Filing # 62475001 E-Filed 10/05/2017 04:46:18 PM

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

PEOPLE UNITED FOR MEDICAL
MARIJUANA, INC., et al,
Plaintiffs,

v. CASE NO.: 2017-CA-001394

STATE OF FLORIDA; FLORIDA DEPARTMENT
OF HEALTH; CELESTE PHILIP, M.D., in her
official capacity as Secretary of Health for the State
of Florida; OFFICE OF MEDICAL MARIJUANA USE;
CHRISTIAN BAX, in his official capacity as Director
of the Office of Medical Marijuana Use; FLORIDA
BOARD OF MEDICINE; MAGDALENA AVERHOFF,
M.D., in her official capacity as Chair of the Florida Board
of Medicine; FLORIDA BOARD OF OSTEOPATHIC
MEDICINE; MICHELLE MENDEZ, D.O., in her official
capacity as Chair of the Florida Board of Osteopathic
Medicine,
Defendants.
_____/

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INTRODUCTION

In 2016, Florida voters adopted Amendment 2, a ballot initiative creating a constitutional provision addressing the "Use of Marijuana for Debilitating Medical Conditions." The ballot language was clear about the Amendment's purpose—authorizing medical use of marijuana for certain debilitating conditions—but also clear that the medical use would be subject to extensive regulation of patients, physicians, caregivers, dispensaries, and the marijuana itself, with a focus on health and safety. The text of the Amendment explicitly authorized the Legislature to, with broad discretion, enact laws implementing the Amendment: "Nothing in [the Amendment] shall limit the legislature from enacting laws consistent with this section." Art. X, § 29(e), Fla. Const. In other words, the Amendment gave the State liberal charge to define permissible medical use of marijuana. During a special session culminating in the enactment of section 381.986, Florida Statutes (2017), the Legislature therefore implemented a statutory scheme delineating medical use of marijuana in accordance with the Amendment.

Plaintiffs now ask this Court for declaratory judgment on the constitutionality of that statute, in the absence of any case or controversy. Nothing plaintiffs are asking for would redress any legal injury to any plaintiff, as none are alleged. And with no present controversy, "any opinion on a statute's validity would be advisory only and improperly considered in a declaratory action." *Martinez v. Scanlan*, 582

So. 2d 1167, 1171 (Fla. 1991). Plaintiffs ask this Court to do just that: render an advisory opinion, ruling in the absence of any identified legal injury or any present controversy between plaintiffs and defendants.

In any event, plaintiffs fail to state a claim upon which relief can be granted, because the plain language of the Amendment refutes their argument. Plaintiffs do not even try to claim that the constitutional text in Article X, section 29, imported directly from Amendment 2's ballot language, actually states that smoking must be permitted. Nor do plaintiffs allege that the ballot title or summary indicated a smoking requirement. And if there were any doubt about the meaning of the text, all tools of statutory construction command that the statute be read constitutionally.

What is more, plaintiffs ask this Court for an advisory opinion based on a self-serving political document, distributed by an interest group, about which virtually nothing is known. Plaintiffs do not allege ultimate facts, as distinct from conclusions, that would establish that this document constitutes the intent of the voters—or the original public meaning of the constitutional text. Plaintiffs do not allege when the "statement" was created, when it was distributed to voters, where it was published, or how it was distributed to voters. And, it is clear that, under Florida law, the information universally made available to voters about the Amendment would have been the ballot summary. § 101.161, Fla. Stat. Without any ultimate facts supporting the allegation that the intent statement reflects voters' understanding

of the Amendment, plaintiffs cannot adequately allege voter intent—which must, of course, actually represent "what the people must have understood it to mean when they approved it." *Benjamin v. Tandem Healthcare, Inc.*, 998 So. 2d 566, 570 (Fla. 2008).

LEGAL STANDARD

In challenging a duly enacted statute, plaintiffs bear a heavy burden and must overcome a strong presumption of constitutionality. "Statutes are presumed constitutional, and the challenging party has the burden to establish the statute's invalidity beyond a reasonable doubt." *Jackson v. State*, 191 So. 3d 423, 426 (Fla. 2016). Florida courts must construe statutes to avoid constitutional problems whenever possible. *Gulfstream Park Racing Ass'n, Inc. v. Dep't of Bus. Regulation*, 441 So. 2d 627, 629 (Fla. 1983). Indeed, "[i]t is axiomatic that doubts as to the validity of a statute will be resolved in favor of its constitutionality." *Hamilton v. State*, 366 So. 2d 8, 10 (Fla. 1978) (upholding constitutionality of statute classifying cannabis with methamphetamines, barbiturates, narcotics, and other drugs for the purposes of criminal punishment, based on "health hazards").

The presumption of constitutionality is particularly strong when a State is operating within its general power to protect the health and safety of its citizens. As the Florida Supreme Court has explained, "[e]very presumption is to be indulged in favor of the validity of a statute and each cause should be considered in light of the

principle that the State is the primary judge, and may by statute or other appropriate means, regulate any enterprise, trade, occupation or profession if necessary to protect the public health, safety, welfare or morals." *Golden v. McCarty*, 337 So. 2d 388, 389 (Fla. 1976) (affirming constitutionality of statute regulating tattoo artists, against action for declaratory relief). When it comes to statutes relating to public health, welfare, and safety, the State operates with broad authority. *See, e.g.*, *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) (discussing the States' "great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons") (citation omitted). "The Legislature has a great deal of discretion in determining what measures are necessary for the public's protection, and [a] Court will not, and may not, substitute its judgment for that of the Legislature insofar as the wisdom or policy of the act is concerned." *Hamilton*, 366 So. 2d at 10.

