

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, STATE OF FLORIDA

PEOPLE UNITED FOR MEDICAL MARIJUANA, INC.

Plaintiff,

Case No. \_\_\_\_\_

vs.

STATE OF FLORIDA; FLORIDA DEPARTMENT OF HEALTH; CELESTE PHILIP, M.D., in her official capacity as Secretary of Health for the State of Florida; OFFICE OF COMPASSIONATE USE; CHRISTIAN BAX, in his official capacity as Director of the Office of Compassionate Use; FLORIDA BOARD OF MEDICINE; JAMES ORR, M.D., in his official capacity as Chair of the Florida Board of Medicine; FLORIDA BOARD OF OSTEOPATHIC MEDICINE; ANNA HAYDEN, D.O., in her official capacity as Chair of the Florida Board of Osteopathic Medicine,

Defendants.

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**ACTION FOR DECLARATORY JUDGMENT**

1. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021 (1995) to determine the constitutionality of amendments to section 381.986, Florida Statutes (2016), passed by the Florida Legislature during the 2017 Special Session A (“Implementing Bill”), which excludes the use of marijuana in a form for smoking from the statute’s definition of “medical use.”

2. Defendants have various responsibilities for healthcare policymaking, budgeting, operation and supervision of Florida’s healthcare system, including administration of Article X, section 29 of the Florida Constitution.

3. The Plaintiffs have a genuine and current dispute with defendants, are in doubt of their rights, and require a judgment of this Court to declare them and provide other relief requested herein.

### **JURISDICTION AND VENUE**

4. This suit is to redress the deprivation of rights and privileges secured to Plaintiffs by Article X, section 29 of the Florida Constitution.

5. This Court has jurisdiction pursuant to Article V §5(b) of the Florida Constitution and Sections 26.012 and 86.011, Florida Statutes.

6. Venue is proper in this Court pursuant to section 47.011, Florida Statutes because Defendants are located in this Circuit.

### **PARTIES**

#### **The Plaintiff**

7. Plaintiff PEOPLE UNITED FOR MEDICAL MARIJUANA, INC. is a corporation not for profit organized under the laws of the state of Florida with its principal address in Orlando, Florida. PEOPLE UNITED FOR MEDICAL MARIJUANA, INC. organizes to provide research, expert opinions and feedback on a range of medical marijuana issues and advocated for the legalization of medical marijuana in the state of Florida for the treatment of debilitating medical conditions beginning in 2014.

#### **Defendants**

8. Defendant State of Florida, through its Legislature and Governor, adopted the challenged Implementing Bill.

9. Defendant Florida Department of Health (the “Department”) is the state agency constitutionally-delegated to promulgate regulations for the implementation of Art. X, § 29. They are also the state agency authorized to impose penalties on individuals who violate the Implementing Bill. Defendant Celeste Philip, M.D., is Secretary of the Department. Defendant Philip is sued in her official capacity as Secretary of Health for the State of Florida, as are her agents and successors.

10. Defendant Office of Compassionate Use (the “Office”) is part of the Florida Department of Health. The Implementing Bill for Art. X, § 29, which is the subject of this litigation, also amends section 385.212, Florida Statutes (2016), to provide for the Office’s administration and enforcement of Fla. Stat. § 381.986 (2016) (as amended). The Office is charged with writing and implementing the department’s rules for medical marijuana, overseeing the statewide Compassionate Use Registry and licensing Florida businesses, which are seeking to cultivate, process, and dispense medical marijuana. Defendant Christian Bax is the Director of the Office. Defendant Bax is sued in his official capacity as Director of the Office of Compassionate Use for the Florida Department of Health, as are his agents and successors.

11. Defendant Florida Board of Medicine is part of the Florida Department of Health. Defendant James Orr, M.D., is the Chair of the Florida Board of Medicine. Pursuant to Florida law, the Florida Board of Medicine exercises supervisory powers over the state’s physicians and conducts disciplinary proceedings and imposes penalties against physicians. *See* § 458.309, Fla Stat. (2012). Defendants Florida Board of Medicine and Orr are authorized to impose penalties on physicians for violations of the Implementing Bill. Defendant Orr is sued in his official capacity as Chair of the Florida Board of Medicine, as are his agents and successors.

