

IN THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

COLUMBUS SMITH, an individual,

Plaintiff,

vs.

Case No. _____

FLORIDA DEPARTMENT OF HEALTH,
an agency of the State of Florida;

Defendant.

_____ /

COMPLAINT

1. This is an action for declaratory judgment pursuant to Chapter 86, Florida Statutes, and for temporary and permanent injunctive relief. This Court has jurisdiction to grant the requested declaratory and injunctive relief. See §§ 86.011, 86.021, and 26.012(3), Fla. Stat. (2016).

2. Venue is proper in Leon County, Florida, pursuant to Section 47.011, Florida Statutes, because the Florida Department of Health, (hereinafter “the Department”), resides in Leon County.

PARTIES

3. Plaintiff, Columbus Smith, is a resident of the State of Florida, whose address is 1002 Kirklin Avenue, Panama City Florida 32401.

4. Mr. Smith is a black farmer registered with the United States Department of Agriculture.

5. Mr. Smith is a recognized class member in Pigford v. Glickman, 185 F. R.D. 82 (D.D.C. 1999), and In Re Black Farmers Litig., 856 F. Supp. 2d 1 (D.D.C. 2011).

6. Mr. Smith qualifies as a black farmer for a medical marijuana license in Florida with the exception that he is not a member of the Black Farmers and Agriculturalists Association-Florida Chapter.

7. Defendant, the Department of Health (hereinafter the “Department”), whose address is 4052 Bald Cypress Way, Tallahassee, FL 32399, is an executive branch agency of the State of Florida created pursuant to Section 20.43, Florida Statutes.

8. The Department is responsible for administering the provisions of Section 381.986, Florida Statutes, and Article X Section 29 of the Florida Constitution, including issuing licenses for growing medical marijuana.

GENERAL ALLEGATIONS

Pigford I and II Classifications

9. In 1997 and 1998, two class-action lawsuits entitled Pigford v. Glickman (“Pigford”) and Brewington v. Glickman (“Brewington”), respectively, were filed on behalf of groups of African-American farmers. Those lawsuits

asserted that the U.S. Department of Agriculture ("USDA") had systematically discriminated against African-American farmers on the basis of race, in violation of the Fifth Amendment to the United States Constitution, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act, and the Administrative Procedure Act.

10. After the Pigford and Brewington cases were consolidated, they were settled by the parties in 1999 and became the largest civil rights settlement in history.

11. The terms of the settlement were outlined in a Consent Decree entered by the Court on April 14, 1999, which stated that eligible claimants were required to file their claims with the case administrator by October 12, 1999.

12. The Consent Decree also stated that claimants who could show "extraordinary circumstances" for missing the October 12, 1999, deadline could file at a later date. September 15, 2000 was set as the "late-filing" deadline.

13. While approximately 22,700 claimants filed claims before the October 12, 1999 claims deadline, approximately 61,000 additional individuals requested permission to file claims after the October 12, 1999, claims deadline but before the September 15, 2000 "late-filing" cut-off date.

14. Fewer than 3,000 of the roughly 61,000 "late-filers" were found to have demonstrated the required "extraordinary circumstances" for receiving extra

time to file their claims. As a result, more than 58,000 "late-filers" did not have their discrimination claims heard.

15. In addition, thousands of additional potential claimants filed late-filing petitions after the September 15, 2000 late-filing cut-off, but before June 18, 2008, the date of final enactment of the 2008 Farm Bill.

16. Congress passed, and on June 18, 2008, the President signed, a law providing claimants with a right to pursue their discrimination claims if they had petitioned to participate in Pigford, but did not have their petitions considered because they were filed late.

17. The Farm Bill did not "re-open" the Pigford case. Instead, Congress provided a new right to sue, which is subject to the specific conditions and limitations.

18. Approximately 23 lawsuits separate lawsuits were subsequently filed by large groups of individuals aggregating their claims into a single complaint, which were consolidated by the Court in 2008 as In re Black Farmers Discrimination Litigation, 08-mc-0511 (D.D.C.).

19. Recognizing that \$100 million original settlement amount would almost certainly not be enough to pay all valid claims, after nearly two years of litigation, on February 18, 2010, attorneys for tens of thousands of farmers and attorneys for USDA entered into a Settlement Agreement that would require

Congress to fund an additional \$1.15 billion for successful claimants (which would bring total funding for valid claims to \$1.25 billion).

20. On December 8, 2010, President Obama signed into law the Claims Resolution Act of 2010, which provided \$1.15 billion (additional to the \$100 million already provided in the 2008 Farm Bill) to fund the February 18, 2010 Settlement Agreement. The Claims Resolution Act of 2010 also prescribed several new terms for incorporation into the Settlement Agreement.

