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June 20, 2012

Chief Justice Tani Cantil-Sakaueye
Associate Justice Marvin R. Baxter
Associate Justice Ming W. Chin
Associate Justice Carol A. Corrigan
Associate Justice Joyce L. Kennard
Associate Justice Goodwin Liu
Associate Justice Kathryn M. Werdegar
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

RECEIVED
JUN 20 2012
CLERK SUPREME COURT

Re: *People v. Joseph* (2012) 204 Cal.App.4th 1523
Second Appellate District, Case Nol. B232248
Los Angeles County Superior Court, Case No. BC432005

To the Honorable Chief Justice and Associate Justices:

On behalf of the League of California Cities ("LOCC"), I am respectfully submitting this letter requesting that this Court deny review of *People v. Joseph* (2012) 204 Cal.App.4th 1523.

A. The LOCC's Interest In Denial Of Review.

The LOCC 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 LOCC is interested in maintaining local agency regulatory control to allow cities to make their own regulatory choices, and to ensure the proper application of state law as it concerns California cities.

The LOCC is advised by its Legal Advocacy Committee ("Committee"), which consists of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and it identifies those cases that are of statewide or nationwide significance. The Committee identified this case as being of such significance and, accordingly, the LOCC submitted a Request for Publication of *People v. Joseph, supra*, to the Court of Appeal, Second Appellate District, on April 12, 2012. Through the Committee process, the LOCC also submitted a Response to Requests for Depublication to this Court on May 10, 2012.

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B. The Joseph Opinion Does Not Meet The Standard For Review By This Court.

Contrary to the assertions in the May 4, 2012, Petition for Review filed by petitioners with this Court, the *Joseph* opinion does not "disrupt the uniformity of decision" [sic] in existing case law regarding Health & Safety Code Section 11362.775. California Rules of Court, Rule 8.500(b)(1) states this Court may grant review "[w]hen necessary to secure uniformity of decision or to settle an important question of law." However, as analyzed below and contrary to the assertions in the May 4, 2012, Petition for Review ("Petition") filed with this Court, the *Joseph* opinion does not meet this standard.

C. The Joseph Opinion Does Not Undermine Or Conflict With Established Law.

The Petition for Review incorrectly asserts that the *Joseph* opinion conflicts with the Medical Marijuana Program Act ("MMPA"), Health & Safety Code sections 11362.7 *et seq.*¹ case law interpreting it. The Petition cites to an excerpt of *People v. Joseph*, which states that the MMPA "does not cover dispensing or selling marijuana." (Petition, p. 25.) The Petition claims that phrase, essentially, invalidates Section 11362.768 and related cases. (*Id.*) Petitioners, however, are mistaken; the MMPA simply sets up a criminal defense in connection with collective or cooperative cultivation efforts. (See section 11362.775.) The Court of Appeal, Fourth Appellate District, recently confirmed that these provisions only apply to operations that cultivate the marijuana on-site. (*City of Lake Forest v. Evergreen Holistic Collective* (2012) 203 Cal.App.4th 1413, *petition for review filed* April 9, 2012.) Section 11362.775 does not authorize the wholesale dispensing of marijuana. Thus, particularly when viewed in its proper context, the *Joseph* decision accurately interpreted the MMPA.

The Petition references *People v. Urziceanu* (2005) 132 Cal.App.4th 747, *County of Butte v. Superior Court* (2009) 175 Cal.App.4th 729, *People v. Hochanadel* (2009) 176 Cal.App.4th 997, *People v. Colvin* (2012) 203 Cal.App.4th 1029, and *People v. Kelly* (2010) 47 Cal.4th 1008, as established case law purportedly protecting dispensing and selling marijuana. (Petition, pages 14-22.) However, these cases do not provide the support claimed by the Petition. For example, *People v. Urziceanu*, *supra*, 132 Cal.App.4th 747, involved a defendant convicted in a criminal action of conspiracy to sell marijuana. The passage excerpted by the Petition was simply that court's commentary on the newly enacted MMPA. The court ultimately remanded the matter for a new trial to determine whether the cooperative was within the parameters of Section 11362.775. (*Id.* at p. 786.) The language relied upon by the Petition is, at best, non-binding dicta.

