Medical Marijuana Production, Possession and Use

Number: PETITION

Date: October 02, 2015

The Honorable Jorge Labarga
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Labarga and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is the responsibility of the Attorney General to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On September 3, 2015, this office received a letter from the Secretary of State (a copy of which is attached) advising this office that the initiative petition entitled “Use of Marijuana for Debilitating Medical Conditions” had met the registration, submission, and signature criteria set forth in section 15.21, Florida Statutes.

The full text of the proposed amendment, which adds a new section 29 to Article X of the Florida Constitution, states:

“SECTION 29.– Medical marijuana production, possession and use.
(a) PUBLIC POLICY.
(1) The medical use of marijuana by a qualifying patient or caregiver in compliance with this section is not subject to criminal or civil liability or sanctions under Florida law.
(2) 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.
(3) Actions and conduct by a Medical Marijuana Treatment Center registered with the Department, or its agents or employees, and in compliance with this section and Department regulations, shall not be subject to criminal or civil liability or sanctions under Florida law.
(b) DEFINITIONS. For purposes of this section, the following words and terms shall have the following meanings:
(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.
(2) ‘Department’ means the Department of Health or its successor agency.

(3) ‘Identification card’ means a document issued by the Department that identifies a qualifying patient or a caregiver.
(4) ‘Marijuana’ has the meaning given cannabis in Section 893.02(3), Florida Statutes (2014), and, in addition, ‘Low-THC cannabis’ as defined in Section 381.986(1)(b), Florida Statutes (2014), shall also be included in the meaning of the term ‘marijuana.’
(5) ‘Medical Marijuana Treatment Center’ (MMTC) means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Department.
(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.
(7) ‘Caregiver’ means a person who is at least twenty-one (21) years old who has agreed to assist with a qualifying patient's medical use of marijuana and has qualified for and obtained a caregiver identification card issued by the Department. The Department may limit the number of qualifying patients a caregiver may assist at one time and the number of caregivers that a qualifying patient may have at one time. Caregivers are prohibited from consuming marijuana obtained for medical use by the qualifying patient.
(8) ‘Physician’ means a person who is licensed to practice medicine in Florida.
(9) ‘Physician certification’ means a written document signed by a physician, stating that in the physician's professional opinion, the patient suffers from a debilitating medical condition, that the 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.
(10) ‘Qualifying patient’ means a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying patient identification card. If the Department does not begin issuing identification cards within nine (9) months after the effective date of this section, then a valid physician certification will serve as a patient identification card in order to allow a person to become a ‘qualifying patient’ until the Department begins issuing identification cards.
(c) LIMITATIONS.
(1) Nothing in this section allows for a violation of any law other than for conduct in compliance with the provisions of this section.
(2) Nothing in this section shall affect or repeal laws relating to non-medical use, possession, production, or sale of marijuana.
(3) Nothing in this section authorizes the use of medical marijuana by anyone other than a qualifying patient.
(4) Nothing in this section shall permit the operation of any vehicle, aircraft, train or boat while under the influence of marijuana.
(5) Nothing in this section requires the violation of federal law or purports to give immunity under federal law.
(6) 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.
(7) Nothing in this section shall require any health insurance provider or any government agency or authority to reimburse any person for expenses related to the medical use of marijuana.
(8) Nothing in this section shall affect or repeal laws relating to negligence or professional malpractice on the part of a qualified patient, caregiver, physician, MMTC, or its agents or employees.
(d) DUTIES OF THE DEPARTMENT. The Department shall issue reasonable regulations necessary for the implementation and enforcement of this section. The purpose of the regulations is to ensure the availability and safe use of medical marijuana by qualifying patients. It is the duty of the Department to promulgate regulations in a timely fashion.
(1) Implementing Regulations. In order to allow the Department sufficient time after passage of this section, the following regulations shall be promulgated no later than six (6) months after the effective date of this section:
a. Procedures for the issuance and annual renewal of qualifying patient identification cards to people with physician certifications and standards for renewal of such identification cards. Before issuing an identification card to a minor, the Department must receive written consent from the minor's parent or legal guardian, in addition to the physician certification.
b. Procedures establishing qualifications and standards for caregivers, including conducting appropriate background checks, and procedures for the issuance and annual renewal of caregiver identification cards.
c. Procedures for the registration of MMTCs that include procedures for the issuance, renewal, suspension and revocation of registration, and standards to ensure proper security, record keeping, testing, labeling, inspection, and safety.
d. A regulation that defines the amount of marijuana that could reasonably be presumed to be an adequate supply for qualifying patients' medical use, based on the best available evidence. This presumption as to quantity may be overcome with evidence of a particular qualifying patient's appropriate medical use.
(2) Identification cards and registrations. The Department shall begin issuing qualifying patient and caregiver identification cards, and registering MMTCs no later than nine (9) months after the effective date of this section.
(3) If the Department does not issue regulations, or if the Department does not begin issuing identification cards and registering MMTCs within the time limits set in this section, any Florida citizen shall have standing to seek judicial relief to compel compliance with the Department's constitutional duties.
(4) The Department shall protect the confidentiality of all qualifying patients. All records containing the identity of qualifying patients shall be confidential and kept from public disclosure other than for valid medical or law enforcement purposes.
(e) LEGISLATION. Nothing in this section shall limit the legislature from enacting laws consistent with this section.
(f) SEVERABILITY. The provisions of this section are severable and if any clause, sentence, paragraph or section of this measure, or an application thereof, is adjudged invalid by a court of competent jurisdiction other provisions shall continue to be in effect to the fullest extent possible."

