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IN THE SUPREME COURT OF FLORIDA
Case No.: SC13-2006

ADVISORY OPINION TO THE ATTORNEY GENERAL
RE: USE OF MARIJUANA FOR
CERTAIN MEDICAL CONDITIONS

INITIAL BRIEF OF SPONSOR
People United for Medical Marijuana

IN SUPPORT OF THE INITIATIVE

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STATEMENT OF THE CASE

This matter comes before the Court upon a petition for an advisory opinion submitted by the Attorney General on October 24, 2013 pursuant to Article IV, Section 10, Florida Constitution, and Section 16.061, Florida Statutes. This Court is charged with deciding whether the text of the proposed amendment entitled "Use of Marijuana for Certain Medical Conditions" (hereinafter "Medical Marijuana Amendment"), complies with Article XI, Section 3, Florida Constitution, and whether the proposed ballot title and substance comply with Section 101.161, Florida Statutes. This Court has jurisdiction pursuant to Article V, Section 3(b)(10), Florida Constitution. This brief is submitted by People United for Medical Marijuana, Sponsor of the proposed amendment, in response to this Court's Order of October 28, 2013 accepting jurisdiction and inviting interested parties to submit briefs.

The Sponsor filed the proposed initiative petition with the Secretary of State to amend the Florida Constitution by adding a new Section 29 to Article X:

> **SECTION 29. Medical marijuana production, possession and use —**
>
> (a) PUBLIC POLICY.
>
> (1) The medical use of marijuana by a qualifying patient or personal caregiver is not subject to

criminal or civil liability or sanctions under Florida law except as provided in this section.

(2) A physician licensed in Florida shall not be subject to criminal or civil liability or sanctions under Florida law for issuing a physician certification to a person diagnosed with a debilitating medical condition in a manner consistent with this section.

(3) Actions and conduct by a medical marijuana treatment center registered with the Department, or its employees, as permitted by this section and in compliance with Department regulations, shall not be subject to criminal or civil liability or sanctions under Florida law except as provided in this section.

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

(1) “Debilitating Medical Condition” means cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis or other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.

(2) “Department” means the Department of Health or its successor agency.

(3) “Identification card” means a document issued by the Department that identifies a person who has a physician certification or a personal caregiver who is at least twenty-one (21) years old and has agreed to assist with a qualifying patient’s medical use of marijuana.

(4) “Marijuana” has the meaning given cannabis in Section 893.02(3), Florida Statutes (2013).

(5) “Medical Marijuana Treatment Center” 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 personal caregivers and is registered by the Department.

(6) “Medical use” means the acquisition, possession, use, delivery, transfer, or administration of marijuana or related supplies by a qualifying patient or personal caregiver for use by a qualifying patient for the treatment of a debilitating medical condition.

(7) “Personal caregiver” means a person who is at least twenty-one (21) years old who has agreed to assist with a qualifying patient's medical use of marijuana and has a caregiver identification card issued by the Department. A personal caregiver may assist no more than five (5) qualifying patients at one time. An employee of a hospice provider, nursing, or medical facility may serve as a personal caregiver to more than five (5) qualifying patients as permitted by the Department. Personal caregivers are prohibited from consuming marijuana obtained for the personal, medical use by the qualifying patient.

(8) “Physician” means a physician who is licensed in Florida.

(9) “Physician certification” means a written document signed by a physician, stating that in the physician's professional opinion, the patient suffers from a debilitating medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient, and for how long the physician recommends the medical use of marijuana for the patient. A physician certification may only be provided after the physician has conducted a physical examination of the patient and a full assessment of the patient’s medical history.

(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. If the Department does not begin issuing identification cards within nine months after the effective date of this section, then a valid physician certification will serve as a patient identification card in order to allow a person to become a "qualifying patient" until the Department begins issuing identification cards.

(c) LIMITATIONS.

(1) Nothing in this section shall affect laws relating to non-medical use, possession, production or sale of marijuana.

(2) Nothing in this section authorizes the use of medical marijuana by anyone other than a qualifying patient.

(3) Nothing in this section allows the operation of a motor vehicle, boat, or aircraft while under the influence of marijuana.

(4) Nothing in this law section requires the violation of federal law or purports to give immunity under federal law.

(5) Nothing in this section shall require any accommodation of any on-site medical use of marijuana in any place of education or employment, or of smoking medical marijuana in any public place.

(6) Nothing in this section shall require any health insurance provider or any government agency or authority to reimburse any person for expenses related to the medical use of marijuana.

(d) DUTIES OF THE DEPARTMENT. The Department shall issue reasonable regulations necessary for the implementation and enforcement of this section. The purpose of the regulations is to ensure the availability and safe use of medical marijuana by qualifying patients. It is the duty of the Department to promulgate regulations in a timely fashion.

(1) Implementing Regulations. In order to allow the Department sufficient time after passage of this section, the following regulations shall be promulgated no later than six (6) months after the effective date of this section:

a. Procedures for the issuance of qualifying patient identification cards to people with physician certifications, and standards for the renewal of such identification cards.

b. Procedures for the issuance of personal caregiver identification cards to persons qualified to assist with a qualifying patient's medical use of marijuana, and standards for the renewal of such identification cards.

c. Procedures for the registration of Medical Marijuana Treatment Centers that include procedures for the issuance, renewal, suspension, and revocation of registration, and standards to ensure security, record keeping, testing, labeling, inspection, and safety.

d. A regulation that defines the amount of marijuana that could reasonably be presumed to be an adequate supply for qualifying patients' medical use, based on the best available evidence. This presumption as to quantity may be overcome with evidence of a particular qualifying patient's appropriate medical use.

(2) Issuance of identification cards and registrations. The Department shall begin issuing qualifying patient and personal caregiver identification cards, as well as begin registering Medical Marijuana Treatment Centers no later than nine months (9) after the effective date of this section.

(3) If the Department does not issue regulations, or if the Department does not begin issuing identification cards and registering Medical Marijuana Treatment Centers within the time limits set in this section, any Florida citizen shall have standing to seek judicial relief to compel compliance with the Department's constitutional duties.

(4) The Department shall protect the confidentiality of all qualifying patients. All records containing the identity of qualifying patients shall be confidential and kept from public disclosure other than for valid medical or law enforcement purposes.

