



DETROIT BALLOT PROPOSALS: ENTHEOGENIC PLANTS, REPARATIONS TASK FORCE, AND EXPANDED INITIATIVE POWERS

Three proposals are on Detroit's ballot at the November 2, 2021, general election. The proposals include a voter-initiated city ordinance (Proposal E decriminalizing entheogenic plants), a proposal placed on the ballot by City Council (Proposal R creating a reparations task force), and a voter-initiated city charter amendment (Proposal S regarding initiative powers).

Proposal E - Entheogenic Plants

Ballot Question: *Shall the voters of the City of Detroit adopt an ordinance to the 2019 Detroit City Code that would decriminalize to the fullest extent permitted under Michigan law the personal possession and therapeutic use of Entheogenic Plants by adults and make the personal possession and therapeutic use of Entheogenic Plants by adults the city's lowest law-enforcement priority?*

If Proposal E passes, it would enact a Detroit ordinance to decriminalize to the fullest extent permitted under Michigan law the personal possession and therapeutic use of entheogenic plants.

If Proposal E is rejected, use and possession of entheogenic plants would remain illegal and enforced pursuant to Michigan law.

Major issues to consider: This measure would decriminalize the use and possession of entheogenic plants (generally, certain psychedelics) in Detroit, however, it does not legalize the use and possession of these psychedelics. It would make enforcement of laws relating to entheogenic plants the city's lowest law-enforcement priority. Distribution of psychedelics would still be criminalized. Without regulated and guided use of these substances, individuals put themselves at practical and psychological risks. Potential impacts of this proposal could include an increased and uninformed usage of these substances, increased access to potential therapeutic uses for various ailments, and a reduction in public resources devoted to the enforcement of criminal penalties related to the use of certain psychedelic substances by adults in Detroit. Decriminalization in the state's largest city also could create momentum for future statewide decriminalization efforts.

Background

Entheogenic plants are psychoactive substances that induce alterations in perception, mood, consciousness, cognition, or behavior for the purposes of therapeutic use, spiritual development, recreation, etc. Some of the most common entheogenic plants include psilocybin (also known as magic mushrooms), ayahuasca, mescaline, peyote, DMT (N, N-dimeth-

yltryptamine), and ibogaine. Cannabis, which was legalized in Michigan by a 2018 initiated statute, can also be broadly categorized as an entheogenic plant. Currently, federal law classifies magic mushrooms, peyote, and other hallucinogens as Schedule I drugs. This categorization indicates that there is no currently accepted medical use for these substances and a high potential for abuse. Marijuana and heroin are other examples of Schedule I drugs.

Over the past year, an effort to reduce police enforcement of laws pertaining to entheogenic plants (i.e., psychedelics) in Michigan has been finding traction. In September 2020, the Ann Arbor City Council unanimously passed an ordinance to decriminalize a range of psychedelic substances, including psilocybin, DMT, and ayahuasca. Michigan State Senator Jeff Irwin introduced a bill for state decriminalization of psilocybin and mescaline in September 2021, to make them available for therapeutic use and exempt them from criminal penalties in certain circumstances. Michigan advocates are pushing for a similar reform in Grand Rapids.

Decriminalizing psychedelic substances would prevent many Detroiters from being prosecuted and would save the city and state money in enforcement costs.

Many cities and states across the country have already enacted related reforms. In 2019, Denver became the first city in the country to decriminalize psilocybin possession. The city now has its eyes set on broader reform, with plans to end the criminalization of noncommercial gifting and communal use of the psychedelics. In California, Oakland and Santa Cruz have decriminalized psychedelics. Oregon voters passed an initiative in November 2020 to legalize psilocybin therapy. Voters in Washington, D.C., approved a ballot measure last year to deprioritize enforcement of laws criminalizing psychedelics.

Some advocates claim that such psychedelic plants could represent a promising treatment to address certain behavioral health disorders. One of the main provisions of Proposal E specifies decriminalization of the therapeutic use of entheogenic plants. The definition of therapeutic relates to the branch of medicine that is concerned specifically with the treatment of disease. A therapeutic dose of a drug is the minimum amount needed to elicit a positive effect without triggering adverse effects or toxicity. With such health interventions, the therapeutic use

of psychedelic substances would assume that the treatment would be guided by a trained health professional using controlled dosing.

