

Selling cannabis regulation:

Learning From Ballot Initiatives in the United States in 2012

Emily Crick^{*}, Mark Cooke[‡] and Dave Bewley-Taylor[¶]

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Key Points

- In November 2012, Washington, Colorado, and Oregon voted on ballot initiatives to establish legally regulated markets for the production, sale, use and taxation of cannabis.¹ Washington and Colorado's measures won by wide margins, while Oregon's lost soundly.
- A majority of voters view cannabis in a negative light, but also feel that prohibition for non-medical and non-scientific purposes is not working. As a result, they are more likely to support well-crafted reform policies that include strong regulations and direct tax revenue to worthy causes such as public health and education.
- Ballot measures are not the ideal method for passing complicated pieces of legislation, but sometimes they are necessary for controversial issues. Other states often follow in their footsteps, including via the legislature.
- The successful campaigns in Washington and Colorado relied on poll-driven messaging, were well organised, and had significant financing. The Oregon campaign lacked these elements.
- The Washington and Colorado campaigns targeted key demographic groups, particularly 30-50 year old women, who were likely to be initially supportive of reform but then switch their allegiance to the 'no' vote.
- Two key messages in Washington and Colorado were that legalisation, taxation and regulation will (i) free up scarce law enforcement resources to focus on more serious crimes and (ii) will create new tax revenue for worthy causes.
- National attitudes on legalising cannabis are changing, with more and more people supporting reform.

^{*}Emily Crick - Research Assistant, Global Drug Policy Observatory

[‡]Mark Cooke - Policy Counsel, American Civil Liberties Union of Washington State

[¶]Dave Bewley-Taylor - Director, Global Drug Policy Observatory

INTRODUCTION

In 2012, voters in the US states of Washington, Colorado and Oregon were given the opportunity to vote in ballot initiatives for the creation of legally regulated cannabis markets. Washington's Initiative 502 and Colorado's Amendment 64 both passed with 55.7% and 55.3% of the vote respectively. Oregon's Measure 80 failed with 53.4% of those voting rejecting the measure. As calls for and legal processes towards the initiation of cannabis policy reform become more common within US states, it is a timely and useful exercise to reflect upon the campaigns for reform in Washington (WA), Colorado (CO) and Oregon (OR) and examine why the public supported cannabis policy reform in some instances and not others.

Within the United States of America there is a broad and growing consensus that the policy of prohibiting the use of cannabis for anything other than scientific and medical purposes is failing. Yet, most voters still view recreational cannabis use in a negative light. Moreover, as the policy landscape shifts, there is mounting concern that overly commercial and under regulated cannabis policies, particularly those that could harm youth, are not desirable either. Polling and interviews with experts from WA, CO, and OR indicate that swing voters, crucial to passing ballot initiatives, desire to have cannabis policies that are well thought out and not overly ideological. Strong regulations, dedicating tax revenue to education and public health programmes, and strong protections for youth seem to be particularly important to voters. As will be shown, these policy features also align with political messages that most strongly resonate with voters.

Drawing on and developing further the discussions within the GDPO Policy Report, *Legally regulated markets in the US: Implications and possibilities*,² this policy brief will review and analyse what may lie behind the successes and failures of the ballot measures in Washington, Colorado and Oregon,

as well as examine the changing national context for cannabis reform. It concludes by bringing together some of the lessons learned within these states in what has been referred to as the process of 'selling' policy ideas to the voting public.³

THE RISE OF BALLOT INITIATIVES AND THE FORMULATION OF PUBLIC POLICY

The recent changes to cannabis policy in Washington and Colorado were brought about through direct democracy; in these instances ballot initiatives were put to the electorate with the express intention of determining state law on cannabis.⁴ Such use of ballots is increasingly common with some political scientists arguing that the mechanism is beginning to eclipse the legislature in the formulation of public policy within the United States. For example, John Matsusaka has argued that there have been more high profile policy developments brought about through ballot initiatives (e.g. affirmative action, immigration, lotteries and casinos, and medical cannabis to name but a few) than through state legislatures.⁵ Within this context, ballot initiatives have been criticised on a number of points. A primary concern is that voters are uninformed about the basic facts, often confused about the issues and unduly influenced by campaign advertising.⁶

While it is true that many ballot initiatives are technically complex and that voters may not have the in-depth knowledge to make exceptionally well informed decisions on the specific issues, many feel capable of doing so because they rely on 'heuristic cues'⁷, such as the support of a certain political elite, public figure or interest group.⁸ Moreover, ballot measures on topics that could broadly be described as 'moral issues' (e.g. gay marriage, abortion, immigration and drug policy) require less detailed knowledge from the voter because they are informed largely by personal opinion.⁹

Another notable feature of the rise of direct democracy through ballot initiatives is the impact that these measures have on the direction of legislative policymaking. For example, initiatives can indicate voter preferences that may become recognised by the legislature even if they do not pass. Successful initiatives in one state may also influence policy changes through the legislature in another state.¹⁰ This issue is particularly pertinent in the area of cannabis policy reform. For example, the first medical cannabis laws were passed by ballot initiatives in 1996 and 1998, but soon thereafter legislatures started passing similar laws, beginning with Hawaii in 2000. Similarly, Washington and Colorado's passage of ballot measures in favour of legal regulation has led a number of states to consider legislative bills on the same issue.

That said, it has also been argued that ballot initiatives are not the ideal process for passing complicated laws, especially those that deal with regulatory, financial, health, and criminal justice issues. In this regard, drug policy expert and President of the Criminal Justice Policy Foundation, Eric E. Sterling, argues that policy is better created through the legislature:

*'Developing public policy is a complex process, and invariably, as proposed legislation is analyzed and debated, additional issues arise that were not anticipated or addressed in even the most carefully drafted bill when it is first introduced. Making law for a state of millions of people necessarily involves many interests that may see the impact of legislation never anticipated by the sponsors and their consultants. When the legislature makes a policy change, it often carries a legitimacy with the courts and the executive branch of a state that can result in improved compliance with the law. Government officials familiar with the legislative process may not extend the same legitimacy to a law enacted by initiative.'*¹¹

Nonetheless, Sterling points out that at times ballot initiatives are a necessary way of circumventing policy stalemate. An example of this was California's Compassionate Use Act of 1996. This was put before the voters after the Republican governor vetoed three previous bills passed by the Democrat controlled legislature to allow medical cannabis in the state.¹² Sterling also notes that a strong vote by the public - such as the Washington's Initiative 502 and Colorado's Amendment 64 which both passed with over 55% of the vote - carry a very strong political legitimacy.¹³

THE CONTEXT FOR THE 2012 BALLOT INITIATIVES: MEDICAL MARIJUANA SCHEMES AND PREVIOUS PROPOSALS FOR REFORM IN WASHINGTON, COLORADO AND OREGON

When analysing ballot initiatives for the legal regulation of cannabis in 2012, it is useful to consider the history of medical cannabis laws, resulting in 'medical marijuana schemes,' and previous reform efforts in each state in order to help understand the context within which the proposed policy shifts were presented to the public.

Washington became a medical cannabis state in 1998 when 59% of voters approved Initiative 692.¹⁴ The state legislature also debated a series of cannabis related bills in the period of 2007-2012, including decriminalisation¹⁵ and legalisation¹⁶ proposals. Washington State also had advocacy groups pushing for cannabis reform prior to 2012. For example, the American Civil Liberties Union (ACLU) of Washington State made this a priority issue and embarked on a multi-media campaign called *Marijuana: It's Time for a Conversation*, which included a thirty-minute video that aired on television and a series of public forums across the state to raise the profile of the topic.¹⁷ In 2010, grassroots campaign group Sensible Washington proposed Initiative 1068 (the Marijuana Reform Act) that would have removed all criminal and civil penalties for

the possession, cultivation, and distribution of cannabis, but it failed to get enough signatures to be put on the ballot.¹⁸ A similar effort was attempted in 2011, Initiative 1149, but it also failed to make the ballot.¹⁹

Colorado relaxed its cannabis laws in 1975 by removing jail penalties for possession of under one ounce. It became a medical cannabis state in 2000 when Amendment 20 was passed with 55% of the vote.²⁰ Colorado has ‘the most extensive regulatory apparatus of any of the eighteen [now twenty-three] medical marijuana states in the country’²¹ and it has been argued that the medical cannabis industry in the state has experienced less interference by the federal government than other states because of its strict regulations.²² Colorado also held a vote on cannabis legalisation in 2006 – it failed by 58%-41% – though it only aimed to make possession of up to one ounce legal rather than regulating production and supply.²³

Oregon also has a long history of progressive marijuana reform efforts. It was the first US state to decriminalise possession of cannabis in 1973. In 1986, at the peak of the President Reagan’s ‘war on drugs’, Oregon held a ballot initiative to legalise cannabis, although it failed by 74%-26%.²⁴ It became a medical cannabis state after ballot measure 67 passed with 55% of the vote in 1998.²⁵ Cannabis related legislation was also frequently debated in Oregon between 1998 and 2012, including significant amendments to the law in 2007.²⁶

LEARNING FROM THE PAST: THE LESSONS OF CALIFORNIA’S PROPOSITION 19

Cannabis policy reform’s momentum has been growing in recent years, but, as suggested above, the history of movement goes back decades.²⁷ In the 1970’s, in addition to Oregon, a series of other states decriminalised cannabis possession for adults and support for legalisation reached new heights, although significant public backlash followed in the

1980’s.²⁸ Moreover, beginning in 1996, medical cannabis laws have passed in twenty-three states and Washington D.C.²⁹ A handful of legalisation ballot initiatives have also been attempted, although none were successful until 2012.³⁰ The lessons of California’s recent ballot initiative are particularly relevant, as California has been one of the vanguard states for cannabis policy reform.

