

THOUGHT LEADERSHIP

LEGAL UPDATES

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Four States Legalize Recreational Marijuana on Election Day

As a historic election here in the United States unfolds beyond Election Day, one thing is certain – marijuana continues to win – and win decisively. While notable races in several states and counties were too close to call at the end of Election Night, marijuana state ballot initiatives were called early. All five states with marijuana on the ballot passed their various measures.

Four more states vote to legalize adult-use (recreational) marijuana, meaning about 1 in 3 Americans now live in a state where the cultivation, sale and use of marijuana is legal for adults.

1. **Arizona**'s first legalization effort in 2016 narrowly failed, 51.3 percent to 48.7 percent. With 86 percent of the results reported, this year, a much more irrefutable 59.8 percent to 40.2 percent shows an electorate that is ready for adult-use marijuana.

2. Unlike many marijuana initiatives being brought through electorate signatures, **New Jersey**'s legislature referred this question to the ballot after not being able to pass an adult-use bill in 2019. Although the legislature could not figure it out, the people have spoken and spoken loudly as New Jersey passed adult-use marijuana by a margin of 67 percent to 33 percent. The ballot question posed to voters was whether New Jersey should amend the state Constitution to legalize, tax and regulate a controlled form of marijuana called "cannabis," whereby the State commission created to oversee the State's medical cannabis program would also oversee the new, personal-use cannabis market. It is to be amended.

3. **South Dakota** had two initiatives for marijuana legalization: Measure 26 and Amendment A. These measures complement each other and each one or both could have passed or failed. Measure 26 establishes a medical marijuana program for patients with serious health conditions. Amendment A

permits persons 21 and older to purchase up to an ounce of marijuana under a program that licenses and regulates marijuana businesses along with establishing a 15 percent tax on marijuana sales to adults who are not patients. This amendment also requires the legislature to pass laws by 2022 regulating the cultivation, processing and sale of industrial hemp. With 95 percent of the votes counted, Measure 26 passed with 69.2 percent of the vote while Amendment A passed with 53.4 percent the vote. South Dakota became the first state to pass a workable medical program and adult-use program in the same election period.

4. **Montana** voted on two marijuana measures. Initiative 118, which updates the Montana Constitution to read: *“Section 14. Adult Rights. A person 18 years of age or older is an adult for all purposes, except that the legislature or the people by initiative may establish the legal age for purchasing, consuming, or possessing alcoholic beverages and marijuana.”* Initiative 190 establishes the regulation of the cultivation, marijuana-infused products manufacturers and dispensaries for adult use. For the first 12 months, only existing medical cannabis licenses may apply. Initiative 190 passed with 56.68 percent of the vote while Initiative 118 passed with 57.71 percent of the vote.
5. **Mississippi** voted on Initiative 65 and Alternative 65A. Initiative 65 would allow for a robust medical marijuana program. Alternative 65A was brought forth by the legislature as a much more restrictive alternative, allowing for medical marijuana solely for those patients with terminal medical conditions. The legislature seemed to be out of touch with their electorate as the robust program, Initiative 65, passed with 73.86 percent over Alternative 65A’s 26.37 percent of the vote to establish a medical marijuana program.

Several cities and counties in Colorado have turned to the ballot to decide whether they should allow recreational marijuana facilities. Colorado, which passed recreational (or retail) marijuana 10 years ago, allows local municipalities to decide whether to allow marijuana within their limits. The City of Lakewood, which already has legalized medical marijuana, voted 66 percent to 34 percent to approve the operation of recreational marijuana facilities. The City of Littleton voted 57 percent to 43 percent to allow current medical marijuana dispensaries to also sell retail marijuana on or after January 1, 2021.

Husch Blackwell welcomes these new states into the marijuana industry and looks forward to studying the implementation of these state programs including the development of rules and regulations.

Other notable initiatives passed in Oregon and the District of Columbia. Oregon voted 55.8 percent to allow licensed service providers to administer psilocybin-producing mushroom and fungi products to individuals 21 years of age and older. While D.C. voters approved a measure to effectively

decriminalize psilocybin and other organic drugs by making it a lowest enforcement priority for the police department.

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If you have questions, please contact Steve Levine, Meghan Brennan or your Husch Blackwell attorney.