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

(f) 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 any court of competent jurisdiction other provisions shall continue to be in effect to the fullest extent possible.

The proposed Medical Marijuana Amendment includes the following title and summary as required by Section 101.161(1), Florida Statutes:

BALLOT TITLE: Use of Marijuana for Certain Medical Conditions

BALLOT SUMMARY: Allows the medical use of marijuana for individuals with debilitating diseases as determined by a licensed Florida physician and 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 authorize violations of federal law or any non-medical use, possession or production of marijuana.

The Attorney General's petition notes that the Secretary of State has determined there are 94,541 valid petition signatures certified to the Division of Elections which constitutes more than the 10 percent of the required signatures necessary to trigger this Court's Advisory Opinion process under Section 15.21, Florida Statutes. The Financial Impact Estimating Conference has also been convened pursuant to Article XI, Section 5(c),

Florida Constitution, and Section 100.371, Florida Statutes. The Conference released its Financial Impact Statement on November 4, 2013, and on November 7, 2013, the Attorney General asked this Court for its opinion on the compliance of the Fiscal Impact Statement with Section 100.371, Florida Statutes.

On October 28, 2013, this Court entered an order setting a briefing schedule for the initiative proposal and inviting all interested parties to file briefs.

People United for Medical Marijuana, as Sponsor of the proposed Medical Marijuana Amendment, submits this Initial Brief as an interested party.

SPONSOR'S STATEMENT OF INTENT

People United for Medical Marijuana, as Sponsor of the proposed Medical Marijuana Amendment, seeks a constitutional change to remove state-law penalties for Floridians who follow their physicians' medical advice and utilize medical marijuana for treatment of debilitating medical conditions and diseases, and to ensure through appropriate regulations the availability and safe use of medical marijuana by qualifying patients. The Sponsor is aware that many Florida physicians currently recognize that

medical marijuana may benefit their patients, and can recommend it, but the patients may not use it for fear of criminal repercussions.

The Sponsor looked to the example of the twenty other states that have allowed medical marijuana in some capacity. The proposed Medical Marijuana Amendment draws from the more successful examples by carefully balancing access to medical marijuana with controls to avoid abuse of the system. The intent of the physician certification process is to ensure that only patients who need medical marijuana receive it and that physicians conduct and document an appropriate degree of inquiry to ensure that the medical advice they give is within professional standards. Thus, physician certification requires a physical examination, review of a patient's medical history **and**: (i) a finding of a debilitating medical condition; (ii) a finding that the potential benefits of using medical marijuana likely outweigh the risks; and (iii) a time limited recommendation for any qualifying use. The intent is to allow use for a serious medical condition or disease. The amendment is not intended to authorize medical marijuana for treatment of minor or trivial ailments.

The Department of Health is authorized to ensure that qualified patients and their caregivers are readily identifiable, that patients have access to a safe and adequate source of medical marijuana, and to register and

regulate producers and treatment centers to ensure appropriate security, record-keeping, testing, labeling, inspection and safety. The Sponsor is aware that many very ill people are suffering who could be helped and that is what the Sponsor wants to do in proposing the Medical Marijuana Amendment.

SUMMARY OF THE ARGUMENT

This initiative seeks to decriminalize use of medical marijuana by a patient when a Florida physician determines, in his or her professional opinion, that the patient suffers from a debilitating medical condition and that the benefits of using marijuana likely outweigh any health risks to the patient. The language of the Medical Marijuana Amendment sets limits on use, and the amendment retains penalties for non-medical use and allows for investigation and punishment of abuses. The Department of Health is given authority to provide identity cards for patients and otherwise oversee and regulate use of medical marijuana to ensure safety and compliance.

It is also important to note what the initiative does not do. It does not create a new agency, it does not create a government program, it does not create a financial benefit, nor does it compel participation in a program either by patients or any physician. It provides more freedom for individuals

to seek treatment options based on medical advice without fear of being arrested and prosecuted for a crime.

To allow for rational policy development the amendment delays full implementation for up to nine months after its effective date in order to facilitate thoughtful drafting of regulations by the Department of Health and consideration of legislation by the Florida Legislature. This delay is intended to prevent disruptive changes. In short, this initiative is targeted at a narrow issue and gives patients with debilitating medical conditions a legal option to seek treatment with medical marijuana under Florida law. Not all patients will qualify to use medical marijuana, and some may not seek to use it. If they do, however, a Florida physician must examine the patient to confirm the diagnosis, determine if the condition is debilitating and then determine if use of medical marijuana would be beneficial. Thus, even a diagnosis of a specific disease listed in the amendment may not justify use of medical marijuana.

The proposed Medical Marijuana Amendment has minimal impact on the functions of government and is drafted with the intent to define and limit these impacts. The basic single subject test is met by such narrowly drawn amendments and this proposal is like others this court has approved to go to the ballot. It does not make a cataclysmic change, it does not create a new

entity; it has a specific and unified purpose, and it does not have a substantial effect on multiple provisions of the Constitution or multiple functions of Florida government. Those conclusions are supported by the findings of the Financial Impact Estimating Conference that predict a very minuscule impact on the Department of Health, the agency charged with implementing the amendment.

The title and summary clearly express the chief purpose and likely effect of the amendment. The title and summary state that use of medical marijuana may be authorized for "certain medical conditions" or "debilitating diseases as determined by a licensed Florida physician." That is what the text allows. The initiative focuses on certain medical needs and the professional judgment of Florida physicians. The limiting factors, such as a required physical exam, a finding that the condition is debilitating, a finding that the benefits of using marijuana will outweigh the risks, the defined time period for use, and the requirement for the patient to obtain a patient identification card all work together to ensure that the use of medical marijuana is not uncontrolled. The title and summary, read together, provide the voter with accurate information to make an informed decision.

Ultimately, this Court's test for compliance with the title and summary standard is that the title and summary provide voters a fair and

reasonable description of the effects of the amendment. Accepting the opponent's misinterpretation that the amendment allows "limitless" access to medical marijuana would obviously render an accurate title and summary to be inaccurate. An accurate assessment of the effects shows that the title and summary describe a controlled and limited process that allows a physician to advise a patient with a debilitating medical condition or disease that medical marijuana would be beneficial to him or her. The basic argument that the overall effect is too broad is more consistent with a policy argument opposing the amendment than with the redefinition of an initiative to enable an argument that the title and summary are misleading.

