
Regulatory Oversight Podcast: 12 Days of Regulatory Insights: Day 5 - Cannabis Chronicles**Speakers: Jean Gonnell and Nick Ramos****Date Aired: December 11, 2024****Nick Ramos:**

Welcome back to the special holiday edition of our *Regulatory Oversight* podcast, "The 12 Days of Regulatory Insights". This 12-episode series is focused on key highlights and trends from this past year in various areas and designed to keep our listeners informed and engaged during the holiday season. I'm Nick Ramos, a member of our Regulatory Investigation, Strategy, Enforcement and Cannabis Industry Practices. Quite a mouthful.

Before we get started today, I wanted to remind all of our listeners to visit and subscribe to our blog at [RegulatoryOversight.com](https://www.regulatoryoversight.com), so you can stay up-to-date on developments and changes in the regulatory landscape. Today, I'm joined by my colleague, Jean Gonnell, who leads the firm's Cannabis Industry Practice, to discuss regulatory updates in the cannabis industry from 2024 and the impacts that the recent election will have on the industry in 2025. Jean, thanks for joining us today.

Jean Gonnell:

Thank you.

Nick Ramos;

So, Jean, I was thinking, we would get started by discussing state legalization initiatives in 2024. As with any discussion of topics in this space, I thought it might be prudent to talk about a recent Pew Research Center to kick off our discussion, that had some numbers that were fairly striking to me, at least. So, in the U.S., 54% of Americans live in a state where recreational use of marijuana is legal, 74% of Americans live in a state where marijuana is legal for either recreational, or medical use, and 79% of Americans live in a county with at least one cannabis dispensary.

As we both know, these percentages have grown significantly in the last decade, and continue to make the federal prohibition looked kind of silly because of this striking percentage of Americans that have access to cannabis in the states, where it's legal. But until federal legalization happens, state legalization and reform efforts will be key for the industry. So, this past year, and fairly recently actually, several states recently voted on ballot measures to legalize medical or recreational marijuana. I was thinking maybe we could discuss Florida first. Jean, how about you tell us a little bit about what happened in Florida recently?

Jean Gonnell:

Absolutely. So, Florida had a ballot initiative that would have actually changed the state constitution to legalize recreational marijuana. As part of that initiative, the requirement was a 60% vote to pass. The vote came out at 55.9%, which obviously is short of a 60%. I think it's important to note that there's only three states that have ever passed recreational marijuana

over 60% of the votes. That would be New Jersey, Maryland, and Arizona. So, it's a pretty steep hill in relation to what was going to be required to pass recreational marijuana in Florida. I think a lot of people were really genuinely surprised and disappointed when it only hit the 55.9%. I say, only, because everybody did truly understand it did have to hit that 60% voter threshold.

Nick Ramos:

Yes, that's interesting, Jean. Either the ballot measure in Florida, Amendment 3, when we're talking about the percentage of voters that needed to vote yes to pass it. I understand that there were some interesting political backers and opponents for Amendment 3. Could you maybe tell us a little bit more about who backed and who opposed the Amendment 3 in Florida?

Jean Gonnell:

Yes. The governor, Ron DeSantis, was staunchly opposed to passing Amendment 3, and it appears from different statements that he made that the basis for his pushback was a belief that there was going to be a public nuisance, if in fact, recreational was passed, coinciding with the smells that come from cultivation facilities, et cetera. So, there was a huge amount of pushback from the governor.

Conversely, Donald Trump. President-elect Donald Trump actually did support Amendment 3, and came out shortly before the election, probably about three months before the presidential election, noting that he was in fact voting yes on Amendment 3.

Nick Ramos:

That's very interesting. We'll get to more about President-elect Trump's views on cannabis generally a little bit later in the podcast. But it is interesting that he backed Amendment 3, and that a member of his own party actually opposed it, and Governor Ron DeSantis as the governor of Florida. So, unfortunate for Florida, steep political climb with the super majority vote. I also understand, though, that two other states voted against recreational use recently, North Dakota and South Dakota. Jean, can you tell us a little bit more about what happened in those two states?

