



Abortion, Pot, Slavery, and More: 34 Ballot Initiatives We're Watching Today

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Happy Election Day...I guess. There aren't many candidates competing today about which a libertarian could get excited. But there are a few Election 2022 ballot measures that set our hearts aflutter—and a few others we're anxiously watching in hopes that they fail. So, let's dig in. The list below—by no means comprehensive—offers a glimpse at some of the especially good and especially bad ballot measures on *Reason's* radar.

DRUG LEGALIZATION

Marijuana legalization measures are on the ballot in five states—Arkansas (Issue 4), Maryland (Question 4), Missouri (Amendment 3), North Dakota (Measure 2), and South Dakota (Measure 27). Jacob Sullum offers a rundown of these recreational weed initiatives [here](#) (Sullum's post also details an Oklahoma initiative that ultimately failed to get on the ballot), while the *Cato at Liberty* blog homes in on the tax structures contained in each.

One state—Colorado—will vote on whether to decriminalize psychedelics. If Proposition 122 passes, Colorado will remove criminal penalties for noncommercial activity related to "natural medicine," which it defines to include the psychoactive components in shrooms as well as dimethyltryptamine (DMT, which is the active ingredient in ayahuasca), mescaline (which is the active ingredient in peyote), and ibogaine (derived from the iboga tree bark). More on Proposition 122 [here](#).

ABORTION

Abortion-related initiatives are on the ballot in five states—California (Proposition 1), Kentucky (Amendment 2), Michigan (Proposal 3), Montana (LR-131), and Vermont (Proposal 5). Passage of the California, Michigan, or Vermont proposals would expand reproductive freedom; passage of the Kentucky proposal would restrict it. The Montana proposal is a weird one.

Proposition 1 would amend California's constitution to include a right to reproductive freedom, defined to include the "fundamental right to choose to have an abortion and the fundamental right to choose or refuse contraceptives."

Proposal 3 would amend Michigan's constitution to include a right to reproductive freedom, defined as "the right to make and effectuate decisions about all matters relating to pregnancy, including but not limited to prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care."

Proposal 5 would amend Vermont's constitution to state "that an individual's right to personal reproductive autonomy is central to the liberty and dignity to determine one's own life course and shall not be denied or infringed unless justified by a compelling State interest achieved by the least restrictive means."

Amendment 2 would amend Kentucky's constitution to state that "nothing in this Constitution shall be construed to secure or protect a right to abortion or require the funding of abortion."

LR-131 would state that in Montana, "infants born alive, including infants born alive after an abortion, are legal persons; requiring health care providers to take necessary actions to preserve the life of a born-alive infant; providing a penalty." Violators of the law could face up to 20 years in prison. The measure is set up to seem like common sense—of course an infant, once born, is a legal person—and supporters portray detractors as barbarians who want to abort babies after birth. But detractors—including the American Civil Liberties Union of Montana and the Montana Medical Association—say the bill is unnecessary ("Montana law already recognizes the responsibility of medical providers to care for viable infants outside of the womb," point out Nancy Maxson and Nancy Leifer, co-presidents of the League of Women Voters Missoula), and infringes upon the physician's judgement. For instance, it would require doctors to take all medical steps possible to prolong the life of an infant who is in severe pain and cannot live on its own outside the womb rather than simply provide palliative care.

NANNY STATE VS. FREE MARKETS

Flavored tobacco and online sports betting are up for a vote in California, while Coloradoans will vote on alcohol delivery services.

California Proposition 31 would uphold a ban on flavored tobacco products, including flavored vaping products. The ban was passed via Senate Bill 793 (SB 793). If Proposition 31 passes, SB 793 will be upheld; if it fails, it will be repealed. Essentially, California voters will have the "chance to override lawmakers trying to control their personal choices," as *Reason's* Scott Shackford wrote about it. (See also: "California's Anti-Vaping Ballot Question Isn't About 'Protecting Children.'")

Proposition 27 would legalize online sports betting and Proposition 26 would legalize sports betting at Native American casinos and at licensed racetracks. But "in the style of California politics, it's all a gigantic, expensive mess of competing interests," notes Shackford, who offers more details on both initiatives.

