Portfolio Media. Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

A Former Mass. Pot Regulator Advocates For A Fair Industry

By **Sam Reisman**

Law360 (August 5, 2022, 4:09 PM EDT) -- Shaleen Title, the CEO and co-founder of the equity-focused cannabis policy think tank Parabola Center, has more than 20 years' experience changing and enacting marijuana laws. And now she says the legalization movement is at a crossroads.

Shaleen Title

"The most urgent thing for me now is really trying to curb corporate influence in marijuana legalization and regulation, especially at the federal level," she told Law360 in a recent interview.

Title worked on the 2012 campaign to legalize recreational marijuana in Colorado, one of the first two states to do so, and later pivoted from advocacy to government regulation as one of the inaugural commissioners of Massachusetts' Cannabis Control Commission, tasked with overseeing the launch of the Bay State's adult-use market.

Following the completion of her term, she launched Parabola and recently authored a paper, "Fair and Square: How to Effectively Incorporate Social Equity Into Cannabis Laws and Regulations," laying out proposals for how to build a fair and safe cannabis industry that is not dominated by large corporate interests.

Title spoke with Law360 about her advocacy, divisions within the legalization movement, and why she believes "all drugs should be legal and regulated."

This conversation has been edited for length and clarity.

What do you think are some of the biggest public misconceptions about cannabis, both the plant and the industry, that you would like people to be disabused of?

That it's a monolith. It's a myth that you can stereotype the industry or the movement, because it has changed so much, and it's now so big that you have all different types of facets within the movement. I would say, too, it's a myth that cannabis is a special plant or a special drug that makes it immune to corporate manipulation, for profit. So we have to be vigilant about that and learn from other industries.

And I think it's important to understand that when we talk about equity and justice, it's more than just racial justice. I think that, of course, the most important thing [to acknowledge] is that Black and Latino people have been disproportionately targeted for their cannabis use, but there are other ways that we can look at equity. When we talk about patients, and we talk about poor people, there are so many ways that you can benefit from cannabis, and all of those communities deserve to be treated fairly.

What in the cannabis industry do you see as "corporate manipulation"?

I think in general, the industry is compliant, far more compliant than Big Tobacco when it comes to checking IDs and testing their products. So no, I wouldn't say I've seen the type of shenanigans that we've seen in Big Tobacco, but I think there are some red flags.

Generally, because cannabis is federally illegal, you see a lot of caution, and you know that regulators are watching you very closely. So I think they're generally good actors. But I think that if cannabis was legalized, and you no longer have that kind of stigma — not that stigma is a good thing — but I think it plays one good role in terms of limiting that type of behavior.

I've also seen a lot of concerning ways that workers are being treated. Here in Massachusetts, there was a company that just had to pay $33,000 back in tips that they took from workers. So I think the bigger that companies get and the longer they've been around, the more likely they are to be skirting regulations and manipulating for profit, and we should be proactively protecting against that.

How do you define equity in the cannabis space?

> Anyone who is trying to defend the drug war does not have evidence on their side.

When I say equity, I mean fairness. And the most obvious and the most urgent form of fairness is making up for the way that Black and Latino people have been treated, and the generational harm it's caused those communities.

But more broadly, when you talk about fairness, we also have to be thinking about consumers. We should be thinking about workers and the people who have grown and used cannabis for thousands of years.

If you could wave a policy wand, what would you like to see be instituted in this country as far as cannabis policy?

If I could wave a magic wand, I would want everyone to be able to use cannabis safely with a product that has been tested, that is properly labeled, that they have access to a convenient product that is priced fairly, that is produced sustainably, and that at the same time the businesses who make cannabis are acting ethically and fairly. And that bad corporate actors such as Big Tobacco aren't allowed anywhere near the marijuana industry. I'll add that Parabola Center pushes for disqualifying companies like Big Tobacco [from participating in the cannabis industry] instead of disqualifying individuals based on a criminal record.

What policies can prevent a cannabis takeover by large corporate interests?

There's a lot to point to. Certainly, merger limits are going to become more and more important. In the short term, I think pushing for limits on how much of the market one entity can own or control, like we have in much of the Northeast, is really important. And then protections for workers, just like every other industry.

Anti-legalization advocates also are concerned about the takeover of cannabis by large corporations, but of course their starting position is that this drug should be completely illegal. Could you see yourself ever coalescing with them, given that some of your interests are aligned?

I think most of those concerns are disingenuous, because if you are suggesting that prohibition will solve those issues, you're not adding any value to the conversation. We already know that prohibition is bad policy, probably the worst policy. And handing the market from prohibition to bad corporate actors is also very bad policy.

So I could see myself teaming up with anybody who believes in good regulation. Those lines are being drawn now, because there are a lot of people in the cannabis movement who do not support strict regulation, who I may be in opposition to when it comes to policy. I think the public health community is going to be the greatest or the most unexpected ally when it comes to strong ways of curbing corporate influence.

