RYAN PACK, an individual, and ANTHONY GAYLE, an individual, Petitioners and Appellees, vs. SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, Respondent, CITY OF LONG BEACH, a city organized under the laws of the State of California, Real Party in Interest and Appellant.

S197169

SUPREME COURT OF CALIFORNIA

2011 CA S. Ct. Briefs 97169; 2011 CA S. Ct. Briefs LEXIS 1666

November 10, 2011

Court of Appeal of the State of California Second Appellate District, Division Three. Case No. B228781. Superior Court of the County of Los Angeles. Case Nos. NC055010 and NC055053. HON. PATRICK T. MADDEN JUDGE, DEPT. B.

Petition for Appeal

COUNSEL: [*1] ROBERT E. SHANNON, City Attorney (SBN 43691), MONTE H. MACHIT, Principal Deputy City Attorney (SBN 140692), CRISTYL A. MEYERS, Deputy City Attorney (SBN 213378), OFFICE OF THE LONG BEACH CITY ATTORNEY, Attorneys for Real Party in Interest & Appellant, CITY OF LONG BEACH.

JUDGES: HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE

TITLE: Petition for Review

TEXT: I. PETITION FOR REVIEW

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

The City of Long Beach, Real Party in Interest and Appellant, respectfully petitions this Honorable Court for review of the opinion in the above-captioned matter by the Court of Appeal for the Second Appellate District, Division Three, entitled *Ryan Pack, et al. v. Superior Court of Los Angeles County (2011) 199 Cal.App.4th 1070.* The decision was certified for publication and filed on October 4, 2011. There were no requests for rehearing. A true and correct copy of the Court of Appeal's opinion is attached hereto as Exhibit "A". The Petition for Review is timely.

II. ISSUES PRESENTED

1. Whether a municipal ordinance that affirmatively [*2] permits and regulates medical marijuana collectives is preempted by federal law.

2. Whether a public entity has the legal authority to enact a total ban on medical marijuana collectives and related activities, in light of federal law preemption, the Compassionate Use Act, and the Medical Marijuana Program Act.

3. Whether a public entity can authorize and regulate medical marijuana collectives pursuant to local land use regulations and zoning codes.

III. NECESSITY OF REVIEW

The Supreme Court may grant review of a Court of Appeal decision "[w]hen necessary to secure uniformity of decision or to settle an important question of law." (*Calif. Rules of Court, Rule 8.500, Subd. (b)(1).*)

1. Secure Uniformity of Decision

The Court of Appeal decision in *Pack* is in sharp conflict with the Fourth Appellate District decisions in *Qualified Patients Association v. City of Anaheim (2010) 187 Cal.App.4.th 734, City of Garden Grove v. Superior Court (2007) 157 Cal.App.4th 355,* and *County of San Diego v. San Diego NORML (2008) 165 Cal.App.4th 798;* the Third Appellate District decision in *County of Butte, et al. v.* [*3] *Superior Court of Butte County* (2009) 175 Cal.App.4* 729; and the Second Appellate District decision in *County of Los Angeles v. Martin Hill (2011) 192 Cal.App.4th 861,* all of which uphold state and local authority to permit and regulate medical marijuana. The Court in *Pack* acknowledged this conflict when stating "we disagree with our colleagues who, in two other appellate opinions, have implied that medical marijuana laws might not pose an obstacle to the accomplishment of the purposes of the federal CSA . . . . " *(Pack v. Sup. Court of Los Angeles County, 199 Cal.App.4th at 1092.)* Review is necessary to reconcile the conflicts created by these diverging Court of Appeal decisions and to secure uniformity in the law related to regulation of medical marijuana.

2. Settle Important Questions of Law

This Court should grant review to settle an important and recurring issue of broad statewide impact concerning the ability of a city or county to adopt a regulatory or licensing process for medical marijuana collectives and related activities. Throughout California, counties and municipalities attempting to comply with conflicting federal [*4] and state medical marijuana statutes find themselves enmeshed in litigation. The federal government's shifting position on enforcement, coupled with conflicting medical marijuana appellate opinions, has left California's cities and counties without clear-cut legal direction. As a result, challenges to local regulations that either permit or ban cultivation and distribution of medical marijuana are being litigated statewide. A recent survey conducted by the League of California Cities indicates that over one-hundred such lawsuits in various stages of litigation are currently pending in California.

