

2020

## Understanding Stakeholder Interests in Rulemaking Through the Lens of Private-Interest Institutionalism

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*Walden University*

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# Walden University

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Walden University  
2020

Abstract

Understanding Stakeholder Interests in Rulemaking Through the Lens of Private-Interest

Institutionalism

by

W. Lewis Koski

MBA, Regis University, 2004

BS, Colorado State University, 1997

Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

Public Administration- Policy Analysis

Walden University

November 2020

## Abstract

State regulators have the task of promulgating regulations for multiple heavily regulated industries, but there is a dearth of research to help public policy makers better understand how rulemaking processes are perceived by stakeholders in those processes. Regulators who promulgated rules for the legalization of marijuana in Colorado used both required and discretionary methods of participation in rulemaking to involve stakeholders with multiple competing interests. This qualitative research study was based on a phenomenological approach and interview data from 10 stakeholders who participated in the Colorado Marijuana Enforcement Division's rulemaking processes between 2013 and 2016. The purpose of this study was to better understand the shared and lived experience of those stakeholders during a unique and historic time in state rulemaking. The findings suggested that both the cannabis industry stakeholders and public interest stakeholders were able to influence the final regulations. Respondents reported that they were also able to influence the regulation design and formation, and attributed their influence to the processes that allowed for dialog among and between stakeholders and government officials. The implications for positive social change include: the potential use of tools, such as working groups and informal meetings with regulators, as an alternative to the current political narrative; the positive impacts of proactive outreach to diverse stakeholders; enhanced rulemaking planning and implementation; and, greater buy-in and support for more collaborative rulemaking processes across regulated industries.

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## Dedication

I want to dedicate this to my family who endured this journey with me and who supported me the entire way.

## Acknowledgments

I want to thank all of the people who took part in the implementation of cannabis legalization in Colorado and those who participated in this study, which has been in the making for nearly seven years.

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## Chapter 1: Introduction to the Study

### **Introduction**

In this study, I examined how stakeholders perceived their lived experiences of participating in cannabis legalization rulemaking processes in Colorado between 2013 and 2016. The primary purpose of regulation is to protect consumers from business practices that are or may become harmful to the public at large. Public interest institutionalism puts public interest at the forefront of regulatory decision-making (Ginosar, 2014). I used public interest institutionalism to explain and understand how the stakeholders above described their experiences with rulemaking.

In late 2012, Governor Hickenlooper certified the election results of Amendment 64 (Art. V, § 1(4)), which would effectively legalize cannabis in Colorado on January 1, 2014. The amendment to the Colorado Constitution (Article XVIII, §16) provided a framework for implementation of legalization that directed the Colorado legislature to develop statutes and for state regulators promulgate regulations for the licensing and monitoring of industry actors. There were no other statutes or regulations in place anywhere in the world, so this effort would be starting without established best practices for this type of public policy.

The novelty of Colorado's situation put implementation of cannabis legalization into the national spotlight largely because the state was among the first to legalize cannabis for a commercial market and no one knew exactly how to accomplish this complex and divisive effort successfully, especially when cannabis legalization by states remained in conflict with federal law (Controlled Substance Act §21 U.S.C. § 801 et seq).

In an effort to organize an effective response to cannabis legalization, Hickenlooper (Article IV § 2) created a task force to make legislative and regulatory recommendations to the state legislature. The task force enlisted the participation of a wide-ranging group of stakeholders that included local and state government officials, state lawmakers, cannabis patients, drug addiction specialists, legal experts, cannabis industry participants, law enforcement and opponents/proponents of cannabis legalization to name a few (Article IV § 2). Hickenlooper explicitly directed the task force to honor the will of the electorate in forming public policy recommendations that allowed for a viable commercial cannabis market for adult use, but also placed public health and safety as the primary focus of the group's efforts (Article IV § 2). Hickenlooper intended to account for the private interests of the cannabis industry while also noting that the public's interest in health and safety were paramount in crafting legalization's public policy. This is a challenging balance to strike in any regulatory framework.

In 2013, the governor's task force made numerous recommendations to the Colorado General Assembly (Brohl & Finlaw, 2013) and the legislature adopted the Retail Marijuana Code (C.R.S. §12-43.4-102). Between the amendment to the constitution (Article XVIII, §16) and the code (C.R.S. §12-43.4-102), regulators at the Colorado Department of Revenue (CDOR) were tasked with promulgating regulations that spanned from licensing of the cannabis businesses to product production limits, laboratory testing, labeling requirements, manufacturing, and advertising to name some of the more controversial categories (C.C.R. § 212-2). The drafters of Amendment 64,

the Governor and the Colorado General Assembly deferred a tremendous amount of public policy development to regulatory institutions.

The subsequent rulemaking processes were administered by CDOR's Marijuana Enforcement Division (MED). MED, like the task force before it, was directed by the governor to build in a balance of private and public interests into the regulations (Blake & Finlaw, 2014). I focused on the rulemaking processes that occurred between 2013 and 2016 to better understand what stakeholders with diverse opinions on legalization experienced participating in rulemaking.

State regulators, like ones at the MED, can act as facilitators of inclusive process as public and private interest stakeholders engage in rulemaking. Very little is known about how stakeholders engaged in state rulemaking processes or perceived their participation in the various aspects of rulemaking that can include written comments, informal meetings with regulators, workgroup participation and public testimony at regulatory hearings. I sought to understand how various stakeholders perceived their ability to influence the final regulations, and the ways they describe what they learned about other stakeholders during rulemaking in Colorado after the legalization of cannabis for adult use. I used public interest institutionalism (Ginosar, 2014) as the theoretical framework for my study. This theory suggests that the regulator is best positioned to facilitate processes that may result in regulations that focus exclusively on public interests, but those public interests are agreed upon and negotiated by a diverse group of stakeholder opinions. This theoretical framework is consistent with the governor's direction to state officials that Colorado's marijuana legalization public policy should be

inclusive of the private business interests of the regulated cannabis businesses without compromising the public's interest in health and safety.

For this study, I used a qualitative methodology with a phenomenological approach. According to Creswell (2013), qualitative research with a phenomenological approach is appropriate when the theoretical framework has not been the subject of considerable research and/or the researcher has also experienced the phenomenon being studied. This approach was an appropriate methodology for my research because very little research was done specifically on the topic of public interest institutionalism. I was deeply involved in the central phenomenon of this study, which was gaining a better understanding of the lived experiences of stakeholders participating in state rulemaking processes during rulemaking in Colorado. A better understanding of how stakeholders perceive the merits of their participation in rulemaking can help regulators evolve or improve rulemaking processes. In particular, I sought to inform regulators, lawmakers, and other nongovernmental stakeholders how participation in rulemaking processes can help to balance public and private interests in heavily contested public policy issues like the legalization of marijuana. I sought to better understand the perceptions of stakeholders who participated in the rulemaking processes in the years immediately following the legalization of marijuana in Colorado.

In 2012, the Colorado electorate voted for a State Constitutional Amendment that legalized the possession of up to one ounce of marijuana for adults over 21 years of age. The content of the amendment included the basic framework for licensing businesses that would cultivate, manufacture, transport, and sell marijuana (Blake & Finlaw, 2014).

Shortly thereafter, the Colorado General Assembly adopted statutes, called the Retail Marijuana Code (C.R.S. § 12-43.4-102), that directed the MED to develop regulations for cannabis industry licensees (Blake & Finlaw, 2014). I selected cannabis legalization in Colorado as the focus for this research because I was deeply involved in the subsequent rulemaking processes from 2013 to 2016. As a senior-level government executive, I was tasked with promulgating regulations, and therefore I was familiar with the processes utilized during the term of this study.

Regulators sought to garner the participation of diverse groups of stakeholders with disparate viewpoints about marijuana legalization when designing their rulemaking processes. The intent was to include many points of view in developing and promulgating the final regulations. Understanding how stakeholders perceive their experiences during rulemaking can affect social change by helping regulators construct more effective rulemaking processes.

### **Background**

I focused on developing a better understanding of how stakeholders perceived their lived experience with rulemaking processes facilitated by the MED during the legalization of cannabis from 2013 to 2016. A tremendous amount of public policy across the country is created through the rulemaking processes (Kerwin & Furlong, 2011; Rosenbloom, 2014). Rulemaking happens at every level of government, and regulations carry the full weight of law for those who are subject to the regulatory framework. Rulemaking is ubiquitous to industry; regulations far outnumber legislated public policy (Kerwin & Furlong, 2011; Rosenbloom, 2014). Because rules can impact different groups

of people disproportionately, members of diverse stakeholder groups may try to influence the regulations (Rinfret & Cook, 2014). An early study during legalization in Colorado (Subritzky, et al., 2015) acknowledged the transparency and inclusion of MED's rulemaking and the researchers cautioned how cannabis industry stakeholders could put profits above public health and safety. As new regulations are created, or old ones are modified, stakeholders may have a lot to gain or lose (Kerwin & Furlong, 2011). Stakeholders have an interest in knowing when and how to participate so they can offer feedback to rulemaking agencies and advocate for their specific interests (Rinfret & Cook, 2014). Rulemaking processes between federal and state governments vary widely, and many of those variations are attributable to regulators' use of mandatory and discretionary aspects of rulemaking processes.

I assumed that regulators have the authority to design rulemaking processes and increase participation from stakeholders. The literature showed that regulators are mandated by law to allow participation in rulemaking processes, but there are other discretionary rulemaking components that regulators can use to make processes more inclusive. Federal rulemaking bodies must follow the process requirements for the promulgation of regulations, which are outlined in the Federal Administrative Procedures Act (Rosenbloom, 2015). Subsequently, each state has adopted its own Administrative Procedures Act (APA) to govern how rulemaking should be conducted (Kerwin & Furlong, 2011). These mandates typically include what is known as notice and comment periods, and in Colorado, regulatory agencies are required to have quasi-legislative public hearings on proposed rules (C.R.S § 24-4-101, et seq.).

At both levels of government, regulatory agencies are required to give notice on the rules they intend to develop or change and provide a period of time when stakeholders can submit written comments. In some cases, public hearings are required or highly recommended (Kerwin & Furlong, 2011; Rosenbloom, 2015; Shapiro, 2008). Even though these processes are intended to increase participation, they tend to restrict full participation because there is very little conversation or participation afforded to stakeholders (West, 2005). The mandated points of participation in the APA were meant as a floor rather than a ceiling; those requirements do not restrict regulators from adding more participative components to their rulemaking processes if they choose to do so.

It is clear that regulators have the discretion to add more participative components to their rulemaking processes. They also have a number of political, procedural, and preference factors to consider when exercising their discretion. These factors may lead to the regulator adding processes to increase participation (Shapiro, 2008), but they can also choose a less participative process (Gangadharan, 2009). The extent to which regulators go above and beyond the basic requirements in the APA may affect how complete, fair, and effective rules are. Executive branch agencies (Kelleher & Yackee, 2006), lawmakers (Lavertu & Yackee, 2012; West & Raso, 2013), and judges (Hwang, Avorn, & Kesselheim, 2014) review the rules and either support or oppose regulatory positions through subsequent executive orders, legislation, and litigation, respectively. If stakeholders were not satisfied with a final rule, they would likely engage with those oversight bodies to delay implementation of regulations or overturn them altogether.

Stakeholders are critical to providing private and public interest feedback to regulators engaged in rulemaking. Even though regulators have significant influence over regulatory processes and final outcomes (Hwang et al., 2014; Lavertu & Yackee, 2012; Shaprio, 2008) regulators should not ignore stakeholder interest in influencing public policy. Stakeholders perceive early involvement as being beneficial especially if it is before the notice and comment period (West & Raso, 2013, Yackee, 2015b) because they feel they can influence the scope of rule changes before the notice is scheduled to be released. My research, in part, was designed to understand more deeply the extent to which stakeholders perceived that their participation made a difference.

There is evidence that stakeholder engagement can influence regulations. Cook and Rinfret (2013) conducted a qualitative study to better understand how participation in the rulemaking processes facilitated by the Environmental Protection Agency allowed stakeholders to influence the final regulations. The findings showed that participation mattered because the final regulations reflected, to some extent, the opinions of those who participated (Cook & Rinfret, 2013). Importantly, Cook and Rinfret's findings showed that more participation resulted in more stakeholder influence over the final regulations. This finding was similar to that of West and Raso (2013), who found that regulators perceived more participation had more influence on the final rules. Both Cook and Rinfret (2013) and West and Raso (2013) obtained most of their data from regulators, not from stakeholders who participated in the rulemaking; this made the findings somewhat one-dimensional.

Several studies have focused on the components of rulemaking that stakeholders took part in during the rulemaking process. Gusmano (2013) discussed the merit of expanding the participative processes for rulemaking at the Federal Food and Drug Administration (FDA) and the extent to which stakeholders should have decision-making authority. This study included interviews of participants with different perspectives who had participated in a 2-day workgroup meeting that deliberated on FDA regulations. Gusmano's (2013) research showed the potential for transparent, open discussions between stakeholders. Similarly, Rinfret, Cook and Pautz (2014) found that participants were less pleased with the final fracking regulations in states where the government was perceived as being less open and participative during rulemaking. The purpose of their study, which examined rulemaking related to fracking regulations in three states, was to better understand the types of processes stakeholders preferred (Rinfret et al., 2014). In both studies, participants preferred open processes where they could have a productive and transparent dialogue with the regulator, but neither study explored the stakeholders' involvement with multiple modes of rulemaking participation discussed above.

Even though there has been research conducted on participation in rulemaking, no researchers have sought to better understand how stakeholders perceive their lived experience of participating in multiple components of one or more rulemaking processes. This study will help to fill that gap in the literature.

### **Problem Statement**

Regulatory agencies in Colorado must meet the minimum requirements of the Administrative Procedures Act (C.R.S § 24-4-101.5 et seq.) regarding the facilitation of

public feedback during the promulgation of regulations (Rinfret et al., 2014). Simply following the APA may be insufficient for maintaining participation by stakeholders who represent different viewpoints related to both public and private interests. If stakeholders lose interest in rulemaking over time, regulators may be unable to maximize the feedback needed to balance the restrictive or permissive nature of regulations (Ginosar, 2014). This is problematic because the public interests could suffer from a regulated industry that becomes too influential over the regulations.

Since Herring's (1935) seminal work regarding regulatory theory, it has been widely understood that regulations reflect varying combinations of public and private interests. The absence of participation by stakeholders can lead to changes in the balance between public and private interests in regulations (Carpenter & Moss, 2014). Increased participation can lead to more influence over the final rules; participation can be facilitated by the regulator through additional participative processes not required by the APA (Cook & Rinfret, 2013a; Cook & Rinfret, 2013b; Gusmano, 2013; Michael, 2013; Rinfret et al., 2014). The solutions offered in existing studies do not address how regulators can maintain the balance between public and private interests over time. More specifically, no existing studies explain how stakeholders experience various participatory rulemaking processes required by the APA or facilitated by the regulator. The extent to which participants find these processes useful in voicing concerns, contributing constructive information to regulators, better understanding other viewpoints, and influencing the final regulations is unknown. My research highlighted stakeholders' perceptions in order to better understand these dynamics.

### **Purpose of the Study**

The purpose of my qualitative phenomenological research was to better understand the shared and lived experience of a purposefully selected group of participants who took part in rulemaking processes facilitated by the MED from 2013 to 2016. The selected stakeholders, who represented both public and private interest viewpoints, provided their perceptions of the participative rulemaking processes they experienced. By better understanding stakeholder perceptions, regulators can make more informed decisions on how to incorporate a more diverse set of viewpoints to create and maintain regulations that equitably balance public and private interests. I explored the extent to which stakeholders were able to voice viewpoints, contribute substantively, understand other stakeholder viewpoints, and influence the final regulations while participating in rulemaking processes.

### **Research Questions**

The overarching research question for this study was: What are stakeholders' perceptions and lived experience of rulemaking processes facilitated by the Colorado Marijuana Enforcement Division (MED) during the legalization of marijuana between 2013 and 2016?

Subquestion 1: How did participants perceive that their experience informed or influenced the rulemaking processes?

Subquestion 2: How did participants perceive other stakeholders' viewpoints and contributions to the rulemaking processes?

Subquestion 3: How did participants perceive the regulator's role during the rulemaking processes?

Subquestion 4: What were participants' lived experience of engagement in the rulemaking process?

### **Theoretical Framework for the Study**

The theoretical framework for this study was public interest institutionalism, which was formulated by Ginosar (2014). Ginosar (2014) asserted that the top priority for any rulemaking process should be protect the public interest, but that the public interest should be negotiated by groups of stakeholders with diverse ideas and opinions about the public policy at hand and not just stakeholders claiming to be advocating for public health and safety. He also determined that the regulator was best positioned to facilitate meaningful dialogue amongst various stakeholder interests in rulemaking.

Ginosar's work followed the lineage of research conducted by Herring (1935) and Bernstein (1955). Herring (1935) published the seminal work on regulatory theory, which formulated the concept of public and private interests. Herring identified public interests as those that focused on consumer protection and public safety, while private interests were concerned with regulations more favorable to business needs. Public interest regulatory perspectives tended to be more restrictive towards the regulated community subjected to regulations (Herring, 1935). Restrictive regulations tend to place more requirements on regulated businesses and increase the cost of regulation. Private interest goals tended to be more permissive making it easier to conduct commerce (Herring, 1935). Permissive regulations tend to reduce the restrictions or requirements on regulated

businesses and reduce the costs associated with regulation. Herring found that public interest participation tended to diminish over time, while participation by the regulated community—the group that generally advocated for private interests—remained consistent. This disparity in participation led to more influence by the regulated community, which put consumers at risk through more permissive policy favoring industry efficiencies over public health and safety. Herring concluded that regulators would continue to advocate for public interest regulations in order to ensure that rules reflected the concern for consumer protection and public safety. However, Herring did not offer suggestions about how regulators could maintain participation by individuals who originally championed the public’s interests in rulemaking.

Ginosar (2014), whose work draws on both regulatory and capture theories, provided a contemporary approach to rulemaking processes and recommended the regulator become a deliberative, participative facilitator in order to seek out various public and private interest perspectives. Ginosar referred to this approach as public interest institutionalism. In public interest institutionalism, the regulator defines what the public interest is and prioritizes public interest by collaborating with a diverse group of stakeholders within the confines of institutional processes present in rulemaking (Ginosar, 2014). The public interest institutionalism theoretical framework was important to this research because it provided a starting point from which to address the gap in research. By collecting data from stakeholders to understand their lived experience within the participative process, this study generated new data on public interest institutionalism from the perspective of stakeholders who had taken part in multiple modes of

participation in rulemaking. I used public interest institutionalism as described by Ginosar to better understand how stakeholders describe their lived experiences with the phenomenon of participating in marijuana legalization rulemaking processes in Colorado.

### **Nature of the Study**

The current literature related to participative rulemaking processes focuses on the value of participation and the extent to which participation is likely to influence final regulations (Carpenter & Moss, 2014; Gusmano, 2013; Michael 2014; Rinfret et al., 2014). In order to provide regulators with useful information about how to maintain participation over time, I obtained a better understanding of how stakeholders with different viewpoints on drug policy experienced the participative rulemaking processes facilitated by MED during implementation of the marijuana legalization in Colorado. My research produced reliable data and findings that can be shared with regulators and stakeholders to improve rulemaking participation.

I used a phenomenological approach. Qualitative research designs are appropriate for exploring phenomena with which both the subjects and the researcher have experience (Denzin & Lincoln, 2011). In this case, a qualitative design was appropriate because I served as a regulator and the study's respondents—who represented both public and private interests—were people who were involved in the rulemaking processes surrounding cannabis legalization in Colorado. The phenomenological approach was appropriate for this research because I explored how subjects experienced a phenomenon in the past. Phenomenological studies are also used to capture the essence of the experiences from those with the most exposure to the phenomenon according to

Moustakas (1994), which in this research was identifying stakeholders that had experience with multiple modes of rulemaking participation. In this study, the participant population consisted of stakeholders who had taken part in all or most modes of the participative processes facilitated by MED. Moustakas (1994) said to use a purposeful sampling technique to ensure that participants with the richest set of experiences with the phenomena being explored were chosen to participate in this study in order to capture the richest data possible. I used purposeful sampling to identify the stakeholders with the most experience with the phenomenon by ensuring they all had experience with multiple rulemaking sessions and multiple modes of participation.

Using inductive logic, I collected specific data from semistructured interviews designed to answer the research questions. I then constructed themes representative of the participants' experiences with participative rulemaking as described by Gibbs (2008). These themes will be discussed more in Chapters 4 & 5.

### **Definitions**

*Administrative Procedure Act (APA):* Law that provides guidance and mandates how regulators should promulgate regulations. The federal APA is located at 5 USC §551 et seq. (1946) and provides the general framework for all 50 states that have adopted state-specific APA doctrine respectively. This research plan is focused on rulemaking in Colorado. Colorado's APA is found at (C.R.S § 24-4-101.5 et seq.). In both cases, rulemaking is a quasi-legislative process giving final regulations the full authority of law.

*Advisory Committee:* Diverse group of stakeholders formed for the purpose of discussing and providing advice to regulators on different approaches to regulatory

policy. These groups typically provide services over an extended period of time that spans multiple rulemaking sessions.

*Discretionary Processes for Participation in Rulemaking:* For various reasons, regulators may find the written comment and public hearing requirements in the APA insufficient for fully understanding the impact final regulations can have on stakeholders. Regulators are allowed to engage in discretionary processes to increase the amount and quality of participation from stakeholders beyond what is required by the APA. These discretionary processes can include, but are not limited to, informal meetings, public workgroups, and surveys.

*Mandatory Processes for Participation in Rulemaking:* The APA at the federal and state levels requires a comment period to allow stakeholders to submit written comments to the regulator for consideration of the draft rules released in the Notice of Rulemaking. This allows stakeholders an opportunity to officially agree, disagree, add alternative approaches, insert more data for analysis, or otherwise lobby to get the regulator to adopt a particular position on a rule. While strongly suggested at the federal level, some state APAs require the regulator to hold a public hearing in order for stakeholders to provide oral testimony for the same reasons they did during the comment period.

*Opportunities to Participate:* The aggregate number of opportunities, modes of participation, stakeholders have to participate in a given rulemaking process. This includes all of the mandatory and discretionary processes to participate in rulemaking.

*Notice of Rulemaking (NOR):* The official notice required by APA and filed by a regulator to begin a formal rulemaking session. The purpose of the NOR is to tell stakeholders which rules will be the focus of the session and what changes or additions are being considered in those rules. The changes and additions are memorialized in draft versions of the new regulations. In almost all rulemaking processes, federal or state, regulators are required to provide an opportunity for stakeholders to participate in the session, at least in writing.

*Public Workgroups:* A group of diverse stakeholders assembled by the regulator for the purpose of discussing a specific topic in a given rulemaking session. Workgroups are typically assembled for shorter periods of time than advisory groups or committees. This is the type of workgroup facilitated by MED during rulemaking in Colorado.

### **Assumptions**

I made several assumptions that were generally known to be true, but did not have to be proven in order to proceed with the research. First, I assumed that stakeholders could describe their perceived experiences from various mandatory and discretionary rulemaking processes that occurred in Colorado during the legalization of marijuana. I designed the semistructured interviews questions (see Appendix A) to elicit meaningful and insightful responses from interviewees who participated in multiple rulemaking sessions and various mandatory and discretionary modes of participation. As mentioned below, Colorado's implementation of legalization was purposefully chosen as the focus of this study due to the richness and number of experiences stakeholders experienced during this salient period in history.

My plan assumed that interviewees would act rationally, just as they did when they participated in Colorado's rulemaking processes for legalization. In other words, I assumed that private interest stakeholders like cannabis businesses would still have strong feelings about the benefits a commercial marijuana market just like I assumed that law enforcement stakeholders would have strong opinions about perils of cannabis legalization. It was not important for the interviewees in my study to separate their strong feelings about the merits of marijuana legalization to focus on their involvement in the rulemaking processes institutionalized by the MED.

The biggest challenge was ensuring that the experiences they shared were specific to their perceptions of rulemaking participation hosted by MED rather than other public policy processes hosted by the state legislature or local government. As outlined in Chapter 3, I carefully and succinctly framed the focus of the study for the participants. Also, the research questions were carefully crafted to focus on the process of rulemaking hosted by the MED that they participated in, so stakeholders were taken back to the experience we all shared during the timeframe isolated for this study. This approach focused the stakeholders on their rulemaking experiences with the MED while still affording them the ability to have strong emotions and feelings about the merits of cannabis legalization.

### **Scope and Delimitations**

The scope of this research was to explore the perceptions and lived experience of a purposefully selected group of up to 12 interviewees who participated extensively in the rulemaking processes from 2013-2016 in Colorado after the legalization of marijuana. In

particular, the study was designed to start filling a gap in the literature that exists in regard to how stakeholders perceive their experience during rulemaking. Colorado's rulemaking processes between 2013 and 2016 were selected due to the large number of rulemaking sessions and opportunities to participate in which stakeholders took part. Also, during this same timeframe, Colorado public administrators wrote the first comprehensive set of marijuana legalization regulations (C.C.R. § 212-2). This research explored whether or not stakeholders perceived their participation as influencing the final regulations, which is important to better understanding how to improve rulemaking processes that garner participation over time from a diverse group of stakeholders. Given the large number of regulations finalized during this period, stakeholders were able to recall instances where they were or were not able to influence the final regulations.

