

## Washington's Marijuana Legalization Grows Knowledge, Not Just Pot: A Report on the State's Strategy to Assess Reform

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### INTRODUCTION AND SUMMARY<sup>1</sup>



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On November 6, 2012, voters in Washington and Colorado made the momentous and almost entirely novel choice to legalize and regulate recreational marijuana. While many places around the world have tried out forms of marijuana decriminalization or legalized medical uses, none had ventured to make the production, distribution and recreational use of the drug legal, let alone erect a comprehensive, state-directed regulatory system to supervise the market. In spite of the lack of experience, and in spite of a clear conflict with federal drug law, solid majorities in Washington and Colorado decided that their states should lead the way through experimentation. (In 2013, Uruguay would follow.) The opening of state-legal marijuana shops has been a reality in Colorado since January, and has finally come to pass in Washington as of July 8.

While Colorado is justifiably garnering headlines with its ambitiously rapid (and, in many respects, impressive) legalization rollout,<sup>2</sup> there is a case to be made that Washington is undertaking the more radical and far-reaching reform. It is, in effect, attempting not just to change the way the state regulates marijuana, but also to develop tools by which to judge reform and to show that those tools can be relevant amid the hurly-burly of partisan political debate. Washington has launched two initiatives. One is about drug policy; the other is about *knowledge*. In the world of drug policy, and for that matter in the world of public administration more generally, this is something fairly new under the sun.



This paper is one of a series Governance Studies at Brookings is undertaking in partnership with the Washington Office on Latin America (WOLA).

1 I would like to thank the many Washingtonians who took the time to speak with me about their two marijuana experiments, as well as Ashley Gabriele, John Hudak, Grace Wallack, John Walsh and especially Jonathan Rauch for their help in researching and writing this report.

2 Colorado's legalization is assessed in detail by my colleague John Hudak: "Colorado's Rollout of Legal Marijuana is Succeeding," Brookings Center for Effective Public Management (July 2014) (<http://www.brookings.edu/research/reports/2014/07/colorado-marijuana-legalization-succeeding>).

This second reform, though less heralded than the attention-grabbing fact of legalization, is in many ways just as bold. Washington's government is taking its role as a laboratory of democracy very seriously, tuning up its laboratory equipment and devoting resources to tracking its experiment in an unusually meticulous way. Several innovative features are especially noteworthy:

- A portion of the excise tax revenues from marijuana sales will fund research on the reform's effects and on how its social costs can be effectively mitigated. In effect, the state has built test equipment into its policy reform from day one, with a dedicated funding stream to provide continuity and political independence.
- Coordination of research efforts is taking place across multiple state agencies, including the Department of Social and Health Services, the Department of Health, and the Liquor Control Board. Instead of relying on just one point of view or information source, the state is focusing many lenses on the issue, attempting to create a multifaceted picture.
- A cost-benefit analysis is to be conducted by the state's in-house think tank, the Washington State Institute for Public Policy (WSIPP), and will be nearly unprecedented in its scope and duration. If well executed, this effort will provide a yardstick for success that can help focus and discipline the political debate.

By combining these techniques, Washington's policymakers seek to empower themselves not only to proactively regulate legal marijuana but to proactively inform and influence the informational battles that will surround legal marijuana. That is no mean feat in a policy area so full of passionate, and often intemperate, advocates. As the battle lines harden in the information wars between legalization's champions and critics, the state's knowledge-building efforts offer its officials the chance to transcend the breathless rhythms of the news cycle and set their sights on more consequential time horizons. Reformers across the country—in marijuana policy and beyond—would do well to learn from this second experiment as much as from the first.

This paper outlines Washington's side-by-side experiments: the marijuana experiment and the knowledge experiment. It will weigh the potential and the pitfalls of the state's knowledge experiment. And it will offer some thoughts on how to get the most out of Washington's innovations—both for those who care about drug policy and for those who care about making policy reform of any sort work better.

## WASHINGTON'S MARIJUANA EXPERIMENT: THE STRUCTURE AND PACE OF REFORM

Washington's experiments with *recreational* marijuana legalization may begin with the passage I-502 in 2012, but the state created room for legal medical use of the drug back in 1998, when 59 percent of voters approved Initiative 692. Calling Washington's legal treatment of medical marijuana a "system" would be misleading: what I-692 did was create an affirmative legal defense that could be invoked by "patients with terminal or debilitating illnesses, who, in the judgment of their physicians, would benefit from the medical use of marijuana."<sup>3</sup> In other words, if you had a doctor's note saying that you had a medical need for marijuana, a jury would be instructed to acquit you of any possession charges brought by a prosecutor—though nothing would actually stop your arrest or prosecution.<sup>4</sup> Medical marijuana existed in a legal gray area even under state law: there was no fully above-board way for patients to purchase marijuana (or for anyone to grow and sell it), but a functioning and growing market was largely tolerated, especially after an October 2009 U.S. Department of Justice memo indicated that federal law enforcement would deprioritize prosecution of users or caregivers who are "in clear and unambiguous compliance with existing state laws."<sup>5</sup>

Many states—Colorado notably among them—eventually devised regulatory controls for their medical marijuana systems, for example by licensing dispensaries and making sure that they pay normal taxes. Washington did not adopt such controls. Instead, medical marijuana providers in the state grew more sophisticated in legally insulating themselves under state law while remaining effectively free from any state regulation—a situation many describe as akin to the Wild West. Getting a note of medical necessity became a fairly trivial hurdle to overcome, as plenty of medical professionals were willing to simply sell a note to anyone who would pay. Dispensaries, meanwhile, found a legal loophole to protect themselves from prosecution: they would be the officially designated "collective garden" operation for their previous three "patients," with the roster of membership changing with every customer that came through the door. This bit of metaphysical trickery ensured they could not be prosecuted for possession or trafficking, and the "medical" market grew rapidly.

