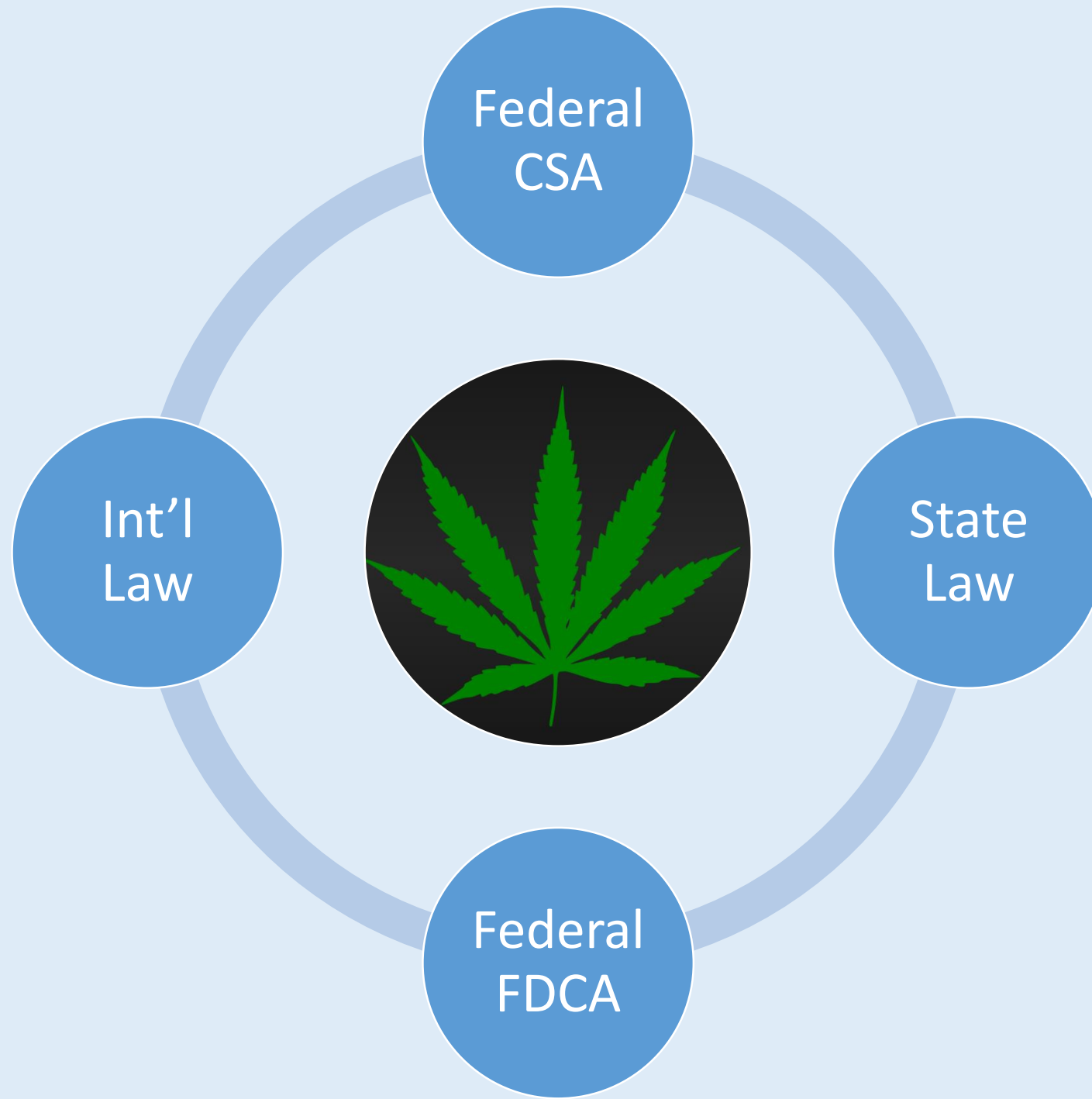


# The Cannabis Legal Landscape Today

Erika Lietzan  
University of Missouri School of Law  
November 2018



Federal  
CSA

State  
Law

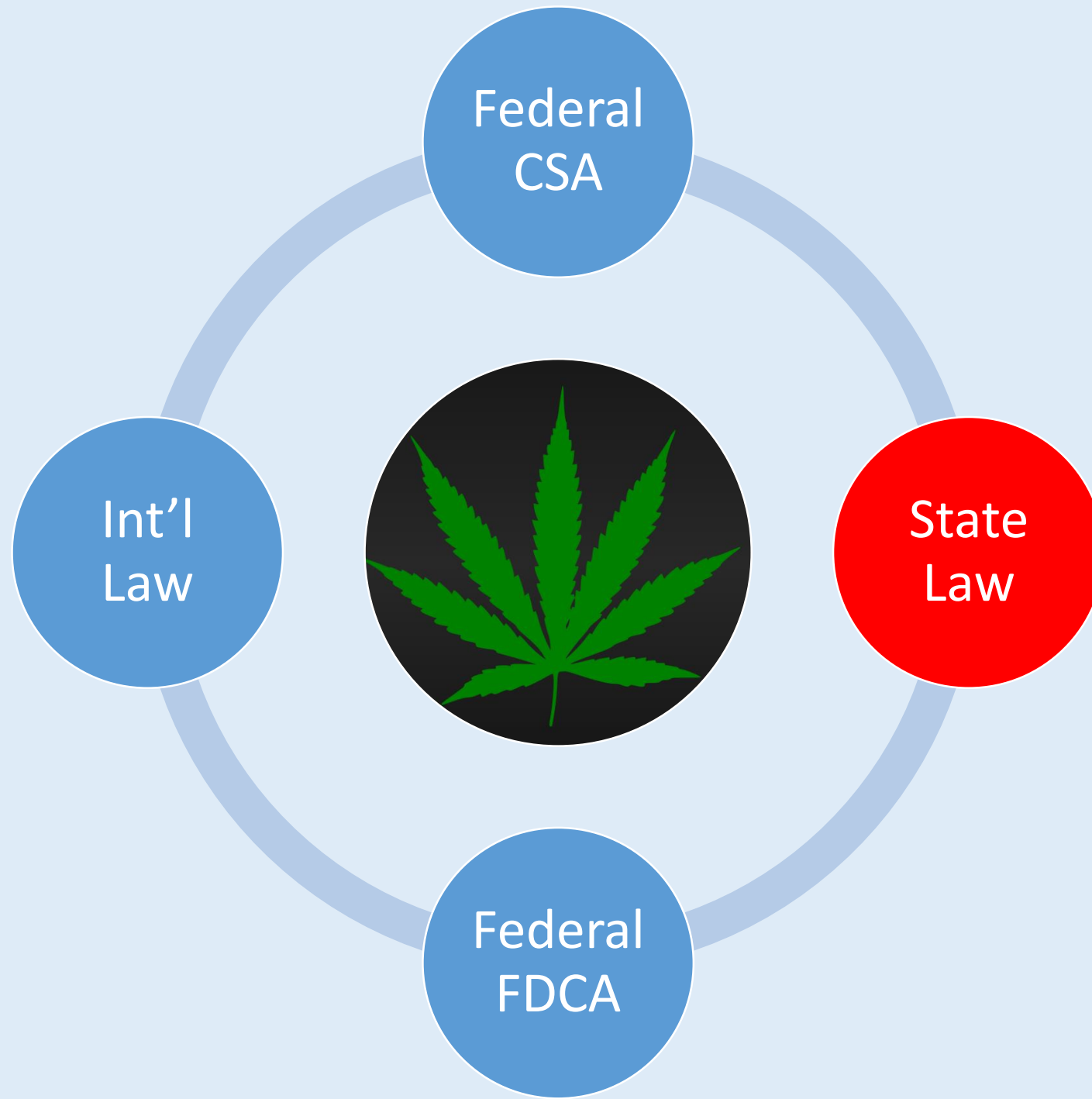