It is not easy for citizens to amend the Florida Constitution, and as this Court has said, it should not be easy. Citizens must collect over 600,000 signatures within a newly limited time frame. Ultimately, 60% of voters must approve the change. This Court removes initiatives that are clearly and conclusively defective when they violate the single subject rule or because they fail to advise voters of the principal purpose and impact of the proposal.

However, when a proposal complies with the single subject test and the ballot title and summary requirements, as here, citizens are entitled to seek the support of voters to change their Constitution and the voters may make their own decision on the policy question presented by the initiative.

This Court should allow the sponsors to proceed with their efforts to bring the Medical Marijuana Amendment to the ballot.

ARGUMENT

The proposed Medical Marijuana Amendment poses a single and unified question to Florida voters. Should an individual with a debilitating disease or medical condition, who has been so diagnosed by a licensed Florida physician, be lawfully allowed to use marijuana for medical purposes so long as they meet a number of conditions? The individual patient must submit to, and a licensed Florida physician must conduct, a medical examination. The physician must determine that the patient has a debilitating condition and that the medical benefits of using the marijuana will outweigh any health risks to the patient. The physician then issues a written authorization allowing the patient to acquire and use a limited amount of marijuana for a defined period of time. The patient, or his or her caregiver, must then obtain an identification card from the Department of Health, and can only obtain limited amounts of marijuana (as defined by the Department of Health) from a medical marijuana treatment center registered by the Department of Health. The initiative requires a patient to meet all of the above conditions to use medical marijuana legally.

I. THIS INITIATIVE, WHICH DECRIMINALIZES MEDICAL MARIJUANA FOR PATIENTS WITH DEBILITATING MEDICAL CONDITIONS THROUGH A DEFINED PROCESS, PRESENTS A LIMITED AND UNIFIED QUESTION AND DOES NOT SUBSTANTIALLY IMPACT MORE THAN ONE FUNCTION OF GOVERNMENT.

Article XI, Section 3, Florida Constitution, provides that the people may propose amendments by initiative, "provided that, any such revision or amendment . . . shall embrace but one subject and matter directly connected therewith." The single subject requirement contained in that provision is a rule of restraint, and is intended to prevent citizen initiatives from making changes to the Constitution that could have a substantial effect on multiple functions of state government, or that would involve multiple precipitous changes in the law.

The proposed Medical Marijuana Amendment is drafted to avoid broad impacts. It does not authorize any non-medical use of marijuana; therefore all other uses remain controlled by existing law. It does not create a new state agency. Under this proposal, the use and distribution of medical marijuana will be comprehensively overseen by the Department of Health. The limiting language of the amendment is designed to avoid undue impacts on government and promote the welfare of patients whom physicians have determined could benefit from the supervised use of medical marijuana.

As this Court has noted, when considering whether an initiative proposal complies with the single subject requirement of Article XI, Section 3, as well as when considering the compliance of the ballot title and summary with the requirements of Section 101.161, Florida Statutes, it will only invalidate the initiative proposal when "the proposal is clearly and conclusively defective on either ground." *Advisory Opinion to the Att'y Gen'l re Protect People, Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco*, 926 So. 2d 1186, 1190 (Fla. 2006) (quoting *Advisory Opinion to the Att'y Gen'l re Amendment to Bar Government from Treating People Differently Based on Race in Public Education*, 778 So. 2d 888, 890-91 (Fla. 2000)). Because the proposed Medical Marijuana Amendment presents a unified question that affects only one subject and matter properly connected therewith, this Court should uphold the proposal and allow it to appear on the ballot.

A. The Medical Marijuana Amendment provides a policy change regarding the use of medical marijuana but does not substantially alter or perform the functions of multiple branches or levels of government.

A proposed constitutional amendment may not perform, alter or substantially affect multiple, distinct functions of government. *See Advisory Opinion to the Attorney General re Right to Treatment & Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d 491, 496 (Fla. 2002); *Advisory*

Opinion to the Attorney General - Save Our Everglades, 636 So. 2d 1336, 1340 (Fla. 1994); *Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994); *Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984) (when an amendment changes more than one government function, it is clearly multi-subject"); *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). An initiative which 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. *Treating People Differently Based on Race*, 778 So. 2d at 892 (quoting *Advisory Opinion to the Attorney General re Fish and Wildlife Conservation Commission*, 705 So. 2d 1351, 1353-54 (Fla. 1998)). Merely having an effect on a function or a branch is acceptable for an initiative, so long as this effect is not substantial.

The Medical Marijuana Amendment does not substantially alter or perform the function of multiple branches of government. It works a single policy change – decriminalizing the possession and use of marijuana for the limited purpose of alleviating the effects of debilitating medical conditions.

The amendment provides for a specific role for the Department of Health (DOH) in overseeing and licensing. The language of the amendment provides that DOH will ensure "availability and safe use" of medical

marijuana. As reported in the Complete Financial Information Statement, released with the required Fiscal Impact Statement, DOH has estimated that the budgetary impact on the agency would be $1,090,183 in the first year after adoption, and $1,060,936 in year 2, and that the amendment would require three new full-time positions. *See* Financial Impact Estimating Conference, *Complete Initiative Financial Information Statement, available online at:* http://www.edr.state.fl.us/Content/constitutional-amendments/2014Ballot/UseofMarijuanaforCertainMedicalConditions/CompleteFinancialInformationStatement.pdf. By way of comparison, the overall budget of the DOH for fiscal year 2012-13 was $2,793,152,317. *See* Florida Dept. of Health, *About the Department, available online at:* http://www.floridahealth.gov/public-health-in-your-life/about-the-department/index.html. The FIEC also noted that fees have been used in other jurisdictions to offset costs and that fees may be levied under the initiative. Given the overall functions of the DOH, these impacts on regulatory functions are not substantial in the sense contemplated by the single subject rule.

As this Court has recently explained, ‘‘the fact that [a] branch of government is required to comply with a provision of the Florida Constitution does not necessarily constitute the usurpation of the branch’s

function within the meaning of the single subject rule." *See Advisory Opinion to the Att'y Gen'l re Standards for Establishing Legis. Dist. Boundaries*, 2 So. 3d 175, 181 (Fla. 2009) (quoting *Protect People, Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco*, 926 So. 2d at 1192). Similarly, an initiative will not be removed just because there is some "possibility that an amendment might interact with other parts of the Florida Constitution." *See Advisory Opinion to the Att'y Gen'l re Term Limits Pledge*, 718 So. 2d 798, 802 (Fla. 1998).

