

# A Tale of Three Cities: Medical Marijuana, Activism, and Local Regulation in California

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## Abstract

This article examines important differences taken by California's three largest metropolitan areas to regulating medical cannabis dispensaries and the role activists and organizations play in shaping regulatory practices. In the San Francisco Bay Area, Los Angeles, and San Diego, medical marijuana activists and providers have faced vastly different "political opportunity structures." I operationalize political opportunity structures as composed of district attorney policies, police department policies, city initiatives and resolutions, the presence or absence of dispensary regulations, and the presence or absence of city level task forces or commissions. Activists use ballot initiatives, lobbying, civil disobedience, protests, and referenda to further open the political opportunities they faced. Cities in the San Francisco Bay Area are "pro-regulation," while Los Angeles has taken a "laissez faire" approach, and San Diego a "prohibitionist" approach. Successful local ballot initiatives, pro-medical marijuana city council resolutions, sympathetic local law enforcement personnel, and the presence of local regulatory bodies contribute to favorable political opportunities and viable local regulations. Local officials have responded differently to a federal campaign to eliminate dispensaries and dissuade local regulation that began in late 2011.

Keywords: medical marijuana, medical cannabis, dispensaries, drug policy

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This article seeks to answer a two-fold research question: why did the medical marijuana movement succeed in changing marijuana policy in California in the 1990s, and why have different cities in California taken vastly different approaches to governing the radical new policy? To explore these questions, I use the concept of "political opportunity structures"

from the political process approach to the study of social movements. The concept of political opportunity structures emphasizes the role of political and legal contexts in shaping the emergence and success of social movements. After introducing the concept of political opportunity structures, and reviewing earlier literature on radical drug policies, I operationalize political opportunity structures with regard to medical marijuana dispensaries and their regulation.

Using interview data with key actors, movement literature, archival research, observations from attending City Council and Cannabis Task Force meetings, and official City documents, I explore the varying experiences of San Francisco, Los Angeles, and San Diego regarding official responses to medical marijuana providers. I analyze how political opportunity structures and the ways that activists open political opportunity structures contribute to three distinct regulatory approaches to medical marijuana under a uniform state law. I propose three regulatory models and explain their varying contours. Cities in the San Francisco Bay Area represent the “pro-regulation” model, while Los Angeles represents the “laissez-faire” model, and San Diego represents the “prohibitionist” model. These three models vary according to the variables that comprise their political opportunity structures: city and district attorney policies, the presence of pro-medical marijuana ballot initiatives and council resolutions, and local law enforcement policies with regard to cooperating with the Drug Enforcement Administration (DEA).

This article seeks to contribute to an understanding of how novel drug policies emerge and take hold despite institutional opposition. It emphasizes the importance of activism and civil disobedience in capitalizing on and expanding political opportunity structures. My three-city comparison demonstrates that three models of dispensary regulation emerged from three different political opportunity structures in California. However, civil disobedience and political activism play a large role in shaping local cannabis politics. Political opportunity structures alone cannot explain how activists were able to shape the context of medical cannabis. It was the bold civil disobedience of activists and their ability to cooperate with city and state officials that made Proposition 215’s potential a reality.

The terms activist, advocate, provider, dispensary, and qualified patient are used throughout the article. An activist is any individual working alone or as part of a group to institute the provision of medical cannabis in line with the Compassionate Use Act of 1996 (CUA). Activists may use political tactics (including ballot initiatives and lobbying), legal tactics (lawsuits and challenges), or traditional social movement tactics (including protest, civil disobedience, and rallies). Advocates are actors who only use legal tactics (lawsuits and legal defenses). A provider is an individual or group of individuals operating a medical cannabis dispensary, a medical cannabis collective, or medical cannabis growing projects. A medical cannabis dispensary is a location that sells medical marijuana to qualified medical cannabis patients. A qualified medical cannabis patient is someone who has sought and received a recommendation to use cannabis for medicinal purposes from a currently licensed and practicing physician.

### **Context, Opportunities, and Drug Policy Reform**

This section traces the theoretical development of the concept of “political opportunity

structures,” and reviews how earlier scholars of drug policy reform have implicitly focused on political, legal, and geographical contexts to help explain the emergence of new social formations that challenge the logic and institutional arrangements of drug prohibition (including medical cannabis dispensaries and needle exchange programs). I then operationalize an empirical definition of political opportunity structure with regard to medical cannabis to guide my exploratory analysis of the movement’s emergence and three models of dispensary regulation. At the conceptual level, political opportunity structures are composed of laws and policies at the national, state, and local levels of government. From variations in how presidential administrations deploy federal law enforcement agencies, to changes in state law, to city level policies toward medical cannabis dispensaries, an interlocking system of policies forms the legal context that shapes the politics of medical marijuana. My case study of the emergence and spread of the medical marijuana movement employs a dynamic version of political process theory to account for the role of activism and civil disobedience in shaping political opportunity structures.

Political process theory was the dominant orientation to social movements from the late 1970s to the late 1990s, and its concepts remain prominent concerns in the sociology of social movements (Crossley, 2002; Lee, 2012; Meyer & Staggenborg, 1996; Tarrow, 1998). Political process theorists ask why does movement activity arise in certain places and at certain times? The theory examines both durable and shifting features of the state and the historical context of movement emergence. The perspective holds that broad economic, political, and cultural changes alter the political structure and the ability of powerless groups to wield power (McAdam, 1982; Tilly, 1978). According to Eisinger (1973, p. 11), the political behavior of groups “is not simply a function of the resources they command but of the openings, weak spots, barriers, and resources of the political system itself.”

