CASE NO. SC19-2116

In the Supreme Court of Florida

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

SPONSOR MAKE IT LEGAL, FLORIDA'S BRIEF IN SUPPORT OF THE PROPOSED PETITION INITIATIVE

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STATEMENT OF THE CASE AND FACTS

Make it Legal, Florida is a political committee and the sponsor of the proposed amendment to the Florida Constitution at issue in this proceeding, titled "Adult Use of Marijuana," Serial Number 19-11 ("Amendment"). On December 19, 2019, Florida Attorney General Ashley Moody asked this Court to review the Amendment for compliance with sections 101.161, Florida Statutes, and article XI, section 3 of the Florida Constitution.

The Amendment's ballot title and summary, as well as its full text, are reproduced below for the Court's reference.

> 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.
>
> Text of Proposed Amendment, creating new Article X, Section 33, Florida Constitution:
> Section 33. Adult Use of Marijuana.
> **(a) Definitions.** As pertaining to this section
> (1) "Adult" means a person 21 years of age or older.
> (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.

(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.
(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.

(d) Authority.

(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.

Five briefs were filed in opposition to the Amendment by the following groups: Florida Attorney General Ashley Moody; the Florida House of Representatives ("House"); the Florida Senate ("Senate"); the Florida Chamber of Commerce, Floridians Against Recreational Marijuana, Save Our Society from Drugs, and National Drug-Free Workplace Alliance (collectively, "FARM"); and Drug Free America Foundation, Florida Coalition Alliance, National Families in Action, and Smart Approaches to Marijuana (collectively, "Drug Free America"). All opposing parties are collectively referred to as "Opponents."

SUMMARY OF ARGUMENT

The ballot summary accurately describes the chief purpose of the Amendment: to allow adults aged 21 and up to possess and use a limited amount of marijuana for any reason, and correspondingly, to allow those adults to lawfully obtain that marijuana from medical marijuana treatment centers ("MMTCs"). The Amendment does not logroll unrelated subjects, and the ballot summary does not misrepresent the Amendment's effect. Rather, the ballot summary straightforwardly and neutrally describes a measured extension of Florida's existing legal framework governing marijuana possession and use. Under the deferential standard that this Court has traditionally applied to avoid interfering in the citizen initiative process, the Amendment and its title and summary satisfy the limited requirements of article XI, section 3, Florida Constitution, and section 101.161, Florida Statutes.

Opponents' policy-driven criticisms of the ballot summary and Amendment are not justiciable in this proceeding, and do not justify the extreme remedy of striking the Amendment from the ballot. The Amendment does exactly what the ballot summary says it does. The ballot summary's silence as to federal law is not misleading, because the Amendment could never change federal law. Ballot summaries need not disclose legal impossibilities.

Despite this Court's clear direction in recent petition initiative cases involving marijuana amendments, all five Opponents insist that a ballot summary must educate

voters on the relationship between state and federal law. All five Opponents are wrong. Under this Court's precedent, ballot summaries are not required to recite the current state of federal law, or an amendment's effect on federal law. Nor must a ballot summary remind voters that they are voting to amend Florida's Constitution rather than federal statutes. An amendment to Florida's Constitution obviously cannot change federal law, just as it cannot change the law of California or Georgia. The ballot summary does not purport to effect such a change, nor could it. Florida voters do not require a lesson in these elementary civics principles, especially having voted on marijuana amendments in two out of the last three election cycles.

Indeed, for more than two decades, states have been rapidly and substantially diverging from federal law to expand permissible marijuana use under state law. California first legalized marijuana for medical purposes in 1996. Since then, 32 other states have followed suit,[1] including Florida through a 2016 constitutional amendment.[2] Just since 2010, 16 states have passed medical marijuana laws, and ten states have legalized recreational marijuana.[3] Florida voters' consideration of

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[1] "Legal marijuana just went on sale in Illinois. Here are all the states where cannabis is legal." *Business Insider*, January 1, 2020, *available at* https://www.businessinsider.com/legal-marijuana-states-2018-1; "U.S. marijuana laws: a history," *The Washington Post*, *available at* https://www.washingtonpost.com/graphics/health/marijuana-laws-timeline.

[2] "Florida Cannabis had a big year. What's coming in 2020?" *Tampa Bay Times*, January 1, 2020, *available at* https://www.tampabay.com/florida-politics/buzz/2020/01/01/florida-cannabis-had-a-big-year-whats-coming-in-2020/.

[3] *See* note 1, *supra.*

amendments in 2014 and 2016 to allow marijuana use for medical purposes, and the current effort to extend adult marijuana use to non-medical purposes through the instant Amendment, plow no new ground on this issue, and present no novel issues to voters that are not already ingrained in public discourse.

The remainder of the Opponents' criticisms of the ballot summary are equally unpersuasive. First, the ballot summary makes plain that the Amendment will build upon and expand existing laws governing marijuana use for medical purposes. Both the ballot summary and Amendment state that adults aged 21 and up will be permitted to possess and use 2.5 ounces of marijuana for any reason, and MMTCs will be able to lawfully supply that limited amount of marijuana to adults.

Second, the ballot summary's reference to "defined public places" is not misleading, because the Amendment defines the term "public places." The Opponents' displeasure with the Amendment's definition does not render the ballot summary misleading.

Third, the Amendment does not grant blanket immunity as one opponent suggests. The only "immunity" that the Amendment grants is from liability for the use or sale of marijuana that is currently prohibited under Florida law, but would be permitted under the new Amendment—for example, an MMTC's sale of marijuana to an adult for non-medical purposes. This Court has already rejected the argument

that a ballot summary must include this common-sense exemption from liability for those who operate in accordance with an amendment's strictures.

Finally, the Senate's attacks on the substance of the Amendment reveal a policy disagreement barely masquerading as a single-subject challenge. The Senate decries the "policy choices" that voters will have to make in voting for or against the Amendment, and laments the Amendment's delegation of authority to the Department of Health that this Court already approved in the context of medical marijuana. What the Senate cannot demonstrate, however, is that the Amendment combines unrelated subjects, or substantially alters the functions of any branch of government—and thus, cannot demonstrate a single-subject violation.

