COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION THREE

QUALIFIED PATIENTS ASSOCIATION, et al. Appellants, vs. CITY OF ANAHEIM, Respondent.	)	Case No. G046417 Orange County Superior Court Case No. 07CC09524

[PROPOSED] BRIEF OF AMICUS CURIAE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF RESPONDENT CITY OF ANAHEIM

(Cal. Rules of Court, rule 8.200(c))

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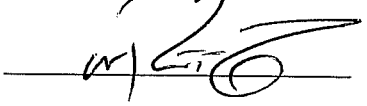
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rule of Court, Rule 8.208, *amicus curiae* California State Association of Counties, to the best of its knowledge, is unaware of any entities or persons who have a financial or other interest in the outcome of this proceeding that would be relevant to the question of disqualification under Canon 3E of the Code of Judicial Ethics.

Dated: June 6, 2013

Respectfully submitted,

ARTHUR J. WYLENE
Tehama County Counsel



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I. INTRODUCTION

In *Qualified Patients Ass'n v. City of Anaheim* (2010) 187 Cal.App.4th 734, this court noted that "[w]hether the MMPA bars local governments from using nuisance abatement law and penal legislation to prohibit the use of property for medical marijuana purposes remains to be determined." (*Id.* at p. 754.) That question has now been answered. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the Supreme Court unequivocally held that "[n]othing in the CUA[1] or the MMP[2] expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders." (*Riverside* Slip. Op. at p. 3.) This conclusion is directly on point, and dispositive of this case. Consequently, the judgment of the Superior Court should be affirmed.[3]

II. A TALE OF TWO CITIES: WHAT *RIVERSIDE* MEANS FOR ANAHEIM

The Cities of Riverside and Anaheim are similar in size, location, and demographics[4] – and have experienced similar negative effects from the profusion of

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[1] (Health and Saf. Code, § 11362.5, hereinafter "CUA.") All further undesignated statutory references are to the Health and Safety Code, unless context requires otherwise.

[2] (§§ 11362.7 et seq., hereinafter "MMP.")

[3] To paraphrase a famously brief decision, "[t]he appellant has attempted to distinguish the factual situation in this case from that in [the governing caselaw]. He didn't. We couldn't. Affirmed." (*Denny v. Radar Industries, Inc.* (Mich.Ct.App. 1970) 184 N.W.2d 289, 290.) Although much effort will doubtless be expended briefing the matter, in the final analysis this case is likewise just that simple.

[4] The Court may take judicial notice that Anaheim and Riverside are less than 40 miles apart. (Evid.Code, § 452, subd. (h); *City of Anaheim v. Workers' Comp. Appeals Bd.* (1981) 116 Cal.App.3d 248, 261, fn. 17.) The striking similarities between the two cities

marijuana dispensaries in recent years. (Compare *Riverside* Slip Op. at p. 28, fn. 9 with C.T., vol. 8, pp. 2214-2215.) After deliberate consideration, the City Councils of both cities adopted functionally identical ordinances prohibiting the establishment or operation of storefront dispensaries. (Compare *Riverside* Slip Op. at p. 2 [describing Riverside Mun. Code, §§ 19.910.140, 19.150.020, and related provisions] with Anaheim Mun. Code, §§ 4.20.020, 4.20.030.)[5] Both ordinances likewise faced similar preemption challenges. As in this case, Riverside's challengers asserted that:

- That the CUA and MMP "authorize" the operation of dispensary "collectives," and thus such activities cannot be banned by local ordinance;
- That the CUA and MMP (either alone, or in conjunction with the Uniform Controlled Substances Act) occupy the field, thus precluding local efforts to prohibit conduct covered by those laws;

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are readily apparent from the 2010 census reports. (Compare United State Census Bureau, Anaheim (city) Quick Facts, available at <http://quickfacts.census.gov/qfd/states/06/0602000.html> with United State Census Bureau, Riverside (city) Quick Facts, available at <http://quickfacts.census.gov/qfd/states/06/0662000.html>. See also *SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 84, fn. 8 [taking judicial notice of facts in census].)