Federal  
FDCA

Int'l  
Law

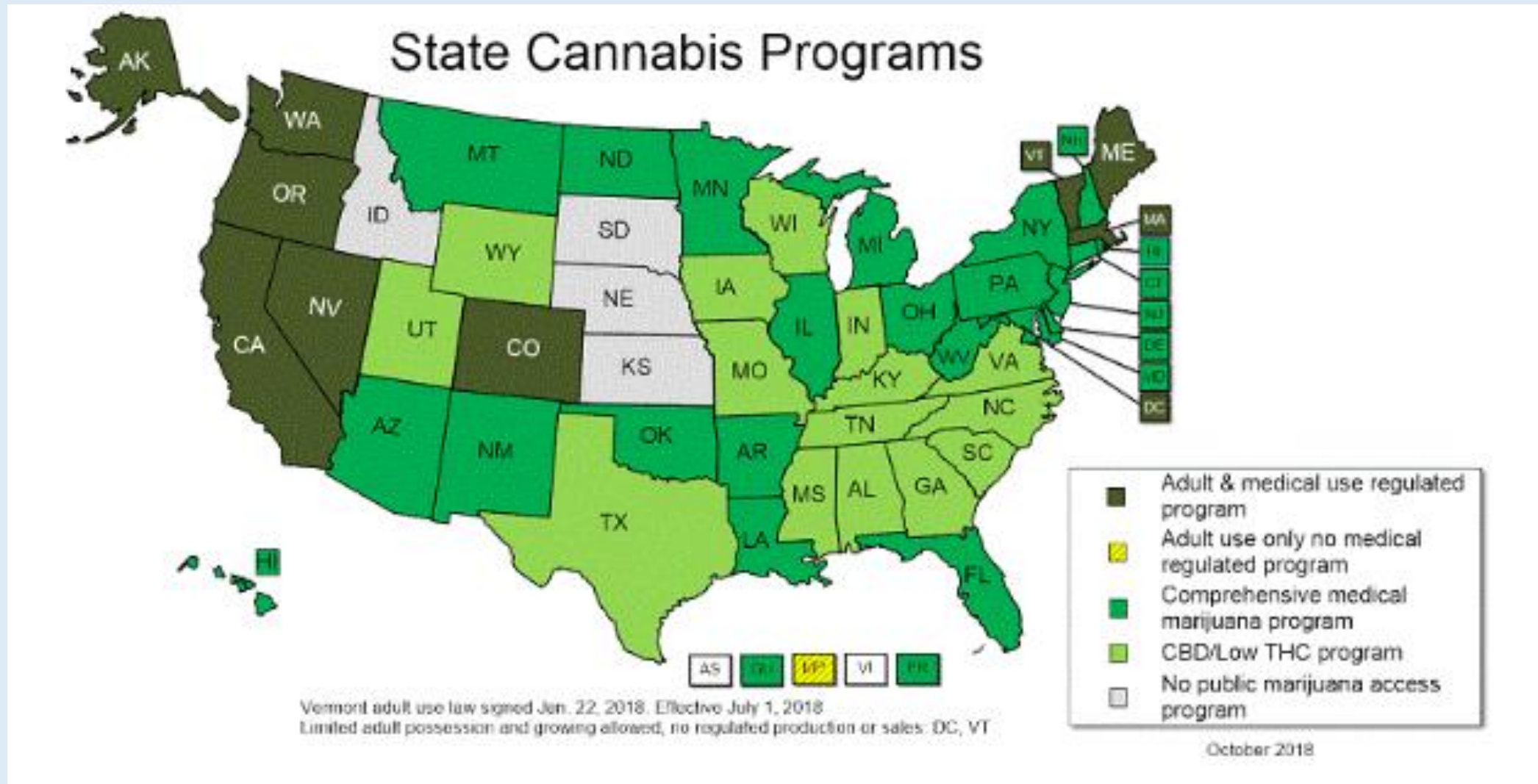
# Controlled Substances Act

- Schedule I: “marihuana” and “tetrahydrocannabinols”
- What is “marihuana”? Defined as all parts of the plant *Cannabis sativa L*, the seeds, extracted resin, and any derivative of these things.
- Does not include mature stalks, fiber from the stalks, oil or cake made from the seeds, or compounds made from the same.

