AmericansFor SafeAccess
Advancing Legal Medical Marijuana Therapeutics and Research

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February 11, 2010

The Hon. Presiding Justice and Associate Justices
California Court of Appeal
Fourth Appellate District, Division Three
925 N. Spurgeon St.
Santa Ana, CA 92701-3724

Re: *Qualified Patients Association v. City of Anaheim*, No. G040077

POST-HEARING LETTER BRIEF OF AMERICANS FOR SAFE ACCESS

To the Honorable Presiding Justice and Associate Justices:

By Order, dated December 21, 2009, this Court requested additional briefing whether the inclusion of Health and Safety Code section 11570 in the exemption of medical marijuana collectives from criminal sanctions evidences an intent by the Legislature to preempt municipal ordinances banning medical marijuana collectives. *Amicus curiae* Americans for Safe Access ("ASA") respectfully submits that the Legislature's inclusion of the nuisance statute in its list of exemptions evidences an intent to preempt local efforts to ban medical marijuana collectives as nuisances.

In 2003, the Legislature enacted Health and Safety Code sections 11362.765 and 11362.775 as part of the "Medical Marijuana Program Act" or "the MMPA." The express purposes of the MMPA are to "[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects" (Stats, 2003, C. 875 (S.B. 420), § 1, subd. (b)(3)) and to "[p]romote uniform and consistent application of the act among the counties within the state." (Stats, 2003, C. 875, § 1, subd. (b)(2).) To these ends, Health and Safety Code sections 11362.765, subd. (a) and 11362.775 provide, respectively, as follows:

> Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article,

nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570."

Because Health and Safety Code Section 11570 does not provide for criminal sanctions to abate a nuisance, this Court asked the parties and *amici* to brief the significance of the inclusion of 11570 into sections 11362.765 and 11362.775 of the Health and Safety Code. Since the Legislature cannot be presumed to have engaged in idle acts (see *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 22 ["We do not presume that the Legislature performs idle acts, nor do we construe statutory provisions so as to render them superfluous"]; *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2006) 40 Cal.4th 1, 14 [courts will avoid constructions that render statutory language surplusage]), the Legislature's exemption of medical marijuana collectives and cooperatives from sanctions under the nuisance statute (§ 11570) should be interpreted to preclude all sanctions, criminal or civil, for qualified medical marijuana activities under the MMPA, and to preempt local ordinances that impose such sanctions. This interpretation is consistent with the expressed purposes of the MMPA to "[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects" (Stats, 2003, C. 875 (S.B. 420), § 1, subd. (b)(3)) and to "[p]romote uniform and consistent application of the act among the counties within the state," (Stats, 2003, C. 875, § 1, subd. (b)(2)); cf. *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 572 ["Under general settled canons of statutory construction, we ascertain the Legislature's intent in order to effectuate the law's purpose"] [citation omitted].)[1]

Furthermore, in Section 11362.765, the Legislature stated its intention not to "authorize any individual or group to cultivate or distribute marijuana for profit." Under the maxim of statutory construction, *expressio unius est exclusio alterius,* this suggests that the Legislature intended that groups who cultivate and distribute marijuana on a not-for-profit basis would be authorized. (Cf. *Rojas v. Superior Court* (2004) 33 Cal.4th 407, 424.) Anaheim's absolute ban on medical marijuana collectives conflicts with the intent of these laws.

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[1] By contrast, this interpretation does not render the term "criminal" in Sections 11362.765 and 11362.775 nugatory because most of the statutes contained therein provide for criminal sanctions.

In sum, the Legislature's exemption of medical marijuana collectives and cooperatives from sanctions under the nuisance law evidences an intent to preempt local ordinances to the contrary.

Respectfully Submitted,

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DECLARATION OF SERVICE

I am a resident of the State of California and over the age of eighteen years. My business address is Americans for Safe Access, 1322 Webster St., Suite 402, Oakland, CA 94612. On February 11, 2010, I served the within document(s):

POST-HEARING LETTER BRIEF OF AMERICANS FOR SAFE ACCESS

Via first-class mail to:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on this 11th day of February, 2010, in Oakland, California.

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