

Understanding Arizona's Propositions: Prop 205

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Proposition 205 – Regulation and Taxation of Marijuana Act

Proposition 205, the Regulation and Taxation of Marijuana Act, would legalize marijuana for recreational use by people aged 21 and older. Supporters argue marijuana prohibition is a failed drug policy that has benefited only crime cartels and drug dealers. Proponents argue the people of the state would be better off by shifting its production and sale to tightly regulated Arizona businesses and establishing a system somewhat similar to the manner in which alcohol is taxed and regulated. Opponents argue that legalization would have disastrous effects on children, businesses and the public at large. They also claim it would just add to the inventory of dangerous products such as alcohol and tobacco already legally available.¹

The Proposal

Major provisions of Proposition 205 would allow adults 21 and older to possess up to an ounce of marijuana; purchase the drug from licensed businesses; and grow up to six marijuana plants in their homes for their personal use without a license if the plants are kept in an enclosed area. The proposition would establish a 15 percent tax on retail sales of the drug and earmarks the tax money for education and public health purposes. The measure also would create a new state agency, the Department of Marijuana Licenses and Control, to regulate the “cultivation, manufacturing, testing, transportation and sale of marijuana.”²

The proposition dramatically expands upon the Arizona Medical Marijuana Act (AMMA) approved by voters in 2010 that makes up to 2½ ounces of marijuana legally available from licensed dispensaries every two weeks to people with certain medical conditions who have a doctor's recommendation and a state-issued card. There are around 100 dispensaries and 98,000 people registered in the program.

Other than for medical marijuana patients, possession of marijuana in Arizona is a felony and carries the possibility of incarceration. Should Proposition 205 be approved, about 4.8 million Arizonans would be legally eligible to use marijuana for whatever reason.³

Twenty-five states, including Arizona, have made medical marijuana legal. Four states — Oregon, Washington, Colorado and Alaska — and the District of Columbia have legalized the recreational use of marijuana.

Much of the funding in support of this initiative, and what is known as “The Campaign to Regulate Marijuana Like Alcohol,” comes from medical-marijuana dispensaries in the state and from the Washington, D.C.- based Marijuana Policy Project (MPP), which sponsored and largely bankrolled Arizona’s 2010 medical marijuana measure. MPP has worked to legalize marijuana in states across the country and thus far has been successful in Colorado and Alaska. MPP has been campaigning in 2016 for ballot measures legalizing the use of marijuana in California, Nevada, Massachusetts and Maine, as well as Arizona.

Opponents of Proposition 205, many of whom support an organization called “Arizonans for Responsible Drug Policy,” include members of the business community led by the Arizona Chamber of Commerce and Industry, the state association of county sheriffs, and prominent conservatives including Maricopa County Attorney Bill Montgomery, Yavapai County Attorney Sheila Polk and Cathi Herrod of the Center for Arizona Policy. Governor Doug Ducey also has expressed his opposition to Proposition 205.

Arguments In Favor

- Marijuana prohibition has failed just as many years ago the prohibition of alcohol failed. It has not kept the drug out of the hands of anyone who wants it – including teenagers – and has benefitted only crime cartels and street-level drug dealers.
- Marijuana is much less harmful than alcohol or tobacco, which are legally sold and consumed.
- Adults should have a right to choose to use or not use the drug; it is a matter of personal freedom.
- The measure would enhance the ability of people to use marijuana to reduce pain and cope with serious illnesses, allowing them to go beyond the limited list of approved illnesses covered by the existing medical marijuana program.
- Through testing and packaging a regulated system would give consumers a safer and more reliable product than what they can buy off the street and black market. The regulated system also would offer a safer shopping environment with less exposure to more harmful hard drugs.
- Replacing the illegal system where dealers are willing to sell to anyone with one where the product is sold in stores and the sellers are required to check for proof of age would make it more difficult for those under 21 to get the drug.
- Regulation would improve the criminal justice system by giving police and courts additional time and resources to focus on more serious violent crimes.
- The measure would lead to the creation of a legitimate marijuana industry, which would be good for the economy in creating jobs and economic opportunities.
- The measure would create a much-needed revenue stream for public education that elected officials cannot divert for other purposes due to voter-mandated law.
- Regulation would deal a blow to organized crime by cutting off a large revenue stream. In effect, it would take dollars away from cartels and dealers and put them into public programs.