The Amendment satisfies the narrow requirements of article XI, section 3 of the Florida Constitution, and section 101.161, Florida Statutes. In exercising the extreme care and deference that its precedent requires in citizen initiative proceedings, this Court should approve the Amendment and ballot summary for placement on the ballot, and allow Florida's voters to exercise their fundamental right to amend their own Constitution.

ARGUMENT

I. THE PROPOSED AMENDMENT, BALLOT TITLE, AND BALLOT SUMMARY COMPLY WITH SECTION 101.161, FLORIDA STATUTES, AND ARTICLE XI, SECTION 3, FLORIDA CONSTITUTION.

This Court reviews a citizen initiative amendment using a deferential standard, and historically, has been "reluctant to interfere with the right of self-determination for *all* Florida's citizens to formulate their own organic law." *In re Advisory Op. to Att'y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 794–95 (Fla. 2014) (citing *Advisory Op. to Att'y Gen. re Right to Treatment & Rehab. For Non-Violent Drug Offenses*, 818 So. 2d 491, 494 (Fla. 2002)) (marks omitted) (emphasis in original). Florida voters enjoy a fundamental right to amend their Constitution by initiative. *See* Art. XI, § 3, Fla. Const. When addressing requests for advisory opinions on initiative petitions, this Court's analysis is governed by two general principles:

> First, we will not address the merits or wisdom of the proposed amendment. . . . Second, we have recognized that we must act with extreme care, caution, and restraint before we remove a constitutional amendment from the vote of the people," because "the Court has no authority to inject itself in the process, unless the laws governing the process have been 'clearly and conclusively' violated."

Id. (internal marks and citations omitted). Only in the most egregious circumstances is interference with that right warranted. Thus, this Court abides by "the principle that sovereignty resides in the people and the electors," who "have a right to approve

or reject a proposed amendment to the organic law of this State, limited only by those instances where there is an entire failure to comply with a plain and essential requirement." *In re Advisory Op. to Att'y Gen. re Limits or Prevents Barriers to Local Solar Electricity Supply*, 177 So. 3d 235, 241–42 (Fla. 2015) (internal marks omitted). In exercising this "extreme care, caution, and restraint," *see id.*, this Court should be mindful the only *express constitutional limitation*[4] imposed upon on the citizens' fundamental right to amend their constitution is that the amendment "shall embrace but one subject and matter directly connected therewith." Art. XI, § 3, Fla. Const. Any statutory restrictions should be interpreted in a manner to favor placement of this Amendment on the ballot, and only in the most egregious violations.

The Amendment in this case satisfies article XI, section 3 of the Florida Constitution, and section 101.161, Florida Statutes. This Court's review does not

[4] The Court found an implicit constitutional accuracy requirement in the penumbras and emanations of article XI, section 5 of the Florida Constitution, and declaring section 101.161 was a codification of this requirement. *E.g., Armstrong v. Harris*, 773 So. 2d 7, 12 and n.15 (Fla. 2000). Nowhere does Florida's Constitution expressly and unambiguously establish legislative authority to impose additional requirements on initiative petitions, authorize the Attorney General to request the Court's opinion on those standards, or direct the Court to conduct a review for compliance with legislatively-imposed standards. *See generally* Art. IV, § 10, Fla. Const. ("The attorney general shall, as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI."); § 16.061, Fla. Stat. (directing the Attorney General to petition this Court for an opinion on an amendment's compliance with Art. XI, §3, Fla. Const., and § 101.161, Fla. Stat.).

extend beyond these two limited inquiries. *Advisory Op. to Att'y Gen. re Fla. Marriage Prot. Amendment*, 926 So. 2d 1229, 1233 (Fla. 2006).

The ballot summary satisfies section 101.161, Florida Statutes, because it explains the "chief purpose" of the Amendment: to allow adults aged 21 and up to possess and use a limited quantity of marijuana for any reason, and to allow MMTCs to dispense marijuana to those adults. No additional disclosures must be made in the ballot summary, because no other significant impacts are concealed in the Amendment's text.

The Amendment similarly complies with the single-subject rule because it "manifest[s] a logical and natural oneness of purpose and [does] not substantially alter or perform the functions of multiple branches of government." *Advisory Op. to the Att'y Gen. re Raising Fla's Min. Wage*, SC19-548, 2019 WL 6906963, at *2 (Fla. Dec. 19, 2019) (internal marks omitted). The only subject the Amendment addresses is the legal possession and use of marijuana by adults. The Amendment does not bundle together unrelated subjects "in order to get an otherwise disfavored provision passed." *Advisory Op. to the Att'y Gen. Re: Voting Restoration Amendment*, 215 So. 3d 1202, 1206 (Fla. 2017).

Nor does the Amendment alter or perform the role of multiple branches of government, or usurp the function of the legislature or executive branch. *See Advisory Op. to Att'y Gen. re Right to Treatment and Rehab.*, 818 So. 2d 491, 496–

97 (Fla. 2002) (holding that amendment did not violate single-subject rule when it affected and required compliance by multiple branches, but did not "usurp the function" of those branches). Just like the medical marijuana amendments that came before it, this Amendment delegates limited rulemaking and oversight authority to the Department of Health, and preserves the legislature's authority to pass legislation consistent with its provisions. *See* Amendment, at § 33(d).

The Amendment complies with section 101.161, Florida Statutes and the single-subject rule, and should therefore be placed on the ballot. For these and the reasons below, none of the Opponents' arguments to the contrary demonstrate that the ballot summary or Amendment are clearly and conclusively defective. Thus, none of the Opponents' arguments justify the extreme consequence of striking the Amendment from the ballot.

II. THE BALLOT SUMMARY IS NOT REQUIRED TO EDUCATE VOTERS ON THE CURRENT STATE OF FEDERAL LAW, WHICH VOTERS ARE POWERLESS TO CHANGE THROUGH AN AMENDMENT TO FLORIDA'S CONSTITUTION.

a. THE BALLOT SUMMARY IS NOT REQUIRED TO EDUCATE VOTERS ON THE CURRENT STATE OF FEDERAL LAW.

The Amendment does exactly what the ballot summary says it does: it amends Florida's Constitution to permit marijuana use by adults for any reason, and allows MMTCs to dispense marijuana to such adults. The Opponents spend the bulk of their briefs demanding that the ballot summary remind Florida voters that marijuana is

currently prohibited under federal law, and that they cannot revise federal statutes by amending the Florida Constitution.