12. Defendant Florida Board of Osteopathic Medicine is part of the Florida Department of Health. Defendant Anna Hayden, D.O., is the Chair of the Florida Board of Osteopathic Medicine. Pursuant to Florida law, the Florida Board of Osteopathic Medicine exercises supervisory powers over the state's osteopathic physicians and conducts disciplinary proceedings and imposes penalties against osteopathic physicians. *See* § 459.005, Fla Stat. (2012). Defendants Florida Board of Osteopathic Medicine and Hayden are authorized to impose penalties on physicians for violations of the Implementing Bill. Defendant Hayden is sued in her official capacity as Chair of the Florida Board of Osteopathic Medicine, as are her agents and successors.

### **STATEMENT OF FACTS**

13. Studies show a link between medical marijuana treatment and combating symptoms for at least fifteen different ailments, including, but not limited to, cancer, epilepsy, glaucoma, human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), post-traumatic stress disorder (PTSD), Dravet syndrome, Alzheimer's disease, inflammatory bowel disease, arthritis, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis, and other ailments of the same kind or class.

14. Scientists have already discovered over one-hundred separate cannabinoids through medical marijuana research, which have the potential to induce positive biologic changes in the body's cannabinoid receptor system.

15. Inhalation is a medically effective and efficient way to deliver Tetrahydrocannabinol (THC), and other cannabinoids, to the bloodstream.

16. In a study published in the *Journal of the American Medical Association* in 2012, marijuana smoking was shown to not impair lung function, based on the doses inhaled by the majority of users, as compared to non-smokers and tobacco smokers. In fact, marijuana smoking was shown to increase lung capacity.

17. Despite decades of marijuana being used for smoking in the United States, there have been no reported medical cases of lung cancer or emphysema attributed to marijuana.

18. Article X, § 29(a) of the Florida Constitution immunizes from liability (i) medical use of marijuana by a qualifying patient or caregiver; (ii) issuance of a physician certification with reasonable care to a patient with a debilitating medical condition; and (iii) actions and conduct by a Medical Marijuana Treatment Center (“MMTC”), so long as they are in compliance with other provisions of Section 29.

19. Art. X, § 29 Florida Constitution was initiated by petition and collected 716,270 valid signatures of Florida voters and was certified by the Secretary of State of Florida for the 2016 general election ballot, pursuant to procedures prescribed in Art. XI, § 3 of the Florida Constitution.

20. Art. X, § 29 was adopted by the electorate of the State of Florida on November 8, 2016 with 71.32% voting “yes,” pursuant to procedures prescribed in Art. XI, § 5 of the Florida Constitution.

21. The ballot title for the proposed amendment approved by the electorate of the State of Florida was:

“Use of Marijuana for Debilitating Medical Conditions.”

22. The ballot summary for the proposed amendment approved by the electorate of the State of Florida was:

Allows medical use of marijuana for individuals with debilitating medical conditions as determined by a licensed Florida physician. Allows caregivers to assist patients' medical use of marijuana. The Department of Health shall register and regulate centers that produce and distribute marijuana for medical purposes and shall issue identification cards to patients and caregivers. Applies only to Florida law. Does not immunize violations of federal law or any non-medical use, possession or production of marijuana.

23. In *Advisory Op. to Att'y Gen. re Use of Medical Marijuana for Certain Medical Conditions*, 181 So. 3d 471 (Fla. 2016) the Florida Supreme Court held, in part, "The initiative petition and ballot title and summary satisfy the legal requirements of article XI, section 3, of the Florida Constitution, and section 101.161(1), Florida Statutes."

24. Article X, § 29 of the Florida Constitution provides in part:

(a) Public Policy

(1) The medical use of marijuana by a qualifying patient or caregiver in compliance with this section is not subject to criminal or civil liability or sanctions under Florida law.

(b) Definitions. For purposes of this section, the following words and terms shall have the following meaning:

...

(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."

(6) "Medical use" means the acquisition, possession, use, delivery, transfer, or administration of an amount of marijuana not in conflict with Department rules, or of related supplies by a qualifying patient or caregiver for use by the caregiver's

designated qualifying patient for the treatment of a debilitating medical condition.

(8) "Physician" means a person who is licensed to practice medicine in Florida.

(9) "Physician Certification" means a written document signed by a physician, stating that in the physician's medical opinion, the patient suffers from a debilitating medical condition

(10) 'Qualifying Patient' means a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying patient identification card.