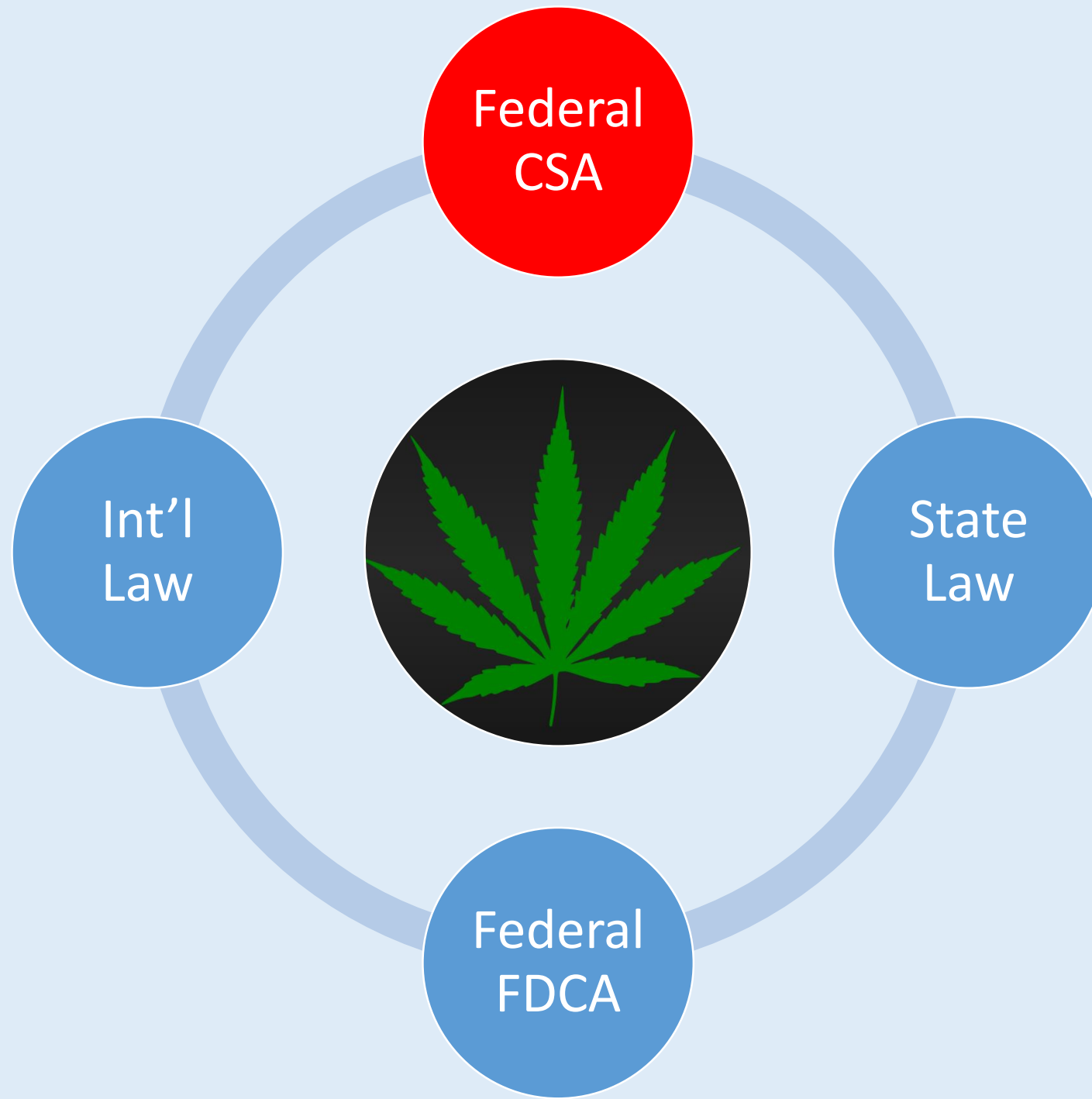




# State Laws



From NCSL website



# Federal Response

- Medical cannabis: 2009 **Ogden Memo** to U.S. Attorneys. Deprioritize prosecution if individual clearly complying with state law.
- Adult/recreational cannabis: 2013 **Cole Memo** to U.S. Attorneys. Eight priorities for resource allocation.

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.



# Federal Response / Situation Today

- Marijuana in general: 2018 **Sessions Memo** to U.S. Attorneys.

In deciding which marijuana activities to prosecute under these laws with the Department's finite resources, prosecutors should follow the well-established principles that govern all federal prosecutions. Attorney General Benjamin Civiletti originally set forth these principles in 1980, and they have been refined over time, as reflected in chapter 9-27.000 of the U.S. Attorneys' Manual. These principles require federal prosecutors deciding which cases to prosecute to weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community.

# Consolidated Appropriations Act, 2018, H.R. 1625 § 538

SEC. 538. None of the funds made available under this Act to the Department of Justice may be used, with respect to any of the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York,

North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, or with respect to the District of Columbia, Guam, or Puerto Rico, to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Medical  
marijuana only



