

Amendment 2: Analysis of Intent

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When interpreting new laws, courts frequently refer to the intent of the “framers”, or intent of the legislature. The concept is to understand the purposes behind the drafting of a statute or constitutional provision. In the case of initiatives in Florida, it is important for voters to be aware of intent and that once voters approve an amendment, courts know that the interpretations are in fact the intent of informed voters as well. Voters should vote for an amendment fully understanding the intent of the drafters. Fostering voter understanding is the central purpose of this memo, and we do so by expressing the intent of the individuals who drafted the language for Amendment 2.

Initiative proposals must present a unified and understandable purpose to even be allowed on the ballot. Amendments allowing the use of medical marijuana have passed the Florida Supreme Court’s test for clarity and unified purpose twice--in 2014 and 2016.

This Amendment, “Use of Marijuana for Debilitating Medical Conditions”, was drafted by John B Morgan, Esq., Jon L. Mills, Esq., Tamar Todd, Esq., and Benjamin Pollara. They are the primary authors of the Amendment’s text (and its predecessor, the 2014 Amendment 2). The political committee “PC”, People United for Medical Marijuana “PUFMM”, has Mr. Morgan as its Chairman, Mr. Pollara as its Treasurer (Chairman and Treasurer being the only two legal positions in a Florida PC), and has retained Mr. Mills’ counsel since early 2013. When each iteration of the Amendment came before the Florida Supreme Court, PUFMM was the sole proponent to submit briefs and arguments before the Court.

The understanding and intent of the voters is central to constitutional interpretation by the courts, legislature, and implementing agencies. This document is intended to provide background for voters and is meant to provide perspective as to the drafter’s intent. If Amendment 2 is approved by the voters, that affirmation can be viewed as agreement with the intent of this amendment as expressed in this memo and in other voter information materials.

We hope this document will be of assistance to voters, voter groups, and the media in describing the meaning and purpose of this amendment. Ultimately, we also hope that this background will assist and expedite the future work of the legislature and agencies working to implement this constitutional provision.

BACKGROUND: Citizen initiated amendments to the Florida Constitution must adhere to what is known as the “single subject rule” before the Florida Supreme Court approves their presentation to voters on an election ballot. In practice, what this means is an amendment must have a “unity of purpose” (a single subject), as well as have a “substantial impact” on no more than one function of state government (another element of the single subject rule). The purpose of this requirement is to avoid confusing voters as to the true intent of a proposed measure.

In addition, the court must determine that the ballot title and summary do not mislead the voters and fairly inform them of the principal purpose of the proposal.

The Supreme Court of Florida has now twice ruled that the 2014 and the 2016 amendment passed the “single subject” test and provided fair notice to the voters. The constitutionality of the 2014 iteration was affirmed in a 4-3 opinion by the Court; 2016’s was 7-0.

The following section “Public Policy”, items (a)(1)-(3) inform the most basic functions of Amendment 2, and guide the purpose of the rest of the amendment’s text. These three subsections are the “single subject” and principal purpose of this Amendment.

ARTICLE X, 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.

- **The purpose of this section is to prohibit the arrest, prosecution, and conviction of qualifying patients and caregivers or other penalty or sanction being levied against qualifying patients and caregivers for the medical use of medical marijuana as defined in the amendments or for other actions such as the purchase, possession or transport of marijuana taken in compliance with this Amendment. In addition to the simple function of making legal that which is not legal in the absence of this amendment, (i.e. “the medical use of marijuana”), this subsection also creates an important, clarifying, limitation to the law. The qualifying clause, “in compliance with this section”, informs the reader that the removal of “criminal or civil liability or sanctions” only applies to individuals acting in compliance with not only the text of the Amendment but with other legislation and regulations adopted as set forth in and consistent with the Amendment.**

(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.

- **This subsection prohibits the arrest, prosecution, and conviction of physicians or other penalty or sanction being levied against physicians for the act of writing a “Physician Certification” (defined in the subsequent section (b)), if the physician does so in a manner that is in compliance with the text of the Amendment and with a reasonable standard of professional care.**

(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.

- **Finally, in order for patients and caregivers to have safe, reasonable access to medical marijuana under this law, and for physicians to be able to reasonably recommend marijuana to their patients with the knowledge they will be able to purchase a regulated, tested, and labeled product, the establishment of “Medical Marijuana Treatment Centers” [“MMTC’s”] is necessary. This subsection prohibits the arrest, prosecution, conviction, of owners, agents, and employees of MMTCs, or other penalty or sanction being levied against owners, agents, and employees of MMTCs, as long as they are registered with the Department of Health and are acting in compliance with not only the text of the amendment but with other legislation and regulations adopted as set forth in and consistent with the Amendment.**

(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.

