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Marijuana legalization presents challenge for Washington's tribes

by [Leah Sottile](#) [@Leah_Sottile](#) January 27, 2014 5:00AM ET

The state law may have changed, but Washington's 29 tribes can make their own calls on enforcement

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The Yakama Nation says it will ban marijuana on all its ceded lands.

Justin Sullivan/Getty Images

WELLPINIT, Wash. — After every other case had been tried, the crowded room had emptied and the three shackled prisoners in orange jumpsuits and cuffs had been escorted away, Isaiah Wynne sat before the judge.

On a frigid December afternoon in Spokane Tribal Court — a squat clapboard building on a gravelly road at the center of this rural town, where the warm aroma of wood-burning stoves cut the cold air — Wynne held a red folder bulging with papers. His black hair was folded neatly into two long braids; a crisscross of tribal tattoos peeked out from under his black shirtsleeves. He sat beside his lawyer, Michael Beegle, who wore a suit and cowboy boots.

Wynne faced three charges of possession of marijuana with intent to sell. But his attorney argued that, despite the [Spokane Tribe's explicit Law and Order Code \(PDF\)](#) stating that marijuana is illegal for use on the reservation, the charges against him should be dismissed because of the tribe's historical use of the plant for medicinal and spiritual purposes. In fact, a talking circle of elders was called here recently to discuss whether that was true.

"I think there's substantial evidence that there is historical use," Beegle said.

It's a scene likely to be replicated in tribal courts across Washington, one of two states in the country where people can legally use, distribute and possess marijuana. There are 29 federally recognized tribes in the state. And marijuana remains illegal to possess — for medical purposes or otherwise — under federal and tribal law.

Last week the [Yakama Nation](#) — which has a 1.2 million-acre reservation in south-central Washington — [said it would ban marijuana on all its ceded lands](#), a massive [area that spans more than 10 counties and includes several cities \(PDF\)](#). Though the tribe ceded most of that land to the federal government, under [the Yakama Treaty of 1855 \(PDF\)](#) it retains the exclusive right to hunt, fish and gather food there.

No tribal involvement

Harry Smiskin, the Yakama Nation's Tribal Council chairman, told the Yakima Herald last week the treaty entitles the tribe to fight any marijuana business seeking to open on its ceded lands.

"We're merely exercising what the treaty allows us to do, and that is prevent marijuana grows (and sales) on those lands," Smiskin told the newspaper.

That could be a problem [for the hundreds of businesses in cities such as Pasco, Ellensburg and Wenatchee that have filed applications](#) to be processors, producers and retailers of marijuana. But some people aren't sure if the Yakama's claims will hold up in court.

It does raise the question: How involved were Washington's tribes in the state's move to legalize marijuana? Not very, said Alison Holcomb, the author of Initiative 502, which voters approved in 2012 — but that's because I-502 didn't aim to have marijuana legalized on any tribal lands.

"When we were drafting Initiative 502, our goal was to draft it in such a way that it would withstand a challenge under federal law," said Holcomb, who is also the criminal-justice director for the American Civil Liberties Union of Washington. "In tackling that goal, we had no interest in also trying to require Native American communities to accommodate this state law on reservations. We had no intention of going there and forcing any tribe to open marijuana businesses."

Troy Eid, chairman of the Indian Law and Order Commission, said part of the reason tribes weren't included in the conversation about marijuana legalization in Washington or Colorado, the other state to legalize it, was that the initiatives started with voters — not legislators.

"In neither case did (consultation with tribes) happen, because the voters simply voted," said Eid, who lives in Colorado. "But between Washington and Colorado, it's different. (Colorado) has two Indian nations. They're in federal jurisdiction. Nothing that happened with our amendment affects those tribes. Nothing has changed at all.

"Washington — it's different, because in Washington they purported to legalize (marijuana), but the law enforcement on those reservations is state law enforcement," he said.

The result is an apparent lack of clarity or consistency across the state's tribes.

"The question becomes whether or not the tribe will enforce marijuana use by its members on the reservation," Holcomb said. "Each tribe is taking a different position. I think there are tribes that are actually interested in the possibility of having stores on their reservations. And, so far, the Yakama Nation is the only tribe to be very outspoken about its opposition to the implementation of the law."

Challenging prohibition

Marijuana legalization in Colorado and Washington is something of an experiment, it seems, and among the biggest challenges posed to those states are effective prevention plans that keep [marijuana from getting into the hands of minors and stopping it from traveling beyond the border into states where it isn't legal](#). Though marijuana won't be legal on the several reservations near Washington's borders, tribal members could easily purchase it from a store off the reservation and bring it back onto tribal land.

Holcomb said there's no question that tribes can prohibit marijuana from their lands — and that the topic is a sensitive one for many reasons.

"On the one hand, Native Americans have struggled with substance-abuse issues, and they have not traditionally received adequate funding and support to address those substance-abuse issues," she said. "They're struggling with poverty. They're struggling with a lot of socioeconomic challenges ... It's a very big issue for them.

"But the flip side of that coin is whether or not prohibition ... has been a tactic that has been effective or if it has caused more problems for tribal members."

She points to criminal organizations that have built marijuana farms on tribal land and the disproportionate enforcement of possession laws when it comes to minorities. If slapped with a possession charge, someone like Wynne could be facing serious barriers in every aspect of his life.

"For a community that is already struggling," Holcomb said, "it seems really counterproductive to add

another hurdle."

