A Smoking Gun
Medical Marijuana and Gun Ownership Rights: What Patients Need to Know

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What does it mean to have a fundamental right? Well, the Supreme Court has held that a fundamental right is explicitly or implicitly expressed in the U.S. Constitution under the Bill of Rights or has been conferred under the Due Process Clause as involving either life, liberty, or property. For example, the right to bear arms is a fundamental right guaranteed under both the federal constitution and also most, if not all state constitutions. Missouri has made the right to bear arms, a fundamental right. And, they have recently added language making the right to possess and use medicinal cannabis, also fundamental right under state law.

On the other hand, federal law has not come around to legalizing cannabis and in fact, has absurdly classified the plant as a Schedule I drug – meaning that it has absolutely no medicinal value whatsoever. In a letter published by the U.S. Department of Justice, which is by the way, not law, but guidance issued by an administrative body, they have concluded that because the Controlled Substances Act (CSA) still makes cannabis possession unlawful under federal law, this forecloses the issue and every use and possession of cannabis for any reason violates federal law.

This begs the question, if the right to bear arms is a fundamental right (both at the federal and state level) and the right to possess and use medicinal cannabis is too a fundamental right, then how can it be justified that one of your fundamental rights must give way to the exercise of the other? If both rights are unequivocally inalienable, then to take one in place of another is presumably a violation of one of those rights, in other words a violation of due process of law. Essentially, what I am arguing is exercise of one right cannot be hinged upon the other.

Courts that have actually looked at the issue of whether state cannabis laws violate the plain language of the CSA, depending on the rights provided by state law, have stated rather unequivocally that state cannabis laws which have made possession of cannabis legal, whether for medicinal or recreational purposes, do not violate the Controlled Substances Act because none of the states who have legalized cannabis have made trafficking of cannabis legal (meaning none of the states have made it legal to carry or take cannabis across state lines). They have opined in those various decisions that the true intent and purpose of the Controlled Substances Act was in curbing or preventing the trafficking of illegal substances, and since no state cannabis laws up to this point allow this kind of activity, they are not in contravention of or in conflict with the Controlled Substances Act. In fact, those cases have opined that states are not mandated to enact or enforce federal law. Furthermore, keeping the proper context in mind, those cases have also concluded that, while a court can impose a condition that probationers not violate federal laws generally, it must not include terms requiring compliance with federal laws that prohibit cannabis use.

You may ask, well, why do we keep hearing this same argument that the Controlled Substances Act (CSA) makes any use of cannabis illegal? It does sound like a compelling argument given the Supremacy Clause of the U.S. Constitution puts federal law ahead of state law. In short, what this means is that the U.S. Constitution preempts all other bodies of law, federal statutes/laws preempt

state statutes, with administrative law either state or federal generally having the force and effect of law. In explaining what administrative law is, think along the lines of regulations, for instance by the EPA, which protect the environment, or ICE. However, administrative law, imposes only penalties and sanctions for violations thereof, they are very rarely ever criminal in nature.

This brings us to preemption. A state law is preempted by federal law where: 1) the federal law contains a provision which expressly preempts state law; 2) Congress has determined the law was intended to exclusively govern the field; or 3) federal and state law conflict so that compliance with both is an impossibility. There is substantial case law which dispels the myth that the CSA preempts all state marijuana laws. In fact, the CSA rather plainly states the opposite, an excerpt from the CSA is cited below,

> **No provision of [the subchapter on control and enforcement of United States drug laws] shall be construed as indicating an intent on the part of Congress to occupy the field**…to the exclusion of any state law on the same subject matter which would otherwise be within the authority of the State, **unless there was a positive conflict between that provision…and that State law, so that the two cannot consistently stand together.** (emphasis added).

This is pretty important. In addition, courts have interpreted the manifest purpose of the CSA as being "to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances. Since no state law purports to allow the trafficking of illegal substances across state lines, it would be hard to claim that the manifest purpose of the CSA is being thwarted by state medical or even recreational cannabis laws.

In conclusion, your fundamental rights are purportedly being violated when the state of Missouri requires its citizens to abandon their legal right to possess firearms if and when they exercise their right to use medicinal cannabis. The Department of Justice's memorandum does not constitute law and states cannot be mandated to enforce federal law. This leads to the conclusion that where federal law neither expressly preempts state law, nor contravenes the manifest purpose of the federal law, and does not conflict so substantially that compliance with both is an impossibility, as here, the state law is not preempted. As citizens, we have to protect these rights.