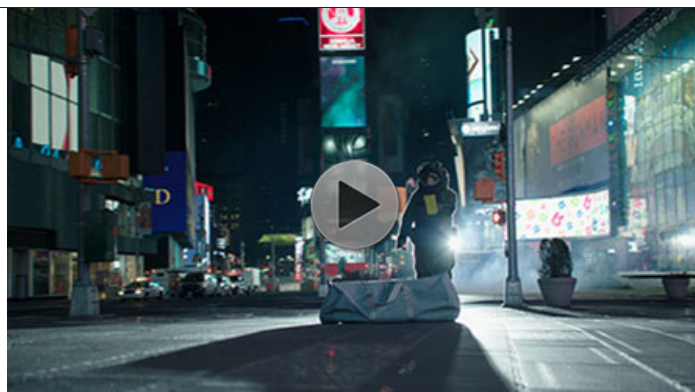


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State vs. Federal Law: Who Really Holds the Trump Card?

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Gay marriage, medical marijuana, recreational marijuana, immigration... the list goes on and on of laws that are *supposed* to be decided state by state. Yes, you may say, "Well they are." Truth is, no they aren't.

There are two basic levels in the U.S legal system: federal law and state law. A federal law applies to the nation as a whole and to all 50 states whereas state laws are only in effect within that particular state.

If a state law gives people more rights than a federal law, the state law is legally supposed to prevail. This means state law will always supersede federal law when the person in question stands to gain more from the state law, right?

Wrong. The law that applies to situations where state and federal laws disagree is called the supremacy clause, which is part of article VI of the Constitution. The supremacy clause contains what's known as the doctrine of pre-emption, which says that the federal government wins in the case of conflicting legislation. Basically, if a federal and state law contradict, then when you're in the state you can follow the state law, but the feds can decide to stop you. When there is a conflict between a state law and federal law, it is the federal law that prevails. For example, if a federal regulation prohibits the use of medical marijuana, but a state regulation allows it, the federal law prevails.

Confused as to what really happens when state and federal laws clash? Let's take gay marriage for instance. The Supreme Court recently announced that it would be hearing two cases involving same sex marriage, both of which have implications for states' rights to recognize same sex marriage. The decisions will almost certainly effect what role states can play in recognizing same sex marriage. Even President Obama has said that states and states alone should decide whether same sex marriage is legal within their borders. As of now there are 17 states that recognize same-sex marriage and 33 states that have a ban against it.

So, does federal law recognize same-sex marriage?

Yes. The federal government must now recognize valid same-sex marriages according to the U.S. Supreme Court's June 26, 2013 decision in *U.S. v. Windsor*. This decision cleared the way for same-sex married couples to receive federal benefits. Yet not all facets of the federal government adhere to that. The IRS recognizes same-sex marriage as married under all federal tax provisions where marriage is a factor. The Social Security Administration however, only recognizes marriages that are valid in the state where the couple lives for the purposes of granting federal benefits. This means if you're in a same-sex marriage but live in a non-recognition state, you aren't eligible for Social Security benefits on your spouse's work record.

Lets move onto my favorite subject, pot. At the federal level there is the Controlled Substances Act, which classifies marijuana as a Schedule I substance. This act considers pot to have a high potential for dependency and no accepted medical use, making distribution of marijuana a federal offense. In October of 2009, the Obama Administration sent a memo to federal prosecutors encouraging them not to prosecute people who distribute marijuana for medical purposes in accordance with state law. So what happens when you get caught with the green bud in a state that allows it (for now let's say medicinally)?

We can look at the case of Gerald Duval Jr. Duval claims he is on the frontlines of the war over medical marijuana. Michigan, Duval's home, allows the farming and use of medical marijuana. Duval Jr. thought his Michigan pot farm was protected under state law -- then the feds came. Now, he will soon serve a 10-year prison sentence for breaking the U.S. government's marijuana regulations. How can this even be fair?

Well, this my friends is how I see it... it's the "go ask your mother" law. Regress back into your childhood and think of your father as the state law and your mother as the federal law. You want to go to a party and stay out a little later past your curfew. Your father (state) says yes but your mother (federal) says no. Who ultimately has the final say?

"Go ask your mother."

Follow Lesley Daunt on Twitter: www.twitter.com/theLesleyDaunt

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