

Florida Phoenix

ACLU to FL Supreme Court on marijuana initiative: Remember your place

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In a brief supporting a citizens' initiative to legalize recreational marijuana use, the ACLU accuses the Florida Supreme Court of abusing its authority to strike proposed state constitutional amendments from the ballot.

The court is supposed to review proposed amendments to ensure the ballot summaries voters will read at the poll aren't misleading and that they don't "logroll" unrelated ends into a single amendment, the brief argues. (The full amendment language tends to be too lengthy to reproduce on a ballot line.)

But the court over the years has ginned up legal tests unsupported in the text of the constitution, including that proposed amendments shouldn't affect more than one "function of government," the ACLU argues.

Furthermore, the justices have applied such principles inconsistently, allowing a public vote in some cases and blocking them in others, it continues.

Another suspect test involves the degree to which an amendment might violate federal law. It was on that basis that the court in 2021 blocked a similar amendment from the ballot on ground that it misleadingly failed to make clear that pot would remain illegal under federal law.

"In practice, these requirements are so malleable that they allow the court to do the constitutionally impermissible: rule on the merits of a proposed amendment," the ACLU of Florida wrote in the 35-page brief filed Monday.

The petition drive

Smart & Safe Florida, backed by a \$39 million investment from the medical marijuana provider Trulieve, has collected more than 1 million petition signatures to place the proposed amendment on the 2024 ballot.

The ballot summary this time explicitly states that marijuana would still be illegal under federal law. It reads:

"Allows adults 21 years or older to possess, purchase, or use marijuana products and marijuana accessories for non-medical personal consumption by smoking, ingestion, or otherwise; allows Medical Marijuana Treatment Centers, and other state licensed entities, to acquire, cultivate,

process, manufacture, sell, and distribute such products and accessories. *Applies to Florida law; does not change, or immunize violations of, federal law.* Establishes possession limits for personal use. Allows consistent legislation. Defines terms. Provides effective date. (Emphasis added.)

Attorney General Ashley Moody has asked the court to throw the initiative off the ballot for several reasons, including the federal-law angle, notwithstanding the language in the new proposal. (Also opposing the initiative are the Florida Chamber of Commerce; supporters include the Cato Institute and the Medical Marijuana Business Association of Florida.)

“[T]hat language omits the critical fact that the amendment would make federal criminals of those who take advantage of it. That omission creates the misleading implication that adult marijuana use and possession — or at least some subset of it — would be lawful in the state if the amendment passed,” a brief Moody’s office filed in June asserts.

The ACLU argued for circumspection by the court. “The judiciary should exercise extreme restraint when reviewing ballot initiatives,” its brief reads. “Since all power of government flows from the people, courts should exercise extreme restraint in denying electors the right to vote on proposed changes in the government.”

Appeal for guidance

It adds: “Yet, in the last five years, the Florida Supreme Court struck four out of nine citizen initiatives it reviewed from the ballot (and declined to review one). In contrast, the court struck zero citizen initiatives out of the seven it reviewed in the five years before that.”

The organization also argued the justices should do more to guide petition gatherers in writing acceptable ballot summaries. Lately, it says, the justices have seized upon a single dispositive reason for striking amendments without discussing additional problematic language.

“[T]he court did not give any guidance that could help citizen initiative drafters determine what makes discrepancies legally significant. This leaves initiative drafters without clear standards by which to draft their ballot summaries and ballot texts,” it reads.

Consequently, organizers may conduct successive petition drives at great expense and trouble only to fall afoul of problems the court could have, but did not, identify, the organization argued.

“Current ballot initiative jurisprudence makes drafting an initiative an acrobatic exercise. The court can restore the function of the ballot-initiative process. To do so, it must adhere to its constitutional commitment to the will of the people, provide clear guidance for ballot-initiative drafting by clarifying precedent, and rule on every nonfrivolous objection. Only thus can it fulfill its true role: letting the people of Florida decide how to amend their Constitution.”