IN THE SUPREME COURT OF FLORIDA

FLORIDA DEPARTMENT OF HEALTH, OFFICE OF MEDICAL MARIJUANA USE, ET AL.,

Petitioner,

v.

FLORIGROWN, LLC, a Florida Limited Liability Company, and VOICE OF FREEDOM, INC., d/b/a FLORIGROWN,

Respondents.
_____/

Case No. SC19-1464
DCA Case No. 1D18-4471
L.T. Case No. 2017-CA-2549

SUPPLEMENTAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE AND FACTS

The following additional facts are pertinent to this supplemental briefing. In 2017, the Legislature established a medical marijuana treatment center ("MMTC") licensing scheme that requires applicants to meet specific requirements and undergo an extensive, comparative review of qualifications by the Department of Health (the "Department"). § 381.986(8), Fla. Stat. The scheme severely restricts the number of licenses based on patient population. § 381.986(8)(a)4.

The scheme also includes two closed classes of entities that are exempt from these requirements. These entities were either licensed "dispensing organizations" ("DOs") under the 2015 low-THC legislation or the rejected applicants for that program. § 381.986(8)(a)1.-2. The Department must issue licenses exclusively to these closed classes until they are completely exhausted. § 381.986(8)(a)1.-2. It must issue licenses to these classes without reviewing the entity's qualifications; the entities merely attest they will comply with statutory requirements. R. 2066-69.

The Department has meticulously complied with these directives. Not a single MMTC license has been issued to any entity that does not fall within the two closed classes since the Amendment[1] came into force in January 2017. R. 2109. The Department has refused to allow any entity other than those in the closed classes

[1] All references to the "Amendment" refer to article X, § 29, Fla. Const.

to even apply for a license.[2]

The Department characterizes section 381.986(8)(a) as including "grandfather provisions" [Supp. Br. 6, 7, 9]; but, in fact, only a fraction of the entities granted immediate licensure by these provisions were actually operating at the time they were licensed. R. 2066-67, 2070, 2073. None of the fifteen MMTC licenses issued from August 2017 through the present were issued to "grandfather in" existing operators.[3] After the Department doled out the MMTC licenses to the largely non-operating entities, numerous licensees immediately flipped their MMTC license for significant sums, some in excess of $50 million for the "paper" alone. R. 2135.

In attempting to justify the statutory give-away of MMTC licenses to the unsuccessful DO applicants, the Department claims these entities "were known to the Department," which "justified distinct treatment." Supp. Br. 8. But the record testimony is that these entities were simply given MMTC licenses without having to

[2] The Department cannot blame the temporary injunction for its refusal to proceed with implementation because the temporary injunction has been repeatedly stayed, and the Department has proceeded to issue MMTC licenses to the special classes as recently as April 2019. *See Louis Del Favero Orchids, Inc. v. Fla. Dep't. of Health*, 290 So. 3d 165 (Fla. 1st DCA 2020).

[3] *Compare* OMMU Weekly Update (Aug. 23, 2017), https://s27415.pcdn.co/wp-content/uploads/ommu_updates/2017/170727-ommu-update.pdf (listing existing operating dispensary organizations before implementation of (8)(a)2.a.), *with* OMMU Weekly Update (Sept. 6, 2017), https://s27415.pcdn.co/wp-content/uploads/ommu_updates/2017/170906-ommu-update.pdf (listing for the first time entities licensed under (8)(a)2.a.).

undergo any re-evaluation of their previously rejected qualifications to serve as a DO and without having to submit an MMTC application. R. 2066-67. Instead, as the Department's own representatives testified, these entities were merely required to tell the Department that they would comply with the statute, and the Department had no authority to not issue them a coveted MMTC license. R. 2854-58; 1122-23.

