

Hemp: A New Vision for Cannabis Reform

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Hello, my name is Rod Kight. I am an attorney who represents businesses in the cannabis industry. I've got a lot to say in the next 20 minutes, so hang on because I'll be talking fast.

Cannabis is on the wrong path. I am going to present a new vision for cannabis reform, one that is informed by hemp. I will discuss what I call the "3 Pillars Approach" to hemp policy and regulation, but I want to make it clear that this approach is useful for the cannabis and cannabinoid industry as a whole, including what we now divide into the "hemp" and "marijuana" sectors. The 3 Pillar Approach will enable the hemp industry, and if eventually taken to its logical extreme, the entire cannabis industry, to legally, safely, and efficiently produce and distribute cannabis products throughout the US and the world to a rapidly expanding market of cannabis consumers. Importantly, the 3 Pillar Approach provides a path forward from the seemingly intractable issues regarding intoxication, access by minors, and quality control that are passionately debated everywhere from LinkedIn to Legislative Floors throughout the country. This approach does so without getting mired in the industry-stifling overregulation and complexity that we see with the current marijuana industry or with the prohibition-focused direction that many states are taking with respect to hemp. My message today is that the future of cannabis exists right here, right now. We just have to open our eyes to see it. The 3 Pillar Approach that I propose will support and nurture the rapidly expanding cannabis industry while providing appropriate protections for consumers.

Throughout my talk today I am going to be discussing hemp, but it's important to understand that I am ultimately discussing the future of cannabis itself. Let's make sure we're clear on this: hemp is cannabis. It is not a different plant. Under federal law and the laws of all 50 states, "cannabis" has been divided arbitrarily into two categories, legal "hemp" and illegal "marijuana". This artificial division has served an important purpose, to be sure, the most important of which has been to legalize cannabis at the federal level and to normalize cannabinoid use. But this

division will eventually cease to exist and we have a fleeting opportunity- right now- to steer the direction that cannabis policy as a whole takes for the next several decades. So, while I'm talking today keep in mind that hemp is cannabis and that what is good for hemp now is good for all cannabis tomorrow.

As a cannabis lawyer I am often asked when cannabis will be legalized, to which I usually respond, "It already is." Cannabis in the form of "industrial hemp" was legalized in 2014. Cannabis legalization was expanded in 2018 when Congress dropped the "industrial" prefix and completely revamped the definition of hemp to include the cannabis plant, and "any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers" with a delta-9 THC concentration not exceeding 0.3% by dry weight. Most people in this room can probably cite the definition from memory.

Sitting here today, all cannabis containing no more than 0.3% delta-9 THC has been removed from the federal controlled substances act. The DEA and several courts have confirmed that this descheduling includes cannabis products, provided that their delta-9 THC levels do not exceed 0.3%. Illegal "marijuana", which used to include all cannabis except for the stalks and non-germinating seeds, is now relegated solely to cannabis and cannabis products containing more than 0.3% delta-9 THC. This is not much of an obstacle since the cannabis plant does not produce much delta-9 THC to begin with. In fact, it is not a stretch to say that the 2018 Farm Bill almost completely descheduled cannabis. For example, in my home state of North Carolina, a very good "hemp" state but one with zero "marijuana" reform, I can legally purchase any type of cannabis product that one could want. In fact, I have a wider array of choices for both the products themselves and the distribution channels that sell them in North Carolina than here in Colorado or in any state on the west coast, all of which are commonly associated with progressive cannabis policy. Consider this as you watch the entire country breathlessly awaiting a possible rescheduling of marijuana from schedule 1 to schedule 3. Yes, all cannabis needs to be completely descheduled at the federal level, but what people fail to realize is that we are, for all intents and purposes, almost there.

Our challenge now is to preserve what we have obtained, by which I mean the functional descheduling of cannabis through hemp, while charting a course forward that will serve all interests, including the industry, consumers, researchers, policymakers, regulators, and even concerned parents and educators. To that end, I propose the 3 Pillar Approach to hemp regulation, which I believe will unite and steer not only the hemp industry, but eventually the entire cannabis industry.

