

# 3rd Time May Be The Charm For Florida Cannabis Legalization

By **Ashlee Tising and Jonathan Robbins** (September 16, 2022)

They say that the third time is the charm! After two unsuccessful attempts, Florida's voters' efforts to expand its medical marijuana program to recreational or adult use just got another shot, this time backed by country music duo the Bellamy Brothers, along with Trulieve, Florida's largest operator.

A constitutional ballot initiative was filed last month for Florida's 2024 general election titled "Adult Personal Use of Marijuana."<sup>[1]</sup>

Unlike the 2016 constitutional amendment that broadened Florida's medical cannabis landscape, the last two attempts to expand Florida's cannabis laws to adult use via constitutional amendment did not make it to the ballot. Both adult-use measures, meant for the 2022 general election, were rejected by the Florida Supreme Court on grounds that the summaries or the proposals in their entirety would mislead Florida voters.

The backers of the new initiative, not to mention the majority of Florida's voters, are hopeful that the new measure will survive any challenge and make it to the ballot. Before that happens, supporters will have to gather around 900,000 signatures from Florida voters. Thereafter, if the specific language of the ballot initiative passes muster, Florida's existing cannabis program will be expanded and we can expect more players to enter the Florida market.

Howard and David Bellamy stated in a video announcing the push "More than 140 million Americans already have the freedom to partake in responsible cannabis use and it is past time for Florida to provide its law-abiding adults the same privilege."

If approved by Florida voters, individuals 21 or older will be allowed "to possess, purchase, or use marijuana products and marijuana accessories for non-medical personal consumption by smoking, ingestion, or otherwise."

Per the full text of the amendment, the effective date of the ballot initiative, should the constitutional amendment pass, is "six (6) months after approval by voters." However, entrepreneurs hoping to get their hands on a golden ticket will likely have to wait. As with most constitutional amendments, the Florida Legislature will still have the final say on how the adult-use industry will be structured and history tells us that this will not happen quickly.

In fact, while it appears that the majority of Florida's electorate — not to mention those in the industry — fully support the initiative, some have expressed concern that this may further delay the issuance of additional vertically integrated medical licenses, or MMTC as they are called in Florida, required by law, which have been in limbo since 2017.

Section 381.986 of the Florida Statutes created the framework for the state's medical marijuana industry when it was amended in 2017 and mandated the Florida Department of Health to grant new licenses as the number of authorized patients increases. With more than 700,000 patients, Florida should have issued at least another 22 licenses to



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keep up with the population — doubling the number of operators in Florida. That has not happened.

Gov. Rick DeSantis' office has blamed the delay on litigation over the statute, but that blame is misplaced. The specific case alluded to by the governor, *Florigrown LLC v. Florida Department of Health*, was resolved more than one year ago and never truly affected the issuance of additional licenses.[2]

Indeed, in a recent appeal of *Louis Del Favero Orchids Inc. v. Florida Department of Health*, a decision denying a Florida MMTC license to applicant Louis Del Favero Orchids, Judge Ross Bilbrey of Florida's First District Court of Appeal, sided with the Department of Health on its denial, but specifically called out and scolded Florida officials for not following up on promises to grant additional licenses.[3] According to a recent *Citrus County Chronicle* article, Judge Bilbrey's opinion "called out the state's foot-dragging." [4]

Though DeSantis has repeatedly assigned blame for the delays on the *Florigrown* case,[5] this does not appear to be supported by the facts. For example, the state statute also provides for the issuance of an MMTC license to a certain class of Black farmers. While this license was not implicated in any way by litigation, it still has yet to be issued.

Based upon the state's long history of stalling the issuance of new licenses, skeptics have expressed concern that Florida's Department of Health will attempt to claim that the issuance of new licenses should be further delayed pending the outcome of the new ballot initiative.

While the language in the proposed amendment is extremely limited, it does include the following:

- "The Legislature may provide for the licensure of entities that are not Medical Marijuana Treatment Centers to acquire, cultivate, possess, process, transfer, transport, sell, and distribute marijuana products and marijuana accessories for personal use by adults."
- "Nothing in this amendment prohibits the Legislature from enacting laws that are consistent with the amendment."

Notably absent from the initiative is the provision of a social equity program.

