

The Emerging Cannabis Lobby:
A Study of Arguments Through Public Comments and Interviews
Riley Knight
Indiana University

Abstract

As one of the newest and fastest growing businesses in the United States, the cannabis industry deserves a thorough examination from researchers. Though many contemporary studies have focused on the empirical effects of legalization, almost none have focused on the growing persuasive muscle of the legal recreational sector due to legalization of recreational marijuana that has rapidly swept that country in the past decade. This paper will study the arguments the cannabis lobby deploys to state regulators in order to change rules in their favor. The primary mode of analysis employed is a review of public comments. In addition to public comments, three interviews were conducted; one with a member of Colorado's Marijuana Enforcement Division (MED) and two with members of the National Cannabis Industry Association (NCIA). These interviews gave an in depth look into the day-to-day operation of the marijuana industry in Colorado. In a qualitative analysis of data, it was found that cannabis firms overwhelmingly appeal to the law of unintended consequences, claiming new regulation will have major economic impacts on their crop or product sales. Interviews with stakeholders also found that economic concerns are the highest concern in the industry. Few other issues are as important to cannabis as obtaining federal recognition and reducing state-level red tape put into place post-legalization.

Introduction

In the past decade alone, legal recreational marijuana has grown from a non-existent industry to a multiple billion dollar one. With so much money flowing into this rapidly expanding part of the economy, many cannabis stakeholders have joined trade industry groups and started to invest in lobbyists to advocate for them on the national level. As

lobbying of this sort largely takes place out of public view, it is difficult to see the extent of arguments the cannabis industry is making to policy makers. As the news media has been largely focused on the fight to legalize recreational marijuana, less attention has been paid to cannabis industry groups that emerged post-legalization. Meanwhile, one of the largest fears of opponents of legalization is cannabis emerging as another “Big Tobacco” or “Big Alcohol.” Many groups see cannabis as similar in nature to the other “sin industries.” They worry that cannabis will gain the ability to advertise on a much larger scale than is currently possible. This paper explores, “What kinds of arguments does the cannabis industry make to regulatory bodies to lessen the coerciveness of regulation?” Long term implications of this question are also clear. Answering what kind of arguments cannabis uses can also point to long term trends in its development as a major part of the economy.

The importance of this issue has only grown over the past decade. As recreational marijuana was illegal in every state in the United States until 2012, there was no industry group dedicated to marijuana regulation. However, as more and more states have followed the leads of Colorado (legalized in 2012) and Oregon (legalized in 2014), an increasingly powerful cannabis industry group has emerged. Though lacking the unity of far more established “sin industries” such as tobacco and alcohol, the rise in lobbying spending on the federal level has been enough to begin to make an impact. As recently as 2013, there was a negligible amount of lobbying money spent at the federal level. However, by 2019, that number had soared to nearly \$4 million (Marijuana, 2019). For comparison, the much larger beer, wine, and liquor lobbies spent \$32 million on lobbying the federal government (Beer, 2019). While advocacy spending numbers for the state level are not easily available, each

new rule published by local regulators draw hundreds of comments from stakeholders, demonstrating large amounts of engagement from the industry. Given the small size of the national cannabis industry, this growth has been striking.

From the findings of my thesis, lawmakers will be more prepared to make sense of arguments coming to them from this new industry. This will allow them be more objective in their assessments of cannabis and allow them to be rational when introducing new marijuana-related policy. Instead of relying on potential stereotypes about marijuana, lawmakers will be able to draw new conclusion based on the data I have collected. They can better understand the motives of lobbyists and the industry. Cannabis is unique among lobbying groups because it is so new. By studying the sort of arguments the industry makes, lawmakers can be prepared to encounter these arguments with an open mind and make empirical-based judgements not based on preconceived ideas about marijuana and the cannabis industry as a whole. Understanding the motivations behind the cannabis lobbying can go a long way towards building trust between the long prohibited marijuana industry and the government as a whole.

In order to ascertain the arguments made by the cannabis industry, my study looks at the content of public comments. To qualify, these comments must be submitted to the state level regulator of recreational marijuana and be accessible to the public. I decided to use public comments because they represent the policy stance of cannabis dispensary owners. Although many recreational marijuana establishments have websites and publish blog posts on political issues, they rarely present their actual views on pending regulations. The industry knows that very few citizens bother to read public comments, making them safe from most

backlash they may receive. Therefore, I gathered public comments from legal states as best I could.

Analyzing these comments is an important part of my will my study which will also include qualitative interviews to provide the context under which these comments are being made. To help design my research, I used a variety of meta-analysis done on the alcohol industry and the arguments made by that group. This allowed me to better categorize comments, and allowed for faster analysis. Following that analysis, I have conducted a series of interviews with stakeholders inside the cannabis industry. One interview was conducted with a member of the Colorado Marijuana Enforcement Division, the chief regulator of cannabis in the first legal state. The other two interviews were conducted with members of the National Cannabis Industry Association, a Denver based lobbying group. The interviews were highly informative and helped reveal further motivations within industry stakeholders.