B. The Medical Marijuana Amendment has a limited impact on Florida governmental functions.

The overall effect of the Medical Marijuana Amendment is quite specific and foreseeable. It will allow individuals with debilitating medical conditions the freedom to seek treatment options that are currently illegal under Florida law. A cancer patient would be able to ask a doctor if medical marijuana is a reasonable option to mitigate pain, nausea, sleeplessness and loss of appetite. That use is now legally prohibited.

Patients using medical marijuana are not excused from the operation of the criminal law with respect to other areas of life (such as the operation of motor vehicles). The supervised use of medical marijuana by designated patients should have no significant impact on law enforcement.

The incidental impacts on the Department of Health, as the regulatory agency, are described *supra*, in Part I.A of this Argument.

It is noteworthy that the drafters of the Medical Marijuana Amendment provided a time period of up to nine months after the normal effective date to allow the DOH adequate time to draft regulations and consider policies. Further, the time frame in the proposed amendment allows for a legislative session to transpire after the passage of the amendment and before it takes effect. Thus, the amendment also provides the Legislature an opportunity to enact laws that further the purposes of the constitutional provision. In fact, the amendment contains a specific provision recognizing that legislative authority.

In sum, the Medical Marijuana Amendment was drafted to minimize the type of multiple "cataclysmic effects" that are prohibited by the single subject rule.

C. The Medical Marijuana Amendment, which removes legal penalties for the use of marijuana for medical purposes, is similar to other successful initiatives approved by this court, such as the slot machine or casino gambling initiatives, which provided limited exemptions from previously prohibited activities.

The fact that the Medical Marijuana Amendment decriminalizes medical use of a drug that is currently prohibited is analogous to other initiatives this Court has approved that expanded permitted conduct. As a

policy decision the electorate chose to authorize behavior previously criminalized by statutory law. For example, the two slot machine initiatives and the casino gambling initiatives all effectively legalized behavior (or required the Legislature to legalize behavior) that was then subject to criminal penalties. *See In re Advisory Opinion to Attorney General re Authorizes Miami-Dade & Broward County Voters to Approve Slot Machines "(Slot Machines II")*, 880 So. 2d 689, 690 (Fla. 2004); *In re Advisory Opinion to Attorney General re Authorization for County Voters to Approve or Disapprove Slot Machines ("Slot Machines I")*, 813 So. 2d 98, 100 (Fla. 2002); *Advisory Opinion to the Atty. Gen'l re Florida Locally Approved Gaming*, 656 So. 2d 1259 (Fla. 1995); *In re Advisory Opinion to Attorney General re Limited Casinos*, 644 So. 2d 71 (Fla. 1994). Thus, the fact that the Medical Marijuana Amendment removes legal penalties for possession of a criminally prohibited substance for those who meet its criteria does not invalidate the initiative.

The two slot machines and casino gambling initiatives are analogous in other ways: they all provided for a limited, rather than a comprehensive legalization of the criminalized behavior. In the case of the slot machine and casino gambling initiatives, there was a geographically limited legalization. *See Slot Machines II*, 880 So. 2d at 690 (existing pari-mutuel facilities in

Dade and Broward Counties); *Slot Machines I*, 813 So. 2d at 100 (existing pari-mutuel facilities in Dade and Broward Counties); *Advisory Opinion to the Atty. Gen'l re Florida Locally Approved Gaming*, 656 So. 2d 1259 (Fla. 1995) (on riverboats in counties with populations over 200,000, and additionally in one hotel for every 500,000 residents in a county); *Limited Casinos*, 644 So. 2d at 71 (certain facilities in Dade, Broward, Palm Beach, Duval, Escambia, Hillsborough, Lee, Orange and Pinellas Counties). Of course, the two slot machine and the Florida Locally Approved Gaming initiatives were also conditional in that they each required the approval of voters in a separate county-wide referendum.

The proposed initiative is also analogous to the amendment approved by the Court in *Right to Treatment & Rehabilitation for Non-Violent Drug Offenses*. 818 So. 2d at 491. That amendment would have created a right in Article I for individuals charged or convicted of possessing illegal drugs or drug paraphernalia to receive treatment instead of prison time. *Id.* at 493. The amendment thus affected criminal statutes of the State, and had incidental effects on the executive which enforced such laws and the judiciary which sentenced those convicted. However, the Court found that the amendment had a sufficient "oneness of purpose" and that any such interactions with other branch functions were minimal and directly related to

that purpose. *Id.* at 495 (citing *Stop Early Release of Prisoners*, 661 So. 2d at 1204-05). The decriminalization of medical marijuana for treatment as defined in the initiative is its sole purpose and the single subject of the Medical Marijuana Amendment.

II. THE MEDICAL MARIJUANA AMENDMENT'S BALLOT TITLE AND SUMMARY, READ TOGETHER, CLEARLY AND ACCURATELY DESCRIBE THE CHIEF PURPOSE OF THE AMENDMENT AND PROVIDE VOTERS WITH SUFFICIENT INFORMATION TO MAKE AN INFORMED DECISION.

This Court's consideration of initiative ballot title and summary issues is governed by Section 101.161(1), Florida Statutes.[1] The test is whether they are drafted "so the voter will have fair notice of the content of the proposed amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot." *Advisory Opinion to the Attorney General Re: Stop Early Release of Prisoners*, 661 So. 2d 1204, 1206 (Fla. 1995). The test will be met "unless the summary is clearly and conclusively

[1] Section 101.161, Florida Statutes, sets forth the statutory requirements for ballot title and summary for proposed initiatives:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot . . . Except for amendments and ballot language proposed by joint resolution, the substance 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.

defective." *Armstrong v. Harris*, 773 So. 2d 7, 11 (Fla. 2000) (citing *Askew v. Firestone*, 421 So. 2d 151, 154 (Fla. 1982)); *Florida League of Cities v. Smith*, 607 So. 2d 397, 399 (Fla. 1992). Another aspect of this Court's evaluation is that the title and summary are evaluated together. This Court considers both the title and summary together to determine "whether the ballot information properly informs the voters." *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010) (citing *Voluntary Universal Pre–Kindergarten Educ.*, 824 So.2d at 166); *Florida Dept. of State v. Slough*, 992 So. 2d 142, 148 (Fla. 2008).