Early political process theorists (Eisinger, 1973; Tilly, 1978) emphasize the structural determinants of movement genesis, while underemphasizing the role of agency, activism, and social relationships. Later formulations of political process theory (Tarrow, 1998) are dialectical and dynamic in noting that movement activity (and the activities of countermovements) often alter future political opportunity structures for both existent movements, the state and countermovements (Gale, 1986; Meyer & Staggenborg, 1996). Later political process theorists also emphasize the role of state response in conditioning the direction that social movements take (Meyer & Staggenborg, 1996). Although later scholars have theorized how social movement actors alter political opportunity structures, there has been little empirical exploration of how activists go about shaping political opportunity structures. Political opportunity structures are often theorized but seldom illustrated. This article seeks to contribute to an understanding of how activists shape political opportunity structures by emphasizing how activists have shaped the politics of medical marijuana. I detail the empirical dimensions of political opportunity structures at the end of this section.

Several scholars of drug policy reform have implicitly focused on the importance of political and social contexts to the emergence of radical deviations from existing drug policy, including needle exchange programs and medical marijuana distribution cooperatives. Chapkis and Webb (2008), for example, contend that Santa Cruz’s location was integral to the development of the medical marijuana collective known as the WoMen’s Alliance for Medical Marijuana (WAMM). Similarly, Sherman and Purchase (2001) show that co-

operation between various local officials was crucial to the survival of the nation's first public needle exchange. The mayor, chief of police, health department director, and county commissioner were all amenable and willing to cooperate with implementing a needle exchange program in Tacoma, Washington (Sherman & Purchase, 2001). Ferraiolo (2004; 2007) finds that ballot initiatives and the use of "framing" by drug policy reformers was instrumental to the successful passage of California's medical marijuana law, Proposition 215, in 1996. With regard to medical marijuana, such voter initiatives are a crucial component of political opportunity structure at the state level. Ten of the seventeen states that have adopted medical marijuana laws have done so through voter initiatives (ProCon.org, 2012).

Empirically, the local political opportunity structures that shape the provision of medical marijuana in California are composed of: policies pursued by district and city attorneys, how local law enforcement agencies work with federal law enforcement agencies, city and county initiatives, the presence or absence of dispensary regulations, and the presence or absence of city-level medical marijuana task forces or commissions. Additionally, local political opportunity structures are also shaped by federal medical cannabis policies that shift with each new presidential administration; under Obama federal policies shifted significantly *during* his administration. Local medical cannabis policies are not merely trumped by federal policy; instead local political opportunity structures determine the impact of federal policies (e.g. in determining variations in federal raids and local responses to raids). Medical marijuana activists shape the political opportunity structures through advocacy, local ballot initiatives, activism and lobbying. See Table 1 for a summary of political opportunity structures and activist tools.

Table 1 *Political Opportunity Structures and Activist Tools*

Elements of Local Political Opportunity Structures	Tools Activists and Organizations Use to Shape Local Political Opportunities
Federal Policies State Laws and Policies City Laws and Policies City Council Resolutions in Support City and District Attorney Practices Police Department Policies and Practices Viable Dispensary Regulations City Commissions and Task Forces	City and State Ballot Initiatives Lobbying Protest and Rallies Legal Advocacy Referenda

### **A Tale of Three Cities**

California's three largest metro areas, the San Francisco Bay Area, Los Angeles, and greater San Diego, demonstrate key local differences in medical marijuana policy under one uniform state law. The intentional flexibility of California's medical marijuana law makes local variations in the application of state law possible. Cities in the San Francisco Bay Area represent the "pro-regulation" model; city and district attorneys recognize the legitimacy of dispensaries to operate under state law, local law enforcement agencies do not cooperate with DEA dispensary raids, local ballot initiatives codify official support, regulatory guidelines and bodies tasked with regulation exist, and the number of dispensaries is relatively low. Los Angeles represents the "laissez-faire" model; city and district attorneys do not recognize the legitimacy of dispensaries under state law, local law enforcement agencies have not consistently cooperated with DEA raids on dispensaries, a local ballot initiative was not approved until 2011, local regulations have been contested and unstable, and the number of dispensaries is very high. San Diego represents the "punitive" model; city and district attorneys actively work to close dispensaries, local law enforcement agencies have consistently cooperated with DEA raids on dispensaries, the county government has challenged provisions of state law regarding the provision of ID cards, and local ballot initiatives have not been passed, although a referendum to repeal restrictive city regulations passed in 2011.

### **San Francisco: The Origin of the Medical Marijuana Movement**

In the San Francisco Bay Area, favorable political opportunity structures contributed to the birth of the medical marijuana movement, its incubation through determined activism and favorable city policies (from 1997 through 2004), the eventual regulation of dispensaries (in 2004 and 2005), and the formation of local task forces and commissions (2007 through 2009). The movement first caught on in San Francisco, then in nearby Santa Cruz and next-door Oakland (Bock, 2000; Chapkis & Webb 2008). Before it grew into a statewide effort to legalize the provision of marijuana for medical purposes, activists in these locales risked arrest to provide the plant to people suffering from AIDS, cancer, and other conditions (Reinarman, Nunberg, Lanthier, & Heddleston, 2011).

The cultural history and rich activist past of San Francisco contributed to the perfect set of conditions for the medical cannabis movement to take root. In the Bay Area, waves of social movements prepared the soil for the early growth of the movement. Two key figures in San Francisco's medical marijuana movement, Brownie Mary Rathbun and Dennis Peron, directly link the cannabis movement of the 1970s to the medical marijuana movement of the 1990s (Rathbun & Peron, 1993). Their pasts as both cannabis and gay rights activists left them uniquely positioned to advocate for the use of marijuana to treat the suffering of people with AIDS, as the disease ravaged San Francisco's gay community during the 1980s and early 1990s.