According to my interviews with industry stakeholders (NCIA employees), cannabis currently seeks to de-stigmatize itself. It is safer than alcohol in many ways, and the doom-and-gloom predictions of legalization opponents have by-and-large not come to pass (Lachenmeier, 2015). According to Ms. Gray at the MED, Colorado created a very strict set of requirements with the goal of convincing the public cannabis was safe for consumption. However, these rules have made it difficult for dispensary owners and distributors to turn a profit, even as sales continue to rise (Marijuana Sales Report, 2020). Naturally, this has led to stakeholders seeking lighter regulations as their primary goal. In the following thesis, I will first examine previous literature on lobbying and the potential stigmas that form the

basis for making sense of cannabis advocacy. I will then present my methods and findings, followed by a discussion on these findings.

Literature Review

In conducting this study, very little existing literature was found on cannabis lobbying for several reasons. First, the industry is still relatively new and much of the research done focuses instead on how legalization has impacted local economies. There are countless studies done on what arguments have held true after legalization and which ones have not, but these do little to further my study. Second, researchers may be more focused on other public health issues, such as the rise of vaping in the teenage population. Third, the issue is not seen as pressing or urgent. In fact, it was also difficult to find wide ranging studies on the lobbying tactics of alcohol. Given this shortage of literature, a comparison between three similar industries makes sense. I used many of the same categories authors researching alcohol used. Marijuana faces the same perceived social problems as alcohol and tobacco, which include high taxes to discourage consumption, and negative effects on people's health.

Public Comments

Federal regulators and many state regulators allow for the public to leave comments on proposed regulations. Industry groups and advocacy groups lobby the government through these comments. Agencies generally try to be responsive to comments and, depending on state law, must explain why they did or did not incorporate their suggestions. The importance of these comments and the rules they pertain to should not be understated.

Policy making and legislation creation has increasingly moved from the legislative branch to the executive branch, particularly at the federal level. One such observation finds, “legislative delegation of regulatory authority to agencies continues today, with the result that modern governance relies heavily on the public policy decisions generated during government rulemaking,” (Yackee 2019). On the federal level especially, the trend towards more powerful administrative agencies is clear from Yackee’s (2019) research. The movement to influence those agencies have therefore become all the more important, cannabis not excluded. Powerful lobbies that influence administrative agencies can make a large difference in the final outcome. Though proponents of public comments often cite the ability of the public to get involved with the process, Yackee (2019) states others, “to be influential during rulemaking, commenters may require resources and technical expertise,” (Yackee 2019). Cannabis has increasingly built up a lobby that has these skills that Yackee (2019) cites. They should not be discounted from the political arena because of the short time they have spent in it.

In a study by the Brookings Institution, comments submitted to the EPA were studied in the context of “comment campaigns”. Comment campaigns are large scale efforts by either industries or advocacy groups that seek to pressure agencies into changing their rules (Potter, 2017). The article concludes that determining whether comments have actually affected the rules is very difficult to discern. However, comments do help to expand the scope of the conflict or give legislative leaders *reason d’etre* to repeal or pass a certain rule (Potter, 2017). It would be interesting to see if the cannabis industry has used a public comment campaign similar to the ones carried out by other powerful industries.

While no study like this has been done on cannabis, it would almost undoubtedly reveal that comments may or may not affect final rules. It is nearly impossible to prove just how effective such campaigns are. But as stated above, my study does not focus on final rules. Rather, it is concerned with the similarities in arguments between different comments.

Other research into public comments finds that the alcohol industries are less likely to use peer reviewed sources (Savell, 2016). This may be similar to the way the cannabis industry lobbies the government, though since such study do not yet exist, it will be impossible to tell for some time. Studies into comment campaigns conducted by the telecoms industries found that corporations are likely to “astroturf” in order to sway federal regulators (Peng, 2016). The integrity of public comment periods are put to risk by the very industries they are supposed to regulate. In this case, telecommunication companies fighting regulation would not only comment for themselves, but would pressure non-profit organizations that receive funding from them to comment as well. This creates the illusion of opposition to an issue from many different corners. However, the reality could not be more different. When reading public comments on cannabis, I needed to be aware of comments from different backgrounds. Simply because public comments do not come from a dispensary or other cannabis representatives does not mean they are not under the influence of the cannabis lobby, as seen from the comment study above.

Lobbying and Lobbyists

A cornerstone of the future of the cannabis industry is lobbyists. According to lobbyit.com, lobbyists, “are professional advocates that work to influence political decisions on behalf of individuals and organizations,” (What is a Lobbyist). Without the influence of

lobbyists, organizations would have a very difficult time persuading lawmakers to support their positions. The rise of marijuana lobbying groups will ensure that voices within the industry are heard and responded to, not just in legal states, but increasingly in the federal Congress as well.

The importance of interests groups (that lobbyists represent) is to further connect or break the links between lawmakers and their voters. One study called, “Voting Against Your Constituents? How Lobbying Affects Representation,” found that lobbying groups can make or break links between Members of Parliament (MPs) and their constituents (Giger & Kluver, 2015). They found that, “Legislators who have strong ties with sectional groups are significantly more likely to deviate from the preferences of their voters, whereas links with cause groups in fact increase the congruence between what voters want and what their representatives do.” This conclusion has major repercussions for the marijuana industry. Despite majority support for legalization, Congress has not acted. This may be because cannabis lacks a dedicated interest that can restore the links between voters and MPs. The arguments these lobbyists use is all the more important because it is possible they represent the views of constituents, not just of one lobby group. The emerging lobbying may help to bring Congress more in line with the wishes of the voters.

