

Florida Supreme Court Rejects Recreational Marijuana Constitutional Ballot Amendment Initiative

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On April 22, 2021, the Florida Supreme Court struck down a high-profile effort to legalize marijuana for recreational use in Florida. Justices reviewed a constitutional ballot initiative sponsored by the political committee *Make It Legal Florida* and, in a 5-2 decision, ruled it to be “misleading.” In an opinion written by Chief Justice Charles Canady, a majority of justices took issue with *Make It Legal Florida*’s use of the word “permit” in the initiative’s ballot summary. The justices argued that the amendment did not effectively advise Floridians that, although marijuana use would be allowed under Florida law if the amendment were to pass, marijuana would still be illegal federally.

The opinion specifically sets forth, “A constitutional amendment cannot unequivocally ‘permit’ or authorize conduct that is criminalized under federal law ... A ballot summary suggesting otherwise is affirmatively misleading.”

“The summary’s unqualified use of the word ‘permits’ strongly suggests that the conduct to be authorized by the amendment will be free of any criminal or civil penalty in Florida,” the majority opinion stated. “The proposed amendment, on the other hand, explains that the conduct will only be free of criminal or civil liability ‘under Florida law.’ The proposed amendment includes that language, of course, because a recreational marijuana user or distributor will remain exposed to potential prosecution under federal law ? no small matter,” the majority noted.

Background

Make It Legal Florida spearheaded the drive to put the proposal on the 2022 ballot, and had already gathered more than 556,000 signatures out of the 891,589 needed. As part of the judicial review process, Florida Supreme Court sign-off on the proposed ballot title and summary would be needed to place the question on the ballot next year.

The proposal would have left it up to Florida voters to permit “adults 21 years or older to possess, use, purchase, display, and transport up to 2.5 ounces of marijuana and marijuana accessories for personal use for any reason,” as well as allow existing medical marijuana dispensaries to sell it.

Similar issues have previously come before the Florida Supreme Court. When it considered whether to allow an amendment legalizing medical marijuana onto the 2016 ballot, the backers of that initiative avoided this pitfall. The measure's sponsors noted in their ballot summary that the medical marijuana measure did not "immunize" Floridians from "violations of federal law." Justices approved that ballot's language unanimously, and 71 percent of the electorate voted to legalize medical marijuana in 2016.

Analysis

The Florida Supreme Court's ruling, along with two other bills likely to gain passage in the current legislative session ? which, respectively, would (1) limit contributions to ballot initiative campaigns to just \$3,000 from individuals and corporations and (2) raise the percentage of the total vote needed for ballot amendment approval from 60 percent to 66 percent ? will almost guarantee that another ballot amendment initiative is going to prove a challenge over the next few years.

The apparent failure of Florida's legislative effort to cap the level of tetrahydrocannabinol (THC) in marijuana offered to patients was celebrated this week by medical marijuana advocates. "Thank God for all of the activists that came up to Tallahassee, that signed the petitions. That's what democracy looks like: When we get together, we hear from the people, and legislation that would have hurt them is stopped," stated Agriculture Commissioner Nikki Fried.

In his dissent, Justice Alan Lawson echoed Fried's sentiments, stating, "today's decision underestimates Florida voters."

Following successful state cannabis ballot measures in the 2020 election by Arizona, New Jersey, Montana, Mississippi and South Dakota, the "domino effect" has continued in 2021 with recent adult-use legislation approved in New York, New Mexico and Virginia. Adult-use legislation currently is being considered in Connecticut, Minnesota, Pennsylvania, Rhode Island and Wisconsin.

The Florida Supreme Court's ruling demonstrates the ongoing divide between various states in the legalization of marijuana for medical and recreational use, which still is criminalized under federal law.

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