SC19-1536

IN THE SUPREME COURT OF FLORIDA

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: REGULATE MARIJUANA IN A MANNER SIMILAR TO ALCOHOL TO ESTABLISH AGE, LICENSING, AND OTHER RESTRICTIONS

INITIAL BRIEF OF FLORIDA CHAMBER OF COMMERCE, DRUG FREE AMERICA FOUNDATION, NATIONAL DRUG-FREE WORKPLACE ALLIANCE, AND SAVE OUR SOCIETY FROM DRUGS IN OPPOSITION TO THE INITIATIVE

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IDENTITY AND INTEREST OF OPPONENTS

The following interested parties appear in opposition to the proposed amendment entitled "Regulate Marijuana in a Manner Similar to Alcohol to Establish Age, Licensing, and Other Restrictions" (the "Proposed Amendment").

The Florida Chamber of Commerce (the "Chamber") is Florida's largest federation of employers, chambers of commerce, and associations championing Florida job creators. This brief is filed on behalf of the Florida Chamber's Litigation Center in our effort to secure Florida's future.

Drug Free America Foundation, Inc. ("DFAF") is a drug prevention and policy organization committed to developing strategies that prevent drug use and promote sustained recovery. DFAF is a Non-Governmental Organization (NGO) in Special Consultative Status with the Economic and Social Council of the United Nations.

The National Drug-Free Workplace Alliance ("NDWA") is the workplace division of Drug Free America Foundation. NDWA's mission is to be a national leader in the drug-free workplace industry by directly assisting employers and stakeholders, providing drug-free workplace program resources and assistance, and supporting a national coalition of drug-free workplace service providers.

Save Our Society From Drugs is a national nonprofit organization based in Saint Petersburg, Florida. It is committed to establishing, promoting, and enabling

sound drug laws and policies that will reduce illegal drug use, drug addiction, and drug-related illness and death.

STATEMENT OF THE CASE AND FACTS

On September 11, 2019, the Attorney General petitioned this Court for an advisory opinion as to the validity of an initiative petition entitled "Regulate Marijuana in a Manner Similar to Alcohol to Establish Age, Licensing, and Other Restrictions." This Court has jurisdiction. Art. V, § 3(b)(10), Fla. Const. The full text of the Proposed Amendment, which would create a new section within Article X of the Florida Constitution, is set forth in the Attorney General's Petition.

The Proposed Amendment includes the following ballot title and summary:

> BALLOT TITLE: Regulate Marijuana in a Manner Similar to Alcohol to Establish Age, Licensing, and Other Restrictions.
>
> BALLOT SUMMARY: Regulates marijuana (hereinafter "cannabis") for limited use and growing by persons twenty-one years of age or older. State shall adopt regulations to issue, renew, suspend, and revoke licenses for cannabis cultivation, product manufacturing, testing and retail facilities. Local governments may regulate facilities' time, place and manner and, if state fails to timely act, may license facilities. Does not affect compassionate use of low-THC cannabis, nor immunize federal law violations.

On September 23, 2019, this Court issued an order establishing a briefing schedule. The Florida Chamber of Commerce, Drug Free America Foundation, National Drug-Free Workplace Alliance, and Save Our Society from Drugs submit this brief as interested parties opposed to the Proposed Amendment.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

> *Should Florida authorize the residential growing and unlimited personal use of marijuana by adults for nonmedical purposes, authorize the creation of a network of "cannabis establishments" for the commercial manufacture, distribution, and sale of marijuana for nonmedical purposes, provide that Florida's local government bodies are subject to the rulemaking requirements of the Florida Administrative Procedure Act when enacting ordinances and regulations relating to marijuana, and amend Florida statutes to "accommodate" the possession of pipe bombs and machine guns by individuals convicted of trafficking in cannabis?*
>
> ___ Yes
>
> ___ No

The statement above is the constitutional question the Proposed Amendment before the Court in this case *actually* presents to Florida voters. Yet this disparate array of subjects—spanning 10 single-spaced pages of new constitutional language—is concealed from voters behind a ballot title and summary suggesting that the only question presented by the proposal is whether marijuana should be regulated "similar to alcohol."

If Florida's single-subject and ballot clarity requirements for amendments proposed by initiative are to retain any force and effect, this Court must declare the Proposed Amendment invalid and order it stricken from the ballot.