Arguments Against

- The measure unconstitutionally favors existing medical marijuana dispensaries in getting one of the 150 or so licenses that initially would be available to open up marijuana stores.
- Too much emphasis is placed by proponents on the potential revenues, which even by the best of estimates would amount to only a small percentage of the state's \$9.6 billion budget. Proponents, moreover, ignore the increased costs created by the program such as those resulting from increased traffic accidents, the need for more medical treatment for abusers and the expense of building a bureaucracy to supervise the new system.
- The proposition is poorly written and raises serious questions about such matters as the ability of employers to control the use of marijuana in the workplace, the implementation of drug-testing requirements for welfare benefits, and the handling of child visitation and custody cases.
- The measure would further endanger public safety by increasing the number of impaired drivers; workplace accidents; crimes committed by those under the influence of the drug; instances of the drug falling into the hands of children; and more second-hand smoke damage to bystanders.
- High-potency marijuana, common in today's market, is highly addictive and harmful to users and also has the potential of being a "gateway" or "stepping-stone" drug that would lead to the use of hard drugs or the abuse of prescription drugs.
- Legalization for adults would lead to more drug consumption by teenagers and children because legalizing increases the supply and availability of the drug, the perception that it is safe and acceptable for use, and the use of the drug in edibles such as cookies and candy.
- Legalization would mean the continued growth of an already-giant marijuana industry, which would attempt to create a larger market for an addictive product and, as in the case of tobacco in years past, will likely target young people.
- The use of marijuana is morally wrong and threatens public health and safety. Legalization would encourage the use of a product that is dangerous to those who use it and the public at large.

Discussion

The debate over the legalization of marijuana in Arizona has been characterized by hotly debated charges and countercharges. Proponents consider many of the claims made by opponents as "far-fetched" products of a deliberate campaign to scare voters into believing that there will be dire consequences in regard to health and safety, business operations and other matters that have not

occurred or presented serious problems in states such as Colorado and Washington, which have legalized the recreational use of marijuana.

On the other hand, opponents charge that proponents greatly exaggerate the number of marijuana users who are incarcerated for the possession of small amounts of the drug, ignoring that the state has long placed emphasis on treatment through drug courts and diversion programs, and that incarceration usually does not occur at judicial discretion until the third offense.

Many of the claims made by both supporters and opponents of the proposition are difficult to substantiate with empirical evidence. An independent study by a nonpartisan, nonprofit, consumer advocate group found that limitations on the data make it difficult to document the extent to which or whether the use of marijuana has been directly linked to increases in traffic deaths, hospital visits and school suspensions in Colorado since voters legalized use of the drug. The report also found conflicting research as to whether or not the use of the drug by high school students in the state has increased since legalization.⁴

Several of the issues raised by the opponents regarding the effects of the measures on existing laws and regulations and the constitutionality of favoring existing dispensaries are likely to be settled only in court, should the measure be adopted by voters.

When it comes to revenue, a study by the nonpartisan Tax Foundation in May 2016 disclosed that over time Arizona could raise as much as \$113 million each year by imposing a 15 percent tax on the sale of marijuana. It based its conclusion on the revenues raised in Colorado and Washington following the decision of voters in those states to legalize marijuana. Other estimates range from \$72 million a year by 2019 and \$120 million in revenue a year within the first two years of implementation.⁵ The revenue stream is likely to start out slowly as they did in these two states as the legalization program and regulatory system take shape.⁶ The program could bring some cost savings, for example, in regard to police and court operations. Still, a total accounting of what legalization would likely mean in terms of new costs has yet to be determined.

