

### PROPOSITION 19

## Marijuana Initiative Loaded With Uncertainty

Businesses See Prop. 19 As Threat To Workplace

■ By **SEAN BELK**  
Staff Writer

**O**n November 2, Californians will have a chance to vote on a rather controversial initiative that aims to legalize the recreational use, distribution, cultivation and sale of marijuana.

Proposition 19, known as the Regulate, Control And Tax Cannabis Act of 2010, would allow any person 21 years of age or older to possess, process, share and transport an ounce or less of marijuana, solely for personal consumption. People would also be allowed to grow their own pot plants on a 25-foot parcel of land on their own property.

This isn't the first time California has tried to outright legalize marijuana. The earliest measure, also called Prop. 19, was in 1972. That proposition was rejected by 66 percent of voters, according to the Initiative & Referendum Institute at University of Southern California (USC).

So far, Alaska is the only state in the country to have successfully decriminalized recreational use of an ounce or less of marijuana and home cultivation in 1975. But that was temporary, eventually repealed by voters about 15 years later. Since then, about a dozen states in the country have legalized the use of "medical marijuana," with California being the first in 1996, through Prop. 215. Other states, such as Colorado and Oregon, have tried but have fallen short of passing any outright legalization.

This time around, however, both camps admit there are uncertainties to be hashed out before any widespread change would occur in California. In fact, many feel the proposed initiative, as it is written, is largely left open to interpretation, jam packed

with ambiguous and confusing clauses, carrying with it implications other than simple legalization.

The proposition on this year's general election ballot stretches into such areas as a way to bail out the state's cash-strapped economy and references employer policies and even civil rights issues. Opponents fear the measure's language would allow employees to come to work stoned, permit people to drive stoned and increase use by underage youth.

Though, if Prop. 19 were to pass, some say it would be held up in courts for years anyway, since opposing parties, or even the federal government itself, may challenge the proposition in appeals court, asking for an immediate injunction.

The act's stated purpose is to reform the regulation of marijuana, claiming that the country's current laws do little or nothing to control cannabis or reduce its availability, pointing out that many still use the hallucinogenic weed across the nation with one third of the country's population (roughly 100 million Americans) who have already acknowledged using it in their lifetime. "Cannabis consumption is simply a fact of life for a large percentage of Americans," the initiative reads.

The proposition also claims that establishing legal and regulated sales would prevent the state from "wasting millions of dollars a year on targeting, arresting, trying, convicting and imprisoning" offenders of cannabis related laws. It also claims it would increase safety by putting "dangerous street dealers out of business."

However, law enforcement officials and those opposed to the initiative say that argument is moot since simple marijuana

possession no longer carries the consequences it once did and is largely treated as an infraction, carrying only a \$100 ticket. Further, those opposed say only about 1,200 people are currently in the state's prison system for solely marijuana related offenses, while others are incarcerated for a combination of crimes of parole violations.