Proposition 126 in Colorado would make permanent a pandemic allowance for alcohol delivery services for restaurants to sell takeout alcoholic beverages.

BAIL REFORM

Bail reform is on the ballot in Alabama (Amendment 1) and Ohio (Issue 1). But neither measure's passage would result in bail being more flexible or more fair.

Amendment 1 in Alabama—also known as "Aniah's Law"—would stipulate 13 felony offenses for which judges could completely deny bail. Currently, the Alabama constitution states "that all persons shall, before conviction, beailable by sufficient sureties, except for capital offenses"—so, bail can be set high, but it generally must still exist. The new law would let judges deny bail for a much wider variety of people accused of crimes—and lead to a lot more innocent people being imprisoned. "We could have individuals stuck in jail for years at a time and ultimately not found guilty," Jerome Dees of the Southern Poverty Law Center told AL.com. "They are innocent the day they are charged but still could be in jail for months and years."

Issue 1 in Ohio would take away the state Supreme Court's power to shape bail considerations and hand that power to the state legislature. It comes in response to the Ohio Supreme Court's ruling in *DuBose v. McGuffey*, in which the court said a \$1.5 million bond for a murder/robbery suspect was too high. Issue 1 says that when setting bail, Ohio courts must "consider public safety, including the seriousness of the offense, as well as a person's criminal record, the likelihood a person will return to court, and any other factor the Ohio General Assembly may prescribe." It would also "remove the requirement that the procedures for establishing the amount and conditions of bail be determined by the Supreme Court of Ohio."

Opponents of Issue 1 argue that its passage "could create a risky mosaic of policies and standards determined, no longer by the Supreme Court, but by individual judges," notes Reason Foundation's Vittorio Nastasi. They also say it's unnecessary, since Ohio judges can already deny bail entirely in some circumstances, including when someone "poses a substantial risk of serious physical harm to any person or to the community," and are already allowed to consider "the nature and circumstances of the offense charged," the "history and characteristics of the accused," and "the nature and seriousness of the danger to any person or the community that would be posed by the person's release" when determining whether bail will be granted. "Good prosecutors in Ohio already know how to keep dangerous suspects in jail pending trial," said State Sen. Cecil Thomas (D–Cincinnati). "They request a detention hearing and present evidence about the risk to public safety. This ensures that before denying a person who is still considered innocent their freedom, due process rights must be respected and enforced."

CIVIL LIBERTIES

Voters today are set to consider search warrants for electronic data, religious freedom, gun rights, and prison slavery.

Data privacy/due process. Measure C-48 in Montana would amend the Montana Constitution "to explicitly include electronic data and communications in search and seizure protections."

Freedom of religion. Issue 3 in Arkansas would amend the state's constitution to say that "government shall not burden a person's freedom of religion even if the burden results from a rule of general applicability." The state could only pass a law that impinges on freedom of religion if it demonstrates that this law "is in furtherance of a compelling government interest; and is the least restrictive means of furthering that compelling government interest." Furthermore, "a person whose religious freedom has been burdened ... may assert that violation as a claim or defense in a judicial, administrative, or other appropriate proceeding and obtain appropriate relief against a government." The American Civil Liberties Union (ACLU), the ACLU of Arkansas, and the Baptist Joint Committee for Religious Liberty (BJC) oppose the law. "The unintended consequences of this measure would be severe and far-reaching, giving people a basis to challenge and exempt themselves from virtually any state law," said Holly Dickson, executive director of the ACLU of Arkansas. Don Byrd of BJC said the proposed amendment "strays from the federal version of [Religious Freedom Restoration Act] in a potentially significant way: by leaving out the word 'substantial.' Instead, the law is triggered by *any* burden on religious exercise." But many see this as a plus. Rep. Jimmy Gazaway (R-Paragould) described it as providing stronger protections for freedom of religion. "I'm not sure that's a dramatic departure, but I think it's one that most Arkansans would welcome to protect their religious freedom," Gazaway said.

A right to keep and bear arms. Amendment 1 in Iowa would amend the state constitution to explicitly state that "the right of the people to keep and bear arms shall not be infringed" and that Iowa recognizes this as "a fundamental individual right," requiring any restrictions on this right to be subject to strict scrutiny.