On a motion to dismiss, the burden remains on the plaintiffs to sufficiently state a cause of action. Although allegations in the complaint are presumed true, "[t]he presumption of truthfulness attending consideration of the sufficiency of a complaint to state a cause of action does not operate to relieve the plaintiff of the burden of proof resting upon him." *Lehew v. Larsen*, 124 So. 2d 872, 873 (Fla. 1st DCA 1960). In determining whether plaintiffs have met their burden to survive dismissal, the Court is limited to the specific allegations stated on the face of the

operative complaint and its attachments. *Santiago v. Mauna Loa Invs., LLC*, 189 So. 3d 752, 755 (Fla. 2016). "The rule is fundamental . . . that in considering a motion to dismiss a complaint for failure to state a cause of action, the trial or appellate court is confined to the allegations within the four corners of the complaint," *Corbett v. E. Air Lines, Inc.*, 166 So. 2d 196, 203 (Fla. 1st DCA 1964), of which "any exhibit attached . . . shall be considered a part thereof for all purposes," Fla. R. Civ. P. 1.130(b). However, to be sufficient, a complaint must allege ultimate facts and not merely legal conclusions. *Maiden v. Carter*, 234 So. 2d 168, 170 (Fla. 1st DCA 1970). Stated otherwise, "[m]ere legal conclusions are fatally defective unless substantiated by sufficient allegations of ultimate fact; and every fact essential to the cause of action must be pleaded distinctly, definitely, and clearly." *Ocala Loan Co. v. Smith*, 155 So. 2d 711, 716 (Fla. 1st DCA 1963). The Court "is not authorized to consider any other facts" beyond "the well-pled facts alleged in the four corners of the complaint." *See, e.g., Lewis v. Barnett Bank of S. Fla., N.A.*, 604 So. 2d 937, 938 (Fla. 3d DCA 1992).

When a complaint for declaratory relief "fail[s] to make a prima facie showing that any present, justiciable question exists regarding [plaintiffs'] rights and a good-faith, actual, present, and practical need for a declaration exists," the action is properly dismissed. *Rhea v. Dist. Bd. of Trs. of Santa Fe Coll.*, 109 So. 3d 851, 859 (Fla. 1st DCA 2013). And absent a "present controversy based on articulated facts

which demonstrate a real threat of immediate injury," this Court lacks jurisdiction. *Apthorp v. Detzner*, 162 So. 3d 236, 240–41 (Fla. 1st DCA 2015).

ARGUMENT

I. Because Plaintiffs Do Not Have Standing and There Is No Justiciable Controversy, This Court Lacks Jurisdiction to Grant Relief.

Plaintiffs are not entitled to relief because they have not alleged facts sufficient to demonstrate standing for a declaratory judgment. "Florida courts will not render, in the form of a declaratory judgment, what amounts to an advisory opinion at the instance of parties who show merely the possibility of legal injury on the basis of a hypothetical state of facts which have not arisen and are only contingent, uncertain, [and] rest in the future." *Santa Rosa Cty. v. Admin. Comm'n, Div. of Admin. Hearings*, 661 So. 2d 1190, 1193 (Fla. 1995) (internal quotations omitted). Plaintiffs have not alleged even a hypothetical state of facts suggesting possible legal injury. And they have alleged no actual adversity between any plaintiff and any defendant. However broadly Chapter 86, Florida Statutes, is construed, and even on generous motion to dismiss standards, "there must still exist some justiciable controversy between adverse parties that needs to be resolved for a court to exercise its jurisdiction." *Martinez*, 582 So. 2d at 1171. Plaintiffs have not explained how their interests are presently adverse to any defendant and therefore

have "fail[ed] to present or even allege a justiciable controversy sufficient to maintain an action for a declaratory judgment." *Apthorp*, 162 So. 3d at 241.

"Standing presents 'a threshold inquiry' that must be made at the commencement of the case." *McCarty v. Myers*, 125 So. 3d 333, 336 (Fla. 1st DCA 2013) (citation omitted). In order to have standing, "a party seeking adjudication of the courts on the constitutionality of statutes is required to show that his constitutional rights have been abrogated or threatened by the provisions of the challenged act." *Hillsborough Inv. Co. v. Wilcox*, 13 So. 2d 448, 453 (Fla. 1943) (emphasis supplied). The long-established rule in Florida is that "a party does not possess standing to sue unless he or she can demonstrate a direct and articulable stake in the outcome of a controversy." *Brown v. Firestone*, 382 So. 2d 654, 662 (Fla. 1980). Here, plaintiffs have failed to demonstrate the necessary "direct and articulable stake" in this case. This defect in their pleading requires dismissal.

Plaintiffs' lack of standing deprives this Court of any jurisdiction over the action. "It is the function of a judicial tribunal to decide actual controversies." *Montgomery v. Dep't of Health & Rehabilitative Servs.*, 468 So. 2d 1014, 1016–17 (Fla. 1st DCA 1985). "Before any proceeding for declaratory relief should be entertained it should be clearly made to appear that [1] there is a bona fide, actual, present practical need for the declaration; that [2] the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state

of facts; that [3] some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that [4] there is some person or persons who have, or reasonably may have an actual present, adverse and antagonistic interest in the subject matter, either in fact or law; that [5] the antagonistic and adverse interest are all before the court by proper process or class representation *and* that [6] the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity." *May v. Holley*, 59 So. 2d 636, 639 (Fla. 1952) (emphasis supplied). As shown below, there is no present need for a declaration of rights, no ascertainable state of facts upon which a declaration of rights could be based, and no present adverse interests before the Court. Because plaintiffs "fail[] to present a justiciable controversy, the trial court lack[s] jurisdiction to issue a declaratory judgment." *Helfrich v. City of Jacksonville*, 204 So. 3d 39, 42 (Fla. 1st DCA 2016).

a. Plaintiff PUMM Must Be Dismissed for Lack of Standing.

More specifically, People United for Medical Marijuana (PUMM) has not alleged the minimum standing basis for a declaratory suit. Even assuming the truth of the allegations in the amended complaint, PUMM has specifically alleged no legal injury at all. PUMM has not alleged how Defendants' "enforc[ing] the

Implementing Bill"[1] (AC ¶46) will injure it, much less that any injury is actual, present, or imminent. "Without a showing of an actual denial of [a constitutional right] in a specific factual context, [plaintiff] lack[s] standing to assert this claim." *McCarty*, 125 So. 3d at 337. A party, such as PUMM, "who is not adversely affected by the statute . . . has no standing to argue that the statute is invalid." *Sancho v. Smith*, 830 So. 2d 856, 864 (Fla. 1st DCA 2002).