Following a two-day evidentiary hearing, the trial court found "there had been no testimony or other evidence to suggest [section 381.986(8)(a)1.-3.] bear a rational relationship to ensuring the supply of safe medical marijuana to qualifying patients." R. 1936. The trial court found that, rather than allowing the licensure of MMTCs to be based on an entity's qualifications, the statute required that the licensee be an entity the Department had determined years earlier was not the best choice to operate as a DO under the pre-Amendment limited program for low-THC marijuana. *Id.* The trial court further held that the provisions at issue are special laws granting a privilege to corporate entities in violation of the Florida Constitution. R. 1936-37.

On this record and facts, the Department asked both the First District Court of Appeal and this Court to decide the constitutionality of the provisions at issue.[4]

[4] The Department has made varying claims over the last three years about the number of licenses available to the closed classes and when they will be available to other entities. But the issue before this Court is not what the Department has said; the issue is what the Department has done. The record shows the Department has consistently enforced the provisions to the exclusion of all other provisions under which other entities could potentially receive a license. R. 2893-96.

SUMMARY OF THE ARGUMENT

Section 381.986(8)(a)1.-3.[5] is an unconstitutional special law because (1) it applies to a closed class of entities but was enacted under the guise of a general law, and (2) it grants a privilege to a group of private corporations.

This Court has repeatedly held that the controlling question in evaluating whether a law is an unconstitutional special law is whether the class in the law is "closed." Here, the classes are so clearly closed, the Legislature might as well have named the licensees in the statute. No reasonable possibility exists that other entities may be licensed under the exemptions afforded the closed class of existing licensees.

Section 381.986(8)(a)1.-3. is also an unconstitutional special law under article III, section 11(a)(12), of the Florida Constitution, which prohibits special laws pertaining to a "grant of privilege to a private corporation." The statute permits private corporations to be licensed as an MMTC without going through the extensive application process the statute imposes on other entities seeking a license. Both licensure without application and competitive advantage are "privileges" as defined by this Court.

[5] No licenses have been issued under the preference requirements in section 381.986(8)(a)3. However, because the preferences apply to licenses to be issued under the unconstitutional scheme in section 381.986(8)(a)2., the license provisions in section 381.986(8)(a)3. are likewise unconstitutional. For this reason, the arguments in the Louis Del Favero Orchids, Inc. amicus brief, are without merit.

Finally, section 381.986(8)(a)1.-3. is unconstitutional because the classes are arbitrary and do not bear a rational relationship to the primary purpose of the statute. The trial court made an express factual finding based on the Department's own concessions below that the statute was not rationally related to any purpose. This is because: Section 381.986(8) does not regulate the amount of marijuana that can be grown. The licensees can sell their licenses immediately upon receiving them. Some licensees are still not operating, thus eviscerating the argument that they were better situated than others to begin production and sale of medical marijuana. And some of the licensees were previously found to be unqualified. These provisions are irrational under any standard.

As explained in Section III of this Brief, despite the statutes' invalid provisions, this Court can fashion a remedy that provides both a fair process for registering MMTCs while ensuring that Florida patients continue to have safe and available access to the medical marijuana they need.

ARGUMENT

I. STANDARD OF REVIEW.

The ultimate legal question of whether a law is an unconstitutional special law is reviewed *de novo*. *St. Vincent's Med. Ctr., Inc. v. Mem'l Healthcare Grp., Inc*., 967 So. 2d 794, 799 (Fla. 2007). Whether a class is closed so as to make a law an unconstitutional special law must be determined using a "reasonable possibility"

standard—and this Court must review both factual and legal issues to make that determination. *Id*. at 801. Here, as in *St. Vincent's*, the trial judge held a two-day evidentiary hearing and made factual findings that (1) the classes at issue were closed, (2) the statutory provisions at issue granted special rights, benefits, and advantages to a closed class of entities, and (3) the restrictions in the statute bore no rational relationship to ensuring the supply of safe medical marijuana to qualifying patients. R. 1935-37. Those findings must be reviewed to determine whether they are supported by competent, substantial evidence. *St. Vincent's*, 967 So. 2d at 798.

