



# Federal appeals court asked to weigh in on lawsuit over North Dakota political ad law

BY: MARY STEURER  
ND Monitor

The Burleigh County State's Attorney's Office wants a federal appeals court to dismiss a lawsuit against the office accusing it of free speech violations.

Former state lawmaker Brandon Prichard in the suit alleges the state's corrupt practices law, which criminalizes lying or making intentionally misleading statements in political ads, is unconstitutional.

Prichard claims he, his wife, Kathryn and his political organization Citizens Alliance of North Dakota were subject to an unfair investigation under the statute by the Burleigh County State's Attorney's Office, which forced them to self-censor their political speech. The Republican is a controversial figure in North Dakota politics in part for his attacks on incumbent Republican lawmakers.

Burleigh County State's Attorney Julie Lawyer asked U.S. District Court Judge Daniel Traynor

to toss the case. Lawyer in court records said that although her office had previously investigated the Prichards under the law, she declined to prosecute.

The Burleigh County State's Attorney's Office also brought charges under the statute in 2018 against legislative candidate Duane Sand, The Bismarck Tribune reported. Prosecutors later dropped the charges against Sand after those involved reached a private settlement.

Lawyer in court records said Prichard's lawsuit should be dismissed in part because her office has decided not to enforce the statute moving forward.

The Burleigh County State's Attorney's Office also argued Prichard does not have standing to bring the case because he did not provide sufficient evidence that the agency has caused him harm, or that action by a court could address that harm.

Traynor earlier this month denied the agency's motion to dismiss the lawsuit. He wrote that Burleigh County prosecutors' previous enforcement actions under the statute means the plain-

tiffs could face prosecution in the future, which may present a First Amendment concern.

Traynor in the order also hinted he may ultimately find the corrupt practices law unconstitutional.

Lawyer has since asked the 8th Circuit Court of Appeals to review Traynor's ruling.

She has not yet submitted documents outlining her reasons for the appeal. Lawyer must file a brief detailing her arguments by June 23, according to court records.

Lawyer did not immediately respond Tuesday to a request for comment.

Prichard in a Tuesday statement said he believes the 8th Circuit will deny Lawyer's appeal.

His suit originally also named the North Dakota Attorney General's Office and the North Dakota Ethics Commission as defendants, though the court granted those agencies' requests to be dropped from the case.

North Dakota Monitor reporter Mary Steurer can be reached at [msteurer@northdakotamonitor.com](mailto:msteurer@northdakotamonitor.com).



Brandon Prichard attends a special session of the Legislature on Oct. 23, 2023. Prichard, a former state lawmaker, in November filed a federal lawsuit challenging the constitutionality of a state political ad law. (Kyle Martin/For the North Dakota Monitor)

# The feds have embraced medical marijuana. Now what?

*DOJ's cannabis reclassification offers tax, research benefits but leaves recreational weed adrift*

BY: AMANDA WATFORD  
ND Monitor

The U.S. Department of Justice's recent decision to downgrade the drug classification for medical cannabis will help medical marijuana businesses. Companies will be able to claim some federal tax benefits. New research can start up at state universities.

But the broader divide between federal and state marijuana policy remains largely intact, leaving states to navigate a fragmented and still-evolving cannabis landscape with few clear answers about what comes next.

The unprecedented change in April reclassifying medical marijuana from Schedule I to Schedule III means the federal government is acknowledging an accepted healthcare use for cannabis. Recreational marijuana, however, remains a Schedule I drug under federal policy, even though 24 states and the District of Columbia allow recreational cannabis in various forms, from dried flower to vaping oils to processed gummy candies.

The U.S. Drug Enforcement Administration is set to hold its first hearing at the end of June on the possible de-scheduling of marijuana broadly, which would include recreational or adult-use cannabis.

Until then, some experts say little is expected to change for the more than half of states with medical or recreational marijuana programs.

"This change is sort of catching up to what states are already doing," said Katharine Neill Harris, a drug policy fellow at Rice University's Baker Institute for Public Policy. "In some ways the federal government is following the states on this issue."

States have spent years building regulatory frameworks for medical and recreational marijuana programs — including licensing systems, tax structures, testing requirements and retail oversight.

Following the DEA's announcement in April that it would reschedule medical cannabis, some state commissions acknowledged the decision but stressed that their laws have not changed and that they are awaiting further federal guidance.

In Nevada, for example, state cannabis officials released a statement noting that the rescheduling change allows medical cannabis licensees to register with the DEA, while also emphasizing that Nevada law still classifies non-medical marijuana as a Schedule I substance.

In mid-May, the California Department of Cannabis Control proposed emergency regulations that would allow businesses holding licenses for both medical and recreational marijuana to obtain separate licenses. The change could position cannabis businesses to take advantage of potential benefits tied to the rescheduling of medical marijuana.

Many of the day-to-day functions of state cannabis programs are expected to remain intact, according to experts.

"Right now, nothing would have to change for states because we don't know what the federal regulations are going to look like for managing medical cannabis," said Heather Trela, the director of operations and a fellow at the Rockefeller Institute of Government, a nonpartisan public policy think tank.

"Everyone's kind of figuring it out right now, and we don't have all the details, so it's hard for states," she said.

State cannabis regulators and officials in several states, including Oklahoma, Vermont and Washington, told Stateline they are waiting for guidance from the DEA and other federal agencies before determining whether businesses will be required to register with the DEA, qualify for federal tax relief or face new compliance requirements, and whether states may need to revise

their own cannabis laws.

"None of us really can effectively advise our licensees, which is just incredibly frustrating, especially with a ticking clock," said James Pepper, the chair of the Vermont Cannabis Control Board, which regulates the state's medical and adult-use market.

