

Ohio Says No to Marijuana and Monopolies

By Claire Oxford, J.D. Candidate 2018 | November 9, 2015

On Tuesday, November 3, voters rejected a proposal that would have made Ohio the fifth and largest state to legalize the recreational use of marijuana.

[Issue 3](#) would have amended the Ohio Constitution to legalize marijuana for medical and recreational use, but it also would have created a monopoly for marijuana production. The proposed measure granted exclusive rights for marijuana growth and distribution to ten facilities, all owned by investors in the legalization movement. [The proposal was defeated by a nearly 2-1 margin.](#)

Despite its progressive marijuana stance, Issue 3 was not borne out of the legalization movement. It was largely the creation of political consultant [Ian James](#), whose company, the [Strategy Network](#), “specializes in grassroots efforts such as ballot campaigns.” In 2009, the Strategy Network helped pass a measure that amended the Ohio Constitution to legalize casinos, and specified where they would be located.

James says he took the ideas behind the casino movement and applied it to the marijuana legalization movement. He found backers who each pledged a minimum of \$2 million to finance the campaign—and each of whom would own one of the production and distribution facilities. The investors called themselves ResponsibleOhio, and included former professional basketball player Oscar Robertson, Cincinnati sports agent James Gould, fashion designer Nanette Lepore, and two [great-grand-nephews](#) of President William Howard Taft.

James does not hide the corporate motivation behind this grassroots movement saying “We have clearly taken this from the tie-dye to the suit-and-tie approach.”

Many other pro-legalization groups found they could not support Issue 3 due to the anticompetitive market it would create. [1851 Center for Constitutional Law](#), a conservative legal rights organization, officially supports legalization, but found it could not support Issue 3 due to the would-be monopoly it would create. The Ohio Green Party also opposed Issue 3 because of the market implications.

Due to the opposition to the exclusive production rights included in Issue 3, the Ohio General Assembly included [Issue 2](#), popularly called the antimonopoly measure, on the ballot. Issue 2 passed by a small margin and created new anti-monopoly standards that make the exclusive distributions right clause of Issue 3 illegal. Had both issues passed, the case likely would have ended up in court.

The larger ramifications of the decision in Ohio are not yet clear. Four states—Alaska, Colorado, Washington, and Oregon—have previously legalized the recreational use of marijuana, and at least five more are expected to include ballot measures that would legalize recreational

marijuana in 2016. However, Ohio is seen as a political bellwether, as the presidential candidate who wins Ohio usually wins the election. Therefore Ohio's rejection of the legalization of marijuana leads to speculation that the larger national trend will vote down legalization propositions. However, critics say that Issue 3 failed due to the monopoly it would have created, so perhaps its failure is not indicative of a national trend against marijuana, but simply disdain for anticompetitive market restrictions.

Whatever the national consequences may be, the failure of Issue 3 means Ohio avoided a complicated dispute that would have arisen had both Issues passed, making the provisions of Issue 3 illegal.