SC25-2009

In the Supreme Court of Florida

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

ON A PETITION FOR AN ADVISORY OPINION TO THE ATTORNEY GENERAL

SPONSOR SMART & SAFE FLORIDA'S RESPONSE TO ATTORNEY GENERAL'S NOTICE OF DISMISSAL

GLENN BURHANS, JR. (FBN# 605867)
ABIGAIL CORBETT (FBN# 31332)
STEARNS WEAVER MILLER
106 East College Avenue, Suite 700
Tallahassee, Florida 32301
(850) 329-4850
gburhans@stearnsweaver.com
acorbett@stearnsweaver.com

BARRY RICHARD (FBN# 105599)
BARRY RICHARD LAW FIRM
101 E. College Ave., Suite 400
Tallahassee, FL 32301
(850) 251-9678

DAN HUMPHREY (FBN# 1024695)
DAVID M. WALSH (FBN# 1048823)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
2601 South Bayshore Dr, Suite 1550
Miami, FL 33133
(305) 402-4880
danielhumphrey@quinnemanuel.com
davidwalsh@quinnemanuel.com

JOHN F. BASH (*pro hac vice*)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
600 W. 6th St., Suite 2010
Austin, TX 78701
(737) 667-6100
johnbash@quinnemanuel.com

ELLYDE R. THOMPSON (*pro hac vice*)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
295 5th Avenue, 9th Floor
New York, New York 10016
(212) 849-7344
ellydethompson@quinnemanuel.com

RACHEL G. FRANK (*pro hac vice*)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
555 13th St. NW, Suite 600
Washington, DC 20004
(202) 538-8380
rachelfrank@quinnemanuel.com

Sponsor Smart & Safe Florida hereby responds to the Attorney General's Notice of Dismissal notifying the Court of his withdrawal of his request for an advisory opinion and asking the Court to dismiss this case. The Attorney General's withdrawal does not divest this Court of jurisdiction to render an advisory opinion in this matter and accordingly there is no basis to dismiss the case.

BACKGROUND

1. In 2025, the Sponsor proposed a ballot initiative to permit the adult personal use of marijuana in the state of Florida. The proposed amendment closely tracks a 2024 proposal, which this Court determined met the constitutional requirements for placement on the ballot. The Sponsor, however, made certain changes to address concerns expressed by voters relating to marketing and packaging attractive to children, smoking and vaping marijuana in public, and licensing. After drafting the proposed amendment, the Sponsor submitted a petition form to the Secretary of State, which was approved. The Sponsor then began circulating the petition and collecting signatures for placement on the 2026 General Election Ballot.

On December 17, 2025, once the necessary signature threshold was met, § 15.21, Fla. Stat., the Attorney General petitioned this Court under article IV, section 10 of the Florida Constitution and section 16.061 of the Florida Statutes (2025), seeking an advisory opinion on the validity of the Proposed Amendment. That request triggered this Court's jurisdiction under article V, section 3 of the Constitution, which provides that "[t]he supreme court * * * []shall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law." Consistent with its Rules of Procedure, the Court ordered briefing and designated February 5, 2026, as the date for oral argument.

2. Meanwhile, the Sponsor has been actively engaged in litigation against the Secretary of State in his official capacity and other parties relating to the initiative signature requirements.

In mid-2025, the Sponsor intervened in a pending federal case challenging the constitutionality of certain new statutory requirements for the initiative process, including a prohibition on the collection of petitions by non-residents, § 100.371(4)(b)(3), Fla. Stat. *See Florida Decides Healthcare, Inc. v. Byrd*, No. 4:25cv211-MW/MAF

(N.D. Fla.). The federal district court enjoined the Secretary of State, the Attorney General, and various County Supervisors of Elections and State Attorneys from enforcing Florida statutory provisions that prohibited non-citizens and non-residents from gathering petition signatures, on the ground that the restrictions likely violate the U.S. Constitution, ECF No. 283. Although the United States Court of Appeals stayed that injunction pending appeal, ECF No. 525 at 3, the district court has set a trial on the merits for next week. ECF No. 548 at 2.

Separately, the Sponsor brought suit against the Secretary and the Leon County Supervisor in the Second Judicial Circuit seeking declaratory and injunctive relief against the invalidation of over 70,000 petitions on the novel grounds that the signatories were "inactive" voters under section 98.065(4)(d) or that the petitions were collected by non-residents or non-citizens. *See Byrd v. Smart and Safe Florida*, --- So.3d ---, 2026 WL 184610, at *2 (Fla. 1st DCA Jan. 23, 2026). The district court entered a partial injunction, but the First District Court of Appeal vacated it. *See id.* The Sponsor has moved for rehearing *en banc*, Mot. for Rehearing *en Banc*, filed Jan.