21. The Settlement approved by Judge Friedman on October 27, 2011 resolves all of the claims asserted in the 23 lawsuits that were consolidated into the single case called In re Black Farmers Discrimination Litigation, 08-mc-0511 (D.D.C.).

22. All timely submitted claims were reviewed and decided by the Court-appointed Neutrals. On August 6, 2013 Class Counsel filed an Unopposed Motion for Approval of Distribution of Funds, which the Court granted on August 23, 2013. The Court's Order approved the distribution of \$1,200,425,182.08 as detailed in the Claims Administrator's Corrected Preliminary Final Accounting (dated August 15, 2013). Under the terms of the Settlement Agreement, all decisions are final, and there is no process for further review or appeal.

Legalization of Medical Marijuana in Florida

23. In 2014, Florida legislators passed a measure to offer a non-euphoric strain of medical cannabis low in tetrahydrocannabinol (THC), the chemical that gets you high, but rich in cannabidiol, which has been found to help with seizures. The measure, called the "Charlotte's Web" bill, was mostly aimed at helping patients with epilepsy and similar, specific conditions.

24. In 2016, lawmakers expanded the program to allow terminally ill patients to access full-strength medical marijuana, regardless of THC levels, and Growing and dispensing marijuana commenced in 2016.

25. During November 2016 election, Florida's medical marijuana constitutional Amendment 2 passed which makes full-strength marijuana legal and broadens the definition of "debilitating medical condition" for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.

Section 3 of Chapter 2017-232, Laws of Florida

26. During the 2017 Legislative Session, the Legislature enacted Senate Bill No. 8-A entitled an act relating to medical marijuana which became effective June 23, 2017 as Chapter 2017-232, Laws of Florida.

27. Section 3 of Chapter 2017-232, Laws of Florida, created Section 381.986(8)(a)2. b., Florida Statutes ("challenged law"), which provides as follows:

b. As soon as practicable, but no later than October 3, 2017, the department shall license one applicant that is a recognized class member of Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999), or in Re Black Farmers Litig., 856 F. Supp. 2d 1 (D.D.C. 2011) and is a member of the Black Farmers and Agriculturalists Association-Florida Chapter. An applicant licensed under this sub-section is exempt from the requirements of subparagraphs (b)1. and (b)2. (Emphasis supplied).

28. The above referenced subsection creates a class of applicants entitled to a license no later than October 3, 2017, and which is exempt from other licensing requirements, if such applicant meets both of the following criteria:

- (a) The applicant must be a recognized class member of Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999) or In Re Black Farmers Litig., 856 F. Supp. 2d 1 (D.D.C. 2011), **and**
- (b) The applicant must be a member of the Black Farmers and Agriculturalists Association-Florida Chapter.

29. Black Farmers and Agriculturalists Association – Florida Chapter, Inc., is a Florida private non-profit corporation incorporated in April, 2011, and whose principal address is located at 3330 NW 2nd Avenue, Ocala, Florida 34475.

30. ~~The Black Farmers and Agriculturalists Association-Florida Chapter, Inc. has between 3 and 5 members.~~

31. The Black Farmers and Agriculturalists Association-Florida Chapter, Inc. is not currently accepting new members.

32. The Black Farmers and Agriculturalists Association-Florida Chapter, Inc. was not accepting new members prior to the passage of Section 3 of Chapter 2017-232, Laws of Florida.

33. The Black Farmers and Agriculturalist Association-Florida Chapter, Inc. has refused to make its membership list public or to disclose its membership to the Department claiming its membership list is confidential.

Count I – Impermissible Special Law

34. Paragraphs 1-33 of this Complaint are incorporated by reference as if specifically set forth herein.

35. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes.

36. Plaintiffs seek judgment that Section 3 of Chapter 2017-232, Laws of Florida creating Section 381.986(8)(a)2. b., Florida Statutes, is an impermissible special law and therefore unconstitutional pursuant to Article III, Section 11(a)(12) of the Florida Constitution.

37. Article III, Section 11(a)(12) of the Florida Constitution provides:

(a) ~~There shall be no special law or general law of local application pertaining to:~~

* * *

(12) private incorporation or grant of privilege to a private corporation.

38. Section 381.986(8)(a)2.b., Florida Statutes, as created by Section 3 of

Chapter 2017-232, is a special law designed to operate on particular persons, more specifically: applicants that are recognized class members of Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999) or In Re Black Farmers Litig., 856 F. Supp. 2d 1 (D.D.C. 2011), **and** which are also a member of a specific private corporation; to-wit: Black Farmers and Agriculturalists Association-Florida Chapter.

