

Laboratories for Democracy: State-Level Variation in Recreational Marijuana Ballot
Initiative Outcomes

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Dedication

The thought of pursuing a graduate degree never crossed my mind until I received a test with some feedback from a professor during the spring of 2010. I was taking “Drugs, Society, and the Criminal Justice System” with Professor Bruce Bullington at Florida State University. This was the course and professor that sparked my interest in the sociology of drugs, drug policy, and how we approach concepts like drug abuse, deviance and addiction. Hand written in the margins of the last page of an essay exam, he wrote, “fantastic responses! I truly hope that you consider graduate studies.” I took that note very personally, and I believe that it was that small token of positive reinforcement that created the domino effect of being able to attend and complete a graduate program. Thank you to Professor Bullington and the countless other professors, teachers, and mentors whose small acts of encouragement create positive ripple effects in the lives of those whom they invest in.

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Abstract

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The War on Drugs has prompted a policy and jurisdictional battle between the federal government and select states across the country. While the federal government maintains marijuana under a Schedule I classification, certain states have introduced and successfully passed recreational marijuana legislation through ballot initiatives that decriminalize marijuana under certain conditions. Relying on a qualitative analysis of newspaper articles, editorials, and interviews, this thesis examines the social and political forces that influence whether a recreational marijuana ballot initiative fails or succeeds. A case study involving a comparative examination of legalization debates is conducted for states that have recently had decriminalization measures on the ballot during the Obama Administration (2008-Present). Findings will illustrate the similarities and differences between the provisions of each state, and the paper will make recommendations for a “best practices” approach to debating and presenting marijuana policy via the ballot initiative process.

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Introduction

Marijuana policy has been at the forefront of the larger discussion regarding the “War on Drugs”, and the social and legal ways in which the United States approaches drug use and regulation. While the federal government maintains marijuana as a schedule I drug that possesses no medical utility, lack of accepted safety standards, and a high potential for abuse (U.S. Department of Justice 2013), several states have attempted to pass recreational marijuana legislation via the ballot initiative process. During the 2012 presidential election, two states passed ballot measures that effectively legalize marijuana. Relying on a qualitative analysis of newspaper articles, editorials, and interviews, this paper examines the social and political forces that influence whether a recreational marijuana ballot initiative fails or succeeds.

This thesis takes the form of a case study and comparative examination of legalization debates in states that have recently had decriminalization measures on the ballot, either in the recent past (California 2010) or in 2012 (Colorado, Oregon, and Washington). The data and analysis contribute to the body of knowledge on marijuana policy and the process in which controversial values become normalized. More specifically, this paper illustrates how marijuana policy changes are framed and debated. Findings will illustrate the similarities and differences between the provisions of each state, and the paper will make recommendations for a “best practices” approach to presenting recreational marijuana legislation.

The study fits under a theoretical framework of that synthesizes the concepts of *policy windows*, coined by DiChiara and Galliher (1994), the process of *problematic*

normalization, posited by Dombrinck and Hillyard (2007), and *structural contradictions theory* by William Chambliss.

DiChiara and Galliher examine the social and political factors that contributed to the process of marijuana *decriminalization* in the 1970s. They analyze the legislative process and social discourse in 11 states over a 5-year period, as well as an explanation of the ultimate stalling of the decriminalization movement. Their findings suggest that pressure for decriminalization occurs to the extent that high status individuals are identified as violators of the law (1994, p. 42).

Policy windows refer to infrequent but important periods of time where legislative change is likely to occur on a given issue, or set of issues. Despite their rarity, the major changes in public policy can occur as a result of these windows, but the opportunity may not last for long, and any major change can be reversed. If a proposal fails, people may be unwilling to invest more time and energy in the endeavor, or changes in key political leadership may make such proposals less feasible (Kingdon 1984). This paper argues that the current social and political climate regarding marijuana policy is a *de facto* policy window that the United States is currently experiencing, which may prompt other policy changes. While this thesis focuses on the ballot initiative process in the context of marijuana policy reform, a policy window may bring changes in the form of official legislative change from the state or federal government, congressional acts, or simply a lack of enforcement of existing laws (known as *de facto* decriminalization).

Victimless crimes refer to behavior that, under common understanding, does not represent a direct threat or harm to those who choose not to engage in that given

behavior, despite the fact that the behavior in question may be in violation of criminal or civil law. The private and recreational use of certain drugs, the discreet hiring of sex industry escorts, and electing not to wear a seatbelt while driving a motor vehicle are examples of civil or criminal offenses that arguably pose little to no risk for those who are *not* engaging in that action. Dombrinck and Hillyard illustrate how laws and attitudes with regards to certain behavior and vices evolve and change to reflect changing conceptions of sin, crime, and illegality. The authors stress a trend of *problematic normalization*, where victimless crimes undergo a process of challenged and legally tumultuous acceptance. As the data will illustrate, actions and perceptions on marijuana policy and usage fit within this process of problematic normalization.

Lastly, the study draws from central components of structural contradictions theory. Stemming from the conflict theory paradigm, this orientation recognizes that some of the most salient dilemmas and conflicts are those that derive from the economic and political structures of a given historical period. Often the resolutions of certain contradictions only create further dilemmas, while also spotlighting other conflicts that may have been dormant, sparking further contestations and resolutions (Chambliss 1988). An analysis of the legal provisions of the ballot initiatives will illustrate how marijuana policy reform directly contributes to new conflicts and social, political, legal entanglements that result from the legal attempts to fix what many might say are ineffective laws surrounding marijuana. While successfully passed ballot initiatives may address and alleviate many of the problems associated with the law in the past, it may create new dilemmas that the states have to address. The term ‘reform’ implies a need for correction or improvement. Proposals to legalize and regulate marijuana for recreational

use are arguably methods of improving or minimizing the harms of previous marijuana regulations.

Medical and recreational marijuana policy change represent a contemporary experiment that is being developed, contested, and refined. Various disciplines have an active stake in understanding the factors behind marijuana legalization and how it is developed, contested, pitched, and either supported or rejected by American voters via the ballot initiative process. Furthermore, this study provides insightful data on state-specific legislative processes and rhetoric, highlighting how state-level variation in culture and discourse has significant effects on how marijuana legalization develops.

Literature Review

Marijuana: Characteristics, Prevalence, and Reasons for Its Lack of Medical Regulation

Marijuana is a type of psychoactive drug that fails to neatly fall within the standard drug typology, or umbrella categories that help classify different kinds of drugs. The plant has been historically “classified at different times by different observers as a hallucinogen, a sedative or depressant, a narcotic, a stimulant, and even a psychomimetic” substance (Goode 2008). The plants *cannabis sativa* and *cannabis indica* contain approximately 400 chemicals, of which 61 are called cannabinoids that can only be found in this plant (Goode 2008). As a result, some of the major obstacles in regulating marijuana, both for medical and recreational purposes, lie in the inability to standardize a given dose. Users report wide variability in the types of highs that can be obtained from the plant, which not only has considerable intra-species variation, but a

multitude of cultivation and ingestion methods. The Food and Drug Administration has a structural difficulty with assessing the medical utility of marijuana due to their regulatory process of studying and approving drugs. The FDA requires that a drug possess consistent and predictable potency, be free of contamination, and have reliable indicators of strength, potency, shelf life, dosing and toxicity (U.S. Food and Drug Administration 2013). Given the difficulty with cannabis standardization (in plant form), the FDA is reluctant to consider cannabis as a medical drug under its current regulatory structure.

Marijuana is the fourth most commonly used drug in the world, and the most commonly used *illicit* drug in the United States (Goode 2008). Caffeine, nicotine and alcohol maintain a stronghold on the top three places for global drugs of choice. Prior to the discussion of marijuana policy, it is important to recognize how usage rates have changed over time. Monitoring the Future (MTF) is a longitudinal, ongoing study, funded primarily by the National Institute on Drug Abuse and conducted by the Institute of Social Research at the University of Michigan. MTF has been collecting data on the behaviors, attitudes, and values of middle and high school students since 1975. To illustrate the popularity and prevalence of marijuana, tables 1 through 3 show how use and availability have changed over time. The following figures show a slightly upward trend in marijuana usage among adolescents, illustrating that eighth, tenth, and twelfth grade students are using marijuana at higher levels compared to twenty years ago. It is important to verify trends in marijuana usage and availability when discussing attempts to legalize the drug. At a time when expenditures associated with the War on Drugs are increasingly scrutinized, and usage rates and availability of prohibited drug (namely, marijuana) remains unchanged, the following data illustrate the continued presence of

marijuana in the United States. Despite efforts to prohibit the drug, it remains very accessible to youth and adolescents.

Figure 1.1a Percentage of Adolescents Who Used Marijuana Daily

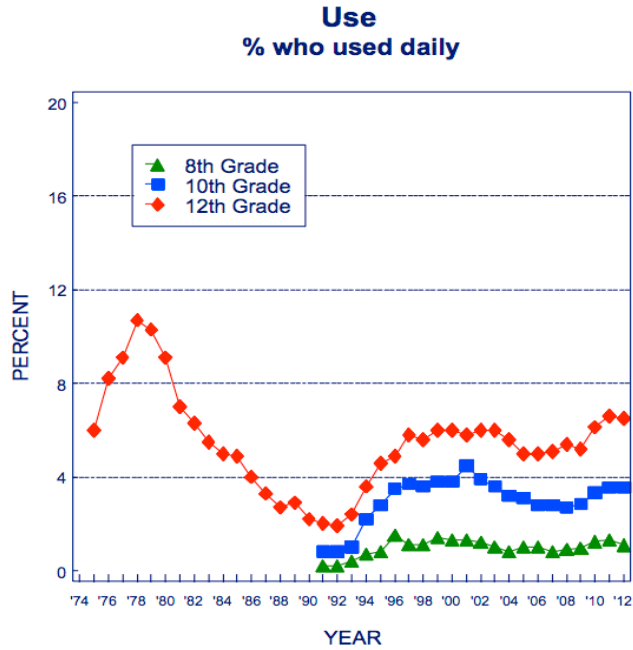


Figure 1.1b: Percentage of Adolescents Who Used Marijuana in Last 12 Months

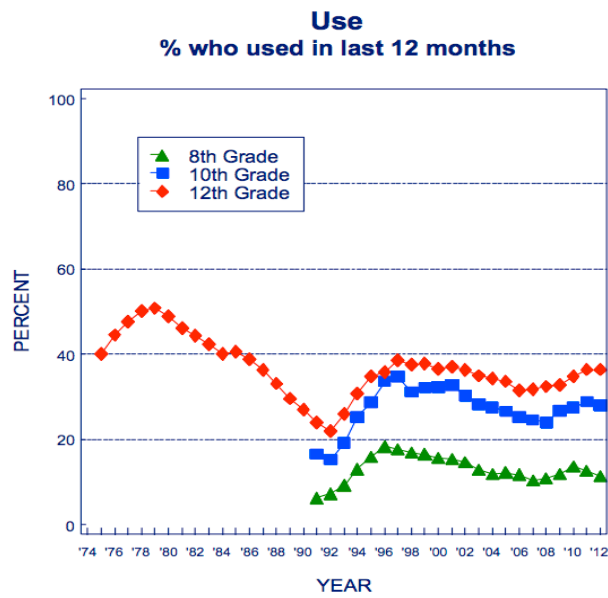
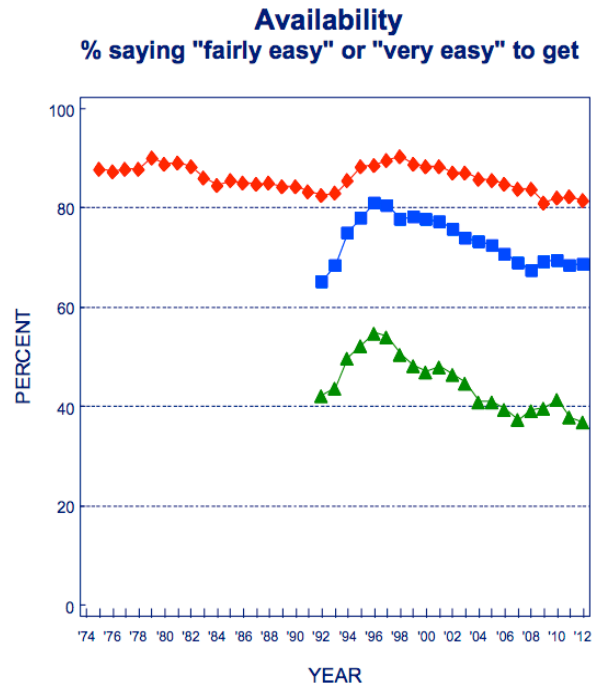


Figure 1.1c: Percentage of Adolescents Saying Marijuana is “fairly easy” or “very easy” get



Source: Monitoring the Future, 2013.