II. SECTION 381.986(8)(a)1.-3. IS AN UNCONSTITUTIONAL SPECIAL LAW.

Special laws are not always unconstitutional. Instead, they are unconstitutional if they are a special law enacted under the guise of a general law,[6] or if they are otherwise prohibited under article III, section 11(a), of the Florida Constitution. Section 381.986(8)(a)1.-3. fits both bills.

The Department posits three reasons why section 381.986(8)(a)1.-3. is a general law: (1) it operates uniformly within permissible classifications; (2) the class remains "open" when section 381.986(8)(a) is read as a whole even though the individual classes created under the provisions at issue are closed; and (3) the statute

[6] Special laws are subject to procedural requirements that do not apply to general laws. These procedural requirements are set forth in art. III, § 10, of the Florida Constitution. It is undisputed that the Legislature did not publish a notice of intention to seek enactment of the provisions at issue.

has statewide impact and is rationally related to an important state function. The Department ignores that, of these three issues, the controlling question is whether the class is open or closed. If the class is closed, then the classification is arbitrary and impermissible. Here, as shown under Section II, A., the classes are unquestionably closed (even when the statute is read as a whole).

In addition, as shown under Section II, B., the law is an unconstitutional special law because it grants a privilege to corporations, which the Constitution prohibits.

Finally, as shown under Section II, C., the classifications are arbitrary and impermissible, and they are not rationally related to the statute's primary purpose—which is to provide safe and available medical marijuana to qualified Florida patients per the Amendment's mandates.

A. The Statute Is An Unconstitutional Special Law Enacted Under The Guise Of A General Law Because The Classes Are Closed.

In *Florida Department of Business and Professional Regulation v. Gulfstream Park Racing Association, Inc.*, 967 So. 2d 802 (Fla. 2007), this Court discussed its prior cases "to illustrate the application of the constitutional restrictions on the passage of special or local laws." *Id.* at 807. This Court noted that its ruling in each case turned on whether the class created by the statute was open or closed. *Id.* at 807-08 ("a statutory classification scheme incapable of generic application to members of a class, and fixed so as to preclude additional parties from satisfying the

requirements for inclusion within the statutory classification at some future point in time, indicates an arbitrary classification scheme" (quoting *Dep't of Bus. Reg. v. Classic Mile, Inc.*, 541 So. 2d 1155 (Fla. 1989)); *Dep't of Legal Affairs v. Sanford–Orlando Kennel Club, Inc.*, 434 So. 2d 879, 882 (Fla. 1983) ("[t]he controlling point is that even though this class did in fact apply to only one track, it is open and has the potential of applying to other tracks"; "[t]he fact that matters is that the classification is potentially open to other tracks"). As this Court held in both *Gulfstream* and *Classic Mile*, the very fact a class is closed establishes the law creates an arbitrary classification scheme.

More recently in *License Acquisitions v. Debary Real Estate Holdings, LLC*, 155 So. 3d 1137 (Fla. 2015), this Court recognized that statutes that employ arbitrary classification schemes are not valid as general laws and then acknowledged "[a] statute is invalid if 'the descriptive technique is employed merely for identification rather than classification.'" *Id.* at 1143 (quoting *Classic Mile*, 541 So. 2d at 1159). "Ultimately, the criterion that determines if a reasonable relationship exists between the classification adopted and the purpose of the statute is whether the classification is potentially open to additional parties." *Id.* (citing *Classic Mile*, 541 So. 2d at 1158-59) (emphasis added).

R.J. Reynolds Tobacco Co. v. Hall, 67 So. 3d 1084 (Fla. 1st DCA 2011), which the Department hails as supporting its position, instead crystallizes that the

test to determine whether a statute is a special law is whether the class is open. The First District agreed that the "controlling point" was whether the statute had the potential to apply to other entities in the future. *Id.* at 1091-92 (quoting *Gulfstream*, 912 So. 2d at 621-22 ("The critical question is not one of legislative intent; rather, it is whether the class regulated by the statute is open. . . . [T]he proper standard is whether there is a reasonable possibility that the class will include others.")).

