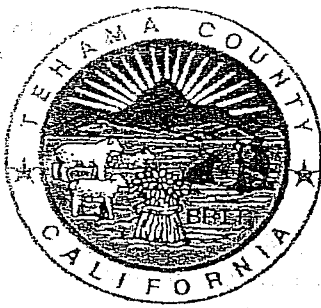

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September 10, 2012

Honorable Chief Justice Tani Gorre Cantil-Sakauye
and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

VIA OVERNIGHT DELIVERY

RECEIVED
SEP 12 2012
CLERK SUPREME COURT

Re: Letter Supporting Review – *County of Los Angeles v. Alternative Medicinal Cannabis Collective* (Cal. Supreme Court Case No. S201454)

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rules of Court, rule 8.500(g), the California State Association of Counties (CSAC)[1] and the League of California Cities (League)[2] respectfully support the Petition for Review filed by the County of Los Angeles.

The Court of Appeal in this case has entered the rapidly expanding melee of medical marijuana jurisprudence, holding that Los Angeles County's "complete ban on all 'medical marijuana dispensaries,' including collectives and cooperatives authorized under Health and Safety Code section 11362.775, conflicts with, and is thus preempted by, California's medical marijuana laws."[3] This question is of immense interest to our member Counties and Cities, virtually all of whom presently face difficult decisions regarding the regulation of marijuana dispensaries and other marijuana-related land uses. Local agencies' responses to these challenges vary with the needs of each community, but all local governments are interested in ensuring that their communities retain the traditional regulatory tools necessary to address these land uses and associated impacts.

Since January 2012, this Court has granted review of every published appellate decision dealing with a complete ban on medical marijuana dispensaries,[4] including

[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.

[3] (*County of Los Angeles v. Alternative Medicinal Cannabis Collective*, Slip Opn. ("Opn.") at p. 2.)

[4] (See Opn. at p. 16.)

both those opinions upholding bans (e.g., *City of Riverside v. Inland Empire Patient's Health and Wellness Center, Inc.*, review granted January 18, 2012, S198638) and opinions, like this one, striking them down. (*City of Lake Forest v. Evergreen Holistic Collective*, review granted May 16, 2012, S201454). This course of action appears eminently sensible, and should be continued with a grant of review in this matter. The need for uniformity of decision in this area is especially keen, and allowing the welter of conflicting opinions to remain published while the Court considers the question is virtually certain to generate further confusion and disparity among the lower courts (and could be interpreted to prematurely signal this court's own views on the pending issue).

Review of this particular case is further warranted for several additional reasons. First, the instant CA decision openly conflicts with at least two of the appellate decisions that presently remain published:

- The CA explicitly disagreed with the reasoning of *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, which held that California's medical marijuana laws provide only "limited criminal immunities under a narrow set of circumstances," and therefore do not preempt local zoning and business licensing ordinances.[5] Describing this interpretation as "unduly narrow,"[6] the CA proceeded to articulate a radically more expansive view, under which the medical marijuana laws *affirmatively authorize* the "dispensary function," and inferentially immunize such operations from local zoning and nuisance limitations with which other businesses must comply.[7] (This leads to the anomalous result that a community may zone out all other commercial property uses,[8] but may not prohibit retail-level marijuana dispensaries, which – regardless of their internal organization – present equal or greater practical impacts on the community in terms of traffic, noise, and need for public services, etc.)[9]

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[5] (*Kruse, supra,* 177 Cal.App.4th at pp. 1172-1176.)

[6] (Opn. at p. 10.)

[7] (Opn. at pp. 9, 12, 14.)

[8] (*Town of Los Altos Hills v. Adobe Creek Properties, Inc.* (1973) 32 Cal.App.3d 488, 500-509. See also *Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 863-864 rev'd on other grounds, 453 U.S. 490.)

