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December 29, 2011

PRESS RELEASE

For Immediate Release

Long Beach, CA - December 29, 2011 – *Patients First*, a non-profit part of *Citizens for the Fair Treatment of the Disabled*, and *Long Beach Collective Association* have agreed in principle to form an alliance to cooperate in the effort to ensure medical marijuana patients have access to medication through the collective/cooperative process provided for in California.

Attorney Richard Brizendine, counsel for the *Long Beach Collective Association*, and attorney Matthew Pappas, interim spokesman for *Patients First* and the attorney representing the patients in *Pack v. City of Long Beach*, met on Monday, December 26, 2011. Thereafter, the groups agreed to form an alliance that addresses a "ban" of all collectives that has been proposed by the City of Long Beach as well as legislative issues related to medical cannabis.

"Thousands of patients – including patients with cancer, AIDS, renal failure, and other serious illnesses and disabilities – would be adversely affected by a ban. I am pleased that *Long Beach Collective Association* and *Patients First* have decided to form an alliance that can work together to address common issues like the proposed 'ban' and future legislation," Pappas said.

A recent letter from state Attorney General Kamala Harris stresses the importance California voters have placed on having medical cannabis available for patients. In her letter, she addresses city "bans" of collectives and urges leaders in the state legislature to consider laws and regulations that will ensure medication is available for patients in conformance with the voter's *Compassionate Use Act* passed in 1996. Leaders of the *Long Beach Collective Association* and *Patients First* believe that city officials in Long Beach should follow the urgings of the state's Attorney General and consider

legislation that is appropriate given her findings and urgings regarding patients and their medication access.

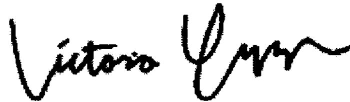
Leaders of both *Long Beach Collective Association* and *Patients First* plan to meet sometime next week to discuss the important needs of patients as well as legislation that balances the important health, safety, and welfare concerns of all Long Beach citizens.

ATTACHMENTS:

1. ***Copy of Letter from Kamala Harris to state Legislative leaders;***
2. ***Letter from Matthew Pappas to Kamala Harris dated December 23, 2011.***

CONTACT INFORMATION:

For more information, please contact Richard Brizendine of the Long Beach Collective Association, Katherine Aldrich of Patients First, Carl Kemp of the Long Beach Collective Association **or** ***Lambert Aduki of Patients First.***



Victoria S. Pappas
Legal Assistant/Office Mgr.

VSP:jm

encl.

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
KAMALA D. HARRIS
ATTORNEY GENERAL

December 21, 2011

The Honorable Darrell Steinberg
President Pro-Tempore
State Capitol, Room 205
Sacramento, CA 95814

The Honorable John A. Perez
Speaker of the Assembly
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0046

Re: Medical Marijuana Legislation

Dear President Pro-Tempore Steinberg and Speaker Perez:

As the state's chief law enforcement official, I am troubled by the exploitation of California's medical marijuana laws by gangs, criminal enterprises and others. My Office recently concluded a long series of meetings with representatives across the state from law enforcement, cities, counties, and the patient and civil rights communities. The primary purpose of the meetings was to assess whether we could clarify the medical marijuana guidelines that my predecessor published in 2008 in order to stop the abuses. These conversations, and the recent unilateral federal enforcement actions, reaffirmed that the facts today are far more complicated than was the case in 2008. I have come to recognize that non-binding guidelines will not solve our problems – state law itself needs to be reformed, simplified, and improved to better explain to law enforcement and patients alike how, when, and where individuals may cultivate and obtain physician-recommended marijuana. In short, it is time for real solutions, not half-measures.

I am writing to identify some unsettled questions of law and policy in the areas of cultivation and distribution of physician-recommended marijuana that I believe are suitable for legislative treatment. Before I get into the substance, however, I want to highlight two important legal boundaries to keep in mind when drafting legislation.

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First, the Court of Appeal for the Second Appellate District recently ruled in *Pack v. Superior Court* (2011) 199 Cal.App.4th 1070 that state and local laws which license the large-scale cultivation and manufacture of marijuana stand as an obstacle to federal enforcement efforts and are therefore preempted by the federal Controlled Substances Act. Although the parties involved in that case have sought review of the decision in the California Supreme Court, for now it is binding law. As mentioned below, the decision in *Pack* may limit the ways in which the State can regulate dispensaries and related activities.

Second, because the Compassionate Use Act (Proposition 215) was adopted as an initiative statute, legislative efforts to address some of the issues surrounding medical marijuana might be limited by article II, section 10(c) of the Constitution, which generally prohibits the Legislature from amending initiatives, or changing their scope or effect, without voter approval. In simple terms, this means that the core right of qualified patients to cultivate and possess marijuana cannot be abridged. But, as long as new laws do not "undo what the people have done" through Proposition 215, we believe that the Legislature remains free to address many issues, including dispensaries, collective cultivation, zoning, and other issues of concern to cities and counties unrelated to the core rights created in the Compassionate Use Act.

With this context, the following are significant issues that I believe require clarification in statute in order to provide certainty in the law:

(1) Defining the contours of the right to collective and cooperative cultivation

Section 11362.775 of the Health and Safety Code recognized a group cultivation right and is the source of what have come to be known as "dispensaries." It provides, in full:

> 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.

There are significant unresolved legal questions regarding the meaning of this statute. Strict constructionists argue that the plain wording of the law only provides immunity to prosecution for those who "associate" in order to "collectively or cooperatively . . . cultivate" marijuana, and that any interpretation under which group members are not involved in physical cultivation is too broad. Others read section 11362.775 expansively to permit large-scale cultivation and transportation of marijuana, memberships in multiple collectives, and the sale of marijuana through dispensaries. These divergent viewpoints highlight the statute's ambiguity. Without a substantive change to existing law, these irreconcilable interpretations of the law, and the resulting uncertainty for law enforcement and seriously ill patients, will persist. By articulating the scope of the collective and cooperative cultivation right, the Legislature will help law enforcement and others ensure lawful, consistent and safe access to medical marijuana.

(2) Dispensaries

The term "dispensary" is not found in Proposition 215 and is not defined in the Medical Marijuana Program Act. It generally refers to any group that is "dispensing," or distributing, medical marijuana grown by one or more of its members to other members of the enterprise through a commercial storefront.

Many city, county, and law enforcement leaders have told us they are concerned about the proliferation of dispensaries, both storefront and mobile, and the impact they can have on public safety and quality of life. Rather than confront these difficult issues, many cities are opting to simply ban dispensaries, which has obvious impacts on the availability of medicine to patients in those communities. Here, the Legislature could weigh in with rules about hours, locations, audits, security, employee background checks, zoning, compensation, and whether sales of marijuana are permissible.

As noted, however, the *Pack* decision suggests that if the State goes too far in regulating medical marijuana enterprises (by permitting them, requiring license or registration fees, or calling for mandatory testing of marijuana), the law might be preempted by the Controlled Substances Act. We also cannot predict how the federal government will react to legislation regulating (and thus allowing) large scale medical marijuana cultivation and distribution. However, the California-based United States Attorneys have stated (paraphrase Cole memo re: hands off approach to those clearly complying with relevant state medical marijuana laws).

(3) Non-Profit Operation

Nothing in Proposition 215 or the Medical Marijuana Program Act authorizes any individual or group to cultivate or distribute marijuana for profit. Thus, distribution and sales for profit of marijuana – medical or otherwise – are criminal under California law. It would be helpful if the Legislature could clarify what it means for a collective or cooperative to operate as a "non-profit."

The issues here are defining the term "profit" and determining what costs are reasonable for a collective or cooperative to incur. This is linked to the issue of what compensation paid by a collective or cooperative to members who perform work for the enterprise is reasonable.

(4) Edible medical marijuana products

Many medical marijuana collectives, cooperatives, and dispensaries offer food products to their members that contain marijuana or marijuana derivatives such as cannabis oils or THC. These edible cannabis products, which include cookies, brownies, butter, candy, ice cream, and cupcakes, are not monitored or regulated by state and local health authorities like commercially-distributed food products or pharmaceuticals, nor can they be given their drug content. Likewise, there presently are no standards for THC dosage in edible products.

Commercial enterprises that manufacture and distribute marijuana edibles and candy do not fit any recognized model of collective or cooperative cultivation and under current law may be engaged in the illegal sale and distribution of marijuana. Clarity must be brought to the law in order to protect the health and safety of patients who presently cannot be sure whether the edibles they are consuming were manufactured in a safe manner.

I hope that the foregoing suggestions are helpful to you in crafting legislation. California law places a premium on patients' rights to access marijuana for medical use. In any legislative action that is taken, the voters' decision to allow physicians to recommend marijuana to treat seriously ill individuals must be respected.

Please do not hesitate to contact me if you have questions or concerns.

Sincerely,

KAMALA D. HARRIS
Attorney General

cc: The Honorable Mark Leno
The Honorable Tom Ammiano

MATTHEW S. PAPPAS
ATTORNEY

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December 23, 2011

VIA U.S. MAIL

Ms. Kamala D. Harris
Attorney General
State of California
1300 I Street, Suite 1740
Sacramento, CA 95814

Re: *Pack v. Superior Court* (2011) 199 Cal.App.4th 1070

Dear Ms. Harris:

I am the attorney representing the patients in the above referenced case. I am in receipt of your letter to members of the state Legislature dated December 21, 2011 regarding medical marijuana in California.

Anthony Gayle is one of the patients in the *Pack* case. He is 25 years old. He suffers from renal failure. He's had heart surgery to replace a part of his heart. Mr. Gayle must have kidney dialysis three (3) times per week. He is likely terminal. Dangerous and addictive opiate drugs like Vicodin and Oxycontin have been contraindicated given his condition.

In the underlying *Pack* case, Mr. Gayle, along with patient Ryan Pack, who was permanently and seriously injured after being hit by a vehicle while riding a bicycle, applied to the trial court for a preliminary injunction.

Long Beach enacted Chapter 5.87 of its municipal code in March, 2010. I have included video excerpts from a City Council meeting held that date. In the video, you will see that city council members were confused by a presentation made by the Los Angeles District Attorney's office. Apparently, the District Attorney felt it necessary to confuse council members based on his staunch opposition to patient rights. It appears he either willfully withheld information regarding the provisions of Ca. Health & Safety Code § 11362.775 or simply failed to read that state law before discussing transportation.

In the video excerpts, you will notice that the members of the council are clearly confused about the transportation issue during the meeting.

Chapter 5.87 was **not** enacted for the benefit of the "all seriously ill Californians" in need of medical cannabis the voters of California considered when they enacted the *Compassionate Use Act* in 1996. As then councilwoman Tonia Reyes-Uranga stated on the record during the March 16, 2010 meeting, Chapter 5.87 is "pretty much a sham" that was designed to take away medication access for patients like Ryan Pack and Anthony Gayle.

On October 6, 2010, patients Pack and Gayle argued before the trial court in the underlying case that a preliminary injunction should issue barring the City from enforcing Chapter 5.87 because the enforcement of that law would result in their inability to access collectives. Dealing with serious medical conditions and life issues, Pack and Gayle access medication through collectives established under and operating pursuant to the *Medical Marijuana Program Act* and 2008 Attorney General guidelines governing the *Safety and Non-Diversion of Marijuana Used for Medical Purposes.*

As you know, injunctive relief is extraordinary in nature and requires the court to assess probability of success on the merits, irreparable harm, and balance respective hardships. On November 2, 2010, although finding Chapter 5.87 was "motivated by sentiments contrary to" and "inconsistent with" the *Compassionate Use Act* and *Medical Marijuana Program Act*, the trial court declined to issue the requested preliminary injunction. Thereafter, the patients petitioned the Second District California Court of Appeal for a peremptory *writ of mandamus* or for an *alternative writ*. The appellate court granted the *alternative writ* and ordered the parties to show cause.

On October 4, 2011, after extensive briefing by the parties and by *amici curiae* including the *American Civil Liberties Union*, the *ACLU of Southern California*, the *ACLU of Northern California*, the *ACLU of San Diego and Imperial Counties*, *Americans for Safe Access*, the *National Drug Policy Alliance*, the *City of Los Angeles*, the *League of California Cities*, and the *Association of California Counties*, the appellate court **granted the petition for *writ of mandamus*.**

When it granted the patients' Petition, the court said there was a "100%" chance the injunction should have been issued by the trial court. The **irreparable harm** claimed by the patients was their **inability to access medication through the collective and cooperative system provided for in the *MMPA* because enforcement of Chapter 5.87 would lead to closure of their respective collectives**. Yet, days after the *Pack* decision, in a retaliatory manner and with the same "sentiments contrary to" the *CUA* and *MMPA*

referred to by the trial court in its November 2, 2010 order, City Attorney Robert Shannon **told the Long Beach City Council it must ban all collectives.**

Mr. Shannon and the Los Angeles District Attorney are violating state law. They are violating the state's *Compassionate Use Act* and the *Medical Marijuana Program Act*. On December 13, 2011, Mr. Shannon publically represented in a Long Beach City Council meeting that the *Pack* case **required** the Long Beach City Council to **ban** all patient collectives. He did not say a "moratorium" was appropriate, but instead said a **ban** was **absolutely necessary**. Mr. Shannon's presentation was **recorded on video** and is now available on the longbeach.gov Website. He misrepresented what the *Pack* decision means.

