

ADVANCE TO THE NEAREST DISPENSARY: HOW
QUEBEC’S MARIJUANA MONOPOLY IS A MODEL FOR
FUTURE LEGALIZED STATES

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I. INTRODUCTION

The legalization of marijuana is a contentious political topic. The Marihuana Tax Act of 1937 prohibited the use of cannabis by creating penalties and regulations for the use of the drug.¹ Although this Act was overturned in 1939, in 1970 the United States implemented the Controlled Substances Act (“CSA”), which “serves as the legal foundation of the government’s fight against drugs of abuse.”² The CSA places regulated drugs into five schedules or categories.³ The scheduling is based upon a substance’s potential for abuse, its pharmacological effects, its history, and current patterns of abuse.⁴ Marijuana is a Schedule I drug.⁵ Other Schedule I drugs include ecstasy, heroin, and lysergic acid diethylamide (“LSD”).⁶ In contrast, fentanyl and pain relievers such as Vicodin or Demerol are Schedule II drugs.⁷

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¹ Marihuana Tax Act of 1937, Pub. L. No. 75-238, 50 Stat. 551 (repealed 1970); see Dwight K. Blake, *Marijuana Tax Act of 1937: What You Need to Know*, AM. MARIJUANA,

<https://americanmarijuana.org/marijuana-tax-act-of-1937> [<https://perma.cc/93WJ-74TC>] (July 20, 2021). Cannabis and marijuana are used interchangeably throughout this Note. The terms are essentially equivalent.

² Virgil Van Dusen & Alan R. Spies, *An Overview and Update of the Controlled Substances Act of 1970*, PHARMACY TIMES (Feb. 1, 2007), <https://www.pharmacytimes.com/publications/issue/2007/2007-02/2007-02-6309> [<https://perma.cc/38W2-V2JV>].

³ 21 U.S.C. § 812.

⁴ 21 U.S.C. § 811(c).

⁵ *Drug Scheduling*, U.S. DRUG ENF’T ADMIN., <https://www.dea.gov/drug-scheduling> [<https://perma.cc/Y67E-KWJX>] (last visited Feb. 12, 2022).

⁶ *Id.*

⁷ *Id.*

Under the CSA, it is illegal to possess, cultivate, distribute, and prescribe marijuana.⁸ The CSA withstood constitutional challenge in the case of *Gonzalez v. Raich*, wherein the U.S. Supreme Court held that the government was able to regulate marijuana under the Commerce Clause of the U.S. Constitution.⁹ Even though marijuana is illegal pursuant to federal law, many states have challenged this authority and have legalized the use of medicinal and recreational marijuana.¹⁰

States that have legalized recreational marijuana, such as Colorado and California, use a license authorization approach to marijuana sales where the state government authorizes private retailers and manufacturers to develop and sell marijuana products.¹¹ Given the current regulations, a U.S. state that has legalized recreational marijuana would be wise to implement a monopolistic approach model to marijuana sales—currently utilized in the Canadian province of Quebec¹²—as opposed to the license authorization model. This Note argues that a monopolistic approach model would be more effective than the current license authorization model, as a monopolistic approach better promotes public health, eliminates regulations for private retail dispensaries, and leads to an optimal price of marijuana products.

A. Important Factors for States to Consider in Legalizing Marijuana

Marijuana legalization is rapidly occurring throughout the country, as several states voted to pass marijuana legalization acts in 2020 and 2021.¹³ The legalization of cannabis, however, does not come without issues. States have continued to monitor the harmful effects

⁸ 21 U.S.C. §§ 812, 841(a); see Andrew L. Scherf, *The Societal and Economic Impacts of Recent Dramatic Shifts in State Marijuana Law: How Should Minnesota Proceed in the Future?*, 36 *HAMLIN J. PUB. L. & POL'Y* 119, 121 (2015).

⁹ *Gonzales v. Raich*, 545 U.S. 1, 19 (2005).

¹⁰ *Here's the Timeline for the History of Marijuana Legalization in the United States*, CIVILIZED (Sept. 24, 2018), <https://www.civilized.life/articles/timeline-history-of-marijuana-legalization-united-states> [<https://perma.cc/UBT4-5EZT>].

¹¹ See *infra* Section I.C.

¹² See *infra* Part V.

¹³ Lauren Dezenski, *Montana, Arizona, New Jersey, South Dakota and Mississippi Approve Marijuana Ballot Measures*, *CNN Projects*, CNN POL. (Dec. 7, 2020, 4:38 PM), <https://www.cnn.com/2020/11/04/politics/marijuana-legalization-2020-states/index.html> [<https://perma.cc/EV3D-QML4>]; Jean-Gabriel Fernandez, *The Year in Review: Nine States Legalized Marijuana in 2021*, *SHEPHERD EXPRESS* (Dec. 10, 2021, 1:53 PM), <https://shepherdexpress.com/cannabis/cannabis/the-year-in-review-nine-states-legalized-marijuana-in-2021/> [<https://perma.cc/KT9Y-ZTQU>].

of marijuana and its economic impact on society. With legalization in full effect in many states, each state is tasked with providing strict guidelines to limit the use and sale of cannabis products. In August of 2013, the federal government issued the Cole Memorandum, in which it mandated states to implement cannabis policies that put the priorities of their citizens ahead of any profit maximizing framework.¹⁴

The health and safety of each citizen is at the forefront of marijuana regulations across the country. Having proper guidelines for the sale and use of marijuana is crucial, since studies have shown that even casual usage of marijuana can cause brain abnormalities in the areas that impact motivation and emotion.¹⁵ Long-term usage of marijuana can cause lasting effects on the brain.¹⁶ Moreover, in the past ten years, an increasing number of emergency room visits are related to marijuana, with some possible causes including involvements in accidents and acute psychotic reactions.¹⁷ Marijuana is also the illicit drug most frequently found to be involved in automobile accidents, including fatal ones,¹⁸ as the risk of being involved in an accident nearly doubles after using marijuana.¹⁹

Keeping marijuana away from children is vital, as “[s]tudies show a person’s brain is not fully developed until age twenty-five, and smoking marijuana before that age will permanently destroy portions of the brain.”²⁰ Additionally, studies have shown that individuals who consume “marijuana regularly during adolescence have impaired neural connectivity (fewer fibers) in specific brain regions” involved in a

¹⁴ Memorandum from James M. Cole, Deputy Att’y Gen., U.S. Dep’t of Just., to U.S. Att’ys (Aug. 29, 2013), <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf> [<https://perma.cc/K4HZ-ZFQW>] [hereinafter Cole Memorandum].

¹⁵ Megan Brown, Article, *Puff, Puff, or Pass? Why the United States Is not Ready to Legalize Recreational Marijuana*, 24 SAN JOAQUIN AGRIC. L. REV. 93, 120 (2015). *But see* Jennifer Walter, *What Science Knows About Marijuana’s Health Benefits*, DISCOVER MAG. (Feb. 7, 2020, 3:00 PM), <https://www.discovermagazine.com/mind/what-science-knows-about-marijuanas-health-benefits> [<https://perma.cc/7B7A-EF2J>].

¹⁶ Walter, *supra* note 15.

¹⁷ *See* Nora D. Volkow, Ruben D. Baler, Wilson M. Compton & Susan R.B. Weiss, *Adverse Health Effects of Marijuana Use*, 370 New Eng. J. Med. 2219, 2221–22 (2014).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Brown, *supra* note 15, at 122 (citing Madeline H. Meier, Avshalom Caspi, Antony Ambler, HonaLee Harrington, Renate Houts, Richard S.E. Keefe, Kay McDonald, Aimee Ward, Richie Poulton & Terrie E. Moffitt, *Persistent Cannabis Users Show Neuropsychological Decline from Childhood to Midlife*, 109 PROCS. NAT’L ACAD. SCIS. E2657 (2012)).

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broad range of cognitive functions like memory, learning, and interoceptive awareness.²¹

Although the effects of marijuana use are not as harmful as once thought, it is still important for each state to protect the public from the proven dangers of marijuana and to curb consumption to optimal levels. A strict regulatory framework that destroys the black market and bans advertising can have a strong influence in deterring adolescents under the age of twenty-one from obtaining cannabis.²² Retail stores promote and advertise the use of cannabis to maximize revenue for the business, like advertisements for any other product on the market.²³ Unsurprisingly, the profit-maximizing motives of retailers have typically overshadowed public safety. A national study concluded that “youth who reported greater exposure to alcohol advertising would have increased alcohol use over time.”²⁴ This study also found that an increase in advertisements leads to an increase in drinking levels for people in their twenties.²⁵ Marijuana advertising has a similar effect on consumers, as an increase in advertising leads to an increase in usage.²⁶ Strictly enforced regulations are necessary to protect consumers from the dangers of illicit drugs.

B. U.S. State Legalization

State laws legalizing the sale and use of recreational marijuana were first enacted in 2012 in Colorado and Washington.²⁷ The

²¹ Volkow, Baler, Compton & Weiss, *supra* note 17, at 2220.

²² See *What You Can You Do If Marijuana Has Been Legalized in Your State*, HAZELDON BETTY FORD FOUND., <https://www.hazeldenbettyford.org/recovery-advocacy/marijuana-education/regulatory-action> [https://perma.cc/4X5A-B3MX] (last visited Jan. 28, 2022).

²³ See Janelle Lassalle, *7 Creative Advertising Methods for Cannabis Businesses*, FORBES (Apr. 28, 2020, 5:53 PM), <https://www.forbes.com/sites/janellelallasalle/2020/04/28/7-creative-advertising-methods-for-cannabis-businesses/?sh=6851e7773908>.

²⁴ Leslie B. Snyder, Frances Fleming Milici, Michael Slater, Helen Sun & Yuliya Strizhakova, *Effects of Alcohol Advertising Exposure on Drinking Among Youth*, 160 ARCHIVES PEDIATRICS & ADOLESCENT MED. 18, 19 (2006).

²⁵ *Id.* at 18.

²⁶ See Elizabeth J. D’Amico, Anthony Rodriguez, Joan S. Tucket, Eric R. Pedersen & Regina A. Shih, *Planting the Seed for Marijuana Use: Changes in Exposure to Medical Marijuana Advertising and Subsequent Adolescent Marijuana Use, Cognitions, and Consequences Over Seven Years*, 188 DRUG & ALCOHOL DEPENDENCE 385, 389 (2018).

²⁷ See *Colorado and Washington: Life After Legalization and Regulation*, MARIJUANA POL’Y PROJECT, <https://www.mpp.org/issues/legalization/colorado->

legalization of marijuana gained further traction as the perception of marijuana as a “dangerous” drug has become destigmatized, with government officials realizing certain benefits of legalizing and regulating Schedule I drugs.²⁸ Some of the driving forces behind legalization are a substantial amount of tax revenue generated through sales,²⁹ widespread support for the use of medicinal marijuana in seriously ill patients, “the palpable futility of outlawing a substance that continued to be relatively easy to acquire,” and eliminating the vast amount of resources wastefully spent on enforcement.³⁰

The federal government’s issuance of the Cole Memorandum signaled its relaxed stance on marijuana policies and state-wide intervention.³¹ The Memorandum encourages state and local governments that legalize cannabis to “implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests.”³² Additionally, the Memorandum allows state governments to effectively regulate the sale and use of marijuana on their own terms. It also aims to ensure that states are “implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises”³³ States now have the autonomy to create their own regulatory framework if it meets the criteria of public health and safety by ensuring that marijuana legislation focuses on “prevent[ing] criminal involvement in the market, sales to youths, and illegal diversion to other states.”³⁴

and-washington-life-after-legalization-and-regulation/ [https://perma.cc/MNK8-GKE6] (last visited Jan. 28, 2022).

²⁸ See Andrew Daniller, *Two-Thirds of Americans Support Marijuana Legalization*, PEW RSCH. CTR. (Nov. 14, 2019), <https://www.pewresearch.org/fact-tank/2019/11/14/americans-support-marijuana-legalization/> [https://perma.cc/WN4N-2X63].

²⁹ George Theofanis, Note, *The Golden State’s ‘High’ Expectations: Will California Realize the Fiscal Benefits of Cannabis Legalization?*, 49 U. PAC. L. REV. 155, 156 (2017).

³⁰ Armikka R. Bryant, *Taxing Marijuana: Earmarking Tax Revenue from Legalized Marijuana*, 33 GA. ST. U.L. REV. 659, 668–69 (2017).

³¹ See Cole Memorandum, *supra* note 14.

³² *Id.* at 2.

³³ *Id.* at 3.

³⁴ Jennifer Gallerani, Tim Gunther, Elise Serbaroli & Erin Fay, *Committee Blog: Re-Thinking Cannabis Track and Trace Models — A Sustainable and Scalable Approach*, CANNABIS INDUS., <https://thecannabisindustry.org/category/cole-memo/> [https://perma.cc/E6R3-HT2W] (last visited Apr. 5, 2022); *Regulating Commercially Legalized Marijuana as a Public Health Priority*, AM. PUB. HEALTH ASS’N

States should pursue the opportunity to legalize marijuana because legal marijuana is regulated for consumer safety, results in decreased use for teens, and decreases crime.³⁵ Although legalization would result in more access to and higher prices of cannabis and cannabis products, the products themselves would be regulated, thoroughly ensuring that the marijuana products would not be laced or tainted with other dangerous substances.³⁶ Regulation ensures that the products are safe to consume by requiring companies to adhere to strict testing and labeling policies.³⁷

C. State Laws

U.S. states that have legalized the recreational use, sale, and distribution of cannabis have variations in their regulatory laws.³⁸ Such states have similar laws regarding age restrictions and marijuana use in public places.³⁹ They have also used a license authorization approach to distribute retail cannabis products,⁴⁰ which requires marijuana cultivators, retailers, and manufacturers to obtain a license to conduct business.⁴¹ Businesses must also register with the state for all

(Nov. 18, 2014), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2015/01/23/10/17/regulating-commercially-legalized-marijuana-as-a-public-health-priority> [<https://perma.cc/9WBL-FE4E>];

³⁵ *Should Recreational Marijuana Be Legal?*, BRITANNICA, <https://marijuana.procon.org/> [<https://perma.cc/4ATR-Y276>] (Nov. 13, 2018).

