

Responsible Ohio: Successes, Failures, and the Future of Adult Marijuana Use in Ohio

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I. INTRODUCTION

On November 3, 2015, Ohioans went to the polls to vote on Issue 3, a ballot initiative to amend the Ohio Constitution to legalize adult marijuana use. Though other states had legalized medicinal marijuana prior to eliminating prohibition, ResponsibleOhio, the political action committee (PAC) behind the initiative, believed it could skip this preliminary hurdle. The group worked tirelessly for almost two years to ensure that Issue 3 would become law. Had it succeeded, the organization would have possessed the blueprint to end prohibition in many other states, if not the entire country. Yet, despite favorable polling in the months leading up to the election, it became clear that the PAC had miscalculated. On election night, the initiative was soundly defeated, with Ohioans voting against legalization at a rate of two to one.¹ The State would have to wait until at least the 2016 presidential election to get another chance at legalization.

Part I of this Essay reviews the history and key players behind ResponsibleOhio as well as the initiative’s path to the ballot. Part II summarizes the text of Issue 3 and assesses relevant provisions. Parts III and IV highlight the debate between marijuana activists and prohibitionists, and Part V analyzes why the campaign was ultimately unsuccessful. Part VI notes that even though Issue 3 did not pass, it led to acceptance of medical marijuana in Ohio and thus set the stage for full legalization in 2020. Finally, the Essay concludes in Part VII with a reflection on the lessons learned from ResponsibleOhio and gives suggestions on how to best frame a marijuana legalization campaign to appeal to voters in the next presidential election.

II. THE RISE OF RESPONSIBLEOHIO

Though ResponsibleOhio did not materialize until 2014, the structure and strategy for what would become Issue 3 began to take shape years prior. In the

¹ Matt Pearce, *Ohio Voters Soundly Reject Marijuana Legalization Initiative*, L.A. TIMES (Nov. 3, 2015), <http://www.latimes.com/nation/la-na-ohio-marijuana-results-20151103-story.html> [https://perma.cc/3QF3-TEVN]; see also Mollie Reilly, *Ohio Votes Against Legalizing Marijuana*, HUFFPOST (Nov. 3, 2015), http://www.huffingtonpost.com/entry/ohio-marijuana-vote_us_56391e59e4b0307f2cab0499 [https://perma.cc/7AXD-HEK4].

aftermath of the 2007–2008 financial crisis, many states (including Ohio) faced serious budget shortfalls and were in search of additional sources of revenue.² Legalizing casino gambling was suggested as a solution to the Buckeye State’s financial problems. However, several campaigns attempted to legalize the vice in 1996, 2006, and 2008, and all were unsuccessful.³ Ohio remained one of the last states in the Midwest to prohibit the practice.

A. Casino Gambling as a Model for Legalizing Adult Marijuana Use in Ohio

A PAC, the Ohio Jobs and Growth Committee (OJGC), saw the financial crisis as an opportunity to succeed where others had failed. Noting a state budget shortfall of \$3.2 billion, the campaign made several compelling arguments in favor of legalizing gambling.⁴ The group alleged that legalization would create up to 20,000 jobs, generate roughly \$600 million in annual tax revenue (to be split among counties, cities, and law enforcement), and result in \$200 million in licensing fees.⁵ The argument that Ohio was best served by retaining money that was moving to casinos in surrounding states like Pennsylvania, Michigan, and West Virginia likely struck a chord with Ohio voters.⁶

Notably, the initiative restricted construction to one casino per each of the state’s four largest metropolitan areas—Cincinnati, Columbus, Toledo, and Cleveland.⁷ Exact locations for each casino were predetermined and incorporated in the amendment.⁸ The campaign was almost entirely bankrolled by two wealthy investors, Dan Gilbert, founder of Quicken Loans, Inc. and JACK Entertainment, and Penn National Gaming, Inc. (PNG).⁹ In exchange for their support, these two corporations received exclusive rights to the new

² For an extensive examination of Ohio’s budget leading up to the Issue 3 campaign, see Adam Millsap & Thomas Savidge, *A Snapshot of Ohio’s Budget Situation from 2006 to 2015*, MERCATUS CTR. (Dec. 13, 2016), <https://www.mercatus.org/publications/snapshot-ohio-budget-situation> [https://perma.cc/S3JJ-YTNA].

³ *Ohio Casino Approval and Tax Distribution, Amendment 3 (2009)*, BALLOTPEdia, [https://ballotpedia.org/Ohio_Casino_Approval_and_Tax_Distribution,_Amendment_3_\(2009\)#Text_of_measure](https://ballotpedia.org/Ohio_Casino_Approval_and_Tax_Distribution,_Amendment_3_(2009)#Text_of_measure) [https://perma.cc/5RGQ-PM3R] [hereinafter *Ohio Casino Approval*].

⁴ Associated Press, *Ohio Gov. Strickland Accepts Gambling Amid Deficit*, HERALD-DISPATCH (June 19, 2009), http://www.herald-dispatch.com/news/recent_news/ohio-gov-strickland-accepts-gambling-amid-deficit/article_66472383-f8f0-557b-aa30-a606a373ccec.html [https://perma.cc/W3LA-BDL3].

⁵ Marc Kovac, *Ohio Casino Backers To Start Signature Drive*, VINDICATOR (Apr. 16, 2009), <http://www.vindy.com/news/2009/apr/16/ohio-casino-backers-to-start-signature-drive/?newswatch> [https://perma.cc/GCH8-WJDC].

⁶ Michael E. Zatezalo, *The Perfect Storm: Ohio’s Entry into Legalized Gaming*, KEGLER BROWN HILL & RITTER (Jan. 1, 2010), <http://www.keglerbrown.com/publications/the-perfect-storm-ohios-entry-into-legalized-gaming/> [https://perma.cc/RK5C-MTR2].

⁷ OHIO CONST. art. XV, § 6.

⁸ *Id.*

⁹ *Ohio Casino Approval*, *supra* note 3.

gaming facilities, with PNG controlling Columbus and Toledo, and Gilbert's JACK Entertainment taking Cleveland and Cincinnati.¹⁰ The campaign argued that predetermined casino operators and fixed casino locations would reduce the problems often associated with gambling, such as theft, addiction, and prostitution.

On November 3, 2009, the citizens of Ohio passed the initiative, with 53% in favor and 47% against.¹¹ Timing, effective campaigning, and a well-crafted initiative all contributed to the amendment's passage. The OJGC persuaded Ohio—a moderate state that had steadfastly refused to legalize gambling—to reverse course. The campaign's lead organizer, Ian James, would take these successes and apply them six years later in an ambitious—yet flawed—attempt to legalize another vice: marijuana.

B. *ResponsibleOhio and Issue 3*

Starting in May 2013, the Ohio Rights Group (ORG), an organization that favored legalizing the medicinal use of marijuana, began to collect signatures to place an initiative on the 2015 ballot.¹² That summer, James, founder and CEO of the Strategy Network (a political consulting group that had been involved in past efforts to protect voting rights, end payday loan abuse, and legalize casino gambling in Ohio), was asked to assist with the endeavor. It quickly became apparent to James that the ORG lacked the resources necessary to place its initiative on the ballot. Moreover, he was disappointed with the group's lack of ambition. Recent developments had seen full legalization in Colorado and Washington; James believed Ohio could be the next state to end prohibition. Yet, as an experienced political organizer, he knew that placing such a controversial initiative on the ballot would require significant capital. After consulting with his spouse and business partner, Stephen Letourneau, James decided to try for complete legalization.¹³

In early 2014, James approached Chris Stock, a Cincinnati attorney who had represented James in litigation stemming from the Ohio casino gambling initiative, to help draft an amendment to the Ohio Constitution that would end marijuana prohibition. At first, Stock was hesitant. As an antitrust attorney with a reputable Cincinnati firm, he was concerned that involvement in the campaign would affect his professional reputation. Stock, a straight-laced individual who

¹⁰ OHIO CASINO CONTROL COMM'N, OHIO CASINOS, <http://casinocontrol.ohio.gov/About/OhioCasinos.aspx> [https://perma.cc/9NJ6-N7AG].