The proposed Medical Marijuana Amendment clearly complies with the requirement that its title and summary be clear, accurate and complete. The title and summary together explain that patients with debilitating medical conditions, as determined by a Florida physician, may be allowed to use medical marijuana. The language further describes the role of caregivers, the Department of Health and registered treatment facilities, and finally gives notice that it has no effect on existing federal law.

The court recognizes that because of the statutory 75- and 15-word limits the summary and title are not required to detail every aspect of a proposed initiative. *See Advisory Opinion to the Att'y Gen'l Re Protect People from the Hazards of Second-Hand Smoke by Prohibiting Workplace*

Smoking, 814 So. 2d 415, 419 (Fla. 2002); *Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982). Rather, the ballot title and summary must describe only the major purpose of the initiative. "[I]t is not necessary to explain every ramification of a proposed amendment, only the chief purpose." *Advisory Opinion to the Atty. Gen'l re Right to Treatment & Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d 491, 497 (Fla. 2002) (quoting *Save Our Everglades*, 636 So. 2d at 1341).

The ballot title for the proposed amendment reads: "*Use of Marijuana for Certain Medical Conditions*." The ballot summary reads:

> Allows the medical use of marijuana for individuals with debilitating diseases as determined by a licensed Florida physician and 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 authorize violations of federal law or any non-medical use, possession or production of marijuana.

The title and summary are written in clear and unambiguous language so that "the voter will have notice of the issue contained in the amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot." *Florida Marriage Protection Amendment*, 926 So. 2d 1236 (citing *Save Our Everglades*, 636 So. 2d at 1341).

A. The Ballot Title and Summary together clearly and accurately explain the limited scope of this amendment in applying to patients with debilitating diseases and medical conditions where a licensed Florida physician determines that the benefits of using marijuana outweigh risks to patients.

In her petition referring this initiative to the Court, the Attorney General raises several issues with the ballot title and summary that, in her opinion, render them incomplete or inaccurate. Her suggestion that the amendment is "limitless" in scope is based upon a flawed interpretation of the initiative. *See* AG Petition, at 10. The Attorney General's interpretation fails to consider the amendment's explicit limits regarding time, amount, place, finding of medical condition or disease, finding of medical benefit and the requirement to obtain an identification card. Furthermore, it fails to account for an entire section of the Medical Marijuana Amendment entitled "Limitations," which enumerates additional restrictions.

1. The Title and Summary, when read together, accurately give notice to voters that any access to medical marijuana under this Amendment is subject to defined limits and a certification process requiring both a serious medical condition and a physician's recommendation.

The Attorney General's first concern involves the term "debilitating diseases" as used in the ballot summary, while the text of the Medical Marijuana Amendment uses the term "debilitating medical condition." She asserts that voters will be misled to believe that there are limitations in this

initiative when, under her interpretation, there are none. In other words the Attorney General asserts that the initiative's "breathtaking scope" is subject to no real qualification, but will allow virtually unfettered use of medical marijuana. According to the Attorney General, the term "debilitating diseases" in the summary suggest a limited applicability of the amendment, while the amendment itself would allow marijuana use for a variety of unknown "other conditions" where approved by a physician. The Attorney General's interpretation of the Medical Marijuana Amendment is that "there is no 'condition' beyond the amendment's reach." AG Petition, at 9.

In fact, any statement that the initiative would allow unfettered use of medical marijuana would itself be misleading to voters. There are a series of specific conditions that must be met for a patient to receive medical marijuana. A patient may not use medical marijuana unless all of these requirements are met:

1. The patient must suffer from a debilitating medical condition or disease.

2. The patient must visit a licensed Florida physician in person for a physical examination.

3. The physician must conduct a full assessment of the patient's medical history.

4. The physician must, in his or her professional opinion, determine that the patient has a debilitating medical condition.

5. The physician must conclude that this specific patient will benefit from use of medical marijuana *and* that the potential benefits of using marijuana likely outweigh any health risks.

6. The patient must obtain the above in a written certification signed by the physician.

7. The physician's certification must contain a recommendation as to how long the patient should use medical marijuana.

8. Using this physician's certification, the patient must then obtain an identification card from the Florida Department of Health.

9. The patient could then go to a registered treatment facility to obtain the medical marijuana.

10. The amount of medical marijuana the patient may obtain cannot exceed the allowable amount to be defined by the Department.[2]

The Medical Marijuana Amendment does not provide unlimited access, but rather allows for strictly prescribed and limited access to medical marijuana.

2. The Title and Summary provide voters with sufficient information to know that the Medical Marijuana Amendment limits access to marijuana to those with serious medical diseases and conditions.

The term "debilitating medical condition" is used in the text of the amendment. The title uses the term "certain medical conditions", while the summary speaks of "debilitating diseases." Read together, the title and summary point to diseases and medical conditions of such severity as to be debilitating—which is exactly what the text provides.

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[2] This process is set forth in the definition for "Physician certification," found in Subsection (b)(9) of the proposed Medical Marijuana Amendment.

The term, "debilitating medical condition," [3] as used in the text of the Amendment, is defined to include some specific and known debilitating conditions such as cancer and ALS. However, the Medical Marijuana Amendment does not attempt to define all possible debilitating conditions, nor should it because the Constitution is a document for now and the future. The text of the Constitution should not try to list all debilitating diseases and conditions, but should and does allow proper scope for medical judgment. This proposal provides that the licensed Florida physician must, in writing, make three determinations: 1) that the patient is suffering from a debilitating medical condition; 2) that use of medical marijuana will be advantageous to that particular patient; and 3) the proper time period for use. *See* Subsection (b)(9) of Amendment.