25. Article X, § 29 of the Florida Constitution further provides in part:

(c) Limitations.

(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.

26. Article X, § 29 of the Florida Constitution further provides in part:

(e) Legislation. Nothing in this section shall limit the legislature from enacting laws consistent with this section.

**I. THE STATUTORY DEFINITION OF "MEDICAL USE" IN THE IMPLEMENTING BILL IS INCONSISTENT WITH THE CONSTITUTIONAL DEFINITION OF "MEDICAL USE" PASSED BY VOTERS AS ART. X, § 29(B)(6).**

27. The Implementing Bill for Art. X, §29 of the Florida Constitution was passed by both houses of the Legislature on June 9, 2017, the last day of the 2017 Special Session A.

28. The Implementing Bill provides:

(1) Definitions - As used in this section, the term:

...

(j) 'Medical use' means the acquisition, possession, use, delivery, transfer, or administration of marijuana authorized by a physician certification. The term does not include:

...

2. Possession, use or administration of marijuana in a form for smoking, in the form of commercially produced food items other than edibles, or of marijuana seeds or flower, except for flower in a sealed, tamper-proof receptacle for vaping.

29. This sub-section of the Implementing Bill, excluding “possession, use or administration of marijuana in a form for smoking” from the statutory definition of “medical use,” is inconsistent with Art. X, § 29 of the Florida Constitution, which provides for a process to determine whether an individual may qualify for “medical use” and provides that that person shall not be liable under Florida law for possession, use or administration consistent with Art. X, § 29.

30. The prerequisite for medical use under the Constitution requires a person become a “qualifying patient” by obtaining a “physician certification” by a licensed Florida physician that finds that the patient has a “debilitating medical condition”. That person must then obtain a “patient identification card” from the Department of Health to finally become a qualifying patient. (Art. X, § 29(b)(6), (8)-(10)).

31. By redefining the constitutionally defined term “medical use” to exclude smoking, the Legislature substitutes its medical judgment for that of “a licensed Florida physician” and is in direct conflict with the specifically articulated Constitutional process.

**II. THE STATUTORY DEFINITION OF “MEDICAL USE” IN THE IMPLEMENTING BILL IS INCONSISTENT WITH THE CONSTITUTIONAL DEFINITION OF “MARIJUANA” PASSED BY VOTERS AS ART. X, § 29(B)(4).**

32. The sub-section of the Implementing Bill, excluding “possession, use or administration of marijuana in a form for smoking” from the statutory definition of “medical use,” is inconsistent and in direct conflict with Art. X, § 29 of the Florida Constitution, which



defines “marijuana” and provides that a person shall not be liable under Florida law for possession, use or administration of marijuana when *acting in compliance* with Art. X § 29.

33. Art. X, § 29(b)(4) incorporates by reference the meaning given “cannabis” in Fla. Stat. § 893.02(3) (2014):

All parts of any plant of the genus *Cannabis*, whether growing or not, the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant of its seeds or resin . . . .

34. Art. X, § 29(b)(4) incorporates by reference the definition of “low-THC cannabis” from Fla. Stat. § 381.986(1)(b) (2014) in its meaning of the term “marijuana:”

A plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin that is dispensed only from a dispensing organization.

35. Whole-leaf, or whole-flower, cannabis is a common commercial derivation of marijuana that is sold by at least one medical marijuana treatment center already approved as a dispensing organization by the Florida Department of Health under Fla. Stat., §381.986(6) (2016). Any MMTC who produces, processes, transports or sells “marijuana in a form for smoking” would violate the Implementing Bill and be subject to criminal penalties.

36. By redefining “medical use” to exclude “possession, use or administration of marijuana in a form for smoking,” the Legislature redefined and narrowed the definition of marijuana in direct conflict with the definition of Art. X, § 29(b)(4). By incorporating a specific statutory definition into the Constitution in Art. X, § 29(b)(4), the people have prohibited any *statutory* modification of that constitutional definition.

