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Opting out of marijuana not so easy

By Oriana Durand and James Mattone/ The Boston University Statehouse Program

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Supporters of Question 4 say legalizing the recreational marijuana is the next logical step in a process that has seen state voters decriminalize small amounts of pot and allow the use of medical marijuana.

But there is one little-discussed difference. The 2012 referendum that allowed the sale of medical marijuana required elected municipal officials to declare support or non-opposition to a medical dispensary in their community in order for the clinics to open.

This year's Question 4 would require cities and towns to take the extra step of holding a vote to opt out of allowing commercial marijuana sales.

"There are many cities and towns that are struggling with that issue," said Will Luzier, campaign manager of Yes on 4. "This allows the question to be put to the people rather than to the executive or legislative body of the city or town, because it is essentially a more democratic process."

Luzier pointed to top state officials who oppose legalizing marijuana, including Gov. Charlie Baker, Attorney General Maura Healey and Boston Mayor Marty Walsh, as a reason to require towns to have votes to opt out.

"They have their right to their opinion, so we are going to bring this to the people. That's another example of powering the people in the democratic process," he said.

According to Question 4's wording, at least 10 percent of registered voters in a town or city must sign a petition against the sale and consumption of marijuana. If that threshold is met, the question can go on the next biennial election.

This differs from the medical marijuana law, where local town and city governments had to approve a medical marijuana facility.

Geoffrey Beckwith, executive director of Massachusetts Municipal Association, said that the switch removes the power of local officials to block pot shops.

“Communities will have virtually no say in that, and local officials will be shut out of the process in determining whether these facilities should be licensed, and this is quite the marked contrast in other states where it was legalized initially,” he said.

Beckwith blames business interests for the change in approach to community independence.

“The large lobby, the big business behind marijuana sales really doesn’t want to have local officials having any kind of say as to whether or not these facilities open in their communities,” he said.

Municipalities will still have some control if the law is passed. Local governments can impose an additional tax of up to 2 percent. They can also set regulations for the sale of marijuana, much like they can for liquor stores.

In fact, under the measure, municipalities are able to enforce a cap of one marijuana store per five liquor stores.

“We think that is significant local control. This system is in keeping with other regulatory agencies operating in Massachusetts,” said Jim Borghesani, communications director of Yes on 4.

Borghesani argued that an opt-out provision would prevent the foot dragging that delayed the opening of medical marijuana clinics.

“We also think it’s unfair that medical marijuana was passed overwhelmingly in 2012, and we’re still seeing selectmen on their own being able to block medical marijuana in their town, while people in their town probably voted to allow medical marijuana,” he said.

Towns and cities in Massachusetts that opt out would be denied any tax revenue from the sale of marijuana in the state. This is a concern for Mark Leahy, executive director of the Massachusetts Police Association, who believes it might be a bad incentive for local governments with financial concerns.

“They may have infrastructures programs in their towns that may have fallen behind, they may not be adequately looking down the road at the social implications at having such a facility in their community,” he said. “Our vocal objection to this is because we know our communities and it’s not in the best interest of our communities.”

Other states that have legalized marijuana, such as Oregon, Colorado and Washington, have implemented similar regulations allowing counties to prohibit the sale of marijuana.

Oregon's opt-out program requires at least 55 percent of voters to say no to pot shops before a county can ban the sale of marijuana. In Colorado, some locales have enacted similar legislation. Michelle Rutter, government relations coordinator for the Cannabis Industry, pointed out the Catch 22 with those marijuana laws.

"There are many counties in Colorado, despite that adult use has been legalized four years ago, that still have moratoriums on cannabis, and adult use stores just aren't allowed there. While possession is legal there, you have nowhere to legally purchase it," Rutter said.

Four other states, Arizona, California, Nevada, and Maine, also have marijuana legalization questions on their ballots this November, but with different local government powers. None allow for a direct citizen vote to opt out of the law as seen in Massachusetts' Question 4.

California's Proposition 64 and Maine's Question 1 both give a municipal government the power to ban a retail marijuana store, and enact local laws pertaining to marijuana use and sale.

Arizona's Proposition 205 would allow counties instead of single municipalities to ban marijuana stores. These three laws are similar to Massachusetts' 2012 medical marijuana legislation, where municipal governments have direct control over facility placement.

Nevada's Question 2 takes it one step further, allowing county boards to vote on legalization in its borders. The same measure was used for Nevada's medical marijuana law, where according to the Las Vegas Sun, 12 out of 16 counties banned medical marijuana facilities.



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