

State and Federal Law and the Religious Use of Psychedelic Sacraments

McKenna Reas and Mason Marks
College of Law, Florida State University

Introduction

•The 21st century has seen a period of new regulations, services, and laws pertaining to drugs that used to be considered illegal in all states due to their federal status as a Schedule I drug.

◦In 2020, **Oregon voted for the approval of Measure 109**, which legalized psilocybin use at designated healing centers and provides a legal framework for other states to implement drug laws legalizing psychedelic substance use, specifically psilocybin.

◦Following Oregon's lead, **Colorado passed Proposition 122 and later amended this legislation with SB 23-290** that allows for medicinal and personal psilocybin use.

•While other states have yet to fully legalize psychedelic substances for medicinal or personal use, many states have begun local reforms, research initiatives, and have active legislation in progress.

•28 states currently enforce their own **Religious Freedom Restoration Act (RFRA)**, based on the federal RFRA, that protects minority religions from state laws that may encroach on their right to freely practice their beliefs, including the use of psychedelic sacraments.

•Currently, there are gaps between state psychedelic drug laws and the religious protections of historically significant religious groups that use psychedelic substances.

•This research exists to examine the relationship between state laws and religious freedoms in the United States as states begin to legalize psychedelic substances for medical or personal use.

Methods

•This study specifically examines Oregon, Colorado, California, Washington, Texas, Florida, and Michigan, as well as the implications that these state policies may have on broader psychedelic law.

•This study measures state psychedelic drug laws, their effectiveness, and their interactions with religious freedom policies.

•This study was conducted through literature reviews that surveyed:

- Existing legislation
- Active legislation
- Failed legislation
- Medical research initiatives

•After examining these sources and other regulatory frameworks on the state and federal level, conclusions were able to be drawn about state psychedelic drug laws and their ability to protect religious practices involving psychedelic sacraments.

•This research consists of sources discovered through online databases, state legislative reports, Supreme Court decisions, and literature specifically pertaining to the medical and spiritual use of psychedelic drugs.