In the coming months, other federal agencies may issue guidance on how rescheduling will affect existing rules, according to policy experts. The U.S. Department of Transportation said in December that drug testing and licensing standards will not change, and TSA rules still prohibit carrying marijuana on flights. Financial guidance from the IRS and the Treasury Department also are still pending.

## 'Taxed like a normal business'

But some marijuana policy experts and industry leaders say the federal shift could bring major changes to cannabis business operations and scientific research.

Cannabis businesses have long been blocked from taking certain federal tax deductions because marijuana was classified as a Schedule I substance. Some industry leaders say moving medical cannabis to Schedule III could ease some of those constraints.

"Going forward, we can be treated and taxed like a normal business, which ultimately helps the bottom line and allows us to reinvest more meaningfully in the states where we operate," said Lauren Niehaus, the executive director of government relations at Trulieve Cannabis Corp., one of the largest cannabis companies in the country. Trulieve, based in Florida, operates dispensaries in eight states.

The tax policy change is a central issue for cannabis operators across the board, from small businesses to large multistate companies, Niehaus said.

Ryan Hunter, the chief revenue officer of Spherex Labs, said rescheduling changes could shift investor and lender attitudes toward the cannabis industry, with some capital partners becoming more willing to invest.

But Hunter said the latest federal change also creates new uncertainty for companies operating in both medical and recreational markets, including Spherex Labs, which operates in Colorado.

"Our business is still very much in wait-and-see mode," Hunter said. "There are a lot of positive gains here, but really more than anything, a lot more confusion."

The federal government has effectively created different legal frameworks for the same substance, he added. Medical cannabis is now federally recognized, while recreational marijuana and its consumers remain in conflict with federal law.

The rescheduling change also carries federal registration requirements under the Controlled Substances Act, a law that would require medical cannabis businesses to register with the DEA, pay annual fees, and comply with detailed reporting, inventory and security rules that may overlap or conflict with existing state systems.

Spherex Labs has chosen not to register at this time, Hunter said, opting to wait for further federal guidance.

Earlier this month, the Oklahoma Bureau of Narcotics and Dangerous Drugs Control sent a letter to licensed medical cannabis businesses encouraging them to register with the DEA and warning of possible sanctions, including revocation of their state licenses, for failing to comply with federal requirements.

But the Oklahoma Medical Marijuana Authority, which oversees cannabis licensing and regulation in the state, told Stateline the letter came as a surprise and that it remains unclear whether federal officials actually intend to require DEA registration for medical operators.

Other states could adopt similar federal registration requirements, according to Trela, of the Rockefeller Institute of Government.

## Cannabis research

Some researchers and experts say rescheduling marijuana could reduce longstanding barriers to studying its medical use, safety and long-term health effects.

Current research on marijuana's effects falls short of what is needed to fully understand cannabis as a medical treatment, according to Chad Johnson, an assistant professor of pharmaceutical sciences at the University of Maryland School of Pharmacy. Johnson also is the director of the university's medical cannabis graduate studies program.

"We really do need those randomized trials to really say that cannabis is effective for treating a particular condition," Johnson said.

There are still major gaps in cannabis research, he said, including how it is formulated and delivered, such as whether methods beyond smoking, vaping or edibles may be more effective, and how to determine appropriate dosing for specific medical conditions.

Johnson added that rescheduling could allow academic institutions to study products already being sold in their respective states, making research more closely aligned with what consumers are actually using, rather than relying on cannabis sourced through federally authorized suppliers.

Some public health and addiction experts say the federal shift should not be interpreted as a signal that cannabis is risk-free, pointing to ongoing con-



cerns about cannabis use disorders, dependency and effects on mental health.

"It's going to reduce the public's perception of risk of cannabis, and right now, I don't think the public is aware of the high potency that cannabis has," said Dr. Alta DeRoo, the chief medical officer of the Hazelden Betty Ford Foundation, one of the largest nonprofit treatment providers for addiction and mental health. DeRoo also is a board-certified addiction medicine physician and OB-GYN.

Some opponents of the change also argue it is driven as much by political and economic pressure from the cannabis industry as by evolving science.

"The issue is not research. The issue is money, tax breaks for an industry, and that's really what the whole effort to relax marijuana laws is about," said Kevin Sabet, a former drug policy adviser to three presidential administrations and the president and CEO of Smart Approaches to Marijuana, a nonprofit that opposes legalizing marijuana.

## What's next

New federal changes also could face court challenges or be reversed by a future administration, according to some cannabis policy experts.

Last week, the attorneys general of Indiana, Louisiana and Nebraska filed a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit, arguing that the Justice Department's rescheduling order violates federal administrative law. Louisiana and Nebraska have medical-only cannabis programs, while Indiana does not have a cannabis program at all.

Smart Approaches to Marijuana and the National Drug and Alcohol Screening Association filed a similar lawsuit earlier this month, arguing that the administration exceeded its authority under the Controlled Substances Act.

At the same time, the White House's latest National Drug Control Strategy document also raised concerns about high-potency marijuana and warned that international cartels and organized crime groups continue to exploit state cannabis legalization laws.

Aside from criminal justice implications, federal restrictions have limited cannabis businesses' access to banking, investment and long-term planning, even as state markets have expanded into a multibillion-dollar industry.

Banks have largely avoided working with cannabis businesses because marijuana remains broadly illegal under federal law, which exposes financial institutions to potential regulatory penalties and compliance risks even in states where cannabis is legal.

Several bills have been introduced in Congress that would provide protections for banks offering services to cannabis businesses, but no legislation has been adopted.

Stateline reporter Amanda Watford can be reached at [awatford@stateline.org](mailto:awatford@stateline.org).

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