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August 16, 2013

VIA OVERNIGHT DELIVERY

The Honorable Tani Cantil-Sakauye,
Chief Justice of the California Supreme Court
and the Honorable Associate Justices of the Court
350 McAllister Street
San Francisco, California 94102-4797

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AUG 22 2013

CLERK SUPREME COURT

Re: Letter Supporting Request for Partial Republication - *420 Caregivers, LLC v. City of Los Angeles* (Cal. Supreme Court Case No. S204684)

Honorable Chief Justice Cantil-Sakauye and Associate Justices:

The California State Association of Counties (CSAC)¹ and the League of California Cities (League)² respectfully support the *Request for Partial Republication of Court of Appeal Opinion* filed by the City of Los Angeles.

County and city governments statewide have spent the past several years making difficult decisions regarding the regulation of marijuana dispensaries and other marijuana-related land uses. This process remains ongoing, as communities face new challenges and listen to emerging voices. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013)

¹ The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

² The League of California Cities is an association of 469 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide or nationwide significance. The Committee has identified this case as being of such significance.



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August 16, 2013

Page 2

56 Cal.4th 729, this Court affirmed the validity of these efforts, holding that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders." (*Id.* at p. 738.)

The Court of Appeal opinion in *420 Caregivers* adopted the same analytical approach - and applied it to several questions touched on only obliquely in *Riverside*. Perhaps most notably, *420 Caregivers* expressly held that "[t]he MMPA—implicitly in its original form and expressly as amended in 2012—permits local criminal ordinances that regulate medical marijuana collectives." (*420 Caregivers* slip. op. at p. 32.) While *Riverside* itself was a nuisance abatement action, the conclusion that criminal enforcement is equally permissible follows naturally from its reasoning. In light of *Riverside*'s holding that local governments enjoy the full constitutional police power to "make *and enforce*" ordinances regulating or prohibiting marijuana dispensaries (and the provisions of Health and Safety Code section 11362.83 specifically authorizing "criminal enforcement" of local marijuana ordinances), it should be difficult to argue that local dispensary bans cannot be enforced through misdemeanor criminal penalties. However, if experience in this field teaches anything, it is that any point not explicitly addressed by positive authority will be litigated with extreme vigor. Republication of the *420 Caregivers* opinion will provide much needed guidance for future courts - and perhaps avoid the need to re-litigate these issues from the ground up statewide.

420 Caregivers also addressed another point of considerable lasting significance, holding that cities and counties electing to tolerate marijuana dispensaries may require those dispensaries to maintain records regarding persons to whom marijuana is provided, and to make such records available to government officials upon request. The *420 Caregivers* court held that dispensaries may be treated as "closely regulated businesses" with a reduced expectation of privacy, and noted the substantial governmental interest in obtaining the information necessary to prevent the illegal diversion of marijuana and related criminal activity. (Slip op. at pp. 42-48.)

The Court of Appeal's discussion of the strong government interest at stake here was not off the mark. Communities that do not choose to ban dispensaries need every available regulatory tool to reduce the prospect of criminal activity and control secondary impacts upon the community. Requiring dispensaries to maintain and provide the same types of records as traditional pharmacies (see slip. op. at pp. 46-47) is both reasonable and, indeed, essential to protect the public welfare. This issue was not, of course, addressed by *Riverside* - and will surely require months or years of litigation in other jurisdictions if *420 Caregivers* is not republished to provide appropriate guidance.



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Page 3

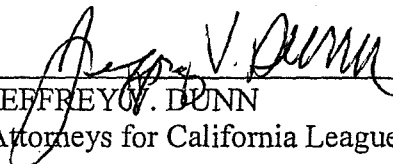
For the foregoing reasons – as well as the others noted in the City’s *Request* – CSAC and the League respectfully request that the Court of Appeal opinion in *420 Caregivers* be republished in relevant part as requested by the City of Los Angeles.

Respectfully submitted

Dated: August 16, 2013

BEST BEST & KRIEGER LLP

By:



JEFFREY V. DUNN

Attorneys for California League of Cities

Dated: August 16, 2013

TEJAMA COUNTY COUNSEL

By:


ARTHUR J. WYLLENE

Attorneys for California State Association of Counties

1 **PROOF OF SERVICE**

2 At the time of service I was over 18 years of age and not a party to this action. My
3 business address is 18101 Von Karman Avenue, Suite 1000, Irvine, California 92612. On August
4 16, 2013, I served the following document(s):

5 **LETTER SUPPORTING REQUEST FOR PARTIAL
6 REPLICATION**

7 **By fax transmission.** Based on an agreement of the parties to accept service by
8 fax transmission, I faxed the documents to the persons at the fax numbers listed
9 below. No error was reported by the fax machine that I used. A copy of the record
10 of the fax transmission, which I printed out, is attached.

11 **By United States mail.** I enclosed the documents in a sealed envelope or package
12 addressed to the persons at the addresses listed below (specify one):

13 Deposited the sealed envelope with the United States Postal Service, with
14 the postage fully prepaid.

15 Placed the envelope for collection and mailing, following our ordinary
16 business practices. I am readily familiar with this business's practice for
17 collecting and processing correspondence for mailing. On the same day that
18 correspondence is placed for collection and mailing, it is deposited in the
19 ordinary course of business with the United States Postal Service, in a
20 sealed envelope with postage fully prepaid.

21 I am a resident or employed in the county where the mailing occurred. The
22 envelope or package was placed in the mail at Irvine, California.

23 **By personal service.** At ___ a.m./p.m., I personally delivered the documents to
24 the persons at the addresses listed below. (1) For a party represented by an
25 attorney, delivery was made to the attorney or at the attorney's office by leaving the
26 documents in an envelope or package clearly labeled to identify the attorney being
27 served with a receptionist or an Individual in charge of the office. (2) For a party,
28 delivery was made to the party or by leaving the documents at the party's residence
with some person not less than 18 years of age between the hours of eight in the
morning and six in the evening.

By messenger service. I served the documents by placing them in an envelope or
package addressed to the persons at the addresses listed below and providing them
to a professional messenger service for service. A Declaration of Messenger is
attached.

By overnight delivery. I enclosed the documents in an envelope or package
provided by an overnight delivery carrier and addressed to the persons at the
addresses listed below. I placed the envelope or package for collection and
overnight delivery at an office or a regularly utilized drop box of the overnight
delivery carrier.*California Supreme Court only.

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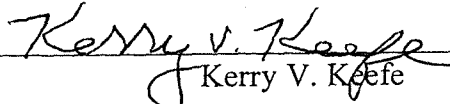
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1 I declare under penalty of perjury under the laws of the State of California that the
2 above is true and correct.

3 Executed on August 16, 2013, at Irvine, California.

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5 _____
6 Kerry V. Keefe
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