³⁶ See Devin Powell, *The Spice of Death: The Science Behind Tainted “Synthetic Marijuana”*, SCI. AM. (Apr. 17, 2018), <https://www.scientificamerican.com/article/the-spice-of-death-the-science-behind-tainted-synthetic-marijuana/> [<https://perma.cc/C8BF-R8UG>]; see also Jean-Gabriel Fernandez, *Why Legal Marijuana Is Safer*, SHEPHERD EXPRESS (Dec. 10, 2019, 3:16 PM), <https://shepherdexpress.com/cannabis/cannabis/why-legal-marijuana-is-safer/> [<https://perma.cc/7E4Q-J7X6>].

³⁷ See *Effective Arguments for Regulating and Taxing Marijuana*, MARIJUANA POL’Y PROJECT, <https://www.mpp.org/issues/legalization/effective-arguments-for-regulating-and-taxing-marijuana/> [<https://perma.cc/2N7P-T7MU>] (last visited May 4, 2022).

³⁸ See *Laws*, WEEDMAPS, <https://weedmaps.com/learn/laws-and-regulations> [<https://perma.cc/VG6K-8GJD>] (last visited Feb. 20, 2022).

³⁹ See *id.*; see, e.g., COLO. REV. STAT. 44-10-702 (2021); CAL. HEALTH & SAFETY CODE § 11357 (West 2021).

⁴⁰ See Noelle Skodzinski, *Your State-by-State Guide to Cannabis Cultivation Business Application and Licensing Fees*, CANNABIS BUS. TIMES (Feb. 12, 2021), <https://www.cannabisbusinesstimes.com/article/state-state-guide-marijuana-application-licensing-fees> [<https://perma.cc/HM2W-AGFV>].

⁴¹ Nikki Nelson, *What Are the Business License Requirements for a Cannabis Business*, WOLTERS KLUWER (July 11, 2019),

marijuana activities and must be granted authorization to conduct those activities within the state.⁴² Licenses ensure that businesses are held “accountable for their actions and behavior” and “protect the health and safety of the public.”⁴³

Each state has its own sales and excise tax percentage that are attributed to marijuana sales. Generally, a sales tax is a tax on all consumer purchases and an excise tax is a tax on specified goods,⁴⁴ such as a tax on tobacco or alcohol.⁴⁵ Some states utilize both tax measures for marijuana and other states use either the standard sales tax or the excise tax.⁴⁶ Additionally, state law approaches vary on the ability of people to cultivate marijuana plants at home.⁴⁷ Lastly, these states also have variations in their advertising laws for the controlled substance.⁴⁸ The following subsections provide a short guide to marijuana excise taxes in Colorado, California, and Vermont.⁴⁹

<https://www.wolterskluwer.com/en/expert-insights/what-are-business-license-requirements-for-cannabis-businesses> [<https://perma.cc/AH2A-YZ6F>].

⁴² CANNABIS CONTROL COMM'N, GUIDANCE ON LICENSURE 6, 7 (2020).

⁴³ *When Do You Need a Business License for Your Company?*, DELAWARE INC. (Oct. 27, 2020), <https://www.delawareinc.com/blog/do-i-need-a-business-license-business-license-info/> [<https://perma.cc/6VAM-LZBE>].

⁴⁴ *What Is an Excise Tax?*, FRESHBOOKS <https://www.freshbooks.com/hub/taxes/an-excise-tax> [<https://perma.cc/5VG7-6Q6K>] (last visited Feb. 12, 2022) (“While excise tax is levied only on certain goods and services that are considered harmful or linked to specific health issues, sales tax is applied to a broad range of things.”). Excise taxes are used to discourage consumers from consuming the product.

⁴⁵ *What Is Excise Tax and How Does it Differ from Sales Tax?*, ACCURATETAX (Sept. 10, 2015), <https://www.accuratetax.com/blog/what-is-excise-tax/#:~:text=Excise%20tax%20differs%20from%20sales,are%20applied%20to%20specific%20goods> [<https://perma.cc/8GK7-G8P3>].

⁴⁶ Janelle Cammenga, *How High Are State Taxes on Recreational Marijuana in Your State?*, TAX FOUND. (June 10, 2020), <https://taxfoundation.org/state-excise-taxes-on-recreational-marijuana-2020> [<https://perma.cc/WR55-ZBJ2>].

⁴⁷ Susan Gunelius, *What States Allow You to Grow Your Own Recreational or Medical Cannabis?*, CANNABIZ MEDIA (Sept. 8, 2020), <https://www.cannabiz.media/blog/which-states-allow-you-to-grow-your-own-recreational-or-medical-cannabis> [<https://perma.cc/5E7Z-BE43>].

⁴⁸ Gino Sesto, *The Complete Guide to Marijuana Advertising Laws*, DASH TWO (July 9, 2019), <https://dashtwo.com/blog/marijuana-advertising-laws/> [<https://perma.cc/AD4F-CYSP>].

⁴⁹ Colorado and California were chosen to be reviewed in this Note because they have an extensive history of marijuana regulations, as these states legalized marijuana in 2012 and 2016, respectively. Vermont was chosen to be reviewed in this Note because it has a shorter history of marijuana regulations, as the state only legalized marijuana in 2018.

1. Colorado

In 2012, Colorado legalized the use and regulation of recreational marijuana with constitutional Amendment 64.⁵⁰ The Amendment “allows persons 21 years or older to purchase up to one ounce of cannabis daily” and to cultivate up to six plants for personal use.⁵¹ Only licensed retailers are authorized to sell cannabis products.⁵² Consumers are subject to a fifteen percent sales tax from retailers while retailers must pay a fifteen percent excise tax from cultivators.⁵³ In comparison, Colorado has a standard sales tax of 2.9%.⁵⁴

2. California

In 2016, the California legislature legalized the use of recreational marijuana through Proposition 64, allowing adults over the age of twenty-one to use marijuana recreationally.⁵⁵ Users may “possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than 28.5 grams of cannabis not in the form of concentrated cannabis.”⁵⁶ A person is allowed to grow and harvest up to six plants in his or her own residence.⁵⁷ California currently has a state excise tax of fifteen percent on retail sales and a cultivation tax of \$9.25 per ounce.⁵⁸ There is an additional state sales tax of 7.25% on all retail items.⁵⁹

⁵⁰ COLO. CONST. art. XVIII, § 16.

⁵¹ Theofanis, *supra* note 29, at 169; COLO. CONST. art. XVIII, § 16(1)(a), (3)(b).

⁵² COLO. CONST. art. XVIII, § 16(4); *see Laws About Marijuana Use*, COLO. CANNABIS, <https://cannabis.colorado.gov/legal-marijuana-use/laws-about-marijuana-use> [<https://perma.cc/M3AP-8F5P>] (last visited Jan. 28, 2022).

⁵³ COLO. CONST. art. XVIII, § 16(5)(d); COLO. REV. STAT. §§ 39-28.8-202, 39-28.8-302 (2021).

⁵⁴ *Sales Tax Guide*, COLO. DEP’T OF REVENUE TAX’N DIV. (Aug. 2021), https://tax.colorado.gov/sites/tax/files/documents/Colorado_Sales_Tax_Guide_August_2021.pdf [<https://perma.cc/7VJZ-A723>].

⁵⁵ CAL. HEALTH & SAFETY CODE § 11362.1 (West 2021).

⁵⁶ *Id.* § 11362.1(a)(1).

⁵⁷ *Id.* § 11362.2(a).

⁵⁸ CAL. REV. & TAX CODE §§ 34011, 34012 (West 2021); *see also* David Downs, *California’s \$635M in Cannabis Taxes – Where Is It Going?*, LEAFLY (Jan. 24, 2020), <https://www.leafly.com/news/politics/californias-635m-in-cannabis-taxes-where-is-it-going> [<https://perma.cc/WRY2-R9XX>].

⁵⁹ *See* Downs, *supra* note 58.

3. *Vermont*

Vermont became the eleventh state to legalize recreational marijuana when it legalized the possession and use of marijuana in 2018.⁶⁰ Recreational sales are not expected to begin until October of 2022.⁶¹ Senate Bill 54 is the governing bill that legalizes, regulates, and taxes cannabis sales.⁶² The Cannabis Control Board in Vermont regulates Vermont's marijuana market and determines which businesses are eligible to receive licenses to sell or cultivate the product.⁶³ Local communities will have to vote on whether to allow dispensaries to open in their neighborhoods.⁶⁴ Marijuana sales will be taxed at a twenty percent combined tax rate, which includes a fourteen percent excise tax and a six percent sales tax.⁶⁵

In general, state regulatory frameworks dictate which individuals and companies are authorized to grow marijuana commercially and which retailers are allowed to sell cannabis products through a license authorization approach. Marijuana wholesalers operate under manufacturing licenses and are permitted to sell to dispensaries.⁶⁶ Retailers are also required to obtain licenses to sell their products.⁶⁷ Some marijuana retailers operate growing operations as well, exclusively selling their own products.⁶⁸ Most retailers purchase products from various types of producers, such as commercial growers, concentrate manufacturers, and edible producers.⁶⁹ Many other retailers function solely as an outlet for consumers to purchase cannabis, taking a hands-

⁶⁰ VT. STAT. ANN. tit. 18, § 4230 (2022); *see also* John Schroyer, *Vermont Becomes 11th State to Legalize Recreational Marijuana Market*, MJBIZDAILY, <https://mjbizdaily.com/vermont-becomes-11th-state-to-legalize-recreational-marijuana-market> [<https://perma.cc/C833-3GWP>] (Dec. 17, 2021).

⁶¹ Schroyer, *supra* note 60.

⁶² *Summary of S. 54, the Bill to Regulate and Tax Cannabis in Vermont*, MARIJUANA POL'Y PROJECT, <https://www.mpp.org/states/vermont/summary-of-s-54-the-bill-to-regulate-and-tax-cannabis-in-vermont> [<https://perma.cc/4LQB-PZAM>].

⁶³ Xander Landen, *Vermont House Backs Legal Market for Marijuana Sales*, VTDIGGER (Feb. 26, 2020), <https://vtdigger.org/2020/02/26/vermont-house-backs-legal-market-for-marijuana-sales> [<https://perma.cc/LLS3-ES67>].

⁶⁴ *Id.*

⁶⁵ *See* VT. STAT. ANN. tit. 32, § 7902 (2022).

⁶⁶ *See, e.g.*, CAL. BUS. & PROF. CODE § 26130 (West 2021).

⁶⁷ *See, e.g., id.* § 26070.

⁶⁸ *How Do Dispensaries Get Weed to Sell?*, NEWS AMS. NEWS NETWORK (July 24, 2020), <https://www.newsamericasnow.com/how-do-dispensaries-get-weed-to-sell> [<https://perma.cc/BZ3J-BRQP>].

⁶⁹ *Id.*

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off approach to growing, developing, and researching for innovative, quality products.⁷⁰

II. MARIJUANA'S IMPACT ON THE ECONOMY

Marijuana legalization has had a profound impact on the economies of the states that have legalized the sale and use of cannabis. The main economic focus in legalizing marijuana has come in the form of increased revenue and job growth.⁷¹ States have continued to see a steady growth in revenue through sales or excise taxes and retail, cultivation, and harvesting licenses.⁷²

A. Tax Revenue

Taxing marijuana sales is the main source of marijuana-related revenue for legalized states.⁷³ In 2019, California collected \$629.3 million in tax revenue from marijuana sales.⁷⁴ That same year Colorado received \$302.4 million from taxes on marijuana sales.⁷⁵ Oregon, which charges a seventeen percent retail tax on all marijuana products, collected \$102.1 million in marijuana-related tax revenue.⁷⁶ Marijuana tax revenues have greatly benefited the general public.⁷⁷ Depending on the state, the money from marijuana tax revenue may be put into anti-drug programs, environmental programs, or state public school funds.⁷⁸

Although the high tax rates related to marijuana sales lead to an increase in state revenue, there are some concerns. One such concern is that higher tax rates may lead consumers out of the legal marijuana

⁷⁰ *See id.*

⁷¹ *See* Mrinalini Krishna, *The Economic Benefits of Legalizing Weed*, INVESTOPEDIA, <https://www.investopedia.com/articles/insights/110916/economic-benefits-legalizing-weed.asp> [<https://perma.cc/8T5Z-NHEC>] (Apr. 29, 2021).

⁷² *See id.*

⁷³ Elliott Ramos, *Recreational Marijuana Sales Showered States with Cash in 2021*, NBC NEWS (Jan. 21, 2022, 3:51 PM), <https://www.nbcnews.com/news/us-news/recreational-marijuana-sales-showered-states-cash-2021-n1287861> [<https://perma.cc/Q399-948S>].