The Proposed Amendment's ballot title and summary are misleading and fail to provide fair notice to voters of the measure's true chief purpose and effect. The Proposed Amendment would legalize marijuana cultivation, sale, and use for non-medical purposes as a matter of state law. But the ballot title and summary falsely suggest that the proposal would impose new restrictions and regulations for the limited use of marijuana. The Proposed Amendment's ballot title and summary also state that marijuana would be regulated "similar to alcohol"—but the amendment itself would impose a system very different from Florida's current alcohol regulations. The ballot title and summary falsely state that the Proposed Amendment would authorize only "limited use" of marijuana, while the amendment itself authorizes unlimited personal use of marijuana. And the Proposed Amendment's ballot summary fails to disclose a variety of additional provisions, including those subjecting local government bodies to the rulemaking requirements of the Administrative Procedure Act and mandating that the Florida Legislature amend specific statutes to "accommodate" the possession of machine guns and destructive devices by individuals convicted of trafficking in cannabis.

The Proposed Amendment also violates the Florida Constitution's single-subject requirement by addressing multiple subjects in the same proposal. The Proposed Amendment covers both commercial and non-commercial use of marijuana. The initiative substantially directs and performs the functions of both

the legislative branch and an executive branch agency. The Proposed Amendment restructures the relationship between state and local government by subjecting local government bodies to the rulemaking requirements of the Florida Administrative Procedure Act when issuing marijuana regulations under constitutional authority. And the combination of all of these subjects in a single proposal results in logrolling of various aspects upon which voters may feel differently, which this Court has found to constitute a violation of the Florida Constitution's single-subject requirement.

For any or all of these reasons, this Court should conclude that the Proposed Amendment is invalid and prohibit its placement on the ballot.

ARGUMENT

I. THE BALLOT TITLE AND SUMMARY ARE MISLEADING AND DO NOT CLEARLY AND UNAMBIGUOUSLY PROVIDE FAIR NOTICE TO VOTERS OF THE PROPOSED AMENDMENT'S CHIEF PURPOSE.

Florida law requires the sponsor of an amendment proposed by initiative to prepare a ballot summary not exceeding 75 words in length. § 101.161(1), Fla. Stat. The ballot summary is an explanatory statement in "clear and unambiguous language" of the "chief purpose of the measure." *Id*. When reviewing the validity of a ballot title and summary under section 101.161 of the Florida Statutes, this Court has asked two questions: 1) whether the ballot title and summary fairly and

accurately inform the voter of the chief purpose of the amendment; and 2) whether the language of the title and summary, as written, is likely to mislead the public. *See*, *e.g.*, *Adv. Op. to Att'y Gen. re Water & Land Conservation*, 123 So. 3d 47, 50 (Fla. 2013); *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

The ultimate purpose of the ballot title and summary requirements is "to provide fair notice of the content of the Proposed Amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot." *Adv. Op. to Att'y Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998) (citation omitted). "Reduced to colloquial terms, a ballot title and summary cannot 'fly under false colors' or 'hide the ball' with regard to the true effect of an amendment." *Slough*, 992 So. 2d at 147.

Here, the Proposed Amendment's ballot title and summary fail—in numerous ways—to satisfy these basic "truth-in-advertising" requirements.

A. The Ballot Title and Summary fail to clearly and unambiguously disclose the Proposed Amendment's chief purpose: the legalization of marijuana cultivation, sale, and use for non-medical purposes as a matter of state law.

Florida law currently prohibits the possession, sale, or use of marijuana for all purposes other than those related to the treatment of debilitating medical conditions. Art. V, § 29, Fla. Const.; § 381.986, Fla. Stat. The Proposed Amendment would sweep aside those state-law restrictions and would broadly

legalize the cultivation, processing, sale, and use of marijuana as a matter of state law.[1] But that chief purpose is hidden from the voters by the sponsor's unclear and misleading ballot title and summary. Rather than accurately characterizing the initiative as one that *abolishes* criminal penalties and authorizes the *expansion* of marijuana use in Florida, the ballot title and summary mislead the voters as to the proposal's chief purpose by stating that the Proposed Amendment "regulates" and establishes new "restrictions" for "limited" marijuana use. In fact, the Proposed Amendment would allow *unlimited* personal use of marijuana and would mandate a new statewide network of "cannabis establishments" to cultivate, process, and sell marijuana to the public. This Court should deny ballot access to the Proposed Amendment because its ballot title and summary fail to provide fair notice to voters regarding the measure's chief purpose.