With nearly 40% of 12th grade student reporting marijuana use within a twelve month time period, a discussion of how the United States has failed to reduce marijuana usage is warranted. It is interesting to note that since the start of the MTF survey, over 80% of 12th graders have routinely reported that marijuana is very easy, or fairly easy to obtain. Multiple anecdotal and empirical sources illustrate how in most cases, marijuana is more easily obtainable by adolescents than tobacco or alcohol. As the data will show, proponents of recreational marijuana argue that legalization and regulation of marijuana would make the drug *less* accessible to those under 21 years of age, since it will be subject to similar regulatory processes used with tobacco and alcohol products. Despite widespread prohibition, cannabis use continues, and the larger question remains as to

what kind of legislative system will produce the least harm, both for the community and for the system of regulation itself (Lenton 2004).

The State University of New York - University at Albany maintains an extensive database on public perception of drugs through their Hindelang Criminal Justice Research Center. The following table shows how views regarding marijuana legalization have changed over time.

Table 1: Attitudes Toward Legalization of the Use of Marijuana
Question: Do you think the use of marijuana should be made legal or not?

	Yes, legal	No, illegal	Don't know/ refused
1969	12%	84%	4%
1972	15	81	4
1973	16	78	6
1977	28	66	6
1979	25	70	5
1980	25	70	5
1985	23	73	4
1995	25	73	2
2000 ^a	31	64	5
2001	34	62	4
2003 ^a	34	64	2
2005 ^a	36	60	4
2009 ^a	44	54	2
2010 ^a	46	50	4
2011	50	46	3
2012	48	50	1

Source: Sourcebook of criminal justice statistics online; SUNY Albany 2012

Data originally collected by Gallup, Inc.

While prevalence among middle school and high school students has remained fairly stable, attitudes towards legalization have been steadily increasing for over four decades, and since the research question was being systematically conducted by Gallup, Inc. This

creates a policy environment where legal norms are not representative of social norms, which understandably leads to the challenging of the status quo on marijuana policy.

As with any social issue, it is important to differentiate between important sociological dimensions when assessing how society views a particular vice. Society is composed of competing groups with differential levels of power and resources, struggling to define the legal and social norms of their time. The following table illustrates how support for legalizing marijuana varies significantly by subgroup.

Table 2: Support for Legalizing Use of Marijuana by Subgroup

Subgroup	% Yes, legalize
Liberals	69
Moderates	57
Conservatives	34
18-29 year olds	62
30 to 49 year olds	56
50 to 64 year olds	49
65+ year olds	31
Democrats	57
Independents	57
Republicans	35
East	51
West	55
Midwest	54
South	44
Men	55
Women	46

Source: Frank Newport. Gallup, Inc. 2011

Policy Windows: Trends and Why Legalization Is Possible

Albert DiChiara and John F. Galliher examined dissonance and contradictions in the origins of marijuana decriminalization within the time period that corresponds to the start of data collection by the MTF. In the five-year span between 1973 and 1978, eleven states reduced criminal penalties for possession of small amounts of the drug, but this period of reform was brief, fragile, and limited in scope (DiChiara and Galliher 1994). They argue that a narrow policy window was created in the 1970s as a result of the arrest of high status youths and the support of law enforcement agencies that sought more efficient use of limited resources. The following table is an excerpt from DiChiara and Galliher, showing a state-by-state breakdown of legal provisions.

Table 3: Provisions of State Marijuana Decriminalization Laws

<u>State</u>	<u>Year</u>	<u>Title of Law</u>	<u>Maximum Penalty</u>	<u>Amount of Marijuana</u>
Oregon	1973	Violation	Up to \$100 – 1 st offense	Up to 1 oz.
Alaska	1975	Misdemeanor	Up to \$100	Up to 1 oz. (in public)
Maine	1975	Civil violation	Up to \$200	“Usable Amount”
Colorado	1975	Petty offense	Up to \$100	Up to 1 oz.
California	1975	Misdemeanor	Up to \$100	Up to 1 oz.
Ohio	1975	Minor misdemeanor	Up to \$100	Up to 100 grams
Minnesota	1976	Petty misdemeanor	Up to \$100 – 1 st offense	“Small Amount”
Mississippi	1977	Noncriminal	\$100-\$250 – 1 st offense	Up to 1 oz.
New York	1977	Violation	Up to \$100 – 1 st	Up to 25 grams

			offense	
N. Carolina	1977	Misdemeanor	Up to \$100 – 1 st offense	Up to 1 oz.
Nebraska	1978	Civil offense	\$100 – 1 st offense	Up to 1 oz.

Their findings fit within a larger body of literature that illustrates the trend of decriminalization and policy reform occurring when high-status youths (and their parents) fall under the purview of punitive laws. In other words, political leaders are more likely to revisit the rules when middle and upper class white youth become subject to state power and control via drug law violation. This type of law-breaking behavior among middle and high status individuals results in a form of “moral dissonance”, as violators are seen as having both high social status and low moral status (Lempert 1974). Lempert posits that for moral dissonance to influence legal change, the deviant behavior in question must be widespread. Given what we know about marijuana prevalence and usage among high school youth alone, widespread usage was occurring in the 1970s (with an average of about half of 12th graders having used the drug in the past 12 months, and nearly 1 in 10 high school seniors using in the past day). Lempert’s hypothesis cannot adequately account for all kinds of behavior considered to be deviant; there has been a firm ideological shift concerning gay rights, despite the fact that the percentage of the U.S. population that is gay is significantly lower than the percentage of the U.S population that has tried marijuana at least once in their lifetime. Measures of those who self-identify as LGBTQ fluctuate widely between 1 and 25%, (Robison 2013) whereas lifetime prevalence for marijuana usage is approximately 42% (National Survey of Drug Use and Health 2012).

With regards to both the origins of drug laws, and the choice in prosecuting and punishing offenders, the most severe punishment has historically been reserved for the users of substances that are publicly associated with a threatening minority population (Musto 1973; Helmer 1975). Starting with the fear of the Chinese and misconceptions about opium (Duke 2010), the early 1900s saw a xenophobic, moral, and sensationalized approach towards dealing with drugs, much to the disadvantage of minority groups. Placed in a historical context, drug laws in the United States have much of their origins in xenophobia, fear over the effects of a growing immigrant population, and a desire to impose punitive sanctions on marginalized social groups. During the earlier part of the 1900s, marijuana use was most prevalent among the beat community, jazz musicians, Latin American and Mexican immigrants, and African Americans (Polsky 1967).

However, marijuana user characteristics dramatically changed during the 1970s, as more college-educated whites from the middle and upper class began to experiment and identify with the drug. A corresponding policy reform window opened up as users increasingly pertained to the dominant white population. This policy window of marijuana *decriminalization* occurred briefly in the 1970s, but it was effectively closed after a recriminalization wave in the following decade. The decriminalization movement was a partial one, where there were still mandated penalties for public possession, but penalties were reduced. Each of the eleven states began to increase penalties during the 1980s in the context of the increased drug war under the Reagan Administration.

The United States is currently experiencing a policy window of marijuana *legalization* at the state level. Marginalized groups, racial and ethnic minorities, and those who may be thought to have low status or low power are no longer over-represented in

the population of marijuana users. Critics might argue that they were never over-represented in the population of users to begin with, but over-represented in arrest and punishment statistics. As a contemporary mainstream drug with widespread prevalence and use by virtually all brackets and subpopulations of the U.S. population, recreational and medical marijuana have vocal advocates that know how to take part in the legal and political system to attempt policy reform. There is potential for legalization to occur, particularly in states that currently have medical marijuana industries, but if Colorado's Amendment 64 and Washington State's Initiative 502, which successfully passed recreational marijuana policy reforms, produce negative political and social effects, this new policy window may be shortened and effectively closed. Kingdon (1984) explains that if a proposal fails, people may be unwilling to invest additional time and energy in similar initiatives, and changes in political capital may affect the support of such proposals. However, in this contemporary context, a marijuana policy failure in one state may not deter advocates from supporting similar initiatives in their neighboring state.

Problematic Normalization and Big Business: It Started with Medical Marijuana

John Dombrink and Daniel Hillyard (2007) explore the changes in how Americans approach vice, crime, deviance, and morality, and how culture wars produce a contentious path of normalization. They coin the term *problematic normalization* to describe how standards of law and morality adapt to increasingly normalized approaches to issues like gambling, abortion, gay marriage, assisted suicide, and stem cell research (Dombrink and Hillyard 2007). In these culture wars, or wars between values, competing groups use power to define, label, and control what is deviant or unwanted. Edwin Schur (1965) states that it is important to determine who feels threatened and whose interests

are at stake when attempting to account for a social problem and the beginning of a political movement. The data will provide a nuanced account of the various competing interests of both the pro and anti camps of recreational marijuana legislation, and how these perceived threats and competing interests affect the discourse of why a given ballot is supported or rejected.

John Geluardi (2010) portrays cannabis as an increasingly normalized drug that has medical and social utility, and that has sparked a rapidly evolving political and economic landscape that is now based on finding the equilibrium between commercialization and public safety. It has been a conflicted process of regulation within the medical marijuana industry due to the concerns and disagreements over the a) business and industry development of medical marijuana (commercialization), and b) perceived and actual risks concerning the impact of legitimized cannabis (public safety).

It is important to differentiate between the recreational and medical marijuana movements, as they have different political agendas and constituents. Perhaps counter-intuitively, as the data will show, medical marijuana proponents can and do attempt to block recreational initiatives that may interfere with the current practices of the medical industry. Geluardi tracks medical marijuana in a way that fits neatly within the process of problematic normalization. The dollar value of the entire *medical* marijuana industry (\$14 billion/year in California alone) is emphasized to illustrate just how powerful the medical marijuana industry can be, should the drug enter the domain of mainstream, regulated business.

However, Geluardi does not draw a solid distinction between the medical marijuana and recreational marijuana industries; he mentions legislation and movements in a way that jumps back and forth between the two. The parallels between the recreational and medical marijuana industries suggest that there will come a point where the two might fuse together. Geluardi recognizes that many of the current stakeholders and players in the medical marijuana industry would need to rethink their business as the industry grows and continues to evolve. The “off the grid” 1960s counterculture aspects of the marijuana movement have been increasingly replaced by business-savvy, recent college graduates who have viewed marijuana in more of a business lens than a social-service lens. Connotations of alternative medicine, spirituality, counter-culture and rebellion are being replaced with dialogue on market regulation, profitable business models, taxation policy, and business-friendly, harm-reduction legalization.

Public support for marijuana varies geographically. Public opinions concerning acceptable behavior and policy are partially contingent on the area in which people live. While this study examines state level variation, municipal and county differences matter in the development and potential implementation of any marijuana policy. Many residents in Humboldt County (a rural California coastal jurisdiction 200 miles north of San Francisco) residents for example, do not view marijuana as a threat to social stability or an aberration from social norms; on the contrary, Humboldt County residents have experienced an increase in social services and community integration due to the positive method in which medical cannabis industry revenue has been allocated (Geluardi 2010, p. 169). Yet other counties and municipalities in the state of California are against marijuana legalization. Parallel experiences are noted in Colorado and Washington.