Slavery/indentured servitude as punishment. Ballot measures in Alabama, Louisiana (Amendment 7), Oregon (Measure 112), Tennessee (Amendment 3), and Vermont (Proposal 2) would amend their respective state constitutions to prohibit slavery or indentured servitude as a punishment for a crime. The Alabama change comes as part of a larger constitution edit; the others stand alone. More on all five measures here.

ELECTION AND VOTING LAWS

With Question 3, Nevada voters will consider something called Final Five voting. The Cato Institute's Walter Olson has more details:

Nevada voters in Question 3 will decide whether to join Alaska in adopting the innovation known as Final Five voting (Final Four in Alaska), in which a single all-party qualifying-round primary is followed up by a ranked choice voting (RCV) general election. As I've argued, while RCV tends to get more attention, it's the first of these paired reforms that could pose the more systematic challenge to current practice by offering a way to sidestep "some of the manifest problems with today's party primary system, in particular the dominant role of zealously motivated base voters." Olson also details other election-related measures on the ballot:

Alabama voters will consider whether to prohibit changes to election law made within six months of a general election [...] Arizona voters will consider voter ID together with some other security-related election proposals, and Connecticut voters will decide whether to join all but five other states in allowing early in-person voting. Finally, Arizona and Arkansas voters will consider

proposals that would curb use of the direct democracy process itself by requiring supermajorities for many ballot measures and, in Arizona's case, imposing some other new constraints.

WAGE HIKES

Voters in several states will consider minimum wage hikes.

Question 2 in Nevada would raise the minimum wage to \$12 per hour by July 1, 2024.

Initiative 433 in Nebraska would raise the minimum wage to \$15 per hour by 2026.

Initiative 82 in Washington, D.C.—a measure loved by labor unions and hated by servers and businesses alike—would raise the minimum wage for tipped workers from \$5.35 per hour to equal the minimum wage for non-tipped employees by 2027. Voters previously approved such a measure in 2017, but it was repealed by the city legislature.

FREE MINDS

California's latest faux-trafficking sting. Here's another "human trafficking operation" in which police simply posed as adult sex workers and arrested people who tried to pay them for sex. This one, called Operation Century Week, has been blessed—and hyped—by California Attorney General Rob Bonta's office and was assisted by the Department of Homeland Security and the FBI. "Tackling human trafficking in our state takes cooperation and a multi-pronged approach," said Bonta, calling the stings a means to "help protect people against exploitation."

In total, 30 people were arrested for solicitation. The state also brags that it seized 0.25 grams of cocaine and 0.6 grams of ketamine.

San Diego County District Attorney Summer Stephan said "we will not tolerate this modern-day slavery of vulnerable children and young adults being bought and sold like a piece of pizza. Human beings are not for sale."

The discrepancy between the big talk from Banta and other officials and the actual operation is unbelievable—or would be to anyone not following this sort of stuff. But selling standard prostitution and drug stings as heroic stands against human trafficking is, alas, common across America these days.

FREE MARKETS

A federal judge has temporarily struck down several gun restrictions in New York. More from *The Hill*:

U.S. District Judge Glenn Suddaby agreed in a Monday filing to put a pause on enforcement for parts of the state's new Concealed Carry Improvement Act, including provisions that required people applying for a gun license to prove "good moral character" and provide a list of their social media accounts and their family contact information.

The new law also limited firearms in "sensitive" locations, making areas such as New York City's Times Square a gun-free zone for even licensed gun owners.

Suddaby on Monday said the requirements overstepped New York officials' authority and argued the state's list of gun-free zones was too broad — though he allowed bans to remain for places such as schools and polling stations, according to Reuters.

- A guide to 2022 governor's races.
 - Former friends and colleagues of Arizona Republican gubernatorial candidate Kari Lake "say they remember her far differently from the candidate they see today."
 - "Justice Ketanji Brown Jackson, in her first opinion since taking office over the summer, objected Monday to the Supreme Court's decision not to side with an Ohio death row inmate's claim," noted NBC News