SC19-2116

IN THE SUPREME COURT OF FLORIDA

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: ADULT USE OF MARIJUANA

INITIAL BRIEF OF DRUG FREE AMERICA FOUNDATION, FLORIDA COALITION ALLIANCE, NATIONAL FAMILIES IN ACTION, AND SMART APPROACHES TO MARIJUANA, IN OPPOSITION TO THE INITIATIVE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Florida Cases **Page(s)**

Federal Cases **Page(s)**

Federal Constitutional Provisions **Page(s)**

Florida Constitutional Provisions **Page(s)**

Federal Statutes **Page(s)**

Florida Statutes **Page(s)**

Regulations **Page(s)**

IDENTITIES OF OPPONENTS

The following interested parties submit this brief in opposition to the initiative petition entitled "Adult Use of Marijuana" (the "Proposed Amendment").

The Drug Free America Foundation, Inc. ("DFAF") is a drug prevention and policy organization committed to developing strategies that prevent drug use and promote sustained recovery. DFAF is a Non-Governmental Organization (NGO) in Special Consultative Status with the Economic and Social Council of the United Nations.[1]

The Florida Coalition Alliance, Inc. (the "Alliance"), is a representative agency of Florida coalitions that collectively engage with stakeholders regarding drug prevention issues on a statewide basis, as well as assist communities as they reduce substance abuse and its' related problems by providing access to training and other resources to assist the prevention effort.[2]

National Families in Action ("NFIA") is a nonprofit organization that has worked across the country to help parents enact state laws preventing the marketing

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[1] *See* The Drug Free America Foundation, Inc., *About Us*, https://www.dfaf.org/about-us/, (last visited January 6, 2020).

[2] *See* Florida Coalition Alliance, Inc., *Membership*, https://www.floridacoalitionalliance.org/membership.html, (last visited January 6, 2020).

of drugs and drug use to children and forming parent groups to protect children's health.[3]

Smart Approaches to Marijuana, Inc. ("SAM") is a bipartisan alliance of organizations and individuals (including medical doctors, lawmakers, treatment providers, preventionists, teachers, law enforcement officers, and others) dedicated to a health-first approach to marijuana policy. SAM advocates for a commonsense, approach to marijuana policy based on reputable science and sound principles of public health and safety.[4]

STATEMENT OF THE CASE AND FACTS

Pursuant to Art. IV, § 10, Fla. Const., the Attorney General has petitioned this Court for an advisory opinion as to the validity of an initiative petition entitled "Adult Use of Marijuana." This Court has jurisdiction. Art. V, § 3(b)(10), Fla. Const.

The full text of the Proposed Amendment, which would create a new section within Article X of the Florida Constitution, is as follows:

> **Section 1**. A new section in Article X is created to read:
> Section 33. Adult Use of Marijuana.
> **(a) Definitions**. As pertaining to this section
> (1) "Adult" means a person 21 years of age or older.

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[3] *See* National Families in Action, *About National Families in Action*, https://www.nationalfamilies.org/about/about.html, (last visited January 6, 2020).
[4] *See* Smart Approaches to Marijuana, Inc., *Mission & Vision*, https://learnaboutsam.org/who-we-are/mission-vision, (last visited January 6, 2020).

(2) "Department" means the Florida Department of Health or its successor agency.

(3) "Marijuana" shall have the same meaning as defined in Article X, Section 29.[5]

(4) "Marijuana accessories" means any equipment, products, or materials of any kind which are for ingesting, inhaling, topically applying, or otherwise introducing marijuana into the human body.

(5) "Medical Marijuana Treatment Center'' shall have the same meaning as defined in Article X, Section 29, except a licensed Medical Marijuana Treatment Center is permitted to sell, distribute, or dispense marijuana to a person 21 years of age or older for personal use for any reason in compliance with this section.

(6) "Public place" means any public street, sidewalk, park, beach, or other public commons.

(b) Public policy.

(1) An adult is permitted to possess, use, display, purchase, or transport marijuana or marijuana accessories for personal use for any reason in compliance with this section and Department regulations and is not subject to criminal or civil liability or sanctions under Florida law.

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[5] Article X, Section 29(a) of the Florida Constitution provides:

(4) "Marijuana" has the meaning given cannabis in Section 893.02(3), Florida Statutes (2014), and, in addition, "Low-THC cannabis" as defined in Section 381.986(1)(b), Florida Statutes (2014), shall also be included in the meaning of the term "marijuana."