In 2010, California held a voter initiative on cannabis legalisation - Proposition 19 (hereafter referred to as Prop 19). Despite polls showing high levels of support - polling a month before the vote showed 52% of voters were likely to support the measure³¹ - the vote failed by 53.5%-46.5%. It is worth quickly summarising some of the reasons put forward for the failure of Prop 19, because campaigners for tax and regulate ballots in other states looked to this experience in order to learn from it. Some have argued that Prop 19 failed in part due to a low youth voter turnout, a pattern common in years that are not presidential elections.³² Other explanations for the failure of Prop 19 rest on the notion that regulation and taxation would have been imposed at a county level; meaning that the state would suffer from a messy patchwork of different laws, and the cheapest tax jurisdiction would have become the main market supplier.³³ The measure’s failure to impose uniform state-wide regulation also became a major point of attack by opponents of the initiative during the campaign³⁴ and it should be noted that despite failing to secure enough votes, a post-election poll revealed that 50% of voters believed cannabis should be legal, but some voted ‘no’ to the Proposition due to issues with the specifics of the regulations.³⁵ As discussed further below, campaigners in Washington and Colorado discovered that stating how the tax money would be spent was an important issue for voters.

Another area where campaigners in Washington and Colorado learnt from the Californian experiences was in relation to the

identification of key demographic groups, such as 30-50 year old women. According to Rick Ridder, President, RBI Strategies and Research, a company involved in campaign strategies in Washington, there were two key reasons to focus on this group in particular:

*(1) In California and in other research, that demographic group was initially supportive of marijuana legalisation but could be easily persuaded by the 'No' position. (2) They were also the group that responded positively to messages about money for schools from taxing marijuana. So, strategically we needed them to stay with us to win, and we had messages that resonated with them.*³⁶

Although the youth vote – or lack of it in the California case – is vital in ballot measures of this type, campaign strategists failed to target specific messages to this group perhaps because they took support by the younger demographic for granted. Prop 19 also suffered from lack of support from some in the medical cannabis industry: the three counties that grew the majority of cannabis for the medical market in California all voted resoundingly against Prop 19³⁷ and it has been argued that the interests of growers in maintaining their market privilege did much to generate opposition to the proposals.³⁸ Another highly influential factor in Prop 19's defeat was that the federal government was more vocal in its opposition to Prop 19 than was the case in Washington or Colorado in 2012.³⁹

WHAT WERE THE KEY MESSAGES FOR REFORM IN WASHINGTON, COLORADO AND OREGON?

Polling on cannabis law reform has been carried out since the 1960s (see figure 10), so leading into the 2012 Initiatives both proponents and opposition campaigners were aware that certain sections of the voting public were sympathetic to their case. As a result, both sides knew that they had to focus on convincing those voters who were undecided. Having learned from

experiences in California, campaign strategists for Colorado's Amendment 64 and Washington's Initiative 502, consequently identified key demographic groups, particularly women aged 30-50 (see Text Box 1).⁴⁰

Polling carried out before and during the campaigns in Washington and Colorado helped identify what the key concerns were and how the campaign messages played out with voters. The campaigns in Washington and Colorado shared a number of similarities as well as differences. For instance, in both states the financial implications were high on the agenda – saving money on law enforcement and increased tax revenues chimed well with voters in an era of austerity and national and state-wide budget cuts.⁴¹ Freeing up the resources of law enforcement agents to concentrate on crimes that are more serious also came up in both states, as did taking money out of the hands of criminals. In Colorado, one television advertisement focused specifically on preventing money from falling into the hands of Mexican drug 'cartels'.⁴²

That said, the campaigns diverged significantly on other key focal points. For example, in Colorado, pro-reform campaigners continued using the 'marijuana is safer than alcohol' message – even though it did not feature particularly highly in voter concerns – because it continued a discussion that had been going on in the state for some years (see Text Box 3). In Washington State one of the key messages was that prohibition had failed as a policy and that through legal regulation the state could better address issues such as youth access and impaired driving (see Text Box 1).⁴³

The pro-reform campaign in Washington - A predominately 'top-down' approach

Washington's initiative 502 (hereafter referred to as I-502) was very much a 'top-down' initiative. It was sponsored by ten high profile professionals, including Alison Holcomb of the American Civil Liberties Union of Washington State (who served as the campaign director),

as well as politicians like State Representative Mary Lou Dickerson, legal professionals including Seattle's City Attorney, Peter Holmes and John McKay, former United States Attorney for the Western District of Washington, and medical and public health experts.⁴⁴ As well as having a number of mainstream supporters, there was only limited opposition to the campaign.⁴⁵ The amount of mainstream support, inclusion of a new "per se" standard for drugged driving, and the dedication of tax revenues to prevention education and treatment may help to explain why the anticipated opposition from law enforcement and health professionals was muted.

In May 2011, before the ballot initiative was registered, polling was carried out to find out how the public felt about cannabis reform. The polls recorded that 52% were supportive of reform with 41% against. It was also noted that 48% held negative feelings towards cannabis, with only 24% having positive feelings towards the drug. As a result, campaigners for reform focused on creating reassurance for those that were concerned about cannabis. The polls also showed that cannabis law reform polled particularly well with young Democrat men, so this group was not specifically targeted by campaign messages.⁴⁶

The Washington campaign raised over \$6 million, a significant portion of which went for television advertisements.⁴⁷ These included former law enforcement officials and prosecutors, and mothers who argued that the initiative would do a better job of protecting youth interests than prohibition. Campaign strategists tracked polling as the television adverts were broadcast in order to discover which messages had the greatest impact and found that the law enforcement messages were the most successful.⁴⁸ In the last two weeks of the campaign, television adverts were focused on key demographic groups and on the proposed policy being a 'common sense' approach in order to prevent any gains being lost just before

election day (see Text Box 2). The television advertisements emphasised that the new policy would involve tight regulation as well as extra income for the state. In Washington another key factor was the 'good government' message which was helped when some current and former prosecutors got on board to explain that not only has prohibition failed but that it is essentially 'deregulation' of cannabis markets.⁴⁹

Whilst many of the campaign messages had a broad appeal, campaign strategists also targeted key demographics such as 30-50 year old women because they were seen as a consistent voting block albeit one that had specific concerns about youth access and impaired driving (see Text Box 1). The issue of impaired driving became quite controversial because it imposed zero tolerance on people under 21 who were caught driving with the active ingredient of cannabis, Tetrahydrocannabinol, in their blood and was, as a result, seen as unnecessarily targeting young people.⁵⁰ The Driving Under the Influence (DUI) component of the initiative may have dissuaded some young voters - normally seen as being very supportive of cannabis legalisation - from voting in favour of the policy. The issue of impaired driving illustrates how difficult it can be to please all the main demographics where one constituency can be alienated by a core message that is important to another group. Campaigners also found that voters wanted to know how their tax dollars would be spent and so part of the campaign focussed on where the money would go. In Washington it will be allocated to health care, prevention and education programs, and evaluation and research.⁵¹

As mentioned above, voters use often 'heuristic cues', such as support by specific people or groups, in order to make their decisions at the ballot box. Therefore, pro-reform campaign organisers worked to get the right messengers on their side: they focused on getting doctors,

nurses, law enforcement officers, faith leaders and groups such as the Children's Alliance to endorse publicly their campaign (See Text Box 1). In March 2012 television evangelist, former presidential candidate and prominent right-winger Pat Robertson came out in support of the legal regulation of cannabis.⁵² His support could have helped bring Christian and conservative voters on board. Additional endorsements came in the final months of the campaign from thirteen newspapers in Washington State, with the Seattle Times, the Spokesman Review and The Columbian, all announcing their support for the initiative.⁵³

