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Lily Epstein April 9, 2018

Race, Marijuana, and Legalization: From Historical Legacies to the Contemporary Case of Colorado

by

Lily Epstein

Dr. Peter Wakefield
Adviser

Interdisciplinary Studies in Culture and Society

Dr. Peter Wakefield

Adviser

Dr. Timothy J. Dowd

Committee Member

Dr. Corey L. M. Keyes

Committee Member

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Abstract

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The narrative goes that the reason marijuana is criminalized in a majority of the United States, is because it is a harmful drug and our lawmakers were trying to protect us. While this used to be an accepted fact, as studies come out about the positive and non-harmful effects of marijuana it is important to really look into what led to marijuana criminalization in the 1930s. In this paper I am arguing that marijuana was criminalized through racist and xenophobic rhetoric that swayed the public and lawmakers to support criminalizing marijuana. I am then looking to 2012 to understand how in a time when marijuana is starting to be legalized, the campaigns who work to legalize them include or avoid the narrative frame of the original criminalization of marijuana. After understanding the frame of the pro-legalization campaign of marijuana in Colorado I will look to see if and how this narrative has social justice implications in terms of the criminal justice system and the legal marijuana industry. My findings are that through the whitewashing of the campaign to legalize marijuana, the campaign to legalize marijuana not only left, but created space for certain injustices that arose from criminalization to continue in the sphere of legalization.

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Table of Contents

Author's Note

I would like to begin by acknowledging my privilege. As a white female from an upper-middle class family I have never had to endure the injustices from the War on Drugs that surrounds low-income and people of color. Not only have I never been personally impacted by the War on Drugs, but because of my privilege I have gone a majority of my life without even having to confront the prejudice the War on Drugs creates. With that being said, as I learn more about the systematic racism that is pervasive in the War on Drugs, and our society as a whole, I am attempting to make sense of what I now know from the perspective of someone who has not lived through it.

My interest in the War on Drugs began in the winter of 2016 after watching Ava DuVernay's, *13th.* I was shocked that Richard Nixon and Ronald Reagan were able to create a drug war that so clearly targeted African Americans and get away with it. It was then when I realized I did not understand the War on Drugs at all. I had always taken the argument that drugs are bad and those who use them should be arrested at face value. It was not until this film, and the subsequent classes I took in the spring of my junior year of college, that I began to realize just how systematically racist so many United States' policies involving the criminal justice system are. Through the classes Mental Health & Well-Being, Storytelling, Narrative & Trauma, and Sociology of Law I learned more about the roots of drug criminalization and its social justice impact on society. While deciding where I wanted to turn my attention to for this thesis, I was in the process of reading Johann Hari's *Chasing the Scream: The First and Last Days of the War on Drugs.* His exploration of the history of drug criminalization all the way to the

present-day war on drugs and its effects on marginalized communities inspired me to focus on the social justice impact of the war on drugs.

I then turned my attention to marijuana. While I am not a user of the drug, I know many people who are; most of whom are white college-aged students. They freely smoke marijuana without the fear of going to jail and losing their liberties, while Black and Hispanic/Latinos are targeted for marijuana use and locked away. After reading about the racist roots behind marijuana criminalization, I wanted to understand how this disparity came to be, and if or how it is being remedied. This led me to examine how racism is ingrained in both the original criminalization of and one of the first successful legalization marijuana campaigns.

Introduction

As I sat in my living room watching *13th*, I could not believe the quote by Richard Nixon's aide, John Ehrlichman, that sprawled across my screen:

> The Nixon Campaign in 1968 and The Nixon White House had two enemies: the antiwar left and black people…You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin. And then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.[1]

I could not believe that the federal government created campaigns and initiatives that centered around targeting racially marginalized communities and those they did not agree with under

[1] Ava DuVernay, "13th." *A Netflix Original Documentary. Sherman Oaks, CA: Kandoo Films* (2016).

the pretense that their mission benefited society. It also led me to the question: has this happened before?[2]

While many people believe that the War on Drugs began with President Nixon and was solidified by President Reagan, this is not the case. The original War on Drugs began in the 1930s upon the inception of the Federal Bureau of Narcotics with Harry Anslinger as commissioner. While the creation of these campaigns are decades apart from each other, there is a unifying factor: they all use racism to promote their demonization of drugs. Drug policy expert David F. Musto, explains: "The most passionate support for legal prohibition of narcotics has been associated with a fear of a given drug's effect on a specific minority,"[3] and the main campaigners of the War on Drugs understood this.

In order to understand the racism employed in Nixon's and Reagan's War on Drugs, it is vital to recognize how Anslinger criminalized drugs in the United States in the first place. In this paper I will be exploring Anslinger's campaign to criminalize marijuana, and the racism employed to convince the public and law makers that outlawing marijuana is the right decision. Through this lens, I will then look to 2012 to explore the pro-legalization campaign of Amendment 64, which legalized recreational marijuana in Colorado. I am focusing on Colorado's campaign, because Colorado was one of the first two states to legalize recreational marijuana in 2012, and the first state, and place in the world, to begin regulated retail sales of recreational marijuana in 2014.

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[2] It is important to note that my Interdisciplinary Studies major focuses on Marketing and Communications from a sociological perspective. Understanding how campaigns use societal beliefs to overtly and subliminally influence public opinion is critical in my research.

[3] David F. Musto, *The American Disease: Origins of Narcotic Control*. (Oxford University Press, 1999), 224.

The purpose of exploring these two different campaigns is to understand to what extent the racism ingrained in Anslinger's campaign to criminalize marijuana has been employed in Colorado's pro-legalization campaign. Since the narrative used in the criminalization of marijuana began a War on Drugs that is, at least in part, as Ehrlichman suggests, racist in nature, I will be exploring whether or not Colorado's legalization campaign has the power to change the racism of marijuana policy. To explore this, I will be looking at how marijuana arrest rates did or did not change following the passage of Amendment 64 and who is involved in the legal marijuana industry in Colorado. The reason why I am specifically looking at arrest rates, is because of the racial disparities prevalent in the history of marijuana arrests.

The importance of understanding these campaigns is to see how unconscious bias can be influenced by the campaigns that are disseminated, and whether or not these campaigns have the potential to influence policy's implementation. Even though the campaigns and their subsequent advertisements are not the only factors affecting how marijuana policy is enacted, as you are about to see, they do have the potential to influence both the policy and business components of marijuana legalization.

CHAPTER 1: Social Movement Framing

Before examining the two campaigns that led to both the federal criminalization and state-sponsored legalization of marijuana, it is necessary to explore the literature on social movement framing. This will help in understanding how these two campaigns chose their narratives. Specifically, how Anslinger decided on his arguments that swayed the public and lawmakers to criminalize marijuana, and how in 2012, the Colorado pro-legalization campaigners chose and relayed their arguments.

Sociologist David Snow explains that framing, which is derived from Erving Goffman's *Frame Analysis*, "is rooted in the symbolic interactionist and constructionist principle that meanings do not naturally or automatically attach themselves to the objects, events, or experiences we encounter, but arise, instead, through interpretive processes mediated by various contextual factors."[4] The primary use of social movement framing is to help interpret the social world. "Frames help internalize past experience and guide future action/reaction to upcoming events," and social movement organizations provide frameworks to interpret the world.[5] Whether their cause is actually beneficial or harmful to society, these social movements have the ability to frame their issue in a light that bolsters their argument by providing a "call to arms" that resonates.[6] In doing so, their agenda is furthered by convincing social actors that their beliefs are rooted in the reality these organizations create. These social actors can then rally around this fabricated "call to arms."

The reality that these organizations create must be embedded in the beliefs of the time period in order to garner support. As sociologists Robert Benford & David Snow explain: "The more culturally believable the claimed evidence, and the greater the number of slices of such evidence, the more credible the framing and the broader its appeal."[7] The time period of social movements, therefore, makes a difference. Cultural and political events shape the attitude of

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[4] David Snow, "Framing and Framing Processes," in Protest Culture: A Companion, vol. 17 (New York, NY: Bergahn Books, 2016), 125.
[5] Stefania Vicari, " Measuring collective action frames: A linguistic approach to frame analysis." *Poetics* 38, no. 5 (2010), 506.
[6] Robert D. Benford and David A. Snow, "Framing Processes and Social Movements: An Overview and Assessment," *Annual Review of Sociology* 26 (2000), 617.
[7] Benford and Snow, "Framing Processes and Social Movements," 620.

people, and therefore, can act as the primary driver of change. The social movement framers can use time period-specific beliefs to produce an outcome that promotes their agenda.

In order for social movement organizations to properly frame their arguments in ways that garner support for their stances, they need to understand the "salience of the specific issues to the individual," and then what can ultimately influence people to believe in their cause.[8] As the "framing process typically reflects wider cultural continuities and changes," the decisions of what to argue comes from understanding what is important to the public. [9] By understanding the importance of the issue and how positively the issue is viewed, the social movement organization can then properly translate their arguments into their advertisements to garner the most support.

In addition to understanding the fundamental beliefs people hold based off of the way society is structured, for social movements to succeed, they need to find ways that bring people of different backgrounds together. It is necessary in "social movements frame discourse to provide movement members with a 'collective us.'"[10] In order to bring people to their side, they can create a collective us that has a common goal. Even if the reasoning for supporting the common goal differs between those involved in the movement, creating the collective us behind common ground creates a stronger movement. As long as those supporting the movement want the same overarching outcome, the social movement organizations can frame the principle goal in a way that ignores the nuances of the different groups. Doing this,

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[8] Gamson, William A., David Croteau, William Hoynes, and Theodore Sasson. "Media images and the social construction of reality." *Annual Review of Sociology* 18, no. 1 (1992), 390.
[9] Benford and Snow, "Framing Processes and Social Movements," 629.
[10] Vicari, "Measuring collective action frames," 510.

however, does not always work in organizations who have multi-faceted goals. Creating a campaign that works for everyone to accomplish an immediate objective can prove troublesome in the long-run by slowing down the progress of the ultimate purpose of the social movement.

This is the case in the criminalization and legalization campaigns of marijuana. Both the criminalization and legalization campaign of marijuana framed their movements by playing on public sentiment of their time period. In doing so, they successfully accomplished their primary goal, either to criminalize or legalize marijuana. Both campaigns have far reaching consequences beyond just criminalizing or legalizing marijuana that have resulted in enduring, systematically racist policies.

CHAPTER 2: Harry Anslinger's Campaign to Criminalize Marijuana

The nation's experience with Prohibition suggests that drugs are criminalized in two steps. First, the substance must be reconceptualized as dangerous, debilitating, and of no legitimate value. Second, the user must be reconfigured as socially marginal and ignorant, or contemptuous of community standards and moral decency – the kind who responds only to the stern intervention of the criminal law.

- Doris Marie Provine, *Unequal Under Law*

In this section I will be exploring the roots of the criminalization of marijuana and the man behind it. In order to examine how marijuana criminalization came to be, it is important to understand the political climate of the country at the time, and the alcohol Prohibition campaign that came before it. While not immediately relevant, understanding the way Prohibition was framed is key to comprehending how marijuana was criminalized and how this kind of framing affects present-day marijuana laws. The primary focus will be in exploring the racist rhetoric used to garner support that led to the ratification of the 18th Amendment, which

prohibited, "the manufacture, sale, or transportation of intoxicating liquors."[11] I will be consulting the first chapter of Doris Marie Provine's, *Unequal under Law: Race in the War on Drugs,* "Race in America's First War on Drugs," to give a brief overview of the role race played in Prohibition.