¹¹ *Struggling Ohio Votes To Open Doors to Casinos*, FOX NEWS (Nov. 4, 2009), <http://www.foxnews.com/politics/2009/11/04/struggling-ohio-votes-open-doors-casinos.html> (on file with *Ohio State Law Journal*).

¹² Jackie Borchardt, *Pro-Medical Marijuana Ohio Rights Group Endorses Issue 3*, CLEVELAND.COM (Oct. 13, 2015), http://www.cleveland.com/open/index.ssf/2015/10/pro-medical_marijuana_ohio_rig.html [https://perma.cc/4ZLD-NZZK].

¹³ Telephone Interview with Ian James, Chief Exec. Officer, The Strategy Network (Feb. 27, 2017).

had previously worked for the Ohio attorney general's office, claims to have never consumed marijuana.¹⁴ Still, he was intrigued by the opportunity to leave his mark on Ohio public policy. Though Stock did not necessarily support sanctioning a right to get high, it was apparent to him that the law in its current form served no one. After conducting his own research on the topic, he was convinced that prohibition bogged down the justice system by putting nonviolent drug offenders in prison and placed a large burden on already impoverished families. Stock reasoned that drafted correctly, the initiative could benefit public health and safety, as well as generate significant tax revenue for the Ohio economy.

After two weeks spent vacillating about whether to assist James, Stock relented. However, he first requested carte blanche to draft the amendment, and James agreed. Issue 3 became Stock's pet project—he spent countless hours working on the initiative in addition to completing his regular tasks as an attorney. Alongside a group of people with legal, political, and public policy experience, Stock began to piece together a matrix of every state and locality that had ever legalized marijuana. He referred to the matrix constantly to craft the best possible initiative. Like any good attorney, Stock wanted the language in the amendment to be impregnable. His greatest concern was that reporters would misconstrue one of the initiative's provisions and stall the amendment before it reached the ballot.¹⁵

In organizing the campaign, James looked to the successful 2009 ballot initiative that legalized casino gambling. He knew that legalizing adult marijuana use would be an expensive endeavor, even in an off-year election. James hired Cincinnati sports agent and businessman Jimmy Gould to assist with fundraising.¹⁶ As the campaign's first official investor, Gould possessed a wealth of contacts that he had cultivated over twenty-five years in private equity. Gould secured funding from ten wealthy individuals, including several famous Ohioans: Nick Lachey (singer), Frostee Rucker (former Cincinnati Bengal), Oscar Robertson (legendary basketball player), and Nanette Lepore (fashion designer).¹⁷ By election day, investors, including Gould, had raised \$36 million in revenue for the PAC.¹⁸

¹⁴Tom Troy, *Marijuana Backers Shift from Tie-Dye to Suit-and-Tie*, BLADE (Apr. 14, 2015), <http://www.toledoblade.com/news/2015/04/14/Marijuana-backers-shift-from-tie-dyeto-suit-and-tie.html> [https://perma.cc/EDY6-6PK2].

¹⁵Telephone Interview with Chris Stock, Senior Partner, Markovitz, Stock & Demarco (Feb. 20, 2017).

¹⁶*First Marijuana Investor Made Public Is Cincinnati Sports Agent James Gould*, COLUMBUS DISPATCH: DAILY BRIEFING (Jan. 16, 2015), <http://www.dispatch.com/content/blogs/the-daily-briefing/2015/01/01.16.2015-marijuana-investor.html> [https://perma.cc/RJ2H-FFM6].

¹⁷Alan Johnson, *Investors in Proposed Ohio Marijuana Farms Are Diverse Lot*, COLUMBUS DISPATCH (Sept. 2, 2015), <http://www.dispatch.com/content/stories/local/2015/09/02/investors-in-legal-pot-are-diverse-lot.html> [https://perma.cc/TCK3-JTXY].

¹⁸Jackie Borchardt, *\$36 Million Raised for Ohio Marijuana Legalization Proposal*, CLEVELAND.COM (Mar. 3, 2015), http://www.cleveland.com/open/index.ssf/2015/03/36_million_raised_for_ohio_mar.html [https://perma.cc/2LF3-CZRY].

With the campaign coming together, the last task was to frame the issue. James hired Dennis Willard (owner of Precision New Media, LLC, a Columbus business specializing in public relations strategy and marketing) as the campaign's chief media consultant.¹⁹ However, the bulk of the project fell to Lydia Bolander, who became the initiative's primary spokesperson and political advisor. It was Bolander and James who decided to focus on adult use as an issue of medical and personal choice.²⁰

That winter, a Cleveland reporter caught wind of ResponsibleOhio's plan to amend the state's constitution. On December 18, 2014, the Cleveland Plain Dealer published an article outlining several key parts of the amendment, including a provision that would grant exclusive cultivation rights to the ten investors.²¹ In the article, John Pardee, President of the Ohio Rights Group, argued that Issue 3 granted a "constitutional monopoly," and the term stuck.²² ResponsibleOhio would struggle to reverse the misconception for the rest of the campaign.²³

C. Path to the Ballot

On March 13, 2015, Issue 3 cleared its first hurdle when Ohio Attorney General DeWine approved the petition summary language that would be used to collect signatures in support of the initiative.²⁴ The following week, the Ohio Ballot Board agreed that ResponsibleOhio's proposed amendment addressed a "single issue" and therefore the group could proceed with collecting signatures.²⁵ ResponsibleOhio would need to collect 305,591 signatures from forty-four of Ohio's eighty-eight counties (10% of the vote in the 2014 gubernatorial election) by July 1, 2015 to have the initiative placed on the November ballot.²⁶ To meet this goal, the group relied mostly on professional petition circulators who were paid per signature. A day before the deadline, ResponsibleOhio had amassed roughly 700,000 signatures and submitted them

¹⁹ Troy, *supra* note 14.

²⁰ Interview with Lydia Bolander (Feb. 9, 2017).

²¹ Mark Naymik & Brent Larkin, *Campaign To Legalize Marijuana Use in Ohio Quietly Underway and Borrows Page from Casino Campaign*, CLEVELAND.COM (Dec. 18, 2014), http://www.cleveland.com/open/index.ssf/2014/12/campaign_to_legalize_marijuana.html [<https://perma.cc/5WL9-QCT5>].

²² *Id.*

²³ Interview with Lydia Bolander, *supra* note 20.

²⁴ Jackie Borchardt, *ResponsibleOhio's Marijuana Legalization Amendment Clears Initial Hurdle*, CLEVELAND.COM (Mar. 13, 2015), http://www.cleveland.com/open/index.ssf/2015/03/responsibleohios_marijuana_leg.html [<https://perma.cc/2ZAP-P9MD>].