(5) "Medical Marijuana Treatment Center" (MMTC) means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Department.

(2) A Medical Marijuana Treatment Center is permitted to sell, distribute, or dispense marijuana or marijuana accessories to an adult for personal use for any reason in compliance with this section and Department regulations and is not subject to criminal or civil liability or sanctions under Florida law.

(c) Restrictions.

(1) An adult may possess, display, purchase, or transport up to two and a half ounces of marijuana for personal use for any reason.

(2) A Medical Marijuana Treatment Center that sells, distributes, or dispenses marijuana or marijuana accessories to an adult shall ensure any marijuana or marijuana accessories are clearly labeled and in childproof packaging.

(3) Marijuana or marijuana accessories shall not be advertised or marketed to target persons under the age of 21.

(4) Marijuana authorized by this section may not be used in any public place.

(5) The limitations set forth in Article X, Section 29(c)(4), (5), (6), and (8) shall apply to personal use of marijuana authorized by this section.[6]

(d) Authority.

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[6] Article X, Section 29(c)(4), (5), (6), and (8) provide:

> (4) Nothing in this section shall permit the operation of any vehicle, aircraft, train or boat while under the influence of marijuana.
>
> (5) Nothing in this section requires the violation of federal law or purports to give immunity under federal law.
>
> (6) Nothing in this section shall require any accommodation of any on-site medical use of marijuana in any correctional institution or detention facility or place of education or employment, or of smoking medical marijuana in any public place.
>
> * * *
>
> (8) Nothing in this section shall affect or repeal laws relating to negligence or professional malpractice on the part of a qualified patient, caregiver, physician, MMTC, or its agents or employees.

> (1) The Department shall issue reasonable regulations necessary for the implementation and enforcement of this section.
>
> (2) Nothing in this section shall limit the legislature from enacting laws consistent with this section.
>
> **(e) Severability**. The provisions of this section are severable and if any clause, sentence, paragraph, or section of this measure, or an application thereof, is adjudged invalid by a court of competent jurisdiction, other provisions shall continue to be in effect to the fullest extent possible.

Advisory Op. to the Att'y Gen. re Adult Use of Marijuana, Case No.: SC19-2116 (December 20, 2019).

The Proposed Amendment includes the following ballot title and summary:

> **BALLOT TITLE**:
>
> ADULT USE OF MARIJUANA
>
> **BALLOT SUMMARY**:
>
> Permits adults 21 years or older to possess, use, purchase, display, and transport up to 2.5 ounces of marijuana and marijuana accessories for personal use for any reason. Permits Medical Marijuana Treatment Centers to sell, distribute, or dispense marijuana and marijuana accessories if clearly labeled and in childproof packaging to adults. Prohibits advertising or marketing targeted to persons under 21. Prohibits marijuana use in defined public places. Maintains limitations on marijuana use in defined circumstances.

Id.

This Court issued its order establishing a briefing schedule. *Id.* The DFAF, the Alliance, NFIA, and SAM (collectively, the "Drug Free Opponents"), submit this brief as interested parties in opposition to the Proposed Amendment.

SUMMARY OF ARGUMENT

For nearly two decades, proponents of societal use of marijuana have sought to bypass the legislative process and change Florida's laws prohibiting the use, possession, cultivation, and distribution of marijuana through the ballot initiative process.[7] Notably, a 2014 initiative aimed at changing Florida law to allow the use of marijuana for "medical purposes" came before this Court. *Advisory Op. to Atty. Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 791 (Fla. 2014) ("*Marijuana I*"). Although this Court permitted the initiative to appear on the November 2014 ballot, Florida voters rejected the *Marijuana I* amendment. *See Initiative Tracker*. Certain of the Drug Free Opponents also appeared in that matter in opposition to the *Marijuana I* amendment.