Nor has PUMM demonstrated associational standing. Associational standing requires, at a minimum, establishing that the association is "suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit." *Warth v. Seldin*, 422 U.S. 490, 511 (1975); *see also State v. Fla. Workers' Advocates*, 167 So. 3d 500, 506 (Fla. 3d DCA 2015) (for associational standing, association must allege it is "suffering immediate or threatened injury of the kind comprising a justiciable issue had an individual member of the association . . . brought the action") (remanding for dismissal of complaint because trial court lacked justiciable controversy and association lacked standing to challenge constitutionality of statute). PUMM, a political interest group organized to promote a ballot initiative, has made no

[1] Plaintiffs reference the "Implementing Bill" for Amendment 2, which is now codified at section 381.986, Florida Statutes (2017). By statewide vote, Amendment 2 was adopted as Article § X, section 29 of the Florida Constitution; it was implemented via SB 8-A and HB 5A during the 2017 Special Session, passed, and enacted as section 381.986.

allegation that could suffice to show a particularized injury to any member of its organization, which it simply describes as a nonprofit corporation "organize[d] to provide research, expert opinions and feedback on a range of medical marijuana issues and advocated for the legalization of medical marijuana in the State of Florida." (AC ¶7.) Nor has PUMM alleged an injury-in-fact to itself. The caselaw is settled that money spent by an advocacy group on generalized lobbying is not an injury-in-fact. *See Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 980 (11th Cir. 2005). And when an association "alleges no injury-in-fact to either itself or its members . . . , it lacks standing" to bring a claim. *Amnesty Int'l, USA v. Battle*, 559 F.3d 1170, 1177 (11th Cir. 2009).

The bare, conclusory allegation in the amended complaint's prayer for relief that "[t]here is a bona-fide, actual present practical need for a declaration" (AC ¶50) does not establish injury and does not satisfy PUMM's standing requirement, because, as stated above, this Court is not required to accept conclusory allegations unsupported by ultimate facts. *See also* Fla. R. Civ. P. 1.110(b) (pleadings standards require "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief"). PUMM has not even attempted to plead ultimate facts showing how it could be injured.

Put another way, the insufficiency of PUMM's allegations to state a justiciable controversy deprives this Court of jurisdiction over PUMM's claims. "To

satisfy the requirement of standing, the plaintiff must show that a case or controversy exists between the plaintiff and the defendant." *United Auto. Ins. Co. v. Diagnostics of S. Fla., Inc.*, 921 So. 2d 23, 25 (Fla. 1st DCA 2006) (citing *Godwin v. State*, 593 So. 2d 211 (Fla. 1992)). PUMM, a political advocacy organization, is not licensed or regulated by the Department of Health or any healthcare board. Therefore, no controversy could arise between PUMM and any defendant. And a conclusory assertion of "a present, ascertained, or ascertainable set of facts, or present controversy to a state of facts" (AC ¶52), without identifying those facts, is not sufficient to allege a justiciable case or controversy.

b. The Three Individual Plaintiffs Must Be Dismissed for Lack of Standing.

As with PUMM, because the amended complaint has not alleged facts describing any actual legal injury the individual plaintiffs have suffered or will suffer in the absence of a declaratory judgment, these individuals do not have standing to maintain this action. *See Alachua Cty. v. Scharps*, 855 So. 2d 195, 198 (Fla. 1st DCA 2003) (directing trial court to dismiss plaintiff's complaint for declaratory and injunctive relief, for lack of standing). Although the amended complaint alleges that the three individual plaintiffs each have been diagnosed with a "Debilitating Medical Condition," as defined in Article X, section 29 of the Florida Constitution, it does not allege that they are "qualifying patient[s]" for medical use of marijuana, as

defined in Article X, section 29(b)(10). The amended complaint does not allege that they have obtained a physician certification or valid qualifying patient identification card for medical use of marijuana, both of which are required to become a "qualifying patient." *See* Art. X, § 29(b)(3), (6), (10), Fla. Const. And it does not allege that they possess prescriptions to smoke marijuana for medical purposes or even that they could qualify for prescriptions to use medical marijuana in any form at all. Although plaintiff Jordan alleges that she "has previously been prescribed smokeable marijuana in another state and as part of a medical trial," (AC ¶9), the Amendment does not permit reciprocity with other states but instead explicitly requires any diagnosis and prescription to be from a licensed Florida physician, Art. X, § 29(b)(1), (8), (9), Fla. Const. Moreover, none of the individual plaintiffs alleges they would be unable to effectively treat their conditions with any of the numerous other methods of delivering medical marijuana, besides smoking, that section 381.986 permits.

In short, the amended complaint does not allege imminent legal injury or a present controversy as to any state of ascertainable facts relating to the individual plaintiffs. And "[w]hile one may seek a declaration of his or her rights without an allegation of actual injury, an aggrieved party must nonetheless make some showing of a real threat of immediate injury, rather than a general, speculative fear of harm that may possibly occur at some time in the indefinite future." *State v. Fla.*

Consumer Action Network, 830 So. 2d 148, 152 (Fla. 1st DCA 2002). The individual plaintiffs have shown no adversity with any defendant, and whatever speculative fear or theoretical interest they have in the matter does not bestow standing for adjudication. *See Fla. Soc'y of Ophthalmology v. State, Dep't of Prof'l Regulation*, 532 So. 2d 1278, 1279 (Fla. 1st DCA 1988) (affirming dismissal of declaratory judgment action when "[t]he allegations in the dismissed complaint do not refer to any facts showing an actual rather than theoretical dispute").

II. All Defendants Except the Department of Health Are Improper Because They Are Not Subject to Suit Based on Section 381.986.

With the exception of the Department of Health, all defendants named in the amended complaint must be dismissed because they are not proper parties to the suit. The State of Florida cannot be a defendant in this declaratory action because it is protected by sovereign immunity. The Board of Medicine and Board of Osteopathic Medicine, and their highest officers, also are not properly subject to this suit because they have no relevant enforcement authority under section 381.986. And the Office of Medical Marijuana Use and its director are not proper defendants because they also have no enforcement authority under section 381.986 and, in any event, the Legislature has not given OMMU the capacity to sue or be sued. Because no facts could ever overcome these defects in the alleged complaint, these defendants should be dismissed from the action with prejudice.

a. The State of Florida Is Immune From a Declaratory Action Based on Section 381.986.