After the appellate court ordered the parties to show cause in *Pack* back in November, 2010, the City of Long Beach engaged in abhorrent conduct aimed at attacking, harassing, and arresting patients. I'll just provide one (1) example of the City's outrageous behavior against patients during the appellate court briefing period. Petitioner Ryan Pack is a member of the non-profit 562 Collective in Long Beach, California. On March 1, 2011, the City of Long Beach filed an action in Los Angeles Superior Court seeking to declare 562 Collective in violation of LBMC §§ 5.87.020 and 5.87.090 as well as to abate 562 Collective as a nuisance. On May 10, 2011, around twenty-five (25) Long Beach police officers broke-into the 562 Collective without a warrant using a battering ram.

On June 2, 2011, after the warrantless raid, seizures, and arrests, 562 Collective applied *ex parte* for an order to show cause regarding preliminary injunction prohibiting enforcement and for a temporary restraining order pending the order to show cause hearing. *City of Long Beach v. 562 Collective, et al.* (March 1, 2011) L.A.S.C. No. NC055751. After reviewing the moving papers as well as an opposition filed by the City, the trial court made a preliminary finding that the City's break-in, search, and seizure at the patient group was improper stating:

> "THE CONCERN THAT I HAVE IS AS ARTICULATED BY THE DEFENDANTS, THE EVIDENCE SEEMS TO SHOW THAT THE CITY THROUGH ITS POLICE HAVE USED WHAT I REFER TO AS STRONG-ARM TACTICS TO KNOCK DOWN DOORS OF THE COLLECTIVE WITHOUT A WARRANT AND WITHOUT EXIGENT CIRCUMSTANCES. PEOPLE WHO HAVE USED THE COLLECTIVE HAVE BEEN ARRESTED AND BOOKED AND IT'S FURTHER ALLEGED THE CITY HAS CONTACTED THE LANDLORD AND THREATENED TO WITHDRAW THE BUSINESS LICENSE UNLESS THE LANDLORD EVICTS THE DEFENDANT. AND THIS IS WHILE THIS CASE WHERE THE CITY IS THE

PLAINTIFF IS SEEKING TO ABATE WHAT IT REFERS TO THE NUISANCE WHICH IS THE DEFENDANT COLLECTIVE 562 FROM OPERATING. AND SO WHAT I DON'T UNDERSTAND IS WHY THE CITY WOULD USE SUCH TACTICS WHILE THE CASE IS PENDING?" *Long Beach v. 562 Collective, Transcript*, June 2, 2011, at p.2, lns.10-24 (*excerpt included.*)

The trial court then ordered a show cause hearing on an expedited basis for June 10, 2011. The briefing schedule in advance of the hearing was announced by the Court and accepted by the parties. On June 10, 2011, after the City had been ordered to show cause and the parties were before the trial court for the show cause hearing, the trial judge stated:

"IT'S ALLEGED THAT THE CITY, THROUGH OFFICERS AND OF THE POLICE DEPARTMENT, AN AGENCY OF THE CITY, ENGAGED IN CONDUCT THAT WAS NOT PART OF FORMAL CIVIL DISCOVERY. IT WAS NOT BASED UPON A SEARCH WARRANT. IT WAS NOT BASED UPON WHAT I WOULD REFER TO AS EXIGENT CIRCUMSTANCES, INSTEAD, BASED UPON WHAT I READ, OFFICERS USED A BATTERING RAM AND BROKE DOWN A DOOR AND SEIZED DOCUMENTS IN THE COLLECTIVE. I DON'T SEE ANYTHING PRESENTED BY THE CITY THAT SHOWS ANYTHING OTHER -- THERE'S UNREBUTTED ALLEGATIONS THAT WERE MADE BY THE COLLECTIVE, AND I DIDN'T SEE ANY RESPONSE TO THAT BY THE CITY. *Long Beach v. 562 Collective, supra,* Transcript, Order to Show Cause Hearing, June 10, 2011, at p. 3, lns. 12-22 (*excerpt included*).

Thereafter, the trial court reviewed a declaration of a Long Beach police officer submitted by the City apparently in support of its warrantless raid and search of and the seizure of property from 562 Collective. The judge then addressed the deputy city attorney stating:

"WITH ALL DUE RESPECT, I DON'T THINK IT'S UP TO OFFICER COOPER TO TELL ME WHETHER OR NOT HE'S COMPLIED. IF THAT WERE THE CASE, WE WOULDN'T NEED JUDICIAL OFFICERS TO DETERMINE WHETHER THERE IS PROBABLE CAUSE TO ISSUE A SEARCH WARRANT, AN ARREST WARRANT, WHETHER THERE'S PROBABLE CAUSE TO HOLD THE DEFENDANT TO ANSWER FOR A FELONY, ET CETERA, ET CETERA, ET CETERA. THERE IS NOT -- THERE'S NOT ONE FACT IN HERE THAT REBUTS ANY OF THE ALLEGATIONS MADE BY THE DEFENDANTS THAT IT WAS A SEARCH NOT INCIDENT TO A LAWFUL SEARCH WARRANT OR ANY SEARCH WARRANT OR THAT ANY EXIGENT CIRCUMSTANCES EXISTED. AND, THIRDLY, THAT

A BATTERING RAM DEVICE WAS USED TO BREAK DOWN A DOOR AND SEIZE DOCUMENTS AS TO AN OPPONENT IN A CIVIL CASE." *Long Beach v. 562 Collective, supra,* Transcript, June 10, 2011, at p. 5, lns. 4-18 (*excerpt included.*)

This is one (1) of about twenty (20) similar warrantless raids. There were **many** patients arrested under the invalid Chapter 5.87 permitting provisions. There are videos of several raids, harassment, and attacks now on YouTube. Interestingly, despite the numerous deaths related to drug abuse of dangerous opiates like Vicodin and Oxycontin, there were **no** warrantless raids of CVS, Walgreens, or similar medication providers. Likewise, in all of the 5.87 raids in Long Beach, there were no **arrests for violation of state law**. In other words, the patient groups were in compliance with the *MMPA* and Attorney General guidelines. I spoke with a managing patient in regard to the effect of such raids. He told me that patients become fearful of coming into the collectives, they are left without medication, and that it takes weeks for some patients to build up enough courage to come back, if they ever do, because of fears caused by this behavior.

Noting the reference to gangs and criminal activity in your December 21, 2011 letter sent to the leaders of the Assembly and Senate, it is appropriate to note that the vast majority of managing patients of patient collective groups are **not** people making $100,000.00 per month[1] or who drive expensive cars. While there are likely a small group of people distributing marijuana improperly and taking advantage of medical marijuana laws, the managing patients I have had the privilege of working with drive older vehicles that have over 100,000 miles on them. They do **not** make large sums of money and instead face financial issues and challenges while working to maintain medication availability for patients. Most of them have families and rent the houses they live in. While people like Mr. Cooley and Long Beach City Attorney Robert Shannon[2] would like to give the

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[1] During a May, 2011 warrantless raid of non-profit patient collective in Long Beach, a police officer remarked to a volunteer patient being arrested solely for alleged violation of the "permit" provisions of invalid Chapter 5.87. The officer told the volunteer he was getting the "short end of the stick" since the managing patient made $100,000.00 per month. In fact, the managing patient was facing serious financial issues at the time, made less than 1/30th of the amount suggested, drove a domestically produced GMC vehicle with over 130,000 miles on it that was more than seven years-old, and was, following the improper raid, evicted from her rented apartment. That managing patient has never made $100,000.00 per month or anything even close to that. In her life, she's never made more than a few thousand dollars per month.

[2] During a December 13, 2011 Long Beach City Council meeting, information from an earlier held closed-session meeting of the council indicated the police had told council members that 40% of medical marijuana comes from illegal 'drug cartels.' After discussing the issue with patients, the marijuana provided by illegal 'drug cartels' is apparently so very bad that patients would not accept

impression that medical marijuana is just a front for "drug dealing," it is **not** – it is **certainly not that for** those patients who suffer from ailments like Mr. Gayle and Mr. Pack. On the other hand, drug abusers choosing more dangerous drugs like Vicodin and Oxycontin can feign conditions, obtain prescriptions, go to a traditional pharmacy, have the prescription filled, and purchase a bottle of vodka and pack of cigarettes as they leave the pharmacy. Yet, they are not discriminated against through improper police raids and attacks simply because of the medication used that effectively works to mitigate symptoms and medical conditions they suffer from.

The *Pack* court **granted the Petition for *writ of mandamus*.** The appellate court referenced the "balance of hardship" requirements in analyzing the standard of review. That court did **not** create a situation that **requires cities to ban medical marijuana collectives**. Media seeking politicians get out in the press aggrandizing themselves by claiming the necessity of bans in an effort at getting that all-important spot on the evening news. Perhaps those politicians need to sit down and meet a cancer patient who is able to eat and who can participate in life because medical cannabis is effective.

I represent the plaintiff patients in *Marla James, et al. v. City of Costa Mesa, et al.* (2010 9th Cir.) 10-55769. It is the patients' assertion in that case that the *Americans with Disabilities Act of 1990* (ADA) as amended by Congress in 2008 is applicable to them. Under Title II of the ADA, cities may not implement policies or procedures, including but not limited to zoning laws, that facially or by operation discriminate against qualified disabled individuals.

In addition to the *ADA* argument in *James*, I have included an argument that is more applicable to "all seriously ill" Californians in medical need of cannabis. On December 17, 2009, President Obama signed into law the 2011 *Omnibus Appropriations Act* (P.L. 111-117, 2009.) For ten years prior to that date, Congress used its art. 1, sec. 8, cl. 17 **plenary authority over the federal District of Columbia** to prohibit implementation of that City's voter passed "*Legalization of Marijuana for Medical Uses*" law. (D.C. Initiative 59, 1998.) Thereafter, under that **federal jurisdiction's** *Home Rule Act*, the D.C. City Council unanimously approved D.C. Stat. [Proposed] 13-138. The Mayor signed that law in early

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such medication nor would such medication be effective for them. A cursory review indicated that **no** medication provided by the patient groups in Long Beach comes from illegal 'drug cartels' and, in fact, the police agency in Long Beach is really concerned with budget cuts and is seeking to **increase crime rates** in an effort to maintain federal funding for narcotics programs. Given the clear evidence shows **crime increases** when medical marijuana collectives are **closed down**, , it is clear the intent of the police and public employees is to ensure job security in a manner that harms seriously ill and disabled Californians.

June, 2010 and, because Congress has **plenary power** over the District and to ensure compliance with the mandate in art. 1, sec. 8, cl. 17, the proposed law **had to go to Congress for approval**. On or around July 29, 2010, the law was effectively **approved by Congress** allowing the federal district to implement its "*Legalization of Marijuana for Medical Uses*" law.

The House report on P.L. 111-117 shows Congress **knew** it was "allowing the District" to implement the "*Legalization of Marijuana for Medical Uses*" law much like the states. There was dissent reported and detailed in the House report. The press reported Congress's action as "allowing medical marijuana" in the District of Columbia. Today, there is a **complete section of Washington D.C. law that <u>legalizes</u> medical marijuana use, possession, transportation, cultivation, and distribution in that federal district**. Codified as Wa. D.C. Stat. 7-1671, *et seq.*, I have included just a small part of that law. The entire argument and detail is available on "Pacer" under 9th Cir. No. 10-55769.

Should Tony Gayle move to Washington D.C. to obtain marijuana and to be protected like patients using Vicodin or Oxycontin under the federal *Americans with Disabilities Act*? No, he should <u>not</u>. When Congress acted to allow the **voters of Washington D.C.** to legalize medical marijuana in P.L. 111-117, it likewise granted that same **fundamental right** to vote to **legalize – not just decriminalize – marijuana to the voters and their respective representatives in <u>all of the states</u> – including California.**

I believe the 9th Circuit will rule in favor of the disabled and seriously ill patients in *James v. Costa Mesa*. However, I am a sole practitioner and you are the Attorney General of California. **There need to be regulations – <u>not</u> bans.** The public safety, health, and welfare need to be balanced with the important needs and rights of the seriously ill, disabled, and permanently injured patients who have been recommended medical cannabis by a licensed doctor. The doctors need to be regulated – they should not be handing out recommendations via "Skype" or "willy-nilly."

Most importantly, cities like Long Beach, its City Attorney, and the Los Angeles District Attorney should **<u>not</u>** be thwarting state law in a manner that causes the **irreparable harm** redressed by the appellate court in *Pack*.

I believe the California Legislature has the ability to act now. I do **<u>not</u>** believe, considering Congress's action in Washington D.C., that California medical marijuana laws are now preempted by the federal *CSA*. Although I must wait until the Ninth Circuit decides that issue, perhaps the State of California itself can assert that issue or provide a letter brief to the Ninth Circuit. Likewise, perhaps the Governor as well as members of the

Legislature can work with their federal counterparts to ensure cities can regulate (not ban) collectives, doctors can be regulated in this area, and, most importantly, that patients have access to medical marijuana when that medication works effectively.

