IN THE FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No.: 1D18-2206

FLORIDA DEPARTMENT OF HEALTH, *et al.*,
Appellants,
v.
PEOPLE UNITED FOR MEDICAL MARIJUANA, *et al.*,
Appellees.

APPELLEES' ANSWER BRIEF

ON APPEAL FROM A FINAL ORDER OF THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT, LEON COUNTY
Case No.: 2017-CA-1394

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TABLE OF CONTENTS

TABLE OF CITATIONS

Page

Cases

Statutes

Rules

STATEMENT OF THE CASE AND FACTS

In 2016, the voters of Florida overwhelmingly passed a constitutional amendment titled, "Use of Marijuana for Debilitating Medical Conditions" (hereinafter the "Amendment"). The Amendment's chief purpose was summarized on the ballot as follows:

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

In re Advisory Op. to Att'y Gen. re Use of Medical Marijuana for Debilitating Medical Conditions, 181 So. 3d 471, 476 (Fla. 2015). 71.3% of the more than 9 million votes cast were in support of the Amendment. R. 17.

In holding "that the initiative petition and ballot title and summary satisfy the legal requirements of article XI, section 3, of the Florida Constitution, and section 101.161(1), Florida Statutes," the Florida Supreme Court noted "that the initiative has a logical and natural oneness of purpose, specifically, whether Floridians wish to include a provision in our state constitution permitting the medical use of marijuana." 181 So. 3d at 477.

Pursuant to article XI, section 5, Florida Constitution, the Amendment was made effective as article X, section 29, Florida Constitution, and titled "Medical

marijuana production, possession and use." Section 29 specifically noted that, as a matter of public policy, "[t]he 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), Fla. Const. Additionally, the term "marijuana" was incorporated into the Constitution vis-à-vis section 893.02(3), Florida Statutes (2014), as "all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin." Article X, section 29 places the decision to use medical marijuana—despite health risks—in the hands of a patient with a debilitating medical condition[1] and his or her physician.

Article X, section 29(c), titled "Limitations," specifically provides that the Legislature may limit the use of medical marijuana in certain locations, however, provides no authority for the Legislature to prohibit a type of medical marijuana, or even for the imposition of a statewide prohibition. Subsection (6) provides:

[1]"'Debilitating Medical Condition' means cancer, epilepsy, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), post-traumatic stress disorder (PTSD), amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis, or other debilitating medical conditions of the same kind or class as or comparable to those enumerated, and for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient." Art. X, § 29(b)(1), Fla. Const.

> Nothing in this section shall require any accommodation of any on-site medical use of marijuana in any correctional institution or detention facility or place of education or employment, or of smoking medical marijuana in any public place.

A "public place" is among the list of locations where medical marijuana use may be prohibited. Nothing in the Amendment permits the statewide prohibition of smokable medical marijuana in all places in Florida.

In 2017, the Florida Legislature adopted an implementing statute for the Amendment. Section 381.986, Florida Statutes (2017), prohibits medical marijuana in a form for smoking despite constitutional approval for smokable marijuana as a permissible treatment option for qualifying patients. In excluding smokable medical marijuana from the statutory definition of medical use,[2] the Legislature has in effect recriminalized smokable medical marijuana. This lawsuit stems from that legislative action.

Soon after the Legislature enacted Florida Statute section 381.986, People United for Medical Marijuana, Florida for Care, Catherine Jordan, and Diana

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[2] "'Medical use' means the acquisition, possession, use, delivery, transfer, or administration of marijuana authorized by a physician certification. The term does not include:

…

2. Possession, use, or administration of marijuana in a form for smoking, in the form of commercially produced food items other than edibles, or of marijuana seeds or flower, except for flower in a sealed, tamper-proof receptacle for vaping." § 381.986(1)(j), Fla. Stat. (2017).

Dodson (collectively the "Appellees") challenged the constitutionality of the statute recriminalizing smokable medical marijuana.

Appellee Catherine Jordan is a Florida resident who has been diagnosed with Amyotrophic Lateral Sclerosis ("ALS"). R. 1532. She is registered as a "qualifying patient" for purposes of the Amendment, which means she has a valid physician certification from a Florida physician. *See* Art. X, § 29(b)(9)–(10), Fla. Const. R. 418. Ms. Jordan utilizes the smokable form of marijuana because it best relieves her symptoms, as opposed to other available forms of medical marijuana. R. 2552–53.

Appellee Diana Dodson has been diagnosed with acquired immunodeficiency syndrome (AIDS)—an enumerated debilitating medical condition. R. 2499. Ms. Dodson testified that she has not applied to become a qualified patient yet because it is "cost prohibitive for [her] at this point." R. 2502. She intends to become a qualifying patient and wishes to use smokable medical marijuana. R. 2502–04. Because of the statute, however, she cannot pursue the use of medical marijuana in a form for smoking. R. 2503. She has used smokable medical marijuana in California and testified that "[s]moked cannabis works best for me." R. 2500–01.

Appellee People United for Medical Marijuana (hereinafter "PUMM") is a political committee that was formed to legalize medical marijuana via popular initiative for the benefit of individuals suffering in Florida. R. 2508. As of July 6, 2017, PUMM has approximately 29,000 individuals who have joined as members,

contributors, or volunteers. R. 2523. Certain PUMM members have been diagnosed with debilitating medical conditions and have become qualifying patients and others have been diagnosed with debilitating medical conditions and intend to apply to become qualifying patients. R. 2524. Many have received their medical marijuana identification cards from the Office of Medical Marijuana Use. R. 2524.

Appellee Florida for Care, Inc. (hereinafter "FFC"), is a non-profit corporation that has supported the legalization of medical marijuana in Florida. R. 2509. As of December 2017, FCC had approximately 41,580 members. R. 541. Certain of FFC's members have been diagnosed with debilitating medical conditions and have become qualifying patients under Florida law. R. 2523. Other FFC members have been diagnosed with debilitating medical conditions and intend to apply to become qualifying patients. R. 2523. Moreover, certain FFC members have indicated that they have not become qualifying patients because smokable medical marijuana is not permitted by Florida law. R. 2524.

In May 2018, following a bench trial, the trial court issued its Order and Final Judgment. R. 1769. The trial court declared section 381.986, Florida Statutes (2017), facially invalid because the statute's recriminalization of smokable medical marijuana "conflicts with the Florida Constitution and prohibits a use of medical marijuana that is permitted by [article X, section 29 of the Florida Constitution]:

smoking in private." R. 1769. Additionally, the trial court held Ms. Dodson, PUMM, and FFC have standing to pursue this claim. R. 1782–86.

