

## The Grass is Greener: Cannabis Law News



### Episode 2 – ESG in the Cannabis Industry: More Than a Buzzword December 1, 2021

Speaker	Statement
<b>Marshall A. Custer</b>	<p>Hello, and welcome to The Grass is Greener: Cannabis Law News, hosted by Husch Blackwell’s Cannabis Law group, where we update you on the latest trends and topics in the evergreen and ever-evolving cannabis industry.</p> <p>Hello, and welcome to Episode 2 of the Grass is Greener. I’m Marshall Custer, and today we’re going to be talking about ESG. A hot topic across all industries, but today we’re going to be looking at ESG from the cannabis perspective and, more specifically, the regulated marijuana industry. Here with me today to discuss is a colleague of mine and one of our MVPs of the cannabis practice here at Husch Blackwell, a long-time industry veteran. Alyssa, I think you’ve even practiced longer than I have. Serious dog mom and equally serious distance runner, Alyssa Samuel. Hi, Alyssa.</p>
<b>Alyssa B. Samuel</b>	<p>Thanks, Marshall. You’re too kind. I think you might have me beat on experience. But who is counting? Anyway... And I wish that I was as serious of the runner I once was. Not so serious anymore.</p>
<b>Marshall A. Custer</b>	<p>We can’t do it forever. But we can try.</p>
<b>Alyssa B. Samuel</b>	<p>Right.</p>
<b>Marshall A. Custer</b>	



Well, I think we're going to dive right in today. So, I think people are pretty attuned to many of the environmental concepts that are talked about often today, right? Like, the ever-amorphous sustainability or more, more able to measure energy conservation or discrete metrics such as carbon footprint. And I think ESG, as one of the kind of new corporate acronyms that are getting thrown around often, it gets lumped into that mental model of, you know, what is environmentally friendly.

But I think it's a great deal more than that. I think it does a disservice to just think ESG means we're trying to help the environment. So, let's start there. Let's start with the basics. Alyssa, what does ESG stand for and what does it encompass? What's it trying to get at?

**Alyssa B. Samuel**

So ESG is environmental, social and governance. And it's a lot more holistic than just talking about a few things that are...doing a few things that are friendly to the environment. It's talking about business practices as a whole. Are you sustainable? What is your environmental impact? But also, what is your impact in the community? And what is your impact to your employees? How do you actually govern yourself? So, are you operating as a corporate good citizen, kind of, is how I look at it, if you take all three pillars together.

And consumers are becoming much more aware of what exactly that means and the nuances that are involved in looking at an environmental, at your environmental practices. Simply saying that you're sustainable anymore isn't necessarily going to cut it with a lot more savvy consumers. They want to know, well, what exactly are you doing? Consumers are becoming much more aware of what's called "greenwashing," which is, you know, if you put a few solar panels up and then say you're sustainable, well, that doesn't take into account everything else that you're doing that may be detrimental to the environment.

And that's the same thing with the rest of your practices. Are you as a corporation or as a business contributing to the greater good in a positive way, or are you exploiting the people that work for you or the communities that support you and the environment? And this is all becoming very much a buzzword.

**Marshall A. Custer**

Well, I agree with that. It feels to be one of the more hot topics that I'm seeing thrown around quite often. And I guess that gets to a bit of the next question. You have touched on how consumers are driving a lot of this talk of ESG. And broadly. And by that I mean not just the cannabis and marijuana industries. But what's driving beyond just customers asking about it and maybe social trends? What's driving, you know,



the “hot topic-ness” of ESG? Why are people starting to focus on this?

**Alyssa B. Samuel**

I think there are a lot of reasons. I think on an environmental, on the environmental side, I think we just saw the U.N. report that came out a few months ago that noted we’ve done some irreversible damage to the Earth. And there’s an attitude that we are all in this together and if we don’t reverse course, you know, we’re going to leave a barren wasteland to our kids and grandkids, if we can, if they can even survive. On the environmental side, I think there’s a little bit of some alarms that went off, and I think that there’s been greater education around these issues.

On the social and governance side, I think there is a confluence of factors that have led to people really looking and examining these things with a critical eye. I think our political culture right now is very, very attuned to how employees are treated. I think COVID was a game changer for a lot of people. I think people had a lot of time to think about, to make more thoughtful choices. And as we’ve seen, a lot of people redirected their lives in a lot of ways. And so, I think the workforce has shifted. It is more competitive to get workers. And I think that’s also making employers much more aware of how they need to be governing themselves.