⁷⁴ Kenneth W. Boyd, *Deep Dive: Recreational Marijuana Tax Revenue in the United States*, CPA, <https://www.ais-cpa.com/deep-dive-recreational-marijuana-tax-revenue-in-the-united-states/> [<https://perma.cc/PA68-94E7>] (Jan. 26, 2022).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *See* Christy Bieber, *Marijuana Tax Revenue: A State-by-State Breakdown*, MOTLEY FOOL (Aug. 3, 2021), <https://www.fool.com/research/marijuana-tax-revenue-by-state/> [<https://perma.cc/LP5W-EH8R>].

⁷⁸ *See id.*

market and into the black market.⁷⁹ If legal marijuana costs considerably more than its illicit counterpart, consumers may revert to their old purchasing habits. Conversely, it is these higher tax rates that fuel the states in their legalization process; without such a financial incentive to legalize cannabis, states may choose to decriminalize the controlled substance instead of navigating the legalization process.⁸⁰

B. Licensing Revenue

States can earn a significant amount of revenue through an effective licensing structure. In many states, such as Colorado and California, cultivation facilities, retail stores, product manufacturers, testing facilities, operators, and transporters must all obtain licenses from the state of operation.⁸¹ License application fees can range from \$1,000 to \$5,000 for new stores, with an additional annual renewal fee.⁸² In total, Colorado received roughly \$12 million in revenue from marijuana licenses and application fees in the fiscal year of 2019.⁸³ In comparison, Washington received \$4.8 million dollars in licensing fees during fiscal year 2020 and Oregon earned \$13.1 million dollars from licenses during fiscal year 2019.⁸⁴ While licensing is a strong source of income for states, it is insignificant compared to tax revenues, as some states, including Colorado and Washington, have seen their tax revenue soar to \$423 million and \$480 million, respectively, in 2021.⁸⁵

⁷⁹ Scherf, *supra* note 8, at 148.

⁸⁰ See German Lopez, *15 States Have Decriminalized — But Not Legalized — Marijuana*, VOX, <https://www.vox.com/identities/2018/8/20/17938358/marijuana-legalization-decriminalization-states-map> [<https://perma.cc/G9EM-PCAQ>] (July 10, 2019, 5:34 PM).

⁸¹ See *Financial Impact of Legalizing and Regulating Cannabis for Adult Use*, MARIJUANA POL'Y PROJECT, <https://www.mpp.org/issues/legalization/financial-information-on-states-with-adult-use-legalization> [<https://perma.cc/L94X-TTLG>] (last visited Jan. 26, 2022).

⁸² Herbert Fuego, *Ask a Stoner, Why Are Pot Business Licenses So Costly?*, WESTWORD (Sept. 3, 2019, 6:54 AM), <https://www.westword.com/marijuana/starting-a-marijuana-business-in-colorado-carries-expensive-licenses-fees-11462794> [<https://perma.cc/LD69-7E8C>].

⁸³ *Financial Impact of Legalizing and Regulating Cannabis for Adult Use*, *supra* note 81 (“\$11,874,019 was generated from marijuana licenses and application fees in FY19, including both adult-use and medical marijuana.”).

⁸⁴ *Id.*

⁸⁵ Ramos, *supra* note 73.

C. Jobs

The marijuana industry has produced an increase in cannabis-related jobs over the last decade. According to a “2019 Cannabis Jobs Count [study], cannabis directly employs more than 211,000 full-time workers in the U.S.”⁸⁶ The legal cannabis workforce has increased every year since 2017.⁸⁷ Within a few months of legalization, Colorado estimated that approximately twelve thousand people joined the workforce in jobs related to marijuana.⁸⁸ Similarly, other legalized states, both recreationally and medicinally, such as Florida, New York, and Nevada, also boosted cannabis employment.⁸⁹ “Florida grew its cannabis employment by 703% in 2018, adding more than 9,000 full-time jobs.”⁹⁰ Within that same year, Nevada added more than 7,500 jobs, while New York added 5,000 jobs.⁹¹

New jobs in the cannabis sector include retail employees, attorneys, businessmen, laboratory workers, and newly specialized marijuana chefs.⁹² New businesses are constantly being created to develop and manage the marijuana industry. For example, laboratory workers have garnered more business through cannabis testing and developing new strains and products.⁹³ The increase in jobs is certainly a major component to legalizing cannabis, as states have jumped at the opportunity to boost their employment rates and increase job productivity.⁹⁴

⁸⁶ Kevin Murphy, *Cannabis Is Becoming a Huge Job Creator*, FORBES (May 20, 2019, 9:00 AM), <https://www.forbes.com/sites/kevinmurphy/2019/05/20/cannabis-is-becoming-a-huge-job-creator/?sh=10aaa23749bf> [https://perma.cc/7Z3M-QW8Q]; BRUCE BARCOTT & BEAU WHITNEY, LEAFLY, SPECIAL REPORT: CANNABIS JOBS COUNT 1 (2019).

⁸⁷ See Bruce Barcott, *As of 2019, Legal Cannabis Has Created 211,000 Full-Time Jobs in America*, LEAFLY (Mar. 4, 2019), <https://www.leafly.com/news/politics/legal-cannabis-jobs-report-2019> [https://perma.cc/2HG3-AHAT] (“The cannabis workforce increased 21% in 2017. It gained another 44% in 2018. We expect at least another 20% growth in jobs in 2019.”).

⁸⁸ German Lopez, *Legal Marijuana Created Thousands of Jobs in Colorado*, VOX (May 20, 2014, 3:00 PM), <https://www.vox.com/2014/5/20/5734394/legal-marijuana-created-thousands-of-jobs-in-colorado> [https://perma.cc/H7EG-UC3C].

⁸⁹ BARCOTT & WHITNEY, *supra* note 86, at 8.

⁹⁰ Barcott, *supra* note 87.

⁹¹ *Id.*

⁹² Lopez, *supra* note 88.

⁹³ See Glenn Cudiamat, *Cannabis Laboratory Testing Market in North America*, CANNABIS SCI. & TECH., Mar. 2020, at 50.

⁹⁴ Kyle Jaeger, *New York Governor Says Marijuana Legalization Will Create ‘Thousands’ of Jobs and Touts Regulatory Appointments*, MARIJUANA MOMENT (Sept. 27, 2021), <https://www.marijuanamoment.net/new-york-governor-says->

D. Health Benefits of Marijuana

As previously mentioned, marijuana has some positive health effects.⁹⁵ Some health benefits include, inter alia, treating chronic pain, depression, anxiety, cancer, and epilepsy.⁹⁶ One of the compounds in marijuana, cannabidiol (“CBD”), is thought to help reduce inflammation.⁹⁷ Marijuana may also “help improve sleep disorders, such as insomnia.”⁹⁸

III. PROBLEMS WITH THE LICENSE AUTHORIZATION APPROACH

The current licensing model utilized in U.S. states needs reform. One issue of the license authorization approach is the still booming illicit market. In many states, such as Colorado and California, the black market has utterly dominated the legal market because of high costs of legal dispensaries.⁹⁹ Legal retailer’s comparatively expensive products are attributed to high taxes and dispensary restrictions.¹⁰⁰ The black market does not have to face regulatory, insurance, or tax expenses, and can easily undercut the price of legal retailers.¹⁰¹ Cannabis consumption is also “concentrated among a small group of heavy users,” who are particularly price sensitive and often would rather stick with their black-market supplier.¹⁰²

marijuana-legalization-will-create-thousands-of-jobs-and-touts-regulatory-appointments/ [https://perma.cc/5CCZ-FPJ9].

⁹⁵ Daniller, *supra* note 28.

⁹⁶ David Raiton, *Marijuana (Cannabis): Good or Bad?*, MED. NEWS TODAY, <https://www.medicalnewstoday.com/articles/320984#What-are-the-health-risks-of-cannabis?> [https://perma.cc/L263-BXEY] (Feb. 22, 2022).

⁹⁷ Kristeen Cherney, *What Are the Benefits of Marijuana?*, HEALTHLINE (Jan. 6, 2020), <https://www.healthline.com/health/medical-marijuana/benefits-of-marijuana> [https://perma.cc/C5A2-AHSF].

⁹⁸ *Id.*

⁹⁹ Claire Hansen, *Illegal Pot Still Plagues States Where Weed Is Legal*, U.S. NEWS (July 23, 2019), <https://www.usnews.com/news/national-news/articles/2019-07-23/illegal-pot-still-plagues-states-where-weed-is-legal> (“One of the main reasons appears to be cost. Marijuana sold at state-legal dispensaries is often more expensive than drugs obtained on the underground market and is heavily taxed, often at multiple stages of the supply chain. Abiding by state regulations can be costly for growers and retailers, too, with licensing fees and other regulations.”).

¹⁰⁰ Alex Berenson, *Cannabis Retailer MedMen’s Financial Troubles Are a Warning for the Marijuana Industry*, CNBC (Mar. 28, 2019, 11:47 AM), <https://www.cnn.com/2019/03/28/medmens-financial-troubles-are-a-warning-for-the-marijuana-industry.html> [https://perma.cc/HVW4-RW2P].

¹⁰¹ *Id.*

¹⁰² *Id.*

Another concern is a slow transition phase between legalization and the opening of operational stores. Strict regulations and slow licensing processes can hamper the transition from an illegal market to a legal one.¹⁰³ Some retailers are struggling to stay financially solvent. For example, the large retail chain MedMen lost \$131 million in 2018, as its operating costs outweighed income generated.¹⁰⁴ MedMen has pointed to a booming illicit market and high mark-ups of legal marijuana as the reason for its struggles.¹⁰⁵

Thus, states may have received significant revenue from taxing the legal marijuana industry, but the black market looms large. This black-market competition has affected the sales of large retailers.¹⁰⁶ State regulations have hampered the ability for retail stores to offer competitive prices for cannabis products. A quick solution to fix the legal retail market for dispensaries may be to lower taxes or scrap the current regulatory framework and start anew.

A. The Case to Lower Taxes

Lowering taxes in U.S. states will put retail stores in a better position to compete with the black market.¹⁰⁷ As it currently stands, consumers in most states can save around ten percent by purchasing marijuana on the black market.¹⁰⁸ The high cost of legal marijuana is attributable to the many costs legal dispensaries must absorb from their operation. From an economic standpoint, effectively cutting the tax rate will likely lead consumers into the legal market; however,

¹⁰³ Hansen, *supra* note 99.

¹⁰⁴ Berenson, *supra* note 100; see also Daniel Gill, *Cannabis Businesses, Once in Trouble, Find No Good Way to Escape*, BLOOMBERG TAX (Feb. 11, 2021, 6:00 AM), <https://news.bloombergtax.com/daily-tax-report/cannabis-businesses-once-in-trouble-find-no-good-way-to-escape> [<https://perma.cc/5M8S-DVG6>] (“The company soon learned that even well-heeled cannabis consumers would rather drive a few miles to get a lower price, and that controlling costs is integral to success.”).

¹⁰⁵ Berenson, *supra* note 100.

¹⁰⁶ Paola Mendez, *Local Cannabis Dispensaries Fighting for Survival*, L.A. BUS. J. (Apr. 15, 2022), <https://labusinessjournal.com/special-reports/local-cannabis-dispensaries-fighting-for-survival/> [<https://perma.cc/SBW2-67ZW>].

¹⁰⁷ See Jeff Daniels, *California Proposes Slashing Pot Taxes to Help Regulated Industry Compete with Black Market*, CNBC, <https://www.cnn.com/2019/01/28/calif-bill-introduced-to-slash-pot-taxes-as-legal-industry-struggles.html> [<https://perma.cc/SG8R-NBRG>] (Jan. 29, 2019, 9:18 AM).

¹⁰⁸ Jeffrey Martin, *Black Market Marijuana Still Popular in States Where Pot Is Legal, Exported to Other States*, NEWSWEEK (Oct. 9, 2019, 8:27 PM), <https://www.newsweek.com/black-market-marijuana-still-popular-states-where-pot-legal-exported-other-states-1464273> [<https://perma.cc/Q7BU-GA44>].

there are a number of other reasons why individuals stick to black-market marijuana other than cost, including quality and convenience.¹⁰⁹ Austin Berg of the Illinois Policy Institute has suggested that starting with low marijuana sales tax rates will help switch consumers into the legal market.¹¹⁰ If a state's goal is public health and safety, this plan would be effective. Over time, as the illicit market stumbles, states could slowly increase the tax rate. By implementing a lower tax percentage, states would still receive net revenue based on the sales tax. They would not be losing revenue by receiving a smaller percentage of tax, as the money received from the tax would still be included in net revenue. A lower sales or excise tax rate would help consumers and businesses in the short term by ramping up sales and would help increase state revenue in the long term as consumers make their way into the legal market.

There are, however, a few issues with lowering the tax rate. Lowering taxes may result in millions of Americans becoming habitual users of marijuana, consuming the substance on a daily basis.¹¹¹ Higher taxes are used to mitigate the harm of marijuana by making cannabis products less attainable, so lowering the tax rate would lead to more harm as more people would have the ability to use disposable income on marijuana.¹¹² Determining the optimal tax level in the short term would benefit retail stores, but as the product moves out of the black market, states can slowly increase the tax rate to collect more revenue and deter the usage of cannabis.

¹⁰⁹ Jeremy P. Gove, *Colorado and Washington Got Too High: The Argument for Lower Recreational Marijuana Excise Taxes*, 19 RICH. J.L. & PUB. INT. 67, 96 (2016) (“As more consumers transition to the legal market, the tax base expansion then partially compensates for the revenue foregone by lowering the tax rates. This process becomes a positive feedback cycle, as more revenue is generated for the government it can better combat the black market, in turn creating more legal customers and generating more revenue. Another beneficiary of that process is legal producers, as more customers fuel greater demand for legal alternatives.”).