The State of Florida cannot be sued without its permission. "In Florida, sovereign immunity is the rule rather than the exception." *Pan–Am Tobacco Corp. v. Dep't of Corr.*, 471 So. 2d 4, 5 (Fla. 1984). Plaintiffs have not alleged that the Legislature has abrogated sovereign immunity here to permit an action against the State of Florida. *See Fla. Dep't of Health & Rehab. Servs. v. S.A.P*, 835 So. 2d 1091, 1094 & n.5 (Fla. 2002). Rather, an action challenging the constitutionality of a statute must be brought against the state agency, department, or official charged with enforcing the statute at issue. *Walker v. President of the Senate*, 658 So. 2d 1200, 1200 (Fla. 5th DCA 1995) (holding that the Senate President and Speaker of the House were not proper parties to a declaratory action challenging certain operations of the Department of Corrections); *see also Atwater v. City of Weston*, 64 So. 3d 701, 703 (Fla. 1st DCA 2011) (holding that the Senate President, Speaker of the House, Governor, and Secretary of State were not proper parties to a lawsuit challenging the constitutionality of the growth management statute). The State of Florida as a general entity is not empowered to take enforcement action based on section 381.986, has not waived sovereign immunity, and therefore is protected from a legal challenge to the statute's constitutionality.

b. The Board of Medicine and Board of Osteopathic Medicine, and Their Highest Officers, Cannot Be Sued Because They Have No Relevant Authority to Enforce the Statute.

The Board of Medicine and the Board of Osteopathic Medicine also are improper defendants because they have no authority to enforce the statute with respect to plaintiffs. These boards are responsible for licensing, monitoring, educating, and disciplining certain health practitioners. None of the plaintiffs alleges that they are health practitioners or that they could ever be subject to board discipline, board licensing, or any other action by the boards. Indeed, the Board of Medicine and Board of Osteopathic Medicine could *never* be adverse parties to plaintiffs under the provisions of section 381.986. Because no amendment could cure this defect, the claims against the Board of Medicine and Board of Osteopathic Medicine should be dismissed with prejudice. *See Ragans v. City of Jacksonville*, 106 So. 2d 860, 864 (Fla. 1st DCA 1958) (trial court's grant of motion to dismiss with prejudice was proper when the complaint's failure to make sufficient allegations was a "defect . . . incapable of cure by amendment").

For the same reasons, the highest-ranking officers of these entities—Chair of the Board of Medicine, Magdalena Averhoff, and Chair of the Board of Osteopathic Medicine, Michelle Mendez[2]—have no enforcement authority relevant to anything

[2] Plaintiffs named James Orr, M.D., and Anna Hayden, D.O., as defendants. Dr. Orr has not been Chair of the Florida Board of Medicine since July 2015, and Dr. Hayden has not been Chair of the Florida Board of Osteopathic Medicine since December 2015. In accordance with Florida

plaintiffs allege or could allege in their amended complaint. Therefore, "there is no relief the court could order [these defendants] to provide [that would] remedy the constitutional violation alleged in the complaint." *Scott v. Francati*, 214 So. 3d 742, 747 (Fla. 1st DCA 2017) (holding that the Governor was not a proper defendant in a declaratory action because the Governor had no enforcement authority over the challenged statute).

c. The Office of Medical Marijuana Use and Its Director Are Not Proper Parties Because They Do Not Have the Capacity to Be Sued or Any Enforcement Authority Under the Statute.

When the Legislature intends a government body to constitute a body corporate, subject to suit, the body will be accorded the power to sue and be sued. *See Daniels v. State Rd. Dep't*, 170 So. 2d 846, 849 (Fla. 1964) ("[S]tate agencies, although purely public bodies, [may be] designated as a 'body corporate' by statute and given many of the attributes of a private corporation, such as the right to sue and to be sued."); *Fla. Livestock Bd. v. Gladden*, 86 So. 2d 812, 813 (Fla. 1956) (concluding that suit was authorized against state entity only because a statute conferred "the usual powers of a body corporate for all purposes necessary to further carry out the [statutory] provisions and requirements . . . , including the right to contract and be contracted with, to sue and be sued"); *cf. Kizar v. Wittenberg*, 398

Rule of Civil Procedure 1.260(c)(1), counsel for defendants has substituted the proper public officers into the case caption.

So. 2d 1002, 1003 (Fla. 5th DCA 1981) ("[A] a state board or commission which is not an entity apart from the state, lacks capacity to sue in its own name in the absence of statutory authorization."). The Office of Medical Marijuana Use (OMMU), originally called the Office of Compassionate Use,[3] is a statutorily created office within the Department of Health and not a distinct legal entity or designated body corporate. *See* § 381.986(5)(a), Fla. Stat. (2014). Nothing in the statute confers the statutory power for OMMU to sue or be sued. *See id.* The entity's name was changed to OMMU through a legislative amendment to SB 8-A, but its functions and legal status remain the same. OMMU has limited duties and powers, set forth in section 381.986, not including the capacity to be sued, and this Court therefore has no jurisdiction to permit an action to proceed against OMMU. *See State, Dep't of Elder Affairs v. Caldwell*, 199 So. 3d 1107, 1110 (Fla. 1st DCA 2016) (reversing and remanding for entry of judgment on the pleadings in state entity's favor when "there is no indication that the Legislature specifically intended to permit the Department to be sued" and "[e]ven if it could be inferred that the Legislature intended to permit the Department to be sued . . . , such an inference is not sufficient to constitute a clear and unequivocal waiver of sovereign immunity").

[3] The amended complaint names the Office of Compassionate Use as a defendant. Defendants have substituted the correct title, Office of Medical Marijuana Use, into the case caption.

Likewise, OMMU is an improper defendant because it has no enforcement authority under the statute. At most, the statute provides for the Department of Health, through OMMU, to maintain a passive Compassionate Use Registry, which is updated strictly based on input from physicians. *See* § 381.986(2)(c), Fla. Stat. (providing as a mandatory condition that a "physician register[] as the orderer of low-THC cannabis for the named patient on the compassionate use registry maintained by the department and update[] the registry to reflect to the contents of the order"); *id.* § 381.986(5)(a) (providing for "a secure, electronic, and online compassionate use registry for the registration of physicians and patients as provided under this section"). Under the plain language of the statute, there is no authority for OMMU to *enforce* anything at all. Instead, any misuse of the registry constitutes a first-degree misdemeanor punishable by criminal law. *Id.* § 381.986(3). It is not surprising, then, that the amended complaint fails to describe any manner in which OMMU could enforce any part of the statute in a way that could create a justiciable controversy with plaintiffs—none of whom are even physicians, dispensing organizations, or qualifying patients. This defect, too, cannot be cured by amendment because no facts exist that could import enforcement authority for OMMU into the statute.

