



# THE CANNABIS INDUSTRY IN THE TRUMP ERA

*What does the 2016 election mean for cannabis businesses?*

The results of the 2016 election took many people by surprise. The election of Donald Trump as president and a better-than-expected showing by Republican Senate and House candidates has put the White House and both chambers of Congress under GOP control for the first time since 2007.

The 2016 election was also a watershed moment for the cannabis industry. Voter initiatives to create or expand legal cannabis programs were on the ballot in nine states. Eight of those nine initiatives passed, including four adult-use programs and four medical programs.

With that combination of results, the question on the minds of many cannabis professionals is “*Now what?*”

The short answer? There is considerable uncertainty about what lies ahead. But there are reasons for cautious optimism. **This is the moment that NCIA - with your support - has been preparing for.**

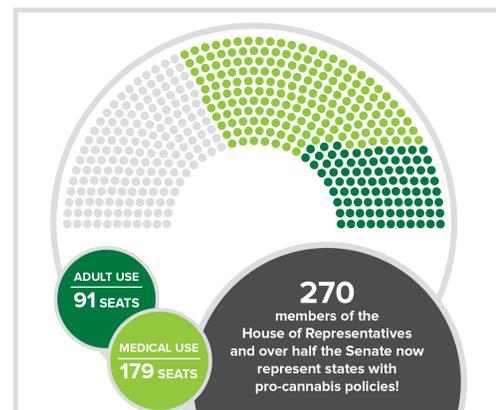
## WHAT HAPPENED IN THE ELECTION?

### Presidential Election

As of Thursday, November 17, Donald Trump had claimed 60,913,096 votes, accounting for **47.1%** of the electorate. Hillary Clinton had won 61,917,919 votes, or **47.9%**. However, due to the state-based electoral college system and the Trump campaign’s close victories in several large states, Donald Trump has won at least **290** electoral votes, twenty more than the 270 needed to win the presidency. (Michigan’s 16 electoral votes remain outstanding, as the official vote count there is ongoing and very close.)

### Congressional Elections

In the U.S. Senate, Democrats picked up two new seats with victories in Illinois and New Hampshire. Meanwhile, Republicans won in six races that had been considered competitive. This keeps the Senate in Republican control, **51** seats to **48** seats, and likely means most leadership and committee positions will remain status quo. (The Louisiana Senate race remains to be settled in a December runoff.)



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In the U.S. House, Republicans maintained their majority as well, winning **239** seats to Democrats' **193**. (Three House races remain uncalled at this writing.)

Thanks to the success of cannabis ballot initiatives, there are now **270** House members and **56** Senators who represent medical or adult-use cannabis districts or states.

### Cannabis Initiatives

Five states voted on ballot initiatives to legalize, tax, and regulate marijuana for adult use. Four of those initiatives passed, and three of them passed by **more than seven percentage points**.

State	% For	% Against	% Point Difference	Result
California	56.2	43.8	+ 12.4	Passed
Nevada	54.5	45.5	+ 9.0	Passed
Massachusetts	53.6	46.4	+ 7.2	Passed
Maine	50.2	49.8	+ 0.4	Passed
Arizona	48.0	52.0	- 4.0	Failed

Four states voted on ballot initiatives to create or expand legal medical marijuana programs. All four of those initiatives passed, with an average victory of **26.3 percentage points**.

State	% For	% Against	% Point Difference	Result
Florida	78.3	21.7	+ 56.6	Passed
North Dakota	63.7	36.3	+ 27.1	Passed
Montana	57.6	42.4	+ 15.2	Passed
Arkansas	53.2	46.8	+ 6.4	Passed

Nearly **17 million** Americans voted in favor of cannabis programs in the 2016 election. With these results, more than **60%** of the U.S. population now lives in a state with a legal medical marijuana program. More than **20%** of the population lives in a state where voters have chosen to legalize, tax, and regulate marijuana for adult use.

## WHAT WILL A TRUMP ADMINISTRATION MEAN FOR THE CANNABIS INDUSTRY?

### Trump's Position on State Marijuana Programs

During the campaign, Donald Trump made a variety of statements related to marijuana and state marijuana programs, making it somewhat difficult to predict his likely approach. However, there is reason for cautious optimism.