There is very limited evidence that controlled administration of entheogenic plants in combination with psychotherapy may improve outcomes for patients whose behavioral conditions are extremely treatment-resistant, providing potential relief for some citizens. Other countries, including Portugal, have found that the decriminalization of substances decreased addiction and drug-related deaths, as well as transmission of communicable diseases (such as those spread by needle sharing), without leading to a significant increase in drug usage.¹ This may be due to the shift from a criminal justice approach to addiction to one rooted in principles of public health.

In October of 2018, the U.S. Food and Drug Administration (FDA) granted breakthrough therapy designation to psilocybin, acknowledging that it shows promise for treating resistant conditions such as depression.² There is also very limited evidence to show that therapeutic uses of these plants have the potential to reduce tobacco, alcohol, and cocaine dependence (within rural aboriginal populations).³

While these psychedelics show potential for therapeutic use, much of the findings to date are based on limited research. The reality is that the breadth of research needed on the therapeutic effectiveness of psychedelics to back up the kinds of decriminalization efforts sweeping the nation has not yet been performed. Without sufficient research on the full suite of outcomes that may accompany the use/abuse of these substances, policymakers should be careful about enacting broad sweeping decriminalization. With most psychedelics labeled as a Schedule I drug by the federal government, scientists have not had the ability to fully study these substances as they would other therapeutic treatments.

While research shows that psilocybin does not

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have a lethal dose and is generally non addictive, there are both practical and psychological risks associated with the use of such plants. High doses of psychedelics, like any drug, can seriously impair judgment. An individual who has taken these drugs can even become reckless. Without proper attention to setting and preparation, people can have “bad trips” accompanied with terrifying experiences that can sometimes have lasting effects. One survey of people who reported having “bad trips” found that nearly eight percent of them had sought psychiatric help afterward.⁴

When researchers conduct studies with entheogenic plants involving volunteers, researchers screen volunteers carefully to exclude people at risk of serious mental illness. In rare instances, a bad psychedelic trip can set off a psychotic break. There is still much to learn about the benefits and potential risks of these substances, not to mention the consequences of unrestricted use.

Analysis

This measure would decriminalize the use and possession of psychedelic plants in Detroit; however, it does not legalize the use and possession of them. Decriminalization is not legalization. When possession of a substance (and use thereof) are decriminalized, criminal charges are usually not applied. If an individual is found guilty and convicted, punishments for the crime include criminal penalties such as jail time.

With decriminalization, penalties can still apply for possession and use of a substance. It sometimes means that criminal penalties are replaced with civil penalties. These could include referral to an education or treatment program, or a fine (akin to a traffic violation).

Even if possession and personal use are decriminalized, it remains illegal to possess and use the substance. Distribution of the substances would still carry criminal penalties. Beyond decriminalization, legalization removes all penalties for possession and personal use of a substance and opens the door for commercialization of a substance. Michigan is one of 18 states that have legalized marijuana. Once a substance is legalized, regulations are typically

established to manage where and how the legal substance can be produced, sold, and consumed. Criminal or civil penalties still may apply if production, sale, or consumption occur outside of regulations. Proposal E is an attempt to make Detroit one of the first Michigan cities to decriminalize psychedelics, following a similar path marijuana took in its journey to legalization.

Advocates have argued that the federal drug schedule does not align with current medical research or scientific consensus. Numerous studies in recent years have provided promising evidence for the usefulness of psychedelics in treating various ailments. This has spurred actions across the country to reform the laws surrounding entheogenic plants (i.e., psychedelics). Various other states have enacted laws to commission studies of the medical benefits and implications of decriminalizing such psychedelics. Major research institutions, such as John Hopkins University and the University of California, Berkeley have centers dedicated to psychedelic research.

It is important to consider the role of health professionals involved in using psychedelics therapy. Medical professionals cannot prescribe treatment if the substances are still illegal at the state level. Municipal decriminalization would not authorize medical professionals to prescribe entheogenic plants under a therapeutic treatment plan. This creates a real danger of unmanaged use of these substances.

Without regulated and guided use of these substances, individuals put themselves at practical and psychological risks. Available research shows promise for psychedelic medicines, but their safety and efficacy have not yet been proven under formal regulations authorizing other therapeutic treatments. Ballot initiatives may not be the smartest way to introduce psychedelics to the mass public and advocate for their potential therapeutic benefits.

Overall, the potential impacts of this proposal could include an increased and uninformed usage of entheogenic plants, a step toward statewide decriminalization, increased therapeutic uses for various ailments, and a reduction on time and money associated with the enforcement of criminal penalties relating to entheogenic plant usage by adults in Detroit.