Washington's legislature attempted to bring some order to this chaos in 2011, passing S.B. 5073, a broad reform law that would have exempted from arrest and prosecution all patients and providers who registered with the state (preserving the affirmative legal defense for those

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3 Washington Secretary of State, "Initiative 692" (<http://www.sos.wa.gov/elections/initiatives/text/i692.pdf>), Section 2; November 1998 General Election Results. ([http://www.sos.wa.gov/elections/results\\_report.aspx?e=10&c=&c2=&t=&t2=5&p=&p2=&y=](http://www.sos.wa.gov/elections/results_report.aspx?e=10&c=&c2=&t=&t2=5&p=&p2=&y=)).

4 Patients could use this defense for amounts of marijuana up to "the amount necessary for a sixty day supply"; I-692, Section 5. Seattle voters further made room for growth in the medical marijuana business by passing Initiative 75 in 2003, which made enforcement of marijuana possession laws the lowest priority for city law enforcement personnel.

5 David W. Ogden, Deputy Attorney General, Memorandum for Selected United States Attorneys (October 19, 2009) (<http://www.justice.gov/opa/documents/medical-marijuana.pdf>): 2.

who opted not to register), strictly limited the size of collective gardens, and subjected growers and dispensaries to licensing and regulation.<sup>6</sup> In other words, at least as a matter of state law, medical marijuana would have been brought out of the legal shadows and into the realm of regulated commerce. But the specter of federal illegality spooked then-Governor Christine Gregoire, who effectively gutted the law with a partial veto. Gregoire said it was unacceptable to risk making Washington state bureaucrats into federal criminals by having them participate in a licensing scheme for a market still illegal under federal law, and so medical marijuana remained an unruly mess.<sup>7</sup>

Against this backdrop of arrested development for the medical market was a long-simmering campaign for full legalization conducted by devoted advocates. Among this committed camp of activists, treating marijuana as a social scourge was seen as the height of irrationality and prejudice, derived from nothing more than the historical legacy of reefer madness back in the 1930s. The message they sought to spread—seldom in extremely efficacious ways—was “live and let live.” Marijuana could be part of a perfectly healthy and well-adjusted lifestyle, and citizens ought to be given the right to make the choice for themselves.

The drafting of I-502 and the skillful advocacy campaign to pass it were organized by a very different crowd, with very different interests. Rather than being pro-marijuana, the reformers who wrote the initiative’s text, led by ACLU of Washington Drug Policy Director Alison Holcomb, were motivated by opposition to America’s failed war on drugs, which they believed had delivered few benefits while exacting huge costs in the form of squandered law-enforcement resources and unnecessary incarcerations. Rather than sending a libertarian message of permissiveness, reformers emphasized smarter government better pursuing public safety and social justice, a message which was crafted to appeal to non-users and even soccer moms with progressive politics.<sup>8</sup> An integral part of the message, then, was that a move toward legalization would *not* be an abandonment of state control. Instead, it would give the state a fighting chance of ridding the marijuana market of its nastiest features, including organized crime and unsafe product. At the same time, the state would no longer bear the disproportionate costs of prohibition, both in law enforcement resources wasted and lives damaged by unnecessary prison time.

Adding to the appeal of this approach was the natural (and compelling) comparison between marijuana and alcohol, the latter of which arguably represents the greater social threat. Washington’s liquor regulation regime is a tight one, featuring a powerful Liquor Control Board

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6 S.B. 5073 (2011) (<http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/Senate%20Passed%20Legislature/5073-S2.PL.pdf>).

7 Olivia Katrandjian, “Under Federal Threat, Wash. State Gov. Vetoes Medical Marijuana Dispensary Bill,” *ABC News* (April 30, 2011) (<http://abcnews.go.com/US/washington-state-governor-vetoes-medical-marijuana-dispensary-bill/story?id=13499869>).

8 For a wonderful account of the politics around I-502, see Nina Shapiro, “Alison Holcomb: Pot Mama,” *Seattle Weekly* (September 25, 2012) (<http://www.seattleweekly.com/2012-09-26/news/alison-holcomb-pot-mama/>).

(LCB) and a prohibition of vertical integration of production and sales, the better to lessen the risks of predatory monopolies' preying on drinkers' worst habits. By explicit analogy, the promised system of marijuana control would provide the same kinds of protections—a prospect all the more appealing because of the rapid, ungoverned expansion of the medical marijuana market.

But while I-502 promised a path to order, it self-consciously failed to deliver the necessary means to get there, because it left the medical marijuana issue entirely untouched. This was a simple political calculation: if the initiative had put the medical market on a clear path to extinction, it would have risked being defeated by a “bootleggers and Baptists” coalition. Instead, by remaining silent about the future of medical, it could lessen the risk of opposition from those content with the muddied legal status quo.<sup>9</sup> The champions of 502 expected that the framework they put into place would be filled out by future legislation, swallowing the messy medical market in one way or another. (A perfectly reasonable thing to expect, since the various statutes governing medical marijuana in the state could be amended by the legislature at any time.)

Because of the political positioning of I-502, Washington's move toward legalization has been an odd mix of deliberateness and irresoluteness. On the one hand, as this paper will detail, the state has set its regulatory sights quite high, aspiring to total supervision of the (still private) growth and sale of marijuana in the state. Every producer, processor, and seller in the 502 system will be licensed, a process that involves strict criminal background checks and review of business plans. Research efforts of various kinds are meant to inform the Liquor Control Board as it makes licensing decisions, with the goal of enabling it to control the quantity and pricing of legal marijuana available.

On the other hand, the LCB has no control at all over the still-vibrant medical market, and to date there has been no legislation passed to clarify how medical marijuana is meant to coexist with the heavily taxed 502 system. A bill, S.B. 5887, that would have provided clarity by merging the systems passed the state Senate in early 2014, but it was ultimately stalled over the age-old question of who should get the money. Local governments are determined to get a cut of the 502 tax revenues, and disagreements over revenue-sharing doomed the bill. Many are hopeful that Washington's legislature will bring order by folding the medical system into 502's regulatory scheme in its January 2015 session, but there are no guarantees.