None of the funds can be used

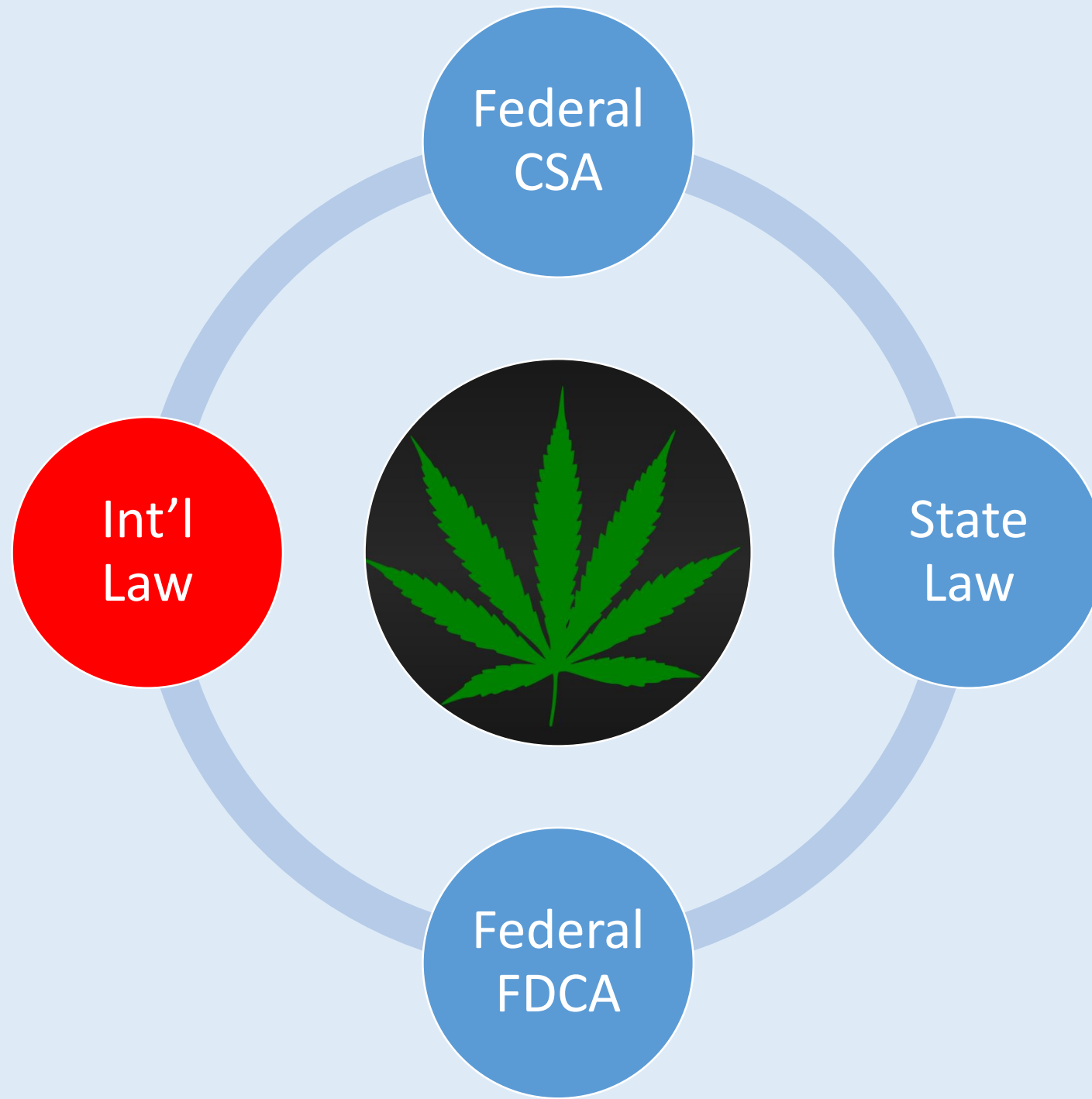
to **prevent** any of these states

from **implementing** its own laws

that authorize . . . medical marijuana

# What About Descheduling?

- The Attorney General could do it or Congress could do it
- AG process involves FDA
- FDA's views on medical and scientific issues is binding
- DEA has declined requests to reschedule cannabis, including requests from state governments