Proposal R - Reparations Task Force

Ballot Question: *Should the Detroit City Council establish a Reparations Task Force to make recommendations for housing and economic development programs that address historical discrimination against the Black community in Detroit?*

If Proposal R passes, the Detroit City Council would be required to establish a reparations task force to make recommendations for housing and economic development programs that address historical discrimination against Detroit's Black community.

If Proposal R is rejected, City Council could still create a reparations task force on its own.

Major issues to consider: Over the past year, conversations about reparations have resurfaced following the killing of George Floyd, the rise of the Black Lives Matter movement, and the 2020 presidential election. Reparations for descendants of slaves gained national momentum in 2021 after a U.S. House committee advanced for the first-time legislation to study reparations for Black Americans. Proposal R creates a reparations task force, but the proposal does not extend beyond establishing the body. It does not define membership of the body or any timelines it is supposed to meet. Further, it does not ensure any legislative or fiscal action towards enacting any of the recommendations the task force makes. The task force has one specific directive: to make short, medium, and long-term recommendations for the city to specifically address the creation of generational wealth and to boost economic mobility and opportunity in the Black community.

Background

On July 13, 2021, City Council unanimously approved a resolution to place a reparations initiative on the November 2021 ballot. That was an initial step in implementing a City Council resolution approved on June 15, 2021, that supported community reparations and the establishment of a reparations process for Black Detroiters. While the Detroit City Council could have formed its own reparations committee without placing the question on the ballot, they asked for the proposed question to be on the ballot to gauge the interest of residents.

The resolution would create an investigatory process to assess, catalog, and understand the damages associated with slavery as they evidence themselves in Detroit. The reparations task force would be tasked with developing short-, medium-, and long-term recommendations to specifically address the creation of generational wealth and to boost economic mobility and opportunity in the city's Black community.

The reparations resolution follows other cities across the country that have adopted or initiated similar bills

including Asheville, North Carolina; Evanston, Illinois; St. Paul, Minnesota; and Providence, Rhode Island.

Analysis

This proposal establishes a task force to investigate policy recommendations for housing and economic development programs that would aid the Black community utilizing a racial equity approach.

The task force has one specific directive: to make short-, medium-, and long-term recommendations for the city to specifically address the creation of generational wealth and to boost economic mobility and opportunity in the Black community. It, however, does not ensure any specific action towards enacting the task force recommendations, not does it generate the additional resources that will be needed to enact them. There is no promise of funding or city ordinances that would be established or appropriated after the recommendations of the task force are made.

The original resolution passed by Detroit City Council demanded a "strong and sufficient U.S. federal government program funding commitment to reparations"

and “programs that should be democratically administered at the local level for the benefit of Detroit’s black community”.

The highlighted provisions in the June 15 resolution stand in contrast to the language under the U.S. Constitution, providing some legal barriers as to funding a reparations program. Under the U.S. Constitution, taxpayer money cannot be allocated to a specific race. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives federal funds or other federal financial assistance. The creation of a reparations task force could assist in determining how to create a reparations fund to finance a reparations program. Other cities have addressed this issue of funding by creating a reparations fund on the local level.

One city in particular has already established a comprehensive reparations program which addresses equitable housing for Black residents. In March 2021, Evanston, Illinois, approved a Local Reparations Restorative Housing Program, granting qualifying households up to \$25,000 for down payments or home repairs using funds from the city’s Reparations Fund established two years earlier.

The passage of the ballot proposal will help move the conversation from talk to action towards identifying comprehensive policy programs that provide reparations to African American Detroit residents impacted by the legacy of slavery. If Detroit implements the ballot proposal and establishes a reparations task force, it could serve as a catalyst for a broader federal effort in the future as it would join a growing list of cities that are moving forward with the issue.

Proposal S - Expand Initiative Powers

Ballot Question: *Do you agree to amend a provision of the City of Detroit Charter to amend Sec. 12-101 of the Charter that restricts power from the voters to enact City ordinances for the appropriation of money?*

Section 12-101 of the Detroit City Charter (Initiative and Referendum) currently reads [with deleted language struck through and added words capitalized]:

The voters of the city reserve the power to enact city ordinances, call [sic] the “initiative”, and the power to nullify ordinances, enacted by the city, called the “referendum”. However, these powers do not extend to the budget or any ordinance for the appropriation of money; AND the referendum power does not extend to any emergency ordinance. The initiative and the referendum may be invoked by petition as provided in this chapter.

If Proposal S is adopted, voters would be able to petition for the enactment of city ordinances that include the appropriation of money.

If Proposal S is rejected, voters would not be able to petition for the enactment of city ordinances that include the appropriation of money.