Dennis Peron opened the Big Top Pot Supermarket in 1972. In addition to openly selling marijuana, the Big Top was also a key gathering site for activists from a variety of

progressive social movements in the 1970s (Rathbun & Peron, 1993). Rathbun provided marijuana-laced brownies to Peron's Big Top in the 1970s. After she was arrested for baking brownies, her court-mandated community service grew into volunteer work with AIDS patients through the Shanti project (Rathbun & Peron, 1993). This would lead her to volunteer in the AIDS ward of San Francisco's General Hospital, where she continued to provide marijuana brownies to people suffering from AIDS, despite two more arrests. She became a *cause celebre* in San Francisco, successfully used a medical necessity defense in court, and continued to advocate for the medicinal benefits of marijuana for people with cancer and AIDS. The discovery that cannabis relieved the symptoms of wasting syndrome for people suffering from AIDS and cancer caused Peron, Rathbun, and other activists to advocate for it being provided to those suffering from the disease.

Peron authored the city ballot initiative Measure P in 1991, after San Francisco police arrested him for possessing marijuana for his partner Jonathan West, who was very ill with AIDS. The measure pressured San Francisco officials to allow people suffering from AIDS and cancer to use marijuana without interference from local law enforcement (Rathbun & Peron, 1993). Proposition P had important effects on the political opportunity structure of the early medical marijuana movement. In addition to the ripple effect provided by the victory, as similar measures passed in Santa Cruz County and in Morro Bay the following year, the success of the measure and the tragedy of his partner's death inspired Peron to open up the San Francisco Cannabis Buyers Club (CBC).

In response to Proposition P and Brownie Mary's theatrical trial in 1992, the San Francisco Board of Supervisors declared August 25, 1992 "Brownie Mary Day" in the city. The medical marijuana community held a rally at city hall to celebrate. The San Francisco Board of Supervisors approved Resolution 741-92 in August of 1992, which states, "[T]he San Francisco Police and the District Attorney shall place as its lowest priority, enforcement of marijuana laws that interfere with the medicinal application of this valued herb..." (as quoted in Rathbun & Peron, 1993, p. 47). Although the San Francisco CBC had opened the previous year, the new resolution allowed the club to expand its operations by moving to a much larger space. The success of the early movement in San Francisco highlights the willingness of local leaders to permit an innovative approach to the AIDS crisis when faced with federal inaction.

Inspired by Peron and the San Francisco CBC, in 1995 Jeff Jones and several other activists formed the Oakland Cannabis Buyers Cooperative (OCBC) to deliver medical cannabis to patients in the East Bay cities of Oakland, Berkeley, San Leandro, and Fremont. Like the San Francisco Cannabis Buyers Club, the Oakland Cooperative engaged in civil disobedience by providing cannabis before it was legal under state law. According to Jones (personal communication, October 7, 2011),

We were actively dispensing by bike delivery in the middle part of '95, and then got endorsed by the city council, here in Oakland, in the middle part of '96....located on Broadway...in July of '96, where we operated a provider collective until the feds shut us down in October of 1998.

Despite its relatively covert status, the Oakland Cannabis Buyers Club enforced mem-

bership protocols and sought to verify that the patients they were serving had been diagnosed with serious medical conditions including AIDS and cancer. When I asked whether he had received a “signal from the city” before opening the delivery service, Jones replied “a signal... came more from those who were already doing things” (personal communication, October 7, 2011).

The City of Oakland responded to the OCBC and the growing movement by declaring its support for medical marijuana in several resolutions. In a resolution dated December 12, 1995, the Oakland City Council voiced their belief in the medical utility of cannabis for treating the symptoms of cancer, AIDS, multiple sclerosis, glaucoma, arthritis, epilepsy and migraines. In Resolution 72379, the Council also stated its support for a medical marijuana bill in the California Assembly and the embryonic Compassionate Use Initiative of 1996 (Oakland City Council, 1996b). This resolution established the City of Oakland as an early proponent of medical marijuana in the state. Oakland joined the city of San Francisco as being officially on record in support of medical marijuana. In a more daring move, the Oakland City Council made their support of the Oakland Cannabis Buyers Club known in a resolution dated March 12, 1996, which recognized that “the Oakland Cannabis Buyers Club provides a way for patients needing to purchase marijuana for medical use to do so with greater ease and less risk of arrest and prosecution” (Oakland City Council, 1996a).

The San Francisco CBC served as both the operational and symbolic headquarters for a group of activists in the burgeoning medical marijuana movement (Bock, 2000; Chapkis & Webb, 2008). This group, which consisted of Peron and Rathbun, Dale Gieringer of the California branch of the National Organization for the Reform of Marijuana Laws (NORML), Mike and Valerie Corral of Santa Cruz’s Wo/Men’s Alliance for Medical Marijuana, and Jeff Jones from the Oakland Cannabis Buyers Cooperative, made important drafts in 1995 of what would become the Compassionate Use Act, and then Proposition 215 (Bock, 2000). Ultimately it would take an infusion of financial support from donors affiliated with the Drug Policy Foundation to fund a professional signature drive that put the initiative on the 1996 ballot in California (A. St. Pierre, personal communication, August 15, 2010).

The watershed event in the institutionalization of medical marijuana in California was the passage of Proposition 215 in November of 1996. This Proposition effectively legalized—under state law—marijuana for medical use, although it did not provide for the legal provision of medical cannabis to patients. The Act remains unique among medical marijuana laws for several important reasons. First, it was drafted by a grass-roots group of activists, many whom were already engaged in civil disobedience to provide medical marijuana to sick people. Second, the drafting of the initiative was a collaborative process, and the final draft was reached through long meetings. Third, the Act was unique in providing broad language that allowed the creation of dispensing collectives in locales amenable to their existence (Bock, 2000). Subsequent medical marijuana laws in Oregon, Washington, Alaska and Hawaii did not provide for the existence of dispensaries.

Medical marijuana dispensaries are the key sites for the provision of medical marijuana in California. Until Colorado began to permit the operation of dispensaries in 2009, dispensaries were the most distinctive feature of medical marijuana provision in California. Similar to syringe or needle exchange programs, dispensaries occupy physical space and often have a permanent address. Because of their physical footprint, dispensaries broadcast the

success of the medical marijuana movement in California. The physicality of California's dispensaries forces federal, state and local governments to address the legality, taxability and feasibility of these unique formations that straddle the line between modalities of policy reform and commercial enterprises. Both Feldman and Mandel (1998) and Reiman (2008) found that dispensaries were important venues for face-to-face social networking and the provision of social services.

