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HEADLINE: Conflicting camps debate merits of medical marijuana legalization in Nebraska ahead of petition deadline

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Roasting under the mid-June sun on a clear day outside of the Madison County Courthouse, Benjamin Herner waited patiently for prospective signees to his petition — one that could put cannabis on the ballot in the upcoming November elections.

Although Herner is a licensed chiropractor by trade, he’s dedicated the past decade of his life to an initiative dedicated to the cause of legalizing cannabis medically in Nebraska.

As a longtime sufferer of fibromyalgia, Herner, Norfolk resident who’s spent most of his life in small-town Nebraska, said his firsthand experience with the “powerful” medicinal properties of cannabis convinced him of the need to bring that to a legal, safe and accessible market for others.

“I’ve been on methadone, man. I’ve been on all of those anti-inflammatories; none of them touched my pain, but THC (the psycho-active chemical in cannabis) did.”

Although he set a personal goal of gathering 100 signatures, Herner said he’s well surpassed that, managing to net nearly 400 by camping outside of businesses all throughout the winter, spring and early summer for nearly 200 hours.

“Sometimes you’ve got to do it yourself, so that’s the attitude I had,” he said.

The cause Herner works for, aptly titled Nebraskans for Medical Marijuana, is part of a statewide effort to bring potential relief to many Nebraskans who range from children to the elderly and suffer from a variety of ailments, from muscular pains and seizures to Crohn’s disease and even cancer.

**Petition deadline looming**

Spearheaded in the Nebraska Legislature by state Sens. Anna Wishart and Adam Morfeld of Lincoln, the movement has gained traction in recent years. Nonetheless, Nebraskans for Medical Marijuana finds itself with its back against the wall, with a deadline of Wednesday, July 7, with 132,000 signatures gathered thus far and more than 60,000 still needed to get the initiative on the ballot.

“We still have a very steep hill to climb to be really honest here,” Wishart said. “But if we get it on the ballot … I think it will have one of the strongest showings of any ballot initiative in terms of people supporting the issue.”

Nonetheless, the movement has continually faced opposition from state government institutions, including a gut-wrenching defeat for the movement in 2020 when a ballot measure that passed the state’s petition signature threshold was struck down by the Nebraska Supreme Court for including too many issues in its wording.

More recently, a May 2021 medical cannabis bill proposed by Wishart fell in the state Legislature on a 31-18 vote, just two votes short of the two-thirds supermajority required to surpass the filibuster and move Legislative Bill 474 forward.

Wishart, the representative for the urban 27th District encompassing the west end of Lincoln since 2017, said she thinks political calculations are still holding back some, if not all, of the bills’ opponents, comparing the situation to the state legalization of gambling in the 2020 election.

“We dragged our feet for years on legalizing gambling,” Wishart said. “In fact, some of the senators that were the most ardent in opposition are the ones that are introducing legalization to take advantage of the revenue from gambling.”

**‘Not just a benign substance’**

Politics aren’t the only thing holding back some, however. John Kuehn is another state senator on the other side of the debate. Since 2014, Kuehn has represented the rural 38th District, which covers six counties in south-central Nebraska and whose largest municipality is the town of Holdrege. He also is co-chairman of the Nebraska chapter of Smart Approaches to Marijuana, a national organization opposing the commercialization and legalization of cannabis.

The organization has many concerns about legalizing cannabis medically in Nebraska due to its impacts on “youth, mental health and public safety.”

“These are all concerns that voters and citizens and families are going to have to weigh when they come into this issue, because it’s not just a benign substance,” Kuehn said.

Those concerns, Kuehn said, start with cannabis’ lack of institutional certification, which makes it difficult to determine its safety, and he compared it to the way cigarettes are marketed, saying this makes the “medical” label deceptive.

“There is no distinction between medical marijuana and recreational marijuana; it’s the same product,” Kuehn said. “Anything that would have a medical label or terminology used to it should go through an FDA approval process and be regulated in the same way as any other prescription medication would be, and not using a dispensary model and kind of following the tobacco playbook for making a dangerous drug accessible, particularly to children.”

**‘Broken’ FDA system**

Wishart disagreed with the sentiment that FDA approval is a be-all, end-all for a drug’s safety, however. She cited the harmful impacts of various FDA-approved drugs, such as oxycodone, that are “destroying people’s lives” and that the federal approach to cannabis has been historically biased.

“I think the FDA system is broken when it comes to this issue,” Wishart said. “Looking into the past on the criminal prohibition of cannabis just opens your eyes to some of the massive issues in terms of government and bureaucracy, control and money.”

Furthermore, Wishart cited a 2014 study from the Society for Adolescent Health and Medicine that found from a sampling of 11 million adolescent students between 1991 and 2011 that there was no increase in use among teens in states with medical cannabis laws.