The Appellants appealed and thereby invoked the automatic stay under Florida Rule of Appellate Procedure 9.310(b)(2). R. 1789. The Appellees moved to vacate the automatic stay. R. 1815–21. The Appellants opposed. R. 2357–66. The trial court subsequently granted the Appellees' motion. R. 2440–43. However, this Court reversed the trial court's order and reimposed the automatic stay. However, the motions panel noted that the decision to reimpose the automatic stay would not "preclude full review of the issues on appeal by the merits panel." *Fla. Dep't of Health v. People United for Med. Marijuana*, Case No. 1D18-2206, 2018 WL 3233113, at *3 n.* (Fla. 1st DCA July 3, 2018).

SUMMARY OF THE ARGUMENT

It is a fundamental tenet of justice in the United States that the Constitution is the supreme legal authority. *Marbury v. Madison*, 5 U.S. 137, 138 (1803). The Florida Supreme Court has also articulated this position. The Legislature receives deference in resolving civic debate, but "the Constitution must prevail over any enactment contrary to it." *Bush v. Holmes*, 919 So. 2d 392, 398 (Fla. 2006). Constitutional authority is the sole controlling issue in this case. The statute at issue specifically prohibits physician-specified medical treatments that are textually authorized under article X, section 29 of the Florida Constitution.

Section 29 permits physicians to certify treatment using medical marijuana—including in a form for smoking—to qualifying patients. That is all article X, section 29 does. Nothing less. Nothing more. However, section 381.986(1)(j), Florida Statutes (2017), explicitly prohibits the smoking of medical marijuana as a treatment. It is clearly an enactment contrary to section 29.

The Appellants argue that article X, section 29 of the Florida Constitution does not create a "right to smoke" medical marijuana. Appellants' Initial Brief at 17. We agree. Section 29 does not in itself create an individual right for anyone to smoke. The constitutional framework authorizes treatment with medical marijuana when a physician determines such treatment to be medically appropriate for a specific patient with a debilitating medical condition. The Constitution creates a *procedural right to seek treatment* with smokable marijuana.

The Appellants also argue that the State has the authority to enact legislation to implement section 29. Appellants' Initial Brief at 35. We agree. *See* art. X, § 29(e), Fla. Const. The State is directly authorized to implement policies fostering the safe use and sale of medical marijuana. But the statute in question directly and explicitly prohibits smokable marijuana as a treatment. § 381.986(1)(j), Fla. Stat. The statute may implement policy consistent with the Constitution—section 29 says so. But a statute cannot rewrite the constitutional provision itself. *See Bush v.*

Holmes, 919 So. 2d at 398. This statute is in direct conflict with multiple provisions of article X, section 29, Florida Constitution.

The Appellants argue that it is improper to utilize the intent of drafters and voters. Appellants' Initial Brief at 17. We would agree insomuch as the textual conflict is so clear that an evaluation of intent is unnecessary. However, if there were any ambiguity, the expression of intent by the drafters and the public debate that took place could not indicate more clearly that medical use of smokable marijuana was to be available to appropriate patients with the consent of their physicians.

The Appellants have argued that the testimony of Dr. Huestis was incorrectly stricken. Appellants' Initial Brief at 35. That testimony was properly stricken because testimony on the merits or faults of smokable marijuana has no role in this case. *See Bush v. Holmes*, 919 So. 2d at 398 ("the question we face today does not turn on the soundness of the legislation or the relatively small numbers of students affected. Rather, the issue is what limits the Constitution imposes on the Legislature."). That decision has been constitutionally granted to a patient and his or her doctor—not the Legislature. The sole issue here is the direct conflict of a statute with a constitutional provision. An attempt to demonstrate facts regarding the wisdom of nullifying a constitutional provision is not legally appropriate.

Because this provision contravenes the Constitution, there can be no factual justification. It is facially unconstitutional.

The standing of Catherine Jordan—a qualifying patient suffering from ALS—is undisputed by the State. *See* Appellants' Initial Brief at 8, 39. Therefore, standing is undisputed for at least one appellee. The Appellants argue that Diana Dodson does not have standing because she does not have a qualifying patient identification card. Appellants' Initial Brief at 41-42. However, Ms. Dodson has done everything she can do to seek treatment through smoking. She has been diagnosed with AIDS—an enumerated debilitating medical condition—and she has an imminent injury that stems from the statute preventing her from seeking unimpeded medical advice and treatment as provided for in the Florida Constitution. R. 2503–504. There is no reason she should be compelled to seek an identification card when she will unequivocally be denied the form of treatment that best addresses her illness and symptoms. With respect to the standing of PUMM and FFC, the record is clear that each meet the criteria for organizational standing.[3]

[3] Under that standard, an association must establish: (i) a substantial number of the association's members are substantially affected by the challenged rule; (ii) the subject matter of the rule is within the association's general scope of interest and activity; and (iii) the relief requested is the type appropriate for an association to receive on behalf of its members. *Fla. Home Builders Ass'n v. Dept. of Labor Employment Security*, 412 So. 2d 351, 353–54 (Fla. 1982).

In sum, section 381.986, Florida Statutes (2017), is in direct and irreconcilable conflict with article X, section 29 of the Florida Constitution. As such, it is facially unconstitutional.

ARGUMENT

I. SECTION 381.986'S EXCLUSION OF SMOKABLE MARIJUANA IS IN DIRECT CONFLICT WITH ARTICLE X, SECTION 29 OF THE FLORIDA CONSTITUTION.

The Florida Constitution is the supreme legal authority within the State of Florida, and cannot be ignored or overturned by any legislative authority. *See Bush v. Holmes*, 919 So. 2d at 398. If a statute is in direct contravention of the Constitution, then it must be struck down. *Id.*; see *Marbury v. Madison*, 5 U.S. at 138. Section 381.986's prohibition on the smoking of medical marijuana is in direct conflict with article X, section 29 of the Florida Constitution. Therefore, it must be struck down.

