Cannabis at an inflection point: federal rescheduling, hemp crackdowns, constitutional limits in 2025

By Alexander Malyshev, Esq., and Sarah Ganley, Esq., Carter Ledyard & Milburn LLP

JANUARY 14, 2026

The U.S. cannabis industry entered 2025 amid growing skepticism that federal rescheduling would move beyond preliminary announcements and extended agency review. That skepticism eased somewhat in December, when President Trump issued an executive order directing federal agencies to fast-track the reclassification of cannabis from Schedule I of the Controlled Substances Act ("CSA") to the less restrictive Schedule III.

While the order did not itself change federal law, it reinvigorated expectations that rescheduling — long viewed as procedurally stalled and politically fragile — might finally advance.

That renewed optimism emerged, however, against a countervailing regulatory and legal backdrop. Throughout 2025, anti-legalization groups gained traction at the state and federal levels, regulators intensified enforcement against intoxicating hemp products, and courts increasingly subjected state cannabis licensing regimes to constitutional scrutiny.

The result is a cannabis landscape defined less by steady liberalization than by simultaneous expansion and retrenchment — one in which federal reclassification appears closer than ever, even as the broader legal framework governing the industry grows more contested.

The December 2025 executive order and federal rescheduling

On Dec. 18, 2025, President Trump issued an executive order (https://bit.ly/4ppLHn2) directing the Attorney General to expedite the reclassification of cannabis from Schedule I to Schedule III under the CSA. Although the executive order does not itself effectuate rescheduling — and cannabis remains federally illegal — it signals renewed executive-branch engagement with a reform effort that had appeared increasingly vulnerable to delay.

The order builds on the Department of Health and Human Services' 2023 recommendation (https://bit.ly/4stmrip) that cannabis be moved to Schedule III and seeks to revive a formal rulemaking process initiated under the Biden Administration in 2024. That process stalled in early 2025 amid procedural disputes and allegations of improper ex parte coordination between the Drug Enforcement Administration (DEA) and anti-legalization groups, leaving the industry uncertain whether rescheduling would proceed at all.

While federal rescheduling regained momentum, 2025 also saw a resurgence of organized opposition to cannabis legalization at both the state and federal levels.

If completed, rescheduling would deliver tangible benefits to the industry. Moving cannabis to Schedule III would substantially ease barriers to medical research by reducing registration, storage, and security requirements for researchers. It would also eliminate the application of Internal Revenue Code § 280E, allowing state-legal cannabis businesses to deduct ordinary and necessary business expenses on their federal tax returns — an issue that has long distorted balance sheets across the industry.

Because Cannabis would remain a controlled substance there would still be a tension between federal law and a patchwork of state legalization regimes. Rescheduling would also do little, standing alone, to address the risk aversion of financial institutions, insurers, and interstate service providers that continue to view cannabis as a federally prohibited activity.

Moreover, the rulemaking process itself remains vulnerable. Even on an accelerated timeline, rescheduling must still proceed through notice-and-comment rulemaking, potential administrative hearings, interagency review, and publication of a final rule. Litigation or renewed political resistance could again delay — or derail — the effort. The executive order may

restore momentum, but it does not eliminate the structural fragility that has long defined federal cannabis reform.

Political pushback and the reframing of opposition

While federal rescheduling regained momentum, 2025 also saw a resurgence of organized opposition to cannabis legalization at both the state and federal levels. Anti-legalization groups refined their messaging, shifting away from traditional arguments centered on crime or morality and toward critiques of corporate concentration, regulatory dysfunction, and public-health concerns.

Federal rescheduling may be closer than ever, but political opposition remains organized, courts are increasingly active arbiters of cannabis policy, and regulators appear more willing to intervene decisively.

That strategy proved effective at the ballot box. Voters in Florida, North Dakota, and South Dakota rejected recreational cannabis ballot initiatives despite polling showing broad public support. In Florida, in particular, opponents successfully reframed legalization as a measure designed to entrench large incumbent operators rather than expand consumer access or advance social equity — an argument that resonated with voters and may influence future opposition campaigns.

At the federal level, anti-legalization advocates similarly targeted reforms aimed at easing restrictions on the industry, including banking access and tax relief. Rather than contesting legalization directly, opponents increasingly characterized these measures as unjustified subsidies for a fragmented and unevenly regulated industry. That reframing has complicated efforts to present rescheduling as a technical, evidence-based adjustment rather than a symbolic endorsement of legalization.