# International Law

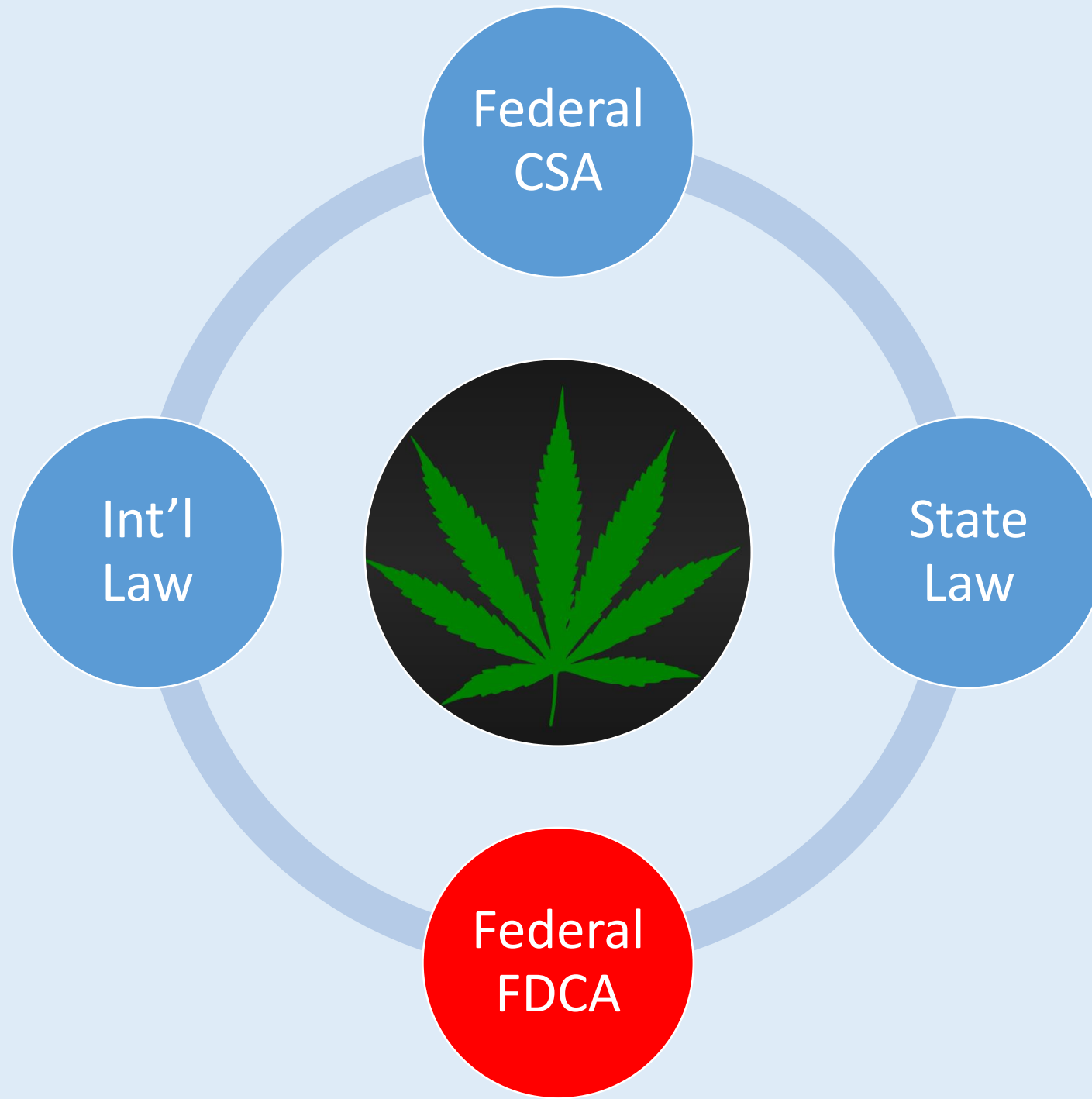
## **The International Drug Control Conventions**

Single Convention on Narcotic Drugs of  
1961 as amended by the 1972 Protocol

Convention on Psychotropic Substances of 1971

United Nations Convention against Illicit Traffic in  
Narcotic Drugs and Psychotropic Substances of 1988

- Each Party shall establish as a criminal offence . . . the cultivation of cannabis plant for the purpose of the production of narcotic drugs . . .
- - The use of cannabis for other than medical and scientific purposes must be discontinued as soon as possible but in any case within 25 years from the coming into force of this Convention



# Medical Use of the Cannabis Plant

- Medical research: cannabis grown at the University of Mississippi and distributed by the National Institute on Drug Abuse (NIDA)
- Differing concentrations of delta-9-THC and cannabidiol (CBD)
- But lots of criticism from researchers



# Synthetic Cannabinoids



Contains synthetic delta-9-THC, assigned the nonproprietary name dronabinol

Contains a cannabinoid similar to delta-9-THC, with the name nabilone.





# Naturally Derived Cannabinoid



- ✓ First approved new drug derived directly from the *cannabis* plant
- ✗ Not the first new drug with botanical origins
- ✗ Not a botanical NDA
- ✗ No abuse potential, according to FDA reviewers, so placed in Schedule V

# Clinical Investigations

- Numerous clinical trials published or ongoing
- Looking at pain, neurological conditions, psychiatric conditions
  - Using cannabis from Ole Miss
  - Or at the state level: “bring-your-own”
  - Or outside the United States