Alcohol Prohibition and Race in the United States

As Provine explains in *Unequal under Law,* "the nationwide Prohibition campaign and the contemporary war on drugs offer further evidence that anxieties about race and class hierarchies underlie the criminalization of drug use."[12] Drug criminalization is a covert way in which American elites carry out racial oppression. This political manipulation of criminalization traces its origins back to Prohibition

Provine begins her examination of Prohibition's link to racism and oppression, by explaining that in colonial America, "what the colonials feared was the inebriation of their social inferiors, who might become dangerously out of control."[13] From this anxiety, the temperance movement emerged. The racial and ethnic prejudices prominent in America at the time due to immigrants in the North, Black males in the South, and Indians in the West laid the groundwork that made alcohol Prohibition possible. Prohibitionists played on the fear of white middle-class American's that if their social inferiors, who were those of different races and ethnicities, had access to alcohol then these marginalized communities would rise up against them.

[11] Robert P. George and David A.J. Richards, "The 18th Amendment of the U.S. Constitution," National Constitution Center, https://constitutioncenter.org/interactive-constitution/amendments/amendment-xviii.
[12] Doris Marie Provine, *Unequal under Law: Race in the War on Drugs* (Chicago: University of Chicago, 2007), 37.
[13] Ibid.

In order to gain public support, Prohibitionists used scientific facts to prove alcohol is toxic to one's body and portrayed alcohol as the cause of poverty, crime, prostitution, and harmful to one's health via scientific facts. They also portrayed alcohol as un-American to play on anti-immigration fear. They fostered their anti-immigration argument by using the fear of immigrants crowding Northern cities.[14] Although, during this time period, Northerners were stereotyped as being less racist than Southerners in terms of their views on African Americans, unfortunately, their bigotry actually just fell on a different group. Their xenophobic views led them to continue the crusade against alcohol even though it could lead to the disenfranchisement of Black Americans in the South.

In the South, the temperance movement was structured in a similar way to the North's, but their crusade was against Black Americans instead of immigrants. They portrayed the "indigenous poor, especially Blacks" as a menace to society due to their alcohol consumption.[15] Southern Prohibitions began pushing their agenda at a local level, but moved into promoting their temperance movement to a national level.

The actual legislation of Prohibition promoted the disenfranchisement of marginalized people in hidden and conspicuous terms. Unfortunately, due to their status, marginalized people were unable to speak out for their rights. While Prohibition penalized and alienated people of color, middle-class whites were drinking freely in speakeasies without consequence and actually profiting off of Prohibition. Provine explains, "prohibition had spawned an ethnic vice industry," due to "young, white, ethnic entrepreneurs willing to run and sell liquor with the

[14] Ibid., 40.
[15] Ibid., 41.

support of criminal gangs."[16]

All of the legislation created a clear portrait of the covert goal of the temperance movement to control marginalized communities. The primarily goal of Prohibition was not to rid society of alcohol, but rather to "differentiate groups and assign status," as to remove the threat to the power structure that benefited, and still benefits, white middle/upper-class males.[17]

Overall, Provine argues that in order to understand the racism of the modern-day War on Drugs, one should look at Prohibition for an explanation as to how and why this veiled racialized control is possible. Even though Prohibition ended, and the anti-alcohol sentiments dissipated, the negative stereotypes of people of color, specifically African Americans, that allowed their society to continue to alienate them, stayed. Prohibition and the representation of marginalized people that it created, paved the path for anti-drug crusaders to continually associate minority groups with drugs. Through these racial prejudices and fears, those with an agenda to continue the War on Drugs, such as the man behind marijuana criminalization, Harry Anslinger, have used these fears to not only "harvest" but actually "manufacture" the public's anxieties on drugs, and turn drug criminalization into a widely accepted war.[18]

Harry Anslinger's Marijuana Criminalization Campaign

The leading force in the campaign to criminalize marijuana in the 1930s was Harry J. Anslinger. Anslinger was the original czar of the War on Drugs. His commitment to criminalizing

[16] Ibid., 45.
[17] Ibid.
[18] Ibid., 62.

drugs, specifically marijuana, started the War on Drugs that the world now knows. Due to the Great Depression, and its subsequent economic downfall, along with the failure of Prohibition, the Federal Bureau of Narcotics was nearly bankrupt a few years after its inception and its appointment of Harry Anslinger as commissioner in 1930. In order to get his department back on track, Anslinger set his sights on criminalizing drugs that he believed were both a danger to public safety and would be profitable for his department. The types of drugs he initially focused on ridding the country of were hard drugs, such as cocaine and heroin, that he believed are destructive to its users. He quickly realized that only focusing on drugs that are actually harmful to its users would not be enough to keep his department afloat, though.

Eventually, he set his sights on criminalizing marijuana, a drug that he did not view as debilitating to its user, to further his department's agenda.[19] Anslinger swayed public opinion to get the public to view marijuana as a menace in two parts. After realizing that in order to secure a larger budget for his department he needed to change his position on the dangers of marijuana, he began instilling fear about the dangers of the drug itself, and how its effects were destructive to its user.[20] He even denounced doctors who attempted to explain to him that marijuana is just a healing substance and refused to fund any independent research that could discredit his claims on the hazards of using marijuana. A former Federal Bureau of Narcotics' agent under Anslinger's tenure explains that there was a sophisticated report presented by the American Medical Association and American Bar Association regarding laws concerning

[19] Johann Hari, *Chasing the Scream: The First and Last Days of the War on Drugs* (London: Bloomsbury Publishing, 2016), 15.
[20] Steven B. Duke and Albert C. Gross, *America's Longest War: Rethinking Our Tragic Crusade Against Drugs* (New York, NY: G.P. Putnam's Sons, 1993), 91.

marijuana, which Anslinger, "considered that report as contraband. Not only was it contraband to be disseminated among professional people, political people, and lay people across the country, but it was contraband in the office too."[21] His next step was then associating racial fears with marijuana; a tactic that has transcended into our present day. While his focus on criminalizing marijuana initially focused on the "destructive nature" of marijuana, over time his messaging became overtly racist.

In order to garner public support in criminalizing marijuana he needed to ensure they viewed marijuana as a harmful drug. In his book *The Traffic In Narcotics,* Anslinger relays to the public the dangers of marijuana, which he refers to by the Mexican-derived named, "marihuana," by explaining, "marihuana is only and always a scourge which undermines its victims and degrades them mentally, morally and physically."[22] He pushed this idea onto the public through official Federal Bureau of Narcotics' bulletins that told stories of Black and Hispanic men's, "sex desires are aroused and some of the most horrible crimes result. He hears light and sees sound. To get away from it, he suddenly becomes violent and may kill," after using marijuana.[23] Through his discussion of the dangers of marijuana, at first look it seems as though he was motivated to eliminate a drug he believed was harmful to society, but this is not really the case. Instead, all of the ways in which he portrayed marijuana as dangerous were really just thinly veiled racist claims used to gain funding for the Federal Bureau of Narcotics. As Johann Hari explains in *Chasing the Scream,*

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[21] Larry Sloman, Reefer Madness: A History of Marijuana in America (New York: St. Martins Griffin, 1979), 200-201.
[22] Harry J. Anslinger and William F. Tompkins, *The Traffic in Narcotics* (New York: Funk & Wagnalls Company, 1953), 20-21.
[23] Steve Fox, Paul Armentano, and Mason Tvert, *Marijuana Is Safer: So Why Are We Driving People to Drink?* (White River Junction, VT: Chelsea Green Publishing, 2013), 49.

> Harry had long dismissed cannabis as a nuisance that would only distract him from the drugs he really wanted to fight. He insisted it was not addictive, and stated "there is probably no more absurd fallacy" than the claim that it caused violent crime. But almost overnight, he began to argue the opposite position. Why? He believed the two most-feared groups in the United States – Mexican immigrants and African Americans—were taking the drug much more than the white people.[24]

He knew putting marijuana in a dangerous light would likely make the public agree with his decision to criminalize, but as a racist himself, he understood that associating the drugs with minorities white people were scared of would really solidify people to believe in his position, and in turn secure the funding for his department. Using social movement framing to create a narrative that fit with the racist and xenophobic time period, he explained the dangers of minorities using marijuana, such as races mixing, by giving damning statements like: "There are 100,000 total marijuana smokers in the U.S., and most are Negroes, Hispanics, Filipinos and entertainers. Their Satanic music, jazz and swing result from marijuana use. This marijuana causes white women to seek sexual relations with Negroes, entertainers and any others."[25] These absurd claims allowed him to play on racist fears that made the public and legislatures agree with and accept marijuana criminalization. He specifically propagated the idea that marijuana made Black Americans lose control and "forget the appropriate racial barriers—and unleashed their lust for white women." [26]

Former Associate Professor of History and Director of the Africana Studies Institute at the University of Connecticut**,** Jelani Cobb, furthers this point by exploring the rhetoric people

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[24] Hari, *Chasing the Scream,* 15.
[25] Ibid.,, 17
[26] Ibid.

used at the time to create a "rapid transition to a kind of mythology of black criminality."[27] Cobb explains in the documentary *13th,* a film focusing on racial inequality and mass incarceration of African Americans in America, that: "they would say that the Negro was out of control, that there's a threat of violence to white women."[28] This argument, an argument also used to garner public support of Prohibition, played on the fear of white Americans losing control of their Black subordinates if they were under the influence of marijuana. Even though scientific evidence contradicts Anslinger's claims that marijuana turns users violent and uncontrollable, the thought that Black Americans could be on the same social level as white Americans was unfathomable for the white Americans in power. Sensationalizing the Black American uprising that would surely be intertwined with keeping marijuana legal helped Anslinger in his quest to criminalize marijuana. As Black Americans gained more rights, and this fear continued to grow, white Americans were willing to grasp onto whatever Anslinger said to ensure their status, and in turn agreed with criminalizing marijuana.

Anslinger also exploited xenophobic and racial fear of Mexican immigrants, and subsequently the Hispanic American community. Expert on American Drug policy David Musto explains: "When the Great Depression settled over America, the Mexicans […] became an unwelcome surplus in regions devastated by unemployment." [29] As the Great Depression continued, and white Americans lost their jobs, they placed the blame on Mexican immigrants for the lack of work. Due to this, there was growing anti-Mexican immigrant sentiment that coincided with Anslinger's campaign to criminalize marijuana that he capitalized on. There were

[27] DuVernay, "13th."
[28] Ibid.
[29] Musto, *The American Disease,* 219-220.

even groups whose goal was to "keep America American," for fear of "mixture with an inferior race was causing race suicide." One example is the American Coalition. As a prominent member of the group wrote in the *N.Y. Times* in September of 1935: "Marijuana, perhaps now the most insidious of our narcotics is a direct by-product of unrestricted Mexican immigration."[30]

Anslinger used this revulsion towards Mexican immigrants to garner support for marijuana criminalization. Before the campaign to criminalize marijuana began, most Americans knew marijuana by its scientific classification: "Popularized during the Depression, the new name *marijuana* was, in effect, the evil twin of *cannabis,* a word familiar to Americans as a medicinal ingredient."[31] When Anslinger began his campaign, however, he "brandished the non-English term [marihuana] like a truncheon to emphasize the weed's connection to alien elements that crept over the Mexican border into the United States," and made it that "very few Americans knew that marijuana, the weed that some blacks and Chicanos were smoking, was merely a weaker version of the concentrated cannabis medicines that everyone had been smoking since childhood."[32] The term "marihuana" itself is the Mexican-derived name for the drug cannabis. In effect, cannabis became considered a white person's drug, while marijuana was associated with "criminal" Mexicans and other minorities.