Not even recent legislative amendments, expressly intended to confer local governing authority and reduce the onslaught of litigation, have provided adequate clarity. Because the differences between federal and state laws and conflicting appellate opinions give rise to uncertainty, review by this Honorable Court is necessary to secure uniformity of contrary appellate decisions, and to settle the controversial and important legal issues relating to local medical marijuana regulation.

IV. APPLICABLE STATUTORY LAW

1. The State Compassionate Use Act (CUA)

California's relevant [*5] medical marijuana laws are found in the Compassionate Use Act of 1996 (CUA) and the Medical Marijuana Program Act (MMPA). The CUA was a voter approved ballot initiative codified in *Health and Safety Code, Section 11362.5.* Its purpose was "to ensure that seriously ill Californians have the right to obtain and use

marijuana for medical purposes where . . . the use is deemed appropriate and . . . recommended by a physician," and to ensure that "patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." Id. The CUA also sought to "encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana." (Id., *Subd. (b)(1)(B).*) In practice, the CUA provides a limited affirmative defense to violations of *Health and Safety Code Sections 11357* and *11358*, which prohibit the possession and distribution of marijuana, respectively.

2. The State Medical Marijuana Program Act (MMPA)

Unfortunately, reports from across the state revealed problems [*6] with the CUA. (Stats. 2003, ch. 875, § 1, subd. (a)(2).) The CUA's uncertain provisions impeded police enforcement and also prevented qualified patients and designated primary caregivers from obtaining its protections. As a result, in 2003 the California State Legislature enacted the Medical Marijuana Program Act ("MMPA"). *(Calif. Health and Safety Code, Sections 11362.7-11362.9.)* The MMPA was intended to enhance access to medical marijuana in part by providing additional affirmative defenses to qualified patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes. (*County of Los Angeles v. Hill, 192 Cal.App.4th at 864.)* On January 1, 2011, the MMPA was amended to prohibit medical marijuana cooperatives from operating within a 600-foot radius of a school. *(Calif. Health and Safety Section 11362.768.)* The amendment also spelled out local government authority to adopt ordinances or policies "that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider." Id. Stated another way, counties and municipalities are not prohibited [*7] from adopting and enforcing laws consistent with the CUA and MMPA. *(Calif Health and Safety Section 11362.83.)* Despite its allowance for local regulation, the MMPA "presents the unusual circumstance of a state law that, under limited circumstances, permits the possession of a substance deemed contraband under federal law." *(County of Butte v. Superior Court of Butte County, 175 Cal.App.4th at 739.)*

3. The Federal Controlled Substances Act (CSA)

In 1970, Congress enacted the Controlled Substances Act ("CSA"). *(21 U.S.C Section 801 et seq.,)* The CSA created comprehensive regulations to criminalize the unauthorized manufacture, distribution, and possession of substances contained within any of its five schedules. (Id.; *Gonzales v. Raich (2005) 545 U.S. 1.)* Schedule I contains the most severe restrictions on access and use, whereas Schedule V contains the least. Id. Marijuana is identified as a CSA Schedule I controlled substance, which means it has "no currently accepted medical use . . . . " *(Gonzales v. Raich, 545 U.S. at 14.)*

Although the CSA does not recognize "medical necessity" as a [*8] defense, the legislation does contain an express preemption provision. The CSA asserts its preemptive effect on state and local laws *only* where "there is a *positive conflict* between [the CSA and] state [or local] law so that the two cannot consistently stand together." *(21 U.S.C. Section 903.)* This narrow preemption provision was designed "to maintain the power of states to elect to serve as a laboratory in the trial of novel social and economic experiments without risk to the rest of the country." *(County of San Diego v. San Diego NORML, 165 Cal.App.4th at 826.)*

Moreover, there is "a strong presumption against federal preemption when it comes to the exercise of historic police powers of the states." *(See, Crosby v. National Foreign Trade Council (2000) 530 U.S. 363, 372-374; Gibbons v. Ogden (1824) 22 U.S. 1, 211; McCulloch v. Maryland (1819) 17 U.S. 316, 427.)* Therefore, "absent a clear and manifest congressional purpose" that presumption will not be overcome. *(People v. Boultinghouse (2005) 134 Cal.App.4th 619, 625.;* Insofar as "regulation of medical practices [*9] and state criminal sanctions for drug possession are historically matters of state police power, we must interpret any federal preemption in these areas narrowly." (*Qualified Patients Ass'n, 187 Cal.App.4th at 757-758; County of San Diego v. San Diego NORML, 165 Cal.App.4th at 822-823.)*

Thus, states have enacted their own medical marijuana laws, and today, California is one of sixteen states, in

addition to the District of Columbia, that allow marijuana for medical use in limited circumstances. The remaining states are Alaska, Arizona, Colorado, Delaware, Hawaii, Maine, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and Washington.