[5] If anything, Anaheim's ordinance is somewhat *more lenient* than the ordinance adopted by Riverside. The latter defines a prohibited dispensary as *any* "facility where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5 (Proposition 215)" (Riverside Mun. Code, § 19.910.140), whereas Anaheim's prohibition applies only to a "facility or location where medical marijuana is made available to and/or distributed by or to *three or more* of the following: a qualified patient, a person with an identification card, or a primary caregiver." (Anaheim Mun. Code, § 4.20.020.030.) While both ordinances entirely prohibit storefront dispensaries, the Anaheim ordinance at issue here appears to allow more flexibility for small private groups – thereby accommodating, to some degree, the interests of medical marijuana patients.

- That the provisions of the CUA and MMP exempting medical marijuana activities from certain *state criminal sanctions* implicitly shield those activities from local penalties and nuisance abatement as well; and
- That totally banning marijuana dispensaries contradicts the intent of the electorate and Legislature, as expressed in the preambles to the CUA and MMP;

The Supreme Court rejected all of these arguments, and upheld the City's dispensary ban:

> "[W]e have made clear that a state law does not 'authorize' activities, to the exclusion of local bans, simply by exempting those activities from otherwise applicable state prohibitions . . . the MMP merely exempts the cooperative or collective cultivation and distribution of medical marijuana by and to qualified patients and their designated caregivers from prohibitions that would otherwise apply under state law. The state statute does not thereby mandate that local governments authorize, allow, or accommodate the existence of such facilities." (*Riverside* Slip Op. at pp. 32-33.)

> "The MMP . . . creates no comprehensive scheme for the protection or promotion of facilities that dispense medical marijuana. The sole effect of the statute's substantive terms is to exempt specified medical marijuana activities from enumerated state criminal and nuisance statutes. Those provisions do not mandate that local jurisdictions permit such activities . . . Local decisions to prohibit them do not frustrate the MMP's operation." (*Riverside* Slip Op. at p. 35.)

The Court was likewise unimpressed with the challengers' field preemption arguments:

> "[T]here appears no attempt by the Legislature to fully occupy the field of medical marijuana regulation as a matter of statewide concern, or to partially occupy this field under circumstances indicating that further local regulation will not be tolerated. On the contrary, as discussed in detail above, the CUA and the MMP take limited steps toward recognizing marijuana as a medicine by exempting particular medical marijuana activities from state laws that would otherwise prohibit them. In furtherance of their provisions, these statutes require local agencies to do

> certain things, and prohibit them from doing certain others. But the statutory terms describe no comprehensive scheme or system for authorizing, controlling, or regulating the processing and distribution of marijuana for medical purposes, such that no room remains for local action." (*Riverside* Slip Op. at p. 27.)[6]

Building on its earlier opinions in *Ross v. RagingWire Telecommunications, Inc.* (2008) 42 Cal.4th 920 and *People v. Mentch* (2008) 45 Cal.4th 274 (and more recent Court of Appeal decisions in *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153[7] and *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861), the high court concluded that the CUA and MMP are "limited and circumscribed" measures that "do no more than exempt certain conduct by certain persons from certain state criminal and nuisance laws," and consequently do not "expressly or impliedly limit[] the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders" (*Riverside* Slip Op. at p. 3):

> "The considerations discussed above also largely preclude any determination that the CUA or the MMP impliedly preempts Riverside's effort to "de-zone" facilities that dispense medical marijuana. At the outset, there is no duplication between the state laws, on the one hand, and Riverside's ordinance, on the other, in that the

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[6] The Court also expressly distinguished *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061 (relied upon heavily in Appellants' Reply Brief), and eliminated any suggestion that the Uniform Controlled Substances Act (Health & Saf. Code, §§ 11000 et seq.) occupies the field to exclusion of local marijuana dispensary bans: "The UCSA accordingly occupies the field of penalizing crimes involving controlled substances . . . there is no similar evidence in this case of the Legislature's intent to preclude local regulation of facilities that dispense medical marijuana. The CUA and the MMP create no all-encompassing scheme for the control and regulation of marijuana for medicinal use. These statutes, both carefully worded, do no more than exempt certain conduct by certain persons from certain state criminal and nuisance laws against the possession, cultivation, transportation, distribution, manufacture, and storage of marijuana." (*Riverside* Slip Op. at pp. 30-31.)