The passage of the Proposition led to a new legal reality in California, which encouraged both activists and entrepreneurs to open medical cannabis dispensaries. Although Proposition 215 passed in every county in the state, it was most popular among voters in the San Francisco Bay Area, with San Francisco and Santa Cruz counties having the highest percentages of "yes" votes. Despite the success of the initiative, state law enforcement officials were not as hospitable to dispensaries as law enforcement officials in the Bay Area. California Attorney General Dan Lungren tried to shut down Peron's new Cannabis Cultivators' Club in late 1997. In *The People v. Peron*, Lungren argued that cannabis clubs could not qualify as "caregivers" under the CUA. In December, 1997, the California Appellate District judge ruled that clubs should not be considered "primary caregivers." Clubs began to organize as collectives of patients as opposed to caregivers for patients, allowing them to sidestep Lungren's efforts to capitalize on the *People v. Peron* ruling.

### Federal Pushback and Local Opportunity Structures

In January of 1998, the US Department of Justice filed suit against six cannabis clubs in northern California, including the OCBC and Peron's renamed Cannabis Cultivators Club. In an example of a local law enforcement official acting to protest the involvement of a federal law enforcement agency, San Francisco County District Attorney Terrance Hallinan filed an *amicus curiae* brief critical of the DOJ suit. On October 19<sup>th</sup>, 1998, the Oakland OCBC closed voluntarily, and announced that it would appeal the decision to the 9<sup>th</sup> Circuit Court of Appeals. A week after the OCBC closed, on October 27, 1998, the Oakland City Council (1998) declared "a local public health emergency with respect to safe, affordable access to medical cannabis in the City of Oakland." The response of city officials to the closing of the OCBC demonstrated how committed the city of Oakland was to the spirit of the CUA, and to the idea that cannabis was both an effective and necessary medicine.

Outside the protective climate of the San Francisco Bay Area, local officials were not as hospitable to the operation of dispensaries. While providers in the Bay Area were primarily wary of federal law enforcement agencies, providers in other parts of the state faced prosecution by local police and sheriffs. In a 1998 *Los Angeles Times* article, activist and cannabis dispensary operator Scott Imler said that law enforcement had closed 23 of 29 dispensaries in the state since 1996, "including ones in San Diego, Orange, and Ventura counties" (Glionna, 1998).

From 1998 to 2002, changes in personnel altered the national and state level political opportunity structures for the fledgling medical marijuana movement. In 1998, Democrat Bill Lockyer was elected California Attorney General and he pursued a policy that was much more amenable to the CUA than his predecessor, Lungren. Lockyer sought to pursue a poli-



cy of “full implementation” of Proposition 215, and convened an advisory panel that featured law enforcement and activists alike (Bock, 2000). Although Lockyer sought uniform regulations for cannabis patients, growers and dispensaries, many nuances of Prop. 215 would not become resolved until the California legislature passed Senate Bill 420 in 2003. At the Federal level, the first term of George W. Bush beginning in 2001 marked a new chapter in the effort to prevent activists from providing patients with cannabis.

In May 2001, the Supreme Court announced its unanimous decision in *United States v. OCBC*. The case had been appealed to the 9<sup>th</sup> Circuit Court of Appeals, which ruled in Jones’ favor. The high court ruled against the OCBC’s medical necessity defense and found that the OCBC violated the Controlled Substances Act of 1970 (Eddy, 2010). Emboldened by this ruling, the DEA began to raid dispensaries throughout the state with greater frequency in 2001 and 2002. On October 25, 2001, for example, the DEA raided Scott Imler’s LA Cannabis Resource Center in West Hollywood. West Hollywood officials viewed the dispensary favorably and were surprised by the raid (Brady, 2001).

Even after the closure of the high profile Oakland Cannabis Buyers Cooperative, activists and entrepreneurs continued to open dispensaries in the state. Most storefront dispensaries remained largely concentrated in the greater Bay Area until 2006. By 2003, there were between ten and twelve dispensaries operating in downtown Oakland, which became known as Oaksterdam. Although the numerous dispensaries brought needed revenue to new restaurants, cafes and shops that sprung up with an increase in visitors, City Council member Ignacio De La Fuente sought to cut down on the number of dispensaries in the area (Casey, 2003). In the process of regulating Oaksterdam, the City of Oakland became the first in the state to issue concrete guidelines for the local governance of dispensaries. These regulations prohibited on-site smoking and placed a cap of four dispensaries for the city of roughly 435,000 people. Oakland instituted its dispensary regulations through Ordinance No. 12585 on February 19, 2004 (Oakland City Council, 2004), and then used civil law to force eight of the city’s twelve dispensaries to close (J. Jones, personal communication, October 7, 2011). By formulating regulations, city officials sought to balance the interests of citizens with those of medical cannabis providers, while recognizing the value that well-run dispensaries provided to medical cannabis patients.

Through continuing to author and pass city-level ballot initiatives, activists in Oakland and Berkeley continued to shape the local political context. In 2004, activists in Berkeley and Oakland authored ballot initiatives to assert more control over the local regulation of cannabis and medical dispensaries. In Oakland, activists sponsored Measure Z to move beyond medical marijuana by calling for plans to tax and regulate all adult cannabis use. In Berkeley, several dispensary operators banded together to lobby the Berkeley City Council to pass a new dispensary ordinance in April of 2004. The group mobilized a protest of 30 people at the April 20<sup>th</sup> meeting of the council, but ultimately had to rely on a ballot initiative that November (Artz, 2004).