By changing the name, and subsequently, the connotation of marijuana, Anslinger acquired the support of the public. He reframed the drug in order to persuade those who feared Mexican-immigrants that criminalizing the drug implicitly equated with criminalizing

[30] Ibid.
[31] Martin A. Lee, *Smoke Signals: A Social History of Marijuana-Medical, Recreational and Scientific* (New York: Scribner, 2012), 51.
[32] Ibid.

these racial minorities. Through the rhetoric Anslinger employed in his campaign, coupled with the racist and xenophobic sentiments toward Black Americans and Mexican immigrants of the time period, marijuana criminalization led to the regulation of people of color who were seemingly slipping out of the dominant social class' control. All of this culminated in the fact that Anslinger "was ready and willing to exploit racial bigotry when it became clear that the regulation-through-taxation method was a feasible option for outlawing *Cannabis,"* which he did through the Marihuana Tax Act of 1937.[33]

Marihuana Tax Act of 1937

The Marihuana Tax Act of 1937 was the first time marijuana was put under regulation by United States' federal government. While marijuana had been a part of both The Pure Food and Drug Act of 1906 and the Harrison Act in 1914 in both act's early stages, the drug was excluded from the final provision. It was not until after Harry Anslinger crusaded against and created legislation demonizing marijuana in the early to mid-1930s that the first law against marijuana in The United States was created: The Marihuana Tax Act of 1937.

The Marihuana Tax Act of 1937 placed a small tax on "all buyers, sellers, importers, growers, physicians, veterinarians, and any other persons who deal in marijuana commercially, prescribe it professionally, or possess it" and states "any person who is convicted of a violation of any provision of this Act shall be fined not more than $2,000 or imprisoned five years, or both, in the discretion of the court."[34] While this tax did not directly outlaw the possession and

[33] Carolyn Gallaher, *On the Fault Line: Race, Class, and the American Patriot Movement*. (Rowman & Littlefield, 2003), 140.
[34] "THE MARIHUANA TAX ACT OF 1937," DrugLibrary.org, http://www.druglibrary.org/schaffer/hemp/taxact/mjtaxact.htm.

use of marijuana, it created a law to control marijuana users, who were associated with being minorities, and paved the path for harsher criminalization laws in the future.

This act targeted minorities in two ways. The first indirect way is through the punishment of violating the act itself. Since people of color were already disenfranchised through other facets of society, they likely did not have the finances to pay the fine if this was their punishment. This then created a system where it became easy to rationalize, since they could not pay, incarcerating people of color and ridding them from a society where they were considered a menace.

The second way communities of color were targeted was through Harry Anslinger's testimony during the hearing of The Marihuana Tax Act. In the senate hearing on marijuana regarding the Marihuana Tax Act of 1937, Anslinger specifically said, "the primary reason to outlaw marijuana is its effect on the degenerate races."[35] As political geographer, Carolyn Gallaher explains, "Anslinger's testimony before the committee relied heavily on a personal 'gore file' containing tabloid clippings sensationalizing marijuana use among minority communities," which included the inaccurate assertion that "one-half of violent crimes in the United States were committed by minorities using marijuana."[36] Anslinger did not use scientific arguments, but rather played off of the fear that when Black Americans and Mexican immigrants use marijuana, there is an elevated potential they will harm white citizens. He made this especially apparent in a story about, "colored students at the University of Minn[esota] partying with female students (white) and getting their sympathy with stories of racial

[35] David McDonald, "The Racist Roots of Marijuana Prohibition," FEE.org, April 11, 2017, https://fee.org/articles/the-racist-roots-of-marijuana-prohibition/.
[36] Gallaher, *On the Fault Line,* 140.

persecution. Result? Pregnancy."[37] He furthered the rhetoric of white women being at the mercy of Black marijuana users that he used to gain the public's support to ensure this fear was solidified in the penal system. It is especially palpable that he overtly played on the racism in America based on the composition of the senate committee. These were men who were "Jim Crow legislators from the Deep South and congressmen from Southwestern states who hoped to cash in on a Depression-era backlash against Mexican immigrants."[38] He used racist rhetoric in the hearings to ensure the passage of the Marihuana Tax Act. By turning the Marihuana Tax Act of 1937 into a racist witch hunt, Anslinger not only secured the success of the Federal Bureau of Narcotics, but also the systematic injustice of racial minorities carried out through marijuana criminalization for years to come.

CHAPTER 3: Amendment 64 and the Campaign to Regulate Marijuana Like Alcohol

Noticeably absent in most political campaigns to legalize marijuana at the state level — whether for medical or recreational use — is the racialized inception and enforcement of marijuana laws.
– Steven W. Bender, *The Colors of Cannabis*

Understanding the racist roots of Anslinger's marijuana criminalization is critical when exploring the movements that led to current day legalization. As campaigns to legalize marijuana grow all over the country, undoing the racist roots of criminalization are not usually part of the primary arguments discussed in the campaigns. Instead, marijuana legalization is typically described in terms of how legalization would provide a boost for the economy and how it is not as dangerous as people have come to believe due to its medicinal properties.

[37] Bruce Barcott, *Weed the People: The Future of Legal Marijuana in America*, (Time Home Entertainment: 2015), 22.
[38] Gallaher, *On the Fault Line,* 140.

Undoing the racist rhetoric of marijuana criminalization in the 1930s is not what is likely swaying voters to legalize it, since pro-legalization campaigners seem to avoid putting this argument at the forefront of their messaging. This is clear in the manner Colorado campaigned for the legalization of marijuana in 2012.

In this section I will be critically analyzing the pro-legalization Amendment 64 campaign in Colorado, with a specific focus on the Campaign to Regulate Marijuana like Alcohol. I have chosen the Campaign to Regulate Marijuana like Alcohol, because the co-director of Amendment 64 and others who originated Amendment 64 led this campaign. The campaign advertisements range from early April 2012 to the end of October 2012, right before the Amendment was voted on November 6, 2012. In this analysis, I will be focusing on the racism that is omnipresent in the first marijuana prohibition's campaign, and if or how the pro-legalization campaigners attempt to tackle this or perpetuate it. Before exploring how the pro-Colorado Amendment 64 movement is framed, it is important to understand what Amendment 64 consists of and the key arguments from the pro-legalization campaign.

What is Amendment 64?

More than 70 years after the Marihuana Tax Act of 1937 was created, Colorado's Amendment 64 was enacted into law early December of 2012 in a reversal of what Anslinger had worked for. It was introduced by Mason Tvert and Brian Vicente who ran the Campaign to Regulate Marijuana Like Alcohol. Article XVIII of the constitution of the state of Colorado was approved on November 6, 2012 to include Amendment 64 after 55 percent of voters voted for it. Amendment 64 states: "The people of the state of Colorado find and declare that the use of marijuana should be legal for persons twenty-one years of age or older and taxed in a manner

similar to alcohol," and "individuals will have to show proof of age before purchasing marijuana." At the basic level, this is what Amendment 64 legalized. As Amendment 64 continues, though, it delves deeper into the specifics of what is now legal, and still illegal, under this addition to the Colorado constitution. The key legal uses of marijuana are listed here:

> (a) Possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less of marijuana.
> (b) Possessing, growing, processing, or transporting no more than six marijuana plants, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown, provided that the growing takes place in an enclosed, locked space, is not conducted openly or publicly, and is not made available for sale.
> (c) Transfer of one ounce or less of marijuana without remuneration to a person who is twenty-one years of age or older.
> (d) Consumption of marijuana, provided that nothing in this section shall permit consumption that is conducted openly and publicly or in a manner that endangers others.[39]

It is important to understand that in these now legal acts the illegalities of marijuana are written into it, such as personal use of more than one ounce, use of marijuana by someone younger than 21 years old, and public consumption. Amendment 64 also explains how marijuana-related facilities will operate in terms of "cultivating, harvesting, processing, packaging, transporting, displaying, or possessing marijuana or marijuana products."[40] I will come back to this in a later chapter when exploring the businesses who now legally sell marijuana after the passage of Amendment 64.

Amendment 64 is also explicit in what type of marijuana possession/usage still remains illegal under the law: "Selling, distributing, or transferring marijuana to minors and other individuals under the age of twenty-one shall remain illegal," and "driving under the influence of marijuana shall remain illegal."[41]

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[39] Colo. Const. art XVIII, § 16 (3).
[40] Ibid.
[41] Ibid.

Key People and Arguments

Two of the main campaign leaders and directors of Amendment 64 were Mason Tvert and Brian Vicente. Tvert is a white Jewish male who grew up in a middle/upper-class family in Phoenix, AZ. His interest in changing marijuana laws began when he was taken to the police station in college after smoking marijuana. After being "interrogated like a suspect in a terror plot," Tvert reflected on this perceived injustice by reflecting on college-sanctioned parties filled with alcohol, a substance he believes is more dangerous than marijuana.[42] He continued thinking about this, and even moved to Colorado where he then created Safer Alternative for Enjoyable Recreation (SAFER) and co-authored a book titled *Marijuana is Safer: So Why Are We Driving People to Drink?.* [43] All of this furthered his desire to legalize marijuana in Colorado, and eventually led him to work with Vicente on Amendment 64. Vicente is a male with Latino-roots who grew up in an upper/middle-class family in Columbus and Cincinnati, Ohio.[44] He is a lawyer who co-authored Amendment 64 and worked with Tvert in creating the pro-legalization campaigns that the Campaign to Regulate Marijuana Like Alcohol worked on.

The main position of Vicente and Tvert was that marijuana is a safer alternative to alcohol, so it should be regulated in this manner. The name of the Campaign to Regulate Marijuana Like Alcohol alludes to this argument. In Amendment 64, it specifically states: "In the interest of the health and public safety of our citizenry, the people of the state of Colorado further find and declare that marijuana should be regulated in a manner similar to alcohol."[45]

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[42] Hari, *Chasing the Scream,* 276.
[43] Mason Tvert, "Mason Tvert – Part 1 of 4," interview by Janet Bishop, Colorado Cannabis Collecting Initiative, September 16, 2015, 1.
[44] Brian Vicente, "Brian Vicente – Part 1 of 2," interview by Janet Bishop, Colorado Cannabis Collecting Initiative, March 17, 2016, 2.
[45] Colo. Const. art XVIII, § 16 (1).

