**Introduction and Defining Bad Law**

Due to limited space, this article highlights just a few of the plethora of problems identified in the Missouri medical marijuana amendments that are of blatant legal concerns. These amendments have been set for the November 2018 ballot. However, I will discuss why, even just the issues I have brought to the reader’s attention, makes the amendments bad law and should not be approved by the electors. Bad law is a legal term of art which is applied to a law, or proposed law, that is harmful, vague, lacks enforceability, or is in conflict with other well accepted public policies. In reviewing the Missouri medical marijuana amendments, I find that each qualifies as bad law. The only way to cure or fix bad law is to repeal it or never adopt it in the first place. Readers should decide for themselves if each of these amendments meets the definition of bad law. And, bad law results in bad public policy.

**Purpose of a Constitution vs. Statutes**

A constitution is a document that provides the framework under which a state or federal government functions. In changing a constitution, one is changing the core framework by which the government pegs the development of future laws and public policies. Therefore, modifying constitutions is designed to be a slow and burdensome process so that this framework is not changed without a great deal of contemplation and purpose. Modifying a constitution should never be used in situations where issues can be handled through statutory law. Based on this fundamental understanding of the purpose of a constitution vs. laws, two of the three pro-medical marijuana proposed amendments should be defeated as they are not a proper topic to be enshrined in a constitution.

**Highlights of the Three Ballot Issues**

There are three ballot issues in Missouri that will in one way or another be promoting the consumption of marijuana:

- **Amendment 2:** Medical Marijuana and Veterans Healthcare Services Initiative (4% tax on medical marijuana sales);
- **Amendment 3:** Bradshaw Amendment (would create two new entities — Biomedical Research and Drug Development Institute, and the Land Acquisition Board; 15% tax on medical marijuana sales); and
- **Proposition C:** Missourians for Patient Care Act (statutory amendment with a 2% tax on medical marijuana).

The focus on all three amendments is to use as sources for medical marijuana, plants that contain high levels of THC (tetrahydrocannabinol) as these amendments are not focusing on growing hemp-marijuana with its low .3% THC level and high CBD (cannabidiol). The Bradshaw Amendment specifically states that its definition of marijuana does not include hemp. None of the three proposed amendments limit the amount of THC in the...
plants grown nor in any of the end products which will be consumed as ‘medicine.’

All three amendments legalize taking medical marijuana by any method currently known or that any physician recommends, which includes but is not limited to vaping, edibles, lotions, smoked, suppositories, and derma patches in order to get the marijuana into one’s body or on it. The boiler plate language found in all three amendments provides an extensive list of health conditions for which medical marijuana can be recommended, including but not limited to glaucoma, seizures, cancers, intractable migraines, multiple sclerosis, Parkinson’s disease, etc. Additionally, if any illness has been overlooked there is a catchall phrase for those as well — “… any other debilitating medical condition as determined in the professional judgment of a physician.” There is no mechanism in place to remove an illness from the list of legally approved medical conditions for the use of medical marijuana. Both the open-ended list (vagueness) and the lack of ability to remove any medical condition (in ability to enforce or apply sound public policy) makes these amendments bad law.

Government entities will issue licenses for the medical marijuana cultivation sites (grows), manufacturing of medical marijuana, and/or medical marijuana dispensaries. Will local communities (counties or cities) be able to prohibit these medical marijuana operations in their jurisdiction? Answer: maybe and, then again, maybe (probably) not. For example, in one of the proposed amendments, the citizens would have to hold a special election in which “… two-thirds majority of the registered voters vote to prohibit medical marijuana operations” in order to stop the marijuana operations in a community. Such an election result would be nearly impossible to achieve since the standard is not two-thirds of those who vote in that election but it is two-thirds of the actual registered voters who must vote against marijuana operations in their community. Again, this appears to meet the standard of bad law as this option for the citizenry would simply be unrealistic.

The Bradshaw Amendment requires that if a local government wants to opt out for the first five years and then a citizenry vote for the next five years, it must submit this in writing to a government oversight board. This would typically be normal procedural law but the oversight board does not have to honor the opt out requests because the language is merely permissive, i.e. the board ‘may’ (or might not) accept the opt out requests but does not have to. Again, another example of bad law in which the public has no recourse to preserve their quality of life.

Ranking the Amendments — Is Lesser of Evils Possible?

In my opinion, the worst amendment is the Bradshaw Amendment, the second worst is the Medical Marijuana and Veterans Healthcare Services, and the lesser of the evils is the Missourians for Patient Care Act. The only reason the statutory one is the least of the evils is because it is in the form of a statute and can be more easily corrected in the future. All three of these ballot amendments are, however, bad law and should each receive a ‘no’ vote in November.

Why is the Bradshaw Amendment the Worst?

In addition to its being an amendment to the state constitution, it creates a massive new governmental institution which would be known as the Biomedical Research and Drug Development Institute with a very powerful board of directors. The powers given to this constitutionally enshrined body are breathtaking and there appears to be no means of real oversight. Reading how this institute and its governing board would be established and run raises tremendous concerns of the amount of power concentrated into one governmental body. The concerns are too numerous to address in this brief article, so I would urge the reader to read the extensive powers that would be held by this board and ask yourself: (1) what controls are in place to avoid conflict of interests in research? (2) what controls are established for assuring research meets medical research ethical standards? (3) what mechanism is there for the reporting of ethical or legal breaches? (4) what mode of oversight and accountability is there over the proposed institution and its board of directors? (5) since the purpose of the research is to find cures using marijuana, what happens if the research shows that marijuana as a medicine either is ineffective or is actually dangerous? The answers that I arrived at leads me to conclude that the Bradshaw Amendment is bad law.

Hope for Your Future

Whether or not you like politics or legal questions,
the topic is being foisted upon the public this fall by those who advocate for marijuana. Remember that the vast majority of Americans do not consume marijuana. In Colorado 73% of its jurisdictions have banned marijuana grows, marijuana manufacturing, and dispensaries. There is public guilt being pushed by those advocating for these amendments that to vote “no” is denying people essential medicine. This argument ignores the fact that the FDA has approved several medicines that are marijuana based and available by prescription so there is no need to grow one’s own marijuana medication. Where is the compassion by those advocating for medical marijuana for those who have been harmed by medical marijuana from suicides, murders, and rising crime rates in general where marijuana has been legalized?

Disclosure

This is not intended as legal advice. If you need legal advice contact an attorney who is licensed in the state of Missouri.

Resource Links

Drug Free Idaho funded a documentary, Chronic State: How Marijuana Normalization Impacts Communities, it was mostly filmed in Pueblo, Colorado about the impact of marijuana in Colorado.

- https://vimeo.com/280127474

When the topic of compassionate use of medical marijuana comes up, let the public know about the victims of marijuana consumption. One source is an electronic memory quilt of loved ones whose deaths are linked to marijuana produced by MomsStrong.org


“It’s High Time We Took A Breath From Marijuana Commercialization” By Bob Troyer, US Attorney For District of Colorado, Denver Post, September 28, 2018. Troyer highlights the failed promises of the marijuana industry and that Colorado’s children now consume marijuana at a rate 85% higher than the national average.