

Regulatory Oversight Podcast:**Budding Regulations: Navigating the Cannabis Regulatory Landscape****Host: Stephen Piepgrass****Guests: Jean Gonnell, Bruce Turcott, Cole White****Stephen Piepgrass:**

Welcome to another episode of *Regulatory Oversight*, a podcast that focuses on providing expert perspective on trends that drive regulatory enforcement activity. I'm Stephen Piepgrass, one of the hosts of the podcast and the Leader of the firm's Regulatory Investigations, Strategy and Enforcement Practice Group. Our podcast features insights from members of the practice group, including its nationally ranked State Attorney's general practice, as well as guest commentary from business leaders, regulatory experts and current and former government officials. We cover a wide range of topics affecting businesses operating in highly regulated areas.

Before we get started today, I want to remind all our listeners to visit and subscribe to our blog at regulatoryoversight.com so you can stay up to date on developments and changes in the regulatory landscape. Today, two of my colleagues, Jean Gonnell and Cole White speak with Bruce Turcott of the Attorney General Alliance, or AGA, on the issues of local licensing, receiverships, social equity and intoxicating hemp products in Colorado and Washington.

Bruce is the Legal Editor of the Cannabis Law Deskbook for the Attorney General Alliance. He's responsible for updating Deskbook content to reflect developments in cannabis law across all the states and territories, and to provide guidance to those engaged in this area of law and policy. Bruce was a senior counsel in the Washington Attorney General's office until he retired in 2022 from that position. As lead counsel for the Washington State Liquor and Cannabis Board, he advised the state of Washington for nearly 10 years on implementing the world's first cannabis licensing system from scratch, including the nation's first tribal state cannabis compacts. He defended legal challenges to the legalization initiative, and he co-chaired an Attorney General's office working group to coordinate legal advice across state agencies. I know we're all looking forward to today's discussion.

Cole White:

Thanks so much, Stephen. Hello everyone and welcome to Troutman's *Regulatory Oversight* podcast. My name's Cole White and I'm an attorney in Troutman Regulatory Investigation Strategy and Enforcement Practice Group. Today we're here to talk about all things cannabis, so our focus of the conversation today is going to be on unpacking the journey of cannabis legalization in the pioneering states, Washington and Colorado, the first two states to legalize recreational marijuana, and my guest today could not be better for that conversation.

I've got Bruce Turcott with the Attorney General Alliance, who was involved in legalization in Washington in the Washington AG's office from the very get-go, and Troutman's cannabis practice partner, Jean Gonnell, who's been practicing in Colorado in the cannabis space since before recreational marijuana was even legalized in Colorado. Thanks so much to my guests for

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being here. Bruce, I'm going to go ahead and hand it off to you. Can you tell us a little bit about yourself and about your journey to AGA?

Bruce Turcott:

Thanks Cole. As Cole said, I was with the Washington Attorney General's office as lead counsel to the Washington State Liquor and Cannabis Board since our Initiative 502, legalizing cannabis was passed back in 2012. And actually, I'd found an earlier conversation with Jean that she's actually more of an old timer than I am because she goes back even farther in that field.

I retired from the state last year and joined the Attorney General Alliance. The AG Alliance is an educational non-profit with membership of 51 state and territorial Attorneys General and a wide variety of public and private sector partners. Currently, I'm editor of the Cannabis Law Deskbook, which is published annually by the AG Alliance and Thomson Reuters. The Cannabis Law Deskbook is a comprehensive guide to state-based regulation with authors from AG offices around the country.

Jean Gonnell:

I have been practicing the cannabis law from essentially in the beginning, starting in law school as an intern in a firm that handled cannabis. And then since licensure in June of 2012, I focused my cannabis practice on the regulatory marijuana world in the State of Colorado, and then expanding into other states, with the emphasis on just everything related to regulatory matters, business transaction, administrative actions, litigation, et cetera. And I've seen a very large change over the last 12 years in relation to marijuana and how things have been regulated since recreational became legal in 2012, especially in Colorado.