This Court has regularly enforced the ballot clarity requirements of Florida law, which prohibit ballot summaries that mislead and fail to disclose the chief purpose and effect of a proposed amendment. In the landmark case of *Askew v. Firestone*, for example, this Court addressed a ballot summary indicating that a

[1] As Justice Polston has previously noted, however, "any manufacture, distribution, or possession of marijuana is a criminal offense under federal law." *In re Advisory Opinion to Atty. Gen. re Use of Marijuana for Certain Medical Conditions*, 132 So. 3d 786, 819 (Fla. 2014) (Polston, dissenting) ("*Marijuana I*"); *see also* 21 U.S.C. § 812(c) (designating marijuana as a Schedule I controlled substance).

proposed amendment would impose a restriction on lobbying activities by former legislators and statewide elected officers. 421 So. 2d 151 (Fla. 1982). In fact, the proposal would have *removed* the absolute two-year ban on lobbying by former legislators and elected officers, retaining that ban only if an affected person failed to file financial disclosure documents. *Id*. at 153.

In language that has been cited frequently in subsequent cases, this Court acknowledged that the law requires a clear and unambiguous ballot summary in order to "give the voter fair notice of the decision he must make." *Id*. at 155. A proposed amendment must "stand on its own merits" and not be "disguised as something else." *Id*. at 156. The Court found the proposed amendment in *Askew* invalid and ordered it stricken from the ballot because the proposal's ballot summary indicated that it was a "restriction on one's lobbying activities" when the amendment would "actually give[] incumbent office holders, upon filing a financial disclosure statement, a right to immediately commence lobbying before their former agencies which is presently precluded." *Id*.

The Proposed Amendment here fails for the same reason. The ballot title and summary characterize the initiative as one that would "regulate" and establish new "restrictions" for "limited" marijuana use. In fact, the Proposed Amendment would *abolish* current state-law restrictions and criminal penalties on non-medical marijuana use, allow *unlimited* personal use of marijuana, and would authorize a

new statewide network of "cannabis establishments" to cultivate, process, and sell marijuana to the public. The ballot summary at issue in *Askew* mischaracterized a proposal that *eliminated* an absolute ban on lobbying and falsely indicated that it imposed new *restrictions* on lobbying. In the same manner, the Proposed Amendment here falsely suggests that a proposal broadly legalizing the cultivation, processing, sale, and unlimited personal use of marijuana by adults as a matter of state law is actually an initiative regulating and establishing new restrictions and limits on marijuana use, as compared to current Florida law.

The Proposed Amendment's misleading ballot summary stands in sharp contrast to the ballot summary of another recent amendment on a similar subject: the initiative entitled "Use of Marijuana for Debilitating Medical Conditions," adopted by the voters at the 2016 General Election as Article X, § 29 of the Florida Constitution. The ballot summary for the 2016 medical marijuana initiative stated that it:

> 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 Opinion to Atty. Gen. re Use of Marijuana for Debilitating Medical Conditions, 181 So. 3d 471, 476 (Fla. 2015) ("*Marijuana II*"). This Court concluded that the ballot title and summary in *Marijuana II* "fairly inform voters of the purpose of the proposed amendment—the state authorization of medical marijuana for patients with debilitating medical conditions. The language is clear and does not mislead voters regarding the actual content of the proposed amendment." *Id*. at 478.

The ballot summary in *Marijuana II* accurately conveyed to the voters that it would authorize or allow activities previously prohibited by state law. *See*, *e.g.*, *Marijuana II* at 476 (ballot summary stating that proposal "*[a]llows* medical use of marijuana for individuals with debilitating medical conditions as determined by a licensed Florida physician" and "*allows* caregivers to assist patients' medical use of marijuana") (emphasis added). In contrast, the Proposed Amendment here falsely suggests that—as compared to the status quo—it would impose new regulations, limitations, and restrictions on marijuana use. As a result, the ballot summary fails to fairly inform voters of the Proposed Amendment's chief purpose: a broad authorization for the cultivation, processing, sale, and unlimited personal use of marijuana by adults as a matter of state law. The proposal therefore "fl[ies] under false colors" and fails to advise the electorate "of the true meaning, and ramifications" of the amendment. *Askew*, 421 So. 2d at 156.