Jean Gonnell:

Yes. In North Dakota, this is actually a third time in six years that a recreational measure has been defeated. This vote was a little bit closer than previously, but the voters in North Dakota decided to, again, vote no on recreational use. I think, by and large, a lot of states, when they vote no on recreational, it's because there's not a good regulatory system put in place for medical. And North Dakota does not currently have a medical program where there's centers of dispensaries, and cultivations, et cetera, and it's more about personal use, and medical in that arena. So, a lot of voters voted no, and it was actually voted down 52.5% to the 47.5% in favor. I think there was a little bit of a surprise in the community that North Dakota voted it down, but I do think the basis for it not passing is based on the fact that there's not a huge medical regulatory structure in North Dakota's system right now.

Nick Ramos:

Yes. Contrary to public belief, North Dakota and South Dakota are actually two separate states. So, maybe you could tell us a little bit about what happened in South Dakota.

Jean Gonnell:

South Dakota, I think a lot of people did believe it was not going to pass. So, it wasn't a huge surprise in South Dakota, but voters rejected a ballot measure to legalize recreational use again for the third straight election cycle. Measure 29 would have legalized possession and home cultivation, but it would not have established a regulatory framework for recreational use. Again, I think voters really want to see good regulatory frameworks when it comes to recreational marijuana. I think North Dakota and South Dakota have that commonality, they want regulated systems put in place. 55.5% of the voters rejected the measure in South Dakota.

Nick Ramos:

Interesting. Okay. So, we've covered three states that rejected legalization in some form this past year. Now, we can maybe talk about one, what I'll call sleeper state that presents one bright spot for legalization efforts this year. That state is actually Nebraska, who voted to approve medical use. Jean, can you tell us a little bit more about what happened in Nebraska?

Jean Gonnell:

I would agree with you, it is the sleeper state. I think a lot of people were genuinely surprised that it got on the ballot. Now, there is some litigation going on pertaining to the measures that it took to get on the ballot. There's elevations of fraud and forgery pertaining to the petition. But regardless, the voters did approve the measure, two measures actually, Amendment or IM 437 and 438, which would legalize marijuana possession and allow doctors to prescribe medical marijuana. Because right now, there is no programs, there's just decriminalization in Nebraska. So, this would actually allow for medical marijuana and would create a new state agency to regulate the medical program.

This actually passed with a very high margin at 71% for the medical marijuana program, which is very surprising to a lot of people near Nebraska or in – watching the industry. I think, exactly like I said, it's definitely a sleeper state, but it was very surprising.

Nick Ramos:

Yeah, definitely. Okay, great. So, in sum, for legalization proponents, not a great year on the state legalization front. Maybe 2025 will be a little better for state legalization efforts. For now, though, we can probably switch gears and talk about the 2025 outlook for any type of federal action that might occur in this space, given the change in administration. So, I'll go back to the peer research polls again and pull out a key statistic. 57% of Americans believe that marijuana should be legal for both medical and recreational use. Very interesting statistic.

The majority of Americans believe that whether it's state or federal, that they should have access to this product. We also know that President Trump supported legalization in Florida as we previously discussed. And during his 2016 campaign, and even more recently, he had

suggested that legalization should be left to the states. Trump also stated that he supports research on medical uses of marijuana as a Schedule III drug, and this was very recently, as recent as I believe September. As we all know, the DEA has proposed regulations to reschedule marijuana from a Schedule I to a Schedule III drug.

So, Trump's comments on this effort indicate that he may support DEA action on this change. The DEA is actually a component of the Department of Justice, which is run by the attorney general. So, Trump's pick for attorney general could provide some insight into whether rescheduling may be successful.

Trump recently nominated former Florida Congressman Matt Gaetz to be the next Attorney General, but Gaetz withdrew his nomination and Trump pretty quickly nominated Pam Bondi as his new pick for Attorney General. Assuming that the nomination moves forward, it makes sense to look at Pam Bondi's history and comments that she's made on cannabis legalization generally because that might influence her thinking on the subject as the Attorney General.

Jean, can you tell us a little bit more about where Bondi might stand on rescheduling and legalization efforts?

Jean Gonnell:

Well, historically, when Bondi served as Florida's attorney general from 2011 to 2019, and during Trump's first term, she served on the president's commission on combating Drug addiction and the opioid crisis.

And during those years, she initially opposed efforts to legalize medical marijuana in Florida. And she also, as Attorney General in Florida, filed appeals in state court defending the legislature's ban on smoking marijuana, although smoking was later added as an approved form of consumption in later legislation.