[7] The Supreme Court plainly disagreed with the argument advanced by the challengers (both in *Riverside* and here) that *Kruse* either is not on point or took an "unduly narrow" view of the CUA and MMP.

two schemes are coextensive. The CUA and the MMP "decriminalize," for state purposes, specified activities pertaining to medical marijuana, and also provide that the state's antidrug nuisance statute cannot be used to abate or enjoin these activities. On the other hand, the Riverside ordinance finds, for local purposes, that the use of property for certain of those activities does constitutes a local nuisance. Nor do we find an 'inimical' contradiction or conflict between the state and local laws, in the sense that it is impossible simultaneously to comply with both. Neither the CUA nor the MMP requires the cooperative or collective cultivation and distribution of medical marijuana that Riverside's ordinance deems a prohibited use of property within the city's boundaries. Conversely, Riverside's ordinance requires no conduct that is forbidden by the state statutes. Persons who refrain from operating medical marijuana facilities in Riverside are in compliance with both the local and state enactments." (*Riverside* Slip Op. at pp. 26-27.)[8]

"In section 11362.775, the MMP merely removes state law criminal and nuisance sanctions from the conduct described therein. By this means, the MMP has signaled that the state declines to regard the described acts as nuisances or criminal violations, and that the state's enforcement mechanisms will thus not be available against these acts. Accordingly, localities in California are left free to accommodate such conduct, if they choose, free of state interference. As we have explained, however, the MMP's limited provisions neither expressly or impliedly restrict or preempt the authority of individual local jurisdictions to choose otherwise for local reasons, and to prohibit collective or cooperative medical marijuana activities within their own borders. A local jurisdiction may do so by declaring such conduct on local land to be a nuisance, and by providing means for its abatement.? (*Riverside* Slip Op. at p. 37.)

Finally, the Court did not find this conclusion inconsistent with the expressed intent of the CUA and MMP:

"Though the CUA broadly states an aim to 'ensure' a 'right' of seriously ill persons to 'obtain and use' medical marijuana as recommended by a physician, the initiative statute's actual objectives, as presented to the voters, were modest, and its substantive provisions created no broad right to use medical marijuana without hindrance or inconvenience . . . The MMP's language no more creates a "broad right" of access to medical marijuana without hindrance or inconvenience than do the words of the CUA. No provision of the MMP explicitly guarantees the

[8] The Appellants' Reply Brief here creatively phrases their argument on this point, asserting that Anaheim's ordinance "commands what [Section] 11362.775 prohibits, i.e., criminal prosecution for the distribution of medical marijuana made otherwise lawful under 11362.775." (App. Rep. Br., at p. 3.) Leaving aside the question of whether a prohibitory ordinance actually *commands* prosecution in all cases (which is not an appropriate assumption for a facial challenge like this one), *Riverside* demolishes the other half of the argument, making it clear that the MMP does not prohibit such actions.

availability of locations where such activities may occur, restricts the broad authority traditionally possessed by local jurisdictions to regulate zoning and land use planning within their borders, or requires local zoning and licensing laws to accommodate the cooperative or collective cultivation and distribution of medical marijuana." (*Riverside* Slip Op. at pp. 24-25.)

