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

CASE NO.:

PATIENTS AND PRODUCERS ALLIANCE, INC., a Florida Not For Profit Corporation,

Plaintiff,

v.

The STATE OF FLORIDA; FLORIDA DEPARTMENT OF HEALTH, an agency of the state of Florida; CELESTE PHILIP, Florida's Surgeon General, in her official capacity; and CHRISTIAN BAX, Director of the Office of Medical Marijuana Use, in his official capacity.

Defendants.
_____/

COMPLAINT

This is an action for declaratory relief pursuant to Fla. Stat. § 86.021 to determine the constitutionality of amended Fla. Stat. § 381.986 (2016). The Plaintiff in this case is Patients and Producers Alliance, Inc., a Florida non-profit corporation that promotes and advocates for patients' rights to use medical marijuana. Pursuant to Fla. Const. Art. X § 29, Defendants are required to "register" sufficient medical marijuana treatment centers ("MMTCs") to "ensure the availability and safe use of medical marijuana by qualifying patients." Fla. Const. Art. X § 29(d). Despite unambiguous constitutional directives to ensure statewide availability of medical marijuana, the State of Florida, through its legislature and agencies, promulgated the revised Medical Use of Marijuana Act (Fla. Stat. § 381.986), which arbitrarily and unreasonably limits the number and type of MMTCs able to be operated in the State. These statutes inhibit the overall accessibility of medical marijuana in Florida, and decrease the availability of diverse marijuana variants and

treatment methods necessary to provide individualized care to qualifying patients. Thus, Fla. Stat. § 381.986 is inconsistent with the Constitution and its goal to "ensure the availability and safe use" of medical marijuana. Fla. Stat. § 381.986 is unconstitutional and must be struck down.

JURISDICTION AND VENUE

1. Jurisdiction in this Court is proper pursuant to Fla. Const. Art. V § 5, Fla. Const. Art. X § 29, and Fla. Stat. § 86.011 because this action seeks declaratory relief arising from Defendants violations of Fla. Const. Art. X § 29 and Fla. Stat. § 381. 986.

2. Venue is proper in this Court pursuant to Laws 2017, c. 2017-232 § 14, which provides that venue shall be in Leon County, and Fla. Stat. § 47.011, as Defendants reside in Leon County.

PARTIES

3. Plaintiff, Patients and Producers Alliance, Inc., ("PAPA") is a Florida not for profit corporation organized under the laws of the State of Florida with its principal address in Plantation, Florida. PAPA is an organization primarily focused on promoting and advocating for patients' rights to use medical marijuana. PAPA advocates for a well-regulated, market-based system to ensure appropriate patient access to medical marijuana. PAPA is composed of a number of intended producers, patients, physicians and other individuals interested in advocating for patients' right to use medical marijuana in Florida.

4. Members of PAPA include, Synergy Wellness, LLC a Florida Company with its principal address in Highland Beach, Florida. Synergy Wellness intends to register as a MMTC to grow and distribute medical marijuana and has purchased land and invested considerable resources in pursuit of that goal. Synergy Wellness believes it would meet the standards necessary for registration. Members also include Christopher Gravett, a Florida Citizen that suffers from chronic pain due to, *inter alia*, osteoarthritis, spinal fracture, lumbar/thoracic spondylosis, and

degenerative disc disease. Gravett is unable to work without medical marijuana to manage his pain. He is unable to afford the medication due to its high prices. He is unable to find the type of delivery/treatment method that best suits his needs from the current MMTCs operating in Florida.

5. Defendant, the State of Florida, through its Legislature and Governor, adopted the challenged statute, Fla. Stat. § 381. 986.

6. Defendant, the Florida Department of Health ("the Department"), is an executive agency of the State of Florida. The Florida Constitution charges the Department with the duty "to promulgate regulations in a timely fashion" that "ensure the availability . . . of medical marijuana" and provide "procedures for the registration of MMTC . . . ." Fla. Const. Art. X, § 29.

7. Defendant, Dr. Celeste Philip, in her official capacity as Florida's Surgeon General, is the head of the Department. *See* Fla. Stat. § 20.43.