A solution necessarily presupposes a problem. So, before discussing the 3 Pillar solution I should articulate the problems it addresses.

The hemp industry is widely and routinely called out about a number of problematic issues, some real and others red herrings. According to detractors, the hemp industry aggressively takes advantage of an unintended legal loophole to produce and distribute poorly manufactured intoxicating cannabinoid products, many of which are synthetic, throughout the US to uninformed individuals, including kids, at gas stations and online, and this has caused a public health crisis and placed the “legal” cannabis industry, by which they mean the marijuana sector, in economic distress while placing the “legitimate” hemp industry, by which they mean the fiber and grain sector, in jeopardy of having the current hemp laws rolled back and thus losing all of the hard-fought ground they have achieved.

Does that adequately capture the sentiment of the hemp industry that many people hold?

Although widespread, many of these claims are patently false.

- To begin with, hemp companies, by and large, produce safe products. Many of those companies are represented here today.
- Additionally, the term “synthetic” is used as a proxy for “bad” or “toxic” products, but the reality is that the plant itself creates the cascade of cannabinoids it produces through bio-synthetic processes. You may be aware that much of the caffeine we consume in the US in products such as sodas and energy drinks is not from the coffee bean, but rather is synthetically manufactured in

China in mostly unregulated circumstances using dangerous chemicals, but you don't see breathless media reports about this or passionate legislators denouncing it.

- As for the argument that the Farm Bill did not intend to legalize intoxicating hemp, this claim is totally unsubstantiated and, from a legal standpoint irrelevant since the intent of a lawmaking body only comes into play if the language of a statute is ambiguous. The Farm Bill's definition of hemp is plain and clear. In fact, if Congress only intended for hemp to be used for industrial purposes, then why did it drop the term "industrial" from the name, and why does the definition use a litany of highly specific scientific terms regarding compounds, including ones that cause intoxication, that we ingest?
- What about the marijuana companies complaining about unfair competition? They have the same right to enter the hemp sector as anyone in this room. Many are doing just that. Moreover, why would we want to take down the hemp industry, which is now larger than the marijuana industry, just to support entrenched interests and to prop up failing policies?
- Finally, no one is trying to curb the production of hemp fiber or grain. In fact, most legislative proposals at the state and federal level seek to increase and incentivize it.

All of that being said, some of the negative claims about the hemp industry are undeniably true. There are bad actors, bad products, minors with access, adults taking products they know little about and having bad experiences, hospital visits, and an overarching concern about a lack of regulation for a rapidly growing industry.

The fact is that the hemp industry has problems that need to be addressed. Even with unsubstantiated claims that are more in the nature of "reefer madness" hysteria than real issues, the hemp industry is losing a public relations war. A proper regulatory policy going forward will solve both the real problems the hemp industry faces and its public relations problem.

Let's turn now to the 3 Pillar Approach to hemp regulation. As its name suggests, this model focuses on three distinct zones of regulation: (1) controlling access by minors, (2) quality control, and (3) proper labeling and marketing.

You'll notice that none of the 3 pillars address "intoxication". This is because attempting to regulate hemp products based on their capacity to produce intoxication is the wrong approach. It's a classic "Fool's Errand". To begin, it is impossible to define "intoxication" in a way that is workable from a legal or regulatory standpoint. What does it mean to be intoxicated? We all 'sort of know', right? But attempting to actually define it is nearly impossible and doing so creates all sorts of unintended consequences. Focusing on intoxication is, in fact, what perpetuates the Reefer Madness hysteria of the 20th century. It promotes a phobia of cannabis intoxication as somehow different in kind from, and more dangerous than, intoxication by alcohol, or caffeine, or tobacco, or sugar, or any number of commonly prescribed medications. From a legal and policy standpoint, attempting to eliminate or control intoxication by redefining "hemp", prohibiting an entire class of hemp products, and/or by limiting the allowed milligrams of THC and other compounds that are allowed in a product or package is totally unnecessary. In addition to being legally unworkable, this approach amounts to a "Nanny State" method of addressing an issue that should instead be based on an adult's personal preference.