For the same reasons, the Director of OMMU, Christian Bax, has no capacity to be sued or enforcement authority under the statute. *Cf. Kizar*, 398 So. 2d at 1003

("Had the Legislature intended the Secretary to have the right to bring the action in her official capacity it would have said so."). Accordingly, plaintiffs' action against OMMU and Director Bax must be dismissed with prejudice. *Francati*, 214 So. 3d at 750 (ordering dismissal of the Governor as defendant when the Governor had no enforcement authority under the statute and therefore the trial court lacked subject matter jurisdiction over him).

In sum, there could be no adversity with any of these entities or officers, who have no authority to enforce the statute against plaintiffs. Although plaintiffs allege, without specifics or factual support, that "[t]he Defendant has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law," (AC ¶54), such a vague assertion is legally meaningless. Setting aside that plaintiffs do not identify which defendant they are referring to, conclusory allegations of this sort do not establish the requisite adversity to make this action justiciable, and, therefore, the Court lacks jurisdiction to determine plaintiffs' claims for declaratory relief against these defendants. Nor can plaintiffs' bare, generic allegation confer enforcement authority upon any party that plainly does not have it under the statute.

III. The Amended Complaint Fails to State a Cause of Action Because the Amendment Does Not Require the Legislature to Legalize Smoking of Marijuana.

Even if plaintiffs had standing to bring this action, their claims would fail because, as a matter of law, no relief can be granted. Plaintiffs' claims depend on an interpretation of the Amendment that is at odds with its plain text. The only way a statutory prohibition on smoking could be unconstitutional is if smoking medical marijuana were *required* by the Florida Constitution. It is not. And plaintiffs' proffered intent statement does not establish any intention by voters that smoking be permitted under the Amendment.

The Legislature implemented a scheme that advances the purposes of the Amendment and is based on reasonable considerations and conclusions about the public's health, safety, and welfare. The Legislature permissibly relied on evidence of health hazards relating to marijuana smoking and constructed legislation to effectuate the Amendment in a way that best serves the citizens of Florida.

a. Section 381.986 Enjoys Every Presumption of Validity, as a Reasonable Exercise of the State's Power to Protect Health and Safety.

Duly enacted statutes come to the Court "clothed with a presumption of constitutionality and must be construed whenever possible to effect a constitutional outcome." *Lewis v. Leon Cty.*, 73 So. 3d 151, 153 (Fla. 2011) (citation omitted). A law "bearing a substantial relationship to the health, safety, morals, or general

welfare of the community" is inherently "a valid exercise of police power." *Orange Cty. v. Costco Wholesale Corp.*, 823 So. 2d 732, 739 (Fla. 2002). It is well settled in Florida law that "[l]egislative action exercised under the state's police power is valid if such exercise is confined to those acts which may reasonably be construed as expedient at least for protection of the public safety, public welfare, public morals or public health." *Newman v. Carson*, 280 So. 2d 426, 428 (Fla. 1973). This is because "[a] great deal of discretion is vested in the Legislature to determine public interest and measures for its protection." *Id.* Section 381.986 is just such a law—squarely in the realm of public health, safety, and welfare—and "[e]very presumption is to be indulged in favor of the validity of [the] statute." *Golden*, 337 So. 2d at 389; *cf. Hobby v. State*, 761 So. 2d 1234, 1237 (Fla. 2d DCA 2000) (statute regulating sale of drugs "reasonably construed as expedient for protection of the public health, safety, welfare, or morals") (citation omitted).

b. Under the Amendment's Plain Language, the Legislature Has Discretion to Define "Medical Use" and Could Permissibly Conclude That Smoking Has No Part.

Courts are "obligated to give effect to the language of a Constitutional amendment according to its meaning and what the people must have understood it to mean when they approved it." *Tandem Healthcare*, 998 So. 2d at 570. "Any inquiry into the proper interpretation of a constitutional provision must begin with an examination of that provision's explicit language." *Fla. Soc'y of Ophthalmology*

v. Fla. Optometric Ass'n, 489 So. 2d 1118, 1119 (Fla. 1986). When the language of a constitutional amendment is clear and precise, the text must be enforced as written, and extrinsic interpretive tools "are not allowed to defeat the plain language." *Brinkmann v. Francois*, 184 So. 3d 504, 510 (Fla. 2016) (quoting *Fla. League of Cities v. Smith*, 607 So. 2d 397, 400 (Fla. 1992)).

Here, the plain language of the Amendment permits the Legislature to enact a range of statutory frameworks implementing production, distribution, and use of medical marijuana. In its broad discretion, the Legislature did just that. In some places, the Amendment's provisions are more precise—for example, setting the maximum time frames for the Department of Health to begin issuing regulations regarding qualifying patient identification cards and caregiver identification cards, and defining "marijuana" by cross-reference to existing statutes. In many other places, though, the Amendment's language is intentionally broad, allowing for legislative and administrative discretion in implementation. Repeatedly, the Amendment indicates an overriding concern that medical use be implemented with a focus on health and safety. A few examples illustrate the discretion the Amendment confers:

- "Debilitating Medical Condition" is defined to include several enumerated specific diagnoses but also includes the open-ended phrase ". . . 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," Art. X, § 29(b)(1), Fla. Const.

- DOH may come up with whatever reasonable "[p]rocedures for the issuance and annual renewal of qualifying patient identification cards" are deemed appropriate, so long as prior written consent is required "[b]efore issuing an identification card to a minor," Art. X, § 29(d)(1)a., Fla. Const.
- DOH may "define[] the amount of marijuana that could reasonably be presumed to be an adequate supply for qualifying patients' medical use," Art. X, § 29(d)(1)d., Fla. Const.; whatever maximum quantity of marijuana DOH determines adequate for a qualifying patients' medical use should be "based on the best available evidence," *id.*

Further, the Amendment expressly states that the Legislature may, without limitation, "enact[] laws consistent with this section." Art. X, § 29(e), Fla. Const.