Structural Contradictions: Federalism, States Rights, and Ballot Initiative Process

If marijuana policy reform is to happen, what level of government is best equipped to initiate legislative change? “Marijuana, perhaps more than any other phenomenon, is treated divergently by the three levels of government” (Kamin 2013). William Chambliss, one of the primary proponents of structural contradictions theory, posits that conflicts and dilemmas are inherent in social structures, and are most salient in the mechanisms of the political and economic structures of a given era. Attempting to rectify a specific contradiction may lead to new conflicts and dilemmas, and uncover other contradictions, which may have been dormant.

Several contradictions are in motion with regards to this drug. In the context of the debate between the supremacy clause versus state’s rights, states are challenging the supremacy clause of the constitution by passing legislation that is in direct violation of federal law. Additionally, the voters themselves are initiating this state-level change, since publicly elected figures are likely to view marijuana advocacy as potentially damaging to their career. Hundreds of thousands of signatures are gathered in order to create a ballot initiative, which then places it in the hands of legislators and onto the ballot. This contradiction stems from the incongruence between social norms and the law; poll data show that Americans are not only using marijuana at relatively stable rates, but support for legalization is actually increasing. The legal norms (in this case prohibition) do not reflect contemporary social norms. A continued incongruence between the two produces a deleterious effect on the perceived legitimacy of law itself (Christiansen 2010). The data of this study can be neatly anchored within the core tenets of structural contradictions theory and show how the newly passed recreational marijuana ballot

initiatives have simultaneously solved important conflicts while creating new and unanticipated ones.

The sharp disparity between federal and state law was most evident in 2010 when California was entertaining Proposition 19, a ballot initiative that would have legalized recreational marijuana use for the entire state. Attorney General Eric Holder released a statement prior to the November vote, vowing that the Department of Justice would “vigorously enforce” federal drug laws against California residents who grow, sell, or use recreational marijuana, should the ballot measure successfully pass (Hoeffel 2010). The Obama Administration assumed a clear stance and made it evident that California was attempting to contradict federal laws that supersede what any individual state might want to pass. This begs the larger question of how future issues will be dealt with when there is incongruence between the federal government’s stance on an issue and a state’s legal reform.

While there is a lack of agreement in direction and clarity for just exactly *how* medical marijuana, and potentially full marijuana legalization, could or should come about, the ballot initiative process exemplifies state level change on the part of the voters themselves. Some states have had medical marijuana industries in place for well over a decade, and federal law enforcement approaches have been arbitrary and scattered. Federal officials seldom, if ever, attempt to apprehend and prosecute medical marijuana users (who are in clear violation of federal law) unless they have committed other crimes (Caulkins et. al 2012). Many in the marijuana industry saw the election of Barack Obama as a sign that there would be progressive change in marijuana policy (Kamin 2013). However, despite the firm stance taken in California, the Obama Administration has been

inconsistent in terms of deciding whether federal marijuana laws would be enforced in states that allow for medical usage, and fell completely silent in 2012 when President Obama was running for reelection. Arbitrary and haphazard enforcement has resulted in some medical industries being subject to harsh “crackdowns” and seizures by federal authorities, while other jurisdictions are left relatively untouched. The unpredictability and current tension between medical marijuana operations and federal law has been cited as a supporting reason for why marijuana should be legalized outright, so that more consistency and less ambiguity can come about. Nationwide marijuana legalization would eliminate a salient structural contradiction that exists between the federal government and the 18 states that allow for medical marijuana, and the two states that have legalized it for recreational use.

Framing The Issue: Controlling Criminal Behavior, Standardizing a Drug, or Regulating a Vice?

A haphazard legalization and enforcement structure creates a policy, legal, and political environment where framing marijuana becomes contested. Is marijuana a dangerous drug with intimate correlations to crime, and should subsequently be treated as a criminal justice issue? Is marijuana a popular psychoactive drug like alcohol or tobacco that should be standardized and approached primarily through a mental and physical health orientation, or is it more closely akin to vice regulation like pornography, stripping, and gambling, where the objective is to minimize the harms of a controversial but (sometimes) legal activity? Wide state-level variation in how marijuana is treated, and a prohibitionist stance by the federal government, results in conflicting methods of implementing social control. The federal government largely handles marijuana as a

crime-control and safety issue. However, certain states, and specific cities within the state, view marijuana more as a public-health issue, and legislate to control it differently. The data will show how conceptions of deviance and social control vary by geographical region and legal jurisdiction; there is no uniform societal or legal standard for what is acceptable in terms of marijuana policy, and how to control what may be labeled as undesirable or potentially dangerous. With medical marijuana existing legally in 18 states and the District of Columbia, marijuana is arguably seen as a serious felony at the federal level, an option to exercise a constitutional right at the state level, and either a nuisance to be regulated or a source of tax income at the local level (Kamin 2013). The methods of social control regarding marijuana can have life-changing consequences (e.g. years in prison), which adds to the urgency of creating consistent laws and policies that can protect users. The current status quo of confused and conflicted federalism has produced a volatile policy climate for medical marijuana, which as the data will show, translates into more insecurity with how to approach recreational marijuana policy.

Weighing the Scales: Pros and Cons of Legalization

Marijuana as a drug has become consistently normalized in the past few decades, despite prohibitionist periods of recriminalization in the 1980s and 1990s. Survey data show that Americans are increasingly supportive of marijuana for medical use, and a record amount of Americans support it for recreational use as well. A 2011 Gallup Poll found that in 2011, Americans were at a record high for supporting marijuana legalization, with 50% of Americans approving of legalization, and 46% disapproving (Newport 2011). More recent 2012 and 2013 national poll data show similar results, with support for legalization hovering around 50%. Despite minor year-to-year fluctuations,

there is a clear trend towards increased support for legalizing marijuana. In addition, even more people support decriminalization (as opposed to legalization), showing that the once-perceived risks and dangers associated with marijuana no longer hold up to contemporary public understanding of the plant. A problem with polling results is that survey respondents may not recognize the difference between legalization and decriminalization. The former involves active regulation of a newly accepted product, while the latter involves the lessening of criminal or civil penalties that currently exist for the drug. Similar to how gambling and alcohol were treated in the past, the cannabis industry represents a stigmatized form of deviant behavior that is currently experiencing problematic normalization. Changes in public attitudes eventually lead to changes in public policy towards something that was previously considered taboo or unwanted.

Several arguments and counter-arguments have dominated the discourse of whether to legalize marijuana for recreational use. The following table lists the most commonly referenced arguments on both sides of the debate. These were themes or specific arguments that were cited in the both the newspaper(s) and the interview data.

Table 4: Most Commonly Referenced Arguments in Favor and Against Marijuana Legalization

Typical Arguments in Favor of Legalization	Typical Arguments Against Legalization
Usage rates will not rise, if legalized	Usage rates will rise, if legalized, especially among adolescents.
Black market marijuana would be in less demand, resulting in less funds for criminal organizations	Criminal organizations and individuals would find alternative methods to profit from marijuana, or turn to new drug(s)
Tax revenue would benefit the government	Tax revenue would be offset by a) the costs of implementation and regulation, and b) tax evasion

Law enforcement and criminal justice resources are used inefficiently in combatting recreational marijuana	Roads and highways will be less safe
Alcohol and tobacco are more injurious and costly to society, so marijuana prohibition is unwarranted	Health complications like respiratory illness, dependence, impaired cognitive function, and lung cancer will rise
A recreational marijuana and hemp industry would create jobs and help the economy	That money that would result from burgeoning marijuana industries just “isn’t worth it”
There should be little governmental interference with what one decides to do in the confines of their own home, particularly if it has no negative effect on others	Marijuana is a dangerous drug, and legalizing it sends the wrong message to teens and children about drugs.

The data will shed insight on the strongest arguments in favor and against the ballot initiatives of the states in question, and contribute to the extant body of knowledge regarding these opposing viewpoints.

Methodology

This case study relies on content analyses and interviews as the central methods of data analysis. The cases under study are Colorado, Oregon, Washington, and California (see Table 2). The first three voted on their recreational marijuana ballot initiatives during the November 2012 election, while California voted on a similar ballot initiative in 2010. The two most widely circulated newspapers in each of the five states were selected for content analyses, systematically examining and coding data that show themes, trends, and processes that account for whether a measure passed or failed. The form of coding utilized in this study can be classified as conventional content analysis, where coding categories are derived directly and inductively from the raw data (Berg & Lune 2012).

Table 5: States Selected for Case Study

State	Year	Initiative	Outcome	Medical Marijuana Approved	Previous Decriminalization
California	2010	Proposition 19	NO (53.5%)	1996	1975, 2000, 2011
Colorado	2012	Amendment 64	YES (54.83%)	2000	1975
Oregon	2012	Measure 80	NO (53.42%)	1998	1972, 1995
Washington	2012	Initiative 502	YES (55.42%)	1998	2003

*Note: Decriminalization refers to the de jure reduction in criminal penalties.

A grounded theory approach is taken, as the researcher began coding with minimal bias from the theoretical frameworks of policy windows, problematic normalization, and structural contradictions that were known at the beginning of the study. The newspaper data are then cross-referenced via in-depth interviews with two experts from each state, most of who played an active role in either formulating their respective state’s ballot initiative, or in contributing to the debate on why marijuana should be legalized. The content analysis and interview data complement each other in giving rich detail about the social and political factors influencing the legislative outcome.

Table 6: Newspapers Selected for Content Analyses

Colorado	Oregon	Washington	California
The Denver Post (N = 35)	The Oregonian (N = 29)	The Seattle Times (N=90)	The Los Angeles Times (N = 50)
The Gazette	The Statesmen	The News Tribune	The San Francisco

(N = 20)	Journal (N = 8)	(N = 17)	Chronicle (N = 30)
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The filter for choosing newspaper articles was relatively straightforward. All articles that were available via the source website were included, from the gestation period of the legislation (the beginning of newspaper coverage) until the exact date of the vote in which the decision was made whether to pass or reject the ballot initiative. A total of 279 articles were included, with the specific source breakdown listed in the above chart. It is unclear why there were more news articles and editorials available from the California Washington State sources versus Colorado and Oregon.

Primary coding categories include the following: prominent individuals and organizations that took a stance in support or against a ballot initiative, funds raised in favor and in opposition, arguments in favor, arguments against, legislative details of the ballot initiative, latent functions and effects of the proposed legislation, relationship to medical marijuana industry, general framing of the ballot initiative, areas of concern and conflict, and leads/important information to verify.

Limitations of this approach include missing newspaper data, and a relatively narrow focus on type of newspaper coverage. National sources like *USA Today*, *TIME*, *The Wall Street Journal*, *The Economist*, and various state-based newspapers covered most, if not all of these ballot initiatives extensively, but were excluded from the study because the researcher sought to examine local coverage in each of the four states. Additionally, some of the sources were limited in how many articles were allowed to be accessed, or simply did not retain an extensive log of historical archives. This presented a

significant obstacle in terms of quantity of articles. The Oregonian and Statesmen Journal had fewer available articles, creating a relative shortage of data when compared to other states. Despite the variation presented in Table 6 (above), the researcher does not believe that a low article count for certain newspapers had a substantial effect on the quality of the findings and data analysis. Newspaper sources themselves are not considered objective communicators of news. They were active participants, manipulators, and advocates in choosing a side within the legalization debate. The editorials and endorsements provided by every single newspaper source showed how their visibility and following was a way in which the newspaper organization could take a side and share it’s perspective on whether their state’s initiative should be supported or not.

Semi structured in-depth interviews were conducted via telephone or video chat (Google + and Skype), with the platform determined by the interviewee. Convenience and snowball sampling were used so that the researcher had the ability to identify respondents who are experts or major advocates for either the pro or anti campaigns of their respective states. Interviews lasted approximately twenty minutes to forty-five minutes. The following table contains a list of the eight interview respondents who provided professional insights into the legislative process and political discourse surrounding the ballot initiative within their state.

Table 7: Interview Respondents

State (Ballot Initiative)	Name	Professional Affiliation
California (Proposition 19)	Nate Bradley	Private Investigator. Former law enforcement officer with 10 years of experience as a city police officer and deputy sheriff.