39. This section grants to the members of the Black Farmers and Agriculturalists Association-Florida Chapter, the privilege of being the one license granted to the much larger class of African American Farmers nationwide who were recognized as class members of Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999) or In Re Black Farmers Litig., 856 F. Supp. 2d 1 (D.D.C. 2011), who were discriminated against by the United States Department of Agriculture for years based upon race.

40. This section excludes applicants from the much larger class of African American Farmers nationwide who were recognized as class members of Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999) or In Re Black Farmers Litig., 856 F. Supp. 2d 1 (D.D.C. 2011), who were discriminated against by the United States Department of Agriculture for years based upon race, for the benefit of the limited members of the Black Farmers and Agriculturalists Association-Florida Chapter.

41. The Black Farmers and Agriculturalists Association-Florida Chapter is a private corporation.

42. Membership in the Black Farmers and Agriculturalists Association-Florida Chapter is not a requirement to farm in the State of Florida.

43. Plaintiff is not a member of the Black Farmers and Agriculturalists Association-Florida Chapter.

44. Plaintiff applied for membership in the Black Farmers and Agriculturalists Association-Florida Chapter but was denied membership because the organization stated it is not accepting new members.

45. The Black Farmers and Agriculturalists Association-Florida Chapter is not the only Association that advocates for black farmers in the State of Florida.

46. Because Section 381.986(8)(a)2. b., Florida Statutes, applies only to members of the Black Farmers and Agriculturalists Association-Florida Chapter, a private corporation, such section is a special law.

47. There is a bona fide, actual, and present need for a declaration of whether Section 381.986(8)(a)2.b., Florida Statutes, as created by Section 3 of Chapter 2017-232, is an impermissible special law which violates Article III, Section 11(a)(12) of the Florida Constitution.

48. Plaintiff's demands judgment against the Department that Section 381.986(8)(a)2.b., Florida Statutes created therein, is an impermissible special law which violates Article III, Section 11(a)(12) of the Florida Constitution. and

providing such other and further relief as this Court may deem just, proper, and equitable.

Count II – Impermissible Classification

49. Paragraphs 1-33 of this Complaint are incorporated by reference as if specifically set forth herein.

50. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes.

51. Plaintiffs seek judgment that Section 3 of Chapter 2017-232, Laws of Florida, and specifically Section 381.986(8)(a)2.b., Florida Statutes, contains an impermissible classification and is, therefore, unconstitutional pursuant to Article III, Section 11(b) of the Florida Constitution and under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution and the “equal before the law” and Due Process provisions of Article I, Sections 2 and 9 of the Florida Constitution.

52. Section 381.986(8)(a)2. b., Florida Statutes, as created by Section 3 of Chapter 2017-232, is a special law designed to operate on particular persons, more specifically: applicants that are recognized class members of Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999) or In Re Black Farmers Litig., 856 F. Supp. 2d 1 (D.D.C. 2011), **and** which are also a member of a specific private corporation; to-wit: Black Farmers and Agriculturalists Association-Florida Chapter.

53. The Black Farmers and Agriculturalists Association-Florida Chapter is not accepting new members, and was not accepting new members prior to the passage of Section 381.986(8)(a)2. b., Florida Statutes, as created by Section 3 of Chapter 2017-232, Laws of Florida, and therefore, the classification is effectively closed by to include only the few members of the private corporation.

54. There is a legitimate state purpose for affording an opportunity to obtain a medical marijuana license to the large class of Black Farmers nationwide who were recognized as class members of Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999) or In Re Black Farmers Litig., 856 F. Supp. 2d 1 (D.D.C. 2011), as being discriminated against by the United States Department of Agriculture for years based upon race.

55. There is no rational basis for limiting the opportunity of Black Farmers to obtain a medical marijuana license to only the few members of that class of Black Farmers who are also members of a specific private association.

56. The classification of Black Farmers who may obtain a medical marijuana license who are also “a member of the Black Farmers and Agriculturalists Association-Florida Chapter” is arbitrary, discriminatory, and not reasonably related to the subject of Section 381.986(8)(a)2.b., Florida Statutes, or to implementing Article X Section 29 of the Florida Constitution.

57. There is a bona fide, actual, and present need for a declaration of whether Section 3 of Chapter 2017-232, Laws of Florida, and specifically Section 381.986(8)(a)2.b., Florida Statutes, created therein, creates an impermissible classification which violates Article III, Section 11(b) of the Florida Constitution, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution and the “equal before the law” and Due Process provisions of Article I, Sections 2 and 9 of the Florida Constitution.