Neither the ballot summary nor the Amendment purport to change federal law—a result it could never achieve. The inability to revise federal statutes through a state constitutional amendment is an elementary civics principle that borders on a truism. The Opponents concede as much,[5] yet still demand a disclaimer that legal impossibilities remain, in fact, impossible. Section 101.161 does not require this absurd degree of coddling an elector.

This Court's precedent establishes two critical points that undermine the Opponents' arguments: first, a conflict between current federal law and a proposed amendment is not justiciable in initiative petition proceeding; and second, a ballot summary is not required to educate voters on the current state of federal law, or a proposed amendment's effect on federal law.

This Court made the first point clear in *Advisory Opinion to Attorney General—Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225 (Fla. 1991). In *Limited Political Terms*, this Court approved an amendment for placement

[5] *See, e.g.,* House Br. at 6 ("But the proposed amendment would not have that effect. . . . By its own terms, the amendment would not change that. Nor could it."); Attorney General Br. at 7 ("Within our federal system, a state has no power to authorize its residents to participate in conduct that would constitute a federal crime.").

on the ballot despite its facial conflict with federal law. *Id.* at 226–27, 228. This result is directly on point.

Limited Political Terms approved an amendment that purported to impose term limits on certain elected offices in Florida, including United States representatives and senators. Established law prohibited Florida from imposing its own requirements on federal elected offices, the qualifications for which are expressly delineated in the U.S. Constitution. *See id.* at 230–31 (Overton, J., dissenting) (citing *Stack v. Adams*, 315 F. Supp. 1295 (N.D. Fla. 1970), *Davis v. Adams*, 400 U.S. 1203 (1970), and *Powell v. McCormack*, 395 U.S. 486 (1969)). Yet the ballot summary affirmatively represented that the amendment would impose term limits on U.S. representatives and senators, despite the impossibility of this result. *Limited Political Terms,* 592 So. 2d at 226.

Opponents of the measure pointed to the federal constitutional infirmities that appeared on the face of the ballot summary and amendment. *Id.* 227, n.2. The Court summarily dismissed this line of argument, noting that the amendment's enforceability under federal law was "not justiciable" in an initiative petition proceeding. *Id.* at 227. Just as in *Limited Political Terms*, the instant Amendment's consistency with federal law is not justiciable here, and the ballot summary's silence regarding federal law is therefore irrelevant to this Court's limited review.

Later, this Court in *Advisory Opinion to Attorney General re Use of Marijuana for Certain Medical Conditions*, 132 So. 3d 786, 808 (Fla. 2014) ("*Marijuana I*"), reaffirmed that it "has never required that a ballot summary inform voters as to the current state of federal law and the impact of a proposed state constitutional amendment on federal statutory law as it exists at this moment in time." Importantly, the dissenting opinions in *Marijuana I* did not deviate from this principle, and in fact Justice Polston expressly recited it: "[W]hile ballot summaries are *not required to mention the current state of federal law* or a proposed state constitutional amendment's *effect on federal law*, they are required to not affirmatively mislead voters by falsely implying the opposite of what the current state of federal law is." *Id.* at 819 (Polston, J., dissenting) (emphases supplied); *see also Cty. of Volusia v. Detzner*, 253 So. 3d 507, 211 (Fla. 2018) (unanimously concluding that a ballot summary was not misleading by not describing the "current state of the law" regarding the election of constitutional officers).

The ballot summary in *Marijuana I* affirmatively represented the proposed amendment's relationship to federal law, noting that the amendment did not "authorize violations of federal law." *Id.* at 794. It was the perceived accuracy of this representation, and whether it risked being interpreted incorrectly by voters, that split the Court on this issue. The Court ultimately held that this language did not mislead voters into falsely assuming harmony between state and federal law on the

issue of medical marijuana use. *Id.* at 808. The majority bolstered this holding by rejecting the notion that a ballot summary must disclose something that does not appear in the text of the Amendment. *Id.* ("By asserting that the ballot summary should include language informing the voters that marijuana possession and use is currently prohibited under federal law, the opponents are actually asserting that the ballot summary should include language that is not in the proposed amendment itself. This is not required.").

The ballot summary in this case is even more innocuous, because it implies nothing about federal law at all. Thus, it falls squarely within the black-letter rule that a ballot summary does not need to recite the current state of federal law or include language that does not appear in the text of the Amendment.

Because of this distinction, Justice Polston's and Justice Canady's dissents in *Marijuana I* do not provide the support that the Opponents' briefs suggest; in fact, the opposite is true. As explained above, it was not silence, but the potential suggestion of harmony between state and federal law, that troubled two of the three dissenting justices in *Marijuana I*. *Id.* at 818–19 (Polston, J., dissenting); *id.* at 820–21 (Canady, J., dissenting). Justice Canady found that the ballot summary's fatal problem was that it was "blatantly deceptive because it informs the voters that the amendment '[d]oes not authorize violations of federal law,' although it is beyond

dispute . . . that conduct authorized by the amendment is criminal conduct under federal law." *Id.* at 820 (Canady, J., dissenting).

By contrast, the Amendment in this case contains no such "proclamation of the amendment's supposed consistency with federal law." *Id.* at 820–21. It does not "inform[]" the voters of federal law at all, let alone imply the Amendment's relationship with federal law. *See id.* In contrast to an affirmative representation, silence as to the Amendment's effect on federal law will not "hoodwink[]" voters "into believing that the amendment is consistent with the requirements of federal law." *Id.*

Simply put, both the majority and the dissent in *Marijuana I* acknowledged that a ballot summary does not have to include an educational disclaimer, which is the precise modification to the ballot summary that Opponents demand in this case. *See id* at 808 and 818–20.

Shortly after *Marijuana I*, the Court unanimously approved for placement on the ballot another amendment permitting the use of medical marijuana, even though the summary did not disclose that marijuana remained illegal under federal law. *Advisory Op. to Att'y Gen. re Use of Marijuana for Debilitating Medical Conditions*, 181 So. 3d 471, 478 (Fla. 2015) ("*Marijuana II*").

Opponents' insistence that the ballot summary must contain a primer on the federal Controlled Substances Act ("CSA") cannot be reconciled with this Court's

clear pronouncements that a ballot summary need not recite the current state of federal law. This will be the third petition initiative in six years to address the possession and use of marijuana under Florida law. The Court did not require the first two ballot summaries to catalogue Congress's current treatment of marijuana, and should not do so now.

