

Wednesday, April 24, 2013

This War Isn't Working

by *Walt Sorg*

On April 10, 1933, Michigan became the first state to ratify the constitutional amendment ending Prohibition. It did so in a convention with elected delegates from each of Michigan's 100 state House districts. The ratification passed 99-1.

The 18th Amendment was an experiment that failed. It was an effort to replace the free-market economics of supply and demand through government's power. All it succeeded in doing was promote widespread flaunting of the law by average citizens and create a lucrative marketplace for criminals. It gave us Al Capone, the Purple Gang, Elliot Ness and his Untouchables, the Valentine's Day Massacre and the fictional Nucky Thompson's "Boardwalk Empire."

Eighty years later, the Michigan Legislature is being asked to begin the process anew by taking the first step to repeal the second Prohibition, the ban on marijuana possession and use.

Just as with alcohol, America has a love/hate relationship with marijuana.

The Nixon administration tried to deport John Lennon because of a London cannabis conviction. Lennon later headlined an Ann Arbor fundraiser for imprisoned legal-pot crusader John Sinclair. The Sinclair prison sentence (10 years for possession of two joints) also inspired Ann Arbor's annual Hash Bash.

Today, attitudes are changing but are still contradictory. While we are entertained by the pot-aided "hijinks" of Cheech and Chong, Snoop Dogg and Charlie Sheen, we also demonize some in the public spotlight for simple possession. Last year MSU basketball star Derrick Nix was arrested for possession. Nix faced the possibility of losing his scholarship.

At the same time, scores of our national leaders have admitted to smoking pot over the years without penalty. The list includes presidents Barack Obama, George W. Bush and Bill Clinton (he didn't inhale); Vice President Al Gore, V.P. candidate Sarah Palin, Secretary of State John Kerry, and a large bipartisan panoply of governors, U.S. senators and congressmen.

A step to deal with a part of the contradiction was taken this week. State Representative Jeff Irwin, D-Ann Arbor, introduced legislation to decriminalize possession of less than one ounce of marijuana, making possession a civil misdemeanor on par with jaywalking or littering. The law is modeled after ordinances already enacted by a handful of Michigan cities including Ann Arbor, Traverse City, Ypsilanti, Flint, Grand Rapids and Detroit. (Lansing Mayor Virg Bernero is looking into decriminalizing it here. See Page 5.) Simple possession would be punishable by a \$25 fine

for a first offense, and up to \$100 for repeat offenders. (Sale of marijuana and possession of more than an ounce would remain a felony.)

“Prohibition didn’t work in the ‘30s, and it isn’t working today,” said Irwin. “We have had a war against marijuana for decades and it has failed in every way. Just here in Michigan, we spend over \$300 million per year arresting, trying and incarcerating people for marijuana use. Marijuana prohibition has only succeeded in lining the pockets of drug cartels and violent gangs, creating more violence on our streets.”

Irwin’s co-sponsors include libertarian Republicans, many of whom had championed repeal of Michigan’s mandatory motorcycle helmet law on grounds of personal liberty.

Public opinion is clearly shifting towards legalization. Two recent polls show majority support nationwide. A Pew Research poll three weeks ago found Americans favoring legal pot 52 percent to 45 percent; another poll commissioned by Huffington Post last week found support at 57 percent to 33 percent.

The most recent poll in Michigan was taken a year before the legalization votes in Colorado and Washington. A January 2012 survey by EPIC/MRA found legalization losing 50 percent to 45 percent, including 68 percent opposition among Republicans.

“Opposition has been greater when we tested it in past years, so support is obviously increasing over time,” EPIC/MRA pollster Bernie Porn said. “However, voters age 18 to 40 oppose it by roughly the same number as the statewide results (51 percent to 43 percent “no”).” The strongest support, he said, was among voters 50 to 55 (55 percent to 42 percent) and men 18 to 49 (56 percent to 40 percent).