Cole White:

Thank you guys so much for those intros and thank you guys so much for being here. I think this is really going to be a very interesting conversation that I'm really looking forward to having. The theme of our conversation today is discussing the lessons learned and the success stories in the pioneering states of Washington and Colorado. With that in mind, the first question I'd like to ask you, and Jean, this is a great segue out of your intro, which is what have been the most significant changes or challenges in the cannabis regulatory landscape since the early days of legalization? Right? We've seen a huge long journey and multifaceted issues. I'm just interested in your perspective, Jean. What do you think has been the most significant change or challenge for the industry in Colorado?

Jean Gonnell:

I think some of the most significant changes have to do with the financial aspects. At the onset, it was very clear that all money that was going to be utilized or these types of businesses had to be associated with the members or the shareholders related to the license entities, and any types of loans that were going to be utilized had to be unsecured types of loans to these entities.

Now, that's changed quite a bit over the years and now they allow secured types of lending pertaining to licenses, never inventory, obviously. Other passive types of interests as far as

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equity holders being under a threshold of 10%, but they don't have to go through the robust background checks because they don't have any control over the companies. They're merely equity interest holders. And then even just more robust disclosure abilities for indirect financial interest holders, those people who do want to lend money to the businesses and then the new entry into publicly traded companies into this area, which started around 2019 in Colorado, that's allowed for a lot more revenue and a lot more capital to be utilized in marijuana.

But part of the things our clients tend to deal with are the immense tax issues that come up related to excise tax for cultivators in the recreational area, the issues pertaining to 280E on the federal level and the huge amount of tax burden that our clients unfortunately have to undertake and the importance of having a good tax attorney and good CPAs related to cannabis that understand the nuances of the business.

In addition to that, there's a lot of testing requirements that have evolved over the years, which is very important for public safety, but can sometimes be a little bit ambiguous or misguided without enough scientific research that are helping the legislatures identify what type of testing needs to be involved. And again, these are all expensive components of this regulated industry, and so that our clients see a huge amount of tax burden and just costs associated to all these types of businesses, and it all really does result from the legislature and the types of statutes and rules that are passed pertaining to this highly regulated industry.

Cole White:

Absolutely. Yeah, it's interesting. I think most people who are even tangentially familiar with cannabis know about the 280E issue. They know about the financing issue. It's fascinating to hear that financing has opened up a little bit and that it's become easier to finance operations in Colorado. That's fascinating. Thank you for that.

Bruce, I'll kick it to you. What do you think has been either the most significant challenge or the most significant changes in Washington since early days of legalization?

Bruce Turcott:

For my former client, the Liquor and Cannabis Board, this was a daunting task. Everyone felt surreal the first year in meetings talking about this, and it was truly a culture change for many. They quickly determined there was no precedent anywhere in the world for setting up a retail cannabis system. Washington had to develop their system from scratch because they did not have an existing system of cannabis licensing for medical, unlike Colorado, which had a medical licensing system that they converted to adult use licensees.

Washington had a year under their initiative to adopt rules and really did take that much time to do the public outreach and to determine all the aspects of what needed to be covered in the rules and really couldn't be rushed. Of course, after that, there was a lot of comprehensive revisions of rules and tweaking rules that goes on to this day. They received over 7,000 applications in a 30-day window, which created a long tail of several years of administrative hearings to adjudicate the denials of licenses where people challenge those.

As far as legal uncertainties, the conundrum was and still is, what was made legal under state law remained and remains illegal under federal law, but the Attorney General's office, our client

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is the people of the state and we're obligated to defend state law. We waited almost a year for the Department of Justice Cole Memo to the US Attorneys, directing them to basically leave alone state licensing systems if they complied with a number of federal priorities designed to protect public health and public safety. And it appears that Washington's draft rules were reviewed by DOJ in the process of them drafting that memo.