Nor does the definition of "Debilitating Medical Condition" support a conclusion that any condition would justify use of medical marijuana. In the amendment text, the definition of "debilitating medical condition" lists a

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[3] The text of the amendment provides the following definition for "Debilitating Medical Condition" in Subsection (b)(1):
(1) "Debilitating Medical Condition" means cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis or other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.

series of specific debilitating medical conditions and diseases, and further allows doctors to recommend use for other medical conditions or diseases if they determine, in their medical opinion, that these medical conditions are indeed debilitating, and that medical marijuana use will have benefits to a particular patient that outweigh any health risks. *See* Subsections (b)(1) & (b)(9) of Amendment. Those other conditions determined by a physician must be generically similar in severity or seriousness to the specific list of medical conditions in that definition under standard canons of statutory construction. *See, e.g., Graham v. Haridopolos*, 108 So. 3d 597, 605 (Fla. 2013) (quoting *State v. Hearns*, 961 So. 2d 211, 219 (Fla. 2007) (under canon of *ejusdem generis*, "when a general phrase follows a list of specifics, the general phrase will be interpreted to include only items of the same type as those listed")). Another principle of statutory construction is to read the different sections to be consistent with each other. *See, e.g., Forsythe v. Longboat Key Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992) (citing *Marshall v. Hollywood, Inc.*, 224 So. 2d 743, 749 (4th DCA), *writ discharged*, 236 So. 2d 114 (Fla. 1969), *cert. denied*, 400 U.S. 964 (1970) (read all parts of the law together "to achieve a consistent whole")). In addition to the definition for "debilitating medical condition," the definition of "physician certification" includes a requirement that the physician certify,

in writing, that the patient suffers from a debilitating medical condition **and** that the benefits of medical marijuana outweigh any risks to the patient. [4]

If debilitating medical conditions were determined only by whether the benefits outweigh the risks then there would be no additional requirement for the physician to certify that the patient has a debilitating medical condition, as the amendment requires. The effect of the text is to allow these patients access to medical marijuana, based on determinations by a licensed Florida physician, and the ballot title and summary make this clear to voters. The specific list of defining terms used in the text to explain "debilitating medical condition" would not have fit within the narrow limits of the ballot title and summary. There would not be space to include the list of diseases, including cancer, Parkinson's disease and other specific conditions, nor would this explain that the amendment intentionally leaves open the use of medical marijuana for other conditions as the practice of

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[4] The text of the amendment defines "Physician certification" in Subsection (b)(9) as:

> (9) "Physician certification" means a written document signed by a physician, stating that in the physician's professional opinion, the patient suffers from a debilitating medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient, and for how long the physician recommends the medical use of marijuana for the patient. A physician certification may only be provided after the physician has conducted a physical examination of the patient and a full assessment of the patient's medical history.

medicine evolves. *See Right to Treatment & Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d at 497 (it is not necessary to explain every minute detail of a proposal, so long as the chief purpose is made clear). However, taken together the terms, "certain medical conditions" and "debilitating diseases" give due notice of the degree of severity required. The title and summary place the voter on notice that trivial and minor conditions are not included in the scope of the amendment, and the Medical Marijuana Amendment in fact does not include such conditions.

In her concerns about the alleged inconsistent terminology used in the ballot title and summary from that of the amendment text, the Attorney General also cites *Advisory Opinion to the Attorney General re Casino Authorization, Taxation and Regulation*, 656 So. 2d 466 (Fla. 1995), where this Court invalidated an initiative in part because of inconsistent terminology in the summary and the text. However, the problem in *Casino Authorization, Taxation and Regulation* was the terms which were used, where they were used, and the fact that they had significantly different meanings. Both the terms "hotel," used exclusively in the summary, and "transient lodging establishment," used exclusively in the text, had specific meanings assigned to them by Florida Statutes – and the meaning for "transient lodging establishment" was much broader in scope and meaning

than the narrower term "hotel." *Id.* at 468-69. In the case of the Medical Marijuana Amendment, the Florida Statutes do not provide a specific definition of "debilitating disease" or "debilitating medical condition." Furthermore, the fact that the title and summary together use the same words found in the text gives the voter clear notice as to the seriousness of the medical conditions and diseases involved. Ultimately, the term "debilitating medical condition" is reasonably within the scope of "certain medical condition," as used in the title, together with the summary's term "debilitating disease as determined by a Florida physician."

The proposed Medical Marijuana Amendment does not present the clearly misleading terms or incomplete information that prompted this Court to invalidate other initiatives. For example, the legislative amendment to Article I, Section 17 considered in *Armstrong v. Harris*, sought in conforming the language of that provision to the wording of the Eighth Amendment to the U.S. Constitution, to preserve the death penalty in the state. 778 So. 2d at 18. The ballot title and summary, however, did not reveal that the amendment changed the standard for all criminal punishments—a major omission that this Court properly held to be misleading because it failed to inform voters about the amendment's reduction in a constitutional protection. *Id.*

Likewise, in *Additional Homestead Tax Exemption*, this Court invalidated an initiative that would have expanded the homestead property tax exemption. 880 So. 2d at 647. The ballot summary stated that it provided "property tax relief to Florida home owners," while this Court found that, under the amendment text, it would have allowed local governments to *raise* millage rates so long as they were not at the constitutional millage cap. 880 So. 2d at 652. This Court found that the summary was misleading because it *promised* tax relief, while the amendment did not affect the power of local taxing authorities to raise property tax rates. *Id.* at 653.

In *Stop Early Release of Prisoners I*, this Court invalidated the summary that promised to "ensure" that state prisoners would serve "at least eighty-five percent of their sentence." 642 So. 2d 724, 726 (Fla. 1994). However, the text of the amendment noted that it did not apply to an exercise of clemency by the Governor and Cabinet. *Id.* The Court found that, given fiscal and other constraints, exercises of clemency would likely be expanded, and that the ballot summary was misleading. *Id.* at 727 (ballot summary "misleads voters into believing that the amendment is ironclad, when in fact it expressly leaves the Governor and Cabinet an easy, cheap, and relatively painless method of defeating the entire purpose stated in the

summary"). The proposed Medical Marijuana Amendment's title and summary avoid the pitfalls of promising too much, hiding important information from the voters, or failing to disclose important foreseeable impacts. If adopted, the amendment will do what its title and summary state.