Florida law requires clarity in ballot titles and summaries because "[t]he burden of informing the public should not fall only on the press and opponents of the measure." *Askew*, 421 So. 2d at 156. This Court should find the Proposed Amendment invalid because its ballot title and summary fail to clearly and unambiguously disclose its chief purpose in violation of Florida law.

B. The Ballot Title and Summary falsely state that the Proposed Amendment will regulate marijuana "in a manner similar to alcohol" and that it authorizes only "limited use" of marijuana.

The ballot title and summary also are affirmatively misleading to voters by falsely stating that the Proposed Amendment will "Regulate marijuana in a manner similar to alcohol" and that the proposal authorizes only "limited use" of marijuana. The Proposed Amendment does not regulate the commercial production and sale of marijuana in a manner "similar to" how alcohol is currently regulated in Florida. Nor does the Proposed Amendment authorize only "limited use" of marijuana, but instead provides for unlimited personal use. This Court should find the Proposed Amendment invalid because its ballot title and summary are affirmatively misleading to voters.

The ballot title advises voters that the proposal will "[r]egulate marijuana in a manner similar to alcohol." Yet the regulatory framework proposed for marijuana is dramatically different both in substance and structure from Florida's Beverage Law. *See generally* Ch. 561-568, Fla. Stat. As just one example, Florida

law imposes limits on the number of certain alcoholic beverage licenses that may be issued, and that number is tied to the number of residents in each county. *See* § 561.20, Fla. Stat. Certain hotels and restaurants are exempt from the limitations on the number of licenses. *Id*. The Proposed Amendment does not regulate marijuana in a manner similar to alcohol by limiting the number of licenses or addressing sales of marijuana at hotels and restaurants. At the same time, the Proposed Amendment imposes domicile and residence requirements as a condition of licensure to operate "cannabis establishments." *See*, *e.g.*, Proposed Amendment at (e)(1)d. These license restrictions are not found in Florida's Beverage Law.

The Proposed Amendment's regulatory framework for marijuana differs from current alcohol regulation even more sharply. Rather than entrust regulation of the sale of marijuana solely to the Florida Department of Business and Professional Regulation (DBPR), as is the case with the sale of alcohol, the proposal undermines state authority and burdens local governments by mandating that counties and municipalities create alternate systems for reviewing applications and issuing marijuana licenses. This redundancy is to be put into action if DBPR does not respond to an individual's application within a specified time, or if DBPR fails—apparently in the judgment of the county or municipality—to adopt regulations under the numerous requirements of subsection (e)(1) of the Proposed Amendment. The Proposed Amendment's mischaracterization of its regulatory

scheme as "similar to" current state regulation of alcohol is thus another way in which its ballot title and summary would mislead voters.

The ballot title's characterization of the proposal's regulatory scheme as "similar to alcohol" also conveys to voters a false impression about the Proposed Amendment. If marijuana is to be treated "similar to alcohol," will marijuana be available for sale or consumption at any of the customary places that one is able to purchase or consume alcohol? In the wake of the Proposed Amendment, would marijuana be available for purchase at grocery stores and gas stations? At sporting event concession stands? Will online retailers be able to obtain licenses to distribute marijuana? Rather than accurately convey the true chief purpose and scope of the Proposed Amendment, the ballot title's reference to "alcohol" regulation misinforms and misleads voters regarding the content of the proposal.

Finally, the ballot summary states that the Proposed Amendment will regulate marijuana for "limited use" by persons twenty-one years of age or older. But the Proposed Amendment itself would allow *unlimited* "personal use" of marijuana. *See* Proposed Amendment at (c)(1) (providing for possession and use of cannabis products "in quantities reasonably indicative of personal use or for use by household members"); *see also id*. at (c) (specifying that Proposed Amendment establishes "minimum quantities, subject to increase . . . but not subject to decrease"). The ballot summary thus misleads voters by stating that it provides for

"limited use" when the Proposed Amendment itself does not limit the personal use of marijuana.

This Court has cautioned that a ballot title and summary should "tell the voter the legal effect of the amendment, and no more." *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984). Misleading "political rhetoric" in a ballot title or summary designed to invite an emotional response from voters rather than providing an accurate "synopsis of the proposed amendment" is "improper." *Adv. Op. to Att'y Gen. re Florida Marriage Protection Amendment*, 926 So. 2d 1229 1238 (Fla. 2006). Because the Proposed Amendment here does not actually regulate marijuana "in a manner similar to alcohol," its misleading use of an inaccurate comparison constitutes impermissible political rhetoric. This Court should find the Proposed Amendment invalid because its ballot title and summary are affirmatively misleading to voters.