In the same way, "medical use" is defined broadly in the Amendment, allowing for legislative discretion. Plaintiffs' claim that medical use of marijuana *must* include smoking is foreclosed by the text of the Amendment, which nowhere mandates smoking marijuana as "medical use." Rather, "medical use" is given an explicit definition with no mention of smoking whatsoever:

> "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.

Art. X, § 29(b)(6), Fla. Const.

Subsection (b)(6) also expressly provides that the Department of Health will promulgate rules governing "medical use," which inherently contemplates legislative action and direction. *See also* Art. X, § 29(e), Fla. Const. ("Nothing in [the Amendment] shall limit the legislature from enacting laws consistent with this section."). The Amendment in plain terms states that "medical use" is use that is "not in conflict with" the regulatory guidelines the State sets. Art. X, § 29(b)(6), Fla. Const. And where the Amendment addresses "administration of an amount of marijuana," as part of medical use, it does so without specifying—and certainly without mandating—any particular method of administration. *See id.*

Subsection (c) on its face sets certain outer limits on what the Legislature may do in implementing the Amendment, but nowhere do those limitations require the Legislature to legalize marijuana smoking. Among the things the Legislature need not do in implementing the Amendment is "require an accommodation . . . of smoking medical marijuana in any public place." Art. X, § 29(c)(6), Fla. Const. Plaintiffs try to use this language to lead the court where logic does not go, namely to the conclusion that because the Amendment expressly declines to require

(although it still may allow) public smoking, it therefore affirmatively requires smoking of medical marijuana in other settings. The Court need not look far for an illustration of how plaintiffs' reasoning comes up short. Take, within the same subsection, the provision that the Amendment shall not "require any accommodation of any on-site medical use of marijuana in any correctional institution or detention facility or place of education or employment." *Id.* Are we to understand this to mean that the Amendment *requires* medical use of marijuana in all other facilities and settings? Of course not. The limitation plaintiffs rely on simply clarifies that, however it is implemented, nothing in the Amendment mandates that public places in Florida accommodate marijuana smoking. It does nothing more. The Legislature chose not to permit smoking as part of medical marijuana use at all, for several reasons set forth below. This act of discretion was within the Legislature's general authority to protect the health, welfare, and safety of Florida's citizens and within the range of options permissible under the constitutional language.

Had the framers or voters intended to legalize smoking by adopting the Amendment, they could have done so. There was ample opportunity for smoking to be specifically provided for or required in the Amendment. But however hard plaintiffs may look for it, a smoking requirement is not in the Amendment. Indeed, plaintiffs have not and cannot cite to language in the Amendment that requires the Legislature to define "medical use" to include smoking. And such a substantial

"right"—to a heretofore illegal act—cannot reasonably be created through unstated implication and flawed deductive reasoning.

Nor does the ballot title or ballot summary suggest that the Amendment legalizes the smoking of marijuana for "medical use." The ballot title was "Use of Marijuana for Debilitating Medical Conditions"—not "*Unrestricted* Use of Marijuana for Debilitating Medical Conditions," and not "*Smoking* of Marijuana for Debilitating Medical Conditions." *In re Advisory Op. to the Att'y Gen. re Use of Medical Marijuana for Debilitating Med. Conditions*, 181 So. 3d 471, 476 (Fla. 2015). The ballot summary likewise lacks any reference to smoking:

> 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.

Id. And, of course, the ballot summary is what the voters see. § 101.161(1), Fla. Stat. Because neither the ballot title nor the ballot summary addresses smoking as a medical use of marijuana, neither can be relied upon as showing voter intent to require smoking. *See Graham v. Haridopolos*, 108 So. 3d 597, 605 (Fla. 2013)

(declining to adopt an interpretation of a constitutional amendment when "[n]owhere in the ballot title or ballot summary does it indicate" such an intent).[4]

c. Plaintiffs' "Analysis of Intent" Exhibit Bears No Markings Indicating It Could Actually Reflect Voter Intent to Require Smoking—Or Voter Intent at All.

With the plain language of the Amendment, ballot title, and ballot summary against them, plaintiffs attempt to rely on an undated, unauthenticated document of unknown origin to provide conclusive proof of "[t]he intent of drafters and voters." (AC ¶41.) Plaintiffs allege no ultimate facts showing how voters would have come to know about the intent statement and therefore how it could have formed the basis of voter intent. Although the amended complaint alleges that the "intent statement . . . was published and distributed to provide voters with the meaning of the provisions on which they would vote," *id.*, plaintiffs make no allegations regarding critical facts such as (i) when the intent statement was written, (ii) when the statement was distributed, (iii) how the statement was disseminated to voters, (iv) where voters could have seen the statement, or (v) how many voters may have seen the statement. Without establishing that voters actually were aware of and had access to the intent statement, there is no basis for concluding that the statement reflects voter intent.

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[4] Plaintiff PUMM was the ballot sponsor of Amendment 2 and therefore had every opportunity to include a smoking requirement in the ballot title, summary, or text. *See generally In re Advisory Op. to the Att'y Gen.*, 181 So. 3d 471. But when presenting the Amendment to the Florida Supreme Court, PUMM never suggested that smoking would or must be included in the use of medical marijuana. *See id.*

Even with a presumption of truth, a conclusory allegation that the intent statement reflects voters' understanding of the Amendment, without ultimate facts supporting the allegation, is not sufficient to allege voter intent. *Cf. Shands Teaching Hosp. & Clinics, Inc. v. Estate of Lawson ex rel. Lawson*, 175 So. 3d 327, 331 (Fla. 1st DCA 2015) ("Although courts must liberally construe, and accept as true, factual allegations in a complaint, as well as reasonable inferences therefrom, there is no obligation to accept internally inconsistent factual claims, conclusory allegations, unwarranted deductions, or mere legal conclusions.").