"[T]hough the Legislature stated it intended the MMP to "promote" uniform application of the CUA and to 'enhance' access to medical marijuana through collective cultivation, the MMP itself adopts but limited means of addressing these ideals . . . The MMP has never expressed or implied any actual limitation on local land use or police power regulation of facilities used for the cultivation and distribution of marijuana. We cannot employ the Legislature's expansive declaration of aims to stretch the MMP's effect beyond a reasonable construction of its substantive provisions." (*Riverside* Slip Op. at pp. 33-34.)

As should be obvious to Appellants,[9] *Riverside* completely disposes of each and every argument that they have raised. It cannot now be cogently argued that that cities and counties must accommodate marijuana-related land uses, or that such land uses cannot be "de-zoned" or banned. There is no room left for Appellants' assertion that exclusion of medical marijuana activities from certain *specific* state penal provisions implicitly exempts those activities from the *general* enforcement authority and remedies exercised by local agencies under their police power.[10] Simply put, this case is indistinguishable from *Riverside* in both fact and law;[11] the Supreme Court having

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[9] Appellants' Reply Brief, filed nearly three weeks after *Riverside* was issued, *and* after this Court ordered briefing on the effect of that case, surprising fails to mention *Riverside* – and indeed, relies entirely upon arguments *expressly rejected* by the Supreme Court.

[10] Appellants' argument under Civil Code section 3482 ("[n]othing which is done or maintained under the express authority of a statute can be deemed a nuisance") also collapses. As *Riverside* makes clear, the CUA and MMP do not "authorize" medical marijuana activities in this sense.

[11] The one procedural difference actually *favors* the City here – were any such favor necessary. Unlike *Riverside*, which involved an action to enforce the dispensary ban against specific individuals, the Appellants' challenge to Anaheim's ordinance in this case is facial (see *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1086-1089; *Alfaro v. Terhune* (2002) 98 Cal.App.4th 492, 509-510 [outlining the hallmarks of a facial challenge]), and thus their burden is significantly heavier. To prevail, Appellants "must

spoken, nothing remains for Appellants to argue here, and the judgment of the Superior Court should thus be affirmed.

III. CITIES AND COUNTIES MAY ENFORCE ORDINANCES REGULATING OR PROHIBITING MARIJUANA-RELATED LAND USES THROUGH MISDEMEANOR PENALTIES

As noted in the Respondent's brief, the trial court initially concluded that the provisions of Anaheim's ordinance imposing misdemeanor criminal penalties for violation of the dispensary ban were preempted by the CUA, but severable from the remainder of the ordinance. (C.T., vol. 8, pp. 2175-2176.) However, Judge Chaffee subsequently reconsidered that conclusion, and ultimately ruled that "the criminal penalties imposed by [the] ordinance do not serve to punish the possession or cultivation of medical marijuana; rather those penalties are imposed for a violation of the city's zoning regulations and/or its ban on the mass distribution of marijuana" – and were thus not preempted. (C.T., vol. 8, p. 2209.)

This latter conclusion is clearly correct. To being with, it is beyond dispute that the *MMP* does not preempt the criminal enforcement of an otherwise valid dispensary ordinance – because the law expressly says so. Health and Safety Code section 11362.83 specifically provides that "[n]othing in this article," i.e., the MMP, prohibits the "civil *and criminal* enforcement" of "local ordinances that regulate the location, operation, or

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demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." (*Tobe, supra,* 9 Cal.4th at p. 1084.) Appellants "cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the [Ordinance]." (*Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, 716-717. See also *Pieri v. City and County of San Francisco* (2006) 137 Cal.App.4th 886, 894; *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 678 ["the challenger must establish that *no set of circumstances* exists under which the Act would be valid"].) If the *Riverside* defendants could not demonstrate that the dispensary ban was invalid *as applied* to them, the Appellants here necessary cannot prevail on a *facial* challenge.

establishment of a medical marijuana cooperative or collective." As for the CUA, that initiative "makes no mention of medical marijuana cooperatives, collectives, or dispensaries." (*Riverside* Slip Op. at p. 23.) Consequently, dispensary operators cannot claim any protection thereunder even from *state* felony prosecution (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 767; *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068 [Slip. Op. at p. 14]) – let alone local zoning misdemeanors.