4. Medical Marijuana Ordinance No. ORD-10-0007

Article XI, section 7 of the California Constitution empowers a municipality to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Due to the proliferation of illegal, unlicensed storefront dispensaries in the City and an increase in serious felony crimes in proximity to such facilities, in May of 2010 the City of Long Beach ("City") adopted Ordinance [*10] No. ORD-10-0007 (later codified as Long Beach Municipal Code, Chapter 5.87) to regulate medical marijuana collectives in a manner consistent with the CUA and MMPA. ORD-10-0007 was enacted to combat public health and safety threats emanating from the diversion of marijuana via illegal medical marijuana distribution facilities. At the same time, ORD-10-0007 provided seriously ill qualified patients and designated primary caregivers with access to medical marijuana.

ORD-10-0007 required prospective medical marijuana collectives to submit a permit application along with a regulatory application fee. Incomplete or inaccurate applications, as well as applications proposing to locate collective sites within a 1,500 foot radius of a high school, or within a 1,000 foot radius of a kindergarten, elementary, middle or junior high school were rejected. ORD-10-0007 also prohibited a collective from operating within 1,000 feet of another collective.

As a result, the City conducted a lottery to determine which locations could potentially operate and continue in the application process. Following the lottery, permit applicants were subject to various operational safeguards including membership limitations, [*11] record keeping, security surveillance and product testing. Collectives were prohibited from commencing or continuing operations without a permit. Not one of the Petitioners herein, or their purported medical marijuana facilities submitted a bona fide application. To date, no medical marijuana collective permits have been issued in the City of Long Beach.

V. STATEMENT OF THE CASE

In May of 2010, the City of Long Beach adopted Ordinance No. ORD-10-0007 to regulate medical marijuana collectives. The ordinance prohibited medical marijuana collectives from commencing or continuing operations without first applying for and obtaining a permit. Petitioners Anthony Gayle and Ryan Pack were medical marijuana patients and purported members of a medical marijuana collective known as Kai Kem, Inc. (Kai Kem) located at 743 East 4th Street in Long Beach, California. Kai Kem failed to submit an application for a medical marijuana collective permit. Consequently, on June 18, 2010, the City issued a cease and desist order regarding the unpermitted medical marijuana facility. On August 18, 2010, Kai Kem submitted an untimely, incomplete and inaccurate medical marijuana collective permit application. [*12] The City rejected the permit application, and on August 23, 2010, issued another order directing Kai Kem to cease operations no later than August 29, 2010. The collective continued its unpermitted operations, and on September 2, 2010, the City issued a violation notice and further cease and desist orders.

Petitioners Pack and Gayle filed the underlying suit on August 30, 2010, seeking injunctive and declaratory relief, and arguing that ORD-10-0007 was invalid and preempted by federal law. On September 15, 2010, Petitioners filed a request for a preliminary injunction arguing "they would be irreparably harmed by the continued enforcement of the ordinance, as there was no collective they could legally join in order to obtain their necessary medical marijuana." (*Pack v. Sup. Court of Los Angeles County, 199 Cal.App.4.th at 1084.)* Petitioners also claimed "that the City's ordinance went beyond decriminalization and instead permitted conduct prohibited by the federal CSA, and thus was preempted." Id.

The City opposed the preliminary injunction arguing, inter alia, that: 1) Petitioners lacked standing; 2) ORD-10-0007 did not conflict with the Constitution or laws of the [*13] State or the United States Government; 3) the

City was authorized to enact the ordinance in accordance with its police powers pursuant to California Constitution, Article XI, section 7; 4) *Government Code, Section 37100* authorized the City to enact ORD-10-0007; 5) pursuant to *Government Code, Section 36900,* the City was empowered to redress violations of its ordinance as a misdemeanor or infraction; 6) the City was expressly authorized to enact ORD-10-0007, and regulate medical marijuana collectives pursuant to *Health and Safety Code Section 11362.83;* and 7) that Petitioners were barred from equitable relief based on unclean hands.