In addition to these issues, I respectfully ask that you *please* submit a letter brief supporting review of *Pack*, including **all three (3) issues presented by the City**, in the California Supreme Court. As with many of my letters, let me conclude by noting I do **not** use marijuana. I do not currently have a medical need for it. However, my daughter is a patient. She is 19-years-old and was almost killed in an assault in Nevada. Medical marijuana is effective for her and I do not believe that she should be treated differently than a patient for whom opiates, amphetamines, or benzodiazepines are effective.

Very truly yours,

Matthew Pappas

MSP:tp

encl.

cc: Mr. Anthony Gayle, Mr. Ryan Pack, and Ms. Marla James
Mr. Darrell Steinberg and Mr. John A. Perez
Mr. Robert Shannon, Ms. Rae Gabelich, and Ms. Suja Lowenthal
Mr. Charles Farano, Mr. David Welch, and Mr. Lee Durst
Mr. Jose Huizar
Mr. Edmund G. Brown, Jr.
Mr. Andre Birotte, Jr., Mr. Eric Holder, and Mr. Barrack Obama

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
KAMALA D. HARRIS
ATTORNEY GENERAL

December 21, 2011

The Honorable Darrell Steinberg
President Pro-Tempore
State Capitol, Room 205
Sacramento, CA 95814

The Honorable John A. Perez
Speaker of the Assembly
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0046

Re: *Medical Marijuana Legislation*

Dear President Pro-Tempore Steinberg and Speaker Perez:

As the state's chief law enforcement official, I am troubled by the exploitation of California's medical marijuana laws by gangs, criminal enterprises and others. My Office recently concluded a long series of meetings with representatives across the state from law enforcement, cities, counties, and the patient and civil rights communities. The primary purpose of the meetings was to assess whether we could clarify the medical marijuana guidelines that my predecessor published in 2008 in order to stop the abuses. These conversations, and the recent unilateral federal enforcement actions, reaffirmed that the facts today are far more complicated than was the case in 2008. I have come to recognize that non-binding guidelines will not solve our problems – state law itself needs to be reformed, simplified, and improved to better explain to law enforcement and patients alike how, when, and where individuals may cultivate and obtain physician-recommended marijuana. In short, it is time for real solutions, not half-measures.

I am writing to identify some unsettled questions of law and policy in the areas of cultivation and distribution of physician-recommended marijuana that I believe are suitable for legislative treatment. Before I get into the substance, however, I want to highlight two important legal boundaries to keep in mind when drafting legislation.

First, the Court of Appeal for the Second Appellate District recently ruled in *Pack v. Superior Court* (2011) 199 Cal.App.4th 1070 that state and local laws which license the large-scale cultivation and manufacture of marijuana stand as an obstacle to federal enforcement efforts and are therefore preempted by the federal Controlled Substances Act. Although the parties involved in that case have sought review of the decision in the California Supreme Court, for now it is binding law. As mentioned below, the decision in *Pack* may limit the ways in which the State can regulate dispensaries and related activities.

Second, because the Compassionate Use Act (Proposition 215) was adopted as an initiative statute, legislative efforts to address some of the issues surrounding medical marijuana might be limited by article II, section 10(c) of the Constitution, which generally prohibits the Legislature from amending initiatives, or changing their scope or effect, without voter approval. In simple terms, this means that the core right of qualified patients to cultivate and possess marijuana cannot be abridged. But, as long as new laws do not "undo what the people have done" through Proposition 215, we believe that the Legislature remains free to address many issues, including dispensaries, collective cultivation, zoning, and other issues of concern to cities and counties unrelated to the core rights created in the Compassionate Use Act.

With this context, the following are significant issues that I believe require clarification in statute in order to provide certainty in the law:

(1) Defining the contours of the right to collective and cooperative cultivation

Section 11362.775 of the Health and Safety Code recognized a group cultivation right and is the source of what have come to be known as "dispensaries." It provides, in full:

> 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.

There are significant unresolved legal questions regarding the meaning of this statute. Strict constructionists argue that the plain wording of the law only provides immunity to prosecution for those who "associate" in order to "collectively or cooperatively . . . cultivate" marijuana, and that any interpretation under which group members are not involved in physical cultivation is too broad. Others read section 11362.775 expansively to permit large-scale cultivation and transportation of marijuana, memberships in multiple collectives, and the sale of marijuana through dispensaries. These divergent viewpoints highlight the statute's ambiguity. Without a substantive change to existing law, these irreconcilable interpretations of the law, and the resulting uncertainty for law enforcement and seriously ill patients, will persist. By articulating the scope of the collective and cooperative cultivation right, the Legislature will help law enforcement and others ensure lawful, consistent and safe access to medical marijuana.

(2) Dispensaries

The term "dispensary" is not found in Proposition 215 and is not defined in the Medical Marijuana Program Act. It generally refers to any group that is "dispensing," or distributing, medical marijuana grown by one or more of its members to other members of the enterprise through a commercial storefront.

Many city, county, and law enforcement leaders have told us they are concerned about the proliferation of dispensaries, both storefront and mobile, and the impact they can have on public safety and quality of life. Rather than confront these difficult issues, many cities are opting to simply ban dispensaries, which has obvious impacts on the availability of medicine to patients in those communities. Here, the Legislature could weigh in with rules about hours, locations, audits, security, employee background checks, zoning, compensation, and whether sales of marijuana are permissible.

As noted, however, the *Pack* decision suggests that if the State goes too far in regulating medical marijuana enterprises (by permitting them, requiring license or registration fees, or calling for mandatory testing of marijuana), the law might be preempted by the Controlled Substances Act. We also cannot predict how the federal government will react to legislation regulating (and thus allowing) large scale medical marijuana cultivation and distribution. However, the California-based United States Attorneys have stated (paraphrase Cole memo re: hands off approach to those clearly complying with relevant state medical marijuana laws).

(3) Non-Profit Operation

Nothing in Proposition 215 or the Medical Marijuana Program Act authorizes any individual or group to cultivate or distribute marijuana for profit. Thus, distribution and sales for profit of marijuana – medical or otherwise – are criminal under California law. It would be helpful if the Legislature could clarify what it means for a collective or cooperative to operate as a "non-profit."

The issues here are defining the term "profit" and determining what costs are reasonable for a collective or cooperative to incur. This is linked to the issue of what compensation paid by a collective or cooperative to members who perform work for the enterprise is reasonable.

(4) Edible medical marijuana products

Many medical marijuana collectives, cooperatives, and dispensaries offer food products to their members that contain marijuana or marijuana derivatives such as cannabis oils or THC. These edible cannabis products, which include cookies, brownies, butter, candy, ice cream, and cupcakes, are not monitored or regulated by state and local health authorities like commercially-distributed food products or pharmaceuticals, nor can they be given their drug content. Likewise, there presently are no standards for THC dosage in edible products.

Commercial enterprises that manufacture and distribute marijuana edibles and candy do not fit any recognized model of collective or cooperative cultivation and under current law may be engaged in the illegal sale and distribution of marijuana. Clarity must be brought to the law in order to protect the health and safety of patients who presently cannot be sure whether the edibles they are consuming were manufactured in a safe manner.

I hope that the foregoing suggestions are helpful to you in crafting legislation. California law places a premium on patients' rights to access marijuana for medical use. In any legislative action that is taken, the voters' decision to allow physicians to recommend marijuana to treat seriously ill individuals must be respected.

Please do not hesitate to contact me if you have questions or concerns.

Sincerely,

KAMALA D. HARRIS
Attorney General

cc: The Honorable Mark Leno
The Honorable Tom Ammiano

MATTHEW S. PAPPAS
ATTORNEY

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December 23, 2011

VIA U.S. MAIL

Ms. Kamala D. Harris
Attorney General
State of California
1300 I Street, Suite 1740
Sacramento, CA 95814

Re: *Pack v. Superior Court* (2011) 199 Cal.App.4th 1070

Dear Ms. Harris:

I am the attorney representing the patients in the above referenced case. I am in receipt of your letter to members of the state Legislature dated December 21, 2011 regarding medical marijuana in California.

Anthony Gayle is one of the patients in the *Pack* case. He is 25 years old. He suffers from renal failure. He's had heart surgery to replace a part of his heart. Mr. Gayle must have kidney dialysis three (3) times per week. He is likely terminal. Dangerous and addictive opiate drugs like Vicodin and Oxycontin have been contraindicated given his condition.

In the underlying *Pack* case, Mr. Gayle, along with patient Ryan Pack, who was permanently and seriously injured after being hit by a vehicle while riding a bicycle, applied to the trial court for a preliminary injunction.

Long Beach enacted Chapter 5.87 of its municipal code in March, 2010. I have included video excerpts from a City Council meeting held that date. In the video, you will see that city council members were confused by a presentation made by the Los Angeles District Attorney's office. Apparently, the District Attorney felt it necessary to confuse council members based on his staunch opposition to patient rights. It appears he either willfully withheld information regarding the provisions of Ca. Health & Safety Code § 11362.775 or simply failed to read that state law before discussing transportation.

In the video excerpts, you will notice that the members of the council are clearly confused about the transportation issue during the meeting.

Chapter 5.87 was **not** enacted for the benefit of the "all seriously ill Californians" in need of medical cannabis the voters of California considered when they enacted the *Compassionate Use Act* in 1996. As then councilwoman Tonia Reyes-Uranga stated on the record during the March 16, 2010 meeting, Chapter 5.87 is "pretty much a sham" that was designed to take away medication access for patients like Ryan Pack and Anthony Gayle.

On October 6, 2010, patients Pack and Gayle argued before the trial court in the underlying case that a preliminary injunction should issue barring the City from enforcing Chapter 5.87 because the enforcement of that law would result in their inability to access collectives. Dealing with serious medical conditions and life issues, Pack and Gayle access medication through collectives established under and operating pursuant to the *Medical Marijuana Program Act* and 2008 Attorney General guidelines governing the *Safety and Non-Diversion of Marijuana Used for Medical Purposes.*

As you know, injunctive relief is extraordinary in nature and requires the court to assess probability of success on the merits, irreparable harm, and balance respective hardships. On November 2, 2010, although finding Chapter 5.87 was "motivated by sentiments contrary to" and "inconsistent with" the *Compassionate Use Act* and *Medical Marijuana Program Act*, the trial court declined to issue the requested preliminary injunction. Thereafter, the patients petitioned the Second District California Court of Appeal for a peremptory *writ of mandamus* or for an *alternative writ*. The appellate court granted the *alternative writ* and ordered the parties to show cause.

On October 4, 2011, after extensive briefing by the parties and by *amici curiae* including the *American Civil Liberties Union*, the *ACLU of Southern California*, the *ACLU of Northern California*, the *ACLU of San Diego and Imperial Counties*, *Americans for Safe Access*, the *National Drug Policy Alliance*, the *City of Los Angeles*, the *League of California Cities*, and the *Association of California Counties*, the appellate court **granted the petition for *writ of mandamus*.**

When it granted the patients' Petition, the court said there was a "100%" chance the injunction should have been issued by the trial court. The **irreparable harm** claimed by the patients was their **inability to access medication through the collective and cooperative system provided for in the *MMPA* because enforcement of Chapter 5.87 would lead to closure of their respective collectives**. Yet, days after the *Pack* decision, in a retaliatory manner and with the same "sentiments contrary to" the *CUA* and *MMPA*

referred to by the trial court in its November 2, 2010 order, City Attorney Robert Shannon **told the Long Beach City Council it must ban all collectives.**

Mr. Shannon and the Los Angeles District Attorney are violating state law. They are violating the state's *Compassionate Use Act* and the *Medical Marijuana Program Act*. On December 13, 2011, Mr. Shannon publically represented in a Long Beach City Council meeting that the *Pack* case **required** the Long Beach City Council to **ban** all patient collectives. He did not say a "moratorium" was appropriate, but instead said a **ban** was **absolutely necessary**. Mr. Shannon's presentation was **recorded on video** and is now available on the longbeach.gov Website. He misrepresented what the *Pack* decision means.

After the appellate court ordered the parties to show cause in *Pack* back in November, 2010, the City of Long Beach engaged in abhorrent conduct aimed at attacking, harassing, and arresting patients. I'll just provide one (1) example of the City's outrageous behavior against patients during the appellate court briefing period. Petitioner Ryan Pack is a member of the non-profit 562 Collective in Long Beach, California. On March 1, 2011, the City of Long Beach filed an action in Los Angeles Superior Court seeking to declare 562 Collective in violation of LBMC §§ 5.87.020 and 5.87.090 as well as to abate 562 Collective as a nuisance. On May 10, 2011, around twenty-five (25) Long Beach police officers broke-into the 562 Collective without a warrant using a battering ram.