C. The Ballot Title and Summary fail to disclose other significant aspects of the Proposed Amendment.

In a Proposed Amendment whose text spans more than ten single-spaced pages, it is unsurprising that the ballot summary does not address every aspect of the proposal. Yet the ballot summary here fails to disclose other significant aspects of the Proposed Amendment in a manner that conceals from voters the initiative's

true chief purpose and ramifications. Two of those undisclosed changes are discussed below.

The Proposed Amendment subjects county and municipal governments to the rulemaking requirements of Florida's Administrative Procedure Act. Specifically, the proposal provides that county and municipal regulations and procedures related to cannabis establishments are "subject to all requirements of s. 120.54, Florida Statutes (2016) or as amended." *See* Proposed Amendment at (e)(5)(b). Yet the definition of "agency" under the Florida APA does not include government entities acting pursuant to constitutional authority, and generally does not include any government entity having jurisdiction in one county or less. § 120.52(1), Fla. Stat.

Under the Proposed Amendment, municipal governments adopting marijuana regulations would be subject to "all requirements" of section 120.54. These extensive procedural requirements include review (and potential objections) by the Florida Legislature's Joint Administrative Procedures Committee ("JAPC") under section 120.54(3)(a)4. and section 120.54(3)(d); review by the rules ombudsman in the Executive Office of the Governor under section 120.54(b)(2)b., and specific publication and notice requirements not applicable to other categories of municipal regulations and ordinances. The Proposed Amendment's ballot summary references regulation by local governments, but fails to disclose the

significant reallocation in authority between state and local governments that would result from the imposition of APA rulemaking requirements on local government bodies.

The Proposed Amendment also requires the Florida Legislature, within six months from the proposal's effective date, to enact laws to "accommodate" the possession of a "machine gun," a "semiautomatic firearm and its high-capacity detachable box magazine," or a "destructive device"[2] by individuals trafficking in marijuana. *See* Proposed Amendment at (g)(4), (5); § 775.087(2), Fla. Stat. (2019). The ballot summary contains no mention of this constitutional mandate on the Florida Legislature to revise Florida's criminal code to ease penalties for machine gun and bomb possession by cannabis traffickers.

II. THE PROPOSED AMENDMENT VIOLATES THE FLORIDA CONSTITUTION'S SINGLE-SUBJECT REQUIREMENT.

The Florida Constitution restricts constitutional amendments proposed by initiative petition to "one subject and matter directly connected therewith." Art. XI, § 3, Fla. Const. The single-subject requirement "is a rule of restraint" placed in the constitution upon the ballot initiative process to allow the people to

[2] The term "destructive device" under Florida law includes, but is not limited to, "any bomb, grenade, mine, rocket, missile, pipe bomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of

propose and vote upon "singular changes in the functions of our governmental structure." *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984). By focusing the electorate's attention on "a change regarding one specific subject of government," the single-subject requirement "protect[s] against multiple precipitous changes in our state constitution." *Id*.; *see also In re Adv. Op. to Att'y Gen. – Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994) (noting that single-subject requirement is "designed to insulate Florida's organic law from precipitous and cataclysmic change").

This Court requires "strict compliance" with the single-subject rule in the initiative process because "our constitution is the basic document that controls our governmental functions, including the adoption of any laws by the legislature." *Fine*, 448 So. 2d at 989. For that reason, this Court is called upon to provide "careful scrutiny" of an initiative proposal to ensure that it meets the single-subject requirement. *In re Adv. Op. to Att'y Gen. re Limits or Prevents Barriers to Local Solar Electricity Supply*, 177 So. 3d 235, 242 (Fla. 2015).

The Proposed Amendment, on its face, violates the single-subject requirement by addressing multiple subjects that are logically separable. As an analytical matter, this Court has also evaluated compliance with the single-subject

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causing bodily harm or property damage." § 790.001(4), Fla. Stat.

requirement by determining whether the initiative: 1) engages in "logrolling" of distinct subjects; or 2) substantially alters or performs the functions of multiple branches of state government. *Water & Land Conservation*, 123 So. 3d at 50. The Proposed Amendment engages in both of these prohibited practices, and each provides a further independent ground for this Court to deny ballot placement to the Proposed Amendment for its violation of the single-subject requirement.