¹¹⁰ Phil Rogers, *Mayor Lori Lightfoot Suggests She May Be Open to Lowering Recreational Cannabis Taxes*, NBC CHI. (Jan. 10, 2020), <https://www.nbcchicago.com/news/local/mayor-lori-lightfoot-says-she-may-be-open-to-lowering-recreational-cannabis-taxes/2199489> [<https://perma.cc/T9JH-E48T>].

¹¹¹ Jonathan P. Caulkins, *A Principled Approach to Taxing Marijuana*, NAT'L AFFS. (2017), <https://www.nationalaffairs.com/publications/detail/a-principled-approach-to-taxing-marijuana> [<https://perma.cc/9UKQ-Q5ZT>].

¹¹² *Id.*

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B. Section 280E of the Internal Revenue Code

Private retailers have federal income tax concerns due to marijuana's illegal status under federal law. Section 280E of the U.S. Internal Revenue Code ("IRC") states that,

[n]o deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business . . . consists of trafficking in controlled substances . . . which is prohibited by Federal law or the law of any State in which such trade or business is conducted.¹¹³

This provision prohibits legal cannabis stores from deducting marijuana expenses, as marijuana is illegal under federal law. Thus, Section 280E effectively raises the federal income tax for legal dispensaries. In *Olive v. Commissioner*, the Ninth Circuit held that Section 280E applies regardless of the legal status of marijuana in the operating state.¹¹⁴ But legal retailers have learned that they can limit this provision by splitting their businesses in two—one that sells marijuana and another that sells a service, merchandise, or other non-marijuana affiliated goods.¹¹⁵ However, even if the retailer splits the business, the main taxable income is from the source of the higher profit of the business—which in almost all cases is selling marijuana.¹¹⁶ Therefore, dispensaries will have a large amount of gross income without the ability to deduct expenses from marijuana activities. Section 280E makes it difficult for privately owned marijuana retailers to operate a financially successful store.

A state-run marijuana monopoly can avoid this expense deduction problem altogether.¹¹⁷ Section 115 of the IRC states that "[g]ross income does not include . . . income derived from any public utility or the exercise of any *essential governmental function* and accruing to a State or any political subdivision thereof"¹¹⁸ Professor Benjamin M. Leff proposes that government-run marijuana stores would be

¹¹³ 26 U.S.C. § 280E.

¹¹⁴ *Olive v. Comm'r*, 792 F.3d 1146, 1147 (9th Cir. 2015); *see also* *Alpenglow Botanicals, LLC v. United States*, 894 F.3d 1187, 1195 (10th Cir. 2018).

¹¹⁵ *See* *Californians Helping to Alleviate Med. Probs., Inc. v. Comm'r*, 128 T.C. 173 (2007).

¹¹⁶ *Patients Mut. Assistance Collective Corp. v. Comm'r*, 151 T.C. 176, 178 (2018) (finding that ninety-nine percent of Harborside Health Center's revenue came from marijuana sales).

¹¹⁷ *See* Benjamin M. Leff, *Tax Benefits of Government-Owned Marijuana Stores*, 50 U.C. DAVIS L. REV. 659, 662 (2016).

¹¹⁸ 26 U.S.C. § 115 (emphasis added).

exempt from Section 280E, as the sale of marijuana is an essential government function.¹¹⁹ The Internal Revenue Service (“IRS”) ruled that “income produced by the Montana Liquor Control Board was exempt from federal income tax, even if it could be argued that selling liquor is purely proprietary.”¹²⁰ The IRS “acted on the assumption that the operation of the Liquor Control Board[] constituted direct action by the State itself.”¹²¹ The IRS “has taken the concept of ‘essential government function’ and expanded it until it encompasses any activity that makes or saves money for a state or local government.”¹²² Marijuana income of states would then likely be exempt from federal income tax—a major expense for any dispensary. State retailers do not have to pay income tax on gross revenue and do not have to worry about deducting expenses under Section 280E, as the provision does not apply to essential government functions.

The IRS’s approach is illustrated in the case of a government-run marijuana dispensary in North Bonneville, Washington, which has been exempted from paying federal taxes.¹²³ Without the burden of paying taxes, the state government can retain all the gross profits from marijuana sales. The high tax costs and Section 280E are deterrents for legal dispensaries, as the gross profit margin is minimized. This issue is only relevant so long as the use and sale of marijuana continues to be illegal under federal law. The federal government can also always repeal this provision of the tax code.

C. The Black Market

The marijuana black market¹²⁴ is the main competitor of legalized states and the retail dispensaries within them. To compete, the many jurisdictions that have legalized marijuana under their exclusive regulatory frameworks have had to address the issue of public health and

¹¹⁹ Leff, *supra* note 117, at 663.

¹²⁰ *Id.* at 670; I.R.S. Gen. Couns. Mem. 14,407 (1935).

¹²¹ *Id.*

¹²² Ellen P. Aprill, *Excluding the Income of State and Local Governments: The Need for Congressional Action*, 26 GA. L. REV. 421, 429 (1992); *see also* I.R.S. Rev. Rul. 71-132, 1971-1 C.B. 29 (holding that income derived from the Oregon Liquor Commission Control is not subject to federal income tax).

¹²³ Elizabeth Daigneau, *America’s First Government-Owned Marijuana Store*, GOVERNING (May 20, 2015), <https://www.governing.com/archive/gov-cannabis-corner-portland.html> [<https://perma.cc/G9ZA-Y3NA>].

¹²⁴ The “black market” consists of professional marijuana sellers that operate without a license.

safety of marijuana, as well as economic factors.¹²⁵ States had hoped that marijuana legalization would put an end to black-market marijuana sales, as black-market activity has historically been linked to criminal activity, including weapon possession and sales of other, more dangerous illicit drugs.¹²⁶

The black market, however, is stronger than ever.¹²⁷ Research has shown that almost eighty percent of the cannabis sold in California comes from the black market.¹²⁸ Massachusetts estimates that seventy-five percent of cannabis sales are from the black market.¹²⁹ Consumers have continued to purchase from illegal sources, and legal dispensaries have taken a huge hit as a result.

States have moved to legalize marijuana to become the sole regulatory unit in growing, cultivating, and selling marijuana.¹³⁰ This oversight is crucial from a public health and safety perspective. The head of the U.S. Border Patrol Union, Brandon Judd, has said that legalizing marijuana has damaged cartels.¹³¹ Drug cartels are dangerous groups, often operating within the United States, that sell drugs for a

¹²⁵ See *Regulating Commercially Legalized Marijuana as a Public Health Priority*, AM. PUB. HEALTH ASS'N (Nov. 18, 2014), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2015/01/23/10/17/regulating-commercially-legalized-marijuana-as-a-public-health-priority> [<https://perma.cc/J3CY-DPV6>]; see also Sam Tabachnik, *Black Market Marijuana Grows Are Popping Up Faster than Law Enforcement Can Take Them Down. But Is Legalization the Cause?*, DENVER POST (June 20, 2021), <https://www.denverpost.com/2021/06/20/black-market-marijuana-colorado-chinese-crime-rings> [<https://perma.cc/DDH6-PSV8>].

¹²⁶ German Lopez, *America Can End Its War on Drugs. Here's How.*, VOX (Apr. 25, 2016 9:00 AM), <https://www.vox.com/2016/4/25/11445454/end-war-on-drugs> [<https://perma.cc/Y3WJ-8CXM>].

¹²⁷ David Marino, Jr., *It May Be Legal, but High Prices, Inconvenience May Drive Black-Market Marijuana for Years*, WGME (Dec. 29, 2020), <https://wgme.com/news/marijuana-in-maine/it-may-be-legal-but-high-prices-inconvenience-may-drive-black-market-marijuana-for-years> [<https://perma.cc/8SGF-9M8K>].

¹²⁸ Kevin Murphy, *Cannabis' Black Market Problem*, FORBES (Apr. 4, 2019, 1:30 PM), <https://www.forbes.com/sites/kevinmurphy/2019/04/04/cannabis-black-market-problem/?sh=28f12d79134f> [<https://perma.cc/RS4E-3DZJ>].

¹²⁹ *Id.*

¹³⁰ James E. Swauger, Caitlin F. Acheson & William McGrath, *The Changing Face of Marijuana Regulation: Current Federal Status*, FOOD & DRUG L. INST. (Oct. 2017), <https://www.fdli.org/2017/10/changing-face-marijuana-regulation-current-federal-status> [<https://perma.cc/NJ3J-YCDM>].

¹³¹ Kyle Jaeger, *Border Patrol Union Head Admits Legalizing Marijuana Forces Cartels Out of the Market*, MARIJUANA MOMENT (Feb. 14, 2020), <https://www.marijuanamoment.net/border-patrol-union-head-admits-legalizing-marijuana-forces-cartels-out-of-the-market> [<https://perma.cc/9MPE-TT DJ>].

controlled price.¹³² Their core business consists of selling cocaine, heroin, and marijuana, and they have historically been known as violent groups.¹³³ States hope that illegal sales of marijuana will decrease due to legalization efforts, thus forcing the cartels out of the United States.¹³⁴ Black market activity continues to be active across the United States, but states hope that selling legal marijuana at competitive prices will force consumers into the legal market.¹³⁵

There are also other dangers associated with black market marijuana. Many illegal drug suppliers misrepresent their product and sell dangerous synthetic drugs to unsuspecting consumers.¹³⁶ Many vape-related illnesses are linked to black market marijuana products.¹³⁷ Importantly, unregulated sales also allow illegal sellers to sell their product to anyone—including minors.¹³⁸

Illegal marijuana is still popular in legalized states.¹³⁹ High demand of the product, low-supply, underfunded law enforcement officers, and slow-moving regulations have all contributed to the black

¹³² Chris Zappone, *Who Are the Mexican Drug Cartels and Why Are They So Deadly?*, SYDNEY MORNING HERALD (Nov. 6, 2019), <https://www.smh.com.au/world/north-america/who-are-the-mexican-drug-cartels-and-why-are-they-so-deadly-20191106-p537y3.html> [https://perma.cc/SP5K-EZ68].

¹³³ *Id.*

¹³⁴ See Alicia Wallace, *Why More States Could Legalize Marijuana in 2021*, CNN BUS., <https://www.cnn.com/2020/06/24/business/cannabis-legalize-2021-recession/index.html> [https://perma.cc/JH3Q-R2G8] (June 25, 2020, 7:22 PM).

¹³⁵ See German Lopez, *Marijuana Legalization Is Already Making Mexican Drug Cartels Poorer*, VOX (Dec. 31, 2015, 11:30 AM), <https://www.vox.com/2015/12/31/10694644/marijuana-legalization-winning> [https://perma.cc/WK92-UVYW].

¹³⁶ *Doctors Warn of Health Problems Related to Marijuana Laced with K2*, NEWS ON 6 (July 30, 2020, 8:14 AM), <https://www.news-on6.com/story/5f22c7bf1e56120c175009d9/doctors-warn-of-health-problems-related-to-marijuana-laced-with-k2> [https://perma.cc/3W3R-RA7D].

¹³⁷ Dispensaries.com, *Black Market Weed Is Still Popular in Some States, but It's Also Very Dangerous*, GREEN ENTREPRENEUR, <https://www.greenentrepreneur.com/article/340904> [https://perma.cc/CCA9-543B] (Oct. 17, 2019).

¹³⁸ See WILLIAM J. MEADOWS, *CANNABIS LEGALIZATION: DEALING WITH THE BLACK MARKET* 18 (2019).

¹³⁹ Natalie Fertig, *How Legal Marijuana Is Helping the Black Market*, POLITICO MAG. (July 21, 2019), <https://www.politico.com/magazine/story/2019/07/21/legal-marijuana-black-market-227414> [https://perma.cc/L4TF-2MBA].

market's growth.¹⁴⁰ The biggest disparity between legal and illegal marijuana is cost.¹⁴¹

Legal marijuana markups have the effect of driving consumers away from the product. The mix of state-imposed sales tax and high costs significantly increase the price of cannabis.¹⁴² According to Price Economics, legal marijuana costs more than illegal marijuana with consumers saving around ten percent on average by purchasing exclusively from the black market.¹⁴³ In parts of California, however, consumers can save as much as forty percent buying from the black market.¹⁴⁴ The majority of the marijuana industry is dominated by a small percentage of users.¹⁴⁵ From a purely economic standpoint, these consumers have little incentive to purchase from the legal market. There is no need for frequent users to change their spending habits unless they are forced to make a change. State governments would benefit from an increase of marijuana sales into the legal market. By shifting illegal sales into the legal market, states would greatly increase their revenue through sales tax.

IV. STATE MONOPOLIZATION OF ALCOHOL AS A FRAMEWORK FOR A MONOPOLISTIC APPROACH TO MARIJUANA SALES

The license authorization approach for marijuana sales is like the approach for alcohol sales in the United States. Alcohol retail stores and big brand distributors in most states must obtain licenses for their operations.¹⁴⁶ However, some states, such as Utah and Pennsylvania,

¹⁴⁰ *Id.*; Sarah Friedman, *Legal Cannabis Market Just Can't Compare to the Black Market*, CBD TESTERS (Aug. 11, 2020), <https://cbdtesters.co/2020/08/11/legal-cannabis-market-just-cant-compare-to-the-black-market> [https://perma.cc/UWL9-RSF7].

¹⁴¹ Fertig, *supra* note 139.