He has expressed strong support for medical marijuana, telling the *Washington Post*, “I think medical [marijuana] should happen — right? Don’t we agree? I think so,” and telling Bill O’Reilly that he is “**in favor of medical marijuana 100%.**”

The president-elect’s comments on adult-use marijuana legalization have been less supportive, including telling Bill O’Reilly that Colorado’s adult-use program is “causing a lot of problems out there.” Trump’s inner circle includes people who have taken strict prohibitionist stances on marijuana policy issues, including Vice President-elect **Mike Pence** and Senator **Jeff Sessions** (R-AL).

(Senator **Ted Cruz** (R-TX) has also begun receiving increasing attention as a potential Attorney General nominee. During his time as a presidential candidate, Cruz was not particularly favorable on cannabis issues, but nonetheless expressed consistent support for state sovereignty on the question of legal marijuana programs.)

On the campaign trail, President-elect Trump also repeatedly expressed **support for state sovereignty** on the marijuana issue. In a debate during the Republican primary, he responded to a question about legalization and states’ rights by saying, “If they vote for it, they vote for it.”

Later, he told the *Washington Post*, “In terms of marijuana and legalization, I think that should be a state issue, state-by-state,” and “**I really believe we should leave it up to the states.**”

In an [interview with Colorado political reporter Brandon Rittiman](#), Trump was asked explicitly what he would do if he appointed an Attorney General who wanted to shut down adult-use marijuana programs. Trump responded, “**Yeah, I wouldn’t do it, no.**”

RITTIMAN: You wouldn’t let him?

TRUMP: No.

RITTIMAN: Even if you picked him as AG?

TRUMP: Well you’re asking me. I wouldn’t do that, no.

RITTIMAN: You think Colorado should be able to do what it’s doing.

TRUMP: I think it’s up to the states, yeah. I’m a states person. **I think it should be up to the states, absolutely.**

### **The Role of the Justice Department**

Regardless of the president-elect’s position, the transition to a new administration means the potential for policy changes at the Department of Justice.

Since August of 2013, the Justice Department’s policy toward state marijuana programs has been guided by the “**Cole Memo.**” Written by Deputy Attorney General James M. Cole, that memo outlined eight federal law enforcement priorities related to marijuana, primarily intended to prevent diversion of product into states where it remains illegal,

prevent diversion of revenue to criminal enterprises or cartels, and prevent sale of cannabis to minors.

The Cole Memo also stated that Justice Department officials should exercise **prosecutorial discretion** to focus on those priorities, steering away from targeting cannabis consumers or businesses that are not breaking state laws or regulations. This approach has allowed states to move forward with the regulated cannabis programs chosen by their voters.

Hypothetically, new leadership at the Justice Department could revoke the Cole Memo and return to an era of federal enforcement actions against state-compliant cannabis businesses. However, such an action would almost certainly provoke **substantial backlash**.

Reputable public polling indicates that a significant majority of American voters now favor the full legalization of marijuana. October 2016 polls from Gallup and Pew found national support for marijuana legalization at **60%** and **57%**, respectively.

Voters in **28** states across the country have chosen, via ballot initiative or legislative process, to allow some form of legal, regulated cannabis program in their state. Many of those programs were approved by significant electoral margins.

All of these states now feature **regulatory programs designed and administered by state and local government authorities**, including licensing and tax collections.

A Department of Justice crack-down on state-compliant cannabis businesses would **put federal law enforcement in conflict** not only with the majority of American voters but also with governors, state legislatures, and state regulatory bodies.

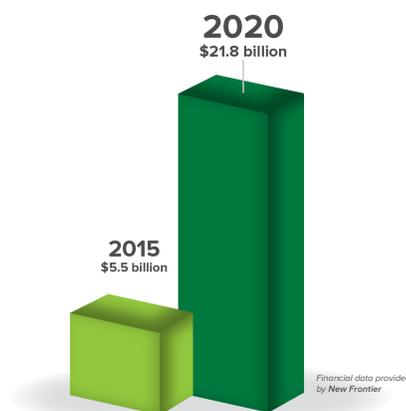
### The Economic Impact of the Industry

In addition to considering the will of the voters and the sovereignty of the states, the Trump administration and the new Congress will also have to consider the economic impact of the cannabis industry.