²⁵ Press Release, Ohio Sec'y of State, Ballot Board Certifies Marijuana Legalization Amendment as Single Ballot Issue (Mar. 20, 2015), <https://www.sos.state.oh.us/media-center/press-releases/2015/2015-03-20a/#gref> [<https://perma.cc/HG35-GZNP>].

²⁶ *Id.*

to the Ohio Secretary of State for review.²⁷ On July 21, the State determined that approximately 40% were valid, putting the campaign below the required threshold.²⁸ While the opposition contended that moneyed interests incentivized the campaign to improperly vet signatures, ResponsibleOhio argued that upwards of 40,000 signatures remained uncounted and threatened to sue.²⁹ Secretary John Husted extended the signature requirement deadline to July 30, 2015.³⁰ No lawsuit was filed and ResponsibleOhio submitted an additional 30,000 signatures for approval. Finally, on August 12, 2015, the initiative was certified for the ballot.³¹ At long last, marijuana legalization would be put to a vote in Ohio.

III. ISSUE 3: THE TEXT

Stock and his team went through many drafts before settling on the final language of Issue 3.³² Notably, the text of the amendment is complex and hard to decipher, which is usually the mark of proficient draftsmanship. The following analysis of Issue 3 splits the initiative into six pertinent parts: regulation, cultivation, manufacture, sale, taxation, and consumption.

A. Regulation³³

The initiative lays out a comprehensive system for regulating recreational marijuana use in the state. Consumption, production, manufacture, and sale are to be regulated by a governor-appointed state commission. Known as the Ohio Marijuana Control Commission (OMCC), the group would consist of seven Ohio residents, including: a physician, a police officer, a patient advocate, a resident business owner, a citizen with experience in the legal marijuana industry, an administrative law attorney, and one member of the public. Additionally, the commission would be required to develop annual consumer

²⁷ Jackie Borchartt, *ResponsibleOhio Submits Signatures for Marijuana Legalization Amendment*, CLEVELAND.COM (June 30, 2015), http://www.cleveland.com/open/index.ssf/2015/06/responsibleohio_submits_signat.html [<https://perma.cc/BK9Q-LDG2>].

²⁸ Jim Provance, *Marijuana Rights Group Misses Mark*, BLADE (July 21, 2015), <http://www.toledoblade.com/State/2015/07/21/Marijuana-rights-group-misses-mark.html> [<https://perma.cc/9SKG-M4ZP>].

²⁹ *Id.*

³⁰ Anne Saker, *ResponsibleOhio Makes Signature Deadline*, CIN. ENQUIRER (July 30, 2015), <https://www.cincinnati.com/story/news/2015/07/30/responsibleohio-makes-signature-deadline/30904475/> [<https://perma.cc/WH6K-MEKS>].

³¹ Anne Saker, *Husted: Ohio To Vote on Pot This Year*, CIN. ENQUIRER (Aug. 12, 2015), <http://www.cincinnati.com/story/news/2015/08/12/update-ohio-vote-pot-year/31469407/> [<https://perma.cc/W4U5-7LYB>].

³² Telephone Interview with Chris Stock, *supra* note 15.

³³ OHIO SEC'Y OF STATE, PROPOSED CONSTITUTIONAL AMENDMENT, ISSUE 3: GRANTS A MONOPOLY FOR THE COMMERCIAL PRODUCTION AND SALE OF MARIJUANA FOR RECREATIONAL AND MEDICINAL PURPOSES § 12(I) (2015) (proposed by initiative petition).

demand metrics, which could lead to the licensing of additional facilities in the future.

B. *Cultivation*³⁴

The most controversial portion of the initiative were the provisions governing cultivation. Like the successful 2009 initiative to legalize casino gambling, Issue 3 limited Ohio growing facilities to ten preselected sites located across the state. Access to these sites would be granted only after each investment group contributed a \$2 million investment to fund the ResponsibleOhio campaign.³⁵ Each investor would be given exclusive rights to commercial production, and each cultivation facility would be run independently to prevent collusion. Almost immediately, detractors were angered by what they deemed a “pay-to-play” scheme that set up a high bar to entry.³⁶ To appease local marijuana activists, Issue 3 allowed individuals (after obtaining a state-issued license) to grow up to four flowering plants in their home, so long as the plants remained in a “locked space inaccessible to persons under the age of 21.”³⁷

C. *Manufacture*³⁸

Like cultivators, manufacturers were to be regulated by the OMCC. Only licensed marijuana product manufacturing facilities would be allowed to manufacture, process, and package marijuana-infused products. Products that would be legal included a variety of edibles, concentrates, tinctures, sprays, and ointments.³⁹ Additionally, manufacturers would only be allowed to purchase raw marijuana from the ten licensed cultivators. Restrictions on potency and chemical composition were to be governed by the OMCC.

D. *Sale*⁴⁰

The initiative set several limits on the sale of marijuana in the state. First, it limited the number of dispensaries to one per every 10,000 Ohioans. With

³⁴ *Id.* § 12(F).

³⁵ Jackie Borchardt, *Pot Investors Only Contributors to ResponsibleOhio's Marijuana Issue*, CLEVELAND.COM (July 31, 2015), http://www.cleveland.com/open/index.ssf/2015/07/pot_investors_only_contributor.html [<https://perma.cc/2PCN-4AFB>].

³⁶ Jessica Contrera, *The Ohio Marijuana Vote that Could Make Nick Lachey a Weed Kingpin. Yes, That Nick Lachey*, WASH. POST (Oct. 30, 2015), https://www.washingtonpost.com/lifestyle/style/the-ohio-marijuana-vote-that-could-make-nick-lachey-a-weed-kingpin-yes-that-nick-lachey/2015/10/30/58bd2b28-7cc4-11e5-b575-d8dcfedb4ea1_story.html?utm_term=.bec407ce32b5 [<https://perma.cc/AVJ6-XZ2G>].

³⁷ OHIO SEC'Y OF STATE, *supra* note 33, § 12(D).

³⁸ *Id.* § 12(G).

³⁹ *Id.* § 12(L)(9).

⁴⁰ *Id.* § 12(H).

Ohio's current population, this would have allowed for a maximum of 1,159 stores. There were several additional limits on where stores that sold marijuana could be located. To curb parental opposition, Issue 3 precluded dispensaries from being located within 1,000 feet of a school, church, library or playground.⁴¹ Additionally, sellers would have been required to apply for a permit from the precinct where the store was to be located.⁴² Approval from precinct voters was required before the permit would be issued.⁴³ Finally, under the terms of the initiative, licensed dispensaries could only obtain marijuana from the ten predetermined cultivators.

E. *Taxation*⁴⁴

Stock and James claimed legal marijuana, like casino gambling, would raise significant revenue for the State of Ohio. Issue 3 called for a tax of 5% of the gross revenue of marijuana retailers and a 15% tax on manufacturers and producers. The tax dollars would have been shared between state and local governments. Fifty-five percent of the resulting revenue was to go to the "Municipal and Township Government Stabilization Fund," with 30% going to a "Strong County Fund" to be used for health and safety services, which would include public utilities and emergency services. Lastly, 15% was reserved to fund the activities of the OMCC to ensure that the program remained self-sustaining.