### **Delimitations**

This research was delimited to better understanding how stakeholders perceived their experiences with rulemaking during the legalization of marijuana in Colorado. Several related public policy processes were not explored during this research. For example, there was a ballot initiative in which the Colorado electorate voted to legalize cannabis through an amendment to the Colorado Constitution (Art. XVIII, § 16). There were also several legislative sessions that took place from 2013-2016 that resulted in a comprehensive set of marijuana laws (Retail Marijuana Code). Respondents to this research discussed these events while responding to the semistructured interview questions, but the focus of the findings and interpretations in Chapters 4 & 5 remained on the rulemaking sessions hosted by the MED.

The same groupings of public and private interest stakeholders who participated in rulemaking were also very active in the legislative processes, so it was important to recognize the interrelationships between the study's focus and the various public policy processes that were not being explored as part of this research. Even though the ballot initiative and the creation of the marijuana code were not the subject of this research, they were important to discuss for two reasons. First, the amendment and the Marijuana Code both identified categories of rules for the MED administrators to promulgate. Second, in recalling their perceptions of rulemaking, respondents discussed experiences they had with the other public policy processes in which they participated. I expected that stakeholders would mention their participation in the ballot initiative and legislative public policy processes to complement their narratives about participating in rulemaking due to the close relationship of legislative doctrine and rulemaking mandates outlined in the Amendment (Art. XVIII, § 16) and Code (C.R.S § 12-43.4-102).

### **Limitations**

The relatively small group of people who were capable of discussing experiences related to the rulemaking process limited this study. Even though interest in participating did not become a challenge, phenomenological research tends to limit the number of participants to a relatively small number of persons (Creswell, 2013; Patton, 2002; Saldaña, 2016). The theoretical framework for this study limited the research as well. It was conceptualized by Ginosar (2014) as a likely path towards balancing the disparity between public and private interests when forming regulations. This concept has not been directly researched, which made it ripe for qualitative research but the limitations of

qualitative research like lack of statistical outputs, biased or misleading responses from stakeholders who are passionate about their feelings of legalization all limited the research (Creswell, 2013; Patton, 2002). Lastly, the phenomenological approach placed trust on the interviewees to recall their experiences truthfully and in enough detail to identify relationships to the various responses given to the interview questions (Saldaña, 2016). This is an inherent limitation of phenomenological research.

### **Significance**

The intent of this research was to identify ways to improve rulemaking processes in the United States. This research made an original contribution to the literature by providing public administrators and public policy participants with a better understanding of how stakeholders perceived their experiences with participative rulemaking processes. This original research will help public administrators design other deliberative processes that encourage and maintain participation from people with diverse viewpoints in order to solve difficult and divisive public policy issues in a balanced manner.

This research will effect positive social change by increasing regulators' awareness of how public participation is viewed by stakeholders involved in mandated and discretionary rulemaking processes. This awareness may lead to better participation in rulemaking processes. When rulemaking processes provide effective ways for stakeholders to contribute constructively to the process and the final regulations, then civic engagement in those processes is likely to endure over time (Ginosar, 2014). Civic engagement is a hallmark of the democratic process, and research that seeks to encourage

participation can positively affect social change by encouraging governance that balances public and private perspectives and interests.

### **Summary**

In this study, I sought to understand how stakeholders who participated in rulemaking during the legalization of marijuana in Colorado perceived those experiences. During these rulemaking processes, state government officials explicitly sought to protect public interests, but did so with the input and participation of a diverse set of stakeholders who held different and competing views on legalization. Public interest institutionalism, the theoretical framework for this study, posits that regulators are best positioned to negotiate the public interest through a diverse set of stakeholders. My research was phenomenological and sought to better understand if stakeholders were given the opportunity to be heard, whether or not they understood other perspectives better, and the extent to which they were able to influence the final regulations.

In Chapter 2, I outline the research strategies I used to achieve saturation in the literature and provide a more detail synthesis of the literature related to public interest institutionalism and participation in rulemaking.

## Chapter 2: Literature Review

### **Introduction**

Regulations are created and revised in a highly political and cyclical environment. The political environment is often influenced by perceptions of risk to the public from porous regulation, or conversely, perceptions of risk to the regulated community created by unnecessary regulation (Bernstein, 1955; Herring, 1935). Stakeholders with a political advantage tend to have more influence over regulatory processes, so in the end, the promulgation of regulations tend to create winners and losers (Bernstein, 1955). The cyclical revision process in rulemaking can create disruption and instability for a regulated industry.

In a perfect world, regulation would strike a balance between protecting public interests and the private interests of the regulated community. Stakeholders can continuously disrupt this balance when attempting to influence the outcome of new or revised regulations; the political environment also fluctuates in any situation lending weight to either public or private interests in policy making (Herring, 1935). Public interests promulgated into regulations can be eroded over time if the correct balance is not achieved or if the regulated community becomes too influential (Bernstein, 1955). When public interest stakeholder involvement decreases and regulators are expected take up the mantle of promoting the public interests in regulations, an adversarial relationship between regulators and the regulated community can result (Bernstein, 1955). Most research in this area (e.g., Bernstein, 1955; Carpenter & Moss, 2014; Subritzky, et al., 2015) suggested that these dynamics are inevitable or likely, while more recent research

by Ginosar (2014) suggests that regulators are positioned to negotiate a balance of public and private interests into regulation over time. In order to achieve this balance, regulators could benefit from more fully understanding how stakeholders perceive their involvement in rulemaking processes.

The purpose of this qualitative phenomenological study was to better understand the perceptions and the lived experience of a purposefully selected group of participants who took part in rulemaking processes facilitated by the Colorado MED from 2013 to 2016. The stakeholders, who represented both public and private interest viewpoints, provided their respective perceptions of participative rulemaking processes that they experienced. In particular, I explored the extent to which participants were able to voice concerns, contribute constructively, become more understanding of other viewpoints, and influence the final regulations while participating in rulemaking processes. Understanding these shared and lived experiences may help regulators to make more informed decisions on how to incorporate a more diverse set of viewpoints through rulemaking processes to maintain regulations that balance public and private interests equitably over time.

The literature that I reviewed for this research was related to understanding who participates successfully in rulemaking, how regulators navigate the political rulemaking environment (Hwang, et al., 2014; Lavertu & Yackee, 2012; Shapiro, 2008), the tools regulators can use to garner participation (Balla, 2015; Rinfret & Cook, 2014; West, 2009), and how regulations are influenced (Golden, 1998; Rinfret & Cook, 2011; West & Raso, 2013; Yackee, 2011). Few studies appear to have attempted to help regulators

better understand how they can maintain a balance of public and private interests in implementing regulations over time. More specifically, there is a gap in the scholarship where researchers have failed to explain how stakeholders experience participatory rulemaking processes that are either discretionary or required by the APA or the extent to which participants find these processes useful in voicing concerns, contributing constructive information to regulators, better understanding other viewpoints, and influencing the final regulations (Ginosar, 2014). My research started to fill that gap in literature by bettering understanding the lived experiences of stakeholders participating in rulemaking.

In my study, I explored stakeholder's lived experience gained through participation in rulemaking processes surrounding marijuana legalization in Colorado after citizens of the state approved recreational use of the substance (Colorado Constitution, Art. XVIII, § 16). I conducted the literature review to add context to the theoretical framework and its relationship to the phenomenon being studied. In the first portion of this literature review, I explored the theoretical framework for this study by reviewing the seminal works on regulatory theory, which in turn help to inform the key components of public interest institutionalism. Then, I analyzed the literature on participation in rulemaking at the federal and state levels of government in the United States.

### **Literature Search Strategy**

I retrieved the literature for this review from the following Walden library databases: Political Science Complete, Business Source Complete, SAGE Journals,

LegalTrac, Academic Source Complete, and ProQuest Central. During the process of designing and conducting this study, I queried these databases routinely for updated literature relevant to this research.

I used Google Scholar prominently in this literature search strategy. I searched keywords using this database to find new literature in the same way the databases above were used. Additionally, individual pieces of literature found using the Walden library databases were also entered into Google Scholar to utilize the cited by and related articles functions to identify germane literature to this study. I used the cited by tool to identify research conducted after previously discovered literature. I used the related articles tool to identify research articles that were published prior to or after previously discovered research. Every piece of scholarly research cited in this work was subjected to these two functions in Google Scholar. All of the cited by and related article articles were exhaustively reviewed by me and cross-referenced with previously discovered literature and research.

In addition to database searches and Google Scholar tools, I reviewed every reference list for every scholarly article cited in this study for relevant literature. If new sources were discovered, I used the Walden University databases and Google Scholar to retrieve those pieces of literature for review. In aggregate, these strategies were successful in achieving saturation for the scope of this research.

The literature I found using these strategies fell into one or more of four general categories: federal rulemaking, state rulemaking, theoretical framework, and marijuana legalization. I used keywords to identify relevant literature included: *administrative*

*policy, administrative rulemaking, cannabis legalization, citizen participation, marijuana legalization, public deliberation, public interest, public interest-institutionalism, public participation, regulation, regulatory capture, regulatory lifecycles, regulatory processes, regulatory theory, rulemaking, and special interests in rulemaking.* The literature I found using these keywords and phrases yielded thousands of results. Many of these keywords and phrases were combined by me into Boolean searches to narrow the results and identify the most relevant literature.

In this research, I also used literature that originated from sources other than scholarly journals and books. During the course of this literature search strategy, government agency websites were queried for official reports, laws, regulations, and data. Additionally, private entities like professional associations, periodicals, and companies were also queried by me to identify leads to other scholarly resources and to access relevant data. I used these resources sparingly as way to identify important descriptive data points and add context to certain sections.

### **Theoretical Foundation and Conceptual Framework**

The theoretical framework for this research is Ginosar's (2014) public interest institutionalism. In this research, I was focused on better understanding the relationships between government regulators, public interest, and private interest stakeholders who contributed to regulatory processes and attempted to influence outcomes. According to Collins and Stockton (2018), researchers should use the theoretical framework to methodically frame the phenomenon of interest in this study, which for my research was the lived experiences of stakeholders who participated in state rulemaking processes in

Colorado during the legalization of cannabis between 2013 and 2016. More specifically, I used the theoretical framework to frame a set constructs that are typically experienced or observed during rulemaking processes with the understanding that the constructivist philosophy would suggest that the descriptions of those experiences could be as different as the number of research participants in this study as outlined by Creswell (2013). The respondents who I interviewed all participated in the same rulemaking processes, making framing the constructs important, but according to Moustakis (1994), they may have experienced those same exact processes differently. I explored those different perspectives in order to better understand the lived experiences of the research participants in various modes of participation.

Regulators play the central role in designing, controlling, and influencing rulemaking processes while private interest and public interest stakeholders participate in those processes in order to influence the final regulations. In public interest institutionalism, Ginosar (2014) places the regulator in the role of facilitating a public interest-focused outcome by considering the various competing interests that participate in institutionalized rulemaking processes. Public interest institutionalism was a theoretical framework that had not been subjected to formal research but shared a theoretical lineage with regulatory theory.

### **Regulatory Theory: Seminal and Foundational Research**

The primary purpose of regulation is to protect consumers from business practices that are or may become harmful to the public at large. Public interest institutionalism puts public interest at the forefront of regulatory decision-making. Ginosar's work built on

early regulation-related research that found that public outcries related to public health and safety often led to the creation of more restrictive regulations to keep industry from harming the public (Brownstein, 1955; Herring, 1936; Stigler, 1971). Recent examples of regulatory changes resulting from public outcry include the mortgage crisis in 2009, and even more recently, consumers' deaths linked to vaping tobacco and marijuana vaping products in 2019. These types of situations call for elected officials to create legislation to help resolve the problems; new laws, in turn, direct the bureaucracy to promulgate new regulations (Woods, 2013). The ensuing regulatory processes, especially during times of public outcry, compel various stakeholder groups with competing interests and priorities to participate in the making of the new rules (Bernstein, 1955; Herring, 1936). These stakeholder groups generally fall into one of two categories, private or public interests, both of which will be explained below in more detail.

Competing ideas and values are a mainstay of regulatory processes. The foundational research by Bernstein (1955), Carpenter and Moss (2014), Herring (1936), and Stigler (1971) identified the two predominant and opposing viewpoints, private and public interests, universally present in rulemaking. Regulatory theory explores the relationships between public administrators with regulatory authority and diverse stakeholders who participate in regulatory processes during changing political and social changes spurred by public outcry (Bernstein, 1955; Carpenter & Moss, 2014; Herring, 1936) or conversely by apathy towards existing regulations that are considered to be overreaching (Gofen, 2015). Recognizing who likely participates in rulemaking and what positions those stakeholders are likely to take is essential to promulgating balanced

regulations if regulators are to better understand how stakeholders perceive rulemaking processes (Ginosar, 2014). Participants in rulemaking processes either advocate for the public interests or they promote outcomes that reflect the private interests of the regulated community (Bernstein, 1955; Herring, 1936; Stigler, 1971). Assuming that participants will act rationally by promoting their respective interests, regulators can predict how certain stakeholder groups will react to a certain regulatory approach by considering characteristics common to either public or private interests.

Public interest stakeholders generally exhibit several noteworthy characteristics. First, they advocate for regulations that protect consumers and promote public health and safety (Bernstein, 1955; Herring, 1936). Second, traditional public interest stakeholders tend to advocate for more restrictive regulations (Bernstein, 1955; Carpenter & Moss, 2014; Herring, 1936). More restrictive regulations are perceived by public interest stakeholders to prevent business practices that would harm consumers or compromise public health and safety (Bernstein, 1955; Carpenter & Moss, 2014). Third, public interest groups are generally issue-oriented, so they tend to cease or reduce their participation in rulemaking when their desired influence is promulgated into the regulations (Bernstein, 1955; Carpenter & Moss, 2014; Herring, 1936). As public outcry subsides due to changes in public policy, so does the public interest stakeholder input on regulations (Bernstein, 1955). The traditional adversary of the public interest stakeholder is the private interest stakeholder.

Private interest stakeholders also have noticeable characteristics. First, they tend to advocate for business interests related to profitability, lower costs of operations, and

commercial freedoms (Bernstein, 1955; Carpenter & Moss, 2014; Woods, 2013). Restrictive, comprehensive regulations promoted by public interest stakeholders almost always come at a financial cost to the regulated community, a fact that motivates private interest stakeholders to lobby for less restrictive regulations (Carpenter & Moss, 2014; Woods, 2013). Second, private interest stakeholders encourage regulations that allow businesses to operate more efficiently through ease of compliance and at lower costs to production (Bernstein, 1955; Herring, 1936). Traditionally, private interest stakeholders have almost always consisted of the regulated community, so it made sense for them to promote more permissive regulations (Bernstein, 1955; Carpenter & Moss, 2014; Herring, 1936). Third, the involvement of private interest stakeholders is usually sustained over time. Private interest groups, consisting almost exclusively of the regulated community, are most affected by the costs and inefficiencies of more restrictive regulations, so they have good reason to stay involved and continually advocate less restrictive, more business-friendly regulations (Bernstein, 1955; Herring, 1936; Stigler, 1971). In summary, regulatory theory suggests that public interest stakeholders' participation subsides over time, while private interest participation remains consistent or gains more influence in the absence of public interest advocacy (Brownstein, 1955; Herring, 1936). Given the disparate approaches of these two stakeholder groups, there exists a natural tension that regulators must manage during rulemaking processes.

Several characteristics of the regulator are noted in the seminal work on regulatory theory. First, Brownstein (1955) and Herring (1936) framed the regulator as a mediator between competing public and private interest stakeholders. Since people with

public and private ideologies are diametrically opposed to one another (in theory, at least), regulators often alienate one of the two groups because there is no readily apparent middle ground (Herring, 1936). Second, regulators tend side with public interest groups, especially during times of social outcry for public health and safety issues and may come across as combative to the regulated community (Brownstein, 1955; Ginosar, 2014; Herring, 1936). Once public interest goals are achieved, the stakeholders who championed those goals leave it to regulators to implement corresponding regulations; often, regulators feel compelled to champion the public's perspective going forward while the regulated community stays actively engaged in the rulemaking process (Brownstein, 1955; Herring, 1936). Third, in the absence of public interest stakeholders, regulators step in as the adversaries to private interest stakeholders who are mainstays of rulemaking processes, influential in lawmaking, and sometimes more persuasive than the regulatory bodies (Bernstein, 1955; Carpenter & Moss, 2014; Woods, 2013). The adversarial relationship noted above, coupled with industry influence, often leads to the regulator getting captured by the industry through increased influence while public interests get slowly removed from the regulations. (Brownstein, 1955; Carpenter & Moss, 2014; Howlett & Newman, 2013). The foundational and supporting researchers in this area give the impression that regulatory capture is all but inevitable, while I sought to research and identify ways in which regulators could preserve public interests over time and manage the potential of capture.

In public interest institutionalism, the researcher placed the regulator in the central role of negotiating public interests between stakeholder groups while traditional research

puts them on a course towards an adversarial relationship with the regulated industry (Ginosar, 2014). One of the most significant weaknesses found in the earlier research about the regulator, was researchers' reliance on the regulator as the ultimate decision maker, especially when public interest groups were absent from continuing regulatory processes (Bernstein, 1955; Etzioni, 2009; Herring, 1936). The regulator was responsible for public interest advocacy as well as implementation and enforcement of the regulated community (Bernstein, 1955; Herring, 1936). As scholars learned more about the rhythm and timing of participation between public and private interests, they also learned about how participation effected the regulators.

Regulators have more or less influence during certain times in the regulatory lifecycle. Just as the influence of private and public interest groups fluctuates, regulators can be more or less influential at certain points in the regulatory process (Bernstein, 1955; Herring, 1936; Etzioni, 2009). For example, Furlong (1997) and Golden (1998) recognized that regulators were not effective in maintaining a diverse group of stakeholder involvement over time. Their assertions reflect Herring's (1935) observation that public interests fade over time and Bernstein's (1955) assertion that diminished participation by public interest stakeholders is one of the first signs that industry capture of the regulator is imminent. Regulators, then, should have an interest in exploring ways in which to protect public interests over the long term without creating undue regulatory burdens on the business community.

### **Public Interest Institutionalism**

My development of regulatory theory provided important insights into who participates, when they participate, important periods of influence, and respective relationships and perceptions of regulators. My use of public interest institutionalism provided a regulator-centric framework through which to explore how participants in rulemaking processes perceive their experiences. Ginosar posited that if regulators better understood how public and private interest stakeholders perceived their experiences, regulators could use this information to inform decisions and improve deliberative processes.

Ginosar's theoretical framework consisted of four distinctive constructs. First, the regulator is best positioned to maintain the public's interest in regulations over time if they are committed to ensuring decisions are made after carefully considering various competing perspectives; broad regulatory objectives should be agreeable to most, if not all, of the participants, even those representing opposing interests. Careful consideration of all sides is important, especially if traditional public interest stakeholder participation subsides and regulators take up the public interest mantle, regulators might need to repair relationships with the private interests of the regulated industry if they had not been working collaboratively with them before.

If understanding various perspectives is important, then it is also critical for the regulator to demonstrate a collaborative mindset by bringing competing perspectives together to deliberate on balanced policy. Ginosar's second construct relied on the exchange of ideas occurring in a public setting where discourse can occur in an open and

supportive environment. In aggregate, the regulator facilitates the exchange of disparate ideas in a group setting where stakeholders can engage in discourse that arrives at a shared vision of what the public interest should be over time. In public interest institutionalism, the regulator is tasked with focusing on public interests as the central point of regulation by including all stakeholders in a process designed to define what the public interest concerns should be for a given regulatory framework. Public interest institutionalism differs from regulatory theory because all stakeholders are required to assume some responsibility for determining and upholding public interest priorities and directly interact with members of the opposition. In other words, stakeholders not only have to make their case for a particular policy option to regulators, but they also have to make it directly to stakeholders with opposing viewpoints.

As stakeholders share their varied approaches to regulatory concepts, policy dilemmas are certain to arise. Ginosar's third construct was that the regulator is responsible for defining regulatory problems, prompting new regulatory insight, and ensuring that all interested stakeholders are afforded opportunities to do so in a deliberative process that allowed them to better understand the perspectives of stakeholders with opposing views. Regulators framing policy problems for both private and public interests can serve to increase empathy and deepen shared understandings of how certain policy options can impact stakeholders with opposing viewpoints.

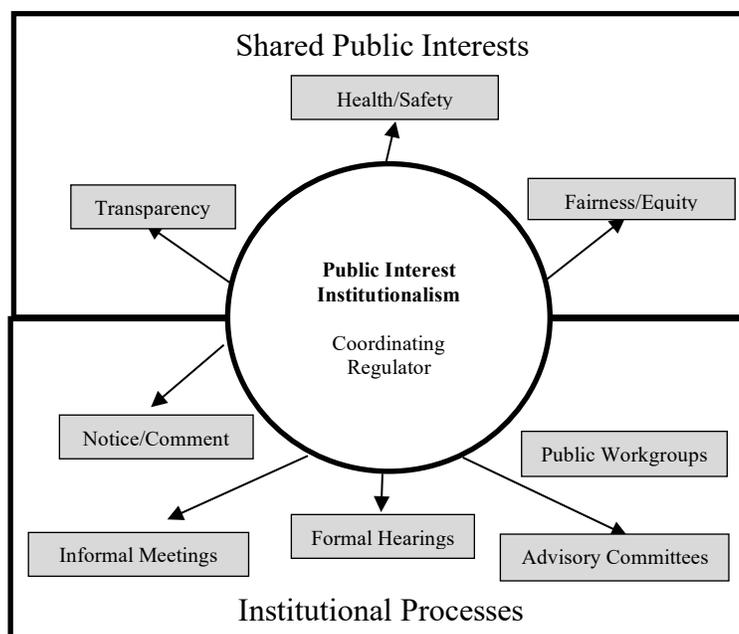
Ultimately, the fruits of participation in rulemaking processes should be reflected in the final regulations. The fourth construct assigned to the regulator was ensuring that the final rules are reflective of the exchange of ideas presented during the discursive

processes used during the rulemaking procedures. Regulators have the authority to bridge the gap between public and private interest perspectives by facilitating participative processes. Ginosar suggested that regulators synthesize the varied perspectives to arrive at balanced policy reflective of both viewpoints and representative of shared public interests.

Public interest institutionalism and the balancing of stakeholder interests places the regulator in the role of facilitating a mutually agreed upon understanding of what public interests should be for a given regulatory problem. According to Ginosar and Levi Faur (2010), the regulator had to be open to the idea of proactively seeking input in order to arrive at an agreed-upon approach. Ginosar identified this type of regulator as one who proactively seeks to coordinate multiple viewpoints during rulemaking. The antithesis to this, according to Ginosar, is the regulator who chooses to be combative during rulemaking processes. Combative regulators may not be as well equipped to negotiate mutually agreed-upon public interest policy, which can make them less effective at balancing public and private interests.

The mindset or enforcement posture of the regulator is an important aspect of public interest institutionalism. In public interest institutionalism, coordinating and combative types of regulators may both be effective at arriving at regulatory policy that protects the public interests, but it may be more difficult to maintain that regulatory mechanism over the long haul if half or more of the stakeholders were alienated by the policy direction compelled by a combative regulator, according to Ginosar. The combative regulator, as described by Ginosar, is analogous to the regulator in Bernstein's

(1955) second phase of the regulatory life cycle during which the regulator is empowered by the influence of public interest groups to focus on enforcement of the regulations, most of which are more restrictive in nature.



*Figure 1.* The two realms of coordinating regulators as outlined in the theory of public interest institutionalism (Ginosar, 2014).

Figure 1 shows the two realms within which a coordinating regulator operates, as conceptualized by Ginosar in public interest institutionalism. The first realm is in the area of shared public interests which identifies the attributes a regulator should be concerned with. The second realm focuses on the institutional components of rulemaking that provide the conduits by which the regulator can collect information from disparate viewpoints (Ginosar & Levi Faur, 2010; Ginosar, 2014). Typical administrative procedures mandated by the state for governing rulemaking only require the regulator to

use notice and comment into the institution of rulemaking, while informal meetings, public workgroups, advisory committees or formal hearings are typically processes the regulator has discretion to institutionalize. In Colorado, all of the aforementioned procedures were institutionalized by regulators during legalization, except for advisory committees.

In much of the literature on regulatory policy, researchers concentrate on the likelihood of regulators being captured by the industry being regulated. However, I assumed that even though regulatory capture was a real threat (Carpenter & Moss, 2014) there is potential to counter it by changing the regulator's approach to rulemaking in order to preserve public interests through broad input into what constitutes the public interest (Ginosar, 2014). Even though regulatory capture was an important concept to understand, the focus of my research is on rulemaking institutions or modes of participation (notice and comment, workgroups, public hearings, informal meetings) that made up the process of rulemaking as contemplated by Ginosar in public interest institutionalism. It was those institutional components of rulemaking that stakeholders participated in during rulemaking that occurred when Colorado first legalized cannabis.

