

Lawsuit challenges Utah lawmakers' decision to replace medical marijuana ballot initiative

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By Ben Winslow

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SALT LAKE CITY -- The medical marijuana advocacy group Together For Responsible Use and Cannabis Education is suing Gov. Gary Herbert and Dr. Joseph Miner, the executive director of Utah's Department of Health, over the new law replacing Proposition 2.

The lawsuit was filed late Wednesday in Salt Lake City's 3rd District Court. TRUCE founder Christine Stenquist and the Epilepsy Association of Utah's Doug Rice are the plaintiffs. It seeks to declare the legislature's replacement for Prop. 2 unconstitutional.

"Anything that defeats the right of the people to pass their own legislation under our constitution should be declared unconstitutional. Otherwise it's totally illusory," TRUCE attorney Rocky Anderson said in an interview with FOX 13 on Wednesday.

The lawsuit focuses on the legislature's decision to upend what voters approved last month and Gov. Herbert's decision to sign it into law. But Anderson said it also raises concerns about The Church of Jesus Christ of Latter-day Saints' involvement in talks to replace Prop. 2.

Anderson argued the LDS Church's involvement violates a portion of the state constitution.



"It prohibits the control of the state or interference in the functions of government by any church and that is exactly what we have seen here," he said.

TRUCE and the Epilepsy Association of Utah plan to seek an injunction against the state, prohibiting them from moving forward with enacting the new medical cannabis law. Instead, Anderson said, they are requesting the courts force the state to revert back to Prop. 2.

"Proposition 2 will be in place and the replacement bill, House Bill 3001, will be declared unconstitutional," he told FOX 13.

Gov. Herbert's office had no comment on the lawsuit.

TRUCE isn't the only group filing a legal challenge to the legislature's actions. A newly formed group called "The People's Right" is seeking plaintiffs for an emergency writ to the Utah Supreme Court to get a new referendum. Steve Maxfield said he would like to get a question before voters on HB3001.



The Lt. Governor's Office has so far rejected Maxfield's request for a voter-referred question, noting that with a two-thirds majority passing HB3001, it can't be done under the law. Maxfield is undeterred and asked for potential plaintiffs to join him on Monday at the Matheson Courthouse to file the writ.

"The legislature does the people's business. Anytime the people decide no more, it's the people's right to say, 'Hey, not now,'" he said Wednesday.

Paul Cassell, a former federal judge and a law professor at the University of Utah's S.J. Quinney College of Law, said he believed both legal actions are long shots.

"They don't have a very good case under current law. While the voters have a right to enact a law, the legislature has the right to change it," he said.



Utah law does give the legislature the ability to modify or replace a voter-approved initiative.

"Whether it's a democratically sound approach, I suppose it's something people can debate," Cassell said.

But the courts have historically been pretty friendly to voter-approved initiatives. Anderson said there is prior case law siding with voters on citizen referendums that he was counting on to advance TRUCE's case.

"If there is any meaning in our Constitution as to the people's right through direct democracy to pass initiatives and hence legislation, it's got to mean way more than the bill is there one day and defeated by the legislature two days later," he said.