On November 2, 2010, the trial court rendered a twenty-two page decision in which it denied Petitioners' request for preliminary injunction. The court ultimately declined to address the federal preemption argument, on the basis of Petitioner's "unclean hands". *(Pack v. Sup. Court of Los Angeles County, 199 Cal.App.4th at 1085.)* On November 15, 2010, Petitioners filed the underlying petition for writ of mandate seeking review of the trial court's order to correct what they argued was a clear abuse of discretion, or in the alternative [*14] error by the trial court when it denied Petitioners' motion for a preliminary injunction. On November 24, 2010, the Court of Appeal issued its Order to Show Cause why relief should or should not be granted, and following briefing by the parties and *amici curiae,* on October 4, 2011, the Court of Appeal granted the petition, finding the core provisions of the ordinance to be federally preempted and remanded the matter to the trial court to determine whether any of the few remaining ordinance provisions conflict with federal law.

The Court begins by noting that, "Federal law prohibits the possession and distribution of marijuana . . . *(Citation omitted);* there is no exception for medical marijuana" *(Pack, 199 Cal.App.4th at 1076);* under federal law "marijuana has 'no currently accepted medical use' at all," . . . (*Id. at 1077,* citing *United States v. Oakland Cannabis Buyers Cooperative (2001) 532 U.S. 483, 491);* "as far as Congress is concerned, there is no such thing as medical marijuana." *(Pack v. Sup. Court of Los Angeles,* at 1092). The Court discusses California's statutory scheme governing medical marijuana and begins [*15] by acknowledging that it is not consistent with federal law . . . "[W]e first discuss the contradictory federal and state statutory schemes" (Id. at 1076.) After a lengthy discussion on the distinction between "decriminalizing" and "authorizing" the possession and cultivation of marijuana, the Court concludes that the City's ordinance, by setting up a regulatory scheme by which medical marijuana is governed, in fact authorizes unlawful activity and therefore its provisions are federally preempted. (Id. at 1090-1095.) " . . . [T]o Congress *all* use of marijuana is recreational drug use, the combating of which is admittedly the core purpose of the federal CSA. This case presents the question of whether an ordinance which establishes *a permit scheme* for medical marijuana collectives stands as an obstacle to the accomplishment of this purpose. We conclude that it does." (Id. at 1092, emphasis in original) "The conclusion is inescapable: the City's permits are more than simply an easy way to identify those collectives against whom the City has chosen not to enforce its prohibition against collectives; the permits instead authorize the operation of collectives by those [*16] which hold them. As such, the permit provisions . . . are federally preempted." (Id. at 1095.)

VI. DISCUSSION

1. The Legal Authority for a Municipality to Enact an Ordinance Permitting and Regulating Medical Marijuana is Unsettled and Requires Clear Guidance from the State's Highest Court.

Pursuant to *California Rules of Court, Rule 8.500, Subd. (b)(1),* this Court may grant review of a Court of Appeal decision "[w]hen necessary to secure uniformity of decision or to settle an important question of law." Id.

Many local governments have enacted bans against the distribution of medical marijuana, and many more including the City of Long Beach, have enacted local regulations in order to facilitate the safe distribution of medical marijuana. Supreme Court review is the only means of resolving the conflicting appellate case law. n1 In the immediate case, the issue of whether the federal CSA preempts local medical marijuana ordinances and regulation is ripe for review.

n1 On October 14, 2011, in Los Angeles Superior Court Case No. BC433942 entitled *Americans for Safe Access, et al. v. City of Los Angeles, et al.*, the trial court denied a motion for preliminary injunction. The order briefly discussed federal preemption related to local medical marijuana collective regulation, and noted lack of uniformity on this issue in *Pack v. Sup. Court of Los Angeles*, *Qualified Patients v. City of Anaheim*, and *County of San Diego v. San Diego NORML*. (*Id., 199 Cal.App.4th at 1070; 187 Cal.App.4th 734; 165 Cal.App.4th 798.)* The trial court stated, "[t]he law appears to be unsettled now, and this court sees no benefit or present need to add to the fray with another ruling. It is better to wait until *Pack* becomes final or until our Supreme Court decides to weigh in on the federal preemption issue."