Nor are there any guarantees that the state's vision of precise and beneficent bureaucratic control will turn out to be a realistic one—indeed, the early experience gives some cause for

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<sup>9</sup> For instance, see the FAQ released by the “Yes on I-502” campaign regarding medical marijuana, which seeks to reassure medical users that their situation will be unaltered. “Backgrounder: I-502 and Medical Marijuana” (<http://www.newapproachwa.org/sites/newapproachwa.org/files/I-502%20Backgrounder%20-%20Medical%20Marijuana%20-%2020073012.pdf>). This strategy was not wholly successful, as some of the most vehement “No on I-502” voices came from those involved in the medical marijuana business.

skepticism. Licensing an appropriate number of producers and sellers has turned out to be a more difficult task than the LCB anticipated, with the result that the rollout of the 502 system has been messy. Confronted with far more applications to grow than anticipated, LCB abruptly told grower applicants that they would be licensed for only about a quarter of the canopy space that was originally announced, leaving many entrepreneurs with leases on larger areas than they could use. A flood of applications for retail licenses led to a shakily stage-managed lottery process to assign just 334 retail licenses. Many applicants felt they were wrongly disqualified with no legal process in place for redress, which has left a hangover of lawsuits against the LCB. Meticulousness in criminal background checks and location requirements for stores (to keep them away from schools, parks, etc.) has slowed the process to a crawl. Moreover, unlike Colorado, which initially restricted market entry to pre-existing regulated medical marijuana enterprises,<sup>10</sup> Washington opened its licensing process to all comers, many of whom have not been ready for the rigors of the process. This has absorbed a great deal of LCB staff time and energy. And even once the LCB manages to give out all of the licenses it has allotted, many people—from potential customers to Seattle’s pro-502 city attorney, Pete Holmes—fear that far too few people will have been given access to the market to make it work effectively.<sup>11</sup>

Post-passage expectations about when stores would open have also been repeatedly frustrated, with hopes of fully supplied stores opening across the state in spring 2014 giving way to a reality of a trickle of store openings beginning in July 2014, with scant product available to sell. In stark contrast to Colorado’s rather seamless transition from regulated medical to regulated recreational, which has led to a thriving legal recreational market, Washington’s debut has seemed tentative and inauspicious. The pathway to the 502 system’s displacing the medical and black markets through a robust supply of legal product is still hazy.

The causes for pessimism about Washington’s slow-developing system are thus clear.<sup>12</sup> But there is a case to be made that the longer-term outlook is better, with skeptics overly preoccupied with inevitable growing pains and insufficiently appreciative of the benefits of moving slowly. From the LCB’s perspective, gaining ground slowly and fully controlling ground once gained is far more important than moving quickly; the board is happy to grant that the 502 system is not really ready for prime time as the first sales begin, but it argues that its cautious approach allows it to move more effectively to a system that excludes criminals, prevents diversion, provides for serious testing and labeling, facilitates empirical understanding of the legal market’s effects, and maintains an appropriate price for legal marijuana several years down the road. Given the ubiquity of medical marijuana and the tax

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<sup>10</sup> See Hudak, cited above.

<sup>11</sup> Graham Johnson, “City Attorney: Seattle Needs at Least 50 Pot Shops,” *KIRO TV* (December 4, 2013) (<http://www.kirotv.com/news/news/city-attorney-seattle-needs-least-50-pot-shops/ncB4Q/>).

<sup>12</sup> They are spelled out at greater length by Jacob Sullum, “Washington’s Legal Marijuana Mess,” *Reason* (July 2014) (<http://reason.com/archives/2014/06/04/washingtons-legal-marijuana-me>).



advantages of illegal operators, the LCB begins with modest goals: it hopes that after a year of full 502 implementation (which may align roughly with 2015, given the delays in licensing growers and sellers), the legal recreational system will possess a roughly 25 percent market share, with steady gains in the years to follow. Washington's process may leave those eying Colorado's quick legalization process both envious and resentful, but the regulators believe it represents the more prudent path and the one that will better serve Washingtonians in the long run.

## **WASHINGTON'S KNOWLEDGE EXPERIMENT: MICROSCOPES FOR THE LABORATORY OF DEMOCRACY**

An integral part of this slow-but-steady approach to the legalization experiment is a focus on the laboratory's measurement equipment. Rather than blithely assuming that its policy experiment with marijuana legalization will yield self-evident results, Washington is taking a wide range of steps designed to allow it to understand exactly what kinds of effects I-502 will have on citizens' lives. This empirical approach is written into 502 itself, and was indispensable to selling legalization as a means of diminishing social injustices and ultimately benefiting the state as a whole. The I-502 regime takes pains to advertise its awareness of the potential social harms of legal marijuana, but simultaneously promises to objectively quantify and manage those harms in a way that delivers net benefits.

To put it another way, I-502 attempts to commit Washington to the role of responsible scientist in the coming information wars. As anti-legalization advocates prepare their "sky is falling" interpretations of events in the wake of the first legal sales—and as pro-marijuana activists complain that onerous regulations continue to unduly limit people's liberty—agents of the state intend to be armed with facts and figures, prepared to occupy the reasonable middle ground where costs and benefits are both assessed honestly. This is almost the platonic ideal of technocracy: public-spirited elites collecting and analyzing data and putting their results to work on behalf of the public good, uninfluenced by demagogues guided by less respectable passions.

Realizing this appealing vision will be difficult for a number of reasons, which I turn to below. Initially, though, we should take stock of the different research programs that will inform Washington's marijuana policy and consider why they could potentially be so useful.