8. Defendant, Mr. Christian Bax in his official capacity, is the Director of the Department's Office of Medical Marijuana Use ("OMMU"). Pursuant to Fla. Stat. § 385.212, the OMMU "shall administer and enforce s. 381.986." Fla. Stat. § 385.212. The OMMU is charged with writing and implementing the Department's rules for medical marijuana, overseeing the statewide Compassionate Use Registry and registering Florida businesses that seek to cultivate, process and dispense medical marijuana.

STATEMENT OF FACTS

Medical Marijuana in Florida Before Amendment 2

9. In 2014, the Compassionate Medical Cannabis Act was signed into law. This act ordered the Department to issue five Dispensing Organization licenses for the cultivation and distribution of low tetrahydrocannabinol ("THC") medicinal marijuana for patients suffering from

cancer or seizures. As a result of subsequent litigation and legislations, the Department issued seven (7) Dispensing Organization licenses.

10. In early 2016, the Florida Legislature expanded Florida citizen's right to medicinal marijuana by passing the Right to Try Act which allowed patients suffering from terminal illnesses access to "full potency" medical marijuana.

11. In October 2016, with a constitutional amendment set to be voted on in the November 2016 Florida election, the drafters of the proposed constitutional amendment released a document entitled "Amendment 2: Analysis of Intent" ("AOI"). This document discussed the drafters' intent when authoring the text of the Amendment 2. It recognized that:

> The . . . intent of the voters is central to constitutional interpretation by the courts . . . This document is intended to provide background for voters and is meant to provide perspective as to the drafter's intent. If Amendment 2 is approved by the voters, that affirmation can be viewed as agreement with the intent of this amendment as expressed in this memo . . . .

AOI at 1.

12. On November 8, 2016, Florida voters overwhelmingly passed the Florida Medical Marijuana Legalization Initiative which created Fla. Const. Art. X § 29. This provision, also known as Amendment 2 ("the Amendment"), authorized the use of low-THC and full-potency medical marijuana for patients suffering from specified "debilitating medical conditions." Fla. Const. Art. X § 29.

Amendment 2 and its Requirements

13. The purpose of Fla. Const. Art. X § 29, as described by its ballot summary, is to "allo[w] medical use of marijuana for individuals with debilitating medical conditions . . ." and directs that "the Department of Health shall register . . . centers that produce and distribute marijuana . . . ." AOI at 1.

14. In addition, Fla. Const. Art. X § 29 explicitly provides that "the Department shall issue reasonable regulations necessary for the implementation and enforcement of this section." Fla. Const. Art. X § 29(d). As stated in the Constitution, "the purpose of the regulations is to ***ensure the availability*** and safe use of medical marijuana by qualifying patients." *Id.* (emphasis added).

15. The Amendment defines MMTCs as an entity that either "acquires, cultivates, possesses, processes . . . transfers, transports, sells, distributes, dispenses, **or** administers marijuana, products containing marijuana, related supplies, **or** educational materials . . . and is ***registered*** by the Department." Fla. Const. Art. X § 29(b)(5).

16. The AOI makes it clear that the word "or" was used intentionally to ensure that

> MMTCs must be registered to engage in any of the activities listed in the definition, **but do not have to engage in all of them**. For example, a cultivator may be registered separately from a dispensary . . . The Amendment provides for multiple types of MMTCs, including, but not necessarily limited to: cultivation; processing; distributing; dispensing; transportation; and administration. . . . **A requirement that a single MMTC must perform all MMTC functions would be contrary to the language and intent of this Amendment**, which clearly calls for a variety of business functions in the language.

AOI at 4 (emphasis added).

17. The Amendment also requires the Department to implement "procedures for the ***registration*** of MMTCs that include procedures for the issuance, renewal, suspension and revocation of ***registration***, and ***standards*** to ensure proper security, record keeping, testing, labeling, inspection, and safety." Fla. Const. Art. X § 29(d)(1)(c) (emphasis added).

