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Cannabis and the U.S. Election

By Andrew J. Wilder and Vlad Mihaescu

With the United States presidential election just days away, American voters are also deciding on the potential future of the legal cannabis industry. Cannabis has been increasingly legalized throughout the United States in the past years. With Gallup polls indicating strong and increasing support for the legalization of cannabis (currently 66% of Americans in favour) and the industry being projected by many analysts to grow to over \$30 billion in the next 5 years, it is clear that there is powerful momentum to see the industry succeed. However, how quickly it gets there may depend in part on the results of this election.

On the ballot for certain states is the legalization of medical and/or recreational cannabis. Presently, 35 states have legalized cannabis for medicinal purposes, and 11 states and Washington, D.C. have legalized recreational use. Come November 3, 2020, 5 more states could join in this green wave.

Arizona is taking a second kick at the can. In 2016, an initiative to legalize recreational cannabis in the state was narrowly defeated by just 67,100 votes. This year, there is hope that the initiative will finally be passed with the backing of some major multi-state cannabis businesses. The Governor of Arizona is still in opposition of the initiative.

New Jersey has been trying to legalize cannabis since the election of Governor Phil Murphy in 2017. The Governor has hopes that the industry could bring \$300 million in revenues to the state government. Despite this, legislative efforts have failed and now the matter is being put before voters. The program would legalize recreational use for adults 21 years of age or older. A successful vote could also mean increased pressure on neighbouring states such as New York and Pennsylvania to legalize recreational use.

South Dakota is in a bit of unique scenario in that citizens will be voting on the legalization of both medical and recreational cannabis. Usually state legalization has taken the approach of passing medical before recreational, but South Dakota is putting both on the ballot simultaneously.

Two cannabis initiatives are on the ballot for Montana this year. Ballot issue I-190 would allow adults 21 years of age or older to purchase, possess and consume cannabis for recreational purposes, while also

establishing a 20% sales tax on products. The other initiative, CI-118 would also provide for adults 21 years of age or older to purchase, possess and consume cannabis, however it would not provide a regulatory framework for establishing an industry in the state.

In Mississippi, two competing measures are up for vote. The first, proposed by a citizen petition, would allow physicians to prescribe medical cannabis for patients who have a qualifying condition, such as cancer or post-traumatic stress disorder. The second is brought about by the Mississippi legislature, which drafted an alternate measure that would require medical cannabis products to be pharmaceutical grade and only permits the smoking of cannabis by those who are terminally ill.

Although not strictly cannabis related, of notable mention is the initiative from Oregon, whose voters will be deciding on the Oregon Psilocybin Program Initiative. The program would provide legal access to psilocybin (commonly known as 'magic mushrooms') to qualifying individuals. Another measure being voted for proposes to decriminalize the personal possession of all drugs in Schedule I, II, III or IV of the federal *Controlled Substances Act* (the "CSA"), which would be a first for the U.S.

These initiatives have the opportunity to bring in hundreds of millions in revenue for their respective states, however just as important as these initiatives is the presidential election and what each candidate could do for the U.S. cannabis industry as a whole.

Former Vice President Joe Biden and running Senator Kamala Harris have publicly acknowledged that they are in favour of the decriminalization of cannabis and the expungement of criminal records relating to cannabis possession and use. Although this is not the same as legalization of cannabis it is a step in the right direction. However, some are concerned that Joe Biden's past harsh stance on drugs will limit the change required to truly move the industry forward.

On the other hand, President Trump, who approved the 2018 Farm Bill that removed hemp from the CSA, has been relatively quiet on the topic of cannabis and has not given any clear indication that there would be any meaningful change under another four years of his administration. Although there is uncertainty as to what changes would result from either candidate, it would seem more likely that former Vice President Joe Biden would provide greater opportunities for the U.S. cannabis industry.

Some of these opportunities could include support for passing legislation such as the *Marijuana Opportunity, Reinvestment and Expungement (MORE) Act*, which was sponsored by Senator Harris and would remove cannabis from the CSA and eliminate criminal penalties for individuals who manufacture, distribute or possess cannabis. Given the current makeup of the US Senate, many commentators have suggested that this Act will not be passed by the Senate. On the other hand, the *Secure and Fair Enforcement (SAFE) Banking Act*, which was passed by the US House of Representatives earlier this year and still needs to be approved by the US Senate, would allow financial institutions to provide financing and banking services to cannabis companies without the fear of sanctions. The passage of either of these pieces of legislation would be a huge catalyst for the growth of the U.S. cannabis industry.

The full impact of what the election means for the U.S. cannabis industry is yet to be seen. We will be watching the election closely to see which candidate wins and how the composition of the members of the House of Representatives and the Senate may change to better understand the potential impact that November 3rd will have on the future of the U.S. cannabis industry.

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