- **Research on impact on youth.** Sections 28 and 30 of I-502 allocate the first portion of tax revenue to support research in various corners of Washington's bureaucracies. The Department of Social and Health Services (DSHS) receives \$125,000 quarterly to put toward administering and expanding its longstanding healthy youth survey, which collects information on self-reported usage and on a wide range of covariates, ranging from "attitudes toward substance use" to "rebelliousness." Linda Becker, a longtime veteran of DSHS who has been

involved in the survey for many years, sees it as a key asset for Washington (and says that self-reports from teenagers are more reliable than you might think). Conducted annually in Washington all the way back to 1988, and including attitude questions as far back as 1995, the survey gives Washington a far better chance than most states could hope for to understand whether legalization is accompanied by important changes in youth orientation toward marijuana. The youth survey thus offers a huge data set and a nearly ideal baseline against which to measure certain kinds of changes—although until now it has only been administered to public school students, limiting the age range it covers. With new 502 funds it will be expanded to cover college-age young adults, but of course this segment will lack a baseline for comparison. Rising forms of marijuana consumption, including “vaping,” “dabbing,” and eating edibles, may also drive a large enough cultural shift to introduce some serious measurement difficulties.

- **Research on prevention and treatment.** DSHS is further drawn into the business of researching marijuana’s effects by I-502’s requirements that it spend fully 15 percent of the tax revenue generated from recreational marijuana (after up-front set-asides) on the “prevention or reduction of maladaptive substance use,” with the requirement that at least 85 percent of this spending “be directed to evidence-based and cost-beneficial programs and practices that produce objectively measurable results.” Figuratively speaking, only those programs that earn an official “Responsible Social Scientist Gold Star” will have access to this funding source. This requirement also puts DSHS in close contact with the Washington State Institute for Public Policy (WSIPP, pronounced “wissip”), a state-sponsored think tank with long experience doing cost-benefit analyses of social programs.

The state’s Department of Health finds itself in a parallel position to DSHS: it gets 10 percent of post-set-aside tax revenue to fund education and substance-abuse treatment programs, again with the requirement that these programs be “evidence-based or research-based” and that they “provide medically and scientifically accurate information about the health and safety risks posed by marijuana use.” Given the paucity of good scientific information about marijuana, this is a tall order, and it means that marijuana-related programmatic spending in the state will need to be relentlessly focused on empirically demonstrating its own efficacy—which might generate a great deal of information useful to others involved in drug-abuse prevention or treatment, but will undoubtedly come at a cost of slower roll-out and restricted flexibility.



- **Cost-benefit analysis.** The heart of the I-502’s focus on empirical assessment is its mandate of a comprehensive cost-benefit analysis to be conducted by WSIPP. The institute will receive an up-front set-aside of \$50,000 of I-502 tax revenue each quarter and is charged with an extremely ambitious project: it must conduct a comprehensive cost-benefit analysis of I-502 which incorporates a huge variety of factors.<sup>13</sup> WSIPP must produce a “preliminary” report by September 1, 2015, and subsequent “final” reports in 2017, 2022, and 2032. Seldom has a state-sanctioned body been charged with conducting such a wide-ranging and long-term assessment of a momentous policy change, and the opportunity that this responsibility creates for WSIPP is, at least for social scientists, rather awe-inspiring.

We should also take note of some less formally structured efforts to tune the measurement equipment being used in Washington’s policy experiment. Most important are the wide-ranging efforts made by the Liquor Control Board to get itself up to speed on an issue on which it had no expertise before passage of I-502. Since it alone is given the power to promulgate regulations prescribing the shape and size of the legal marijuana market, as well as the responsibility to produce a system that achieves a “Goldilocks” price (neither so high as to lose out to the black market nor so low as to make marijuana ubiquitous), it must understand a great deal about cultivation, marketing, and consumption. It has taken that requirement seriously, making a strong initial push to educate its leaders and staff in 2013 through a proliferation of reading groups and official presentations by marijuana experts, even offering a “Marijuana 101” class for staffers that featured a history of the drug’s place in American culture. It also put out requests for proposals for a wide range of research topics meant to give regulators a sense of the previously existing medical and black markets, eventually hiring BOTEK Analysis Corp., an outside consulting company led by UCLA Professor Mark Kleiman, to take on the whole slate of projects. LCB officials also sought advice from their counterparts in Colorado, Uruguay, and Canada (which has recently developed regulations for medical marijuana).

By now, this initial push to become educated has subsided: the agency has taken its first shot at prescribing rules and has transitioned to what it sees as the perpetual process of incrementally adjusting its positions as new information becomes available. One of the main sources of such information is the intensive licensing process, which puts the LCB in close contact with thousands of individuals seeking to play a role in the legal marijuana market—and

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<sup>13</sup> Such factors include: public health, including health costs of changed usage *and* health costs associated with prohibition (i.e., from lack of regulation and from black market risks); public safety, including marijuana-related crime from changed usage and reduction in black market violence; youth and adult usage rates, and changes in patterns of “maladaptive use” rates; economic impact, including on jobs, workplace safety, and state and local revenues; state administrative costs; criminal justice impact, including changes in uses of law enforcement and court resources, as well as the benefits of not processing those involved in marketing marijuana through the criminal justice system.

which will, after sales begin, require it to closely monitor how businesses are being run and any complaints about how they negatively affect their communities. With that experience, the regulators will incrementally adjust the supply of licenses at each stage of the process, attempting to fine-tune until a stable equilibrium supply is achieved.

Some observers are inclined to dismiss this learning process as basically hopeless for Hayekian reasons: attempting to centralize a huge volume of diffuse information in a state bureaucracy seems bound to go awry and can be easily caricatured as a “Soviet style” organization of a market.<sup>14</sup> And it is true that government officials often find themselves without the incentives to invest energy in learning about the effects of their decisions in the world, so that bureaucratic inertia and attention to routine tasks make nimble adaptation impossible.

