IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

CASE NO.: 1D18-1505
L.T. NO.: 2017-CA-002403

FLORIDA DEPARTMENT OF HEALTH,

Appellant,
v.
JOSEPH REDNER, an individual,

Appellee.

APPELLEE REDNER'S SUGGESTION THAT THE TRIAL COURT JUDGMENT BE CERTIFED AS REQUIRING IMMEDIATE RESOLUTION BY THE FLORIDA SUPREME COURT

Respectfully Submitted,

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Appellee, Joseph Redner, respectfully suggests the judgment below be certified for resolution by the Florida Supreme Court pursuant to Fla. R. App. 9.125.

For the same reasons articulated in a virtually identical submittal made by Appellee, People United for medical Marijuana, *et al*, in Case No. 1D18-2206, from which this submittal is humbly plagiarized in good faith, the important issue decided by the trial court below that requires immediate resolution is that Section 381.986, Fla. Stat. (2017) unconstitutionally criminalizes the possession of a growing plant by a qualified patient, even if recommended by a qualified physician to facilitate a route of administration requiring live cannabis plants, as permitted by Article X, § 29 of the Florida Constitution. This unconstitutional restriction on one option available to treat debilitating medical conditions presents an immediate threat of irreparable injuries to Mr. Redner, as well as those patients for whom this medical treatment is currently prohibited. Supreme Court review is highly probable because the issue inevitably involves the interpretation of a new section of the Constitution and the unconstitutionality of a statute. Delay from two rounds of review only increases the injury for those who must wait to access a constitutionally protected medical treatment and postpones final determination by the Court.

This case involves a statutory provision conflicting with Article X, § 29. The Amendment was passed in 2016 by 71% of the voters, and authorizes individuals with certain medical conditions to seek treatment with medical marijuana. The Amendment

specifically provides that as a matter of public policy, "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." Art. X, §29(a)(1). In 2017, the Florida Legislature adopted Fla. Stat. §381.986 to implement portions of Art. X, §29. In that statute, the Florida Legislature specifically prohibited "home grow" of medical marijuana. The constitution defines medical marijuana to include ***all*** parts of the cannabis plant, including a growing plant. By making live plants used to facilitate the administration of medical marijuana illegal under Florida law, the Legislature contradicted the plain language of the constitutional amendment and violated the Appellees' constitutional rights to use medical marijuana, as authorized by a physician, to treat their debilitating medical conditions.

After trial, the Circuit Court below issued its Order and Final Judgment on April 11, 2018, holding, *inter alia*, that, contrary to the applicable provisions of Fla. Stat. §381.986, that "Nothing in the Amendment authorizes the Department of health [or any other pert of Florida's government] to ignore the rights of qualifying patients to access the medical marijuana treatment to which they are entitled under the Constitution, or to exclude any method by which qualifying patients may take their medicine." *See* Appendix, Order and Final Judgment, at p 13.

The trial court also ruled that Mr. Redner "has a constitutional right to possess growing marijuana plants for the purpose of using them as a medical treatment for

his qualifying debilitating condition, consistent with Dr. Gordon's recommendation as to emulsifying [juicing] the biomass of the marijuana plants to obtain the recommended eight ounces per day." *See* Appendix, Order and Final Judgment, at p. 17. The trial court further ruled that Mr. Redner is entitled to "possess, grow and use the plants while he is involved in administering the medical treatment to himself in accordance with the recommendations of his physician, with no civil or criminal liability under Florida law." *See* Appendix, Order and Final Judgment at pp. 17-18.

The appellate rules permit this Court to certify trial court orders as requiring immediate resolution by the Supreme Court because the issues "are of great public importance or have a great effect on the proper administration of justice throughout the state." Fla. R. App. P. 9.125(a). In making such a decision, this Court has limited its determination to whether (1) the order is appealable; (2) the issue is of great public importance or is likely to have great effect on the proper administration of justice; and (3) circumstances exist which require an immediate resolution by the Florida Supreme Court. *Harris v. Coalition to Reduce Class Size*, 824 So. 2d 245, 248 (Fla. 1st DCA 2002). Even where the opposition argues against the need for immediate review, doubts should be resolved in favor of certification. *League of Women Voters of Fla. v. Detzner*,

178 So. 3d 6, 8 (Fla. 1st DCA 2014). The District Courts of Appeal have certified appeals involving the constitutionality of Florida Statutes.[1]

There is also a need for an immediate resolution of this dispute. The patients who qualify for medical marijuana pursuant to Art. X, § 29 are those with "debilitating medical conditions," including cancer, HIV, ALS, Parkinson's disease, and multiple sclerosis. Although the Florida voters adopted the amendment in 2016, the use of medical marijuana was subsequently limited by § 381.986. Individuals who are entitled to seek relief through the emulsification of a growing plant have not been able to access that treatment or palliative care. For many Floridians, including Mr. Redner, their health care issues are urgent. The immediate health care needs of Mr. Redner and similarly situated Floridians meet the definition of "circumstances that require immediate resolution." While this case does not present a pending deadline as in election cases, this case presents an immediate quality of life issue for those with debilitating, and in many cases incurable or terminal illnesses.

The uncertainty caused by this question is its own ongoing injury. Limiting this ongoing injury trumps two levels of appellate review particularly when Supreme

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[1] *E.g.*, *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013); *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126 (Fla. 2000); *Florida v. Florida Police Benevolent Assoc.*, 688 So. 2d 326 (Fla. 1997); *United States Fidelity and Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355 (Fla. 1984); and *Department of Insurance v. Teachers Ins. Co.*, 404 So. 2d 735, (Fla. 1981).

Court review is virtually certain.[2] This conclusion is consistent with the principle that important disputes should be finally resolved by the Florida Supreme Court sooner, rather than later.

This principle is directly applicable here. Even expedited review could take more than a full year. On May 4, 2014, Mr. Redner filed a Motion for Expedited Review before this Court. To date, there has been no benevolent consideration of this request. During the time it takes to administer this appeal, both Mr. Redner and similarly situated Floridians with debilitating medical conditions will be denied any certainty regarding their ability to access a recognized form of the administration of medical marijuana permitted by Art. X, § 29. Although the uncertainty regarding Section 381.986 will continue for at least some period, certification by this Court and an expedited decision will substantially lessen the length of that uncertainty.

WHEREFORE, based on the foregoing, Appellees respectfully request that this Court certify the trial court's decision pursuant to Fla. R. App. P. 9.125.

CERTIFICATION

I express a belief, based on a reasoned and studied professional judgment, that this appeal requires immediate resolution by the Supreme Court and (a) is of great public importance, or (b) will have a great effect on the administration of justice throughout the state.

[2] *See, e.g., Flagg v. State*, 74 So. 3d 138, 141 (Fla. 1st DCA 2011); *Heggs v. State*, 718 So. 2d 263, 264-65 (Fla. 2nd DCA 1998).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June11, 2018, a true and correct copy of the above and foregoing has been furnished in accordance with Florida Rule of Judicial Administration 2.516 to Michael J. Williams, Esquire at michael.williams@flhealth.gov, to Amber Stoner, Esquire at amberstoner@shutts.com, to Jason Brent Gonzalez, Esquire at jasongonzalez@shutts.com, and to Amanda L. Derby-Carter, Esquire at Amanda.l.derby@gmail.com.

/s/Luke Lirot
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this document was prepared in compliance with the requirements of Fla. R. App. P. 9.100(l).

/s/Luke Lirot
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