F. *Consumption*⁴⁵

Issue 3 would have legalized consumption for all adults over the age of twenty-one. Anyone who met the age requirement could purchase, possess, or transport up to one ounce of flower for recreational use.⁴⁶ Additionally, anyone under the age of twenty-one with a certified debilitating medical condition (as diagnosed by a licensed physician) would be allowed to use marijuana medicinally.⁴⁷ Though it would have been left to the OMCC to determine what constituted such a condition, the commission likely would have included illnesses such as "cancer, HIV, Alzheimer's, sickle-cell anemia, and other conditions such as severe pain, traumatic stress disorder, severe nausea, seizures, and persistent muscle spasms."⁴⁸

⁴¹ *Id.* § 12(A), (J)(1).

⁴² *Id.* § 12(H).

⁴³ OHIO SEC'Y OF STATE, *supra* note 33, § 12(H).

⁴⁴ *Id.* § 12(A)(E).

⁴⁵ *Id.* § 12(A), (B), (D), (J) (general rules and specific limitations regarding consumption).

⁴⁶ *Id.* § 12(D).

⁴⁷ *Id.* § 12(B).

⁴⁸ Troy, *supra* note 14.

IV. ISSUE 3: THE DEBATE BETWEEN MARIJUANA ACTIVISTS AND PROHIBITIONISTS

The debate surrounding Issue 3 raised many of the same issues that marijuana legalization had raised since the 1960s. Legalization proponents saw marijuana use as a right, believing that the substance could be regulated in much the same way as alcohol. Conversely, prohibitionists considered marijuana to be a corrupting force and the second coming of Big Tobacco—an industry whose boundless corporate greed notoriously put profit before consumer health.

In her first statement as ResponsibleOhio spokesperson, Bolander argued that criminalization had destroyed countless lives and wasted substantial law enforcement resources.⁴⁹ Not only would ResponsibleOhio counteract the failure of prohibition by “regulat[ing], tax[ing] and treat[ing] marijuana like alcohol” but it would ensure that sick patients obtain the “treatment they rightfully deserve.”⁵⁰ Ultimately, this was an issue about “safety, personal freedom, healthy choices, jobs and tax dollars for [Ohio] communities.”⁵¹ Similarly, in an interview with the *News-Herald*, James alleged that marijuana prohibition had reinforced racial injustice.⁵² He stated that even though blacks and whites in Ohio consume the drug in the same amount, blacks are four times more likely to be arrested for marijuana possession.⁵³

Much of the campaign’s revenue went to television advertisements. In one spot, titled “Legalizing Ohio: An Introduction” the group characterized prohibition as an abject failure.⁵⁴ The ad argued that allowing an unregulated black market to flourish while denying marijuana to people who could benefit from its therapeutic effects was fundamentally unfair.⁵⁵ ResponsibleOhio presented itself as a respectable group of “businesswomen and men, medical professionals, patient advocates, and average Ohioans” who had united to provide responsible marijuana reform.⁵⁶ In another ad, the group framed the ten preselected investors as necessary for control of the industry, which would allow the State to better regulate the quality of the marijuana being produced.⁵⁷

⁴⁹ Alan Johnson, *Group Aims for 2015 Ballot Issue To Legalize Marijuana*, COLUMBUS DISPATCH (Dec. 19, 2014), http://www.dispatch.com/content/stories/local/2014/12/18/Marijuana_ballot_issue_possible_in_2015.html [<https://perma.cc/M69K-5RGF>].

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² The News-Herald Ohio, *Ian James, Executive Director for Responsible Ohio Talks About the High Paying Jobs that Would Be Created*, YOUTUBE (June 15, 2015), https://www.youtube.com/watch?v=_xHH6m2NP9c.

⁵³ *Id.*

⁵⁴ ResponsibleOhio, *Legalizing Ohio: An Introduction*, YOUTUBE (Aug. 6, 2015), <https://www.youtube.com/watch?v=bCOWAIvQM9Y>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ ResponsibleOhio, *Legalizing Ohio: What About Safety?*, YOUTUBE (Aug. 11, 2015), https://www.youtube.com/watch?time_continue=118&v=ss1g5Jdrr2E.

The unique structure of Issue 3 created odd bedfellows—alliances were formed between groups that were completely opposed to legalization and marijuana advocates critical of the provision granting licenses to only ten cultivators. The Ohio Libertarian Party, which had favored ending prohibition since 1971, argued that Issue 3 amounted to a constitutional grant of “crony-capitalis[m]” that would be hard to reverse.⁵⁸ NoToResponsibleOhio took the previous argument a step further by alleging that Issue 3 would not destroy the marijuana black market, but rather empower it.⁵⁹ The organization alleged that the oligopoly would artificially inflate prices and thereby incentivize criminal organizations to enter the market illegally.⁶⁰ Several groups, including the Better for Ohio campaign, saw the dissatisfaction with Issue 3 and drew up amendments of their own.⁶¹ These amendments would have licensed more cultivators and allowed residents to grow plants at home without first obtaining permission from the state.⁶² Lastly, Ohio’s top elected officials feared the impact that legalization would have on children.⁶³

As in any political debate, both sides attempted to frame the issue to their advantage. Though the positions for and against legalization mirrored past arguments surrounding marijuana prohibition, ResponsibleOhio provided the opposition with significant ammunition by limiting cultivation licenses to ten wealthy investors. The group’s inability to comprehend the nuance and history surrounding this debate contributed to the failure of Issue 3.

V. WHY ISSUE 3 FAILED

Given that polls leading into the 2015 election showed 53% of Ohioans in favor of legalizing adult recreational use, the sheer size of Issue 3’s defeat left many marijuana activists asking, “Where did we go wrong?”⁶⁴ Regarding political debate, there is an apt quote often attributed to the late Ronald Reagan:

⁵⁸ Jackie Borchartt, *Libertarians, Green Party Oppose ResponsibleOhio’s Marijuana Legalization Plan*, CLEVELAND.COM (May 29, 2015), http://www.cleveland.com/open/index.ssf/2015/05/libertarians_green_party_oppos.html [<https://perma.cc/V7GP-SVW5>].

⁵⁹ NoToResponsibleOhio, *Say No to ResponsibleOhio*, YOUTUBE (Mar. 21, 2015), <https://www.youtube.com/watch?v=tQMEByC1C0Q>.

⁶⁰ *Id.*

⁶¹ Robert Higgs, *‘Better for Ohio’ Marijuana Legalization Effort Mimics ResponsibleOhio, Backers Hope for Collaboration*, CLEVELAND.COM (Apr. 28, 2015), http://www.cleveland.com/open/index.ssf/2015/04/better_for_ohio_marijuana_lega.html [<https://perma.cc/3MEV-7624>].

⁶² *Id.*

⁶³ See *infra* note 74.

⁶⁴ *Florida, Ohio Back Personal Pot; Pennsylvania Split, Quinnipiac University Swing State Poll Finds; Keystone State Voters Say Attorney General Must Go*, QUINNIPIAC U. (Oct. 8, 2015) [hereinafter QUINNIPIAC U.], https://poll.qu.edu/images/polling/ps/spa10082015_cross_tabs_Snw94cr.pdf [<https://perma.cc/U32F-5NJS>].

"If you're explaining, you're losing."⁶⁵ Unfortunately for Ohio legalization proponents, ResponsibleOhio found itself doing a significant amount of explaining in the months ahead of the vote.

As the smoke cleared around the election, it became apparent that modeling the Issue 3 campaign after the successful push to legalize casinos in Ohio had been a mistake. Though gambling and marijuana consumption were both prohibited activities in the state, the similarities between the two end there. What was required was a more nuanced campaign that accounted for marijuana's unique attributes.