Prospects/Choices

Although Arizona is commonly considered a conservative state, its voters have at times shown a willingness to experiment with marijuana legalization at some level. In 1996, Arizona voters were among the first in the nation to approve medical marijuana, adopting an initiative measure by a vote of 872,235 to 461,332 – or 65 percent to 35 percent. However, the following year Arizona lawmakers effectively repealed the voter-approved measure, citing legal problems and suggesting that voters were misled by the proposition's sponsors. In 1998, voters reaffirmed their 1996 decision by turning down a proposal from the Legislature that would have severely limited the medical marijuana proposition voters had approved two years earlier. The measure was voted down 562,091 to 418,303.⁷ The Medical Marijuana law, however, never went into effect because of legal problems with how it was worded.

In more recent years voters have changed course a bit. In 2002, 57 percent of those who voted rejected the Marijuana Legalization Act, which would have made it legal to possess small

quantities of the drug and would have made it available to those with a serious medical condition. Voters came back in 2010 to approve the medical marijuana measure, Proposition 204, but only by a very narrow margin, 50.1 percent to 49.9 percent. Survey information gathered in July indicates that Proposition 205 may be in some danger.⁸ More recent polls, however, have been more encouraging for its possible passage.⁹

When it comes to the election, much may depend on how voters perceive the dangers posed by marijuana. Some national survey research found that those who discount the danger of the drug or see it as far less dangerous than alcohol or tobacco use are likely to support legalization while those who see it as a very dangerous drug for users and as a threat to public health and safety are likely to oppose legalization.¹⁰

¹ The pro and con statements presented here represent a summary of arguments found in statements filed with the Arizona Secretary of State, on the websites of relevant organizations, and in newspapers and other publications.

² "Summary of the Regulation and Taxation of Marijuana Act," Arizona Secretary of State Website, <http://apps.azsos.gov/election/2016/BallotMeasure/BallotMeasureList.htm>.

³ Howard Fischer, Capitol Media Services, "Hearing set to consider if marijuana is legally flawed," Arizona Daily Star, July 20, 2016.

⁴ Vanessa Schipani, "Unpacking Pot's Impact in Colorado," Fact Check. Org., posted August 19, 2016, <http://www.factcheck.org/2016/08/unpacking-pots-impact-in-colorado>.

⁵ Yvonne Wingett Sanchez, "Study: Legal pot would bring \$113M," *Arizona Republic*, June 2, 2016; and J.P. Holyoak, chairman of the Campaign to Regulate Marijuana Like Alcohol, "Why legal pot supersedes its prohibition," *Arizona Republic*, August 11, 2016.

⁶ Joseph Henchman and Morgan Scarboro, "Marijuana Legalization and Taxes: Lessons for Other States from Colorado and Washington," Tax Foundation Website, May 12, 2016, <http://taxfoundation.org/article/marijuana-legalization-and-taxes-lessons-other-states-colorado-and-washington>.

⁷ Going beyond this, the voters in 1998 also gave their approval to the "Voter Protection Act" that requires a three-fourths legislative vote to make any changes in propositions approved by the voters and that any changes to voter initiatives must "further the purpose" of the original law."

⁸ Andrea Noble, "Marijuana initiatives on ballot in record 9 states despite federal government's firm stand," *Washington Times*, The (DC), August 15, 2016.

⁹ Yvonne Wingett Sanchez, "Half of Ariz. Voters support legalization of marijuana," *Arizona Republic*, September 7, 2016, <http://www.azcentral.com/story/news/politics/elections/2016/09/07/poll-half-want-see-marijuana-legalized-arizona/89778892/>

¹⁰ Pew Research Center, "In Debate Over Legalizing Marijuana, Disagreement Over Drug's Dangers," April 14, 2015, <http://www.people-press.org/2015/04/14/in-debate-over-legalizing-marijuana-disagreement-over-drugs-dangers/>.

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