Here, no "reasonably possibility" exists that the class created by section 381.986(8)(a)1.-3. will include others. Section 381.986(8)(a)1.-3. creates a class of private entities that obtained a license without going through the more stringent post-Amendment license application process set forth in section 381.986(8)(b) and without regard to the number of qualified patients in the medical marijuana use registry. There is no possibility, much less "reasonable possibility," that other entities may be licensed without applying and qualifying under the additional requirements in section 381.986(8)(b) from which the existing licensees are exempt.

The Department argues that section 381.986(8)(a) is not unconstitutional because other entities have a reasonable possibility of obtaining an MMTC license in the future under section 381.986(8)(a)4., so the class is open. The Department misses the point because it incorrectly defines the class created by section 381.986(8)(a)1.-3. *St. Vincent's*, 967 So. 2d at 796, illustrates this point.

St. Vincent's holds that, when a statute creates a licensure exemption which only applies to one class of potential licensees, the statute is a special law. *Id.* at 801-02. In *St. Vincent's*, a statute created an exemption from a certificate of need ("CON") requirement for any adult open-heart surgery program meeting the statute's criteria. *Id.* at 796-97. Other hospitals challenged the statute, alleging it was a special law designed to benefit St. Vincent's, which was the only hospital that could qualify for the exemption. *Id.* at 797. This Court held the statute was an unconstitutional special law because no reasonable possibility existed that any other hospital could meet the exemption's requirements. *Id.* at 796, 802. Obviously, other hospitals could potentially obtain a CON for an adult open-heart surgery program if they met the other requirements—but this Court nevertheless ruled the law was a special law because the exemption only benefited one hospital. *Id.*

Like the statute in *St. Vincent's*, the statute here provides exemptions to a closed class of entities. It allows that closed class—and only that closed class—to obtain a license without going through the stringent license application process set forth in 381.986(8)(b) and without regard to the number of qualified patients in the medical marijuana use registry. Only entities that previously applied for a DO license are eligible, and even then, only if they (1) had the license as of July 1, 2017; (2) had one or more administrative or judicial challenges pending as of January 1, 2017; or (3) had a final ranking within one point of the highest final ranking in its

region. § 381.986(8)(a)1.-2. The statute could easily have just listed the entities eligible for the application exemption by name. Clearly, the "descriptive technique" employed in the statute is "merely for identification." *Debary*, 155 So. 3d at 1143.

This class is not open now, and it was not open when the statute was enacted in July 2017, which was long after entities had been ranked as DO applicants under the former version of the statute for a different, more limited medical marijuana program. None other but these entities can become an MMTC without going through a competitive application process. This is not an issue of reasonable possibility—it was and is an issue of impossibility. Because the class created by the statute is closed, the statute is an unconstitutional special law enacted under the guise of a general law.

B. The Statute Is An Unconstitutional Special Law Because It Grants A Privilege To Private Corporations.

In addition to section 381.986(8)(a)1.-3 being an unconstitutional special law enacted under the guise of a general law because the classes are closed, it is also an unconstitutional special law under article III, section 11(a)(12), of the Florida Constitution, which prohibits special laws pertaining to a "grant of privilege to a private corporation." The statute permits specific private corporations to be licensed as an MMTC without going through the extensive application process the statute imposes on other entities seeking a license.

The entities licensed under the statute gained a competitive advantage over entities that are required to go through the application process, none of which have yet received a license because an application process has inexplicably not even been initiated—despite it being three years since the Amendment became effective. Without question, both licensure without application and competitive advantage are privileges, as this Court has defined that term.

