

Good afternoon. My name is Eric Blazak and I am here speaking on behalf of Bristol Extracts LLC, licensed as both an adult-use conditional cultivator and processor. I will also be speaking, along with two of my fellow members on this panel, on behalf of the Association of New York Cannabis Processors. I'd like to thank this Sub-Committee and the members of it for inviting us to this panel. It has been very difficult, to this point, to have a legitimate voice in NYS Cannabis program, despite how important our collective voice is to the industry. I am grateful for the opportunity, both now and moving forward, to work in collaboration with all of you, with the OCM and with the Governor's office. I know that everyone on this panel today is equally committed to help ensure that this program, and in turn ourselves, our workforces, and our communities will be successful. New York State has called upon all of us to help to create a workable, equitable, safe regulated market, and so we are answering and will continue to answer that call. It is important to us that the rest of the country uses NY's model as the what to do model, as opposed to the opposite alternative. While we applaud the OCM for their effort, we do not share their enthusiasm for what has been executed thus far, nor are we instantly feeling optimistic about the future of the regulated cannabis industry in NY, without real, substantive change. Fortunately, the future has yet to occur and if we are able to collectively, and in the best interest of the program overall, adjust our sails, then the ship can be righted and we can all look toward bluer horizons.

Don't cut off your nose to spite your face. We've all heard that expression. Usually, when people use that phrase, it is used as a warning- do not put yourself at a disadvantage, and do not act in anger or haste before thinking through the consequences. We have seen this haste, ironic in a program that has been as slow as this one, be ruinous time and time again.

Given the current state of the cannabis industry in NYS, and a quick look into how we got to such an undesirable place, it's easy to say that NY cut off its nose to spite its own face from the very beginning. Legalization happened, and then we faced six months without an agency being stood up. During this period, countless illicit stores would open to fill the void. Once the OCM was finally established, we were already stuck with a huge sense of urgency, a need to react. We were excited about the prospect of the AUCC/AUCP program, but the regulations that

followed them were flawed, which several of us spoke with the legislature about at the time. Now, we are deeply concerned that the full program regulations are flawed as well.

Until now, California has been the poster child of what not to do as a program. NY is quickly taking that title away from California, unfortunately, largely because it appears we are using California as our model of choice. I am unsure of the reasoning for that, but the parallels become more apparent each day.

From the beginning, California did not open enough licensed retail stores. In addition, they were and continue to be soft on regulation enforcement in regard to both the illicit markets, and the unethical practices of companies that are participating in the regulated market. This created an enormous boost for the illicit market, allowing them to mature beyond control. In 2020, California legally distributed 2.5 million pounds of cannabis. That sounds like a lot, and it is, but also in 2020, there were roughly 11 million pounds sold in the illicit market in California.

~~Think about the taxable revenue there that is simply unavailable to the state of California.~~ And that's the smallest of California's cannabis industry problems. Regulated companies are unable to compete with the illicit market because regulated players have to pay taxes. In order to stay in business, many of the regulated companies also participate in the grey and black markets, which we have already seen evidence of here in NY. Businesses that have stayed ethical are largely out of business.

In Contrast, Colorado has been largely successful because they nipped the grey market in the bud very early in the process, spending upwards of 2/3s of their budget on enforcement. This proved to be wise as the market continues to thrive. Colorado, in 2020, harvested 1.8 million pounds for the regulated market. California harvested 2.5 million for the regulated market. Incidentally, the illicit and regulated markets combined had California harvest around 12.6 million pounds of cannabis, which is the amount needed to make them as successful as Colorado given the population discrepancy. New York, by the per-capita math from Colorado and California tells us that NY cultivators should be growing 5.4 million pounds to satiate demand.

NY is following California's timeline. The grey market stores are everywhere you look. There are full-on illicit dispensaries littering NYC, and every other city and town across the state.

Flower, pre-rolls, beverages, and concentrates are found in gas stations, convenience stores and even in bars. The amount of open grey market stores in NYS are deep into the thousands. Many of them have high quality products that they are able to sell for less than half the price of regulated stores because they do not pay the 13% sales tax, and the unregulated processors and growers, whether from NY or any other state, do not have to pay a potency tax on their products.

