How should the state tax its citizens? Should the recreational use of marijuana be legal? Does the state need to do more to protect consumers from payday lenders? These are among the policy questions that will be decided this fall not by legislatures, but by the voters themselves. In all, ballot measures of some kind are a part of this year’s elections in six Midwestern states.

CSG Midwest recently interviewed legislators and others about these measures, and what’s at stake. Here is an overview of some of the measures to be decided on in Illinois, Michigan, Nebraska, North Dakota and South Dakota.

**Illinois: Flat tax or graduated income tax?**

A single issue is dominating political ads and elections in Illinois this year: the high-profile, big-money fight over whether to switch from a flat tax to a graduated income tax. This big shift in tax policy requires voter approval because of language in Illinois’ 50-year-old Constitution that constrains the taxation options of the legislature. It says that any income tax “shall be at a non-graduated rate,” and that any tax on corporations “shall not exceed the rate imposed on individuals by more than a ratio of 8 to 5.”

This November, the General Assembly is asking voters, via a legislatively referred constitutional amendment, for more flexibility. It also has already passed a bill to implement a graduated income tax starting in January if voters approve the constitutional change.

“Being a member of the General Assembly or the governor is not going to be fun in 2021,” says Ken Redfield, emeritus professor of political science at the University of Illinois-Springfield, noting the state’s immense fiscal challenges. “It could be an unbelievable horror show if there is no federal stimulus and the graduated income tax goes down to defeat.

“Then everything goes back on the table.”

For opponents of the ballot measure, he adds, one of the recurring talking points up to Election Day will be this: “Can you trust these guys?” Proponents argue that the graduated income tax will create a fairer system, and that the plan ready for implementation would actually provide tax relief for 97 percent of Illinois taxpayers.

Gov. J.B. Pritzker has put $50 million of his own money into supporting the “fair tax” proposal.

**Michigan: Expand privacy protections in Constitution**

A ballot measure in Michigan aims to add a few words to the state’s Constitution to address the potential privacy implications of law enforcement’s use of increasingly sophisticated technologies.
“Rather than try to adjudicate every new technology, and rely on it being taken to the U.S. Supreme Court — which can take years or decades — we thought it would be much better to require a warrant in all cases,” says Michigan Sen. Jim Runestad, who led efforts to get the bill on the ballot as a legislatively referred initiative.

The language would add the words “electronic data” and “electronic communications” to a section of the state Constitution securing a person’s “houses, papers and possessions” from unreasonable searches and seizures.

Runestad has been working on the proposed constitutional amendment for multiple sessions. In years past, he says, securing legislative passage was an “uphill battle” because of the concerns of Michigan law enforcement. But Runestad relied on the experience of another state to alleviate those concerns. In 2014, voters in Missouri amended their state Constitution to add privacy protections related to electronic technologies. Runestad reached out to sheriff’s associations, chiefs of police, attorneys general and prosecutors in Missouri to measure the impact of the constitutional amendment on their work.

“All of them said there was no problem, there was no issue,” he says. This year, the measure easily passed both of Michigan’s legislative chambers.

**North Dakota: Change how Constitution can be amended?**

North Dakota is one of five states in the Midwest that gives voters broad, direct powers to change their state’s Constitution. That process, North Dakota Senate President Pro Tempore David Hogue says, has caught the attention of individuals and interest groups from outside the state.

“They know what it takes to get our Constitution changed, what it costs to get the signatures and get the media buys to launch a campaign,” Hogue says. “It’s really quite reasonable for them. For $500,000 or a million bucks, you can do it.”

According to Hogue, the result has been multiple proposals to amend North Dakota’s Constitution, with all or most of the money for these campaigns coming from outside the state. For example, this year, a measure that almost appeared on November ballots (it was taken off as the result of a state Supreme Court ruling this summer) sought to establish ranked-choice voting in North Dakota, among other provisions.

“It’s not a one-off problem,” Hogue says of the influence of outside money. “It’s systemic.”

In response, the North Dakota Legislative Assembly is asking voters to change the process. If a constitutional amendment is approved by voters, it would next have to go before the legislature. Lawmakers would then either approve or reject the proposal. Minus legislative approval, the proposal would then have to be approved a second time by voters before taking effect.

“It’s a collaboration between the people and the legislature,” says Hogue, who sponsored the legislatively referred constitutional amendment. “The legislature makes sure the proposal gets aired out, with public hearings and public testimony. You’re going to have both sides have the chance to weigh in, even if they don’t have the resources."

He jokingly refers to the proposal as the “Barbra Streisand-Robert Redford ‘The Way We Were Amendment’ “ because North Dakota’s Constitution once required this kind of legislative input.

**South Dakota: Legalize use of marijuana**

The future of South Dakota’s marijuana laws will be decided by the state’s voters this November.
Currently, South Dakota is one of six Midwestern states where both recreational and medical use of marijuana is illegal (see map). Four years ago, in neighboring North Dakota, voters chose to legalize medical marijuana. In Michigan, the use of medical and recreational marijuana has received voter approved over the past 12 years (medical in 2008, recreational in 2018.)

But proposals to legalize recreational marijuana also have sometimes been rejected by voters in recent years, in North Dakota and Ohio.

Two different proposals will appear on South Dakota ballots in November — one an initiated measure to legalize marijuana for medical purposes, the second a proposed constitutional amendment to legalize recreational and medical marijuana.

Nebraska: Cap rates imposed by payday lenders?

Four years ago, South Dakotans adopted a major change in the state’s consumer protection laws: They set a cap on annual interest rates for consumer loans at 36 percent. The payday lending industry was one target of that ballot measure, and this year, Nebraskans will vote on a similar change.

Nebraska Sen. Tony Vargas has worked on the issue since first joining the Legislature in 2017, and he helped get a bill passed two years ago (LB 194) that required payday lenders to provide more information to borrowers, accept prepayments of loans, and submit annual reports to the state. Missing from the final negotiated legislation, though, was the 36 percent limit on annual interest rates.

“We do everything we can in the Legislature,” Vargas says. “But sometimes we can’t do enough because of a lot of political forces. “Now voters are going to see the Cadillac version of that legislation on the ballot.”

Additional protections are needed, Vargas says, to keep parts of Nebraska’s population from falling into debt traps.

“This is affecting people of color and low-income people, and particularly single mothers,” he says. “That is a population that needs as much support as possible, and they tend to rely more on different public programs. At the same time, we have a consumer product that is profiting off of those who we are trying so hard to help.”