A. The Proposed Amendment addresses multiple subjects in a single initiative.

Under Article XI, section 3, a proposed initiative "shall embrace but one subject and matter directly connected therewith." Art. XI, § 3, Fla. Const. On its face, the Proposed Amendment violates this single-subject requirement by addressing at least four distinct and logically separable subjects. The Proposed Amendment: 1) provides that "personal use" of marijuana for non-medical purposes is "not unlawful" under Florida law or the law of Florida's counties and municipalities; 2) authorizes the individual cultivation of marijuana for personal use; 3) provides for the commercial cultivation, distribution, and sale of marijuana to the public; and 4) establishes a constitutional framework to govern these differing private and commercial activities that compels specific actions not only by the Florida Legislature and an executive branch agency, but also by every county and municipality within Florida. These distinct and logically separate

topics cannot fairly be characterized as a single "subject and matter directly connected therewith" as required by the Florida Constitution. Instead, the multiple subjects addressed by the Proposed Amendment lack the "logical and natural oneness of purpose" required by the single-subject requirement and this Court's precedent. *See*, *e.g.*, *Adv. Op. to Att'y Gen. re Voting Restoration Amend.*, 215 So. 3d 1202, 1206 (Fla. 2017). The proposal stands as a hodgepodge of significant provisions that would result in exactly the type of cataclysmic change to Florida's Constitution that the single-subject provision is intended to thwart.

The many subjects addressed by the Proposed Amendment are logically separable and distinct from one another. As just one example, decriminalizing the possession and use of marijuana by *individuals* for non-medical purposes is logically distinct from authorizing (and mandating State and local government licensure of) *commercial* cultivation, distribution, and sale of marijuana. Yet the presence of any more than one of these distinct subjects in the Proposed Amendment is fatal under the single-subject requirement.

It is no answer to a single-subject challenge that each of these distinct subjects "regulates marijuana." Indeed, almost any collection of distinct topics can be characterized as a "single subject" at a sufficiently high level of generality. But this Court has long held that "enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement." *Evans*, 457 So.

2d at 1353; s*ee also Fine*, 448 So. 2d at 990 (rejecting sponsor's contention that single-subject requirement was satisfied because multiple provisions of an initiative all addressed "limiting government revenue"). Were this Court to adopt a different approach, initiative sponsors could readily evade the Florida Constitution's single subject requirement by the simple artifice of describing their proposals in sweeping generalities such as "proposing legal reform" or "proposing changes to government structure."

The Proposed Amendment violates the single-subject requirement by addressing disparate subjects in a single initiative and should be denied placement on the ballot.

B. The Proposed Amendment engages in logrolling.

The Proposed Amendment also engages in "logrolling" of distinct subjects in violation of the Florida Constitution's single-subject requirement. This Court has long noted that the single-subject requirement "guards against 'logrolling,' a practice wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue." *Save Our Everglades*, 636 So. 2d at 1339; *see also Adv. Op. to Att'y Gen. re Indep. Nonpartisan Comm'n to Apportion Legislative & Cong. Districts Which Replaces Apportionment by Legislature*, 926 So. 2d 1218, 1224 (Fla. 2006) (defining logrolling as the practice wherein a single proposal combines unrelated issues,

"some of which electors might wish to support, in order to get an otherwise disfavored provision passed").

In *Nonpartisan Commission*, this Court concluded that a ballot initiative violated the single-subject requirement by combining the creation of a new redistricting commission with a separate change to the standards applicable to the districts that would be created by the commission.[3] 926 So. 2d at 1225–26. The combination of these two subjects constituted logrolling because "[a] voter who advocates apportionment by a redistricting commission may not necessarily agree with the change in the standards for drawing the legislative and congressional districts. Conversely, a voter who approves the change in district standards may not want to change from the legislative apportionment process currently in place." *Id*. at 1226. This Court concluded that the proposal engaged in logrolling and ordered it stricken from the ballot because "a voter would be forced to vote in the 'all or nothing' fashion that the single subject requirement safeguards against." *Id*.