This Court reviews decisions determining a statute's constitutionality de novo. *State v. Catalano*, 104 So. 3d 1069, 1075 (Fla. 2012). Statutes are presumed to be constitutional and "[t]o overcome the presumption, the invalidity must appear beyond reasonable doubt, for it must be assumed the legislature intended to enact a valid law." *Crist v. Fla. Ass'n of Criminal Def. Lawyers, Inc.*, 978 So. 2d 134, 139 (Fla. 2008). There is no presumption that permits a statute to contradict or overturn a constitutional provision. As stated by the Florida Supreme Court, there is "no

distinction between a small violation of the Constitution, and a large one." *Bush v. Holmes*, 919 So. 2d at 398. Both small and large violations are equally unacceptable. *Id*. The conflict here is clear, unquestionable, and irreconcilable.

The Florida Legislature enacted section 381.986 under the guise of article X, section 29(e), Florida Constitution, which permits legislation that is "consistent with [the] section." However, the statute prohibits types of physician recommended medical treatments specifically authorized by the Constitution—most prominently the smoking of medical marijuana. Not only is that legislation not "consistent with this section," it is in direct contravention of it. *See* art. X, § 29(e), Fla. Const. Section 381.986 limits a physician's ability to decide what is in his or her patient's best health interest by statutorily abolishing a treatment option.

Accordingly, the trial court was correct in deciding that the prohibition on smoking medical marijuana in section 381.986 of the Florida Statutes is unconstitutional, and this Court should uphold the trial court's decision.

A. The Plain Language of Article X, Section 29 Authorizes Use of Smokable Marijuana for Patients with Debilitating Medical Conditions.

Article X, section 29 of the Florida Constitution explicitly provides that a Florida physician may authorize the use of medical marijuana for a patient with a debilitating medical condition. Section 381.986, Florida Statutes (2017) directly

overrides that constitutional provision and prohibits a physician from authorizing the use of smokable marijuana in treatment.

The State argues that it has the authority to enact legislation to implement section 29. Appellants' Initial Brief at 14. It absolutely does. *See* art. X, § 29(e), Fla. Const. Article X, section 29 does contemplate additional regulations to provide for the safe use of medical marijuana. *Id*. at § 29(d). For example, the Department of Health (hereinafter the "Department") is empowered to reasonably limit what constitutes an adequate supply for treatment. *Id*. It can also set standards for caregivers and Medical Marijuana Treatment Centers. *Id*.

However, the Legislature may not ignore the Constitution. Enactments and regulations must be consistent with the text and context of section 29. It is fundamental that the Constitution represents the law of the State, and that it is superior in its force and effect to statutory law enacted by the Legislature. *State ex rel. Nuveen v. Greer*, 102 So. 739, 743 (Fla. 1924). If the Legislature enacts a law that conflicts with an express policy of the Constitution, such an enactment does not even become law, and is deemed invalid from the date of its enactment. *Id*.; *Oliver v. State*, 619 So. 2d 384, 386 (Fla. 1st DCA 1993). The trial court determined that article X, section 29, Florida Constitution is self-executing. R. 1773. While there were procedural duties placed on the Department, the civil and criminal immunity for qualifying patients, licensed physicians, and caregivers did not necessitate any

legislative implementation. Section 381.986, Florida Statutes (2017), is in direct conflict with multiple subsections of Section 29.

Section 29(d) reads, "[t]he Department shall issue reasonable regulations necessary for the implementation and enforcement of this section." Art. X, § 29(d), Fla. Const. Then, the provision lists four specific types of implementing regulations to be issued. They are (i) "[p]rocedures for the issuance and annual renewal of qualifying patient identification cards," (ii) "[p]rocedures establishing qualifications and standards for caregivers, (iii) [p]rocedures for the registration of MMTCs," and (iv) [a] regulation that defines the amount of marijuana that could reasonably be presumed to be an adequate supply for qualifying patients' medical use." Art. X, § 29(d)(1), Fla. Const.

Clearly, the regulations contemplated by the provision are procedural in nature and in no way authorize the redefining of constitutional text. The Department has the most explicit grant of authority within the constitutional provision. However, that authority is limited to regulation similar in type to that which is enumerated. The principle of *ejusdem generis* "provides that where general words or phrases follow an enumeration of specific words or phrases, 'the general words are construed as applying to the same kind or class as those that are specifically mentioned.'" *In re Advisory Op. to Att'y Gen. re Use of Marijuana for Certain Medical Conditions*, 132 So. 3d 786 (Fla. 2014) (quoting *Fayad v. Clarendon Nat'l Ins. Co.*, 899 So. 2d

1082, 1088-89 (Fla. 2005)). Here, there is no explicit grant that the Department shall issue other regulations. Regardless, its ability to do so is circumscribed not only by the requirement that such regulations be consistent with the section as a whole, but also by the fact that those regulations be of the same kind specifically enumerated.

The Department was never intended to alter a substantive definition—such as what constitutes medical use—of the underlying constitutional provision. Nor can the Legislature redefine the constitutional definition of "marijuana," which includes "all parts" of the cannabis plant and "every … preparation of the plant. § 893.02(3), Fla. Stat. (2014) (incorporated in art. X, § 29(b)(4), Fla. Const). Neither the Legislature nor the Department can prohibit the ability of a physician and a patient with a debilitating medical condition to weigh the health risks and decide to use smokable marijuana. Section 29 divests the State of that power. Art. X, § 29(b)(6), Fla. Const. The Legislature cannot ignore the Constitution and enact statutes that are no longer within the scope of legislative power because that decision has been made by the people through constitutional amendment.

The Appellants also state, without authority, that "'medical use' is defined broadly in the Amendment, allowing for legislative discretion." Appellants' Initial Brief at 19. In fact, medical use is defined precisely, particularly within the context of the entire provision. The definition includes the process for the medical decision made by the physician and the patient. Art. X, § 29(b)(9), Fla. Const. That process

includes: (i) a physical examination; (ii) a full assessment of a patient's medical history; (iii) a finding that the patient suffers from a debilitating medical condition; and (iv) a finding that the potential health risks of using medical marijuana are outweighed by the potential benefits. *Id*. The definition also incorporates the full definition of marijuana. Art. X, § 29(b)(4), Fla. Const.

The definition of "medical use" is at the core of the constitutional-statutory conflict in the instant case. The Constitution says, "'[m]edical use' means the acquisition, possession, use, delivery, transfer, or administration of an amount of marijuana not in conflict with Department rules, or of related supplies by a qualifying patient or caregiver for use by the caregiver's designated qualifying patient for the treatment of a debilitating medical condition." Art. X, § 29(b)(6), Fla. Const. The essence of medical use is "use … or administration of an amount of marijuana not in conflict with Department rules … by a qualifying patient." *See id*. And because the constitutional definition of marijuana includes "all parts of any plant of the genus Cannabis," medical use includes use of smokable marijuana. *See* § 893.02(3), Fla. Stat. (2014); Art. X, § 29(b)(4).