But this complaint is misapplied to the case of marijuana regulation in Washington for two reasons. The first is that the state’s officials feel that there is no real alternative to tight control given the looming threat of federal action. The Justice Department has made it clear that if the legalization experiments

become too laissez-faire, they will quickly come to an end, and there is little reason to doubt the credibility of this threat (which is, of course, legally unassailable). Under the circumstances, a preference for free markets is of limited applicability. Second, and more important, a sense that all bureaucracies must be hidebound, inflexible, and incapable of thriving in dynamic environments is an overbroad generalization which dismisses far too casually the possibility of genuine government learning. Especially in a brand new area of regulation where there is no default pattern of conduct, bureaucratic personnel can be rallied around a common sense of mission and be motivated to operate at a high level.<sup>15</sup> In the dynamic context of a new legal market, that means getting bureaucrats to learn, and while their efforts will surely be very far from perfect, there are reasons for real optimism.

The sense of being trailblazers matters greatly here: government officials know they have the eyes of the world upon them and understandably think they are involved in exciting and meaningful work, which energizes them to go beyond what the minimum discharge of their duties requires. There is a palpable sense of cooperative endeavor among government

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<sup>14</sup> See Sullum, cited above.

<sup>15</sup> See the discussion of organizational culture and mission in James Q. Wilson, *Bureaucracy* (New York: Basic Books, 1989), 109-110.

officials, who coordinate task forces and forge ties with academic experts with unusual frequency.<sup>16</sup> Washington's bureaucrats tasked with regulating the newly legal marijuana market have access to remarkable amounts of outside expertise; because they are making conscious investments in innovative public-health research and conducting an unprecedented policy experiment, Washington can be a mecca for all of those people with a serious interest in learning about the effects of drugs—and the drug war—in our society.

Washington is unusually well suited to this role thanks to a number of institutions that long predate I-502. WSIPP itself is an unusual resource with a well established reputation for reliable evaluation.<sup>17</sup> Just as importantly, the state has many academic allies to work with. The University of Washington's Alcohol and Drug Abuse Institute, founded in 1973, has long experience in supporting research and can pivot to serving as a public clearinghouse for good information (which it does in part through the 502-mandated website, [learnaboutmarijuana.wa.org](http://learnaboutmarijuana.wa.gov), now getting some 6,000 hits per day). The researchers there enjoy unusually strong ties to state and local government officials, and coordinate grant applications from many institutions to expand research efforts beyond what 502 itself will fund, pursuing funding from the National Institutes of Health as well as private foundations like the AAA Foundation for Traffic Safety.<sup>18</sup>

## THE IMPLICATIONS OF SUCCESS, AND HOW TO GET THERE

Taken as a whole, Washington's efforts to promote dispassionate understanding of marijuana legalization are impressive, but of course the people of the state are unlikely to appreciate researchers' work for its own sake. This section elaborates on the knowledge experiment's potential benefits and offers suggestions about how best to secure them; the next section considers challenges and how to cope with them.

Washington's various researchers have a chance to structure the contours of the state's legalization debate by forcing both supporters and opponents to base their claims on high quality empirical evidence. Without such evidence, the most likely outcome would be a familiar pattern of polarization along the battle lines of the culture wars, with the two sides expending as much energy trashing each other's motives as actually paying attention to the facts on the ground. The availability of a generally respected body of data about the social effects of the recreational marijuana market ought to help arrest that dynamic somewhat, by making it

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<sup>16</sup> Although Colorado is not showing the same interest in carefully tracking the effects of its legalization, its bureaucratic implementers (who are ahead of Washington's in most ways) seem to enjoy a similar esprit, pushing them to productive collaborations and a high level of performance. See Hudak, cited above.

<sup>17</sup> Confirming WSIPP's status as a leader, the Pew Center on the States is seeking to spread the WSIPP model around the country. See Sara Watson, "Results First: Helping States Apply Objective Data and Independent Analysis to Policy Decisions to Get the Best Return on Investment" (<http://policyintegrity.org/documents/Watson.pdf>).

<sup>18</sup> See, for example, this hotly-pursued grant from the NIH: "Public Health Impact of the Changing Policy/Legal Environment for Marijuana" (<http://grants.nih.gov/grants/guide/pa-files/PAS-14-020.html>), which is likely to go to a group of Washington researchers.

easier to marginalize those who insist on evidence-free (or heavily anecdote-based) rhetoric. In the short run, that should create more space for policymakers to focus on improving the state's marijuana regulations, rather than having to attend constantly to implacable critics (on both sides). And over a longer time horizon it creates the possibility that moderates (again, on both sides) can converge on a set of consensus metrics for evaluating success relative to an established pre-legalization baseline.

Put another way, Washington's knowledge experiment creates the conditions to make marijuana regulation wonkish, the province of careful analysts rather than angry firebrands. For a certain segment of the public convinced that "wonks" are generally firmly planted on one side of the political spectrum, this may seem like a bug rather than a feature. And for anyone—whether libertarian or drug warrior—who sees the state's orientation to marijuana as a primarily moral issue, transforming the policy area into a playground for data-parsing social scientists can only be threatening. But for the majority of citizens who have come to see marijuana through less absolutist eyes, the development should be a very welcome one.

Slightly different from the marginalization of demagogues is the discrediting of purveyors of misinformation. Over the years, drug warriors have relied on an exceptionally flawed (and often outright false) canon of claims about the effects of drugs—and so, to a lesser extent, have legalizers, some of whom tout unproven and often dubious benefits of consuming marijuana while poo-hooing all worries about adverse health effects. A fair number of these policy advocates have developed the trappings of methodological sophistication, presenting their arguments in the clothing of responsible social science. Without institutional support for a less biased group of researchers, "facts" injected into the debates by these sources become the standard points of reference for media, politicians, and citizens trying to make sense of these issues.