A. The Pay-to-Play Business Model Alienated Voters Who Otherwise Would Have Supported an End to Marijuana Prohibition

Perhaps ResponsibleOhio's biggest misstep was its business plan to limit licensed cultivators to ten wealthy investors. Right out of the gate, the scheme was branded as a "monopoly," and the critique stuck.⁶⁶ Though it is more accurate to characterize the ten would-be cultivators as an oligopoly (a market structure where a small number of competitors possess the majority of the market share), the high bar to entry was perceived as anticompetitive and un-American. This scheme alienated legalization advocates wary of corporate interests and played into the hands of prohibitionists who saw a budding marijuana industry as the next Big Tobacco.

Clearly, ResponsibleOhio believed that it was saddled with two undesirable options: (1) refuse corporate donations but risk not having the funds necessary to get the initiative on the ballot, or (2) allow corporate buy-ins but end up with an amendment that favored wealthy investors over the free market. ResponsibleOhio went with the latter, and bet that support was strong enough to overcome the perceived favoritism. Though the campaign realized that most Ohioans were in favor of legalization, they overestimated the urgency behind the movement. Not only did the pay-to-play scheme do very little to energize marijuana advocates, it caused many who were otherwise in favor of legalized adult use of cannabis to vote against the initiative.

B. Buddie the Mascot Reaffirmed Fears of Corporatization

In a misguided effort to appeal to college students throughout the state, ResponsibleOhio created a mascot to represent the campaign. Buddie, a giant anthropomorphic marijuana bud with chiseled abdominals and a cartoonish grin, wore a white spandex suit with a capital "B" superimposed over a cannabis leaf on his chest. The mascot was controversial, and even sparked disagreements

⁶⁵ John Hawkins, *The 40 Best Quotes from Ronald Reagan*, TOWNHALL (July 3, 2012), <https://townhall.com/columnists/johnhawkins/2012/07/03/the-40-best-quotes-from-ronald-reagan-n1081503> [<https://perma.cc/6Y33-HPS5>].

⁶⁶ Interview with Lydia Bolander, *supra* note 20.

within the campaign before ultimately making an appearance in August 2015.⁶⁷ As part of a campus bus tour, Buddie was used to encourage young, typically left-leaning students to vote. College kids posed for pictures alongside Buddie and received free t-shirts that had phrases such as “O-High-O” and “Legalize.”

This tongue-in-cheek caricature failed to lend credibility to the initiative. ResponsibleOhio’s questionable mascot choice was brought to the national fore by comedian and satirist Stephen Colbert, who quipped, “if you’re a college student who is high and you see Buddie, I’m not sure you’re going to go to the voting booth. I’m pretty sure you’re going to check yourself into a psych ward.”⁶⁸ Buddie’s resemblance to Joe Camel (the infamous R.J. Reynolds mascot used in the 1980s and ‘90s, allegedly to advertise cigarettes to minors) gave the opposition yet another opportunity to argue that marijuana legalization would result in companies employing predatory tactics once associated with Big Tobacco.⁶⁹

Instead of using this gimmick, the campaign should have stuck to its main point—that prohibition had been a failure, and a taxed and regulated system was the better option. Moreover, sending Buddie on the campaign trail was a poor decision; it turned off many who were already skeptical of combining marijuana and big business. The mascot did not assuage those fears. Not only did Buddie bolster the opposition, but he also made the campaign appear inept and out of touch.

C. Putting the Initiative on the Ballot in an Off-Year Election Did Not Benefit the Campaign as Much as Organizers Had Hoped

Early in the campaign, ResponsibleOhio decided to put the initiative on the ballot in an off-year election. The PAC’s reasoning was twofold: (1) off-year elections are cheaper than even years, and (2) the issue would not be overshadowed by the vitriolic politics associated with midterm and presidential elections. At the same time, however, off-year elections can be challenging for liberal ballot issues because the demographic that turns out tends to be older and more Republican.⁷⁰ Additionally, prior to 2015, all jurisdictions that had legalized adult use (Colorado and Washington in 2012, Alaska, Oregon, and Washington, D.C. in 2014) did so in even-year elections. ResponsibleOhio clearly felt that excitement generated by the prospect of legal cannabis would

⁶⁷ *Id.*

⁶⁸ *The Late Show with Stephen Colbert: Ohio Is Going Green*, CBS, at 00:02:27–:35 (Sept. 15, 2015), <https://www.cbs.com/shows/the-late-show-with-stephen-colbert/video/C13F37A7-7525-3A65-20B5-D406C73D0AC3/ohio-is-going-green/> [<https://perma.cc/Z3XJ-9RHD>].

⁶⁹ Nushin Rashidian, *Is Responsible Ohio’s Mascot Buddie ‘the Joe Camel of Marijuana’?*, *GUARDIAN* (Oct. 21, 2015), <https://www.theguardian.com/us-news/2015/oct/21/buddie-responsible-ohio-mascot-joe-camel-big-business> [<https://perma.cc/J4AA-TWDS>].

⁷⁰ Ronald Brownstein, *The Great Midterm Divide*, *ATLANTIC* (Nov. 2014), <https://www.theatlantic.com/magazine/archive/2014/11/the-great-midterm-divide/380784/> [<https://perma.cc/TWB8-QPBC>].

allow Ohio to buck this trend. Though unorthodox, the campaign's reasoning was understandable, considering the strategy worked well in the push to legalize casino gambling in Ohio in 2009 (also an off-year election). Unfortunately, as is often the case in midterm elections, ResponsibleOhio was unable to get their key demographic—young, college-educated millennials—to show up to the polls.

In hindsight, given that the campaign generated upwards of \$36 million in funding, perhaps it would have been better to wait until 2016, as voter turnout in presidential elections is roughly twice that of off-year elections in the Buckeye State.⁷¹ Though it is impossible to predict the outcome with complete accuracy, had Issue 3 been on the ballot in 2016, the campaign would have had a much better chance of success.

D. ResponsibleOhio Was Too Ambitious by Attempting To Completely End Prohibition Instead of Legalizing Medicinal Use First

Every state that legalized prior to 2015 allowed medical use first. Conversely, Issue 3 asked the electorate to take a leap of faith. Politically, Ohio leans conservative and tends to resist change. Eliminating prohibition on a substance that had been criminalized in the state for almost a century was a bold move.

In the months leading up to the election, polls showed that 90% of Ohioans supported medical cannabis, whereas only a slim majority were in favor of full legalization.⁷² Given the amount of support for medical use, ResponsibleOhio would have been wise to play the long game. Instead of legalizing cannabis all at once, it would have been better to fund an initiative that first legalized medicinal marijuana. So long as a functioning system was in place to regulate the substance, Ohioans would have seen that many of their fears were unfounded. In this way, the state would have a chance to deal with growing pains associated with any new regulatory scheme. Not only would the state be able to work out the kinks with medical marijuana, but it would be better situated when prohibition comes to an end. If done right, citizens would gradually become accustomed the idea of comprehensive legalization. Thus, they would have been more likely to check “yes” when the issue of full legalization was finally put to a vote.

Though it is unlikely that ResponsibleOhio could have gone after full legalization in 2016, legalizing medical use first would have built the foundation for full legalization in 2018 or 2020.