- **Qualifying Debilitating Medical Conditions includes the listed specific debilitating conditions, but also includes any comparable debilitating conditions for which the physician believes the potential benefit outweighs the known risk. An individual physician makes the determination if a condition is comparable to those listed in the text of the amendment. Individuals without a debilitating condition would not qualify to receive medical marijuana under this Amendment.**

(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.”

- **The definition of Medical Marijuana includes all current statutory definitions of cannabis (or medical marijuana). The effect of the language is to assure the definition cannot be changed in a way that limits the scope of the application of this provision. Section 893.02(3), Fla. Stat. (2014), defines “cannabis” as “all parts of the plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.” Section 381.986(1)(b), Fla. Stat., describes “Low-THC cannabis” as: a plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin that is dispensed only from a dispensing organization.**

(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.

- **This Amendment allows for MMTCs to register with the Department of Health to engage in a variety of discrete activities, as outlined. MMTCs must be registered to engage in any of the activities listed in the definition, but do not have to engage in all of them. For example, a cultivator may be registered separately from a dispensary. Some of the activities listed may overlap between the various MMTCs (such as possessing medical marijuana). The Amendment provides for multiple types of MMTCs, including, but not necessarily limited to: cultivation; processing; distributing; dispensing; transportation; and administration. This language allows cross ownership of MMTCs, but does not require any cross ownership of MMTCs. A requirement that a single MMTC must perform all MMTC functions would be contrary to the language and intent of this Amendment, which clearly calls for a variety of business functions in the language. The Amendment also allows the legislature to set reasonable limits on ownership of multiple MMTCs by any operator. This ownership structure is intended to foster and support the sufficient**

availability of medical marijuana, reasonable cost, and safe use for qualified patients.

(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.

- **This definition intends to encompass all activity engaged in by a qualifying patient and his or her caregiver necessary for the treatment of the qualifying patient’s debilitating medical condition with medical marijuana that is consistent with the text of the Amendment.**

(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.

- **This definition allows for the Department of Health to place reasonable limits on the number of qualifying patients one caregiver may be allowed to assist, and on the number of caregivers that one qualifying patient may be allowed to have at the same time. Under the text of the Amendment, the Department could not set either number at zero, but could set a higher number for the number of qualifying patients a caregiver may assist and the number of caregivers a qualifying patient may be allowed to have. This provision also requires that caregivers be at least 21 years old and that they obtain an identification card.**

(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.

- **Under this amendment, minors may not receive Medical Marijuana without the written consent of their parent or legal guardian. Two parts of the Amendment provide this safeguard: first, physicians may only provide a certification to a minor**

child when the parent or legal guardian has consented in writing; and second, the Department of Health also must receive written consent from the parent or legal guardian before issuing an identification card to a minor, in addition to the physician certification.

(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.

- **A qualifying patient is a person who has been diagnosed with a debilitating medical condition, who has a physician certification, and a valid identification card. Under this Amendment, if the Department of Health delays issuing identification cards to qualifying patients and caregivers or refuses to do so, the valid physician certification issued to a patient will serve as a patient identification card for purposes of accessing medical marijuana and providing legal protection to the patient until such a time as the Department has complied with its obligations to issue identification cards.**

(c) LIMITATIONS.

- **The general purpose of this section is to make clear the limitations of this amendment. This Amendment is intended to facilitate the proper use of medical marijuana in the manner provided by the Amendment and to provide legal protections, and is not intended otherwise to affect criminal law (including other prohibitions on marijuana use, possession, production or sale), negligence law, medical ethics or malpractice, or insurance law.**

(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.

- **This Amendment does not affect the current statutory prohibition on the operation of a vehicle, aircraft, train or boat while under the influence of marijuana. The legislature may pass additional laws regarding operating motor vehicles under the influence of MMJ.**

(5) Nothing in this section requires the violation of federal law or purports to give immunity under federal law.

- **This provision is echoed in the Ballot Summary, and makes clear to Florida voters that this Amendment does not change Federal law, under which marijuana is currently prohibited, but which the Justice Department has stated it does not intend to devote resources to prosecute marijuana use complying with state medical marijuana states in most cases. A 2013 DOJ memo states that federal enforcement priorities for marijuana will include cases involving organized crime and the trafficking of other illicit substances, diversion of the marijuana to other states where it is prohibited, preventing the distribution of marijuana to minors, and preventing use of or production of marijuana on federal lands or property. Additionally, the “Rohrabacher-Farr Amendment” enacted by Congress as part of a federal appropriations bill prohibits the United States Department of Justice (“DOJ”) from expending funds to undermine state laws authorizing the use and distribution of medical marijuana.**

(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.

