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## *Cannabis Industry*

### 2022 ELECTION RESULTS: CANNABIS INITIATIVES



# MIXED



*November 9, 2022*

By: [Richard M. Blau](#), Regulated Products Section Chair

Recreational marijuana will not reach the halfway mark in terms of the total number of states legalizing recreational marijuana as a result of mixed performances by legalization ballot measures in five states following the 2022 Midterm Elections. Maryland and Missouri have joined 19 states and the District of Columbia to legalize recreational cannabis, but Arkansas, North Dakota, and South Dakota voters rejected their respective ballot initiatives. Each ballot measure required 50.01% to pass. Let's take a look at what happened in these states.

#### **ARKANSAS – FAILED**

Arkansas approved medical marijuana in 2016. Hoping to ride a progressive wave as it relates to marijuana, proponents of recreational use put forth a constitutional amendment initiative for the 2022 Election. Initially, the Arkansas Board of Election Commissioners rejected the wording of the proposed Amendment 98, concluding the measure could not be put before the voters because its ballot language, as drafted, did not explain the impact if the measure passed. However, the Arkansas Supreme Court overturned that conclusion in September, allowing voters to consider whether people 21 years of age and over could use recreational marijuana.

Last night, Arkansas voters nevertheless rejected the constitutional amendment allowing for the recreational use of marijuana. With 90% of the votes tallied by early morning, the measure failed with only 44% in favor.

#### **MARYLAND – PASSED**

Maryland voters resoundingly approved Question 4 on their November 2022 ballot, paving the way to legalization of recreational marijuana use in the Old Line State. With 71% of all ballots counted as of this morning, the "YES" vote garnered a convincing 65% of the total, meaning marijuana use for adults 21 years of age or older will be legal beginning in July 2023. The new law also directs

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the Maryland State Legislature to pass laws for the use, distribution, regulation, and taxation of marijuana.

Especially important, passage of Question 4 now triggers the implementation of a previously passed bill providing regulations for an adult-use market that Maryland Governor Larry Hogan allowed to take effect without his signature. And that legislation does include expungement provisions. Under the complementary law that now will be enacted, the purchase and possession of up to 1.5 ounces of cannabis will be legal for adults. Additionally, adults 21 and older would be allowed to grow up to two plants for personal use and gift cannabis without remuneration.

The legislation also removes criminal penalties for possession of up to 2.5 ounces and includes expungement provisions for certain past marijuana-related convictions. Past convictions for conduct made legal under the new law will be expunged automatically, and people currently serving time for such offenses would be eligible for resentencing. People with convictions for possession with intent to distribute now can petition the courts for expungement three years after serving out their time.

### **MISSOURI – PASSED**

Missouri voters approved medical marijuana in 2018. In the ensuing four years, Missouri's Republican-led Legislature refused repeated initiatives to pass recreational marijuana use, leading advocates to seek direct approval from the voters.

Last night, however, voters in Missouri overrode the partisan divide and approved a ballot measure legalizing recreational marijuana use; with 89% of all votes counted as of this morning, the marijuana initiative had a 53% majority.

Missouri Constitutional Amendment 3 allows adults 21 and older to purchase and possess up to three ounces of cannabis for personal, recreational use. Consumers also can grow up to six flowering marijuana plants, six immature plants, and six clones if they first obtain a registration card from state authorities. The initiative imposes a 6% tax on recreational cannabis sales and will use the resulting revenue to facilitate automatic expungements for people with certain non-violent marijuana offenses on their records. Additionally, any remaining revenue will go toward veterans' health care, substance misuse treatment, and the state's public defender system.

Further, the initiative now requires the Missouri Department of Health and Senior Services to issue at least 144 microbusiness licenses through a lottery system, with priority given to low-income applicants and people who have been disproportionately impacted by drug criminalization. A seed-to-sale tracking system will be established for the marijuana market. Despite the state legalization,

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local jurisdictions can opt out of permitting cannabis microbusinesses or retailers from operating in their area if voters approve a ban on the ballot.

### **NORTH DAKOTA – FAILED**

North Dakota voters rejected Measure 2 on their ballot, which would have created a new chapter of the North Dakota Century Code allowing for the production, processing, and sale of cannabis and the possession and use of various forms of cannabis by individuals who are 21 years of age and older, within limitations as to location. Had Measure 2 passed, North Dakota adults 21 and over would have been able to possess a limited amount of marijuana and cultivate up to three plants in a residence. The measure also provides limitations and penalties relating to consumer use.

The rejection by voters was clear. As of this morning, with 90% of all votes counted, Measure 2 earned only 45% of the tally. Reflecting the continued divisiveness of the issue, yesterday's rejection came after North Dakota legalized medical marijuana in 2016, failed to legalize recreational marijuana in 2018, and decriminalized marijuana in 2019.