The following general election, marijuana proponents again attempted to amend the Florida Constitution. *See Initiative Tracker*. This attempt also came before this Court. *Advisory Op. to Atty. Gen. re Use of Marijuana for Debilitating Med. Conditions*, 181 So. 3d 471, 473 (Fla. 2015) ("*Marijuana II*"). This Court permitted *Marijuana II* to appear on the ballot, and Florida voters approved the amendment "Use of Marijuana for Debilitating Medical Conditions," which is now found at Art. X, § 29, Fla. Const. The Proposed Amendment seeks to build on that

[7] *See* Fla. Dep't of State, Div. of Elec., Initiatives / Amendments / Revisions Database, *available at*, https://dos.elections.myflorida.com/initiatives/ (last accessed December 30, 2019) ("*Initiative Tracker*").

headwind and overturn the remaining prohibitions in Florida law regarding the use and possession of marijuana.

This Court should not permit the Proposed Amendment to appear on the ballot because its summary outright misleads voters regarding its intended purpose, and it fails to accurately inform voters of the effects of the amendment. *First*, the Proposed Amendment purports to "permit" the "adult use of marijuana," but, in reality, the Proposed Amendment cannot "permit" the use of marijuana as marijuana use, possession, distribution, and cultivation remains illegal under federal law. 21 U.S.C. § 812(c). The Supremacy Clause of the United States Constitution dictates the United States Constitution and all United States' laws "shall be the supreme Law of the Land." U.S. Const. art. VI, cl. 2. Pursuant to this clause, if there is conflict between a state law (or constitutional provision) and federal law, "state law must give way." *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 617 (2011) (internal citations omitted). Accordingly, the Proposed Amendment cannot permit the "adult use of marijuana" and immunize Florida citizens from penalties under federal law as it purports to do. The ballot summary fails to provide voters any notice, much less "fair notice," of this significant defect in "permit[ting]" the use of marijuana.

Second, the ballot summary fails to inform voters the Proposed Amendment will provide broad civil immunity to those using, possessing, manufacturing, and distributing (among others) marijuana. Twice the Proposed Amendment states an

individual or MMTC using marijuana in compliance with the Proposed Amendment is "not subject to . . . civil liability . . . under Florida law." (Proposed Amendment, at (b)(1) and (b)(2)). The ballot summary contains no hint of notice to voters that enacting this Proposed Amendment will also bring along a significant, previously unknown, immunity.

Accordingly, this Court should reject the Proposed Amendment and prevent it from being presented to the voters.

ARGUMENT

Florida law provides for limited review by this Court of ballot initiatives. This Court has noted this review does not "address the merits or wisdom of the proposed amendment," but, rather, is a determination of whether the initiative complies with Florida law. *Advisory Op. to Att'y Gen. re Raising Florida's Minimum Wage*, 44 Fla. L. Weekly S302a, SC19-548 (Fla. December 19, 2019) (quoting *Advisory Op. to Attorney Gen. re Prohib. State Spending for Experimentation that Involves Destruction of a Live Human Embryo*, 959 So. 2d 210, 212, 214 (Fla. 2007)).

I. BALLOT SUMMARIES MUST BE TRUTHFUL, INFORMATIVE, AND PROVIDE FAIR NOTICE OF THE EFFECTS OF THE PROPOSED AMENDMENT

This Court is tasked with determining whether the proposed amendment: (1) "embrace[s] but one subject and matter directly connected therewith"; and (2) includes a ballot title and summary in compliance with the requirements of section 101.161(1), Florida Statutes. *Id.* (citing *Prohib. State Spending for Experimentation that Involves Destruction of a Live Human Embryo*, 959 So. 2d at 211 n.1, 212—15.)). Section 101.161(1), Florida Statutes, provides as follows:

> (1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, ***a ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language*** on the ballot after the list of candidates , followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The ballot summary of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. ***The ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure***. . . . . The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

§ 101.161(1), Fla. Stat. (emphasis added).

The "clear and unambiguous" summary of the amendment's "chief purpose" requires "'that the voter should not be misled and that he have an opportunity to know and be on notice as to the proposition on which he is to cast his vote.'" *Askew*

v. Firestone, 421 So. 2d 151, 155 (Fla. 1982) (quoting *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954)). A ballot summary must give "fair notice" of the proposed change and such summary may not be vague, misleading, or contradict the text of the proposed amendment. *Raising Florida's Minimum Wage*, 44 Fla. L. Weekly S302a (citing *Prohib. State Spending for Experimentation that Involves Destruction of a Live Human Embryo*, 959 So. 2d at 214)).