Finally, the I-502 campaign recognised that monitoring the impacts of the new law would be crucial and consequently the ballot initiative also stipulated that Washington State Institute for Public Policy would conduct cost-benefit analyses of the policy in 2015, 2017, 2022 and 2032.⁵⁴ The focus of these reports will be on public health impacts, public safety, youth and adult usage rates, economic impacts, criminal justice impacts and state and local administrative costs.⁵⁵ As noted, this research will be funded by excise taxes collected from the licenses, production and sales of cannabis products.⁵⁶

Box 1. View from the ground: The importance of messages and messengers
Interview with Pete Holmes, City Attorney, Seattle and supporter of I-502

Polling was used at the initial stage to see how the issue was viewed across the state. Peter Holmes noted that *'The campaign, with seed money from the American Civil Liberties Union of Washington, engaged a professional polling firm to establish where state voters were on the subject of legalisation...'* The next stage was to identify some broad messages for all demographics: *'Number one, that prohibition was a failed policy no matter what your thoughts were. Second, that through legalisation we could re-direct law enforcement resources more appropriately, solve greater social justice aims and actually address things like impaired driving and youth access. And the third thing was to tax it because while we are taking this market away from an illegal industry, we want to tax it and regulate it and help fill some sorely needed budget gaps.'* Whilst many of the messages were aimed at all demographics, some messages were targeted to specific constituencies. Women between 30 and 50 were targeted because they are a consistent voting block and were, according to Holmes, *'likely to be voters who would be reticent about legalising marijuana. So a lot of the efforts, for example emphasising the prevention of youth access and impaired driving, were strong messages for them.'* Although polling helped shape the messages, the messengers also played a big part in helping develop a well-rounded campaign. Holmes explained that *'there were also personal motivations by the different sponsors so while the polling looks at what the voter demographics are... as sponsors stepped forward from the various fields like medicine, law enforcement, social health providers, social service providers, we were able to construct a message that kept building on itself, and whether it was newspaper endorsements or for example the Children's Alliance endorsement, all of those kept building on themselves'*.



Box 2. View from the ground: Polling and advertising are vital to a campaign's success Washington state summer of 2012 media experiment

In the summer of 2012, as part of its ongoing public education efforts, the I-502 campaign conducted a messaging experiment, using polling and a television ad. The campaign wanted to target an advertisement to the vitally important demographic of women age 30-50 to see whether it could influence this demographics' opinion on marijuana legalisation. The campaign created an advertisement featuring a middle-aged mother speaking to the camera in a coffee shop. She says:

I don't like it personally, but it's time for a conversation about legalising marijuana. It's a multi-million dollar industry in Washington State and we get no benefit. What if we regulate it? Have background checks for retailers, stiff penalties for selling to minors. We could tax it to fund schools and health care. Free up police to go after violent crime instead. And we would control the money, not the gangs. Let's talk about a new approach. Legalising and regulating marijuana.

Prior to airing the advertisement the I-502 campaign conducted polls in two of the state's largest media markets for baseline data. The advertisement then aired in Seattle (the test market), but not Spokane (the control market). After airing it for approximately two weeks, the campaign again polled the two markets to see if the advertisement had any effect. The polling revealed that it was effective with women aged 30-50, increasing their likelihood of support for I-502 by 8 points. This experiment is a good illustration of the sophistication of the I-502 campaign and highlights the importance of polling in cannabis reform campaigns.

The pro-reform campaign in Colorado: Primarily a 'bottom-up' approach

In Colorado, the ballot initiative was in the form of a constitutional amendment (explaining why it is known as Amendment 64). This legal mechanism means that no future government can overturn the policy without further amending the state constitution. Amendment 64 (hereafter referred to as A-64) was more of a 'bottom-up' process than that in Washington State. Supporters of A-64 raised between \$2-3 million for the campaign.⁵⁷

Polling helped campaigners identify key constituencies and therefore construct messages that appealed to those groups. Campaigners for the 'Yes' vote targeted 30-50 year old women, who were seen as the group most likely to respond positively to messages

about spending the tax revenue gained from cannabis sales on school building projects.⁵⁸ Television and online advertisements ranged from the 'Safer Communities' message with a Denver police officer arguing that regulation will allow them to focus on serious crime rather than arresting users,⁵⁹ to young adults explaining to their parents that they would rather use cannabis than alcohol because it feels less bad for their bodies and they feel safer smoking than when they are drinking.⁶⁰ Another television advertisement argued that voting for A-64 was a 'Vote for Colorado' because regulating cannabis would prevent money going to Mexican drug 'cartels' and instead the money would be used to build schools, noting that at that point Colorado

ranked 35th in the US for school funding.⁶¹ A-64 set out that \$40 million dollars of cannabis tax revenues would be used for school building programmes.⁶² Under A-64 the taxes to be imposed were put to the ballot on November 5th 2013; the measure to impose a 15% excise tax on wholesale marijuana sales and a 10% sales tax on retail sales was passed by 65%

of voters.⁶³ In both states, campaigners also found that spelling out how the tax dollars will be spent chimed well with voters, especially those that had not made their minds up.⁶⁴ Unlike I-502, A-64 did not include details of a review of the policy. However House Bill 1317 - the bill that established the legally regulated market for cannabis in Colorado - stipulates

Box 3. View from the ground: Sometimes follow your gut instincts
Interview with Brian Vicente, co-director of the ‘Sensible Colorado’ campaign

In constructing the campaign for the legal regulation of cannabis, messaging was crucial. While some of these messages were developed after polling, Vicente noted that other messages were used despite not polling as well. As he points out, *‘we also ran with the “marijuana is safer than alcohol” message which did not poll as well as other messages but it continued the dialogue we’d been having for seven or so years in our state about the relative harms of marijuana versus alcohol and why one is criminal and why one is not... So it [the polling] played an important role but also we went with our gut.’* However, polling did help identify targeted demographics and what the concerns of these groups were. On this point Vicente notes, *‘We did know that our target demographic by and large was 30-50 year old women and we did know that tying money, marijuana tax money, to school construction did well amongst women.... Other than that our messages were fairly broad and we like to think they reached senior citizens and young voters and had an impact on both.’* After the vote, exit polling was used to see which demographics came out to vote in favour, as well as which messages were most successful. In this regard, Vicente observed, *‘Our messages seemed to be consistent in terms of moving people before and after. So again the law enforcement resources and the tax revenues being the primary ones that measurably did impact on people.’*



Box 4. View from the ground: Learning from Washington and Colorado
Interviews with Peter Holmes, Seattle City Attorney and Brian Vicente, co-director of the
‘Safer Colorado’ campaign

Other states are looking to see if there are any lessons they can learn from the campaigns in Washington and Colorado. Holmes suggested that the crucial thing is to develop suitable messages for each specific state: *‘Washington was more ‘legalise, regulate and tax’ and Colorado had a different process because they had a more mature medical marijuana industry already... The basic approaches were: Colorado built on its medical marijuana model and we did something entirely separate from the medical marijuana market.’*

Vicente identified two key lessons that could be learned by other states. First, that money counts: *‘We did learn that if you can buy ads those do in fact pick up polling numbers for you and change things.’* Second, the language of the initiative is very important in getting voters out.

that the department of regulatory agencies will conduct a sunset review by 1st July 2016 in order to assess the impacts of the new law.⁶⁵

The pro-reform campaign in Oregon

- Underfunded and too liberal

So far this briefing has reviewed only the successful ballot measures in 2012; it is now time to turn attention to Oregon where ballot Measure 80 (M-80) failed to pass. In attempting to understand why this was the case, a number of commentators have argued that the language of the ballot initiative was poorly constructed.⁶⁶ For example, it has been argued that “The language in Oregon was too broad without sufficient details on regulatory structure or taxation”⁶⁷ and that the drafting was problematic because M-80 failed to set age limits or establish limits on the possession of immature plants and seeds.⁶⁸ Moreover, the Measure has been criticised for its somewhat peculiar inclusion of the fact that George Washington grew hemp as well as references to the ‘herb-bearing seed’ given to humanity in Genesis 1:29 in the King James Bible.⁶⁹