The Appellants argue that medical use is limited to use or administration not in conflict with Department rules, whatever those rules may be. Appellants' Initial Brief at 19-20. However, that assumes that the Department is granted much greater rulemaking authority than article X, section 29 actually contemplates. While the

promulgation of Department rules is expressly provided for, such rulemaking authority is tightly circumscribed within the section. Referring back to the constitutional definition of medical use, it is "use . . . or administration of an amount of marijuana not in conflict with Department rules." Art. X, § 29(b)(6), Fla. Const. "[N]ot in conflict with Department rules" modifies "amount," not "use," "administration," nor "marijuana." Therefore, the Department is authorized to define amounts and is not authorized to rewrite the constitutional definition of marijuana. This reading is consistent with the explicitly enumerated duties of the Department. *See id*. at § 29(d). As discussed *supra* pp. 12-13, the Constitution directs the Department to "define[] the amount of marijuana that could reasonably be presumed to be an adequate supply." Art. X, § 29(d)(1), Fla. Const. Nowhere in section 29(d) is the Department directed to limit what delivery mechanisms are acceptable for medical use. Nowhere in section 29(d) is the Department directed to limit what forms of marijuana are acceptable for medical use. Had the drafters intended for the Legislature to have the authority to impose rules defining medical use or marijuana, they would not have painstakingly created and constitutionalized such definitions themselves. Thus, when section 29(b)(6) is read in concert with section 29(d)(1), it is clear that the Department was meant to issue rules regulating the amount of marijuana constituting an adequate supply, not the means or substance

of consumption by qualifying patients. That decision-making authority remains within the ambit of licensed Florida physicians.

The Appellees assert a facial challenge to the smoking prohibition contained in section 381.986 because it directly conflicts with article X, section 29 of the Florida Constitution. That statute excludes the "possession, use or administration of marijuana *in a form for smoking*" from the definition of medical use. § 381.986(1)(j), Fla. Stat. (2017) (emphasis added). This definition contravenes the definitions of "medical use" in article X, section 29(b)(6) of the Florida Constitution, which defines marijuana in a fashion that clearly includes smokable marijuana. The plain language of the statute directly conflicts with the plain language of the Constitution. The law says that "a determination that a statute is facially unconstitutional means that no set of circumstances exists under which the statute would be valid." *Fla. Dep't of Revenue v. City of Gainesville*, 918 So. 2d 250, 256 (Fla. 2005). There is no set of circumstances that allow a statute to redefine a fundamental provision of a section of the Constitution.

Article X, section 29 of the Constitution sets forth the provisions regarding the patients' use of and physicians' certification of medical marijuana. The constitutional definition of medical use places no limitation on the use of marijuana in a form for smoking. Art. X, §29(b)(6), Fla. Const. The implementing statute, however, says explicitly that "medical use" does not include "marijuana in a form

for smoking" and, therefore, conflicts with the constitutional definition that incorporates the definition of marijuana that is not restricted by the term "in a form for smoking." *See* § 381.986(1)(j)(2), Fla. Stat. (2017). A comparison of the plain language of section 29 and section 381.96(1)(j) shows how explicitly the Legislature contradicted the Constitution:

Article X, § 29	Florida Statute § 381.986
(b) DEFINITIONS. For purposes of this section, the following words and terms shall have the following meanings: (6) "Medical use" means the acquisition, possession, use, delivery, transfer, or administration of an amount of marijuana not in conflict with Department rules, or of related supplies by a qualifying patient or caregiver for use by the caregiver's designated qualifying patient for the treatment of a debilitating medical condition.	(1) DEFINITIONS.—As used in this section, the term: (j) "Medical use" means the acquisition, possession, use, delivery, transfer, or administration of marijuana authorized by a physician certification. The term does not include: (2.) *Possession, use, or administration of marijuana in a form for smoking*, in the form of commercially produced food items other than edibles, or of marijuana seeds or flower, except for flower in a sealed, tamper-proof receptacle for vaping. (emphasis added)

The term "marijuana" as used in the constitutional definition of medical use is itself constitutionally defined. Therein lies the direct and overt statutory conflict. The constitutional definition includes smokable marijuana while the statutory definition explicitly and unequivocally excludes marijuana in a form for smoking.

The Constitution has clearly defined a term, and there is no authority for the Legislature to redefine it, much less in a way that is narrower, and in direct conflict.

To be clear, the executive and legislative branches may have different views than the general public regarding the policy of legalization of medicinal marijuana at the state level. The Appellees do not dispute the Department's authority to issue reasonable regulations necessary for the implementation of the constitutional provision. Nor do they challenge the Legislature's inherent general authority to enact laws relating to the health and safety of their citizens. However, section 29 explicitly places health decisions regarding medical marijuana into the hands of patients and physicians—not the Legislature. Section 29 authorizes the Legislature to ensure the "safe use of medical marijuana." Art. X, § 29(d), Fla. Const. However, it does not authorize the redefinition of "marijuana" nor the redefinition of "medical use."

B. The Definitions Provision within Article X, Section 29 Requires the Availability of Medical Marijuana in a Form for Smoking.

The text of article X, section 29 of the Florida Constitution does not in any way suggest that marijuana in a form for smoking was intended to be removed from the definition of medical use or the administration of marijuana pursuant to a qualified physician's directions or certification. To the contrary, section 29 expressly provides for the "medical use of marijuana," and defines marijuana as "all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof;

the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin." Art. X, § 29(b)(4), Fla. Const. The specific inclusion of "all parts of any plant" makes it clear, on its face, that article X, section 29 of the Florida Constitution was intended to allow consumption of the marijuana "flower" in all forms. Those forms include marijuana that is smokable.

Here, the Legislature's imposition of restrictions on the method by which qualifying patients take their medicine is contrary to the text of section 29, which did not impose any such restrictions. Because section 29 specifically incorporates the term "[m]arijuana" to include the definition of cannabis and low-THC cannabis in the Florida Statutes, the plain language of article X, section 29(e) does not permit the Legislature—or the Department of Health—to regulate in a way that is inconsistent.