This argument is consistently used in the advertisements the Campaign to Regulate Marijuana like Alcohol disseminated to the general public. They also had three other key arguments: One, helping the economy, which meant more money for government programs like schools. Two, allocating police resources to more pressing criminal issues and by legalizing marijuana to decrease violent drug crimes. Three, saying that the government should not rely on the paternalistic principle, e.g., interfering with a person's autonomy, to regulate their marijuana use. Along with Amendment 64 that states: "In the interest of the efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom," marijuana should be legal, these arguments are furthered in the campaigns produced by the leaders of Amendment 64.[46]

Before delving into the campaigns, I would be remiss not to mention that the Campaign to Regulate Marijuana Like Alcohol's primary position does not overtly address the racial history ingrained in the origins of marijuana criminalization. This proves worrisome in relation to what the outcome of legalization may entail. Since Anslinger framed criminalization of marijuana through a racist lens, it seems that the only way to revert this way of thinking and remedy the wrongs is to directly address the racism of marijuana criminalization in the pro-legalization of marijuana campaigns.

Analysis of the Advertisements

In this section I have selected some of the most-watched campaign videos and a billboard from the Campaign to Regulate Marijuana Like Alcohol to analyze. My analysis of this campaign is bolstered by the social movement framing discourse explored in Chapter 1, and an

[46] Ibid.

understanding of the racism used in Harry Anslinger's campaign to criminalize marijuana. These advertisements are used to explore how the pro-legalization campaign's arguments incorporated the ideas of injustice that are ingrained in both the original laws and campaign of marijuana criminalization. It is critical to note that I acquired all of the videos I am assessing from the Colorado Marijuana Initiative 2012's YouTube channel.

"Marijuana over Alcohol" Billboard – April 5, 2012

The Campaign to Regulate Marijuana Like Alcohol unveiled a billboard next to a liquor shop in mid-2012. The billboard reads: "For many reasons, I prefer… marijuana over alcohol. Does that make me a bad person?" with the URL RegulateMarijuana.org at the bottom of the billboard. The text is accompanied by a photo of a white woman who looks to be in her late 40s/early 50s with a blonde, bobbed haircut. The sign was located above Mile High Liquors, and a smaller Bud Light billboard could be seen underneath it. Both the location and the text are important because it alludes to the campaign's key position that marijuana is safer than alcohol. While placing the billboard behind a liquor store is clearly making a statement, the more impactful statement is made in the subtleties of the text and the white model chosen for the billboard.

It is important to understand the racial bias involved in who people believe are the biggest users of drugs in order to understand the racism of this billboard. There is unconscious bias in who people believe use drugs, and marijuana specifically. In 1995 a survey published in the *Journal of Alcohol and Drug Education* asked: "Would you close your eyes for a second, envision a drug user, and describe that person to me?" In response, 95 percent of respondents described a Black drug user, even though these results contrast directly with the fact that

African Americans constituted only 15 percent of drug users at the time. In terms of marijuana use it is virtually the same among both races.[47] If people of color are seen as the biggest drug offenders, the text of the billboard, that asks if using marijuana makes her a "bad person," then implicitly equates "bad person" to a Black or Hispanic/Latino person. This is especially furthered by the image of the white "soccer mom." Similarly to the "Dear Mom" advertisement discussed below, they are trying to alleviate fears of who the public believes the marijuana user is, to ensure the passage of Amendment 64. This alleviation is done by whitewashing their campaign, and subsequently, the racialized history of marijuana legislation.

The campaigners are attempting to change the misconception that those who use marijuana are dangerous, and by doing so attempt to disassociate the user from being a person of color. In turn, they are using social movement framing to create a new "collective us," that revolves around making the collective us white. This creates a space where a white person who does not use marijuana can align themselves with white people who do use marijuana. By understanding that the user of marijuana looks like them, and seemingly is the same as them, they can then rally behind marijuana legalization.

If they chose a person of color to be on the billboard then the message could actually attempt to reconcile some of the racist history of marijuana criminalization. By showing a person of color on the billboard, alongside the white soccer mom, the campaigners would both get their point across that using marijuana does not make you a bad person, whether Black, Hispanic/Latino, or white. By including both a white soccer mom who is considered a "good" user of marijuana and a user of color who is considered "bad," the campaigners would help in

[47] ACLU, *The War on Marijuana in Black and White*, (New York: ACLU Foundation, 2013), 9.

discrediting the stereotype of the negative association that Anslinger used between marijuana, violence, and crime with Black and Hispanic/Latino Americans. This in turn, could help change the public's perception of Anslinger's racist associations to help mitigate the injustices that continued after marijuana legalization in Colorado.

"Dear Mom" Video Advertisement – May 10, 2012[48]

Right before Mother's Day, the Campaign to Regulate Marijuana Like Alcohol put out this campaign of a white daughter writing an e-mail to her mother. The purpose of the advertisement is for the daughter to explain that she prefers using marijuana, rather than smoking for a multitude of reasons. In a campaign that stated many of their advertisements were directed "toward women between the ages of 30 and 60,"[49] it makes sense that they would try to play on the heartstrings of mothers. The daughter explains, it is "less harmful to my body, I don't get hungover, and, honestly, I feel safer around marijuana users."

The subtly racist sentiment in this advertisement is heard when the daughter says, "I feel safer around marijuana users." A white daughter telling this to her mother is reminiscent of the racialized fears used in both alcohol and marijuana prohibition. Specifically, when Anslinger played on the racist fears that if white women used marijuana they would be induced into having sex with Black men.[50] Having the daughter attempt to alleviate these fears by changing the narrative that the users are people who the daughter surrounds herself with are people like her. Specifically, they are subliminally showing that primary users can be white, blonde haired

[48] Campaign to Regulate Marijuana Like Alcohol, "Dear Mom," advertisement, May 10, 2012, https://www.youtube.com/watch?v=rCVc_kLfjMg.
[49] Rob Kampia, "The 10 Things That Led to Legalized Marijuana in Colorado," The Huffington Post, January 26, 2013, https://www.huffingtonpost.com/rob-kampia/colorado-marijuana_b_2139163.html.
[50] Provine, *Unequal under Law,* 82-84.

adolescent women, rather than the Black and Hispanic/Latino others who have previously been associated with marijuana use and violence. Even though this argument could be viewed as beneficial for ridding the stigma of unsafe users surrounding marijuana, in reality it excludes Blacks and Hispanics/Latinos from the narrative, leaving room for them to still be viewed in this light.

This advertisement uses the same "collective us" framing that the "Marijuana over Alcohol" billboard uses in terms of creating a white "us." It also incorporates a "call to arms," of marijuana being safer than alcohol, which couples with the concept of understanding the "salience of the issue to the individual." The campaigners were able to construct a narrative that pulled at the heart strings of mothers to understand that it is possible their daughters are marijuana users, and since using marijuana over alcohol makes them feel safer, it then is worth it to legalize marijuana.

"Vote for Colorado" Video Advertisement – October 6, 2012 [51]

This advertisement's primary focus is on making the voter aware that "marijuana tax revenues post-2017 could top $100 million annually." This supports their platform that marijuana will grow Colorado's economy, and give the state money to put into other government programs. Even though this advertisement's focus is economic, it still consists of undertones of the 1930s-xenophobic rhetoric used to persuade Americans that marijuana criminalization was the right thing to do. As a woman's voice says, "we all know where the money from non-medical marijuana sales is going. It doesn't need to be that way," a cartoon of

[51] Campaign to Regulate Marijuana Like Alcohol, "Vote for Colorado," advertisement, October 6, 2012, https://www.youtube.com/watch?v=1KAOq7XX2OY.

multiple dollar signs flows from a green Colorado to a brown Mexico. Even though there is variety in the black market of marijuana, by focusing only on Mexican cartels the campaigners continue the association of criminals with Mexico, and in turn the Hispanic community. The disappointment in the narrator's voice as the viewer sees money flowing from The United States to Mexico paints the picture that Mexico, not the drug itself, is the real issue.

At the end of the advertisement the narrator even says, "let's vote for the good guys and against the bad guys. Let's have marijuana tax money go to our schools, rather than the criminals in Mexico." Again, this promotes the idea that legalizing marijuana would help rid Colorado of its ties to Mexico, and specifically plays into anti-Mexican anxieties some white voters have. This is a sentiment used to persuade the more conservative types of voters they were attempting to target. As Steven W. Bender explains in *The Colors of Cannabis,* "Rather than a desire to dismantle laws with disproportionate impact on users of color, more evident in the campaigns for legalizing recreational marijuana was disdain for feathering the nest of the illicit drug cartels, widely assumed to be operatives of color," which is clearly seen through this advertisement.[52] In this advertisement, the campaigners use both an economic and xenophobic "call to arms" to frame their narrative. Using an economic call to arms makes the issue salient to those who may have no interest in marijuana's properties, but do care about increasing the local economy. The xenophobic rhetoric used against Mexico, and subsequently Hispanics, also allows for the "collective us" to be "us" as Americans. This promotes rallying around what is in the best interest of Americans, while simultaneously getting rid of those who go against American interests.

[52] Steven W. Bender, "The Colors of Cannabis: Race and Marijuana," *UCDL Rev. 50 (2016),* 693.

Finally, while the narrator is discussing "the good and bad guys," a classroom filled with white children led by a white teacher is shown. By showing only white teachers and children in classrooms, it seems as though the money from marijuana taxes will go mainly to those schools that are whiter. They also are continuing the association of white students as good kids, while excluding Black and Hispanic/Latino youth from the narrative. In doing this, the campaigners are making marijuana legalization seem more appealing to white conservative voters by whitewashing who the primary beneficiaries of legalization will be.

"Safer Communities" Video Advertisement – October 17, 2012[53]

In this campaign video a retired white Denver Police Department lieutenant, Tony Ryan narrates to explain that, "regulating the sale of marijuana will allow law enforcement to direct resources toward serious crime." The choice of a white police lieutenant is critical in terms of changing the perception that marijuana is bad. Having a powerful white figure promoting legalizing marijuana allows white voters to feel comfortable in changing their position that marijuana might not actually be an evil substance. Also, since most conservatives believe the police force is a just organization, they are more likely to understand the positives of marijuana legalization when it is coming from a law enforcement agent who they can relate to.[54] Having an older, white former police officer telling voters that this will actually make their communities safer, therefore, plays into the more conservative voter's beliefs. [55] In doing so, the campaign

[53] Campaign to Regulate Marijuana Like Alcohol, "Safer Communities," advertisement, October 17, 2012, https://www.youtube.com/watch?v=RzTGdoHOl80.
[54] Conor Friedersdorf, "Few Conservatives Take Police Abuses Seriously," The Atlantic, May 1, 2015, https://www.theatlantic.com/politics/archive/2015/05/few-conservatives-take-police-abuses-seriously/391886/.
[55] Rob Kampia, "The 10 Things That Led to Legalized Marijuana in Colorado."

organizers use social movement framing to create a "call to arms," surrounding the safety of their neighborhood to convince the white voters to vote for Amendment 64.

Due to the historical association of marijuana, people of color, and crime, however, this type of social movement framing whitewashes the campaign even further. Many in minority communities distrust the police, especially white police officers.[56] Having the face of marijuana legalization be a white police officer actively ignores the racism of marijuana arrests in communities of color who are used to seeing these white officers policing their communities for marijuana use. The term "serious" crime is also ambiguous. Through the whitewashing of this campaign, it seems as though this undefined serious crime still focuses on policing communities of color in ways other than marijuana arrests.