	Dale Gieringer, PhD.	State Director - California NORML (National Organization for the Reform of Marijuana Laws)
Colorado (Amendment 64)	Mason Tvert	Director of Communications – Marijuana Policy Project
	Brian Vicente, Esq.	Primary co-author of Amendment 64. Co-director of the Campaign to Regulate Marijuana Like Alcohol.
Oregon (Measure 80)	Representative Peter Buckley (D)	Co-Chair of the Joint Committee on Ways & Means. Oregon House of Representatives.
	Paul Stanford	Primary author of Measure 80.
Washington (Initiative 502)	Jonathan Martin	Enterprise Reporter – Seattle Times
	Roger Roffman, Ph.D.	Professor Emeritus – University of Washington, School of Social Work. Over 4 decades of marijuana and addiction research experience. Consultant and co-sponsor of I-502.

Due to time constraints, only two respondents were interviewed for each state.

All respondents were either advocates for their state’s ballot initiative, or experts who have studied the issue and followed the debate leading up to the vote. This presents a significant limitation to the study, as the voices from the anti-legalization campaign are absent from the analysis. Multiple solicitations to organizations and individuals involved with anti-marijuana stances went either unanswered, or the representatives chose not to participate.

Nevada and Alaska were considered as potential cases for inclusion in this study. Both states had experienced legalization measures in the 2006 and 2000, respectively. Any legislative proposals prior to the 2008 presidential election were excluded, as a

comparison spanning such a large time frame would be largely impaired by the differences in presidential administrations and political environments.

Findings

The following findings for each state are largely drawn from the newspaper article and editorial data. The assertions, claims, and details regarding phenomena in each state correspond to findings from the newspaper sources, unless an interview respondent is cited. A nuanced breakdown for each state is presented below, but there are overarching themes that help summarize the findings. The following section presents notable characteristics that are specific to each of the four states. Some of these attributes are largely representative of “what works” or “what doesn’t work”. This information can inform policy makers, advocates, and sponsors on both sides of the issue about the processes in which these ballot initiatives are formulated, critiqued, and promoted.

In Colorado, there was significant concern contained in editorials and article data regarding how the state’s reputation might be affected by legalized marijuana. Major business interest groups like the Denver Chamber of Commerce worried that companies would not want to base themselves in Colorado for fear of being in a stigmatized “pot state”, and more practically, for concern over litigation and legal entanglements regarding workplace drug policies. Colorado’s ballot initiative process had the most symbiotic relationship with the medical marijuana industry. Unlike Washington, where the medical marijuana community strongly opposed Initiative 502, Colorado’s medical cannabis industry supported Amendment 64 partly because the provisions of the new law provided benefits and preferential status to existing medical marijuana patients and businesses.

Washington State's Initiative 502 contained a controversial DUI/DWI measure, which was largely responsible for the backlash from the medical marijuana community. The Washington I-502 campaign was the most successful of the four states in raising funds and public support. Both Jonathan Martin and Roger Roffman attribute this fundraising success to Alison Holcomb, an American Civil Liberties Union attorney. Through thorough polling and correspondence with potential donors, Alison Holcomb was able to demonstrate that the initiative was likely to pass, and by extension, that the funds would be effective. Advocates for I-502 were effective in framing the need for this ballot initiative as a social justice imperative; the legalization of marijuana was framed as something that would improve criminal justice inequities and reduce the misallocation of law enforcement resources

Oregon was largely unsuccessful due to the controversial preamble that was contained in the ballot initiative language. While the editorials and articles of *The Oregonian* and *The Statesmen Journal* are not representative of public views, they strongly opposed the initiative, and this staunch opposition was logically consumed by their readership. A correlating factor is that Measure 80 was poorly funded. However, despite the underfunding of the Measure 80 campaign, there were still approximately 45% of voters who voted in favor of the initiative.

California's Proposition 19 was presented and debated in a different political climate than Colorado, Oregon and Washington. In 2010, the Obama Administration and several federal law enforcement entities were vocal in expressing their opposition to this attempt to legalize marijuana. The data show that this provided somewhat of a deterrent effect to voters, who were concerned that legalizing marijuana via Proposition 19 would cause more legal conflicts with the federal government. Additionally, Proposition 19 was crafted with problems built into its own provisions: the local option of allowing counties and municipalities to decide whether to recognize marijuana as legal was perceived as highly problematic and potentially unworkable

under the California State Constitution. The following section presents more details for each of the four states.

Colorado

Colorado's Amendment 64 allows for adults 21 and older to purchase and use marijuana in private settings. It allows for adults to grow up to six marijuana plants on their own property, and forbids public usage. Marijuana stores, regulated by the state, would pay state and local sales tax, and storeowners are liable for a potential excise tax of up to 15% when purchasing marijuana from licensed wholesale growers. There is an implementation delay of one year, so that stores will not actually operate until January 2014. Local and municipal jurisdictions have the discretion to decide whether they will allow for the operation of recreational marijuana stores. This allows some discretion for counties and major cities to implement policy in accordance with the desires of the voters within that jurisdiction.

Medical marijuana has been authorized in Colorado since 2000, and Amendment 64 does not contain any provision that would affect or modify current medical marijuana laws. Since medical marijuana organizations would have the relatively easy option of switching over to the recreational market, Amendment 64 anticipates this by giving preferential status to existing and future medical marijuana dispensaries: the application/registration fee to open a recreational marijuana sales location is \$5,000 while the fee is capped at \$500 for existing medical marijuana establishments. Additionally, medical marijuana cardholders are authorized to possess up to two ounces of the drug, while only one ounce is authorized under Amendment 64 for recreational users. Lastly, medical cardholders have an affirmative defense against prosecution if they need to

possess more than the legally allowed amount for their particular ailments. This symbiosis with the medical marijuana community was a strength of Amendment 64, resulting in a lack of interference from the medical cannabis lobby and a more unified stance amongst growers and those within the pro-legalization campaign.

State-specific reasons for supporting Amendment 64 included an estimate that at least 350 jobs would be created and new local and state tax revenue of approximately \$47-60 million would be generated. Certain businesses also favored the possibility for Colorado to become a hub for marijuana tourism, sparking demand for hotels, restaurants, rental cars, and other tourism sub-industries that would benefit from a surge in economic exchange.

In terms of opposition, the Denver Chamber of Commerce heavily opposed the Amendment due to their concern that it would bring a negative and highly stigmatized attention to the state. While proponents favored the potential dollars that would result from marijuana tourism, big businesses took an opposite stance by saying that being a “pot state” would be bad for business, since companies would be more reluctant to move to the state if it is known for marijuana.

Identified financial supporters of Amendment 64 include over \$1.3 million raised by the Campaign to Regulate Marijuana Like Alcohol organization, and \$830,000 from the Marijuana Policy Project. The biggest individual donor was Scott Banister, a San Francisco based Internet entrepreneur, with Peter Lewis, Chairman of Progressive Insurance coming in at a close second. The pro campaign reported expenditures of about \$1.6 million. Other supporters include former Colorado congressman Tom Tancredo, the

Colorado branch of the NAACP, a coalition of 300+ physicians, the United Food and Commercial Workers Union (Colorado’s largest union), and the Colorado Center on Law and Policy. The name of the formal organization that advocated for Amendment 64 is entitled “Pro 64”.

Sources of funds for opposing Amendment 64 came from Smart Colorado, which is the formal name of the opposition campaign. Smart Colorado raised \$433,000. Florida-based organization Save Our Society From Drugs was the largest donor, providing \$210,000. Visit Denver, Focus on the Family, Citizen Link, and Steve Mooney were large donors as well. It is important to note that the pro campaign outspent the anti-campaign by a 4 to 1 margin. Both campaigns had a higher number of donors from within the state, but total amount of funds raised was greater from out-of-state sources. Denver Mayor Michael Hancock, Governor John Hickenlooper, the Colorado Education Association, multiple law enforcement organizations, former official of the Office of National Drug Control Policy Kevin Sabet, the Denver Post, Colorado U.S. Attorney Spokesman Jeff Dorschner, US Attorney General Eric Holder, and the Downtown Denver Partnership were all identified as having a strong stance against the passage of Amendment 64. Given the wide variety of domains that these individuals and organizations represent, their reasons for opposing the Amendment were multifaceted.

Table 8: Identified Proponents and Opponents of Amendment 64

<u>Proponents</u>	<u>Opponents</u>
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<p>Campaign to Regulate Marijuana Like Alcohol</p> <p>Colorado Center on Law and Policy</p> <p>300+ Physician Interest Group</p> <p>United Food and Commercial Workers Union</p> <p>NAACP: CO Branch</p> <p>Tom Tancredo: Former Congressman</p> <p>Marijuana Policy Project</p> <p>Safer Alternative for Enjoyable Recreation</p> <p>Sensible Colorado</p> <p>Progressive Insurance Chairman Peter Lewis</p> <p>National Cannabis Industry Association</p>	<p>Smart Colorado</p> <p>Denver Mayor Michael Hancock</p> <p>Governor John Hickenlooper</p> <p>Downtown Denver Partnership</p> <p>District Attorney Dan May</p> <p>Colorado Springs City Council</p> <p>Former ONDCP Official Kevin Sabet</p> <p>Colorado Education Association</p> <p>CO US Attorney Spokesman Jeff Dorschner</p> <p>Denver Metro Chamber of Commerce</p> <p>Save Our Society From Drugs</p>
<p>*Note: This list is not exhaustive</p>	

Brian Vicente, an Amendment 64 campaign sponsor with over eight years of experience with Colorado grassroots initiatives provides the following insights into Amendment 64. According to the Mr. Vicente, major messages in Colorado included that marijuana is *objectively* less harmful than alcohol, that law enforcement resources need to be better allocated and not wasted on marijuana offenses, and that significant tax revenue could be raised by regulation. Having the former Republican congressional member Tom Tancredo *and* the support of the Colorado Democratic Party was understood to be a significant political factor in Amendment 64’s success. This kind of bi-partisan support from formal political entities and a Republican career politician gave rigor and strength to the pro campaign.

Significant arguments heard against Amendment 64 varied. The business community (more specifically, the Denver Chamber of Commerce) was specifically concerned with how Amendment 64 would hurt the state's brand, and how this legal change could make it harder for Colorado to recruit new businesses to relocate within the state. Negative perceptions of the potential for marijuana tourism were also cited. There was a common argument that engaging the federal government in a battle over marijuana policy was not a smart move, and that efforts to actually implement a successfully passed Amendment 64 would be hindered by the expected backlash of the federal government. Lastly, the respondent noted that it was a very common and standard argument that marijuana would become more available to teens and adolescents.

The current Governor and former Denver Mayor John Hickenlooper was among those opposed to the Amendment. The respondent indicated that the law enforcement community in general either opposed or abstained from taking a stance on Amendment 64. Denver Mayor Michael Hancock was also an opponent, as well as the Colorado Drug Investigator's Association, which is "basically a trade group for narcotics officers." The medical marijuana community was generally very supportive, evidenced by a petition drive where more than 150 medical marijuana-related businesses allowed volunteers to collect signatures during business hours inside of their stores. There were some medical marijuana trade associations that did not commit to a stance, or opposed the amendment, arguably on grounds of self-preservation.

Oregon

In Oregon, where Measure 80 failed, adults would have been allowed to grow and possess without any state interference; there would have been no limits on personal

possession and cultivation. Selling would be permitted under provisions that would allow for regulation and taxation. The medical marijuana laws, in place since 1998, have been seen as the most permissive in the country.