In *Lawnwood Medical Center, Inc. v. Seeger*, 990 So. 2d 503 (Fla. 2008), this Court considered whether the privilege prohibited by section 11(a)(12) is "economic favoritism over other entities similarly situated" or whether "'privilege' encompasses more than a financial benefit." *Id.* at 510. This Court held that "a broad reading of the term 'privilege' as used in article III, section 11(a)(12)" was required, not "limiting the term to any particular type of benefit or advantage." *Id.* at 512. More recently, in *Venice HMA, LLC v. Sarasota County*, 228 So. 3d 76, 81 (Fla. 2017), this Court described privilege more simply, stating "in common parlance, a privilege is having something that others do not have."

The entities that were licensed under section 381.986(8)(a)1.-3. had and have benefits and advantages that Florigrown and other entities seeking licensure as MMTCs do not have. Obtaining a license without going through the application process is a benefit, as is the competitive advantage given to those licensees through the grant of those licenses without consideration of other applicants who may be

more qualified. Giving away licenses to a closed class of entities to the exclusion of other entities provides a privilege to the private entities licensed under its terms. It is unconstitutional.

C. Rational Relationship To A Legitimate State Interest Is Not The Appropriate Test, And, In Any Event, The Statute Is Not Rationally Related To The Statute's Chief Purpose.

The Department argues that the statute at issue in *R.J. Reynolds* was found to be a general law because the statutory bond limitation it created for *Engle*-progeny cases and five entities that signed a settlement agreement was rationally related to a legitimate government interest (the state's revenue stream under the agreement). It argues that, because the statute here is rationally related to a government interest, it is not a special law. But, that is not the test, and it is not the reason the First District found the statute in that case to be a general law. As stated above, the "controlling point" is whether the statute had the potential to apply to other facilities in the future—because if the class is closed, the statute is arbitrary as a matter of law and, therefore, unconstitutional. *R.J. Reynolds*, 67 So. 3d at 1091-92; *see also Gulfstream*, 912 So. 2d at 621-22.

If, as the Department urges, the test was merely whether a statute was rationally related to a legitimate state function, this Court would have found almost every statute it has ever reviewed to be a constitutional general law. For example, regulation of pari-mutuel betting is unquestionably a legitimate function of the state.

See Sanford–Orlando Kennel Club, Inc., 434 So. 2d at 881 ("[T]he State of Florida has a legitimate pecuniary interest in racing . . . [and] because of the nature of the enterprise, authorized gambling, this state may exercise greater control and use the police power in a more arbitrary manner."). Yet, this Court has struck down several attempts by the Legislature to regulate pari-mutuel betting because the statutes were special laws due to the class being closed. *See, e.g.*, *Gulfstream*, 967 So. 2d at 803; *Classic Mile*, 541 So. 2d at 1156.

The Department's reliance on *Schrader v. Florida Keys Aqueduct Authority*, 840 So. 2d 1050 (Fla. 2003) and *City of Coral Gables v. Crandon*, 25 So. 2d 1 (Fla. 1946), is equally misplaced. *Schrader* simply addressed whether classifications could be geographically limited and still be a general law. 840 So. 2d at 1055. This Court emphasized that, if a law uses a classification that is geographical in its terms but the purpose of the statute is one of statewide impact and treats all local governments in that area the same, then the law is a valid general law. *Id.* at 1056-57. The statute in *Schrader* was constitutional because every affected entity in the geographical class was treated the same.

This Court held in *Crandon* that acts based on population as a classification are unconstitutional special laws where, "by their very terms they were tailor made to fit some particular county or subject, and no other county or subject could be reasonably expected to be governed by them." 25 So. 2d at 2. This Court found the

law in *Crandon* to be a valid general law because, even though Dade County was the only county impacted, it "certainly would not be contended that the act was not potentially applicable to other counties in the state." *Id.* Thus, the class in *Crandon* could extend to other counties in the future and was not closed. *See id.* at 2-3.