Similarly, in *Save Our Everglades*, this Court found that an initiative that both established a "Save Our Everglades Trust" to restore the Everglades—and also imposed a fee on raw sugar to fund the Trust—embodied "precisely the sort

[3] A concurring opinion for three justices would have further found that the initiative in *Nonpartisan Commission* violated the single-subject requirement by joining congressional and legislative redistricting in the same proposal. *Id*. at 1229.

of logrolling that the single-subject requirement was designed to foreclose." 636 So. 2d at 1341. As the Court explained, "[o]ne objective—to restore the Everglades—is politically fashionable, while the other—to compel the sugar industry to fund the restoration—is more problematic. Many voters sympathetic to restoring the Everglades might be antithetical to forcing the sugar industry to pay for the cleanup by itself, and yet those voters would be compelled to choose all or nothing." *Id*. This Court ordered the "Save Our Everglades" initiative stricken from the ballot because it engaged in logrolling in violation of the single-subject requirement.

The Proposed Amendment here similarly violates the single-subject requirement by engaging in logrolling of disparate topics. For instance, in deciding how to cast their ballot, a voter considering the Proposed Amendment may favor decriminalizing the individual use and possession of marijuana, but oppose the legalization of large-scale commercial activity, including the commercial cultivation, distribution, and sale of marijuana throughout the State. Another voter might support legalizing commercial sales of marijuana for non-medical purposes, but oppose unregulated cultivation of marijuana by individuals in residential areas. A third voter may generally prefer the uniformity of state regulatory oversight of marijuana but oppose the non-uniform oversight that would result from the patchwork of local regulation and licensing of facilities

under the Proposed Amendment. And a fourth voter may favor the increased availability of marijuana, but strongly oppose the proposal's constitutional mandate that the legislature "accommodate" the possession of machine guns and bombs by persons trafficking in cannabis. Yet, "[t]he amendment forces the voter who may favor or oppose one aspect of the ballot initiative to vote . . . in an 'all or nothing' manner." *Adv. Op. to Att'y Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998).

The Proposed Amendment engages in classic logrolling of the sort that this Court has repeatedly condemned as violative of the single-subject requirement. This Court should find the proposal invalid and deny ballot placement to the Proposed Amendment.

C. The Proposed Amendment substantially alters or performs the functions of multiple branches and levels of state and local government.

Finally, the Proposed Amendment violates the single-subject requirement by substantially altering the functions of multiple branches—and levels—of government in a single initiative proposal. The proposal's reach includes not only altering and performing functions of the State's executive and legislative branches, but also dramatically changing the function of counties and municipalities by mandating the enactment of specific local ordinances and regulations and

subjecting all counties and municipalities to the provisions of Florida's Administrative Procedures Act, Chapter 120, Florida Statutes.

Although a proposed amendment may lawfully *affect* more than one branch of government, a ballot initiative violates the Florida Constitution's single-subject requirement where it "substantially alters or performs the functions of multiple branches" of government. *Adv. Op. to Att'y Gen. re Fish & Wildlife Conservation Comm'n*, 705 So. 2d 1351, 1353–54 (Fla. 1998). The Proposed Amendment here fails to satisfy this standard.

In *Save Our Everglades*, 636 So. 2d at 1340, this Court concluded that a ballot initiative violated the single-subject requirement by performing the functions of multiple branches of government. The initiative at issue would have "establishe[d] a trust for restoration of the Everglades" while "provid[ing] for funding and operation of the trust." *Id*. The court characterized this provision as implementing a "policy decision of statewide significance and thus perform[ing] an essentially legislative function." *Id*. The proposal would also have involved the exercise of "vast executive powers" to administer the trust and engage in capital projects and land acquisition. *Id*. Finally, the proposal would have performed a "judicial function" by making factual findings of liability and damages against the sugar cane industry. *Id*. By creating a "virtual fourth branch of government," the

initiative fell "far short of meeting the single-subject requirement" of the Florida Constitution. *Id*. at 1340–41.

Here, the proposal combines multiple functions of government in violation of the Florida Constitution's single-subject requirement. *See Evans*, 457 So. 2d at 1354 (when an amendment "changes more than one government function, it is clearly multi-subject"). The Amendment performs and alters the legislative function, both by establishing state policy and by limiting the Legislature's authority. *Cf. Save Our Everglades*, 636 So. 2d at 1340 ("This provision implements a public policy decision of statewide significance and thus performs an essentially legislative function."). The proposal establishes that, as a matter of state policy, marijuana should be legal in the interest of "efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom," as well as "health and public safety." Proposed Amendment at (a)(2)-(3). The proposal then details with great specificity, over approximately ten pages of text, how this policy is to be carried out by the Legislature, the Executive branch, and every county and municipality in the State.