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Shelley Madsen 3 hours ago

Or perhaps the tribes could benefit financially from the cultivation and sale of marijuana. As for addictions: marijuana has been used effectively as an aid to alcohol withdrawal during recovery.

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jack dollarhide 3 hours ago

It's a known fact that tribal member have a problem with alcohol. Maybe cannabis can help that, maybe.

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Rich Hensch 11 hours ago

Pot causes less problems than alcohol. Neither is good for the body. Pot is better for the spirit than alcohol, IMO.

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Joel Francis 8 hours ago

Well, pot's not good for your body if you smoke it (using common sense - not science), but as far as I know, if you inject it, it may not be bad for you at all. Obviously some people will get psychologically addicted to it, and others will over use it, succumbing to a lack of motivation. But in reality, alcohol would be seen as worse than Meth if it was invented yesterday.

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Patricia Boley 5 hours ago

That's a very broad statement that, as a toxicologist, I take issue with. The first thing you learn as a toxicologist is "that everything is a poison and nothing is a poison. The toxicity is in the dose." -Paracelus. This is true for almost any substance, including water. Too much water ingested at once can stop your heart. However unlike alcohol there has never been an established toxic dose for marijuana. It can't kill you. No one has ever died from taking too much marijuana. It has also been studied extensively and has numerous medicinal uses. Glaucoma, chemo-therapy induced nausea, insomnia, MS, pain, epilepsy, dementia, Tourette's syndrome, to name a few. Several researches have found that it actually kills cancer cells. There is much excitement and promise for it in regards to its effects on cancer.

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Trey Pierce 3 hours ago

This has absolutely no relevance to what this article is about.

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-1  

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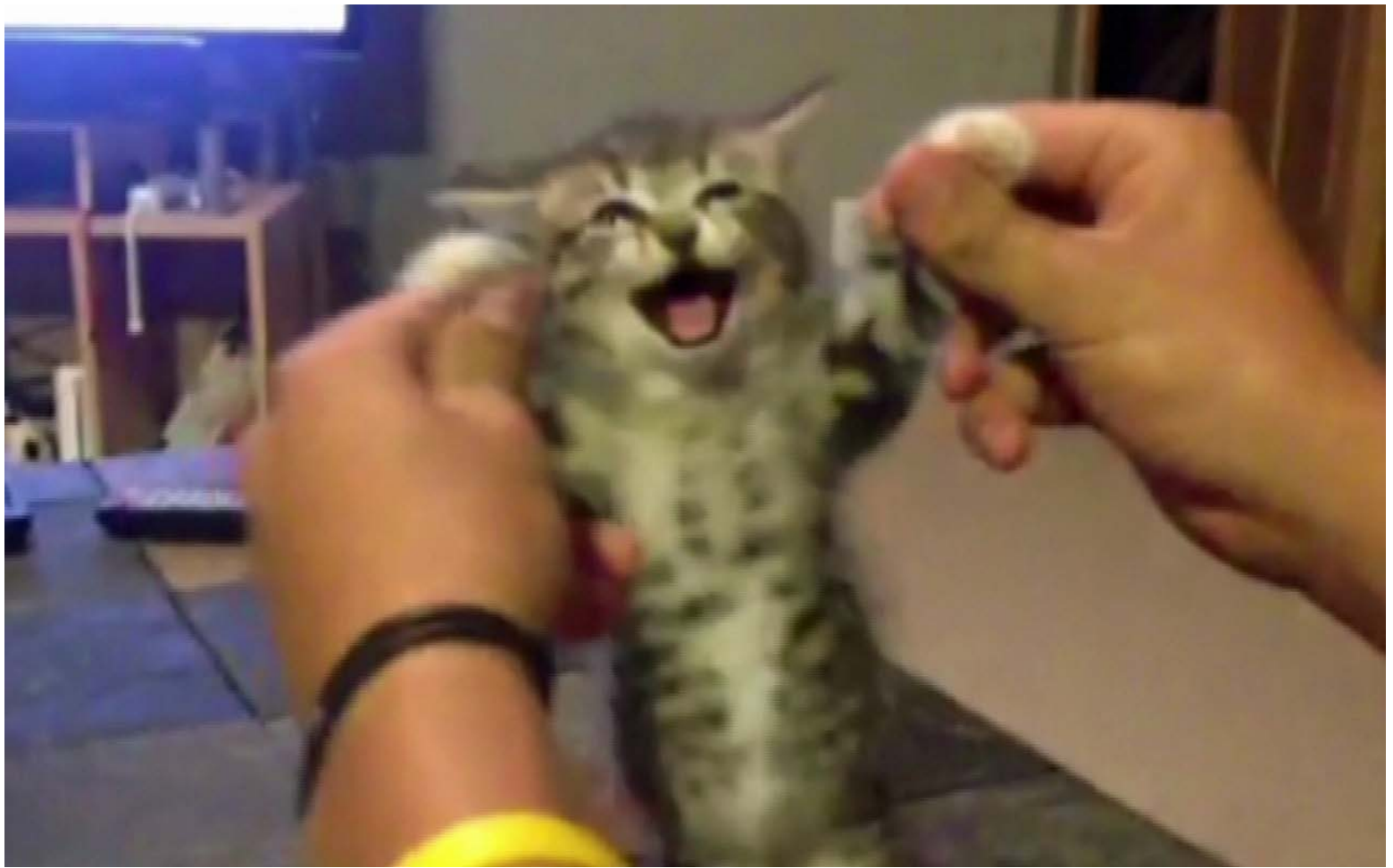
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