25, 2026, and intends to seek this Court's review if reconsideration is denied.

3. On February 2, 2026, less than 72 hours before oral argument in this matter, the Secretary of State announced that he had determined that the proposed amendment "failed to meet the legal requirements for placement on the 2026 General Election Ballot." That determination rested on the Secretary's conclusion that the Sponsor failed to meet the requisite signature threshold in light of the invalidations that the Sponsor is contesting in the legal actions described above. Should the Sponsor prevail in those actions, up to 98,000 petitions would be added to the total, easily surpassing the 880,062 necessary for ballot placement.

In addition, the day before the Secretary's announcement, the Sponsor submitted a public records request to all 67 County Supervisors of Elections to ascertain the number of verified valid signed petitions, as well as the number of signed petitions that should have been verified as valid. Depending on the results of that request, the Sponsor may file an action in the coming weeks directly challenging the Secretary of State's determination that the Sponsor did not obtain the requisite number of verified petition signatures.

4. Despite the fact that the Secretary's February 2 conclusion is currently subject to multiple legal challenges, the Attorney General has now filed a "Notice of Dismissal" in this Court. That notice urges the Court to "dismiss this case and cancel the oral argument scheduled for February 5, 2026." Not. of Dismissal, filed Feb. 2, 2026.

ARGUMENT

The Court should deny the Attorney General's request for dismissal.[1] The Attorney General claims that dismissal is required under Section 16.061(4), Florida Statutes. That statute provides:

> If the Attorney General is notified by the Secretary of State pursuant to s. 15.21(2) that an initiative petition no longer qualifies for ballot placement for the ensuing general election, the Attorney General must withdraw his or her request for an advisory opinion if the Supreme Court has not yet fulfilled that request. If the Secretary of State subsequently resubmits the initiative petition if the criteria in s. 15.21(1) are again satisfied and the court has not issued its advisory opinion, the Attorney General must file a new petition seeking such advisory opinion.

[1] The filing made by the Attorney General is captioned a "Notice of Dismissal." It requests, however, entry of an order dismissing the case and cancelling oral argument. To the extent the Court construes the "Notice" as a motion, the Court should deny the motion. To the extent it construes it as a "Notice of Dismissal," it should strike the notice.

If section 16.061(4) were construed to require this Court to dismiss an advisory-opinion case where the Secretary of State's determination that an initiative no longer qualifies for ballot placement is currently subject to legal challenge, as it is here, the statute would be unconstitutional. Nothing in the Constitution permits the Legislature to authorize the Attorney General to divest this Court of jurisdiction through a withdrawal of a request. As a practical matter, moreover, such a novel procedure would confer on a Secretary of State effectively unreviewable authority to foreclose an initiative's placement on the ballot, even on legally invalid grounds.

For that reason, section 16.061(4) should be construed not to divest this Court of jurisdiction, at least where the Secretary of State's determination is currently subject to legal challenge. If the Court concludes that the statute is not amenable to that construction, however, it should hold that the statute is unconstitutional as applied here.

1. Article IV, Section 10 of the state Constitution provides:

> The attorney general shall, as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI. The justices shall, subject to their rules of procedure, permit interested

> persons to be heard on the questions presented and shall render their written opinion no later than April 1 of the year in which the initiative is to be submitted to the voters pursuant to Section 5 of Article XI.

The Attorney General's request under that provision in turn invokes this Court's advisory-opinion jurisdiction under Article V, Section 3(10): "The supreme court. . . [s]hall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law."

By their plain terms, those provisions do not allow for any mechanism to divest this Court of jurisdiction once the Attorney General has made the request for an advisory opinion. To the contrary, both provisions state in mandatory terms that this Court "shall render" an advisory opinion. That language does not contemplate a mechanism for the Executive Branch to divest this Court of jurisdiction previously invoked.

It is axiomatic that "provisions of the Constitution cannot be altered, contracted, or enlarged by legislative enactments." *Havoco of America, Ltd. v. Hill*, 790 So. 2d 1018, 1029 (Fla. 2001). For that reason, Section 16.061(4) would be unconstitutional were it

construed to authorize the Secretary of State or the Attorney General to divest this Court of jurisdiction to render an advisory opinion.

