



Amendment A case will decide adult marijuana use and may set a path for S.D. ballot measures

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April 26, 2021

PIERRE, S.D. (KELO) — A majority of South Dakota voters decided November 3 that marijuana should be legal for people age 21 and older. But 17 days later, a challenge arose in Hughes County Circuit Court. On Wednesday, the South Dakota Supreme Court will hear the argument about whether the route Amendment A took to the ballot was valid and whether the result — 225,260 yes to 190,477 no — counts.

Governor Kristi Noem, a Republican, is trying to get the vote on Amendment A declared invalid. Circuit Judge Christina Klinger, whom the governor appointed two years ago, found in the governor's favor and issued a 12-page ruling on February 8. A former U.S. attorney for the district of South Dakota, Brendan Johnson, a Democrat, sponsored the ballot measure. His side appealed the judge's decision to the South Dakota Supreme Court.

The five-member Supreme Court will hear the appeal Wednesday in its chamber on the Capitol's second floor, across the rotunda from the governor's office. The Supreme Court also took a special extra step by reserving room 414, on the Capitol's fourth floor, for people to listen to a live simulcast of the argument that starts at 10 a.m. CT.

Amendment A proposes a significant change to the South Dakota Constitution by adding the topics of marijuana and hemp for the first time. Judge Klinger however found that Amendment A didn't adhere to a guiding principle in the constitution that voters approved in 2018, known as Amendment Z, that said "no proposed amendment may embrace more than one subject." (That vote was 195,790 yes to 117,947 no.)

Judge Klinger also ruled that Amendment A is a constitutional revision and therefore should have taken an additional step, of going to a statewide constitutional convention, then should have gone to a special election for South Dakota voters to decide. Instead Amendment A went through the standard signature-gathering process to reach the general-election ballot.

The Supreme Court could make first-ever decisions, known as precedents, on those two questions. A point the justices may address is whether opponents should have raised those arguments during the 2020 campaign, so that voters could have been aware of them.

The Supreme Court's eventual decision doesn't affect passage of [IM 26](#) legalizing medical marijuana in South Dakota that voters approved 291,754 to 125,488.

On Amendment A, the Supreme Court is considering [a core filing that is 550 pages](#), not counting hundreds of additional pages of previous court decisions the opposing sides have cited. There are actually two lawsuits. One seeks a decision that Amendment A was unconstitutional. The second contested the election itself.

State Highway Patrol Superintendent Rick Miller, on behalf of the governor, and Pennington County Sheriff Kevin Thom brought both challenges.

The Redstone law firm of Sioux Falls, through attorneys Lisa Prostrullo, Matt McCaulley and Christopher Sommers, represent superintendent Miller and indirectly the governor. Robert Morris of Belle Fourche represents Sheriff Thom.

Johnson and Timothy Billion, from the Sioux Falls office of the Robins Kaplan firm, represent South Dakotans for Better Marijuana Laws and Randolph Seiler, William Stocker, Charles Parkinson and Melissa Mentele.

The state Office of Attorney General defended Secretary of State Steve Barnett at the circuit court level but dropped off the appeal. That left Johnson and Billion to outline questions they want the justices to decide.

Did the circuit court err when it concluded that Thom had standing to sue the state in his official capacity as county sheriff?

Did the circuit court err when it concluded that Miller had standing to sue the state in his official capacity as state Highway Patrol superintendent?

Did the circuit court err when it determined that the challenge to Amendment A's placement on the November 2020 ballot could not be brought until after the election?

Did the circuit court err when it determined that Amendment A plainly and palpably violated the South Dakota Constitution because it contained multiple subjects that had no rational relationship?

Did the circuit court err when it determined that Amendment A plainly and palpably violated the South Dakota Constitution because it instituted far-reaching changes to South Dakota's basic governmental plan?

Did the circuit court err when it concluded it did not have the legal authority to separate any unconstitutional provisions?

Judge Klinger dismissed a challenge to the election itself by Superintendent Miller and Sheriff Thom. Their attorneys raise one question on appeal: Whether an election contest is an appropriate cause of action to challenge whether a proposed constitutional amendment was submitted to voters in violation of Article XXIII of the South Dakota Constitution?

Attorneys for the pro-marijuana side raised two questions in return. Whether an election contest is an appropriate cause of action where a contestant does not allege any irregularities in the election process? And whether Miller and Thom could commence an election contest in their official capacities?

Also in the file is one 'friend of the court' brief filed March 10 by the Cato Institute and three other groups. They argue in the 17-page brief that the Supreme Court should reject the challenge to Amendment A "and honor the will of South Dakota's voters."

The Supreme Court on April 23 rejected a second such brief that attorney Daniel Brendtro of Sioux Falls attempted to file. The expedited deadline for filing an amicus curiae brief was April 5.