The summary may not omit material facts regarding the purpose or effects of the proposed amendment. *Advisory Op. to Atty. Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998) (citing *Advisory Op. to the Atty. Gen. re Fish & Wildlife Conservation Com'n*, 705 So. 2d 1351, 1355 (Fla. 1998) and *Advisory Op. to the Attorney Gen. re Tax Limitation*, 644 So. 2d 486, 495 (Fla. 1994)). Nor may the summary mislead voters. *Advisory Op. to the Atty. Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998) (noting this Court would invalidate a ballot initiative if "the language of the title and summary, as written, misleads the public."); *Advisory Op. to Attorney Gen. re 1.35% Prop. Tax Cap, Unless Voter Approved*, 2 So. 3d 968, 975–76 (Fla. 2009) (rejecting from placement on the ballot a proposed amendment that had a defective ballot summary which was misleading and omitted material facts).

A proposed amendment's summary may not "fly under false colors" or "hide the ball" as to the amendment's true effect. *Armstrong v. Harris*, 773 So. 2d 7, 16

(Fla. 2000) (quoting *Askew*, 421 So. 2d at 156). "A proposed amendment must be removed from the ballot when the title and summary do not accurately describe the scope of the text of the amendment, because it has failed in its purpose." *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010) (internal citations omitted). The summary "must also be accurate and informative." *Id.* (citing *Term Limits Pledge*, 718 So. 2d at 803); see also *Advisory Op. to the Atty. Gen. re Casino Authorization, Taxation and Regulation*, 656 So. 2d 466, 469 (Fla. 1995) (holding that a summary may be "misleading not because of what it says, but what it fails to say.").

In this instance, the ballot summary of the Proposed Amendment is outright misleading and fails to give voters "fair notice" of the true effect of the Proposed Amendment for, primarily, two reasons: (1) the ballot summary fails to inform voters it does not and cannot "permit" the use of marijuana; and (2) the ballot summary hides from voters the Proposed Amendment's broad grant of civil immunity.

II. THE PROPOSED AMENDMENT'S BALLOT SUMMARY IS FALSE AND OUTRIGHT MISLEADING SINCE THE PROPOSED AMENDMENT CANNOT AND DOES NOT TRULY PERMIT ADULT USE OF MARIJUANA

The Proposed Amendment purports to "permit" marijuana use but fails to advise voters about federal law prohibitions and its inability to actually immunize marijuana use, possession, etc. from civil and criminal penalties under federal law.

A. Federal Law Unambiguously Prohibits the Conduct the Proposed Amendment Purports to "Permit"

The federal government has legislated in the area of controlled substances for over 100 years. Without detailing each such enforcement attempt, suffice to say Congress has enacted a myriad of laws to exclusively dominate the legal and regulatory environment regarding controlled substances. 22 U.S.C. § 903 (providing for express preemption of conflicting state laws when "the two cannot consistently stand together."). The present iteration of this legislation, the Comprehensive Drug Abuse Prevention and Control Act of 1970, was designed by Congress to federalize and uniformalize the various prohibitions against the use and possession of various controlled substances found in numerous federal laws. Title II of this legislation, the Controlled Substance Act ("CSA"), prohibits the use, possession, sale, importation, manufacturing, and distribution of controlled substances, outside the prescribed boundaries of the CSA.

The CSA created a five-tier system with each tier described as a "Schedule." 21 U.S.C. § 812. Ranging from 1-5, each Schedule describes those controlled substances, or their chemical or ingredient makeup, that are included in that section. *Id.* Controlled substances are divided into each schedule according to various factors, including: potential for abuse; acceptable medicinal uses; risk to public

health; among others. *Id.*; see also 21 U.S.C. § 811(c). Federal law presently defines marijuana as a "Schedule I" controlled substance. § 812(c)(17).[8]

The CSA explicitly prohibits any use, sale, or possession of a Schedule I substance (which, as stated, includes marijuana). 21 U.S.C. § 841(b)(1)(D) (describing the sentence for possession of marijuana to include either or both "a term of imprisonment of not more than 5 years" and "a fine not to exceed . . . $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual."). Despite the Proposed Amendment's authors seemingly seeking to "permit" only a small amount (up to 2.5 ounces), such does not immunize this conduct under federal law. Possession of even small amounts for so-called "personal use" may still subject the individual to civil or criminal penalties. *Id.* (describing prohibitions for ***any*** amount of marijuana); see also 21 U.S.C. § 844a(a) and 28 C.F.R. § 76.2(h)(6)(vi) (possession of marijuana in small amounts, even one (1) ounce, may result in a $10,000 fine). There is no amount of marijuana that Florida voters may "permit" the use of without the accompanying violation of federal law(s) and risk of federal penalties.

