

Charles Lane: Colorado's marijuana experiment has a bitter aftertaste

By Charles Lane

WashingtonPost.com | October 23, 2014

LoDo Wellness Center, which calls itself the largest marijuana dispensary in the trendy Lower Downtown (“LoDo”) area, is a mellow place, decorated with Oriental rugs, sofas and statues of Buddha.

Yet there's a moment of mild tension when you arrive: Staff members politely insist on proof that you are either older than 21 and eligible to shop in the “retail” area or older than 18 with a doctor-approved “red card” for access to the private “medical” area. The latter is on the other side of a door marked “must remain locked at all times.”

The atmosphere is part speakeasy, part pharmacy and — incongruously — part candy store. At the retail counter, you'll find not just smokable dope but also myriad “edibles” infused with tetrahydrocannabinol (the main active ingredient in marijuana) that are outwardly indistinguishable from ordinary cookies, gummy worms and lemon drops.

LoDo epitomizes the quirks, contradictions and unanticipated consequences that characterize — or, some say, bedevil — Colorado's 10-month-old experiment with legal marijuana.

There's been no surge in crime or drug abuse, nor is there a big movement to repeal the measure voters approved in 2012. Still, second thoughts are evident in everyday conversations here as well as recent polls. A USA Today survey this month found that roughly half of likely Colorado voters disapprove of legalization in hindsight and think the state has not done a good job regulating the burgeoning industry.

Edibles are the big issue. Coloradans have been astonished at the array of delicious THC delivery systems: candy, sodas, even, at LoDo, spiced peanuts soaked in marijuana oil. Edibles account for 45 percent of the legal marijuana market, according to the Colorado Cannabis Chamber of Commerce. Given that Colorado adopted legalization on an adults-only basis, this doesn't sit well with a lot of parents.

The actual health risks, as opposed to the risk of underage usage, are unclear. Still, bad reactions to THC-laced treats have landed several children and adults in the emergency room and possibly led to two deaths. Consequently, the state tightened rules on labeling and dosage. Like other purveyors, LoDo now sells edibles in childproof containers. Yet standardization of packaging and THC dosage is, at best, a work in progress.

Legal pot in Colorado was supposed to be a major new source of tax revenue. Early returns are underwhelming. The state legislature's budget office originally forecast \$67 million for the 2014-2015 fiscal year; it subsequently marked that down to \$47 million.

Optimistic projections assumed users of medical marijuana, legal in the state since 2000, would switch to recreational marijuana, to avoid the hassle and cost of seeing a doctor. Instead, the number of red cards has increased slightly because medical pot is far more lightly taxed, and hence roughly 40 percent cheaper, than recreational. For heavy users, that adds up. LoDo distributes advertisements for \$55 red-card consultations at the Canna Health Clinic; "pay less in taxes," they urge.

In economic parlance, this is known as "regulatory arbitrage." The failure to have anticipated it makes the continuation of medical pot "the biggest challenge" for the new system, according to Sam Kamin, a professor at the University of Denver law school.

Meanwhile, millions in marijuana revenue may be refunded anyway, under Colorado's unique constitutional provision that requires the government to give back money when state revenue growth exceeds the rate of inflation plus population growth.

No one knows exactly what to do about that or many other issues that have cropped up — such as the persistence of the untaxed black market or how to measure the impairment of pot-using motorists.

Colorado could eliminate the medical-recreational distinction. If the latter is available, why keep the former? But then people would have to admit that the vast majority of "medical" usage is, and always was, recreational. The likes of Canna Health Clinic would be put out of business, too.

As for edibles, the state public health department told a state pot advisory panel on Monday to ban them, except for lozenges and oils, noting a "definite risk to children." The cannabis industry quickly shot that idea down; it appears pot growers and retailers have already achieved a measure of "regulatory capture."

The industry's alternative is clearer labeling. That could backfire, too. "A stamp would just help [kids] find it," LoDo employee Liza Baker told me, citing conversations with middle school teachers she knows.

None of this proves Colorado's brave new world is worse than the status quo ante; there were high costs to pot prohibition, too. Every regulatory dilemma for legal pot is analogous to those facing alcoholic beverages or cigarettes.

Still, what's impressive — and, for other states, instructive — about this libertarian project is that it hinges on well-informed, impartial government regulation, free of undue special-interest influence, about which libertarians are ordinarily and properly skeptical.

Colorado may yet achieve that. For now, though, the system still seems a little half-baked.