With the state split on the issue, most Michigan legislators tread lightly on the issue of legalizing recreational use of marijuana.

“A lot of my colleagues will say, not on the record of course, that ultimately we should be talking about legalizing, regulating and taxing marijuana,” Senate Democratic Leader Gretchen Whitmer, D-East Lansing, said on City Pulse radio.

“They’ll have those conversations but they don’t want them attributed to them. That’s where I think we could end up going, and it would make sense on a lot of different fronts. If people are going to be using it, the state could be regulating and taxing it.”

On the record, many lawmakers instead focus on efforts led by former Attorney General Mike Cox and his successor, Bill Schuette, to stamp out medical marijuana despite the 2008 statewide vote to legalize medicinal pot.

The 2008 citizen initiative passed in all 83 Michigan counties with 63 percent of the vote. (The 1932 referendum on repealing alcohol Prohibition also passed in 82 of 93 counties, with Barry county the sole holdout.)

East Lansing Rep. Sam Singh is co-sponsoring bipartisan legislation to regulate medical marijuana, allowing for the establishment of “medical marijuana provisioning centers.” The bill specifically allows local governments to ban provisioning centers within their borders.

The confusion we have right now lies at the feet of the last two Legislatures, which “didn’t do anything” to clarify the language of the 2008 ballot initiative, said Singh.

Whitmer is also highly critical of the state’s last two attorneys general for their efforts to undermine the voter-approved law.

“When the voters passed medical marijuana, I was so excited. It showed that our public is much more progressive than the people in the Legislature,” said Whitmer.

“[Former] Attorney General Mike Cox was not in favor of it, and not particularly helpful in trying to create the state rules on the dispensaries,” Whitmer added. “And that has led to a lot of the consternation and confusion over what the law is and how it is to be applied and enforced. [Current Attorney General] Bill Schuette was opposed to it. He led the opposition to medical marijuana. So it’s not really much of a surprise that he is using his office to keep us from doing what the voters wanted. I would love to see us clean up the law, keep the political ideologues out of it, and give people the opportunity to have medical marijuana when it can be helpful.

“(We should be looking at) how to make it work, how to make it safe, and accessible.”

Like many of their colleagues, Whitmer, Singh and Lansing Rep. Andy Schor think the Legislature should look at adding a state tax on medical marijuana. (Unlike other drugs, a doctor’s approval for the use of marijuana is not considered a prescription. Michigan does not tax prescription drugs.) California and Maine legislators are all considering taxes of up to 30 percent on medical marijuana. Colorado already does so to varying degrees based on the county and is considering taxes on recreational marijuana. According to The New York Times, Colorado brought in \$5 million in 2011 from medical marijuana tax revenue.

Several area legislators declined to respond to a survey email from City Pulse asking their views on legalizing and taxing marijuana, and also asked them if they had personally used marijuana. The only Republican to respond was Grand Ledge Sen. Rick Jones. The former Eaton County sheriff and chairman of the Senate Judiciary Committee opposes legalization. (About trying it, Jones said, “I was not interested as a young person in school because I did not like smoking and it was against the law.”)

Jones voted against the 2008 ballot proposal, calling it “poorly written” and something that has “allowed recreational use.” He said a federal medical marijuana law is needed.

“Then pharmacies can legally handle it,” he said in an email response. “The current product can be contaminated by mold or bug spray. It needs to be pharmacy grade.”

Reps. Theresa Abed, D-Grand Ledge, Tom Cochran, D-Mason, Bill Rogers, R-Brighton, and Cindy Denby, R-Fowlerville, and Sen. Joe Hune, R-Fowlerville, did not respond to our survey.

STATE BUDGET IMPACT

Few question that legalizing marijuana would save state and local government money for police, courts and prisons. Former Detroit Police Chief Ike McKinnon is among a growing national group of law enforcement officers calling for legalization.