¹⁴² Murphy, *supra* note 128.

¹⁴³ Martin, *supra* note 108.

¹⁴⁴ *Id.*

¹⁴⁵ German Lopez, *Big Marijuana Is Coming — and Even Legalization Supporters Are Worried*, VOX, <https://www.vox.com/policy-and-politics/2015/12/2/9831980/marijuana-legalization-industry-business> [https://perma.cc/8Z5A-LXVC] (Apr. 20, 2016, 2:00 PM) (“[O]ne study of [Colorado]’s pot market conducted by the Marijuana Policy Group for the Colorado Department of Revenue found the top 29.9 percent heaviest pot users in the state made up 87.1 percent of demand for the drug.”); see MILES K. LIGHT, ADAM ORENS, BRIAN LEWANDOWSKI & TODD PICKTON, COLO. DEP’T OF REVENUE, MARKET SIZE AND DEMAND FOR MARIJUANA IN COLORADO 14 (2014).

¹⁴⁶ See Robin Room, Dir., Ctr. For Soc. Rsch. on Alcohol & Drugs, Paper Presentation at the International Seminar on Alcohol Retail Monopolies: Why Have a Retail Alcohol Monopoly? (Aug. 19, 2001).

use a different approach for alcohol sales.¹⁴⁷ These states have opted to use a government-run monopoly for alcohol retail and distribution, where the state is the sole retailer and distributor of alcoholic beverages in the state.¹⁴⁸

The model for a government-run alcohol retail store has existed for nearly a century.¹⁴⁹ After prohibition ended, some U.S. states created state monopolies for alcohol sales to “promot[e] temperance” and minimize the harm of drinking.¹⁵⁰ The secondary goals were to maintain “an orderly retail market in alcoholic beverages . . . and provid[e] revenue to their government.”¹⁵¹ U.S. state alcohol monopolies are more efficient and have contributed proportionally much more revenue to their state compared to their private counterparts.¹⁵² The greatest value that state monopolization adds is its deterrent effect. Because state stores are limited and opened for fewer hours, alcohol consumption is lower in states with government-run alcohol stores.¹⁵³

State monopolization of alcohol continues to exist in Pennsylvania and Utah, as well as in five other states.¹⁵⁴ States such as Iowa and Maine only control the wholesale of alcohol, but Pennsylvania and

¹⁴⁷ See UTAH CODE ANN. § 32B-1-103 (West 2022); 47 PA. CONS. STAT. § 1-104 (2022).

¹⁴⁸ See UTAH CODE ANN. § 32B-1-103 (West 2022); 47 PA. CONS. STAT. § 1-104 (2022).

¹⁴⁹ Robin Room, Alcohol Monopolies and Alcohol Control 1 (1991) (unpublished manuscript), <https://www.robinroom.net/monopoly.pdf> [<https://perma.cc/4MJ3-C2H6>].

¹⁵⁰ Room, *supra* note 146.

¹⁵¹ *Id.*

¹⁵² Room, *supra* note 146, at 3; ROLAND ZULLO, XI BI, YU XIAOHAN & ZEHRA SIDDIQUI, INST. FOR RSCH. ON LAB., EMP., & THE ECON, THE FISCAL AND SOCIAL EFFECTS OF STATE ALCOHOL CONTROL SYSTEMS 45 (2013). For example, a 2013 study found that the “average per capita income for license states was \$27.43 for spirits” compared to states that controlled wholesale with state retail earning \$52.01. *Id.*

¹⁵³ Room, *supra* note 146, at 3; see ALCOHOL JUST., STATE CONTROL OF ALCOHOL: PROTECTING THE PUBLIC’S HEALTH (Jan. 2014), <https://alcoholjustice.org/images/factsheets/StateControlPublicHealth2014.pdf> [<https://perma.cc/YB8E-UG47>]. Residents of control states consume fourteen percent less spirits and seven percent less total alcohol than residents of license states. *Id.* at 1.

¹⁵⁴ Nicholas Mancall-Bitel, *State Owned Liquor Stores, Explained*, THRILLIST (Apr. 26, 2018, 4:41 PM), <https://www.thrillist.com/culture/state-owned-liquor-stores> [<https://perma.cc/WMZ2-PG9Q>] (“The states of Alabama, Idaho, New Hampshire, North Carolina, Pennsylvania, Utah and Virginia all own the liquor stores directly.”).

Utah control the sale of alcohol on a wholesale and retail level.¹⁵⁵ These states control the number of stores, location of stores, brands on sale, and hours of operation.¹⁵⁶ Some consumer disadvantages of this system are that stores are open for fewer hours each day¹⁵⁷ and the alcohol selection is typically worse compared to private retail stores in other states.¹⁵⁸ License systems usually result in greater alcohol availability, as there are more stores per capita, longer hours of operation, and cheaper prices for products.¹⁵⁹

States with a monopoly system have greatly benefited from the lack of competition and have generated greater revenue than license states. “Both monopoly states and license states primarily generate revenue through alcohol sales taxes and alcohol beverage licenses, but monopoly states generate additional revenues through mark-ups on the sale of alcohol products.”¹⁶⁰ However, the lack of competition in monopolistic states and the non-existence of black-market alcohol, leads to alcohol prices increasing, and without a black market for alcohol sales, consumers must deal exclusively with government-run stores.

The state-run alcohol sales market and the recreational marijuana market differ greatly.¹⁶¹ Recreational marijuana stores must compete with the black market, while state-run alcohol stores have the luxury of non-competition. Cannabis stores do not benefit from high mark-ups of its product because black market cannabis continues to cost less

¹⁵⁵ *What Is the History of Iowa's State-Owned Liquor Stores?*, STATE LIBR. OF IOWA, <https://www.iowadatacenter.org/statelib/services/collections/law-library/HistoricalFAQ/Q14> [<https://perma.cc/LP8N-ENWV>] (last visited Feb. 12, 2022); *State Based Regulations*, ME. BEER & WINE DISTRIBS., <http://www.maine-beerandwine.com/advocacy/state-based-regulations> [<https://perma.cc/LRT9-G6GF>] (last visited Feb. 12, 2022).

¹⁵⁶ Room, *supra* note 146, at 3.

¹⁵⁷ *State Control of Alcohol*, *supra* note 153, at 2.

¹⁵⁸ Mancall-Bitel, *supra* note 154.

¹⁵⁹ A 2012 study found that “that average prices in license states were approximately two dollars lower (6.9% lower) than in control states.” Michael Siegel, William DeJong, Alison B. Albers, Timothy S. Naimi & David H. Jernigan, *Differences in Liquor Prices Between Control State-Operated and License-State Retail Outlets in the U.S.*, 108 ADDICTION 339, 343 (2013); *see also* Emma Snyder, Comment, *Privatization in Pennsylvania: How Reforming the Pennsylvania Liquor Code Would Benefit the Commonwealth and Its Citizens*, 119 PA. STATE L. REV. 279, 293 (2014).

¹⁶⁰ *Id.* at 287.

¹⁶¹ *See generally* Robin Room & Jenny Cisneros Örnberg, *Government Monopoly as an Instrument for Public Health and Welfare: Lessons for Cannabis from Experience with Alcohol Monopolies*, 74 INT. J. DRUG POL’Y 223 (2019).

than legalized marijuana.¹⁶² Additionally, marijuana cannot compete with black market prices because of the amount of taxes consumers are required to pay.¹⁶³ As it currently stands, there are no explicit state laws mandating a state-run government monopoly for marijuana sales.¹⁶⁴ Under current laws, states have approached marijuana sales with a license-authorization model.¹⁶⁵

V. CANADIAN LEGALIZATION

In 2018, Canada legalized the use and sale of cannabis with the passing of the Cannabis Act.¹⁶⁶ The purpose of the Act is to protect the public health and safety of all citizens by reducing the use of cannabis in the illegal market through the protection and restriction of cannabis for underage users.¹⁶⁷ Canada has a similar approach to that expressed in the Cole Memorandum,¹⁶⁸ as it has tried to regulate cannabis through the scope of public health and safety rather than by profit-maximizing means.¹⁶⁹ The Act provides access to a quality-controlled substances and enhances public awareness of the risks and effects of cannabis usage.¹⁷⁰ It also makes it illegal for anyone to possess illicit cannabis, use cannabis in a public place, and distribute unauthorized cannabis.¹⁷¹ Provinces are responsible for the method of

¹⁶² Meadows, *supra* note 138, at 15.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 1.

¹⁶⁵ *See generally id.*

¹⁶⁶ *See Cannabis Act*, R.S.C. 2018, c 16 (Can.).

¹⁶⁷ *Id.* s 7; *see* Ian Austen, *2 Years After Legalizing Cannabis, Has Canada Kept Its Promises?*, N.Y. TIMES, nytimes.com/2021/01/23/world/canada/marijuana-legalization-promises-made.html [https://perma.cc/7B9U-QAC7] (Apr. 18, 2021) (“‘By controlling it, by legalizing it,’ Mr. Trudeau said in 2018, ‘we’re going to ensure that criminal organizations and street gangs don’t make millions, billions of dollars of profits every year.’ And the strict regulations governing legal sales, the prime minister promised, would ensure that Canadians were consuming marijuana not adulterated with other drugs or toxins and would eliminate sales to minors.”).

¹⁶⁸ *See Cole Memorandum*, *supra* note 14.

¹⁶⁹ *Cannabis Legalization and Regulation*, CAN. DEP’T OF JUST., https://www.justice.gc.ca/eng/cj-jp/cannabis [https://perma.cc/AW28-FGKE] (July 7, 2021) (“The *Cannabis Act* creates a strict legal framework for controlling the production, distribution, sale and possession of cannabis across Canada. The Act aims to accomplish 3 goals: • keep cannabis out of the hands of youth[,] • keep profits out of the pockets of criminals[, and] • protect public health and safety by allowing adults access to legal cannabis.”).

¹⁷⁰ *Cannabis Act*, R.S.C. 2018, c 16 s 7(f), (g) (Can.).

¹⁷¹ *Id.* ss 8, 9, 13.

distribution and sale in their own territory.¹⁷² This authority includes setting limitations of who can sell cannabis and how stores must be operated.¹⁷³

Each province has its own strict limitations on selling marijuana. Some provinces, such as Alberta and Manitoba, use a private licensing system, while Quebec operates exclusively through government-run stores.¹⁷⁴ Provincial duties include formulating retail models and rules for selling marijuana, the laws of public consumption, and personal growing limits.¹⁷⁵ Provinces may dictate who is allowed to sell marijuana, where consumers are permitted to consume the product, and whether citizens are allowed to grow marijuana plants in their own home. For the purposes of this Note, I will focus on the Quebec regulations, as Quebec's model offers a distinct perspective on marijuana legalization.

A. Quebec Regulations

Quebec traditionally has had a unique method of regulating certain prohibited activities. Gambling is strictly regulated by the Quebec Alcohol, Racing, and Gaming Commission.¹⁷⁶ The Société des alcools du Québec has exclusive distribution rights on all alcoholic beverage sales, with the exception of beer and light cider, in Quebec.¹⁷⁷ A similar model of regulation was adopted for the sale and distribution of cannabis in Quebec.

The Société québécoise du cannabis ("SQDC") is the sole cannabis retailer¹⁷⁸ in the province with exclusive right to purchase cannabis

¹⁷² *Authorized Cannabis Retailers in the Provinces and Territories*. GOV'T OF CAN., <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/laws-regulations/provinces-territories.html> [https://perma.cc/8FMH-R36U] (Mar. 9, 2022).

¹⁷³ *Id.*

¹⁷⁴ HARVEY SLADE, TRANSFORM DRUG POL'Y FOUND., CAPTURING THE MARKET: CANNABIS REGULATION IN CANADA EXECUTIVE SUMMARY 2–3 (James Nicholls & Steve Rolles eds., 2020), <https://transformdrugs.org/wp-content/uploads/2020/06/Capturing-the-Market-Digital-2020.pdf> [https://perma.cc/9MEA-YQJA].

¹⁷⁵ *Id.* at 2–6.

¹⁷⁶ *Online Gambling in Quebec: Laws and Regulations*, CASINO REPS., <https://www.casinoreports.ca/online-gambling-in-quebec-laws-and-regulations> [https://perma.cc/2WCY-VMRV] (last visited Jan. 26, 2022).

¹⁷⁷ *Quebec Alcohol Laws*, CANADIAN FREE TRADE AGREEMENT, <https://alcohol-laws.ca/quebec> [https://perma.cc/38JZ-MQMZ] (last visited Jan. 26, 2022).

¹⁷⁸ A cannabis retailer is synonymous with a legal marijuana dispensary.

from wholesalers and sell it at market.¹⁷⁹ The SQDC sells dried cannabis, cannabis oil, fresh cannabis, and cannabis resin.¹⁸⁰ Consumers may purchase up to thirty grams of dried cannabis per visit.¹⁸¹ The possession limit in one's own home is set at 150 grams.¹⁸² The legal age to purchase and use marijuana is twenty-one.¹⁸³ Additionally, it is illegal for a person to grow a marijuana plant in his or her own home.¹⁸⁴

Quebec also has strict rules for advertising and promoting cannabis products. The Cannabis Regulation Act strictly prohibits “advertising to promote cannabis, a brand of cannabis, a cannabis producer or the SQDC, particularly if it is directed at minors, is false or misleading or is likely to create a false impression about the characteristics of cannabis or its effects on health”¹⁸⁵ Information used to inform individuals of the effects and safety hazards of marijuana is permitted,¹⁸⁶ particularly to deter children from using these products.¹⁸⁷ A 2019 study on tobacco advertising found that advertisements directed at minors increase sales of illicit products that can have an adverse effect on youth.¹⁸⁸

Quebec's monopolistic structure allows the province to take control of all aspects of the marijuana business.¹⁸⁹ The Quebec government determines the price of cannabis, chooses which distributors and

¹⁷⁹ Province of Quebec Cannabis Regulation Act, C.Q.L.R. 2018, c C-5.3, art 25 (Can.).