On June 2, 2011, after the warrantless raid, seizures, and arrests, 562 Collective applied *ex parte* for an order to show cause regarding preliminary injunction prohibiting enforcement and for a temporary restraining order pending the order to show cause hearing. *City of Long Beach v. 562 Collective, et al.* (March 1, 2011) L.A.S.C. No. NC055751. After reviewing the moving papers as well as an opposition filed by the City, the trial court made a preliminary finding that the City's break-in, search, and seizure at the patient group was improper stating:

> "THE CONCERN THAT I HAVE IS AS ARTICULATED BY THE DEFENDANTS, THE EVIDENCE SEEMS TO SHOW THAT THE CITY THROUGH ITS POLICE HAVE USED WHAT I REFER TO AS STRONG-ARM TACTICS TO KNOCK DOWN DOORS OF THE COLLECTIVE WITHOUT A WARRANT AND WITHOUT EXIGENT CIRCUMSTANCES. PEOPLE WHO HAVE USED THE COLLECTIVE HAVE BEEN ARRESTED AND BOOKED AND IT'S FURTHER ALLEGED THE CITY HAS CONTACTED THE LANDLORD AND THREATENED TO WITHDRAW THE BUSINESS LICENSE UNLESS THE LANDLORD EVICTS THE DEFENDANT. AND THIS IS WHILE THIS CASE WHERE THE CITY IS THE

> PLAINTIFF IS SEEKING TO ABATE WHAT IT REFERS TO THE NUISANCE WHICH IS THE DEFENDANT COLLECTIVE 562 FROM OPERATING. AND SO WHAT I DON'T UNDERSTAND IS WHY THE CITY WOULD USE SUCH TACTICS WHILE THE CASE IS PENDING?" *Long Beach v. 562 Collective, Transcript*, June 2, 2011, at p.2, lns.10-24 (*excerpt included.*)

The trial court then ordered a show cause hearing on an expedited basis for June 10, 2011. The briefing schedule in advance of the hearing was announced by the Court and accepted by the parties. On June 10, 2011, after the City had been ordered to show cause and the parties were before the trial court for the show cause hearing, the trial judge stated:

> "IT'S ALLEGED THAT THE CITY, THROUGH OFFICERS AND OF THE POLICE DEPARTMENT, AN AGENCY OF THE CITY, ENGAGED IN CONDUCT THAT WAS NOT PART OF FORMAL CIVIL DISCOVERY. IT WAS NOT BASED UPON A SEARCH WARRANT. IT WAS NOT BASED UPON WHAT I WOULD REFER TO AS EXIGENT CIRCUMSTANCES, INSTEAD, BASED UPON WHAT I READ, OFFICERS USED A BATTERING RAM AND BROKE DOWN A DOOR AND SEIZED DOCUMENTS IN THE COLLECTIVE. I DON'T SEE ANYTHING PRESENTED BY THE CITY THAT SHOWS ANYTHING OTHER -- THERE'S UNREBUTTED ALLEGATIONS THAT WERE MADE BY THE COLLECTIVE, AND I DIDN'T SEE ANY RESPONSE TO THAT BY THE CITY. *Long Beach v. 562 Collective, supra,* Transcript, Order to Show Cause Hearing, June 10, 2011, at p. 3, lns. 12-22 (*excerpt included*).

Thereafter, the trial court reviewed a declaration of a Long Beach police officer submitted by the City apparently in support of its warrantless raid and search of and the seizure of property from 562 Collective. The judge then addressed the deputy city attorney stating:

> "WITH ALL DUE RESPECT, I DON'T THINK IT'S UP TO OFFICER COOPER TO TELL ME WHETHER OR NOT HE'S COMPLIED. IF THAT WERE THE CASE, WE WOULDN'T NEED JUDICIAL OFFICERS TO DETERMINE WHETHER THERE IS PROBABLE CAUSE TO ISSUE A SEARCH WARRANT, AN ARREST WARRANT, WHETHER THERE'S PROBABLE CAUSE TO HOLD THE DEFENDANT TO ANSWER FOR A FELONY, ET CETERA, ET CETERA, ET CETERA. THERE IS NOT -- THERE'S NOT ONE FACT IN HERE THAT REBUTS ANY OF THE ALLEGATIONS MADE BY THE DEFENDANTS THAT IT WAS A SEARCH NOT INCIDENT TO A LAWFUL SEARCH WARRANT OR ANY SEARCH WARRANT OR THAT ANY EXIGENT CIRCUMSTANCES EXISTED. AND, THIRDLY, THAT

A BATTERING RAM DEVICE WAS USED TO BREAK DOWN A DOOR AND SEIZE DOCUMENTS AS TO AN OPPONENT IN A CIVIL CASE." *Long Beach v. 562 Collective, supra,* Transcript, June 10, 2011, at p. 5, lns. 4-18 (*excerpt included.*)

This is one (1) of about twenty (20) similar warrantless raids. There were **many** patients arrested under the invalid Chapter 5.87 permitting provisions. There are videos of several raids, harassment, and attacks now on YouTube. Interestingly, despite the numerous deaths related to drug abuse of dangerous opiates like Vicodin and Oxycontin, there were **no** warrantless raids of CVS, Walgreens, or similar medication providers. Likewise, in all of the 5.87 raids in Long Beach, there were no **arrests for violation of state law**. In other words, the patient groups were in compliance with the *MMPA* and Attorney General guidelines. I spoke with a managing patient in regard to the effect of such raids. He told me that patients become fearful of coming into the collectives, they are left without medication, and that it takes weeks for some patients to build up enough courage to come back, if they ever do, because of fears caused by this behavior.

Noting the reference to gangs and criminal activity in your December 21, 2011 letter sent to the leaders of the Assembly and Senate, it is appropriate to note that the vast majority of managing patients of patient collective groups are **not** people making $100,000.00 per month[1] or who drive expensive cars. While there are likely a small group of people distributing marijuana improperly and taking advantage of medical marijuana laws, the managing patients I have had the privilege of working with drive older vehicles that have over 100,000 miles on them. They do **not** make large sums of money and instead face financial issues and challenges while working to maintain medication availability for patients. Most of them have families and rent the houses they live in. While people like Mr. Cooley and Long Beach City Attorney Robert Shannon[2] would like to give the

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[1] During a May, 2011 warrantless raid of non-profit patient collective in Long Beach, a police officer remarked to a volunteer patient being arrested solely for alleged violation of the "permit" provisions of invalid Chapter 5.87. The officer told the volunteer he was getting the "short end of the stick" since the managing patient made $100,000.00 per month. In fact, the managing patient was facing serious financial issues at the time, made less than 1/30th of the amount suggested, drove a domestically produced GMC vehicle with over 130,000 miles on it that was more than seven years-old, and was, following the improper raid, evicted from her rented apartment. That managing patient has never made $100,000.00 per month or anything even close to that. In her life, she's never made more than a few thousand dollars per month.

[2] During a December 13, 2011 Long Beach City Council meeting, information from an earlier held closed-session meeting of the council indicated the police had told council members that 40% of medical marijuana comes from illegal 'drug cartels.' After discussing the issue with patients, the marijuana provided by illegal 'drug cartels' is apparently so very bad that patients would not accept

impression that medical marijuana is just a front for "drug dealing," it is **not** – it is **certainly not that for** those patients who suffer from ailments like Mr. Gayle and Mr. Pack. On the other hand, drug abusers choosing more dangerous drugs like Vicodin and Oxycontin can feign conditions, obtain prescriptions, go to a traditional pharmacy, have the prescription filled, and purchase a bottle of vodka and pack of cigarettes as they leave the pharmacy. Yet, they are not discriminated against through improper police raids and attacks simply because of the medication used that effectively works to mitigate symptoms and medical conditions they suffer from.

The *Pack* court **granted the Petition for *writ of mandamus.*** The appellate court referenced the "balance of hardship" requirements in analyzing the standard of review. That court did **not** create a situation that **requires cities to ban medical marijuana collectives**. Media seeking politicians get out in the press aggrandizing themselves by claiming the necessity of bans in an effort at getting that all-important spot on the evening news. Perhaps those politicians need to sit down and meet a cancer patient who is able to eat and who can participate in life because medical cannabis is effective.

I represent the plaintiff patients in *Marla James, et al. v. City of Costa Mesa, et al.* (2010 9th Cir.) 10-55769. It is the patients' assertion in that case that the *Americans with Disabilities Act of 1990* (ADA) as amended by Congress in 2008 is applicable to them. Under Title II of the ADA, cities may not implement policies or procedures, including but not limited to zoning laws, that facially or by operation discriminate against qualified disabled individuals.

In addition to the *ADA* argument in *James*, I have included an argument that is more applicable to "all seriously ill" Californians in medical need of cannabis. On December 17, 2009, President Obama signed into law the 2011 *Omnibus Appropriations Act* (P.L. 111-117, 2009.) For ten years prior to that date, Congress used its art. 1, sec. 8, cl. 17 **plenary authority over the federal District of Columbia** to prohibit implementation of that City's voter passed "*Legalization of Marijuana for Medical Uses*" law. (D.C. Initiative 59, 1998.) Thereafter, under that **federal jurisdiction's** *Home Rule Act*, the D.C. City Council unanimously approved D.C. Stat. [Proposed] 13-138. The Mayor signed that law in early

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such medication nor would such medication be effective for them. A cursory review indicated that **no** medication provided by the patient groups in Long Beach comes from illegal 'drug cartels' and, in fact, the police agency in Long Beach is really concerned with budget cuts and is seeking to **increase crime rates** in an effort to maintain federal funding for narcotics programs. Given the clear evidence shows **crime increases** when medical marijuana collectives are **closed down**, , it is clear the intent of the police and public employees is to ensure job security in a manner that harms seriously ill and disabled Californians.

June, 2010 and, because Congress has **plenary power** over the District and to ensure compliance with the mandate in art. 1, sec. 8, cl. 17, the proposed law **had to go to Congress for approval**. On or around July 29, 2010, the law was effectively **approved by Congress** allowing the federal district to implement its "*Legalization of Marijuana for Medical Uses*" law.

The House report on P.L. 111-117 shows Congress **knew** it was "allowing the District" to implement the "*Legalization of Marijuana for Medical Uses*" law much like the states. There was dissent reported and detailed in the House report. The press reported Congress's action as "allowing medical marijuana" in the District of Columbia. Today, there is a **complete section of Washington D.C. law that <u>legalizes</u> medical marijuana use, possession, transportation, cultivation, and distribution in that federal district**. Codified as Wa. D.C. Stat. 7-1671, *et seq*., I have included just a small part of that law. The entire argument and detail is available on "Pacer" under 9th Cir. No. 10-55769.

Should Tony Gayle move to Washington D.C. to obtain marijuana and to be protected like patients using Vicodin or Oxycontin under the federal *Americans with Disabilities Act*? No, he should <u>not</u>. When Congress acted to allow the **voters of Washington D.C.** to legalize medical marijuana in P.L. 111-117, it likewise granted that same **fundamental right** to vote to **legalize – not just decriminalize – marijuana to the voters and their respective representatives in <u>all of the states</u> – including California**.

I believe the 9th Circuit will rule in favor of the disabled and seriously ill patients in *James v. Costa Mesa*. However, I am a sole practitioner and you are the Attorney General of California. **There need to be regulations – <u>not</u> bans.** The public safety, health, and welfare need to be balanced with the important needs and rights of the seriously ill, disabled, and permanently injured patients who have been recommended medical cannabis by a licensed doctor. The doctors need to be regulated – they should not be handing out recommendations via "Skype" or "willy-nilly."

Most importantly, cities like Long Beach, its City Attorney, and the Los Angeles District Attorney should **<u>not</u>** be thwarting state law in a manner that causes the **irreparable harm** redressed by the appellate court in *Pack*.

I believe the California Legislature has the ability to act now. I do **<u>not</u>** believe, considering Congress's action in Washington D.C., that California medical marijuana laws are now preempted by the federal *CSA*. Although I must wait until the Ninth Circuit decides that issue, perhaps the State of California itself can assert that issue or provide a letter brief to the Ninth Circuit. Likewise, perhaps the Governor as well as members of the

Legislature can work with their federal counterparts to ensure cities can regulate (not ban) collectives, doctors can be regulated in this area, and, most importantly, that patients have access to medical marijuana when that medication works effectively.

In addition to these issues, I respectfully ask that you *please* submit a letter brief supporting review of *Pack*, including **all three (3) issues presented by the City**, in the California Supreme Court. As with many of my letters, let me conclude by noting I do **not** use marijuana. I do not currently have a medical need for it. However, my daughter is a patient. She is 19-years-old and was almost killed in an assault in Nevada. Medical marijuana is effective for her and I do not believe that she should be treated differently than a patient for whom opiates, amphetamines, or benzodiazepines are effective.