But even when discussing whether a law is "rationally related" in the special law context, this Court does not, as the Department urges, merely analyze whether the law is rationally related to a legitimate state purpose. This Court analyzes whether a rational relationship exists between the factors used to establish the class and the primary or chief purpose of the statute. *Classic Mile*, 541 So. 2d at 1158 (class distinguishing between counties based on whether the counties had previously been issued racing permits did not bear a reasonable relationship to the purpose of the statute). If the factors determining the class are not based on legitimate, material differences among all potential licensees but instead simply employ a descriptive technique, then the class is arbitrary and does not bear a reasonable relationship to the purpose of the statute. *Id.* at 1158-59.

Regardless of the test, as the trial court found, the provisions of the statute at issue in this case are not rationally related to anything. Section 381.986(8) does not regulate the amount of marijuana that can be grown. An MMTC can grow one plant or millions, so the number of licenses has no relationship at all, much less rational, to the amount of medical marijuana available. R. 2836-37. The licensees can sell

their licenses immediately upon receiving them [§ 381.986(8)(e)] and some licensees are still not operating, thus eviscerating any argument that the licensees were better situated than others to begin production and sale of medical marijuana. Also, one of the criteria in section 381.986(8)(a)2. is that licenses are to be issued to entities previously found unqualified and they simply have to have a lawsuit pending against the Department. In addition, entities to be licensed under section 381.986(8)(a)4. must submit to a stringent competitive application process (assuming one is ever developed)—but the prior DO applicants are immediately "waived in" without regard to the grounds as to why they were originally disqualified. § 381.986(8)(a)2. These provisions are unreasonable under any standard.

The Department ignores these findings and the record, attempting after-the-fact to create justifications for the statute's discriminatory licensing provisions. In doing so, the Department fails to address the trial court's evidentiary finding that the provisions at issue do not "bear a rational relationship to ensuring the supply of safe medical marijuana to qualifying patients." R. 1936. It also fails to address the Department's concession below that it did nothing to evaluate the qualifications of these entities before awarding them coveted MMTC licenses, despite the fact the Department rejected their applications the last time it evaluated them. R. 2856-58. Its argument here is inconsistent with its own record admissions.

The fact is, the Department asked both the First District and this Court to rule on the merits of the issue, on the existing record—knowing that detrimental factual findings and admissions were in the record. A court may reach the ultimate merits in a temporary injunction case where, as here, the trial court has held an evidentiary hearing and the parties request the court to rule on the merits of the claim. *Silver Rose Entm't, Inc. v. Clay Cty.,* 646 So. 2d 246, 248 (Fla. 1st DCA 1994). But the Department cannot recreate a new factual record on appeal.

III. THE REMEDY

The unconstitutional licensing provisions completely block Florigrown and other entities from having fair access to the MMTC licensing process. This does not mean that all of section 381.986 is invalid. This Court can sever the invalid provisions to uphold the constitutionality of the rest of section 381.986. *See Lawnwood*, 990 So. 2d at 518. The Legislature recognized that its licensing provisions might be unconstitutional—enacting a severance provision. § 381.986(8)(a) ("If this subparagraph or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end, the provisions of this subparagraph are severable.").

Here, if the existing licenses are declared invalid because the licensing provisions are invalid, then Floridians would be harmed by not having available

access to the medical marijuana they need while new licenses are issued under a constitutional process (even if the supply is limited and priced extraordinarily high due to the cartel created by the statute). To avoid this harm, this Court can devise a remedy such as that in *Martinez v. Scanlon*, 582 So. 2d 1167 (Fla. 1991). In *Martinez*, this Court held that the Court has the authority to grant prospective relief where, as here, a statute is unconstitutional as to substance but the legislature had the power to enact it and retroactive application of invalidation of the statute would impose a hardship on Floridians. *Id.* at 1175-76.

