

Practice Update

Cannabis Reform Ballot Initiatives Take a Hit in 2024 Election

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By Jonathan S. Robbins

The results are in, and the industry is only batting .250 (if that). This year's election provided voters with the opportunity to weigh in on three adult-use ballot initiatives in Florida, North Dakota, and South Dakota, as well as an initiative to establish a medical cannabis program in Nebraska. The only one to make it out of the gate was Nebraska, and pending litigation is keeping that one in the air. So, what happened?

Florida

Florida's Amendment 3, which would have established an adult-use program in the country's third most populous state, fell short of the 60 percent supermajority required to pass a citizen-initiated constitutional amendment in the Sunshine State, garnering 56 percent of the vote. The initiative was sponsored by Smart & Safe Florida and was well-funded to the tune of \$150 million by multistate operators in the state. Nevertheless, strong opposition heralded by Governor Ron DeSantis, accompanied by what many argue was an opposition campaign improperly financed by taxpayer dollars and replete with misinformation, killed the amendment, even in the face of President Elect Trump's support. In 2016, Florida voters approved medical marijuana legalization also through a constitutional ballot initiative — that measure passed by 71 percent, but only after a previous attempt in

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2014 failed with 57 percent support. The failure of Amendment 3 likely leaves hundreds of millions of dollars in tax revenue on the table and the state's illicit market will likely continue to thrive.

Supporters of the initiative are hopeful (though perhaps not optimistic) that Florida's Executive Branch and Legislature will hear the voice of the citizens and pass reasonable and sensible legislation establishing an adult-use program in Florida.

North Dakota

The third time was not the charm for the Peace Garden State. Voters rejected State Measure 5 with 53 percent of the electorate voting against it, which would have established a regulated adult-use marketplace for licensed operators, along with home-grow. North Dakota voters previously rejected similar measures in 2018 and 2022. The state will continue to operate its medical program, which was passed by a ballot initiative in 2016.

South Dakota

Sponsored by South Dakotans for Better Marijuana Laws, Measure 29 would have permitted adults over 21 to possess up to two ounces of flower and grow up to six plants at home. The initiative did not provide for the establishment of a commercial marketplace. The 2024 election marks South Dakota's third failed attempt to legalize adult-use cannabis. Supporters of the measure were hopeful that larger voter turnout in presidential election years would have boosted the effort, but 57 percent of the voters cast ballots in opposition. Like Florida, it remains to be seen whether supporters will spend the time and money to give it another shot.

Nebraska

While adult-use measures took a flop, the medical proposals on the ballot in Nebraska handily passed. Nebraska Initiative Measure 437, with 70.7 percent of voters voting to approve, asked voters to consider a

statute that would legalize the use, possession, and acquisition of up to five ounces of cannabis for medical purposes with a written recommendation from a healthcare provider. Initiative Measure 438, with 66.9 percent of voters voting in favor, asked voters to consider a statute that would legalize the possession, manufacture, distribution, delivery, and dispensing of cannabis for medical purposes by registered private entities. The statute also would establish the Nebraska Medical Cannabis Commission to regulate the industry, making Nebraska the 39th state to approve medical marijuana. Adult-use consumption will remain illegal.

Nevertheless, a pending legal challenge creates uncertainty as to whether the laws will indeed take effect. The lawsuit challenged the integrity of the signatures gathered and required to make the ballot. If, in fact, the campaign's signature verification methods are deemed non-compliant, the sponsors of the proposal are back to square one.

While this comprises the ballot measures for the legalization of medical or adult-use cannabis, honorable mention goes to Oregon, where voters approved a ballot measure requiring state-regulated cannabis businesses to enter into labor peace agreements with their workers. The unionization of the cannabis industry has been the subject of much debate, and Oregon now joins California, Connecticut, New Jersey, and Virginia.

As always, Akerman's National Cannabis Practice Group will stay abreast of all developments, and we remain available to assist both plant-touching and ancillary service providers in their endeavors.

Stay tuned!

Disclaimer:

Possessing, using, distributing, and/or selling marijuana or marijuana-based products is illegal under federal law, regardless of any state law that

may decriminalize such activity under certain circumstances. Although federal enforcement policy may at times defer to states' laws and not enforce conflicting federal laws, interested businesses and individuals should be aware that compliance with state law in no way assures compliance with federal law, and there is a risk that conflicting federal laws may be enforced in the future. No legal advice we give is intended to provide any guidance or assistance in violating federal law.

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