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IN THE SUPREME COURT OF FLORIDA

Case No. SC19-2116

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

Supplemental Brief of THE FLORIDA SENATE, and BILL GALVANO, in his official capacity as President of the Florida Senate

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ARGUMENT

I. Chapter 2020-15, Laws of Florida, clarifies the Court should take into account Federal Law when Evaluating Initiatives

The Court has asked how Chapter 2020-15, Laws of Florida, impacts its review in the present case. As the Court recognized in *Minimum Wage*, the Court's jurisdiction is defined by Article V, § 3 (b)(10) of the Florida Constitution, which states this Court "[s]hall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, *addressing issues as provided by general law*." *See Advisory Opinion to the Attorney Gen. re Raising Florida's Minimum Wage*, 285 So. 3d 1273 (Fla. 2019) (emphasis added). Therefore, the Court's scope of jurisdiction regarding the validity of initiative petitions is defined by general law. The Legislature enacted Chapter 2020-15, Laws of Florida, in part, to clarify an expansion of the Court's review.

Section 2 of Chapter 2020-15 amends § 16.061(1), Florida Statutes, by requiring the Attorney General to petition the Court for an opinion "regarding… whether the proposed amendment is facially invalid under the United States Constitution." "The provisions of [Chapter 2020-15], including the ballot requirements for certain disclosures and statements, apply to constitutional amendments proposed by initiative which are proposed for the 2020 general election and each election thereafter." *See Id.* at § 6. The act took effect upon approval by the Governor on April 8, 2020. *See Id.* at § 8.In *Advisory Opinion to Attorney General—*

Limited Political Terms in Certain Elective Offices, 592 So. 2d 225 (Fla. 1991) (*Limited Political Terms*), this Court ruled "we are limited in this proceeding to addressing whether the proposed amendment and ballot title and summary comply with article XI, section 3, Florida Constitution and section 101.161, Florida Statutes (1989)." *Id.* at 227 (citing *Grose v. Firestone*, 422 So. 2d 303, 306 (Fla. 1982) (finding question of whether proposed amendment violated due process not justiciable in challenge to ballot summary)) (footnote omitted). As discussed in the Senate's Reply Brief, this narrow reading of § 16.061(1) before it was amended was contrary to the text of the statute and the prior precedent of the Court. *See Senate RB* pp. 1-6. To the extent that *Limited Term Limits* holds that the facial constitutionality of an initiative cannot be considered, the amendment to § 16.061(1) overturns that holding.

The Sponsor acknowledges there is a "conflict" between federal law and what the Initiative permits, (Sponsor Br. at 17), but argued "a conflict between current federal law and a proposed amendment is not justiciable in initiative petition proceeding." *Id.* at 12. The Sponsor's argument in that regard relies on *Limited Political Terms*, which the new law clarifies no longer applies.

The conflict in this case is broad. The Initiative would create a constitutional right where any "adult may possess, display, purchase, or transport up to two and a half ounces of marijuana for personal use for any reason." There are passingly few

restrictions on this. For instance, the Sponsor says that the restriction found in Article X § 29(c)(6) applies, but that restriction is limited by its terms to medical marijuana use. It's not at all clear how or if it would apply to recreational marijuana use. So those restrictions appear illusory. The conflict that the Sponsors acknowledge would attempt to overthrow the federal regulatory scheme in Florida.

While there are state law cases that attempt to say that the federal Controlled Substances Act does not preempt state laws that only create regulations and allow marijuana use, in *Gonzales v. Raich,* 545 U.S. 1, at fn 38, 125 S. Ct. 2195, 162 L.Ed.2d 1 (2005) the Supreme Court pointed out that the Supremacy Clause controlled over California's law. Even in Justice Thomas's dissent he acknowledged that was the reasonable conclusion to draw from the holding. "The CSA displaces California's Compassionate Use Act if the CSA is constitutional as applied to respondents' conduct, but that is the very question at issue." *See Id.* Thomas Dissent at fn. 6

CONCLUSION

The passage of Chapter 2020-15, Laws of Florida, clarifies the scope of the Courts review and opens the door for the Court to consider the Initiative's inability to comport with Federal law. Because the Initiative is facially invalid under the U.S. Constitution, the Court should remove it from the ballot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed electronically with the Clerk of the Court via the Florida eFiling Portal which will serve all parties of record this 10th day of February 2020.

s/ Jeremiah Hawkes

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I certify that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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