Another important visual comes as Ryan says, "to me, the regulation of marijuana means safer communities," while a white picket-fence community filled with American flags flashes across the screen. The flags emulate the idea that legalizing marijuana is the all-American thing to do, even as marijuana remains illegal at the federal level. Also, white picket-fence suburban houses are an image that has long been associated with middle-class white families, so it seems when Ryan is saying "safer communities" he is equating this to safer *white* communities. Ryan is making the distinction that even after marijuana is legalized, these white communities will still be safer. The implication of this narrative is that marijuana legalization will not only create safer communities due to better policing, but also then these white people will not have to leave their segregated community to access marijuana. In turn, a white "collective us" is created as a

[56] Gallup, Inc., "Confidence in Police Back at Historical Average," Gallup.com, July 10, 2017, http://news.gallup.com/poll/213869/confidence-police-back-historical-average.aspx.

motivator to vote for Amendment 64 for those white people who only want to interact within their white communities. This in itself is alleviating white fears on marijuana that are derived from racism, because as the campaign organizers clearly position marijuana as safer than alcohol, they also covertly attempt to distance the unsafe marijuana user, who has historically been a person of color, from what legalization would entail.

Finally, when Ryan discusses "there's plenty to do without spending all of your time going around looking for a marijuana bust," three images appear showing three different people being arrested. In these images every person being arrested appears to be white. Portraying white citizens being arrested seems like an odd choice, since Black and Hispanic/Latino marijuana users are disproportionately arrested: "In the last decade, blacks were 3.8 percent of Colorado's residents, but 10.5 percent of the marijuana arrests. Latinos were 19 percent of the state's residents, but a quarter (25 percent) of Colorado's marijuana possession arrests."[57] The campaign organizers portrayed arrests in this manner to entice white voters into joining their cause by subliminally showing that marijuana arrests can affect them too. Not portraying the minorities who are being disproportionately targeted and affected by marijuana criminalization and its subsequent arrests ignores the inherent social justice implications of marijuana criminalization. Again, showing only white people being arrested furthers the concept of the white "collective us," since the campaign organizers make it appear that it is white people who are most impacted my marijuana criminalization. Also, since the campaign organizers do not teach the racial disparities that coincide with marijuana criminalization, this gives way to the

[57] Harry G. Levine, Jon B. Gettman, Loren Siegel. "210,000 Marijuana Possession Arrests in Colorado, 1986-2010," Marijuana Arrest Research Project, New York, NY, October 2012.

continual disenfranchisement of minorities affected by marijuana criminalization even after legalization in Colorado.

"What if?: Latino Voices for Amendment 64" Video Advertisement – October 31, 2012[58]

This advertisement focuses on the same components of other campaigns like putting "money back in Colorado schools" and taking "marijuana off the streets away from teens and out of criminals' hands," the only difference is that these ideas come from Latino voices. Also, the arguments for legalizing marijuana are said intermittently in both English and Spanish. The three Latino people in the video are saying the same things as those that are targeting white communities, but by not using a white narrator, the focus is placed on a community that is disproportionately, harmfully affected by the link between marijuana and the criminal justice system. The spokespeople in this campaign constantly use the term "our" and directly address the audience, saying "you can, I can, we all can all do something to make our schools better and our communities safer." This is a targeted way to garner the Latino community's support by using social movement framing to create a "collective us," and also change the stigma surrounding marijuana use in Hispanic/Latino communities by providing a "call to arms." Yet, the fact that this is the only advertisement that focuses on a collective "our," simultaneously helps and hurts this community. This collective "our" when describing how to better the Latino community reinstills the historical connection between marijuana criminality and Hispanics/Latinos by making it seem as though the drug is an entrenched part of the community.

[58] Campaign to Regulate Marijuana Like Alcohol, " What if?: Latino Voices for Amendment 64," advertisement, October 31, 2012, https://www.youtube.com/watch?v=8KycY5QuI0Y.

This video is also one of the least watched on the Colorado Marijuana Initiative's 2012 YouTube Channel. It has approximately 1/29 of the views that the most watched video, "Dear Mom," has. This video is reaching a smaller audience and not making as large of an impact as the other campaigns. The Latino voice, therefore, is still lost in a campaign dominated by white voices. This creates a narrative where voters are not thinking about how Amendment 64 will work in this community, and therefore, leaves space for marginalization to continue. It is also important to note that although the Campaign to Regulate Marijuana like Alcohol uses this video, and released a radio advertisement in Spanish, which reiterates what this video says, to appeal to Latino communities, there are none that directly try to reach African American communities.

Overall Campaign Analysis

The majority of the advertisements by the Campaign to Regulate Marijuana Like Alcohol appeal to white, more conservative voters, who may initially be skeptical of the benefits of marijuana legalization. This appeal is accomplished by showing these white voters how it can benefit them and their communities. To reiterate, in the advertisements that are not used to appeal to Latino voters, the spokesperson, model, or people shown benefiting from marijuana legalization are always white. In the majority of their campaign, the organizers avoid showing people of color, the ones who are most disproportionately negatively affected by marijuana criminalization, in their advertisements. This creates the narrative that marijuana is now a white person's drug, and white people are most affected, which is not the case. In doing so, however, it alleviates white people's anxiety springing from the demonization of marijuana through its association with people of color in marijuana's original criminalization campaign. By

perpetuating this notion and ignoring the racialized history of the prohibition of marijuana the campaigns leave room for the injustice of marijuana criminalization to continue in different formats, such as in juvenile and public consumption arrests.

The impact of ignoring the racialized history of marijuana in the Campaign to Regulate Marijuana Like Alcohol's advertisements, becomes even more evident in the story some of the creators of Amendment 64 use when discussing their path to victory. In interviews conducted by Janet Bishop for Colorado State University's Amendment 64 Collection, Bishop speaks with both Brian Vicente and Mason Tvert, two of the creators of Amendment 64 and leaders of the Campaign to Regulate Marijuana Like Alcohol, in terms of their path to marijuana legalization. In the separate interviews, they both explain their initial interest in marijuana legalization and how their campaign worked from inception to Amendment 64's passage, and their reflective thoughts on the campaign in late 2015 and early 2016, which is when the interviews took place.

One of the key takeaways from these interviews is in their discussions of framing their campaigns. When Vicente discusses what voters could understand at the time his campaign decided on their messaging, he explains:

> I was like, your average voter just doesn't care about social justice, racial justice, issues. They don't. So, in order for us to affect the change we wanted to see, we had to reach people where they're at. And a lot of that was more talking about economics, and getting rid of the underground market, and using criminal justice resources more effectively. That was a better way to reach people than talking about racial justice things.[59]

Even though Vicente explains to Bishop that his main reason for joining the fight to legalize marijuana was to work at criminal justice reform, both for those who need marijuana for

[59] Vincente, "Brian Vicente – Part 1 of 2," interview by Janet Bishop, 21.

medical reasons and due to racial disparities in marijuana arrests, he did not make criminal justice reform the focus of their campaign. Instead, he and his campaign appealed to the more sensible arguments, arguments that coincided with more conservative views.

Vicente also specifically touches on the campaign's focus to abolish the underground market, including cartels. As evidenced through the "Vote for Colorado" campaign video, this argument is ingrained with anti-Mexican sentiment, which through the association people have with cartels and people of color, translates into anti-Hispanic attitudes. This anti-Mexican sentiment did not only develop in the advertisements shown to the general public, but also in those the campaign chose to endorse Amendment 64. When asked about who their largest target audience was Bishop inaccurately guesses it was the Hispanic/Latino community. Vicente responds by explaining, they appealed to, "the other end of the spectrum," or conservatives, by having former congressman Tom Tancredo be a spokesman. When describing Tancredo and his role in the campaign, Vicente says, he "is no fan of immigrants, to put it very mildly […] And we ran a bunch of radio ads with him on conservative radio, talking about how this is wasteful policy to arrest people for marijuana or what have you."[60] Vicente's explanation of where they spent the most advertising money shows they were not trying to appeal to those who are marginalized through discriminatory marijuana policy. Rather, they attempted to appeal directly to those who went against the ideals of justice that Vicente seems to be promoting. Specifically, in Vicente's clarification that Tom Tancredo "is not fan of immigrants" it shows the campaign's focus is on conservatives, and they do not care if it distances them from promoting

[60] Brian Vicente, "Brian Vicente – Part 2 of 2," interview by Janet Bishop, Colorado Cannabis Collecting Initiative, April 6, 2016, 7.

social justice by counteracting the racism ingrained in marijuana criminalization. Appealing to these conservatives leaves a gap in voter's understanding of the racism and xenophobia that is entrenched in marijuana laws.

Vicente furthers this notion by explaining, "we kind of were all-access. You know, anyone that would support this and join our coalition, we were supportive."[61] Instead of leading a campaign that made it clear marijuana's social justice issues revolved around disparities in the arrest rates of minorities and using their campaign to help these communities, the campaigners invited those who actively disagreed with helping people of color, like Mexican immigrants. Even as they gathered support on their initiative from the Colorado ACLU and NAACP, by allowing those who directly disagree with socially progressive laws to speak for them, they ignored what could have been a way to educate the general public on racial injustices. By actively avoiding focusing on the social justice implications of marijuana, the campaign left room for the disenfranchisement of people of color to continue even after Amendment 64 passed.

When Bishop asks Tvert about the social justice implications of marijuana, specifically incarceration rates and how this was approached by their campaign, Tvert has a similar answer to Vicente:

> Unfortunately, those arguments are the least effective when it comes to actually changing marijuana laws […] Which I'm not saying is right. It's actually horrible, but it unfortunately does not compel people to do much, at least in terms of elected officials and whatnot. Going to Congress and saying this is going to benefit people of low income and communities of color, you don't win."[62]

[61] Ibid.
[62] Tvert, "Mason Tvert – Part 1 of 4," interview by Janet Bishop, 27.

Tvert furthers what Vicente explains about people not being able to grasp onto this notion, but goes further by discussing its implications on elected officials. While it is possible to rationalize not putting racial justice arguments into advertisements for the public if statistics argue this will cause a campaign to fail, what is difficult to understand is ignoring this argument in the attempt to educate those in power. Tvert explicitly states that those congressmen and congresswomen do not care about the disparities of marijuana laws that disproportionately affect minorities. Ignoring the criminal justice argument when lobbying lawmakers creates room for more covertly, racialized marijuana policy to be implemented even in the era of legalization, because the impurities of the racialized history is lost on them. In turn, they created a campaign that whitewashed marijuana legalization in order to appeal to those who do not care about the social justice implications of marijuana criminalization. If even elected officials cannot wrap their head around the racism that marijuana laws have produced, a pretty dim picture is evoked in the way legalization is likely to be carried out.

CHAPTER 4: Social Justice Implications

At every stage of marijuana's history in the United States, from reefer madness scares to the war on drugs, and now even piecemeal legalization, black Americans have suffered disproportionately: stereotyped as justifications for prohibition, targeted for arrest, and now, finally, excluded in many ways from the Green Rush.[63]

- *BuzzFeed News*

Criminal Justice

Minorities and Marijuana Legalization

[63] Amanda Chicago Lewis, "How Black People Are Being Shut Out of America's Weed Boom: Whitewashing the Green Rush," BuzzFeed, March 16, 2016, https://www.buzzfeed.com/amandachicagolewis/americas-white-only-weed-boom.