At bottom, the mere divergence between state and federal law on what behavior is permitted or criminalized does not require a disclaimer in the ballot summary. This Court has never held otherwise, and has flatly rejected any obligation to include a primer on federal law in a ballot summary. This same conflict that the Opponents identify exists between federal law—which classifies marijuana as a Schedule I substance with a purported high potential for abuse, for which there purportedly is no current accepted medical use in treatment in the United States, and for which there is a purported lack of safety for use under medical supervision—and the medical marijuana laws of 32 other states, as well as the non-medical marijuana laws in 11 states.[6] The Amendment breaks no new ground in diverging from federal law on this issue.

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[6] *Compare* 21 U.S.C. § 812, *et seq.*, *with, e.g.,* Cal. Bus. & Prof. Code § 26000, *et seq.* ("Medicinal and Adult-Use Cannabis Regulation and Safety Act," allowing recreational and medicinal use); Colo. Const. Art. 18, § 16 ("Personal use and regulation of marijuana," allowing recreational and medicinal use); Conn. Gen. Statutes. Ann. § 21a, Ch. 420F ("Palliative Use of Marijuana," allowing medicinal use); *see also* "State Medical Marijuana Laws," Table 1, *National Conference of State Legislatures* (Oct. 16, 2019), *available at*

To find the instant ballot summary misleading, one must first ignore the Court's direction in *Limited Political Terms* and *Marijuana I*, and must further ignore the rudimentary premise that the Amendment can only change Florida's Constitution. Any conflict that exists between Florida's current and proposed marijuana laws on one hand, and an independent federal regulatory scheme on the other, is not a "chief purpose" of the amendment that must be disclosed in the ballot summary. It is an educational disclaimer that Florida law does not require. If it "is not necessary to explain every ramification of the proposed amendment," *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986), then it is certainly not necessary to explain non-impacts and legal impossibilities which no state constitutional amendment could effectuate.

b. FLORIDA VOTERS HAVE A PRESUMED LEVEL OF COMMON KNOWLEDGE AND UNDERSTANDING, ESPECIALLY WHEN THEY HAVE VOTED ON SIMILAR AMENDMENTS IN TWO OUT OF THE LAST THREE ELECTIONS CYCLES.

As the House concedes, "[t]his Court presumes that the average voter has a certain amount of common understanding and knowledge." *Fla. Educ. Ass'n v. Fla. Dep't of State*, 48 So. 3d 694, 701 (Fla. 2010); House Br. at 7. This principle validates the ballot summary in this case for two reasons: first, because elementary civics principles preclude voters from amending federal statutes through state

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https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx (cataloguing state laws regulating marijuana use).

constitutional amendments; and second, because voters have been exposed to the tension between state and federal marijuana laws for more than twenty years.

This Court has never required educational disclosures in a 75-word ballot summary. As explained above, the Amendment could never change federal law, and does not purport to change federal law. Voters are not so oblivious to think that by extending Florida's existing medical marijuana scheme—which also conflicts with federal law—to allow non-medical marijuana use, they are wiping out independent federal statutes passed by Congress. Just as Florida voters cannot change other states' laws through an amendment to the Florida Constitution, neither can they change the laws of the United States government. This basic principle need not be reiterated in the ballot summary.

Additionally, the Opponents' assumption that Florida voters are ignorant of the existing legal framework surrounding marijuana is not supported by facts or history, and is not a presumption that this Court should make. In 2014 and 2016, Floridians voted on initiatives to amend Florida's Constitution to allow the use of medical marijuana. The ballot summaries for both initiatives referenced federal law (the first of which generated dissent, as explained above). The latter initiative passed, and currently resides in article X, section 29 of the Florida Constitution. Thus,

Florida's current law—which voters are presumed to know[7]—already reflects the subject matter that the Amendment in this case addresses.

This Court's reasoning in *Advisory Opinion to the Attorney General re Protect People from the Health Hazards of Second-Hand Smoke*, 814 So. 2d 415, 419 (Fla. 2002), is instructive. In *Health Hazards of Second-Hand Smoke*, this Court concluded that a ballot summary adequately stated an amendment's chief purpose even though it did not detail the amendment's impacts on other statutes that imposed restrictions on smoking. The Court agreed with the proponents that "it does not stretch logic to presume that most, if not all, voters are aware that smoking is presently limited in certain public places, given the pervasiveness of signs and other remonstrations against smoking in those areas, and that people work in places such as restaurants," and that voters "must be presumed to have a certain amount of common sense and knowledge." *Id.*

The same logic holds true in this case. Florida voters must be presumed to understand the basic dichotomy of federal versus state laws, and must be presumed to be familiar with present limitations on the use of marijuana under the respective legal frameworks. *See id.*

[7] *See, e.g., Florida Bar v. Dubow*, 636 So. 2d 1287, 1288 (Fla. 1994) ("Ignorance of the law is not an excuse."); *Hart v. Hart*, 377 So. 2d 51, 52 (Fla. 2d DCA 1979) ("All citizens are presumed to know the law.").

Indeed, states' expansion of lawful marijuana use has been part of the public discourse for more than two decades.[8] All the while, the federal CSA has outlawed marijuana for any purpose, medical or otherwise. *See* 21 U.S.C. § 812. Yet the Department of Justice's policy of enforcing the CSA has flip-flopped numerous times, as the House points out. House Br. at 8. Even at present, a bill is pending before Congress to decriminalize marijuana at the federal level altogether. *See* H.R. 3884, 116th Cong. (1st Sess. 2019).[9] Even if the 75-word ballot summary could be edited in such a manner to address the current state of federal law as it stands right now, it may change by the time voters consider this measure. This volatility in the status of federal law and federal enforcement underscores the futility of reciting in a ballot summary the current state of federal law, which the Amendment is entirely powerless to change.

