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CAUCUS ROOM

The Considerable Unresolved Details of Marijuana Legalization

By Carl Golden | November 30, 2020, 1:20 pm | in **Caucus Room** (<https://www.insidernj.com/category/caucus-room/>)



As a candidate in 2017, Phil Murphy pledged that possession of small amounts of marijuana for personal and recreational use by adults would be legalized “in the first 100 days” of his Administration.

While his promise was typical campaign hyperbole, there was a sense that with Republican Gov. Chris Christie leaving office and the possibility of a united government under Democratic control, prospects were considerably brighter for weed users to kick back, relax and light up without fear of arrest, prosecution or jail time.

And here we are.

As of this week, the governor is off by 1,050 days give or take and still counting while the Senate and Assembly – both controlled by his party – are at a stalemate over legislation to regulate and police the marijuana marketplace.

This past November, some 60 percent of New Jersey voters approved a Constitutional amendment to fulfill candidate Murphy’s campaign promise but left it to the Legislature to work out the details.

It was many of the same details that thwarted legislative approval in the first instance and led to the fallback position — a referendum whose outcome was never in doubt.

The details remain unresolved and the debate is likely to spill into 2021, potentially pushing the first over the counter pot sale into 2022.

The referendum — in truth, a meaningless and expensive public opinion poll — was little more than a relief valve to ease the pressure on the Legislature and provide a rationale for on the fence Senators and Assembly members to eventually support legalization by characterizing their favorable votes as a reflection of the will of the people.

That the referendum would succeed was never in doubt. Polls consistently showed public support north of 60 per cent and never wavered. No significant organized or well-financed opposition to the ballot question ever emerged, an acknowledgement that attempting to persuade a majority to cast a negative vote was pointless.

Given the foreknowledge that the referendum would draw overwhelming support, is it not logical to inquire why the year between legislative approval of the ballot question and the general election was not utilized by legislative supporters to negotiate and agree on implementation details and produce a proposal ready for debate before the voting machines went into warehouse storage?

Why not anticipate the certain outcome, get ahead of the issue and remove all the obstacles that stood in the way of legislative approval?

The points of conflict — primarily tax levels and allocation of the revenue, licensing, number and location of dispensaries — were certainly well known; they'd been debated during the futile efforts to secure legislative passage last year.

The issue wasn't suddenly thrust upon an unsuspecting Legislature; everyone involved knew it was coming nearly a year before it arrived.

A joint legislative study group — bipartisan if possible — could have been enormously helpful by spending time and energy during the year to sift through the questions and points raised during the debate, develop responses, find common ground and convince the competing factions that compromise was in the best interest of all. Time was certainly on their side.

By allowing the clock to run out, the leadership missed an opportunity to produce an implementation bill — even one with broad parameters — that represented the consensus of both houses and provide a head start on the post-election approval process.

It would not, of course, have guaranteed acceptance or foreclosed the introduction of amendments but it would have given the leadership a compelling case to make to their caucuses that the agreement was reached by members of both houses after negotiation and bargaining and represented a viable way forward.

Committee hearings would provide transparency and an opportunity for the public to weigh in but having a consensus document at hand could very well have drawn majority support and avoided much of the divisiveness and competing proposals which have taken over the debate.

The failure thus far to produce legislation that will satisfy all sides and secure sufficient votes for passage is an embarrassment for a party for whom legalization enjoyed broad support. It certainly does not reflect the response normally expected for a proposal that was a central component in the agenda their governor offered to voters in his campaign.

Senate Budget and Appropriations Committee chairman Paul Sarlo (D-Bergen), summed it up: "We have two bills that are completely not alike. They will have to be negotiated."

Whether agreement can be reached prior to the Jan. 1 effective date of the referendum seems uncertain.

For example, Attorney General Gurbir Grewal's order that prosecutions of low-level offenses — possession or under the influence — be halted until at least Jan. 25 signaled his doubts that a bill would reach the governor's desk before then.

His directive reflects the Administration's view as well since he would not have taken the step without consulting with and receiving clearance from the governor's office.

Supporters have emphasized legalization as a potential cure for the disproportionate incarceration of minority offenders for low level drug offenses — offenses, they argue with justification, that overwhelmingly result in non-custodial penalties for whites despite a roughly equal rate of marijuana use.

As desirable as that goal clearly is, money — how much and where and how it will be spent — remains at the core of the dispute.

It all comes down to money. When government is involved, it always all comes down to money but especially now when severely cash strapped states are borrowing, raising taxes, cutting spending and lifting sofa cushions in search of spare change to help overcome the devastation wrought by the COVID-19 pandemic.

In the meantime, the memory of Murphy's "first 100 days" promise grows dimmer. And, with a boost from the Legislature, he can discontinue keeping count — a disappointing exercise that could have and should have been avoided.

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