While Berkeley’s initiative was defeated, Oakland approved Measure Z by super majority. The creation of a Measure Z Task Force to oversee the implementation of the initiative had a lasting effect; task forces and commissions would form in San Francisco and Berkeley in 2009. In the aftermath of the 2004 ballot initiatives, dispensaries in the Bay Area continued to operate in a similar manner. There was no upsurge in the number of dis-

pensaries, and Berkeley and San Francisco followed the lead of Oakland in instituting dispensary regulations in 2005.

At the state level, the California legislature passed State Bill 420 in 2003, and it took effect in 2004. Ultimately this law clarified the legal basis for dispensaries and called on county health departments to implement a voluntary state identification card program. After the bill took effect in 2004, the number of dispensaries outside the Bay Area began to steadily increase. The development of early regulations kept the number of dispensaries in the birthplace of medical marijuana relatively low when compared to Los Angeles. In addition to limiting the number of dispensaries in a given city, regulations typically limit the hours that dispensaries can be open, the location of dispensaries, and their proximity to schools and parks. Regulations also codify which local agencies are responsible for enforcement; for example, in San Francisco the Department of Public Health is responsible for the enforcement of regulations.

Since 2004, Oakland has served as a unique laboratory for medical marijuana law, city regulations, new taxation schemes, and a cannabis trade school named Oaksterdam University. Oakland is also home to Harborside Health Center, the largest dispensary in the state. Beginning in 2008, Harborside and its owner Steve D'Angelo began to increase the media profile of their growing and highly photogenic dispensary. In the summer of 2009, Oakland became the first city in the state to institute a special local business tax on dispensaries. Oakland also served as the headquarters for the unsuccessful 2010 Proposition 19 campaign to legalize and tax marijuana in California.

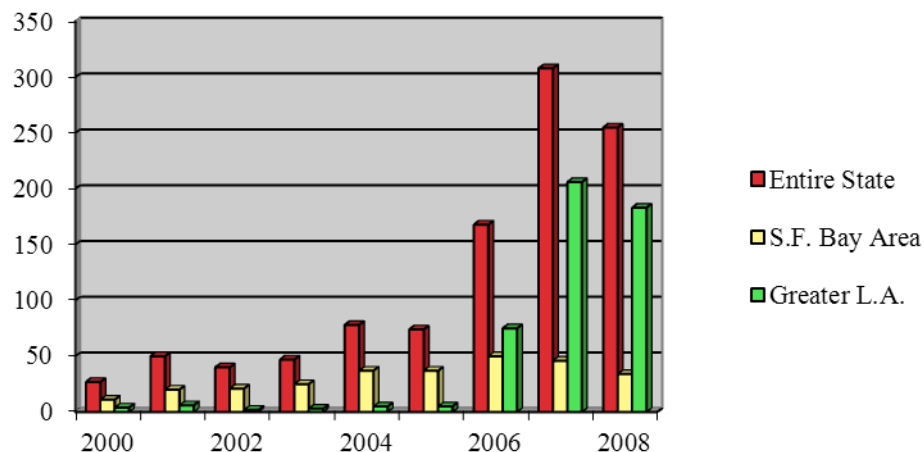
In the summer of 2010, the city councils in Berkeley and Oakland sought to expand their abilities to tax and regulate medical marijuana production and provision in the event that Proposition 19 was approved. These two cities had been the most progressive and groundbreaking with regard to medical marijuana governance, eventually allowing activists a hard-won seat at the regulatory table. Oakland officials may have pushed the envelope too far by debating the idea of city-sponsored and taxed mega-grows. Oakland City Attorney John Russo expressed his concerns about the mega-grow plan in a letter to US Attorney Melinda Haag in January 2011 (Elinson, 2011). In a letter dated February 1, 2011, US Attorney Melinda Haag warned Oakland officials that sanctioning the growing of marijuana for either medical or non-medical purposed would be viewed as being complicit in a federal crime (International Business Times, 2011). Haag's threat turned out to be the opening salvo in a federal effort to roll back the regulatory gains made in California's more medical marijuana friendly cities. The federal effort to quash dispensaries was not officially announced until October 2011. By threatening local officials who were seeking innovative approaches to the production and taxation of medical marijuana, Haag was re-asserting the primacy of federal law, which highlights that the political opportunity structures that medical marijuana proponents confront have a layered quality.

### **Los Angeles**

Los Angeles represents a middle ground in the spectrum of regulatory approaches to medical cannabis. In effect, the hands-off approach has generated a regulatory vacuum in the second largest metro area in the US. Essentially, city leaders have been reluctant to embrace

either a regulatory or prohibitionist approach to dispensaries. This impasse was created as some City Council members favored regulation, while others favored prohibition. This approach has led to a steady increase in the number of dispensaries, with little to no oversight in how they operate and whether they are living up to the spirit of Prop. 215 and SB 420.

Figure 1 Medical Cannabis Dispensaries by State and Region 2000 to 2008



This chart shows the number of storefront dispensaries that were operating in the Bay Area, Los Angeles and the state of California over an eight-year period. These numbers are lower than those found in other sources (Geluardi, 2010; Jacobson et al., 2011). To compile these totals I used the “wayback machine” feature on the website Internet Archive ([internetarchive.org](http://internetarchive.org)). Internet archive is a digital archive of film, video, and printed materials, that also features an archive of website captures dating back to the mid-1990s. I used this feature to visit the archived “captures” of California NORML’s website. I visited the list of dispensaries and delivery services on California NORML’s website for each year’s capture and then counted all the dispensaries that the site listed by these two regions. I eliminated the names of obvious delivery services from the count, so these numbers refer specifically to dispensaries with physical addresses.

The Los Angeles dispensary boom did not begin until late 2005. Prior to 2005, there were only four dispensaries operating in Los Angeles County. According to the website of California NORML, between two to four dispensaries operated in Los Angeles from 1999 to 2004. Los Angeles County’s largest early dispensary was closed in October 2001. The Los Angeles Police Department was hostile to the operation of dispensaries, and in 2006 LAPD Chief Bratton declared dispensaries magnets for crime (Jacobson et al., 2011). Despite this climate, the number of dispensaries began to grow in the year after SB 420 went in to effect in 2004. In 2005, the California State Board of Equalization started to collect sales tax on medical cannabis sold through dispensaries, which lent more legitimacy to dispensaries at the state level.