**III. THE IMPLEMENTING BILL THAT MAKES SMOKING UNLAWFUL IN ANY LOCATION, INCLUDING IN A PRIVATE PLACE, IS INCONSISTENT WITH THE TEXT AND INTENT OF ART. X, §29(C)(6), WHICH ALLOWS LEGAL RESTRICTIONS ON SMOKING MEDICAL MARIJUANA IN A PUBLIC PLACE “UNLIKE THE PROPER USE OF MEDICAL MARIJUANA IN A PRIVATE PLACE WHICH IS NOT ILLEGAL.” APPENDIX A - INTENT OF SPONSORS.**

37. Art. X, § 29(c)(6) states that accommodations for smoking medical marijuana in a public place are not required under the constitutional provision. The Constitution does not itself prohibit smoking, but it does authorize the prohibition of smoking in a “public place.” Subsection (c)(6) addresses limitations on use in specific locations such as corrections facilities and public places. That constitutional clause does not address, define or limit medical use of marijuana in a private place. The statute specifically limits medical use of marijuana in smoke form in *any* location in conflict with the Constitution.

38. The intent of drafters and voters is found in “Amendment 2: Analysis of Intent,” attached as “Exhibit A.” That intent statement was written by the drafters of the text and was published and distributed to provide voters with the meaning of the provisions on which they would vote.

39. The intent statement specifically states that Art. X, § 29(c)(6) “makes clear that the Amendment does not require that the smoking of medical marijuana be allowed in public unlike the proper use of medical marijuana in a private place which is not illegal.” The statement unambiguously says that smoking medical marijuana in a private place in compliance with the provisions of the amendment is legal.

40. As stated in the “Amendment 2: Analysis of Intent,” the amendment “defines medical marijuana differently and the scope and standards for this amendment are intended to provide broader access to more qualifying patients than provided for in the existing statutes.”

The existing statutes at the time of the intent statement prohibited the use of medical marijuana by smoking.

41. Statutes enacted by the legislature may not restrict rights granted under the Constitution, and, to the extent a statute conflicts with express or clearly implied mandates of the Florida Constitution, the statute must fall. *See Notami Hosp. of Florida, Inc. v. Bowen*, 927 So. 2d 139 (Fla. 1st DCA 2006), *decision aff'd*, 984 So.2d 478 (Fla. 2008).

42. Plaintiffs and those similarly situated are in doubt about their rights and on a question of interpretation arising under this Implementing Bill, and request a declaration of their rights under the law and the Constitution.

43. The State of Florida, and the various Defendants, has or will imminently act under the color of state law and authority when it enforces the Implementing Bill.

### **REQUEST FOR DECLARATORY RELIEF**

The Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 through 45 as if set forth fully herein.

44. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021 (1995).

45. The Florida Legislature amended Fla. Stat. § 381.986 (2016), to exclude from the definition of medical use: “possession, use or administration of marijuana in a form for smoking.”

46. This definitional exclusion conflicts with the constitutional text and the intent of voters in passing Article X, § 29 to the Florida Constitution.

47. There is accordingly a bona-fide, actual, present practical need for a declaration that the sub-section prohibiting smoking as a “medical use” in Fla. Stat. § 381.986 (2016), as

amended during the 2017 Special Session A, is unenforceable under Article X, § 29 of the Florida Constitution.

48. Because the complaint alleges a state statute to be unconstitutional, a copy shall be served on the Attorney General, as reflected in the Certificate of Service, in accordance with Section 86.091, Florida Statutes (1967).

49. The declaration concerns a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts.

50. An immunity, power, privilege, or right of the Plaintiffs is dependent upon the law applicable to the facts. The Plaintiffs' immunity to criminal prosecution under Article X, section 20 is directly at issue.

51. The Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

52. The relief sought is not merely the giving of legal advice of the answers to questions propounded for curiosity.

WHEREFORE, Plaintiff, FLORIDA FOR CARE, INC., respectfully requests that this Court enter a declaratory judgment that the amendment to Fla. Stat. § 381.986(g)(1) (2016), which prohibits the use of marijuana in a form for smoking, is unenforceable, prohibit the State of Florida from enforcing same, award the Plaintiff its reasonable attorneys' fees and costs, and grant such other relief as this Court deems just and proper.

Respectfully submitted this 6th day of July, 2017.

/s/ Jon L. Mills  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court by using the Florida Courts e-Filing Portal and that a true and correct copy of the foregoing document was served by electronic mail and by Certified First Class U.S. Mail on all counsel listed below on this \_\_\_\_ day of July, 2017.

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