There is an inherent tension between state and federal drug laws, particularly as states attempt to "legalize" this substance which remains illegal under federal law.

[8] In addition to this federal statute, the use, sale, or possession of marijuana is also prohibited pursuant to the United States' treaty obligations under article 2 of the Convention on Psychotropic Substances.

But, ultimately, federal laws always win. The Supreme Court has addressed this situation noting the CSA prohibits the use, possession, etc. of marijuana with "but one express exception . . . for Government-approved research projects." *United States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 489–90 (2001) (citing 21 U.S.C. § 841(a)(1), § 823(f)). Even in instances where a state purports to authorize "the local cultivation and use of marijuana in compliance" with state law, such state laws do not immunize individuals from federal law civil and criminal penalties. *Gonzales v. Raich*, 545 U.S. 1, 5 (2005).

In *Gonzales,* Angel Raich and Diane Monson brought suit against the Attorney General of the United States seeking to prevent enforcement of the CSA as to their use and possession of marijuana pursuant to California law permitting such marijuana use. *Id.* at 7. Raich and Monson brought an as applied challenge to the CSA's prohibition of the use and possession of *intrastate* marijuana, since such is legal under state law in the state it was manufactured, used, and possessed (California). *Id.* The Court held:

> The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail. It is beyond peradventure that federal power over commerce is superior to that of the States to provide for the welfare or necessities of their inhabitants, however legitimate or dire those necessities may be. Just as state acquiescence to federal regulation cannot expand the bounds of the Commerce Clause, so too state action cannot circumscribe Congress' plenary commerce power.

Id. at 29 (internal quotes and citations omitted).

The Supreme Court rejected the petitioner's numerous arguments, and unequivocally held that state laws have no power to legalize or permit something federal law prohibits. *Id.* at 29. Indeed, even as more states "legalize" marijuana, numerous defendants across the country have been prosecuted for use and possession of marijuana and have argued, to no avail, the invalidity of their convictions based on compliance with state laws. *See United States v. Canori*, 737 F.3d 181, 184 (2d Cir. 2013) (upholding marijuana conviction since "[m]arijuana remains illegal under federal law, even in those states in which medical marijuana has been legalized."); see also *United States v. Kelly*, 18-CR-00217-RJA-JJM, 2019 WL 6693528, at *2 (W.D.N.Y. Dec. 9, 2019) ("Congress may one day decide to legalize the possession of marijuana for medical (or other) purposes. However, it has yet to do so, and where, as here, the statute's language is plain, the sole function of the courts is to enforce it according to its terms.").

No matter what Florida voters add to the Florida constitution, it cannot immunize individuals from prosecution for violations of federal law.

B. The Proposed Amendment's Summary Misleads Voters Since it Fails to Inform Voters about the Federal Law Provisions that Prevent the Essential Purpose of the Amendment

This Court has previously rejected proposed amendments that mislead voters about the current state of the law in an attempt to lure voters into voting favorably for that proposal. For instance, this Court rejected a proposed amendment that

attempted to modify then-current legislative proscriptions on lobbying by former officeholders. *Askew*, 421 So. 2d at 156.

The summary told voters it would "[p]rohibit[] former legislators and statewide elected officers from representing other persons or entities for compensation before any state government body for a period of 2 years following vacation of office, unless they file full and public disclosure of their financial interests." *Id.* at 153. Hidden from the voters, however, was the fact that such lobbying was already prohibited under Florida law. *Id.* at 155. In fact, by voting in favor of the proposed amendment, voters would be gutting the prohibition on lobbying by former officeholders by introducing a very easy task (submission of a financial disclosure) in order to evade entirely the two-year ban. *Id.* at 153; 155—56. This Court rejected such sleight-of-hand and determined the summary was "so misleading to the public" that the proposed amendment must be removed from the ballot. *Id.* at 156.