¹⁸⁰ *Id.* art 28.

¹⁸¹ *Id.* art 31.

¹⁸² *Id.* art 7.

¹⁸³ *Id.* arts 4, 34–39.

¹⁸⁴ *Id.* art 5.

¹⁸⁵ *Cannabis Regulation Act*, GOV'T OF QUE., <https://encadrementcannabis.gouv.qc.ca/en/loi/loi-encadrant-le-cannabis/#possession> [<https://perma.cc/KN5R-H8SN>] (Mar. 11, 2020, 1:09 PM).

¹⁸⁶ *Id.*

¹⁸⁷ See Michael Roberts, *Marijuana Ads Make Kids More Likely to Use and See Pot Positives*, *Study Says*, WESTWORD (May 17, 2018, 5:36 AM), <https://www.westword.com/news/marijuana-advertising-makes-kids-more-likely-to-use-study-says-10320080> [<https://perma.cc/7QG3-B5G7>].

¹⁸⁸ ROBERT K. JACKLER, CINDY CHAU, BROOK D. GETACHEW, MACKENZIE M. WHITCOMB, JEFFREY LEE-HEIDENREICH, ALEXANDER M. BHATT, SOPHIA H.S. KIM-O'SULLIVAN, ZACHARY A. HOFFMAN, LAURIE M. JACKLER & DIVYA RAMAMURTHI, *JUUL ADVERTISING OVER ITS FIRST THREE YEARS ON THE MARKET 7* (2019), https://tobacco-img.stanford.edu/wp-content/uploads/2021/07/21231836/JUUL_Marketing_Stanford.pdf [<https://perma.cc/J2KN-7Q27>].

¹⁸⁹ See Province of Quebec Cannabis Regulation Act, C.Q.L.R. 2018, c C-5.3, art 25 (Can.).

producers to work with, regulates the type of cannabis products that are on the market, sets the THC limits, and is the sole beneficiary of the revenue collected.¹⁹⁰ As the sole legal retailer in the area, the SQDC is able to maintain reasonable prices to compete with the black market and limit advertising.¹⁹¹

B. *The Economics of Marijuana in Quebec*

Canada's excise tax only applies to cultivators, producers, and packagers of marijuana products.¹⁹² This federal tax is paid only once the products are purchased by retailers, whether that is a private retailer or government retailer.¹⁹³ Cannabis and cannabis products are taxed at the same rate as all goods and services within Canada.¹⁹⁴ The federal tax rate of goods and services is five percent.¹⁹⁵ Most provinces include an additional provincial sales tax ("PST"), with Quebec's PST set at 9.975%.¹⁹⁶ Even without a federal sales or excise tax, Quebec's tax rate is much lower than U.S. counterparts.

Despite its reasonably priced cannabis products, Quebec still has its own black-market issues. The cost of SQDC marijuana is still higher than its competitors, while supply has been low.¹⁹⁷ Because of the low supply of cannabis, consumers are relying on other sources to satisfy their demand.¹⁹⁸ The current price of legal cannabis is still higher than its black market counterpart and thus it has failed to entice consumers to purchase from the SQDC.¹⁹⁹ The SQDC has also been

¹⁹⁰ See *Cannabis Regulation Act*, *supra* note 179.

¹⁹¹ Jon Liedtke, *Quebec Retail Cannabis Overview*, STRATCANN (Oct. 16, 2020), <https://stratcann.com/2020/10/16/quebec-retail-cannabis-overview> [<https://perma.cc/3P4F-BKEK>].

¹⁹² Excise Act, S.C. 2002, c 22, ss 158.01–158.34 (Can.); see *How Canadian Cannabis Taxes Will Affect Marijuana Dispensaries*, INDICAONLINE (Sept. 27, 2018), <https://indicaonline.com/blog/how-canadian-cannabis-taxes-will-affect-marijuana-dispensaries> [<https://perma.cc/P2QB-VWRL>].

¹⁹³ *How Canadian Cannabis Taxes Will Affect Marijuana Dispensaries*, *supra* note 192.

¹⁹⁴ *Id.*

¹⁹⁵ Excise Tax Act, R.S.C. 1985, c E-15, s 165(1) (Can.).

¹⁹⁶ Act Respecting the Québec Sales Tax, C.Q.L.R. 2012, c T-0.1, art. 16 (Can.).

¹⁹⁷ Manisha Krishnan, *How Canada's Black Market Survived One Year of Legal Weed*, VICE (Oct. 17, 2019, 8:44 AM), <https://www.vice.com/en/article/wjwb8y/how-canadas-black-market-survived-one-year-of-legal-weed> [<https://perma.cc/H2EV-9PKW>].

¹⁹⁸ *Id.*

¹⁹⁹ Amy Hauer, *Great Expectations: Is Legalization the Ultimate Buzz-kill?*, MCGILL FAC. OF ARTS (Apr. 16, 2019), <https://www.mcgill.ca/arts/article/great-expectations-legalization-ultimate-buzz-kill> [<https://perma.cc/KFB6-RKGE>].

criticized for their lower quality products compared to the black market and lack of retail locations.²⁰⁰

Consumers are also deterred from shopping at the SQDC because of long lines and undersupply.²⁰¹ The SQDC had forty-five stores in operation as of August of 2020—a small number when considering the number of residents in the province.²⁰² Comparatively, the province of Alberta has 515 dispensaries.²⁰³ The lack of legal retailers and the option for home deliveries from illegal sources²⁰⁴ have made the black market a more reliable and accessible option for marijuana consumers. Despite these challenges, Quebec's monopolistic structure is arguably superior to the American license authorization approach in competing with the black market since the monopolistic approach is more equipped to lower the price of marijuana to an optimal consumption level, while also discouraging marketing and advertising of marijuana products.²⁰⁵

VI. COMPARISON OF THE LICENSE AUTHORIZATION APPROACH AND A GOVERNMENT-RUN MARIJUANA MONOPOLY

The license system and a government-owned monopoly must be compared through the lenses of typical business practices. To assess the viability of a government-owned marijuana store in the United States, five basic principles of business need to be addressed: funding, research and quality assurance, marketing and advertising, location, and public choice theory. The following section provides a comparison of the business aspects of the U.S. license authorization approach and the Quebec monopolization model.

²⁰⁰ T'Cha Dunlevy, *Why Quebecers Prefer Illegal Pot Over Going to the Cannabis Store*, MONTREAL GAZETTE (Oct. 16, 2019), <https://montrealgazette.com/cannabis/why-quebecers-prefer-illegal-pot-rather-than-going-to-the-cannabis-store> [<https://perma.cc/9SPP-VJCY>].

²⁰¹ *Id.*

²⁰² Solomon Israel, *Quebec's Marijuana Monopoly Has Relatively Few Stores, but Why?*, MJBIZDAILY, <https://mjbizdaily.com/why-does-quebec-marijuana-monopoly-have-relatively-few-stores> [<https://perma.cc/XL8J-VCB3>] (Dec. 17, 2021).

²⁰³ *Id.*

²⁰⁴ See Jesse B. Staniforth, *Quebec Looks Into Same-Day Delivery to Battle Illicit Market*, LEAFLY (Nov. 29, 2019), <https://www.leafly.com/news/industry/quebec-same-day-delivery> [<https://perma.cc/2882-CJWD>].

²⁰⁵ See, e.g., Province of Quebec Cannabis Regulation Act, C.Q.L.R. 2018, c C-5.3, art 53 (Can.).

A. Funding

Funding is a major concern for all businesses. Whether a company is looking to raise equity or debt, all businesses need a source of capital to fund their operations. Banks are a valuable source of providing new companies with capital by way of loans.²⁰⁶ Marijuana companies need to be financed like other companies or start-ups,²⁰⁷ they provide a unique legal risk because of their “federally illegal” status. Due to the federal drug policy and the Bank Secrecy Act of 1970, “employees, directors, and officers of financial institutions can face civil and criminal penalties, including lifetime bans from the banking industry,” if they facilitate financing for cannabis-related companies.²⁰⁸ This results in companies raising money through private investors by issuing securities such as debt or equity.²⁰⁹

U.S. marijuana companies are also not afforded the protection of bankruptcy. A Colorado bankruptcy judge held that marijuana companies cannot file for bankruptcy due to their federally illegal status.²¹⁰ This prohibition may deter investors from investing in marijuana startups or other dispensaries, as bankruptcy is a useful tool to eliminate debt and prevent creditors from collecting money if the company fails in its operations.

Canada, on the other hand, allows banks to lend money to cannabis companies.²¹¹ They also allow cannabis companies to be traded on

²⁰⁶ Glenn Curtis, *The Best Ways to Borrow Money*, INVESTOPEDIA, <https://www.investopedia.com/articles/basics/07/financing-options.asp> [<https://perma.cc/Q33L-STFP>] (June 26, 2021).

²⁰⁷ Brett Relander, *Funding Platforms for Marijuana Startups*, INVESTOPEDIA, <https://www.investopedia.com/articles/investing/030515/funding-platforms-emerging-marijuana-startups.asp> [<https://perma.cc/LHE2-WKCZ>] (Dec. 31, 2021).

²⁰⁸ Suzanne K. Daigle, Comment, *Legal Impediments to Banking Services for Recreational Cannabis Businesses: Comparing Oregon to Canada*, 21 OR. REV. INT’L L. 215, 224 (2020) (citing Rachel Cheasty Sanders, *To Weed or Not to Weed? The Colorado Quandary of Legitimate Marijuana Businesses and the Financial Institutions Who Are Unable to Serve Them*, 120 PA. ST. L. REV. 281, 297 (2015)); see also 12 C.F.R. § 21.11 (2021).

²⁰⁹ John Rebchok, *Cannabis Companies Secure Fresh Funding Deals as Investors Wade Back into Capital Markets*, MJBIZDAILY, <https://mjbizdaily.com/cannabis-companies-secure-fresh-funding-as-investors-return-to-capital-markets> [<https://perma.cc/H33B-SCAV>] (Dec. 17, 2021).

²¹⁰ Tom Angell, *Feds to Compile Cannabis Tax Revenue Data*, MARIJUANA MOMENT (Jan. 15, 2021), <https://www.marijuanamoment.net/feds-to-compile-cannabis-tax-revenue-data-newsletter-january-15-2021> [<https://perma.cc/6AQP-8ESK>].

²¹¹ Jim Bates, *This Canadian Bank Aims to Bolster Growth with Cannabis Industry Lending*, TSI WEALTH DAILY ADVICE (Apr. 10, 2019),

910 *CARDOZO INT'L & COMPAR. L. REV.* [Vol. 5:3

various stock exchanges.²¹² There are several Canadian cannabis-related companies that are publicly owned and traded.²¹³ For example, Aurora and Hexo Corp. are two companies that are traded on the New York Stock Exchange.²¹⁴ These publicly traded companies are in charge of cultivation, harvesting, and wholesale selling of marijuana.²¹⁵

A state-run monopoly in the United States would likely be financed with state funds.²¹⁶ State funds are comprised of taxes and other government-related revenue.²¹⁷ Every year, each U.S. state government apportions the funds to finance capital projects.²¹⁸ Financing through state funds is the most efficient way to finance capital projects as the funds are readily available so this avoids taking on debt.²¹⁹ State funding was used to finance the SQDC.²²⁰ In 2018, the Quebec government allocated \$139.3 million of revenue related to its government-run alcohol stores, Société des alcools du Québec, to finance the SQDC.²²¹

<https://www.tsinetwork.ca/daily-advice/cannabis-investing/this-canadian-bank-aims-to-bolster-growth-with-cannabis-industry-lending/> [<https://perma.cc/U4AX-PQKD>].

²¹² Mrinalini Krishna, *10 Canadian Marijuana Stocks for Your Portfolio*, INVESTOPEDIA, <https://www.investopedia.com/investing/10-canadian-marijuana-stocks/> [<https://perma.cc/S6GF-8KSD>] (Aug. 29, 2021).

²¹³ *Id.*

²¹⁴ Michael Berger, *Where Will Aurora Cannabis and Hexo Corp. Be a Year from Now?*, TECHNICAL420 (Aug. 19, 2020, 7:18 AM), <https://technical420.com/cannabis-article/where-will-aurora-cannabis-and-hexo-corp-be-a-year-from-now> [<https://perma.cc/CZ83-F43G>].

²¹⁵ *Licensed Cultivators, Processors and Sellers of Cannabis Under the Cannabis Act*, GOV'T OF CAN., <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/industry-licensees-applicants/licensed-cultivators-processors-sellers.html> [<https://perma.cc/NGS5-6P8B>] (Feb. 11, 2022).

²¹⁶ Erica MacKellar, *FY 2022 State Budget Update*, NAT'L CONF. OF ST. LEGISLATURES (Mar. 2, 2022), <https://www.ncsl.org/research/fiscal-policy/fy-2022-state-budget-update.aspx> [<https://perma.cc/NX5T-DP7Q>].