In my research, stakeholders who participated in rulemaking processes during legalization of cannabis in Colorado were asked to describe their perceptions of the process and various rulemaking institutions they participated in. In particular, I asked the subjects of my research about the role of the regulators, other participants with differing viewpoints and whether or not respondents accomplished what they set out to do by

participating. This was consistent with the four constructs of public interest institutionalism, which are:

- a. The regulator is best positioned to preserve and facilitate a negotiated public interest amongst competing viewpoints and public policy agendas;
- b. Stakeholders with disparate viewpoints participate in open dialogue during rulemaking processes to define public interests from a broader spectrum of competing ideas and policy agendas;
- c. The regulator continues to identify and frame regulatory problems that surface from collectively defining public interests from all interested stakeholders through deliberative institutionalized processes; and
- d. The regulator crafts new regulatory policy that is reflective of the deliberative processes (Ginosar, 2014).

My review of the literature found that these constructs, taken in the aggregate or individually, could help inform regulators how to better garner a more collaborative or negotiated agreement about what constitutes the public interest. In the literature, researchers found that the public interest is important to preserve because public health, safety and the credibility of the regulated framework may be at risk if the regulated community is largely unregulated due to capture.

The theory of public interest institutionalism emerged out of a study conducted by Ginosar and Levi-Faur (2010), who empirically researched how two different agencies obtained different outcomes for the regulation of product placement on commercial television. Regulators in both of the jurisdictions in Ginosar and Levi-Faur's (2010) study

were credited with proactively engaging with interested parties to understand how seemingly mutually exclusive approaches to the regulation of product placement could be combined to the satisfaction of disparate stakeholders. Regulators used outreach to a broad range of stakeholders to establish norms for the specific jurisdiction (Ginosar & Levi Faur, 2010). According to Ginossar and Levi Faur (2010), each jurisdiction established different norms, but after determining the norms and carefully considering multiple viewpoints, the regulators were able to negotiate a regulatory mechanism with which both groups of stakeholders could agree. Ginossar and Levi-Faur's (2010) study is important to my research because Colorado took a similar approach; the state institutionalized a working group process and held informal meetings outside the required rulemaking requirements to engage a broad group of stakeholders for each policy recommendation. Stakeholders in this study (Ginosar & Levi-Faur, 2010) responded positively to the participatory regulatory process, so during my own semistructured interviews, I sought to understand how stakeholders from Colorado's marijuana legalization rulemaking processes perceived their experiences with similar outreach methods.

If it is accurate that stakeholders respond positively to additional outreach and rulemaking process for stakeholder to participation, then it is possible that public interests are not the sole domain of public interest stakeholders or regulators. It is not safe to assume that public interest stakeholders will favor more restrictive regulations, nor is it safe to assume that private interest stakeholders will favor more permissive regulations at the expense of the public interest. Ginossar and Levi Faur (2010) found that it was more

effective for regulators to use an approach that spoke to the stakeholders' shared values rather than their individual interests. In both of Ginosar and Levi-Faur's (2010) case studies, private and public stakeholders were involved in determining the public interest. In one case, the rulemaking processes regulators used resulted in a more restrictive public policy, while the other case ended with a more permissive policy. In other words, the regulators were able to find common ground in two different instances where one of the interest groups accepted a regulatory approach contrary to their established viewpoints.

A similar phenomenon occurred in Colorado when a marijuana industry association took it on themselves to develop a public service campaign for salespeople in stores to help new customers properly assess how much of a cannabis product was safe to take. It is not clear what motivated the industry to take this approach, but it was developed and implemented during rulemaking processes dealing directly with labeling, packaging, and proof of age verifications. Building on the constructs of public interest institutionalism, I sought to better understand how public and private stakeholders perceived their experiences in a specific set of rulemaking processes to implement legislation and constitutional changes in state law.

### **Literature on Federal Rulemaking**

In this section of the literature review, I focus on the body of research related to participation in rulemaking processes, specifically how regulators utilize institutional processes and how stakeholders interact within those processes on the federal level; in the following section, I examine scholarship on participatory rulemaking at the state level.

In order for public interest institutionalism to function, the regulator must have enough discretion, authority, and willingness to congregate a diverse group of stakeholders who will participate in institutional processes to negotiate how the regulations will affect public interests. Some of the institutional processes at the regulator's disposal are those mandated within the APA, which include the public notice of rulemaking, a written comment period, and in some instances, a formal hearing (Rosenbloom, 2014). Even though these formal mandates are memorialized in law, regulators have discretion to use these institutional processes to invite more participation, or they can design processes in order to limit participation (Gangadharan, 2009; Shapiro, 2008). Even though it is the intent of the law to encourage participation by stakeholders, the details of conventional rulemaking processes are largely left up to the regulator to orchestrate (Shapiro, 2008). If, when, and how much stakeholder participation influences the final regulations depends largely on the mindset, or political will, of the regulator and their willingness to engage in meaningful, participatory processes.

The extent to which regulators use their discretion to facilitate participatory processes can be found in literature specifically focused on the volume and quality of participation used to inform regulations at the federal level. Shapiro (2008) conducted an empirical study that analyzed multiple federal regulations that received a high volume of public comments. According to Shapiro (2008), it was not clear whether or not the regulators designed rulemaking processes to increase participation, but it was helpful because the study shed light on why regulators would want to be thoughtful when deciding how to handle large volumes of comments. It may be easy to assume that more

participation is always better, but Shapiro (2008) noted that more comments did not necessarily mean more productive participation; not all of the comments in Shapiro's study contributed useful content for informing the final regulations. More comments submitted by stakeholders can also increase the odds of there being litigious challenges to the rule (Shapiro, 2008). The finding in Hwang et al. (2014) was consistent with Shapiro's findings and showed how courts were sensitive to whether or not regulators adequately defended their decisions to use or not use recommendations or data from public comments. It could be as important for regulators to use written comments to inform the final rules as it is to defend how much participation was fostered.

The final rules promulgated by the regulator could be subject to oversight. Shapiro (2008) found that agencies utilized public comments to change the rule when comments helped regulators better understand the complex technical nature of a rule and public comments were also considered by regulators if oversight bodies did not appear to have an interest in the rule change. The participation that occurred mattered because it influenced the outcome and agency regulators used discretion to weigh the political and legal impacts of their decisions to change or leave a regulation alone according to Shapiro. Regulators have to be mindful of other institutions like the courts and lawmaking bodies that also have an influence on the public policy public policy shaped through rulemaking.

Political influence is an unavoidable aspect of rulemaking. The manner and effectiveness with which oversight bodies like the executive branch, Congress, and the courts restrict agency discretion on timing of conventional process is mixed in the

literature. The manner in which oversight bodies interact with the regulator can have both positive and negative impacts on the quality and quantity of public comments (Balla, 2015). Balla (2015) empirically found that regulatory agencies used their discretion to extend notice and comment periods when they needed to get more input from stakeholders, and they could shorten those same periods if they were lacking resources or when the agency is engaged in multiple notice and comment periods. This research showcased the regulators ability to influence the process and throttle up for more participation if they needed it and ratchet it down if they did not want more participation.

If an agency can use discretion to influence the prioritization of rulemaking process and control the flow of participation, they are likely to use that authority. Lavertu and Yackee (2012) found that regulatory agencies were more likely to meet mandated timeframes from Congress, but less likely to meet self-imposed deadlines negotiated with stakeholders. Congressionally mandated deadlines might serve the purpose of speeding up rulemaking processes but can lead to regulators shortening the length of time stakeholders have to participate (2012). This could limit the regulator's ability to foster more communication through participatory processes.

Regulators can use their authority to shape the process depending on political factors. Potter (2013) found that regulators reduced the amount of time stakeholders have to review agency notices and submit comments when there was pressure on the regulator from the executive branch or legislative bodies to promulgate a rule, which substantively decreased opportunities to participate. On the other hand, Potter (2013) also found that regulators were likely to increase the time for public comment in order to obtain more

supportive feedback to justify their own ideas on how the policy in the regulation should be formulated. Thus, regulators have the ability to leverage their regulatory discretion in conventional processes to help ensure their desired outcome is achieved, even if there is pressure from oversight bodies (Potter, 2013). Although the literature contains mixed results in respect to how effectively oversight bodies can affect agency decision-making, the decision still exists for regulators to utilize agency discretion to administer conventional and contemporary rulemaking processes.

Regulators are not confined to the participatory processes required by law. Within the theory of public interest institutionalism Ginosar (2014) described the idea that a combative regulator might try to limit participation while the coordinating regulator uses participation from a diverse group to collectively arrive at a shared understanding of public interests. Regulators also have discretion to use other institutional processes like informal meetings with stakeholders before notice and comment periods (Rinfret & Cook, 2014; West, 2009) and workgroups after rulemaking had begun (Rinfret, et al., 2014). Just as with formal procedures, regulators can choose to use or not use these techniques to encourage participation (Gangadharan, 2009). The combative regulator (see Ginosar, 2014) tends to use traditional or conventional rulemaking processes to advance their approach to a given rule, while the coordinating regulator tends to employ innovative or contemporary rulemaking processes to develop a rule that is more inclusive of competing ideas. It is clear that regulators have discretion to design more participative processes if they choose to do so for rulemaking.

The difference between coordinating and combative regulators is clearly articulated in the concept of negotiated rulemaking. In negotiated rulemaking, coordinating regulators proactively seek input from a diverse grouping of stakeholders before or during conventional rulemaking processes required under the APA (Hwang et al., 2014). Negotiated rulemaking is not required by law but has been encouraged by elected officials as a way to ensure that rulemaking processes are inclusive, transparent, and fair (Hwang et al., 2014; Kerwin & Furlong, 2011). Regulators belonging to executive branch agencies have been encouraged by the legislative branch to exercise discretion and proactively cooperate with stakeholders (Kerwin & Furlong, 2011). Regulators not only have discretion but are also encouraged by the governmental bodies to which they report to use contemporary rulemaking concepts.

Contemporary rulemaking, in the context of this research, does not mean that all of the traditional institutional rulemaking processes should be cast aside, but suggests there is room for a coordinating regulator to engage in additional activities that complement conventional rulemaking institutional devices. Negotiated rulemaking (Fiorino, 1988; Langbein & Cornelius, 2000; McDonald et al., 2005; Ryan, 2001;), shuttle diplomacy (Rinfret & Cook, 2014), and dynamic rulemaking (Wagner, West, McGarity, & Peters, 2017) are terms used to describe contemporary processes or concepts in federal rulemaking. In each case, the regulator is cast in the role of facilitating dialogue among a diverse group of stakeholders to negotiate regulatory policy within the confines of the notice and comment period (Langbein & Kerwin, 2000), engaging in persistent communication inside and outside of formal rulemaking processes

(Rinfret & Cook, 2014), or reassessing with stakeholders after the rule has been stress-tested in the real world by the regulated community (Wagner et al., 2018). A regulator's engagement with the public and interested stakeholders on controversial or complex policy issues is not limited to the narrow confines of traditional rulemaking outlined in the APA; instead, a coordinating regulator considers APA requirements a floor rather than a ceiling.

The sum of conventional and contemporary rulemaking components affords regulators numerous options to structure opportunities for stakeholders to participate in rulemaking. Figure 2 shows regulators' various procedural options by distinguishing between conventional components, which are generally required processes through the APA, and contemporary components, which the regulator can use at his discretion.

<b>Conventional Components</b>	<b>Contemporary Components</b>
These components are required by the APA and represent the minimum procedural requirements for regulators. Legally, these components must be addressed during the rulemaking process.	These components are largely discretionary for regulators and are done prior to, or during, conventional processes. These components are generally conducted in addition to the conventional components.
<ol style="list-style-type: none"> <li>1. Notice of rulemaking</li> <li>2. Written comment period</li> <li>3. Formal hearing*</li> </ol>	<ol style="list-style-type: none"> <li>1. Informal meetings</li> <li>2. Public workgroups**</li> <li>3. Advisory groups**</li> <li>4. Community sessions/town halls</li> <li>5. Online surveys/questionnaires</li> <li>6. Audience engagement services</li> </ol>

\* Some provisions of the APA require a hearing, while others do not. Formal hearings are included here because most provisions in state law require a formal quasi-legislative hearing and this research is focused on state rulemaking processes in Colorado.

\*\* For this research, Public Workgroups are temporary groups formed for the purpose of addressing policy issues in a specific rulemaking sequence while the Advisory Groups are formed for longer periods of time.

*Figure 2.* Conventional and contemporary components of U.S. rulemaking procedures.

The first two constructs described in public interest institutionalism posit that the regulator is best positioned to protect public interest over the long term by garnering feedback from a diverse group of stakeholders (Ginosar, 2014). The literature suggests that regulators do have the proper tools and discretion to facilitate effective rulemaking sessions. By leveraging both conventional and contemporary tools, regulators can help create a shared vision of what constitutes public interest.

### **Stakeholder Influence on Regulations**

The previous section focused on regulators and the extent to which they are positioned legally, practically, and politically to facilitate shared public interest outcomes in rulemaking. In this section, I discuss what the literature on stakeholder involvement in federal rulemaking found. This topic is important for three reasons. First, public interest

institutionalism suggests that a broad range of stakeholder input is important to determine the public interest. Second, public interest institutionalism posits that diverse opinions should be used as a tool to help regulators identify and frame new problems that arise over time, and third, public interest institutionalism seeks to arrive at outcomes that are reflective of participation by stakeholders in various institutional processes, whether conventional or contemporary in nature (Ginosar, 2014). None of the literature found specifically referenced participation through the lens of public interest institutionalism, but ample literature was found where authors discussed the extent to which stakeholders influence rulemaking topics through formal and informal interactions with regulators. For example, Furlong (1997) and Golden (1998) sought to better understand who participated in federal rulemaking and the extent to which those participants influenced the final regulations. Furlong (1997), who conducted a quantitative study, concluded that interest group participation mattered to stakeholders and that participation was important to influencing the final regulations. These studies indicated that participation mattered to stakeholders and the measure of success was influencing the final regulations.

Regulated industry members tend to participate more, but they do not always dominate the outcome. Golden (1998) found that varied interests in rulemaking from the public and the regulated community participated in rulemaking, but it was hard to determine which groups had the most influence. Golden (1998) was unable to determine which of those groups had the most influence over the final regulations even though it was apparent that public interest groups participated less than regulated industry groups. Furlong (1997) and Golden (1998) both found, somewhat inconclusively, that the

regulated industry was more organized, generally had more resources, and participated in rulemaking more frequently than public interest stakeholders. Regulated industry groups also utilized informal processes to achieve desired policy outcomes. Even though these findings reinforce all of the concerns previously noted about regulatory capture, it is important to note that stakeholders in earlier literature were able to influence future rulemaking agendas, and they were able to have some influence over the final regulations.

As noted earlier, much of the existing literature is focused on who participated in rulemaking and when they decided to participate. A substantial amount of literature shows that stakeholders involved earlier in the rulemaking process perceived themselves as being more influential in determining rulemaking priorities and final policy outcomes. By “early in the process,” scholars are generally referring to the time before any formal notice and comment period. West and Raso (2013) noted that approximately 60% of new or revised federal regulations subject to rulemaking were advanced by the regulatory agency. They also found that most agenda items were rule revisions that were part of the agency’s effort to implement a regulatory program over time. These revisions tended to favor regulated communities, who generally began their working relationship with regulators very early in the rulemaking process and sustained their involvement over the long-term (West & Raso, 2013). West and Raso (2013) found that although a large portion of the rules were brought forward by regulators, the regulated community influenced which rules should be brought forward by agencies for new or revised policy. This influence was achieved by early involvement in the regulatory process (2013).

These findings were consistent with other literature that focused on special interest group involvement with regulators before the onset of formal procedures.

Influence can be assessed at various points in the regulatory process. Since regulatory agencies have limited resources, there is a strong likelihood that they cannot address all of the rule changes all of the potential stakeholders want considered (West & Raso, 2013). Agencies have to decide what issues to prioritize and advance to rulemaking; stakeholders may influence the process by getting key issues on the rulemaking agenda. Yackee (2011) conducted a quantitative study that measured how informal communication between regulators and special interest groups during the early stages of developing a rule (in advance of a formal notice and comment period) influenced the rules brought forward for rulemaking. Researchers findings showed that special interest groups who lobbied regulators early in the process were successful at influencing rules that advanced into the formal process; they were also affective at keeping other rule topics from advancing into the formal process (Yackee, 2011). In fact, Yackee (2011) found that special interest groups that met informally with regulators were 41% more likely to influence the regulatory agenda than groups that did not meet with regulators early-on. This raises concerns about fairness and transparency. Unfortunately, Yackee (2011) did not categorize the special interest groups to learn whether or not those interest groups were more focused on public or private interests. Since public interest institutionalism seeks influence from a broad set of perspectives, it is important to know if this is possible when much of the literature focuses on how the regulated community dominates influence during rulemaking.

Every regulator is subject to competing forces, all of which can make balancing varied interests complicated and contentious. Rinfret and Cook (2013) conducted a qualitative study that focused on interest group participation throughout the entire process for a specific rule. Like West and Raso (2013) and Yackee (2011), Cook and Rinfret (2013) also found that earlier involvement by stakeholders resulted in more influence over various stages of the rulemaking process. However, this advantage was not limited to industry interests; all interest groups who participated early were able to influence the rules (2013). The interviewees for Cook and Rinfret's (2013a) study came from various interest groups and included public officials, scientists, and members of the regulated community. All of their interviewees were involved from the early stages of the rulemaking process through the formal process of notice and comment. Rinfret and Cook (2014) found that the regulator deliberately sought input from various stakeholder groups to ensure she received information from a variety of sources, not just the regulated community. In that study, Rinfret and Cook (2014) found that it was helpful to gather input from various stakeholder opinions in order to find areas where the regulator could negotiate common ground for a resolution in the final rule competing interests could live with. The researchers referred to this concept as shuttle diplomacy, where regulators sought out participation by various stakeholder groups in order to arrive at a mutually agreeable final regulation. These studies emphasize the ability of the regulator to use their discretion to convene rulemaking that incorporates a broad set of different-minded stakeholders. They also show that stakeholders can help the regulator define problems and incorporate various policy alternatives into the final regulation.

Convening a diverse group of stakeholders may be important but stakeholders can help their own case by presenting useful and constructive information the regulator can work with effectively. In an earlier study, Rinfret and Cook (2011) found that different interest groups were particularly effective at influencing regulators if the presenting stakeholder had specific knowledge of the relevant rules and industry, proposed a financially feasible approach, and was able to provide detailed instructions. Using these strategies was effective regardless of the stakeholder's interests (public or private; Cook & Rinfret, 2013). Costa, Desmaraias & Hird (2019) researched how regulators used scientific comments submitted by various stakeholder groups on a rule promulgated by the EPA. The quality of stakeholder content was important, but how the regulator, under pressure from Congress, used the input was part of a complex synthesis of scholarly stakeholder submissions and political pressures (Costa, et al., 2019). In the end, the regulator left the rule in question intact to the benefit of public interests, but it omitted several scientific citations underpinning the rule, which benefitted the industry participants (2019). In both studies, stakeholders with thoughtful, defensible and grounded proposals were more likely to garner the attention of the regulator but political pressures could play a material role in deciding the final outcome despite quality contributions from stakeholders. This is a reminder that rulemaking is part of a larger cyclical public policy engine that is not immune to oversight and influence outside of the rulemaking process. Rulemaking processes, and the extent to which those were equitable and transparent, will be subject to the scrutiny of government oversight making the defensibility of rulemaking processes important.

All of the relevant literature in this review, up until this point, was exclusively focused on federal rather than state-level rulemaking. Starting with a review of the relevant federal literature was part practical and part by design. From a practical standpoint, most of the relevant research found using the keywords described earlier in this chapter examined the various components of federal rulemaking in the United States. Since most state rulemaking processes are created in the image of the federal APA (Rosenbloom, 2015), it made sense to examine the federal literature first to better understand how that body of research was relevant to the constructs of public interest institutionalism. However, I focused my research on state-level processes for rulemaking that occurred during the legalization of marijuana in Colorado. Therefore, in the next section of this review I focus on participation in state-level rulemaking.

### **Literature on State Level Rulemaking**

Parsing the state level rulemaking literature was important to this research for two reasons. First, my research was focused on state level rulemaking processes that transpired as the result of cannabis legalization in Colorado between 2013 and 2016. It makes sense, then, to review the state rulemaking literature separately because it is more analogous to the specific phenomena explored in this research. Second, the theoretical framework for this research, public interest institutionalism, is based on research done at the federal level, so it is important to establish its applicability to state level rulemaking. In other words, are there similar themes in the relevant state-level research and federal research? Or, are there unique dynamics at the state level that will help inform the design of this proposed study?

Research focused on state level rulemaking, especially as it relates to the role of regulators and interested stakeholders, is more diffuse than the literature on federal rulemaking. I uncover from the state research that does exist some of the same themes I explored in the federal rulemaking section in order to provide a better understanding of how public interest institutionalism might be applicable at lower levels of government.

State requirements for regulators to incorporate public participation and feedback into rulemaking processes are similar to federal rulemaking requirements. The federal APA, at least in spirit, is largely reincorporated into each state law, so the institutionalized processes that are part and parcel to federal lawmaking are also hard-wired into nearly all state rulemaking processes (Rosenbloom, 2015). For example, the institutional processes listed in Figure 2 are applicable to both federal and state rulemaking processes. State regulators are subject to institutionalized processes that are required by law, including notices of rulemaking, written comment periods, and public hearings. State regulators are also afforded many, if not all, of the discretionary processes like the one employed in Rinfret, et al. (2014) where they researched the state regulatory response to new fracking rules. In one state where regulators conducted outreach and workgroups with stakeholders during rulemaking, participants reported to the researchers that they felt heard and the process was transparent (Rinfret, et al. (2014). In states that did not include discretionary processes, stakeholders felt left out of the process and did not feel like the agency was being transparent (2014). The consistency in process alternatives or modes of participation between federal and state regulators means that

public interest institutionalism is an applicable theoretical framework for exploring the state-level phenomenon that is the focus of this research.

The regulator is central to achieving the positive outcomes of public interest institutionalism. For this to happen, the regulator in Colorado had to have the authority in law through the APA (C.R.S § 24-4-101.5 et seq.), the willingness, and the political support to coordinate diverse interests to arrive at shared goals for public health and safety (Ginosar, 2014). In reality, a coordinating regulator envisioned by Ginosar (2014) might be akin to a unicorn because stakeholders have so many competing interests amongst one another, regulatory decisions can invoke action within other areas of government, the regulator may have the ability to influence public policy in other arenas of government (i.e., state legislatures), or the regulator may have strong ideological feelings about the public policy. For example, these factors were present in scholarship focused on federal rulemaking where political pressure from Congress influenced the regulators decision (Costa, et al., 2019) and state rulemaking where regulators were encouraged by the findings of Crow et al. (2019) to more proactively seek our input from an eclectic group of stakeholders to inform equitable rulemaking decisions. All of these factors may vary on a state-by-state basis, but the central role of regulator in designing processes using required and discretionary modes of participation is consistent between the federal and state levels of government.

Like federal regulators, state regulators have a significant amount of discretion and influence. In fact, state regulators may have more influence than those at the federal level. Boushey and McGrath (2015) found that across the country, state regulators are

increasingly being relied on by state legislatures to develop public policy through rulemaking. There are two reasons for this phenomenon, and they are relevant to this study. First, Colorado was a divided chamber, which according to Boushey and McGrath (2015) could have made it hard for state law making bodies to work out details of the public policy during the legislative session. A lot of policy not included in the statutes (C.R.S. § 12-43.4-102) were deferred down to regulators to incorporate into rule (C.C.R. § 212-2). No one had ever tried to regulate cannabis commercialization for adult use, so there was a lot of policy to develop and a divided chamber in 2013 could not get that all accomplished in time for January 1, 2014 when legal sales were constitutionally allowed to begin. Second, Colorado law making is not a full-time job, which also compelled lawmakers to delegate more public policy down to regulators (2015). The part-time lawmakers in Colorado had little or no experience creating a regulatory framework from scratch, so they had to rely on other experts to flush out the details of the public policy beyond the short time frame of Colorado legislative session, which occurs from January to May of every year.

State legislatures are frequently divided between parties, so there is less opportunity to resolve divisive public policy matters during a limited legislative session, Legislatures are tempted to pass tough decisions down to the quasi-legislative process that is rulemaking (Boushey & McGrath, 2015). This was certainly the case while legalizing cannabis in Colorado, where the state legislature delegated rulemaking authority to the MED for everything from testing standards, to electronically monitoring inventory, to production controls, to advertising and food manufacturing (C.R.S 44-10-

101, et. Seq.). Boushey and McGrath (2015) estimated a 14% increase in rulemaking when state government had divided chambers, and this was likely even more in Colorado because no one had ever fully designed a complete regulatory structure for the legal sale of marijuana in a regulated commercial market. The divisive nature of a state legislature session can be compounded by a member's lack of expertise with many divisive policy issues, which was certainly the case for lawmakers in Colorado given the nascent nature of the public policy around cannabis legalization.