Finally, as a practical matter, Florida voters should be empowered to decide which behaviors they wish to criminalize, instead of being bound to mimic the United States Code. It is perfectly reasonable for Florida's voters to make a policy choice to decriminalize certain activities and not expend the state's limited resources to arrest, detain, prosecute, and fill its prisons with individuals who possess and use a limited amount of marijuana. If the Amendment passes, no Floridian would be

[8] *See supra* notes 1, 2.
[9] *Available at* https://www.congress.gov/116/bills/hr3884/BILLS-116hr3884ih.pdf.

compelled to violate federal law. Rather, the state would simply not criminalize conduct that it has in the past. If federalism remains a principle worth preserving, then this dichotomy between federal and state policy and budgetary choices is a permissible one.

In sum, the average voter is no stranger to the efforts of states, including Florida, to legalize marijuana in one form and purpose or another, and the federal government's contrary position. This dichotomy between state and federal laws is a basic concept inherent in our federalist system of government. Specifically in the context of marijuana regulation, it is a matter of everyday knowledge and discourse that the average voter is presumed to understand, and the ballot summary need not provide additional education on the matter.

III. THE OPPONENTS' REMAINING ATTACKS ON THE BALLOT SUMMARY ARE EQUALLY MERITLESS AND DO NOT JUSTIFY THE EXTREME REMEDY OF STRIKING THE PROPOSED AMENDMENT FROM THE BALLOT.

a. THE BALLOT SUMMARY PLAINLY DESCRIBES THE EXPANSION OF MMTCS' ABILITY TO DISPENSE 2.5 OUNCES OF MARIJUANA TO ADULTS AGED 21 AND OLDER FOR NON-MEDICAL PURPOSES.

The ballot summary describes the expansion of the lawful use of marijuana for non-medical purposes, and allows MMTCs to dispense marijuana for that purpose. The 2.5 ounce limitation on personal possession is equally plain. Common sense dictates that this limitation likewise applies to the amount that MMTCs may dispense to adults in accordance with the Amendment. The ballot summary is not

misleading, and is not ambiguous. It therefore complies with section 101.161, Florida Statutes, and is fit to appear on the ballot.

FARM tortures the ballot summary's straightforward text to manufacture an ambiguity that does not exist. FARM argues that it is unclear whether the 2.5 ounce limitation applies to MMTCs, and whether the ballot summary describes an expansion of lawful marijuana use, or an increase in the age limit for medical marijuana use. FARM Br. at 12–13. Both arguments are absurd and fail to create a genuine ambiguity. *Gov't Emps Ins. Co. v. Macedo*, 228 So. 3d 1111, 1113–14 (Fla. 2017) (recognizing that only reasonable interpretations will give rise to an ambiguity); *ContractPoint Fla. Parks, LLC v. State*, 958 So. 2d 1035, 1037 (Fla. 1st DCA 2007) ("It is axiomatic that we will not interpret a statute in a manner which would lead to an absurd or unreasonable result.").

The Amendment's expansion, rather than constriction, of lawful marijuana use is beyond credible dispute. The ballot summary states that use by adults is permitted "for any reason." This language is broader than existing law, which restricts marijuana use for only medical purposes, and upon prescription by a qualified physician, among other limitations, and criminalizes any activity not conforming to the permitted uses. *See* Art. X, § 29, Fla. Const.; §381.986, Fla. Stat.; § 893.13, Fla. Stat. (criminalizing the possession of cannabis).

Nor does the ballot summary's reference to MMTCs render it ambiguous. Rather, it simply builds upon existing law, with which Florida voters are presumed to be familiar, *see Dubow*, 636 So. 2d at 1288; *Hart*, 377 So. 2d at 52—particularly because they have voted on the issue twice in recent memory.

Finally, the 2.5 ounce limitation must logically apply to MMTCs. Certainly, the ballot summary does not purport to authorize an MMTC to dispense an amount of marijuana that would be instantly illegal in the hands of the adult to which the MMTC was dispensing. When faced with a reasonable interpretation that achieves a lawful result, and an absurd interpretation that achieves an unlawful result, this Court should choose the former. *See Holmes v. Fla. A & M Univ. by and through Bd. of Tr's.*, 260 So. 3d 400, 405 (Fla. 1st DCA 2018); *Nabbie v. Orlando Outlet Owner, LLC*, 237 So. 3d 463, 466–67 (Fla. 5th DCA 2018); *see also State v. Atkinson*, 831 So. 2d 172, 174 (Fla. 2002) ("A basic tenet of statutory construction compels a court to interpret a statute so as to avoid a construction that would result in unreasonable, harsh, or absurd consequences."); ANTONIN SCALIA & BRYAN A. GARNER, READING THE LAW: THE INTERPRETATION OF LEGAL TEXTS § 37 (Thomson/West 2012), at 234 (explaining the absurdity doctrine and observing that "[a] provision may be either disregarded or judicially corrected . . . if failing to do so would result in a disposition that no reasonable person could approve."). No

ambiguity exists, and the ballot summary accurately describes the chief purpose of the Amendment.

b. THE BALLOT SUMMARY DOES NOT MISLEAD BY REFERRING TO "DEFINED PUBLIC PLACES" BECAUSE THE PROPOSED AMENDMENT DEFINES THE TERM "PUBLIC PLACES."

The ballot summary advises voters that the Amendment would still prohibit the use of marijuana in "defined public places." The Amendment then defines "public places" as "any public street, sidewalk, park, beach, or other public commons." Amendment, at § 33(a)(6). FARM submits that the phrase "defined public places" in the ballot summary is misleading, because the Amendment's definition of "public place" includes the term "public commons." FARM Br. at 13–14. FARM dislikes the scope of the definition of "public place," arguing that the phrase "public commons" is so broad that it erases any limitation on the term "public place," and therefore the term "public place" is not truly "defined" as stated in the ballot summary. *Id.* FARM offers no support for its dubious position that a term ceases to be defined if its definition is broad.

The ballot summary references "defined public places," and the Amendment in turn defines "public place," and does so in neutral terms. This ends the inquiry. FARM's displeasure with the Proposed Amendment's definition does not render the ballot summary misleading.

FARM's conclusion that the term "public commons" erases any conceivable restriction on the term "public place" finds no support in either FARM's brief or Florida law. The terms "public place" and "public commons" are distinct; they are not inflexible synonyms. Indeed, it is a fundamental principle of interpretation that different words are presumed to have different meanings. *Maddox v. State*, 923 So. 2d 442, 446–47 (Fla. 2006). Nor do courts interpret text to render part of a provision—like an entire definition—meaningless. *Bennett v. St. Vincent's Med. Ctr.*, 71 So. 3d 828, 838 (Fla. 2011).