Very truly yours,

Matthew Pappas

MSP:tp

encl.

cc: Mr. Anthony Gayle, Mr. Ryan Pack, and Ms. Marla James
Mr. Darrell Steinberg and Mr. John A. Perez
Mr. Robert Shannon, Ms. Rae Gabelich, and Ms. Suja Lowenthal
Mr. Charles Farano, Mr. David Welch, and Mr. Lee Durst
Mr. Jose Huizar
Mr. Edmund G. Brown, Jr.
Mr. Andre Birotte, Jr., Mr. Eric Holder, and Mr. Barrack Obama

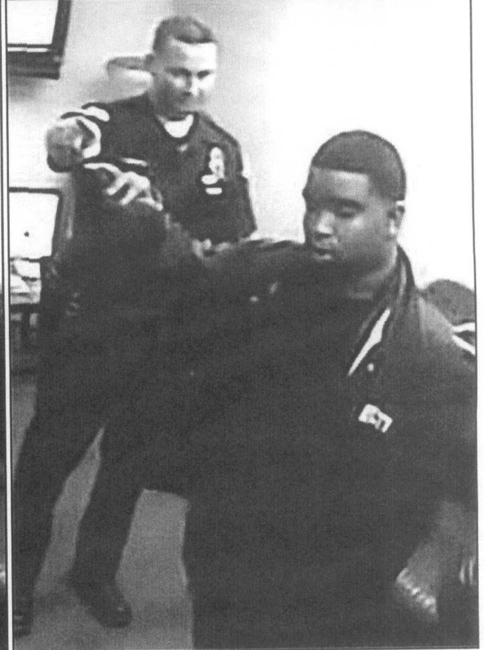
1 THAN THIS ONE PENDING INVOLVING SIMILAR ISSUES, THE LEGALITY
2 OF THE ORDINANCE IN THE CITY OF LONG BEACH THAT DEALS WITH
3 MARIJUANA COLLECTIVES. BASED UPON TWO PRIOR CASES THAT I CAN
4 THINK OF, I FOUND THAT THE ORDINANCE IN THE CITY OF
5 LONG BEACH WAS CONSTITUTIONAL AND THE ENFORCEMENT OF THE
6 ORDINANCE COULD NOT BE ENJOINED. THAT MATTER IS NOW PENDING
7 BEFORE THE COURT OF APPEAL IN THE STATE OF CALIFORNIA, SECOND
8 APPELLATE DISTRICT.
9 AS I'VE NOTED IN THIS LAWSUIT, THE CITY HAS
10 FILED A LAWSUIT TO ABATE A NUISANCE. THE CONCERN THAT I HAVE
11 IS AS ARTICULATED BY THE DEFENDANTS, THE EVIDENCE SEEMS TO
12 SHOW THAT THE CITY THROUGH ITS POLICE HAVE USED WHAT I REFER
13 TO AS STRONG-ARM TACTICS TO KNOCK DOWN DOORS OF THE
14 COLLECTIVE WITHOUT A WARRANT AND WITHOUT EXIGENT
15 CIRCUMSTANCES.
16 PEOPLE WHO HAVE USED THE COLLECTIVE HAVE BEEN
17 ARRESTED AND BOOKED AND IT'S FURTHER ALLEGED THE CITY HAS
18 CONTACTED THE LANDLORD AND THREATENED TO WITHDRAW THE
19 BUSINESS LICENSE UNLESS THE LANDLORD EVICTS THE DEFENDANT.
20 AND THIS IS WHILE THIS CASE WHERE THE CITY IS THE PLAINTIFF
21 IS SEEKING TO ABATE WHAT IT REFERS TO THE NUISANCE WHICH IS
22 THE DEFENDANT COLLECTIVE 562 FROM OPERATING. AND SO WHAT I
23 DON'T UNDERSTAND IS WHY THE CITY WOULD USE SUCH TACTICS WHILE
24 THE CASE IS PENDING.
25 THE QUESTION THAT I HAVE IS, IF I ACCEPT THE
26 ALLEGATIONS OF THE DEFENDANT MOVING PARTY AS TRUE, WHY
27 SHOULDN'T THE COURT ENJOIN THE CITY FROM STRONG-ARM TACTICS?
28 MS. CARNEY: YOUR HONOR, IF I MAY FIRST ADDRESS THE

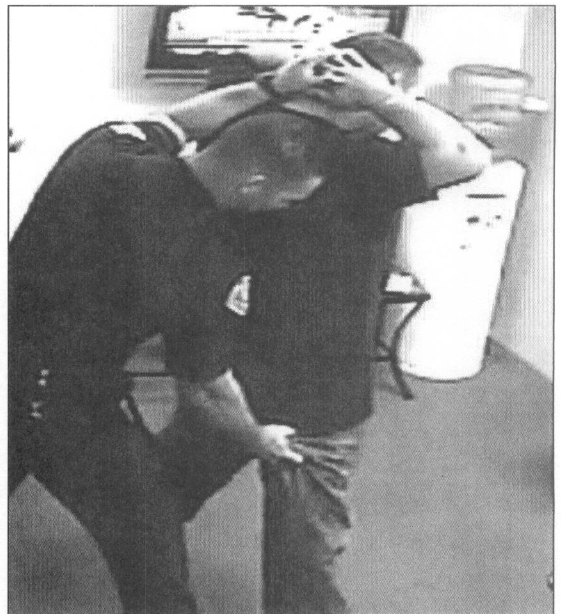
EXHIBIT "1"

1 CONNECTION WITH 3970 ATLANTIC AVENUE IN THE CITY OF
2 LONG BEACH, WHICH I BELIEVE TO BE THE LOCALE OF THE 562
3 COLLECTIVE."
4 WITH ALL DUE RESPECT, I DON'T THINK IT'S UP TO
5 OFFICER COOPER TO TELL ME WHETHER OR NOT HE'S COMPLIED. IF
6 THAT WERE THE CASE, WE WOULDN'T NEED JUDICIAL OFFICERS TO
7 DETERMINE WHETHER THERE IS PROBABLE CAUSE TO ISSUE A SEARCH
8 WARRANT, AN ARREST WARRANT, WHETHER THERE'S PROBABLE CAUSE TO
9 HOLD THE DEFENDANT TO ANSWER FOR A FELONY, ET CETERA, ET
10 CETERA, ET CETERA.
11 THERE IS NOT -- THERE'S NOT ONE FACT IN HERE
12 THAT REBUTS ANY OF THE ALLEGATIONS MADE BY THE DEFENDANTS
13 THAT IT WAS A SEARCH NOT INCIDENT TO A LAWFUL SEARCH WARRANT
14 OR ANY SEARCH WARRANT OR THAT ANY EXIGENT CIRCUMSTANCES
15 EXISTED.
16 AND, THIRDLY, THAT A BATTERING RAM DEVICE WAS
17 USED TO BREAK DOWN A DOOR AND SEIZE DOCUMENTS AS TO AN
18 OPPONENT IN A CIVIL CASE.
19 MS. CARNEY: I UNDERSTAND, YOUR HONOR. FIRST, THE
20 CITY BELIEVES THAT THE DEFENSE HAS MADE ALLEGATIONS
21 UNSUPPORTED BY EVIDENCE CONCERNING THE CIRCUMSTANCES. AND --
22 THE COURT: I'M SORRY. I JUST WANTED TO FOCUS ON THE
23 WORDS "THE PLAINTIFF BELIEVES THAT THE DEFENDANTS."
24 MS. CARNEY: DEFENDANTS HAVE MADE ALLEGATIONS NOT
25 SUPPORTED BY EVIDENCE CONCERNING THE EVENTS THAT THEY ALLEGE
26 OCCURRED AT THE 562 COLLECTIVE.
27 WHILE I'M NOT DISPUTING THE POLICE DO CONDUCT
28 REGULAR INVESTIGATIONS AND THOSE INVESTIGATIONS DID INCLUDE

EXHIBIT "2"

1 AN INVESTIGATION OF 562, OTHER THAN STATING AT THIS TIME THAT
2 THEY COMPLIED WITH ALL THE REQUIREMENTS OF THE CONSTITUTION,
3 IF THE DEFENDANTS WOULD LIKE TO BRING A 1983 CLAIM, AS I
4 DISCUSSED IN MY FURTHER OPPOSITION, THEY'RE WELCOME TO DO SO.
5 AT THAT POINT WE MAY BE REQUIRED TO DISCLOSE SPECIFICALLY THE
6 EXIGENT CIRCUMSTANCES. BUT AS FAR AS THE MATTER THAT WE'RE
7 HERE FOR TODAY, THE CITY'S POSITION IS THAT WE DID SUPPLY
8 INFORMATION DENYING THEIR ALLEGATIONS AND THAT --
9 THE COURT: I DISAGREE WITH THAT STATEMENT. I THINK
10 YOU DENIED THE ALLEGATIONS, BUT I DON'T THINK YOU SUPPLIED
11 ANY FACTS TO REBUT THE ALLEGATIONS.
12 MS. CARNEY: I UNDERSTAND. I THINK THAT'S CORRECT.
13 THE COURT: I THINK THERE IS A DIFFERENCE WITH A
14 DISTINCTION.
15 MS. CARNEY: I AGREE.
16 THE COURT: ALL RIGHT. WELL, THE REQUEST OF THE
17 DEFENDANT IS ASKING THE COURT TO ENJOIN THE ENFORCEMENT OF
18 THE ORDINANCE IN QUESTION. AND I WILL SAY I'VE GIVEN THIS
19 MATTER A GREAT DEAL OF THOUGHT. HERE'S WHAT I -- HERE'S THE
20 BENEFIT OF MY THOUGHTS.
21 AS I'VE NOTED EARLIER, THE CITY HAS BROUGHT
22 THIS CIVIL CASE WHERE IT IS THE PLAINTIFF AND IT SEEKS TO
23 ABATE WHAT IT CALLS A PUBLIC NUISANCE, THE OPERATION OF THE
24 562 COLLECTIVE, WHICH IT ALLEGES SHOULD NOT BE PERMITTED TO
25 OPERATE IN THE CITY.
26 ON THE OTHER END OF THE TABLE, THE DEFENDANT
27 CONTENDS THAT -- I BELIEVE IT WAS ON MAY THE 9TH OF THIS YEAR
28 AGENTS OF THE PLAINTIFF, SPECIFICALLY POLICE OFFICERS FROM





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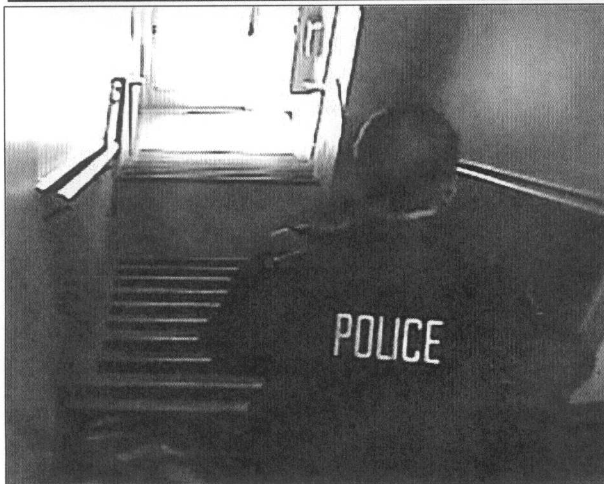
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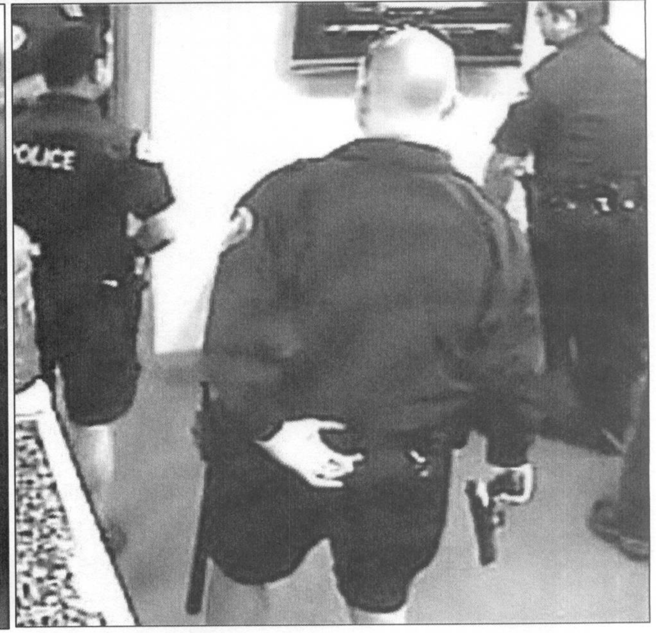

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DECLARATION OF WADE ANDREWS

1. I Wade Andrews, declare as follows:

2. I am over the age of 18. I am the property manager for the building located at 3970 Atlantic Avenue in Long Beach, California.

3. In early May, I was contacted by telephone by a person identifying himself as Erik Sund. Mr. Sund identified that he works for the City of Long Beach. During the call, Mr. Sund told me that he wanted the 562 patient collective that leases an office location in the 3970 Atlantic Ave. building to be evicted. When I asked him why, he became agitated and told me if I did not evict the patient group, he would revoke my business license and that I would never again be able to obtain a business license in the City of Long Beach.

4. After the call, I notified the 562 patient group that the group had to cease operations and vacate the premises within 30-days. I provided written notice to the group based on the threats made to me by Mr. Sund.

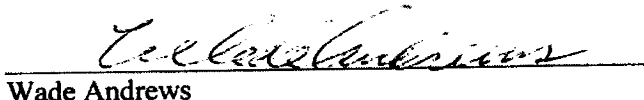
5. Several days after the call from Mr. Sund, I received a notice by mail that I was to appear before Mr. Sund for a business license revocation hearing. A true and correct copy of the notice of business license revocation that I received is included with this declaration.

6. I have received Long Beach citations alleging that I am in violation of Long Beach Municipal Code section 5.87. According to the citations, one of which is included with this declaration, I am violating 5.87 because 562 collective group does not have a permit to cultivate medical marijuana in the City of Long Beach.