Had it passed, the new law would have directed state regulators to register adult-use cannabis production businesses, dispensaries, and their agents; permit an individual to possess a limited amount of cannabis product; provide protections, limitations, penalties, and employer rights relating to the use of cannabis products; and provide that fees were to be appropriated for administration of the new law. North Dakota currently taxes medical marijuana at a 5% of sales and use rate, generating between \$1.5 million to \$2 million per year for the state.

### **SOUTH DAKOTA – FAILED**

Two years ago, 54% of voters in South Dakota passed a 2020 ballot measure to legalize recreational marijuana. However, a lawsuit filed by two highway patrol officers on behalf of Governor Kristi Noem, in 2021, prevented the Mount Rushmore state from implementing that ballot measure and allowing regulated cannabis sales for their adults. The South Dakota Supreme Court ruled on November 24, 2021, that the measure violated the state's requirement that constitutional amendments deal with just one subject.

Proponents of recreational marijuana went back to work, producing initiated Measure 27 on the 2022 ballot. Last night, voters in South Dakota continued to follow the direction of their Governor, rejecting the proposed legalization measure. As of this morning, with 75% of all votes counted, South Dakotans opposed Initiated Measure 27 by a margin of 53.6% to 46.4%. Had the referendum passed, the new law would have legalized "the possession, use, and distribution of marijuana."

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Unlike the measures in other states, South Dakota's marijuana referendum was broadly worded to avoid another constitutional challenge. The measure would not have legalized the sale of marijuana for adult use and did not include any language about dispensaries, regulation, or taxation, leaving those details to the state Legislature. However, had it passed, the 2022 initiative would have eliminated criminal penalties to grow, possess, and use marijuana for persons 21 years of age and older, essentially decriminalizing the product.

### ***QUO VADIS?***

Prior to yesterday's elections, Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington, and West Virginia all legalized medical marijuana.

Prior to yesterday's election, Alaska, Arizona, California, Colorado, Connecticut, the District of Columbia, Illinois, Maine, Massachusetts, Michigan, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington all had laws legalizing marijuana for personal use.

According to the latest polling from the Pew Memorial Trust,<sup>1</sup> an overwhelming share of U.S. adults (91%) say either marijuana should be legal for medical and recreational use (60%) or it should be legal for medical use only (31%). Fewer than 1-in-10 (8%) say marijuana should not be legal for use by adults.

While nobody has a crystal ball, industry observers and media pundits alike continue to report that legalization of marijuana across most, if not all, of America will arrive eventually. We are seeing more and more that consumers want choice, governments want the tax revenue, and policymakers want a legal industry instead of an illicit market.

The greatest obstacle appears to be political. Democrats are unabashedly pro-legalization, but Republicans have no interest in allowing them the victory of removing "marihuana" from Schedule I of the Controlled Substances Act. So long as marijuana is used as a wedge issue rather than

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<sup>1</sup> Details from the new survey, conducted by Pew Research Center from April 5-11, 2021, are accessible online at: <https://www.pewresearch.org/fact-tank/2021/04/16/americans-overwhelmingly-say-marijuana-should-be-legal-for-recreational-or-medical-use/>



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viewed as a bi-partisan opportunity, legalization will continue to produce expensive and laborious battles to transform public support into majority ballot counts.

Still, it is axiomatic that all important decisions ultimately boil down to . . . **money**. The cannabis industry continues to grow in the U.S. and is too advanced to disappear.<sup>2</sup> As the national and local economies continue to face challenges, calls from federal and state lawmakers for new sources of revenue will only grow louder.

### The Bottom Line

Medical marijuana is already legal today in 37 states plus the District of Columbia. Recreational marijuana is already legal for recreational use in 19 states and the District of Columbia, with two more states coming online next year. While political partisanship is unlikely to disappear anytime soon, the economics cannot and will not be ignored. Marijuana as a legal product is the soon-to-be new norm. Regardless of which party wins the most in 2022, expect to see more marijuana-related ballot initiatives in 2024!



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<sup>2</sup> [BDSA](https://bdsa.com/wp-content/uploads/2022/03/Cannabis-Market-Forecast-Spring-2022-Update.pdf), a market research company focused on the cannabinoid industry, issued a March 2022 update of its cannabis market forecast—a five-year rolling global forecast by country, state, province, channel, and category. The report observes that cannabis sales in the United States in 2021 grew approximately 30% over the annual legal sales total from 2020. The update projects that cannabis sales in the U.S. will grow from \$25 billion in 2021 to \$40 billion in 2026, reaching \$27 billion by the end of 2022, which would produce an increase of more than 6% over 2021 sales of \$25 billion. Details and the full BDSA Cannabis Market Forecast Spring 2022 Update are accessible online at: <https://bdsa.com/wp-content/uploads/2022/03/Cannabis-Market-Forecast-Spring-2022-Update.pdf>