



JUDICIAL EDUCATION PROGRAM

Symposium on the Economics and Law of Cannabis Markets

Monday, October 12 – Tuesday, October 13, 2020 | VIRTUAL

GEORGE MASON UNIVERSITY ANTONIN SCALIA LAW SCHOOL

**LAW &
ECONOMICS
CENTER**

MONDAY, OCTOBER 12

All sessions held VIRTUALLY

8:00 - 8:05 am

Welcome

Donald J. Kochan, Professor of Law
Deputy Executive Director, Law & Economics Center
George Mason University Antonin Scalia Law School

8:05 - 9:00 am

Lecture: The Economics of Cannabis Markets: Moving from an Illicit Activity to a Regulated Industry, the Complex Web of Diverse Participants, and the Persistent Incentives Toward Black Markets

Sean O'Connor, Professor of Law
Executive Director, Center for the Protection of Intellectual Property
George Mason University Antonin Scalia Law School

9:15 - 10:30 am

Panel 1: The Economic Effects of State Competition: Toward the Creation of Smart Regulation of Emerging Cannabis Industries in the Absence of a Federal Marketplace

Jonathan H. Adler, Johan Verheij Memorial Professor of Law, School of Law
Director, Coleman P. Burke Center for Environmental Law, Case Western Reserve
University School of Law

Robert Mikos, Professor of Law, Vanderbilt Law School

Adrian Moore, Vice President of Policy, Reason Foundation

John Hudak, Deputy Director, Center for Effective Public Management & Senior
Fellow, Governance Studies, Brookings Institution

Moderator: Sean O'Connor

Reading Assignment:

Adler, Jonathan H., "Introduction: Our Federalism On Drugs," in *Marijuana Federalism: Uncle Sam and Mary Jane*, 1-13. Washington, DC: Brookings Institution Press, 2020.

Bass, Jordan, Sam Chapman, and Allison Felix, "Is the Colorado Marijuana Industry Showing Signs of Maturation?" *Federal Reserve Bank of Kansas City*, December 31, 2019.

Mikos, Robert A., "The Evolving Federal Response to State Marijuana Reforms," *Widener Law Review* 26, no.1 (2020).

10:45 am - 12:00 pm

Panel 2: Regulatory Incentives in Cannabis Markets: The Competing Goals of Sin Taxes, Public Health, Elimination of Illicit Markets, and Revenue-Generation

Jonathan Bench, Co-Chair, Corporate Practice Group, Harris Bricken McVay Sliwoski LLP

James Burack, Director, Marijuana Enforcement Division, Colorado Department of Revenue

Adrian Moore

Rosalie Liccardo Pacula, Professor and Elizabeth Garrett Chair in Health Policy, Economics & Law, University of Southern California Sol Price School of Public Policy

Moderator: The Honorable D. Michael Fisher, Senior Circuit Judge, U.S. Court of Appeals for the Third Circuit

Reading Assignment:

Gascon, Charles S. "As More States Legalize Marijuana, Economics Comes into Play," *Federal Reserve Bank of St. Louis*, May 18, 2020.

Howell, Allie. "Do Marijuana License Fees Help Keep the Black Market Going?" *Reason Foundation*, July 15, 2020.

Spindle, Tory R., et al. "Changing Landscape of Cannabis: Novel Products, Formulations, and Methods of Administration." *Current Opinion In Psychology* 30 (2019): 98-102.

12:00 pm - 1:45 pm

Panel 3: Law Enforcement Incentives: The Impact of Tax Revenue on Enforcement Priorities and the Resulting Consequences for Competition Between Legal Cannabis Industries and Illegal Black Market Participants

Douglas Berman, Newton D. Baker-Baker & Hostetler Chair in Law, Ohio State University Moritz College of Law

Andrew Howard, Lieutenant, Denver Police Department

Sam Kamin, Vicente Sederberg Professor of Marijuana Law and Policy, University of Denver Sturm College of Law

Tamar Todd, Legal Director, New Approach PAC and Lecturer, University of California, Berkeley School of Law

Moderator: The Honorable Bernice B. Donald, Circuit Judge, US Court of Appeals for the Sixth Circuit

Reading Assignment:

Ward, Kyle C., Paul A. Lucas, and Alexandra Murphy. "The Impact of Marijuana Legalization on Law Enforcement in States Surrounding Colorado." *Police Quarterly* 22, no. 2 (2019): 217-242.

Wiens, Terra, et al. "Law Enforcement Practices in the First Two States in US to Legalize Recreational Marijuana." *International Journal of Drug Policy* 61 (2018): 38-43.