State-specific reasons for supporting Measure 80 included an estimate that \$140 million would be gained in tax revenue, while \$60 million would be saved in reduced law enforcement costs. Marijuana laws were seen as being enforced in an arbitrary manner, and the corresponding punishment was lacking in swiftness and severity. There were several references to the culture of the Pacific Northwest, or in the case of Oregon, the “Beaver State spirit”. This cultural attitude was one that combined libertarianism with policy entrepreneurship, or taking a pioneering approach to certain issues. Whether it is being the first state to allow for doctor-assisted suicide, voting by mail, or requiring private sector employers to provide bereavement leave, the “Beaver State Spirit” captures this innovative and sometimes trendsetting approach to public policy. Having been the very first state to decriminalize marijuana in 1973 and open the policy window of the 1970s, there was a general attitude of the pro-camp that Oregon would be a pioneer in recreational marijuana policy. Supporters included the former Polk County district attorney, state democratic senator Peter Buckley, the NAACP regional conference, and Green Party presidential candidate Jill Stein.

Measure 80 would have created a new seven-member commission, of which five members would be from the marijuana community of growers and processors. This committee would oversee zoning and licensing, and there would be no limitations on personal possession and cultivation. The Commission would also be mandated to promote Oregon cannabis products in all legal national and international markets, and the

Oregon attorney general would be required to serve as an ambassador and advocate for the state’s marijuana industries. Measure 80 also mandated a drug education program where educational language regarding marijuana is introduced to youth. There was significant concern among some Oregonians that this educational program would downplay the negative effects of marijuana use.

*Table 9: Identified Proponents and Opponents of Measure 80**

<u>Proponents</u>	<u>Opponents</u>
Democratic State Senator Peter Buckley NAACP Regional Conference Paul Stanford, Chief Proponent Green Party Presidential Candidate Jill Stein	Coalition of 9 former DEA officials The Oregonian Umatilla County Sheriff John Trumbo
*Note: This list is not exhaustive	

One of the original drafters of Measure 80 and a major financial contributor was selected as an interview respondent. With over two decades of experience in Oregon marijuana policy, the following information is largely drawn from this respondent’s personal and professional experience with Measure 80. The most popular arguments in favor of the measure were that it would regulate an existing illegal market, it would raise substantial public revenue, and it would increase public safety. The biggest camps of supporters came from the Oregon Chapter of the National Association of Criminal Defense Lawyers, the medical marijuana industry, and very small groups of law enforcement officials. The Oregon Sheriff’s Association and the District Attorney’s Association were strongly opposed to Measure 80.

According to the respondent, the largest newspaper in the state (*The Oregonian*) spearheaded a misinformation campaign about Measure 80, which arguably played the biggest factor in Measure 80's failure:

They put out information.... They were the first ones to editorialize about it, and against it. They issued numerous editorials saying it was poorly written, and it put the marijuana industry in charge of the market. They said it was akin to Phillip Morris being in charge of tobacco safety. Those two arguments were echoed from the time they put them out there until throughout the campaign. –Paul Stanford

A significant portion of the editorials and comments regarding Measure 80 viewed the legislation as too radical, and framed the measure as a “legislative Hail Mary”. The preamble that referenced the founding fathers and historic figure of the United States as supporters of cannabis, alluding to the moral and civil imperative of supporting legalized cannabis, was not well received by many Oregonian voters. When asked to elaborate about what constitutes a “misinformation campaign”, the respondent provided the following insight:

Well I think [the voters] perceived it that way because that's what the media told them. Most people don't read these things.... What I've heard from many people is that they thought they were going vote against it. Then they read it. Once they read it, they supported it. So the preamble talked about some historical and scientific facts about marijuana and cannabis, and the Oregonian painted that negatively as a manifesto for cannabis, and belittled it, even though the facts cited therein were incontrovertible. The preamble turned out to be a liability, politically, and was used against it. –Paul Stanford

In conclusion, the lack of funds, problematic wording of the Measure, and the negative framing by the state's major newspaper were significant contributing factors to the failure of Measure 80.

Washington

Initiative 502 of Washington state allows for adults 21 years and older to purchase up to one ounce of marijuana for personal consumption, and placed responsibility to regulate under the purview of the Liquor Control Board, which would regulate growers, processors, and retail stores. A 25% excise tax would be required at each stage of the marijuana growing process, from its production with the growers until it is sold. Retail facilities would not be allowed near schools, daycares, youth centers, parks, or libraries, and public use or display of the drug would be prohibited. Employers are still able to dismiss employees who test positive for THC. Additionally, a standard blood test limit for driving under the influence is introduced as five nanograms of THC per milliliter of blood, which was a source of conflict.

With medical marijuana existing in the state since 1998, the medical lobby opposed I-502 on grounds that the driving provision was too strict, arbitrary, and potentially punitive for medical users. I-502 contained a DUI provision where someone could be convicted of driving under the influence if a blood test revealed at least five nanograms of THC in the bloodstream. The initiative attempted to incentivize the support of the medical industry by retaining an aspect of privilege and increased accessibility for authorized medical users: under I-502 it remains illegal to privately grow marijuana for recreational use, but medical patients are allowed to grow for themselves.

Washington relied on criminal justice research to help advocate for I-502. Over 67,000 arrests for low-level marijuana possession occurred in the past five years, with African-Americans and Latinos being arrested disproportionately. Blacks were arrested twice as often as whites for possession in Washington during the past 25 years, even

though whites use marijuana more (Marijuana Arrest Research Project 2012). Over 241,000 people in Washington were arrested for misdemeanor marijuana possession since 1986, costing \$306 million in law enforcement resources, and \$194 million in the past decade alone. Both the *Seattle Times* and the *News Tribune* extensively covered the aforementioned facts, and many others. Additionally, similar to the “cartel effect” argument seen in California, proponents argued that organized crime groups in British Columbia that specialize in black market marijuana would see decreased profits and have less business in Washington (Seattle Times 2012).

Supporters of I-502 include multiple state county law enforcement organizations, State Senator Lisa Brown, GOP Senate Candidate Michael Baumgartner, Law Enforcement Against Prohibition (LEAP), Seattle attorney Pete Holmes, the Seattle City Council, the State Labor Council, former Seattle US attorney John McKay, and the non-profit Children’s Alliance. Many public health experts and leaders within the African-American community also took a stance in favor of the initiative. The American Civil Liberties Union, New Approach Washington, New York based Drug Policy Action, and Progressive Insurance CEO Peter Lewis helped contribute to the \$6 million in expenditures that the campaign raised. It is interesting to note that in terms of funds raised in opposition to I-502, zero law enforcement organizations or individuals donated money against the measure.

Opponents included Steve Sarich, a well-known medical marijuana pioneer. Others opposing I-502 were the Washington Association for Substance Abuse and Violence Prevention, WA Gubernatorial candidates Rob McKenna and Kay Inslee, former director of the National Institute on Drug Abuse Robert DuPont, Drug Free

America Foundation, and Democratic Senator Maria Cantwell. AP and Edison Research found that opposition mainly came from voters who were 65 and older, conservatives, Republicans, and those with less than a high school diploma. There was also a correlation with religion: weekly churchgoers were likely to oppose the measure, while those who report that they never attend religious services or occasional churchgoers were likely to be in favor. Support was strongest among liberals, Democrats, moderates, those with more than a high school diploma, and families with an annual income over \$100,000.

Table 10: Identified Proponents and Opponents of I-502

Identified Proponents and Opponents of I-502*	
<u>Proponents</u>	<u>Opponents</u>
Alison Holcomb, ACLU Lawyer & Campaign Manager	Steve Sarich, medical marijuana entrepreneur
Seattle US Attorney John McKay	Washington Association of Sheriffs and Police Chiefs
Rick Steves, travel writer and socialite	Washington Association for Substance Abuse and Violence Prevention
Seattle City Council	Robert DuPont, former director of National Institute on Drug Abuse
LEAP: Law Enforcement Against Prohibition	Drug Free America Foundation
King County Law Enforcement	WA Gubernatorial Candidate Rob McKenna
Democratic State Senator Lisa Brown	WA Gubernatorial Candidate Kay Inslee
GOP Senate Candidate Michael Baumgartner	Snohomish County Drug Task Force
Children’s Alliance	US Senator Maria Cantwell
*Note: This list is not exhaustive	

Two interview respondents provide key information about I-502. One of them is University of Washington emeritus professor Roger Roffman, who has over forty years of experience studying marijuana policy and its effects on mental health. Professor Roffman also revised and provided input for various versions of I-502 as it was developed. Another respondent is a major enterprise reporter for the *Seattle Times*, who covered marijuana policy for the two years leading up to the general election and vote on I-502.

The strongest arguments in favor of I-502 centered on the framing of marijuana policy reform as a social justice imperative. The referencing of disparities and inequalities within the criminal justice and the enforcement of current marijuana laws was an important part of the I-502 campaign. A recognition that the status quo was not only failing to work (in terms of reducing access and use), but causing serious social harms (in the form of criminal justice costs and racially disparate punishment) was prevalent throughout the discourse on the initiative. Roger Roffman discusses the way in which the pro-I-502 campaign was organized:

The major points that the campaign was organized around were that the efforts to prevent access to marijuana are largely ineffective, and these efforts come with great costs. Not only financial costs for the operation of the law enforcement and criminal justice system, but also with major social justice inequities in terms of how the laws are actually implemented, with very clear inequities in terms of people of color being arrested far more than whites even though the epidemiological data make it clear that people of color use marijuana at a somewhat lower level. The campaign was also emphasizing that the tax revenues that this [new] legal market could generate could be put to good use in terms of public health and public safety. –Roger Roffman

In terms of supporters of I-502, Professor Roger Roffman emphasized the legitimacy and credibility that the campaign gained when a former US Attorney, John McKay, became one of the sponsors.

He had submitted an op-ed column and it has been published in the *Seattle Times*, the daily newspaper in Seattle, calling for legalization. For a former US Attorney to do that clearly made news and it added the credibility of a fairly high-ranking government official. –Roger Roffman

Roger Roffman identified other influential political figures like the former header of the Seattle office of the FBI, Charles Mandigo, and currently sitting Seattle City Attorney Pete Holmes. A team of influential lawyers added to the logic and rigor of the campaign as well. In terms of other high status individuals, Roffman identified Rick Steves as not only a sponsor, but also a major influence for the voters of Washington. As a very popular travel writer, with a major television program called ‘Europe Through the Back Door’, Steves’ support of I-502 further added to the popular support of the initiative. In addition to Roger Roffman’s responses, Enterprise reporter Jonathan Martin from the *Seattle Times* also noted that Rick Steves is a “very beloved figure in the Seattle area because he has a travel company that has been here a long time. He’s a regular radio show. He’s just a super folksy, easygoing guy. He was just a great face for the campaign too” (Martin 2013).

The medical marijuana, law enforcement, and substance abuse communities were the most vocal opponents of the measure. *Seattle Times* Enterprise reporter Jonathan Martin contextualizes the actions of the medical marijuana community with the following excerpt:

The medical marijuana industry was the most vocal opponent. They showed up at most hearings and public meetings, and were loud and noisy. Their best argument was that a provision related to a per se standard for intoxicated driving, which criminalized and defined stoned driving for the first time. They would get up and yell, and interrupt meetings. And to be honest with you, I think that the people were influenced, so I think they were actually effective. But when you put John McKay, or the campaign manager Alison Holcomb, who is an ACLU attorney and is very savvy, knowledgeable, calm, and put them on the other side of the panel against medical marijuana folks, it was not a fair fight. –Jonathan Martin

Roger Roffman expands upon this by sharing his perspective on the other opposition camps.

The others who opposed the initiative tended to be representatives of the drug prevention community, and law enforcement. Their arguments tended to focus on marijuana's harms; the risks to young people from early initiation of use and heavy marijuana use during adolescence, the risk of addiction, and the risk of mental health problems for people who use marijuana heavily. –Roger Roffman

Professor Roffman categorized the opposition to Initiative 502 as being categorized into two separate camps. According to him, law enforcement and substance abuse prevention tended to speak the same issues: the harms to health and behavior, to normal human development among young people, the risks to public safety. The medical marijuana community represented the other camp, which mostly lobbied against the DUI provision.

The data show that the pro I-502 spent approximately six million dollars in promoting the initiative, while the opposing campaign spent no more than \$50,000, showing a 120:1 ratio of pro campaign spending to anti-campaign spending. Professor Roffman attributes this successful fundraising and campaign spending to Alison Holcomb, who was able to conduct polling at various stages of the campaign in order to show potential contributors that the initiative would have a very high likelihood of passing, and that their funds would be used effectively.