[9] The CA also attempted to distinguish *Kruse* on the ground that "*Kruse* involved the violation of licensing and zoning requirements applicable to all local businesses, not just medical marijuana collectives or cooperatives, and a temporary moratorium on the issuance of permits, variances, and licenses for operation of medical marijuana dispensaries. It did not deal with a permanent and complete ban on such dispensaries." (Opn. at pp. 17-18.) While the observation that *Kruse* did not involve a *permanent* ban is accurate, no part of *Kruse*'s reasoning is actually dependent upon whether the local zoning prohibition in question was permanent or temporary.

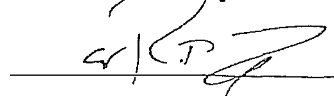
- The CA's insistence that the medical marijuana laws authorize and immunize the "dispensary function," specifically including marijuana sales,[10] also runs contrary to *People ex rel. Trutanich v. Joseph* (2012) 204 Cal.App.4th 1512. In *Joseph*, the City of Los Angeles obtained a civil injunction against the operator of a storefront dispensary on the ground that the dispensary's activities violated Health and Safety Code section 11570 and constituted a public nuisance. The Court of Appeal rejected the dispensary operator's argument that his activities were immunized from nuisance prosecution under the medical marijuana laws, holding that these statutes merely protected "group activity to cultivate marijuana for medical purposes," but *did "not cover dispensing or selling marijuana."* [11] The operation of a storefront medical marijuana dispensary, therefore, was not immunized under the medical marijuana laws. The instant CA's conclusion that the medical marijuana laws authorize the collective dispensing of medical marijuana and shield such activity from nuisance actions is directly at odds with the holding in *Joseph*, that these laws *did not* authorize the existence of medical marijuana dispensaries.

Further, the instant CA simply got it wrong. While mere mistake by the CA is not by itself grounds for review, the more important the issue, the more critical it is that the published guidance be *correct*. In this case, the CA has seriously erred. For the reasons described in greater detail in the Request for Depublication previously submitted by the League and CSAC, the CA's conclusions that California's medical marijuana laws "authorize" marijuana dispensaries and protect them from local zoning and nuisance prohibitions violate basic principles of statutory interpretation. Even if these questions were not already pending before the Court, review would be warranted to clarify the scope of local regulatory authority, and correct the severe and mistaken limitations that the instant CA has placed on local agencies' ability to protect the public welfare.

For all of these reasons, CSAC respectfully requests that the Petition for Review be granted. Thank you for your consideration.

Very truly yours,

ARTHUR J. WYLENE
Tehama County Counsel



AJW/rb

cc: Service List

[10] (Opn. at p. 9.)

[11] (*Joseph, supra*, 204 Cal.App.4th at p. 1523.)

CERTIFICATE OF SERVICE

I, the undersigned, am employed in the City of Red Bluff, County of Tehama, State of California; my business address is 727 Oak Street, Red Bluff, CA 96080. I am over the age of eighteen years and not a party to the within action. On the date below I caused the following papers to be served as follows:

Letter Supporting Review – County of Los Angeles v Alternative Medicinal Cannabis Collective (Cal. Supreme Court Case No. S201454)

Causing a true copy thereof to be delivered to the office of each party shown below at the address indicated and by leaving the same with a person apparently in charge and over the age of eighteen years;

(X) Placing a true copy thereof, enclosed in a sealed envelope with first-class postage thereon fully prepaid, in the United States mail at Tehama County, California, addressed as follows:

Overnight Delivery
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

J. David Nick
345 Franklin Street
San Francisco, CA 94102

Kamala D. Harris, Attorney General
Office of the Attorney General
1300 I Street
Sacramento, CA 95814-2919

Sari J. Steel
500 West Temple Street
Los Angeles, CA 90012-2713

California Court of Appeal
Second Appellate District, Division One
Ronald Reagan State Building
300 S. Spring Street, 2nd Floor
Los Angeles, CA 90013

John A. Clark, Executive Director
Clerk of the Superior Court
County of Los Angeles
Stanley Mosk Courthouse
111 N. Hill Street, Room 105-E
Los Angeles, CA 90012

Stephen J. Nelson, Esq.
PO Box 1227
Covina, CA 91722

I declare under penalty of perjury that the foregoing is true and correct, executed at Tehama County, California, on September 10, 2012.

ROBIN BENNETT