Though it is difficult to prove what sort of effects lobbyists have on final rules, studies have shown that coalition lobbying is often successful (Nelson & Yackee, 2012). Coalition lobbying is slightly different from more traditional lobbying in that it combines the weight of multiple lobbies into one effort. Cannabis is most likely involved in coalition lobbying, especially when it comes to the agriculture sector. The Nelson study was

successful in proving that lobbying does help industries increase their influence in the capitol, so it should be assumed that this applies to cannabis. Which arguments they use to push their agenda is important for understanding the sort of language changes to rules scholars can expect to see from said lobbying efforts.

Lobbyists are vital for getting issues on the national agenda. Without them, Congress is unlikely to act. Analyzing arguments these lobbyists use at the state-level can help predict what sort of final language voters can expect in final rules and laws. The link between the two has been established by multiple studies. Predicting what final rules will look like will help establish predictability in lawmaking and more certainty for business owners.

The Alcohol and Tobacco Industries

As the reader may recall, the original hypothesis presented was that cannabis comments would closely mirror the alcohol and tobacco industry. There are a variety of similarities between the three. They are considered “sin industries” by many within the policy-making community, and face high taxes and strict regulation. Though cannabis does face the same pressures (including high taxes and very strict regulation), there is no evidence from comments of arguments similar to alcohol and tobacco being deployed.

The primary industries that will be compared to cannabis in my study is alcohol and tobacco. Alcohol is one of the oldest and longest established industries in the country, but I predict that the three industries will act in a very similar manner. The alcohol industry around the world (not just in the United States) uses arguments and language that mirrors itself from state to state, and country to country. The tobacco industry does the same. With the release of

documents from the tobacco industry during the 1990s, it was revealed that tobacco and alcohol had coordinated lobbying strategies. With a wide sample, I drew upon relevant arguments that may be applicable to cannabis. Then, I will do a rough comparison of the two, looking for similarities and differences in quantities of arguments to see if a comparison between the two exists in empirical data.

One prominent meta-analysis of alcohol studies finds the industry tends to use similar language regardless of the topic of the public comment (Savell, 2016). The industry around the world uses the same categories of arguments to persuade lawmakers to deregulate alcohol or stop new regulations from coming into force. The most often used argument was that the industry can regulate itself and that it needs no oversight. Using this sort of language in comparison to the cannabis industry will help to reveal similarities between the two. Additionally, it will make studying arguments by the cannabis industry easier because the topic of the proposed rule will not be as important as one may assume.

Savell, 2016, also looks at the “negative unintended consequences” argument. This essentially means that the high cost of compliance will force companies to lay off workers, or that the regulation will not affect all producers and customers equally. Though not as used as the regulatory redundancy argument, it is still the second-most popular argument employed by the alcohol lobby. It is likely that cannabis will employ similar arguments, given the already heavy cost of compliance with burdensome state regulations demanded by the public after legalization.

Another study in the *Australasian Journal of Medicine* conducted a study comparing the alcohol and tobacco industries directly (Bond, 2010). The study found a large amount of

communication between the two groups, particularly when it comes to legislative issues. The study found that both tobacco and alcohol face restriction such as advertising constraints, labelling regulation, supply and retail restrictions, and taxes to control consumer behavior. New regulations from legal states point to the exact same regulations facing the growing cannabis industry. Facing almost the exact same legislative pressure that the tobacco and alcohol industry are subject to, cannabis can be expected to lobby in a similar manner to these other two groups, justifying the comparison between the three industries.

Similar to the cannabis industry, the tobacco industry's products are primarily consumed by smoking and are both considered "sin industries" by regulators. In this systematic review of the tobacco industry, researchers found that tobacco uses similar tactics around the world, similar to the alcohol industry. Almost all of the arguments presented by the tobacco industry are the same as the alcohol industry. Should cannabis use similar language to tobacco and alcohol, it is likely they are also using the same arguments. This will help show what sort of lobby the cannabis industry will be. Lawmakers can then be more aware of arguments presented by the lobby when considering regulations (Savell, 2014).

Tobacco also makes use of front groups in order to influence policy (Smith, 2014). Many of these groups leave comments on regulations which support the pro-tobacco position. When studying cannabis, my study will need to look for these front groups that attempt to influence policy in a pro-cannabis manner. However, at this point, the industry is not distrusted in the same way tobacco is so this may not be necessary. It is useful to look at various theories from different "sin industries" as they may be relevant to current research. However, it is too soon to make any judgements on the cannabis industry based solely on

what the tobacco industry has done in the past. Future research may consider looking into these front groups once the industry has been properly legalized. Until then, front groups will remain a minor part of academic consideration.