Similarly, in *Casino Authorization, Taxation and Regulation*, the summary told voters the proposed amendment "prohibits casinos unless approved by the voters . . . who may authorize casinos on riverboats, commercial vessels, within existing pari-mutuel facilities and at hotels." 656 So. 2d at 467. The text of the amendment, though, provided something quite different; it permitted voters to authorize casinos "within pari-mutuel facilities"; "on board stationary and non-

stationary riverboats and U.S. registered commercial vessels"; and at "transient lodging establishments licensed by the state." *Id.* at 468.

This Court noted the glaring discrepancies between what the summary promised voters and what the proposed amendment actually delivered. The summary promised voters it would only allow gambling at "hotels"; yet, the amendment provided for gambling to be permitted by voters "at "transient lodging establishments licensed by the state," which has a far broader definition. *Id.* at 468–69. The amendment also misled voters regarding the use of "riverboats" and "commercial vessels" by expanding the definition in the text of the amendment to also include such vessels while "stationary." *Id.* at 469. This Court held the summary was misleading since it "suggests that the amendment is necessary to prohibit casinos in this state." *Id.* Such was simply not true. This summary, by *omission*, failed to inform voters of the current state of the law. *Id.* By not giving voters this critical information, voters may have been felt compelled to vote *for* the amendment thinking they were prohibiting casinos; but by voting yes were providing a means to do the opposite.

Although this Court permitted the *Marijuana I* amendment to appear on the 2014 ballot, it did so over the dissents of Justices Polston, Canady, and Labarga. *Marijuana I*, 132 So. 3d 786, at 818—26 (Polston, J., dissenting; Canady, J. dissenting; and Labarga, J., dissenting). In their respective dissents, Justice Polston

and Chief Justice Canady agued the initiative should not appear on the ballot because the amendment purported to "authorize" violations of federal law, contrary to its summary. *Id.* at 818–19 (Polston, J., dissenting); 819—21 (Canady, C.J., dissenting).

Marijuana I told voters it would only apply to Florida law and would "not authorize violations of federal law." *Id.* at 794. Yet, its sole purpose was precisely that. *Id.* The sole purpose of the amendment was to alter Florida law to authorize the use and possession of marijuana (for medical purposes), despite its remaining illegal under federal law. *Id.* Justice Polston accurately described this fallacy as "absolutely false." *Id.* at 819 (Polston, J., dissenting). And correctly noted the ballot summary would "affirmatively mislead Florida voters" by telling voters in the summary it did not authorize violations of federal law while the text of the amendment purported to authorize violations of federal law. *Id.* Chief Justice Canady opined further on this significant defect. *Id.* at 819–21 (Canady, C.J., dissenting). Justice Canady refuted the arguments made by the amendment's proponents that the summary was not misleading since it was a true statement. *Id.* Justice Canady described the deception: the ballot summary cleverly told voters it did not authorize violations of federal law. *Id.* This, of course, is true. It could not. However, read in context with the remainder of the summary, it was apparent "[a] reasonable reader can only conclude . . . the summary affirms that the conduct authorized by the amendment is not conduct that would violate federal law." *Advisory Op. to Atty. Gen. re Use of Marijuana for*

Certain Medical Conditions, 132 So. 3d 786 (Canady, C.J., dissenting). That is inherently misleading as such is simply not the case, nor is it possible.

Chief Justice Canady noted in *Marijuana I*, "it is hard to conceive" of "[a] more misleading" discrepancy between the ballot summary and text. *Id.* at 820 (Canady, C.J., dissenting). Unfortunately, it appears there is one – the one set forth in the Proposed Amendment. Even more egregious than the ballot summary in *Marijuana I*, the Proposed Amendment specifically tells voters if they approve this amendment, it will "permit" adults to legally use marijuana "for any reason." As discussed above, this is patently untrue. This is precisely the type of language that is "so misleading as to clearly and conclusively violate section 101.161." *Id.* at 808 (internal citations omitted).

The ballot title begins by describing the intended constitutional changes innocuously as "Adult Use of Marijuana" seemingly creating a new constitutional provision that would allow adults to legally use marijuana. The summary continues the subterfuge by promising voters it will "[p]ermit[] adults 21 years or older to possess, use, purchase, display, and transport up to 2.5 ounces of marijuana and marijuana accessories for personal use for any reason." The choice of this word tells voters the use of marijuana will be legally allowed by authorities. PERMIT, Black's Law Dictionary (11th ed. 2019) (defining "permit" as: "1. To consent to formally; to allow (something) to happen, esp. by an official ruling, decision, or law.").