The legal cannabis industry was estimated to be worth **\$5.5 billion** in 2015 and expected to more-than-triple in value to **\$21.8 billion** by 2020.

In Colorado alone, the cannabis industry has already created more than **18,000** jobs. The first two years of adult-use legalization in the state generated **\$168** million in tax revenue, and another **\$140** million or more is expected by the end of 2016. A recent study determined that every dollar spent on retail marijuana in Colorado generated **\$2.40** in state economic impact.

In California, the legal cannabis market is projected to be worth **\$6.6 billion** by 2020, and the state expects to collect **\$1.4 billion** in tax revenues from cannabis businesses in just the first year of full operation.



On the other side of the country, the cannabis market in Massachusetts is expected to reach **\$1.1 billion** by 2020 and generate **\$100 million** a year in tax revenue. Even a smaller state like Maine projects a market worth almost **\$300 million** by 2020.

All of this economic activity, job creation, and tax revenue generation is a substantial benefit to state and local economies. Wiping that away by trying to shut down state-legal industries would have severe consequences.

## **WHAT IS NCIA DOING?**

This moment of change and uncertainty is exactly when it is most important for the cannabis industry to have a powerful, unified voice.

This is **why NCIA was created** and why your membership is so important.

For six years, NCIA has been developing productive relationships in Washington, D.C., educating policymakers about our industry and the responsible small business owners who have built it. **That work becomes even more critical now.**

### **The New Administration**

With the election of Donald Trump and the uncertainty around the new leadership of the Justice Department, NCIA's top priority now is advocating for the **continued respect of state laws** regarding legal cannabis programs.

Our experienced government relations team is gathering daily intelligence about likely leadership decisions within the Trump transition team. As those decisions become more clear, we are developing a strategy to activate our allies in both parties on Capitol Hill and throughout federal and state government to make the case for a continuation of the current Justice Department policy.

The Trump transition is tapping many long-time D.C. hands to shape the development of their leadership team. This means that **relationships built over many years** by senior members of NCIA's advocacy team will be extremely valuable in providing lines of communication and persuasion to the new administration.

### **The New Congress**

With more than **60% of House members** and more than **half of Senators** now representing states with regulated cannabis programs, NCIA is also pursuing new opportunities to educate lawmakers from both parties about the importance of state sovereignty and the issues created by the conflict between state and federal law.

#### *Appropriations Amendments*

For the past two years, Congress has approved protections for medical marijuana programs through the **Rohrabacher-Farr amendment** to Justice Department appropriations. That amendment bars the Justice Department from spending federal funds to target patients or providers in states where medical marijuana is legal.

A similar amendment, known as **McClintock-Polis**, was proposed in 2015 and would have extended those protections to all state-legal cannabis programs, whether medical or adult-use. It narrowly failed at the time, 206-222, with more than 40 Republicans in support.

NCIA will be advocating strongly for the renewal of the existing medical marijuana protections, and the reintroduction of the expanded protections for all state-legal cannabis programs, in the upcoming Congress. These amendments can help provide a counterweight if Justice Department decisions seem likely to cut against the industry.

### *Banking and Tax Legislation*

NCIA will continue to move forward with the work it has begun in previous years to address the major issues facing cannabis businesses at the federal level, with **banking access and unfair 280E taxation** leading the list.

Legislation addressing these issues has garnered bipartisan support in the past, and the increasing number of House members and Senators with cannabis industry constituents should help continue our progress.

## **WHAT CAN YOU DO?**

As an NCIA member, you've already done one of the most important things you can do - become an active part of the team fighting for you and your business in Washington, D.C. Now is the time for us to keep building our ranks and showing the strength of our organization.

If you know industry colleagues who are not yet members of NCIA, **urge them to [join our effort](#)**. Our power lies in our numbers.

### **Act Nationally**

As an individual, you also have a powerful voice, and now is the time to use it. **Call your members of Congress** and tell them your story. Tell them about the work you do to make our industry safe and responsible. Tell them about the jobs you've created, the taxes you've paid, and the commitment you've made to play by the rules.

Ask them to support legislation that will **respect state laws and the will of the voters**.

Committee assignments have yet to be set, but we anticipate that some House members and senators will play a particularly critical role in our issues. It is especially important that NCIA members and supporters connect with these offices early and often to educate them on our industry banking and tax challenges.