[*17]

For example, in *Pack v. Sup. Court of Los Angeles*, the Court of Appeal for the Second Appellate District unequivocally disagreed with Fourth Appellate District precedent regarding medical marijuana and federal preemption analysis. In the case *of Qualified Patients Ass'n v. City of Anaheim*, the Fourth District stated that:

> . . . 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. n2

(Qualified Patients Ass'n v. City of Anaheim, 187 Cal.App.4th at 759-760; City of Garden Grove v. Sup. Court, 157 Cal.App.4th at 389-390; accord, *County of San Diego v. San Diego NORML, 165 Cal.App.4th at 825, fn.13.)* [*18]

n2 It should also be noted that this statement is at odds with the gratuitous and troublesome language in *Pack*, specifically at footnote 27, wherein the *Pack* Court states, "[t]there may also be an issue of whether the ordinance *requires* certain City officials to violate federal law by aiding and abetting (or facilitating (*21 U.S.C. § 843(b)*) a violation of the federal CSA" when approving and issuing a permit. (*Pack v. Sup. Court of Los Angeles County, 199 Cal.App.4th at 1091*, emphasis in original.) Thus, the Court is suggesting that any city council which "authorizes" a medical marijuana dispensary may be criminally liable along with other city employees.

In *Pack*, the Appellate Court acknowledged the judicial conflict among the Appellate Districts by stating:

> [W]e disagree with our colleagues who, in two other appellate opinions, have implied that medical marijuana laws might not pose an obstacle to the accomplishment of the purposes of the [*19] federal CSA because the purpose of the . . . CSA is to combat recreational drug use, not regulate a state's medical practices.

Id. at 1092. Further, the Fourth Appellate District flatly rejected *Pack's* theory that *Health and Safety Code Section 11362.775* of the MMPA, which provides 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 invalid based on obstacle preemption. In *County of San Diego v. San Diego NORML*, the Court 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. (*Id., 165 Cal.App.4th at 826-827.)*

Additionally, under *Qualified Patients Ass'n v. City of Anaheim*, the Fourth Appellate District Court established that local municipalities cannot enact a total ban of medical marijuana dispensaries based solely on federal law preemption. (

Id., 187 Cal.App.4th at 763.) While *Qualified Patients* involved analysis of [*20] a local city ban, as opposed to regulation, the principles of preemption apply to both scenarios. Thus, it is the Court's position in *Qualified Patients* that, "[t]he city may not justify its ordinance [banning medical marijuana] solely under federal law, nor in doing so invoke federal preemption of state law that may invalidate the city's ordinance." Id. In other words, under *Qualified Patients Ass'n v. City of Anaheim*, a city cannot rely on CSA preemption to adopt a local ban of medical marijuana collectives. This stands in contrast to *Pack's* implied finding that local entities can ban dispensaries. That implied finding is compelled by logical progression: if a city cannot permit and regulate that which the (federal) law prohibits it can ban that which the law prohibits.

Moreover, in 2011, the California legislature amended the MMPA by adding *Health and Safety Code Section 11362.768* which reads in relevant part, "(f) Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, [*21] or provider . . . . (g) Nothing in this section shall preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider." Referring to *Health and Safety Code Section 11362.768,* the Second Appellate District in the matter of *County of Los Angeles v. Hill* stated, "[i]f there was ever any doubt about the Legislature's intention to allow local governments to regulate marijuana dispensaries, and we do not believe there was, the newly enacted *Health and Safety Code Section 11362.768* has made clear that local government may regulate dispensaries." (*Id., 192 Cal.App.4th at 868.)*

2. The MMPA, the CUA and the Recent Amendment Thereto Give Municipalities the Right to Permit and Regulate Medical Marijuana Facilities.

In *Pack*, the Court concluded that to the extent ORD-10-0007 permits and regulates medical marijuana collectives, it is preempted by federal law. If that were so, "there would be no room for state regulation, despite an evident federal intention that there be significant room for such regulation." *(Viva!* [*22] *Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc. (2007) 41 Cal.4th 929, 952.)* The Appellate Court distinguished the City's ordinance provisions that "authorize" and "permit" conduct illegal under the CSA from provisions that merely "impose further limitations on medical marijuana collectives beyond those imposed under the MMPA, and do not, in any way, permit or authorize activity prohibited by the federal CSA." (*Pack v. Sup. Court of Los Angeles County, 199 Cal.App.4th at 1096.)* In essence, the Court, ignoring the MMPA's express mandate to the contrary, reasoned that only those medical marijuana ordinances framed in terms of restrictions are federally permissible.

Curiously, the Court in *Pack* acknowledged a recent amendment to *Health and Safety Code Section 11362.83,* which takes effect January 1, 2012, and effectively confirms that municipalities have the power to regulate medical marijuana dispensaries. The amended *Health and Safety Code Section 11362.83* provides in relevant part:

> Nothing in this article shall prevent a city or other local governing body from adopting and enforcing any of the following: [*23] (a) Adopting local ordinances that *regulate* the location, operation, or establishment of a medical marijuana cooperative or collective. (b) The civil and criminal enforcement of local ordinances described in subdivision (a). (c) Enacting other laws consistent with this article.

