

LEGALIZING MARIJUANA: IM 26 & CONSTITUTIONAL AMENDMENT A

ISSUE: Two measures South Dakotans will consider in November would legalize the sale and use of marijuana.

OVERVIEW: Initiated measure (IM) 26 and Constitutional Amendment A both legalize the sale and use of marijuana in South Dakota.

IM 26 would legalize marijuana for medical purposes. IM 26 sets up a regulatory system for the South Dakota Department of Health (DOH) to administer which includes the issuance of registration cards for qualifying patients. Those in possession of a valid registration card are allowed to possess up to three ounces of marijuana and grow up to three plants. The DOH is also tasked with regulating testing and manufacturing facilities, as well as dispensaries.

Constitutional Amendment A would amend the South Dakota State Constitution to legalize the possession and use of one ounce or less of marijuana for those 21 years or older. This amendment directs the South Dakota Department of Revenue (DOR) to regulate and tax the sale and use of marijuana in the state, imposing a 15% tax on the sale. The tax would be used to cover the DOR's expenses in regulating marijuana, with the remainder of the funds split between support for schools and the state's general fund. The amendment also directs the legislature to pass laws regulating the medical use of marijuana and the growth and processing of hemp. The legislature passed a bill in the 2020 session to legalize and regulate the growth and processing of hemp.

SDFB POLICY: SDFB policy opposes legalization of marijuana for any purpose.

DISCUSSION: Both IM 26 and Constitutional Amendment A carry a warning from the South Dakota Attorney General that the measure legalizes a substance that is illegal under federal law and will likely require judicial clarification if passed. Both

measures would also likely require additional legislation passed during the 2021 legislative session.

Aside from the conflict with federal law, both measures raise regulatory questions regarding the cultivation of marijuana in the state and the interaction with the growth of hemp in South Dakota. Neither measure fully considers the cultivation of marijuana or the regulatory structure that might be necessary to successfully accomplish that. For example, other states (i.e. Oregon) where both hemp and marijuana are cultivated, sophisticated regulatory systems are in place to prevent cross-pollination which essentially ruins the marketability of both crops.

There are also several questions regarding funding for both ballot measures. The Legislative Research Council (LRC) conducts fiscal impact statements for every ballot measure proposal. The LRC has concluded that IM 26 will require more than \$670,000 in state funding to set up the medical marijuana program. There's an assumption built into the constitutional amendment that the sales tax revenue would cover the regulatory costs associated with the legalization of marijuana, but the LRC believes that there would be increased costs related to "serious car accident(s)" offset by savings to incarceration costs.

RECOMMENDATION: SDFB recommends a 'NO' vote on both IM 26 and Constitutional Amendment A.