

Missouri: Unusual attempt to legalize marijuana cultivation fails at state Supreme Court



David M. Kall | Thursday, December 14, 2017

The number of states in which residents have the legal right to grow marijuana, under specific circumstances, is now up to 16. These states are the following, according to [Ballotpedia](#):

For recreational use:

1. Alaska
2. California
3. Colorado
4. Maine
5. Massachusetts
6. Nevada
7. Oregon
8. Washington D.C.

For medical use:

1. Washington
2. Arizona
3. Hawaii
4. Michigan
5. Montana
6. New Mexico
7. North Dakota
8. Rhode Island

Ballotpedia recognized that “in none of these states was growing marijuana made legal through the

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judicial interpretation of constitutional law,” but litigants pursue the theory anyway. The latest to tackle this question is the Missouri Supreme Court, in the case *State of Missouri v. Shanklin*. Prior to this development, three Missouri state courts rejected the unusual argument seeking to get around the criminalization of marijuana cultivation via the state constitution.

In the *Shanklin* suit, plaintiff/appellant Shanklin, a St. Louis resident, hoped to leverage an Aug. 5, 2014 voter-approved constitutional amendment, known as the **right to farm**, in his favor. That amendment reads as follows:

That agriculture which provides food, energy, health benefits, and security is the foundation and stabilizing force of Missouri's economy. To protect this vital sector of Missouri's economy, the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state, subject to duly authorized powers, if any, conferred by article VI of the Constitution of Missouri.

In an **opinion** dated Dec. 5, 2017, the Missouri Supreme Court held that the right to farm does not include the right to farm marijuana. Shanklin had been convicted of three counts involving marijuana cultivation and possession, and possession of drug paraphernalia. Police discovered his operation when they conducted a “utility inquiry” that was triggered by excessive electricity use consistent with marijuana cultivation.

In an attempt to have the first two counts dismissed, Shanklin argued that the statutes prohibiting the production and possession of a controlled substance were unconstitutional because of the protected right to farm. The court disagreed, disputing the resident’s contention that his operation was a permissible “farming practice.”

The court opined that the operative clause in this amendment is that which addresses the protection of farming, “this vital sector of Missouri's economy.” It pointed out that there is “no language suggesting Missouri voters intended to nullify or curtail longstanding laws regulating or prohibiting possession, cultivation, and harvest of controlled substances... , because the amendment expressly recognizes farming and ranching practices are subject to local government regulation, it would be absurd to conclude Missouri voters intended to implicitly nullify or curtail state and federal regulatory authority over the illegal drug trade.”

Ballot initiatives

Most marijuana proponents in Missouri take a more traditional approach to legalization. In one, supporters are pursuing an initiated constitutional amendment that would appear on the Nov. 6, 2018 ballot. At this time there are **two versions** of the initiative, called the Missouri Right to Medical Marijuana Initiative: Measure 2018-179 and Measure 2018-223. Both ask voters whether they want to amend the Missouri Constitution to do the following:

- Remove state prohibitions on the possession, growth and sale of cannabis (marijuana) for personal or medical use by anyone 18 years and older.
- Remove state prohibitions on marijuana possession by anyone under 18.
- Remove state prohibitions on marijuana use by anyone under 18 if the minor has parental or legal guardian consent or a physician's recommendation.
- Release people incarcerated for nonviolent marijuana related crimes unless the person has additional time to serve for another dissimilar offense.

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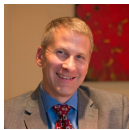
- Prohibit using state funds to assist in federal marijuana offense enforcement.

Measure 2018-179, however, also asks voters whether they want to amend the constitution to “release all individuals from incarceration, parole and probation regardless of additional crimes convicted of, if they have been convicted of a non-violent cannabis (marijuana) related crime...”

Last month, the *Springfield News Leader* reported that in April, Kansas City, the largest city in Missouri with about 475,000 residents, reduced penalties related to marijuana. And in St. Louis, the second largest city with about 315,000 residents, a city alderwoman proposed legalizing the growth, possession and sale of marijuana in October.

The *Springfield News Leader* piece recognized two additional movements besides the Missouri Right to Medical Marijuana Initiative. In the first, the National Organization for the Reform of Marijuana Laws (NORML) has gathered about 60,000 of the necessary 170,000 valid signatures for its initiative, known as New Approach Missouri. NORML envisions a 4 percent tax rate, to be used from health care services for veterans

In the second, an individual who is a Springfield attorney and physician is working on his own solution, the **Bradshaw Amendment**. This would use the revenue generated from, among other things, a 15 percent tax, to “create a world class medical research center in Missouri to find cures for cancer and other incurable diseases.” In addition, the “research center will create tens of thousands of new, high paying, jobs in Missouri, and generate hundreds of millions of dollars in increased revenues for Missouri businesses!”



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Team member bio