18. The AOI makes it clear that the drafters purposely used the permissive word "registration" that implies a grant of registration to any applicant who meets "standards" for registration that are not unreasonable or contrary to the language of the Amendment. In their own words, this section was intended to:

> describe the duties of the Department with regard to . . . **registering** MMTCs. **The intent of this provision would prevent** unnecessary and unreasonable burdens on access to medical marijuana such as **arbitrary or overly restrictive limits on the number or size of MMTCs** . . . . This section requires the Department of Health to impose **standards for registering** . . . *MMTCs*. **The standards** must be reasonable and necessary to ensure the availability and safe use of medical marijuana by qualifying patients. **The Department of Health shall not register MMTCs until the MMTCS are in compliance with the established standards**.

AOI at 8 (emphasis added).

19. Finally, the Amendment forbids the legislature from enacting laws that are inconsistent with the Amendment. Fla. Const. Art. X § 29(e) ("Nothing in this section shall limit the legislature from enacting laws consistent with this section.").

The Legislature's Attempt to Implement Amendment 2

20. On June 9, 2017, the Florida Legislature amended Fla. Stat. § 381.986, in a purported attempt to implement Fla. Const. Art. X § 29.

21. The statute is inconsistent with the plain language of the Amendment, as well as with many of its requirements and purposes.

22. Instead of implementing standards for *registration*, Fla. Stat. §381.986 enacts a restricted *licensing* regime that caps the number of initial licenses available at seventeen, requiring certain parameters to be met before more licenses can be issued.[1] Fla. Stat. § 381.986(8)(a). The legislation specifically contemplates a restricted number of licenses.

[1] "Within 6 months after the registration of 100,000 active qualified patients in the medical marijuana use registry, the department shall license four additional medical marijuana treatment centers . . . Thereafter, the department shall license four medical marijuana treatment centers within 6 months after the registration of each additional 100,000 active qualified patients in the medical marijuana use registry . . . ." Fla. Stat. § 381.986 (4).

23. Furthermore, this licensing regime creates a system of vertical control and integration where MMTCs are required to cultivate, process, transport **and** dispense the medical marijuana they sell:

> A licensed medical marijuana treatment center shall cultivate, process, transport, **and** dispense marijuana for medical use. A licensed medical marijuana treatment center may not contract for services directly related to the cultivation, processing, and dispensing of marijuana or marijuana delivery devices . . . .[2]

Fla. Stat. § 381.986.

COUNT I: DECLARATORY JUDGMENT
(Licensing Regime Violates Fla. Const. Art. X § 29)

Plaintiff hereby reaffirms and realleges every allegation made in ¶¶ 1 – 23 above, as though fully set forth herein.

24. The Constitution ordered the Department to establish procedures for the "registration" of MMTCs along with "standards" that MMTCs would have to meet to obtain registration. Fla. Const. Art. X § 29(d)(1)(c).

25. The verb "to register" is defined as "to enter or enroll in an official list or book of public records" and "to record automatically." *Register, Merriam-Webster*, 2018.

26. The verb "to license" is defined as "to permit or authorize especially by formal license" and "to give permission or consent." *License, Merriam-Webster*, 2018.

27. Thus, use of the word "register" in lieu of "licensure" implies a simple, process whereby the Department would register intended dispensaries in a controlled database if they meet the promulgated standards.

[2] There is a limited exception built in for former Dispensing Organizations that allows them to contract with a single entity for the cultivation, processing, transporting, and dispensing of marijuana and marijuana delivery devices.

28. The restrictive limited licensing regime implemented by Fla. Stat. § 381.986 that provides for a limited number of licenses that applicants must "compete" for, is wholly contrary to the express language of the constitution that requires the Department to provide for "registration" upon the meeting of certain reasonable standards.

29. It is also wholly contrary to the AOI authored by the drafters of the Amendment which also uses the word "register" and states the Amendment was drafted with the intent of preventing "arbitrary or overly restrictive limits on the number . . . of MMTCs." AOI at 8.

30. This limited license framework is significantly more restrictive than the broad registration process guaranteed by the Constitution. It imposes an arbitrary limit on the availability of medical marijuana in the State. This frustrates the Constitution's purpose of ensuring the availability and safe use of medical marijuana. Fla. Const. Art. X § 29(d).