²¹⁷ *Id.*

²¹⁸ *Id.*; see OFF. OF THE LEGIS. FISCAL ANALYST, BUDGET OF THE STATE OF UTAH AND RELATED APPROPRIATIONS 2021–2022, at 1-5 (2021), <https://le.utah.gov/interim/2021/pdf/00002925.pdf> [<https://perma.cc/9Y7X-HDYN>] (showing that Utah's budget contains \$9.2 million for the expansion of the Department of Alcoholic Beverage control).

²¹⁹ Mackellar, *supra* note 216.

²²⁰ 1 FINS. QUE., CONSOLIDATED FINANCIAL STATEMENTS OF THE GOUVERNEMENT DU QUÉBEC: PUBLIC ACCOUNTS 2017-2018, at 186 (2018), http://www.finances.gouv.qc.ca/documents/Comptespublics/en/CPTEN_voll-2017-2018.pdf [<https://perma.cc/6V3N-T352>].

²²¹ *Id.*

B. Research and Quality Assurance

With the ever-changing market conditions, if companies do not provide quality products and change with the consumer, they will surely struggle and perhaps even go out of business. Marijuana is not a commodity good; it is a baseline ingredient used to create innovative and inventive products that will attract consumers. For example, some companies have created a line of marijuana-infused beverages to replace alcoholic beverages.²²² This type of innovation is crucial in a competitive marketplace, as consumers are attracted to more creative and enticing products.

Under a license regulatory framework with private retailers, businesses must compete for consumers. Competition leads retailers to research, develop, and produce quality products for their consumers.²²³ Many cannabis companies develop their own products from harvest to cultivation and retail.²²⁴ These companies typically sell in-house products that are grown on farms owned and operated by the retailers themselves.²²⁵ These retailers have complete control and freedom to develop their own products and sell what they want—provided they abide by the regulations of the state.²²⁶ For example, a regulation in Colorado provides that the “size of a Standardized Serving of Marijuana shall be no more than 10mg of active THC.”²²⁷

Lack of competition has led to comparatively poor performances, compared to private businesses, for many government-run stores in the alcohol industry, and even in the package delivery industry (the United States Postal Service).²²⁸ Without competition, government retailers can produce imperfect products, since there is less incentive to

²²² Susan Gunelius, *5 Innovations from Creative Marijuana Entrepreneurs*, CANNABIZ MEDIA, <https://cannabiz.media/5-innovations-from-creative-marijuana-entrepreneurs> [<https://perma.cc/8S7T-EAR3>] (Jan. 11, 2019).

²²³ Bart Schaneman, *Always Be Creating: How to Use Research and Development Programs to Innovate and Stay Relevant with Consumers*, MARIJUANA BUS. MAG., Sept. 2020, at 104.

²²⁴ Ryan Smith, *A Guide to the Cannabis Supply Chain*, BENZINGA (Apr. 15, 2019, 11:37 AM), <https://www.benzinga.com/markets/cannabis/19/04/13503065/a-guide-to-the-cannabis-supply-chain> [<https://perma.cc/ZR2V-2KS8>].

²²⁵ See Herbert Fuego, *Denver Dispensaries That Only Grow and Sell Their Own Weed*, WESTWORD (Nov. 5, 2019, 8:58 AM), <https://www.westword.com/marijuana/denver-dispensaries-that-only-grow-their-own-weed-11518713>.

²²⁶ See, e.g., COLO. CODE REGS. § 212-3-335 (2022).

²²⁷ *Id.* § 212-3-335(d)(4)(a).

²²⁸ See Marissa Giannotta, *The USPS: A Model for Failure?*, CITIZENS AGAINST GOV'T WASTE (June 10, 2010), <https://www.cagw.org/content/usps-model-failure> [<https://perma.cc/G4QT-ZTYG>].

produce higher quality products. This is in direct opposition to licensed retailers who must produce quality products to compete with nearby retailers.²²⁹ Cannabis companies spend millions of dollars researching and developing new strands and new products to gain customer loyalty.²³⁰

The SQDC is not tasked with its own research and development; rather it purchases its products from large wholesale corporations, such as Aurora and Hexo Corp.²³¹ Aurora and Hexo Corp, among many other innovative cannabis companies, are tasked with creating and developing new products to be sold at retail locations. In Quebec, seventy-three percent of the marijuana supply industry is made up of five large corporations.²³² This effectively shuts out smaller companies and mom-and-pop shops looking to break into the market.²³³ Although there is no legal competition for the SQDC, it is crucial that they provide consumers with quality products at an affordable price because if it is a subpar product, consumers will likely jump back into the black market—a market that has met the demands of marijuana consumers for decades.

²²⁹ Kevin Yamazaki, *High Tech: How Marijuana Legalization Breeds Innovation*, OBSERVER (Mar. 27, 2017, 11:46 AM), <https://observer.com/2017/03/high-tech-how-marijuana-legalization-breeds-innovation> [<https://perma.cc/B7KM-3EV7>]; Adam Andrzejewski, *Why the U.S. Post Office Is in Trouble – 678,539 Employees and a \$9.2 Billion Loss in 2020*, FORBES (Feb. 20, 2021, 11:09 AM), <https://www.forbes.com/sites/adamandrzejewski/2021/02/20/why-the-us-post-office-is-in-trouble-678539-employees-and-a-92-billion-loss-in-2020/?sh=5a67f4b2314e> (“A General Accountability Office (GAO) report found that USPS lost \$69 billion over the previous 11 fiscal years—including \$3.9 billion in fiscal year 2018. Then, a forecasted \$6.6 billion loss turned into an \$8.9 billion loss in 2019.”).

²³⁰ See Joseph Keller, *The Value of R&D in the Cannabis Industry*, CANNABIS INVESTING NEWS (Jan. 27, 2019, 3:00 PM), <https://investingnews.com/innspired/research-and-development-in-the-cannabis-industry> [<https://perma.cc/G8QP-XCWJ>].

²³¹ Nichola Saminather, *Quebec Signs Weed Supply Agreements with Six Canadian Suppliers*, REUTERS (Apr. 11, 2018, 9:47 AM), <https://www.reuters.com/article/cbusiness-us-canada-cannabis-quebec-idCAKBN1HI22C-OCABS> [<https://perma.cc/8YE5-DPG8>].

²³² Naomi Martin, *In Legalizing Marijuana, Canada Did Everything Differently. Here's what We Can Learn*, BOS. GLOBE (July 20, 2019, 9:07 PM), <https://www.bostonglobe.com/news/marijuana/2019/07/20/legalizing-marijuana-canada-did-everything-differently-here-what-can-learn/AP-Kpz25e0uaCxrKnOD3p0K/story.html> [<https://perma.cc/LNA2-ABDS>].

²³³ *Id.*

C. Marketing and Advertising

Advertising is a key component of any business. This type of exposure has major ramifications for the influence of marijuana on children. Some states have enacted regulations to stop marijuana marketing toward children to prevent marijuana use by minors. For instance, in Colorado it is illegal for a marijuana company to advertise to an underage audience either through the internet, radio, television, or print media.²³⁴ Additionally, Colorado prohibits cannabis companies from promoting certain content that could potentially target minors, such as through playful images.²³⁵

Quebec marijuana stores do not advertise,²³⁶ partially due to the Canadian government's goal of limiting the marijuana exposure of children.²³⁷ An argument could be made that the SQDC has little reason to advertise because they are the sole marijuana retailer. However, the SQDC and the Quebec government would benefit from advertising their stores as it would direct consumers to legal dispensaries and away from the black-market products they consumed in the past.

D. Retail Location

The place of business of a retailer is crucial to the success of the store.²³⁸ A good location allows easy access for customers, attracts large numbers of consumers, and increases the potential for sales.²³⁹ A minute difference in location can have an insurmountable effect on

²³⁴ COLO. REV. STAT. § 44-10-203(3)(a) (2021); COLO. CODE REGS. § 212-3-720(B) (2022) (“A Retail Marijuana Business may Advertise in television, radio, a print publication or via the internet only where at least 71.6 percent of the audience is reasonably expected to be at least the age of 21.”); see Nicole Flanigan, *A Guide to Colorado Cannabis Advertising Restrictions*, TEAM MARYJANE (Mar. 5, 2018), <https://www.teammaryjane.com/marijuana-marketing/colorado-cannabis-advertising-restrictions> [<https://perma.cc/T5X7-GSXX>].

²³⁵ COLO. CODE REGS. § 212-3-740(B) (2022); Flanigan, *supra* note 234 (“We see a lot of dispensaries sharing viral memes with Spongebob and Tom & Jerry on their social profiles . . . [These ads] are attractive to children . . .”).

²³⁶ Province of Quebec Cannabis Regulation Act, C.Q.L.R. 2018, c C-5.3, arts. 1, 51 (Can.); Cannabis Act, S.C. 2018, c 16, s 17 (Can).

²³⁷ See Cannabis Act, S.C. 2018, c 16, s 7 (Can).

²³⁸ See Shari Waters, *Choosing a Retail Store Location*, THE BALANCE SMALL BUS. (Mar. 12, 2021), <https://www.thebalancesmb.com/choosing-a-retail-store-location-2890245> [<https://perma.cc/VDU2-D49R>].

²³⁹ HONG YU, SEAN SEDLEZKY, KEN WONG, TONY HERNANDEZ, PAULINE LARSEN & GAY STEPHENSON, POP-UP RETAIL STRATEGIES IN AN OMNICHANNEL CONTEXT 93 (2018).

market share and profitability.²⁴⁰ Marijuana stores are no different than other retail businesses.²⁴¹ They need exposure in well-populated areas to succeed,²⁴² but critics of legalization have condemned the presence of marijuana dispensaries in their cities and towns.²⁴³ The rationale for this criticism is that an increase in dispensaries will equate to an increase in access to cannabis products.²⁴⁴ There are a number of reasons why people do not want marijuana dispensaries in their neighborhood, such as limiting exposure to children to cannabis stores or limiting the potential for driving under the influence.²⁴⁵

Quebec has struggled to thwart the black market since its stores are not as accessible as black-market providers.²⁴⁶ Frequent consumers would rather have someone come to their house and deliver them marijuana than drive a far distance and wait on long lines.²⁴⁷ This is a major issue for many newly legalized states. Consumers want more accessible stores, while concerned citizens want to limit the number of stores in each neighborhood.²⁴⁸ One solution may be to have municipalities vote on whether to allow dispensaries in their area.²⁴⁹

²⁴⁰ *Id.*

²⁴¹ See John Rebchook, *Landing the Right Retail Location*, MJBIZDAILY, <https://mjbizdaily.com/landing-right-retail-location> [<https://perma.cc/2ZEU-C4YE>] (Dec. 17, 2021) (“[R]egulations can create a silver lining: They can reduce competition. The importance of location is reduced slightly in areas where the number of retail licenses is capped . . . That’s because there is little concern that two businesses will locate on the same block and compete for the same customers . . .”).

²⁴² Solomon Israel, *Here’s How to Choose the Best Location for Your Marijuana Retail Store*, MJBIZDAILY, <https://mjbizdaily.com/choosing-the-best-cannabis-retail-location/> [<https://perma.cc/R828-VQW7>] (Dec. 17, 2021).

²⁴³ Cassie Slane, *We’d Rather Not: Americans Like Marijuana but Don’t Want a Dispensary in Their Town*, NBC NEWS (Apr. 19, 2019, 1:53 PM), <https://www.nbcnews.com/business/business-news/we-d-rather-not-americans-marijuana-don-t-want-dispensary-n996306> [<https://perma.cc/K3CU-J83H>].

²⁴⁴ *Id.*

²⁴⁵ *Id.*; Paul Nelson, *Pot’s Legal, but Some Local Towns Worry About Shops, Lounges*, TIMES UNION, <https://www.timesunion.com/news/article/Pot-s-legal-but-some-local-towns-worry-about-16665424.php> [<https://perma.cc/N346-8BAF>] (Dec. 16, 2021, 5:22 PM).

²⁴⁶ Israel, *supra* note 202.

²⁴⁷ Martin, *supra* note 232.

²⁴⁸ See Cassie Slane, *We’d Rather Not: Americans Like Marijuana But Don’t Want a Dispensary in Their Town*, NBC NEWS (Apr. 19, 2019, 1:53 PM), <https://www.nbcnews.com/business/business-news/we-d-rather-not-americans-marijuana-don-t-want-dispensary-n996306> [<https://perma.cc/H2ZC-QS2E>].

²⁴⁹ See LAURA GODDEERIS & WILL FRICKE, INT’L CITY/CNTY. MGMT. ASS’N, LOCAL IMPACTS OF COMMERCIAL CANNABIS 31 (2018).

E. Public Choice Theory

As the marijuana industry prepares for increased legalization,²⁵⁰ one issue that the public will eventually face is the public choice theory. The public choice theory “focuses on the way that politics supplies laws and regulations to meet the demands of interest groups . . . rather than to satisfy some abstract notion of the public good.”²⁵¹ This theory postulates that “legislators themselves were simply selling off public policies to the highest bidders, which implied that political outcomes ought to be analyzed as the results of ongoing interest group competition rather than by reference to the lofty rhetoric politicians and bureaucrats use to publicly justify their choices.”²⁵² Opponents of legalization fear that widespread legalization “will end in domination by so-called Big Marijuana firms, whose marketing and political clout will legitimize the use of marijuana (including among minors), target and exploit problem users (whose black-market purchases currently represent a majority of sales), and result in marijuana’s being under-taxed and under-regulated.”²⁵³ The fear that “Big Marijuana” will dominate the industry and lead to regulatory changes is a significant possibility.²⁵⁴ However, a state-run monopoly would not have to face the pressure of Big Marijuana.