On a community side, I think that whenever you have those kinds of shifts that happen, you know, communities and local governments or state governments as well as federal governments are going to look at those trends. I think what’s most... It’s always most interesting to talk about the cannabis space because as cannabis businesses, we’ve always seen our clients almost required to be better corporate citizens from the get-go. There’s always been an element of, you know, what are you doing to give back to the community? You’ll see that’s a part of the regulatory requirements in a lot of places to have a social impact plan to see what you’re going to do for the community. What kind of jobs are you going to create? What are you going to pay people? And so, we already have an industry that’s already been looked at with a critical eye on that side.

On the environmental side, the regulations have kept people from being more sustainable for some time. There’s always been a lot of regulations on how you get rid of waste, and in some states those are loosening up. We’re not able to reuse packaging – that kind of stuff. There’s a lot of wasted packaging, and regulations are also trying to address that. And on the state side, some regulators are actually trying to require environmentally friendly practices. Like, California’s going to be looking at electricity usage in renewals for cultivations. New York in their new regulations has a mandate to look at



environmentally friendly practices to the end date. So the cannabis place is a really interesting place to look at that shift and where it's coming from.

**Marshall A. Custer** Absolutely. And one thing you said that really struck me was with regard to COVID being a game changer. And, yes, it's old hat. Everyone knows COVID was a game changer. But, you know, there's much made of the labor market now and how it's so difficult to find people. And then you hear some of the more ungrateful employers saying that, you know, it's just people don't want to work as hard as they used to. That's, that's not true. To exactly your point, I think people have reevaluated what's important in their life and there's been such disparity as to who's come through this well and who have not. And the ones that have come through well, I think, are reevaluating very much, you know, "I could have been one of the people that didn't come through."

And so, it's starting to put more decision-making and more thought into what do they care about. And while, I think, the youth, right, have been properly focused on how is our world going to look? How are we going to treat, you know, the communities that we live in? I think some of the older among us have maybe lost sight of that, you know, community-mindedness that the youth has, and COVID has maybe brought that back on.

And then I would take that a bit further. I think those are all the society trends, right, that are driving this focus – that we're seeing, you know, COP26 and all of those movements around environmentalism and social justice. And it seems to now also finally be translating into discrete metrics and, frankly, funds, cash – you know, what businesses actually care about as to where they're going to put their money. In your experience, have you been seeing any of our clients, or any of the private wealth individuals or funds that we're talking about, starting to actually put parameters around how they would like to deploy those dollars? Has it reached that point yet in the cannabis industry, or is this still for the rest of regular economy people to be concerned about?

**Alyssa B. Samuel** I think it's a combination of what I mentioned before and of our industry has already been held to a higher standard in a lot of ways. And it's almost like regulators have always looked at marijuana businesses and said, "We're going to give you the privilege of operating in a space that's federally legal. You need to show us why we should give you that privilege and why you should be there." Meaning, if you're in a licensed limited state, like I said earlier, how many jobs are you going to create? How are you going to treat people?



What sorts of extra programs are you going to have? What are you going to do to give back to the community? How are you going to benefit the community because we're giving you this great privilege?

I think that general corporate America is actually more following suit in a similar shift, where corporations have traditionally been looked at as they're to benefit the investors. That very traditional... The traditional mindset is you have a CEO and you have a board and you have employees, and their job and their duty is to the investors. And the real big shift here conceptually is that we're now saying no. Your job is to be a global citizen. You have a duty to treat your employees right, to contribute to the common good for the benefit of getting to make money for investors. There's a second part of that.

And so, I think we've already had to justify our existence as a good corporate citizen for a long time. Where there's a lag, I think, is on cannabis companies already have a huge burden in the taxes that they have to pay, their regulatory overhead, adding additional things that they need to do, I think, can seem a little overwhelming. But a lot have already done a really great job on the social and governance end because either they've had to from regulators or it's a competitive place to operate to begin with that they've had to.

**Marshall A. Custer** Or as you say, right? As you say, it's coming from government primarily, right? Our corporate good governance has... We want to be an environmentally friendly... We want to support our communities and have good governance – be a good corporate citizen. Much of that has been driven by, you know, the privilege being granted by the states. But it is the state, the government, that seems to be pushing that right now.

**Alyssa B. Samuel** Yeah.

**Marshall A. Custer** And, I think, perhaps, what I'm hearing you say is less so is it the investors. I think that's changing. And that would bring me to, kind of, my next set of questions for you, which is, right, that the premise of ESG, right, is that we're supposed to set up what these metrics are. And if we're talking about the cannabis industry, if those metrics right now are primarily being government-driven, or if the trajectory is that they are going to be government-driven, it would seem wise for industry to get ahead of that and start to take more of the investor focus where they can set the metric – you know, the industry itself – and then turn back toward government and say, "Here's how I would like to have these parameters set," and kind of take the steps ahead of government so that we have, frankly, better crafted legislation. When



the industry is starting to look to do that, are there, are there models out there for measuring ESG – other industries that we think we could look to that could be examples of what has already been done? Granted, this is, you know, an emergent space.

