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December 8, 2011

**Via Federal Express Overnight Mail**

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

**Re: Amicus Curiae Letter in Support of Petition for Review;**
***Pack v. Superior Court of Los Angeles County (City of Long Beach)***
***199 Cal.App.4th 1070 (Cal. Supreme Court Case No. S197169)***

Dear Chief Justice Cantil-Sakauye and Associate Justices:

The League of California Cities ("League") hereby submits this letter pursuant to California Rules of Court, Rule 8.500(g) as *amicus curiae* in support of the petition for review filed by Real Party in Interest City of Long Beach, in *Pack v Superior Court of Los Angeles County (City of Long Beach)* ("*Pack*"), referenced above.

The League is an association of 468 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.

Applicable Statutory Law

For decades, federal statutes have addressed the issue of certain substances under the Controlled Substances Act ("CSA"), 21 USC Sections 801 *et seq.* The CSA establishes regulations controlling the manufacture, distribution and possession of different categories of controlled substances. The CSA places marijuana into Schedule I, which contains the tightest controls. As a Schedule I controlled substance, marijuana has "no currently accepted medical use...." (*Gonzales v. Raich* (2005) 545 US 1, 14.)

Subsequent to the enactment of the CSA, California voters adopted the Compassionate Use Act of 1996 ("CUA"), adding Health & Safety Code sections 11362.5 *et seq.* The CUA decriminalizes the use of medical marijuana under limited circumstances. In 2003, the California Legislature adopted the Medical Marijuana Program Act ("MMPA"), adding Health & Safety Code sections 11362.7-11362.9. The goal of the MMPA was to clarify the CUA by, among other matters, providing clearer protection to specified classes of users and providers of medical marijuana. (*County of Los Angeles v. Hill,* (2011) 192 Cal.App.4th 861, 864.)

Interest of Amicus Curiae

Since the enactment of the above-referenced statutes, California cities (and the courts) have been embroiled in numerous lawsuits challenging various aspects of the interrelationship of these statutes. A League survey found that over one hundred cases are currently pending in California relating to these statutes. Cities in this state have taken a variety of approaches relating to the CUA and the MMPA, ranging from outright bans to regulatory control, licensing and taxation. The *Pack* decision raises serious questions about the validity of some of these actions.

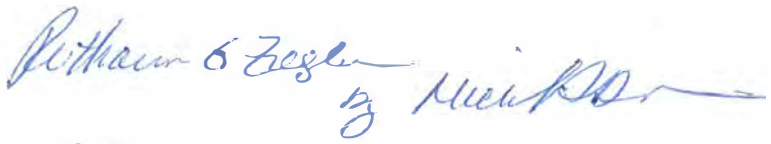
The appellate court in *Pack* addressed a variety of issues. The League's focus here is on the issue of preemption, as analyzed by the court in *Pack*. The *Pack* court, relying on two types of federal preemption, held that several provisions of the regulatory ordinances adopted by the City of Long Beach were preempted. (See *Pack*, 199 Cal.App.4th 1089-1095.) That court found that the portion of an ordinance prohibiting certain activities as to medical marijuana (such as proscribing hours of operation) was not preempted. In contrast, that portion of an ordinance restricting the number of medical marijuana collectives was preempted because such provision, in effect, authorized the operation of medical marijuana collectives. (*Id.* 1094-1095.) Thus, the court created confusion, rather than clarity, as to the breadth of permissible city regulations, if any, under the state CUA and MMPA, in light of the federal CSA.

The *Pack* court also made clear that it disagreed with prior California appellate decisions. "[W]e disagree with our colleagues who, in two other appellate opinions, have implied that medical marijuana laws might not pose an obstacle to the accomplishment of the purposes of the federal CSA because the purpose of the federal CSA is to combat recreational drug use, not regulate a state's medical practices." [Citations omitted.] (*Id.* 1092.)

Thus, there is a fundamental lack of clarity as to the interrelationship between the federal CSA and the state CUA and MMPA. There are conflicting opinions among California appellate courts as to the extent of federal preemption. It is this state Supreme Court, and only this Court, which has the legal authority to provide clarity and uniformity in this matter, especially here when cities are faced with conflicting opinions from California appellate courts.

Although the League takes no position on the merits of the petition for review filed by the City of Long Beach, the League respectfully requests that this Court grant the petition so as to provide to the League and its member cities clarity and uniformity as to these critical issues relating to the federal CSA and the state CUA and MMPA.

Very truly yours,



Ruthann G. Ziegler

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PROOF OF SERVICE

I, Linda A. Stone, declare:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 555 Capitol Mall, Suite 1200, Sacramento, CA 95814.

On December 8, 2011, I served a copy of the foregoing AMICUS CURIAE LETTER on the parties in said cause, by enclosing the documents in a sealed envelope addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the Untied States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on December 8, 2011, at Sacramento, California.

/s/
Linda A. Stone

## SERVICE LIST

| | |
|---|---|
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