¹ Hereafter, all statutory references are to the Health & Safety Code.

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Also cited by the Petition is *County of Butte v. Superior Court, supra*, 175 Cal.App.4th 729. Here, the court simply held that *if* the plaintiff could show that the county summarily destroyed medical marijuana to which the plaintiff might be eligible to possess under the law, the plaintiff *might* be able to recover on a claimed violation of due process. (*Id.* at pp. 735-736.) Relying on established due process law, the court reversed the overruling of a demurrer, finding only that the plaintiff had stated a cause of action. (*Id.* at p. 740.) This case is limited in its holding and does not apply here.

Similarly, *People v. Hochanadel* (2009) 176 Cal.App.4th 997, held that a criminal defendant “*may* have a defense” to certain criminal narcotics charges against him, the success of which the court expressed “no opinion” on the preliminary record before the court. (*Id.* at pp. 1017-1018, emphasis added.) The decision did not provide a wholesale sanctioning of medical marijuana collectives.

In *People v. Colvin* (2012) 203 Cal.App.4th 1029, the defendant was charged with three criminal counts including sale or transportation of marijuana. (*Id.* at p. 1034.) The trial court determined that the defendant was a “qualified patient” under California’s medical marijuana laws, but that he could not rely upon the MMPA’s defense against criminal prosecution since the transportation of the marijuana allegedly had nothing to do with the cultivation process. (*Id.* at pp. 1032, 1034.) Upon review, the Court of Appeal reversed the conviction and rejected the argument that the defense against *criminal prosecution* only applies to cooperatives involving united action or participation among all members. (*Id.* at p. 1032.) Importantly, the trial court in the *Colvin* case found that the cooperative was a “legitimate” “dispensary” properly operating under applicable law, thus making way for the defenses set forth at Section 11362.775. (*Id.* at p. 1036). The same cannot be said to apply in the *Joseph* case, where the defendant was operating outside the confines of the MMPA and local law.

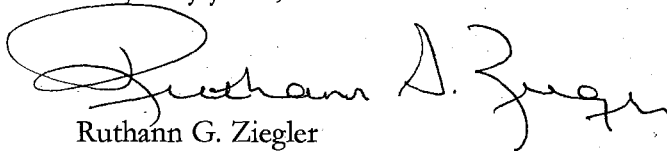
Petitioner also claims that *People v. Kelly* (2010) 47 Cal.4th 1008 supports the position that the MMPA authorizes the sale or dispensation of marijuana unconnected to a cultivation site. (*Id.* at p. 1017, fn.9.) However, *People v. Kelly, supra*, simply dealt with the question of whether the limits on the quantity of marijuana that may be possessed by a patient or primary caregiver, as imposed by Section 11362.77, constituted an impermissible legislative modification of the voter-enacted Compassionate Use Act (Section 11362.5). This is not an issue in the case at hand and, thus, the *Joseph* opinion does not conflict with *Kelly*.

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D. Conclusion.

The cases cited by the Petition for Review are distinguishable from *Joseph*. Simply put, the *Joseph* opinion does not conflict with established case law. The case was properly decided and properly published by the Court of Appeal. For all the reasons presented in the LOCC's initial Request for Publication and Response to Requests for Depublication, and those set forth herein, the League of California Cities on behalf of its 469 member cities respectfully requests that the Court deny the Petition for Review.

Very truly yours,



Ruthann G. Ziegler

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Sacramento, State of California. My business address is 555 Capitol Mall, Suite 1200, Sacramento, CA 95814.

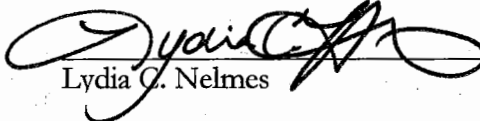
On June 20, 2012, I served true copies of the following document(s) described as **AMICUS LETTER IN OPPOSITION TO PETITION FOR REVIEW** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package 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 United 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 June 20, 2012, at Sacramento, California.


Lydia C. Nelmes

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