Most states that have enacted adult-use legislation have taken steps to ensure that people from communities disproportionately harmed by marijuana prohibition and discriminatory law enforcement are included in the new cannabis industry. This typically includes specific qualifications and benefits for social equity applicants and licensees, judicial reform and reinvestment in disproportionately affected areas.

The initiative is also silent with respect to the continuation of Florida's full-vertical integration requirement — mandating that all licensees control the plant from seed to sale, including: cultivation, extraction, manufacturing, retail and transportation.

Proponents of vertical integration argue that it allows for better regulatory oversight and helps curtail retail facilities from purchasing products from the illicit market, while critics maintain that vertical integration will keep small business owners from participating in the

market due to the prohibitive cost of entry and limits the market of consumer products, as wholesaling is prohibited except under very limited circumstances.

It is likely that the backers did not address these issues in order to avoid running afoul of Florida's single-subject rule, mandating that all citizen-sponsored constitutional ballot initiatives consist of "one subject and matter directly connected therewith." If the rule is not strictly followed, the initiative will be rejected by Florida's Supreme Court.

Upon passage, the Florida Legislature will be vested with authority to address these shortcomings and will hopefully do so. Inasmuch as the initiative specifically vests authority to regulate licensing, Florida's lawmakers will have the discretion to pass implementing legislation addressing, among other things: social equity licenses, vertical integration, caps on licenses and wholesaling between MMTCs.

Currently, adult-use cannabis is legal — at the state level — in 19 states, plus Guam and the District of Columbia. Under federal law, marijuana — as distinguished from hemp — remains a Schedule I substance under the Controlled Substances Act, meaning that it has a high potential for abuse and no currently accepted medical use.

While many details of the adult-use program have yet to be determined, one thing is certain: Existing MMTCs will reap the financial rewards of expanding the state's marijuana market through this ballot initiative, inasmuch as they will be grandfathered in and the first to sell recreational cannabis in the state.

By mid-2025, the effective date of the amendment, if passed, Florida's medical marijuana program will likely be a multibillion-dollar industry consisting of more than 1 million registered patients. Legalization in Florida through the adult-use ballot initiative will create one of the largest state-legal marijuana markets — measured by sales — in the country.

With over 20 million residents and more than 100 million annual visitors, the number of potential consumers in Florida will expand exponentially.

Additionally, if passed, Florida will likely be the first state to legalize adult-use marijuana in the Southeast, thus, in the absence of a tightly controlled border to prohibit the illegal transportation of cannabis across state lines, we can expect significant sales to occur in northern Florida where the state borders Georgia and Alabama.

Financial backers of the proposed constitutional amendment include the Safe & Smart Florida political committee, which is headed by Trulieve, along with the Bellamy Brothers. It is anticipated that other Florida licensees, including several multistate operators will also put their money and energy behind the initiative once reviewed and approved by the state Supreme Court.

At this point, there is no polling data specifically addressing the initiative, however, according to a survey released in February by the University of North Florida, about 76% of the Florida voters polled support legalizing cannabis for adult use, including strong bipartisan majorities.[6] This represents a 12% increase over its prior poll in 2019.

Given the significant financial support by the backers of the initiative, it is anticipated that there will be ample time and resources to gather the required signatures. Assuming the language is approved by Florida's Supreme Court, it does appear that the third time will indeed be the charm.

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***Disclosure: Robbins represents Trulieve, and represented Florigrown in Florida Department of Health v. Florigrown.***

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[1] The Ballot Title & Summary, as well as the full-text of the proposed amendment can be viewed here: <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=83475&seqnum=2>.

[2] Fla. Dep't of Health v. Florigrown, LLC, 317 So. 3d 1101 (Fla. 2021).

[3] Louis Del Favero Orchids v. Fla. Dep't of Health, No. 1D21-2378, 2022 Fla. App. LEXIS 6049 (Dist. Ct. App. Sep. 7, 2022).

[4] [https://www.chronicleonline.com/news/local/judge-criticizes-state-on-marijuana-licenses/article\\_1c5b2a11-14b8-55a2-8024-6e89d78b4fcd.html](https://www.chronicleonline.com/news/local/judge-criticizes-state-on-marijuana-licenses/article_1c5b2a11-14b8-55a2-8024-6e89d78b4fcd.html).

[5] Id.

[6] <https://www.unf.edu/uploadedFiles/aa/coas/porl/UNF%20PORL%20Press%20Release%2022-22-22.pdf>.