31. This contradiction with the express constitutional language and purpose has real and harmful effects on Florida citizens and businesses.

32. First, for the reasons explained below, these artificial limits have increased the price of medical marijuana products to the point that lower income patients, like Christopher Gravett, can no longer afford their medication. For example, in Colorado, cannabis oil costs approximately $0.06-7 per milligram. In Florida, however, it's almost double the cost at $0.1233 per milligram. This means that 500 milligrams of cannabis oil in Colorado costs approximately $32.50, but costs $61.65 in Florida.

33. This price increase is a direct result of the illegal limits placed on MMTC registration. Specifically, these statutory limits have insulated MMTCs from marketplace competition that would have forced lower prices. Furthermore, as each MMTC license grants the ability to partake in a state-sanctioned monopoly marketplace, the licenses have become

commodities that trade at over forty-five million dollars apiece; two such trades have closed in under ten months.[3] These shocking purchase prices have forced newly acquired MMTCs to raise their prices to try and re-coup the massive investments required to enter the market.

34. Second, these artificial limits have decreased the diversity of products and strains on the market, which in turn, inhibits patients' accessibility to the medical marijuana they require.

35. This is particularly problematic given that research has shown different marijuana strains have different health effects on individuals depending on lineage, genetics, and other agents. As such, just like any other medication, the strain of a particular medical marijuana that works for one patient may not work for another. The same is true of delivery mechanisms, which can vary greatly in effectiveness, depending on the individual.

36. To ensure adequate variety, the State needs a wide array of MMTCs, as each MMTC carries different rotating strains and cutting agents. The more MMTCs, the more strains, cutting agent varieties, and delivery systems will be available to patients. In implementing a capped licensing regime, rather than the contemplated registration system, Defendants necessarily limited the available strains of medical marijuana and delivery mechanisms that are accessible on the market. This diminishes patients' ability to find strains and products that address their medical needs. Due to these limitations, patients like Gravett cannot find medical marijuana strains and delivery mechanisms that would be suitable to their needs.

37. Third, the arbitrary cap on MMTCs authorized to operate in Florida restricts the constitutional rights of intended applicants to become MMTCs by making it much less likely they

[3] https://mjbizdaily.com/canadian-listed-marijuana-company-buys-florida-license-holder-48m/ (Anthus purchased Growhealthy for $48,000,000.00); http://www.miamiherald.com/news/politics-government/state-politics/article142897659.html (Alphria purchased Chesnut Hill for $67,000,000.00).

will obtain "registration" and making it *impossible* for all qualified applicants to become "registered."

38. 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 fail. *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).

39. Fla. Const. Art. X § 29 required the Department to issue regulations "to ensure the ***availability*** and safe use of medical marijuana." Fla. Const. Art. X § 29 (emphasis added). As demonstrated above, Fla. Stat. § 381.986's capped licensing regime, however, restricts the availability of medical marijuana by limiting the number of MMTCs across the state. Thus, rather than implement a system that would provide readily accessible medical marijuana through registration, Defendants have curtailed accessibility of it through licensing.

40. Plaintiff, its members, and those similarly situated are in doubt of their rights. There is, therefore, a *bona fide*, actual, present, practical need for a declaration that Fla. Stat. § 381.986 (2016), as amended in 2017, is unenforceable pursuant to Article X § 29 of the Florida Constitution.

41. The declaration deals with a present and ascertained state of facts regarding the Defendants' duties and obligations to comply with Fla. Const. Art. X § 29. Plaintiff, and its members', power(s), privilege(s), and rights are dependent upon the law to the facts. The antagonistic and adverse interests are all before the Court by proper process. And the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded by curiosity because Defendants' actions have had a real adverse effect on Plaintiff's members and those for which it advocates.

WHEREFORE, Plaintiff requests this Court enter an Order declaring Fla. Stat. § 381.986's implementation of a limited licensing regime unconstitutional pursuant to Fla. Const. Art. X § 29.

COUNT II: DECLARATORY JUDGMENT
(Vertical Integration Violates Fla. Const. Art. X § 29)

Plaintiff hereby reaffirms and realleges every allegation made in ¶¶ 1 – 23 above, as though fully set forth herein.