The Attorney General's concerns that the amendment would protect doctors who abuse the practice of medicine by prescribing marijuana fraudulently or negligently are misplaced. *See* AG Petition, at 10. As the Attorney General recognizes, the text of the amendment provides protections only for physicians who act "consistent with this section." Subsection (a)(2) of Amendment. However, to give the required physician certification under this amendment, the physician must affirm "in the physician's professional opinion" that the patient suffers from the requisite medical condition and that benefits of use outweigh risks. Subsection (b)(9). Where a physician, whether by fraud or negligence, acts outside of professional standards in diagnosing a patient or prescribing marijuana, this behavior would not be "consistent with this section" and may be subject to sanctions, whether professional, civil or criminal.

Statutes governing the practice of medicine will remain in effect after adoption of the Medical Marijuana Amendment. As this Court has long held, implied repeals of existing statutes are not favored. The rule has been

"that the statute will continue in effect unless it is completely inconsistent with the plain terms of the Constitution." *In re Advisory Opinion to the Governor*, 132 So. 2d 163, 169 (Fla. 1961). "Implied repeals of statutes by later constitutional provisions [are] not favored and the courts require that in order to produce a repeal by implication the repugnancy between the statute and the Constitution must be obvious or necessary." *Id.*; *see also Advisory Opinion to the Governor—1996 Amendment 5 (Everglades)*, 706 So. 2d 278, 281-82 (Fla. 1997) (existing legislation remains in effect where consistent with the newly adopted constitutional provision).

3. The terms used in the Title and Summary, read together, are clear and not misleading.

The title and summary, read together, let voters know that it could apply to patients with "debilitating diseases" (summary) or "certain medical conditions" (title). The summary also makes clear that this access would be "as determined by a licensed Florida physician." The title and summary together make clear that medical marijuana would not be available for every patient's medical condition or disease and that the threshold for access is a determination by a Florida physician as to medical condition, as to benefit for the patient and as to time frame for usage.

Webster defines "disease" as "2: A condition of the living animal or plant body or of one of its parts that impairs the performance of a vital

function: sickness, malady." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 362 (1985). The term "debilitate," likewise, is defined as "to impair the strength of." *Id.* at 328. Taken together, the term "debilitating disease" thus places voters on notice of the severity of the conditions necessary to access medical marijuana. That the title also uses "certain medical conditions" further places voters on notice of the physician's role in determining the likely benefits of medical marijuana.

Nor is the concern raised by the Attorney General as to the use of the word "certain" in the title valid. The Attorney General, selectively quoting one definition of the word, suggests that "certain" implies that the number of diseases and medical conditions to which the amendment might apply is fixed and definite while the text of the amendment does not define a fixed list. In fact, neither the title and summary, nor the text define any fixed list of diseases, but rather explain the process under which access may be allowed.

Webster provides a definition of "certain" that fits the usage in the summary: "2: of a specific but unspecified character, quantity, or degree." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 222 (1985); *cf.* OXFORD DICTIONARY ("2 [attributive] specific but not explicitly named or stated"), available online at:

http://www.oxforddictionaries.com/us/definition/american_english/certain?q=certain. These definitions and understanding of the word "certain" are clear to the average voter who will be reading the title and summary together. The use of "certain" in the title is consistent with dictionary use and definitions.

Describing the limits of the Medical Marijuana Amendment to voters within the 75-word limit of a summary and the 15-word limit of a title is challenging for any sponsor. The summary of the instant amendment has exactly 75 words. Both the terms "medical condition" and "disease" are found in the text of the amendment that describes qualifying maladies. However, these terms are not identical in meaning. Using both in the title and summary provides the voter with a fair description of the scope of the amendment.

If the title replaced the word "certain" with any of several other possible words, it would be misleading. The qualifier "any" would be too broad. "Specific" would be too narrow. "Listed" would be inaccurate. "Debilitating" medical conditions would be incomplete without adding "as determined by a Florida physician." Therefore, the term "certain medical conditions" represents a logical representation of conditions that may be considered. That phrase is further clarified by adding that use of medical

marijuana may be allowed "for individuals with debilitating diseases as determined by a licensed Florida physician." The phrases used together in the title and summary are thus complimentary and explanatory—not misleading.

The plain meaning, context and intent of the proposal's text have the same scope and effect described in the ballot title and summary. A Florida doctor must determine that a patient has a condition serious enough (a debilitating medical condition) to justify consideration for using medical marijuana. The physician must then make other conclusions under Subsection (b)(9) such as whether use is beneficial even if there is a debilitating condition. One can imagine that a physician might conclude that, even though a patient has a debilitating condition, he or she would not benefit from medical marijuana. There are other conditions that further prevent the "limitless" use of medical marijuana, but the threshold is precisely as described in the title and summary. Certainly the ballot title and summary do not mislead voters by not telling them that anyone can receive marijuana because anyone cannot. The title and summary accurately state the chief purpose and effect.

The crux of the Attorney General's argument is that the initiative may allow too many people to use medical marijuana. That argument is an

appropriate policy argument for the public debate on whether or not a citizen should vote for this initiative. However, this court has continually said that the issue at this stage is not whether the initiative is good or bad. *See Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161, 164 (Fla. 2002) (citing *Right of Citizens to Choose Health Care Providers*, 705 So.2d at 565). The question at issue regarding the title and summary is: does the description of access to medical marijuana in the title and summary accurately reflect the process established in the text of the amendment? In this case, the title and summary meet the requirement of conveying the impact of the initiative to the voter.

B. The Title and Summary do not mislead voters as to possible interactions between the Medical Marijuana Amendment and federal law.

The Attorney General also raises concerns about the interaction between the proposed Medical Marijuana Amendment and federal law. According to the Attorney General, the phrase, "[a]pplies only to Florida law. Does not authorize violations of federal law . . .", as used in the Summary, may tend to mislead voters. The Attorney General believes that because voters would know that the Florida Constitution and Florida law "cannot authorize violations of federal law—and because voters would find it counterintuitive that Florida law would authorize conduct federal law

prohibits," they might be misled into believing that medical marijuana use is permitted under federal law.

In fact, the inclusion of the language "[a]pplies only to Florida law. Does not authorize violations of federal law . . ." explicitly places the voter on notice that they should be aware that the proposed initiative does not authorize violation of federal marijuana laws.