Rather than regulating hemp and its products based on "intoxication", hemp regulations should be focused on the three "zones" that I mentioned earlier: controlling access by minors, quality control, and proper labeling and marketing. As you'll see, it addresses the intoxication issue without having to focus on it, or even to define it.

Pillar 1: We should strictly control access by minors to hemp products. Should the age be 18 or 21? Should a minor be able to obtain hemp products with parental consent? What are the best age-gating practices? All good questions. These are the types of questions that are appropriate for us as an industry and as a society to debate and eventually resolve through legislative and regulatory actions. But the thing we can all agree in is that minors should not have unfettered access to hemp products.

You might ask, “But what about non-intoxicating hemp products, like CBD?” They should also be subject to age-gating. This is an across the board issue. To begin with, we do not yet have sufficient information about any specific cannabinoid to know how it affects developing brains. The fact that a cannabinoid may or may not be intoxicating might or might not have any relevance to its effect on developing brains. We simply do not have that information yet. Also, distinguishing between CBD and THC drags us right back into the mire of regulating based on intoxication rather than the more straightforward approach I am proposing. If you believe that minors should be able to access hemp products with parental consent, something that I believe in, then that is something we can address in regulations. But, all hemp products should be subject to age-gating. Ultimately, if a company’s profitability and market share is based on selling hemp products to minors, then that company should rethink its market approach. Aside from hempseed and hempseed oil, all hemp products that people ingest or inhale should be subject to age-gating. It just makes sense.

Pillar 2: We should require quality control for the production and manufacturing of hemp and hemp products. By this I mean requiring manufacturers to comply with cGMP and other objective quality standards. Experts are currently drawing up, discussing, and promoting these types of standards. Contrary to shrill news reports, many of the best hemp companies- including companies represented today by people in this room- are already self-regulating in this way and meeting objective quality standards. The specific standards we eventually land on and implement are up for discussion, but the need for objective quality standards is non-negotiable. This will ensure that products do not contain contaminants, are consistent in their ingredients and formulations, and that they are safe. Objective quality standards will also help the industry overcome its reputation for promoting so-called synthetic products. For example, delta-8 THC has been studied clinically since the 1980s and is safe. It is a stable molecule and a large number of people actually prefer it to delta-9 THC. The primary issue with delta-8 is not delta-8 itself or even the fact that it is created synthetically from CBD for use in hemp products. (As I mentioned earlier, most of the caffeine we ingest, including by kids, is created synthetically.) Rather, the issue is that many delta-8 products on

the market were not properly manufactured, leaving behind an array of other compounds and solvents in the final products. Similarly, there are no overarching regulations about hemp production with respect to the use of pesticides, fertilizers, and the presence of mold, mildew, mycotoxins, etc. in the flowers and biomass. Objective production and manufacturing regulations focused on consumer safety will ensure that no one ever has to worry about their hemp products being contaminated, just as we do not worry about other products that we commonly consume being contaminated.

Pillar 3: We should require informative, appropriate, and standardized labeling and marketing of hemp products. This will ensure that consumers are adequately informed about the products they are purchasing and using. Consumers should know exactly what ingredients are in a product and their concentrations. Additionally, consumers should know if a product will likely cause impairment and/or to fail a drug test. By the way, this is where the issue of intoxication is properly addressed, not in prohibitions, milligram caps, or convoluted definitions, but rather via straightforward disclosure so that consumers are properly and adequately informed. The same is true about advertising and marketing. And in a similar vein, individual states should not control or regulate labeling or marketing.

This is an important point that often gets lost in the “states’ rights” and “let the states decide” arguments we often hear from cannabis industry advocates. The hemp industry deserves national objective standards and labeling regulation, just like every other consumer product. The current situation, where hemp companies must create compliant labels for every state, and where states are beginning to create their own state-specific quality standards, is inefficient, unnecessary, and fails to address the fact that, unlike the marijuana industry, the hemp industry operates on a national scale.