Creating a completely new regulated commercial market can take a significant amount of time. Many state legislatures only have part-time lawmakers that lack the critical institutional knowledge needed to make material public policy decisions (Boushey & McGrath, 2015; Woods, 2005). As a result, many divisive or complex policy decisions are deferred to state regulators who do have the institutional knowledge needed to advance pertinent public policy (McGrath, 2015; Woods, 2005) when the scope of the discourse at the legislature extends beyond the limits of the legislative term. Since there is a general reluctance by legislators to extend too much authority to regulators, lawmakers may choose to control the agency through regulatory oversight.

Controlling the bureaucracy through oversight does not mean that the regulatory agency will lose its ability to facilitate the regulatory processes outlined in public interest institutionalism. Less oversight is not necessarily a negative; Boushey and McGrath (2015) found that the amount of rulemaking rose by 18% when the legislature had a divided chamber and there was weaker or limited oversight of rulemaking processes and outcomes. One might assume, then, that if the legislature had more oversight, then

rulemaking authority might be tempered due to increased scrutiny. Palus and Yackee (2013) found that regulator influence increased with more oversight, because oversight forced more communication between the legislative body and the regulator. Palus and Yackee's (2013) finding was supported by Woods (2005), whose quantitative study found that more oversight and regulatory review diminished the effectiveness of various interest groups. In other words, less oversight led to more rules (Boushey & McGrath, 2015). More oversight led to more interaction between regulators and legislatures and more influence over the final regulations (Palus & Yackee, 2013). Also, special interest groups influence could be less impactful. The impact of oversight was especially prominent when the regulator had established a comprehensive set of professional relationships with a diverse group of stakeholders (Palus & Yackee, 2013). The network of professional relationships improved the regulator's ability to influence the regulatory process and final rules even though there was oversight by the legislature.

In addition to influencing public policy through the state legislature, regulators can also influence public policy through the governor's office. Palus and Yackee (2013) found that regulators are actually more likely to influence public policy priorities at the governor's office because legislatures are often divided politically, and the culture can be more divisive with a multi-party makeup. This dynamic adds to the notion that regulators play a central role as an influential policy maker in many states and, depending on the circumstances, may be well positioned to help negotiate the public interest (Ginosar, 2014). In aggregate, regulators have the ability to influence beyond the rulemaking

processes and could play a central role in public policy agendas at state legislatures and the governor's office.

### **Private and Public Interest Influence in State Rulemaking**

Private and public interest stakeholders who participate in rulemaking processes may find it helpful to have opportunities to participate, be heard, and learn more about other opinions, and see the fruits of their labor in the final state regulations. The research synopsis below will provide some insight into how private and public interest participate, learn, and influence regulatory processes at the state level. The research in this area was limited but private and public interest stakeholders can participate both through private informal meetings with the regulator and/or formally through formal public processes like notice and comment, workgroups, or hearings.

Informal meetings with regulators are private meetings whereby one group or specific interest participates at a time. In a two-state research project on environmental regulations, researchers found that it was important for regulators to leverage informal processes such as stakeholder meetings (Crow, et al., 2015b) to gain a deeper understanding of a particular approach to a given rule. It was challenging for regulators to ensure those meetings included perspectives from different groups because the regulated community participated in meetings more frequently than public interest stakeholders (Crow et al., 2015; West, 2009). In later research, Crow et al.'s (2019) quantitative research found that regulators tended to entertain informal meetings with known parties, which tended to limit public interest participation in this mode of participation. This practice could present a challenge to regulators if they do not meet informally with

multiple perspectives because could miss opportunities to fully identify areas of disagreement.

If regulators do not proactively seek out input from a broad set of stakeholder perspectives for informal meetings, a particular interest could potentially be underrepresented. Crow et al. (2015b; 2019) concluded by noting that regulators tend to have informal meetings with stakeholders who are known to them, which may or may not include enough perspectives. Despite the potential for more involvement by industry (Crow et al., 2015; 2019), Yackee (2015a) found that robust lobbying efforts leading to informal meetings with regulators did not actually help the industry influence the final states regulations. Even though the effectiveness of informal meetings were called into question by Yackee, Crow et al. (2015) found that informal meetings helped regulators act more efficiently to identify and frame public policy issues. In public interest institutionalism, the regulator is responsible for framing public policy issues for the broader group of stakeholder perspectives (Ginosar, 2014). Informal meetings could help in that regard, but regulators might want to be mindful of the perceived advantage industry stakeholders have advocating for private interests in rulemaking processes.

Industry stakeholders are generally believed to have an advantage when participating in most aspects of rulemaking to include lobbying resources. Industry interests are directly impacted by regulations and industry stakeholders are more likely to invest a significant amount of their lobbying efforts advancing their policy interests, which was found by Grasse et al. (2016) to be about 80% of industry's government relation resources. Grasse et al.'s (2016) findings are consistent with those of Crow et al.

(2016; 2019), who noted that regulators were more inclined to have informal meetings with lobbying groups they were familiar with or interacted with on a more frequent basis. As we know from our earlier discussions about involvement over time, the industry participants representing private interests continue to be involved more over time while public interests tend to subside.

The regulator's relationship with the regulated community was an area of focus in state rulemaking just as it was on the federal side. The relationship between regulators and regulated communities, if too close, can result in the public feeling alienated or public interest groups being left out of the discussion, especially if the industry interests dominate the rulemaking processes (Crow et al., 2016; 2019). These dynamics are important for the regulator to consider when choosing participatory processes. Feedback from public interest groups may be more difficult to obtain if they lose interest or feel like their participation doesn't matter.

Private and public interest stakeholders often participate through the notice and comment period, but the quality of that stakeholder content may play a role in how influential it is in the final rules. Throughout the rulemaking process, stakeholders that presented expert advice grounded in technical and scientific evidence was seen as reliable evidence and persuaded the regulators to consider their position (Cook, 2015). Even though the quality of stakeholder content relevant to garnering the attention of the regulator, the regulator still operates within a political environment where oversight bodies can apply pressure to influence the rules (Costa, et al., 2019). Quality scientific data may matter, but other forces may dominate the direction state regulators take.

State regulators work in executive branch agencies and those agency heads usually work at the pleasure of the governor. In Cook's (2015) case study of Colorado's fracking industry, regulated industry interests were favored in the final policy; these industry-favoring results were partially attributed to the fact that Colorado's governor agreed with fracking policies. Cook's results showed that the final regulations would likely have been different if the governor had a policy position similar to the non-industry interests especially if those non-industry positions were supported by strong technical and scientific data (2015). Having an opinion on policy that differs from that of the governor can create an immediate challenge because executive branch agencies tend to advance the governor's public policy priorities, but strong scientific data provided by stakeholders during notice and comment seems to have persuasive and influential value.

It appears that regulated actors can more readily access regulators and influence final regulations, but the coordinating regulator (see Ginosar, 2014) would proactively seek input from other stakeholders to advance more equitable public processes. Rinfret et al. (2014) studied fracking regulatory policy in several states to better understand how stakeholders perceived their experiences. Rinfret et al. found that regulator-led outreach to garner participation in workgroups made stakeholders feel more involved, even if the final policy was contrary to their policy objectives. Perceptions of being heard during the processes were distinguished from state led processes where the regulatory agency took a *fait accompli* approach to promulgating regulations according to Rinfret et al. This suggests that stakeholders can distinguish between processes designed by regulators that

are inclusive of stakeholder input versus those that are not and; being heard is important to most stakeholders.

In other words, being part of conversation and rulemaking processes were important to private and public interest stakeholders. In a mixed model study, Yackee (2015a) found that involvement in the rulemaking process was generally perceived as being helpful by public interest stakeholders even if the industry had an advantage through advanced lobbying efforts. In her next study, Yackee (2015b) explored whether or not there was a difference between informal and formal rulemaking processes when it came to how stakeholders viewed the effectiveness of their participation. Unlike Crow et al. (2015) and Crow et al. (2016), Yackee found that private, informal meetings with regulators were less effective than those done in public view (2015b). Also, Yackee found that stakeholders perceived improved effectiveness of their involvement if they participated in more processes (2015a;2015b). Taken in aggregate, any stakeholder can influence regulations if the regulators conduct processes equitably, if viewpoints are supported by technical and scientific data, and if the stakeholders participated in both formal and informal processes (2015a; 2015b). In my research, I will gain useful insights from both private and public interest stakeholders who participated formally and informally with regulators over a three-year span in Colorado after the legalization of cannabis in 2013.

### **Summary**

This chapter included a thorough review of the available literature on participation in rulemaking and rulemaking processes. I showed from the literature that

regulators can be vulnerable to capture by the regulated community when public interest stakeholders' participation declines over time. The specter of capture is likely, but not necessarily inevitable, according to Ginosar's constructs of public interest institutionalism. In public interest institutionalism, Ginosar posits that the regulator is best positioned to negotiate the public interest by considering various public and private interest perspectives as she defines what the public interest should be within a particular regulatory framework. I showed how the literature is consistent the tenets of public interest institutionalism by confirming that regulators have the necessary tools and discretion to customize processes to solicit feedback from a wide variety of viewpoints. In this way, regulators can better understand what the collective voices of private and public interests support as promoting the public interests. Regulator authority is confirmed in the literature on rulemaking at the federal level, but more importantly, on rulemaking at the state level, which is my focus for this study.

Additionally, I show from the literature that participation by external stakeholders' matters. Even though regulators have significant influence over regulatory processes and final outcomes, regulators should consider diverse stakeholder interests as they create new public policies. Stakeholders will participate in regulatory processes; if their participation is ineffective, they are likely to pursue other means of influencing public policy. For example, in the case of capture, the regulated community will continuously participate in regulatory processes while also establishing and leveraging influence in other facets of government like legislative and judicial proceedings. These

actions can lead oversight bodies or executive administrations to exercise authority over regulators, which can decrease the regulator's influence.

I confirm in the literature that regulators and external stakeholders both have influence over public policy, and over regulations in particular. Perhaps cooperation, rather than adversarial processes, between regulators, public interest, and private interest stakeholders during rulemaking would make for more favorable outcome by way of consensus building. Even though there was some evidence that private and public interest stakeholders appreciate involvement, the literature was far from conclusive on this point. Through the literature review, I pieced together the case for regulators to facilitate participation using mandated and discretionary institutionalized processes, but there was a gap in the literature: studies are needed that explore, in detail, how stakeholders view their involvement in both mandatory and discretionary types of regulatory activities. As such, I will explore stakeholders' past experiences participating in rulemaking to better understand the extent to which their involvement in mandatory and discretionary regulatory processes was successful helping stakeholders to understand other viewpoints, the degree to which they felt their voices were heard, and the extent to which they were able to influence final regulations.

In Chapter 3, I detail the methodology that will be used to conduct this phenomenological study through the lens of public interest institutionalism, provide the rationale for this choice, and outline a detailed plan for collecting and analyzing data from participants.

## Chapter 3: Methodology

### **Introduction**

My goal for this study was to better understand stakeholder perceptions of rulemaking processes that occurred in Colorado after the legalization of marijuana in 2012. Ginosar (2014) suggests, through the lens of public interest institutionalism, that the regulator is best positioned to facilitate balanced regulatory policy by engaging stakeholders in meaningful discourse. I gathered and analyzed data to better understand how regulators can design rulemaking processes to engage public and private interests to negotiate into regulation what was in the best interest of public.

I used a qualitative methodology with a phenomenological approach.

Phenomenological research accepts the subjective nature of the researcher's personal experiences that are shared with the participants of the study (Moustakas, 1994; Patton, 2002). Further, researchers use a phenomenological method to enhance and develop their interests through a thoughtful description of what was experienced by others during the same phenomenon. Given these aspects of phenomenology, I was well suited to be the primary researcher in this study. In the following sections of this chapter, I discuss my role as the researcher in this study, provide an overview of relevant literature, explained my sampling strategy, and introduce my data collection and data analysis strategies.

### **Research Design and Rationale**

The overarching research question for this study was: What are stakeholders' perceptions and lived experience of rulemaking processes facilitated by the Colorado

Marijuana Enforcement Division (MED) during the legalization of marijuana between 2013 and 2016?

Subquestion 1: How did participants perceive that their experience informed or influenced the rulemaking processes?

Subquestion 2: How did participants perceive other stakeholders' viewpoints and contributions to the rulemaking processes?

Subquestion 3: How did participants perceive the regulator's role during the rulemaking processes?

Subquestion 4: What were participants' lived experience of engagement in the rulemaking process?

I designed qualitative research proposal and adopted a phenomenological research approach. In phenomenology the researcher focuses on how people or groups of people have experienced the phenomenon being studied (Patton, 2002). Researchers also use a phenomenological research design to use various theories related to the social sciences and the phenomenon being researched as they design and implement the study (Patton, 2002). In this research, I explored how public interest advocates, law enforcement, state and local government officials, and regulated marijuana businesses perceived their experiences in public rulemaking processes during the implementation of marijuana legalization in Colorado. Each of the stakeholder groups included participants who were deeply involved in a series of rulemaking sessions that occurred from 2013-2016 that built the foundation for regulations in Colorado. These participants had disparate ideas regarding how marijuana regulations should look in final form, but they shared the

experiences of participating in public rulemaking processes together, which is consistent with Moustakas, (1994) and Patton (2002) who both discussed how phenomenological participants have shared experiences with the same phenomenon being studied. My goal of this research was to explain how the stakeholders described their experiences in rulemaking rather than assess the different positions on the public policy, making the phenomenological tradition an appropriate methodological choice. In general, I sought to understand how a specific and narrowly tailored group of people experience the central phenomenon of interest in a study (Creswell, 2013). The central phenomenon that I examined in this study was participation in state rulemaking for the legalization of cannabis.

In this research, I interviewed respondents who had shared experiences participating in the same rule-making processes. Phenomenological research is focused on perceptions of people who have had first-hand experience with the occurrence of interest in the study (Patton, 2002). Phenomenological methods are designed to understand the shared experiences of subjects as they relate to the focus of the study (Patton, 2002). As stated by Moustakis (1994) and Schwandt (2007), phenomenological researchers value the subjective recall of research participants and welcome diverse perspectives that can describe how they perceived the same experiences. Therefore, in this study, I collected data through semistructured interviews with participants, all of whom took part in at least two regulatory sessions during the legalization of the marijuana. I recruited participants with diverse opinions, from a variety stakeholder groups, and collected data about their experiences participating in rulemaking and

learning about other groups, and their perceptions of their ability to influence the final regulations.

### **Role of the Researcher**

I was the sole researcher for this study. I have had professional relationships with most of the participant population. Many of the prospective subjects were government officials during the rulemaking process for legalizing marijuana, while others were opponents of legalization or members of the regulated community. I was no longer a government official for the entirety of this research, and I currently do not have any official oversight of the prospective participants in the marijuana industry, other than what is detailed below. I thoughtfully considered these past relationships were when designing this study and when determining what methodology to select. There were no identified conflicts of interest.

My relationship to the topic of this study was well-established and documented. I played a material role as a primary architect of the rulemaking processes the state adopted during the period of 2013 to 2016. I was either the chair or co-chair of nearly every public workgroup meeting and hearing during that time, consistently represented the state's interests in lawmaking and rulemaking, and was charged with drafting rules for proposal to the state licensing authority. Lastly, I was tasked with monitoring and enforcing the regulations. My relationship to the phenomenon cannot be understated; I had shared similar experiences with the population I invited to be participants in the study. This type of relationship to the phenomenon would clearly be suspect in a

quantitative study, but not in qualitative study where I utilized a phenomenological approach.

In fact, these factors were well suited for a phenomenological approach. Patton (2002) stressed that the relationship between the subject, researcher, and phenomenon of interest was an important factor in phenomenological research. Patton referred to this concept as the spirit of phenomenological research (2002). Given my past experiences with the phenomenon, I had to manage any biases I may have had about the effectiveness of rulemaking processes during the time period being studied. I employed several strategies to manage the perception of bias. First, I purposefully used a methodology that took into account my relationship to the phenomenon. Second, I detailed my relationship to the phenomenon; by doing so, I acknowledged any perceived biases readers might have about my role as the researcher by being upfront and transparent about my past as directed by Creswell (2009). As I presented my data (the experiences of participants), I also made note of how my biases might be shaping my description of those experiences, themes, or findings. This allowed me to leverage my past while also ensuring the objectivity of my findings, especially since I routinely reminded myself and my readers of how my experiences with the phenomenon have potentially influenced my perceptions and descriptions of others' experiences as advised by Creswell (2009). I used these measures to manage both real and perceived biases I may have had in regard to the topic of study.

### **Setting and Sample**

The population for this study included anyone who participated in two or more participatory rule-making opportunities in two or more rule-making notices in Colorado, and who participated in MED-hosted rulemaking workshops during the legalization of marijuana from 2013 to 2016. Many people who met the minimum criterion had considerably more instances of participation in the rulemaking processes than were the focus of this research. For example, many individuals who were frequently involved in MED-hosted workgroup meetings were also very active in the entire public policy process from 2013 to 2016; these people were likely to participate in other aspects of rulemaking, like submitting written comments and testifying at rulemaking hearings. As a result, these persons had unique, first-hand experiences and have the most comprehensive knowledge of the events central to phenomenon, which Creswell, (2013) noted was important for phenomenological research. Many of these participants represented other government agencies, law enforcement, industry trade groups, special interest groups, or other interested parties such as subject matter experts. In aggregate, the population identified above represented the total universe of qualified persons to potentially interview, which was estimated at 150 to 200 people.

### **Research Sample**

I used a purposeful sampling technique to ensure that participants with the richest set of experiences with the phenomena being explored were chosen to participate in this study. By using purposeful sampling, I was able to capture what Moustakas (1994) described as the essence of the phenomenon, which in my research was the participative

processes. Patton (2002) emphasized the importance of purposeful sampling in order to concentrate data collection on sources that are most likely to produce the most meaningful data. For this particular study, individuals who had participated extensively in rulemaking would have had the richest experiences and insights to share.

The eclectic group of stakeholders who participated in the workgroups, which included marijuana industry licensees, law enforcement, local licensing authorities, subject matter experts, state agency officials, and public interest groups, were the subjects with the greatest amount of information. Therefore, these individuals were the target of purposeful sampling as described by Patton (2002). The respondents' involvement in MED rulemaking processes is detailed more in Chapter 4.

The approach for sampling in this research plan was consistent with other qualitative studies with a similar focus. In Doheny and O'Neill's study (2010), there was a large population of jurors that could potentially participate in the research. The researchers used purposefully random sampling, as described by Patton (2002), to trim the number of participants down to a more manageable number of potential participants. Doheny and O'Neill (2010) identified participants who could talk about their experiences before and after service as a juror. Similarly, I focused on people who had directly experienced the participatory rulemaking process. I accomplished this by using my institutional knowledge of stakeholders' involvement in various rulemaking processes and the components in which they participated (informal meetings, workgroups, and written comments) to make sure the stakeholders with the most relevant experiences were contacted for participation in this research.

One of the most relevant and publicly covered components of rulemaking in Colorado for the legalization of marijuana was the rulemaking workgroups that were conducted shortly after legalization. Rossmann and Shanahan (2012) sought out members of the advisory group being studied because they were the only people with direct experience as a member of the committee. Since those subjects had the most experience, they were best positioned to provide data in the study because they had the most aggregate knowledge about the phenomenon (Patton, 2002). In this research, I purposefully recruited stakeholders with extensive experience throughout the entire term of marijuana-related rulemaking from 2013 to 2016. By using maximum variation sampling described by Patton (2002), I ensured that multiple perspectives from private and public interests were included by reaching out to all major stakeholder groups and their representatives to ensure that all eligible individuals were identified to participate in the study.

In both Doheny and O'Neill's (2010) and Rossmann and Shanahan's (2012) studies, researchers identified the demographic that would be most capable of providing the greatest amount of information to aid in successful data collection. The researchers in both projects had smaller pools to sample from that limited exactly who would be the best subjects to generate data, which is consistent with advisable qualitative research methods according to Patton (2002).

I recruited participants from several public and private interest groups, so the sample group represented multiple views on the process. In order to produce valid data, the participants needed to have been directly involved in the processes and subject to

phenomenon being analyzed. The validity of my aggregate data was dependent on my ability to ensure that participants from all major stakeholder groups were interviewed and that all their experiences were included in my analysis. Given my deep experience with the rulemaking processes in question, I was able to identify prospective interview candidates who met all of the criteria noted above.

I planned to interview 9–12 individuals who met the research criteria. As Patton (2002) noted, one of the challenges is identifying a heterogeneous group of stakeholders to discuss their experiences with the rulemaking processes. Patton (2002) advised that qualitative research samplings can be relatively small in number, especially compared to quantitative research, as long as they provide an accurate and comprehensive amount of information relevant to the phenomenon being studied. Because I was targeting 9–12 research subjects, I recruited individuals who had the most experience with the rulemaking processes that took place during the legalization of marijuana in Colorado from 2013 to 2016. I included stakeholders from the cannabis industry, law enforcement officials, public interest groups, and local authorities to achieve saturation from my sample. Given the diversity of perspectives, I only needed to recruit about two to three people per stakeholder group to get the data needed for this research.

I planned to contact via email approximately 75 individuals I knew to meet the criteria detailed above to request their participation in this study. Many of the prospective subjects were part of my professional network and were easily contacted. Participants who responded to my email or phone call were screened more closely in a preliminary phone call where I gave an explanation of my research plan and the level of commitment

for participants. I also explained that their participation would be anonymous. Subjects who agreed to participate were scheduled for in-person, semistructured interviews. I did not have trouble recruiting enough participants to interview. However, I did plan to send out follow up emails and reach out personally if I needed to garner more participation from the most qualified prospective subjects. I also planned to send out emails to other subjects who met the criteria for participation in this research, but that back up plan was not needed.

### **Data Collection Procedures**

#### **Instrumentation**

I collected data for this research exclusively from interviews with respondents. Creswell (2013) noted that in phenomenological research, the qualitative researcher is the primary instrument. In this research plan, I collected data through semistructured and open-ended interviews. Enlisting research subjects with the most experience with the phenomenon is critical to qualitative research with a phenomenological approach (Creswell, 2013; Patton, 2002). I designed the interview questions to collect the perceived experiences of the interviewees who had richest experiences with the rulemaking processes central to this research. (see Appendix A). The open-ended questions I designed ensured that participants discussed their experiences and limited any inclination to provide the answer they thought I was looking for. This methodology was also central to a phenomenological methodology (Moustakas, 1994), which commonly uses semistructured interviews to provide meaningful data.

Additionally, I intentionally interviewed rulemaking participants with various opinions about the merits of legalization. I did not design my research plan to better understand whether legalization was a good or bad idea, but rather to better understand how people with various opinions on legalization experienced the same set of rulemaking processes. I was interested in knowing whether any or all of the different groups perceived that they were heard, whether or not they influenced the final outcome of the rules, and if they were able to better understand stakeholders with contrary opinions about legalization. I also intended to better understand how the regulator was perceived throughout Colorado's marijuana-related rulemaking processes. No data were collected until I received Institutional Review Board (IRB) approval. My IRB approval number was 05-07-20-0356995.

At the time this research was approved, COVID-19 had made in person interviews a safety concern. I addressed this situation by conducting interviews using GoToMeeting video conferencing. All scheduled interviews were calendared at a time agreed to by the research respondents. All interviews were conducted via GoToMeeting and audio-recorded. Prior to the beginning of each interview, the participant reviewed and acknowledged consent by reviewing and introductory email that also included an informed consent form detailing the purpose of the research, the ability of participants to opt out of the research at any time, and the measures taken to ensure confidentiality.

### **Data Analysis**

I collected data in the form of field notes and transcribed interviews. I utilized NVivo in order to store all data, analyze data through coding techniques, and develop

findings for the final research report. Patton (2002) encouraged qualitative researchers to leverage software during research in order to protect and preserve the research record and to make the analysis of data more efficient and visual. NVivo was used extensively in this respect.

My primary purpose for coding qualitative data was to develop themes from respondent's responses to interview questions. All coding was done within the NVivo software program in order to get visual clarification, induce from the data relationships between various responses from respondents, and draw conclusions about the data a detailed by both Creswell (2013 and Saldaña (2016). I used the coding plan to analyze smaller statement or word data to develop code themes. I identified similar or disparate participant perceptions of the Colorado rulemaking processes by using the codes that had been seen in earlier interviews as described by Saldaña (2016). The various codifications were categorized, and these categories were developed into themes (Saldaña, 2016). I conducted a thematic analysis of data, which provided insights into how people with disparate viewpoints perceived their experiences with the rulemaking process.

### **Trustworthiness**

I employed several techniques to ensure the internal and external validity of this research. Both components are explained in more detail below.

#### **Internal Validity**

During the semistructured interviews, I asked the same set of open-ended questions to all participants. In addition, I periodically asked follow-up questions to prompt participants to expand on certain aspects of their experiences with rulemaking

processes. This consistent approach to interviewing helped me to improve validity of the study while also collecting the fullest data possible (Patton, 2002).

I used GoToMeeting transcripts to create the initial draft of responses and confirmed them for accuracy to ensure verbatim transcripts were achieved. By taking this approach, it allowed me to listen to interviewees more attentively because I did not have to take detailed field notes during the interviews. Also, I ensured that the participants' exact words were captured, making my data analysis more accurate and effective. Since I asked different probing questions of interviewees, I was able to identify data gathered specifically from those questions.