It has also been argued that the Oregon Cannabis Commission (OCC), the proposed

regulatory body, was not sufficiently independent.⁷⁰ It allowed for a seven-member board, five members of which were to be growers and processors. The OCC would have been responsible for issuing licenses and establishing the regulations for the industry, but it would also have been charged with promoting the product in ‘all legal national and international markets’.⁷¹ The Measure’s failure to include any details on proposed taxes, cultivation laws, commercial zoning or advertising restrictions⁷² is likely to have prevented campaigners from being able to develop successful messaging during the run-up to the vote.⁷³ Furthermore, it has been argued that the campaign focussed largely on grassroots supporters rather than targeting voters who do not use cannabis but are open to reform.⁷⁴

The pro-reform campaign in Oregon also failed to gain as much financial support as the initiatives in Washington and Colorado. Compared to \$2-3 million in Colorado and \$6 million in Washington, Oregon’s ‘Yes on 80’ Political Action Committee raised less than \$50,000 in cash contributions.⁷⁵ With big-name backers holding off funding, much of the money came from the measure’s

sponsor, Paul Stanford.⁷⁶ Stanford, a medical cannabis entrepreneur who owns a series of clinics in several states that put patients in touch with doctors who are willing to give recommendations,⁷⁷ has experienced financial difficulties and pleaded guilty to tax evasion charges – a situation that may have hindered support.⁷⁸ Executive Director of the Drug Policy Alliance, Ethan Nadelmann, has suggested that the polling figures (see Fig. 8), which were not as positive in Oregon as in Washington and Colorado, may also help explain the lack of financial support for the initiative.⁷⁹ Nadelmann’s argument illustrates the crucial links between successful polling and funding, though of course to some extent the links work both ways: with low levels of funding, campaigns are likely to be less sophisticated and more likely to be drafted in a pro-cannabis fashion with fewer restrictions, which does not align with broader voter interests. As noted, most voters view cannabis in a negative light, but believe that prohibition is not working.

With a lack of campaign funding, ill-conceived language and drafting, and a lack of sophisticated campaign messages, M-80 was always going to be on the back foot. To be sure, writing in the *Willamette Week*, Matthew Korfhage argues that the campaign lacked access to the polling data and focus groups that gave the Washington and Colorado campaigns more targeted messages.⁸⁰ Video advertisements in support of the measure were also lacking in sophisticated messages compared to the Washington and Colorado campaigns. Due to a lack of campaign funding, these advertisements also were primarily limited to the internet, greatly limiting their exposure. Most largely focused on endorsements from high profile politicians such as Peter Buckley (Oregon State Representative) and Bill Bradbury (former Oregon Secretary of State)⁸¹ rather than engaging with the concerns of key constituencies. A review of the advertisements online finds only one that sets out some of the reasons for reform. This features a young woman arguing that eight out

of ten high school seniors have easy access to cannabis and that therefore children are at risk from the unregulated market. It also argues that regulation of cannabis would allow law enforcement agents to ‘concentrate on real crimes’.⁸² All that said, despite the lack of funding, well-crafted campaign messages and ‘heuristic cues’, M-80 polled surprisingly well with the ‘Yes’ vote getting 46.58%.⁸³

OPPOSITION TO THE BALLOT INITIATIVES

Before looking at the opposition to reform within each state, it is important to recognise the somewhat ambiguous, and arguably politically motivated, position of Federal stakeholders on the issue. This became clear after a group of nine former Drug Enforcement Administration (DEA) heads wrote a public letter to US Attorney General, Eric Holder, in September 2012. This called on him to oppose the ballot initiatives. The ex-chiefs argued that, ‘To continue to remain silent conveys to the American public and the global community a tacit acceptance of these dangerous initiatives’.⁸⁴ The letter was similar to one that had been sent to Holder before the California’s Prop 19 vote in 2010. In that instance he came out in opposition to Prop 19,⁸⁵ but in the case of the ballots in 2012, he stayed silent.⁸⁶ It remains unknown why Attorney General Holder and the Department of Justice remained taciturn in 2012, but it should be noted that Colorado was a crucial swing state in the Presidential election⁸⁷ and therefore the Obama campaign may have wanted to avoid weighing in on a controversial social issue in a highly contested electoral state.

Opposition in Washington

High profile politicians such as Washington State’s outgoing Governor Christine Gregoire (from 2005-2013) opposed I-502, because of concerns about federal opposition⁸⁸; despite what the Department of Justice’s unclear position may have been in the lead up to the ballots. A similar concern underpinned incoming Governor Jay Inslee’s position on the

issue,⁸⁹ although he did not actively campaign against it. Indeed, the organised opposition to I-502 was relatively small and not particularly well funded - it only raised \$16,000 with much of the money coming from those involved in the medical cannabis industry.⁹⁰ Many of those who opposed the initiative were supporters of some form of legalisation but argued that the measure did not go far enough in liberalising the trade. One of the groups that campaigned against I-502 was *Sensible Washington*,⁹¹ the group that previously called for total repeal of all state marijuana laws, which hosted a blog where it deconstructed the initiative in detail. Its main objections included concerns that federal opposition to the proposed law could render it unworkable; the regulatory system would hand control of all aspects of the cannabis market to the Washington Liquor Control Board and therefore the state government; the DUI law was extremely harsh and could have negative impacts on young people under 21; the new policy could increase the black market because grow your own was not allowed, and that A-64 and Oregon's Measure 80 were better initiatives because they did not include stipulations on DUI.⁹²

Other key arguments put forward by the 'No on 502' campaign were that medical cannabis prices could rise dramatically and this could drive patients to the black market and that it would shut down safe access points due to strict controls on where they could operate.⁹³ However it has been argued that medical cannabis growers opposed the initiative to maintain their privileged market positions.⁹⁴

Opposition in Colorado

The opposition to A-64 was better organised than in Washington State and had a number of big political hitters on their side including the state governor⁹⁵ and a number of high profile attorneys. Colorado Governor, John Hickenlooper, spoke out against A-64 in September 2012 saying: 'Amendment 64 has the potential to increase the number of children using drugs and would detract from

efforts to make Colorado the healthiest state in the nation. It sends the wrong message to kids that drugs are OK.' He also argued that:

*'Federal laws would remain unchanged in classifying marijuana as a Schedule I substance, and federal authorities have been clear they will not turn a blind eye toward states attempting to trump those laws. While we are sympathetic to the unfairness of burdening young people with felony records for often minor marijuana transgressions, we trust that state lawmakers and district attorneys will work to mitigate such inequities.'*⁹⁶

Ken Buck, the district attorney for Weld County, Colorado, also wrote an article in the Denver Post opposing A-64 stating that his concerns were related to DUI offences and increases in teen usage.⁹⁷ The Mayor of Denver was another opponent of the amendment as was the Colorado Attorney General. Shortly after the vote was passed, Colorado Attorney General John Suthers raised his concerns about the new law stating that he thought 'the 'legalisation' of cannabis on a state level is very bad public policy' and called on the Department of Justice to announce how it would deal with the developments. He also argued that the revenues to be gained via the tax policies in A-64 were 'speculative' because they needed a further vote by the people in order to be imposed.⁹⁸ Nonetheless, opponents of A-64 only managed to raise an estimated \$440,000,⁹⁹ which was considerably less than supporters of the amendment.

The main organised opposition group to A-64 was *'Smart Colorado'*¹⁰⁰ whose tagline was 'Protecting youth from marijuana'. Its key issue was the negative impact that cannabis has on young people and the risk of increased use. Proponents of the ballot measure countered this by arguing that youth access would be considerably reduced if cannabis was legally regulated and stores had to ask for proof of age. Furthermore evidence from the Centre of Disease Control and Prevention (CDC) showed

that compared to the national average cannabis use amongst young people in Colorado fell by 2.8 percent from 2009 to 2011, while national rates rose by 2.3 percent in the same period and that this decline coincided with the development of Colorado’s medical cannabis programme.¹⁰¹ The *Denver Post* also came out against A-64. It noted that the newspaper had long believed cannabis should be legal, but that a state constitutional amendment was the wrong way to go about it. Rather, it was argued, cannabis legalisation should come from the federal level rather than the state level.¹⁰²

Opposition in Oregon

As with Washington and Colorado, Oregon’s Democrat Governor, John Kitzhaber, came out against Measure 80.¹⁰³ Most major law enforcement bodies in Oregon such as the Oregon State Sheriff’s Association, Oregon Association of Chief of Police, Oregon Narcotics Enforcement Association, and Oregon District Attorneys Association also opposed M-80.¹⁰⁴ Very little money was raised by the opposition, however.¹⁰⁵ The Oregon State Sheriffs Association argued that M-80 would ‘undermine public health and public safety’. Some of their key arguments against the ballot measure included: if M-80 passed it would put Oregon in contravention of the federal Drug-Free Workplace Act which could cause the state to lose access to federal aid and grants for schools and other bodies; M-80 did not establish a limit for cannabis intoxication in relation to drugged driving (i.e. DUI); use amongst young people would rise; legalisation would cause the price of cannabis to fall so far that criminal organisations from out of state would buy the product legitimately in Oregon and then export it to other states.¹⁰⁶

VOTER DEMOGRAPHICS IN WASHINGTON, COLORADO AND OREGON

Mindful of the specific circumstances of each state, it should come as no surprise that while there were similarities in patterns, there were also some differences.