California

California rejected Proposition 19 in 2010, which would have allowed for adults 21 and older to possess, process, and transport up to one ounce, and have the ability to cultivate on private property in an area of up to 25 square feet. Marijuana grown in this private space would only be authorized for personal consumption. Cities and counties would have had the ability to decide whether they would allow marijuana regulation in their jurisdictions. Major reasons for supporting Proposition 19, as referenced in the *Los Angeles Times* and the *San Francisco Chronicle*, included the much needed tax revenue for California legislature, the fact that the War on Drugs has disproportionately affected people of color, the potential jobs in agriculture, health care, retail and textiles, and the fact that the medical marijuana industry within the state was largely seen as a farce, or a masked method of obtaining marijuana for recreational use. The United Food and Commercial Workers Union, the Drug Policy Alliance, the National Black Police Association, the California Branch of the NAACP, Law Enforcement Against Prohibition, and the Drug Policy Alliance were among the initiative's major supporters.

Table 11: Identified Proponents and Opponents of Proposition 19

<u>Proponents</u>	<u>Opponents</u>
Richard Lee, Oaksterdam University President	US Attorney General Eric Holder
National Drug Policy Alliance	Every candidate running for state office
Retired Orange County Superior Court Judge James Gray (Republican)	MEX President Felipe Calderon
NAACP	Gil Kerlikowske, ONDCP Director
LULAC: League of United Latin American Citizens	Governor Schwarzenegger
United Food and Commercial Workers Union	Roger Salazar
Denver Women’s Marijuana Movement	State Chamber of Commerce
Dale Gieringer, NORML State Director	Citizens Against Legalizing Marijuana (CALM)
Green Party challenger Nicholas Payne	Law enforcement community
*Note: This list is not exhaustive	

Fear of increased usage among youth was particularly strong in California, as well as the concern that highways, workplaces, and communities would be less safe. Additionally, the “legal nightmare” of having different marijuana laws in different counties and municipalities was deemed unattractive. The CA Police Chief’s Association, Public Safety First, and CA senior senator Dianne Feinstein strongly opposed the proposition. The federal government and other officials had taken a very sharp stance against Proposition 19, which fueled insecurities about the legal battles that might ensue if it were passed. Unlike in 2012, where the federal government was largely silent and ambivalent, Proposition 19 was met with staunch opposition from federal law enforcement agencies. One of the most salient counter arguments against the initiative

was that it would *not* generate any legitimate sources of tax revenue. Prop-19 would have allowed for personal growing, but it contained zero provisions that would authorize retail locations, or other legitimate channels in which to obtain the drug. Despite having spent \$6 million in favor of passing Proposition 19, it failed.

Dale Gieringer, a marijuana policy advocate, provides some more insight into how Proposition 19 was discussed and debated within the state. As State Director for the California Chapter of the National Organization for the Reform of Marijuana Laws, Mr. Gieringer was professionally tied to Proposition 19, since CA NORML was a partner of the pro campaign. Some of the problematic components of Prop 19 include the ability for cities to decide whether to legalize marijuana at the municipal level. “The local option framing of it, where you’d have a different law in every city and county of California, sets up a chaotic system, which I think scared off a lot of people” (Gieringer 2013).

Another obstacle for Proposition 19 was the strong stance taken by the Obama Administration and Attorney General Eric Holder. “Towards the end of the campaign, the Attorney General and the Administration came out rather strongly against the initiative and I think that may have given people second thoughts as to whether the whole thing was feasible” (Gieringer 2013).

Other reasons for opposing the initiative was that there “was some wording in there that limited the right of employers to do drug testing...It was enough to set off fire alarms at the Chamber of Commerce, and so the chamber of commerce and other business interests became galvanized in opposing the initiative” (Gieringer 2013).

Perhaps the strongest method of countering Proposition 19 and framing it as a problematic initiative that should be rejected, was the approach taken by Roger Salazar, a

talented public relations professional who was part of the No on Prop-19 Campaign.

“Well, there may be very good reasons to legalize marijuana, nevertheless, this is not the way to do it”, was the approach taken by Salazar, and this was very effective in gathering votes to reject the measure.

Analysis

The framing of a state’s ballot initiative is perhaps the most important factor in how voters react to, and engage in, political discourse, and by extension, whether or not voters approve of the initiative. In the case of Colorado, the overarching message and framing was that marijuana needed to be regulated like alcohol. As a testament to this, the Yes on 64 Campaign was formally titled the Campaign to Regulate Marijuana Like Alcohol. The number one message, according to one marijuana policy expert and Colorado grassroots organizer Brian Vicente, was that marijuana was objectively less harmful and consequentially needed to be regulated like alcohol.

There are various concerns about Amendment 64 that have arisen after the legislation passed. While the amendment does not mandate that businesses take a stand for or against allowing usage of marijuana, there is concern with the potential for extensive litigation when someone gets fired for marijuana related reasons, which is a shared concern among all state’s who have considered legalizing marijuana. At the time of this writing (July 2013), Colorado has incorporated the same DUI/DWI provision as Washington, a THC blood limit of five nanograms per milliliter.

Measure 80 failed largely in part because it was viewed as being too radical. A “legislative Hail Mary” (a term coined by the *Oregonian*, the state’s largest newspaper),

Oregon would have had a grower-dominated commission to enforce marijuana regulations, which may have left many voters and stakeholders with a sense of insecurity, and the perception that legitimate third party oversight would be lacking.

With no limits on personal possession and cultivation, and the zoning and licensing left up to the grower-dominated Cannabis Commission, voters viewed Measure 80 as “going too far”. Mr. Stanford noted that the Cannabis Commission was a last minute change in the legal provisions of the measure, and that the original draft would have created a commission where the Governor appoints all seven members.

Several advocates in the cannabis community had problems with [the Governor selecting all seven members of the commission] and said that we shouldn’t give the Governor that much leeway. So we made that [change to a new Cannabis Commission].... It was actually the very last change that we made. And in retrospect that was a mistake. We should have not had people in the industry compose four out of seven members of the commission. –Paul Stanford

To add to the perceived extremity of what this initiative proposes, the language of Measure 80 was also viewed as problematic by newspaper editorials and website commentary. The ballot language references the founding fathers of the United States (George Washington and Thomas Jefferson) and uses the Biblical book of Genesis to justify the “moral righteousness of the Oregon Cannabis Commission and the statewide network of marijuana stores” (Oregonian 2012).

Measure 80 was by far the *least* funded of the 2012 ballot initiatives, as it was viewed as a politically unattractive measure that was not likely to pass, or if passed, would produce negative results. Measure 80 only raised approximately \$32,000, which pales in comparison to the \$5 million raised in Washington. Paul Stanford emphasized the lack of funds and failure to get the pro-Measure 80 messages out to the voters.

Washington and Colorado had approximately \$6 million and \$3 million dollars to spend on their pro campaigns, respectively. Oregon's campaign spent less than \$20,000 on advertising, showing a major disparity in the ability to deliver information to the public. Mr. Stanford asserted that if they had as little as \$200,000 to spend on advertising, they could have won, and that a victory on the day of voting would have been a guarantee if they had been able to spend a half a million dollars on advertising.

“The predominant message that was put out there was through the media, and *The Oregonian* led the charge against the measure” (Stanford 2013). This illustrates how the media are not passive and unbiased conveyers of news and messages; they are active participants in the debate, discussion, and discourse regarding marijuana ballot initiatives. In all of the states analyzed, major newspapers used their editorials and official endorsements to help shape the discussion of the ballot initiative. In Oregon's case, the major newspaper of the state was very critical of Measure 80, which may have played a significant factor in how the public perceived the potential legislation. Measure 80 simply did not have the political and social capital necessary to market itself to the voters. Framed largely as an attempt to give growers and marijuana entrepreneurs free reign in the state, it was duly rejected at the polls in November 2012.

As an example of another structural contradiction, Washington's attempt to improve marijuana policy has produced new conflicts, one of which is the DUI provision. Someone who is driving on Monday morning could conceivably have over five nanograms of THC in their blood from smoking the night before, yet be under no psychoactive effect(s). Medical users who arguably know how to self regulate their ability to operate machinery while medicating may fail these THC-blood limit standards

at any given time while driving. This limit on driving while under the influence of cannabis would criminalize and negatively affect current medical marijuana patients. This DUI standard was highly controversial and was viewed as an arbitrary limit that was not backed by science, and would subject medical patients to increased law enforcement control and adjudication. As with all of the states under analysis, there was widespread concern that marijuana legalization would result in increased youth access, which was a strong reason for many voters to not support the initiative, and that there was concern that the federal government would not allow for the law to be implemented.

A unique factor that played a role in Washington was the cultural blend of libertarianism, with different pockets and districts of liberalism and conservatism. In much of the newspaper data, there was this shared understanding that the state should spend less to enforce low-level drug crimes and respect private adult conduct. Similar to the discourse in Oregon, this shared culture and political ideology is unique to the Pacific Northwest and not found in the same degree in other regions of the United States. The effect of the Pacific Northwest culture on the level of support for recreational marijuana legislation is confounded by the fact that Washington and Oregon experienced different outcomes, with the latter state's measure being rejected. However, both states, and most notably in Washington, experienced a political discourse that exemplified the libertarian and conservative values that are unique to that region.

Despite the opposition, Washington State had robust political and social support from various public, private, and non-profit organizations, with most of them having missions that are completely independent of marijuana. Having former federal officials within the law enforcement and legal community publicly endorse the initiative gave

tremendous weight and rigor to the campaign. With this kind of widespread and multifaceted support from a variety of industries and private, public, and non-profit institutions, it seems appropriate that Washington was the most well funded campaign of any state that has ever tried to legalize marijuana. The campaign for I-502 was able to successfully frame their proposal not as drug policy reform, or the legalization of an unavoidable vice, but rather an issue that centered on social justice and public health reform. This framing, paired with a remarkable level of professional and political endorsements, are what contributed most to the ballot's success.

California's Proposition 19 was the first attempt to legalize marijuana during the Obama Administration. At a time where state medical marijuana laws were being arbitrarily enforced by the federal government, there was a significant amount of insecurity and fear regarding the federal government's potential reaction to legalized marijuana that had not been experienced by the three other states in 2012. California was the only state that experienced a direct challenge (some might call it a threat) from the U.S. Attorney General, which had a potent impact on how voters perceived the viability of Proposition 19, should it pass.

The policy-makers and writers of Prop-19 created an avoidable contradiction in the ballot pertaining to sales tax. For any tax to be excised a sale has to be made, but how can the state tax marijuana when individuals are only authorized to grow on their private property? The tax argument in itself was a logical contradiction that hurt the perceived legitimacy and feasibility of the proposition.

Discussion: A Best Practices Approach

An analysis of the data provides an orientation that is a prerequisite for formulating a list of best practices. Simon Lenton (2004) outlines the following conditions that constitute major factors in how drugs can be decriminalized and/or legalized:

1. Support from a majority of the population
2. Survivability for politicians; that their support will not produce drastic negative effects for their career
3. Law enforcement support
4. Consumer support (those involved in the production and use of cannabis)
5. An empirical or logical basis for legal reform; evidence that legalization produces less harm than the status quo
6. A policy sustainable under international treaties or agreements
7. A policy subject to regular review and evaluation

This study has outlined how the current marijuana policy window sufficiently meets the criteria of conditions one through five. Condition six is impossible to determine at the time of writing because states cannot create, decide, or take part in any international agreements. Condition seven should be provided by the regulatory oversight entities that will oversee Washington's Initiative 502 and Colorado's Amendment 64. Criminologist Jerome Skolnick (1988) outlines variables for the decriminalization and potential acceptance of vices generally, through a different set of important conditions. The more that the following conditions that are met, the higher the likelihood of vice acceptance:

1. Revenue can be produced for the government
2. Large numbers of people engage in the vice
3. The social status of the participants is high
4. Participants have otherwise conventional lifestyles; absence of an explicit tie to a deviant subculture

5. Young people can be shielded from the vice
6. Adults who wish to avoid the vice can be shielded from it
7. The vice can be confined or relegated to the private sphere
8. The vice does not create dependency or interfere with one's ability to fulfill obligations
9. The vice can be controlled by authorities and will not expand to uncontrollable levels

Washington's Initiative 502 and Colorado's Amendment 64 mostly, but not completely, fulfill the guidelines and recommendations that Skolnick and Lenton provide. Sociologist Ronald Weitzer (2012) echoes and expands on some of these guidelines by applying them to prostitution, particularly emphasizing the importance of restricting youth involvement and having consistent regulations and enforcement of this particular vice. These conditions are helpful in assessing how likely a ballot initiative will pass with regards to a stigmatized substance like marijuana. With the data collected for this study, we can use Skolnick, Lenton, and Weitzer's insights on vice regulation to produce a best practices approach to formulating and advocating recreational marijuana ballot initiatives.