After the interviews were transcribed, I conducted interview checking. Each participant had the opportunity to review the draft of their respective transcript so they could provide clarification if necessary. Interview checking is recommended as a way of ensuring the interview data are collected accurately and represent what the interviewee was trying to convey (Creswell, 2013; Moustakis, 1994). Using these methods, I was able to accurately capture the lived experiences of the participants.

### **External Validity**

I used rich thick description so the audience for this research could take the information gleaned and determine its validity in other settings as recommended by Creswell (2013). I went into great detail in this research plan to set the historical nature of legalization in Colorado, the type of stakeholders who engaged in the public policy processes, and the significance of this research. These aspects of rich thick description as described by Creswell (2013) aided in creating external validity for this research project.

### **Ethical Procedures**

I used several measures to manage the ethical issues typically encountered in this type of study. First, before data collection began, I received approval for this study through Walden's comprehensive IRB approval process. I obtained voluntary consent forms via email from all participants in the study. Each consent form included a description of the study, what was entailed in study participation, and any risks associated with participating. Following these procedures helped me to ensure that participants were fully aware of what was expected from them and how their information would be protected.

It was important to protect the confidentiality of participants and the data they provided. Before identifying participants or collecting in data, I ensured that the proper safeguards were already in place. I created a safe, locked location in my home office to store voluntary consent forms, interview recordings, interview notes, interview transcripts, and documents related to my analysis. All digital copies of the aforementioned data are being kept on a secure cloud data by a storage company. I used Dropbox to store these documents securely. All of these records will be kept securely for five years at which point they will be destroyed.

### **Summary**

In this chapter, I focused on the methodology, data collection, and data analysis procedures I employed to conduct this research. I intended to better understand how stakeholders engaged in the legalization of marijuana in Colorado perceived their experiences in rulemaking processes conducted by the Colorado MED from 2013 to

2016, so I selected qualitative methodology with a phenomenological approach. In this research I leveraged my involvement in the phenomenon being studied along with a thoughtful and comprehensive research plan to better understand how private and public interest stakeholders describe their lived experiences with rulemaking in Colorado during the legalization of cannabis from 2013 to 2016.

## Chapter 4: Results of the Study

### **Introduction**

In this chapter, I will share the results of the study discussed in the previous three chapters. I conducted 10 semistructured interviews with purposely selected stakeholders who participated in rulemaking that were hosted by the Colorado MED during the legalization of cannabis from 2013 to 2016. The purpose of my qualitative phenomenological research was to better understand the shared and lived experience of those stakeholders during a unique time in state rulemaking.

I provide the demographics of participants in the study, the methodology used for collecting data, the coding plan for data analysis, and the results of that analysis. I conducted this research consistently in all material respects to the research plan detailed in Chapter 3 that was approved by the Walden University IRB. The IRB approval number for this research is 05-07-20-0356995.

### **Setting**

This study occurred during the COVID-19 pandemic, which prevented me from conducting interviews in person with the respondents. As a result, all of interviews were conducted remotely. Even though it was not ideal, the interviewees had grown accustomed to video and call conferencing due to the pandemic by the time the interviews took place.

I interviewed 10 stakeholders who were materially active in state rulemaking administered by MED from 2013 to 2016. Qualitative researchers can use purposeful sampling to identify research participants with the most relevant experiences related to

the study (Creswell, 2013; Moustakas, 1994; Patton, 2002). I used purposeful sampling to identify respondents who covered the range of participant types (public and private interest stakeholders) and who had significant first-hand experiences with the various modes of participation available during the time frame of my study. Critical to the success of this study was interviewing stakeholders with significant experience with rulemaking hosted by the MED during the legalization of cannabis.

### **Demographics**

I conducted a total of 10 interviews with persons who participated consistently in rulemaking sessions the MED held from 2013–2016. It was important to get multiple viewpoints included in the interviews to fully understand stakeholder perceptions and lived experience of the phenomenon. The population I identified for my research was relatively small, so I intentionally avoided gathering and reporting demographic information, such as age, to ensure confidentiality. I also randomly assigned pseudonyms (R1-R10) to the participants to further protect confidentiality. In total, I interviewed 10 respondents: five of them were public interest stakeholders and five were private interest stakeholders. Five of the respondents were female and five were male. All of the respondents reported that they had participated consistently in rulemaking between 2013–2016.

Table 1

*Respondent Demographics*

<b>Interviewee</b>	<b>Gender</b>	<b>Stakeholder Type</b>	<b>Profession</b>
Respondent 1 (R1)	Female	Public Interest	Government Administration
Respondent 2 (R2)	Male	Private Interest	Industry/Association Executive
Respondent 3 (R3)	Male	Private Interest	Industry Executive
Respondent 4 (R4)	Male	Public Interest	Law Enforcement Executive
Respondent 5 (R5)	Male	Public Interest	Law Enforcement Executive
Respondent 6 (R6)	Female	Private Interest	Industry/Association Representative
Respondent 7 (R7)	Male	Private Interest	Industry Association Representative
Respondent 8 (R8)	Female	Public Interest	Public Interest Nonprofit
Respondent 9 (R9)	Female	Private Interest	Industry Executive
Respondent 10 (R10)	Female	Public Interest	Public Interest Nonprofit

**Data Collection**

I exclusively considered interview data from 10 participants who participated in multiple modes of participation and multiple rulemaking processes hosted by the MED. I contacted approximately 30 prospective interviewees known to have this level of experience with the phenomenon via email or phone to make them aware of my study and gauge their interest in participating. Twelve prospective interviewees responded positively to being interviewed. Ten responded within 2 weeks of the initial

communication was established, and two responded several weeks later, after my interviews were complete.

I sent a follow up email to each participant ( $n=10$ ) that further explained the objectives of the study and included an informed consent form. All 10 of the participants consented to participate, at which point I scheduled and conducted interviews over a 3 week period. The process of participant identification, recruitment, informed consent, and data collection took approximately 6 weeks to complete.

I conducted all of the interviews on the GoToMeeting video conferencing platform. The meeting platform had audio recordings, video conferencing, and rough draft transcripts of the interviews. I conducted nine of the interviews via video conferencing while one interview was done by phone using a conference line. I encouraged participants to find a quiet and private place to participate in the interview, and I assigned each interview a separate meeting room identification number to help ensure the privacy of the conversations and to increase the likelihood of getting a quality audio recording for transcribing the interviews. In addition to the GoToMeeting audio recording, I also used a secondary backup audio recording device.

The interviews lasted from 40.25 minutes to 1 hour and 41 minutes. The average interview time was 1 hour 17 minutes. Respondents were reminded that the interviews would be recorded and that transcripts would be available to them to review. None of the participants asked to review their transcripts. Audio recordings were clear, with the exception of a few nonmaterial instances, so it was possible to convert to the transcripts

verbatim for quality analysis of the data. No technical difficulties were encountered during any of the interviews.

I followed the same semistructured set of open-ended interview questions for each respondent. I also prepared a number of question probes to elicit clarifying responses, jog memory, and focus the respondents on the time period and regulatory processes being researched. Together, I asked both sets of questions methodically and consistently to ensure that respondents were sharing their experiences as thoroughly as possible with the rulemaking processes being researched.

The design of this research allowed for respondents to have a diverse set of opinions about the legalization of marijuana while still being encouraged to focus on rulemaking processes they experienced. There were times during each interview where the respondents strayed to other experiences outside the scope of this research. For example, many of the respondents shared how they participated in the regulatory processes I was researching while also participating in other public policy making activities at the legislature, other state agencies, and municipalities. Given my experience with the phenomenon and having shared many of the same experiences as the respondents, I was able to identify times when the respondents were actually describing other public policy processes and use question probes and clarifying inquiries to refocus their responses back to the set of rulemaking processes that were the focus of my research.

I used several tactics to ensure the relevance of the data collected during the interviews. The previously mentioned question probes and my experience with

phenomenon being researched ensured that the data used in my analysis were specific to the lived experience the respondents had with the rulemaking processes that were the focus of this research. I took minimal notes during the interviews to ensure I was able to listen intently to how respondents were answering questions. This allowed me to identify times when the responses were not relevant to either the rulemaking sessions hosted by MED or the time period of my study. It also allowed me identify responses that needed more clarification or explanation to get the essence of respondents' lived experience as outlined by Moustakis (1994). By using these methods, I was able to collect relevant and timely data from the respondents.

All of the respondents were open and detailed in their responses to the questions asked of them. I was able to achieve saturation of the data after 10 interviews, making additional interviews unnecessary. Based on participants' body language, it appeared that participants were engaged in the discussion and free from distractions. The responses also showed that respondents were committed to providing thorough answers and were opened to sharing their lived experiences in a candid manner. I never had the impression that respondents were holding back sharing their experiences. The quality of the responses and the amount of detail they shared resulted in a comprehensive set of data for future analysis and theme development.

### **Data Analysis**

Analysis of the research data started during the interviews with respondents and continued through final theme development. During the interviews I listened intently to the respondents and made note of keywords or concepts they emphasized or repeated in

their answers. I used these notes during the analysis of transcribed interview data and also to shape some of what I heard during my time with the respondents.

GoToMeeting transcribed the interviews into rough drafts of the conversations. I used those rough drafts as a starting point for creating fully accurate, verbatim transcripts of the respondents' answers by reviewing every audio file from start to finish and making adjustments to match exactly what was in the audio files. I completed a manual transcription of each verbatim transcript within 2 weeks of the actual interview. Audio files and rough drafts of interview transcripts were deleted from GoToMeeting once I had the audio files and transcripts saved in a secure DropBox account. Constructing the verbatim transcripts ensured the accuracy and security of the data, but it also helped me immerse myself in the information shared by respondents and begin formulating the basis for the balance of the data analysis.

I utilized NVivo qualitative software for the balance of data analysis. I imported all of the transcriptions and the corresponding audio files into NVivo as text and mpeg files, respectively, and assigned a "case." Each case represented a specific respondent to whom I assigned a pseudonym. Having the text and audio in NVivo allowed me to efficiently refer back to the audio recordings, thus further ensuring the accuracy and context of the respondents' answers.

My coding plan had three phases. First, I coded each transcript by carefully reading and identifying words, phrases, and blocks of information that captured how respondents answered the open-ended questions in the interviews. I used an inductive approach to develop the codes where I relied on the actual words and phrases used by the

participants to better identify and understand how they defined their experiences with the phenomenon of rulemaking participation as detailed by Creswell (2013) and Saldaña (2016). Second, the initial codes from all of the respondents were analyzed in aggregate. Saldaña recommends analyzing the data together to identify areas where the subjects have similar perspectives as well as those perspectives that may be different. In this phase of the coding plan, I identified areas with similarly coded perspectives from multiple stakeholders and where respondents had differing or nuanced perspectives on the same concept. I organized the most prominent coding categories into themes that captured the lived experiences of the respondents. According to Saldaña researchers can explain the phenomenon more deeply and illustrate different perspectives related to the phenomenon being studied by breaking down different perspectives on the themes. I created subcategories within the themes to show how participants with differing perspectives viewed a particular theme differently. For example, all of the respondents shared what they thought was the most effective mode of participation, which became a theme, but there were different opinions on what the most effective mode of participation was. I used the subcategories within the themes sort and weigh the differing viewpoints.

### **Evidence of Trustworthiness**

#### **Internal Validity**

I followed the semistructured interview plan for each respondent and asked all of the participants the same set of open-ended questions in the same sequence. In between the open-ended questions, I frequently asked additional questions to help participants clarify or expand on a response, redirect them to the rulemaking experiences they had for

the period of interest in this study, and refresh their memory about experiences they had. This made the interviews more conversational, elicited more detail, and improved the relevance of the data provided.

I used a detailed process to develop valid verbatim transcripts. The initial draft of each transcript was produced by GoToMeeting. I compared the audio file with the draft transcript and conducted a line by line review to make sure the audio files and the transcripts matched. I used these final transcripts for the analysis conducted in NVivo, but I also used them to revisit the additional questions I asked and confirm those questions were still open-ended and did not lead the respondent to a desired answer.

During the interview, I asked respondents to email me if any other thoughts came to mind after the interview. I also asked the respondents if they wanted to review their transcripts. No additional information was provided by email and none of participants asked to review their transcripts. Several of the participants explicitly asked not to review the transcripts. Lastly, I asked participants if I could verify information with them if necessary. All of the respondents were agreeable to this secondary verification, but that ended up not being necessary because my recordings were of high quality and I did not have any material issues transcribing the data. I analyzed the transcripts carefully and did not identify any areas where I felt the need to seek follow up clarification from the participants.

## **Results**

In this section, I present the findings of my research data through the themes identified during the inductive analysis and coding process. Each of the findings I

identified below are derived from verbatim transcripts of the interviews with the respondents. Whenever possible, I used exact quotes from the verbatim transcripts. In some quotations, I used brackets to clarify comments made by participants and to replace information that could compromise the confidentiality of respondents or others who were not part of this research. The findings I detail in this chapter include the following topics: 1) modes of participation by the respondents; 2) most effective modes of participation; 3) least effective modes of participation; 4) importance of interaction; 5) influencing the rulemaking process; 6) styles of participation; 7) role of the regulator; and, 8) the counterfactual question and overall experience. I refined these findings further into seven themes that will be shared at the end of this chapter and detailed further in the concluding chapter of this research.

### **Modes of Participation by the Respondents**

At the beginning of each interview, I described the five modes of participation used by MED during the rulemaking sessions held between 2013-2016. I explained that two of those modes, written comments and formal hearing testimony, were required by the APA (C.R.S § 24-4-101.5 et seq.). The remaining three (workgroups, public comment at workgroups, and informal meetings) were all discretionary modes that the regulator was not required to utilize during rulemaking. Respondents were asked if they participated in any of the five modes, how often, and if there were any other means by which they may have participated.

All of the respondents (n=10) reported themselves as being materially active in multiple modes over the entirety of the time that was the focus of my research. For

example, respondents who reported being involved in workgroups, written comments, or public comments utilized those modes over the course of multiple rulemaking sessions.

Table 2

*Respondents' Reported Modes of Participation*

<b>Respondent</b>	<b>Written Comments</b>	<b>Workgroups</b>	<b>Public Comment at Workgroups</b>	<b>Informal Meetings with Regulators</b>	<b>Testimony at Formal Hearings</b>
R1	Yes	Yes	No	Yes	No
R2	Yes	Yes	Yes	Yes	Yes
R3	Yes	Yes	Yes	Yes	Yes
R4	No	Yes	No	Yes	No
R5	Yes	Yes	No	Yes	No
R6	Yes	Yes	Yes	Yes	Yes
R7	Yes	Yes	Yes	Yes	Yes
R8	Yes	Yes	Yes	Yes	Yes
R9	Yes	Yes	Yes	Yes	Yes
R10	Yes	Yes	Yes	Yes	Yes

Three public interest stakeholders, R1, R4 and R5, held official public positions from 2013-2016. Holding those positions may have played a role in why they did not participate in public comment at workgroups or testimony at formal rulemaking hearings. The balance of respondents routinely partook in all modes of participation in several rulemaking sessions administered by the MED during the entirety of 2013-2016. These responses were consistent with how I recalled many of the respondents and similarly situated public and private interest stakeholders participating in rulemaking. Table 2 shows that the respondents were all comprehensively involved in the phenomenon being studied.

In discussing various modes of participation with the respondents, it became clear that they perceived that their respective roles were representative of larger groups. For example, law enforcement participants spoke as though they represented that community as whole. Industry participants spoke as though they represented the entire industry or a specific segment of the industry. It appeared that none of the participants took part simply because they were curious or involved for their personal interest; rather, all respondents had vested interests in influencing the policy consistent with their views on cannabis legalization and the views of a larger similarly situated group of stakeholders.

When it came to modes of participation, many of the stakeholders designed their rulemaking participation strategy in response to what had happened at the previous legislative session. For example, a certain law may not have given the MED the rulemaking authority it needed to conduct rulemaking, so stakeholders like my respondents tried to change the law in the legislative session to give that rulemaking authority to the MED. Stakeholders engaged the legislature by drafting, lobbying, and supporting the passage of bills to achieve results they wanted to see in the next rulemaking session, or if they did not get what they wanted during rulemaking, they would try to similarly affect that change at the next legislative session. R2 summed this up by saying:

And I think that was the hardest part for a lot of people, was just understanding that things had to go through the legislature, then rulemaking, then approval, and then implementation. And for me, you know, it just became kind of part of my calendar. Is that a problem? Well, we've got a year and a half [to fix it].

R2 also said:

Yeah, I mean, I definitely would use things in the legislative session. All right, if I heard a new argument against [my position on a rulemaking topic], I would get out in front of it in between, because the timing was great, right? We would have our stakeholder meetings over the summer. Legislators are busy out raising money. [Regulators] are doing whatever they're doing. Proposed rules would come out in October. I had plenty of time from the time that they [regulators] said whatever it was that they [the regulations] were saying that I hadn't heard before until November to put in front of a legislator proposed language that prevented whatever they [the regulations] were saying. I would write bills...and hopefully find a sponsor.

R7 discussed the same process when he said:

And then, you know, on the other hand, influencing legislation at the state capital of the bills that were being considered. That that tended to be, you know, in the beginning of the year, starting in January to May, the legislative session was in session and we would focus on lobbying the bills and passing good legislation for the licensed industry.

R7 further explained how some stakeholder groups could attempt to lobby the state legislature to control the discretion and the scope of authority the MED had in rulemaking:

And that's where I think...the state legislature can have a lot of control over who is running the MED, first of all. And get over how much rulemaking authority the

MED has because that rulemaking authority can be taken away. And some, I mean, know that you have a state legislature that can say, “We're just doing this and, the MED does not have authority to do rules here.” And that's probably what the industry would do. Candidly...they would take the power out of the MED and put it in the state legislature where there's more ability for them to control things.

R3 said the final hearing was time to assess what the next steps at the legislature would be:

You know, by the time we got to the final hearing, it seemed that things were pretty much set in stone at that point. So far as you know, if there was something you hadn't gotten by that point in the regulations, my sense was that you pretty much had to start gearing up...for the next legislative session or the next...set of regulatory sessions.

Fully understanding respondents' perceptions of the legislative form of participation is outside the scope of this research, but it is important to note that respondents used the legislative session to pass new laws that would shape the next rulemaking session by either giving regulators more authority on a particular topic or by attempting to take rulemaking authority away. It can be hard to separate the two public policy-making processes because the outcomes of one certainly would have implications for the other. This will be discussed more in the concluding chapter, but the legislative and governor's office oversight is a dynamic that regulators consider as they approach rulemaking and other public policy making opportunities.

In the following sections, I discuss in more detail how respondents described their experiences with the various modes of participation.

### **Effective Modes of Participation**

Respondents were asked what modes of participation they thought were effective. All of the respondents spoke positively about at least one mode and many of them spoke to the attributes they liked about several modes.

All 10 of the respondents participated in workgroups, and eight found workgroups to be to be an effective mode of participation. According to the respondents, MED hosted public workgroup meetings during the entire period being researched. Stakeholders interested in participating in workgroups had to apply to MED to be selected. R2 remembered how the workgroups provided a public face for the rulemaking process:

I think it [workgroups] just kind of was a meeting point of all interested parties for public discourse. I mean, literally those stakeholder meetings [workgroups] were the public's view of what was happening in cannabis and who was involved and who was against it, who was trying to sort it out. So... it became bigger than just a meeting about whether or not we want to make rule changes.

R3 said workgroups helped him to be heard and influence the process: "Sitting on the workgroups it's definitely, you know, actually being a member of those work groups was very influential in terms of, in terms about [regulatory] outcomes." He also noted how, during those workgroup meetings, he was able better understand others and reach compromises.

You got to hear multiple opinions on a particular item. I would see a particular line in the regulation as affecting me this way. And you know why this was good or bad. But then you get two or three other people saying what their opinions were, what how it affected them or their constituency. And so, it gives you immediate feedback as to kind of what...all the different problems are. And you know, what the problems are that this regulation is trying to resolve and who is affected... by the way in which it gets resolved.

R5, a member of law enforcement, saw the workgroups as a way to address the contemporary nature of marijuana policy, especially since Colorado was the first to legalize adult use recreational cannabis:

I think it was really important to go through the broader, more robust meetings, committees, working groups, because it was such a controversial thing that we were trying to do. At that time in particular, there was no blueprint or road map on how you do this. And so, it was really important that stakeholders come together and try to develop consensus around some of these areas. Now, there were times that we knew right up front that we just had to agree to disagree on some of these areas. But... had we just gone right to the formal hearing in rulemaking committee and had not gone through this process of developing relationships and bringing stakeholders together [in workgroups], it would not have been ultimately a better outcome for us.

R5 believed that the workgroups led to some successes that may not have occurred if the regulators had not exercised their discretion to utilize workgroups. R10 echoed the importance of the dialog at workgroup meetings:

I think being a participant on the rulemaking group itself is probably the most effective. Again, because you have that interaction and dialog, you get an opportunity to ask questions of the other people that are on the group with you, so that you can get better clarification.

I think it's [workgroup dialog] really important. I mean, there were sometimes it got heated, but I think, again, that's part of the relationship building and part of understanding the other side's perspective.

If you really want to try and find solutions, you have to understand where everybody is coming from and where those deal breakers are, where are people willing to compromise and, you get a lot of that in that back and forth conversation that occurs during those meetings.

R10 concluded this line of thinking by saying, “Lock people in a room force them to sit down and figure it out [Laughter].”

R10 also shared that she felt that the open dialog amongst various stakeholders with different viewpoints helped to achieve outcomes that most of the stakeholders could live with. She said:

You get much better buy in from people if they feel like they were part of the process and they got something out of the process. And I think [our group] did get something out of the processes and that we were heard.

Eight of the respondents saw value in the workgroup process because they saw it as a way to be heard and to learn from others in the same meetings. Workgroups resulted in dialogs that were not possible with written comments or providing testimony at hearings.

Stakeholders had to apply to be part of the workgroups hosted by MED. Since there were usually more applicants to sit on the workgroup panel than there were seats at the table, MED allowed anyone to attend the meetings as a member of the public in the audience. In other words, the meetings were open to the public. Members of the public were not allowed to participate in the workgroup discussion, but they were allowed two minutes to provide public comment at the end of each workgroup session. Several of respondents shared their experiences with those opportunities. R1 said, "I think wrapping up with public comment was really, always really valuable." According to R1, the workgroup conversations would cover a lot of ground, maybe even get derailed by certain conversations, but the audience could not chime in until the end of the session. R1 thought those audience members had some reasonable comments to share:

In the end, when we think we're having a good reasonable conversation to hear what the public was hearing or what the public thought or that we're all out of our minds or that there was like a whole other world sitting behind us who was feeling really passionately about it. And we were missing the boat on some of this stuff or we didn't understand where they were coming from.

R10 confirmed the anxiety that some members of the public expressed during the workgroup sessions. She shared it as part of her experiences after not being on the workgroups a couple of times and having to sit in the audience. She said:

One of the frustrations when you're in the audience and you're kind of listening to this is when you know something doesn't make sense or somebody, you know, makes a claim that is inaccurate or misleading or something. It's then we are there, waiting for your two minutes to be able to counter that.

Even though two minutes was not a lot of time, it did allow people who were not part of the workgroup to respond to what they heard during the session. R9 said, "I think that's [public comments] the key piece to it. Because people need to feel heard. And without that, it would be really hard to get buy in from everyone." According to several respondents, this small period of time was an audience member's opportunity to get their thoughts on the record.

Seven respondents said they perceived written comments as being an important mode of participation. Written comments helped get positions voiced in the workgroups and officially on the record or strategically avoid the back and forth dialog of the workgroup sessions. R1 said that she focused on written comments as a way of officially submitting recommendations to state regulators. She said, "And remember, I put the final recommendations in writing. I took that really seriously." She placed greater weight on the written comments because she had limitations on how much she could participate as a member of workgroups. R1 said,

I found it [participating in workgroups] a little frustrating for me because I couldn't engage in the dialog, particularly in the open and public work group sessions, because I didn't have anything approved by [my internal group] and [my

internal group] couldn't approve anything because I didn't have all the facts to get it to [them], to ask [them] to approve it, you know?

R1 participated in the workgroups to learn more about the rules and how certain approaches would impact her group. She then presented those factors to her group and formalized recommendations by submitting written comments.

R3 saw written comments of way of creating a record of participation and memorializing viewpoints to compare with the final outcome of the rules. She said:

Frankly, you should have written testimony that you made also because that way, you are making the record for yourself that if things don't match up with what you thought [regulators] were going to do, you at least got the record and could go back and stand on your record.

Similarly, R8 strategically participated in workgroups in order to design and submit substantive written comments. When asked what mode of participation she found most effective, she said, "Probably written comments. So, I would say I always spoke up [at workgroups], but we saved a lot of our proposals for the written comments." She elaborated by saying:

I think written comments helped us identify for [regulators] what our priorities were, right. And I think the written comments were the way to flesh out the reason why what we thought was really important and the reason why we thought that was important in a way that it's just hard to do. And to push back at incorrect points of [other stakeholders], but not necessarily to make all of our arguments [during workgroups], we save, we really did save those for written comments.