The Amendment's definition of "public place" is intentionally narrower than any place to which the public has access, which in the absence of a definition, could be a reasonable interpretation of the term. FARM ignores the distinction between these concepts. To illustrate, using its ordinary dictionary meaning, the noun "commons" means a "tract of land owned or used jointly by the residents of a community, usually a central square or park in a city or town." *Common*, DICTIONARY.COM;[10] *accord Commons*, MERRIAM-WEBSTER ("[A] piece of land subject to common use, such as [an] undivided land used especially for pasture, [or] a public open area in a municipality").[11]

[10] *Available at* https://www.dictionary.com/browse/common?s=t.
[11] *Available at* https://www.merriam-webster.com/dictionary/commons?utm_campaign=sd&utm_medium=serp&utm_source=jsonldhttps://www.dictionary.com/browse/commons

But the term "public place" is not so limited. For example, past legislative restrictions on smoking cigarettes defined "public place" to include government buildings, elevators, nursing homes and hospitals, theaters, restaurants, retail stores, and grocery stores, among other locations. *See* § 386.203(1), Fla. Stat. (2002). Sections 877.20 through 877.25 of Florida's criminal code likewise define "public place" to include any place "to which the public has access, including . . . the common areas of schools, hospitals, apartment houses, office buildings, transportation facilities, and shops." § 877.219(5), Fla. Stat. Florida courts have construed "public place" in the Fourth Amendment context broadly to include an emergency room bay, *Purifoy v. State*, 225 So. 3d 867, 870–71 (Fla. 1st DCA 2017), the front yard of a person's home, *State v. Williams*, 128 So. 3d 30, 34–35, n.6 (Fla. 3d DCA 2012), a gas station, *Jenkins v. State*, 978 So. 2d 116, 126–27 (Fla. 2008), and a train station, *State v. Dean*, 639 So. 2d 1009, 1012 (Fla. 4th DCA 1994). *Accord U.S. v. Santana*, 427 U.S. 38, 41–42 (1976) (doorway of private residence was a public place for Fourth Amendment purposes); *Jacobson v. State*, 476 So. 2d 1282, 1285 (Fla. 1985) (police stop in airport terminal did not trigger Fourth Amendment protections).

An interpreting court would not likely consider these locations to be public commons, even though courts and the legislature have considered them public places. As a practical illustration, both voters and courts could reasonably interpret

the Amendment's text to allow marijuana use at a sports bar or cigar lounge, while still prohibiting marijuana use at a municipally-owned amphitheater, like the Cascades Park amphitheater in Tallahassee.

FARM's displeasure with the Amendment's definition of "public place" is a pure policy disagreement that must be resolved in the ballot box, rather than by this Court. The Amendment offers a definition of "public place," and the ballot summary is therefore accurate in its reference to "defined public places." The ballot summary is not misleading simply because FARM prefers a different definition.

c. THE AMENDMENT DOES NOT GRANT BLANKET IMMUNITY FOR INDEPENDENT TORTS AND CRIMES, AND THIS COURT HAS ALREADY HELD THAT A SIMILAR BALLOT SUMMARY DID NOT NEED TO REFERENCE IMMUNITY FOR THE LAWFUL PRESCRIPTION AND USE OF MARIJUANA FOR MEDICAL PURPOSES.

The Amendment grants "immunity" to individuals only as far as Florida law grants immunity for the lawful use of any other lawful product. To the extent that an adult's possession of up to 2.5 ounces of marijuana for non-medical use currently gives rise to civil or criminal liability under Florida law, the Amendment would erase that liability. The Amendment does not grant blanket immunity from independent torts or crimes.

Drug Free America argues that the Amendment grants blanket immunity to MMTCs for "negligence, including improper manufacturing and handling, false and deceptive advertising, among a host of others." Drug Free America Br. at 25. This is an absurd reading of plain language that this Court should reject. Drug Free

America likewise argues that the Amendment grants "immunity" to individuals who "use marijuana inappropriately" while operating a vehicle, aircraft, train, or boat. Not only is this reading absurd, it is also flat wrong. The Amendment incorporates existing prohibitions on operating any vehicle, aircraft, train, or boat while under the influence of marijuana. *See* Amendment, § 33(c)(5) (incorporating Art. X, § 29(c)(4)).

Common sense dictates that the Amendment will not immunize adults from independent torts and crimes simply by virtue of their possessing marijuana at the time that the misconduct occurs. Section 101.161 does not require the ballot summary to disclose an outlandish effect that the Amendment does not accomplish.

This Court rejected nearly the same argument in *Marijuana I*. In that case, the amendment stated that physicians licensed in Florida "shall not be subject to criminal or civil liability . . . for issuing a physician certification to a person diagnosed with a debilitating medical condition in a manner consistent with this section." *Marijuana I*, 132 So. 3d at 807. This Court held that this language did "not grant broad immunity . . . to physicians who prescribe medical marijuana fraudulently or even negligently." *Id.* Instead, the Amendment did "no more than what it states—exempts physicians

from being subject to criminal or civil liability or sanctions for the limited act of prescribing marijuana in a manner consistent with the amendment." *Id.*[12]

Just as in *Marijuana I*, the Amendment in this case does no more than what it states: it exempts adults who possess and use marijuana in accordance with the Amendment's strictures from criminal or civil liability arising from that mere possession or use alone. *See id.* This is a natural and obvious implication of a ballot summary that "[p]ermits 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," and need not be repeated separately.

IV. THE SENATE'S CRITICISMS OF THE PROPOSED AMENDMENT REVEAL A NON-JUSTICIABLE POLICY DISAGREEMENT, NOT A SINGLE-SUBJECT VIOLATION.