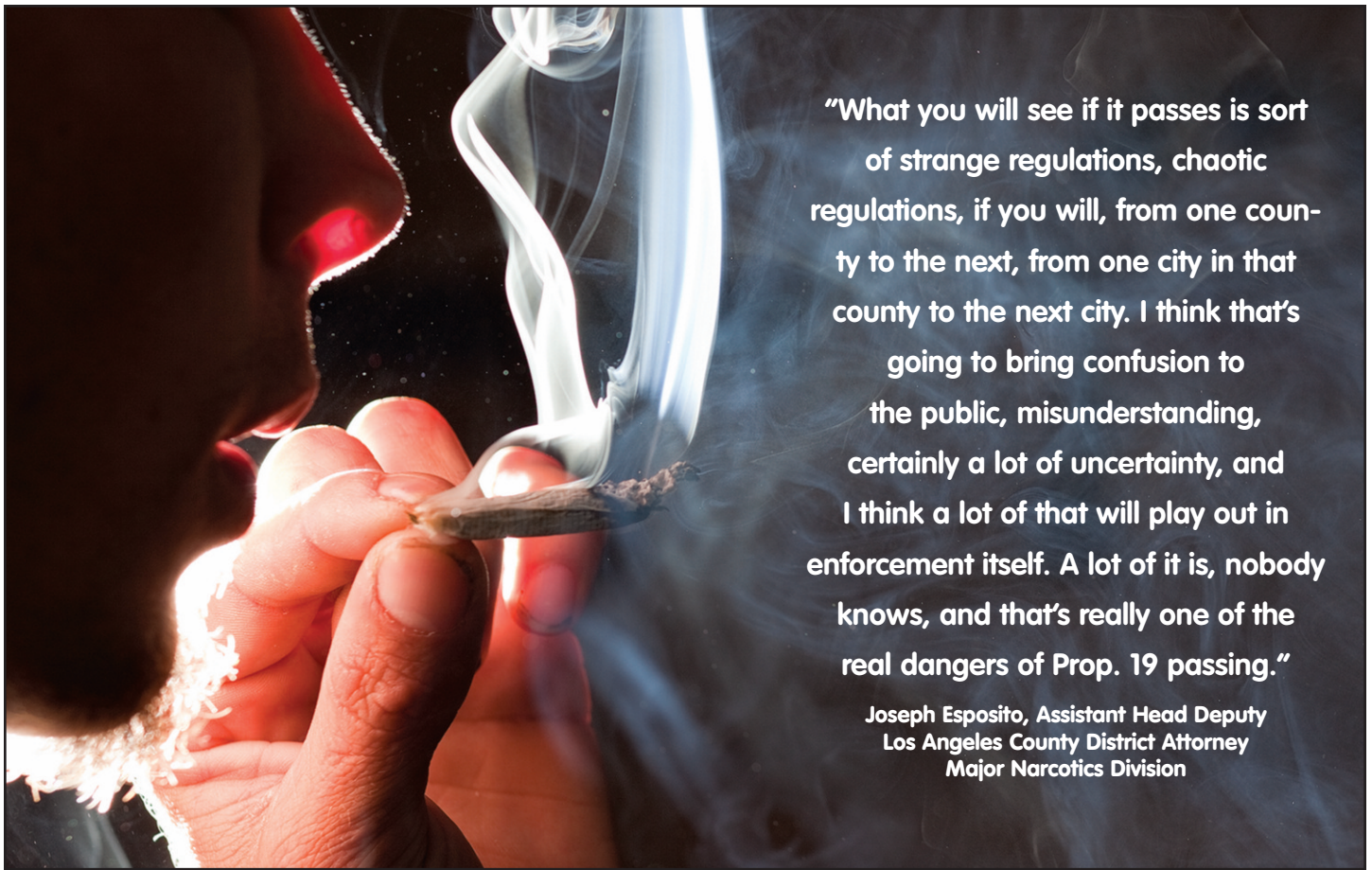
Gov. Arnold Schwarzenegger, who opposes the measure along with a majority of candidates running for office this year, rushed to pass legislation earlier this month to appease the measure's advocates, downgrading possession of an ounce or less to an infraction rather than a misdemeanor. This cuts down on court costs associated with offenders challenging the court system.

### Revenues And Regulations

The measure also supposedly comes with a potential bonus for cities and counties, according to the act's supporters. The premise is that legalizing, regulating and taxing the substance for personal use would actually form thousands of jobs by creating a new marijuana industry, which, like industries of alcohol and cigarettes, would generate a windfall in "billions of dollars in annual revenue for California."

What's unclear is exactly how the new law would play out in the 478 cities and 58 counties across California, which, under the measure, would be individually responsible for coming up with their own forms of taxation, licensing and regulation ordinances if statewide legislation isn't passed. Also unknown are the expenses for filing, monitoring and enforcing such a license system and how they would offset the potential for revenue.