The racism embedded in marijuana criminalization has far-reaching consequences beyond garnering public support for the passage of laws like the Marihuana Tax Act of 1937. Playing on racial and xenophobic fears, the Marihuana Tax Act, and others that followed, produced a structure that systematically discriminates against minorities: The War on Drugs. Of all the drugs, marijuana criminalization has played one of the larger roles in growing the War on Drugs. In 2010, marijuana arrests accounted for 52 percent of all drugs arrests in America.[64] The majority of those both arrested and in jail for drug offenses are, therefore, due to some type of marijuana offense, whether it be possession, distribution, or cultivation. If as *The New Jim Crow* author, Michelle Alexander explains: "Nothing has contributed more to the systematic mass incarceration of people of color in the United States than the War on Drugs," this then means that marijuana is one of the leading causes of racial disparities in the criminal justice system. [65]

One would hope that following the passage of Colorado's Amendment 64 in 2012, and other successful legalization campaigns, the disparities that arise from marijuana arrest rates would dissipate in these states. Yet, this is not the case. In a report doctored by the Drug Policy Alliance regarding marijuana legalization in eight states and Washington, D.C., they see the pattern that even though marijuana arrest rates decreased for Black and Hispanic/Latino people, the racial disparities in arrest rates persist.[66] How is this possible? As *The Colors of Cannabis* author Steven Bender attempts to make sense of this: "Three vestiges of racial profiling in a legalization regime attach to offenses that survive legalization — driving under the

[64] ACLU, *The War on Marijuana in Black and White*, 14 & 40.
[65] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2012), 60.
[66] Drug Policy Alliance, *From Prohibition to Progress: A Status Report on Marijuana Legalization,* (United States: Drug Policy Alliance, 2018), 1.

influence of marijuana, possession of marijuana by youths, and public consumption of marijuana."[67] These practices, which are also rendered illegal under Colorado's Amendment 64, are a part of the larger racism that is marijuana criminalization.

Changing the laws does not mean racially motivated police practices will be eliminated. Driving under the influence is considered a pretext for police officers stopping people of color. Whether they are "driving too fast, driving too slow," or even just "driving in a low-income neighborhood known for its drug traffic, it is so commonplace for Black men to be pulled over in their vehicles that this practice has acquired its own acronym: DWB (Driving While Black)."[68] Using driving high as a pretext, officers still have the opportunity to engage in this type of racial profiling, which has the potential to lead to arrests and jail time for people of color.

The stop and frisk method that is used on adults for driving under the influence, is also commonplace for youth. While a white teenager driving with marijuana likely does not face the risk of being "stopped and their car searched because they 'look suspicious' […] Black youth, by contrast, get stopped, frisked and searched all the time."[69] An example of this disparity that is mirrored throughout the country is in the case study of the NYPD. Of the 600,000 people the NYPD stops and frisks every year, the majority are "black and brown juveniles;" this constant targeting of minority youth makes up a large number of the "1 million hours officers spent making 440,000 arrests for lowest-level marijuana possession arrests from 2002-2012."[70]

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[67] Bender, "The Colors of Cannabis," 701.
[68] Katheryn Russell-Brown, *The Color of Crime,* 2nd ed. (New York: New York University Press, 2009), 62.
[69] Michelle Alexander, "The New York Times Company," The New York Times, May 22, 2013, https://www.nytimes.com/roomfordebate/2013/05/22/how-can-marijuana-be-sold-safely/in-legalizing-marijuana-end-the-racial-bias.
[70] Levine, Harry, Loren Siegel, and Gabriel Sayegh. "One Million Police Hours: Making 440,000 Marijuana Possession Arrests in New York City, 2002–2012," (2016).

It is critical to understand that this disproportionate targeting is not occurring because Black and Hispanic/Latino youths use marijuana more than white youths. Rather, the National Institute on Drug Abuse released a report that shows white and black high school seniors use marijuana at nearly identical rates.[71] Even though white juveniles use marijuana just as much as, if not more than, Black and Hispanic/Latino youths, their white privilege allows them to get away with it. On the opposite end of the spectrum, almost two-thirds of youths who have been committed to or are held at detention facilities are minorities, even though they only make up 34 percent of the total adolescent population in the United States.[72] Michelle Alexander furthers this point by explaining: "studies have shown that youth of color are more likely to be arrested, detained, formally charged, transferred to adult court, and confined to secure residential facilities than their white counterparts." [73] Not only are they locked away, but they "now have criminal records and are thus subject to legalized discrimination for the rest of their lives. These young men are part of a growing undercaste, permanently locked up and locked out of mainstream society."[74] This racial bias enacted in the War on Drugs then puts these juveniles of color into a system that limits their liberties at an early age, while white youth can continue using marijuana, and living their lives, freely. This is especially clear in the legislation that accompanies the changing face of the marijuana user:

> The legalization of recreational and medical marijuana through whitewashed campaigns mirrored the dynamic of marijuana decriminalization that swept federal and state government in the late 1960s and early 1970s. As "Reefer Madness" views of axe-wielding black and Mexican smokers were replaced by the reality

[71] Alexander, *The New Jim Crow,* 99.
[72] Russell-Brow, *The Color of Crime,* 34.
[73] Alexander, *The New Jim Crow,* 118 & 7.
[74] Ibid.

> of widespread white usage, especially on college campuses, campaigns mounted to reduce penalties for marijuana possession by these more trusted users.[75]

As soon as marijuana becomes a white problem, the narrative surrounding it changes, and in turn, the punishments become less severe.

This unfair targeting of minority youths is only furthered through police patrolling. Keith Humphreys, who studies drug policy at Stanford University explains: "Police do patrol more in neighborhoods of color and they also get more calls to respond in neighborhoods of color, and when police show up and find kids illegally in possession of marijuana they're obligated to do something about it."[76] This idea that police happen upon children of color relates to the racism of public consumption. Sociologists argue the theory that Black and Hispanic/Latino drug users are more likely to use and have transactions in public spaces due to differences in varying communities' access to private spaces, which in turn, "influence[s] the likelihood that criminal behavior will be detected.[77] Targeting a community where a drug bust is more likely to be seen is not "race-neutral" due to the systematically racist disparities that play into the differences of where marijuana use is likely to be detected. Alexander explains, this type of policing is "nothing more than wartime propaganda, not sound policy."[78] Even when marijuana is made legal, due to public consumption's illegality, racial bias and targeting of communities of color by police still persists.

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[75] Bender, "The Colors of Cannabis," 694-695.
[76] Ben Markus, "As Adults Legally Smoke Pot In Colorado, More Minority Kids Arrested For It," NPR, June 29, 2016, https://www.npr.org/2016/06/29/483954157/as-adults-legally-smoke-pot-in-colorado-more-minority-kids-arrested-for-it.
[77] Alexander, *The New Jim Crow,* 125.
[78] Ibid., 126.

What Happened After Amendment 64 in Colorado

In 2010, prior to Amendment 64's passage, marijuana arrests accounted for 60.7 percent of all drugs arrests in Colorado; a statistic more than 8 percent higher than the national average.[79] While it has been less than six years since Colorado passed Amendment 64, and four years since the first recreational marijuana store opened its doors, there is insight into what has happened to those most affected by marijuana criminalization. The Drug Policy Alliance reports that, "marijuana-related charges statewide (not including Denver) decreased by 80 percent between 2010 and 2014," and "an overwhelming majority of this decrease in charges came in the aftermath of Amendment 64."[80] When broken down by race, the number of marijuana arrests decreased by 51 percent for Whites, 33 percent for Hispanics/Latinos, and 25 percent for African Americans.[81] Yet, even in the decrease in arrest rates, it is clear the disproportionate targeting of minorities continued, and white people are profiting the most from the legislation. This is especially salient in the arrest rates of African Americans, since the marijuana arrest rate for African Americans (348 per 100,000) was almost triple that of whites (123 per 100,000) in 2014.[82] The Drug Policy Alliance furthers this in their report, which shows in 2014 the "Black Arrest Percentage" was 9.2 percent, a number that is virtually the same as pre-Amendment 64 in 2010, where the percentage was 9.4 percent [83] The disparity between Hispanics/Latinos (140 per 100,000) and whites (123 per 100,000) is less than the disparity between African Americans and whites, but is still distinct. From 2012 to 2014 the arrest rate for whites decreased and then

[79] ACLU, *The War on Marijuana in Black and White*, 14 & 40.
[80] Jon Getman, *Marijuana Arrests in Colorado After the Passage of Amendment 64,* 2015, 1.
[81] Colorado Department of Public Safety, *Marijuana Legalization in Colorado: Early Findings,* March 2016, 5.
[82] Ibid.
[83] Jon Getman, *Marijuana Arrests in Colorado After the Passage of Amendment 64,* 7-8.

plateaued, while for both Hispanics/Latinos and African Americans the arrest rate decreased from 2012 to 2013, and then increased again from 2013 to 2014.[84] In order to understand how even in a legalized state, minorities are still being arrested at higher rates than whites, one must understand the specifics of what is still illegal under Amendment 64.

One key way that minorities are still targeted through marijuana arrests is for charges of public consumption. As law enforcement shifted their priority to this illegality, the number of offenses of "Public display/Consumption" from 2012 to 2014 went from 8 to 891, respectively.[85] The Drug Policy Alliance states: "While the overall decrease in marijuana-related offenses statewide has been enormously beneficial to communities of color, one troubling concern is the rise in disparities for the charge of public consumption, especially in Denver."[86] Even as overall arrest rates go down for people of color who are 21 and older, it is disconcerting, though not surprising, to see that there are ways in which Black and Hispanic/Latino Coloradans are targeted that are still on the rise.

Also disturbing is the disparity in juvenile arrest rates following the passage of Amendment 64. Since Amendment 64 only legalized marijuana use for those 21 and older, it makes sense that as the police had more time to focus primarily on juveniles, whose arrests increased by 5 percent from 2012 to 2014.[87] When this is broken down by race, however, a more sinister story is seen. According to the Colorado Department of Public Safety, between 2012 and 2014, White juvenile arrests decreased by 8 percent, Hispanic/Latino juvenile arrests

[84] Ibid., 22.
[85] Ibid., 7.
[86] Ibid., 1.
[87] Colorado Department of Public Safety, *Marijuana Legalization in Colorado*, 8.

increased by 29 percent, and African-American juvenile arrests increased by 58 percent.[88] Similarly to adult arrest rates, white juveniles are benefiting from marijuana legalization. Unlike adult arrest rates, where African American and Hispanic/Latino adults arrests decreased post-Amendment 64, though, juvenile youths of color are being targeted and arrested more than before the passage of Amendment 64. This then amplifies the racist system in Colorado, because it detains Black and Hispanic/Latino youth at a young age, and effectively locks them out of society by giving them a record.