Regardless, even if it were authenticated or attended by the necessary factual allegations, the intent statement itself does not suggest that the Amendment requires smoking as medical marijuana use. The statement does not even say what plaintiffs say it says. Instead, the statement, in discussing what is now Article X, section 29(c)(6) of the Florida Constitution, explains that the provision "makes clear that the Amendment does not require that the smoking of medical marijuana be allowed in public unlike the proper use of medical marijuana in a private place which is not illegal." (AC ¶42.) Nowhere, though, does the intent statement say that "proper use" of medical marijuana under the Amendment must include smoking at all. On this point, plaintiffs' bare allegation that "[t]he statement unambiguously says that smoking medical marijuana in a private place in compliance with the provisions of the amendment is legal" is unsupported and incorrect. *Id.* "The conclusions of the

pleader[] as to the meaning of the exhibits attached to the complaint[] are not binding on the court." *Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So. 2d 490, 494 (Fla. 3d DCA 1994). And "[w]hen complaint allegations are contradicted by exhibits attached to the complaint, the plain meaning of the exhibits control and may be the basis for a motion to dismiss." *Hunt Ridge at Tall Pines, Inc. v. Hall*, 766 So. 2d 399, 401 (Fla. 2d DCA 2000).

Equally unpersuasive is plaintiffs' attempt to rely on the intent statement's explanation that the Amendment "defines medical marijuana differently and the scope and standards for this amendment are intended to provide broader access to qualifying patients than provided for in the existing statutes." (AC ¶43.) While this is true, it adds nothing to reflect voter intent to include smokeable marijuana.

d. The Legislature Considered Important Health Factors and Reasonably Concluded That Smoking Is Inconsistent With Medical Treatment.

Although the plain language of the Amendment is clear and does not require smoking, if the Court looks to legislative history, it will only confirm the validity of the smoking exclusion. The Legislature's exercise of its general authority to regulate health, welfare, and safety is evaluated by "whether the means utilized bear a rational or reasonable relationship to a legitimate state objective." *Belk-James, Inc. v. Nuzum*, 358 So. 2d 174, 175 (Fla. 1978). The Legislature's protecting public health and safety is, of course, a legitimate state objective. *State v. Yu*, 400 So. 2d 762, 764

(Fla. 1981) (upholding statute "bear[ing] a reasonable relationship to the legitimate state objective of protection of the public health, safety, and welfare").

Here, as the ballot title, ballot summary, and full text make clear, the purpose of the Amendment is medical treatment. The Legislature considered evidence of the health hazards of smoking and concluded that smoking marijuana is a harmful delivery method. Time and again during legislative debate, legislators emphasized that the Amendment is exclusively about *medicine*, and that smoking is antithetical to good medicine. *See, e.g.*, Fla. S., recording of proceedings (June 8, 2017) (Senator Rob Bradley, bill sponsor, discussing and answering questions on SB 8-A) ("[T]he concern about smoking is those involved in the medical community at this point in time, and the ones that I speak to . . . the act of inhaling smoke into your lungs is inherently an unhealthy activity.") at 51:20;[5] Fla. S. Comm. on Health Policy, recording of proceedings (Mar. 22, 2017) (bill sponsor comments at legislative workshop on key concerns in implementing Amendment 2) ("In my discussions with the medical community, the idea of inhaling smoke is by its nature not a healthy act. . . . We are not talking about recreational marijuana . . . We're talking about the medicine. And if we're going to be serious about treating this as we do serious medicines for people that are truly sick, I would suggest that smoking should not be

[5] *available at* http://www.flsenate.gov/media/VideoPlayer?EventID=2443575804_2017061079

in the different ways that people take it.") at 1:40:48;[6] Fla. H.R., recording of proceedings (May 2, 2017) (Representative Ralph Massullo, M.D., discussing the smoking exclusion in House companion bill) ("Smoking has ill effects. And even though marijuana has not been shown to cause cancer in the individuals who smoke it, there have been other statistically proven effects of restrictive airway diseases and other sorts of pulmonary diseases that you get from smoking *anything*. Not to mention you cannot dose smoke in any way, shape, or form. . . . [S]moking marijuana doesn't really affect you in a way medically that we need it to by having a dose-specific mechanism of delivery. Plus, it has the negative side effects.") at 1:25:10.[7]

The Legislature considered several significant health-related factors and reasonably determined that the harms caused by smoking were ample reason to exclude smoking from the definition of "medical use." Specifically, the Legislature considered scientific research that smoking is carcinogenic, causes lung damage, exacerbates asthma and bronchitis, and propagates dangerous second-hand smoke. *See, e.g.*, Fla. S., recording of proceedings (June 9, 2017) (in debate on SB 8-A, Senator Keith Perry discussing several studies his staff found demonstrating the

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[6] *available at* http://www.flsenate.gov/media/VideoPlayer?EventID=2443575804_2017031323
[7] *available at* http://thefloridachannel.org/videos/5217-house-session-part-1/

negative health repercussions of smoking marijuana) at 18:40-20:50.[8] For example, the Senate discussed studies from numerous scientific journals, including:

- 2016 article in the RESPIRATORY CARE JOURNAL reporting a risk of lung cancer from the inhalation of smoking marijuana
- 2015 EUROPEAN RESPIRATORY JOURNAL article reviewing the results of more than a dozen studies demonstrating an association between marijuana smoking and chronic bronchitis, and a follow-on 2016 article in the same publication reinforcing these findings and suggesting that quitting smoking marijuana reversed these symptoms
- 2014 review published in CURRENT OPINION IN PULMONARY MEDICINE reporting results from a Swedish study finding individuals that smoked marijuana more than 50 times had two-fold increase in developing lung cancer
- 2008 comprehensive-review article in the JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION examining multiple research studies which found statistically significant associations between increased lung cancer risk and premalignant changes in the lungs of marijuana smokers

[8] *available at* http://www.flsenate.gov/media/VideoPlayer?EventID=2443575804_2017061092

- 2007 article published in the JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION finding that long-term marijuana smoking increased symptoms of obstructive lung disease
- 2001 article published in the JOURNAL OF CANNABIS THERAPEUTICS reporting that marijuana smoking increased risks of pulmonary infections and respiratory cancers, especially in patients with compromised immune systems

See id. Likewise, the House companion bill sponsor walked the House members "through a number of scientific studies that have been published in the New England Journal of Medicine, which is the gold standard among medical research . . . that have shown from many different medical aspects, whether it's lung disease, whether it's the potential for cancer—and . . . the College of Periodontists have released a study that shows smoking marijuana significantly increases gum disease. So, the act of smoking—bringing those toxins into your body—[is] harmful." Fla. H.R., recording of proceedings (June 8, 2017) (Representative Ray Rodrigues during Q & A on the House implementing bill for Amendment 2) at 1:29:10.[9]

Though the scientific merits are not at issue before the Court, that the Legislature considered extensive evidence on the health hazards of smoking

[9] *available at* http://thefloridachannel.org/videos/6817-house-session/

reinforces that the smoking exclusion in section 381.986 is a permissible exercise of the State's general power to regulate health and safety. *See Lasky v. State Farm Ins. Co.*, 296 So. 2d 9, 15–16 (Fla. 1974) ("[W]e do not concern ourselves with the wisdom of the Legislature in choosing the means . . . or even whether the means chosen will in fact accomplish the intended goals; our only concern is with the constitutionality of the means chosen.").