⁷¹ OHIO SEC'Y OF STATE, VOTER TURNOUT IN GENERAL ELECTIONS, <https://www.sos.state.oh.us/elections/election-results-and-data/historical-election-comparisons/voter-turnout-in-general-elections/> [<https://perma.cc/8CNU-STGR>].

⁷² QUINNIAC U., *supra* note 64.

E. ResponsibleOhio and Traditional Marijuana Activists Were Not on the Same Page

In their effort to take the marijuana campaign from “tie-dyed to suit and tie,” ResponsibleOhio took for granted the support of traditional marijuana activists.⁷³ The old guard are notoriously fickle. Many of them had been fighting against overbearing government authority since the beginning of the Vietnam War. They deplored the provision that would only license ten deep-pocketed cultivators, which they saw as corporations lining their pockets with money generated from a new-age “green rush.” One example of the divide between ResponsibleOhio and traditional activists is Don Wirtshafter. Mr. Wirtshafter, an Ohio lawyer, characterized the effort to end prohibition as his “life’s work.” Nonetheless, he vehemently opposed Issue 3 due to “opportunists seeking monopolistic gains.”⁷⁴ ResponsibleOhio’s disregard for traditional activists resulted in an unlikely alliance of hardcore prohibitionists and advocates who wanted to see marijuana legalized, but only if done the right way. The campaign extended a peace offering by amending Issue 3’s language to allow for home-grown marijuana, but by then it was too late.⁷⁵ Traditional activists had already begun to lend support to Legalize Ohio 2016, a group that promised a better ballot proposal the next election cycle.

Ultimately, many Ohioans were turned off by what they perceived as the corporatization of cannabis, none more so than the old-guard activists.

F. The Lack of Political Support from the Statehouse and Elected Officials Made the Battle To Legalize Much Harder

Many of Ohio’s top executive officials opposed Issue 3. Governor John Kasich, who had recently announced that he was running for president, characterized potential legalization in the state as a “disaster” because he thought it sent the wrong message to children in the state.⁷⁶ Attorney General Mike DeWine feared that kids would mistake edibles infused with marijuana for otherwise innocuous candies.⁷⁷ State Auditor Dave Yost opposed Issue 3 as

⁷³ David A. Graham, *Why Did Ohio’s Marijuana-Legalization Push Fail?*, ATLANTIC (Nov. 3, 2015), <https://www.theatlantic.com/politics/archive/2015/11/where-did-ohios-marijuana-legalizers-go-wrong/414061/> [<https://perma.cc/4FZY-4G8U>].

⁷⁴ Mitch Smith & Sheryl Gay Stolberg, *On Ballot, Ohio Grapples with Specter of Marijuana Monopoly*, N.Y. TIMES (Nov. 1, 2015), https://www.nytimes.com/2015/11/02/us/on-ballot-ohio-grapples-with-specter-of-marijuana-monopoly.html?_r=0 (on file with the *Ohio State Law Journal*).

⁷⁵ OHIO SEC’Y OF STATE, *supra* note 33, § 12(D).

⁷⁶ Todd Dykes, *Cincinnati Native’s Views, Ohio’s Governor’s Views Clash on Pot Use*, WLWT5 (Nov. 2, 2015), <http://www.wlwt.com/article/cincinnati-native-s-views-ohio-s-governor-s-views-clash-on-pot-use/3559519> [<https://perma.cc/AA82-3NQL>].

⁷⁷ Alan Johnson, *DeWine: ‘Ohio Will Be Fundamentally Changed’ if Issue 3 Passes*, COLUMBUS DISPATCH (Oct. 13, 2015), <http://www.dispatch.com/content/stories/local/2015/10/12/marijuana-infused-candy-dewine.html> [<https://perma.cc/YZ4H-3URD>].

well, arguing that “writing into the constitution an exclusive license . . . is a bad idea,” and that “a legalized . . . market should be available to all comers.”⁷⁸ With the state’s top elected officials on the record as strongly opposed to the initiative, the statehouse felt emboldened to attack Issue 3. Several months before the election, lawmakers approved Issue 2 for the ballot, which would have precluded anyone from using Ohio’s Constitution to “grant a commercial interest, right, or license that is not available to similarly situated persons or nonpublic entities.”⁷⁹ State Representatives Ryan Smith and Mike Curtin equated Issue 3 with “crony capitalism” and argued that it “denies voters the opportunity to consider the issues on their own merits.”⁸⁰

Had both Issue 2 and Issue 3 passed, the latter likely would have been invalidated. At the very least, there would have been massive litigation. ResponsibleOhio’s lack of support at the top level of state government did little to convince voters that they should support the initiative.

VI. POST-ISSUE 3: THE LEGALIZATION LANDSCAPE IN OHIO

Had Issue 3 passed, Ohio would have become the first state to legalize recreational and medical use simultaneously. For all its missteps, however, the campaign was the spark that ignited the political debate regarding medical use. What for years had been a nonstarter in the state now seemed sure of passing in some form, and state legislators took notice. In 2016, the Ohio Statehouse legalized medical marijuana. With the medical rollout slated for September 2018, the state should be well-positioned to end prohibition in 2020.

A. Issue 3 Added to the Debate About Ending Prohibition and Played an Important Role in Legalizing Medical Marijuana in Ohio

Every year from 1997–2014, State Senator Bob Hagan introduced a marijuana reform bill in the state legislature.⁸¹ None of these attempts ever came close to the governor’s desk. After ResponsibleOhio demonstrated that 90% of Ohioans favored medical use, legislators realized that if they did not act—and act fast—they risked ceding the power to Ohio voters.⁸² The statehouse worried

⁷⁸ Dave Yost, Opinion, *Ohio Marijuana Proposal Echo Cautionary Tale of Margarine Prohibition*, CLEVELAND.COM (Aug. 9, 2015), http://www.cleveland.com/opinion/index.ssf/2015/08/cautionary_tale_on_ohio_mariju.html [https://perma.cc/BNF4-UHWD].

⁷⁹ OHIO SEC’Y OF STATE, PROPOSED CONSTITUTIONAL AMENDMENT, ISSUE 2: ANTI-MONOPOLY AMENDMENT; PROTECTS THE INITIATIVE PROCESS FROM BEING USED FOR PERSONAL ECONOMIC BENEFIT (2015) (proposing to amend OHIO CONST. art. III, § 1e) (proposed by joint resolution of Ohio General Assembly).

⁸⁰ Mike Curtin & Ryan Smith, Opinion, *Reps: ‘Yes’ on Issue 2 Says ‘No’ to Monopolies*, CIN. ENQUIRER (Oct. 25, 2015), <http://www.cincinnati.com/story/opinion/contributors/2015/10/25/repes-yes-issue-says-monopolies/74599860/> [https://perma.cc/Y7PX-SRQW].

⁸¹ ResponsibleOhio, *supra* note 54.

⁸² QUINNIAC U., *supra* note 64.

that Ohio would become a Midwestern Wild West, where marijuana is regulated in name only and laws were either circumvented or unenforced.