In Los Angeles, the process of regulating dispensaries has been long and arduous. In 2006, as the number of dispensaries was rising and many were operating according to the dictates of the free market (with ubiquitous neon green pot leaves appearing in storefront windows in the tourist friendly areas of Santa Monica and West LA), medical cannabis activists with Americans for Safe Access were trying to influence city leaders to institute dispensary regulations. Although the city drafted an Interim Control Ordinance in August 2007, City Attorney Rocky Delgadillo abruptly dissolved the city's medical cannabis working group in December 2007 and embraced language that sought to invalidate the legality of selling medical cannabis (McDonald & Pelisek, 2009).

The Interim Control Ordinance, No. 179027 prohibited new dispensaries from opening and required all operating dispensaries to register with the City. According to the ordinance, "an inter-departmental task force, led by the Planning Department" would work to "establish viable regulations" for dispensaries in Los Angeles (Los Angeles City Council, 2007). While the City Council was meeting to discuss the ordinance, the DEA raided 10 dispensaries in Los Angeles. This raid sent the message that the DEA did not want the city to regulate (and further legitimize) dispensaries in the city. Although the ordinance forbade the opening of new dispensaries, it gave existing dispensaries 60 days to register with the city clerk, by presenting several documents including a State Board of Equalization seller's permit. The requirement to abide by the State Board's requirements demonstrates how a change at the state level broadened the local political opportunity structure for dispensaries in Los Angeles. Under the moratorium, 186 dispensaries that proffered the proper documents and registered with the city before an October 2007 deadline were allowed to remain open. The ordinance was worded to allow for dispensaries that had not registered with the City to claim a "hardship exemption." Although the moratorium was intended to curb the rapid growth of dispensaries, it effectively spurred hundreds of operators to open dispensaries by claiming the "hardship exemption." By June 2009, city officials estimated that 533 dispensaries had opened after the passage of the interim control ordinance claiming the exemption, in addition to the 186 that were permitted to operate.

There was little impetus for Los Angeles city leaders to take the lead on instituting regulations (J. Jones, personal communication, October 7, 2011; McDonald & Pelisek, 2009). In the smaller cities of San Francisco, Oakland and Berkeley, officials were more responsive to activists and aware of the importance of medical marijuana provision to their constituents. Additionally the wide margins of victory for local and state initiatives communicated widespread popular support to elected officials. In Los Angeles, dispensaries clustered in certain districts of the city and were virtually absent in others. This arrangement contributed to polarization on the City Council around the issue of regulating dispensaries (McDonald & Pelisek, 2009). In nearby West Hollywood, city officials placed a moratorium on new dispensaries in 2005, closed several that had opened, and capped the number of dispensaries allowed in the small city at four (Hoeffel, 2009b).

When new City Attorney Carmen Trutanich took over in July of 2009, he also pursued a strict interpretation of Prop. 215 and SB 420, subscribing to the legal theory that the laws did not permit the sale of medical cannabis. Trutanich and LA County District Attorney Steve Cooley collaborated to block the adoption of dispensary guidelines that were favorable to activists in the medical marijuana community. Some of the chief stick-

ing points centered around on-site consumption, and the use of multiple independent suppliers as opposed to growing all cannabis on site or at one location. Cooley and LA county Sheriff Leroy Baca had encouraged many cities in the county to ban the operation of dispensaries entirely. Cooley and Trutanich influenced the council's approach to ordinances in 2009. By November 2009, the city council had reviewed five draft ordinances and decided against using any of them (Hoeffel, 2009b).

On January 26, 2010, the Los Angeles City Council (2010) finally passed Ordinance No. 181069, which generated controversy among dispensary and patient advocates immediately (Guerrero, 2010; Hoeffel, 2010a). The intended impact of the ordinance was to cut the number of dispensaries in LA from roughly 500 to a little over 200. According to a suit filed by Americans for Safe Access and two dispensaries, the ordinance "severely restricts access to medical marijuana by effectively forcing plaintiffs, as well as the vast majority of collectives in the city, to close their doors" (as quoted in Barboza, 2010).

Americans for Safe Access and an organization called the Greater Los Angeles Collective Alliance (GLACA) hosted a small rally at Los Angeles City Hall in September 2010 to protest the ordinance. The sponsors of the event were disappointed by a low turnout of approximately 80 people at the event. According to prominent LA activist Yamileh Bolanos, "I think it's awful that there's so much lack of concern by the patients of Los Angeles" (as quoted in Hoeffel, 2010b). The lack of mobilized activists who were willing to protest may reflect how complacent Los Angeles cannabis patients had become in an environment where access to cannabis was prevalent, and patients primarily saw themselves as consumers and not activists. Contributing to a lack of activism, many dispensary operators in the city did not have the historical background in activism that some of the longest-tenured operators in the Bay Area had. In the context of little mass activism and a city government that was not supportive, professional advocates used lawsuits to advance the interests of dispensary operators.

On December 10, 2010 Los Angeles County Superior Court Judge Anthony Mohr granted an injunction that barred the City from enforcing aspects of its dispensary ordinance. In response to the injunction, the Los Angeles City Council passed an amended ordinance on January 21, 2011 that employed a lottery to select 100 dispensary operators from a pool of operators that were operating prior to the 2007 moratorium. Dispensary advocates sued the City for the lottery feature of the revised plan, calling it unfair and ignorant of the spectrum of dispensaries operating in the city (Hoeffel, 2011). As the conflict over dispensaries raged on throughout 2011, the City Council put an initiative, Measure M, on the ballot to tax dispensaries in April 2011. It passed with 59% of the vote and allowed the City to collect a 5% tax on gross receipts at dispensaries (Powell, 2011). Advocates did not write the initiative, and both dispensary advocates and dispensary opponents alike opposed it. In the wake of failed ordinances and successful legal challenges from advocates, City Council member Jose Huizar proposed banning all dispensaries outright in late November 2011. In July 2012, the City Council voted unanimously (14-0), to prohibit dispensaries, except for those that submitted adequate paperwork in late 2007 (Linthicum, 2012). This decision came in the midst of an increasingly extensive federal crackdown to close dispensaries in California.

