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October 12, 2011

Re: *Pack v. City of Long Beach, No. B228781*

Dear Sir or Madam:

The October 4, 2011, decision by the Second Appellate District in the case of *Pack v. City of Long Beach* has understandably caused municipal officials to contemplate what impact the ruling will have on their own medical marijuana ordinances. Before taking immediate and drastic action that could substantially inhibit the ability of Californians to acquire and use cannabis for medical purposes, Americans for Safe Access (“ASA”) believes that it would be wise for city attorneys to consider that: (1) the *Pack* decision does not strike down local marijuana ordinances in their entirety, but only one that involves “permitting” of dispensaries, as opposed to using a registry system; (2) the *Pack* decision is not yet final under California law; and (3) the narrow finding of federal preemption in the *Pack* decision likely applies only within California’s Second Appellate District.

Narrow Finding of Federal Preemption

The Second Appellate District is explicit that the narrow finding of preemption by the federal Controlled Substances Act (CSA) applies only to the facet of the Long Beach regulatory scheme that grants permits to medical cannabis collectives. Only “the permit provisions, including the substantial application fees, and the lottery system, are federally preempted.” This reaffirms the authority of municipalities to continue to decriminalize medical marijuana collectives, as the court noted that “[t]here is a distinction, in law, between not making an activity unlawful and making the activity lawful.”

To avoid the concerns about federal preemption expressed by the *Pack* court, municipalities within the Second Appellate District may wish to revise their medical cannabis collective ordinances to comport with a registry model whereby the municipality identifies certain medical marijuana dispensaries who will not be subject to local law enforcement, so long as these dispensaries abide by certain restrictions. The *Pack* court appears to encourage this course of action by stating, “[t]hese [kinds of] provisions impose further limitations on medical marijuana collectives beyond those imposed under the [Medical Marijuana Program Act], and do not, in any way, permit or authorize activity prohibited by the federal CSA.”

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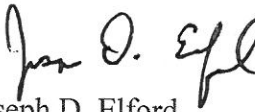
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Applicability Only to the Second Appellate District

The *Pack* decision expressly disagrees with two published decisions on federal preemption by the Court of Appeal for the Fourth Appellate District -- one in *County of San Diego v. San Diego NORML* and another in *Qualified Patients Association v. City of Anaheim*. Because of this appellate conflict, the *Pack* decision is not likely binding on trial courts outside of the Second Appellate District.

In short, in spite of the holding in *Pack*, there is no need for municipalities to abandon their attempts at regulating the manner in which medical cannabis dispensaries in their localities operate; however, local officials in the Second Appellate District may wish to consider revising their current schemes in accordance with the ruling to maintain safe access to medical marijuana to their sick and dying constituents.

Sincerely,



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