She also was a member of the President's Commission on Combating Drug Addiction and the opioid crisis. And the commission issued an unfavorable report concerning medical marijuana legislation. With that being said, despite her historical positions on marijuana and legalization, it's not really clear what her views will be with her potentially in office in the AG's office.

Trump has been nominating people that he expects to implement his executive policies, which is consistent with what he's campaigned on. So it is safe to assume that if Trump pushes for rescheduling or de scheduling, she will fall in line with those attempts and thought process.

Nick Ramos:

Thanks, Jean. Yeah, that's really interesting. Bondi's nomination for AG is gonna be A key appointment to monitor here in the coming months. But generally, you know, Trump and his appointees are limited in what they can do about full federal legalization, which will take an act of Congress.

Republicans will be in control of Congress, and there are several proposed bills that may be worth monitoring in the upcoming year. Jean, maybe we could start out by talking about the States 2.0 Act.

Jean Gonnell:

I think that's the most recent act that's been introduced. It was introduced in December of 2023, and is co-sponsored by several Republican congressmen. This bill would federally legalize marijuana by allowing sales to happen interstates, and tag the FDA, as well as the TTB with the responsibilities to on a federal level. Right now, I think everybody understands, that states that have systems for marijuana cannot sell interstate. Everything has to stay intrastate. The bill would also empower the states by letting the states determine if they want to have programs. So, it would not require states to have marijuana programs, but it would leave these decisions essentially up to the states.

Nick Ramos:

Yes, that's right, Jean. So, another bill that's been proposed that's somewhat similar is the States Reform Act of 2023. Can you tell us a little bit more about that one?

Jean Gonnell:

Yes, the States Reform Act of 2023 was actually introduced in October of 2023, and was actually sponsored by Republicans, Nancy Mace and Matt Gaetz. This bill would defer the enforcement authority to the states, much like it is today, but would remove cannabis or marijuana specifically from the Controlled Substances Act, and would task the FDA with the regulation of cannabis products. I think that this bill has a lot of components of states' initiatives that I think a lot of the Republicans definitely have voiced support for.

Nick Ramos:

Yes, definitely. I agree, Jean. President Trump himself has also voiced support for pushing these types of decisions down to the states. So, those two bills, I think will be key to monitor. We don't have a crystal ball, so we can't really tell, make an assessment one way or the other, whether they will be successful in the upcoming year. However, one last bill I think we should talk about relates to safe banking laws in the industry. President Trump has indicated that he would support common sense laws like safe banking.

As we know, Jean, financing and banking in the cannabis industry remains a huge problem for day-to-day businesses that operate in this space. So, one bill that's been proposed is the Safer Banking Act, which could provide protections to the marijuana industry. Could you maybe tell us a little bit more about the Safer Banking Act, Jean?

Jean Gonnell:

Yes, the Safer Banking Act was introduced in September of 2023 with, again, a lot of support from several Republicans. This bill would provide protections for federally regulated financial institutions that serve state-sanctioned marijuana businesses. Right now, there's a system in different states with state-chartered banks, but the banks are limited to really depositories and just deposit accounts. So, there's a lot of restrictions on those types of bank accounts, and it's not a federally condoned area. Currently, there's also issues pertaining to lending. Right now, banks will not lend.

There's one main bank that works in marijuana that has started lending, but the amount of collateral that is required for any types of those investments, it's very, very heavy. This bill, and a lot of people have been watching the different banking bills that have been happening over the course of the last six years. This is that, it just happens to be the most recent thought process on handling banking for marijuana. This all again relates back to the fact that marijuana is a Schedule I substance under the CSA. In fact, even if it is rescheduled, banks have already stated, that even if it's rescheduled to a Schedule III, that is not going to change the stance for the banking, because, again, it would not be federally legal. This is a bill that I think does have some great support on both sides and should definitely be looked at as a remedy to the current banking issues that cannabis businesses face.

Nick Ramos:

Yes, for sure. As with many recent years for this industry, we've seen some positive action in the legal space, we've seen some negative action. So, we'll just have to wait and see what 2025 holds for us. Jean, I wanted to thank you again for joining me today. I know our listeners definitely enjoyed your valuable insights. I also want to thank our audience for tuning into this special holiday series. Tune in next time as we continue our "12 Days of Regulatory Insight" series. Please make sure to subscribe to this podcast via Apple Podcast, Google Play, Stitcher, or whatever platform you use, and we look forward to the next time.

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