It was only recently that the City of Long Beach, like other cities, drafted an ordinance



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**Joseph Esposito, Assistant Head Deputy  
Los Angeles County District Attorney  
Major Narcotics Division**

regulating medical marijuana shops. Prop. 19, however, states that it would not override the medical marijuana statutes already set in place by Prop. 215 and would not prevent patients from acquiring the drug as medicine.

The California League of Cities, an umbrella organization representing municipalities in the state, has come out against Prop. 19, touting analysis that it is unclear whether any revenue would be received from full legalization. The Board of Equalization, which is responsible for regulating the state’s sales taxes, including alcohol, has stated that passing Prop. 19 would mean about \$1.4 billion in new income but later retracted its statement.

Joseph Esposito, assistant head deputy for the Los Angeles County District Attorney’s major narcotics division, said there are glaring problems with the initiative that don’t specifically address how recreational use would be regulated. “Law enforcement doesn’t have the infrastructure to regulate this new type of law,” he said. “That doesn’t currently exist. Allowing any individual to have a 25-foot plot on your property – that’s not part of the law today. So there are issues with regulat-

ing the sales of it.”

The California Department of Alcoholic Beverage Control, established in 1955, specifically mandates rules for liquor licenses, he said. Under the initiative, each municipality would have to create a new form of regulation that would be different from one entity to the next, further compounding the issue.

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Further, he said there’s a direct conflict between what’s stated in the preamble of the initiative and the actual language, which is so vague and wide ranging that even cannabis supporters have come out against it, Esposito said. “Regardless of what side of the debate you’re on, I think everyone should look at Prop. 19 and say is this the right one?”

## **Marijuana And The Workplace**

The California Chamber of Commerce has recently come out with a legal analysis that raises several issues concerning businesses and employers based on its own interpretation of the initiative’s language. The chamber states that, if passed, Prop. 19 would allow employees to smoke marijuana at work, deny an employer’s right to test employees for marijuana, whether before or after being hired, create liability issues in the workplace, expose businesses to lawsuits and permit transportation workers to drive high on company time.

The specific language states, “No person shall be punished, fined, discriminated against, or be denied any right or privilege for lawfully engaging in any conduct permitted by this Act or authorized pursuant to [Prop. 19]. Provided however, that the existing right of an employer to address consumption that actually impairs job performance by an employee shall not be affected.”

The chamber’s main quarrel with the language has to do with the terms “denied any right or privilege,” shall not be “discriminated against,” and “actually impairs job performance.” The chamber states that the

measure “elevates” marijuana over alcohol and other drugs and opens up potential loopholes for litigation, as businesses would have to prove “actual impairment.”

“Anybody that has anything to do with business and transportation is going to have the same issues,” added Roger Salazar, a spokesperson for the No On Prop. 19 campaign.

The measure would also be in direct conflict with federal law and the Drug Free Workplace Act, which holds requirements for contracts over \$100,000, causing public and private employers to potentially, “lose millions of dollars in federal funding,” the chamber says.

Those advocating for Prop. 19, however, see it differently. Marc TerBeek, an Oakland attorney representing the Yes On Prop 19 campaign, calls the chamber’s arguments “ridiculous,” and stated that California courts generally interpret employee discrimination cases narrowly and that judges don’t typically take such a broad interpretation of such statutes.

The Fair Employment and Housing Act, for instance, wouldn’t be precluded if the initiative were passed, he added, saying that the initiative includes language that retains an employer’s “existing right to address consumption,” which allows employers to make their own decisions regarding marijuana use by workers. He also added that businesses can always fall on federal law to uphold their rights.

“The argument that employees would be allowed, based on any language in the proposition, to smoke at work is a canard . . . it really is . . . it’s an argument that is not made in good faith,” he said. “There’s no chance that a California court is going to interpret that to require marijuana smoking at work anymore than they would require an employer to permit alcohol consumption at work . . . it would be inconceivable.”