The major thrust of Nebraskans for Medical Marijuana’s platform is that cannabis can be used to provide relief for a host of difficult-to-treat conditions, including seizures, fibromyalgia, glaucoma and cancer. Wishart connected to this impetus by pointing to two cases she encountered during her experience with the Legislature.

During her early days campaigning for her seat, she mentioned speaking with a mother whose daughter moved to Colorado to get treatment through cannabis products for her son, who suffered hundreds of seizures a day.

“It eliminated his seizures, and he’s a happy, healthy 10-year-old boy, and they would love to come back to this state, but they’d be treated like criminals here,” Wishart said.

After Wishart became a sitting senator, she was visited by a man who purported to have been given a pancreatic cancer diagnosis and 10 months to live by a doctor. The well-documented power of cannabis as an appetite stimulant, which could counteract the appetite-suppressed symptoms of his cancer, led him to pursuing an Oregon-based doctor who specialized in the drug and prescribed him with a suppository that supposedly resulted in helping him to survive the disease.

“Why in the world would this guy not be able to talk to a doctor in Nebraska to get access to a plant that for over 10,000 years not a single person has ever fatally overdosed from?” she said.

**‘Not typical patients’**

Kuehn countered, however, that such anecdotal examples account for only 10% of the issuances granted for medical marijuana in legalized states, while the other 90% are for “pain and other conditions” that are presumably not as dire.

“These are, by and large, not the typical patients that are given as the poster child example for medical marijuana use,” Kuehn said. “Most of them are males in their mid-20s who have multiple drug use issues and who used marijuana and other illicit substances before they ever got their medical marijuana card.”

Additionally, Kuehn pointed to the uncertainty behind using cannabis to treat the other 10% of patients.

He said the American Glaucoma Society does not condone the use of cannabis for treating that specific disease and that the drug’s efficacy for many of the other conditions it is purported to relieve is uncertain, with well-tested alternatives even available for some, such as CBD for epilepsy, which has been federally legalized since 2018 and in Nebraska since 2019, and is fully endorsed by Smart Approaches to Marijuana.

“(For) someone to just go out and obtain (cannabis) and kind of, for lack of a better term, experiment with them on titrating a dose, that’s antithetical to everything we know about medicine,” Kuehn said. “It is equally cruel to treat the most vulnerable patients as if they don’t deserve the same safety and purity and care as any other patient.”

Kuehn also cited studies that have connected cannabis to exacerbating psychosis and other mental health conditions like depression and social anxiety, although the fact of whether it is capable of directly causing those disorders is still widely debated among the medical community.

Even if cannabis were to be medically legalized, Kuehn seemed to express doubt on the wisdom of entrusting doctors with deciding whether to provide patients access to cannabis, especially since there is no framework for prescribing specific dosages in the dispensary format.

“Opioids are the most regulated of the prescription-controlled substances and we’ve seen an epidemic of overdose despite the fact that you have a doctor’s prescription, and not just that, a doctor has a DEA license and it’s tightly regulated by pharmacies,” Kuehn said. “(Then) we’re talking about 95% to 99%-THC edibles and vapes and dab products … there is really no limit on what an individual could use or consume, and then there’s no interaction with a doctor and determining what an appropriate dosage should be.”

**Requirement for doctors**

Wishart insists that cannabis’ nontoxicity puts it in a different category from opioids, however, because there is no potential for lethal overdose or withdrawal.

Furthermore, she said her proposed medical cannabis bill included a requirement for doctors to undergo “many hours of education” before they would be allowed to recommend cannabis to patients, although she did not specify how many hours, or how the bill would account for controlling doses. Most states with legal cannabis include per-transaction and/or periodic purchasing limits.

Despite the complex and often polarizing nature of cannabis, Wishart said her work in campaigning across the state has awoken her to the potential that the issue of cannabis legalization has to bring together people from all sides of the spectrum, whether young or old, Republican or Democrat, especially in the context of recent years.

“After coming out of the COVID pandemic, people are thinking more about their medical freedom, and their ability to make those sorts of decisions,” she said. “It’s actually an issue I really love working on when it feels like it’s so easy to be pulled apart these days.”

Kuehn cautioned that popularity cannot be the only consideration. He said people are often more supportive of medical marijuana initially because they don’t fully understand the concept and all of the flaws that the organization sees in the current framework for its legalization. Also, Kuehn said it’s difficult for his organization to reach every voter with the proper messaging.

“When you talk to (voters) about what medical marijuana actually means, they very quickly change their opinion,“ Kuehn said. “So we absolutely believe that the ballot initiative process is the wrong way to go about legalizing a drug; that said, if it’s there, we’ll continue to move forward with our education mission and to do what it is that we do.”

Even so, the medical marijuana initiative’s prospects aren’t high for getting on the ballot this year, although Wishart said a defeat next week isn’t going to stop them from fighting for what they believe is right, either.

“We’ll continue to try both at the ballot for the 2024 election and in the Legislature,” Wishart said. “We’re not going away until this is successful.”