The Appellants try to argue that the statute permissibly regulates a delivery mechanism rather than impermissibly regulates the physical substance of marijuana. The substance that is available for physicians to authorize is defined. Article X, section 29(b)(4) incorporates a statutory definition of marijuana, which includes "all parts of any plant of the genus Cannabis." *See* § 893.02(3), Fla. Stat. (2014). Section 29's definition of marijuana is not further limited by its definition of medical use, which is "the acquisition, possession, use, delivery, transfer, or administration of an

amount of marijuana not in conflict with Department rules." *See* Art. X, § 29(b)(6), Fla. Const. The Legislature has impermissibly redefined marijuana in its own unconstitutional definition of medical use. The legislation at issue here defines its prohibition as "in a form for smoking." That prohibition is directed at a substance rather than a "mechanism."

The Constitution clearly defines marijuana to include the marijuana flower. *See id*. at § 29(b)(4). However, the Legislature's definition of medical use does not permit possession of marijuana flower, "except for flower in a sealed, tamper-proof receptacle for vaping." § 381.986(1)(j)(2), Fla. Stat. (2017). Furthermore, the Appellants' distinction of delivery mechanism and substance fails in light of other forms of marijuana that are prohibited under section 381.986. The Constitution's incorporation of the statutory definition of marijuana clearly includes the seeds of "any plant of the genus Cannabis." *See* § 893.02(3), Fla. Stat. (2014). However, the Legislature's definition of medical use does not permit possession of marijuana seeds whatsoever. § 381.986(1)(j)(2), Fla. Stat. (2017). If the Legislature has the ability to alter the constitutional definition of marijuana vis-à-vis its own definition of medical use, then the constitutional definition is rendered meaningless, and an absurd result ensues. The redefinition of the plant results in the ability to redefine a physician's options for medical treatment. Article X, section 29 makes clear what constitutes marijuana, and does not permit legislative alteration. Although the total

exclusion of seeds or partial exclusion of flower (i.e., that not contained in a certain type of receptacle) may seem like a minor violation of article X, section 29, there is no distinction between small and large violations of the Constitution. *See Bush v. Holmes*, 919 So. 2d at 398. And in fact, smokable marijuana is a life or death option for certain patients as demonstrated by the testimony of Ms. Jordan. R. 2552–53. Furthermore, as discussed *supra* pp. 14-19, the Constitution has already defined medical use. And the Legislature has no authority to redefine it in a way that contracts the rights explicit in our Constitution.

As mentioned above, section 29 places determinations regarding the health risks and benefits associated with medical marijuana in the hands of the patient and the doctor, specifically divesting the Legislature or the Department of Health of the power to redefine medical use by redefining the meaning of marijuana. The implementing statute improperly limits a physician from issuing a "physician certification" in accordance with article X, section 29. Pursuant to this section, physicians have the ability to authorize the use of smokable medical marijuana as a treatment for debilitating medical conditions as follows:

> "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 medical use of marijuana would likely outweigh the potential 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 and

> a full assessment of the medical history of the patient. In order for a physician certification to be issued to a minor, a parent or legal guardian of the minor must consent in writing.

Art. X, § 29(a)(9), Fla. Const. (emphasis added). Section 29 of the Florida Constitution further provides that "[a] physician shall not be subject to criminal or civil liability or sanctions under Florida law solely for issuing a physician certification with reasonable care to a person diagnosed with a debilitating medical condition in compliance with this section." *Id*. at § 29(a)(2). Moreover, section 29 gives a physician broad discretion to determine what is medically necessary and in his or her patient's best interest by specifically allowing a physician to issue a physician certification for medical marijuana for non-enumerated conditions, including "other debilitating medical conditions of the same kind or class as or comparable to those enumerated, and for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient." Art. X, § 29(b)(1), Fla. Const.

By disallowing the use of smokable marijuana and preventing physicians from certifying the use of smokable marijuana for their qualifying patients, the Legislature has inserted its own views on the health risks and benefits related to smokable marijuana in place of the physician's discretion. While the Department of Health is given the discretion to "issue reasonable regulations" with the purpose of "ensur[ing] the availability and *safe* use of medical marijuana," it is not given the discretion to

regulate the medical decisions and medical use. *See* art. X, § 29(d), Fla. Const. (emphasis added).

In the face of a clear constitutional mandate that gives physicians discretion regarding the treatment of qualifying patients and the medical use of marijuana for such patients, the legislative restrictions on the constitutional right of physicians to "issue a physician certification with reasonable care" by excluding a major type of use from the definition of "medical use" restricts the right of patients to seek treatment under the Constitution and is invalid.

C. The Provision of Article X, Section 29 That Authorizes Limits on Locations for Use of Medical Marijuana Logically Contemplates the Lawfulness of Use of Medical Marijuana in a Form for Smoking in Private.

Article X, section 29(c)(6) of the Florida Constitution states: "Nothing in this section *shall require* any accommodation of any on-site medical use of marijuana in any correctional institution or detention facility or place of education or employment or of smoking medical marijuana in any public place." This logical provision recognizes that there are some locations where limitations on use should be allowed. Therefore, the Constitution does not prevent a correctional institution or school from limiting use of medical marijuana on its premises. Additionally, the provision allows limitations on use of medical marijuana in public places. The provision itself does not prohibit use in a public place. The provision allows for a prohibition or restriction. Perhaps a location may choose to allow a person with a debilitating

medical condition to use smokable marijuana in that location consistent with their treatment. The Constitution identifies locations that may be restricted.

This limitation operates as a location-based restriction on what is otherwise a constitutionally-codified right: the right to the authorized use of medical marijuana. Authorization to restrict physical locations for smoking clearly does not limit treatment options.

In fact, this provision's restriction on where smokable medical marijuana may be consumed makes it clear that smoking medical marijuana in other locations would be legal if authorized by a physician. That is the only reasonable interpretation of the locational limitation on smoking. *Expressio unius est exclusio alterius*, a well-established principle of construction, states that "where the Constitution expressly provides the manner of doing a thing, it impliedly forbids its being done in a substantially different manner." *Weinberger v. Bd. of Pub. Instruction*, 93 Fla. 470, 112 So. 253, 256 (1927). Thus, the manner explicitly prescribed is exclusive, and the Legislature is prohibited from "enact[ing] a statute that would defeat the purpose of the constitutional provision." *Id*. (internal citations omitted). Here, article X, section 29(c)(6) of the Florida Constitution grants the Legislature the authority to prohibit the smoking of medical marijuana in public. If the Legislature is permitted to ban the smoking of medical marijuana in public, *expressio unius est exclusio alterius* would dictate that "in public" is the exclusive location the Legislature may

exert its regulatory authority. Thus, the Legislature may not prohibit the smoking of medical marijuana in private. And if it cannot prohibit the use of smokable medical marijuana in certain locations, then it does not have the authority to prohibit such use in all locations.