If you talk to prohibitionists, they will often point to tobacco and alcohol and pharmaceuticals and say, "Look how many people have died or been hurt by these legal substances. So why do we want to add another one?" And so it's on us to explain why and how we would regulate marijuana differently. And a lot of that, I think, is actually

regulating the big companies the way that Big Tobacco and Big Pharma have not been effectively regulated in the past.

Prohibitionists will say that marijuana legalization is just the tip of the spear for the legalization of all drugs, which they say would be a public health disaster. What's your response to that charge?

It's not a secret that the drug war doesn't work and prohibition doesn't work. And so anyone who is trying to defend the drug war does not have evidence on their side.

We see that a public health approach to drugs, including decriminalization, including connecting users with support services, sometimes treatment, sometimes jobs, sometimes housing, all of those things work. And arresting them does not work.

What you might see [if drugs are legalized] is people who use drugs feeling safer and being willing to talk about it because they're no longer afraid of arrest and being willing to seek services. In that case, you need to have the services available. But that is the way to help people who use drugs — not to arrest them. If they need help at all. A lot of people use drugs and don't need help. I think that's important to recognize as well.

What were the biggest missteps or missed opportunities when cannabis was first legalized for adult use about 10 years ago?

> We already know that prohibition is bad policy, probably the worst policy. And handing the market from prohibition to bad corporate actors is also very bad policy.

I hope it doesn't sound arrogant to say that I think we did the best we could with the information that we had. But that doesn't mean there weren't missteps. If we had known more information, then we could have, for example, focused on the way that youth would be treated. So for example, in Colorado, after legalization, Black and brown youth under 21, their arrests actually went up because of enforcement for people under 21 unlawfully using cannabis. That was a misstep. I'm glad to say that most states currently now have addressed that and taken steps to make sure that youth are treated fairly.

Another one is we should have automatic expungement for every cannabis offense. Every time that we legalize cannabis, it should just be part of the same bill.

I think, third, we should have made a consistent data collection strategy so that results could be compared across states.

What are your thoughts on the three major cannabis legalization bills we've seen at the federal level? These are the MORE Act in the House, the Senate bill from Chuck Schumer, and Rep. Nancy Mace's bill in the House.

I think all of them make a massive error in ignoring the transition to interstate commerce. Any bill would need a plan to protect small businesses and gradually transition to interstate commerce to have my full support. But, of course, all of those bills are historic. They represent a step in the right direction.

I'm particularly grateful that [Schumer's bill, the Cannabis Administration and Opportunity Act] contains at least an intent to keep out Big Tobacco and to make sure that there are efforts to protect small businesses.

I think there's more in common between all of those bills than there are differences. The MORE Act, of course, needs more regulation. And it also is very helpful in terms of the criminal justice reform and the equity fund efforts that it creates. But I think in the end, all three of them would end up with very similar results.

The illicit market or unregulated market continues to flourish in states even where it's been legalized. What do you think is causing that? And what is the most productive way to talk about it?

So I think we have always known that the underground market would not disappear overnight. Because people have been using it forever, successfully. They usually trust the person that they're getting their cannabis from underground. But there are a lot of benefits to legal regulation as well, especially getting tested products and hopefully being able to get it more conveniently. So for me the goal is to gradually shift to the regulated market. And we know through research that what makes consumers shift is if they can access a product that they want based on convenience, selection and price. And so to get there, we need regulations that are fair and that encourage competition. That's what is going to lead to a shift to the regulated market.

What is not going to work, despite lobbying from existing cannabis companies claiming otherwise, is a crackdown. Prohibition and crackdowns do not work. We know that from decades of the drug war. And those crackdowns are deeply unfair; they perpetuate racial discrimination. And we should not be having any crackdowns until we have a

pathway for people in the unregulated market to transition to selling in the regulated market, and we don't have that yet in this country.

So instead of crackdowns, what we should be focusing on is allowing unlicensed sellers to transition and making sure that there's a competitive enough market where consumers are going to want to transition. And then once we get there, then we can start thinking about the best way to enforce legal regulations.

In some respects, psychedelics seem to be about where cannabis was 10, 15 years ago, in terms of decriminalization efforts and a growing discussion about their potential medical uses. Does cannabis legalization offer any lessons?

> The most urgent thing for me now is really trying to curb corporate influence in marijuana legalization and regulation, especially at the federal level.

There are certainly some lessons. But at the end of the day, the substances are very different. And the reasons why people use them are very different. So you can't just copy and paste one set of regulatory standards for another. There's a lot of research, rightfully, that's being done. And then there'll be a lot of thought that needs to be put into how to safely regulate these products, and certainly, to ensure that for-profit incentives aren't affecting the way that it's sold.

When it comes to what makes people more likely to use drugs, we shouldn't be thinking about whether we're going to arrest them or not. We should be thinking about preventing corporations from unnecessarily getting users to use more harmful products and to use [them] more, in order to maximize profit, because that's what evidence shows happen. So that's what we should be protecting against.