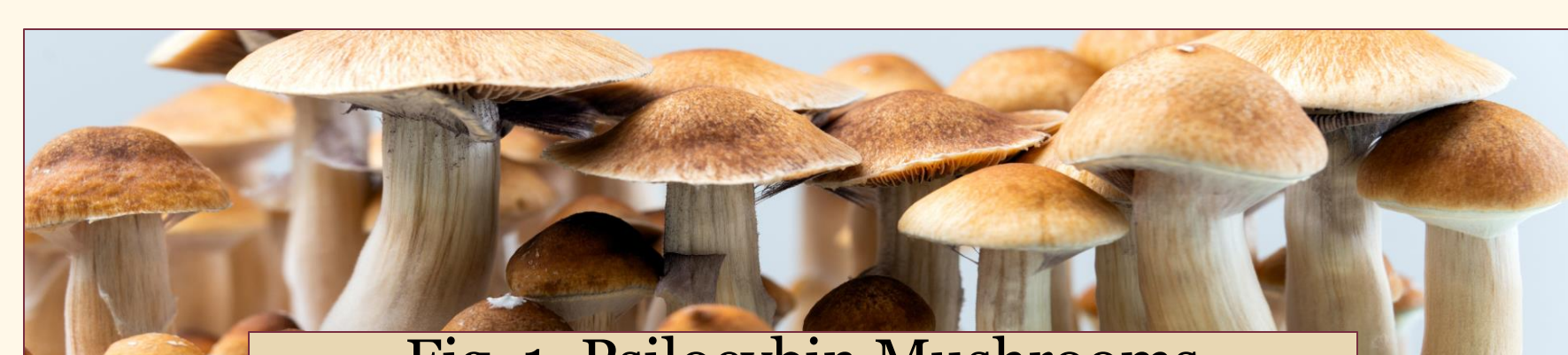


Fig. 1, Psilocybin Mushrooms

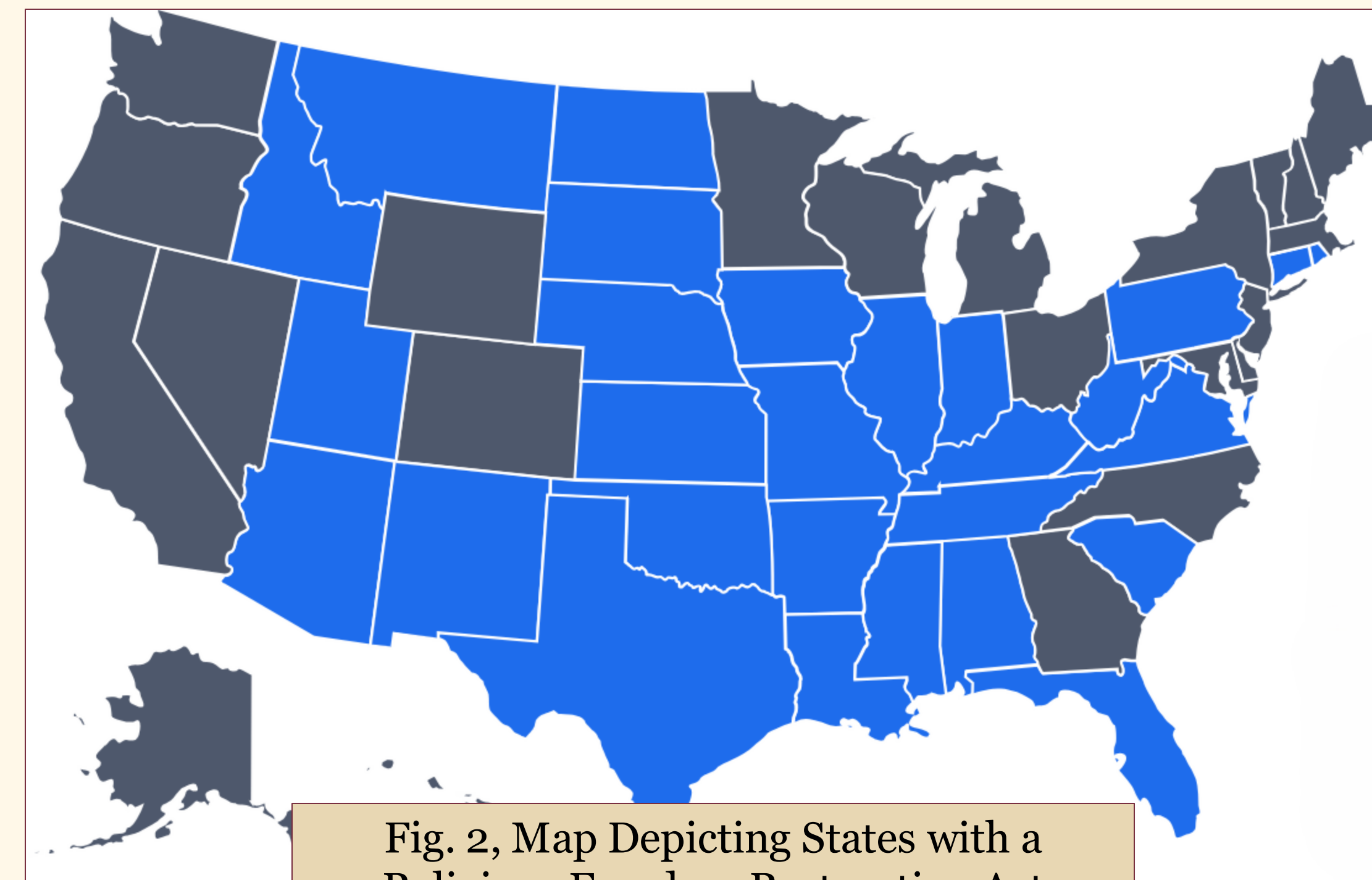


Fig. 2, Map Depicting States with a Religious Freedom Restoration Act (RFRA)



Fig. 3, Key for RFRA Map

Conclusion

•This research aims to examine the conflicting relationship between state drug laws and religious protections granted to Americans through the Free Exercise Clause.

◦Oregon's Measure 109 provides individuals with access to psychedelic substances for mental healthcare purposes at a licensed healing center with a licensed facilitator.

◦Colorado's SB23-290, following the legal framework provided by Measure 109, provides individuals with even more access to psychedelic substances for both mental healthcare and personal use.

•As states like Oregon expand their laws regarding psychedelic substance access, **they must adapt pre-existing laws that guarantee the religious freedom to perform psychedelic sacraments** as protected under the Free Exercise Clause of the United States Constitution.

•By including amendments pertaining to the religious use of psychedelic sacraments, Oregon can continue to provide a legal framework for other states to implement their own psychedelic drug laws while also ensuring that religion is not burdened by the government.

•These findings are significant because the protection of religious traditions must be specifically outlined in current and future state psychedelic drug laws to prevent the government from infringing the rights of or unfairly burdening religious groups for their traditional practices.

•This research is ongoing as states continue to legalize psychedelic substances following the framework of Oregon's Measure 109, conduct research initiatives, and pass local reforms.

•One limitation of this study revolves around the short term that current psychedelic laws have been in place, with less than 5 years of legislation implementation to examine.

•The **operationalization of state psychedelic drug laws is still a relatively new political front**, making it difficult to determine the shortcomings and successes of current legislation and where the future of psychedelic law may lie.