With such a small number of states that have attempted to legalize marijuana, it is difficult to assert that there is a best practices *formula* for creating and advocating for drug policy reform, since there have only been four attempts to legalize marijuana since the Obama Administration took office (and only two attempts from Alaska and Nevada during the Bush Administration). However, given the rich detail provided by this study, the researcher provides a shortlist of what works and what does not, and this information can be organized into certain categories, rubrics, and themes that can provide policy-makers with guidelines for whatever side of the issue they correspond to.

The following matrix highlights the similarities and differences between the four ballot initiatives. Using this table alone, and with only four states to generate this information from, it is difficult to assess where the tipping point lies in terms of how one can predict the success or failure of any future state’s ballot initiative. However, the matrix has utility in showing similarities and differences with regard to the social and political factors that influenced the outcome. Washington’s I-502 has the most positive variables, while California’s Prop 19 and Oregon’s Measure 80 are tied with having the least. A future study that quantifies these variables and assesses the statistical significance between each ballot initiative might help shed light on the importance and degree of impact that each variable has. This matrix can be used to guide future policy makers and campaign managers with their political objectives with regards to marijuana legislation.

Table 12: Ballot Initiative Assessment Matrix

<u>Ballot Initiative Variables Leading up to the Nov. 2012 Vote</u>	<u>California</u> <u>Proposition 19</u>	<u>Oregon</u> <u>Measure 80</u>	<u>Colorado</u> <u>Amendment 64</u>	<u>Washington</u> <u>Initiative 502</u>
Medical Marijuana Existing In State	✓	✓	✓	✓
Celebrity/Socialite endorsement	✓	✓	✓	✓
Lack of controversial DUI/DWI provision	✓	✓	✓	✗
Lack of controversial city/county option	✗	✓	✓	✓
Proponents Outspending Opponents	✓	✗	✓	✓
Support from national non-marijuana non-profit organizations	✓	✗	✓	✓

Support from state/local non-marijuana non-profit organizations	✓	✗	✓	✓
Political Support from Former/Retired State Officials	✓	✗	✓	✓
Lack of opposition from federal government	✗	✓	✓	✓
Political Support from Senior/Top State Officials (Currently Sitting, State-level*)	✗	✓	✗	✓
Political Support from State-level Candidates Running for Office	✗	✓	✗	✓
Law Enforcement Support	✓	✗	✗	✓
Medical Marijuana Support	✗	✓	✓	✗
Lack of controversial employment provision	✗	✗	✓	✓
Out-of-state Political Support (state or federal)	✗	✗	✗	✓
Endorsement by largest state newspaper	✗	✗	✗	✓
Percentage voting Yes	46.5%	46.58%	55.32%	55.7%

Visibility

Despite the high prevalence of marijuana use, and its increased acceptance, cannabis remains a stigmatized and controversial vice. Marijuana is still illegal according to federal law, and according the most state laws. Like pornography, gambling, and other kinds of drugs, the general public generally does not like the storefronts and actors within these industries to be readily visible in the city streets and neighborhoods. Including a provision in a ballot initiative that gives counties the right to limit visibility within reason would attempt to minimize concerns with public visibility. A state-level mandate on the geographical placement of recreational marijuana stores and growing facilities is

necessary to limit the visibility of a legalized marijuana industry. Limits on how close a marijuana-related business can be to K-12 schools, college campuses, and youth centers, for example, provide an easy compromise between those who are within the marijuana industry and those who are concerned with youth access and youth visibility.

Additionally, limits on the kinds of advertising that marijuana businesses can publish satisfies this concern. Roger Roffman elaborates on the significance of addressing visibility and limiting what adolescents can see with the following excerpt:

...When public polling was done in the months leading up to the writing of the initiative it was very clear that many in the public were afraid that if marijuana were legalized, up and down the streets, or in the apartment buildings where they live, lots of people would be growing marijuana, and it would be rampantly visible. And perhaps then alter the quality of life by affecting what neighbors do, and what is seen, and what's accessible to young people. –Roger Roffman

This presents a conflict in regards to how practical it is to control for visibility *if* home growing is permitted. If a lot of people were legally able to grow marijuana, how visible would a personal growing operation be to the naked eye, or outside observer who is standing outside of the person's residence? How can the government effectively regulate and control the degree of visibility of marijuana in personal growing operations? Forbidding the growth of outdoor plants that are visible from the exterior of the property may result in unintended consequences. This problem, however, is ameliorated if home growing is forbidden. If marijuana is regulated like alcohol and tobacco, "you go to a place that sells it, you perhaps get carded to see that you're an adult and then you get to buy it" (Roffman 2013).

Regulation and Oversight

As witnessed in the case of Oregon, having an “in-group” regulatory entity is perceived as biased, probably for conventional industries, and *even more* so for a stigmatized and newly legalized substance. Paul Stanford acknowledges that “in retrospect that was a mistake. We should have not had people in the industry compose five out of seven members of the regulatory Cannabis Commission” (Stanford 2013).

Colorado gave their oversight jurisdiction to the Department of Revenue, which has connected to the Colorado General Assembly and other civic and governmental partners to help establish a regulatory framework for marijuana.

Amendment 64 Implementation Task Force, as per the Governor’s instructions in the Executive Order, was chaired by the Governor’s Chief Legal Counsel and the Executive Director of the Colorado Department of Revenue. It consisted of 24 members drawn from the Colorado General Assembly, the Attorney General’s office, numerous relevant state agencies, offices, and commissions, municipal and county government organizations, persons with expertise in the treatment of marijuana addiction and in legal issues related to marijuana legalization, and representatives of employers, employees, the Amendment 64 campaign, the medical marijuana industry, and marijuana consumers.
– State of Colorado, Office of the Governor and Department of Revenue.

Washington gave oversight responsibilities to the Liquor Control Board. Some of the newspaper data expressed concern regarding whether experts in alcohol regulation have the expertise and relevant experience to oversee a psychoactive drug like marijuana that significantly differs from the properties and effects of alcohol. *Seattle Times* reporter Jonathan Martin discussed the utilization of the Liquor Control Board as the governing authority on marijuana:

They gave the state authority [to the Liquor Control Board]. The Liquor Control Board is taking it very seriously, and they’re getting all the experts and getting tons of input. They had a two-day session on protocols

for marijuana testing. They had five [experts] listening to two days worth of testimony from people that are already doing marijuana lab testing. That's very effective in actually getting a smart regulatory model. So I think that's one of the things they did right. –Jonathan Martin

In a state that is considering a new recreational marijuana ballot initiative, there are important questions and concerns regarding what organization should oversee rule making and law implementation. Department of Revenues and Liquor Control Boards vary by state, so it is up to policy-makers to decide which regulatory framework would work best, and which type of agency would be most competent in enforcing a new recreational marijuana legal system. Having new policy that is compatible with the current operation of a state's medical marijuana industry is crucial in determining whether the existing medical lobby will support the initiative. Having a tight regulatory structure, where an unbiased state entity oversees the growing, distribution, and retail sale process is imperative.

Opting In, Opting Out

California's Proposition 19 would have opened up a legal can of worms through a fragmented and decentralized approach to marijuana legalization.

Our attorneys determined that that whole part of the initiative where cities and counties legalize on a local basis was probably [unworkable] under the California state constitution; it would have never taken effect. –Dale Gieringer

While California's Proposition 19 was controversial for being ambiguous with how counties and municipalities could "opt in" for marijuana legalization, this concept is likely to return, as it can provide a balance between state-wide legalization and district/county-level choice. A compromise that provides voters with more control over their local districts is providing the counties, and/or municipalities with the right to "opt

in” or “opt out” of marijuana legalization and the regulation of cannabis-related businesses and storefronts. This should be approached with caution. Providing counties and cities with the option of whether to allow for recreational marijuana is important. With wide variation in state geography and city culture, the four states under analysis for this study have shown considerable variation in the way voters react to recreational marijuana. Some cities and counties want it while others are sharply opposed. Counties should have the ability “opt out” of allowing for the regulated purchase of cannabis from stores and dispensaries, but they should not be allowed to maintain marijuana as illegal and have users subject to civil or criminal penalties when it is legal at the state level. Similar to the concept of “dry counties” with regards to alcohol, if County X in Washington wants to forbid the presence of recreational marijuana shops in their county, the voters should have the right to select that option, *but* it should not be illegal for someone in County X to be in possession of cannabis or to grow and/or use it on their own property.

Colorado’s Amendment 64 was sharply criticized by the business community. One of the reasons for this was the perception that employers would have to modify their drug-free policies in a way that could make employees less safe, or in a manner that would essentially allow for marijuana usage by employees. Allowing employers to maintain a marijuana/drug policy of their choice was noted as an important point for businesses. No company wants to be told that they may get caught up in legal battles for firing employees who test positive for THC. Understandably enough, someone who is operating a crane in a city center at 8am should probably avoid consuming a psychoactive drug the night before, regardless of whether it is legal or not. Another detrimental

attribute of the debate on Proposition 19 was the genuine concern that there would be lawsuit battles between employers and workers on the issue of firing workers who test positive for THC.

The other important factor that the opponents keyed on was there was some wording in there that limited the right of employers to do drug testing. It was enough to set off fire alarms at the Chamber of Commerce, and so the Chamber of Commerce and other business interests became galvanized in opposing the initiative. –Dale Gieringer

Unlike someone who tests positive for being under the influence of alcohol while on the job, someone might test positive for having a certain amount of THC in their bloodstream, or a certain amount of THC indicators in their urine, but not be under any psychoactive effect whatsoever. The Chamber of Commerce was opposed to the idea of having to accept employees who test positive for THC. Given that drug tests can pick up THC indicators three to four weeks after someone has taken the drug, employers will have to decide how to approach marijuana in a sensible way while ensuring workplace safety and integrity.

Health and Safety

Washington's I-502 was heavily contested by the medical marijuana community due to the DUI/DWI driving provision. It is likely that this will be a source of continued conflict. The medical community is still debating how to properly assess how "high" someone is, and to what level that impairs driving. Unlike the plethora of literature that shows alcohol's effects on hand-eye coordination and the ability to operate machinery, the lack of understanding of marijuana's effects on driving is further complicated by the

fact that dosage and psychoactive intensity varies widely by strand of plant and method of use. There is also a lack of data on automobile accidents where the primary causal factor is marijuana influence, thereby creating a difficulty in comparing traffic statistics with pre and post-initiative time periods. However, in the case of I-502 in Washington, Professor Roger Roffman elaborates as to why the driving provision is not as controversial as others see it:

...Different people can have the same THC measure in their blood and the relationship between that and their actual driving performance can be entirely different. One person can be quite dangerous and unable to drive with the necessary skills and another person would be just fine. The opposition argued there's no science behind a per se limit of 5 nanograms per milliliter. The opposing argument was that the epidemiology is clear: You get to a certain THC level on a population basis, and risks of accidents and fatalities go up. A THC per se limit *not* on the basis that every person is going to react the same way to a certain THC level but as a warning that you're taking the risk of being impaired and putting yourself and other people at risk. In other words it's a *population level measure* rather than an individual imperilment level measure. That's the rationale behind the per se limit. So I don't think that is an imperfection in the law
–Roger Roffman

The newspaper data cannot account for how all voters viewed the DUI/DWI provision but some of the data *do* capture that the public and the law enforcement were supportive of a DUI/DWI provision because it represented a proactive method of ensuring public safety and avoiding traffic accidents. The single and strongest lobby against the DUI/DWI provision was the medical marijuana community.