Id. According to the Court, "[w]hile this new statute clarifies the state's position regarding local regulation of medical marijuana collectives, it has no effect on our federal preemption analysis." (*Pack v. Sup. Court of Los Angeles County, 199 Cal.App.4th at 1080, fn. 9.)* This conclusion is simply incorrect. How could a city possibly adopt an ordinance regulating the operation or establishment of a medical marijuana collective without at the same time authorizing its existence? To that end, the Court circumvented any legal analysis of the MMPA, the enabling statutes from which ORD-10-0007 was derived. n3

n3 On September 20, 2011, the Honorable Edmund G. Brown, Jr., Governor, vetoed Senate Bill SB 847, which proposed further regulation of medical marijuana collectives. In his veto message, the Governor stated, "I have already signed AB 1300 that gave cities and counties authority to regulate medical marijuana dispensaries - an authority I believe they already had. [P] This bill goes in the opposite direction by preempting local control and prescribing the precise locations where dispensaries may not be located. Decisions of this kind are best made in cities and counties . . . . " (www.leginfo.ca.gov/pub/senate-journal/sen-journal-0x-20111011-2501.PDF.)

[*24]

Finally, the Court's distinction between "not making an activity unlawful and making the activity lawful" (*Id at 1093)* creates a line which is simply impossible to clearly draw and provides no real guidance to cities attempting to comply with the law.

3. *Pack* Now Brings Into Question Whether or Not a Public Entity May Make and Enforce Land Use and Zoning Laws Which Authorize and Regulate Medical Marijuana Facilities.

Under Article XI, section 7 of the California Constitution "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Therefore, a local municipality should be free to regulate activities permitted under *Health and Safety Code, Sections 11362.775, 11362.778* and *11362.83.* Based on *Pack*, the relationship between the State's medical marijuana laws and a local municipality's power to enact and enforce local ordinances regulating marijuana is also now unsettled and requires clear guidance from the Court. Pursuant to the appellate decisions in *Los Angeles County v. Hill, the City of Corona v. Naulls (2008) 166 Cal.App. 4th 418,* [*25] and *City of Claremont v. Kruse* (2009) 177Cal.App.4th 1153, local governments are vested with state constitutional authority to regulate the particular manner and location in which a medical marijuana collective may or may not operate.

IV. CONCLUSION

The ability of a local municipality to regulate and permit (or, if it chooses, to ban) medical marijuana collectives and dispensaries, is an issue of deep concern to cities and counties throughout California. The *Pack* court, by squarely confronting the legal time bomb which is federal preemption, has provided an opportunity for this Honorable Court to clarify and settle the law. The City of Long Beach respectfully requests that its Petition for Review be granted.

Dated: November 10, 2011

ROBERT E. SHANNON, City Attorney

/s/ ROBERT E. SHANNON
ROBERT E. SHANNON, City Attorney
Attorney for Appellant and Real Party
in Interest CITY OF LONG BEACH

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that the enclosed Petition for Review was produced using 13-point Times New Roman type, including footnotes, and contains approximately 5,326 words, which is less than the 8,600 words permitted. [*26] Counsel relies on the word count of the computer program used to prepare this brief.

Dated: November 10, 2011

ROBERT E. SHANNON, City Attorney

/s/ ROBERT E. SHANNON
ROBERT E. SHANNON, City Attorney
Attorney for Appellant and Real Party
In Interest CITY OF LONG BEACH

PROOF OF SERVICE BY MAIL

I am a resident of the county of Los Angeles; I am over the age of 18 and not a party to the within action; my business address is 333 West Ocean Boulevard, 11th Floor, Long Beach, CA 90802-4664.

On November 10, 2011, I served the within: **PETITION FOR REVIEW**

On the interested parties herein by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Long Beach, California, addressed as follows:

Matthew Pappas, Esq.
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RYAN PACK and ANTHONY GAYLE

Clerk of the Los Angeles Superior Court
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415 W. Ocean Boulevard
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Court of Appeal
State of California
Second Appellate District, Division 3
300 South Spring Street
Second Floor, North Tower
Los [*27] Angeles, California 90013

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

Executed on November 10, 2011, at Long Beach, California.

/s/ Carol Allan
Carol Allan

[SEE EXHIBIT "A" IN ORIGINAL]