RULE OF LAW INITIATIVE

A Review of Cannabis Scheduling, Administrative Accountability, Due Process, and Government Transparency

CENTRAL QUESTION

What happens when the law requires scientific review, but the officials with final administrative or legislative power reject, delay, redefine or add requirements beyond the scientific record?

1. From Anslinger to the Controlled Substances Act

Harry Anslinger and early federal prohibition. Beginning in the 1930s, Federal Bureau of Narcotics Commissioner Harry Anslinger helped build the federal campaign against marijuana. The campaign relied heavily on sensational claims about crime, race and moral decline. Many quotations attributed to Anslinger circulate online, but not every quotation is traceable to an original transcript; the strongest documented point is that federal marijuana policy was developed in an era of openly racialized and fear-based propaganda, not modern clinical review.

The Controlled Substances Act of 1970. President Richard Nixon signed the CSA in October 1970. Marijuana was placed in Schedule I while Congress created the National Commission on Marihuana and Drug Abuse—the Shafer Commission—to conduct the deeper study that had not yet been completed. The CSA established eight scientific and medical factors for scheduling, including pharmacological effects, current scientific knowledge, patterns of abuse, public-health risk and dependence liability.

2. Nixon, the Shafer Commission and a Predetermined Political Result

The Commission's work. The Shafer Commission was created by the 1970 law and included presidential and congressional appointees. Its 1972 report, "Marihuana: A Signal of Misunderstanding," recommended removing criminal penalties for private possession and small transfers, while continuing to discourage use and regulate public conduct.

The secret recordings matter. White House recordings show that Nixon demanded a forceful anti-marijuana message before the Commission completed and publicly delivered its conclusions. In a May 26, 1971 Oval Office conversation, Nixon told aides he wanted a "strong statement on marijuana"—evidence that the President's political position was already fixed while the supposedly independent review was still underway.

Rejection after the report. The Commission presented its principal marijuana report on March 22, 1972. Nixon's administration promptly rejected the decriminalization recommendation and marijuana remained in Schedule I. The important point is not merely disagreement: the recorded record supports the concern that the decision-maker had adopted the result before receiving the completed scientific and policy review.

DUE-PROCESS CONCERN

A review process loses legitimacy when the official who controls the outcome has publicly or privately predetermined the answer before the evidence and recommendation are complete.

3. DEA Creation and Concentration of Scheduling Power

Creation of DEA. Nixon created the Drug Enforcement Administration through Reorganization Plan No. 2 of 1973. The Attorney General then delegated major CSA functions to DEA. That structure placed enforcement and important scheduling authority inside the same institution: an agency responsible for enforcing drug prohibitions also became a central decision-maker in petitions seeking to reduce those prohibitions.

Institutional conflict. The CSA divides responsibility among the Attorney General/DEA and federal health authorities. Scientific and medical findings from health agencies have special legal weight, but the DEA Administrator controls final agency orders in contested scheduling proceedings. This creates recurring tension when medical experts, administrative judges and enforcement leadership reach different conclusions.

4. The MDMA Case: Judge Young, John Lawn and Competing Definitions of Science

Emergency scheduling and hearings. DEA temporarily placed MDMA in Schedule I in 1985 and initiated permanent scheduling proceedings. Psychiatrists and researchers argued that MDMA had been used therapeutically and should not be placed in Schedule I. The case was heard by DEA Chief Administrative Law Judge Francis L. Young.

Judge Young's 1986 recommendation. After a substantial evidentiary record, Judge Young recommended Schedule III—not Schedule I. He found that the record showed some abuse potential but not the level required for Schedules I or II. He also rejected the idea that a lack of FDA approval automatically proved the absence of an accepted medical use.

Conflict inside DEA. DEA counsel Stephen E. Stone and Charlotte A. Johnson filed exceptions arguing that Judge Young was biased, had disregarded evidence and that MDMA belonged in Schedule I. Administrator John C. Lawn ruled that the accusations of bias were improper and should be stricken—but Lawn nevertheless rejected Young's Schedule III recommendation and placed MDMA in Schedule I.

Court intervention. In Grinspoon v. DEA, the First Circuit held that DEA had used an unduly narrow approach to "currently accepted medical use" and vacated the initial order. DEA later returned MDMA to Schedule I using revised reasoning. The episode demonstrated how an administrative judge could find medical use and recommend a lower schedule, while the enforcement agency's administrator could reject that recommendation.