58. Plaintiffs demands judgment against the Department that Section 381.986(8)(a)2.b., Florida Statutes created therein, is an impermissible special law which violates Article III, Section 11(b) of the Florida Constitution, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution and the “equal before the law” and Due Process provisions of Article I, Sections 2 and 9 of the Florida Constitution and providing such other and further relief as this Court may deem just, proper, and equitable.

Count III —Constitutional Challenge to Section 381.986(8)(a)2.b.

59. Paragraphs 1 – 33 of this Complaint are incorporated by reference as if specifically set forth herein.

60. Article III, Section 10, Fla. Const. (1968) entitled “Special laws” provides as follows:

Special laws. -- No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner

provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

61. An act of the legislature is a special law when it relates to a particular person or entity in connection with a specific situation in which that person or entity is involved. Section 381.986(8)(a)2.b. specifically identifies a particular private person or entity whose approval is required by a private entity before members of the large class of Black Farmers may exercise rights otherwise granted to them by the challenged law.

62. The specific identification of the private entity within the challenged law causes the challenged law to be classified as special law within the context of Article III, Section 10, Fla. Const. (1968).

63. Section 381.986(8)(a)2.b., is special in character because of the specific identification was enacted as a general law, and was not advertised as a special law as required by law and does not contain any provision for the approval thereof by referendum.

64. Plaintiff demands judgment against the Department that Section 3 of Chapter 2017-232, Laws of Florida, and specifically Section 381.986(8)(a)2. b., Florida Statutes, is an impermissible special law which violates Article III, Section (10) of the Florida Constitution and providing such other and further relief as this Court may deem just, proper, and equitable.

Count IV—Challenge to Section 381.986(8)(a)2.b.
as an Unlawful Exercise of the Police Power

65. Paragraphs 1 – 33 of this Complaint are incorporated by reference as if specifically set forth herein.

66. The State of Florida, through the exercise of the police power, regulates the licensing and sale of medical marijuana in Florida. The State of Florida exercises the police power through constitutional and legislative enactments. All of the provisions of Chapter 381 which regulate medical marijuana, including section 381.986(8)(a)2.b., have been enacted by the legislature through the exercise of the police power.

67. The state's police powers, however, are not absolute and any legislation resting on the police power, to be valid, must serve the public welfare as distinguished from the welfare of a particular group or class and the means utilized to exercise the police power must bear a rationale or reasonable relationship to a legitimate state interest.

68. The delegation of the police power to private entities, by virtue of the enactment of section 381.986(8)(a)2.b., Florida Statutes, was accomplished without providing any standards or safeguards or state supervision, whereby a private entity seeking a license under Chapter 381 may be protected against arbitrary or self-motivated action on the part of a private entity.

69. The enactment of section 381.968(8)(a)2.b. is an unlawful exercise of

the state's police power for the following reasons:

- (a) Section 381.968(8)(a)2.b. specifically delegates the sovereign power of the State of Florida to a private entity for primarily private rather than public purposes. It is an unlawful exercise of the police power for the legislature to enact statutes like section 381.968(8)(a)2.b. that serve predominantly a private interest rather a public purpose.
- (b) Section 381.968(8)(a)2.b. grants to a private party the unilateral and unfettered right for any reason, or for no reason, to prevent or otherwise block black farmers from exercising statutory rights unless the person or entity is a member of the Black Farmers and Agriculturalists Association – Florida Chapter, Inc. It is an unlawful exercise of the police power for the legislature to enact statutes like section 381.986(8)(a)2.b., to authorize one private party to use the sovereign power to gain an advantage, economic or otherwise, over another private party.
- (c) Section 381.986(8)(a)2.b. is an unlawful exercise of the police power as the means employed by the legislature to exercise the police power, namely the enactment of a section 381.986(8)(a)2.b., bears no rational or reasonable relationship to any legitimate state interest.

70. Plaintiff is uncertain about his rights and privileges under the provisions of section 381.986(8)(a)2.b.. Accordingly, Plaintiff is in need of a declaration of the rights of the parties to this action with regard to section 381.986(8)(a)2.b..

71. Plaintiff demands judgment against the Department that Section 3 of Chapter 2017-232, Laws of Florida, and specifically Section 381.986(8)(a)2. b., Florida Statutes, is an unlawful delegation of police power under the Constitution and providing such other and further relief as this Court may deem just, proper, and equitable.

Count IV – Injunctive Relief

72. Paragraphs 1-33 of this Complaint are incorporated by reference as if specifically set forth herein.

73. This is an action for temporary and permanent injunctive relief pursuant to Section 26.012(3), Florida Statutes, and Rule 1.610, Florida Rules of Civil Procedure.