7. I felt threatened by Mr. Sund. My wife was scheduled for surgery the day after Mr. Sund called me. I was distressed and worried as a result of his call to me.

I declare under penalty of perjury under the laws of the State of California that the aforementioned statement represents my personal knowledge and is true and correct.

Executed June 6, 2011:



Wade Andrews

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MEMORANDUM

Date: October 26, 2011
From: Ad Hoc Medical Marijuana Committee, City Attorneys' Department
Re: ***Pack v. City of Long Beach*** **– Analysis**

This memorandum is provided for general information only and is not offered or intended as legal advice. Readers should seek the advice of an attorney when confronted with legal issues and attorneys should perform an independent evaluation of the issues raised in this memorandum.

INTRODUCTION

The following is an analysis of *Pack v. Superior Court of Los Angeles County (City of Long Beach)*, 2011 WL 4553155 (Cal.App. 2 Dist.), prepared by the Ad Hoc Medical Marijuana Committee of the City Attorneys' Department. Questions that may be raised by the opinion are also included.

FACTS

The City of Long Beach (City) enacted a comprehensive regulatory scheme governing medical marijuana collectives. Under the ordinance, the City charged application fees, and, because the ordinance prohibited any collective from operating within 1,000 feet of another collective, held a lottery to determine which locations could potentially operate. When enacted, the ordinance expressly provided that no collective could commence or continue operations without a permit. To obtain a permit, collectives were subject to numerous operational requirements and location restrictions. To date, the City has not issued any permits.

PROCEDURAL POSTURE

Plaintiffs were members of medical marijuana collectives who sought to enjoin enforcement of the City's ordinance, arguing that the ordinance went beyond decriminalization and permitted conduct prohibited by the federal Controlled Substance Act (CSA). The trial court denied the preliminary injunction, declining to address the federal preemption argument and instead finding that plaintiffs could not request such a finding when the plaintiffs themselves were in violation of the same federal law. Plaintiffs filed a petition for writ of mandate in the Court of Appeal, Second District, Division 3. That Court granted the writ petition as to the permit provisions of

the ordinance and remanded the matter to the trial court to determine whether any remaining provisions could be severed and given effect, and whether any of the remaining provisions conflict with state law.

ISSUE

The Court of Appeal framed the issue as being "whether the City's ordinance, which permits and regulates medical marijuana collectives rather than merely decriminalizing specific acts, is preempted by federal law."[1]

HELD

In a case of first impression, the Court concluded that, to the extent the City's ordinance permits collectives, it stands as an obstacle to the purposes of the CSA and is preempted by federal law. The ordinance's permit provisions, including its "substantial" application and renewal fees and lottery system, impermissibly authorize the operation of collectives. One provision, which requires permitted collectives to have samples of their marijuana analyzed by an independent laboratory, is preempted under conflict preemption principles because it requires collectives to violate the CSA by distributing marijuana for testing.

ANALYSIS

The Court reviewed the CSA, Compassionate Use Act (CUA), and Medical Marijuana Program Act (MMPA). The Court noted that the CSA contains a provision governing preemption, and relied on that provision in its analysis. The Court further noted that the CUA "simply decriminalizes" certain conduct for state law purposes, and thus is not preempted by the CSA, citing *Qualified Patients Ass'n v. City of Anaheim,* 187 Cal. 4th 734,757 (2010). The Court described the MMPA as an expansion of the immunities provided by the CUA,[2] including arrest immunity for those who participate in the voluntary identification card system. It also limited the amount of marijuana that may be possessed, and decriminalized the collective or cooperative cultivation of marijuana. The Court later relies on the distinction between decriminalization and "authorization" or "permission" in its conclusion that the City's ordinance is preempted by federal law.

In its preemption analysis, the Court reviewed the four types of federal preemption: express, conflict, obstacle and field preemption. Express and field preemption were eliminated as sources

[1] The larger issue is whether any state, county or municipality can regulate medical marijuana collectives without violating the CSA, which was enacted to prevent illicit drug diversion.

[2] The additional immunities provided under the MMPA are triggered "solely on the basis of" specified conduct by specified individuals. To the extent that the conduct goes beyond that, it is not immunized or decriminalized. *People v. Mentch,* 45 Cal. 4th 274 (2008)

of preemption because of 21 U.S.C. § 903.[3] Conflict preemption is established when it is impossible to simultaneously comply with two laws, in this case the CSA and the City's ordinance. Citing *County of San Diego v. San Diego NORML*, 165 Cal. App. 4th, 798, 823 (2008), the reviewing Court determined that "the federal CSA would preempt any state or local law which fails the test for conflict preemption." Thereafter, the Court acknowledged that other courts "concluded that the federal CSA's preemption language bars consideration of obstacle preemption" while another court "concluded that the federal CSA preempts conflicting laws under both conflict and obstacle preemption." Addressing these divergent views, the Court reasoned that "the federal CSA can preempt state and local laws under both conflict and obstacle preemption." In so doing, the Court maintained that it had "not driven a legal wedge – only a terminological one – between 'conflicts' that prevent or frustrate the accomplishment of a federal objective and 'conflicts' that make it 'impossible' for private parties to comply with both state and federal law."

That said, in the limited area of medical marijuana testing, the Court applied conflict preemption. Specifically, the Court found the City's requirement that collectives have samples of their medical marijuana tested at an independent laboratory to ensure that it is free from pesticides and contaminants was preempted by the CSA because this provision required collectives to distribute marijuana for testing. The Court was not persuaded by the argument that the ordinance did not compel any person who did not desire to possess or distribute marijuana to do so.[4]

The Court expressly disagreed with,

> their 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 . . . [and] as far as Congress is concerned, there is no such thing as medical marijuana.

[3] Section 903 provides: "No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together."

[4] In a troubling footnote, and while acknowledging that the issue was not before them, the Court noted that the City's ordinance might require certain city officials to violate federal law by aiding and abetting a violation of the CSA. The Court then points to a letter written by US Attorneys for the Eastern District to the Governor of Washington, in which the U.S. Attorneys warn that state employees may not be immune from liability under the CSA for the employees' implementation of certain legislative proposals for marijuana growers and dispensaries. The Court did not engage in an analysis of aiding and abetting, which requires, *inter alia*, a specific intent to facilitate the commission of a crime by another and the requisite intent of the underlying substantive offense, both of which, arguably, would not be present in the state employee implementing a state regulatory scheme. *Conant v. Walters*, 309 F. 3d 629, 635 (9th Cir. 2002).

The Court ultimately relied on obstacle preemption to conclude that the City's permit scheme is preempted where it authorized, rather than decriminalized, the possession and cultivation of medical marijuana. In contrast, the Court, in footnote 30, acknowledged that "the MMPA sometimes speaks in the language of authorization, when it appears to mean only decriminalization . . . [and that] any preemption analysis should focus on the purposes and effects of the provisions of the MMPA, not merely the language used." The City was determining which collectives were permissible and which were not by requiring collectives to meet certain conditions and pay fees. Possession of a City permit would allow certain collectives to operate, while those without permits could not operate; thus, the Court concluded that the permit was equivalent to authorization.

The Court was also concerned with the City's application and renewal fees, and the fact a lottery was held to determine which collectives might ultimately be granted a permit. Such action, the Court concluded, authorized operation and was preempted. In light of this reasoning, the Court placed "some weight" on a February 1, 2011, letter issued by the U.S. Attorney for the Northern District of California to the Oakland City Attorney regarding that city's consideration of a licensing scheme for medical marijuana. The letter explained, "Congress placed marijuana in Schedule I of the Controlled Substance Act (CSA) and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities." Still, the Court stopped short of rendering any opinion as to federal preemption of the MMPA, but instead focused on provisions of the City's ordinance.

The Court went on to observe that certain provisions of the ordinance which simply identified prohibited conduct without regard to the issuance of a permit, such as closing hours, age restrictions, and no alcohol consumption on premises, imposed limitations on collectives, and thus did not authorize activity prohibited by the CSA. Further locational restrictions, imposed as a limitation on the operation of collectives, would not be federally preempted. However, the latter restrictions appeared as part of the permit process and the Court left it to the trial court on remand to interpret whether those provisions could stand alone.

QUESTIONS

1. Can a city require a permit as a condition of operating a collective in that city?

No. The *Pack* Court viewed the issuance of a permit as authorization to operate a collective, and such authorization is an obstacle to enforcement of the CSA, and therefore preempted. The Court in two footnotes (18 and 31) points to the practical result of the City's ordinance: because of the fees, alarm and other equipment installation requirements, and locational restrictions, the only kind of collectives allowed would be "large dispensaries that require patients to complete a form summarily designating the business owner as their primary caregiver and offer marijuana in exchange for cash 'donations'-the precise type of dispensary believed by the Attorney General likely to be in violation of California law." The Court contrasts this commercial model with a

small collective "of four patients and/or caregivers growing a few dozen plants," suggesting that such an enterprise is more keeping with state law. The Court notes that the large-scale dispensary is disapproved both in the Attorney General Guidelines and the U.S. Attorney Letters. However, given the Court's conclusion that it is the City's authorization that triggers federal preemption, it is unclear how a city could "permit" even a small collective, even though this Court seemed inclined to view small collectives differently.

2. Can a city impose a business tax on collectives?

Taxes were not at issue in *Pack*. However, cities that impose a higher tax rate specifically on medical marijuana collectives may want to evaluate that practice in light of *Pack*. The Court references the Attorney General Guidelines' confirmation of the state's taxation of medical marijuana transactions and requirement that those engaging in such transactions obtain a seller's permit. This, according to the Guidelines, does not allow "unlawful sales" but rather merely "provides a way to remit" any taxes due. (Footnote 11.) To the extent that a local tax on collectives is part of a permitting scheme, it would appear to be preempted under *Pack*. Also, to the extent that such taxation could be viewed as encouraging large-scale commercial operations, *Pack*'s analysis suggests that obstacle preemption may be found.

3. Can a city impose zoning restrictions?

Maybe. The Court does not address zoning separately, nor does it analyze any cases which discuss the traditional power of cities to zone. In providing the background for the case, the Court says "The city's ordinance not only restricts the location of medical marijuana collectives, (citations omitted), but also regulates their operation by means of a permit system (citations omitted)." The Court notes that there is a distinction between not making an activity unlawful, and making the activity lawful. Further, the Court remanded the locational restrictions to the trial court to determine whether they could be interpreted to stand apart from the permit process. "These restrictions, imposed strictly as a limitation on the operation of medical marijuana collectives in the City, would not be federally preempted." It appears that cities can tell collectives where they can't be, but not where they can be.

4. Can a city include collectives and dispensaries as an "allowed" or "enumerated" land use in its code?

Probably not. Although *Pack* does not directly address this issue, its analysis logically seems to disfavor any authorization or allowance of collectives, even if not in the form of permits. If city action "goes beyond decriminalization into authorization" of conduct prohibited by the CSA, it likely runs afoul of *Pack*.

Nowhere in the opinion does the Court address the Tenth Amendment to the U.S. Constitution, which provides that all powers not delegated by the U.S. Constitution to the United States nor prohibited by it to the states are reserved to the states or the people; the authority to make land use regulations is based on this reservation of power. 9 Miller & Starr, Cal Real Estate section

25.2 (3d ed. 2009). In California, zoning is a local matter exercised by the cities pursuant to the police powers set forth in article XI, section 7 of the California Constitution. *Id.*

Pack also did not address California Government Code section 37100, which provides: "The legislative body [of a city] may pass ordinances not in conflict with the Constitution and laws of the State or the United States." This statute is clearly consistent with the Court's decision and appears to reinforce that an ordinance which permits conduct in violation of either federal or state law cannot stand.

5. Can a city impose public safety-related restrictions or prohibitions?

Probably. The Court noted that there are provisions of the City's ordinance that identified prohibited conduct without regard to the issuance of permits. Thus, it appears that making certain conduct unlawful is probably not preempted by the federal CSA.

6. Is there a true split in authority with the Fourth District Court of Appeal such that a city could cautiously ignore *Pack*?

When opinions of the Court of Appeal conflict, the trial court must apply its own wisdom to the matter and choose between the opinions. *McCallum v. McCallum*, 190 Cal. App. 3d 308, 315, fn. 4, (1987).

> As a practical matter, a superior court ordinarily will follow an appellate opinion emanating from its own district even though it is not bound to do so. Superior courts in other appellate districts may pick and choose between conflicting lines of authority. This dilemma will endure until the Supreme Court resolves the conflict, or the Legislature clears up the uncertainty by legislation.

Ibid.

The *Pack* Court disagrees with what the Fourth District Court "implied" with respect to obstacle preemption in *Qualified Patients Ass'n v. City of Anaheim*, 187 Cal. App. 4th 734 (2010) and *County of San Diego v. San Diego NORML*, 165 Cal. App. 4th 798 (2008). In *Qualified Patients*, the Fourth District said:

> . . . a city's compliance with state law in the exercise of its regulatory, licensing, zoning, or other power with respect to the operation of medical marijuana dispensaries that meet state law requirements would not violate conflicting federal law. . . . [T]he fact that some individuals or collectives or cooperatives might choose to act in the absence of state criminal law in a way that violates federal law does not implicate the city in any such violation . . . governmental entities do not incur aider and abettor

> or direct liability by complying with their obligations under the state medical marijuana laws.