10 CBD Tinctures Compared

FROM \$104.00



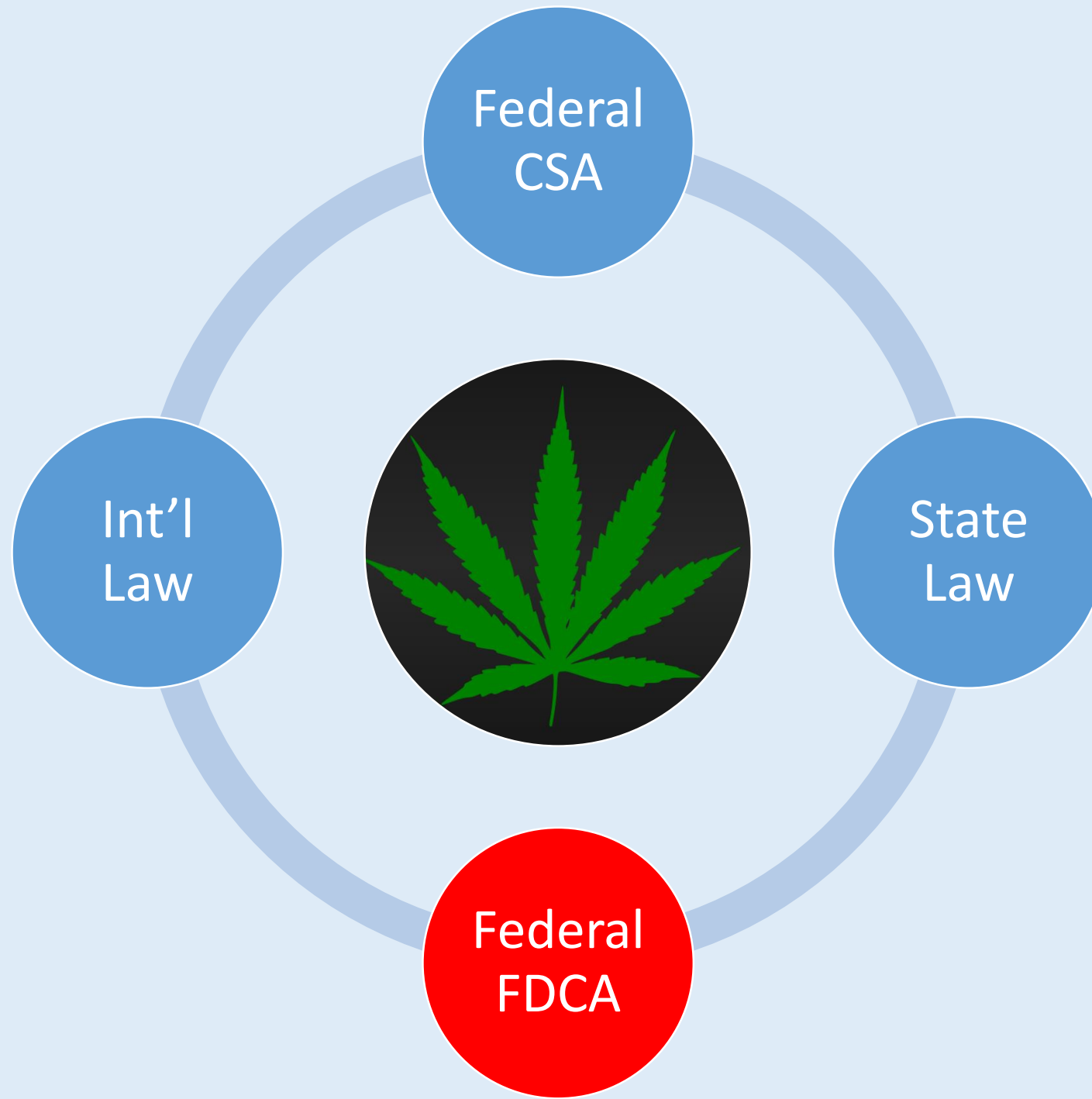
[Become a Member](#) | [Donate](#)

# How to Shop for CBD

Thousands of the cannabis products line store shelves, but determining what's safe is up to you

STRENGTH HEMP  
EXTRACT

Our highest level of CBD



# Food

301(ii) drug  
exclusion  
rule

food  
additive  
rules

What claims  
permissible?

Dronabinol  
CBD

Food additive petition  
GRAS exception

No disease claims  
Structure-function – nutritive  
value?  
Health claim – traditional  
food purpose?



# Dietary Supplements

201(ff)  
drug  
exclusion  
rule

Claims

Other cannabinoids  
maybe

Structure-  
function claims?



Home / CBD (Hemp) / CBD Gummies (Hemp)

## CBD Gummies (Hemp)

★★★★★ (1 customer review)

~~\$17.99~~ \$15.99

Flavor



Medix  
DISSOLUBLE  
**CBD CHEWS**  
CITRUS STRAWBERRY FLAVOR  
150 MG

Medix CBD Edible Chews - Citrus Strawberry (150 MG)