74. Plaintiff moves this Court for an order enjoining the Defendant, Department of Health from issuing the license under the requirements set forth in Section 3 of Chapter 2017-232, Laws of Florida, and specifically Section 381.986(8)(a)2.b., Florida Statutes, pending this Court's ruling on the merits on the following grounds:

72. Florida law limits the number of licenses to grow medical marijuana that the Department of Health may issue.

73. Section 3 of Chapter 2017-232, Laws of Florida, and specifically is an impermissible special law which violates Article III, Section 11(a)(12) of the Florida Constitution:

As soon as practicable, but no later than October 3, 2017, the department shall license one applicant that is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or in *Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011) and is a member of the Black Farmers and Agriculturalists Association-Florida Chapter. An applicant licensed under this sub-section is exempt from the requirements of subparagraphs (b)1. and (b)2.

74. Section 381.986(8)(a)2.b., Florida Statutes, is unconstitutional in the following particulars:

- (a) It is an impermissible special law which violates Article III, Section 11(a)(12) of the Florida Constitution;
- (b) It is an impermissible special law which violates Article III, Section 11(b) of the Florida Constitution, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution and the “equal before the law” and Due Process provisions of Article I, Sections 2 and 9 of the Florida Constitution.

- (c) It is an impermissible special law which violates Article III, Section 10 of the Florida Constitution.
- (d) It is an unlawful delegation of police power under the Constitution.

75. Once the Department issues the license under the unconstitutional statute, it vests in the licensee and cannot be unissued.

76. If this Court does not enjoin Defendant from issuing the license under Section 381.986(8)(a)2.b., Florida Statutes, Plaintiff will likely suffer irreparable harm because the law applies only to the three members of a private corporation, and the available license will not be available to members of the much larger group of black farmers, including Plaintiff.

77. Plaintiffs are likely to succeed on the merits of the underlying case. Granting a license to members of a private corporation consisting of approximately three (3) members, and Department having to rely on said private corporation to verify whether an applicant qualifies for the license, violates the Florida and Federal constitution, and improperly delegates regulatory authority to a private corporation.

78. The balance of hardships weighs decidedly in Plaintiffs' favor. There is potentially significant, irreversible harm to Plaintiff if Defendant is not enjoined

from issuing the license. Conversely, if this Court prevents Defendant from issuing the license, it would merely maintain the status quo.

79. Finally, the public interest favors enjoining the Defendant from issuing the license. It is in the public interest to not discriminate in the issuance of licenses and to issue licenses to the most qualified applicants.

80. For the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs a temporary restraining order enjoining the Defendant from issuing the license under the criteria set forth in Section 381.986(8)(a)2.b., Florida Statutes, and that it grant Plaintiff hearings as soon as possible so that this Court may grant a temporary injunction and permanent injunction preventing Defendant from issuing the license under Section 381.986(8)(a)2.b., Florida Statutes, and providing such other and further relief as this Court may deem just, proper, and equitable.

Prayer for Relief

WHEREFORE, Plaintiff demand judgment in the following forms of relief against the Department:

A. Declaratory relief declaring Chapter 2017-232, Laws of Florida, and specifically Section 381.986(8)(a)2.b., Florida Statutes, an impermissible special law which grants a privilege to the Black Farmers and Agriculturalists Association-

Florida Chapter is unconstitutional pursuant to Article III, Section 11(a)(12) of the Florida Constitution; and

B. Declaratory relief declaring that Chapter 2017-232, Laws of Florida, and specifically Section 381.986(8)(a)2.b., Florida Statutes, creates an impermissible classification of applicants/licensees which is unconstitutional pursuant to Article III, Section 11(b) of the Florida Constitution, and under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution and the “equal before the law” and Due Process provisions of Article I, Sections 2 and 9 of the Florida Constitution; and

C. Declaratory relief declaring that Chapter 2017-232, Laws of Florida, and specifically Section 381.986(8)(a)2.b., Florida Statutes, is an improperly enacted special law which violates Article III, Section 10 of the Florida Constitution; and

D. Declaratory relief declaring that Chapter 2017-232, Laws of Florida, and specifically Section 381.986(8)(a)2.b., Florida Statutes is unconstitutional as an unlawful exercise of the state’s police powers; and

E. Injunctive relief issuing a temporary and permanent injunction, enjoining the Department from issuing the license a medical marijuana license under Section 3 of Chapter 2017-232, Laws of Florida, and specifically Section 381.986(8)(a)2.b., Florida Statutes.

Respectfully submitted this 22nd day of September, 2017.



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