- **This section, 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. This provision also makes clear that the amendment does not change current laws relating to the use of marijuana in schools, correction institutions, detention facilities, and places of employment. While the amendment only addresses “smoking” specifically, the legislature and/or local governments may enact restrictions on other forms of consumption of marijuana in a 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.

- **This section makes clear that no insurance provider or government agency will be required to pay for expenses related to the use of medical 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.

- **This section is intended to make clear that existing laws relating to professional care, negligence or malpractice remain in effect. For example, a doctor remains potentially liable for other ethics violations or malpractice committed while treating a qualifying patient, and also remains potentially liable if the physician certification is made in a manner that does not comply with the requirements of this amendment. Additionally, qualifying patients remain liable for negligent conduct and professional malpractice regardless of the other protections in the Amendment for their medical use of marijuana.**

(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.

- **This section requires the Department of Health to adopt reasonable regulations to implement this Amendment and to provide for the availability and safe use of medical marijuana. The intent of these regulations is to facilitate the provision of medical marijuana to qualifying patients in a safe manner. The following subsections describe the duties of the Department with regard to issuing patient and caregiver identification cards, and registering MMTCs. The intent of this provision would prevent unnecessary and unreasonable burdens on access to medical marijuana such as arbitrary or overly restrictive limits on the number or size of MMTCs or an unreasonable delay in promulgating regulations and registering MMTCs. The final subsection allows for citizen enforcement in court if the Department does not issue reasonable and necessary regulations in a timely manner.**

(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.

- **The intent of this section is to ensure that the Department has adequate information about all caregivers and can ensure that caregivers are adequately responsible to serve as caregivers for qualified patients.**

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.

- **This section requires the Department of Health to impose standards for registering and regulating MMTCs. The standards must be reasonable and necessary to ensure the availability and safe use of medical marijuana by qualifying patients. The Department of Health shall not register MMTCs until the MMTCs are in compliance with the established standards. The Department shall establish standards for 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.

- **The intent of this provision is to give the Department of Health the authority to limit the amount of medical marijuana a qualifying patient may purchase at any given time. In other states with medical marijuana programs, an "adequate supply" is a term that is generally understood to be a supply ranging from 30-90 days. However, this provision allows for qualifying patients to increase their supply beyond the limit established by the Department if a greater amount is appropriate for a particular qualifying patient's 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.

- **This provision gives any Florida citizen standing to seek judicial relief to compel the Department into compliance with its duty. Regulations that would have the effect of preventing successful, timely implementation of the program consistent with the intents and purposes of the Amendment would fail to satisfy the requirement for reasonable regulations.**

(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.

- **This Amendment does not require or need any legislative implementation to take effect. However, the Legislature may pass laws that further the intent and purposes of this amendment, and the Legislature may pass laws that otherwise expand access to marijuana. However, the Legislature may not pass laws that would be contrary to the purpose or nullify this Amendment.**

Note also that the existing law allowing for “Compassionate use of low-THC and medical cannabis,” found in Section 381.986, Florida Statutes, first adopted in 2014 and amended in 2016, is not implementing legislation for this Amendment. This Amendment defines medical marijuana differently and the scope and standards for this amendment are intended to provide broader access to more qualifying patients than provided for in the existing statutes.

(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.

Short summary of the process by which someone accesses medical marijuana from an MMTC under this Amendment.

Before a person may obtain medical marijuana, the following conditions must occur:

1. The patient must visit a licensed Florida physician, whereupon the physician shall conduct an examination and full assessment of the patient’s medical history to determine the whether the patient has a debilitating medical condition, and whether the use of medical marijuana should be considered.
2. The physician must conclude that: (a) in his or her professional opinion, the patient suffers from a debilitating medical condition; (b) that the potential benefits of using marijuana likely outweigh any health risks; and (c) the specified time period for which the physician recommends the use of medical marijuana.

3. The physician must certify the above in a signed, written statement.
4. Using the physician's certification, the patient must then obtain an identification card from the Florida Department of Health.
5. A qualifying patient is then permitted to go to an MMTC to obtain medical marijuana in an amount not in excess of the allowable limit as defined by the Florida Department of Health.