Now, no court has addressed on the merits whether the Federal Controlled Substances Act actually preempts any of these state laws and is not needed to in any of the litigation that's ensued, but we found that every state agency, virtually everyone was affected in some way with legal questions, as many disconnects with federal law in particular were revealed over time. I think Washington did have a lot of successes in this process in being one of the early adopters. It built a system with no prior knowledge. It was a liquor control agency. It implemented it despite federal illegality. It merged the medical system.

Now, there was a medical cannabis system of collective gardens that was unregulated by any state agency, which has existed for the first few years alongside the licensed system of stores, which had evolved into a system of storefront dispensaries, which was an unfair and untenable situation. So the legislature required them to get licensed or to close a few years after adult use legalization in Washington. So that's how Washington handled that situation. They merged the systems. Sales took off faster than expected, and there was more tax revenue than anticipated very early on.

The banking situation in Washington was more fortunate than in many states because our Director of Financial Institutions was quite proactive and aggressive in reaching out and counseling banks, particularly after some of the federal guidance that came out and how to provide account services to these businesses. So we had about a half dozen state chartered banks and credit unions that have been participating for a long time, and that also reduced the amount of cash payments of state excise and sales taxes, which was a concern of the state.

And finally, in public health, there was a lot of attention to trying to protect the public health and protect children. This agency required pre-approval of all cannabis edibles just before it launched legalization.

Cole White:

Great. Thank you so much for that breakdown, Bruce. That is truly fascinating. I cannot imagine being on the front lines of recreational legalization without some type of a guide and having to build that plane out as you fly it like that. That's a huge challenge and very impressive that Washington and Colorado were able to overcome those hurdles. It also is a huge benefit for later legalization states to be able to look to Washington and Colorado's models and make tweaks as they see fit. That's a huge benefit that Washington and Colorado did not have. And I know with the recent legalization in Ohio, regulators in Ohio are probably feeling that same way. It's going to be very helpful for them to be able to look to Washington and Colorado as a guide.

Transitioning from lessons learned, I want to take a minute to highlight some of the differences between Washington and Colorado. Obviously they were two pioneering states, but in some ways they took some very divergent approaches to certain issues. One of those issues is local licensing authority. Bruce, correct me if I'm wrong, but there is no local licensure process in

Washington, right? It's only a state license that you get in order to operate a marijuana business, correct?

Bruce Turcott:

That's correct. As far as local government authority, I would advise the states not to do what Washington did. Its initiative did not address local authority at all, and we already had medical bans in place in some cities and counties. So it was unknown after the initiative passed whether those were still permitted. Meanwhile, the liquor and cannabis world was obligated to issue licenses without regard to these local bans. So the license holders sued local governments in at least a half a dozen lawsuits around the state, and there were more than that at some points, to test whether the initiative preempted those bans. The licensees were ultimately unsuccessful after years of litigation. Our Court of Appeals ultimately held that the local government's police powers were not addressed in Initiative 502, and therefore were unaffected by it so that they still could maintain local bans. But in Washington, to get to your original question, local governments do not have a direct role in licensing decisions. Of course, they still need to enforce their local zoning requirements and other code requirements.

Cole White:

Yeah, Washington and California as well, good examples of how it can create tension between the state and these localities if we're not giving localities a certain amount of control over the regulation process. Jean, tell us about local licensing authority in Colorado. How is it different from Washington?

Jean Gonnell:

Colorado does require and does have a dual license system, which essentially just means that the local authorities can decide to not allow recreational or even medical marijuana within their jurisdictions. In large part, all of the local jurisdictions that do allow for recreational marijuana have built their own ordinances pertaining to time, place and manner types of situations. A lot of these ordinances discuss zoning and where these locations can be located, prohibitions on change of ownership of these licenses for a certain amount of time after the licenses are issued, requirements pertaining to additional security and having cameras, how much DVR footage each location is supposed to have. Every jurisdiction in Colorado that we work with requires they have to have the local license and the state license. So what that means is if you lose your local license, automatically your state license becomes void, and they're contingent on one another. So when you go through the application process, you have to essentially do two applications, one for the Marijuana Enforcement Division and one for the local jurisdictions.

