

Washington is State Most Likely to Legalize Marijuana

By Matthew F. Nieman

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Of the three marijuana-legalization voter initiatives on state ballots November 6, Washington Initiative 502 is the most likely to be adopted. Oregon's Measure 80 is expected to be defeated by voters. Amendment 64 in Colorado is ahead in the polls, but the margin is narrowing and opposition among Colorado voters, especially women voters, is gaining momentum. (See our article, [Colorado Marijuana Legalization Ballot Initiative Loses Ground.](#))

Initiative 502 would legalize and tax the sale and cultivation of small amounts of marijuana. Organized and well-funded supporters of the Washington initiative appear to have the upper hand. In eastern Washington, opposition to Initiative 502 is strong – 53 percent oppose it and 41 percent support it. However, more voters live in western Washington (concentrated in the Seattle area) and they more than offset the opposition.

Moreover, advocates for legalization have an impressive line-up of supporters for the unprecedented marijuana legalization law. The movement is headed by former U.S. Attorney John McKay and his organization, New Approach Washington. Other supporters include five state Senators, ten state Representatives, a retired state Superior Court judge, a former Municipal Court judge, and former Special-Agent-in-Charge of the Seattle FBI office Charles Mandigo. By contrast, *The Seattle Times* reported on October 22 that “business leaders... have been mostly silent.”

Washington is a prime example of the drug-legalization advocates' two-step strategy: (1) enact “medical-marijuana” statutes (according to the U.S. Food and Drug Administration, smoked marijuana has no legitimate medicinal value); and (2) expand state law to legalize of marijuana for everyone.

Seventeen states already have “medical-marijuana” laws in one form or another (some very limited). Three of these states are Washington, Colorado, and Oregon, where ballot initiatives on November 6 carry the possibility of state-wide legalization of the possession, use, cultivation, and distribution of marijuana.

In addition, two states – Massachusetts and Arkansas – will vote on “medical-marijuana” ballot initiatives November 6. (Massachusetts voters are expected to approve; Arkansas voters probably will not.)

The Obama Administration has been silent on the measures in Washington, Oregon, and Colorado, despite the urging of legalization opponents (including nine former Drug Enforcement Agency Administrators and multiple former heads of the Office of National Drug Control Policy) to express opposition. The Administration has opposed legalization in the past, but not in this election-year political environment, when its voice would be most effective. This is particularly significant because Washington Initiative 502 (and the other ballot initiatives) would conflict with the Federal Controlled Substances Act and numerous international treaties on drug trafficking and enforcement to which the United States promote and participate.

While polls indicate that Initiative 502 has declining support among voters in Washington, it remains the legalization initiative most likely to be adopted. The latest poll, reported October 26, has Initiative 502 supported by a margin of 47 percent-to-39 percent, down from earlier surveys showing 54, 51, and 48 percent support levels, in that order. While the momentum appears to be with the opponents, it may be a case of too little, too late.

If Initiative 502 passes, a legal challenge may ensue, in view of the conflict with federal law.

If you have any questions regarding the legalization initiative or other workplace developments, please contact the Jackson Lewis Drug Testing and Substance Abuse Management practice or the attorney with whom you regularly work.

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