The hemp reckoning: closing the farm bill 'loophole'

Perhaps the most consequential regulatory shift of 2025 occurred not in cannabis markets, but in hemp. Since passage of the 2018 Farm Bill, intoxicating hemp-derived products — such as delta-8 and delta-10 THC — have proliferated nationwide, often operating outside the tightly regulated cannabis frameworks imposed on state-legal cannabis businesses. While differences of opinion existed as to whether this was a "loophole," or a lack of enforcement, in 2025, that period of ambiguity came to an end.

In November, Congress enacted legislation (https://bit.ly/45H2UkN) effectively recriminalizing the sale of intoxicating hemp-based and hemp-derived cannabinoid products, with an effective date in November 2026. The legislation reflects growing bipartisan concern that the Farm Bill's definition of "legal hemp" enabled a nationwide market for psychoactive products sold in gas stations, convenience stores, and online marketplaces with little to no oversight. It comes on the heels of earlier state-level efforts to regulate (or outlaw) these products.

The new law sharply narrows the federal definition of "legal hemp," limiting it to hemp and hemp-derived products that contain no more than 0.3% total THC by weight or more than 0.4 milligrams of combined total THC (or any cannabinoid with similar intoxicating effects) per serving. It also criminalizes hemp-derived cannabinoid products marketed for consumer use and targets products created through chemical synthesis. Products falling outside these limits — including most delta-8, delta-10, and similar psychoactive hemp derivatives — are expressly excluded from the federal definition of lawful hemp.

Although the legislation does not explicitly ban non-intoxicating CBD products, industry participants have raised concerns that trace THC levels common in CBD extracts could expose those products to enforcement risk. If those concerns materialize, the revised statutory framework could substantially contract the hemp market.

Constitutional constraints on state cannabis markets

Courts also played an increasingly prominent role in shaping cannabis policy in 2025. In August, the 2nd U.S. Circuit Court of Appeals held in *Variscite NY Four, LLC v. New York State Cannabis Control Board*, 152 F.4th 47 (2d Cir. 2025), that the Dormant Commerce Clause (DCC) applies fully to the recreational cannabis market.

The court invalidated New York's licensing preference for applicants with in-state cannabis convictions, concluding the criterion functioned as a proxy for residency and impermissibly discriminated against out-of-state participants in violation of the DCC. In doing so, the court rejected the argument that cannabis's federal illegality insulated state licensing regimes from constitutional scrutiny.

The decision aligns with earlier 1st U.S. Circuit Court of Appeals precedent striking down residency-based restrictions in Maine's medical cannabis licensing scheme (*see Northeast Patients Group v. United Cannabis Patients & Caregivers of Me.*, 45 F.4th 542 (1st Cir. 2022)) and signals growing judicial skepticism toward protectionist cannabis regulation.

A January 2026 decision from the 9th U.S. Circuit Court of Appeals, however, arrives at the opposition conclusion, holding that the DCC does not apply to federally illegal cannabis and creating an apparent circuit split. See *Peridot Tree WA Inc. v.*

Wash. State Liquor and Cannabis Control Bd., No. 24-3481 (9th Cir. Jan. 2, 2026).

Looking ahead

Developments in 2025 underscore that cannabis reform is neither linear nor assured. Federal rescheduling may be closer than ever, but political opposition remains organized, courts are increasingly active arbiters of cannabis policy, and regulators appear more willing to intervene decisively. Moving forward, the central question is no longer whether cannabis reform will continue, but how — and on whose terms.

Alexander Malyshev and Sarah Ganley are regular, joint contributing columnists on legal issues in the cannabis industry for Reuters Legal News and Westlaw Today.

About the authors

Alexander Malyshev (L) is a partner at **Carter Ledyard & Milburn LLP** and the chair of its cannabis, hemp and CBD industry group. He contributed the chapter, "Banking and Investment Considerations for Cannabis Businesses" in "Health Care and the Business of Cannabis: Legal Questions and Answers" (American Health Law Association 2021). He can be reached at malyshev@clm.com. **Sarah Ganley** (R) is an associate in the litigation department of the firm and can be reached at ganley@clm.com. The authors are based in New York.

This article was first published on Reuters Legal News and Westlaw Today on January 14, 2026.