Under the proposal, the Legislature may not legislate outside the narrow confines of what the proposal authorizes. Proposed Amendment at (c) ("These are minimum quantities, subject to increase by state, county, or municipal legislation, but not subject to decrease"); (c)(2) ("[N]othing in this subsection shall prevent

the state legislature from creating laws that permit outdoor growing for personal consumption."). And the proposal mandates the Legislature enact revisions to specific statutory provisions "no later than 6 months" from the proposal's effective date. *See* Proposed Amendment at (g)(4)-(7).

In addition to eviscerating the Legislature's structural role as the body entrusted with "[t]he legislative power of the state" under Article III of the Florida Constitution, the proposal also substantially performs the function of the executive branch by directing implementation of the proposal by the Department of Business and Professional Regulation through specific regulation and license provisions on specific timetables. *See* Proposed Amendment at (e)(1)-(2); (e)(6).

The Proposed Amendment's reach is not limited to the functions of state government. It dramatically alters the function of all counties and municipalities by compelling their participation in the regulation and licensing of marijuana. The proposal also alters the function of these local governments by expressly making them subject to provisions of Florida's Administrative Procedure Act, Chapter 120, Florida Statutes. *See* Proposed Amendment at (e)(5) (providing that certain procedures for licensing of cannabis establishments by counties and municipalities will "be subject to all requirements of s. 120.54, Florida Statutes (2016)"); *id*. at (e)(7) (authorizing counties and municipalities to issue licenses to cannabis establishments and providing that "[n]othing in this subsection shall limit such

relief as may be available" under numerous provisions of Chapter 120). Presently, municipalities are generally excluded from the definition of agency in Chapter 120, and county entities and officers are only subject under specific circumstances. *See* § 120.52 (defining agency to include officers and governmental entities that have "jurisdiction in one county or less, to the extent they are expressly made subject to [Chapter 120] by general or special law or existing judicial decisions. . . . This definition does not include a municipality . . . ."). These provisions which significantly alter the role of local governments with respect to Chapter 120 are buried on pages 7 and 8 of the proposal, and as noted above, are not disclosed in the ballot summary.

This Court has rejected other attempts to combine expansive changes to multiple levels of government into one citizen initiative. In *Advisory Opinion to the Attorney General re People's Property Rights Amendments Providing Compensation for Restricting Real Prop. Use May Cover Multiple Subjects*, the Court invalidated the proposed initiative because it "would have a distinct and substantial effect on more than one level of government." 699 So. 2d 1304, 1308 (Fla. 1997), *receded from on other grounds by Advisory Opinion to Atty. Gen. re 1.35% Prop. Tax Cap, Unless Voter Approved*, 2 So. 3d 968 (Fla. 2009). The initiative addressed the state, special districts, and local governments, all of which had various legislative, executive, and quasi-judicial functions applicable to land

use. *Id*. Because the amendment altered these multiple levels of government, it violated the single-subject requirement. *Id.*; *see also Adv. Op. to Atty. Gen. ex rel. Amendment to Bar Gov't from Treating People Differently Based on Race in Pub. Educ.*, 778 So. 2d 888, 896 (Fla. 2000) ("[T]he proposed amendments' substantial effect on local government entities, coupled with its curtailment of the powers of the legislative and judicial branches, renders it fatally defective and violative of the single-subject requirement."); *In re Adv. Op. to Att'y Gen. – Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994) ("By including the language 'any other governmental entity,' the proposed amendment encroaches on municipal home rule powers and on the rulemaking authority of executive agencies and the judiciary.").

Because the Proposed Amendment violates the single-subject requirement by substantially altering and performing the functions of multiple branches and levels of state and local government, it should be denied placement on the ballot.

CONCLUSION

"The voters of Florida deserve nothing less than clarity when faced with the decision of whether to amend our state constitution, for it is the foundational document that embodies the fundamental principles through which organized government functions." *Slough*, 992 So. 2d at 149. For the reasons stated above, the Proposed Amendment and its ballot title and summary fail to provide the

clarity voters deserve when considering whether to amend their constitution. This Court should issue an advisory opinion finding the Proposed Amendment invalid and prohibiting it from being placed on the ballot.

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that this computer-generated brief is prepared in Times New Roman 14-point font and complies with the font requirement of Florida Rule of Appellate Procedure 9.210(a), and that a copy has been provided on the 1st day of November, 2019, through the Florida Courts E-Filing Portal to:

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