Framing

The data ultimately show that the most important factor in how ballot initiatives fare within the political process is how they are framed to the voter. Unlike Oregon,

which was framed as a radical form of legalization that gave marijuana users and businesses a clear pass in establishing their own legal norms and regulations, Colorado and Washington presented their respective laws and issues differently. Instead of asserting the argument that “since marijuana usage is so high, we should just regulate it”, or the comparison argument of pitting marijuana against tobacco and alcohol, marijuana policy and the current issues and concerns regarding usage were framed in ways that garnered more public support. Reshaped as a social justice, public health, resource efficiency, and in some ways, a civil rights issue, gave non-users and those completely unfamiliar with marijuana an active stake in being part of the discussion. Rather than a stereotypical potheads vs. law enforcement debate, proponents in both states took various approaches, some focusing on the current inequalities and criminal justice disparities in the status quo of drug laws. Other organizations viewed legalized marijuana as a more legitimate way to pursue education, treatment, and controlled use. Rather than thinking that usage and dependency would increase, legalized marijuana would set a stage for a stronger public health orientation that places education and treatment, and not criminal justice, at the core of marijuana policy.

The fifty states and the District of Columbia would vary widely in how they might approach marijuana policy. The culture of the Pacific Northwest differs from that of the South, the Northeast and the Midwest. Anchoring the debate in the political and social culture of the public happens organically, but it should not be taken for granted.

I think [the culture of the Pacific Northwest] was pretty influential. It’s interesting... Washington State, as liberal as it’s perceived, is an open carry state. Which means that you can carry a gun on your hip anywhere in Washington except the courthouse. It seems to me that this is a very Western, pioneer kind of mentality still. It was founded at the end of the

great western migration, and so outside of the Puget Sound core, particularly eastern Washington, and north and south, west Washington are more conservative areas. I toured around the state with 502, and even in the conservative pockets I often-times heard the small government argument, so basically the Gary Johnson, Ron Paul argument that the government should just stay out of our lives, you know, it's none of your damn business. If I want to smoke pot in my house, what business is it to you? ... On election night, as soon as I started to see, there's one county called Douglas County... which is very rural agricultural part of eastern Washington. Douglas County went for marijuana legalization, and I thought, that's it. You got the libertarians right there. If you got the libertarian farmer folks, this thing is an easy ride. And sure enough, it was.
–Jonathan Martin

Word choice matters. Framing is the key ingredient in influencing voter support. Legal provisions are just one segment of the process of marijuana legalization. The variables lie in how the public perceives those provisions and what kinds of messages and symbols are contained in the discourse and debate. Something so specific as the usage of one or two words can make a tremendous difference in how an issue is perceived by the media, public, and the voters when they take to the polls.

Conclusion

Law itself is neither an end nor a beginning, but rather an intermediate stage in the political process (Burstein 1985). The synthesis between the theoretical framework is as follows: policy windows represent the *when* (2008-current political climate), problematic normalization represents the *what* (the increased support for legalizing marijuana for recreational use), and structural contradictions theory represents the *why* (current prohibitionist laws are seen by many as aggravating more problems than they are solving). The data and qualitative approach of this study provide the *who* (voters in four

different states), *where* (California, Colorado, Oregon, Washington), and *how* (legislative change through the ballot initiative process).

The current policy window and political climate that allows for recreational marijuana ballot initiatives to form and successfully pass is indicative of the way in which social and legal norms are undergoing more than just problematic normalization, but what might be called problematic legalization. The mere fact that there are popular movements and challenges standing in opposition to federal policy is a structural contradiction that raises the larger questions of how crime and legality are constructed, and how federalism operates in theory versus practice. This kind of conflict where specific states take the initiative to bring about major legislative change, without federal approval or in contrast to federal policy, has been experienced with slavery, prohibition, same-sex marriage and doctor assisted suicide.

This thesis focuses on the only way in which marijuana legalization has successfully occurred; through the ballot initiative process. Ballot initiatives are one way of bottom-up legislative change, instead of top-down policy-making, and give the registered voting population a greater degree of influence and choice in passing reformatory laws. While arguments have been made that the federal government should be the leader in marijuana policy reform, others have argued that state governments are more efficient and faster than the larger and more slowly moving parts of the federal government. Some view state-level experimentation against federal law as a risky venture, subject to expensive litigation and legal arbitrariness. Others view state-level change as a way of precipitating change and opening a policy window for marijuana legalization, and are willing to have their state become the petri dish of new drug policy.

The ballot initiative process is just one of several methods of legislative change that can happen within a given state. This thesis explores the social and political dimensions of how recreational marijuana becomes legalized through the ballot initiative process, illustrating how states are functioning as “laboratories for democracy”, a term coined by Supreme Court Justice Louise Brandeis.

Attempts to rectify current contradictions of the political structure will likely lead to other conflicts and dilemmas, and even highlight conflicts that may have been dormant. Whether viewed at the macro level (federalism) or at the micro level (Washington’s specific DUI provision as it pertains to driving while under the influence of marijuana), new sources of conflict and new contradictions have and will continue to arise. Simultaneously an explanation as to *why* marijuana reform is necessary (conflicts with current U.S drug policy) and a paradigm for viewing how additional problems will arise, structural contradictions theory is the umbrella category in which problematic normalization fits neatly. As vices and previously stigmatized behavior are contentiously accepted and increasingly normalized, new public administration, legal, and social norm challenges will be forthcoming.

It is important to note that this study does not seek to make any predictions about the political processes of states that may propose similar marijuana legislation in the future. The 2012 presidential and general election may have been a unique political climate that cannot be duplicated, and its measured effect on the way in which marijuana policy was debated is beyond the scope of this paper. The same assertion applies to California in 2010. Understanding the effect of the 2012 presidential election and the

2010 midterm election on the discourse of marijuana policy is necessary via future research.

California can be viewed as a precursor to the opening of a policy window that in the year 2013 is wide open. Illinois, and Maryland have decriminalization and medical marijuana policies passing through their state legislature as of July 2013. At the time of this writing, New Hampshire has become the nineteenth state to pass medical marijuana legislation. At the federal level, the Polis Bill and the Marijuana Tax Equity Act of 2012 and 2013 respectively, are proposed changes to how the federal government regulates and treats marijuana. While still being processed through the House and Senate committees, the active status of these two policy proposals is evidence that the policy window is open and should remain so long as drastic, high profile negative effects are absent in the Colorado and Washington experience. Some of the experts who provided interview data for this study firmly believe that this policy window will not close.

I think it's inevitable [that marijuana will be] legalized and it is because of the demographic shifts. You look at younger voters, and those under 35 overwhelmingly support regulating and legalizing cannabis. Older voters, the older they are, the less they support that issue, so just the demographic shift in population means that cannabis will be legal sooner rather than later.... I think that we'll see a gradual change over a long period of time.

–Paul Stanford

Another respondent provides insight as to why states truly are the laboratories for democracy, and the primary agents of marijuana policy reform.

Policies of gay marriage and marijuana legalization are similar in that states are leading the way. The federal government [and] politicians are always about five years behind the people, and it gets worse the further up the political chain you go. I think that if we are going to wait for Congress to deal with this without having the pressure come from states like Colorado and Washington, I'd be dead before marijuana was legalized.

...For [marijuana legalization] to happen, it has to happen state-by-state. – Jonathan Martin

Professor Roffman essentially synthesizes the theoretical framework of this study, showing how these contradictions within the process of regulating marijuana represent a problematized path to normalization and legal acceptance, and how states are the appropriate laboratories for democracy in generating marijuana reform.

I think the only politically possible way of achieving legalization is state by state. The [federal] schedule I classification of marijuana that has been in place now for decades has been challenged with a number of lawsuits, which have basically demanded that the Drug Enforcement Administration review the data on medical efficacy and safety, and put marijuana in a different schedule. Every one of those lawsuits has been quashed or has been decided in favor of the DEA and continuing to hold marijuana in schedule I. The enormous polarity of the [U.S.] Congress is such that it would be very unlikely that a Congressional Act would change marijuana's classification, and override the DEA's decision. There's a bill that has now been introduced into Congress that would prohibit the federal government from interfering with states in making legal changes to marijuana law. And my suspicion is that bill will probably never go any place. So it's ultimately the states' [responsibility] and I think that the 'laboratory for democracy' phrase is very apt here. –Roger Roffman

The merits of this study lie in providing perspective on the specific social and political factors that influence whether ballot initiatives pass or fail, and in laying a framework for how to assess the strength and viability of a ballot initiative once it enters public debate and sponsorship. Support from state and city political figures, law enforcement entities, the medical marijuana industry, the general public health community, and most importantly, the way in which the need for policy reform is framed, are some of the important factors in deciding whether an initiative is successfully passed. Future studies are needed to quantify these variables. California and Oregon are

extremely likely to put forward another legalization attempt by 2016, if not earlier for the 2014-midterm elections. Having a larger sample size of not only attempts, but successfully passed ballot initiatives will enrich the application of this data and the relevance of this study's rubric for what constitutes a strong ballot initiative.

Choosing to conduct a content analysis of the two major newspapers of each state and cross-referencing that data with interviews of key players within each state's ballot proposal is just one of many ways of addressing the social and political factors influencing the success or failure of recreational marijuana ballot initiatives. The merits of this approach include a firm understanding of how this form of media can influence political discourse. Newspapers are not objective third parties that relay information to the masses; they hold an active role in shaping the dialogue and framing the debate to their readership. A latent function of this study is to remind policy makers of how influential the media can be. Simon Lenton (2004) states that drug policy researchers need to understand how the media works, and be able to clearly communicate research findings in a way that is usable by the media. The position of major media sources like these can either contribute to an informed public debate, or contribute more towards the sensationalization of the issue (Lenton 2004).

The effects of Amendment 64 and Initiative 502 have yet to be seen, but the experiences of Colorado and Washington are likely to influence how long and to what extent this policy window will remain open. Anchored in the concept of problematic normalization, the majority of interview respondents explicitly specified a concern or expectation that the federal government will "flex its muscles" against the legislative changes in Colorado and Washington. Some were surprised that at the time of writing,

the federal government had *yet* to engage the state in a political and legal battle over their newly passed marijuana laws. However, as all of the interview respondents indicated, they believe that national marijuana legalization is inevitable, and that marijuana policy has hit the tipping point to where there is no question as to *if* this policy window will remain open, but rather, how easy or tumultuous the regulation process will be.

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Appendix: Interview Respondents

State (Ballot Initiative)	Name	Interviewed	Professional Affiliation
California (Proposition 19)	Nate Bradley	May 3, 2013	Private Investigator. Former law enforcement officer with 10 years of experience as a city police officer and deputy sheriff.
	Dale Gieringer, PhD.	April 24, 2013	State Director - California NORML (National Organization for the Reform of Marijuana Laws)
Colorado (Amendment 64)	Mason Tvert	May 8, 2013	Director of Communications – Marijuana Policy Project
	Brian Vicente, Esq.	May 10, 2013	Primary co-author of Amendment 64. Co-director of the Campaign to Regulate Marijuana Like Alcohol.
Oregon (Measure 80)	Representative Peter Buckley (D)	June 25, 2013	Co-Chair of the Joint Committee on Ways & Means. Oregon House of Representatives.
	Paul Stanford	May 8, 2013	Primary author of Measure 80.
Washington (Initiative 502)	Jonathan Martin	May 3, 2013	Enterprise Reporter – Seattle Times
	Roger Roffman, Ph.D.	April 20, 2013	Professor Emeritus – University of Washington, School of Social Work. Over 4 decades of marijuana and addiction research experience. Consultant and co-sponsor of I-502.