R9 encouraged members of her group to articulate concerns they had in written comments so they could differentiate between real problems and ones that were not as important. She said that writing, “Really push[ed] people to put your thought down, just stop talking and actually articulate it.” She noted that it helped to get other members of her group invested. If the issue was important enough, she said, writing, “It kind of forced people to, if you're really had a problem, you're going to take the time to do that [write comments]. And if you're just a complainer, they would oftentimes just let it dissolve.”

R10 thought written comments were useful for two reasons. First, she used written comments to emphasize something that she was concerned about or the direction of something she disagreed with others about. She said that written comments gave her “an opportunity to maybe express something bad or an idea or a thought that had come up from that.” She also perceived her written comments, as well as other workgroup members, as having a more influence than others who were not on the workgroup. She said:

I'm just assuming that the written comments that come from the members of the [work]group kind of get a little bit more weight, I guess than maybe some of the other comments that come in. I don't know that since I'm not a regulator, but if I were a regulator...I would like to read that with a little bit more closely, I guess.

All of the positive experiences with written comments seemed to be associated with a coordinated plan meant to complement workgroups or an overall strategy for participation. Regulators from the MED provided opportunities for back and forth dialog

in workgroups, but there were things some stakeholders did not want or could not say in the workgroups, and they saved some of those ideas for written comments.

Respondents experienced similar dynamics in informal meetings with regulators. Nine of the respondents described their experiences of periodic, informal meetings during which regulators met with them to discuss rulemaking. These meetings included gatherings with specific groups, but also included small groups settings of 5 or less. Meetings were held in person, over the phone, and via text messaging. In the previous section, R1 explained how she used workgroups to become more informed and used written comments to submit formal rulemaking recommendations. She used informal meetings for both purposes; in these meetings, she could be more candid and vulnerable regarding what she knew or did not know. She said:

In a room like that [workgroups]...you want to be careful. You don't want to let people know that you don't know everything. Right. So [in informal meetings] I can really go and or say, "I have no idea what you're talking about. Can you please slow down and say that again?" And then we can talk through some issues or I could really be emphatic about what I thought should happen, when I might not want to be that emphatic at a table with a lot of people [as in workgroups]. It's not that I'm hesitant to speak my mind [in workgroups] ... except sometimes when I can't. But it is being able to really dive in and understand and ask the probing questions [in informal meetings], to get the right answer, to make sure I was starting at the same baseline that other were people at.

R1 valued informal meetings as spaces where she could speak openly with state counterparts in government; she did not have to go through any kind of formal approval process with her group to have those conversations. The public setting of the workgroup was perceived as place where her thoughts and comments might be perceived broadly and prematurely as her group's position on certain policies, while smaller, informal meetings with government officials did not carry those same implications. She trusted that what was said in informal meetings remained confidential.

R1's perspective was similar to that of the two law enforcement respondents, R4 and R5. Both of them appreciated informal meetings because they could talk about ongoing investigations and they could speak more candidly than in workgroups. R4 said:

And then again, you don't you don't have to watch your P's and Q's for everything you say [at informal meetings]. Having them [industry] freak out...if you start talking cop. I mean...at that time...they were just so defensive over everything that it was tough to say anything about them without getting their back up over it.

R5, speaking of informal meetings, similarly noted:

And I believe because we felt it was a more informal and maybe a little bit safer, we knew we could be a little bit more candid in some of our discussions. And, I believe that my perspective had a lot of impact.

R4's lived experience with informal meetings also provided him with what he described as an opportunity to challenge others in the law enforcement community. He explained that his role was to fulfill the will of the voters and not make regulations so restrictive

that the industry was put out of business. However, that goal was not commonly associated with law enforcement at the time. He said:

I was kind of ostracized then from other agencies in [Colorado]. They didn't want to talk to me [at]...that drug enforcement group or drug unit commander's group. I mean, [according to those groups] I was I was talking to drug dealers. I was talking to people in the industry. And they are nothing but dirty drug dealers. And no one should ever talk to them. No one should ever listen to them. No one should ever have a relationship with them.

There were other law enforcement groups from other jurisdictions that I could tell I was the bad guy because I actually talked to people in the industry so...you would get a little friction there [between law enforcement groups].

R5 participated in the informal meetings where MED hosted a larger group of law enforcement agencies to give updates on rulemaking. R5 said he used that group to address the concerns noted in the previous quotation:

Because what happens is on those informal things, when the cops stand up and say, we want this, this and this and this is crazy and, you know, this is bullshit and cops are going to die. Right. And [regulators] and I can stand there in that informal meeting and go time out. It's in the constitution. It's here.

If you don't do that informally now, you've got to do it in front of everybody.

Right. And you kind of clear a lot of the chaff or way before everybody sat down at the [workgroup] table.

R5 simply used the informal meetings to address the law enforcement community in a way he would not in a formal public meeting. He described, somewhat vaguely, his involvement in informal meetings as a way for his group to find common ground outside of a public forum.

On the other side of the coin, R2, an industry executive and association representative, saw the informal meetings similarly to R1. He said:

Well, one, they [informal meetings] weren't public, so it was it wasn't a thing. I like the fact that the prohibitionist groups weren't in the [informal] group and we could have a conversation about what was going on with us.

You know, I think it was mostly just because it [an informal meeting] wasn't a sparring event where the stakeholders... the prohibitionist groups and people who felt like Amendment 64 didn't give them enough freedom. So, those two were polar opposite, but they would do the same thing at the stakeholder groups and just try to, you know, ask for things that are not possible to get them or just make statements where the informal discussion was an opportunity for people who maybe didn't want to become targets of those groups to have a conversation with you, not publicly where they could express whatever their concerns were.

It went thousands of miles farther, by having a face to face in a private setting where people felt like they could say things without other entities hearing about it.

Like R1, R2's experience with informal meetings gave him and his group an opportunity to say things they might not say in the workgroup. Also, he saw it as an opportunity to build relationships with regulators, educate them, and share concerns they did not want to

share in the public venue of workgroups. He participated in the workgroups and found value in them, but he also found informal meetings helpful for fleshing out the things that were most important to his group without having to show all of his cards and without having to defend those beliefs to a larger, more public audience with varied viewpoints.

R6, an industry representative, used the informal meetings to voice concerns she had about the direction a certain set of rules were heading. She appreciated the ability to supplement formal gatherings with informal meetings, saying, “If you're in a stakeholders’ group and I pull the regulator aside and said, “[Regulator], can we have a call later about this? This didn't quite go the way we wanted.” R6 liked being able to ask for informal meetings when things were heading the wrong way because she thought she could make her points clearer in a private meeting. She explained:

I shouldn't say this, but, you know, government in the sunshine [law] is a pain in the ass. And you get a lot more done in a private meeting if you want to say things that you know, in a public setting, people are going to take issue with or you're going to kind of show your cards a little bit.

I think it's a valuable opportunity that you're able to have those [informal] meetings and they don't take anything away from the public meetings. In that you're just reinforcing that something's going to work or not. Or, [the regulator] should think about something a different way. I just like to do it. It's the way you weave the tapestry, in my opinion.

R6 saw informal meetings as an important way of redirecting a regulatory approach towards an approach that she, and the group she represented, found more beneficial to them.

R8 viewed the informal meetings as a forum in which to provide regulators with more information about her group; her group was concerned about the weight regulators put on the things that were being said about her and her group. She said:

We were almost educating each other [during informal meetings] on the subject. They [informal meetings] were fine. I don't remember us feeling like we were asking you for things more than bringing things to your attention, like I think the goal of those meetings were a little bit of, "Here's who we are. Let's clean up any myths, clarifications of who we are and what our goals are." So, a lot of it was just telling [regulators] who we were into, who motivate, what our motivations were. And so, I think they [informal meetings] were very helpful. They were very helpful so that [regulators] could see where we were coming from.

Overall, respondents seemed to value their experiences with workgroups and informal meetings the most. The interplay between the two, along with written comments, was one of the elements the respondents most clearly remembered and valued as part of their overall strategy for participation.

### **Least Effective Modes of Participation**

There were no modes that respondents felt were a waste of time; on some level, the respondents valued all five modes of participation. However, two modes of

participation were generally viewed as less effective than others: written comments and formal hearings.

Even though several respondents found written comments to be an effective mode of participation, there were also recollections of how hard written comments were to produce. Also, in many cases respondents never received a response from the MED to their written comments. R3 noted that it could take several rulemaking sessions of submitting comments before the comments were recognized. R7 expressed that the lack of dialog on written comments was concerning because so much was invested in those comments, and there was often no discussion of them. He said:

I was tough to know whether my stuff was really being read or not. But I say, that was one of my biggest frustrations is a number of my written comments went unanswered. And I didn't know why, so I went at times it may be suspect that, is anyone really reading this stuff? Because, you know, for as much time as I'd put into it, I wanted to know that it was being considered. But it's tough to know that when it's all, I mean, it's like I trust that somebody is reading it. I'm like, I'm being told somebody is reading it. But it would maybe be nice to have a call or something to discuss it.

Given the lack of confirmation of receipt and also not knowing whether his written comments added value to his participation, R7 questioned whether or not it was worth putting in the effort. He said:

I will say, when I do not know whether... my stuff is really being considered in written comment is that's a disincentive for me to do it in the future because it's a

lot of work. I will say that... later on, I lost my momentum to do the written comments because I started doubting whether they were actually being read. Given the value that respondents placed on being heard, it makes sense that the impersonal nature of written comments was less desirable than the open dialog they achieved with workgroups and informal meetings with the regulator.

The mode that respondents seemed to think was least effective was the formal hearing at the end of the rulemaking process. Like written comments, this mode was required by the APA (C.R.S § 24-4-101.5 et seq.). The formal hearing was a quasi-legislative meeting where the MED presented its final proposed rules to a hearing officer. Members of the public were allowed to testify during the hearing, but very little dialog occurred between the MED and the stakeholders during the hearings.

Respondents remembered the hearings as being very formal. They were held at the Old Supreme Court Chambers in the Colorado Capitol, and the MED and hearing officers sat on the dais that looked down on to the members of the audience. Respondents noted the contrast between these hearings, in which the MED presided, and the open dialog facilitated by the MED in workgroups and informal meetings where everyone sat around a table and discussed thoughts and ideas. Informal discussions had been going on for several months leading up to the formal hearings. Many respondents noted that by the time the formal hearings were held, there was little chance of getting anything else changed in the rules without upsetting the work that had been done previously. R2 explained that the formal hearing was more of a formality than anything else: “The least impactful would be the formal hearing on the proposed end. It's all the

same. Yeah, I mean, you know, if you did your job...all the hard work is already done.”

R3 echoed this idea, saying:

Frankly, as you know, those [final hearings] were...more form over substance in some ways, especially you know some of them were kind of more...that things by then seem to be pretty set in stone. The formal hearing at the end of the regulatory process was probably the least influential.

R6 credited the previous efforts with making the hearing more of a perfunctory process when he said:

By the time you get to the hearing in the Supreme Court, through collaborative stakeholder processes you, we should, all of us should have set [regulators] up for success on both sides at the Supreme Court hearings. And if there were some dangles left over you know or, some people didn't feel heard for whatever reason, then that's their opportunity. But in my mind, if you're doing your job right—and I'm not saying the regulator doing [their] job right—but the industry under scrutiny, if we are doing our job right, by the time we get to this formal rulemaking and this spring, you know, then it should be a rubber stamp of sorts because there's very little, I think, meaningful input at that point.

R7 focused on the previous work but also added concern for upsetting the process when he said:

Testimony at the actual hearing, I say, was the least effective. At that point, it's been well, it seemed like it was too late at that point. You know, nobody wanted to change much at that point. There's a hearing officer. My perception is that, you know, at that point, the MED had the rules. They were presenting it to a hearing

officer, and it was in everyone's interest to go with what's there and be done with it unless there was something striking. [The rulemaking] process was long, but that made it a good process. So, by the time we got to [formal hearings], I knew that.

Similarly, R9 saw the process leading up to up to hearing as 90 percent effective when he said:

I don't think a lot happened at the final [hearing] because we have had so many conversations throughout the process that I think we did a very good job of getting down like 90 percent of it right before we got to the final [hearing].

R10 shared a similar perspective to R9 and R7:

A lot of times the final rulemaking hearings were kind of a formality. A lot of times we had gone through all the debate and the arguments and whatever during rule making and crafting..., so we sort of knew what to expect. By the time it got to the hearing, a lot of times it was more of a matter of formality.

The experiences described by the respondents were somewhat unexpected. It was not surprising that the formality of the formal hearing was not their favorite mode of participation, but it was surprising to hear how they used the hearing to validate work done earlier in the process. In fact, several used it as a measuring stick to qualify whether it had been a successful process. If the formal hearing was a “rubber stamp,” “set in stone,” or a “matter of formality,” then that was the sign of a good rulemaking process leading up to the hearing. A couple of the respondents even felt that it was (at least

partially) their responsibility to make sure the formal hearing was just that: an uneventful formality.

### **Importance of Interaction**

As many of the respondents described their participation in rulemaking, there was a fair amount of emphasis placed on experiences that focused on sharing information with other stakeholders of differing perspectives. Numerous comments were made by respondents that focused on educating other stakeholders on things they felt were important. R2 said, “So I got involved and ensured that we clarified what was being talked about.” Clarifying, educating, and branding their groups during participation seemed to be important to the respondents.

The private interest stakeholders felt obligated to constantly build credibility for the marijuana industry. R3 said:

I just wanted people to realize that we were real businesses and we were thoughtful people going into this. I think, you know, early on that there were a lot of people, you know, very skeptical of the industry... And that included citizens, that included regulators, it included legislature, legislators. A lot of our efforts were really just kind of showing that, no, this is not—I mean, yes, there are a fair number of potheads, former illegal growers in the industry—but also there are a lot of people who... were serious professionals [industry stakeholders]. And so, we wanted to demonstrate to people that we would behave professionally and then we could be treated professionally. But there was obviously, I mean, there had to be education.

R7 shared how he hoped his participation would contribute to a credible regulatory framework and to project a positive image to others outside of the rulemaking process.

He said:

I think one of our big goals was to make the state's program robust... But this thing that I think as a [group] that we saw from the beginning was really important was we did not want the federal government to come in and shut everything down, it was to build up a robust state program... We wanted the state to be able to do its job well. And that meant really building out this program. And so, I guess getting to another main thing that we were trying to do was to have, you know, to portray an image to the media that... we care about public safety. We care about public health. We are doing what we can to make this a robust industry that is responsible. That's going to have good actors in it.

The private interest stakeholders were also able help others understand how difficult it would be for businesses to comply with some of the proposed regulations. Private interest stakeholders were acutely aware of how restrictive regulations could shut down businesses because businesses might not be able to comply. R9 explained the importance of discussing business owners' perspectives on regulations:

Really talking about how do we make good public policy, so that before we made the policy, we actually considered everything, including those small little details that either allow something to be implemented and actually work as intended. Or if there something that we missed which, would be an unintended consequence and prevents either the rule from working or businesses from not being able to

operate. I was able to at least encourage people to open up their mindset and let people have access to [me].

R9 provided an example where “having that conversation and being heard really helped us affect the positive changes on the [package] labels.” R4, a public interest stakeholder, remembered getting more informed about the challenges with labeling requirements. He said:

But then you realize the industry says, “Well, wait a second. You know, I've got to print new labels.” And I would call somebody who got up or one or two of them started talking about just what it takes... so, I do remember just kind of listening to that and feeling for these folks.

It's easy for us to come up with some really cool new rule, but they're [industry] the ones that have to live with it. You know... I talked about the labeling was when I'm sitting there and these businesses, they're describing what they have to go through on a label and what they have to do to comply with regulations... And you realize this is a business and they have a bottom line that they're trying to make money. And everything we do here has an impact on them. So, we need to take this seriously. We need to it's not just, “Screw them, put a label on, right.” Because it, it comes back to my basic philosophy is that government should get out of the way of business if it possibly can... I remember thinking, “Wait a second, there's a lot more to this than just them not wanting to stick... a frowning face on their label.”

R5 had a similar experience interacting with manufacturers at rulemaking workgroups that focused on marijuana edible regulations. He recalled:

And in thinking back, you know, I remember one gentleman—when we were talking about the markings on edibles—and he was saying, “You gotta take into account how difficult it is in the manufacturing process to be able to revamp how we are marking our edibles and packaging our edibles and that type of thing.”

And I hadn't really thought about how, you know, from an industry standpoint, from a manufacturing standpoint, that, you know, it's easy for me as a law enforcement person to say this is what you need to do so go make it happen. And he said, “Yeah, but you don't understand.”

R5 went on to describe how the manufacturer helped him better understand how much time it took to implement significant changes to the edible regulations. That conversation helped R5 to better understand the complexities of the manufacturing processes and led him to “take that into account” when designing the regulations.

R6 appreciated the opportunity to share important operational concerns that other stakeholders were unlikely to understand without a robust dialog. She said, “Here we were trying to put together the framework for a substance that was federally illegal, that people didn't understand as a business matter.” The dialog between different groups that were open to fairness and new ideas helped to bridge gaps in understanding, according to R6 further discussed her focus for public workgroups by saying:

I am passionate about stakeholder groups and work groups. I think it's an opportunity to educate the regulators. It's an opportunity to educate your

detractors. But it's just such a great opportunity for everybody involved to understand what the pressures are. You know why, you know, [a particular manufacturer] can't do that [implement a particular regulation]. You know what that's going to cost them in terms of new molds or whatever. I mean, it's just such a good opportunity to voice... the operating concerns.

According to R5, law enforcement had essentially lost when legalization passed through Amendment 64; because of that defeat, his group had lost some of its ability to influence. Just like R6 found value in sharing her viewpoints and concerns, R5 described meetings and workgroups as important ways for law enforcement groups to voice their concerns although they felt ignored by many sectors:

My sense was at that period of time was that a lot of the stakeholders, particularly big industry and some of the elected officials, really weren't that interested in hearing the law enforcement voice.

He also noted that legalization was moving at a pace that made his group concerned about public health and safety being incorporated reasonably into the regulation. He said, "You know, we were moving pretty rapidly down the path of legalization in Colorado."

Given those two dynamics, R5 felt it was important for him to participate so that law enforcement could be represented in the conversation. He recalled participating and interacting with other stakeholders:

So, I think part of it [participating] was trying to make our voice heard and make our concerns known. I think our presence being at the table and our presence was important throughout and we developed some pretty good relationships, I think,

with other stakeholders, you know, and several folks that I got to know and, you know, having kind of informal online discussions with them, they recognized and were able to understand what we were concerned about and what we were talking about.

It was important. It really was important to at least be able to have our voices heard, but also to believe that we provided some valuable input into the process and influenced some of the policy moving forward. So, I think we would have definitely been remiss had we not been at the table.

I believe... we [were] able to let the various stakeholders, you know, give them some insight into what our concerns were.

For R5, it was not just about making sure law enforcement was present and being heard. As mentioned previously, R5 shared an experience that helped him to better understand what the concerns that industry participants had about certain regulatory approaches. R5 summed up the interactions by saying:

You have to kind of let down the barrier... and be willing to listen to a diverse group of stakeholders, and that's what we were able to do at that time. And so, it was really important that we were able to participate and listen to the some of the concerns and priorities of diverse stakeholders that definitely thought different than we did in the law enforcement community.

Even though there were a number of comments from respondents that recognized the low likelihood of converting other stakeholders into their way of thinking, there was a lot of value placed on learning new things from others with competing interests and

views. As respondents developed a better understanding of other viewpoints, they reported finding areas where they could cooperate on regulatory outcomes. This was evident in the labeling and edibles examples discussed above, summarized well by R10:

I think for me personally, it was always about trying to be reasonable, trying to be pragmatic, trying to be science and data driven.

And that was really hard to because we didn't have the science, we didn't have the data ... And that comes from, you know, stepping out of decades of prohibition in the information that we had was all biased to how bad and horrible all of this is.

So, a lot of it was kind of untangling the preconceptions. And but at the same time, because you're dealing with other stakeholders on the table that don't see it your way at all is trying to at least understand their position. So, that you can come to some kind of compromise and that a lot of time was what it was, this is where we can compromise!

The shared experience chronicled above demonstrate that the respondents' interactions resulted in their ability to both influence and be influenced by others. In the next section, I will discuss in more detail the respondents' experience with influencers in the rulemaking processes.

### **Influencing the Rulemaking Process**

Respondents were asked to discuss who had influence during the rulemaking process and who was most influential. Respondents described influence in two ways. First, they described it in terms of "who" had to most influence on the final rules, which is discussed in this section. Second, some respondents described a "style" or "styles" that

other stakeholders employed during rulemaking participation that either influenced the respondent or had the opposite effect. The second description is discussed in the section following this one.

Respondents had multiple responses for who they thought was influential during rulemaking. Nine of the respondents said that they felt that the industry was influential. The public interest stakeholders all referred to the industry having influence. For example, R1 said, “The marijuana industry” had more influence than public interest stakeholders. When asked why she felt that way, she elaborated by saying:

Well, I think because I think that the workgroups were balanced in that favor and then I just think that as we've moved on. They've had, you know, they've gotten a louder and louder voice. They have more, you know, more and more lobbyists, more and more money.

And so, yes, I think I think in general that the marijuana industry has had a greater influence on regulations in Colorado than other groups.

R4 recognized that organized groups were the ones participating in the rulemaking process, and that some of those groups were industry-focused organizations.

He said:

But, you know, the deck was always stacked. That means [the] average joe citizen... isn't going to those things and sitting in the audience and stepping up and giving... commentary at the end of the meeting. You know, it was always stacked with interested parties, and usually the interested parties, other than [a

public interest group] was people who are either in the industry or marijuana proponents.

R5 shared that he thought the industry had influence because they had a vested interest in the outcome of the regulations. He said:

Because they're very vocal, they're very passionate about what it is they wanted accomplished. And so, because of that passion and... because of their investment in marijuana legalization, they [industry] probably had the most influence overall.

Although R4 also thought industry had influence over the regulations, he did not believe this equated to an unfair advantage. He said:

The industry groups [had influence]... I think they they're smart. They... sent very good representatives and they have their ducks in a row, which is fine. I mean, that's the way the game is played. Was there [too] much influence? On the balance. I think it was, I think it was pretty well balanced.

R10 said the industry had influence, but to her it made sense given the number of different interests that existed within the industry:

I would say, probably, industry because they had the most on the line, because what we were doing was writing regulations for [regulators] to regulate the industry and they had a lot of input on that.

R10 also felt that industry seemed to have the most influence, but since there were multiple stakeholder groups (associations, individual business owners, and license types) associated with the industry, they always “got multiple seats” in the discussions. In other words, the industry was not monolithic. Sometimes industry groups had different

viewpoints about various regulatory approaches, and sometimes those different industry groups had different regulatory priorities.

Some private interest stakeholders shared similar experiences and perceptions of industry's influence on the regulations. R7 said:

We got kind of used to... our priorities getting implemented, but I feel like a lot of that had to do because our priorities were thoughtful and reasonable and or generally, I guess I saw as very much so as a partner with it, the Marijuana Enforcement Division to actually address through public safety issues and public health issues and what not.

R6 thought it was the industry's responsibility to influence other groups, especially the law enforcement community. She said:

I think industry [had more influence] ... and I think law enforcement had to be reluctantly brought along. I think it was the burden of the industry to convince law enforcement, who many of us worked on for years and some of them just cannot be convinced.

R3 recalled several groups being influential, so he was more of the mindset that everyone had a chance to share their viewpoints during the processes. However, he did see the industry as being more influential than other groups:

I think everybody's voice ended up getting heard. You know, obviously, I think because of the nature of a lot of the regulations that made, you know, that the industry certainly, you know, probably overall all the industry players, you know, got had a very strong voice at the table.

R3 was one of four respondents who felt that the public interest groups were influential during rulemaking. In particular, he remembered how he felt about law enforcement's involvement when he said:

On the other hand, you know, whereas the law enforcement officers probably had fewer objections, I think, at the table... their objections were taken very seriously because obviously they need to be able to, you know, they need to be able to enforce the laws of their jurisdiction.

R2 also recalled law enforcement having some influence, especially in the earlier phases of this study. He said:

I think in [20]13, law enforcement, it was really influential. A couple of those police chiefs that would put their dress blues on and come down and talk about, you know, blood and fire and mayhem. And that worked, maybe not on [regulators], but it definitely would work in the public opinion portion of this.

R6 also thought law enforcement was influential because they ended up being reasonable while making their position clear. She remembered:

Law enforcement [was influential]. You know, a couple of them were articulate and reasonable. You know, they have a point of view. They're going to stick to it. But they didn't make you feel like you were a criminal for advocating on your business interests. And I think that's appropriate. I mean, I think people should take, you know, take a position, listen, and be flexible.

R2, R3 and R9 felt that some other agencies with a public health focus, such as groups representing children's health interests and various health practitioners, were credible and

influential when they participated. For example, R2 said they “had an awful lot of legitimacy in every one of those meetings, as they should have.” According to R2, “legitimacy” led to influence.

In addition to sharing what groups were most influential, six of the respondents discussed how they succeeded at being influential both individually and on behalf of a larger group. After being asked who was most influential, four of the respondents said they were. For example, R2 said, “Me. Other than me?” R4 said, “I think we had a lot of influence by what we did with extractions [concentrate production].” Similarly, R5 said:

So, walking into this, I really was able to fall back on my experiences in developing community policing and implementing community policing and taking on some pretty significant controversial issues with diverse stakeholders and doing it within the context of marijuana legalization.