The ballot title for the proposed amendment is: "Use of Marijuana for Debilitating Medical

Conditions.” The ballot summary for the proposed amendment states:

“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.”

Pursuant to Rule 9.510(b), Florida Rules of Appellate Procedure, this petition provides the following information:

1. The name of the sponsor and address: The initiative petition is sponsored by People United for Medical Marijuana, Mr. John H. Morgan, Chairperson, 20 North Orange Avenue, Suite 1600, Orlando, FL 32801.

2. The name and address of the sponsor's attorney, if the sponsor is represented: Whether the sponsor is represented by an attorney is unknown.

3. A statement as to whether the sponsor has obtained the requisite number of signatures to have the initiative placed on the ballot: As of September 3, 2015, the sponsor had not obtained the requisite number of signatures to have the proposed amendment placed on the ballot.

4. The current status of the signature collection process: As of September 3, 2015, the Supervisors of Elections had certified a total of 82,986 valid petition signatures to the Division of Elections for this initiative petition. This number represents more than 10% of the total number of valid signatures needed from electors statewide and in at least one-fourth of the congressional districts in order to have the initiative placed on the 2016 general election ballot.

5. The date of the election during which the sponsor is planning to submit the proposed amendment: The initiative does not specify the date of the election. The earliest date this proposed amendment can be placed on the ballot is November 8, 2016, provided the sponsor successfully obtains the requisite number of valid signatures by February 1, 2016.

6. The last possible date that the ballot for the target election can be printed in order to be ready for the election: The last possible date that the ballot for the target election can be printed in order to be ready for the election is unknown.

7. A statement identifying the date by which the Financial Impact Statement will be filed, if the Financial Impact Statement is not filed concurrently with the request: The Secretary of State has advised this office that he forwarded a letter to the Financial Impact Estimating Conference in the care of the coordinator on September 3, 2015.

8. The names and complete mailing addresses of all of the parties who are to be served: The names and complete mailing addresses of all of the parties who are to be served are unknown at this time. Section 16.061(2), Florida Statutes, requires that a copy of the petition be provided to the Secretary of State and to the principal officer of the sponsor:

Mr. Ken Detzner Mr. John H. Morgan, Chairperson
Secretary of State People United for Medical
Florida Department of State Marijuana
R.A. Gray Building, Room 316 20 North Orange Avenue
500 South Bronough Street Suite 1600
Tallahassee, Florida 32399-0250 Orlando, Florida 32801

While not required by law, this office provides copies of the petition to:

The Honorable Rick Scott The Honorable Andy Gardiner
Governor, State of Florida President, Florida Senate
The Capitol Senate Office Building
400 South Monroe Street Room 312
Tallahassee, Florida 32399-0001 404 South Monroe Street
Tallahassee, Florida 32399-1100

The Honorable Steve Crisafulli
Speaker, Florida House of Representatives
Room 420 The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300

In accordance with the provisions of Article IV, section 10, Florida Constitution, I respectfully request this Honorable Court's opinion as to whether the proposed amendment complies with the single-subject requirement of Article XI, section 3, Florida Constitution, and whether the ballot title and summary of the proposed constitutional amendment comply with section 101.161(1), Florida Statutes, setting forth substantive and technical requirements for the ballot title and summary.

Respectfully submitted,

Pamela Jo Bondi
Attorney General