



HANSON: South Dakotans' position on marijuana should not be ignored

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South Dakota residents voted to approve recreational marijuana in November, but they won't be enjoying that popular pastime any time soon. Last month, a state judge invalidated the voter-passed measure that would have legalized recreational marijuana, in part because of a constitutional amendment that South Dakotans passed in 2018 limiting ballot measures to one subject.

The so-called "single subject rule" is often promoted as a way to reduce confusion at the ballot box and prevent people from being induced to vote for an undesirable measure as the price of enacting a desired one. On paper, such rules might sound like a good idea, but in practice, they may be abused to approve or reject legislation based on a judge's subjective view.

The malleable definition of "subject" is fraught with potential for abuse. When issuing its judgment on the constitutionality of the recreational marijuana amendment, the South Dakota Supreme Court would be wise to address this issue head on to prevent the will of future voters from being dismissed due to perceived drafting errors.

South Dakota's battle over legalizing recreational marijuana is being fought not only in the courthouse, but also in the realm of public opinion. Coming from a state where medical marijuana failed to even make it on the ballot four years ago, the passage of recreational marijuana was stunning. Public opinion drastically shifted in the past few years after more states legalized medical and recreational marijuana, and South Dakotans decided it was their turn to join the legalization movement.

The hard-fought battle over public perception of marijuana makes the current lawsuits to overturn the will of the voters even more disappointing. South Dakotans and their elected officials appear to have parted ways on the question of who truly has the state's best interests in mind.

As residents of the first state to allow citizen-initiated referendums in 1898, South Dakotans have a long history of direct input with state governance. With such input comes a sense of personal responsibility and the belief that the people are the best arbiters of their own fate.

Governor Kristi Noem echoed this theme by voicing her confidence that South Dakotans are fully capable of making decisions in their personal lives. For example, when questioned about whether South Dakota would implement a statewide lockdown for COVID-19, she explained that, "the people themselves are primarily responsible for their safety. They are the ones that are entrusted with expansive freedoms—they are free to exercise their rights to work, worship, and play—or to stay at home, or to conduct social distancing."

But with Governor Noem’s vocal opposition to legalization, and her heavy involvement in the recreational marijuana lawsuit, her espoused belief in personal responsibility comes into question.

No one would argue that her desire to build stronger families and create more opportunities for children are not laudable, but unfortunately, South Dakota’s strict marijuana laws arguably undermine those goals by resulting in excessive punishment for minor crimes. In 2018, approximately 10% of all arrests in South Dakota were for cannabis-related offenses. Former U.S. Attorney for South Dakota Brendan Johnson went so far as to say that the state’s strict laws have in essence “criminalized an entire generation of South Dakotans.”

What’s more, under South Dakota’s nonsensical “internal possession” law, people can be prosecuted for possession if marijuana is merely detected in their system—even if it was legally ingested while in another state.

With ramifications far beyond jail time, marijuana convictions also have the potential to devastate lives. Convictions can result in the loss of eligibility for adoption or foster parenting; loss of eligibility for public housing; loss of eligibility for Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance to Needy Families (TANF); difficulties securing employment due to employer discrimination; barriers to professional licensure; loss of educational aid; revocation of one’s driver’s license; and the loss of the right to possess a firearm.

South Dakota public officials should commit to putting faith back in their state’s tradition of personal responsibility, and in that light, re-evaluate their stance supporting harsh marijuana laws. Legalizing marijuana is no longer a policy position exclusively championed by Democrats and libertarians, and South Dakotans have proven that people from all walks of life and ideologies are now embracing the compatibility of personal responsibility and drug reform.

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