**Alyssa B. Samuel** Of course. And Marshall knows I love talking about the wine industry and what they've done. They've been doing this for decades.

**Marshall A. Custer** Right, I was totally leading you to talk about wine!

**Alyssa B. Samuel** Yeah! But, there's a lot of analogous principles between cultivating grapes, processing them and getting them into lines of distribution. That's what we do in our industry, too. So it's... There's a lot of corollaries there. And the wine industry, particularly in Northern California, has already been doing a lot of these things for a long time, partially because of consumer and investor demand. I think that there are... It started out of a belief, but I think that it has continued to grow because investors in wine operations and consumers that are buying wine want to see and want to know that. You're also talking about an industry that operates in a state that's typically short on water, short on electricity, and highly populated. So, you've already got to make sure that the amount of land and space that you have goes as far as possible, and that you're being judicious and efficient with your resources. So it's not just benefitting the environment, but also benefitting the operator, too. So I think that there's a combination of factors. But the wine industry has done, has already looked at the ecosystem of the vineyard in a more holistic way, but they also can, you know, can grow outside.

In some states, in cannabis, you can and can't grow outside. In some locations, you may not want to, based on what the climate is, or in some cities and other localities, they can't be in public view; you have to be inside, et cetera. And so, there's the things... But there's also, you know, technology that's being driven to monitor microbes in wine, and the... I mean, wine growers in Northern California will use, you know, livestock to graze weeds, et cetera – those types of things. So, in marijuana, one of the largest things that we have to worry about is our electricity use and our water usage. And there are some sophisticated, technological ways to start to monitor those things that are already being employed in these other industries, and that are starting to be employed in the cannabis industry. And we do, to your earlier question... There are some clients that we have worked with that are funds that are getting, you know, that are receiving investment for sustainable greenhouse technology and those types of things. But tech



is also helping to drive that.

**Marshall A. Custer** Where I feel like we come up short sometimes on that is, the environmental side seems kind of easy. The social side, I think, is much more difficult. And, you know, that we've seen a number of people in this industry where governments have tried to put in place these, what are usually called, like, the "social equity applicant," or social or formative justice plans that award licenses to people that have been disparately impacted by the war on drugs, that we've often seen straw men set up, and individuals taken advantage of. Thankfully, I see that a lot less these days because I think everyone knows that that's not an okay tactic to take. But I wonder if there are any examples that come to mind of ways that our industry can be more proactive on that front without the government having to say, "This is a special license I need to put in place." Where they can, you know, espouse those values and put those practices into practice.

**Alyssa B. Samuel** Of course. And I think we've already seen some of our clients and some of the industry participants already doing it. I know that you remember the earlier days of the marijuana industry where there were operators that didn't think they needed to follow federal employment laws or labor standards, or have an employee handbook or a human resources person, and, you know, now that's no longer the case. You know, any of our large operators in this industry are now following all the rules and operating just like any other businesses. And one of the things that's unique about the cannabis industry is it tends to be a very young workforce. And young people demand change a lot faster, I think, than people that are comfortable with the way things have always been. So in the cannabis space, I think a lot of that competition for employees is being driven by younger employees that want to see things run a certain way. So I think a lot of that is already happening. There could be more of it.

I think that the regulations that our industry operates in mandate some of these principles, but can also make some of them harder. Like, for instance, employee profit-sharing programs can have a harder time because the regulations on sharing profits from a marijuana business can get in the way of that. Or – and this is something that's also changed, is – the industry, initially to work in the industry, you had to meet certain requirements. And what the industry has found is those requirements often excluded people of color more... disproportionately, or people from lower socioeconomic backgrounds. So, some of those requirements have changed, and we've seen a more diverse workforce as a result. But the thing that I think our industry could tune into a little bit more is not just who you hire, but – and this



is across all industries; I think these sorts of issues impact everyone – but I think what I haven’t seen a lot of this addressed, is I think a lot of companies will look at who they hire to begin with, but they’re not looking at who moves up and who they have in leadership. Like, is there upward mobility for all different types of classes? And is there workplace flexibility for, for moms? Is there training for veterans? Is, you know, is there any way to make the benefits of being in the industry accessible to people that otherwise it may exclude? And I think that that’s started, but I think that that next step could be stronger.

**Marshall A. Custer** I agree with you. I think the base employees that many of the large operators have – very successful operators have in the marijuana industry – is more diverse than many of your, let’s say, Fortune 500-type companies. Definitely more diverse than your average law firm.