The following January, the Ohio House of Representatives signaled that it was ready to address the issue when it convened the Medical Marijuana Task Force. The fifteen-member panel (composed of state legislators, doctors, and businessmen) held seven hearings to assess how best to implement a system to regulate medicinal marijuana.⁸³ That February, the Marijuana Policy Project began Ohioans for Medical Marijuana, an ambitious campaign to place a medical marijuana initiative on the ballot in time for the 2016 presidential election. The pending initiative kept the state legislature honest. Within four weeks, both houses introduced legislation, convened hearings, and sent a completed bill to Governor Kasich. Despite his personal ambivalence toward medicinal marijuana, the Governor signed the measure into law on June 8, and Ohio joined twenty-four other states that had legalized medicinal use on September 8, 2016.⁸⁴

House Bill 523 (H.B. 523) gives tripartite regulatory authority to the Ohio Medical Board, Pharmacy Board, and Department of Commerce. The bill requires separate licenses to be issued to cultivators, manufacturers, and retail dispensaries. Though the law more than doubles the number of licensed cultivators to twenty-four, compared to other states' medical programs, it is quite restrictive. Whereas Issue 3 would have authorized over 1,000 dispensaries statewide, H.B. 523 limits the number of licensed storefronts to forty.⁸⁵ And though the Ohio Medical Board has cited a wide array of qualifying medical conditions, several mental illnesses, including anxiety, depression, and post-traumatic stress disorder, are not among them.⁸⁶ Perhaps what differentiates Ohio's program most is that patients may not smoke their medicine. Rather, the flower must be vaporized or ingested—though is not yet clear how this provision will be enforced.⁸⁷

Even though the regulatory scheme is more restrictive, it seems well-suited for Ohio's unique political environment. Had ResponsibleOhio not brought

⁸³ Andrew Cass, *After Issue 3 Failure, Ohio Marijuana Legalization Efforts Shift Toward Medical*, NEWS-HERALD (Feb. 20, 2016), <http://www.news-herald.com/article/HR/20160220/NEWS/160229983> [<https://perma.cc/9M9D-3G3G>].

⁸⁴ Jessie Balmert, *John Kasich Just Legalized Medical Marijuana in Ohio. Now What?*, CIN. ENQUIRER (June 8, 2016), <http://www.cincinnati.com/story/news/politics/2016/06/08/john-kasich-just-legalized-medical-marijuana-ohio-now-what/85499176/> [<https://perma.cc/E5PA-YNRD>].

⁸⁵ Jackie Borchardt, *Ohio Medical Marijuana Grow Space Increased, Dispensaries Capped at 40 in Proposed Rules*, CLEVELAND.COM (Dec. 16, 2016), http://www.cleveland.com/metro/index.ssf/2016/12/ohio_medical_marijuana_grow_sp.html [<https://perma.cc/N8WQ-AST8>].

⁸⁶ *Patients & Caregivers Frequently Asked Questions*, OHIO MED. MARIJUANA CONTROL PROGRAM, <http://www.medicalmarijuana.ohio.gov/patients-caregivers> [<https://perma.cc/N87L-XJH8>].

⁸⁷ ELIZABETH MOLNAR, OHIO LEGISLATIVE SERV. COMM'N, FINAL ANALYSIS: SUB. H.B. 523, Substitute H.R. 523, 131st Gen. Assemb. (2016).

legalization to the political fore in 2015, it is unlikely that Ohio would have a viable medical program today.

B. ResponsibleOhio's Successes and Failures Provide a Blueprint for Legalizing Adult Use in the 2020 Presidential Election

With medical use being legalized by the Ohio legislature in 2016, the state could end prohibition as soon as 2020. It is unclear, however, to what extent the Trump Administration will enforce the Controlled Substances Act going forward—as a Schedule I drug, marijuana is still illegal under federal law.

Even though Trump has indicated that he “thinks states should be allowed to set their own policies,” the person most responsible for deciding how to enforce the country’s drug laws is Attorney General Jeff Sessions.⁸⁸ Sessions’s opposition to marijuana reform is well-documented. He is on record as saying that “good people don’t smoke marijuana,” marijuana is “dangerous,” and it is “not the kind of thing that ought to be legalized.”⁸⁹ Given recent events, it is unclear how long either of these men will hold office. However, with a Republican majority in both the upper and lower chamber, it seems unlikely that Trump will be impeached.

Several political pundits have hypothesized that the best thing for the Democratic Party is a continuation of the widespread distaste for the sitting President. They theorize that if Trump continues to poll unfavorably, left-leaning voters will show up in droves for the 2018 midterms and the 2020 presidential election. This prediction should sit well with marijuana advocates, as these are the very voters that ResponsibleOhio targeted in 2015: young, liberal, and amenable to legalized adult use.

Yet, due to the nation’s increasingly partisan politics, the prospect of tying legalization to the 2020 presidential election will doubtless make some marijuana advocates uneasy. Supporters should take solace in the fact that over time, legalization has become less of a partisan issue. Whether a Republican or a Democrat is ultimately elected, there is cause for optimism, as a prudent legalization campaign should be able to highlight several issues that will resonate with the electorate.

Trump’s law-and-order platform, promise to “build the wall,” and assertion that he would bring back manufacturing jobs clearly appealed to a certain segment of the country, especially in the American heartland.⁹⁰ Citizens who

⁸⁸ Elisabeth Garber-Paul, *What Will President Trump Mean for Pot?*, ROLLING STONE (Nov. 10, 2016), <http://www.rollingstone.com/politics/features/what-will-president-trump-mean-for-pot-w449564> [<https://perma.cc/Y8XB-JXC9>].

⁸⁹ Patrick McGreevy, *Weed’s Legal in California, but Activists Fear a Battle Ahead with Jeff Sessions, Trump’s Pick for Attorney General*, L.A. TIMES (Dec. 1, 2016), <http://www.latimes.com/politics/la-pol-ca-marijuana-legalization-jeff-sessions-snap-20161201-story.html> [<https://perma.cc/7NER-X4FF>].

⁹⁰ Helena Bottemiller Evich, *Trump Woos the Heartland*, POLITICO (May 27, 2016), <https://www.politico.com/story/2016/05/trump-farmers-rural-america-223652> [<https://perma.cc/>].

voted for President Trump tended to be older, whiter, less educated, more conservative, and poorer than Ms. Clinton's supporters.⁹¹ Generally, this group believes very much in our system of dual sovereignty and state autonomy. Polls show that the most important issues for Trump voters were the economy, immigration, and crime.⁹² Using the 2016 election as a model, a campaign would do well to frame ending prohibition as a states' rights issue that would generate countless tax dollars for Ohioans, increase border security, and potentially reduce drug-related crime.

As with many things in life, money is often the best motivator. In 2016, legal cannabis brought in roughly \$6.7 billion in tax revenue.⁹³ Marijuana is the fastest growing industry in the country with an estimated compound annual growth rate of 25%.⁹⁴ The industry is projected to be worth \$20.2 billion in 2021.⁹⁵ If this estimate holds true, it will generate hundreds of millions of dollars in tax revenue for state and federal governments.⁹⁶ Several Midwestern states are already working on ballot initiatives for the 2018 midterm election.⁹⁷ Additionally, Canada is set to implement full legalization in 2018.⁹⁸ The country—once a popular destination for Ohio gamblers—will likely see an uptick in Ohio tourists, but instead of visiting for the roulette and craps, now they will come for the White Widow and Northern Lights. Once neighboring states legalize adult use, it should not be difficult to convince voters that Ohio money should be spent in-state, rather than in Canada or Michigan.