TerBeek said only in the most specific discrimination circumstance where the case would have nothing to do with impairing business performance, would the courts possibly uphold the discrimination aspect of the initiative, and even then it would be very difficult to prove. “That’s Mt. Everest for a worker to establish,” he said. “Believe

me it’s tough enough . . . it’s very difficult to prevail on employee discrimination claims, generally.”

Regardless, the chamber’s arguments have been echoed by many of the opposing campaign’s backers, including those in the transportation industry, such as California School Administrators Association, which has given \$1,000 to the ‘no’ campaign, and the California Beer & Beverage Distributors, which raised \$10,000.

Notable donors of the Yes On Prop. 19 campaign include Facebook and Napster co-founder Sean Parker, who recently contributed \$100,000, and Dustin Moskovitz, also a co-founder of Facebook, who gave a total of \$70,000, among others, according to most recent contributions filings.

Meanwhile, the Long Beach Chamber of Commerce has expressed its opposition. “We are concerned about the inability to keep marijuana use out of the workplace and the increased potential for litigation,” said Randy Gordon, president and CEO, in a statement. “The Proposition also creates a new protected class of workers and prohibits discrimination against marijuana users.”

George Adams, president and CEO of Anaheim-based SA Recycling, which has facilities in the Port of Long Beach, contributed \$10,000 toward the No On Prop. 19 campaign after being approached by Orange County Sheriff Sandra Hutchens to contribute. He said he already worries about workers drinking on the job, and legalizing marijuana would just add to concerns for workplace safety. Marijuana is already much more complicated to test for to determine impairment than alcohol since there is no specific measurement of THC levels, he said.

“I think pot is much more difficult to tell if someone’s been smoking as opposed to alcohol, and I think that it has long term effects for our workplace . . . I believe strongly that pot physically changes people and takes away their will and ambition to go out and succeed,” Adams said. “It’s just something I feel very strongly about.”

On a personal front, Adams doesn’t want to see younger generations lured into the trap of drug addiction if marijuana became mainstream, he said. “I think that it’s a very

bad thing for California, it’s a very bad thing for our country and it’s a very bad thing for our youth,” Adams said. “I think that our youth have enough issues trying to get into adulthood without having to have the temptation of pot. I think it’s just one more challenge young people have to overcome.”

### **Voter Turnout Critical**

While some polls have already shown slightly more voters in favor of the ballot measure, the spread is still largely divided. It remains unclear as to which way the proposition will slide. One poll released September 29 by the Public Policy Institute of California showed that 52 percent would vote ‘yes’ and 41 would vote ‘no,’ with 7 percent undecided.

Ann Crigler, chair of USC’s department of political science, said campaign funding on both sides has been sparse due to most funding going toward other ballot measures and the gubernatorial race, which remains just as divided. The low funding has created virtually no campaign advertisements. “There’s been very little information sent out so far,” she said. “But I think part of it’s going to depend on what gets done in the next few weeks as far as educating the public.”

Meanwhile, it is to be determined whether enough voters will see a reason to vote yes on Prop. 19, which was put on the ballot through a \$1.4 million effort by marijuana advocate Robert Lee, who runs Oakland University in Oakland, among other supporters.

Crigler said that initiatives, in general, need to have a strong reason for voters to pass, especially ones that may appear confusing to voters. “Generally, people tend to vote ‘no’ unless there’s a good reason to vote ‘yes’ . . . The tendency is, when in doubt, vote ‘no,’” she said.

Interestingly, the issue doesn’t appear to be clean cut across partisan lines, Crigler said. However, what may end up swaying the vote is if a large number of younger voters turn out to the polls, she said, since polls indicate they tend to be more in favor of this initiative than older groups. “There’s some speculation that will happen but . . . honestly, I don’t know if that will develop or whether it’s enough to get people out,” Crigler said. ■