**Alyssa B. Samuel** Yeah.

**Marshall A. Custer** And they have a real opportunity to live and just absolutely kill it on the DE&I front, the diversity, equity and inclusion front. And they have the right mindset. And I sort... I think... All of them I know have the right sort of people involved to do that. And this next statement might get me a little bit in trouble with the people that do tend to pay our bills because I know some of them don’t like this, but most of them do, but I think one of the biggest things that this industry can do on this front is, as this safe banking continues to move at the federal level, get behind Cory Booker and say, “Hey, let’s make restorative justice work, too.” Because Cory’s right: Safe banking makes a lot of white people richer. And it would be nice if we also do something for the other side of that problem.

So, getting back to my question sets... I’ve got a cynical question for you, right? There is... We’ve talked about how ESG, it’s the right thing to do. Clearly a hot topic. I think investment in the marijuana industry will start looking at that in years to come. There’s definitely a social demand for it right now. That’s where the society is trending toward. But the cynical question is: Because marijuana’s such a hot investment market right now, and we know who the winners and losers, more or less, are – the weed’s starting to separate from the chaff pretty quick. If you’re on that “in demand” side, does ESG actually matter? Is it going to stop you from raising money in that next round?

**Alyssa B. Samuel** I would say yes. And I think one of my favorite things to talk about with ESG and why I love it so much is, growing up in Northern California and going to the University of San Francisco and being an environmental studies minor, you know, 20 years ago, I had lots of



grand ideas that people in my community – that’s a very farming-based community – would say, “Well, I mean, that’s nice, but nobody can really afford to buy produce that’s produced that way. You can’t compete if you’re worried about being sustainable. That’s just not accessible for most people.” And that dialogue has changed immensely – where corporations that are doing good on the environmental, social and governance front are seeing greater returns.

And I was just at a conference last week where someone from the alcohol and beverage industry was talking about sustainability trends. And he’s a consultant in that space. And he said, you know, “Every person that I have talked to that was sort of a naysayer to this concept, when I— And they say, ‘Well, that won’t work and that won’t work.’ When I’ve asked them, ‘Have you tried?’ the answer’s always no. Because the people that have actually tried to put in place any of these concepts have seen a benefit from it.”

So, like I was saying with the environmentally sustainable concepts earlier, yes, it’s good for the environment, but how is it a bad thing to be more efficient with your resources? That’s only going to help you. And there are a lot of great companies out there now that make affordable products that you can source that are good for the environment. Like, I know of a skincare brand that has, if you look at the QR code on your actual package it will tell you where it’s recycled and it will tell you, you know, what landfill it came from – you know, from, you know, from ocean trash.

So, I mean, there’s, there’s lots of companies that are doing lots of really creative and innovative things that are now affordable. They are no longer out of reach and uber-expensive. Same thing on the social and governance side. It’s only going to help your organization if you have a more diverse group of people in it. If you’re trying to market the product to everyone, why would you want an organization that doesn’t represent everyone and only those ideas feeding into how you’re operating your business? It just doesn’t make sense. So, what is good for the goose is good for the gander – like, this concept that employing these principles is going to be more expensive and not beneficial is just, frankly, outdated.

**Marshall A. Custer** So without discounting what you’re saying – because you know I’m on the same side as you; we probably vote the same – I’ll remain the cynic and say if you’re one of the really top performers in this industry, one of the hot investments, I don’t think it matters. I think you’re getting your money no matter what because there’s so much demand. And especially if we start seeing another retail frenzy bump, another potentially hot IPO market because of, you know, federal legislation



rumors, I think even more so. But then I'll, I'll put a big asterisk next to that. If that's your mindset – and I'll also further disclaim, I don't know any of the big players where this is their mindset, so I think we're in a good path and our industry's in some pretty good hands – but if that was your mindset, I think you're setting yourself up for failure quickly because it's too short-sighted of a solution. You'll get your money now, but to all the things that you're saying there, Alyssa, the long term comes up quite quickly on us and we'll have repercussions. And that short-sightedness, the not thinking about “What should I do later down the line?” is going to materially harm your organization – and not just if you're one of the big players, if you're the midsize, or even the mom-and-pop who's going to look to survive as this industry continues to consolidate.

So, with that, Alyssa, thanks for coming on today. I know you're out in California, so we didn't get to see you in person. But it's always good to see you, even on the video.

**Alyssa B. Samuel** Always a pleasure, Marshall.

**Marshall A. Custer** Alright. And thanks, everybody, for listening. We'll be back, oh, in probably a few weeks. And I think our next series might be on the various types of exits that the midsize and smaller businesses might be looking toward in the next 18-20 months as many of you start thinking about, “Is it time to sell?” Thanks, and until next time, see ya.

**END OF RECORDING**

