

Heeding State AGs' Perspectives on Draft Legislation May Pay Dividends

In addition to enforcing laws after they are passed, state attorneys general (AGs) often weigh in on draft legislation or proposed ballot initiatives, providing valuable insight for lawmakers and other stakeholders into the attorney general's interpretation of, and level of support for, such proposals. This is particularly true in the area of cannabis regulation, where, in an uncertain and developing area of the law, an attorney general's feedback on policy proposals — not to mention citizens' acceptance and implementation of same — can assist the measure in succeeding either in the legislature or at the ballot box.

Idaho AG Provides Feedback to Marijuana Activists on Draft Ballot Initiative

Such was the case in Idaho, where marijuana activists with the Idaho Citizen's Coalition (Coalition) revised a proposed ballot measure that would legalize adult-use marijuana after receiving comments from the Attorney General's Office. Per Idaho law, the Coalition filed an initial draft of the ballot measure, called the Personal Adult Marijuana Decriminalization Act (PAMDA) last month with the Idaho Secretary of State. After filing the initiative, however, the Idaho AG submitted a letter to the Secretary of State outlining potential legal issues with PAMDA and suggesting changes to resolve those issues. In Idaho, the AG may confer with a petitioner and recommend revisions to a ballot measure "as may be deemed necessary and appropriate." The potential issues identified by the AG included clarifying that "personal" use of marijuana — i.e., the use of marijuana on private property — cannot occur in public places such as on public transit and in state correctional facilities. The AG also suggested that one provision, which states that a person may not be considered to be operating a vehicle under the influence of marijuana if the level of metabolites or components of marijuana are insufficient to cause impairment, could face a constitutional challenge for vagueness and should be revised. The AG suggested that the provision be revised to reflect that police cannot only use the presence of metabolites or components of marijuana to determine whether someone is operating a vehicle under the influence of marijuana. In response to the AG's feedback, the Coalition submitted a revised proposed ballot measure to the Secretary of State earlier this month that addressed some, but not all, of the AG's suggestions. A recent [blog post](#) by the Coalition seems to indicate that they rejected certain revisions due to differences of opinion between the Coalition and the AG on PAMDA's impact on law enforcement.

State AGs' Views May Both Foretell and Impact Outcomes

When it comes to reviewing draft legislation or ballot measures, state attorneys general, as the chief legal officers of their states, often anticipate what industry and normal citizens cannot; namely, the ways in which a proposal can encounter constitutional challenge, create enforcement obstacles, or even conflict with existing state laws and regulations. It is therefore important from a practical perspective for drafters to keep the state attorney general's perspective in mind when submitting a proposal for consideration at the ballot box or before a state legislature. Moreover, even if policy proponents disregard the attorney general's feedback, they should remember that other members of state government will pay heed — which can prove fatal to a bill's momentum. In Idaho it is too early to determine whether PAMDA will pass, as the Coalition has until May 1, 2022, to collect the necessary 65 thousand signatures from voters to get the measure on the ballot. What is clear, however, is that monitoring the state AG's views on draft legislation and proposed ballot initiatives is a good way to anticipate the success of such measures as they progress through the lawmaking process.



Meghan Stoppel, CIPP/US

Member

mstoppel@cozen.com
Phone: (720) 479-3880
Fax: (303) 625-4901



Gianna Puccinelli

Associate

gpuccinelli@cozen.com
Phone: (202) 280-6467
Fax: (202) 861-1905

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