A seemingly positive result of the passage of Amendment 64 is in the possibility that racially biased pretextual stops, both driving and on the street, will decrease. According to a 2015 report from the Police Foundation and the Colorado Association of Chiefs of Police, marijuana laws have the potential to impact street-level policing, because "If the scent of marijuana alone no longer gives the police reasonable suspicion or probable cause to search or detain during a car or pedestrian stop, it will no longer be possible to use marijuana enforcement as a pretext for other investigative aims."[89] Yet, as explored in public consumption arrests, police are still finding ways to target minorities.

Relation to Amendment 64 Campaign

What has followed the passage of Amendment 64, increase in juvenile arrest rates by race and increase in racial disparities in public consumption arrests, shows how the Campaign to Legalize Marijuana Like Alcohol's ignoring of the racism ingrained in marijuana criminalization in their campaign affected the way marijuana policy is being implemented in

[88] Ibid.
[89] Alex, Kreit, "Marijuana Legalization and Pretextual Stops." *UCDL Rev. 50* (2016), 770.

communities of color. While there are no statistics or public opinion surveys on race that prove the pro-Amendment 64 campaigns did little to help in changing perception of marijuana and its connection with people of color, I believe it did have an impact. Specifically, the Campaign to Regulate Marijuana Like Alcohol could have done better to help remedy the social injustice of the past eighty-plus years of marijuana criminalization. The key way in which they ignored this was through whitewashing the campaign. They exclusively showed white users, which changed the narrative by creating a new type of marijuana user without acknowledging the racism used to create the initial marijuana user. Before delving into the negatives of the campaign, I do believe that the narrative this campaign put out did help in reducing arrest rates *overall*. Through the social movement frames they implored, e.g. showing white suburban houses and white soccer moms on billboards, they made the legalization of marijuana seem as though it's largely a white person's problem. In doing so, they ensured that marijuana use did not actually seem like a big deal because these average and kind white people are the ones using it, and therefore, there should be little reason to punish these types of marijuana users.

Yet, by doing this they were unable to actually enlighten the public on the "racist legacy of the drug war," that campaign co-director Brian Vincente believes is a large part of the reason Coloradan's passed Amendment 64.[90] Instead, by only focusing on making sure that the association between white people and marijuana is positive and ignoring changing the narrative of people of color's association with marijuana, it has allowed for injustices that come with marijuana criminalization to continue.

[90] Markus, "As Adults Legally Smoke Pot In Colorado, More Minority Kids Arrested For It."

These injustices are especially evident based on juvenile arrest rates. Vincente says, “it’s shameful that local police shifted their attention to minority kids,” yet, as Denver Police spokesman, Sonny Jackson says “it’s not a matter of what police want to focus on, but rather what people are reporting to authorities. ‘Most of these cases are complaint-driven.” [91] While the campaign advocated for law enforcement resources being spent elsewhere, clearly, people still believe they should still be reporting juvenile marijuana use, at least African American and Hispanic/Latino use, to law enforcement. A possible explanation for this is that those reporting juveniles are those that voted against Amendment 64. While this may be the case, since at the end of 2014 more than 90 percent of respondents in a SurveyUSA poll who voted on Amendment 64 said they would still vote the same, I do believe better representation of Black and Hispanic/Latino juveniles could have alleviated this.[92]

In their campaign, the only time they show juveniles of any race is in their “Vote for Colorado” campaign, where they showed a classroom full of students. Yet, even in this one representation, they only show students who appear to be white. Here, the campaign chose to show white juveniles as academics, while figuratively keeping students of color out of the classroom. While correlation does not equal causation, the arrest rates of white juveniles did decrease, and the arrest rates of African American and Hispanic/Latino juveniles increased. Showing these white students positively may unconsciously have influenced the decrease in white juvenile arrest rates. In order to further remedy the social injustices that they claim is a

[91] Ibid.
[92] Cannabist Network. "2014 Marijuana Poll: Coloradans Weigh in on Legalized Pot." The Cannabist. September 19, 2016. https://www.thecannabist.co/2014/12/29/marijuana-poll-colorado-2014/26211/.

primary goal of theirs, the campaign organizers should have included students of color in these campaigns to associate them with education, rather than the decades-long stigma of criminality. It is possible that if they highlighted youth of color in this similar way, they could have convinced those who are reporting these youths to the police to not go out of their way to do so.

Not only could that have influenced those who are reporting marijuana use by minority youth to the police, but they should have focused more on influencing the way law enforcement polices marijuana. Instead of focusing only on the fact that passing Amendment 64 allows law enforcement to focus their attention and resources onto more violent crimes, to really make a difference they should have subliminally shown ways to avoid racially motivated police practices. Showing people of color in the same light the campaign did with white people had the potential to change the bias that many officers have about communities of color. By doing so, their campaigns then could have helped in deterring law officers from seeking out marijuana busts in communities of color.

Potrepreneurs

Open for Business: With the White Qualifications

Following the passage of Colorado's Amendment 64, in January 2014 recreational marijuana began being legally sold. From January 2014 through December 2017, the Colorado Department of Revenue estimates that the total sales of both recreational and medical marijuana are $4,494,020,686, with the highest sales in 2017 reaching over $1.5 billion (See

Figure 1).[93] Such a profitable industry begs the question, who are the key players in this business?

Not only does the lingering criminalization of marijuana through juvenile arrests and public consumption continue to disenfranchise people of color, but so does the way the legal marijuana industry is set up. The disparity in the way people of color and white people interact with both legal and illegal marijuana is evident in articles describing Colorado's marijuana businesses. In Denver specifically, according to The Denver Post, 10 people control 20 percent of the Denver market, while the other 80 percent is controlled by 641 business owners.[94] This creates a top-heavy market where smaller businesses are less likely to succeed. What is even more telling, is the demographic makeup of these key players. All 10 of those in control of Denver's marijuana industry are white males.

The three marijuana entrepreneurs who own 13 percent of licenses in Denver are described by The Denver Post in a profile of their business. One of the white men, Rhett Jordan, is characterized as "the son of a powerhouse real estate agent, [who] was better known around hometown Genessee as a pothead than an aspiring jock," and "despite a stint in a Utah boarding school because of regular run-ins with marijuana, Jordan had the gene for salesmanship."[95] Unlike people of color who would be thought of as criminals for being associated with marijuana, and would be arrested rather than sent to a boarding school for

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[93] "Marijuana Sales Reports," Colorado Department of Revenue, https://www.colorado.gov/pacific/revenue/colorado-marijuana-sales-reports.

[94] David Migoya and Ricardo Baca, "For the First Time, We Know Who Is Behind Denver's Pot Industry," The Denver Post, October 02, 2016, , https://www.denverpost.com/2016/05/07/for-the-first-time-we-know-who-is-behind-denvers-pot-industry/.

[95] David Migoya and Ricardo Baca, ""No One Believed in Cannabis Back Then. I Did.," The Denver Post, October 02, 2016, https://www.denverpost.com/2016/05/07/no-one-believed-in-cannabis-back-then-i-did/.

marijuana possession and use, this privileged white male is now benefiting from the very drug that has broken communities of color. As author of *The New Jim Crow,* Michelle Alexander discusses: “Here are white men poised to run big marijuana businesses, dreaming of cashing in big—big money, big businesses selling weed—after 40 years of impoverished black kids getting prison time for selling weed, and their families and futures destroyed. Now, white men are planning to get rich doing precisely the same thing?[96] The laws and practices in place to be involved in marijuana businesses primarily work for those who did not have to fear using marijuana when it was criminalized. Due to the strict regulations, cost, and stigma surrounding legal marijuana, this new “Green Rush” is just a continuation of the systematic racism in a new form that has always been ingrained in the United States.

Causes for Exclusion

Written into Colorado Amendment 64 is the outline of who will operate marijuana businesses: “Legitimate taxpaying business people, and not criminal actors, will conduct sales of marijuana.”[97] This means, that if you want to enter into the legal marijuana business, you cannot have any prior criminal record. While on the surface level this rule seems to make sense, as criminals should not be in charge of mind altering drugs; when explored, however, this rule plays into the racism of marijuana criminalization. As investigated in the criminal justice section, there is a large racial disparity in drug arrests, so this law acts as a major road block for people of color who are attempting to enter the marijuana industry. As Dr. Malik Burnett, a policy

[96] Tommy McDonald, "Michelle Alexander: "It's Not Enough to End the Drug War. We Must Also Repair the Harms Caused by It," Drug Policy Alliance, March 5, 2014, , http://www.drugpolicy.org/blog/michelle-alexander-its-not-enough-end-drug-war-we-must-also-repair-harms-caused-it.
[97] Colo. Const. art XVIII, § 16 (1).

manager at the Drug Policy Alliance, explains, the "provisions that prevent people with criminal records as it relates to marijuana from participating in the space" are "particularly invasive given the fact that enforcement of marijuana laws have historically been biased against people of color."[98] This point is clear in the disparity of the marijuana arrest rates of racial minorities versus white people; a statistic Colorado is a part of. Between 2000 and 2010, Black and Hispanic/Latino Coloradans were arrested at 3.1 and 1.5 times the rate of white residents for marijuana possession, respectively.[99] Due to the disparity in arrests of people of color in Colorado prior to the legalization of marijuana, this section of Amendment 64 provides the opportunity for white people to get into the business, while keeping minorities out.

Criminal records, and the criminal justice system as a whole, not only exclude people of color from joining the marijuana industry, but they also instill fear. Even those without criminal records worry about entering the legal marijuana industry due to both the fact that at the federal level marijuana is still illegal, and the stigma that connects people of color to drugs and crime. Ethan Nadelmann, the director of the Drug Policy Alliance explains:

> African Americans know that whenever something is in a gray area of the law they will feel more vulnerable, and for good reason since statistically minorities are more likely to be targeted or seen as suspects […] It may be that the general element of racism and racial disproportionality in law enforcement around drugs can make minorities queasy about entering an area which is not fully legal."[100]

Given the inequality in arrest and incarceration rates, it makes sense that African Americans do not want to put themselves in a precarious situation that could further the racial bias against

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[98] Tracy Jarrett, "Six Reasons African Americans Aren't Breaking Into Cannabis Industry," NBC News, April 19, 2015, https://www.nbcnews.com/news/nbcblk/6-reasons-african-americans-cant-break-cannabis-industry-n344486.
[99] Harry G. Levine, Jon B. Gettman, Loren Siegel. "210,000 Marijuana Possession Arrests in Colorado, 1986 2010," Marijuana Arrest Research Project, New York, NY, October 2012.
[100] Bender, "The Colors of Cannabis," 697.

them. This feeling is echoed in the Hispanic/Latino community as well. Larisa Bolivar, a well-known proponent for decriminalizing marijuana in Denver, notes to Mass Roots that, "'Hispanics are culturally conservative' and there is a fear of racial persecution and ostracism."[101] Not wanting to add another target to their back by going against the federal government and being associated with a criminal drug closes off the opportunity to join a profitable industry.

Another reason why the legal marijuana industry is primarily white is a lack of funds. There is a "reluctance of banks to supply credit to marijuana entrepreneurs for fear of being seen as enabling a business still illegal under federal law," which means that unlike in most businesses where you can apply for a loan, in the marijuana industry you usually have to raise the funds yourself.[102] The vast disparities in wealth between Black and Hispanic/Latino Americans versus white Americans shows that, "if current trends continue, it will take 228 years for the average Black family to reach the level of wealth White families own today. For the average Latino family, matching the wealth of White families will take 84 years."[103] Given this "racial wealth divide," coupled with the inability to use banks to start their businesses, minorities are at a disadvantage that is seemingly impossible to overcome. As a result, the promise of benefiting from legal marijuana is just another systematic racial injustice benefitting white Americans that is built into our society.