During the 1990s, the tobacco industry faced a disastrous decade with major setbacks from which they never truly recovered. During those years, the evidence that tobacco and nicotine were harmful to smokers emerged, and every single state in the nation sued the primary tobacco companies (National, 2014). In one of the largest settlements in history, the tobacco industry paid out \$206 billion to the states to cover healthcare costs for smokers. CEO's continued denial of the dangers of smoking led to an extreme decline in trust among the public. In one survey, 92% of people believed that tobacco companies cause cancer, even if they do not admit it. The industry never recovered from this fall, and is forced to maintain a low profile in Washington. Lobbying spending plunged after the late 90s, and has yet to come close to the amount spent before the settlement (Tobacco Lobbying Profile, 2019). New regulations also force companies to adhere to strict advertising standards, limiting their ability to reach customers.

The travails of the tobacco industry should provide a cautionary tale for the emerging marijuana industry. There is very little data on the long-term effects of marijuana consumption. Given the speed with which legalization has taken place, new data is finally becoming available to researchers. This points to an important aspect of this study. How does the cannabis industry deal with lack of information? Reading public comments submitted by stakeholders can reveal some of this response. Policy makers will want to know if there is an

incentive or evidence that companies are attempting to mislead the public (though this study does not find any evidence of this).

Methods

Variables

My study seeks to uncover the categories in order to classify arguments made by the cannabis industry. Public comments come in many different forms, and it will be necessary to categorize them in order to effectively present them to a wider audience. I coded based on the following themes: regulatory redundancy, industry responsibility, legality, negative unintended consequences, and shifting blame to consumers. I used a primarily dichotomous system, given that most comments were found to present only one argument. However, these categories were subject to change as more comments are analyzed to allow for unexpected findings:

Each category from above is reflective of arguments previously made by the alcohol industry. Given that the tobacco industry is facing similar legislative pressure, they also use arguments targeting the same categories. The claim of regulatory redundancy focuses on the idea that regulations are not necessary because protections are already in place. I will look closely for this when it comes to advertising restrictions. Many states have particular restrictions on how products such as cannabis can be advertised, especially when targeting youth. This will be an important point for many comments. Industry responsibility refers to the idea that the industry can regulate itself. Both the tobacco and alcohol industry push this idea on regulators. Generally, as deregulation happens, lawmakers cite the ability of

industries to regulate themselves and thus save the taxpayers money. However, self-regulation is almost never as stringent as regulation passed by legislative bodies.

Negative unintended consequences is one of the most popular arguments made by alcohol and tobacco interests. Industry groups often claim that new regulation could have negative side effects that hurt voters. Most commonly, these arguments state that voters might lose their jobs, or new taxes could negatively impact the poor (often the primary consumers of “sin industry” products). Legality refers to the idea that new regulations would not stand up to a challenge in court. In the United States, the First Amendment (specifically the right of free speech) is often invoked. Finally, the industries often make the argument that they are not responsible for what their consumers do. For example, the alcohol industry cannot be blamed for underage drinking, just as tobacco cannot be blamed for minors smoking. Will the cannabis industry use similar arguments? Will the industry attempt to shift the blame to minors and away from their product? In order to identify these arguments, I will read through each comment and look for the overall argument. As stated above, key words are almost impossible to identify in this environment. Thus, each comment must be read in its entirety.

Assumptions

This study relies on several underlying assumptions. First, that the cannabis industry has grown to a point that it can influence regulations within the state without the help of the original advocates that helped legalize in the first place. Second, public comments are representative of a mere sample of the industry as a whole. An analysis of comments cannot hope to capture the complexity of many different viewpoints present in the industry. Finally,

interviews with people involved in the industry are also representative of small sample of industry. Further interviews would need to be done to confirm the findings of this study.

The growth of the cannabis industry has allowed newly legal business owners to present their concerns to state authorities in ways that were impossible for black market dealers to do. Before legalization, the entire industry existed entirely underground. There was no way for them to influence laws or regulation at a formal level. Black market dealers could not hire lawyers or lobbyists to represent them. They could not advocate for themselves either. With the legalization of marijuana at the state level, all that changed. In the early years, dispensaries were smaller and lacked the institutional knowledge to become effective advocates for their industry. However, as the industry has grown and revenues have increased, business owners have become more confident in approaching lawmakers and state regulatory agencies. In one example, Colorado has begun to consider allowing out of state residents to work in the cannabis sector (Remove Residency..., 2020). This would only ever happen under pressure from the industry and a need for more workers. Lawmakers are listening to the industry, meaning the arguments they use are heard by regulators and lawmakers.

Data Collection

My primary data collection method will be document analysis. After discussing with my advisor, I realized I wanted to conduct a study primarily into cannabis, not one that compares cannabis and alcohol. I will still use methods used by a meta-analysis into the alcohol industry, but a direct comparison is not the primary vehicle of research. My study will rely on public comments entered into the record by states that have legalized cannabis in

addition to interviews conducted with stakeholders and regulators in the cannabis industry. All three interviews will be conducted with those in the Colorado marijuana industry. Combined with an in-depth study of public comments, such a study may be a groundbreaking look into the emerging cannabis industry. Other data collection methods such as surveys or experiments would not necessarily be useful in this study. A survey of lawmakers may be useful, but actually obtaining a response from such people may be very difficult. Thus, public comments will be the primary source of data for my study in addition to information obtained during interviews.