Patterns in Washington

In the poll carried out by Survey USA (Fig. 1) on 10th September 2012 support from most constituencies was very similar (58% for men, 57% for women, 58% for 18-34 year olds and 61% for both 35-49 year old and 50-64 year olds). Only for the Silent Generation (the 65 plus age bracket) did support fall below 50%. The groups that were most undecided were women, the 35-49 age group and over 65s, in each group up to 10% were undecided. For women and the 35-49 age group, this may have reflected fears about youth access and DUI because they are the groups most likely to have children.

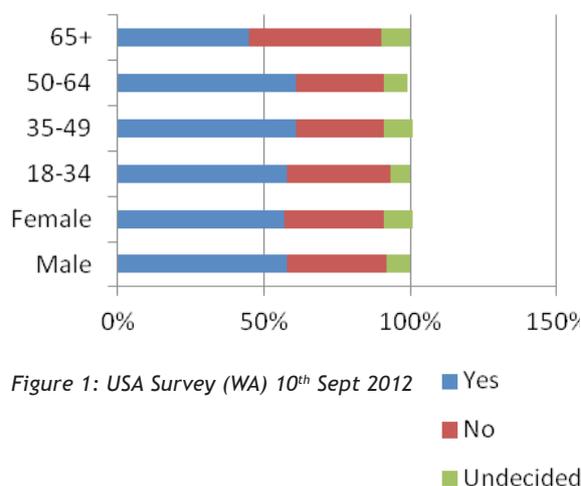


Figure 1: USA Survey (WA) 10th Sept 2012

- Yes
- No
- Undecided

The two polls illustrated in Fig. 2 show how support wavered in the run-up to the vote. What is particularly interesting is that support by men, 18-29 year olds and 30-44 year olds, went up during the period (by 12%, 13% and 12% respectively), but support by women went down slightly (2%). Only in the 66 plus age group did support stay the same. These polls also show that women were the most undecided group - 12% were undecided in the 31st October poll. The fact that women were the undecided group even at this late stage may again reflect their fears about youth access and DUI.

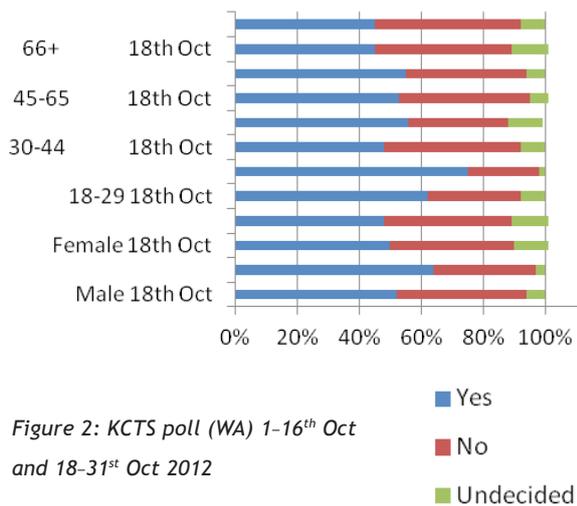


Figure 2: KCTS poll (WA) 1-16th Oct and 18-31st Oct 2012

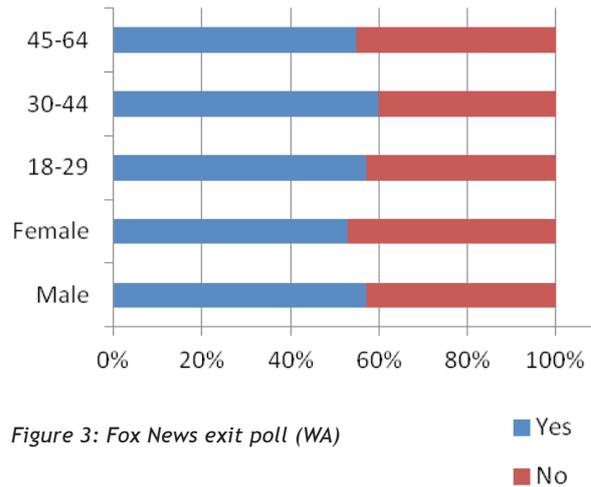


Figure 3: Fox News exit poll (WA)

Comparing the KCTS polling in Washington published on 31st October 2013 (Fig. 2) with the exit poll (Fig. 3) suggests that of those groups that were most undecided (women with 12% and 30-44 year olds with 11%) when it came to casting their ballot almost half of them voted 'yes': the female 'yes' vote went up from 48% to 53%, and for 30-44 year olds the 'yes' vote went up from 56% to 60%. Though it is difficult to extrapolate from the numbers, the fact that the female vote went up 7% could suggest that the campaign messages specifically targeting women aged between 30-45 were successful at allaying their fears regarding increased youth access and impaired driving (see Text Box 2). According to the Fox News exit poll the majority of voters in all constituencies apart from those over 65 voted in support of I-502 (men 57%, women 53%, 18-29 year olds 57%, 30-44 year olds 60% and 45-64 year olds 55%).¹⁰⁷ What is interesting when comparing the exit poll data with that of the KCTS poll on 31st October is that for the Millennials (the 18-29 year old age group) support went down from 75% to 57%. As mentioned above, this may have something to do with the DUI laws included in I-502 that specifically targeted those under 21.

According to Washington State statistics voter turnout was as follows: 18-24 age group = 7.61%; the 25-34 age group = 13.68%; the 35-44 age group = 15.47%; the 45-54 age group = 19.38%; the 55-64 age group = 21.08%; the over 65s = 22.77%.¹⁰⁸ This shows that the over 65s, those who were least in favour of the ballot measure, voted in larger numbers than any other age group. The 18-24 age group turned out in considerably lower numbers (7.61%) than in both Colorado (20%) and Oregon (16%).

Patterns in Colorado

The two polls illustrated in Fig. 4 show the changes in levels of support in October - the final month before the vote. Support from women and Generation-X (the 35-49 age bracket) went up by 7% and 10% respectively and support from the over 65s went up slightly (4%). Support by men, the 18-34 age group and the 50-64 age group went down slightly (2%, 3% and 3% respectively).

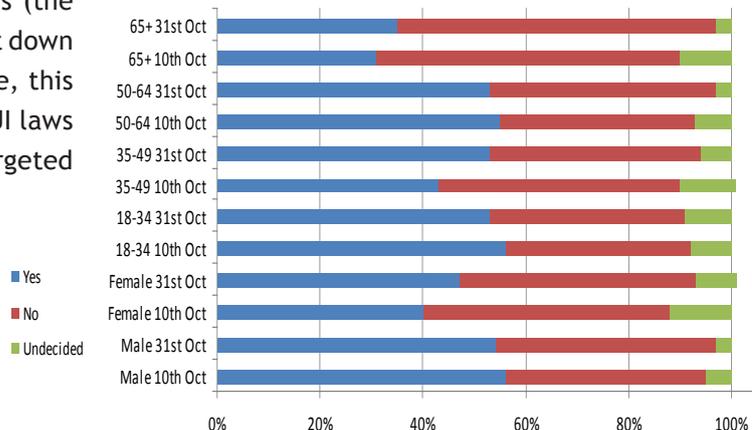


Figure 4: USA Survey (CO) 9-10th Oct and 28-31st Oct 2012

Comparing the USA Survey in Colorado carried out between 28th and 31st October 2012 (Fig. 4) with the Fox News exit poll (Fig. 5) it is clear that most of those women who were initially undecided voted 'yes'. Like in Washington, campaigners targeted women between the ages of 30-50 and as can be seen from the exit polling, these women did come out in support for A-64. The Quinnipiac poll (Fig. 6) also shows that women supported A-64 in higher numbers than men which suggests that the campaign messages aimed at them (e.g. tax money for school building projects, cannabis is safer than alcohol,) were successful.