Major issues to consider: While tools of direct democracy (i.e., the initiative) give citizens a say in the policies and laws of their city or state, they can also be used by businesses and the wealthy to achieve specific policy objectives. Allowing citizens to enact voter-initiated ordinances for the appropriation of money provides an opportunity for citizens to influence their government but could present challenges for the operation of government. It is not clear as to how such citizen-initiated appropriations would fit with current laws as they relate to the timing of elections, the budget and appropriations processes, the prioritization of city spending, and the powers granted to certain branches of government. The city charter provides two methods by which money can be appropriated - 1) through the annual budget process, and 2) through budget amendments that can only be made under certain circumstances.

Background

Proposal S is a voter-initiated petition to amend the Detroit City Charter. It seeks to remove the current prohibition on initiated appropriations in the City Charter, allowing citizens with the ability to enact ordinances for the appropriation of money.

A city charter defines a city government’s organization, powers, and responsibilities. It can be thought of as a city’s constitution. Changes to a charter can be made by revision or amendment.

The initiative is the power which the people reserve to themselves to propose laws. It is one of the most common forms of direct democracy. Citizen initiated laws bypass elected legislative and executive branch officials, but they are subject to judicial review, just as other laws.

When a legislative body refuses to act or change current policy, initiatives allow citizens to take part in the policy process and end the impasse. In Michigan, these powers are granted on the state level and to many cities. It is a process often used as a tool to address a single issue or policy matter. Residents also have the power to repeal legislation via the referendum.

Michigan’s Home Rule City Act provides cities with the ability to include the initiative in their charters. It does not place any limits on the initiative powers written into city charters, such as a prohibition to initiate laws with appropriations. Cities have the sole discretion to place those kinds of restrictions on citizens’ initiative powers.

Only ten of the 100 largest Michigan cities, including

Detroit, have charter provisions restricting citizen initiatives related to appropriations and/or the budget process. The state constitution does not prohibit citizens initiating laws with appropriations, but it does prohibit citizens from calling for referendums on laws that include appropriations.

Most states impose some form of subject restrictions on initiatives and referendums.⁵ In most cases the referenda cannot be invoked to challenge emergency legislation or laws designed to protect public peace. Budget bills and appropriations are also often exempted from the referenda.

States or cities might preclude the initiative or referendum for appropriations because of the potential governance challenges accompanying these methods of direct democracy.

One noteworthy challenge with the initiative is that it requires more of voters. An effective and useful initiative process requires voters to be more knowledgeable about a particular policy issue, as opposed to relying on their elected officials to weigh in on the issue, to make smart decisions at the ballot box.

Initiatives can fundamentally change legislation and the functions of government; thus the type of decisions voters make using the initiative process is critical. Initiatives can lead to bad policy if the proposed legislation is not well-informed and/or voters are not sufficiently knowledgeable on the measure before them. This can arise from voters being deceived by proponents/opponents of a measure before them or from them misunderstanding the proposed law.

Direct democracy can also open the door to special interests seeking favorable laws or funding for personal projects. Direct democracy is borne from ideas of grassroots involvement of everyday citizens, but any interest group can spearhead an initiative. Initiative processes may not always be a process by the people, but rather a process used by the wealthy and business elite.

Using the initiative and referendum for appropriations can bog down the operations of government. The processes are slow and cumbersome. Initiated appropriations divorce the item to be funded from the prioritization of all spending needs relative to the

funding expected to be available. A referendum on an enacted budget item brings implementation of that item to a halt until it can be voted on, creating the potential for departments or services to go for long periods without funding.

It is not clear how an initiated appropriation would fit into the existing budget process laid out in the city charter. An appropriation is the act of setting aside money for a specific purpose to be spent within a specific time frame, usually within a fiscal year. Section 8-205 of the charter provides that money is appropriated through the budget process. Detroit's normal appropriations process requires the mayor to submit to the city council a proposed annual budget for the next fiscal year based on revenue assumptions derived from economic projections, with the city council ultimately responsible for making appropriations to carry out the adopted budget.

Section 8-210 provides a second path for appropriations. It specifies that the budget can only be amended under specific circumstances that include 1) the mayor's identification of revenues in excess of those estimated in the budget or 2) to meet a public emergency affecting life, health, property or the public peace, upon request of the mayor. Proposal S does not amend Article 8 to provide a process for appropriations external to the budget process.

The timing of an initiated ordinance with appropriations is another question. The Michigan Election Law (Act 116 of 1954) requires state and municipal elections to be held on one of three regular election dates which include the first Tuesday after the first Monday in May, August, or November. Progress toward adopting or implementing the city budget -- and therefore evaluating appropriations relative to available revenues -- will be different at each of these election dates.