Additionally, the statute, read to apply in a situation such as this, would violate the separation of powers (Article II, Section 3) by conditioning the continuation of a pending judicial proceeding on an executive branch determination (by the Secretary of State) that is not in the Court's control and that is non-final. *See Bush v. Schiavo*, 885 So. 2d 321, 330-31 (Fla. 2004) (holding unconstitutional a statute authorizing the Governor to issue a stay to prevent the withholding of life support and explaining that "[u]nder the express separation of powers in our state constitution," "'the judiciary is a coequal branch of the Florida government vested with the sole authority to exercise the judicial power,' and 'the legislature cannot, short of constitutional amendment, reallocate the balance of power expressly delineated in the constitution among the three coequal branches.'" (quoting *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 268–69 (Fla. 1991))); *see also Children A, B, C, D, E, & F*, 589 So. 2d at 269 ("The judicial

branch cannot be subject in any manner to oversight by the executive branch.").

The Attorney General cites 100.371(14)(a)(1) ("Each signature shall be dated when made and shall be valid until the next February 1 occurring in an even-numbered year for the purpose of the amendment appearing on the ballot for the general election occurring in that same year, provided all other requirements of law are met."). But that provision merely establishes that a sponsor must secure the requisite number of signatures by February 1 of the election year. It does not shield the Secretary's invalidation of submitted petitions from legal scrutiny or affect this Court's jurisdiction.

The broader context here illustrates the constitutional infirmity in applying the statute to divest the Court of jurisdiction in these circumstances. Over 1.4 million Floridians have exercised their constitutionally granted right to sign the Sponsor's initiative petition to provide for safe, regulated, adult-only use of marijuana. The Constitution requires this Court to render an advisory opinion by April 1, 2026. Art. IV, Sec. 10, Fla. Const. Immediately dismissing advisory-opinion review here, when there are pending outcome-determinative disputes about the Secretary's disqualification of tens

of thousands of petitions, may leave this Court with little or no time to issue an advisory opinion in compliance with that constitutional deadline should the Sponsor prevail in the pending cases. That would frustrate the people's exercise of their right to amend the Constitution by initiative under Article XI of the Constitution.

Further, the Attorney General's understanding of section 16.061(4) fails the test for restrictions on the initiative process set out in *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053 (Fla. 2010) (plurality). That decision requires that "any legislation and administrative rules affecting the initiative process are *either* neutral, nondiscriminatory regulations of petition-circulation and voting procedure, which are explicitly or implicitly contemplated by article XI, *or, if otherwise,* are '*necessary* for ballot integrity." *Id.* at 1058 (emphases in original). Affording the Secretary of State effectively unreviewable discretion to withhold initiatives from the ballot is neither contemplated by the Constitution nor necessary for ballot integrity.

In fact, this Court has repeatedly confirmed that it retains jurisdiction even if the Secretary of State asserts that the February threshold is not satisfied. *See Advisory Op. re: Limited Authorization*

for Casino Gambling, Case No. SC22-25 (Fla. Apr. 14, 2022); *Advisory Op. re: Adult Use of Marijuana*, 315 So. 3d 1176, 1177 (Fla. 2021); *Advisory Op. re: Florida Locally Approved Gaming*, 656 So. 2d 1259 (Fla. 1995); *Advisory Op. re: Casino Authorization, Taxation and Regulation*, 656 So. 2d 466, 467 (Fla. 1995).

Of course, in a case where the Secretary of State has concluded that an initiative does not meet ballot-placement requirements and the sponsor elects not to challenge that determination, then a sponsor should notify the Court that it does not intend to contest the Secretary's determination. The Court could then dispose of the petition without rendering an opinion under article IV, Section 10 because the initiative would not be submitted to the voters in that year. But that differs fundamentally from a divestiture of jurisdiction by action of the Executive Branch in an actively disputed matter.

2. Given those constitutional principles, the Court should, as a matter of constitutional avoidance, construe Section 16.061(4) not to divest this Court of jurisdiction while challenges to the Secretary of State's determination remain pending. *Brito v. Salas*, 2025 WL 3765686, at *9 (Fla. Dec. 30, 2025) ("[W]here a statute is susceptible of two constructions, by one of which grave

and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." (quoting *Burr v. Fla. E. Coast Line Ry. Co.*, 81 So. 464, 468 (Fla. 1919)). In particular, the statutory language is amenable to a construction that does not treat the Attorney General's withdrawal request as jurisdictionally controlling. Rather, that request notifies the Court and the sponsor of the Secretary of State's conclusion, allowing the sponsor to determine whether to challenge that conclusion. If the sponsor chooses not to challenge the conclusion, the Court may then itself elect to dispose of the petition without rendering an opinion.