States are in the best position to open legal marijuana dispensaries. They can fix retail locations, limit advertising, and provide funding to open new stores. Currently, however, state regulations in the United States only provide guidelines for dispensary locations, such

²⁵⁰ See Lauren Yoshiko, *The States Most Likely to Legalize Cannabis in 2022*, BOARDROOM (Feb. 11, 2022), <https://boardroom.tv/cannabis-legalization-by-state-2022/> [https://perma.cc/S2HQ-ZPQT].

²⁵¹ PHILIP WALLACH & JONATHAN RAUCH, BOOTLEGGERS, CTR. FOR EFFECTIVE PUB. MGMT. AT BROOKINGS, BAPTISTS, BUREAUCRATS, AND BONGS: HOW SPECIAL INTERESTS WILL SHAPE MARIJUANA LEGALIZATION 3 (June 2016), <https://www.brookings.edu/wp-content/uploads/2016/07/bootleggers.pdf> [https://perma.cc/D6FB-6BB7].

²⁵² *Id.* (citing George Stigler, *The Theory of Economic Regulation*, 2 BELL J. ECON. & MGMT. SCI. 3 (1971); Sam Peltzman, *Toward a More General Theory of Regulation*, 19 J.L. & ECON. 211 (1976); Gary S. Becker, *A Theory of Competition Among Pressure Groups for Political Influence*, 98 Q.J. ECON. 371 (1983)).

²⁵³ *Id.* at 15; see also Jon Caulkins, *Nonprofit Motive*, WASH. MONTHLY (Mar. 2, 2014), <https://washingtonmonthly.com/2014/03/02/nonprofit-motive> [https://perma.cc/X6VU-TTPE].

²⁵⁴ Kevin Sabet, *Politics and Science Are Both Catching Up with Big Marijuana*, NEWSWEEK (June 2, 2021, 7:30 AM), <https://www.newsweek.com/politics-science-are-both-catching-big-marijuana-opinion-1596664> [https://perma.cc/E83Q-WPFK].

as restricting retailers away from schools.²⁵⁵ In Quebec, alternatively, the province has the ability to determine the exact location and number of stores.²⁵⁶ Additionally, it would be difficult for states to completely eliminate advertising in the license authorization system, as companies need a vehicle to promote their businesses.²⁵⁷ Alternatively, the SQDC does not need to advertise, as they are the only marijuana business in the province. Lastly, license authorization states, on average, take about sixteen months to open the first dispensaries after legalization.²⁵⁸ One of the largest factors for the delay is the time it takes to set industry guidelines and sort through license applications.²⁵⁹ A state-run system would not run into these issues and could open stores immediately. They are in the best position to decrease the cost of the product, maximize revenue for the state, and better protect against the danger of marijuana. Then again, license states can rival a government monopoly by lowering taxes and tightening regulations.

VII. ESTABLISHING A GOVERNMENT-OWNED MONOPOLY IN THE U.S.

As demonstrated, the Quebec model is a viable regulatory method for promoting public health and safety. This framework enables the government to limit the consumption of cannabis through limiting advertising, establishing retail locations, and setting a fixed price per product. The state government is also in the best position to maximize revenue by decreasing costs and increasing output of cannabis products. However, there are several issues that government-owned marijuana stores will have to address prior to opening its doors to consumers. Some of these issues are: (a) how the government retailer will be

²⁵⁵ See, e.g., CAL. BUS. & PROF. CODE § 26054(b) (West 2022).

²⁵⁶ Province of Quebec Cannabis Regulation Act, C.Q.L.R. 2018, c C-5.3, art 33 (Can.) (prohibiting the SQDC from operating in certain locations because the SQDC, as the only licensed retailer, has autonomy to fix retail locations).

²⁵⁷ See Sarah Siegel, *Cannabis Advertising Laws: The States' Way or the Highway*, MASUR GRIFFITTS AVIDOR LLP (Jan. 22, 2020), <https://masur.com/law-talk/cannabis-advertising-laws-the-states-way-or-the-highway/> [<https://perma.cc/ZE7K-W28B>].

²⁵⁸ See Troy Closson, *Marijuana Is Legal in New Jersey, but Sales Are Months Away*, N.Y. TIMES, <https://www.nytimes.com/2021/02/22/nyregion/new-jersey-marijuana-legalization.html> [<https://perma.cc/N4ZH-YFSZ>] (Nov. 3, 2021).

²⁵⁹ See Matt Cortina, *Why Is it Taking So Long to Be Able to Buy Legal Weed in New Jersey?*, NJ INDY (Mar. 2, 2022), <https://njindy.com/2022/03/02/why-is-it-taking-so-long-to-be-able-to-buy-legal-weed-in-new-jersey/> [<https://perma.cc/7BEN-FRB3>].

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able to fund the operation, (b) where they will get their products from, and (c) how the state will tax and price cannabis products.²⁶⁰

A. Funding for a State-Run Marijuana Monopoly

State government-run marijuana dispensaries can be financed either through government money or municipal bonds. Alternatively, the government could create a plan to invest taxpayer dollars to finance dispensaries. Revenue earned from the dispensary would be re-distributed back into the state. The state could also use profits from the dispensary to help fund programs for people with addictions or fund programs for drug education. As an example, cannabis profits in Quebec are “remitted to the government and reinvested primarily in cannabis research and prevention.”²⁶¹ The state could also invest money into cannabis product research and development by giving out grants to third-party developers and manufacturers. State governments would also benefit by investing profits from cannabis sales into programs to teach children about the dangers of drug abuse.

B. Source of Cannabis Products

If state governments establish their own marijuana operations, states would have to choose the manufacturers. The easiest route to take is the one like the one taken by the SQDC. The SQDC purchases products wholesale from established vendors and then re-sells the products at retail prices.²⁶² This system is like state-run alcohol monopolies which obtain their products from large alcohol distributors.

The argument against establishing a government monopoly is that the government is not able to innovate and create quality products for itself. As the exclusive retailer, the government has little incentive for

²⁶⁰ Although beyond the scope of this Note, there are many social justice-related issues associated with decriminalization and legalization of marijuana. This Note strictly focuses on the economic and safety issues of marijuana legalization. Notwithstanding, social justice issues are very important to marijuana legalization.

²⁶¹ *Quebec Cannabis Stores Post Quarterly Profit As Sales Grow*, MJBIZDAILY, <https://mjbizdaily.com/quebec-cannabis-stores-post-quarterly-profit-as-sales-grow> [<https://perma.cc/7E4G-QBRG>] (Dec. 17, 2021) (citing *The SQDC Posts a Profit of \$9.7 Million for the First Quarter of Its 2020-2021 Fiscal Year*, CISION (Sept. 3, 2020, 4:06 PM), <https://www.newswire.ca/news-releases/the-sqdc-posts-a-profit-of-9-7-million-for-the-first-quarter-of-its-2020-2021-fiscal-year-813830080.html> [<https://perma.cc/6YMT-5PYU>]).

²⁶² Dave Jaffer & J.P. Karwacki, *Everything You Need to Know About Marijuana in Montreal*, TIMEOUT (Feb. 25, 2020), <https://www.timeout.com/montreal/things-to-do/marijuana-cannabis-montreal> [<https://perma.cc/SR63-V828>].

research and development. Because the government lacks incentive to develop and create innovative products, third-party wholesalers are in the best position to compete with illegal sellers as they have a greater incentive to create quality products. To incentivize research and development among third party wholesalers, the government should utilize royalties, by giving cannabis manufacturers or developers a percentage of the profit from products sold.

The state government must also decide which wholesalers and distributors will be licensed to produce cannabis products. One solution is to import cannabis products from established companies in other states or countries.²⁶³ This would potentially reduce the cost of producing cannabis for the state, as it eliminates any costs associated with research and development.²⁶⁴ Additionally, it would also allow third parties to develop products, rather than having the consumer rely on the government for product innovation.²⁶⁵ However, the costs associated with importing cannabis products will likely be borne onto the consumer. There are currently several companies that have legal authorization to ship marijuana products from Canada to the United States.²⁶⁶ For example, Canadian companies such as Tilray and Canopy Growth have been approved by the U.S. Drug Enforcement Administration (“DEA”) to ship products from Canada to the United States.²⁶⁷ Regardless, state governments may choose to issue licenses to new in-state wholesalers to grow, cultivate, and develop cannabis products for in-state dispensaries.

²⁶³ Markian Hawryluk, *US Cannabis Might Be Top Shelf, but Canada Is the Export King — For Now*, COLO. PUB. RADIO NEWS (Jan. 5, 2020, 4:00 AM), <https://www.cpr.org/2020/01/05/us-cannabis-might-be-top-shelf-but-canada-is-the-export-king-for-now/> [<https://perma.cc/B2VH-89YG>].

²⁶⁴ *What Are the Benefits of Importing and Exporting Products?*, BESPOKE SOURCING GLOB., <https://bespokesourcing.com/what-are-the-benefits-of-importing-and-exporting-products/> [<https://perma.cc/8PGQ-GFLM>] (last visited May 5, 2022).

²⁶⁵ *Id.*

²⁶⁶ See Nathan Reiff, *Marijuana Companies That Legally Export Cannabis to the U.S.*, INVESTOPEDIA (Oct. 26, 2018, 3:01 PM), <https://web.archive.org/web/20181027015137/https://www.investopedia.com/insights/marijuana-companies-legally-export-cannabis-us> (“Canadian companies have received highly specialized approval in particular situations to ship cannabis products into the U.S. It’s important to recognize that these are limited scenarios and that the situation is far from an open door for Canadian cannabis to flow southward.”).

²⁶⁷ *Id.*

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C. Tax and Prices

The most important factor for a retail marijuana dispensary is setting the optimal price to sell its products. As the lone marijuana retailer in the state, the government would have the ability to set fixed prices for its products at all retail venues. Of course, a caveat is that the state will then have to compete with lower prices on the black market.

The state should also consider foregoing an excise tax to keep prices steady. A government monopoly can decrease prices and fix the amount of retail locations. As the sole marijuana retailer, the state would earn its marijuana-related revenue from sales, as opposed to license authorization states which earn revenue from licensing fees and sales tax. Marijuana sales revenue has the potential to be exponentially more profitable than revenue from licensing fees and sales tax. Lowering prices would encourage consumers to shop at retail locations and eliminate the need for illegal sellers.

The main concern with a state-owned monopoly keeping prices low is that could have the negative effect of increasing consumption. Studies have shown that price decreases lead to higher demand for and usage of cannabis products.²⁶⁸ However, a government-owned dispensary would be hard-pressed to decrease the price of cannabis since, arguably, the government's goal is to maximize revenue. On the other hand, the government has a responsibility to attempt to limit the consumption of cannabis for the public good. Moreover, determining optimal price levels to deter users from purchasing cannabis on the black market while at the same time trying to decrease cannabis usage is still an important issue that state governments will no doubt need to continue to address.²⁶⁹

VIII. CONCLUSION

Quebec marijuana policies and its implementation thereof should be a guide to U.S. states that are currently considering legalization of the recreational use of cannabis. With federal legalization of marijuana looming,²⁷⁰ potential legalization will certainly have an effect on the U.S. market regarding funding, federal tax payments, and restrictions

²⁶⁸ See Caulkins, *supra* note 111.

²⁶⁹ *Id.*

²⁷⁰ Kyle Jaeger, *Federal Marijuana Legalization Bill Officially Scheduled for House Floor Vote Next Week*, MARIJUANA MOMENT (Mar. 24, 2022), <https://www.marijuanamoment.net/federal-marijuana-legalization-bill-officially-scheduled-for-house-floor-vote-next-week/> [https://perma.cc/C7DF-Q6T8].

on cultivation. States that have legalized marijuana in 2021, such as New York and Connecticut, are emphasizing the desire to keep marijuana away from children and competing with the black market, rather than focusing on maximizing revenue.²⁷¹ As states continue to legalize recreational marijuana, they will certainly focus on the current structures in place both in the United States and abroad in Canada.²⁷²

²⁷¹ See Kyle Jaeger, *Connecticut Governor Signs Marijuana Legalization Into Law*, MARIJUANA MOMENT (June 22, 2021), <https://www.marijuanamoment.net/connecticut-governor-signs-marijuana-legalization-into-law/> [<https://perma.cc/7JD5-67SW>]; Luis Ferré-Sadurní, *New York Reaches a Deal to Legalize Recreational Marijuana*, N.Y. TIMES, <https://www.nytimes.com/2021/03/25/nyregion/ny-legalize-marijuana.html> [<https://perma.cc/87GD-H3H4>] (Apr. 1, 2021); Laura Kersey, *2021 Marijuana Legalization Update: Five Things You Need to Know*, NAT'L COUNCIL ON COMP. INS. (June 24, 2021), <https://www.ncci.com/Articles/Pages/Insights-2021-Marijuana-Legalization-Update.aspx> [<https://perma.cc/6QCE-87MH>] (“In 2021, 4 states (Connecticut, New Mexico, New York, and Virginia) passed legislation to legalize marijuana for recreational purposes.”).

²⁷² “A key Senate committee voted unanimously Wednesday to recommend killing a House-passed bill to make New Hampshire the first state to hold a monopoly on the sale of recreational marijuana to adults.” Kevin Landrigan, *State Monopoly to Sell Pot Hits Senate Roadblock*, YAHOO! MONEY (Apr. 21, 2022), <https://money.yahoo.com/state-monopoly-sell-pot-hits-080800786.html> [<https://perma.cc/6FQD-S54R>].