In order to qualify as an appropriate comment for my paper, the public comment must meet a few criteria. First, it must be submitted in a state with legal recreational marijuana, not just medical marijuana as medical marijuana is regulated significantly differently from recreational. Second, the comment must be directed to the state cannabis regulatory agency (Oregon Liquor Control Division in this case), not at the state legislature. This is because I want comments that are honest and not warped by political considerations. If the comments were directed at state legislatures, then they would likely expect the local press to read and report on them. However, comments submitted to the regulatory agencies are almost never read by the press, allowing a more realistic argument to emerge. Third, the comments must be accessible to the public, so as to ensure accuracy in my final paper and the ability of others to review them. Finally, the comment must be submitted by a pro-cannabis party. Comments submitted by less favorable groups would not contribute to my study.

I believe that documents analysis presents that best possible data collection method because it provides a direct look into the cannabis industry, the data is mostly accessible to

the public, and shows a broad view of the principle arguments made by the growing cannabis industry. I was able to travel to Denver, Colorado to conduct interviews with two members of the National Cannabis Industry Association and one member of the Colorado Marijuana Enforcement Division.

Selection of data may be difficult for this project. Although many states have laws allowing citizens to request public comments, they must be released by the state through a (potentially lengthy) process. A request can easily be buried and could take months before the comments are released. Unfortunately, many states do not post comments on their websites and may only grant access to audio of rule hearings. Naturally, this makes systematic selection of documents very difficult. So far, I have only found access to California's public comments in addition to Oregon and Washington. None of the other legal states have been so easy. I requested comments from Colorado and Massachusetts but have not heard back. I do not know how long they will take to return the comments. I have also looked into cannabis industry groups themselves. One California group (the California Cannabis Industry Association) posted public comments on their website. However, groups in other states have not followed in suit. Contacting the groups has also yield few results. The Marijuana Industry Group in Colorado refused to release their comments until the state Marijuana Enforcement Division did first. The Oregon Cannabis Association likewise refused to release documents. Therefore, my selected data will rely on which states actually release data.

Much of my research relies on states to release their comments in a timely manner. However, the data found on the California website is very wide in scope. In fact, it is over

1,000 pages long. Oregon and Washington have also released a number of comments to me. Overall, I believe I have more than enough data to conduct a wide-ranging look into the arguments used by the cannabis industry. Combined with the interviews of Colorado officials, my thesis will present a comprehensive look into the emerging cannabis lobby.

Text Analysis

In an analysis of comments from the cannabis industry, I will be able to see what sort of arguments the industry puts forth to persuade lawmakers new regulations are not necessary. Using the pre-existing arguments from the other studies, I will be able to see if cannabis is shaping similar arguments. By reading through and coding each comment, the categories of arguments will soon emerge. In a study published in PLOS ONE, authors did a text analysis of the alcohol industry in Australia. The authors found that the alcohol industry used the same arguments as the meta-analysis study above. The industry seeks to regulate itself (Martino, 2017).

One of the difficulties I encountered in analyzing comments was lack of easily-classified “key words”. It is easy to try and look for key words when looking at comments from the same corporation or group as may be the case when looking at alcohol or tobacco comments, but cannabis is more difficult to categorize based only on key words. Commenters are generally small businesses that are very clearly not communicating with each other. They tend to have their own issues and have not consolidated into a larger lobbying organization that speaks for the whole. I did not include a section on key words because each comment required me to read through and see what arguments the author was trying to make. There are no simple words that make it clear the author is trying to show that

this regulation will harm their business. They explain in technical terms why regulations that are proposed should be modified. Thus, each comment requires individual attention.

Results

A comprehensive survey of public comments across rule making periods, and a series of interviews conducted with stakeholders in the cannabis industry reveals an industry still in its formative years. Public comments submitted to the Oregon Liquor Control Board reveal overwhelming concern for economic issues that fall only into the category of “unintended consequences”. Interviews conducted with members of the Colorado cannabis industry and regulators reveal an industry devoted to more consensus rule making than the more adversarial relationship present in other industries, hopefully indicating a healthier long-term relationship between regulators and distributors.

Public Comments

In the public comments, I expected to find the following arguments: Negative unintended consequences, “legality”, self-regulation, regulatory redundancy, or industry responsibility. These arguments closely mirror the ones presented in Savell, 2016. Given the similarities presented, it would make sense that the two would lobby in similar manners. Negative unintended consequences would present rule makers with primarily economic arguments. Legality would argue for personal freedom. Self-regulation would claim that the industry can regulate most aspects of itself. Regulatory redundancy would present ideas that marijuana already has regulations regarding a certain issue and that no more are needed.

Finally, industry responsibility would lay the blame at the feet of the consumers, not with the industry.

My findings ultimately supported only one of these arguments. Negative unintended consequences was overwhelming represented in the sample. 34 comments were read and analyzed. The comments were collected from across a different pool of rules, with no one rule providing the only comments. Despite the issue at hand, comments continued to use the same arguments. Negative unintended consequences was found to be the overwhelming concern of stakeholders. Of the 34 comments analyzed, 25 were focused on business or economic implications of the regulation. The rest of the comments were equally distributed among the other categories with little variation. The industry is highly focused on economic issues for the time being, and have little use for other arguments that don't directly address their issues with regulations. Samples of public comments can be found in Appendix A.