The Appellants argue that *expressio unius est exclusio alterius* should not be used because it is a rule of statutory construction. Appellants' Initial Brief at 21 (citing *Taylor v. Dorsey*, 19 So. 2d 876, 881 (Fla. 1944) (internal citation omitted). However, the Florida Supreme Court has been willing to use this principle where there is a clear conflict between the primary purpose of a constitutional provision and a statute. *See Bush v. Holmes*, 919 So. 2d at 407-08. In *Bush v. Holmes*, the Court distinguished the non-application of *expressio unius est exclusio alterius* in *Taylor v. Dorsey*. *Id*. at 408. In *Taylor v. Dorsey*, the constitutional provision being analyzed had a "narrow primary purpose" relating to equitable enforcement against separate spousal property. *Id*. Whereas in *Bush v. Holmes*, the constitutional provision "provide[d] a comprehensive statement of the state's responsibilities regarding the education of its children." *Id*. Here, article X, section 29 represents a comprehensive policy regarding the proper medical use of marijuana by qualifying patients. It is more similar to the provision in *Bush v. Holmes* insomuch as it painstakingly details a framework defining what constitutes marijuana and medical use.

The constitutional limitation on the location of use for medical marijuana logically recognizes and implies that use of medical marijuana in a private space is legal and constitutionally protected. The fact that the Constitution recognizes the possibility to limit smoking in certain locations is a recognition that there may not be a restriction on rights in other locations.

Article X, section 29 assuredly allows the Legislature to prohibit the smoking of medical marijuana in a public place. However, if that language is also construed to allow the prohibition on smoking in a private place, then the provision as a whole has no purpose. This illogical result is impermissible. *See Burnsed v. Seaboard Coastline R. Co.*, 290 So. 2d 13, 16 (Fla. 1974). The Amendment explicitly grants the Legislature the authority to limit or even prohibit smoking in public, but it has no authority beyond that stated in the Amendment and may not prohibit smoking in private. And because the Legislature cannot restrict the smoking of medical marijuana in any private place, it logically cannot completely abolish smokable marijuana as a treatment option.

D. Although Reliance on Outside Materials Is Unnecessary, Such Materials Clearly Indicate That the Legislature Cannot Prohibit Medical Marijuana in a Form for Smoking.

The Appellants argue it is improper to utilize intent of the drafters and voters. We also suggest that the textual conflict is so clear that an evaluation of intent is unnecessary. However, the expression of intent by the drafters and the public debate

could not be clearer that use of smokable marijuana was a medical option to be available to physicians for appropriate patients.

The intent statement was included in a press release and available through United for Care's website. R. 1862. In addition, the document was republished in full by a general news website on October 24, 2016—approximately two weeks before the election. R. 1860–61. In addition, there were numerous public debates where the issue of smoking was hotly contested. In the debates, the issue was not whether the Amendment would allow smoking for medical purposes. Both proponents and opponents acknowledged that it would. R. 2513.

The drafters of the Amendment published "Amendment 2: Analysis of Intent" prior to the November 2016 election. R. 1842. The intent document specifically addressed the smoking issue at the center of the instant case. The Analysis of Intent behind the Amendment "makes clear that § 29 does not require that the smoking of medical marijuana be allowed in public unlike the proper use of medical marijuana in a private place which is not illegal." R. 1848. The Analysis of Intent notes that "while § 29 only addresses 'smoking' specifically, the legislature and/or local governments may enact restrictions on other forms of consumption of marijuana in a public place," but does not specify any such restrictions on consumption in private places. *Id*. The intent statement explicitly lays out that article X, section 29 would do nothing to affect prohibitions on smoking marijuana in public places unlike the

"proper use of medical marijuana in a private place." *Id*. As one of the drafters of the Analysis of Intent testified, the proper use of medical marijuana in a private place included the use of smokable medical marijuana "because that is how most patients consume the medication." R. 2521.

Courts are willing to look to the drafting history and statements of intent of drafters. For example, in *Amendments to the Florida Rules of Appellate Procedure*, 696 So. 2d 1103, 1111 (Fla. 1996), the Court receded from *State v. Creighton*, 469 So. 2d 735 (Fla. 1985), because of a failure of the Court in *Creighton* to review the history and intent of the constitutional provision at issue. Clearly, this Court may also look to timely and clear statements of intent as support for the plain meaning of section 29.

The Appellants also state that there is no language in the ballot title and summary stating that smokable marijuana is a required delivery mechanism for medical use. Appellants' Initial Brief at 33. It is worth noting that smokable marijuana is not only a required "delivery mechanism," but it is also part of the substance—marijuana as defined in the Constitution—available for treatment for a debilitating medical condition. The ballot title was "Use of Marijuana for Debilitating Medical Conditions." *In re Advisory Op. to the Att'y Gen. re Use of Med. Marijuana for Debilitating Med. Conditions*, 181 So. 3d 471, 476 (Fla. 2015). The ballot summary stated the following: "[a]llows medical use of marijuana for

individuals with debilitating medical conditions as determined by a licensed Florida physician . . . 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." *Id*. Smokable marijuana is not defined in the title or summary. There is no requirement that all terms and effects be defined in the seventy-five-word summary. However, marijuana is defined by the text of the Amendment and includes smokable marijuana. *See* art. X, § 29(b)(4), Fla. Const. Further, the record shows voters were made aware that smokable marijuana would be part of treatment—advocates said it would be and opponents said it would be. R. 2513. It would be illogical to conclude that smokable marijuana was not to be included and the voters are rightly deemed to be logical and of reasonable intelligence. *See Advisory Op. to Att'y Gen. re Protect People from the Health Hazards of Second–Hand Smoke*, 814 So. 2d 415, 419 (Fla. 2002) (internal citation omitted).