So with that said, when it comes to psychedelics, I think it's going to be really important to make sure that we're fair in terms of who is manufacturing the product, how it's being administered, how to help people who need help. And then, of course, my focus is on equity. It's a really interesting question with psychedelics, because you don't have the same history of criminal enforcement against certain communities, as you do with cannabis. Instead, you see this proactive effort to ensure that the cultures that have traditionally used these substances are able to continue to benefit from them, which is wonderful and not something that we did with cannabis.

I think the absolutely most important takeaway for psychedelics is to make sure we're going slow and that we are stopping to evaluate before we move too fast.

The cannabis industry was able to get on its feet in large part because law firms decided to start taking on cannabis clients, even though it was federally illegal. What do you make of the legal industry's decision to engage with cannabis in a big way?

I'm obviously very supportive. When I moved out to Colorado, it was [law firm] Vicente Sederberg that I had cold-called to ask if I could come and help to pass the [legalization] law in Colorado. And they said: "Yeah, come on out. We need all the help we can get." While I was there, I was able to learn about not just cannabis law, but the positive impact of regulation.

I went door to door to talk to people about legalization. I think the more lawyers are doing things like that, the better they'll be at their profession, advocating for their clients, but also the more positive impact they'll make in the world.

Let me add also, when it comes to drug policy, there's so much more that you can do with a law degree than just representing clients and especially just representing businesses. You can be a regulator, you can be a policy advocate. You can be someone who reads laws and regulations and just communicates them clearly for people, so they can get involved in the citizen advocacy process. There are so many important things that lawyers can do in drug policy.

Prohibitionists will point to the dangers of increased potency of cannabis products. Should there be limits on potency?

I share those concerns completely. And it always makes me laugh a little when prohibitionists make that argument because they are pointing to the need for regulation, and they are undermining their own point of prohibition. I would say that for medical use, there should be no limits on potency. It really depends on the decision of the doctor and the patient.

For recreational — in my own marijuana community, I will not be popular for saying this — but I think we should start out lower. I would even advocate for edible servings being as low as 2.5 milligrams per serving. [A typical dose of edible cannabis usually contains 10 milligrams of THC.]

Because if you need higher doses, you can usually get a medical card. I would rather a person with a higher tolerance perhaps needing to get a different product, rather than having a person who is trying marijuana for the first time not be able to find a product with a low enough potency for them. And I don't want them to have a bad experience. I don't want them to feel like they had no choice but to try a high-potency product.

I don't think it's something we should leave up to the market because I think it's generally more profitable to sell higher-potency products. And so there is a responsibility on regulators to make sure that tourists or people who might be trying to, for example, transition off of pharmaceutical products or trying a new product to help them sleep, that they're able to ease into it.

What's your take on the SAFE Banking Act?

> I don't think [THC potency limits are] something we should leave up to the market, because I think it's generally more profitable to sell higher-potency products.

The SAFE Banking Act is a horrible policy for two reasons.

One, because it is such a waste of an incremental step. Our first incremental step should be helping patients who face all kinds of problems because they're using a federally illegal product. Or letting people who are in jail for cannabis offenses out. Or a million other things that would be a better incremental step than protecting banks.

The second reason is, even if you accept the premise that protecting banks is our top priority right now for the marijuana movement, the SAFE Banking Act doesn't do what it purports to do. It doesn't protect small businesses. It doesn't protect minority-owned businesses.

What it does is protect banks and then leave it completely to banks' discretion as to what marijuana businesses they'll work with and how. And I think if you know anything about banks or the way that banks have behaved in the past, you won't support SAFE Banking.

However, I would like to support SAFE Banking and I think that if there were some amendments, it would be a positive step. And so I am working with the Cannabis Regulators of Color Coalition. We've been meeting with legislators for months about that, and we'll be putting out some work for the public soon in terms of amendments that we recommend, because I do want to be constructive. I don't want to just criticize SAFE Banking. I don't think that helps. But I think that we can be constructive and actually do the things that the proponents of SAFE Banking claim to be doing.

Is marijuana a bad word?

I don't have a strong opinion on that. I use marijuana and cannabis and weed interchangeably depending on the context. Of course, Harry Anslinger [the head of the U.S. Bureau of Narcotics from 1930 to 1962 and a staunch cannabis prohibitionist] and his buddies decided to use the word marijuana because they thought it sounded foreign. And that worked along with their "Reefer Madness" policies. But that doesn't make the word itself bad.

I'm Indian. Cannabis comes from my culture. We use the word ganja, which comes from Sanskrit. If somebody wants to use the word ganja in a racist way, that doesn't mean the word is bad. It comes from my culture; it's a valuable word. And so I think, you know, just dismissing words from other cultures because they've been used in a racist way, is a misstep, and it almost does what white supremacy is trying to get you to do.

--Editing by Robert Rudinger.

Cannabis Corner is a recurring feature interviewing leading or interesting figures in the industry.