All of these considerations are not only squarely within the Legislature's purview but also of heightened importance where the substance at issue is marijuana, which is not FDA-approved. That marijuana is not approved by the FDA means that the drug has not undergone clinical trials with vetted protocols. *Cf. Mut. Pharm. Co., Inc. v. Bartlett*, 133 S. Ct. 2466, 2470–71 (2013) (summarizing the "onerous and lengthy" process of submitting a new drug for FDA approval). Likewise, no marijuana quality standards have been set by the FDA. *See id.* at 2471 (only through FDA approval of a drug as "safe for use" are the prescribed and recommended conditions of use determined, including "active ingredients, route of administration, dosage form, . . . strength, . . . [and] rate and extent of absorption"). Without this exacting review process, the FDA cannot determine whether a drug is safe and effective. *Cf. Weinberger v. Bentex Pharm, Inc.*, 412 U.S. 645, 652–54 (1973) (FDA recognizes a drug as safe and effective for use only after evaluation by "experts qualified by scientific training and experience," through a process involving

"complex chemical and pharmacological considerations"); *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 617–18 (1973) (describing FDA approval as requiring "adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience" in accordance with "principles . . . recognized by the scientific community as the essentials of adequate and well-controlled clinical investigations," involving "a plan or protocol" detailing the statistical and analytical methods used). Consequently, here, the onus on the Legislature to cautiously regulate this unapproved drug is much weightier, and there is all the more reason for the Legislature to be exceedingly careful regarding the public's health and safety.

Other states have come to the same conclusion, excluding smoking from the use of medical marijuana. *See, e.g.*, MINN. STAT. ANN. § 152.22, Subd. 6(a)(4) (2016); N.Y. PUB. HEALTH LAW § 3360(1) (2014); OHIO REV. CODE ANN. § 3796.06(B)(1) (2016); 35 PA. STAT. AND CONS. STAT. ANN. § 10231.304(b)(1) (2016); W. VA. CODE ANN. § 16A-3-3(b)(1) (2016).

e. Excluding Smoking from "Medical Use" Does Not Thwart the Purposes of the Amendment

The Legislature crafted section 381.986 in a way that is not only faithful to the text of the Amendment but also capably serves the purposes of the Amendment. The statute permits as "medical use" *any* administration of low-THC cannabis,

properly prescribed and ordered, other than by smoking. § 381.986(1)(c), Fla. Stat. This of course includes all of the routes of delivery enumerated in the Amendment: "food, tinctures, aerosols, oils, or ointments." Art. X, § 29(b)(5), Fla. Const. (describing types of marijuana products that may be permissibly processed at a "Medical Marijuana Treatment Center"). The statute also expressly permits vaping as "medical use." § 381.986(1)(c), (e), Fla. Stat. In committee discussion on SB 8-A, the bill sponsor noted that the "bill allows edibles and vaping . . . [O]ther forms like pills, drops, that will be available as well." Fla. S. Comm. on Health Policy, recording of proceedings (June 8, 2017) (testimony of Senator Bradley, sponsor of SB 8-A, Medical Use of Marijuana) at 07:09.[10] And in floor debate on the bill, the Senate understood that approved routes of delivery would include forms such as "[e]dibles, vaping, cream, drops." Fla. S., recording of proceedings (June 8, 2017) (Senator Bradley discussing and answering questions on SB 8-A) at 51:10.[11] In other words, the Legislature has approved a comprehensive array of methods for medical use of marijuana.

And that is exactly what the ballot summary indicates was the purpose of the Amendment: to "[a]llow[] medical use of marijuana for individuals with debilitating medical conditions as determined by a licensed Florida physician." *In re Advisory*

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[10] *available at* http://www.flsenate.gov/media/VideoPlayer?EventID=2443575804_2017061076
[11] *available at* http://www.flsenate.gov/media/VideoPlayer?EventID=244357804_2017061079

Op. to the Attorney Gen. re Use of Marijuana for Debilitating Med. Conditions, 181 So. 3d at 476. Likewise, the ballot text outlined a framework designed to culminate in "ensur[ing] the availability and *safe* use of medical marijuana by qualifying patients." Art. X, § 29(d), Fla. Const. (emphasis supplied). Section 381.986 meets these objectives.

Plaintiffs have not alleged any factual basis to conclude that the Legislature's use of discretion in implementing the Amendment undermines the purpose of the constitutional provision. Plaintiffs do not allege that these permitted routes of delivery are ineffective for treating any of the debilitating medical conditions listed in the Amendment. Plaintiffs do not allege that these authorized routes of delivery are unsafe or infeasible. And plaintiffs do not allege that smoking is a necessary form of "medical use," the only practicable method of "medical use," or even a more effective form of "medical use" than other methods.

CONCLUSION

Because plaintiffs have failed to allege a justiciable case or controversy and have failed to state a cause of action upon which relief can be granted, the amended complaint should be dismissed. And because there exists no state of facts which Plaintiffs could allege to overcome the constitutional and statutory text, the dismissal should be with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that the foregoing was e-filed via the Florida Portal which serves all counsel of record and was served by e-mail to Jon L. Mills, Esq., Boies, Schiller Flexner LLP, 100 S.E. 2nd Street, Suite 2800, Miami, FL 33131-2144 at jmills@bsfllp.com and to Karen C. Dyer, Esq., and George R. Coe, Esq., Boies, Schiller Flexner LLP, 121 South Orange Avenue, Suite 840, Orlando, FL 32801 at kdyer@bsfllp.com, and gcoe@bsfllp.com, and to John Morgan, Esq., Morgan & Morgan, 20 North Orange Avenue, Suite 1600, Orlando, FL 32801 at jmorgan@forthepeople.com on this 5th day of October, 2017.

/s/ Denise M. Harle
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