And another facet of it is a lot of local jurisdictions have moratoriums or limitations on how many dispensaries, for example, they'll allow in an area and they identify setbacks. In a lot of situations, you can't have a dispensary within a thousand feet of a school, a daycare, a rehab facility. Those setbacks are articulated in the local authorities versus the state. The state has really left a lot of these... In fact, everything as far as these setbacks to the local jurisdictions, but it's really important to remember because Colorado is dual license, meaning you have to have local authority licensure and the Marijuana Enforcement Division licensure, that there's extra paperwork and extra costs for all of these application fees, et cetera, related to Colorado system.

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I think Colorado system actually is a good way to do it, especially in states like North Carolina at some point, hopefully in the near future they'll be passing medical marijuana, and I think that a lot of pushback that some people will have will be negated by allowing local jurisdictions to say, "While we appreciate the state is allowing this, we don't want to." That does give the local jurisdictions a little bit of autonomy to make some of these decisions that can cause issues if there's a requirement that state is the only authority that dictates when, where and how these licenses are issued.

Colorado is vastly different than Washington and a lot of other states, but I do see other states like New Jersey and Connecticut, they do have zoning requirements. I think that's a commonality between all local authorities is the zoning portion of marijuana and where these locations are allowed to be located, such as cultivation facilities. You're going to want to make sure that cultivation facilities and manufacturers are in large part put in industrial areas versus retail areas. And so you see a lot of zoning codes pertaining to those different aspects of the industry and the different types of licenses that licensees obtain.

Cole White:

Thanks, Jean. I think the tension you guys are highlighting here is really interesting and something that newly legalizing states should pay attention to, right? Is, "We want to hand over a certain amount of local control to avoid lawsuits and avoid creating tension between the state and localities, but giving local control adds a lot of administrative tests to the licensure process and to the process of running a business." So newly legalized states have to find a way to strike that balance, and most states tend to do it a little different from other states. It's pretty individual. I find the tension between that issue fascinating.

Transitioning from local authority, I'd like to talk a little bit about receiverships. I think a lot of people hear about the tax issue that Jean flagged earlier, right? 280E. A lot of people hear about the issue of not being able to access bank accounts and having to do business mostly in cash. I think most people who are not deeply involved in the industry aren't aware that marijuana businesses don't have access to traditional bankruptcy proceedings like most businesses, and that can lead to a lot of problems that make things really difficult for business owners, and receiverships is one of the solutions to that problem. Jean, I know this is a particular area of expertise for you. Can you tell us a little bit about Receiverships, how they work and what role they play in Colorado?

Jean Gonnell:

Absolutely. I do handle a lot of receivership litigation. Essentially, it's in a situation where there's a distressed business and the predator in large part is concerned that the assets of the business are going to be dissipated and disappear. So it's a mechanism in the court system where a party can go to the courts and request an appointment of a receiver, and that receiver is an arm of the court and answers to the courts.

There seems to be a lot of confusion sometimes when attorneys move to have an appointment of a receiver put in place, thinking that the receiver will work for them. That is definitely not the situation. The receiver answers to the courts and is responsible to make sure that the assets of these receivership estates are not dissipated.

In these receivership orders, we tend to ensure that there's state orders put in place, much like bankruptcy. It's not automatic because the appointment order for receiverships dictates the responsibility of the receiver and what type of capabilities they have, which can include settling different disputes entering into or approving or rejecting certain types of contracts that pertain to assets within the receivership.

And the state mechanism is very useful in instances where there's a multitude of claimants that are coming after the assets of the estate or the parties to the estate to ensure that all of the assets in the receivership stay in the receivership until there's some sort of order from the court for a liquidity event or in the event that the receiver is able to get the business on track to be successful and ensure that the claimants are paid.