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[101] Julie Godard, "Diversity & the Cannabis Industry: Latinos & Latinas (Part 2)," MassRoots, February 16, 2017, https://www.massroots.com/news/diversity-and-the-cannabis-industry-latinos-and-latinas-part-2/.
[102] Bender, "The Colors of Cannabis," 696-697.
[103] Dedrick Asante-Muhammad et al., "The Road to Zero Wealth: How the Racial Wealth Divide Is Hollowing Out America's Middle Class," Prosperity Now, September 2017, https://prosperitynow.org/resources/road-zero-wealth.

Relation to Amendment 64 Campaign

It is important to explore how criminal records, the stigma attached to marijuana, and funding of businesses in minorities and the marijuana industry relate to the pro-legalization campaign of Amendment 64. Nearly four years after the passage of Amendment 64, Brian Vicente makes it clear that in Colorado they have "seen a lot more business opportunities," but "basically for people that already have money and have clean records." He further explains that he wishes they had built in "some sort of provisions that addressed the populations that were negatively affected by the drug war for so many years, which is largely why those of us, Mason, myself, ran this thing."[104] As previously explored, the campaign chose not to focus on social justice in their advertisements, even though Vicente alludes to the fact that this was actually their main goal. While they unfortunately did not add any reparations for communities affected by marijuana criminalization, they should have advertised in ways that could have aided African Americans and Hispanics/Latinos to enter the legal marijuana industry.

Since their main focus was on getting the message that marijuana is safer than alcohol across, they should have outwardly used this idea to influence communities of color, not just white conservatives, that marijuana is not a demon substance. As Miguel Trinidad, a high-end marijuana edibles chef in New York, notes he believes the "lack of Latinos and Hispanics in the cannabis industry is a direct result of the negative stigma attached to cannabis, and believes its healing properties have been overwhelmed by a negative community outlook."[105] While the Campaign to Regulate Marijuana did target the Latino community in some ways, based on the

[104] Vicente, "Brian Vicente – Part 2 of 2," interview by Janet Bishop, 6.
[105] Godard, "Diversity & the Cannabis Industry."

advertisements like “What if?: Latino Voices for Amendment 64,” they failed to express their main point that marijuana is safer than alcohol. If they had advertised directly to these communities of color to help them understand the health benefits of using marijuana over alcohol it is likely that these communities of color would have less of a stigma surrounding the marijuana industry. In turn, they may be more willing to enter into the legal marijuana industry.

Besides the one “What if?: Latino Voices for Amendment 64,” and one radio advertisement, there also was not much representation of these marginalized communities in the overall pro-Amendment 64 campaign. The Campaign to Regulate Marijuana Like Alcohol should have focused more on highlighting more people of color in their campaigns to reach out to these communities to show them that they too can be a part of the legalized marijuana industry. One person they could have emphasized is Wanda James, the first Black dispensary owner in Colorado who eventually became a part of Colorado Governor, John Hickenlooper’s Amendment 64 Task Force.[106] Had she been a part of the beginning stages of planning the strategy for the Campaign to Regulate Marijuana, rather than just at the implementation of Amendment 64, then she could have done two things. Prior to the campaigns, she could have guided Vicente and the other drafters of Amendment 64 to include reparations to Amendment 64 that Vicente discusses, and she currently crusades for.[107] She also could have given insight as to how to best advertise to communities of color to help guide their participation into the legal marijuana market. In the advertisements, she could have shown her community the power of

[106] Joanne Ostrow, "Other Roots: Wanda James, the First Black Dispensary Owner in Colorado, Talks Marijuana Motivation," The Cannabist, March 21, 2018, https://www.thecannabist.co/2017/02/16/wanda-james-simply-pure-marijuana-motivation/72829/.

[107] Diamond Sharp, "This Former Obama Campaigner Is Changing the Face Of Cannabis," Herb, February 26, 2018, https://herb.co/marijuana/news/wanda-james-dispensary-cannabis.

legal marijuana through her story in the medical marijuana industry. Through their campaigns, James could have been a voice to educate these communities on the personal economic gains that could come from them entering the industry. Instead, the campaign did not have a person of color as a main spokesperson and focused only on the benefits for the government's tax revenue. Showing people of color in their advertisements to illustrate to minorities that there should not be a stigma about entering a thriving industry could have helped in creating more opportunities for people of color in the legal marijuana industry.

Conclusion

In order for the Campaign to Regulate Marijuana Like Alcohol to have undone the racial bias that has been a part of marijuana legislation since Harry Anslinger's campaign, they needed to have not only directly addressed the racism of marijuana laws, but also put a focus on avoiding unconscious bias in their advertisements. Instead, they whitewashed their campaign and the history of marijuana to create a new narrative that conservative voters could grasp onto to ensure the passage of Amendment 64. By doing so, they helped continue the racism ingrained in Anslinger's original marijuana criminalization campaign. Had they focused on the social justice implications of marijuana legalization and included racial minorities who are most damaged by marijuana criminalization, then they could have helped in reducing the number of drug arrests and increasing the number of minorities profiting from the legal marijuana industry. Instead, there was inherent bias in their advertisements that allows racial disparities in marijuana policy to persist in Colorado.

So what can be done to remedy the injustices that continue to exist in spite of legalization? My recommendation is to create education campaigns following the legalization of

marijuana for government officials and law enforcement. Doing so can help educate those who are directly affecting how the policy is made and carried out to understand the injustices marijuana criminalization causes. The campaigns that created the initiatives to legalize marijuana, along with the task forces of implementing marijuana laws, should work to create these campaigns. They even could create new videos for these lessons that include communities affected by the systematic racism of marijuana laws. By doing so, they can help mitigate the unconscious racial biases that seem to persist in the campaigns and laws legalizing marijuana.

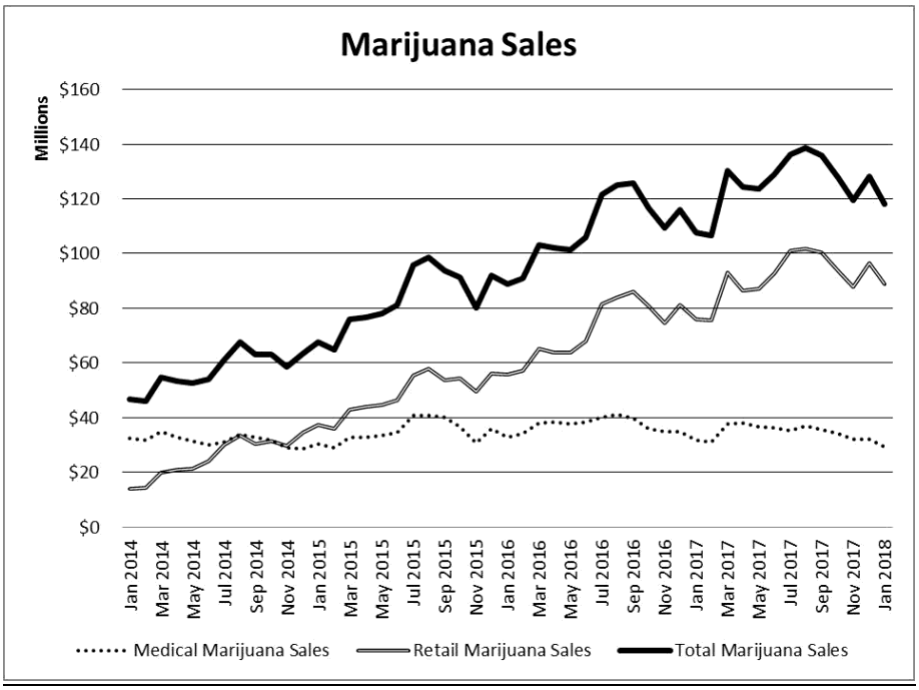
Also, it is important people of color reap the benefits of legal marijuana, given they are the ones who are most negatively affected by its criminalization. A way to do this would be through free, state-sponsored workshops to teach communities of color about the benefits of working in the marijuana industry. They also should include grants for minorities to open marijuana businesses as reparations for how disproportionately marijuana criminalization affects communities of color. Doing this will help alleviate the systematic wealth gap between whites and minorities of color. In addition, from the revenue legal marijuana brings, scholarships could be created for youth of color.

As for states who are looking to legalize marijuana in the future, they can work to fix the racial disparities that continue after marijuana legalization through both legislation and placing an emphasis on analyzing their own campaign objectives and advertisements from a social justice perspective. In terms of legislation the two main foci should be centered around juveniles and those currently serving time for marijuana crimes. Specifically, there should be laws that decriminalize marijuana for juveniles, as a way to stop the school-to-prison-pipeline.

There should also be provisions that exonerate those who are in jail for non-violent marijuana crimes. Included in these provisions should be ridding marijuana charges from one's criminal record in order to ensure this arrest does not disenfranchise them in other aspects of society.

In terms of campaign advertisements, based on how Harry Anslinger's criminalization campaign and the Campaign to Regulate Marijuana Like Alcohol in Colorado framed their campaigns, I believe educating the public about the racist history of marijuana criminalization through advertisements and speeches will help in ridding racial bias. While I understand that there are statistics that prove arguing from the social justice perspective does not win votes, they should at least examine the bias that their campaigns may produce. Instead of only showing white people, there should be a focus on showing people of color. Specifically, they should highlight people of color in the same positive way the Colorado campaign highlighted white people. Focusing on ensuring that their campaign is not whitewashed and directly responding to the claims Anslinger made over 70 years ago by showing their inaccuracies, creates the potential for marijuana legalization to reconcile an unjust war.

Figure 1.



From this graph released by the Colorado Department of Revenue, it is clear that the majority of sales come from recreational marijuana. According to the Colorado Department of Revenue, the majority of recreational marijuana sales take place in Denver and Arapahoe counties.

Notes

Colorado Population according to the U.S. Census Bureau:

- **2000:** 74.5% self-identified as White alone, 3.7% self-identified as Black or African American alone, and 17.1% self-identified as Hispanic or Latino.[108]
- **2010:** 70% of the population self-identified as White alone, 3.8% self-identified as Black or African American alone, and 21.3% self-identified as Hispanic or Latino.[109]
- **2016**: 87.5% of the population self-identified as White alone, 4.5% self-identified as Black or African American alone, and 21.3% self-identified as Hispanic or Latino.[110]

[108] "Census Data for Colorado (2010)," Colorado Department of Local Affairs, https://demography.dola.colorado.gov/census-acs/2010-census-data/#census-data-for-colorado-2010.
[109] Ibid.
[110] U.S. Census Bureau. 2016. *Quick Facts.* Washington, D.C.: U.S. Census Bureau. https://www.census.gov/quickfacts/CO.

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Campaign to Regulate Marijuana Like Alcohol. "Vote for Colorado." Advertisement. October 6, 2012. https://www.youtube.com/watch?v=1KAOq7XX2OY.

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