- **Senator John Boozman** (R-Arkansas). Senator Boozman is the chair of the Financial Services Appropriations Subcommittee, which would have jurisdiction over an amendment barring Treasury funds from being used to target banks serving state-compliant cannabis businesses. He represents Arkansas, where a medical marijuana ballot initiative passed by **more than six percentage points**. Dr. Boozman is an optometrist and should have knowledge of the benefits of cannabis products for glaucoma patients. Call Senator Boozman's office at **(202)**

**224-4843** and ask him to insert a provision barring law enforcement action against banks serving legitimate cannabis businesses into his appropriations bill.

- **Senator Diane Feinstein** (D-CA). Senator Feinstein is about to take over as the top Democrat on the Senate Judiciary Committee. She has been co-chair of the Senate Drug Caucus and is an opponent of legal cannabis programs. Now that Californians have voted for a legal adult-use cannabis program by **more than 12 percentage points**, Senator Feinstein should support her constituents. Please call her office at **(202) 224-3841** and ask her to stand with her constituents and drop her opposition to legislation making it easier for the industry to access banking services and take ordinary business tax deductions.
- **Senator Steve Daines** (R-MT). Montanans voted to reactivate and expand their essentially defunct medical marijuana program by **more than 15 percentage points** in this election. Senator Daines has previously been a leader on efforts to allow veterans to learn about and access medical marijuana in states where it is legal. Call Senator Daines at **(202) 224-2651** and thank him for supporting veterans' access to marijuana. Then ask him to help *all* patients by ensuring the industry has equal access to banking services that will make medical cannabis more available to those in his state who need it.
- **House Majority Leader Kevin McCarthy** (R-CA). Rep. McCarthy is the second-highest ranking member of the House and the top Californian in Congress. Regardless of his views on marijuana, it is important that California businesses have access to banking services to ensure there is **transparency within the industry and safety** for the business owners and their employees. Call Majority Leader McCarthy at **(202) 225-2915** and ask him to support a solution to the banking problems faced by the industry.

Other members of the House and Senate will also have important roles to play in our efforts to maintain respect for state laws and gain safe, fair treatment for cannabis businesses. Some of these members are listed below. If you live in a district or state represented by any of them, please make it a priority to call and ask for their support on solutions to the industry's banking and tax crises.

- Sen. Kamala Harris (D-CA)
- Sen. Bill Nelson (D-FL)
- Sen. Dean Heller (R-NV)
- Senator-elect Catherine Cortez Masto (D-NV)
- Sen. Rob Portman (R-OH)
- Sen. Pat Toomey (R-PA)
- House Minority Leader Nancy Pelosi (D-CA)
- Rep. Xavier Becerra (D-CA)
- Rep. Devin Nunes (R-CA)
- Rep. Linda Sanchez (D-CA)
- Rep. Mike Thompson (D-CA)
- Rep. Peter Roskam (R-IL)

- Rep. Pat Tiberi (R-OH)
- Rep. Richard Neal (D-MA)
- Rep. Erik Paulsen (R-MN)
- Rep. Dave Reichert (R-WA)

If you'd like to do more, NCIA can help. We can arrange meetings in Washington, D.C., or in the local office of your representative or senator. We can coordinate with you to **host a tour of your business** for lawmakers or their staff.

And mark your calendar for our annual **Cannabis Industry Lobby Days** in D.C., which will take place May 16-17, 2017. More than ever, it's important for congressional offices to meet face-to-face with responsible cannabis business owners like you.

### **Act Locally**

There is much you can also do closer to home. Relationships with state and local leaders will be critically important if the federal environment becomes negative.

Get to know your state and local government officials. Be sure your business is in **100% compliance** with state and local regulations. Join or become active with your neighborhood or regional business organizations. Seek out ways to contribute to local charities and engage with your community on behalf of your business.

**Be a good neighbor and a good corporate citizen.**

## **CONCLUSION**

The 2016 election is a turning point for marijuana policy and the cannabis industry in the United States. Never before have so many Americans lined up to reject the failures of marijuana prohibition and support legal, regulated cannabis programs.

But along with our victories have come new challenges. **NCIA is prepared to face those challenges with your help and support.**