Again, it comes down to the order, but the receivers do have to go to the court anytime they want to sell off the assets, settle, major disputes, et cetera, and I think that marijuana has a special component with that because state regulators require that the receivers be badged and approved by the regulatory authorities. In Colorado, there's case law pertaining to this exact issue, essentially stating that the Marijuana Enforcement Division and the statutes related to these businesses is incredibly important, and anybody who wants to be a receiver must be badged, must go through the background checks and be found to be suitable to operate these types of businesses.

Because under marijuana law, the receiver stands in the shoes of the previous owner, and we see a lot of receiverships at this moment because it is a bit of a downturn in the marijuana industry. And so there's a lot of assets that claimants are coming after, and there tends to be also tax liability issues owing to the state. It's a situation where it's to the benefit of everyone that the assets not be lost and that they can be protected while things are litigated pertaining to who is owed money, how much money are they owed, do they have the correct secured types of interests? Is it unsecured? No, et cetera. But receiverships are a massive area in marijuana that I think a lot of people just need to understand the mechanisms and the requirements that the regulatory authorities require in these instances.

Cole White:

Yeah, absolutely. It sounds like a monumental task to be a marijuana receiver or an attorney for a receiver because as you noted, it's almost guaranteed that the business will be distressed, and when you add on top of that the administrative complexity of marijuana law, I can see that being a huge task. Bruce, what about you? Can you give us a little bit of a perspective on what role receiverships play in Washington?

Bruce Turcott:

Well, in Washington, the receivership issue arose after just a few years, and of course, the concern as Jean discussed was whether the receiver would qualify for a license? And also, would the courts observe the need for a receiver to apply to Liquor and Cannabis Board and be qualified for a license? But the bar fortunately worked with us in those early days and was very cooperative, and LCB some years ago adopted a receivership rule that requires giving notice to the agency, sets conditions for receivers, and in servant innovation, created a pre-approved receiver list that potential receivers could become pre-qualified, so to speak, for appointment as receivers.

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Cole White:

Yeah, that's fascinating. I think this is an area that newly legalizing states should really be paying attention to early on because I think having this avenue available for businesses is very important in the face of that they don't have access to other traditional services like bankruptcy proceedings. So thank you guys for your insights on receiverships. I find that issue fascinating.

Transitioning into areas where the pioneering states, Colorado and Washington could have improved their process, right? Talking about social equity in particular. Social equity is very important and is on the forefront of most regulators' mind in newly legalizing states now, but correct me if I'm wrong, Bruce, but in the early days of legalization in Washington, Colorado, social equity was not even a thought. Am I right about that?

Bruce Turcott:

That's right. It wasn't addressed in our initiative, and it became a really hot issue. Actually, some years later, our legislature created a task force a few years ago, a very large task force with a lot of representation on it to make recommendations to the Liquor and Cannabis Board for what should be the qualifications to receive unused retail licenses, and there are only about 30 some of these unused retail licenses available, but this was for applicants adversely affected by the war on drugs. And the legislation was similar to Illinois legislation, which was based on residents in a disproportionately impacted area or convictions for drug related offenses. Disproportionately impacted areas in general would've high rates of poverty, participation in income-based programs, and applicants would've arrests or convictions related to cannabis and possibly other drugs.

So the Liquor Cannabis Board did receive recommendations and it adopted roles. This took several years. It adopted roles just within the past year with needed definitions around these concepts, and it obtained a third party to score applicants. It received about 500 applications, I'm told, for these 30 some retail licenses and is now in the process of processing them.

Also, another important aspect of this program is money was appropriated to our State Department of Commerce to award technical assistance grants to these applicants. It's a big challenge for these new businesses to become established and successful in this mature market, but other necessary and maybe even more important aspects of social equity, besides licenses, are secondly expungement of criminal cannabis related offenses, which is a feature of these programs in most states, I believe. And thirdly, reinvestment of some of these dollars into these affected communities, which has a broader effect than issuing licenses to a few people. That's the situation in Washington and remains to be seen how this unfolds over the next few years.