R6 and R10 also both immediately nominated themselves as influencers. R6 said, “Me. No [laughter],” and R10 said, “Well, me of course!” [laughter]. When asked who was the most influential, R7 also explained how he had been successful:

I guess when I think of the times when I was most effective, it was probably because I would pick out, you know, one, two, three things and hit those points hard and make the case really well. And to be respectful, but thorough. And then... if I was on a working group and I would say something in the working group, I would then try to have some other people in the industry come and do public comment to back up what I'm going to say.

Even though some participants' reflections to their own influence were short and, in two cases, participants laughed after their answers, six respondents shared how they took pride in their participation and they felt like they were influential. Those respondents, in aggregate, covered the spectrum of public and private interests.

### **Styles of Participation**

Respondents were asked if they could remember any particularly effective or ineffective modes of participation they saw in others. Some of the respondents recalled participatory efforts that they were impressed with, but many of the respondents immediately wanted to talk about styles they found to be counter-productive or that caused the participant to lose credibility with the respondents. For example, R1 said that she found stakeholders to be more convincing when they “had a good demeanor, being professional, being reasonable, tying back to their position...what the underlying policy was and what they're trying to get to.” She described the combination of demeanor and how their position impacted the regulations as being something “that was convincing for me.”

R2 said he was more impressed with stakeholders who were direct and fact based: “Like, you've got to give facts. No rhetoric in there.” He described a couple of stakeholders effectively stated the facts and let the other stakeholders make up their own minds about the data; R2 remembered the health professionals as being particularly effective with this method.

Similarly, R3 found fact based as being more effective than positions that were lacked backing and seemed intent on scaring others when he said:

Yes, there were fear-based positions that were definitely less powerful than fact-based positions. So basically, I mean, the ability to, you know, to be a team player, so to speak, as opposed to just solely an advocate for...one, an unwavering advocate for one position.

If you get a reputation as somebody who's trying to make things function, you know, and try to achieve compromises, you know, a radically sensible compromise is not just compromise seeking compromise.

I think a willingness to go to listen to other people's positions, to understand others to make an effort to understand the people's positions, and then tried to try to arrive at a compromise of some sort or trying to figure out if there's ways that everybody can get that or to at least be able to try and minimize the potential for the effects that people are concerned about.

Similarly, R10 said:

I respected the people that I got the sense that, yes, they were there to again come up with something that we could all work with. Hopefully something better than any of us would have come up with on our own.

The stakeholders that respondents found to be least credible were ones who were disruptive, not open to other viewpoints, showed up and didn't participate, or twisted the facts. For example, R1 and R2 recalled that angry and disruptive people were the least influential. R1 said, "I guess ... some of the most non-credible people were the ones who ranted and raved and lost it later." R2 said:

There were some people who were just there to, you know, stir the pot, create trouble, make a statement. It was entertaining, but also kind of a time waster, I think, for those of us who we're hoping to accomplish some goals.

R3 and R9 recalled groups that they perceived as only seeing their own viewpoints during participation. R3 said:

I mean, there were... some people who, you know, just took a strict, very strict position with respect to the industry. I couldn't support that... I couldn't get behind it.

R9 remembered that anyone could attend many of the meeting and some groups were singularly focused on their demands for the regulations. She said:

And unfortunately, you get those people that cannot see for the greater good. They only see their problem and they just distract and take too much time away from actually making everything really productive.

R8 remembered getting frustrated with participants who showed up to the workgroups and did not participate. She said:

It was very frustrating to see people at the table who weren't willing to speak up. Now, maybe they submitted everything in writing and they just were even less reticent than we were.

That's where I got the feeling other government actors were checking a box. I felt like there were, and I can't really tell you which departments, but that's where I felt like those people [other government agencies] would sit there very quiet.

The examples R8 gave were detailed enough that she identified some of the people she was referring to, but it is important to note that those people were individuals from government agencies who she expected to support or complement her group's positions. I cannot be certain based on the information R8 provided, but I got the sense that her examples might be similar to the experience R1 shared when she explained how R1's participation was limited to listening and learning and not actively participating in the conversation out of concern for it being taken as an official position.

R2 and R4 took issue with participants who were viewed as manipulating data carelessly. They both remembered an association whose membership consisted of drug investigators in law enforcement. This group was described as being inconsolable during legalization. Both R2 and R4 mentioned a report that the drug investigator group had written and that they constantly referred to during rulemaking and legislative sessions. R4 said:

[The drug investigator group], they lost all credibility because when they were doing their surveys and putting out their numbers, they were spinning the shit out of it. So, after they did that a couple of times... with their findings on all data, people would look at it. And literally after a couple [times] of doing this a couple six months in a row, people just said, "Well, that's just the [drug investigator] report." And they [other stakeholders] just dismissed it out of hand. They [drug investigators] lost a lot of credibility.

R2 said:

They [drug investigators] were the most ineffective just simply because... their data was wrong, and they were presenting the information. So, from a public policy, they were presenting skewed information as if it was hard rock-solid fact. And I think that's where the mistake is for anybody from that side of the coin, whether it's a public health [or public] safety.

All of the respondents were acutely aware of how other stakeholders presented themselves during the public components of rulemaking. Public and private interest stakeholders had similar feelings about what approaches were helpful and productive as well as behaviors that were counterproductive and/or disingenuous. These perceptions suggest that stakeholders became active participants not only by advocating their interests, but they also noted ineffective and effective means of participating from observing other stakeholders.

### **Role of the Regulator**

All of the respondents were asked what they remember about the role of the regulator during their participation in the rulemaking process. Even though many of the respondents thought that the role of the regulator evolved over time, respondents described the regulator's role as being a facilitator, someone who proactively listened to all viewpoints, someone who remained neutral, and someone who focused the workgroup discussions.

Five of the respondents described how the role of the regulator changed from 2013-2016. For example, R2 said:

[The regulators] at first, were just in the minds of cannabis operators, gun toting cops walking around who didn't know anything about business or marijuana.

Within a year it was much more friendly. By the end of the time period that you're talking about, I think those of us who participated as much as I did, [regulators] knew what I was thinking already, and I knew what [their] restrictions were.

So, yeah, I mean, it's like I said, it start[ed] off hostile and it became really kind of a partnership for the good of the people of Colorado.

R3 also perceived the regulator's role as evolving over time. Similar to R2, R3 recalled the regulators shifting from what he saw as a law enforcement focus to a more regulatory focus:

I think the regulators viewed their jobs as much more enforcement. But they know that there was a kind of a strict letter of the law and it was written down in the regulations, that the first set of regulations, that their job was to ensure strict compliance. Whereas over the course of, I would say 2014 and 2015, the emphasis kind of became more, more, more of a regulatory rather than a law enforcement function.

R3 also shared a memory he had of me as the regulator that is relevant to his thoughts above:

That you wore your gun to most of the early... meetings... you're your gun and back up magazines. Yeah, I guess, just in case things went south. But that stopped at some point. And so, you know, that kind of displayed to me, you know, a different message over time.

I interpreted R3's narrative to mean that when I wore my sidearm, he viewed me as being law enforcement-focused, and that if I was not wearing my sidearm it meant I was viewing my role through a regulatory lens. R3's observation was interesting because it was true that early on, I wore my sidearm. The reality, though, was that I never stopped wearing my sidearm until the day I left government service. Somehow, over time, R3 shifted his focus away from the physical symbols that equated me with law enforcement and began to perceive me differently. I know this exchange and my interpretations are far from conclusive, but it might be that, as R3 became more familiar with the regulators, the less he was concerned about them taking a strict enforcement posture toward the industry. He may have also become less concerned as he came to understand the regulator's style of engagement during rulemaking. The symbols of law enforcement, and therefore the perception of the regulator's role, became less of a focal point over time to R3.

Several of the respondents recalled the regulator being a facilitator and a neutral party focused on hearing all sides participating in the rulemaking process. R1 said, "I view [the regulator] as the facilitator. You're gathering the information; you're hearing from all sides." R1 also saw regulators as being neutral while also "asking probing questions to get to some more information." R5 made a similar comment, saying, "So their role, in addition to the regulator, would have been kind of the facilitator of the process."

R2 remembered the regulators having a role of transparency and making themselves accessible during a period of time when the content of the regulations was likely to make or break the industry. For him, it was not just about influencing the final

content of the regulations. Rather, R2 thought that the process of rulemaking was an indicator of how regulators would monitor and enforce the rules in practice, which could potentially be as collaborative and understanding as the rulemaking sessions. He saw it as the regulator's role to nurture an inclusive environment so that understanding could be realized. R2 said:

And for me, the stakeholder process, the best part about it was to connect the dots between those who regulate us.

What I learned through the process and the transparency, not only of the rulemaking process, the access to the division and the decision makers...was extremely helpful. Just kind of taking those barriers and eliminating them and not being the pot head and the cop across from the table from one another and being two groups of people who were trying to make this work.

R3 saw the regulator as a neutral party that assembled an eclectic group of stakeholders to participate so multiple viewpoints could be heard. Also, R3 remembered the regulator providing a framework to have difficult conversations during rulemaking. He synthesized these thoughts when he said:

I mean, you know, one of the nice things [regulators] did was make sure that, you know, lots of different voices sat around those tables. It wasn't the same groups every time; those same companies.

And in terms of the functions, you know, in terms of the work group, the regulators generally played a pretty neutral... role. But on the topics that needed to be covered, got covered. That was good and what was needed.

Certainly, it's very helpful for the regulator to make the initial framing of the problem. I mean, sometimes, you know, that it was useful to take a step back a little bit and say, OK, what's the real issue there? I generally found that when there was a situation like that, that the regulators were definitely open to, you know, to reframe the problem.

R6 saw the regulators establishing confidence in the group by helping to set expectations and to not shy away from the difficult conversations:

[Regulators] have to develop that trust. And part of that trust is being willing to be vulnerable and let people know, hey, this is where the buttons are going to get pushed. So just be prepared for, you know, some robust conversation.

Reflecting other respondents' thoughts about regulators as facilitators, R8 could not recall a time where the regulators exercised their ability to make unilateral decisions:

I don't remember [regulators] shoving anything down our throats like this will be the rule. [Regulators] always appeared like... they were trying to foster communication.

R10 remembered that there were a number of different modes by which stakeholders could participate. She recalled there being different voices included thorough out the process and that regulators took the time to set expectations and ground rules for everyone:

I mean... I was really impressed, to be honest. There was a great variety of ways and opportunities for people to be involved in the rulemaking. And I think that's

really important because you really need to bring in different voices and different perspectives. [Regulators] were really good at kind of calling on different people, kind of getting people to clarify what it was they were talking about, you know, asking the right questions and then pushing people to do their follow up work. But that, again, [regulators] setting that expectation that we're all going to listen to each other... and, yes, we aren't, we may disagree, but we're going to be respectful of each other. But I think [regulators] and whoever the agency overseeing this was good about bringing other people's perspectives.

### **The Counterfactual and Overall Experience**

At the beginning of each interview, I discussed and defined the five modes of participation MED used during 2013-2016. I also explained how two of those modes, written comment and final hearing, were required by the APA (C.R.S § 24-4-101.5 et seq.) while workgroups, public comment at workgroups, and informal meetings were discretionary. At the end of each interview, respondents were asked to speculate on how things would have been different if MED had elected to simply follow what was required in the law and how that related to their overall experience.

R1 thought that regulators would have lost the opportunity to get community buy-in, which she thought was very important at the onset of the rulemaking process. If you lose community buy-in, she said, "it's so hard to bring it back." She also thought that long-term mistakes would have been made if the initial rulemaking process had not been conducted thoroughly enough. "Whatever it is, had [regulators] made missteps to begin with, you know, some of the missteps would be entrenched in law for the next 20 years or

whatever.” She also thought “missteps” would have drawn unwanted attention from the federal government. “Had it been a disaster, it might not have moved as quickly, or it might have slowed down, or the feds could have come in.” R1 finished her thoughts by saying, “[Regulators] got excellent input to help inform the decisions... Getting input got a certain level of buy-in. And it’s pretty much universal buy-in.”

Similarly, R2 said, “Yeah. You know what would happen!” in response to what would have happened if MED had just stayed with the required processes. R2 did not think anyone would have trusted the outcomes of the regulatory process that did not include robust discourse or opportunities to work through the challenges of standing up the industry because, at the onset of the rulemaking sessions, many in the industry thought the MED were more focused on law enforcement than guiding the rulemaking process. R2 said, “Everybody would have, there would have been an outcry of a “railroad by cops.” I mean, I would had been leading the charge. I would have been there doing the same thing.”

Given the initial lack of trust from the community, R2 thought that industry groups and marijuana legalization activists would have litigated if MED only allowed for written comments and testimony at a hearing when he said:

You know, [regulators] do have that kind of discretion, [regulators] are afforded the... decision making process of how input is taken and had, you know, if [the MED director] just decided, hey, we're just going to by the numbers. We're doing it by the books. Somebody would have said... without input, how does the agency

even know what any of these things [regulations] mean? All right. Yeah, I think somebody would have litigated and it would have changed things.

Many of the respondents talked about how much work went into participating in the workgroups. In fact, R2 said participating was, “100 percent worth, 100 percent exhausting.” Even though it was hard work, he thought it was a lot better than the litigation route, which is far more adversarial. He said, “By having all of the folks who've been involved at the table from the beginning, it just made things easier for everyone. It wasn't hostile.” R2 remembered his thinking in July of 2013, right after the first set of draft rules were released by MED and it announced a stakeholder process:

And then when [regulators] came out after July 1st and said, “Here's how the stakeholder process is going to work,” I think that was a big sigh of relief. OK, we're gonna have a lot more, I guess, reasonable approach to how we work with the agency to create these rules.

I'm not lying when I say this: [the rulemaking process was] fair, productive, transparent and good for everyone involved. If you've pissed off everybody in the room, then you're doing things right. That's how I've always felt about things. If nobody's happy when it comes to rulemaking, then the process is working, right?

R3 said there would have been things that the regulators missed without significant feedback from the industry or things regulators did not account for in the regulations if they did not get expert advice when designing the regulations and “they [industry] would have had to go to the legislature in the spring.” The other potential

problem R3 saw was that bigger industry participants would have been better equipped and had a more influential voice than smaller cannabis businesses:

Or alternatively, you know, frankly... only the big players were going to end up getting heard because they're the ones who can afford to get lobbyists to act on their behalf in front of the legislature when the regulators, frankly, get things wrong or get things... from the industry point of view, get things wrong.

R4 simply did not think rulemaking would have worked and it would have made for an adversarial environment when he said, "It wouldn't have worked as well. I think you've got to grease the skids. And if people don't feel like they're heard in the front end, it would have been a screaming match."

R4 said described his experience overall by saying:

I never knew how the sausage was made. So, it was kind of cool to be involved in that [rulemaking] and just see how it all comes together. As I think about it [participating], it taught me so much and I think it did it did get the job done right.

R5 thought the relationship building that came from the discretionary processes helped to arrive at better outcomes:

I think it's [the diversity of stakeholder groups] something that was valuable because you had to develop those relationships to be able to be successful, and had the state of Colorado tried to short circuit some of that relationship building, I think...we certainly would not have been as successful.

R6 thought limiting participation to the required modes of participation would have completely changed the way the industry looks at the present time. She said:

Well, we wouldn't have the industry where we have today. I think that [regulators] would have been constantly in battle with either lawsuits or... other mechanisms could be brought to bear saying why what you have proposed and enacted can't work. You know, just cannot work.

R7 speculated, similarly to R3, that the legislature would have gotten involved more than it already was at the time:

You would be inundated with upset people and I mean. You know, people... need a venue to air their concerns and grievances in and everything. And if it wasn't happening in those working group meetings, it would be telephone calls and emails and other things like that. And if that wasn't happening, if that got cut off, if the MED was like, you know, "We're not talking to anybody about complaints or anything," then it would go to the state legislature.

R7 shared his overall impression when he said, "There's no comparison... while it's not a perfect program, it's still damn good. All these people should be proud of the process because it has found a very good balance."

R8 was mindful of the cost of a robust regulatory process versus the cost of defending lawsuits, legislative efforts, and administrative cases based on rules no one thought were legitimate. She speculated that it would have been a lot more expensive to emerge out of the disorder of an impersonal regulatory process than it was to have a thoughtful and collaborative process:

And so, there would have been chaos. Right. You would have had unhappy public health people, unhappy parents, unhappy industry. I don't know what it costs to

run stakeholder meetings, but it's got to be a hell of a lot cheaper than defending...all that stuff. Or enforcing people who don't have buy in and just go about their own way of doing things.

R9 thought that limiting participation to the required modes of participation would have prevented the entire regulatory program from getting started and that there would be vastly different interpretations of the final regulations:

I don't think the regulated program would have ever stood up. Just watching it, if you aren't giving people a really clear direction on a mass scale and allowing them a forum to be listened to, to work through it, really understand how to implement the program and stand it up without that really clear direction and complete buy-in from a mass amount of people and it would never stand up.

Everyone would have been operating how they thought the rules were written.

And you got a lot of lawyers telling you what the interpretation of what it looked like.

R9 speculated that this type of environment could also have an impact on the cannabis business and their ability to get investment dollars, which would have made it harder for smaller businesses to survive. She said, "Businesses wouldn't be able to thrive because without really clear clarity of how to operate a business, you can't get investment in it."

R10 summed up what everyone else was sharing when she said, "I think [regulators] would have come up with some really shitty regs in the end." R10 also thought it was sad to imagine what the process would have looked like if only the legal requirements for rulemaking were followed by regulators. She speculated that there

would have been less opportunity for relationship building; after all, many of the stakeholders got to know one another during those early years at rulemaking workgroups. R10 also worried about losing stakeholders' acceptance and ownership of the rules without a more comprehensive approach to rulemaking:

But I think... the biggest benefit is when it comes to doing a rulemaking process, a group process like this is that you get... buy in by the people that are involved, whether... it's law enforcement or the different agencies or the industry or the public or whatever. It's that you get a level of buy in and into that process, into upholding whatever the final product is, because you all had input in it. So, you want to see it do well. You want to see it succeed. You want to see it go well. So, and I think [regulators]... would have lost all of that. I mean, it's like [regulators] were would have been completely blind. I mean trying to come up with the first round of regulations with no road map and no understanding of the industry. I mean... how would [regulators] have put those together, [regulators] would have had to get some kind of input.

Simply put, not one of the respondents thought the regulators would have developed a good set of regulations had regulators only considered written comments and public testimony at a hearing. For the reasons noted above, respondents valued the addition of discretionary modes of participation as complementary to the required modes.

### **Summary**

In this chapter, I provided the participants' demographics, reviewed the methodology used for collecting data, coding, and analysis, and presented the results of

that analysis. I collected interview data during this study that helped me detail the lived experience of respondents, narrated in their own words, during MED-hosted rulemaking processes from 2013-2016. Respondents shared experiences with the modes of participation they used, who they felt influenced the rules, the extent to which they were able to influence the rules, how they learned from other stakeholders, the role of the regulator, and their overall experience participating in rulemaking sessions.

As mentioned earlier, I refined the findings shared above into seven themes that are discussed at length in the concluding chapter. The seven themes that emerged during my analysis of the data were (a) importance of rulemaking participation, (b) limited participation by government stakeholders, (c) non-rulemaking modes of participation, (d) perceptions of the regulator, (e) importance of dialog during rulemaking, (f) fairness of influence, and (g) broad support for the regulations.

In Chapter 5, I interpret these findings and the themes, discuss the limitations of my research, and explain how the results of this research could affect social change in the field of public administration.

## Chapter 5: Interpretation of Findings

### **Introduction**

In this chapter, I address the results discussed in the previous chapter by interpreting the emergent themes from the data analysis. I also discuss the four stated limitations of this research, recommendations for future research, and the implications for social change arising from this research.

The purpose of this qualitative study was to better understand the lived experience of stakeholders who participated in MED-hosted rulemaking processes for the legalization of cannabis from 2013 to 2016. In addition to general feelings about their experiences with the rulemaking process as whole, I sought to better understand the extent to which respondents felt heard by the regulator and other stakeholders, their perceptions of the regulator's role in the process, and their ability to influence the final regulations through participation. I interviewed five public interest stakeholders and five private interest stakeholders. The seven themes that emerged during my analysis of the data were (a) importance of rulemaking participation, (b) limited participation by government stakeholders, (c) non-rulemaking modes of participation, (d) perceptions of the regulator, (e) importance of dialog during rulemaking, (f) fairness of influence, and (g) broad support for the regulations.

### **Interpretation of the Findings**

In this section, I explore and interpret the findings of this phenomenological research project. I will discuss each of the seven themes in order to better understand the phenomenon of participation in rulemaking. When relevant, I compare and contrast the

findings of this research with literature reviewed in Chapter 2 to more fully and deeply interpret the experiences respondents shared during their interviews. I framed the themes of this research using Ginosar's (2014) constructs of public interest institutionalism, which is the theoretical framework of this research. The four constructs of public interest institutionalism are:

1. The regulator is best positioned to preserve and facilitate a negotiated public interest amongst competing viewpoints and public policy agendas;
2. Stakeholders with disparate viewpoints participate in open dialogue during rulemaking processes to define public interests from a broader spectrum of competing ideas and policy agendas;
3. The regulator continues to identify and frame regulatory problems that surface from collectively defining public interests from all interested stakeholders through deliberative institutionalized processes; and
4. The regulator crafts new regulatory policy that is reflective of the deliberative processes (Ginosar, 2014).

### **Importance of Rulemaking Participation**

All of respondents saw the rulemaking process as important for creating the regulations that would be used to effectively monitor compliance of cannabis businesses in Colorado. In their view, the final regulations had critical implications for public health and safety and the ability of cannabis companies to conduct business efficiently and productively. This theme is consistent with the seminal literature outlined in the literature review with respect to who was likely to participate and for what those interests would

advocate during rulemaking (Bernstein, 1955; Herring, 1936; Stigler, 1971). For example, public interest respondents focused on keeping children safe, protecting the welfare of patients, product safety, criminal enforcement, or local safety requirements. Private interest respondents, who were entirely industry stakeholders, focused on the cost of regulation, timelines for implementation, and operability of regulations they found to oppressive. Somewhat predictably, all of the stakeholders' narratives confirmed that they acted rationally by advocating for a particular position that was aligned with their individual or group goals.

### **Limited Participation by Government Stakeholders**

All of the government stakeholders (i.e., public health officials, local government officials, and law enforcement) shared that they were not able to participate fully in the public-facing modes of participation because the rapid rate of rulemaking was outpacing their ability to formulate official positions before speaking up in public. These respondents felt like they had to be extra careful with what they shared or expressed during workgroups because they feared those comments would be taken as an official position or offend other stakeholders. As a result, they were often limited in how they participated publicly, and they were largely focused on listening to the various positions stakeholders expressed during rulemaking.

These limitations are important to recognize because governmental actors are important to the public interest voice. Nongovernmental public interest stakeholders shared frustration that government stakeholders did not stand up for the public health and safety issues in the public forum. Limiting the public interest voice could have negative

consequences if government stakeholders do not have a way to provide feedback to regulators so that they feel heard and are able to influence the regulations, as suggested by Ginosar (2014). The government stakeholders I interviewed for this research said they made their voices heard largely through informal meetings with regulators and through written comments approved by their leadership. The informal meetings happened outside of public view, so nongovernmental public interest stakeholders were unaware of what happened in the informal meetings government stakeholders had with regulators. Some governmental actors may not have been able to advocate as strongly in public as other public interest stakeholders would have liked.

### **Non-Rulemaking Modes of Influence**

All of the nongovernment respondents (two public interest and five private interest) saw rulemaking as part of an annual cycle. In the early months of the year, they were active at the state legislature advancing legislation consistent with their position on legalization. Many of the stakeholders reflected on how their work at the legislature effectively shaped portions of the rulemaking session that took place after the legislative session ended in May. The results of rulemaking that occurred during the summer and fall helped to shape how stakeholders approached the next legislative session.

Respondents reported that they tried to get something in law that they could not get into regulation, alter the regulators' authority for rulemaking, or even try to overturn a regulation they disliked. Throughout this annual cycle, several respondents reported continued lobbying at the legislature, calls to the governor's office, and lawsuits as ways in which they held regulators accountable for the outcomes of rulemaking.

In the context of this research, participation by respondents at the legislature, governor's office, and courts all emphasize the ability and likelihood of stakeholders to share their experiences about the fairness and effectiveness of rulemaking processes to oversight bodies. Regulators, then, have to defend their rulemaking processes in order to justify the decisions they make to arrive at regulatory outcomes.

The literature provided some insight into what respondents might be trying to achieve through non-rulemaking modes of influence. Regulators are more likely to meet mandates from lawmaking bodies more than the demands of stakeholders alone (Lavertu & Yackee, 2012). Hwang et al. (2014) found that courts are likely to consider the process regulators used to formulate regulatory decisions. Regulators are also more likely to follow a governor's lead on a particular regulatory policy position than promulgate a regulation contrary to the administration's priorities (Cook, 2015). The experiences that respondents shared suggested that they knew they could amplify their ability to influence the regulator if they had support from the legislature and the governor's office. They also appeared cognizant of the vulnerability of the rulemaking process, especially in the courts, although none of the stakeholders knew of any lawsuits related to the final rules they helped formulate during the legalization of cannabis in Colorado.