Id. at 759-760. This statement is at odds with the *Pack* Court at footnote 27, wherein the Court states that there may be an issue of city officials aiding, abetting or facilitating a violation of federal law when approving and issuing a permit. Further, the Fourth District rejected the argument that the MMPA, specifically Health and Safety Code section 11362.775 (providing immunity from certain drug related offenses for qualified patients, ID card holders, and primary caregivers who collectively and cooperatively associate to cultivate marijuana for medical purposes), is preempted under a theory of obstacle preemption.

Finally, the Fourth District in *County of San Diego* concluded that the state's identification card program was not preempted as an obstacle to the CSA because the CSA combats recreational drug use, and does not regulate a state's medical practices. *County* at 826-827. Although the Second and Fourth Districts analyzed the issue of obstacle preemption differently, the Fourth District was not confronted with a permitting scheme in either *County of San Diego* or *Qualified Patients*. Thus, it appears that no conflict presently exists with respect to whether cities may permit collectives.

7. If a city has already permitted collectives, what should it do?

Pack says the permit scheme is preempted. One view is that such ordinances are preempted, and thus no longer enforceable, in the same way that a city could not enforce, for example, an illegal lodging ordinance if a court ruled that ordinance unconstitutional. To the extent that, under this view, a permitting ordinance is "null and void" as a matter of law, there is case law which suggests otherwise. In *Travis v. County of Santa Cruz,* 33 Cal. 4th 757, 775-776 (2004), the state Supreme Court stated:

> Plaintiffs suggest that preemption by state law renders a local ordinance not only unenforceable but also 'null and void,' and that consequently in this case 'there is no applicable limitations period because there is essentially no ordinance.' Plaintiffs' claims would thus be timely whenever brought. Plaintiffs cite no authority for this approach, and we have discovered none. Nor does it appeal as a matter of logic. A preempted ordinance, while it may lack any legal effect or force, does not cease to exist; if it did cease to exist, any challenge to it would have no object.

Though *Travis* involved state preemption and the applicable statute of limitations, the Court's analysis is germane. Following its logic, a city council may decide to formally repeal an ordinance which permits or otherwise authorizes collectives or dispensaries based on preemption by federal law, rather than deem it null and void by operation of law. Such an ordinance could expressly provide that any permits issued under the repealed ordinance are void and without legal force or effect.

Another view is that each individual issued permit must be revoked, with notice, so that the permitee is provided due process. Usually this involves some type of appeal hearing. A possibility to consider under this scenario, however, is: What if the hearing body or officer restores the permit to the collective? While such a decision would be inconsistent with *Pack*, collectives would likely argue that, under state law, they have a "right" to exist under the CUA and MMPA. In fact, such arguments are likely to be made regardless of the mechanism a city uses to "disallow" permitted collectives based on the *Pack* ruling. While a court would probably reject such arguments, based on abundant case law finding that state law does not require cities to allow collectives or dispensaries, cities should certainly anticipate them. *See City of Claremont v. Kruse*, 177 Cal. App. 4th 1153 (2009), *City of Corona v. Naulls*, 166 Cal. App. 4th 418 (2008), *County of Los Angeles v. Hill*, 192 Cal. App. 4th 861 (2011).

8. What should a city do with existing zoning provisions?

The city should review the language used to create the zoning restrictions. It appears under *Pack* that if the restrictions operate as a limitation, those restrictions are not preempted. If the zoning provisions are written in a manner that authorizes or allows or permits collectives, they are likely preempted. The main body of the Court's opinion focuses on limitation versus authorization, and seems to imply that the drafting of the right "prohibitory" language will save such ordinances from a preemption problem. However, the Court also says, in footnote 30, that any preemption analysis should focus on the purposes and effect of the provisions, not merely the language used. In that footnote, the Court is discussing the MMPA and how the MMPA sometimes speaks in authorization language when it appears to mean only decriminalization. If the language in your city's ordinance really means only decriminalization, you may be able to use this footnote. However, a similar argument was made as to the "permit" in the *Pack* case, and that argument was rejected by the Court, as the only way one could operate was with a permit. Therefore, it was, again, authorization and not decriminalization.

9. Does *Pack* apply to Charter cities?

Pack says "yes" (footnote 24). *Pack* comes to this conclusion by noting that regulation of medical marijuana is a matter of state and national interest.

10. If a city is contemplating regulation or has started the process of considering an ordinance to permit collectives, what should it do?

The city should re-evaluate its position and not move forward. The city should consider limitations, rather than a permitting scheme. (But see question and answer number six.)

Opinion: http://www.courtinfo.ca.gov/opinions/documents/B228781.PDF
Long Beach Ordinance:http://www.longbeach.gov/civica/filebank/blobdload.asp?BlobID=30310

From: Matthew Pappas <mtthwppps1@gmail.com>
To: undisclosed-recipients:;
Date: 12/30/2011 03:29 PM
Subject: Your City Attorney's Position

Your City Attorney spoke on December 13 expressing that because of the Pack decision, as a party, Long Beach HAD to ban collectives.

Note that a PRELIMINARY INJUNCTION requires a finding of irreparable harm. The trial court, Judge Madden, denied the preliminary injunction in November 2010. Thereafter, the patients sought a writ of mandamus -- an order from the appellate court ORDERING the trial court to issue the preliminary injunction. THE IRREPARABLE HARM WAS THE CLOSURE OF COLLECTIVES UNDER 5.87 THAT WOULD CAUSE INJURY TO RYAN PACK AND ANTHONY GAYLE! The appellate court GRANTED THE PETITION FOR WRIT OF MANDAMUS. The IRREPARABLE HARM in the WRIT PETITION was the improper CLOSURE of collectives through 5.87 -- the permitting provisions of which are UNLAWFUL.

Now, let's analyze -- the appellate court GRANTED THE WRIT to PREVENT the IRREPARABLE HARM (i.e. the CLOSURE OF THE COLLECTIVES THAT WOULD THEN CAUSE THE PATIENTS TO HAVE SERIOUS PROBLEMS). Do you really think a BAN is what the court requires of you?

You'd better have outside counsel review the matter. You're on notice. You have the law now. Make the right decision. You're interfering with the judicial process by passing a ban. Be ready for additional lawsuits.

--

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LEGAL ASSISTANT:
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November 8, 2011

VIA FACSIMILE AND E-MAIL

Ms. Kendra L. Carney
Deputy Long Beach City Attorney
333 W. Ocean Blvd, 11th Floor
Long Beach, CA 90802-4664

Re: *City of Long Beach v. 1 A.M. Collective, et al.*
L.A.S.C. #: NC055752

Dear Kendra:

As you know, I wrote to you on October 18, 2011 following our discussion and subsequent phone conversation on October 13, 2011. To date, I have had no response from your office.

I have provided to you and to Mr. Shannon the clear legal basis and arguments showing that a ban of all medical marijuana collectives in Long Beach is impermissible under articles 2 and 11 of the California Constitution and other provisions of the law. Furthermore, I have explained that a complete ban violates Title 2 of the *Americans with Disabilities Act* (42 U.S.C. §§ 12101, *et seq*) as well as a host of additional laws designed to protect seriously ill and disabled citizens.

I was notified yesterday that the published agenda for the November 15, 2011 Long Beach City Council meeting includes the apparent first reading of and planned vote by the Council on emergency legislation that will, despite absolute legal authority to the contrary, "ban" all patient collective groups in Long Beach.

Since July, 2010, I have sent numerous letters to Mr. Shannon asking him to consider the needs of the many cancer, AIDS, disabled, seriously ill, and permanently injured patients for which the People of the State of California provided for in the *Compassionate Use Act*. I have endured *de facto* slanderous remarks, "spin," and absolutely inappropriate behavior in a City bent on retaliation and what I believe is illegal behavior. The utter contempt for the voters, for Long Beach citizens, for taxpayers, and for the seriously ill and disabled by the Long Beach City Council is utterly outrageous.

I have repeatedly told you that Anthony Gayle, one of the patient plaintiffs in the *Pack* case, suffers from renal failure. He must have dialysis three (3) times a week. His serious illness has caused cardiac damage. He's had open heart surgery. His doctors have told him traditional opiate medications are contraindicated for his condition. **He is 25-years-old.** **It is very likely his illness is terminal**. He can't drive, does not have a car, and is on disability because **he can't work**. He has a young daughter. He certainly cannot cultivate medical marijuana on his own. He has no means of effective transportation. Instead of Oxycontin or Percocet or Demerol or Propofol, medical marijuana works for Tony.

When the City Council passes its ban next Tuesday, would you please ask Mayor Foster and the members of the City Council to visit Mr. Gayle? -- Because Tony isn't going to be able to endure a council meeting in his condition. Can you ask them to take a little bit of time out of their day to talk to Tony, a seriously ill citizen of Long Beach who is likely terminal, and **explain to him why they are taking away his medication?** When you **ban** collectives, you're taking away his medication. In reality – in the real world -- you are taking away the medication that works for him and that his licensed California doctor has recommended. Tony Gayle is, without a doubt, one of the "***all seriously ill Californians***" that the People of the State of California have **unquestionably provided the "right to obtain"** medical marijuana for in Ca. Health and Safety §§ 11362.5(B)(1)(a) and 11362.5(B)(1)(c).

When the state's voters used the terms "*right to obtain*" and "*all seriously ill*" Californians in the *Compassionate Use Act*, they did **not** intend to give Mr. Shannon, Mr. Sund, Detective Strohman, Mayor Foster, Mayor Foster's wife **or any member of the Long Beach City Council** the right to pass a law that **excludes** Tony Gayle from having the system, as a "*seriously ill Californian,*" California implemented under 11362.5(B)(1)(c) of the *Compassionate Use Act*. I still am not sure where many city council members have gleaned their bias and opinions from in respect to medical marijuana patients, including Tony Gayle, and the idea that a "ban" against the many seriously ill and disabled citizens in Long Beach is O.K. considering state law and the *ADA*?

Perhaps city officials and elected representatives rely on local press articles and reports to learn about patients as well as for the basis for their decisions. Many articles in the press are completely inaccurate (i.e. the article that characterized Tony Gayle and Ryan Pack as "owners" of collectives; the report that the City has already repealed 5.87 and banned all collectives; the article that included a quote from an improperly operating "dispensary" owner in which he appeared to be a "legal expert" when (for self-serving reasons) he stated that the *Pack* case means the City has no power to regulate collectives; *or* the article that misquoted a federal judge who later questioned why he was quoted as finding "there is no medical value to marijuana" when he **never** made such a finding.) Often, the inaccuracies in the press are a direct

result of the City's effort to lead "by the nose" the easily offended and often retaliatory reporters to the "facts" and "conclusions" the City wants reported. To be fair, there are reporters[1] who investigate issues rather than reprint blurbs prepared by the City's public relations folks.

As you know, the City has been served with the cross-complaint filed in *City of Long Beach v. 562 Collective*, L.A.S.C. No. NC055751. That cross-action includes, *inter alia,* claims for civil violation of the *Racketeer Influenced and Corrupt Organizations Act*, 42 U.S.C. § 1983, and Ca. Civil Code § 52. There is evidence of violation of 18 U.S.C. § 201 along with what is very likely related violations of 18 U.S.C. § 1956.

I have included with this letter the October 19, 2010 declaration of Larry Parks. In it, Mr. Park states that, "[S]everal weeks ago, I was contacted by attorney Paul Violas. Mr. Violas told me he was aware that I was a manager of a medical marijuana patient cooperative group in Long Beach, California. He told me that **he had the ability to get 'any Long Beach medical marijuana permit application approved'** ... Mr. Violas told me ... he would be able to 'guarantee' acceptance of my patient cooperative group's application ... [Violas provided] me with 'inside information' about what was going on in Long Beach city hall. He appeared to know about things that would be happening in city council meetings before those things would actually become public... **During [a] later call from Mr. Violas, he told me that he would need ... money to be committed to city projects or programs ... in order to make sure city officials would approve my patient group's permit** ... [Violas] said 'all of his clients, **the city does not bother them.**'" Since filing the underlying *Pack v. Long Beach* case at the end of August, 2010, I have been informed by a number of people that offers similar to the one made by Mr. Violas described in Mr. Park's October 19, 2010 declaration have been made to other patient collectives.

During a December 10, 2010 Long Beach council meeting, Councilman Steven Neal requested that the definition in 5.87 of "*parks*" be changed to benefit one particular collective, *Belmont Shore Natural Care* ("*Belmont Shore Collective*"). As originally proposed to the City Council on December 14, 2010, the "*park*" distance amendment would have **eliminated** the *Belmont Shore Collective* as it was located within 1,000 feet of a beach (which by definition is a "*park*" under Chapter 21.35 of the *Long Beach Municipal Code*). It is clear that this was the objective of Councilman Neal's proposed change since his request was to "exempt" Alamitos Beach, which, again, could ***only*** have benefited the *Belmont Shore Collective*. At the suggestion of City staff, the amendment was broadened to include all beaches, but the effect

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1 *e.g.* Gregg Moore, *Long Beach Post*; Jonathan Van Dyke, *Gazette*; and others.

was the same -- one (1) collective was removed from the new 1,000 foot buffer zone, the *BelmontShore Collective*. It was clear from the record that the amendment to exclude beaches from the definition of "parks" was designed to relieve a particular property and collective from the newly proposed restrictions for the benefit of a particular property and interested party.