Cole White:

Absolutely. Jean, what about you? What are your thoughts on social equity in Colorado and how that has worked out for social equity applicants?

Jean Gonnell:

In Colorado, it's a newer program as well, but in Colorado, the state doesn't have any moratoriums or anything like that pertaining to licenses, but they do require that anybody who wants to be a social equity applicant go through what is called a suitability process, and there's three categories related to how you become a social equity. If you've ever had an arrest or anybody in your family, including your mother, father, sister, brother, or children have ever been arrested for marijuana previously, you can apply for social equity designation. The same as far as the income issues that are very similar to Washington, but Colorado did make one pretty large misstep when it comes to their social equity system, and I think Colorado's done a great job on a multitude of issues, but there's one small hole in Colorado system because they didn't limit the social equity program to new entrants to the market.

So if you had been operating a dispensary for 10 years or five years, et cetera, and you happen to have an arrest on your history or had some sort of income-based issue in your past, then you could actually become a social equity applicant. That becomes a little problematic because in cities like Denver, there's a moratorium and you can only apply for a store license, cultivation license or manufacturer license if you're social equity.

And so what's kind of devolved into is that people who've been in the industry of made millions of dollars have upwards of 15 different dispensaries, can now also get another dispensary in the City and County of Denver because they can apply and be sound suitable as social equity. And I don't think that was really the intent of the law. The law was to assist people who had been harmed by the war on drugs, that were having a lot of barriers getting into the system.

So that's just one small issue in the area, but they do ensure that application fees are reduced and that there's different opportunities for funding on a lower level from the city of Denver specifically related to social equity applicants, but other states have handled it differently. A lot of other states have added things such as race and gender to their social equity programs that Colorado does not have. So I think states are watching, they're looking at different ways that Colorado could have done things a little bit differently.

On top of that, the social equity program does require that a social equity applicant be a 51% owner in these licensed businesses, but Colorado law doesn't require that the percentage of ownership match, the profit share in the operating agreements or shareholder agreements. So it can, and I don't know if it really does, but it can run into a situation where you have a shareholder agreement or an operator agreement where the 51% social equity applicant is on a license at 51% but is only allowed to receive 5% of the profits.

And so that's another rule that I think a lot of other jurisdictions have actually fixed, such as New Jersey and has made sure that anybody whose social equity, there's a requirement for that percentage of ownership, it actually matches the type of profit share that would be attributed to the social equity component of the licensed entities.

Cole White:

Thank you for that. I find it really interesting how when these processes aren't built out on the front end and especially when there's nothing else to compare a social equity program to, it can be easy for individuals to find loopholes and to exploit the intent of the system, which defeats the purpose of that type of social equity program. Very interesting to see how that's shaken out in Colorado and how other states learn from that.

Before we close out today, I want to just touch on one other issue that I think is at the forefront of a lot of regulators. Mines in many states, and that's the issue of intoxicating hemp products. In the 2018 Farm Bill, Congress redefined the definition of marijuana to exclude marijuana that is less than 0.03% THC, so anything underneath that threshold is defined as hemp, which is legal at the federal level.

Anything above that threshold is defined as marijuana, which is illegal, but that's created a lot of issues since that bill came out because market actors have applied new methodologies to highlight new cannabinoids which are not traditional delta-9 THC, which is the Farm Bill specifically references. So it's created an issue with products like delta-8 THC, which are technically legal because they're under the 0.3% delta-9 THC threshold, but they're as intoxicating if not more intoxicating than traditional delta-9 products. And the problem with that is these are now legal at the federal level and unregulated, and they're showing up in gas stations and convenience stores as opposed to regulated marijuana products that are showing up in dispensaries.