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⁹¹ Walbert Castillo & Michael Schramm, *How We Voted - by Age, Education, Race and Sexual Orientation*, USA TODAY C. (Nov. 9, 2016), <http://college.usatoday.com/2016/11/09/how-we-voted-by-age-education-race-and-sexual-orientation/> [https://perma.cc/5MAL-R729]; Gregory A. Smith & Jessica Martínez, *How the Faithful Voted: A Preliminary 2016 Analysis*, PEW RES. CTR. (Nov. 9, 2016), <http://www.pewresearch.org/fact-tank/2016/11/09/how-the-faithful-voted-a-preliminary-2016-analysis/> [https://perma.cc/3EB4-Q7RH].

⁹² *2016 Campaign: Strong Interest, Widespread Dissatisfaction*, PEW RES. CTR. (July 7, 2016), <http://www.people-press.org/2016/07/07/4-top-voting-issues-in-2016-election/> [https://perma.cc/GQ5A-2W22].

⁹³ Debra Borchardt, *Marijuana Sales Totaled \$6.7 Billion in 2016*, FORBES (Jan. 3, 2017), <https://www.forbes.com/sites/debraborchardt/2017/01/03/marijuana-sales-totaled-6-7-billion-in-2016/#20fe364475e3> [https://perma.cc/YX7L-Z9XZ].

⁹⁴ Melia Robinson, *The Legal Weed Market Is Growing As Fast As Broadband Internet in the 2000s*, BUS. INSIDER (Jan. 3, 2017), <http://www.businessinsider.com/arcview-north-america-marijuana-industry-revenue-2016-2017-1> [https://perma.cc/SW7YAA8B].

⁹⁵ *Id.*

⁹⁶ Christopher Ingraham, *Here's How Legal Pot Changed Colorado and Washington*, WASH. POST (Oct. 13, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/10/13/here-s-how-legal-pot-changed-colorado-and-washington/> [https://perma.cc/TC9P-9R4Q].

⁹⁷ Brad Devereaux, *2018 Michigan Marijuana Legalization Vote Petition Drive Planned*, MICH. LIVE (Sept. 23, 2016), http://www.mlive.com/news/index.ssf/2016/09/petition_drive_planned_for_201.html [https://perma.cc/S9ZU-Z3PS].

⁹⁸ Alan Freeman, *Canada Announces Plans To Legalize Marijuana by July 2018*, WASH. POST (Apr. 13, 2017), <https://www.washingtonpost.com/news/worldviews/wp/2017/04/13/canada-announces-plans-to-legalize-marijuana-by-july-2018/> [https://perma.cc/VL2J-8VHE].

With legalization, commodification of the drug seems to be an inevitability. However, this does not mean that a campaign should eschew the interests of marijuana activists in favor of deep-pocketed investors. ResponsibleOhio's biggest shortfall was failing to recognize that traditional reformers would oppose an amendment that created a closed industry. Legalization proponents spent years of their lives fighting for the cause. Ultimately, they were unwilling to watch their hard work benefit ten wealthy individuals. An alternative to the ten-cultivator model should expand the number of licenses and award them via a lottery. Not only would this stop opponents from calling the initiative a "monopoly," it would still allow Ohio to regulate cultivation facilities. In addition to reducing hurdles required to obtain a cultivation license, a 2020 campaign should also appoint traditional activists as advisors. These individuals would act as a counterbalance to moneyed interests and ensure that the initiative meets the needs of all Ohioans, not just ten wealthy investors.

In recent years, Ohio has been plagued by the ill effects of prescription painkillers. It is likely opiate addiction has led to an increase in violent crime in Ohio.⁹⁹ Surely, many Ohioans voted for Mr. Trump because he was perceived as the "law-and-order" candidate. A 2020 campaign would do well to emphasize that legal marijuana would cause no new increase in crime. In fact, at least one study shows that legalizing medical cannabis might reduce crime.¹⁰⁰ Though this investigation relates only to medical use, with more states coming online, there will surely be more studies addressing this issue. Currently, 27% of Ohio's 51,000-person prison population are convicted drug offenders.¹⁰¹ At the very least, legalization will reduce the number of individuals who come in contact with Ohio's criminal justice system. One of ResponsibleOhio's best points was that prohibition has not worked and has resulted in the incarceration of many nonviolent offenders. Similarly, a 2020 campaign should emphasize that money spent fighting cannabis could be better utilized to treat opiate addiction and thereby reduce violent crime.

The last point that a 2020 campaign should emphasize is that legalization would not increase the number of undocumented immigrants in the state. Requiring the industry to operate aboveboard (instead of as a black market) would mean that industry players are less likely to hire noncitizens. Because marijuana remains illegal under federal law, dispensary owners and cultivators

⁹⁹ German Lopez, *Why The Opioid Epidemic May Have Fueled America's Murder Spike*, VOX (Feb. 6, 2018), <https://www.vox.com/policy-and-politics/2018/2/6/16934054/opioid-epidemic-murder-violent-crime> [<https://perma.cc/AQ6J-EP2N>]; *Ohio Crime Rates 1960 - 2016*, DISASTER CTR., <http://www.disastercenter.com/crime/ohcrime.htm> [<https://perma.cc/2EZL-YVSD>].

¹⁰⁰ Robert G. Morris et al., *The Effect of Medical Marijuana Laws on Crime: Evidence from State Panel Data, 1990-2006*, Article in 9 *PLOS One*, PLoS 1 (2014), <http://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0092816&type=printable> [<https://perma.cc/BHY4-EW5D>].

¹⁰¹ Alan Johnson, *Ohio Prison Population Could Hit Record High This Summer*, COLUMBUS DISPATCH (May 7, 2016), <http://www.dispatch.com/content/stories/local/2016/05/06/ohio-prison-population-could-hit-record-high-this-summer.html> [<https://perma.cc/8GFH-V8CC>].

would be reticent to draw attention to themselves by employing foreign nationals. At the same time, undocumented immigrants would be unlikely to work in production or cultivation, because even low-level work could be considered drug trafficking.¹⁰² In the Immigration and Naturalization Act, drug trafficking is an aggravated felony, which is a deportable offense.¹⁰³ Because industry owners are unlikely to hire undocumented workers, and the undocumented immigrants themselves will be unwilling to take these jobs, the 2020 campaign can make a compelling argument that the marijuana industry provides jobs exclusively for Ohioans.

VII. CONCLUSION

ResponsibleOhio was an ambitious 2015 campaign that sought to legalize adult marijuana use in the Buckeye State. Even though the campaign fell short, it started the conversation that led the Ohio legislature to legalize medicinal marijuana. Because no state has ended prohibition without first authorizing medical use, Ohio is now well-positioned to legalize adult use as soon as the 2020 presidential election. Yet, legalization will depend upon medical marijuana's success in the state as well as the ability of ResponsibleOhio's successor to learn from the campaign's missteps. ResponsibleOhio's failure to understand the dynamic nature of this long-standing debate alienated the voters necessary for the initiative to succeed. Though ending prohibition is becoming less of a partisan issue, a campaign should present itself in a way that appeals to Ohio voters who supported President Trump in 2016. By opening the market, rather than limiting it to ten wealthy investors, the next campaign can make a strong push for adult use. In this way, ResponsibleOhio's progeny will be successful no matter which candidate wins, or who shows up to vote.

¹⁰² Kate Morrissey, *If Pot Is Legalized, It Can Still Have Big Consequences for Certain Immigrants*, SAN DIEGO UNION-TRIB. (Oct. 14, 2016), <http://www.sandiegouniontribune.com/news/immigration/sd-me-marijuana-immigration-20161014-story.html> [https://perma.cc/HN6J-3CDF].

¹⁰³ *Id.*