2:00 - 3:15 pm

Panel 4: Consumer Protection in a Quasi-Legal Market

Alissa H. Gardenswartz, Shareholder, Brownstein, Hyatt, Farber, Shreck
Kathy Hoffman, Policy and Rules Manager, Washington State Liquor and Cannabis Board

Yoko Miyashita, CEO, Leafly

Todd Zywicki, GMU Foundation Professor of Law, Antonin Scalia Law School

Moderator: Donald J. Kochan

Reading Assignment:

Beales III, J. Howard and Timothy J. Muris. "FTC Consumer Protection at 100: 1970s Redux or Protecting Markets to Protect Consumers?" *George Washington Law Review* 83, no. 6 (2015): 2157-2229, 2157-2574.

Borodovsky, Jacob T., et al. "Cannabis Vaping and Health: Regulatory Considerations" *Addiction* (2019).

Bonevski, Billie, et al., "Lessons from the public health responses to the US outbreak of vaping-related lung injury" *Addiction* (2020).

Zywicki, Todd J. "The Market for Information and Credit Card Regulation." *Banking & Financial Service Policy Report* 28 no. 1 (2009).

"VAPI anniversary: Killer chemicals still on the streets" *Leafly*. August 4, 2020.

"What You Need to Know (And What We're Working to Find Out) About Products Containing Cannabis or Cannabis-derived Compounds, Including CBD." US Food and Drug Administration. March 5, 2020.

Sandler, Jonathan C., and Alissa Gardenswartz. "Consumer Protection Laws & CBD Products - What You Need to Know Before Going to Market." *Cannabis Industry Journal*, December 30, 2019.

3:30 - 4:45 pm

Panel 5: The Economics of Multi-Sovereign Regulatory Contradiction: How Federal Drug Laws Impact Banking, Payroll and Financial Services in States with Legal Cannabis Markets

Tyler Beuerlein, CRO, Hypur and Chair, NCIA Banking and Financial Services Committee

Sahar Ayinehsazian, Senior Associate Attorney, Vicente Sederberg, LLP

Julie Hill, Alton C. and Cecile Cunningham Craig Professor of Law, University of Alabama School of Law

Moderator: Donald J. Kochan

Reading Assignment:

Conti-Brown, Peter. "The Policy Barriers to Marijuana Banking," *Penn Wharton Public Policy Initiative* 52, (February 2018): 1-9.

Hill, Julie Andersen. "Banks, Marijuana, and Federalism," *65 Case Western Reserve University Law Review* 597 (2015): 597-605, 631-647.

TUESDAY, OCTOBER 13

All sessions held VIRTUALLY

8:00 - 9:15 am

Panel 6: The Economics and Incentives of Exclusive Intellectual Property Rights: Do Voids in Trademark and Patent Law Inhibit Participation and Innovation in Cannabis Markets?

Michael Atkins, Attorney, Atkins Intellectual Property

Dale Hunt, Founder, Plant and Planet Law, LLP

Alison Malsbury, Partner, Harris Bricken McVay Sliwoski LLP

Viva Moffat, Professor of Law, University of Denver Sturm College of Law

Moderator: The Honorable Timothy M. Tymkovich, Circuit Judge, US Court of Appeals for the Tenth Circuit

Reading Assignment:

Landau, Nicholas J. & James W. Wright, Jr. "Cannabis Patents, Trademarks, and Other Forms of Intellectual Property Face Difficulties," *Intellectual Property & Technology Law Journal* 31 no. 7 (2019).

Moffat, Viva R. and Sam Kamin. "Trademark Laundering, Useless Patents, and Other IP Challenges for the Marijuana Industry," *Washington and Lee Law Review* 73 no. 1 (2016): 217-222, 244-258, & 263-275.

9:30 - 10:45 am

Panel 7: Beyond Decriminalization: The Economic Impact of FDA and Other Regulatory Barriers to Entry for Cannabis Industries Even if the Federal Government No Longer Lists Marijuana as a Controlled Substance

Erika Lietzan, William H. Pittman Professor of Law & Timothy J. Heinsz Professor of Law, University of Missouri School of Law

Jessica O'Connell, Partner, Covington & Burling LLP

Patricia Zettler, Associate Professor of Law, The Ohio State University Michael E. Moritz College of Law

Moderator: The Honorable Daniel Domenico, Judge, US District Court for the District of Colorado

AGENDA

Reading Assignment:

O'Connor, Sean and Erika Lietzan. "The Surprising Reach of FDA Regulation of Cannabis Even After Descheduling," *American University Law Review* 68 no. 3 (2019): 823-836, 907-926.

"FDA Regulation of Cannabis and Cannabis-Derived Products, Including Cannabidiol (CBD)" US Food and Drug Administration. August 3, 2020.

11:00 am - 12:00 pm

Keynote Address

The Honorable Phil Weiser, Attorney General of Colorado

12:00 pm

Closing Remarks and Adjourn