The ballot title and summary must state the chief purpose of the Amendment and describe it accurately. § 101.161, Fla. Stat. (2017). After passage, it is the underlying constitutional text that explicitly defines the scope of the Legislature's authority. Also, the ballot summary supports the Appellees reading of the provision's intent, that is, that the "medical use of marijuana" is allowed "as determined by a licensed Florida physician." *In re Advisory Op. to the Att'y Gen. re*

Use of Med. Marijuana for Debilitating Med. Conditions, 181 So. 3d at 476. The medical discretion of the licensed Florida physician was of utmost importance. Those Department regulations contemplated by the provision are indeed procedural, not substantive. The Department must regulate centers of production and distribution, as well as handle patient registration. Altering definitions of medical use and limiting delivery mechanisms—the determination of which was constitutionally granted solely to licensed Florida physicians—is a far cry from such regulation.

In *Fla. League of Cities v. Smith*, 607 So. 2d 397, 400 (Fla. 1992), the Court ruled, "extrinsic interpretive tools 'are not allowed to defeat the plain language . . . when constitutional language is precise." The Appellees agree. The intent cited here is entirely consistent with the precise language of article X, section 29. The language is but one more indicium that section 391.986, Florida Statutes (2017), impermissibly contradicts article X, section 29 of the Florida Constitution and must be ruled unconstitutional. The intent of the framers is wholly consistent with the language of the Constitution.

E. The Legislature's Findings Regarding the Dangers of Marijuana in a Form for Smoking Are Irrelevant to this Constitutional Inquiry.

Again, constitutional authority is the only controlling issue in this case. Article X, section 29 of the Florida Constitution places the decision to use medical marijuana and to weigh the benefits and risks in the hands of the patient and

physician. Art. X, § 29(b), Fla. Const. Section 29 clearly allows physicians to authorize treatment with medical marijuana—including in a form for smoking if such is their medical judgment—for individuals with debilitating medical conditions. *See id*. The Constitution has enshrined a process for a medical decision rather than a political decision.

The Appellants argue that section 29 does not create a "right to smoke" medical marijuana. Appellants' Initial Brief at 12. We agree. Section 29 does not create any individual right to smoke. It authorizes treatment when determined by a licensed physician to be medically appropriate. It places the decision to use medical marijuana in the hands of the patient, under the supervision of his or her physician. It removes the State from decisions about any health risks and benefits associated with the use of medical marijuana.

The Appellants properly argue that the Legislature's actions are clothed in a presumption of constitutionality when acting "to protect the public health, safety, welfare, or morals." Appellants' Initial Brief at 26 (quoting *Golden v. McCarty*, 337 So. 2d 388, 389 (Fla. 1976)). However, that presumption ends at the intersection of the instant statute and the Florida Constitution. There is no exercise of police power that allows a statute to overturn or contravene the Constitution. *Bush v. Holmes*, 919 So. 2d at 398. The Legislature's extensive due diligence regarding the alleged dangers of smoking marijuana does not support the statutory prohibition of smokable

medical marijuana. While the Legislature can provide policy and structure to safely implement the medical marijuana policy in the Constitution, it does not have the authority to ignore or override the Constitution.

The Appellants also argue that section 29 gives the Legislature authority to enact laws relating to medical marijuana. Appellants' Initial Brief at 19. Again, we agree. Section 29 does contemplate accompanying legislation "consistent with [the] section." Art. X, § 29(e), Fla. Const. However, the very premise of the Appellees' action is that section 381.986, Florida Statutes (2017), is inconsistent and in direct conflict with the underlying constitutional provision. The Constitution already defines medical use. Art. X, § 29(b)(6), Fla. Const. The Legislature has attempted to redefine medical use. § 381.986, Fla. Stat. (2017). Regardless of its intentions, the Legislature has no authority to circumscribe the Constitution.

This is clear in the plain language of article X, section 29, particularly the constitutional definition of a "physician's certification." "A physician's certification means a written document signed by a physician, stating that in the physician's professional opinion . . . the medical use of marijuana would likely outweigh the potential health risks for the patient." Art. X, § 29(d), Fla. Const. While the State, through the Department of Health and the Legislature, can issue regulations and pass legislation within certain parameters, it cannot contradict the constitutional provision. Section 29 allows that 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." Art. X, § 29(e), Fla. Const. The constitutional provision rests the decision regarding whether and how to use medical marijuana with the patient and doctor, and rests reasonable decisions regarding safe use with the Department. Yet, all of the Appellants' arguments regarding health and safety focuses on health rather than safety. The Appellants have made no argument associated with safety and instead focused its argument on the health risks associated with smoking medical marijuana. This directly contradicts the plain language and purpose of section 29 and is unconstitutional.

The decision to allow physicians to certify the use of medical marijuana was made in the Constitution. The medical judgment is constitutionally left to the physician and his or her patient—not the Legislature.

II. DR. HUESTIS'S TESTIMONY IS IRRELEVANT TO THIS INQUIRY.

The trial court was correct to disregard Dr. Huestis's expert testimony as irrelevant. For the same reason any discussion of individual legislators' opinions regarding smokable marijuana must be disregarded, this Court must focus on the language of the Constitution and not delve into the reasonableness of intentions of the Legislature when enacting the statute. Any reasoning into the health risks associated with smoking medical marijuana is inappropriate because the Florida

Constitution explicitly places such balancing of risks and benefits in the hands of patients and their doctors. There is no testimony, no matter how credible, that justifies Florida Statute section 381.986's direct conflict with article X, section 29 of the Florida Constitution. *See Bush v. Holmes*, 919 So. 2d at 398.

III. APPELLEE DODSON AND APPELLEE ORGANIZATIONS HAVE STANDING TO CHALLENGE SECTION 381.986'S EXCLUSION OF SMOKABLE MARIJUANA.

The Appellants attempt to attack the Appellees' ability to bring this challenge by arguing that Ms. Dodson, PUMM, and FFC do not having standing. However, the trial court correctly found that Ms. Dodson has standing to challenge the constitutionality of section 381.986, Florida Statutes (2017). Additionally, the trial court was correct in finding that PUMM and FFC have organizational standing in order to challenge the statute on behalf of their membership.

Even if Ms. Dodson, PUMM, and FFC did not have standing to challenge the constitutionality of section 381.986, it is important to remember that Ms. Jordan's standing is undisputed. Accordingly, at least one appellee has standing for the case to proceed on its merits.