The three-pillar approach allows adults to make an informed decision about the products they choose to purchase and consume while limiting access to minors and sidestepping the impossible task of defining and regulating products based on their potential to cause intoxication. To use an alcohol comparison, an adult can purchase a low alcohol “session”

beer, a nice bottle of wine, or a large “handle” of hard liquor. The choice of “potency” is left up to the adult consumer, who can rest assured that the products are properly manufactured and that the label will provide sufficient information about the alcohol content and other ingredients to help her make an informed decision about what to purchase and how much to consume. Of course, alcohol causes both intoxication and a host of health and social problems. The fact that it is lawful and widely available across many retail distribution platforms, including convenience stores, while hemp products are being decried as a public health crisis is, frankly, insane.

With the exception of age-gating, which can be state specific, the Three-Pillar Approach will ultimately require a federal-level solution. Don’t cringe. I understand. With the notable exception of the Farm Bill itself, the Feds have been particularly unhelpful to date about hemp and cannabis generally. To be clear, I’m not talking about the federal government doing anything to restrict access to legal cannabis in the form of hemp. The FDA is here at Noco, which I appreciate. There are alternatives to FDA regulation of hemp and hemp products, such as a cannabis monograph. That is an important topic beyond the scope of my talk today. But the fact is that when it comes to quality control for the production and manufacturing of hemp products, and for their labeling, the hemp industry is unfairly forced to struggle with the varying laws and regulations of 50 different states. Additionally, as hemp becomes more normalized, it is incumbent for it to be treated like any other consumer good with respect to these issues.

What will the 3 Pillar Approach mean for hemp and, ultimately, for cannabis as a whole? We can see some glimmers of that world now. First, a consumer in a hemp-friendly state typically has more options than her contemporary in a marijuana state. Additionally, people who want to participate in the cannabis industry face significantly lower barriers and fewer obstacles entering the hemp market than the marijuana market. Importantly, since hemp is federally lawful, hemp businesses can sell and promote their products across state and international lines, take normal tax deductions on their tax returns, enjoy easy access to banking, insurance, and other financial services, advertise their products on most

major platforms, and not have the heavy weight of possible federal prosecution constantly dangling over their heads.

Isn't this a desirable version of cannabis legalization?

At this point, as we move towards a conclusion, I'd like to comment about the sale of hemp products in convenience stores. I frequently hear the claim that "hemp products are sold in convenience stores" used as an argument about how bad and unregulated the hemp industry is. This is a red-herring. Of all the possible distribution outlets for hemp products, convenience stores are among the best. Think about it. For decades, convenience stores have been selling highly regulated products such as alcohol and tobacco that are subject to strict age-gating. To be clear, and before all of my hemp-dispensary clients tar and feather me, I don't have any particular love for convenience stores. What I am in favor of is ALL properly-regulated distribution channels and platforms for hemp products, from ecommerce sites to boutique hemp wellness centers to convenience stores. Just like my alcohol example, there are many different retail options for a bottle of wine, each of which serves a different purpose. The same is currently true, and should remain true, of hemp and hemp products. Don't buy into the Reefer Madness hype. To claim that the hemp industry is somehow bad and unregulated solely because its products are sold at convenience stores, which are highly regulated, is ridiculous. The "convenience store" argument against hemp should die because it is totally unfounded. In fact, cannabis itself does not need to be relegated to overly-regulated "dispensaries". Assuming that we implement the three-pillar approach, it does not matter where or how hemp products are sold. We should be able to buy and sell them at any normal retail outlet.

There is a war raging against hemp in legislatures across the country, on all major social media platforms, and by misguided regulators and law enforcement agencies. But this goes deeper than hemp. At stake is the future of cannabis reform in the US, the ability for small businesses to thrive in an emerging market, and the right for adults to make their own determination about what they choose to ingest. The choices we make today will impact the cannabis industry, by which I mean both the "hemp" and "marijuana" sectors, for decades. If we successfully promote

regulations that address age-gating, quality control, and proper labeling, we do not need to concern ourselves with “intoxication” or any overreaching regulations and blood-sucking tax regimes that are currently strangling the marijuana industry. Nor do we have to worry about squeezing small businesses out of the industry. The hemp sector of the cannabis industry, including those of us here today, is the vanguard of the future for cannabis policy. As the DEA seems to be balking at even a modest rescheduling of marijuana to schedule 3, hemp stands as the new path forward for broad cannabis reform. Hemp is cannabis and it is the future of the cannabis industry.