Interviews

Originally, my thesis was going to focus exclusively on the public comments available to the public. However, as read and analyzed many of these comments, I came to realize that context for these comments would help to sort out which arguments were most important and what the ultimate motivation of the industry was. Only people involved in the cannabis industry could provide such context. Three interviews were conducted with stakeholders in the Colorado and national cannabis industry. The first was with Shannon Grey at the Colorado Marijuana Enforcement Division, whose mission is, "...to promote public safety and reduce public harm by regulating the Colorado commercial marijuana industry through the consistent administration of laws and regulations and strategic

integration of process management, functional expertise, and innovative problem-solving,”(Marijuana Enforcement, 2020). As one of the world’s first cannabis regulators, many of their administrators have worked or worked alongside some of the longest servicing legal cannabis administrators in the world. The other two interviews were conducted with Vince Chandler of the National Cannabis Industry Association (NCIA) and Bethany Moore, also of the NCIA. Mr. Chandler works as a Social Media Manager and Ms. Moore is a Communication Project Manager. Given their daily exposure to the ongoing issues facing the cannabis industry, they both provided valuable insight into problems facing distributors that are not present in public comments.

My interview with Ms. Grey was helpful in seeing how the industry had changed over time. While cannabis became legal recreationally in Colorado in 2014, regulators have had to move at breakneck speed. When first legalized, the state legislature looked not to alcohol as a template for regulation, but to “the gaming industry.” Alcohol is generally federally regulated according to Ms. Grey, and as such, did not provide a solid model for cannabis. This further removes cannabis from comparison with alcohol. Asked about how the industry had changed over the years, Ms. Grey pointed to the rise of edibles and packaging and labeling regulations. Edibles were originally much less regulated when rules first came out. However, despite minor push back from the industry, the MED pushed forward with new regulations that required distributors to clearly label all edibles with warnings of THC content. Though this raised the price to produce, the industry was overall supportive according to Ms. Grey. But the main take away from the interview was that relationship between regulators and suppliers remains cordial and focused on consensus. The MED is

well tuned to the concerns of the cannabis industry. As one of the most regulated industries in the country, Ms. Grey recognizes the desire to be seen as safe. The entire country was watching as Colorado launched an experiment into regulation. Vince Chandler of the NCIA recognized that former Governor Hickenlooper erred on the side of stronger regulation. Ms. Grey stated that the public wanted a safe product, and the only way to ensure safety was through well-enforced regulation.

However, the industry has not responded with attacks on the MED, or trying to ease regulations, but rather, they work with the MED to find rules that make sense for both parties. Ms. Grey stated that the MED Director read through all of the public comments submitted and changed the rules as much as he could within statute to ensure rules made sense and could be complied with. This represents a significant difference from the more combative alcohol and tobacco industry and presents a possible path forward for the industry.

Interviews with the representatives of the National Cannabis Industry Association revealed a set of activists deeply committed to secure personal freedom for a significant portion of the population. Mr. Chandler and Ms. Moore are not attempting to secure a deregulated environment for cannabis, but one with sensible regulations. The difficulty faced by the industry at this time is in federal recognition. Cannabis is not engaged in rent seeking behavior, but rather is fighting for equal regulations. So long as federal drug policy continues to describe cannabis as a Schedule I drug, treatment will remain up to the whim of the executive branch. At the moment, the primary concern of the industry is passing the SAFE Banking Act, which would allow cannabis access to the banking system. Currently, all transactions in dispensaries must be done in cash, a major problem within the industry. While

the alcohol industry seeks easier and easier advertising restrictions, cannabis is simply trying to stay afloat. Mr. Chandler also confirmed that shipping cannabis across state lines would be a long term goal. This is not an industry engaged in rent-seeking behavior.

One of the main take-aways from the interviews with members of the NCIA was that major change is the only constant in the cannabis industry. Even over the past few years, the industry has changed quickly in response to changing consumer demands and federal pressure. While other industries such as tobacco or alcohol can reasonably expect incremental changes at both the federal and state level, cannabis does not have that luxury. New rules and referendum after each election cycle greatly affect the day-to-day operations of the distributors. Lack of certainty has created a unique environment in which cannabis and cannabis alone exists in. Comparisons to other industries are difficult and have no basis until researchers can see the long-term regulation efforts of the federal government, when marijuana is eventually descheduled. This attitude is reflected in the public comments as well. Many of the changes proposed by regulators have the potential to cause major disruptions to the business model for many cannabis dispensaries. Their desire for more incremental regulation (while not stated outright), can be found when reading between the lines.

Discussion

Arguments used by the emerging cannabis industry come down to one simple factor: economics. No other issue concerns distributors and dispensary owners so much as money. This looks unlikely to change in the near future. Both Mr. Chandler and Ms. Moore told me they expect a long fight ahead. Mr. Chandler compared the current period to the beginning of

the end of alcohol Prohibition. Even today, nearly 90 years after Prohibition, states continue to place restrictions on the drink. Cannabis is also likely to face the same gradual deregulation alcohol experienced. Heavy state regulations and non-existent federal regulations ensure that cannabis faces an enormous amount of red tape in the foreseeable future. Continued opposition from the Republican Party ensures that prohibition at the federal level will continue for some time. Stakeholders in the industry confirm that the federal government has provided no guidance, leading states to err on the side of caution and impose strict regulations. Facing difficult regulatory burdens, cannabis must make do with lobbying to reduce these high barriers. They have little time to devote to anything else.