When comparing the city of Los Angeles to Bay Area cities, key elements of local political opportunity structures are markedly different. Los Angeles lacked the ballot initiatives that paved the way and signaled to officials that public support was present. Los Angeles also featured officials who were not as open to the goals of the movement. The stance of city attorneys played a crucial role in determining the approach of the city to medical cannabis dispensaries. City attorney Delgadillo and his successor Trutanich chose to embrace a strategy that explicitly sought to block any retail sale of medical cannabis.

### **San Diego**

The City and County of San Diego have been hostile to medical marijuana providers since 1998. San Diego is somewhat of an anomaly among coastal cities in California. In addition to being far less liberal than its neighbors to the north, San Diego also hosts several large military installations. The electorate of San Diego County voted for George Bush in 2000 and 2004. Although voters narrowly approved Prop. 215 in 1996, it has proven to be the least hospitable large county for medical marijuana, especially during the tenure of Republican District Attorney Bonnie Dumanis.

San Diego officials launched frequent multiple-dispensary raids and cooperated with federal law enforcement agencies to go after medical marijuana dispensaries. Although hundreds of dispensaries and collective cultivation sites have been raided since the early 1990s, in San Diego County the DEA and local law enforcement agencies have raided multiple dispensaries on at least five different occasions since 2005 (California NORML, 2008). Similar to Los Angeles County, the specific actors holding office in San Diego have played a key role in maintaining an inhospitable political opportunity structure. Other factors that contribute to San Diego's unfavorable political opportunity structure include a lack of local laws (achieved through ballot initiatives) that codify the regulation of dispensaries, police and sheriff's departments which favor the prohibition of dispensaries and cooperation with federal authorities, City Council members unsympathetic to dispensary regulation, and a lack of City Council resolutions in favor of medical cannabis and medical cannabis dispensaries.

San Diego DA Dumanis has made the opposition to medical marijuana dispensaries a hallmark of her administration. She has repeatedly used county law enforcement to shut down dispensaries. Unlike other parts of the state (with a few exceptions), local and federal law enforcement agencies continued to raid dispensaries even after US Attorney General Eric Holder announced on March 18, 2009 that federal law enforcement agencies would only take action when state laws were being broken. Following this pronouncement, which became known as the Ogden Memo, federal agencies reduced medical marijuana enforcement in California until October 2011, when they reversed course and pursued an aggressive crackdown.

Unlike their counterparts in the Bay Area, first the San Diego Narcotics Task Force and then the San Diego Police Department targeted early medical marijuana activists in 1998 and 1999, raiding two separate marijuana gardening collectives operating in the county (Bock, 2000). Next, San Diego adopted guidelines for dispensaries in 2003, but they were largely restrictive and intended to prevent dispensaries from operating. After SB

420 went into effect in 2004, the number of dispensaries in San Diego began to grow. By 2005 there were an estimated 29 dispensaries in San Diego County, according to the DEA (McDonald, 2005). Shortly after the Supreme Court's decision in *Raich v. Ashcroft*, which held that the federal government did not recognize the legality of medical marijuana in the eleven states that allowed its use, the DEA raided 13 dispensaries in San Marcos and San Diego, in concert with local law enforcement agencies including the San Diego Police Department and San Diego Sheriff's deputies (McDonald, 2005).

The raids came a month after the San Diego County Board of Supervisors voted 3 to 2 against implementing a provision in SB 420 that called on all county health departments in the state to provide voluntary identification cards to patients in each county (McDonald, 2005). Patient and dispensary advocates had worked with the legislature to draft SB 420, and they sought the provision of county ID cards to make it easier for local law enforcement officials to identify legally qualified patients. According to activists with Americans for Safe Access, the timing of the raids sent the message that local government officials were working against the state law (McDonald, 2005). A second multiple-agency task force raid, featuring cooperation between the DEA, the San Diego Police, and the San Diego Sheriff's Department, took place nine months later on July 5, 2006. That multi-agency raid closed eleven dispensaries and resulted in the arrest of six people on drug trafficking charges (10 News, 2006).

In 2006, San Diego County Supervisors sued the California Department of Health over the provision of ID cards as mandated by the Medical Marijuana Program Act of 2003 (SB 420). San Diego NORML filed a countersuit that was joined by several national drug policy reform organizations, including the ACLU Drug Policy Reform Project, the Drug Policy Alliance, and Americans for Safe Access, later that summer. In December 2006, a San Diego Superior Court Judge ruled against the county's challenge and argued that federal law did not pre-empt the county from providing ID cards in line with the Medical Marijuana Program Act (Americans for Safe Access, 2010).

While the County was fighting to prevent the provision of ID cards (presumably on symbolic grounds), the DEA and a San Diego County Narcotics Task Force conducted another raid on four dispensaries on August 5, 2008. After the US Supreme Court refused to hear an appeal of the *County of San Diego v. San Diego NORML* case, and the county began to issue ID cards in September 2009, a San Diego County Narcotics Task Force and the DEA raided 14 dispensaries in San Diego County. The raids used maximum theatricality, employing SWAT style tactics and even forcing a wheelchair-bound man into a police car. This particular raid is noteworthy for its symbolic timing with respect to the three-year-long battle to avoid the provision of ID cards, and it was the first major raid on multiple dispensaries that occurred after the Ogden Memo of March 2009. Although raids had been the preferred tactic of San Diego law enforcement for dealing with dispensaries, the City of San Diego pursued a different tack in early 2011, using zoning laws to hamstringing the ability of dispensaries to operate without banning them outright (California NORML, 2011).