Future Recommendations

As states implement their own drug laws, they must account for religious protections by either:

- **Specifically exempting religions** that use psychedelic sacraments from the procedures, requirements, and regulations that apply to individuals using psychedelics for mental health or recreational purposes.
 - This protects the religious use of psychedelic sacraments in non-governmental facility centers, like places of worship.
 - Guided by the Free Exercise Clause, this exemption would protect individuals who partake in religious traditions outside of a facilitation center.
 - This exemption allows religious organizations to continue filing for religious exemptions under the Drug Enforcement Administration, giving them both state and federal protection.

Or,

- **Insert an amendment to current drug laws**, specifically in Oregon, that outlines the facilities and distributors that religious organizations can specifically use.
 - This allows the state to regulate drug production for safety purposes, while still allowing religious bodies to continue their traditions.

- Oregon can best present religious protections in drug laws since most states implement Measure 109 as an outline for their own psychedelic drug laws.

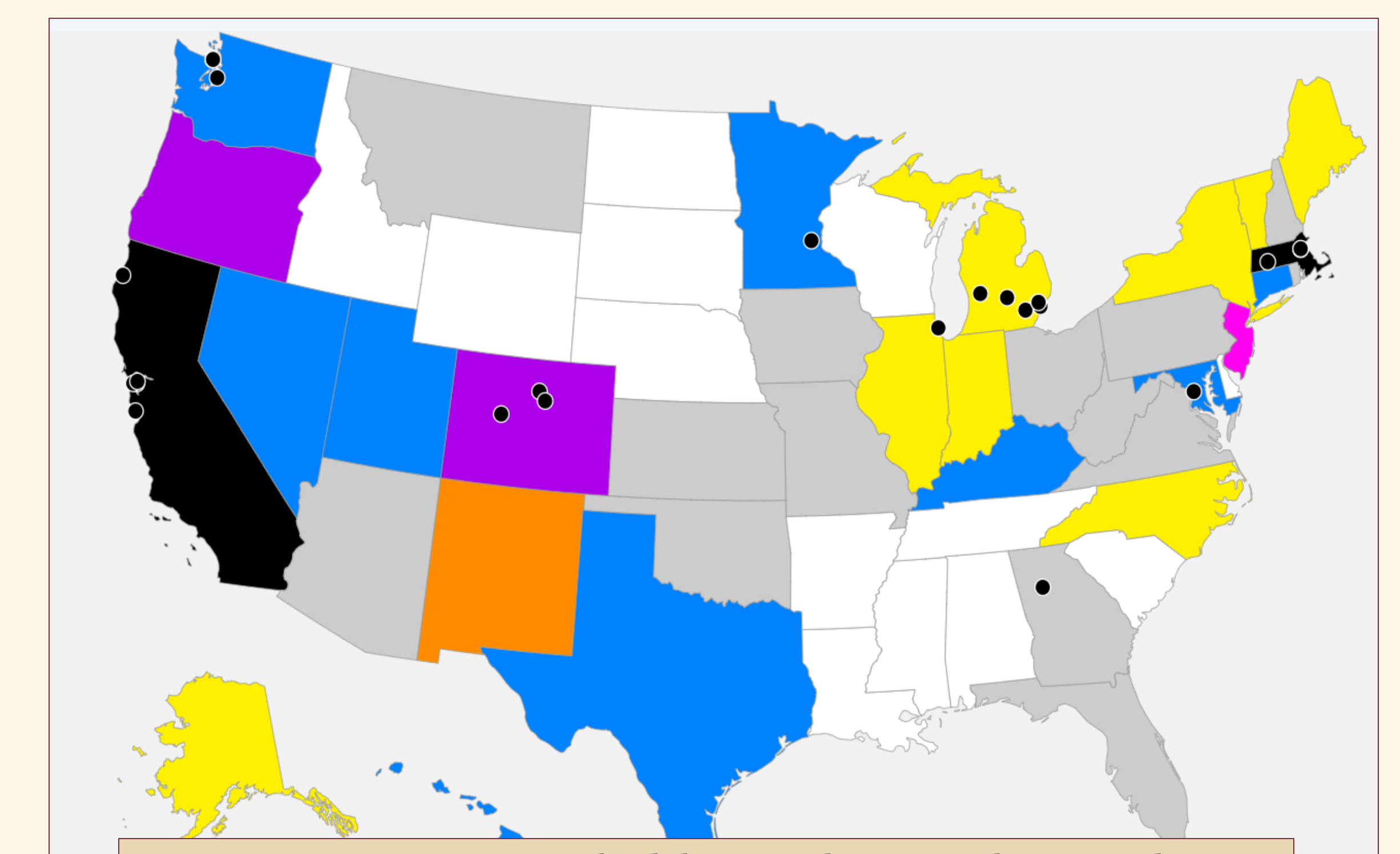


Fig. 4, Map Depicting Psychedelic Legislation in the United States



Fig. 5, Key for Legislation Map

References