### **Perceptions of the Role of the Regulator**

Many respondents' perceptions of the regulator changed over time. Private interest respondents described how they entered into rulemaking skeptical of the regulators and what was motivating them. Private industry respondents also felt that regulators had no practical knowledge of the cannabis industry and were more likely to

take a strict approach to compliance and enforcement than they were to a more balanced approach favoring the industry. Public and private interest stakeholders were expected to participate rationally (Bernstein, 1955; Herring, 1936; Stigler, 1971) and advocated for their respective positions. Along with that expectation, certain preconceived notions are formed by stakeholders about other viewpoints prior to their participation. Similarly, private interest stakeholders made certain assumptions about the regulators and assumed they would be focused on strict compliance with a comprehensive set of regulations. According to respondents, these assumptions were amplified because the MED was a criminal justice agency with law enforcement officers doing the regulating.

Most of the respondents, representing both public and private interests, also shared how concerned they were about the scope of the regulations that needed to be promulgated. Boushey and McGrath (2015) found that state legislatures with divided chambers and part-time lawmakers were more likely to defer the details of law to rulemaking agencies. Both of these dynamics were present during 2013–2016 rulemaking sessions: respondents were aware of how much public policy needed to be promulgated for the new industry, and initially, they were not sure how the rulemaking processes were going to be facilitated.

Once respondents had an opportunity to interact with the regulator, and over the course of several rulemaking sessions, many reported that their perceptions of the regulator changed. Respondents remembered that their impressions of the regulator shifted as they were able to participate in workgroups or informal meetings. Respondents observed the regulators becoming more neutral and objective over time and acting like

facilitators of the rulemaking conversation. Respondents recalled how regulators convened meetings where everyone could be heard, problems could be discussed, and areas of agreement/disagreement were shared. Rinfret et al. (2014) found that stakeholders have a stronger sense of inclusion in rulemaking when regulators conduct outreach during rulemaking. Indeed, respondents from this research placed great value on the opportunities they had to speak to the regulator. Accessibility of the regulators throughout the rulemaking process was important to the respondents; interactions played a role in how participants' opinions of the regulator were formed. Respondents distinguished interactions with regulators from less personable modes of participation, like written comments and rulemaking hearings. This finding was similar to that discovered by Rinfret et al. (2014), in which subjects of the study appreciated an open dialogue with regulators in one case while other subjects in a different case were disappointed with the lack of opportunity to participate. Respondents shared memories of meeting with the regulators, being heard, and often, influencing the regulations as a result.

This was most apparent with the respondents' experiences in informal meetings with the regulator. Crow et al. (2015) found that regulators hold informal meetings to learn more from stakeholders, although informal meetings do invoke concerns about fairness and inclusion of multiple viewpoints. All of the respondents in this research recalled informal meetings with the regulators, and nine of them (four public interest and five private interest) actually described specific instances where they met with regulators, provided details of what was discussed, and explained how much they valued those

experiences. Respondents used private, informal opportunities with the regulator to share information they did not feel comfortable expressing in the public workgroups, educating the regulator, and clarifying negative comments made about their respective groups. Respondents left informal meetings feeling like they had been heard, helped to influence the final regulations, and improved their professional relationship and credibility with the regulators.

The respondents' narratives demonstrate that the first tenet of public interest institutionalism is achievable. In the first tenet of public interest institutionalism Ginosar (2014) recommends that the regulator becomes a negotiator of the public interest by including everyone in determining what the public interest should be. Not one of the respondents denied the central role the regulator played during rulemaking, but many of the respondents, at least initially, were concerned about how the regulators would listen to interested parties. Once they knew there was going to be dialog and discourse with the regulators, they viewed the regulator as someone who could facilitate the creation of rules that, as one respondent put it, "everyone could live with." I interpreted the respondents' data on lived experience to mean that the regulator was not qualified to create rules for the legalization of cannabis in a vacuum, but regulators could arrive at a workable set of regulations if they proactively sought feedback from a diverse group of stakeholders during multiple opportunities to participate.

### **Importance of Dialog During Rulemaking**

Respondents expressed appreciation for dialog with regulators and other stakeholders through various modes of participation during the rulemaking process. In

two research projects by Yackee (2015a, 2015b), stakeholders saw their efforts as being more effective when they utilized a multimodal approach to rulemaking participation. Likewise, while my respondents appreciated various modes of participation, they all favored modes that allowed for conversation.

The required modes of conventional rulemaking participation (notice, comment, and formal hearing) in Colorado were intended to include interested parties in the process, but the statutory design of those modes (C.R.S § 24-4-101.5 et seq.) did not allow for real-time conversation and discourse. Respondents saw value in the required processes, but they described the conversational characteristics of the discretionary processes regulators facilitated as being more useful for educating others and learning about different viewpoints. When respondents described how they developed professional relationships, heard other perspectives, learned something new from another stakeholder, or found areas of agreement/compromise, they always described participation in workgroups and informal meetings with the regulators.

Respondents remembered the regulators convening public workgroup meetings where participants had to apply to be part of the group. There was generally a well-rounded range of perspectives represented at each workgroup. According to the respondents, regulators facilitated conversation, considered multiple perspectives, and sought out information they needed to inform rulemaking decisions.

Respondents described instances in which they presented their own approaches to a particular rule to a diverse group of stakeholders at the workgroups. They noted how this process differed from others in that they had to influence more than just regulator.

Respondents reported the difficulty and unlikeliness of changing another stakeholder's opinion on key issues, but they did report being able to educate others and reach compromises. For example, a conversation occurred during workgroups that focused on edibles manufacturing, which prompted a change in perspective among law enforcement stakeholders. Similarly, public interest stakeholders described how they were still adamant about labeling and testing standards for edibles to protect public health, but they were more open to having a longer implementation period for those rules. As a result of workgroup conversations, public interest stakeholders came to understand the physical limitations manufacturers had in complying quickly to new regulations. Ultimately, workgroups and informal meetings MED facilitated resulted in stakeholders maintaining their stance on key issues while being open to compromise, especially if there was a practical and well-articulated need for a concession.

Respondents also shared how dialog created an opportunity for relationship building that simply would not have been available in rulemaking processes limited exclusively to the required modes of participation. In sharing their experiences, respondents described how they expected stakeholder viewpoints to remain constant during rulemaking; in other words, respondents had preconceived notions about what stakeholders with other viewpoints would advocate for or against. Respondents illustrated this when they described how law enforcement would be focused on reducing crime, how regulators were going to enforce strictly and without regard for business impacts, how no one understood the industry as a business, or how the industry was only trying to protect their financial interests. Based on these perceptions, respondents assumed that other

stakeholders would take positions on regulations that would either harm the public or, conversely, limit or prohibit the commerce promised by legalization. Simply put, they assumed the worst about other stakeholders when going into rulemaking season. Despite these concerns, respondents shared how the dialog with one another facilitated at the workgroups clarified those preconceived notions in a way that helped increase understanding of one another.

Respondents were also acutely aware of how other stakeholders might be perceiving them and assumed, in many cases, that others' perceptions were negative. Both public and private interest respondents were concerned about how they were viewed by other stakeholders and the public because others' views could impact their credibility and effectiveness during rulemaking. For example, private interest stakeholders were concerned about being typecast as pot smoking burnouts or hardcore criminals trying to make a fortune at the expense of children, patients, and the general public. Public interest respondents were concerned about being viewed as lacking business savvy or evangelically advocating for the public interest at any cost.

Conversations that occurred during informal meetings and workgroups were important ways for respondents to make their voices heard, hear what others had to say, better understand one another, and clear up preconceived notions others had about them. Explicit in sharing these memories, respondents universally felt that dialog played a role in evolving their understanding and perceptions of others while also preserving their non-negotiable views. As noted by Rinfret et al. (2014), stakeholders felt more involved in rulemaking when they participated in regulator-led workgroups. Similarly, respondents in

this research felt like dialog helped them feel included in a collaborative process. According to the respondents, if the discretionary modes of participation had not occurred and there had been no conversations, respondents would have continued to assume the worst and rulemaking would have been much more combative, chaotic, and ineffective.

The value respondents placed on the informal meetings with the regulator and the public workgroups in combination with the required modes of participation was illustrated further in their responses to the counterfactual interview question, which asked them to predict what would have happened if the regulator only allowed for written comment and testimony at the formal hearing. Similar to Yackee's (2015a, 2015b) finding that more participation led to more perceived effectiveness by stakeholders, respondents in this research noted that multimodal participation in formal and informal processes was effective. However, if the discretionary modes had been omitted by regulators, all of respondents predicted that the outcomes would have been worse, and that the implementation of legalization could have been threatened. The respondents did not think the required modes of participation alone provided a relief valve for the pressure of diverse viewpoints held in isolation of one another.

Respondents credited what they perceived as a successful implementation of marijuana legalization to the comprehensive and inclusive structure of rulemaking that gave stakeholders and opportunity to be heard, to better understand one another, to reshape thinking, and to make this important public policy effort transparent and workable. Through the lens of public interest institutionalism, the experiences

respondents had support the idea that the regulator can facilitate the process and host modes of participation that garner multiple viewpoints in order to ensure interested parties are heard (Ginosar, 2014). In the next section, I discuss how the respondents described who was successful at influencing the final regulations in Colorado during the legalization of marijuana.

### **Fairness of Influence**

The most tangible measure of stakeholder influence is found in the regulations promulgated at the end of a rulemaking session. According to Ginosar (2014), stakeholders should be able to look to the final regulations and point to specific areas that they influenced. The final regulations should be a reflection, at least in part, of the collaborative processes used to hear stakeholders' perspectives (Ginosar, 2014). This standard holds the regulator accountable for listening to and representing what was agreed upon amongst stakeholders (Ginosar, 2014). According to respondents in my research, it was clearly important to be heard, but it was equally important to see their perspectives incorporated into final regulations.

Marijuana industry participants were perceived to have the most influence according to respondents, but all of the respondents felt as though they had influenced the regulations. Nine of the 10 respondents said that industry participants successfully influenced the regulations. Previous studies have shown that private interests stakeholders are at an advantage to influence regulations if the industry has support from the governor's office (Cook, 2015), if regulators are more likely to meet informally with private interest stakeholders (Crow et al., 2016), or if the industry has invested a large

portion of its lobbying budget on rulemaking (Grasse et al., 2016). In my research, the only one of the above reasons invoked by public interest stakeholders was the ability of industry to spend more time and money participating in the regulatory process. This made sense, given that Governor Hickenlooper was commonly known to have opposed marijuana legalization and that all of the respondents had informal meetings with the regulator. Respondents thought industry stakeholders were more influential, but not in a way that alienated other interests. Most of the respondents, public interest respondents included, described industry influence as proportional. It was expected that the cannabis industry stakeholders would be influential in rulemaking because they would be the ones most notably impacted by what was put into the regulations.

Even though the industry participants were perceived to have an advantage, their advantage did not compromise public interest groups' ability to influence the regulations too. All respondents, in some way, shared experiences and had memories of influencing some important aspect of the regulations that was important to them. This may have happened during workgroups or informal meetings, but everyone self-reported the ability to influence the regulations. This finding is consistent with Yackee's (2015a) finding that public interest stakeholders found value in participating even if it was likely that industry participants had more resources to influence regulations. In describing their thoughts on influence, all but one of the public interest respondents believed the collaborative workgroups and informal meetings tempered the potential influence of the industry and created a level playing field. Private interest respondents credited the same processes

with preventing regulatory approaches that would have shut down the commercial cannabis industry in Colorado before it even got a chance to prove itself a valid industry.

### **Broad Support for Regulations**

A desirable outcome for rulemaking is for regulators to promulgate regulations that have broad support from public and private interest stakeholders. Achieving this outcome may be considered idealistic and unattainable, especially when the public policy in question is divisive. This seems even more impossible in the current zero-sum political environment we are experiencing in the United States. Historically, regulator favored public health and safety when crafting rules, but that priority often created an adversarial relationship between regulators and the regulated community (Bernstein, 1955; Herring, 1935; Stigler, 1971). Over time, private interest stakeholders in the regulated industry gained political and economic advantages over regulators, resulting in capture of the regulator and regulations that favored businesses over public health and safety (Bernstein, 1955; Carpenter & Moss, 2014; Stigler, 1971). In both of these scenarios, a particular group has a much greater influence over the regulations, to the detriment of the other. What is missing from the literature is insight in how to avoid or mitigate these unbalanced dynamics that result in public policy decisions that are not in the best interest of the public or the industry in question.

In the theoretical framework for this study, private interest institutionalism, Ginosar (2014) provides a framework for regulators to mitigate the problem noted above. Ginosar said that the regulator was best positioned to advocate for the public interest among a broad range of stakeholders. In negotiating the public interest, he also posited

that if stakeholders were heard and understood, and if the final regulations reflected stakeholders' interests, the policy would be more widely accepted (Ginosar, 2014). Lastly, if the regulations enjoy broad support from stakeholders and the process of engaging becomes institutionalized by the regulator, there is potential to positively mitigate one group's disproportional advantage. Indeed, my respondents described the regulations created by the regulatory processes they participated in as receiving "buy-in," "acceptance," and being "something we could all live with."

### **Limitations of the Study**

This study has four stated limitations. The first limitation is replication into other jurisdictions. I designed this study with the Colorado marijuana regulatory framework in mind. Colorado is one of many states that has adopted an adult-use cannabis policy, though each jurisdiction has taken different approaches to legalization and rulemaking. Circumstances in other states might not align with the dynamics present in the time period or location researched in this project. As the researcher, I was uniquely positioned as someone who had experienced the same phenomenon as the study's respondents. My level of experience with the phenomenon of interest would be difficult to replicate in other, similar studies. Therefore, in replicating this research, future researchers should be mindful when applying this methodology to other jurisdictions or regulated industries.

The second limitation is my use of public interest institutionalism as the theoretical framework. It is a contemporary theoretical framework that has not been tested extensively. To address this limitation, I designed this as a qualitative study with a phenomenological approach. Qualitative research is an effective way to research untested

and contemporary theoretical frameworks (Creswell, 2013; Patton, 2002). Inherent in this type of research is the absence of statistical analysis commonly found in quantitative research and there are concerns about the motivations and biases about legalization that would inevitably be present in the study population (Creswell, 2013; Patton, 2002). This limitation could be minimized through additional research similar to this project, which added to the knowledge of public interest institutionalism.

The third limitation was sample size; the sample population for this research was relatively small. While there was significant interest by those who participated, the sample size was limited to 10, which is within in the target number for this research and consistent with a phenomenological design (Creswell, 2013; Patton, 2002; Saldaña, 2016). Saturation was obtained during the interviews and I have a high degree of confidence in the data set collected in the verbatim transcripts of the semistructured interviews.

The fourth limitation was unanticipated and discovered during analysis of the data set. Maintaining confidentiality of the respondents was an important aspect of the study design and IRB approval. Given the specific geographic location and small sample population, many of the comments and specific experiences shared by respondents could not be presented because they would have revealed the identity of the respondent or others who were not part of the research. Therefore, I omitted certain specific experience and provided paraphrased versions of other anecdotes. I also used brackets to denote identifying words or phrases that were replaced with [pseudonyms]. These tactics served

the purpose of mitigating concerns about confidentiality but also may detract from the essence of the experience shared by respondents.

### **Recommendations**

My goal for this research was to explore the lived experience of stakeholders who participated in rulemaking sessions hosted by the MED from 2013 to 2016 during the legalization of cannabis in Colorado. Future research should continue to explore public interest institutionalism in other jurisdictions where legalization has been implemented and in states that are just beginning that journey. Marijuana legalization is continuing to expand around the world, so the opportunity is also expanding to conduct research similar to this project. The design and findings of my research provide a framework by which to transfer this research and customize it to other jurisdictions.

If the goal of rulemaking processes is for regulators to incorporate elements of citizen participation into the final regulations, then future researchers should seek to develop a survey instrument that measures that objective. A survey instrument could be used to further research and measure public interest institutionalism, but it could also be used as a gauge to inform regulators about the regulatory processes and modes of participation that best build trust and confidence in those who participate. Constructing equitable processes that balance the needs of diverse viewpoints is something that demands future research. Public interest institutionalism is a framework that helps to conceptualize what standards could be applied to achieve balanced regulations.

## **Implications**

From the results of this research, I show that stakeholders in rulemaking value participative processes and expect regulators to facilitate those processes. Stakeholders value dialog with other stakeholders and believe that industry influence can be balanced with the influence of other stakeholders.

### **Social Change**

In the divisive and toxic culture of public policymaking in today's political sphere, the merits of differing viewpoints are potentially lost to the adversarial narrative dominating politics. Positive social change, in the context of this research, can be achieved through exploration of public policy development that proactively and deliberately seeks out different viewpoints with the expressed intent of arriving at balanced public policy that interested parties can "live with."

Positive social change after dissemination of my work could occur if regulators change the way they approach divisive public policy topics. Conflict-averse regulators could think it is counter intuitive to bring people with opposing viewpoints together to discuss differences in a *very* public forum. Respondents in this research shared how they were able to leverage several modes of participation and interaction with other stakeholders to be heard, learn from others, and find points of compromise and even consensus. One of the most compelling findings of this research was that respondents reported that they were able to maintain their values and priorities while listening to those with different perspectives to establish a mutual understanding of the complexities of a given regulatory approach. The conversational modes of participation (workgroups,

public comment at workgroups, and informal meetings with the regulator) hosted by the MED provided venues for the work to be accomplished. This research supports the idea that regulators have the authority in law and the support of stakeholders to facilitate processes that result in outcomes that incorporate stakeholders' diverse values priorities.

Public policy processes that are inclusive and collaborative have the potential to effect positive social change. My research could potentially contribute to a better, more nuanced understanding of rulemaking for cannabis legalization, but it has implications for other areas of policy, as well. Rulemaking topics include obvious ones, like regulations that are intended to protect consumers, keep adult cannabis from being consumed by minors, and ensure worker safety, but regulators are also tackling other issues like criminal justice reform and involvement by minority communities in the cannabis industry.

My research presents a snapshot of a diverse group of stakeholders and the rulemaking processes that they valued. Regulators can, and should, use this information to help better formulate a plan not only to address raw and divisive rulemaking topics about equity, racial injustice, and inclusion, but to actually lead on the topic outside the backdrop of cannabis legalization. Institutionalizing collaborative and conversational modes of participation into rulemaking can help to promote a culture of inclusiveness that can be leveraged by regulators to have discussions that are hard to start, make challenging decisions, and provide a venue for diverse viewpoints to be heard.

This research can lead to positive social change beyond the regulatory tier of government, too. Effectively facilitating rulemaking processes comes with risks to

regulators, costs to regulatory agencies, and time limitations dictated in administrative procedure laws. Governors and law makers can use the results of this study to better understand the benefits of discretionary regulatory processes as well as the challenges regulators face. Understanding these complex dynamics could lead to positive change at the executive and legislative branches of state government that support regulators' ability and willingness to be more collaborative during rulemaking. It could also lead to more coordination between branches.

### **Recommendations**

The findings of this research support the following recommendations for promulgating regulations for the cannabis industry:

- Regulators should identify the opportunities that exist to engage with stakeholders beyond what is required by law.
- Regulators should continually try and find new ways to engage with impacted stakeholders in a collaborative effort to define and solve regulatory problems through discretionary modes of participation.
- Stakeholders should use their influence in the executive and legislative branches to share the findings of this research and encourage more participatory rulemaking processes.
- Elected officials should explore ways in which to codify collaborative modes of participation into law in order to support regulatory efforts to engage citizens and fund those efforts.

## Conclusion

Rulemaking occurs in a dynamic and political environment where varied interest groups compete to have their preferences and ideas incorporated into the rules. To varying degrees, the literature provides ideas on who influences regulations, how they influence regulations, and who does not get heard. However, there is a gap in the literature. No one has attempted to understand the lived experience of stakeholders who have participated in several rulemaking processes on the same topic and utilized several modes of participation afforded to stakeholders during those processes. Using a qualitative methodology with a phenomenological approach, I examined this gap in literature in order to better understand how stakeholders who participated in MED-hosted rulemaking processes perceived those experiences. Respondents in this research had mostly positive experiences with the MED's rulemaking because there were multiple modes of participation that provided ways to be heard and learn from other stakeholders. Moreover, nearly all of the respondents could articulate how they influenced the final regulations.

The stakes of rulemaking for cannabis legalization were high for impacted stakeholders on both sides of the argument. Public interest respondents were concerned about impacts on crime, increased youth use, and contaminated product in the stream of commerce. Private interest stakeholders were concerned that regulations would be too costly and intrusive to stand up the regulated segment of the market. Respondents shared strong feelings about these competing viewpoints and concerns about the negative impact rulemaking could have on protecting their interests.

Implicit in the respondents' concerns about rulemaking was a desire for a fair and equitable rulemaking process that is transparent. In several cases, respondents shared how their perceptions of the regulator evolved over time; in the end, they remembered the regulator facilitating several modes of participation whereby stakeholders could participate in rulemaking to advocate for their positions.

As respondents drew from memory and their experiences about specific modes of participation, the importance of dialog with other stakeholders became a common theme. Respondents found value in conversations that allowed for them to educate others, share concerns, and counter competing viewpoints. Those conversations also provided opportunities for respondents to learn more about other viewpoints and areas of expertise. These regulator-led conversations were a way to establish understanding, reach compromises, and achieve balanced regulations where public and private interests were addressed. According to respondents, this was achieved without having to compromise their core values and policy goals for the regulations. Respondents said that no one got everything they wanted, but everyone got some of what they wanted in the regulations.

The findings of this research strongly support the tenets of public interest institutionalism that places the regulator in the role of advocating for the public interest by gaining broad support for balanced regulations. Respondents acknowledged and accepted the central role of the regulator as a facilitator tasked with collecting and synthesizing participation from a diverse group of stakeholders to arrive at workable public policy. Respondents felt they were heard and that they had the ability to influence the regulations because the processes leveled the playing field by offering multiple ways

in which to participate and express their thoughts and concerns. These are all characteristics of the model of public interest institutionalism that Ginosar posits could lead to broadly accepted public policy.

A key conclusion is that all of the respondents thought they influenced the final regulations, but none of them reported getting everything they wanted. They spoke of times when there was consensus, times when there were compromises, and times when there was sustained disagreement. There were also times when areas of disagreement were reconciled in way everyone could accept. Eight of the respondents indicated that if no one was completely happy and no one got everything they were after, a good rule (one that everyone could accept, and the industry would comply with) had probably been made. Respondents found the comprehensive set of opportunities to participate in rulemaking led to practical, sustainable ways of balancing interests in the regulations.

My findings for this research have implications for positive change among regulators, governors, law makers, and interested stakeholders by suggesting that strongly-held stakeholder beliefs and positions can be maintained while compromise and consensus are reached. These encouraging findings can help inspire other to make changes to regulatory processes and inform the development of laws that support more participatory rulemaking processes in the United States.

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## Appendix: Semistructured Interview Questions

**Primary Research Question (RQ)**

*What are stakeholder's perceptions and lived experience of rulemaking processes facilitated by the Colorado Marijuana Enforcement Division during the legalization of marijuana between 2013-2016?*

- 1) How did you come to participate in rulemaking during the legalization of cannabis in Colorado?
- 2) Can you share how you participated in rulemaking during the legalization of cannabis in Colorado?
  - a. What rulemaking topics were covered during your participation?
  - b. Did you participate in:
    - Informal meetings with the regulator;
    - Workgroup membership;
    - Written comments; or
    - Public Hearings?
- 3) What did you hope to accomplish by participating in rulemaking?
  - a. Describe what was most important to you; or,
  - b. What aspect of the rules you tried to inform and influence the most.
- 4) Tell me how you identified yourself to other participants.
- 5) Can you describe what you remember about the regulator's role in rulemaking?

***Subquestion 1: How do participants perceive that their experience informed or influenced the rulemaking processes?***

- 1) How useful was it to participate in rulemaking?
  - a. Were you in all or in part able to accomplish what you described earlier?
- 2) Did you feel heard and understood by the MED or other stakeholders?
- 3) Describe how you or other participants informed the rulemaking you participated in.
- 4) Who did you see as the most influential?
- 5) Can you point to any regulatory approaches you helped influence?

***Subquestion 2: How do participants perceive other stakeholder's viewpoints and contributions to the rulemaking processes?***

- 1) What was your relationship like with other stakeholders?
  - a. Those that agreed with you?
  - b. Those that disagreed with you?
  - c. Government actors?
- 2) Tell me who you remember from those experiences.
- 3) How would you describe other stakeholder's involvement in rulemaking?

***Subquestion 3: How did participants perceive the regulator's role during the rulemaking processes?***

- 1) Can you describe what you remember about the regulator's role in rulemaking?

- 2) Did you feel heard and understood by the regulator?

***Subquestion 3: What was the lived experience of participants of engagement in the rulemaking process?***

- 1) Looking back, how would you describe your involvement in rulemaking for the legalization of cannabis in Colorado?
- 2) What was most memorable for you during this time?
- 3) Describe what might have happened if these rulemaking processes were done differently.