Washington's knowledge experiment has the potential to decisively rebut and discredit false claims and misleading anecdotes; once there is good information to counter the bad, politicians peddling outlandish claims risk being branded as liars rather than merely purveyors of hyperbole. The latter is a charge that all politicians face as a matter of course; the former a strong enough deterrent to keep them honest (at least most of the time). A good role model is the Congressional Budget Office (CBO): despite the obvious incentives to offer outlandish underestimates of a bill's costs, members of Congress generally refrain from doing so because they know their proposals will be scored by the well-regarded CBO. Disputing the CBO's estimates is common, but ignoring them impossible, making budgetary debates immeasurably more honest than they would otherwise be.

Effects on the political process to one side, it goes without saying—or should—that better information is also likely to improve regulatory decision-making, a very substantial benefit in its own right. Regulators, like the lay public, will think more clearly about an issue when they

are informed by a steady stream of relatively rigorous data and findings. In the absence of such information, it is all too easy for them to be whipsawed by headline-grabbing anecdotes—such as are already appearing in Colorado, for example about a young man who purportedly jumped to his death after eating marijuana-infused cookies. Having a backstop of credible data can help temper and inform policy makers’ judgment, especially under pressure, as well as making it easier for them to publicly justify a deliberate pace of decision-making. At a more quotidian level, an empirical understanding of what is working and what’s not is invaluable to regulators and politicians as they make tradeoffs regarding law enforcement, licensing rules, resource allocation, and more. Other things being equal, the more policymakers can avoid “flying blind,” the better their decisions are likely to be.

So, what steps must the knowledge experiment take to ensure it successfully opens this path to better policymaking?

*As frustrating as it may be, the best way to achieve a reputation for objectivity is to abstain from translating responsibly interpreted data into political recommendations, instead cultivating arm’s-length relationships with others (especially legislators and staffers in the governor’s office) who are in a position to make good use of information.*

Most importantly, the political independence of evaluators must be zealously defended. The fate of two wonky federal offices created in the 1970s illustrates the point. The Office of Technology Assessment was created in 1972 to help Congress better understand complicated technical issues, and it produced a huge variety of detailed reports for two decades. Though most of those who have studied its history have found it to be admirably objective and helpful, congressional Republicans ultimately came to believe that the OTA was systematically biased against them and killed it in 1995. This fate is not inevitable, though. The aforementioned Congressional Budget Office was created in 1974 to help Congress work through the often impenetrable budgetary implications of its decisions. Despite being charged with rendering judgments about one of the most politically sensitive matters in government, it has endured and indeed thrived over four decades. The key to its success and longevity is clear: achieving non-partisanship was a central goal of its leaders from its inception. Maintenance of that reputation remained a top priority, served by an assiduous refusal to make policy recommendations of any kind, even when asked to

do so. CBO's directors insightfully realized that if they were in the business of translating their specialized policy knowledge into political programs, it would be impossible for them to preserve their reputation as impartial policy auxiliaries.<sup>19</sup>

Those charged with studying the contours and effects of marijuana regulation in Washington should heed the CBO's example and think hard about how they can avoid being understood as creatures of either the pro- or con- factions. Such perceptions would almost certainly doom their enterprise's relevance. As frustrating as it may be, the best way to achieve a reputation for objectivity is to abstain from translating responsibly interpreted data into political recommendations, instead cultivating arm's-length relationships with others (especially legislators and staffers in the governor's office) who are in a position to make good use of information.

Remaining reticent about their policy preferences does not mean that researchers should simply produce findings and hope that they make their way in the world, however. Separate from the danger of being dismissed as biased is the danger of not being heard at all; a cacophony of unparsed findings will have little effect on the policy process. Those involved in the knowledge experiment must go beyond data production and attend to the function of digesting research and making its import clear, even if they should stop short of drawing concrete policy implications. Partially this requires a process of translation from the language of academic public health scholarship to the plainer language of policy debates. And partially it requires pulling together the efforts of many participants who are unlikely to act as effective publicists for their own findings (since communicating with the public is a weakness for most academics).

The knowledge workers must walk a fine line: they must not present themselves as solons whose knowledge entitles them to adjudicate the underlying policy questions, but they must cultivate audiences within the ranks of policymakers and media leaders and have the wherewithal to check misuses of their information by the consumers of their knowledge. They must be wise teachers without being supercilious or self-righteous—a discipline professors have occasionally been known to lack.

The potential role that WSIPP can play in this regard deserves special mention. Thanks to its reputation for independence (very much crafted in the CBO's image)—along with its access under I-502 to a reliable stream of funding and the unusual two-decade time horizon for its research—the institute has the opportunity to serve as an honest broker of the developing

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<sup>19</sup> For factors contributing to CBO's success, see Philip G. Joyce, *The Congressional Budget Office: Honest Numbers, Power, and Policymaking* (Georgetown University Press, 2011), especially 24-47, 57, 212-214. For an elaboration of these themes in the context of federal regulatory policymaking more generally, see Philip Wallach, "An Opportune Moment for Regulatory Reform," Brookings Center for Effective Public Management (April 2014) (<http://www.brookings.edu/research/papers/2014/04/11-regulatory-reform-wallach>).



body of knowledge around legal marijuana. It should figure out ways to leverage its position (including by raising outside funding to supplement its state-provided funds) and act as a convener for social scientists of all kinds working on drug policy issues.

## **COPING WITH THE LIMITS OF LEARNING: WHAT WE WON'T KNOW, OR WILL KNOW TOO SLOW**

For all of the energy and talent being devoted to achieving a responsible understanding of I-502's impact on Washingtonians, there are reasons to wonder whether the knowledge experiment will succeed in producing usable conclusions—at least on the time scale that political fights may demand. This section of the paper works through the challenges that incomplete information and slow information will pose for attempts at responsible empiricism about marijuana legalization in Washington, and it offers suggestions for coping with these problems—none of which should be thought of as fatal.

One problem relates to the eternal siren song of social science: the idea that rigorous data collection and a judicious application of methods can provide definitive answers to all social dilemmas. Especially because the state has sanctioned an official cost-benefit analysis and blessed it as a comprehensive assessment of the law, many will be tempted to imagine that good research can fully determine whether marijuana legalization provides a net benefit for Washington. This vision of scientifically-provided certainty is illusory for familiar reasons.