WHY THE MDMA CASE MATTERS TO CANNABIS

It established the same institutional pattern later seen in the marijuana proceeding: extensive evidence before Judge Young, a recommendation below Schedule I, opposition from DEA counsel, and a final DEA Administrator with power to reject the judge's findings.

5. The Marijuana Rescheduling Case: The Same Judge, the Same Institutional Divide

A petition delayed for years. NORML filed the original marijuana rescheduling petition in 1972. The proceeding endured repeated agency resistance and litigation before evidentiary hearings finally began in 1986.

Judge Young's 1988 decision. On September 6, 1988, Judge Young concluded that marijuana had accepted medical use for some conditions, was safe for use under medical supervision, and should be transferred to Schedule II. His decision described natural marijuana as "one of the safest therapeutically active substances known to man" and concluded that continued agency obstruction would be unreasonable, arbitrary and capricious on the record before him.

John Lawn's rejection. On December 29, 1989, Administrator John Lawn issued the DEA's final order rejecting Judge Young's recommendation. Lawn concluded that marijuana lacked an accepted medical use and accepted safety under medical supervision, and therefore must remain in Schedule I.

The 1991 and 1994 appeals. In Alliance for Cannabis Therapeutics v. DEA, the D.C. Circuit first remanded the matter in 1991 because DEA's test for accepted medical use was unreasonable in part. DEA reformulated its test and again denied rescheduling. In 1994, the court upheld the agency's revised decision. The petition that began in 1972 had taken more than two decades to reach final judicial closure.

6. What the Federal History Shows

- Scientific findings and final administrative decisions can diverge sharply.
- An administrative law judge's recommendation is not the final agency decision; the DEA Administrator can reject it.
- Courts often review whether the agency used a legally permissible standard, not whether the court independently agrees with the scientific evidence.
- Long delays can preserve criminal classifications for decades even while evidence, state law and medical practice change.
- The combination of enforcement power and scheduling authority creates an appearance—and sometimes an allegation—of institutional conflict.

7. Tennessee's Process and Public Chapter 789

Existing state scientific factors. Tennessee's controlled-substances law contains scientific and medical factors for scheduling decisions. Tennessee also has commissions and boards that can study and recommend policy. A key procedural concern is what happens after a recommendation: who is legally required to initiate the next step, which official or board must act, and what deadline or remedy exists if no action occurs?

Public Chapter 789 (SB 1603 / HB 1972). Effective April 23, 2026, this law provides that if marijuana is rescheduled or removed under federal law, Tennessee's commissioner may not make the corresponding state change unless the General Assembly first establishes a marijuana regulatory framework and expressly authorizes the commissioner to act.

Why this is unusual and concerning. The statute singles out marijuana and inserts a legislative precondition before the state may follow a federal scheduling change. That can leave Tennessee penalties and classifications in place even after federal law changes, with no guaranteed deadline for the General Assembly to enact a framework.

TENNESSEE PROCESS QUESTION

If scientific criteria are satisfied and federal law changes, is it constitutionally and administratively sound to continue criminal penalties indefinitely while waiting for a separate regulatory framework with no fixed enactment deadline?

8. Senator Adam Lowe's "No Street Test" Position

His stated position. In a direct public reply, Senator Adam Lowe wrote that there is "no affordable test for inebriation like we have for alcohol and a breathalyzer," said there was no way to determine whether someone had consumed too much and could safely perform tasks, and concluded: "No street test = no legalization."

The legal mismatch. Neither the federal CSA's eight scheduling factors nor Tennessee's scientific scheduling factors make a marijuana breathalyzer a prerequisite to rescheduling. A roadside impairment device is a legislative policy preference, not one of the statutory scientific criteria.

Existing enforcement contradicts an absolute "no way" claim. Tennessee already enforces drug-impaired-driving laws without a marijuana breathalyzer. Officers use observations, standardized field sobriety testing, Drug Recognition Experts, toxicology and other evidence. The absence of a single alcohol-style numerical roadside test does not mean that drug impairment is legally unenforceable.

The scientific problem with the comparison. Alcohol breath testing works because breath alcohol can be related to blood alcohol concentration and Tennessee law uses a defined BAC threshold. THC behaves differently: blood or oral-fluid levels do not map neatly onto current impairment in the same way. Requiring cannabis to produce an alcohol-equivalent device may therefore impose a technologically and biologically mismatched standard.