A. Ms. Dodson Has Standing.

This Court does not need to decide whether every citizen of Florida has standing to challenge the constitutionality of section 381.986, Florida Statutes (2017). Ms. Dodson, in much the same way as Ms. Jordan, has standing because the

she has an imminent injury that stems from the statute preventing her from seeking unimpeded medical advice and treatment as provided for in the Florida Constitution. This imminent injury is caused by the Legislature's decision to enact a statute that narrows the scope of a constitutional provision, and this Court can redress it by affirming the trial court's decision. Ms. Dodson, a Florida resident with AIDS—an enumerated debilitating medical condition—intends to become a qualifying patient and wishes to use smokable medical marijuana. R. 2502–04. However, because of the statute, she cannot pursue the use of medical marijuana in a form for smoking. Ms. Dodson's injury is far from "speculative" as Appellants argued.

The Declaratory Judgment Act specifically foresees the resolution of current doubts about future events, and courts have permitted suits for declaratory judgments where the plaintiff intends to pursue a specific course of action, even if that course of action is not already underway. *Holley v. Adams*, 238 So. 2d 401, 404 (Fla. 1970) (Plaintiff alleged that he intended to be a candidate for the office of Justice of the Florida Supreme Court); *Olive v. Maas*, 811 So. 2d 644 (Fla. 2002) (attorney had standing to seek a declaratory judgment regarding a contract, even though he had not signed the contract). Here, Ms. Dodson has been denied her right to seek a treatment that is authorized by the Florida Constitution and which, following "a physical examination and a full assessment of the medical history of the patient," may be the appropriate treatment as determined by her physicians. *See* Article X,

§ 29(b)(9), Fla. Const. (defining the steps required for physician certification). However, the implementing statute restricts her right to seek treatment that includes smoking medical marijuana, even if a physician certification would, in the absence of the statute's limitations, include the medical use of smokable marijuana. This direct impact fulfills the standing requirement because the statute denies Ms. Dodson her constitutional right to seek authorized medical treatment under article X, section 29(b)(9).

B. PUMM and FFC Have Standing.

Appellees PUMM and FFC have standing to pursue these claims on behalf of both organizations and their members. Both organizations represent patients who are directly affected by the implementing statute's exclusion of medical marijuana in a form for smoking. Because certain individuals who PUMM and FFC represent have a right to bring an action in their own names—for the same reasons as Appellees Dodson and Jordan—both organizations also satisfy the requirements for associational standing that the members themselves would have the right to bring a suit on their own behalf. *See State v. Fla. Worker's Advocates*, 167 So. 3d 500, 506 (Fla. 3d DCA 2015); *Warth v. Seldin*, 422 U.S. 490, 511 (1975).

In addition, PUMM and FFC satisfy the aforementioned test for associational standing that is used in the context of administrative proceedings. In order to satisfy this three-prong test, the association must prove that: (i) a substantial number of its

members—albeit not necessarily a majority—are substantially affected by the challenged statute; (ii) the subject of the challenged statute is within its general scope of interest and activity; and (iii) the relief requested is appropriate for it to receive on behalf of its members. *Fla. Home Builders Ass'n v. Dept. of Labor & Employment Security*, 412 So. 2d 351, 353-54 (Fla. 1982).

Although the Appellants note that PUMM is an unincorporated association, it ignores the fact that PUMM has already been a party to actions regarding the Amendment, and its predecessor that fell short at the polls, as sponsor of those constitutional amendments. Indeed, the Florida Supreme Court considered whether Amendment 2, which was drafted and submitted by PUMM, was a valid initiative petition. *In re Advisory Op. to Att'y Gen. re Use of Medical Marijuana for Debilitating Medical Conditions*, 181 So. 3d 471. As the sponsor of the initiative petition, PUMM was a party, in its own name, and "submitted a brief supporting the validity of the initiative petition." *Id.* at 473. *See also In re Advisory Op. to Att'y Gen. re Use of Marijuana for Certain Medical Conditions*, 132 So. 3d 786 (Fla. 2014) (PUMM was a party, in its own name, for the 2014 proposed citizen initiative amendment). As the sponsor of the Amendment, as well as an organization dedicated to putting the Amendment on the ballot, working to get the Amendment passed by the voters, and assisting its members in navigating the waters of now-constitutionally protected medical marijuana use in the State of Florida, PUMM was

in the best position to represent its members to seek a declaration that the implementing statute unconstitutionally restricts the rights granted in article X, section 29. It would be illogical to allow PUMM to twice be a party before the Supreme Court on this issue and now restrict its ability to represent its members in an effort to defend the very provisions and rights they fought to pass. Using the Appellants' logic, PUMM would have been the principal advocate in the Supreme Court to demonstrate the constitutional validity of the proposed amendment to be on the ballot, but would not have standing to defend the same provisions from unconstitutional legislation after the proposal is in the Constitution.

PUMM is a political committee that was formed to legalize medical marijuana via popular initiative for the benefit of individuals suffering in Florida. R. 2508. In addition to its initiatives to legalize medical marijuana, PUMM also has approximately 29,000 individuals who have joined as members, contributors, or volunteers. R. 2523. Certain PUMM members have been diagnosed with debilitating medical conditions and have become qualifying patients. R. 2524. Many have received their medical marijuana identification cards from the Office of Medical Marijuana Use. R. 2524. Other PUMM members have been diagnosed with debilitating medical conditions and intend to apply to become qualifying patients. R. 2524. Moreover, certain PUMM members have expressed an interest in seeking medical marijuana in a form for smoking upon physician certification. R. 2524.

FFC is a non-profit corporation that has supported the legalization of medical marijuana in Florida. R. 2509. Like PUMM, FFC is a membership organization, and certain of its members have been diagnosed with debilitating medical conditions and have become qualifying patients under Florida law. R. 2524. Other FFC members have been diagnosed with debilitating medical conditions and intend to apply to become qualifying patients. *See* R. 2530. Moreover, certain FFC members have indicated that they have not become qualifying patients because smokable medical marijuana is not permitted by Florida law. R. 2530.

Based on the above facts, both PUMM and FFC, who collectively represent tens of thousands of individuals with an interest in medical marijuana and represent numerous patients with debilitating medical conditions that could be treated with smokable medical marijuana, fulfill the associational standing test set forth in *Florida Home Builders*.

CONCLUSION

This Court should find that the prohibition on medical marijuana in a form for smoking contained within section 381.986, Florida Statutes (2017), is facially unconstitutional and affirm the trial court's Order and Final Judgment.

Respectfully submitted,

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

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