The Fox News exit poll does not record the votes of those aged between 18 and 29 so it is difficult to analyse how their voting patterns changed compared to pre-vote polling though if this age group follows patterns nationwide (Fig. 7) it would be fair to suppose that they leaned towards voting 'yes'. The Quinnipiac poll (Fig. 6) in August 2013 reinforces this argument as it shows that 74% of 18-29 year olds supported A-64.

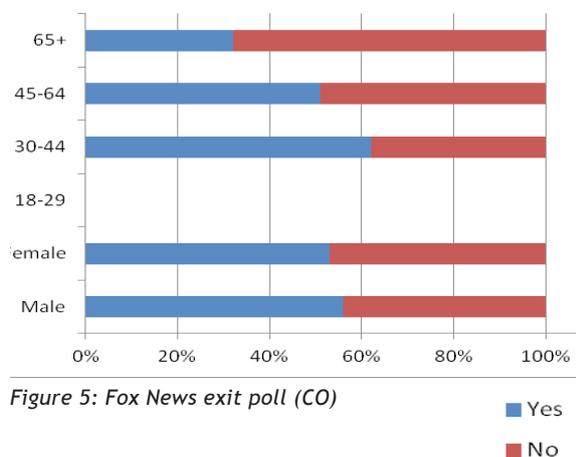


Figure 5: Fox News exit poll (CO)

According to the Fox News exit poll voter turnout was as follows: the 18-29 age group = 20%; the 30-44 age group = 27%; the 45-64 age group = 37%; the over 65s = 15%.¹⁰⁹ In Colorado the age group that came out to vote in the highest numbers was 45-64 year olds. 30-44 year olds, the second largest group to vote, were the most likely to support A-64 with over 60% saying that they had voted in favour. It is interesting to note that in Colorado, the over

65s were the group who turned out in smallest numbers (with a 15% share of the votes), this contrasts starkly with Washington and Oregon where this demographic represented just over one fifth of voters (22.7% and 22% respectively).

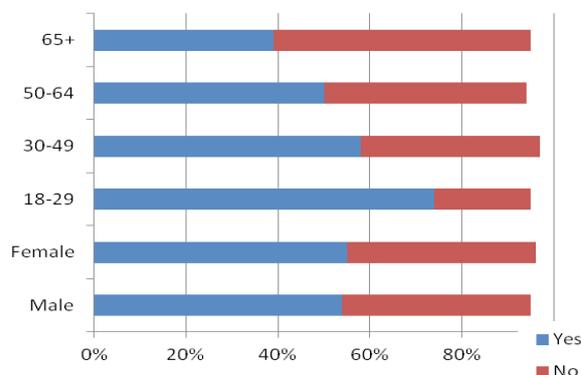


Figure 6: Quinnipiac CO poll (22nd August 2013) - do you support A-64?

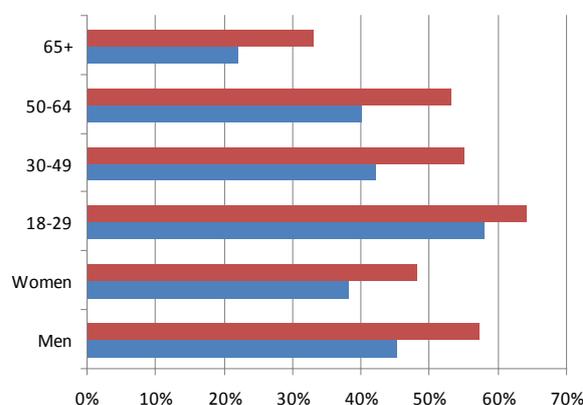


Figure 7: National polling changes by gender and age in voting 'yes' to the question "do you support the legalisation of marijuana?"
Pew Research

Patterns in Oregon

Analysis of the Survey USA polling from September and October (Fig. 8) shows that support for M-80 went down amongst men, the 18-34 age group and the 50-64 age group. Support went up amongst women, the 35-49 age group and the 65 plus age group. Women were the most undecided demographic in September, with 27% uncertain as to how they would vote; this had dropped to 21% in October. In none of the demographic groups did support ever pass 50%. Only in the 18-34 age group did support come close to 50%, with 47% supporting the measure in September and 45% supporting it in October.

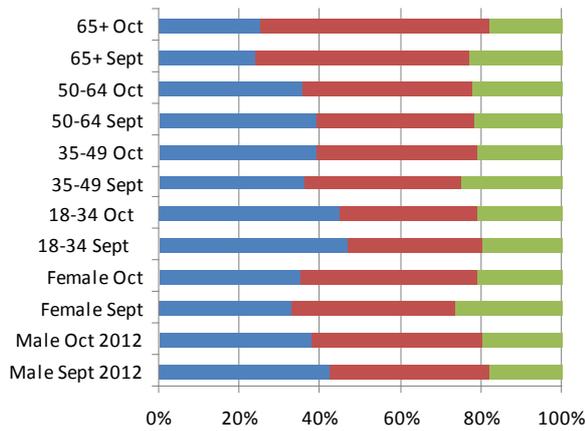


Figure 8: Survey USA Polling data showing support for M-80, September and October 2012

Comparing the exit poll data with the pre-vote polling shows that in all demographics support for M-80 rose, however, in no group did support pass the 50% mark. For men and the 30-44 age group support peaked at 49%. As with Washington and Colorado, the 65 plus age group showed the least support for M-80 with only 31% saying that they had voted in favour. What is interesting, and somewhat problematic in terms of analysis, with the Fox News exit polls, is that in Oregon and Colorado no data was collected from the 18-29 age group.

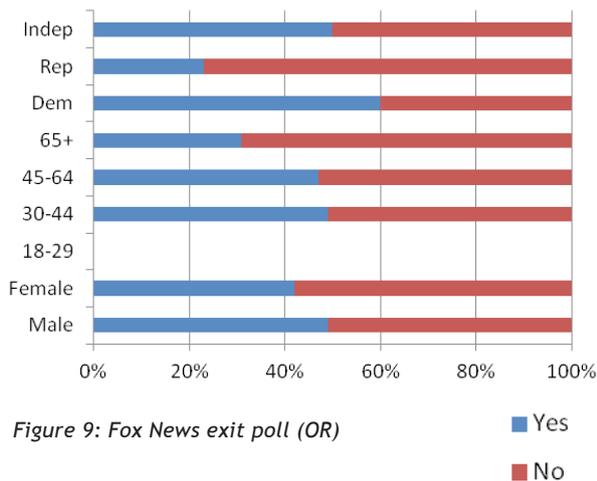


Figure 9: Fox News exit poll (OR)

According to Fox News exit poll was voter turnout was as follows: the 18-29 age group = 16%; the 30-44 age group = 23%; the 45-64 age group = 38%; the over 65s = 22%.¹¹⁰

Washington, Colorado and Oregon vs. National Polling

It is informative to analyse exit poll data and national polling to see how support in Washington and Colorado compares with the rest of the country. Comparisons between the Washington Fox News exit polling (Fig. 4) and Pew poll in 2013 (Fig. 7) show some interesting results. Constituencies that are higher in Washington than nationally include women (53%:48%), the 30-44/30-49 age group (60%:55%), the 54-64/50-64 age group (55%:53%) and the over 65s (45%:33%). Levels of support amongst men are the same in Washington as they are nationally at 57%. What is particularly striking is how much higher support is in Washington from the 65 plus age group that suggests that even though they are still broadly against the regulation of cannabis, the campaign messages were effective. What is also surprising is that levels of support amongst the crucial 18-29 age bracket were lower in Washington than nationally (57%:64%). This may be due to the controversial driving under the influence standard that imposes zero tolerance on those under 21 and therefore was seen to target young people.

Levels of support in Colorado compared to national polling are broadly similar to that of Washington. Looking at the Fox News exit polling in Colorado (Fig. 5) and Pew poll 2013 (Fig. 7) shows that support from women is somewhat higher in Colorado than nationally (53%:48%), as is support from the 30-44/30-49 age group (62%:55%). However amongst the 45-64/50-64 age group, support is slightly lower in Colorado than nationally (51%:53%). Support amongst men and the 65 and over age group is very similar to national polling data (56%:57% and 32%:33% respectively). As noted, the Fox News exit does not record data for the 18-29 year olds but if one compares the Quinnipiac poll in August 2013 with the national polling one can see support is considerably higher in Colorado than nationally (74%:64%). In both Washington and Colorado where campaigners specifically targeted female voters in the

30-45/50 age bracket, the vote was up on national polling. This indicates that campaign messaging that aimed to speak to them may have been successful in getting them out to vote for the 'yes' campaign.

