

Voter-approved legalized marijuana in danger of being overturned (2-3-21)



On Jan. 27, Circuit Court Judge Christina Klinger heard three hours of arguments regarding Amendment A which would legalize marijuana in South Dakota.

The amendment, which was approved through a majority vote in November's General Election, is in danger of being overturned by Gov. Kristi Noem and other government officials. South Dakota Highway Patrol Superintendent Rick Miller and Pennington County Sheriff Kevin Thom are the two lawmen who are in opposition to the amendment, claiming that it is unconstitutional.

Thom and Miller are opposing Amendment A as an election challenge and asking for a declaratory judgement that the amendment violates South Dakota's constitution.

Klinger has not yet released her decision on the matter. At the conclusion of the hearing, she promised to take the arguments under advisement and issue a written ruling on the case. However, it's almost a sure bet that the decision will be appealed to the South Dakota Supreme Court regardless of the outcome.

Lawyer Lisa Prostrullo with Redstone Law Firm is representing Miller and argued to Klinger that due to the multiple issues addressed in the constitution—which covered recreational, medical and hemp—the amendment should have instead been a revision.

Before Jan. 27, legal officials questioned whether or not Miller had standing to bring this amendment challenge to the court. Gov. Noem responded with an executive order—backing Miller and allowing the challenge to hold.

The executive order stated: "On Nov. 20, 2020, I directed Colonel Rick Miller to commence the Amendment A Litigation on my behalf in his official capacity."

It also stated that Amendment A "was not proper and violated the procedures set forth in the South Dakota Constitution."

Defense for the amendment argued that their opponents were attempting to undercut the vote of the people, who voted 54 to 45 percent to legalize marijuana.

Miller's attorney Prostrullo also argued that giving a state agency, the Department of Revenue, sole power to regulate marijuana would elevate them to "a co-equal fourth branch of government."

Assistant Attorney General Grant Flynn said that the Department of Revenue was already maintaining this level of regulation with alcohol.

Noem, who has long opposed marijuana legalization, spoke about it during a Jan. 28 press conference—the day after the hearing.

"I've been very clear since the beginning," Noem said. "I've told you multiple times I don't think anybody got smarter smoking pot, and I think it's a bad decision for the state of South Dakota. In fact, I was actively engaged in making sure the people of South Dakota knew how I felt about these ballot measures before Election Day."

Noem also said the state will have to wait for the results of the hearing and confirmed that the case would most likely hit the Supreme Court.

"We'll have to wait several more weeks to see what the decision is," Noem said. "We expect that it could end up in front of the Supreme Court."

In November, Drey Samuelson, political director for South Dakotans for Better Marijuana Laws said that Amendment A was "carefully drafted, fully vetted and approved by a strong majority of South Dakota voters this year."

In response to the argument that Amendment A is not limited to one subject, Samuelson says that anyone that reads the amendment can see that every word relates to the cannabis plant and that it follows the same standard used by the S.D. Legislature.

Marijuana legalization will begin on July 1, 2021 with the ability to smoke, possess and grow an established amount of pot. South Dakota Legislature has at least until April of 2022 to establish how it will be legislated.