This Court recognizes that the voters "must be presumed to have a certain amount of common understanding and knowledge" when reading the petition. *Florida Education Ass'n v. Florida Dept. of State*, 48 So. 3d 694, 701 (Fla. 2010) (citing *In re Advisory Opinion to Attorney General re Protect People from the Hazards of Second-Hand Smoke*, 814 So. 2d 415, 419 (Fla. 2002)); *Local Trustees & Statewide Governing Bd. to Manage Florida's Univ. Sys.*, 819 So. 2d at 732 (citing *Protect People from the Hazards of Second-Hand Smoke*, 814 So. 2d at 419); *cf. In re Advisory Opinion to Attorney General Re Tax Limitation II*, 673 So. 2d 864, 868 (Fla. 1996) (voters, by learning and experience, would understand the general rule that a simple majority prevails in most elections). As the Attorney General notes, voters may be assumed to understand that, in a federal system, an amendment of the Florida Constitution does not purport to change federal law. However, the summary also affirmatively places the voters on notice

that nothing done here affects federal law, and indeed that this amendment "[d]oes not authorize violations of federal law."

This is not a case where the summary "omits material facts," but rather one where the summary acts to provide as complete information as possible within the limited scope of the 75-word limit of the summary. *Cf. Advisory Opinion to the Attorney General re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998) (quoting *Advisory Opinion to the Att'y Gen'l - Limited Political Terms in Certain Elected Offices*, 592 So. 2d 225, 228 (Fla. 1991)).

Although marijuana is a Schedule I controlled substance under the Criminal Substance Act, 21 U.S.C. § 812, twenty states and the District of Columbia have chosen to enact state laws that allow some use of medical marijuana.[5] In response to the medical marijuana laws in place in these

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[5] *See generally* NAT'L CONF. OF STATE LEGISLATURES, STATE MEDICAL MARIJUANA LAWS (Sept. 2013), *available online at:* http://www.ncsl.org/issues-research/health/state-medical-marijuana-laws.aspx (last accessed October 20, 2013). Some states, including Connecticut, Delaware, Hawaii, Illinois (effective in 2014), New Hampshire, New Jersey, New Mexico, Rhode Island and Vermont, have adopted laws allowing or decriminalizing the medical use through legislation. Other states, including Alaska, Arizona, California, Colorado, Maine, Massachusetts, Michigan, Montana, Nevada, Oregon, Washington, and the District of Columbia, have authorized the use by popular initiative. *See id.* Initiatives in other states that have allowed for the medical use of marijuana under state law have done so through statutory rather than constitutional initiatives – a mechanism unavailable in Florida. Only the legalizations in Nevada (Question 9 in 2000) and Colorado (Amendment 20 in 2000) involved constitutional amendments. *See id.*

twenty states and the District of Columbia, the Justice Department has released a series of memos explaining its priorities in the enforcement of federal marijuana laws in those states which have decriminalized marijuana. The most recent such memo sets forth specific federal enforcement priorities when prosecuting marijuana use, and explains that, where states establish a robust and effective regulatory system "to control the cultivation, distribution, sale, and possession of marijuana," this system is likely to meet federal priorities and there is thus less likelihood of federal prosecution. *See* Memorandum for U.S. Attorneys from James M. Cole, Deputy Attorney General, *Guidance Regarding Marijuana Enforcement*, Aug. 29, 2013, *available online at:* http://www.justice.gov/iso/opa/resources/305201382913275685746 7.pdf.[6]

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[6] The federal enforcement priorities identified in the 2013 Cole Memo are:

1) Preventing the distribution of marijuana to minors;
2) Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
3) Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
4) Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
5) Preventing violence and the use of firearms in the cultivation and distribution of marijuana;

The nature of federal interaction with state laws allowing medical marijuana, especially in the enforcement area, is evolving at this time. However, Florida citizens are entitled to change Florida law, as many other states have done. The title and summary for the Medical Marijuana Amendment place voters on notice that any change provided by this amendment affects only Florida law, and that federal laws are unaffected by this change.[7]

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6) Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7) Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
8) Preventing marijuana possession or use on federal property.

Id. at 1-2. In deciding whether to prosecute, the 2013 Cole Memo states, "The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above." *Id.* at 3; s*ee also* Memorandum for selected U.S. Attorneys from David W. Ogden, Deputy Attorney General, *Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana*, October 19, 2009, *available online at:* http://www.justice.gov/opa/documents/medical-marijuana.pdf. *But see* Memorandum for U.S. Attorneys from James M. Cole, Deputy Attorney General, *Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use*, June 29, 2011, *available online at:* http://www.justice.gov/oip/docs/dag-guidance-2011-for-medical-marijuana-use.pdf (making clear that no blanket protection is provided for state legalization laws).

[7] In other cases, this Court has rejected as "collateral" attempts by opponents to argue that sponsors should have explained in the ballot

This Court has long noted that the 75-word limit imposed on ballot summaries and the 15-word limit for titles make it impossible to explain every minute detail or ramification of a proposal to the voters. *See Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010) (quoting *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986); *cf. Right to Treatment & Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d at 497 (quoting *Save Our Everglades*, 636 So. 2d at 1341); *Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982). A full and complete explanation of the federal-state interaction would be beyond the scope of a ballot summary and unnecessary.

The ballot title and summary provide the chief purpose of the Medical Marijuana Amendment, and do so in a non-emotional and accurate manner. Accordingly, this Court should hold that the title and summary comply with the requirements of Section 101.161, Florida Statutes.

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summary possible federal issues raised by an initiative amendment. *See, e.g., Slot Machines I*, 813 So. 2d at 103 (dismissing interaction of the slot machine initiative with the federal Indian Gaming Act as "collateral to our review in this Advisory Opinion proceeding") (quoting *Advisory Opinion to Atty. Gen. re Term Limits Pledge*, 718 So.2d 798, 801 n.1 (Fla.1998) (''While we do not pass on the constitutionality of inserting a term limits pledge provision in our state constitution, we note that any provision of a state constitution that imposes qualifications on federal offices in addition to the qualifications set forth in the federal constitution is unconstitutional.").

CONCLUSION

The proposed Medical Marijuana Amendment presents a single subject in compliance with Article XI, Section 3, and the ballot title and summary likewise clearly and accurately describe the chief purpose of the proposal as required by Section 101.161, Florida Statutes. For these reasons, this Court should allow the Medical Marijuana Amendment to appear on the ballot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically this 8th day of November, 2013, to the following:

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CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this brief was prepared in Times New Roman 14-point font, in compliance with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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