First are *limitations that accompany any cost-benefit analysis*. Cost-benefit analyses can be most definitive when both costs and benefits are purely economic in nature. Including public-health effects requires making a number of painful assumptions (such as about the worth of a human life)—but those are reasonable ways of balancing hard-to-reconcile social goods. By utilizing some well-worn conventions for monetizing health benefits, cost-benefit analysis offers a rigorous way of organizing our thinking about the tradeoffs of regulation.

But cost-benefit analysis finds itself on shaky conceptual ground when it is asked to analyze a policy change with deep and wide effects on society that are hard to predict in advance—as is the case with marijuana legalization. There are no well-established conventions for monetizing the benefit of not having families torn apart by incarceration, or for diminishing the suspicion between otherwise law-abiding marijuana smokers and the police. As a result, these benefits are likely to be left out of WSIPP's cost-benefit analyses entirely. From the researchers' standpoint, the admittedly partial analysis will still be far better than nothing; their philosophy is that *some* rigorous attention to evidence beats *none*. That is absolutely right, as long as policy makers and the media understand and internalize it.

Researchers can help their audiences by realistically positioning their work. For WSIPP, this means making very clear what it is doing and what it is not doing—and emphasizing the latter right up front, in the executive summaries of their reports. At least initially, WSIPP will be

engaging in a worthwhile and important exercise in informed speculation: collecting existing evidence about the effects of marijuana usage, combining it with preliminary estimates of how I-502 will affect usage rates in Washington, and delivering estimates of different kinds of social impacts. The researchers will be making the key—and basically unverifiable—assumption that more *legal* marijuana consumption will have effects similar to more *illegal* marijuana consumption. They will also have to make highly uncertain estimates about how black markets and law-enforcement practices will change in response to the growth of a legal marijuana market.

None of this is meant to disparage the efforts of those who will work to illuminate the effects of I-502 carefully and responsibly—only to warn that an honest assessment of “what we know” will include a great deal of uncertainty. That uncertainty leads to a second kind of challenge for Washington: *getting heard and understood* over the din of those claiming to have clear and instant answers. Opponents of legalization, in particular, are likely to deliver jeremiads about outcomes in Washington, and it will always be tempting for researchers to oversell just how much countervailing certainty their more sober thinking about policy can really offer.

Instead, as they seek to be heard in the information wars, researchers should differentiate themselves from the professional backlash artists by countering overly broad and certain claims with *claims of confident uncertainty*. In the wake of claims that legalization has brought widespread social deterioration, experts should do the work to make the following kind of claim: “We cannot know the full effects of I-502 on Social Indicator X—and, indeed, nobody can. Those who confidently assert otherwise are being misleading. We can be sure that there has not yet been an epidemic of Bad Behavior Y, because we have reliably measured data on that subject showing modest changes. Tragic Incident Z is indeed very sad, but plenty of similar sad things took place under marijuana prohibition, too.”

Such messages should be accompanied by a concerted effort to specify what available metrics *would* define failure of the legalization effort. It is all well and good to insist that certain consequences of legalization are impossible to measure, but there are plenty that are not, and the empirically minded should seek to draw attention to those that are available and reliable. For example: if traffic accidents, high school dropouts, alcohol sales, and alcohol-related violence all rise significantly as legal marijuana sales rise, and if property values in the neighborhoods with marijuana stores fall, that would be strong evidence that the anti-marijuana advocates’ fears were being realized.<sup>20</sup> Researchers should be identifying such

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<sup>20</sup> Or from a different angle: if marijuana were conclusively shown to be a complementary good to alcohol, so that increased marijuana consumption under legalization leads to more alcohol-related social ills, or if marijuana’s own social ills became as pervasive as alcohol’s, that should make legalization advocates seriously concerned.

relatively tamper-proof statistics to guide opinion-formation among those seeking to form objective opinions of the policy experiment.<sup>21</sup>

The problem of incomplete information is one that policymakers in other states considering marijuana reform ought to think about addressing right away. With relatively modest expenditures (perhaps even in the low six figures), states could sponsor studies designed to help establish pre-legalization baselines on important measures, including survey data of attitudes about usage. Although many missing-data problems might be overcome by later decisions to invest in measurement, ignorance about past attitudes is not among them. Washington has a clear advantage over other states here thanks to its long-running youth survey, and other jurisdictions wanting to understand the effects of drug policy reforms would do well to follow its example. A good rule of thumb for Alaska, Oregon, and other states whose voters may soon join those in Washington and Colorado: your efforts to understand your policy experiment should start right away. (Believe it or not, one very cheap thing these potential legalizers should do is take some of their cities' sewer water and stick it in a freezer—which, amazingly, will later allow scientists to learn about aggregate city-wide marijuana consumption through chemical analysis of human waste!<sup>22</sup>)

Unavailable data will hamper some efforts, because of both infeasibility and missed opportunities. But the more pervasive problem will be not having data soon enough to satisfy people's urge to render an immediate judgment. In other words, we will know—eventually—but the knowing will be too slow.

The crux of the problem is a mismatch of time scales. Were scholars to design an ideal social scientific framework to study the effects of legalizing recreational marijuana, they would almost certainly insist on waiting until data were available for years—maybe decades—before rendering any authoritative conclusions. In that sense, asking WSIPP to present a report in 2032 is far less strange than it sounds at first blush, in spite of the retrospective and short-term nature of most of the institute's prior research.

But Washington is not primarily a social scientist: it is a democracy of some seven million people who must necessarily care more about results in the present than about the purity of knowledge produced by their policy experiments. Large portions of Washingtonians are surely

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21 Note that the raw number of marijuana-related DUI arrests before and after I-502 is not such a statistic, because of the very significant shift in the definition of the offense that the initiative enacted. More DUI arrests may be a sign of more thorough enforcement, or they may be a sign of more drivers who are high, and it is difficult to figure out which one accounts for changes in the numbers. This is not the case for overall traffic accidents or fatalities, however.