As shown above, the entities licensed under the unconstitutional provisions received privileges others do not have—they were first in line to receive their licenses and they were allowed to attest that they could meet the statutory requirements rather than go through a competitive licensing process. Florigrown was the first in line to request to be registered by the Department under the Amendment, and, just as the existing licensees have done, it has pledged to meet all of the stringent statutory provisions for licensure. R. 1769.

Accordingly, this Court can direct in this injunction context, as the trial court did, that the Department allow Florigrown and other similarly situated entities to register for licensure approval. Such direction does not mean that Florigrown or other entities could immediately begin operations. As the trial court found, the Department already has a process in place to be used after registration under which

Florigrown and other entities would still have to show they meet all of the many stringent requirements that are not at issue in this case before they can receive authorization (or licensure) to touch any marijuana at all.[7] These are the same requirements that the current licensees must meet after they receive their licenses—and this is a reason some current license holders are still not operating, *i.e.,* they have yet to establish the criteria for authorization to proceed—even though they attested they could do so. *See* R. 2066-67.

If this Court is concerned regarding the number of entities that might register to operate as MMTCs, that concern would be ameliorated by the market itself as well as the stringent requirements that must be met before cultivation could begin, including the immediate posting of a $5 million bond or letter of credit payable to the Department. *See* § 381.986(8)(b)7.a.-b. After all, why are these "attest-and-go" licenses currently worth over $50 million? And, why have they been called "Super

[7] Subsequent to registration, a prospective MMTC must meet requirements governing growth, inspections, processing, testing, packaging, delivery, dispensing, security, off-site storage facilities, lighting, tracking, number of employees that have to be on the premises at all times, photo identification, transportation, and training. Then, before it can touch any marijuana at all, an MMTC must be inspected and approved to cultivate by the Department. Thereafter, the MMTC cannot commence processing any marijuana until the Department inspects again and grants processing authorization. Finally, before making any marijuana available to patients, the MMTC would have to be inspected again to obtain dispensing authorization and complete the licensing process with the Department. Failure to comply with the Department's requirements subjects a prospective MMTC and its employees to potential criminal prosecution as well as significant other penalties. *See* Florigrown's Resp. Ans. Br. at 47 n.20 and authorities cited therein.

Licenses"?[8] Obviously it is because of the oligopoly the few licensees hold over the entire market. Allowing registration as envisioned by the Amendment and set forth herein would ensure Florida patients can get the medical marijuana they need at reasonable prices from a free, well-regulated market—thus making medical marijuana safe and available, as the Amendment dictates.

CONCLUSION

This Court should hold that Florigrown has not only shown a substantial likelihood of success on the merits of the issue of vertical integration and caps but also on the issue of whether the statutory provisions constitute unconstitutional special laws. This Court should provide the relief set forth above in Section III, the Remedy section of this Brief, allowing Florigrown and other qualified entities to register with the Department and attest that they meet the statutory requirements, which registration is to be followed by the rigorous authorization to operate requirements.

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[8] *See, e.g.*, *Cannafornia Strikes Deal for Fla. Super License, Has Opportunity to Become One of 22 Fla. Licensees*, Cision (June 16, 2020), https://www.prweb.com/releases/cannafornia_strikes_deal_for_florida_super_license_has_opportunity_to_become_one_of_22_florida_licensees/prweb16837181.htm; *Harvest Health & Recreation, Inc. Acquires San Felasco Nurseries, Inc. with Cannabis Super License in Florida Allowing Up to 25 Dispensaries*, Bus. Wire (Nov. 21, 2018), https://www.businesswire.com/news/home/20181121005386/en/Harvest-Health-Recreation-Acquires-San-Felasco-Nurseries.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of June 2020 a true and correct copy of the foregoing has been electronically uploaded to the Supreme Court of Florida's e-Portal and was furnished by E-Mail to all parties listed below.

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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the font used in this brief is the Times New Roman 14-point font and that the brief complies with the font requirements of Rule 9.210(a)(2).

/s/ Katherine E. Giddings
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