This makes negative unintended consequences the most consequential argument made by the industry. While it may be tempting to draw comparisons between alcohol and tobacco and cannabis, the similarities are not yet there. Strict regulations and lack of social acceptance for cannabis force comment writers to focus merely on the economic aspects of the rules and regulations coming into force. As revealed in previous studies into alcohol, the central argument of that industry is regulatory redundancy. Alcohol attempts to persuade policymakers that new regulations are not necessary because they overlap with existing regulations. There were almost no cases of this argument being used by cannabis. The focus remained solely on the negative economic aspects of the rules.

My interview with Shannon Grey in the Marijuana Enforcement Division also helped to highlight these arguments. Over the course of my interview, it gradually became clear that the relationship between the MED and industry as a whole was more constructive and cordial than relationships between alcohol and their regulators. Ms. Grey explained that the MED

Director made it a point to read every single public comment submitted and changes to the rules were often made in an attempt to ease burdens on the dispensary owners, so long as the changes adhered to statute (as defined by the State Legislature, which is not discussed here). This relationship was reflected in the manner of comments submitted. The arguments presented did not try to second-guess regulators or appeal to some “legality” issue, but rather stayed focused on the business side of things. The relationship between the two is stronger because of it.

Another issue Ms. Grey brought to my attention was the fact the alcohol regulations primarily come from the federal level, rather than from the states. This may also impact the dynamic between regulators and producers. More local control likely gives regulators more intimate relationships with the entities they are tasked with regulating. Such relationships are more constructive to the long-term regulatory environment present within an industry. Industry representatives do not feel the need to push more political arguments, and regulators do not need to try and read between the lines in public comments. The working relationship between the industry and regulators seems to allow for more open and honest discussions between the two, rather than the seemingly more adversarial one between alcohol and their regulator (the Food and Drug Administration).

There are multiple possible reasons for the differences between alcohol and cannabis. And while the primary research question of this study is on cannabis, it is sensible to compare the two industries. The two are both considered “sin industries” and face similar pressures from regulators and the public at large. They both face high taxes and strict guidelines. However, this study has revealed that alcohol and cannabis may not be as similar

as they seem. Given that the arguments they present are so different, there may also be differences in other areas as well. Alcohol is clearly more secure in its position as a major cornerstone of social life. Alcohol consumption has remained relatively constant in the last four decades (Ritchie & Roser, 2018). The industry itself has been around for centuries. Attempts to ban alcohol during the Prohibition period have only ended in unequivocal failure. Cannabis, on the other hand, has seen consumption rise rapidly in legal states (Kagia, 2019). While cannabis has been consumed for centuries as well, it has only recently begun to emerge from its Prohibition period. Mr. Chandler from the NCIA mentioned this in his interview. He stated that he believes that cannabis will continue to face restrictions similar to blue laws surrounding alcohol (that are still on the books in some states) long after the federal government adopts legalization.

In the long run, both Ms. Vance and Mr. Chandler (of the NCIA) both expressed that they believed that cannabis would eventually consolidate into an industry similar to alcohol, with a few large companies that dominate the national market, but with local distributors still popular (much like local breweries that brew their own beer). However, both were equally convinced this outcome was many years away. Perhaps once cannabis emerges from federal prohibition, it will begin to move towards using same arguments as alcohol. Alcohol's arguments do contain a certain expectation about actions of regulators that only come from a long established position in both private and public life. Arguments that attack the basic legality of new regulations serve to remind policymakers of the omnipresence of alcohol in daily life and its acceptance by the mainstream. Not only does marijuana face some of the most stringent regulations in the country, but it must also fight for basic recognition by the

mainstream. Until the basic stigma on consuming marijuana has been lifted, it is unlikely for cannabis to focus on anything other than the basic economic problems facing its business model.

Conclusion

It is impossible to predict where the cannabis industry will be even one year from today. The rapid change has caused a ripple effect through state economies and the national one. It has not even been ten years since the first states began to legalize recreational marijuana. Though it is possible to research the current state of the industry and its lobby, it is difficult to predict whether this lobby will be using the same arguments even a year from now. Despite these difficulties, it makes sense to begin studying the industry now. Early trends can help researchers and scholars to predict what sort of pressures policymakers may be facing in the near future.

This study does face many limitations. Public comments can only show a partial picture. They cannot represent the entire industry on all issues facing it. But the overwhelming number of comments devoted to economic issues and the negative monetary effects of the rules under consideration point to the overwhelming concern of expanding cannabis industry. Interviews with stakeholders in the industry enormously assisted in this study, but I recognize it was only with three people. It would have been much better to interview more stakeholders, and perhaps some working directly in the dispensary area of the business. However, despite these limitation, I believe that this study is accurate in its findings and can hopefully be a starting point for further study into the cannabis industry.

Future researchers have many questions to answer about the cannabis industry. Who are the primary lobbyists? One of the biggest criticism of the legal industry is its lack of diversity. Those who suffered the most under the war on drugs have seen little benefit from this new legal paradigm. More studies are needed to see if states should intervene to assist the minority communities that have not been able to take advantage of the business opportunities presented by legal cannabis.