The budget process -- a prioritization of appropriations on public services -- is a fundamental task of government where representatives are elected to handle the business of government. The budget process requires the executive and legislative branches of government to work together to make financial decisions based on the priorities and needs of the citizenry and the means of government. Proposal S usurps the power of city council as the legislative

branch possessing the power of the purse. It is not clear how a voter-initiated appropriation would be prioritized relative to those made through the budget process or what recourse the mayor or city council would have if a voter-initiated appropriation would create financial instability.

The charter does allow for voter-initiated city ordinances to be repealed or amended, but only after the ordinance has been in effect for a year. This means the city would have to wait a full year to repeal or amend an ordinance adopted by voters that appropriates money if they find the appropriation not feasible to the workings of government. The mayor has line-item veto power for all monetary appropriations⁶ but the mayor would not be able to take action against a voter-initiated ordinance.

The inception of the initiative and referendum was never offered as a replacement of representative democracy. They were tools designed to supplement democratic government by allowing voters an opportunity to participate in the policymaking arena when legislative bodies are unwilling or unable to address issues of great concern to the public. For many years, Detroiters have grown frustrated over issues they felt their local government has not adequately addressed or prioritized. Whether it be transportation services, a reparations program, housing policies, or neighborhood development, there is a long legacy of cynicism that exists in Detroit as it relates to local government not acting on behalf of the citizenry.

Our democratic system of government ensures that checks and balances keep the workings of government fair and balanced. The initiative process provides citizens with the ability to add an additional check on government when they feel as though their interests are not being represented properly. On the other hand, there is no requirement for those who enacted an initiative to consider the views of those who may disagree with them.

The accommodation of legitimate but differing needs is a fundamental part of the legislative process that can be lost in an initiative process. This is true of a voter-initiated ordinance for the appropriation of money. Such an ordinance does not look at the totality of needs and priorities of a city. Instead, it prioritizes the appropriation and the policy issue tied to the money

above other matters facing a city. Nevertheless, it empowers voters with the ability to take action on an issue that they feel has been ignored or not fully addressed through the normal channels of government. This could have an effect of increasing civic engagement and political involvement.

Analysis

Proposal S would amend Section 12-101 of the charter, granting voters the power to enact ordinances for the appropriation of money. It does not extend initiative powers to the budget. If the charter is clear about appropriations being a part of the budget process, along with the specificity provided about amending appropriations, does that conflict with the citizenry's power to enact ordinances with appropriations?

While the amended language provides the power to enact voter-initiated appropriations, it does not provide a process. Initiated charter provisions do not supersede other charter provisions unless specifically addressed in the amendment, so it is not clear how this power fits with the existing processes.

Proposal S would divorce appropriations from the analysis of available funds. What happens if a voter-initiated appropriation cannot be supported with current revenue? What process would be used to determine what other program gets reduced to make room for the new spending? It has the potential to cause deficit spending or force reprioritization of spending. Certain departments or programs may not be funded adequately as a result. With the initiative process only having the capacity to deal with single issues, the proposal would put one issue as the major appropriations priority over the long list of appropriations the city has planned to implement. Allowing voters to enact ordinances for the appropriation of money may put the city in a precarious situation if the ordinance requires the city to appropriate money it does not have. The issue of which appropriation ordinance must be prioritized above others would be a question that needs to be answered if this proposal were to pass.

In addition, the city is unable to fall into a deficit under the terms of the bankruptcy agreement. If the city falls into a deficit, a waiver from the Financial Review Commission might not be issued and the city would

risk falling back into state oversight.

However, providing voters with the ability to enact an initiative for the appropriation of money would empower the citizenry to prioritize their government's agenda on issues they find to be of most importance. It is possible that voters taking the time to draft a petition, gather signatures, and go through the process of placing an initiative on the ballot that deals with appropriating money to a specific cause could lead to higher voter participation.

Proposal S raises many questions related to legal processes provided in the city charter, as well as the role citizens play in a representative democracy. Providing voters with the ability to enact ordinances for the appropriation of money creates a danger in the efficacy of governance as it places budget decision-making outside the budget process. However, most of Michigan's largest cities do not have a ban on initiated appropriations indicating a sense of value to citizens being able to enact ordinances for the appropriation of money. This is because the initiative

Endnotes

process provides voters with a means to “check” unresponsive local governments. This highlights one of the main advantages of direct democracy.

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