Noticeably absent from the ballot title and summary is any reference or notice to voters of the current prohibition on marijuana use, possession, or sale (among other things) under federal law.

There likely could be no clearer instance of a ballot summary expressly misleading voters than this instance. The summary tells voters it will "permit[]" an activity that it does not and cannot permit. This is not an instance, as in *Marijuana I*, where the Court determined the proponents of the amendment made technically accurate statements. *Id.* at 808. The ballot summary contains an expressly false statement that is designed to mislead voters about the intent and effects of the Proposed Amendment.

The present situation is perfectly described by Chief Justice Canady's analysis of the proposed amendment in *Marijuana I*, "[f]oisting this seriously deceptive ballot summary on the voters does a severe disservice to the people and to their constitution." *Id.* at 824 (Canady, C.J., dissenting). This Court should not permit this misleading Proposed Amendment, with its patently false ballot summary, to be presented to the voters.

III. THE BALLOT SUMMARY HIDES FROM VOTERS THE BROAD GRANT OF CIVIL IMMUNITY TO THOSE USING MARIJUANA IN ACCORDANCE WITH THE PROPOSED AMENDMENT

Not only does the Proposed Amendment promise to immunize conduct that remains illegal under federal law, twice the Proposed Amendment states an

individual or entity using or selling marijuana in compliance with the Proposed Amendment is "not subject to . . . civil liability . . . under Florida law." (Proposed Amendment, at (b)(1) and (b)(2)). The Proposed Amendment's summary fails to inform voters of its grant of broad civil immunity and is thus fatally defective.

Similarly, in *Marijuana I*, the ballot initiative provided immunity to three (3) groups of individuals and entities: (1) qualifying patients and personal caregivers; (2) physicians; and (3) medical marijuana treatment centers. *Marijuana I*, 132 So. 3d at 817—18 (Polston, J., dissenting). The amendment immunized the above from "criminal or civil liability or sanctions under Florida law." *Id.* Nowhere in the ballot's title or summary did the proponents disclose to voters the broad immunity being enacted. *Id.* Justice Polston correctly noted the summary was defective since it "fail[ed] to disclose the amendment's significant effect on Floridians' constitutional right of access to courts." *Id.* Chief Justice Canady agreed the summary's omission of "any mention of this immunity" was yet another reason the ballot summary was fatally inaccurate. *Id.* at 822 (Canady, C.J., dissenting).

Should the Proposed Amendment be enacted, voters will be opening the floodgates to the "use of marijuana" by any adult (which it defines as "a person 21 years of age or older") and permitting MMTCs to "acquire, cultivate, possess, process (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfer, transport, sell, distribute, dispense, or administer

marijuana, products containing marijuana, related supplies, or educational materials." Art. X, § 29. Floridians deserve to be told that they will be simultaneously closing the courthouse doors for any claims they may have against those same individuals or entities who "acquire, cultivate, possess, process, . . . transfer, transport, sell, distribute, dispense, or administer marijuana [or] products containing marijuana." This would foreclose claims against these MMTCs for any negligence, including improper manufacturing and handling, false and deceptive marketing, among a host of others. There is simply no reference or scintilla of notice to the voters regarding this immunity in the ballot summary.

Buried in the Proposed Amendment is a reference to Article X, § 29(c)(4), and its provision that the amendment (by reference) will not "permit" the use of marijuana while operating a "vehicle, aircraft, train or boat while under the influence of marijuana" for those using medical marijuana for debilitating conditions. But even with that citation, should any voter be aware of it, the Proposed Amendment will provide immunity for individuals should they use marijuana inappropriately, despite the fact Florida law does not "permit" the use of marijuana while operating a boat, vehicle, aircraft, or train (if that prohibition were to be determined to apply).

The Proposed Amendment simply fails to provide "fair notice" to voters of this broad immunity provision and the implications of this amendment. The Proposed Amendment should not be permitted to be placed on the ballot.

CONCLUSION

Because the Proposed Amendment fails to comply with Florida law, contains an outright misleading and false ballot summary, and is otherwise invalid, the Drug Free Opponents respectfully request this Court determine it to be invalid and prohibit it from being placed on the ballot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on his 6th day of January, 2020, I filed the foregoing using the Florida Courts E-Filing Portal, which will electronically serve all counsel of record.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Fla. R. App. P. 9.210(a).

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