42. Florida's Constitution provides that an MMTC may perform some, or all, of the functions required to bring medical marijuana from seed to sale. Specifically, it defines an MMTC as an entity that either "acquires, cultivates, possesses, processes . . . transfers, transports, sells, distributes, dispenses, **or** administers marijuana, products containing marijuana, related supplies, **or** educational materials . . . ." Fla. Const. Art. X § 29(b)(5) (emphasis added).

43. The purpose of the Constitutional Amendment was to allow "multiple types of MMTCs." AOI at 4. In addition, the drafters of the Amendment were clear in stating that a "requirement that a single MMTC must perform all MMTC functions would be ***contrary*** to the language and intent of this Amendment . . . ." AOI at 4 (emphasis added).

44. Nevertheless, in direct conflict with this language, Fla. Stat. § 381.986 **replaces the word "or" with "and"** to require MMTCs be fully vertically integrated, meaning individuals with licenses are required to partake in all aspects of the business from "seed to sale." Fla. Stat. § 381.986(8)(e). As opposed to allowing individuals to engage in certain aspects of the business, like growing medical marijuana, but not retailing it, Fla. Stat. § 381.986 requires all MMTCs to perform all functions of the business.

45. This vertical integration requirement of Fla. Stat. § 381.986 is in direct conflict with the express language of the Florida Constitution and significantly narrows the rights guaranteed by the Amendment.

46. First, by providing for horizontal integration (as opposed to the enacted vertical integration), the Florida Constitution guaranteed relatively low-cost business opportunities to Florida businesses hoping to participate in the medical marijuana industry and greater accessibility of medical marijuana to patients. By requiring vertical integration, the Florida legislature has imposed an extremely high cost for those who wish to enter the marketplace, foreclosing the opportunities provided by the Constitution.

47. Second, vertical integration reduces the availability of medical marijuana.

48. As before, it increases the cost of medication. Specifically, by enacting a large barrier to entry, vertical integration increases the costs of producing and dispensing medical marijuana, decreases competition in the marketplace, and disallows the use of strategic efficiencies that could result from allowing creative minds to explore the best possible way to take advantage of the efficiencies that could result from single purpose MMTCs.

49. Additionally, the tremendous financial resources required for vertical integration necessarily preclude smaller businesses owners from serving the patient community. The current MMTCs are focused on large markets and the highest rate of return. This has resulted in them ignoring specialty and smaller markets for certain medical marijuana patients. For example, on information and belief, no current MMTC offers edible products that are certified kosher. Nor does any MMTC offer some of the highly successful and innovative dosing technologies like inhalers offered by Quest Aerosols which does not heat the THC, but sends the medicine directly inside the patient's lungs.[4] If horizontal integration were permitted, many smaller businesses would be able to enter the retail or production business and supply patients with these unique products and strains that are currently unavailable.

[4] http://aeroinhaler.com/

50. As Fla. Const. Art. X § 29 states, the Department was required to issue regulations "to ensure the ***availability*** and safe use of medical marijuana." Fla. Const. Art. X § 29 (emphasis added). Fla. Stat. § 381.986's vertical integration requirement reduces (rather than ensures) the availability of medical marijuana and thus is in direct contravention of the Florida Constitution. Defendants' refusal to comply with the language and purpose of the Florida Constitution has resulted in real harm to Plaintiff's members and to Floridians.

51. The declaration deals with a present and ascertained state of facts regarding the Defendants' duties and obligations to comply with Fla. Const. Art. X § 29. Plaintiff, and its members', power(s), privilege(s), and rights are dependent upon the law to the facts. The antagonistic and adverse interests are all before the Court by proper process. And the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded by curiosity because Defendants' actions have had a real adverse effect on Plaintiff's members and those for which it advocates.

WHEREFORE, Plaintiff requests this Court enter an Order declaring Fla. Stat. § 381.986's requirement of vertical integration unconstitutional pursuant to Fla. Const. Art. X § 29.

Dated: February 14, 2108

Respectfully submitted,

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