

## Is medical cannabidiol exempt from federal drug law?

I found an article that helps to illustrate my solution (emphasis added).

[Yes, States Can Nullify Some Federal Laws, Not All](#)

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In a nutshell: (1) State officials need not enforce federal laws that the state has determined to be unconstitutional; **nor may Congress mandate that states enact specific laws.** But (2), **states may not block federal authorities who attempt to enforce a federal law** unless a court has held that the law is unconstitutional. And (3), **individuals are not exempt from prosecution by the federal government just because the state where they reside has legalized an activity** or pronounced that a federal law is unconstitutional; if convicted, individuals can attempt to vindicate their constitutional rights in court.

Iowa is not suggesting that federal drug law is unconstitutional. Do we have an ethical and legal obligation to obtain an exemption from federal drug law?

The answer is very simple. Federal drug law currently includes exemptions, and the constitutionality of federal drug law does not create a positive conflict with state law if the state law is exempt from federal drug law.

Federal drug law includes a religious exemption for a psychoactive federal schedule 1 controlled substance.

See [21 C.F.R. § 1307.31 \(2019\)](#) (emphasis added):

The listing of peyote as a controlled substance in Schedule I **does not apply** to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are **exempt** from registration. Any person who manufactures peyote for or distributes peyote to the Native American Church, however, is required to obtain registration annually and to comply with all other requirements of law.

Medical cannabidiol is a psychoactive federal schedule 1 controlled substance. Therefore, the state has the ethical obligation to obtain a codified federal exemption for the use of medical cannabidiol to avoid a positive conflict with federal drug law.

See [21 U.S.C. § 903 \(2019\)](#) (emphasis added):

No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a **positive conflict** between that provision of this subchapter and that State law so that the two cannot consistently stand together.

It would be unethical to intentionally create a positive conflict with federal drug law when it isn't necessary to do so.

Not all states have religious exemptions to their drug laws. The U.S. Supreme Court has made it clear that federal religious exemptions do not apply where states don't have a corresponding state religious exemption so that the two cannot consistently stand together. See [Employment Division v. Smith](#), 494 U.S. 872 (1990).

The U.S. Supreme Court has also made it clear that the accepted medical use of a controlled substance is not defined in federal drug law and accepted medical use is therefore a decision made by state law makers. See [Gonzales v. Oregon](#), 546 U.S. 243 (2006). See also [Grinspoon v. DEA](#), 828 F.2d 881, 886 (1987) (“Congress did not intend ‘accepted medical use in treatment in the United States’ to require a finding of recognized medical use in every state”).

Because medical cannabidiol is exempt from state drug law, a corresponding federal exemption must be acknowledged to avoid a positive conflict and maintain consistency with federal drug law.

There is also exemption language in the international treaties, but that is beyond the scope here. Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol, Article 36(2). Convention on Psychotropic Substances, 1971, Article 22(2).

The party making the change (the state) must notify the party it has the agreement with (federal government). That process is found in [21 C.F.R. § 1307.03 \(2019\)](#).

Thank you for reading this information.

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