

IN THE SUPREME COURT OF FLORIDA

Thursday, December 5, 2023

SC23-682

ADVISORY OPINION TO THE
ATTORNEY GENERAL RE: ADULT
PERSONAL USE OF MARIJUANA

**MOTION FOR RECONSIDERATION WITH MOTION FOR LEAVE TO
APPEAR AS AMICUS CURIAE PURSUANT TO RULE 9.370**

COMES NOW The Doc App, Inc., doing business as My Florida Green (hereinafter referred to as "My Florida Green"), through its undersigned counsel, pursuant to Florida Rule of Appellate Procedure 9.370. My Florida Green respectfully requests that this Honorable Court reconsider its prior decision, which interpreted My Florida Green's "Notice of Intent to File Amicus Curiae Brief in Opposition" as a motion for leave to appear as amicus curiae and subsequently denied it. My Florida Green submits this motion for reconsideration based on the following grounds:

1. Grounds for Reconsideration Due to Premature Interpretation by the

Court: The Court interpreted My Florida Green's notice as a motion for leave to appear as amicus curiae before My Florida Green could formally present reasons for the delayed submission of its amicus brief. This delay stemmed from an evolving understanding of the proposed bill's impacts, which only became clear after oral arguments.

2. **Significance of Contribution Post-Oral Arguments:** Despite the delay, My Florida Green is confident that its amicus brief will offer a unique and insightful perspective. Following a thorough analysis post-oral arguments, My Florida Green recognized significant implications of the bill that necessitate its participation as amicus curiae.

3. **Focus of the Amicus Brief on Federal Recognition of Medical Marijuana:** The amicus brief will thoroughly explore the pathway for federal recognition of medical marijuana as a state right, grounded in the principles of the 10th and 14th Amendments to the U.S. Constitution. It will illuminate the legal foundation for recognizing the regulation of medical marijuana as a state right, distinct and essential to the health and welfare of citizens. While acknowledging the legitimacy of federal regulation concerning recreational marijuana, the brief will underscore Florida's right to preserve, protect, and promote the existing legal status of medical marijuana under the Florida Constitution. The brief aims to articulate why this right should be acknowledged and upheld under federal law, particularly in the context of state health and welfare regulations, providing such regulation makes clear distinction between medical marijuana, and its recreational use.

4. Issues the brief addresses include:

- a. The constitutional complexities of the "Smart and Safe Bill," especially its impact on medicinal and recreational marijuana use.
- b. The need for state-exclusive regulation of medical marijuana and the role of federal interests in regulating recreational marijuana.
- c. The bill's potential effects on individual privacy rights and equal protection under the law.
- d. The economic and healthcare impacts of the bill, emphasizing clarity for the electorate.

5. Legal Framework and Statutory Allowance: In accordance with legal precedents such as *Ciba-Geigy Ltd. v. Fish Peddler, Inc.*, 683 So. 2d 522 (Fla. 4th DCA 1996), amicus curiae briefs serve to assist the Court in complex cases and contribute to the exposition of difficult issues.¹ The Florida Rules of Appellate Procedure allow for the Court to grant leave for later service of an amicus brief, thereby accommodating submissions like ours that have substantial value to the case.

¹ "Briefs from amicus curiae," ... "[a] friend of the court," are generally for the purpose of assisting the court in cases which are of general public interest, or aiding in the presentation of difficult issues. *Ciba-Geigy Ltd. v. Fish Peddler, Inc.*, 683 So. 2d 522 (Fla. 4th DCA 1996).

6. **Statement of Law:** Generally, an “amicus curiae must serve its brief no later than 5 days after the first brief of the party being supported is served. An amicus curiae that does not support either party must serve its brief no later than 5 days after the initial brief or petition is filed.” However, the statute goes on to say that “*a court may grant leave for later service*, specifying the time within which an opposing party may respond.” *Amendments to Florida Rules of Appellate Procedure*, 827 So. 2d 888, 922–23 (Fla. 2002). (Emphasis added.)

7. **Interest of the Amicus Curiae:** My Florida Green, as a key advocate for medical marijuana rights in Florida and servicing over 40,000 patients, offers the Court a unique perspective, particularly regarding the interplay between state autonomy in healthcare management and federal supremacy under the Commerce Clause.

8. **Timeline for Filing and Service:** If reconsidered, and leave is granted, My Florida Green commits to serving the amicus brief within three (3) business days of the order granting permission to file, as it is already prepared.

9. **Reasons for Reconsideration:**

a. **Understanding of Impact Post-Oral Arguments:** Delay in appearing as amicus brief was not due to oversight, but a result of a

nanced understanding of the proposed bill's impact that only became apparent post-oral arguments. was after careful consideration and analysis following the oral arguments that My Florida Green recognized the substantial implications of the bill and determined the necessity of submitting an amicus brief.

b. Significance of Late Realization: While we acknowledge the timing of our realization and subsequent motion was beyond the typical procedural timeframe, the insights and perspectives that emerged post-oral arguments are critical and potentially influential in the Court's deliberations on this matter.

c. Commitment to Informative Contribution: Despite the untimeliness, My Florida Green believes its contribution will be uniquely informative, reflecting a deepened understanding of the bill's potential ramifications that were not initially evident.

10. Compliance with Rule 9.210(b): The proposed amicus brief is compliant with the requirements of Florida Rule of Appellate Procedure 9.210(b). It focuses on legal arguments relevant to the raised issues, omits any statement of case and facts, and adheres to the 20-page limit.

11.Prejudice and Assistance to Tribunal: The brief will not prejudice any party, as it introduces no new evidence but provides legal arguments and analysis of the potential impacts of the Court’s decision. My Florida Green’s expertise in medical marijuana law and patient advocacy will assist the Court in its deliberations.

WHEREFORE, My Florida Green respectfully requests that this Court reconsider its previous decision and grant it leave to file amicus curiae brief.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished via the e- Filing Portal on this 7th day of December 2023, to the following:

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