This Court unanimously permitted Florida's medical marijuana amendment on the ballot in *Marijuana II*, without a hint of concern over a single-subject violation. *See* 181 So. 3d at 477–78. The Amendment seeks to build on that existing legal framework to allow adults to obtain and use a limited amount of marijuana for

[12] The dissenting opinions on the immunity issue in *Marijuana I* were particularly focused on the potential for the amendment to be construed to hamper patients'right to bring negligence or medical malpractice claims against prescribing physicians, *see* 132 So. 3d at 817–18, 822—a concern that is not applicable to the instant Amendment. Moreover, in implementing the language of a similar amendment that passed after the Court's decision in *Marijuana II*, the legislature crafted detailed requirements for physicians prescribing medical marijuana to patients. *See* §§ 381.986 (2)–(4), Fla. Stat. Similarly here, the legislature's authority to enact legislation to provide additional guidance that is consistent with the Amendment is expressly preserved. *See* Amendment, § 33(d)(2)

any reason, rather than only for enumerated medical reasons. *See* Art. X, § 29(b)(1), Fla. Const. (defining debilitating medical condition for which marijuana may be prescribed). This measured expansion is the sole purpose of the Amendment, revealing a "logical and natural oneness of purpose, specifically, whether Floridians wish to include a provision in our state constitution" expanding the lawful "use of marijuana." *Id.* at 477.

The Senate and Drug Free America criticize the Amendment for expanding the legality of marijuana in Florida and "build[ing] on [the] headwind" of the medical marijuana amendment to "overturn the remaining prohibitions in Florida law regarding the use and possession of marijuana." Drug Free America Br. at 9–10; Senate Br. at 2 ("This Initiative expands the legality of marijuana in Florida . . . ."). Though the Amendment leaves many existing restrictions intact, the Senate and Drug Free America generally have it exactly right: the Amendment's sole and chief purpose is to build on the existing legal framework surrounding medical marijuana in order permit adults to possess and use a limited amount of marijuana for any purpose. The ballot summary plainly recites this effect, and the Amendment is singularly focused on this effect. The Amendment therefore satisfies the single-subject requirement in article XI, section 3 of the Florida Constitution.

The Senate raises a host of policy attacks under the pretense of single-subject violations, none of which are appropriate for resolution in this proceeding.[13] In reviewing the Amendment's compliance with section 101.161 and the single-subject rule, the Court "will not address the merits or wisdom of the proposed amendment." *Advisory Op. to Att'y Gen. re Fla. Marriage Prot. Am.*, 926 So. 2d 1229, 1233 (Fla. 2006).[14]

It is difficult to conceive a more pure policy argument than the Senate's observation that voters might have to evaluate the "policy choices" that the Amendment reflects. Senate Br. at 11–12. For example, the Senate argues that because some voters may "support less criminal penalties, but are not comfortable with allowing commercial sales," the Amendment presents a logrolling problem. *Id.* at 11. First, the lawful possession and lawful sale of marijuana are not two unrelated subjects; rather, they are "two sides of the same coin." *Advisory Op. to Att'y Gen. re*

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[13] The Senate's ironic policy arguments, given the Legislature's long existing authority to enact the same changes as those proposed by the Amendment, or different changes that may be more suited to the Senate's preference, and the Legislature's refusal to do anything on this issue except at the behest of citizen-driven initiatives, underscore the critical importance of upholding the exercise of the people's right to amend their constitution.

[14] At the outset, this Court should ignore the inappropriate implications on page 9 and 10 of the Senate's brief. All financial contributions to Make It Legal, Florida are a matter of public record, and are completely irrelevant to any reasoned legal argument to be considered by this Court. To trigger this review, 76,620 electors signed initiative petitions—not simply a few interested parties. For the Amendment to appear on the ballot, at least 766,200 electors—not corporate entities—in Florida will have signed petitions supporting the Amendment's placement on the ballot.

Rights of Electricity Consumers Regarding Solar Energy Choices, 188 So. 3d 822, 828 (Fla. 2016).

Second, and relatedly, the Senate describes an entirely different amendment. The Amendment does not "less[en] criminal penalties"—it eliminates criminal liability altogether for possession of marijuana in accordance with the Amendment's limitations. And in order to allow lawful possession of marijuana, the sale of marijuana must also be legalized to some extent. Otherwise, the right to possession and use is meaningless. *See* SCALIA & GARNER, READING THE LAW: THE INTERPRETATION OF LEGAL TEXTS, § 4, at 63 ("A textually permissible interpretation that furthers rather than obstructs the document's purpose should be favored.").

The Senate's companion argument that polling shows that some voters "may want to authorize personal use while being opposed to allowing commercial sales of marijuana" is a policy criticism that fails for the same reason. *Id.* at 10–11. Setting aside the irrelevance of poll results to this Court's review of a petition initiative, common sense dictates that a right to personal use of marijuana is a nullity without a corresponding right to obtain marijuana for personal use. Moreover, if voters are opposed to MMTCs dispensing marijuana to adults for personal use, then they remain free to vote against the Amendment. *See Health Hazards of Second-Hand Smoke*, 814 So. 2d at 421 ("[T]he voters will ultimately determine the wisdom of the policy alternative presented to them.")

That some voters might disagree with the policy that the Amendment proposes does not constitute logrolling. Otherwise, every petition initiative that draws opposition would violate the single-subject requirement. Only when a proposed amendment combines distinct and unrelated subjects does logrolling occur. *Voting Restoration Amendment*, 215 So. 3d at 1206 ("The term logrolling refers to a practice whereby an amendment is proposed which contains unrelated provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed."). The Senate identifies no "unrelated provisions" bundled within the Amendment, *see id.*, and instead argues that some voters may not support the policy that the Amendment would implement. But voters' policy choices must be resolved in the ballot box.

Nor does the Amendment engage in logrolling by building on existing law. If the opposite were true, then any amendment that touched on a previously-regulated subject would be guilty of logrolling. Clearly, that is not the law. Just last month, this Court approved an amendment for placement on the 2020 ballot that would increase Florida's minimum wage over the next six years, but otherwise leaves intact the remainder of the existing minimum wage amendment found in article X, section 24. *See Advisory Op. to the Att'y Gen. re Raising Fla.'s Min. Wage*, Nos. SC19-549, SC19-736, 2019 WL 6906963, at *2 (Fla. Dec. 19, 2019). This proposed minimum wage amendment builds upon an existing constitutional amendment and

it's implementing legislation, and nevertheless satisfies the single-subject rule. *See id.*; *see* § 448.110, Fla. Stat. ("Florida Minimum Wage Act"). Such flexibility is preferred, given Florida citizens' ability to propose amendments directly to their constitution, and the lack of a refining legislative process for such proposals. *See Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984) ("It is apparent that the authors of article XI realized that the initiative method did not provide a filtering legislative process for the drafting of any specific proposed constitutional amendment or revision," in contrast to "[t]he legislative, revision commission, and constitutional convention processes of sections 1, 2 and 4 . . . .").