THE CORE POLICY CHALLENGE

A lawmaker may advocate for additional safety rules. The constitutional and rule-of-law concern arises when an extra-statutory requirement—especially one that may not be scientifically achievable in alcohol-equivalent form—is used to override or indefinitely postpone the scientific criteria the law actually commands.

9. Constitutional and Administrative Concerns to Raise

- Predetermination: Was the decision fixed before the scientific review was completed?
- Arbitrary treatment: Is marijuana being subjected to requirements not imposed on similarly regulated or more dangerous substances?
- Delegation and accountability: Who has final authority, and who is accountable when boards, commissions, judges, health agencies and enforcement administrators disagree?
- Procedural due process: Is there a clear process, timeline, notice, record and remedy when government fails to act?
- Equal protection and rational basis: Is the classification rationally related to the evidence and applied consistently?
- Separation of functions: Does combining enforcement interests with scheduling authority create institutional bias or the appearance of bias?
- Continuing harm: Can government maintain arrests, incarceration, family separation and economic penalties while the required review process remains stalled or politically overridden?

10. Bottom Line for the Meeting

This history is not simply a debate over whether cannabis is harmless or whether every form of use should be legal. It is a documented pattern in which scientific commissions, administrative judges, physicians and researchers have repeatedly reached conclusions that conflicted with the political or enforcement officials holding final power.

Nixon's administration rejected the Shafer Commission after recordings showed his opposition was already fixed. Judge Francis Young recommended Schedule III for MDMA and Schedule II for marijuana; DEA Administrator John Lawn rejected both lower-schedule outcomes. The marijuana petition then remained trapped in administrative and judicial proceedings for more than twenty years.

Tennessee now faces the same underlying question. Public Chapter 789 prevents an automatic state response to federal marijuana rescheduling until the legislature creates a regulatory framework. At the same time, Senator Adam Lowe has added a separate personal prerequisite—an affordable alcohol-like roadside test—that does not appear in the scheduling statute and does not exist in an equivalent scientifically accepted form.

WHEN SCIENCE IS REQUIRED BY LAW, GOVERNMENT SHOULD NOT BE ALLOWED TO REPLACE IT WITH PREDETERMINED RESULTS, INDEFINITE DELAY OR IMPOSSIBLE EXTRA-STATUTORY CONDITIONS.

Primary and Official Sources for Follow-Up

- Controlled Substances Act: 21 U.S.C. §§ 811–812.
- National Commission on Marihuana and Drug Abuse, Marihuana: A Signal of Misunderstanding (1972).
- Richard Nixon Presidential Library: White House tape logs and Commission records, including Oval Office Conversation 505-4 (May 26, 1971).
- In the Matter of MDMA, Opinion and Recommended Decision of ALJ Francis L. Young (May 22, 1986).
- Grinspoon v. DEA, 828 F.2d 881 (1st Cir. 1987).
- In the Matter of Marijuana Rescheduling Petition, ALJ Francis L. Young (Sept. 6, 1988).
- DEA Final Order, Marijuana Scheduling Petition, 54 Fed. Reg. 53,767 (Dec. 29, 1989).
- Alliance for Cannabis Therapeutics v. DEA, 930 F.2d 936 (D.C. Cir. 1991); 15 F.3d 1131 (D.C. Cir. 1994).
- Tennessee General Assembly, SB 1603 / HB 1972, Public Chapter 789 (effective Apr. 23, 2026).
- Tennessee Highway Safety Office materials on Drug Recognition Experts and impaired-driving enforcement.
- Adam Lowe public reply supplied by the recipient: "No street test = no legalization."

Appendix: Verbatim Public Statements

Senator Adam Lowe (public replies):
“there is no misunderstanding of our laws around marijuana. The Senator has told you, until there is a test for impairment, he will not vote to legalize it in TN. He has supported making it prescription medical use.”

“you haven’t dismantled fact. The fact remains there is no affordable test for inebriation like we have for alcohol and a breathalyzer. There is no way to determine if someone has had too much of a substance and is incapable of safely performing tasks. This is a matter of workplace safety. Once there is a test to gauge this, I see marijuana differently than alcohol. But not until then. It doesn’t matter how many meetings, concerts, or propaganda ads you run on me. No street test = no legalization.”

Verbatim Nixon Quote

White House Conversation 505-4 (May 26, 1971): “Now, this is one thing I want. I want a goddamn strong statement on marijuana. I mean one on marijuana that just tears the ass out of them.”