Comparing the exit poll data (Fig. 9) with national polling statistics (Fig. 7) shows that in Oregon all demographic groups indicated lower levels of support for M-80 than their counterparts on a country-wide basis showed for legalisation. It is likely that this is because of the weaknesses in M-80 itself rather than that Oregon is less supportive of cannabis policy reform than the nation as a whole.

VOTER DEMOGRAPHICS NATIONALLY

As noted, support for legalising cannabis has been growing in the US for some time. In 2011 a nationwide Gallup poll found that for the first time 50% supported legalising cannabis¹¹¹ and in May 2012 a poll carried out by Rasmussen recorded that 56% of respondents were in favour of 'legalising marijuana and regulating it in a similar manner to the way alcohol and tobacco cigarettes are regulated today'.¹¹² More polling has been carried out since the Washington and Colorado votes that show similar trends. Although a USA Today/Gallup carried out at the end of November 2012 found only 48% thought it should be legal with 50% against,¹¹³ a Public Policy Polling survey also carried out in late November 2012 found that 58% of respondents supported legalising cannabis (with 33% strongly supporting legalisation and 25% in favour but not strongly supporting the proposition) with 39% against.¹¹⁴ A national poll carried out on April 4th 2013 by the Pew Research Center revealed that a majority (52%) of people supported legalising cannabis against 45% who thought it should remain illegal. Significantly, Pew notes that support for legalisation has grown

by 11% since 2012.¹¹⁵ The most recent poll, carried out by Gallup in October 2013 (Fig. 10) found that 58% of the population support legalisation of cannabis.¹¹⁶

Could it be argued that a 'tipping point' has been reached on this issue.¹¹⁷

Americans' Views on Legalizing Marijuana

Do you think the use of marijuana should be made legal, or not?

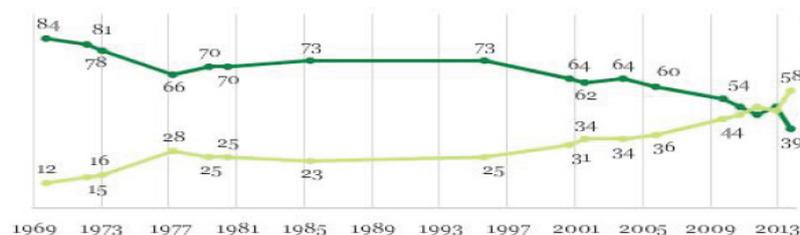


Figure 10: Gallup poll showing support for legalisation over time

A May 2013 study by the Brookings Institution argues that due to the changing demographics in the American population, it is likely that support for legalisation will continue to grow.¹¹⁸ Indeed, the only age group who is still staunchly opposed to legalisation of any kind is the over-65s, and support is strongest amongst Generation X-ers (born between 1965 and 1980) and Millennials (born after 1980) as can be seen in Fig. 11.¹¹⁹

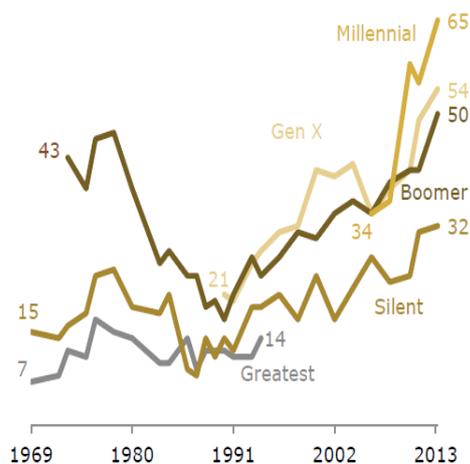


Figure 11: Generational changes in support for legally regulated market

Something that stands out in the polling is the changing level of support amongst the Baby Boomers (born between 1946 and 1964). In 1978, 47% of Baby Boomers supported legalisation, but this dropped sharply during the 1980s and 1990s when only 17% were in favour. Current levels of support amongst this age range are now up to 50% (see Fig. 11).¹²⁰ Mark Kleiman, professor of public policy at UCLA and president of BOTEK Analysis, argues that though support from the Baby Boomers has fallen and then risen again, cannabis has always been a part of the Generation-X and the Millennials lives, which means they are more likely to maintain their support for alternatives to prohibition.¹²¹

A Gallup poll carried out in November 2012 shows clearly that the 18-29 year age group (Millennials) is most strongly in favour of legalisation with 60% in favour of legalisation (Fig. 12).¹²² In the 30-64 age group, which encompasses Generation-X and the Baby Boomers, support lags somewhat behind the Millennials with 48% in support. The over 65s (Silent Generation) are still overwhelmingly opposed to legalisation, with only 36% supporting the idea.

Do you think the use of marijuana should be made legal, or not?

By age and party ID

	% Yes	% No
18 to 29	60	39
30 to 64	48	51
65+	36	61
Republicans	33	66
Independents	50	47
Democrats	61	38

USA Today/Gallup, Nov. 26-29, 2012

Figure 12: Gallup poll: Marijuana - legalise or not?

Another significant result from the Pew Research relates to how the levels of support for legalisation differ depending on the cannabis laws in the state in which the interviewee resides (See Fig. 13)

Views of Legalization Similar in States with Different Laws

States where ...	Marijuana should be		
	Legal %	Illegal %	DK %
Medical marijuana is legal; marijuana decriminalized or legal (24 states and D.C.)	55	42	3=100
Just medical is legal (8 states and D.C.)	57	40	3=100
Marijuana is decriminalized; medical marijuana is illegal (6 states)	54	44	2=100
Medical marijuana is legal and marijuana decriminalized (10 states)	55	41	4=100
Not decriminalized or medical (26 states)	50	47	3=100

PEW RESEARCH CENTER March 13-17, 2013.

Decriminalization laws reduce the penalties associated with the use or possession of small amounts of marijuana. Figures may not add to 100% because of rounding. See

Figure 13: Differences in levels of support for legally regulated markets influenced by state marijuana laws

Whilst support for legalisation is 50% or over in many states, there is some disparity between levels of that support. Support is highest (57%) in states that have medical cannabis laws. In states where there are medical cannabis laws and decriminalisation, 55% of people believe cannabis should be legal. Support for legalisation drops slightly to 54% in states that have decriminalisation but not medical cannabis. Only in states where cannabis is not decriminalised and there are no laws allowing medical access does support drop to 50%. That levels of support for legalisation are highest in states that only have medical cannabis and have not decriminalised recreational use could suggest that voters recognise the benefits of regulation over the relaxation of laws, a view held by Nadelmann who as long ago as 2004 argued that 'the medical marijuana effort has probably aided the broader anti-prohibitionist campaign'.¹²³ Regardless, it seems clear that states that have already passed permissive marijuana laws are more likely to support legalisation in general.

Finally, now that Washington and Colorado have passed laws that legally regulate cannabis, polling has started to emerge that even larger national majorities believe that the federal government should not interfere with these state laws. According to a Gallup poll from December 2012, 64% of adults believed that the federal government should not take steps to enforce federal-anti marijuana laws in states that have legalised it.¹²⁴

CONCLUSIONS: WHAT CAN BE LEARNT FROM THE EXPERIENCES OF WASHINGTON, COLORADO AND OREGON?

As we have seen, the campaigns for legally regulated markets in Colorado and Washington were well funded, professionally run, and relied on strategic messaging to key demographic groups. They also learned lessons from previous reform efforts, particularly the experience in California in 2010. More specifically, a number of inter-related core areas necessary for success can be identified.

(1) Identify key demographic groups and use the right messages

One of the most crucial lessons the cannabis policy reformers learned was to target their campaigns at key demographic groups, particularly 30-50 year old women, who were likely to be initially supportive but then switch their allegiance to the 'no' vote. Well-crafted messages that spoke to this demographic - particularly emphasising that youth access can be better controlled through legally regulated markets than prohibition - seem to have worked in keeping women on the 'yes' side. In both Washington and Colorado, the percentage of females in support of regulated markets was greater than the national average. In Colorado, one of the common campaign messages was the idea that 'cannabis is safer than alcohol'. Whilst this message did not poll as well as messages around law enforcement savings and increased tax revenues, the 'Sensible

Colorado' group chose to stick with it because it built upon a discussion that had existed in the state for some years.