“Too much law enforcement money and resources are being used on [enforcing marijuana prohibition]. There are better things to spend our money on,” McKinnon told the Metro Times in a 2011 interview.

His views were shared by another former Detroit police chief, Jerry Oliver, who wrote in a 2000 op-ed in the Richmond (Va.) Times-Dispatch that “these billions could be better spent on demand reduction, prevention, treatment, education, community-building and supporting families.”

Coming up with hard figures on cost savings are impossible since, as Ingham County Sheriff Gene Wriggelsworth noted, marijuana possession has become a “secondary offense.”

“If we come across it in conjunction with something else, such as a traffic stop, we will charge it. But we don’t go out looking for marijuana,” he said.

Added Ingham Prosecutor Stuart Dunnings: “More often than not it’s involved with other crimes: drunk driver, assaults, things where they are arrested and have marijuana on their person. We don’t see many cases where the only thing involved is possession.”

Taxing legal marijuana would likely be a financial windfall for the state but, again, there is no way to come up hard numbers.

A 2012 Cato Institute study by Jeffrey Miron, director of undergraduate studies at Harvard’s Department of Economics, concluded federal, state and local law enforcement costs would be reduced by \$8.7 billion annually, with an equal amount raised by taxing marijuana sales. With roughly 3 percent of the nation’s population, that would equate to an annual \$546 million fiscal impact on Michigan government budgets (including federal expenditures).

Miron’s report was signed by more than 500 economists, including the late Nobel laureate Milton Friedman, who served as an economist in both the Nixon and Reagan administrations.

Michigan collects more than \$1 billion annually in taxes on two other (legal) drugs of choice: alcohol and nicotine (tobacco). That equates to about 2.5 percent of the entire state budget. Budget analysts in Washington state, which legalized marijuana last November, estimate a proposed 25 percent sales tax would generate \$1.9 billion over five years. Washington’s population is 7 million; Michigan has 10 million residents.

Legal marijuana could also be a boon for Michigan's agriculture industry. A 2006 study by pro-legalization researcher Jon Gettman stated that marijuana is the top cash crop in 12 states and among the top three crops in 30 states. The study estimated that marijuana production, at a value of \$38.5 billion, exceeded the value of corn (\$23.3 billion) and wheat (\$7.5 billion) combined.

Horticulturalist Allan Pyle, an MSU grad who lives outside Traverse City, sees economic potential for Michigan farmers. Pyle has long lead efforts to legalize growing hemp, a type of marijuana which archaeologists say is one of the earliest cultivated crops.

"Hemp's a high-yielding, multi-use crop: biomass, feedstock for energy production," he noted. It produces a very high quality fiber for cloth and rope. It has a fairly high quality oil which can be used for food products, especially from strains that have low levels of THC."

Because some strains of hemp contain high levels of THC, the federal government has effectively outlawed hemp cultivation.

With legalized pot, Michigan farmers could do well, said Pyle, noting that Michigan's climate is ideal for growing many strains of marijuana.

"It is not difficult to grow outdoors. It's very similar to growing tomatoes, not at all challenging to grow."

IMPACT ON HEALTH

Does marijuana pose a health hazard to users? The answer is "probably not," but the research is surprisingly lacking.

Norbert Kaminski, director of MSU's Center for Integrative Toxicology, said far more research is needed to reach definitive conclusions, but noted that recreational use of marijuana is safer than smoking cigarettes.

"Typically a recreational user of marijuana is not going to be exposed to the levels of pyrolysis products compared with someone who is a that a one- of two-pack-a-day smoker," he said.

"Whenever you are inhaling burned substances, there's formation of a lot of different toxic compounds. A typical recreational smoker certainly is not going to be exposed to level of these types of products compared to someone smoking a pack or two of cigarettes a day."

Kaminski said there is "sufficient evidence" to suggest there is physical addiction, but withdrawal symptoms are far more similar to withdrawal from nicotine or caffeine than from opiates.