Focusing again on its perceived wisdom of the Amendment, the Senate next criticizes the Amendment because, in the Senate's view, it achieves a different policy goal than article X, section 20, which prohibits smoking in indoor workplaces. *See* Art. X, § 20, Fla. Const. This is another policy gripe—not a justiciable single-subject violation.

The ballot summary and Amendment do not purport to amend article X, section 20. Nor does any facial conflict between those two provisions exist. For starters, the Amendment does not only authorize smoking marijuana, but contemplates the use of marijuana in multiple forms, including ingestion and topical application. *See* Amendment, § 33(a)(4) (defining "marijuana accessories" to include "any equipment, products, or materials of any kind which are for ingesting,

inhaling, topically applying, or otherwise introducing marijuana in to the human body"). The same is true for medical marijuana. *See* §§ 381.986(1)(d), (f), (g), Fla. Stat. The Senate once again simply dislikes the end result that the Amendment seeks to achieve. Voters who agree retain the unfettered right to vote against the Amendment.

The two medical marijuana amendments that this Court previously approved for placement on the ballot did not violate the prohibition against logrolling, and neither does this Amendment. The amendments at issue in *Marijuana I* and *Marijuana II* delegated rulemaking and oversight authority directly to the Department of Health. *See* 132 So. 3d at 793, 796–97; 181 So. 3d at 475, 477–78. They also proposed a sweeping policy change by legalizing medical marijuana for the first time in Florida's history. The amendments in *Marijuana I* and *Marijuana II* also created the regulatory framework for MMTCs from whole cloth. *See* 132 So. 3d at 791–92; 181 So. 3d at 473–74. This Court nevertheless found that these amendments complied with the single-subject requirement, and approved the amendments for placement on the ballot. If the naissance of MMTCs (and their authority to sell medical marijuana) alongside the legalization of medical marijuana did not constitute logrolling, then their expansion likewise cannot constitute logrolling.

Separate from its logrolling argument, the Senate argues that the Amendment should be removed from the ballot because of ongoing court battles over the scope of the legislature's and Department of Health's respective authority under the current medical marijuana amendment, embodied in article X, section 29 of the Florida Constitution. Senate Br. at 15–17 (citing *Fla. Dep't of Health v. Florigrown, LLC*, No. 1D18-4471, 2019 WL 4019919 (Aug. 27, 2019). The Senate relies on this pending lawsuit to conclude that the Amendment would affect multiple branches of government, and therefore violates the single-subject requirement. *See id.*

The pendency of a lawsuit involving a similar constitutional provision does not push the Amendment out of compliance with the single-subject rule. The *Florigrown* lawsuit may influence the Senate's interest in whether or not the Amendment passes, but fails to establish a single-subject violation. The exacting test for a single-subject violation requires far more than an ancillary impact to another branch. "[A] proposal that affects several branches of government will not automatically fail; rather it is when a proposal substantially alters or performs the functions of multiple branches that it violates the single-subject test." *Marijuana I*, 132 So. 3d at 795–96 (citing *Advisory Op. to Att'y Gen. re Fish & Wildlife Conservation Comm'n*, 705 So. 2d 1351, 1353–54 (Fla. 1998). In fact, this Court has recognized that it is "difficult to conceive of a constitutional amendment that would not affect other aspects of government to some extent." *Advisory Op. to Att'y Gen.*

re Rights of Electricity Consumers Regarding Solar Choice, 188 So. 3d 822, 830 (Fla. 2016) (citing *Advisory Op. to Att'y Gen. re Ltd. Casinos*, 644 So. 2d 71, 74 (Fla. 1994)).

The consequence of pending litigation is not to strip the Amendment from the ballot. Rather, the outcome of the *Florigrown* litigation may frame the Court's future interpretation of this Amendment. If the Senate's position were the governing rule—that no amendment could make its way to the ballot when litigation involving a similar law is pending—then precious few citizen initiatives would ever reach the ballot, given the quantity and variety of lawsuits pending in Florida's courts at any given time. More fundamentally, there is no constitutional basis for imposing such a restriction as a basis for striking a citizen initiative from the ballot. *See* Art. XI, § 3, Fla. Const. Unsurprisingly, the Senate cites no case in which pending litigation justified striking an initiative from the ballot. Senate Br. at 13–18.

The Amendment in this case expressly preserves the legislature's role to develop consistent legislation: "Nothing in this section shall limit the legislature from enacting laws consistent with this section." Amendment, at § 33(d)(2). Identical language already appears in the existing medical marijuana amendment. *See* Art. X, § 29(e), Fla. Const. ("Nothing in this section shall limit the legislature from enacting laws consistent with this section."). Moreover, this Court already approved of a direct delegation of authority to the Department of Health in

Marijuana I and *Marijuana II*. *See* 132 So. 3d at 793, 796–97; 181 So. 3d at 475, 477–78. That the precise contours of the roles of the legislature and the Department of Health may be further developed by this Court in the *Florigrown* lawsuit or in a future lawsuit is no basis to remove this Amendment from the ballot.

An amendment does not violate the single-subject requirement by merely impacting multiple branches of government, or requiring compliance by multiple branches. This Amendment does not require any branch to usurp the role of another, and preserves the legislature's ability to pass consistent legislation. Like all constitutional provisions, any unanswered questions regarding the proper application and interpretation of the existing medical marijuana amendment and the proposed Amendment would ultimately be resolved by the courts. And like all other constitutional provisions, this Amendment's substance will be bound and framed by how this Court ultimately applies and interprets it. Room for interpretation does not equate to a single-subject violation.

CONCLUSION

For these reasons, the ballot summary complies with section 101.161, Florida Statutes, and the Amendment satisfies article XI, section 3 of the Florida Constitution. Make It Legal, Florida respectfully requests that this Court approve the Amendment for placement on the ballot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on January 14, 2020, the foregoing brief was filed through the Florida Courts e-Filing Portal, which will furnish a copy by email to the individuals identified on the Service List that follows.

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CERTIFICATE OF FONT COMPLIANCE

I hereby certify that this brief complies with the font requirements of Rule 9.210(a) of the Florida Rules of Appellate Procedure.

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