State AGS are particularly concerned about this issue. Bruce, can you give us a little insight into how Attorney General offices across the country are thinking about this issue?

Bruce Turcott:

Well, first, a little background in Washington about this. This issue arose in 2021 when Liquor and Cannabis Board learned that processors were synthesizing products containing THC from hemp derived CBD, and it was determined that that was illegal under Washington state law, under Washington's Controlled Substances Act. The legislature passed an agency request bill just this year that brought all cannabinoids, including CBD, under the jurisdiction of the Liquor and Cannabis Board.

So they are undergoing rulemaking now, but presumably testing will be required, and of course, sale through state licensed stores will be required. So they're taking a very comprehensive regulatory approach to these, but states have taken a variety of approaches with some banning these products and some regulating them, but unregulated sale of these products, as you mentioned, really affects every state and many state AGs are very concerned with this issue. Last year, there was a letter sent to Congress by 23 State Attorneys General on a related issue of copycat THC products that are appealing to children and creating public health issues and risks for children.

Cole White:

Thanks for highlighting that issue as well, Bruce. The copycat THC products is a huge problem, and that's bad market actors are just ripping off the packaging of big brands like Oreos or Sour

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Patch Kids, and rebranding them as marijuana candies or gummies, and selling them unregulated products, and those products end up on kitchen counters with young kids walking around and see a bag that says Oreos on it, and they open it and eat the whole bag, and that creates a lot of public health and safety issues, so I appreciate you flagging that as well.

Jean, what can you tell us about intoxicating hemp products in Colorado? Does the state take a certain approach to regulating them or what have you seen on that front in Colorado?

Jean Gonnell:

In Colorado, just as recently as this year, there was an Act that was passed by the legislature that creates a framework for the med to regulate the hemp products. All of that is going to fall under the Marijuana Enforcement Division, and it obviously then requires a license. And so I think that the hemp market in Colorado was more centered around growing hemp not really providing these products, but now that people are showing up with these copycat products and other intoxicating hemp products, the legislature has stepped in and said, "This is a health concern and we need to ensure that everything's being properly tested, properly labeled, licensed, and is going through the proper channels in the dispensaries."

This is somewhat new for Colorado, but it's always been prohibited in large part in Colorado to be selling these hemp type of intoxicating products. And I think the market in Colorado obviously is more centered around marijuana, so in large part, consumers really know they can go to a dispensary down the street and they have no issue with it. So it's just going to add another inventory line to these dispensaries more than anything, but it's definitely a situation where Colorado has stepped up and said, "This is a health and safety issue," and so the legislature passed recent statutes related to it to ensure that all of these products are properly tested, labeled, et cetera.

Cole White:

I think you raised a really interesting and important point, Jean, that having a well-built out regulated marijuana industry actually helps to avoid some of those issues, right? Because consumers are familiar with it, they know the system, they trust it, and they'd rather go to a dispensary and get their regulated marijuana because that's what they're used to. So that in a big way can help alleviate some of the challenges posed by these products. I think this is a very important issue, and I think it's fair to say that we can expect some action from State Attorneys General on this in the near future.

That sort of concludes the main portion of our conversation here. I think that was absolutely fascinating, and I'm so thankful to both of you for your insights. I want to close out on all of us looking into our crystal balls and trying to predict in the future what do we think is going to happen with legalization both in your states and nationwide in the near future? Bruce, I'll kick that first question to you. What do you think are the major future trends in cannabis legalization, Washington, and what can we expect to see in terms of major developments over the next few years?

Bruce Turcott:

Well, in Washington, as I mentioned, a major issue is implementing their social equity program, and that's going to undoubtedly have an evolution over several years. Another is incorporating these hemp-derived products into the license system because that's a big task as well. And I think we haven't really talked about the potential federal rescheduling of cannabis, which has been proposed by the FDA, but see how that unfolds and if it does happen, which is being debated now, a very interesting area, what the effects will be on this industry.