\$45.99

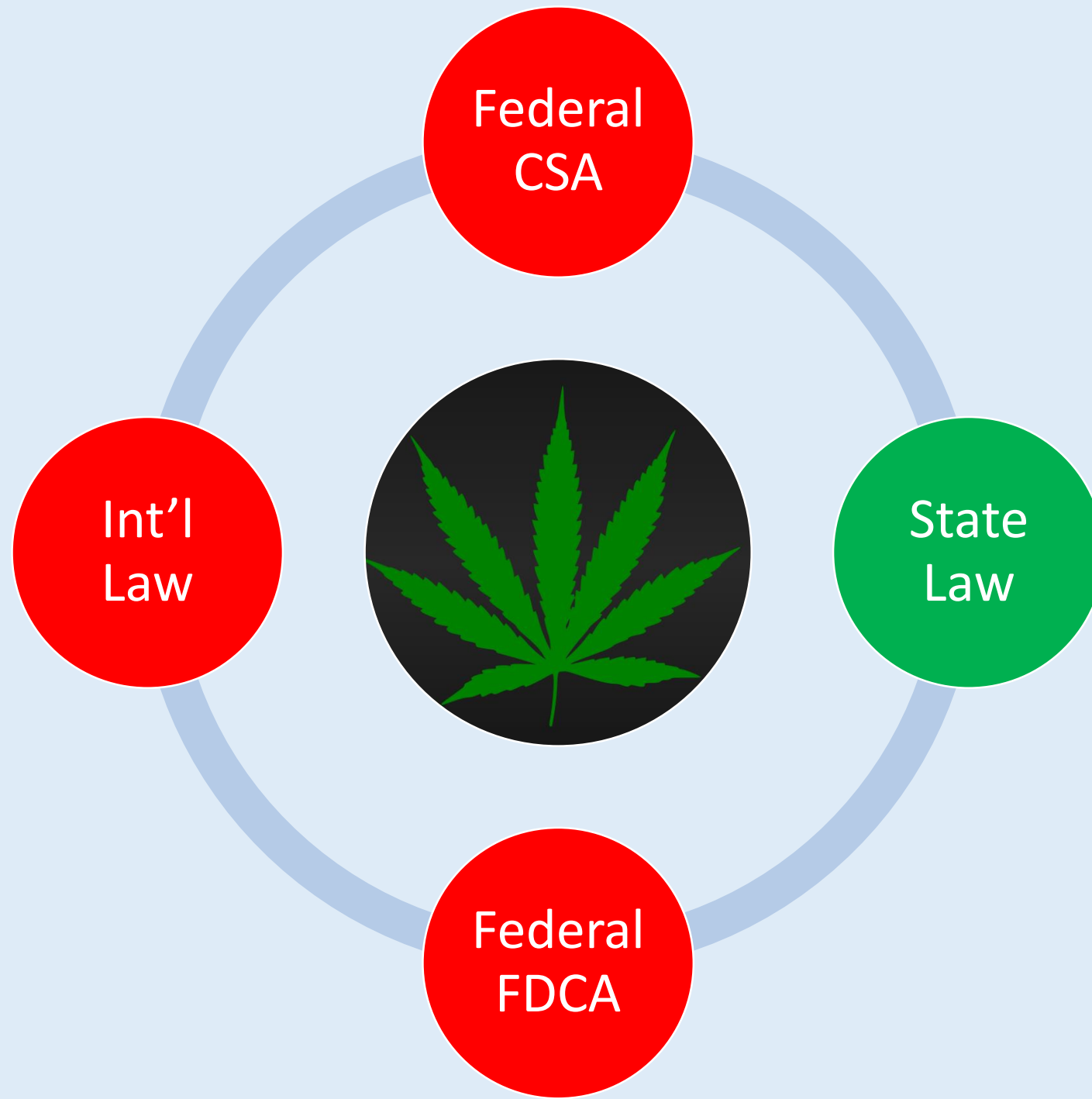
# Controlled Substances Act

- All parts of the plant *Cannabis sativa L*, the seeds, extracted resin, and any derivative of these things **falls in Schedule I**.
- (but not mature stalks, fiber from the stalks, oil or cake made from the seeds, or compounds made from the same)

## Requirements for Handling FDA-Approved Products Containing CBD

As noted, until now, Epidiolex has been a schedule I controlled substance. By virtue of this order, Epidiolex (and any generic versions of the same formulation that might be approved by the FDA in the future) will be a schedule V controlled substance. Thus, all persons in the distribution chain who handle Epidiolex in the United States (importers, manufacturers, distributors, and practitioners) must comply with the requirements of the CSA and DEA regulations relating to schedule V controlled substances. As

83 Fed. Reg. 48950 (Sept. 28, 2018)



Federal  
CSA

State  
Law

Federal  
FDCA

Int'l  
Law



# Post Script

- For more of this background information, please read my article with Sean O'Connor, *The Surprising Reach of FDA Regulation of Cannabis, Even after Descheduling*, forthcoming in the AMERICAN UNIVERSITY LAW REVIEW
- Available on SSRN.COM (just search “Lietzan”)