



July 17, 2013

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Honorable William R. McGuinness, Admin. Presiding Justice
Honorable Peter J. Siggins, Associate Justice
Honorable Martin J. Jenkins, Associate Justice
California Court of Appeal
First Appellate District, Division Three
350 McAllister Street
San Francisco, CA 94102-7421

Re: *Littlefield v. County of Humboldt*
Case No. A135628
Humboldt County Superior Court Case No.: DR090888

Dear Justices McGuinness, Siggins and Jenkins:

Pursuant to California Rule of Court, rule 8.1120(a), the California State Association of Counties (CSAC) respectfully requests that the Court publish its opinion issued on June 28, 2013 in the above-named case.¹ Publication of the opinion is warranted since it meets the standards for certification set forth in Appellate Rule 8.1105(c).

The opinion involves an issue of continuing public interest, and applies existing case law to a set of facts not yet directly addressed by other cases. (CRC 8.1105(c)(6) and (2).) The facts presented in this case – a moderately large medical marijuana grow with vague allegations of medical marijuana protection – arise frequently for counties and their Sheriff's Offices. The opinion undertakes an analysis of the last 15 years of relevant case law in the this area, beginning with *People v. Tippet* (1997) 56 Cal.App.4th 1532 and its limitations on the protections of the medical marijuana statutes, through *People v. Kelly* (2010) 47 Cal.4th 1008, with its clarification on the limitations of the affirmative defenses in the Compassionate Use Act. (Slip Op. at pp. 6-8.) The case then takes that existing case law and applies the principles therein to the large marijuana grow presented by the facts of this case. The opinion explains that a reasonable prudent person standard applies when an officer is confronted with a marijuana grow that clearly would exceed the medical

¹ CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

needs of the growers. (Slip Op. at pp. 8-11.) Because this is a recurring issue in this State, the opinion's guidance would be helpful to law enforcement and courts confronting this problem.

The opinion also explains an existing rule of law in a manner that significantly contributes to legal literature. (CRC 8.1105(c)(3) & (7).) First, it reviews several laws that counties and Sheriffs regularly use to dispose of the seized marijuana, providing guidance on the proper manner of disposal. In fact, it is the first case to cite Health and Safety Code section 11479 (allows law enforcement to destroy all but 10 lbs of seized controlled substance) in relation to medical marijuana. CSAC is aware of at least two cases that are pending before this Court of Appeal raising the same issue.² Certainly additional cases raising this issue are pending in other courts as well. The guidance from this opinion would be helpful to parties and the courts in addressing these and other future cases.

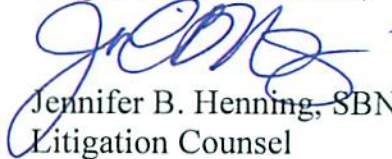
Second, the opinion explains a claimant's burden of proof when claiming that a government entity improperly destroyed his or her medical marijuana. The opinion explains that in order to sustain common law, statutory and constitutional claims for interference with property rights, a plaintiff must introduce competent medical evidence that the quantity of marijuana at issue is reasonably necessary for the plaintiff's needs. Importantly, the opinion clarifies that neither status as a qualified patient, nor a written recommendation for marijuana suffices to meet that standard. (Slip Op. at pp. 13-14.) This contribution to the law is helpful both local governments trying to comply with statutory and constitutional property rights restrictions, and to patient-growers, who will have a better understanding of their burden in establishing a claim for interference with property rights.

² *Reiter v. Sonoma County Sheriff's Dept.* (A137941)(In a direct challenge to Health and Safety Code section 11479, this Petition for Writ of Mandate alleged that the owner of seized marijuana should be given notice and an opportunity to be heard regarding compliance with medical marijuana laws *prior* to destruction); *Dale v. Windsor Police Dept.* (A138592) (same legal argument is presented in this appeal as well).

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The California State Association of Counties believes that this opinion adds to the law in this important area of the law, and provides much needed guidance to local law enforcement agencies and other courts on an issue that they must regularly confront. CSAC therefore urges the Court to certify the *Littlefield* opinion for publication.

Respectfully Submitted,



Jennifer B. Henning, SBN 193915
Litigation Counsel
Calif. State Assoc. of Counties

Proof of Service Attached

Proof of Service by Mail
Littlefield v. County of Humboldt
Case No. A135628

I, Mary Penney, declare:

That I am, and was at the time of the service of the papers herein referred to, over the age of eighteen years, and not a party to the within action; and I am employed in the County of Sacramento, California, within which county the subject mailing occurred. My business address is 1100 K Street, Suite 101, Sacramento, California, 95814. I served the within **REQUEST FOR PUBLICATION** by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Proof of Service List

Party	Attorney
Littlefield, Roscoe, et al : Plaintiff and Appellant	Karen Diane Olson 431 "H" Street - Suite A Crescent City, CA 95531 Donna Bader Attorney at Law 668 North Coast Highway Suite 1355 Laguna Beach, CA 92651
County of Humboldt: Defendant and Respondent	William Forrest Mitchell Mitchell Brisso Delaney & Vrieze 814 Seventh Street Eureka, CA 95501

and by placing the envelopes for collection and mailing following our ordinary business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 17, 2013, at Sacramento, California.


MARY PENNEY