City governments hostile to dispensaries began to use zoning law, dispensary bans, and dispensary moratoria in 2007 (Americans for Safe Access, 2011). Numerous smaller cities moved to ban dispensaries outright, and other small cities moved to use city and

county zoning guidelines to effectively eliminate the possibility of dispensaries opening. Zoning law has been one of the chief tactics that city attorneys and city governments use to curtail the formation of new dispensaries. In order to move beyond the intransigence of cities on allowing new dispensaries to open, activists have led ballot initiative drives both proactively and reactively. In 2011, the City of San Diego played host to a political chess match between city officials intent on restricting medical marijuana dispensaries and advocates and organizations that sought to encourage the legitimacy and regulation of dispensaries.

On March 28, 2011, the City of San Diego approved (5 to 2) Dispensary Regulations that medical marijuana organizations deemed too restrictive (Cadelago, 2011a; Conlan, 2011). According to California NORML director Dale Gieringer (California NORML, 2011), the regulations relegated dispensaries to an industrial district in the city that was difficult for many patients to reach. According to Gieringer (as quoted in California NORML, 2011), “Both L.A. and San Diego...badly botched the job [of regulating dispensaries], by trying to go overboard on killing the industry.” In response to the unworkable city regulations, an organization affiliated with San Diego NORML and a new organization called California Patients’ Rights (CPR) spearheaded a referendum to repeal the ordinance. California Patients’ Rights was formed to raise funds for the professional gathering of signatures to place a referendum on the city ballot. Referendums are one tactic in the repertoire of the medical marijuana movement. Faced with a powerful referendum drive, the City Council of San Diego voted to repeal their March regulations on July 24, 2011 (Cadelago, 2011b). In late August of 2011, San Diego City Attorney Jan Goldsmith announced that all dispensaries in the city would be subject to civil suits that would effectively close them (Cadelago, 2011c).

## Conclusion

On October 7<sup>th</sup>, 2011, the four US attorneys charged with enforcing federal law in California made a coordinated announcement that they would pursue an aggressive strategy to close medical marijuana facilities in the state. During the following week, US attorneys sent out letters to the landlords of dispensaries throughout the state. These letters had a far more chilling effect than lawsuits and even raids on the operation of dispensaries. The crackdown has resulted in the closure of nearly 500 dispensaries across the state, including several in San Francisco and Berkeley and hundreds in Los Angeles and San Diego Counties (Onishi, 2012).

While the limits of favorable local political opportunity structures in guarding against an unfavorable federal context have been exposed by the federal crackdown, the crackdown has played out quite differently in the three cities discussed above. Despite the ability of the Department of Justice to close dispensaries in the cities with the most favorable local political opportunity structures (Brooks, 2012), local officials in the Bay Area have voiced their opposition to the crackdown, while leaders in Los Angeles and San Diego have used the shift in federal policy to pursue an aggressive agenda of closing dispensaries (Onishi, 2012). In August 2012, the Los Angeles City Council followed its vote to ban dispensaries with a vote that instructed the Los Angeles Police Department to



cooperate with the DEA and other federal law enforcement bodies in closing dispensaries in the city (Orlov, 2012). In San Diego, US Attorney Barbara Duffy also encouraged free weekly papers to discontinue the sale of advertising to medical cannabis dispensaries and doctors (J. Jones, personal communication, October 7, 2011). The response of local officials to the federal crackdown demonstrates that both local and national political opportunity structures bound the operation of dispensaries.

My three-city comparison demonstrates that three models of dispensary regulation emerged from three different political opportunity structures in California, and that activists were able to further open political opportunity structures with varying levels of success. In the San Francisco Bay Area activists and officials created a “pro-regulation” model. Activists expanded the political opportunity structures of San Francisco, Oakland, Berkeley, and Santa Cruz, through city and county ballot initiatives, lobbying, rallies, and participation in city task forces. Ballot initiatives provided signals to local politicians that the electorate supported medical cannabis, which allowed officials to work with activists to shape dispensary regulations that balanced the needs of city governments, citizens, and cannabis patients.

In Los Angeles a “*laissez-faire*” model arose from a lack of political will and a consequent excess of entrepreneurial zeal. With no local ballot initiatives, ambiguous city council resolutions, and divisive city politics, the free market became the chief regulatory mechanism for dispensaries, and their number grew rapidly. The high number and overly commercial appearance of LA’s dispensaries ultimately hurt the wider medical marijuana movement’s public image, and left patients ill-equipped to use social movement tactics to lobby for balanced regulations.

San Diego adopted a “prohibitionist model” to dispensaries. With no local ballot initiatives, hostile city and county officials, no viable regulations, and overly punitive law enforcement agencies, activists were not able to influence a hostile political opportunity structure. This arrangement resulted in a repressive climate of frequent multi-agency raids.

Ultimately federal law enforcement officials are attempting to eliminate the ability of state and local governments to regulate dispensaries and other forms of medical marijuana provision. By working to close dispensaries and actively dissuading local officials from working to regulate them (Kreit, 2012), the Department of Justice and DEA seek to dismantle the dispensary system in California and other medical marijuana states. Despite these efforts, support for medical marijuana and the legalization of all forms of adult marijuana use have never been more popular in the US (Newport, 2011). Although a ballot initiative to legalize, tax, and regulate marijuana for adults in California failed in 2010, voters approved similar measures in Colorado and Washington in November 2012 (Savage, 2012).

Although political context was important in determining the early growth of the medical marijuana movement, the efforts of activists were crucial in shaping the form the movement took and in actively shaping future political opportunity structures. By emphasizing the role of activism and other forms of agency, this article contributes to a richer understanding of political opportunity structures as dynamic as opposed to static. Future social movement research can benefit from a focus on how activism shapes political opportunities.

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