22 Jeff Burnside, "Sewage Test: Will You Smoke Pot Now That It's Legal?" *KOMO News* (July 24, 2014) (<http://www.komonews.com/news/local/Sewage-test-Will-you-smoke-pot-now-that-its-legal-268153692.html>); and see testimony of Caleb Banta-Green, research scientist at University of Washington, Alcohol and Drug Abuse Institute, for the Washington House Government Accountability and Oversight Committee (July 9, 2014) ([http://tvw.org/index.php?option=com\\_tvoplayer&eventID=2014070032](http://tvw.org/index.php?option=com_tvoplayer&eventID=2014070032)) (beginning around 1:04).

unshakably for or against legalization, no matter what the experience looks like, but the pivotal open-minded middle neither wants to nor should wait ten or fifteen years to render judgment about legal marijuana's effects. This mismatch creates a dilemma for those looking to promote even-handed thinking about legalization: they must say something in the present as the information wars arrive, even if, to act in good scientific conscience, they must wait for the data to come in.

The way that I-502 is being implemented makes this problem especially acute. In an idealized experiment, "treatment" comes all at once, cleanly delineating pre- and post- periods. But I-502 will be phased in gradually; it seems likely that the legal market will not be at full strength until at least a couple of years after the first stores have opened.<sup>23</sup> Given the slow transition, it would be unrealistic to imagine that data available from 2014 (let alone 2013) will adequately represent the effects of the new regime. This point is compounded by the lingering medical marijuana system, which for now hasn't gone anywhere and continues to operate as a significant source of supply for genuine patients and fakers alike. Before we can know what kinds of cultural and economic dynamics will form around a fully legalized and regulated market in marijuana, that market must come into being and displace the messy legal status quo that preceded it.

Supposing that the state legislature reaches some resolution of the medical question in early 2015, the 502 system would have a chance to grow into the medical market over the course of that calendar year. That would mean 2015 should best be regarded as a transitional period. For many facets of the law's effects, not until 2016 results arrive in 2017 will the state have a full year of unproblematic data. (This means that WSIPP's "preliminary" 2015 report is better thought of as "promissory," and its "first final report" in 2017 will still be quite preliminary. The institute's researchers are well aware of these limitations, but they probably can't broadcast them loudly enough in the run-up to the 2015 release.)

Transitional data, of course, are not necessarily worthless, but once again the advice for responsible observers must be to manage public expectations, avoid overselling, and promote confident uncertainty. Their line should be some variant of: "We just can't make responsible inferences about I-502's effects in that category until we have more solid data. Anyone who tells you anything different is trying to sell you something. Don't let them. Let's actually run our experiment through and wait for the results rather than pretending we know more than we really can."

## **TWO EXPERIMENTS—TWO FUTURES**

Drug policy will always give rise to explosive drug politics, and why not? Drugs, including marijuana, do indeed ruin many people's lives, and we cannot expect most citizens to feel

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<sup>23</sup> Moreover, much of the money allocated to data collection and analysis won't begin to flow until tax revenues from legal sales come in, meaning that researchers will have to struggle to catch up with developments.

dispassionate about that fact. But America's drug war, too, has ruined many lives, and an awakening to that reality has led Washington's voters to undertake a bold and important policy experiment. Washingtonians have also committed serious resources to the measurement equipment that will be used in that experiment, creating the potential for high-quality learning about a novel form of market activity.

The politics of the issue may well end up smashing all of that laboratory equipment to pieces before it has a chance to be used properly. The not at all farfetched worst-case scenario for Washington's efforts is that they will turn out to be a waste of time and energy, ignored or marginalized in a highly emotional discourse that decides the fate of legal marijuana based on the flow of news cycles.

The happier scenario is that, by investing in institutional capacity for responsible learning, Washington's style of legalization will give open-minded citizens and politicians alike room to say, "Let's wait and see," even as advocates make wildly divergent claims about success and failure. A healthy majority of citizens passed I-502 and there is no reason to think that political coalitions have shifted on the issue, so those policy and political leaders who would see the experiment through should have a buffer to be confidently uncertain. That is most likely to happen when researchers are clear about how little is likely to be known in the very-short term—thereby providing some ballast against premature alarmism and triumphalism.

There are thus two dimensions of success to consider as Washington takes its turn as America's leading "laboratory of democracy" on marijuana legalization. The first is success in terms of social effects: that is, changing policy in such a way that social benefits exceed costs. But the second is success at *assessing* the social effects: obtaining a reasonably accurate picture of the effects of legalization, and then introducing that knowledge into the political decision-making process. And so Washington also launches its second experiment: to determine whether publicly funded researchers can effectively evaluate an unprecedented reform—and, just as important, whether politicians and the public can be persuaded to await and then fairly digest researchers' findings.

In principle, Washington's marijuana initiative may be deemed a political success even if its public-knowledge initiative fails. The public and the media might simply be unwilling to await or attend to what researchers learn, or researchers may be unable to produce results that are clear enough to be helpful, or social scientists may prove (not for the first time) maladroit at communicating what they learn. But the reverse could also happen. Even if legalization is deemed a social or political failure, Washington's knowledge initiative may develop tools and processes that could help other states to succeed—and not just with drug-policy reform.

If politicians can refrain from plundering the excise tax dollars dedicated to research over the course of years; if the research produced proves capable of dispassionately informing

regulatory decisions and legislative changes; if regulators, politicians, and the media prove capable of listening; and if the first wave of tragic anecdotes can be kept in perspective as the wider costs and benefits of legalization are weighed—then marijuana policy reform in Washington may well show that providing important reforms with their own test equipment makes laboratories of democracy work better.

That is an experiment well worth conducting.



**Governance Studies**

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