MEDICAL MARIJUANA IN FLORIDA: THE PROSPECTS OF AMENDMENT 2 AND THE RISE OF CHARLOTTE'S WEB

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Florida's general election on November 8th is fast approaching, and once again the Florida Right to Medical Marijuana Initiative, Amendment 2 is on the ballot. Amendment 2 is similar to the amendment presented to voters in Florida's general election during 2014, except this time the Right to Try Act is in effect and the first medical marijuana dispensaries in Florida have opened their doors.

The Right to Try Act (HB 307), which was signed into law by Governor Rick Scott during March 2016, expands the framework and strengthens the regulatory structure of the 2014 Compassionate Medical Cannabis Act, commonly known as Florida's "Charlotte's Web" law, which legalized low-THC (non-euphoric) cannabis for patients who are Florida residents, suffer from cancer or a condition that chronically produces seizures or severe and persistent muscle spasms, and have tried other treatments without success. It also allows doctors to recommend medical cannabis with higher-THC content to terminally ill patients who are "eligible patients" as defined by the Right to Try Act.

Trulieve was the first dispensary in Florida to become operational, opening a location on July 26, 2016 in Tallahassee. Trulieve also opened another medical cannabis dispensary in Clearwater in August, which in addition to providing the low-THC medical cannabis, is the only dispensary in Florida currently carrying high-THC medical marijuana for eligible patients. Now, Trulieve is looking for other potential locations for its dispensaries throughout the state and has sent inquiries to Miami-Dade, Broward, and Palm Beach Counties asking about zoning regulations for potential dispensaries. With dispensaries sprouting up throughout Florida, cities and counties all over the state are passing temporary moratoriums as they contemplate how to handle this issue. More than two dozen Florida cities, including Hialeah, Miami Springs, Boca Raton, Delray Beach and Orlando, have already regulated or completely banned medical marijuana sales at least on a temporary basis until they can pass ordinances fully regulating medical marijuana related activities.

An approval of Amendment 2 this November would expand the marijuana industry in Florida, opening the floodgates to what is expected to be a lucrative $1.5 billion industry by 2020. According to Section 5 of Article XI of the Constitution of the State of Florida, a constitutional amendment must win a supermajority vote of 60 percent of those voting on the question to be enacted. In 2014, Amendment 2 failed to achieve the supermajority requirement by just 2.38 percent, with critics arguing the bill was too broad. Recent polls indicate that support for Amendment 2 is growing with about 70 percent of Florida voters in favor of the amendment. In this year's Amendment 2, the drafters sought to address some of the criticism directed at the 2014 version, including clarifying what is meant by debilitating medical conditions that would qualify for medical marijuana treatment.

To make matters more complex, on August 10, 2016, the U.S. Drug Enforcement Administration reaffirmed marijuana's status as a Schedule 1 drug, which is defined as a drug that has no currently accepted medical use and a high potential for abuse. Legal experts have often debated how the federal and state governments will combat one another on this issue, but thus far, it appears as though the panacea for marijuana advocates is as simple as tweaking the language to classify marijuana use as decriminalized versus legalized. Congress

quietly attempted to do away with marijuana raids in December, 2014 through an omnibus spending bill rider that was intended to prohibit the Justice Department, including the DEA, from using funds relating to that bill to prevent states from implementing their medical marijuana laws (the "Rohrabacher-Farr Amendment"). Despite the Rohrabacher-Farr Amendment's passage, however, medical marijuana raids have continued throughout the country. On August 16, 2016, a three-judge panel of the U.S. Court of Appeals for the 9th Circuit in U.S. v. McIntosh held that the Rohrabacher-Farr Amendment prohibits the federal prosecution by the Justice Department of medical cannabis defendants based on conduct that is allowed by the state's medical cannabis law. Nonetheless, the Rohrabacher-Farr Amendment, which must be renewed every year, has no impact on the IRS or the Treasury Department and as a result, fails to address the many difficulties faced by medical marijuana businesses in trying to operate within the parameters of state and federal law. Although the Rohrabacher-Farr Amendment was set to expire on September 30, 2016, Congress recently approved a short term extension of the Rohrabacher-Farr Amendment through December 9, 2016.

Needless to say, medical marijuana businesses are not in the clear and medical marijuana's continued classification as a Schedule 1 drug under federal law is likely to pose a number of challenges for dispensaries operating in Florida, whether or not Amendment 2 passes this November.

For more information on this topic, please contact Nicole L. Levy on the firm's Dispute Resolution Team or, David Black on the firm's Business, Finance & Tax Team.

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