And another one that's not talked about very often, but I think is important and does relate back to something Jean said earlier, is the need for national testing standards, which are under development by standard setting organizations that take a long time to be developed, didn't exist really for cannabis and will provide a needed baseline, I think, for all the states and ultimately the federal government if there's federal legalization.

Cole White:

Yeah, absolutely, and a great point, raising the possible rescheduling from DEA. I think everyone, the industry is very closely watching that issue, and I think some of the clear benefits that would come from rescheduling at least as proposed so far would be access to research, the ability of researchers to research marijuana would be alleviated, and of course, 280E would not be an issue since 280E only expressly applies to schedule one and two substances. Thanks for flagging that for us, Bruce. Very important topic as well. And national testing standards I think is also an area where it would benefit all legalization states greatly if we had some kind of a national testing standard.

Jean, we'll close out with you. What about you? What's in your crystal ball? What do you think is coming around the corner for legalization in Colorado?

Jean Gonnell:

I think right now the biggest focus is looking at some of the testing issues, and I think it's important to remember that yes, there needs to be a national testing matrix, but every state on some level, it's a different ecosystem. And I think a lot of the states need to look at their ecosystems and figure out what that looks like and what testing really is applicable because what can grow in Oregon is going to be different and how it grows in Colorado and what those looks like as far as indoor growth, outdoor grows, et cetera.

I think there's going to potentially be some taxation changes just as far as excise tax and how that is dealt with for cultivators. There's a lot of conversations pertaining to how the excise tax works and how it's allocated pertaining to the cultivators and who they sell or transfer their marijuana too, as far as dispensaries. There's also, I think, going to be some seed to sale tracking changes as far as what is required. Right now, every plant has to be tagged once it's over eight inches. Is that going to remain that way? Do we really need some of this technology that's maybe not as beneficial as I think regulators thought, but is very costly to the licensees?

As far as the rescheduling of marijuana to a Schedule Three, which appears to be the current recommendation, while that would help the medical market, because effectively that would make marijuana a Schedule Three prescribed type of drug, that is not going to be beneficial in

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large part with the recreational market because recreational, according to Colorado's constitution has to be handled like alcohol. Obviously, that's a different scenario than a medical area, and so I think the rescheduling to a Schedule Three is not going to benefit the recreational portion of the marijuana industry, but descheduling it will.

Another opportunities as far as the Banking Act that has been sitting in Congress, that actually is the most beneficial to marijuana businesses because that will get rid of the problems pertaining to banking access as well as 280E, but effectively, we're still waiting to see what Congress wants to do, but I think that the rescheduling to a Schedule Three is not going to be as beneficial as actually passing good responsible laws pertaining to banking and taxation for this industry.

Cole White:

Absolutely. Yeah. Rescheduling to Schedule Three would not solve the banking issue, and that's a big part of what the industry has a problem with that approach for it. And I think a point that you made, Jean really helps us to put a button on this conversation and tie back to our original theme, which was discussing lessons learned from early legalizing states. I think Washington and Colorado did a huge service to other states who are now legalizing because they have a model to compare to and to point and say, "Well, I like this. I don't like that." Washington and Colorado did not have that, and they had to learn everything the hard way, step-by-step. So states have a huge benefit and they should look to Colorado and Washington's model, but they should also know that a one-size-fits-all approach doesn't necessarily work. They have to evaluate all the aspects of the system and make a determination about how that's going to impact their state and how they want to adjust things to make sure that it's going to work best for their state.

I want to thank you both so much for your time. I think this has been a fascinating conversation that I'm so grateful to have been a part of.

Stephen Piepgrass:

Jean and Cole, thank you for sharing your conversation with Bruce. I know like me, our listeners enjoyed your candid remarks and invaluable insights. I want to thank our audience for tuning in today as well. Please make sure to subscribe to this podcast using Apple Podcast, Google Play, Stitcher, or whatever platform you choose. We look forward to having you join us again next time.

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