

IN THE SUPREME COURT OF FLORIDA

FLORIDA DEPARTMENT OF HEALTH,
OFFICE OF MEDICAL MARIJUANA USE,
et al,

Petitioners,

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

v.

FLORIGROWN, LLC, a Florida limited
Liability company and VOICE OF
FREEDOM, INC., d/b/a Florigrown,

Respondents.

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**MOTION FOR LEAVE OF COURT TO FILE AMICUS CURIAE BRIEF IN
SUPPORT OF PETITIONERS**

Pursuant to Florida Rule of Appellate Procedure 9.370, DFMMJ Investments, LLC d/b/a Liberty Health Sciences, Acreage Florida, Inc., Perkins Nursery, Inc., San Felasco Nurseries, Inc. d/b/a Harvest, Mount Dora Farms, LLC, Better-Gro Companies, LLC, d/b/a Columbia Care Florida, and Dewar Nurseries, Inc. (collectively “Amici”) by and through the undersigned counsel, seek leave of court to appear as amici curiae to file a single brief in support of Petitioners, and in support thereof state as follows:

Interest of the Amici Curiae

1. The Amici are medical marijuana treatment centers (“MMTCs”) licensed pursuant to section 381.986, Florida Statutes. The Amici obtained their respective MMTC licenses in reliance on section 381.986’s requirement that MMTCs

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must be vertically integrated, *i.e.* they must cultivate, process, and dispense medical marijuana. The Amici have invested millions of dollars into their existing facilities in order to comply with the vertical integration requirement. The Amici made these investments, and continue to make substantial capital investments, to ensure they have the facilities and infrastructure necessary to cultivate, process, and dispense medical marijuana to qualified patients.

2. As operators in a highly regulated industry, it is essential that the Amici have a stable and robust regulatory framework to guide their operations. In 2013, the United States Justice Department issued a memorandum that offered guidance to federal prosecutors concerning marijuana enforcement under federal law. That memo, known as the “Cole Memo”, explained that “[i]n jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten...federal priorities....” *Cole Memo* at 3 (2013).¹ The Cole Memo was rescinded in 2018 by then-Attorney General Sessions and replaced with a policy that allows individual United States attorneys to weigh all relevant considerations when deciding whether to prosecute marijuana activities.² In

¹ Available at:

<https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

² Available at: <https://www.justice.gov/opa/press-release/file/1022196/download>

light of the uncertainty created by this change in federal policy, a strong and effective regulatory system is now more important than ever.

3. The First District Court of Appeal's July 9, 2019, decision concluded that section 381.986's vertical integration requirement "directly conflicts with the constitutional amendment and, [Respondent] has demonstrated a substantial likelihood of success in procuring a judgment declaring [the vertical integration requirement] unconstitutional." *Fla. Dep't of Health v. Florigrown*, 44 Fla. L. Weekly D1744, 2019 WL 2943329, at 3 (Fla. 1st DCA July 9, 2019). As recognized by Judge Wetherell in his opinion dissenting in part, the panel decision "will effectively mandate an immediate change in the entire structure of the medical marijuana industry in Florida." *Id.* at 6. Further, it will "create a regulatory vacuum that will need to be immediately filled by an entirely new regulatory scheme in order to avoid an unregulated marketplace for medical marijuana." *Id.* at n.4.

4. The Amici have an interest in protecting their vertically integrated operations and Florida's vertically integrated medical marijuana market, both of which are now in question.

5. The Amici also have an interest in ensuring that Florida has a robust regulatory framework that strictly regulates the cultivation, processing, and dispensing of medical marijuana. The panel decision has created a regulatory void that places the Amici and their operations in a legal grey area.

Issue to be Addressed

6. If granted leave to file its brief, the Amici will provide information regarding the importance of a vertically integrated supply chain in an emerging medical marijuana market that involves dispensing a schedule I controlled substance to vulnerable patients. The Amici will also address the temporary injunction's impact on Florida's medical marijuana program and why the public interest is not served by the temporary injunction.

How the Amici Can Assist the Court

7. The purpose of an amicus brief is "to assist the court in resolving cases of general public interest or aid in resolving difficult issues that have an impact beyond the parties to the litigation." *Liberty Counsel v. Florida Bar Bd. of Governors*, 12 So. 3d 183, 186 n.9 (Fla. 2009).

8. There is no question this case has an impact beyond the parties and is of general public interest. The Court's decision will determine whether existing MMTCs and Florida's medical marijuana program can continue operating unchanged for the pendency of the underlying case. If the temporary injunction is affirmed, existing MMTCs will be faced with significant uncertainties as to which provisions of section 381.986 are applicable and which are not. This legal grey area will, undoubtedly, impact the distribution of medical marijuana to qualified patients. Thus, this case will have an impact on existing MTMCs and Florida's qualified patients.

9. The Amici can assist the Court by providing the industry's perspective on the importance of a vertically integrated medical marijuana program and how uncertainty flowing from the temporary injunction will impact the industry and qualified patients. This information will assist the Court in determining whether the temporary injunction is in the public interest and the temporary injunction's impact on the status quo.

Certificate of Consultation with Counsel for the Parties

10. The undersigned has conferred with counsel for the Petitioners regarding this motion and counsel for the Petitioners has advised that Petitioners do not object to this motion. The undersigned has conferred with counsel for the Respondents regarding this motion and counsel for the Respondents has advised that Respondents do not object to this motion, provided that the amicus brief is timely filed. The undersigned has conferred with counsel for the Florida House of Representatives regarding this motion and counsel for the Florida House of Representatives has advised that they do not object to this motion.

WHEREFORE, the Amici respectfully request that the Court grant their motion for leave of court to file an amicus curiae brief in support of the Petitioners.

RESPECTFULLY SUBMITTED on this 16th day of December 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Leave of Court to File Amicus Curiae Brief in Support of Petitioners has been provided to the following via electronic mail this 16th day of December 2019:

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