Withdrawal symptoms typically are loss of sleep and restlessness.

Far more research is needed, he said, on how marijuana impacts the immune system in both positive and negative ways.

“There are about 60 chemicals in a marijuana plant. Of those 60, only a handful have actually been studied. We know that these compounds do affect the immune system. Depending on how they are administered, they have been shown to suppress and enhance various immune responses.”

HIV patients, for example, often use marijuana to stimulate their appetite.

“The big question is whether their use is further compromising their immune system,” Kaminski said. “That is an area that desperately needs additional research. Because these cannabinoid compounds can suppress the immune system, people may actually greatly benefit from these compounds. Of those 60 cannabinoid compounds, some might have very useful therapeutic applications and would not produce the psychotropic affects that users of marijuana experience.”

There are situations when the body’s immune system works against recovery and needs to be suppressed, such as in organ transplants where the most significant risk is rejection of the new organ.

Opponents to legalization raise the issue of psychological dependence, or anti-social behavior.

Another concern is detecting marijuana abuse by a driver. The body quickly metabolizes alcohol, so breath and blood tests are effective in determining if a driver is under the influence. With marijuana, a person can test positive weeks after its use, and long after any intoxicating effect has ended. While recent cannabis use can be determined through lab tests, there is no field test similar to breathalyzers used by police officers for drunk driving suspects.

A GATEWAY DRUG?

Opponents contend that expanded marijuana use will lead to expanded use of hard drugs. Mitt Romney, in a speech to a group of New Hampshire college students, said, “It is the pathway to drug usage by our society, which is a great scourge — which is one of the great causes of crime in our cities.” Senator John McCain called marijuana “a gateway drug” in a separate 2007 New Hampshire campaign appearance.

Both are quoted in a research paper by MSU economics Ph.D. candidate Yu-Wei Chu, published last December. In looking at the impact of medical marijuana laws, Chu concluded the opposite is true:

“I find medical marijuana laws increase marijuana use by 10–20%” he wrote.

“However, there is no evidence that cocaine or heroin use increase after the passage of medical marijuana laws. In fact, the estimates on cocaine and heroin are uniformly negative. From the arrest data, the estimates indicate a 10–20% decrease in possession arrests for cocaine and heroin combined. From the treatment data, the estimates show a 20% decrease in heroin

treatments but no significant effect in cocaine treatments. These results suggest that marijuana is likely to be a substitute to heroin.”

Baker, who deals with substance abusers daily, concurs. He said alcohol is a far more serious concern as a gateway drug; regulating marijuana use in a manner similar to alcohol regulation makes far more sense than outright prohibition.

WILL MICHIGAN FOLLOW?

Michigan is one of 18 states that allows medical uses of marijuana. Only two states — Colorado and Washington — have legalized recreational use of marijuana, and two more — California and Connecticut —have decriminalized simple possession.

Irwin and other supporters of legalization are watching Colorado and Washington closely to see how those states deal with issues arising from legalization, most significantly the clash between state and federal law.

At the federal level, a bipartisan group of congressmen including Michigan Republican Justin Amash is sponsoring legislation to legalize marijuana to the extent that it is legal in a state, effectively handing over marijuana policy to the states.

While it appears medical marijuana laws will be further clarified in Michigan this year, the immediate prospect for full legalization or decriminalization is about zero. Irwin’s bill may get a hearing in the state House, but Senate Judiciary Chairman Rick Jones presents an insurmountable roadblock to any action in the Senate.

An effort last year at a citizen petition drive by the organization Committee for a Safer Michigan managed to collect just 50,000 of the 325,000 signatures needed to force a statewide vote. The committee is inactive with proponents recognizing that it will cost \$1 million or more to gather the needed signatures.

Eighty years ago, Michigan took the lead in ending Prohibition. This time it appears the state will be content to watch the rest of the nation evolve while continuing to enforce “The Second Prohibition.”