It is confusing, even baffling to us that the OCM has let this happen, mainly because the data is available. We know that they know this is an existential threat to this industry and the New York businesses who are compliant. Yet just three days ago, On October 27th, thecity.nyc released an article announcing that the OCM has suspended hearings against all illicit stores. In the Article, it said that Mr. Alexander attributed the change in enforcement to a lack of resources, and did not say when it planned to restart the administrative trials. This is incredibly disheartening to all compliant participants who are working our fingers to the bone to help to contribute positively to the regulated market. We're holding our end of the agreement with the OCM and because of that, we simply cannot compete, especially when you consider we still have less than 30 regulated stores open, as compared to thousands of unregulated stores. NY should "invest" in the regulated compliant businesses by suspending the taxes until the earlier of either cannabis becoming legal federally, thus ridding the 280E issues that go along with this business, or such a time as the NY industry, and the NY companies and brands leading the way, have had time to mature, investing earned capital back into the businesses, scaling up, hiring more NY employees, building the businesses to a point where they can afford to pay much larger tax bills then they will ever be able to pay as long as they have to send all of their early revenue to the NYS office of taxation, deeming scaling an impossibility.

Instead, NYS has effectively done the opposite. Rather than "investing" in the regulated market, the state is now inadvertently "investing" in the grey market stores by allowing them to continue to sell unregulated products without paying anything in tax, and without any penalty. The grey market is only getting stronger, and more mature, making it less and less likely that the compliant companies will be successful, or even survive at all.

Enforcement does not end with the black and grey markets. There are plenty of regulations being ignored by many of the licensed players in the NY cannabis industry. This is, of course, equally harmful to the industry as a whole. Yet, there is absolutely no enforcement of the current regulations by the OCM, as far as we can see, and there are still fewer than 30 retailers in NYS. What will happen when there are 2,000? A level, yet competitive playing field will only work if everyone is forced to follow the regulations and forced to pay consequences if they do not.

REGULATORY PROBLEMS

One of the problems with the permanent regs, which was also a problem for the conditional regulations, is that the math does not support the policies. When we first saw the AUCC and AUCP regs last year, what jumped off the page was that the amount of material we would be able to grow in NYS was a fraction of the market demand. So, even if the roll-out was smooth, and we had hundreds or thousands of regulated retailers open, NYS's demand far outweighs the supply. This would have resulted in an open-door to the black and grey market anyway, and enforcement would have been even more difficult.

The permanent regulations are no better. We will still experience a severe shortage in supply in 2024 if this is not addressed. We need to get to that 5.4-million-pound number. Cultivators should be allowed to designate portions or the whole of their crop to biomass, and should be able to grow substantially more of it because the price is roughly a tenth of smokeable flower, costs less to grow, and carries far less risk, that is, of course, assuming there are a sufficient amount of regulated retailers open to carry the resulting products, and assumes that grey market stores will be closed, which remains to be seen but, again, is pretty simple math when basing on other markets.

Should we run out of supply next year, it will be very difficult for this industry to survive as a regulated market. Retailers will either close, or start selling product from other states, those

would be the only two options. This needs to be addressed immediately and every one of us here today are more than happy to help.

Now, as we look forward to full licensing, we implore the OCM, the legislators here today and the Governor's office not to cut off your nose to spite your own face. We understand that NY wants the tax revenue. We understand the longing to be running full-speed and realizing all the potential that the NY market has to offer. We understand because we're all teetering on the edge of going out of business, laying off employees, and losing millions of dollars that we've invested if more stores are not opened soon. However, we are willing to suffer for a few more weeks if it means that NY will take the time to pause and do this right.

OUT OF STATE BRANDS

On March 10th, 2022, Governor Hochul said "I'm proud New York will be a national model for the safe, equitable and inclusive industry we are now building." She said that NY companies were the priority. That is quickly changing in front of our eyes, as large national brands begin flexing their muscles in both the regulated and unregulated NY markets. We believe that must change for the health and longevity of NY businesses for a multitude of reasons and predictable outcomes.

And there is time.

While we are excited that \$80 million dollars have been spent on regulated cannabis in NY this year, so far, we are cognizant, as is the rest of the world, that the unregulated sales dwarf the regulated in comparison...that cannot continue, and we can quickly arrive at sensible solutions together.

We believe in this market. We believe that NY can still be the example of how to run a successful adult-use cannabis program for the rest of the country. But first, we must recognize our failures, hold ourselves accountable, research what has worked and what does not work in other programs. Then serious, crucial adjustments need to be made. We have traveled from far

and wide to deliver not only this message, but to offer up our help in fixing things. We only ask that you please let us.