That view accords not only with the Constitution but also with the apparent purpose of section 16.061(4). The statute was designed to address situations where initiatives failed to meet ballot requirements one election cycle and had to therefore be reintroduced in the *next* cycle—not for situations such as this when there is a pending, valid dispute about whether the initiative met the constitutional criteria for ballot placement for the upcoming general election. The actual scenario that the statute contemplates is revealed by the last sentence in the subsection: "If the Secretary of

State subsequently resubmits the initiative petition if the criteria in s. 15.21(1) are again satisfied and the court has not issued its advisory opinion, the Attorney General must file a new petition seeking such advisory opinion." That understanding of the basic purpose of the statute is consistent with the saving construction proposed here.

3. Should the Court conclude, however, that the statute is not amenable to that construction, it should declare the statute unconstitutional as applied here. For the reasons stated above, the Constitution does not permit the Legislature to divest the Court of jurisdiction, at least when the sponsor is actively contesting the Secretary of State's determination that the initiative lacks the requisite signatures.

CONCLUSION

The Court should deny the Attorney General's request to dismiss this matter.

Respectfully submitted this 3rd day of February, 2026.

s/ Daniel L. Humphrey
Daniel L. Humphrey, Esq.
Florida Bar No. 1024695

GLENN BURHANS, JR. (FBN# 605867)
STEARNS WEAVER MILLER
106 East College Avenue, Suite 700
Tallahassee, FL 32301
(850) 329-4850
gburhans@stearnsweaver.com
ABIGAIL G. CORBETT (FBN# 31332)
STEARNS WEAVER MILLER
150 W. Flagler Street, Suite 2200
Miami, FL 33130
(305) 789-3463
acorbett@stearnsweaver.com

BARRY RICHARD (FBN# 105599)
BARRY RICHARD LAW FIRM
101 E. College Ave., Suite 400
Tallahassee, FL 32301
(850) 251-9678
barryrichard@barryrichard.com

DAN HUMPHREY (FBN# 1024695)
DAVID M. WALSH (FBN# 605867)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
2601 South Bayshore Dr, Suite 1550
Miami, FL 33133
(305) 402-4880
danielhumphrey@quinnemanuel.com
davidwalsh@quinnemanuel.com

JOHN F. BASH (*pro hac vice*)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
600 W. 6th St., Suite 2010
Austin, TX 78701
(737) 667-6100
johnbash@quinnemanuel.com

ELLYDE R. THOMPSON (*pro hac vice*)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
(212) 849-7344
ellydethompson@quinnemanuel.com

RACHEL FRANK (*pro hac vice*)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
555 13th Street NW, Suite 600
Washington, DC 20004
(202) 538-8380
rachelfrank@quinnemanuel.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing

was electronically filed via the Florida Court's E-Filing Portal and served by the Clerk maintained website via e-service to the following this 3rd day of February, 2026:

Jeffrey Paul DeSousa
Samuel Elliot
Casey Witte
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399
jeffrey.desousa@myfloridalegal.com
jenna.hodges@myfloridalegal.com
Counsel for the Attorney General

Mohammad O. Jazil
Martin C. Wolk
Holtzman Vogel Baran
Torchinsky & Josefiak PLLC
119 South Monroe St., Ste 500
Tallahassee, FL 32301
mjazil@holtzmanvogel.com
mwolk@holtzmanvogel.com
zbennington@holtzmanvogel.com
Counsel for Florida Chamber of Commerce, Florida Legal Foundation, and Judge Frank Shepherd

Ricky L. Polston
Daniel E. Nordby
Benjamin J. Gibson
Margaret A. McCormick
Shutts & Bowen LLP
215 South Monroe St., Ste 804
Tallahassee, FL 32301
rpolston@shutts.com
dnordby@shutts.com
bgibson@shutts.com
mmccormick@shutts.com
Counsel for Associated Industries of Florida

Jeremy D. Bailie
Weber, Crabb & Wein, P.A.
5453 Central Avenue
St. Petersburg, FL 33710
jeremy.bailie@webercrabb.com
honey.rechtin@webercrabb.com
natalie.deacon@webercrabb.com
Counsel for The Drug Free America Foundation

Jordan Huffer, *pro se*
4210 S. Ocean Boulevard #3
Highland Beach, FL 33487
jordan@motorgroup.com

Michael M. Brownlee
The Brownlee Law Firm, P.A.
200 E Robinson Street, Suite 800
Orlando, FL 32801
mbrownlee@brownleelawfirmpa.com
ktaccetta@brownleelawfirmpa.com
Counsel for Parental Rights Florida

s/ Daniel L. Humphrey.
Daniel L. Humphrey