During investigation related to the Chapter 5.87 related cases, I was informed that an agent of the *Federal Bureau of Investigation* visited a patient collective in February, 2011 and spoke with that collective's managing patient. Apparently, the federal agent was gathering evidence related to City officials, Chapter 5.87, and the "permit lottery" process. Our investigation uncovered that the federal agent did not order the collective to shut down or cease operations.

Our investigation has further uncovered evidence showing that, on November 8, 2011, police agencies ***excluding*** the Long Beach Police Department raided the *Belmont Shore Collective* in Long Beach. Curiously, the LBPD appears to have been excluded from the raid and closure of that "dispensary" even though the raid took place in Long Beach proper.

The City has noticed motions to relate and transfer cases a minimum of three (3) times. At least one of those motions was brought *ex parte* after the City's noticed motion for the same issue was heard just a month prior and denied. The City began the process of bringing motions in *Pack v. City of Long Beach*, L.A.S.C. No. NC055010, in clear violation of the November 24, 2010 appellate court order staying that case. It has wasted countless hours of time and caused various parties to incur thousands of dollars in costs for participants in a host of cases it attempted to "rope into" NC055010 while continuously, repeatedly, and flagrantly violating the November 24, 2010 order.

Long Beach Police Officer David Strohman, who may himself be involved in illegal activity, has made slanderous remarks about patients and patient caregivers including the outlandish statement that a managing member of a Long Beach collective illegally makes "$100,000.00 per month." This statement was published to patients during a LBPD raid on a Long Beach patient group. After the raid, the Los Angeles Superior Court deemed the LBPD's action to be without probable cause, without a warrant, without exigent circumstances, and illegal. In fact, the managing patient Mr. Strohman slandered during the raid actually drives a high-mileage used vehicle, lives month-to-month, rents a home, and makes less than 4% of the $100,000 monthly amount irresponsibly published by Mr. Strohman.

For whatever reason, I believe the City is convinced the Long Beach courts will not issue an order enjoining its bad behavior. It is **clear** that the City's quickly contrived and ill-prepared August *ex parte* motion to relate and transfer cases just days prior to a critical hearing

in one of the "*BC*" (central) cases was designed to ensure that case was transferred to the Long Beach courthouse. While I do not want to think the courts in Long Beach would not fairly consider the issues, the fact that the Second District Court of Appeal, when granting the extraordinary writ of mandamus in *Pack v. Superior Court* (B228781), stated there was a "100% chance" the Petitioners would prevail on the merits in that case perhaps shows why the City is absolutely bent on ensuring all cases are heard in the Long Beach courthouse.

The outrageous stereotypes Mr. Sund, Mr. Shannon, the Mayor, and a variety of city council members have adopted regarding patients are wrong. The evidence we've gathered shows that Officer Strohman and other City officials, including Erik Sund, have **intentionally**, in an effort to create public opposition to patient collectives, spread false information about patients and patient groups to exacerbate negative stereotypes. That same as well as other evidence indicates they have, in concert with other City employees and officials, subverted information in an effort to create City Council member opposition to collectives. In fact, the many illegal, coercive, and calculated actions the evidence tends to show have been taken by various City employees and officials appears to relate to the financial solicitations and "City Hall connections" Mr. Parks references in his October 19, 2010 declaration.

For hypothetical purposes, let's pretend the Mayor of Long Beach is not Bob Foster, but rather "Bob Ignorant." In the hypothetical, I'll characterize how "Bob Ignorant" thinks. To start, no matter how Bob spins it, he looks like a pompous ass. It is clear that Bob absolutely knows the medical marijuana laws are only supposed to provide for patients. But he thinks most of the so-called "patients" using marijuana are hiding behind the "medical" aspect of the law. He believes most of them are, for example, what he would deem the "Occupy Long Beach" "*type*." On an outward basis, Bob tells folks he support patients. But when he's having a drink with people, he'll periodically crack a medical "pot-head" joke while rolling his eyes when the subject comes up. Bob's wife "wears the pants" in the family. Bob wants to think he does and so comes across as having a "Napoleon" complex when he's out of her direct control. Bob's wife is really anti-marijuana. She drives her nice car, goes to her social clubs, and, like the women in the book and movie *The Help*, closes her eyes to the plight of people like Tony Gayle. Instead, she makes every effort to influence the position Bob takes in respect to medical marijuana and is proud she was able to "tighten" city medical marijuana restrictions by urging and advocating for the January, 2011 thousand foot "park" restriction. Bob and his wife are concerned about social position and future political office. Bob makes sure he "greases" the wheel with folks who have the ability to help him get to where he wants to go politically. Since he knows most, if not all, so-called "medical marijuana *patients* (better yet, '*pot-heads*')" are really just worthless drug addicts, he can satisfy his wife's need to influence city business by simply letting her act on her bias against medical marijuana.

What happens when someone like "Bob Ignorant" becomes mayor? Are seriously ill Californians like Tony Gayle ignored? Does Bob pray he never has to meet a likely terminal 25-year-old patient like Tony Gayle who has an arm that is ravaged by constant dialysis and who looks like he's very sick? Does his wife's inappropriate stereotypes about so-called "medical marijuana patients" (those "*pot-heads*") with cancer, AIDS, and other serious illnesses achieve a platform that ends up hurting patients? And, "how DARE anyone EVER challenge a "good law" like Chapter 5.87! Those damn patients should just put up and shut up because they're lucky to have ANY law considering they're all a bunch of '*pot-heads*'!"

You're hurting Tony Gayle, Kendra. You are acting as an instrument for these people. I know that is NOT you. I've had a chance to talk to you and, albeit on a limited basis, discuss some of the issues. At least right now, the issue for these patients isn't about you and it certainly isn't about me. I don't make very much money, Kendra. My car was repossessed last month. I **don't** do this for the MONEY and I **don't** USE marijuana. But my 19-year-old daughter was assaulted and seriously injured. She almost died. She was in a coma for several weeks. I've included some pictures of when she was in the hospital and of the scar from the emergency brain surgery she had to have after she was attacked. The doctors prescribed her opiate medications after the assault. They made her feel ill, constipated, and she began feeling dependent on them. With her doctor's recommendation, she used medical marijuana and did not refill the opiate prescriptions. It worked. It helped her sleep. It was effective for a number of the damage related issues that resulted from the assault and emergency brain surgery.

When someone in Mayor Foster's family or in the families of the various city council members who have adopted inappropriate stereotypes about medical marijuana is seriously injured or diagnosed with cancer, AIDS, or serious illness, maybe they'll say, "well, despite her cancer, Grandma can grow her own marijuana medication because by banning all non-profit patient collectives, Long Beach is looking out for healthy citizens." Or maybe they'll say, "well, even though Grandma's losing a bunch of weight and having serious nausea from chemo, marijuana isn't <u>really</u> a medicine, so we'll keep her on the opiates." Or maybe, after figuring out that it takes a number of weeks and some degree of expertise to grow medical cannabis, perhaps they'll say, "well, its O.K. that we have to drive to an industrial area of less-safe *Timbuktu*, which allows medical marijuana collectives, because we were right in banning all collectives since they really only cater to 'pot-heads.'" I'm fairly certain they'll think, "after all, when that darn Tony Gayle – the guy with kidney failure – and that Ryan Pack – the guy hit by a car while riding his bike -- had the audacity to challenge our very fair and equitable Chapter 5.87 law it was appropriate to show citizens that if they question city government, they will be taught a lesson." Given how these folks think, probably they'll also say, "and since I'm running for state office now, I want to make sure I establish a record that citizens are going to mind the laws passed no matter whether those laws are illegal or discriminatory, otherwise my power as a government official is threatened."

I don't know, Kendra, maybe Chapter 5.87 was a fantastic, fair, and thoughtful law passed for the seriously ill and disabled patients who are citizens of Long Beach. Do you think it was? Or, maybe the patients just should have been happy that they could *even* get a law, no matter how onerous or outrageous, because "beggars can't be choosers?" On the other hand, maybe citizens should challenge bad laws like 5.87?

Tony Gayle and patients like him – patients facing terminal illness or permanent disability – they are the people who pay the outrageous non-refundable lottery and permit fees in laws like 5.87. Many of those patients, like Tony, are on disability or welfare because they are dealing with terrible illness or disability. And let's face it, Kendra, despite the fact that Strohman and his buddies have adopted a "*Miami Vice*" stereotype for all of the managing patients of collectives (maybe Strohman and his fellow officers dream of a role in Hawaii Five-O or *CSI* or better yet, the *Simpsons*), **none** of the managing patient members I've met of Long Beach collectives (other than *Belmont Shore Collective* or the others that appear to have adopted the *As Seen on T.V.* California "*How To Butter Up City Officials Guide*" apparently suggested by other attorneys) drive Ferraris or live in large homes they own in gated communities. In fact, I don't think any of them have a car that is less than five years old and have less than 100,000 miles on them, at least three-quarters of them struggle monthly to just pay rent for the apartments or houses they live in with their families, and I'd accurately guess that none of them make even a quarter of what your boss, Bob Shannon, is paid by the City each year. Some make less annually than Bob Shannon makes in a month (the City pays Bob around $22,500.00 per month from what I've gathered).

I *kind* of guess that, about a week ago, I wasn't *that* surprised to hear a rumor about what folks had deemed a possible "Strohman Surprise" – an event apparently set to take place on November 15. Word was, Strohman and Erik (maybe you joined them) got together the *umpteenth* time to formulate strategy in regard to closing down all patient collectives (all except their friends). Apparently, they'd figured out they have "enforcement and prosecutorial discretion" so even if a "ban" was passed, they could bypass *Belmont Shore Collective* and others who have not endured **any** enforcement over the last year (likely those that have followed the *"How To Butter Up City Officials Guide"*) by simply choosing not to cite or enforce in respect to those folks. When the City Council Agenda for November 15 was published, the rumor and innuendo surrounding the "Strohman Surprise" went away.

Before I finish by giving notice of the *ex parte* for next Tuesday, let me say that you folks really need to come down off of "Pompous Rock." Maybe the unbiased press will report that I'm on "Pompous Rock." I guess if they knew that, like most of the managing patients I referred to earlier, I make quite a bit less annually than you do. Actually, if I'm lucky, I earn *maybe* two (2) months of Bob Shannon's taxpayer paid salary annually. I guess if they knew that, perhaps they'd understand I'm actually on "Poor Rock." Also, I am **not** doing this work for the marijuana because -- **I don't use marijuana**. But, in the unfortunate case I am

diagnosed with some deadly disease for which it works to alleviate pain or symptoms, I'd like to have the option of medical marijuana available if it turns out it would work for me. However, I don't have a medical need for marijuana and so I don't use it.

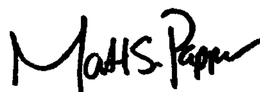
I guess when, like you guys, you're on "Pompous Rock," *you* don't know that you don't know better than the *voters* of California. Nor do you seem to have any idea of the plight faced by patients. While you have maybe eighty or more pharmacies distributing dangerous drugs along with cigarettes and alcohol plastered around the City, because of stereotypes and bias, you simply "ban" all medical marijuana collectives? Where's the beef? And you do that AFTER the *Rand* study showed crime goes UP when collectives are closed and despite evidence that, in the case of MOST collectives, nothing negative occurs? Maybe everyone in your group, including the council folks, should watch the movies "*The Music Within*" and "*The Help.*" The fact is medical marijuana collectives that operate in accordance with the law are simply not the danger you folks make them out to be.

I admit I am probably coming across a bit "haggard" and perhaps a bit "tongue and cheek." However, just to be fair, Kendra, I hope you'll at least admit that in the many prior letters I've sent and requests I've made to discuss settlement, I have been professional, patient, and less "cynical." Over the last year, it seems Long Beach is simply a "wall unwilling to budge" – it does not listen to, discuss, or consider anything that apparently doesn't line pockets – it's just how it appears from this side, Kendra.

On Tuesday, November 15, 2011 at 8:30 a.m. in case NC055072, I'm going to apply *ex parte* for an order prohibiting the council from implementing a ban. I'll apply in Dept. B, Judge Madden, Los Angeles Superior Court, South District, 415 W. Ocean Blvd., Long Beach, CA 90802. Pursuant to our stipulation several months ago when we agreed to accept service by fax and e-mail in NC055751 and NC055752, I'm faxing and emailing this letter to you. I'd ask you to call and discuss settlement, but that ain't going to happen. I've asked so many times already. I guess you, Erik, Bob, the council, and the "*Anti-Patient, Anti-Medical-Marijuana*" Long Beach "team" will just continue to spend away taxpayer dollars in spite of the law, facts, and the oft life-shortened plight faced daily by patients who are citizens of Long Beach.

See you next Tuesday. Have a good weekend -

Very truly yours,



Matthew Pappas

MSP:jm

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