This study found that cannabis uses primary economic arguments when interacting with public officials. This is the first study to look directly at public comments in relation to the cannabis industry. Future studies will no doubt follow. Americans are witnessing the ending of a modern day prohibition. We are also witnessing the birth of an entirely new industry. Never in history has cannabis had a voice that directly represents distributors of product. Cannabis has had advocates for a long time, but never has it been represented in this manner. Researchers should be sure to capture this moment in time, as it will not last forever. Eventually, cannabis will become an established lobby, with little stigma attached to it. At that point, the ability to study the birth of a new lobby will be lost. While documents may still exist in the coming years, the ability to do interviews with stakeholders will be limited. Witnessing the birth of a new industry and its lobby group happens so rarely, it will be useful to have a reliable model in place to use for the next time it happens.

Appendix A: Public Comment Samples

Sample 1

My comments in regards to the hang tag attachment allowed for small edible containers in the proposed rules. I'd like to request that non-critical information be allowed to be included on a leaflet that is inside of the container. Rather than attached to the outside. A lot of products are small in size and it's very difficult to include all of the necessary information on the outside without the container looking too crowded or confusing to the consumer. For items that don't need to visually be seen by the consumer immediately for example the lab information or the facilities address. This information could be contained on a leaflet inside of the container. Obviously, we agree there's a lot of critical safety information and that should remain on the outside of the container when they're looking to purchase the product, but we're hoping an exception can be made for less critical information.

Tyler Kanney
Hydra
Lunchbox

Sample 2

Hi Jamie/Mark/Bryant:

I hope you are all well and have survived 420 without too much excitement this year! In the never ending pursuit of regulation compliancy (that brings us closer to legalization), I am seeing an alarmingly high rate of new products pop up on the market that are blatantly disregarding the packaging/labeling and testing rules. Attached is my new personal favorite, the Trout Prerolls...they didn't even bother to put the Marijuana symbol on the front of the package, not to mention any of the required warnings. These are being sold all over the Portland/Salem area. It boggles my mind that retailers would take a product such as this in and take on the liability of selling it, but they have. Many of them have. I know the industry is struggling and there are pop-up vendors left and right that are just throwing things out there to make a quick buck as a last hurrah before they vanish back under the rock they came from, but this is a problem and it's a reflection on the industry and is impacting those of us that want to see this succeed in the long run. It feels like it's getting worse as the industry gets more desperate. It just looks bad for all of us, and that's before it becomes a real publicity issue.

Sample 3

Christine Smith
Gron Chocolate

I in general support the rule changes. I think my biggest concern that I have right now is the time frame for implementation. I bring this up because as a large processor and also using the individual child resistant packaging that we do we order a very large quantities and those boxes are quite expensive close to a dollar apiece. So I'm sitting on well over \$200,000 boxes right now that meet all of the current requirements and are approved. We have a shelf life of a year on our product so with the current time frame we're looking at potentially either at the end of this year having to recall those products and repackage them which would be very very difficult under the new rules or in a situation right now which we're currently looking at phasing out that product and then destroying all of our existing packaging so that were able to have compliant products on the shelf at the end of this year. So I am completely in favor with a timeline, well I'm not in favor of the timeline. I the adoption of the rules is very fair I just think that end of the timeline 2018 January 1st either needs to be extended in some capacity for retailers to sell out the existing products that are on their shelf. Maybe they aren't allow to take anything in after January 1st but they're allowed to sell out that product under existing packaging.

Sample 4

Northwest Confections, LLC (Wyld) understands the purpose and the need for updated packaging and labeling rules, and we are writing this letter to give our input to help benefit all licensed Marijuana businesses. Our main concern is the negative financial impact that the proposed time-line will have to smaller scaled Oregon Marijuana licenses, as the rule stands now, the larger scale businesses have the advantage (including us) due to our cash advantage allowing us to be flexible and potentially eat the loss of packaging, returns, etc. We appreciate the time that the OLCC (and other agencies) has put into the development of the new rules, and please see our following input.

1) Push back the timeline of the proposed effective dates:

-Change August 1st, 2018 to January 1st, 2019 for licensees to submit packaging for approval by the state.

-Change January 1st, 2019 to June 1st, 2019 to offer more time for businesses to be able to sell, offer for sale, and transfer their remaining inventory.

-Some packaging that is sourced overseas can take up 3 months to obtain after submission of the purchase order, so a license holder may not receive their new packaging until Mid-November (if they received approval the day of August 15th, 2018) and that gives them very little time or flexibility to make the change. If there is one hiccup in their supply chain or their supplier makes a production mistake (frequent), then they would miss the deadline all together. The larger companies (including myself) will start their production long before the August 15th deadline, due to these timeline constraints, as we can afford to take that risk of having to re-do our packaging if it isn't approved by the OLCC, but this timeline is giving a competitive advantage to the larger companies (Wyld being one of them). The other main concern of extending the January 1st, 2019 to June 1st, 2019 is to alleviate some of the financial pressures of a tight deadline, allowing licensees to sell through their older inventory, but to also avoid all returns that will likely on a retail level, that will have an inevitable negative financial impact for both retailers and licensed producers and processors.

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