Ultimately, both Washington and Colorado's strategies seemed to have worked well. In internal exit polling conducted by the campaigns, the two key messages in both states were that legalisation, taxation and regulation will

- (i) free up scarce law enforcement resources to focus on more serious crimes and
- (ii) will create new tax revenue for worthy causes.¹²⁵

(2) Funding and campaign organisation are vital

Money is essential when constructing a ballot initiative campaign. This is not unique to the cannabis issue. In his study of direct democracy in California, Michael Kang found that 'when opponents spent two-thirds more than supporters, they successfully defeated the proposition 87 percent of the time - only two propositions in twenty-eight overcame this spending deficit.'¹²⁶ Kang also notes that during many campaigns ballot measures gained large-scale public support at the outset, but that this changed if a well-funded opposition campaign was mounted.¹²⁷

In Washington, the 'Yes on I-502' campaign out-spent opponents by a huge margin: \$6 million compared to \$16,000. In Colorado, the differential was smaller but the 'Yes on A-64' campaign still had far more money at their disposal than the opposition: \$2-3 million compared with \$440,000. The campaign in support of Oregon's M-80 also out-spent their opponents - the 'yes' campaign raised \$32,000 whilst there was no funded opposition to the measure - but did not have sufficient funding to purchase a state-wide media campaign and subsequently failed to get the ballot initiative passed. In Oregon's case, however, it is likely that its defeat was not just about money.

Washington and Colorado succeeded where Oregon failed because the campaigns were not only well funded but also well organised. In Oregon, the measure was poorly drafted and targeted at grassroots supporters rather than people who did not use cannabis but were open minded to reform.

(3) The initiative must be well crafted

The language of the initiative is extremely important - both Washington and Colorado included a lot of detail about taxes, age limits, and purchase amounts within the initiative itself. Furthermore, campaigners in both states carried out polling and focus groups before drafting the initiatives in order to find out what issues were most important to voters. Oregon's M-80 on the other hand, was not as well conceived. Not only did it quote a possible reference to cannabis in the

Bible, but it also failed to set out a sufficiently robust regulatory framework or tax structure. It also would have established a pro-industry regulatory body that was not considered to be adequately independent. As noted at various points throughout this report, many voters view cannabis in a negative light, but believe that prohibition is not working and that an alternative policy may be more effective. To that end, ballot initiatives must be carefully drafted, include strong regulations and direct tax revenue to worthy causes such as public health and education.

These issues are increasingly relevant, as, at the state level, the United States enters a new phase of policy reform activity. Whilst the campaign for legally regulated cannabis markets in Oregon failed in 2012, it will once again be on the ballot in 2014.¹²⁸ Indeed,

Box 5: View from the ground: Looking to the Future

Interview with Alison Holcomb, Criminal Justice Director, American Civil Liberties Union of Washington State

For Holcomb, a shift to regulated markets in California would be a *'game changer, not only nationally but internationally'*. In terms of the potential international implications, she explains that, since the state borders Mexico, that nation was *'a bit of a player in 2010 when California had proposition 19 on the ballot'*. As Holcomb recalls *'Then president Felipe Calderon who escalated Mexico's drug war in 2006 came forward and very strongly condemned proposition 19, did not want it to pass and publicly said so weeks before the vote and may have persuaded Latino and Latina voters to vote against the measure.'* She goes on to say *'After Colorado and Washington passed their measures in 2012 though, President Pena-Nieto came forward and said this is going to make it difficult for Mexico to pursue the same kinds of policies towards marijuana as it has in the past. Obviously, trying to use law enforcement resources to crack down on supply flowing from Mexico to the states seems less of a priority when there are states within the United States that are growing and selling marijuana legally.'* *'And recently,'* Holcomb continues *'now former president Felipe Calderon has actually come forward and called for an examination of all possible strategies to combat the cartel violence that Mexico is suffering, and the legalisation and regulation of cannabis is certainly one of those strategies. So, California is a big player and I think it's the domino that pushes the rest of the United States quickly and decisively.'*

When asked about the possible state of cannabis policy in the US in 10 years time, Holcomb explains,

‘My hope is that, that far out, 10 years out, we’ll have tipped the scale in terms of a critical mass of states that will give congress the political cover it needs to change federal cannabis policy.’ ‘Now, I’m not certain at all that we are talking about legalisation of cannabis at the federal level’ she cautions. In describing how the tension between state and federal laws may play out, Holcomb concludes, however, that ‘...I do think it’s not too far a stretch to believe that congress might, at least by 10 years out, have passed legislation saying that whatever acts are legal under individual state laws are no longer crimes under federal law, meaning people who are in compliance with the laws of the state in which they live don’t have to worry about federal law enforcement agents arresting them or being dragged into federal court and being prosecuted under federal laws.’



as this publication goes to press, supporters are more confident this time around¹²⁹ having put together a more considered and detailed initiative.¹³⁰ Alaska will also vote on a legalisation measure in late 2014.¹³¹ A legislative bill was also introduced in Oregon in 2013 that would have created a legally regulated market for cannabis in that state, but it has not passed out of the committee stage.¹³² And while in stasis, this brings us back to a point made at the beginning of this report: successful ballot initiatives in one state can influence legislatures in other states. To be sure, Oregon is not the only state to have discussed legislative bills in the wake of the successful votes in Washington and Colorado - indeed eleven states considered such bills in 2013 alone.¹³³

According to some observers, Vermont, New Hampshire and Rhode Island might follow the Colorado route as soon as next year. ‘If anyone’s going to do it through the legislature in 2015, it’s going to be those three’, says Mason Tvert, communications director for the Marijuana Policy Project.¹³⁴ Alison Holcomb also sees

likely movement in other states in the next few years, including, crucially, in California. For her this may be a ‘game changer’ that might help to develop a ‘critical mass of states’ that may alter the relationship between Washington D.C. and state capitals (See Boxes 5). Indeed, if medical marijuana laws are any indicator, if a few more states pass legalisation laws via ballot initiative, state legislatures are soon to follow. More broadly, support for legalisation is growing across the US as the recent Gallup and Pew polls have found. It may be that for many states, a ‘tipping point’ has been reached and voters will increasingly buy the case for regulated markets.

ACKNOWLEDGEMENTS

With thanks to Julia Buxton and Alison Holcomb for their feedback and comments on earlier drafts of this report. Any errors of fact or interpretation remain the responsibility of the authors. Thanks also to Ross Eventon for editorial assistance.

ENDNOTES

- 1 In line with the debate within the United States (and elsewhere), the terms cannabis and marijuana within this report are used interchangeably.
- 2 See Crick, Haase, Bewley-Taylor, Taylor ‘*Cannabis Policy in the US: Implications and Possibilities*’, GDPO Policy Report 1, November 2013 <http://www.swansea.ac.uk/gdpo/projectpages/cannabispolicyintheusimplicationsandpossibilities/>
- 3 Michael Mintrom & Sandra Vergari, ‘Advocacy coalitions, policy entrepreneurs, and policy change’, *Policy Studies Journal*, Vol. 24, No. 3, 1996, pp. 420–434
- 4 It should be noted that not all states allow direct democracy in the form of ballot initiatives. According to the Initiative and Referendum Institute at the University of Southern California, only twenty-four states allow popular ballot measures. These are Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington, Wyoming – http://www.iandrinstute.org/statewide_i%26r.htm
- 5 John Matsusaka, ‘The eclipse of legislatures: Direct democracy in the 21st century’, *Public Choice*, 124; 2005; 161
- 6 For detailed analysis of these criticisms see Michael S. Kang, ‘Democratizing Direct Democracy: Restoring Voter Competence Through Heuristic Cues and “Disclosure Plus”’ *50 UCLA Law Review*, 1141, 2002–2003; 1141–1188
- 7 Kang defines ‘heuristic cues’ as ‘cognitive shortcuts that voters customarily use to make political decisions’. He notes that these cues are similar to brand names in that they ‘reliably summarize a wealth of relevant information under an easily understood label’. Kang, 2003; 1143
- 8 Kang, 2003; 1143; Matsusaka, 2005; 164
- 9 Joshua J. Dyck, Shanna Pearson-Merkowitz, ‘The Conspiracy of Silence: Context and Voting on Gay Marriage Ballot Measures’, *Political Research Quarterly*, 65(4); 747
- 10 Matsusaka, 2005; 172
- 11 Author’s (EC) email communication with Eric E. Sterling, 16th July 2013
- 12 Author’s (EC) email communication with Eric E. Sterling, 16th July 2013
- 13 Author’s (EC) email communication with Eric E. Sterling, 16th July 2013
- 14 Washington Medical Marijuana, NORML – <http://norml.org/legal/item/washington-medical-marijuana>
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Global Drug Policy Observatory

Research Institute for Arts and Humanities
Room 201 James Callaghan Building
Swansea University
Singleton Park, Swansea SA2 8PP
Tel: +44 (0)1792 604293
www.swansea.ac.uk/gdpo



@gdpo_swan