The legislative decision makes perfect practical sense. Local code violations are generally made infractions or misdemeanors for a *reason.* Civil or administrative provisions alone are often an inadequate deterrent to violators, who may act with impunity until they are caught, and then simply cease (or relocate) their operation with minimal consequences. Criminal penalties are part of a balanced and effective code enforcement regime, providing the "teeth" necessary to ensure that the regulations enacted by the local elected officials are actually obeyed. Having made the conscious decision to allow local regulation – or prohibition – of marijuana dispensaries, the Legislature's corresponding acknowledgment of local "criminal enforcement" is eminently sensible, and indeed necessary if such local ordinances are to be effective.

Moreover, the conclusion that local ordinances addressing marijuana-related land uses may be enforced through criminal penalties, as well as civil remedies, flows directly from *Riverside*. While *Riverside* itself was a nuisance abatement action, nothing in the language or logic of that decision suggests any distinction between the various code enforcement remedies that a local agency may employ. Quite the contrary, the Court repeatedly discusses both civil and criminal remedies in the same breath – in the very passages explaining the limited effect of the CUA and MMP only on "state-level"

enforcement mechanisms:

> "[T]he CUA and the MMP, by their substantive terms, grant limited exemptions from certain *state criminal and nuisance laws*, but they do not expressly or impliedly restrict the authority of local jurisdictions to decide whether local land may be used to operate medical marijuana facilities." (*Riverside* Slip Op. at pp. 25-26, fn. 8.)
>
> "In section 11362.775, the MMP merely removes *state law criminal and nuisance sanctions* from the conduct described therein. By this means, the MMP has signaled that the state declines to regard the described acts as nuisances or criminal violations, and that *the state's enforcement mechanisms* will thus not be available against these acts. Accordingly, localities in California are left free to accommodate such conduct, if they choose, free of state interference." (*Riverside* Slip Op. at p. 27.)
>
> "As we have noted, the CUA and the MMP are careful and limited forays into the subject of medical marijuana, aimed at striking a delicate balance in an area that remains controversial, and involves sensitivity in federal-state relations. We must take these laws as we find them, and their purposes and provisions are modest. They remove *state-level criminal and civil sanctions* from specified medical marijuana activities, but they do not establish a comprehensive state system of legalized medical marijuana; or grant a 'right' of convenient access to marijuana for medicinal use; or override the zoning, licensing, and police powers of local jurisdictions; or mandate local accommodation of medical marijuana cooperatives, collectives, or dispensaries." (*Riverside* Slip Op. at p. 38.)

This is not just a matter of judicial language. The essential rationale articulated by the unanimous Court in *Riverside* is that the state's medical marijuana laws have "never expressed or implied any actual limitation on local land use or police power regulation of facilities used for the cultivation and distribution of marijuana." (*Riverside* Slip Op. at p. 33) In other words, the power to ban dispensaries – and enforce those bans – does not derive from the CUA or MMP, and is not dependent for its existence on the terms of those statutes. Rather, it is a function of the cities' and counties' constitutional police power, with which the CUA and MMP do not interfere.

This reasoning formed the centerpiece of the Court's conclusion that the MMP's

exemption of medical marijuana activities from the state-level abatement provisions of Section 11570 does not affect local nuisance ordinances:

> "Finally, defendants urge that by exempting the collective or cooperative cultivation of medical marijuana by qualified patients and their designated caregivers from treatment as a nuisance under the state's drug abatement laws, the MMP bars local jurisdictions from adopting and enforcing ordinances that treat these very same activities as nuisances subject to abatement. But for the reasons set forth at length above, we disagree. Nuisance law is not defined exclusively by what the state makes subject to, or exempt from, its own nuisance statutes. Unless exercised in clear conflict with general law, a city's or county's inherent, constitutionally recognized power to determine the appropriate use of land within its borders (Cal. Const., art. XI, § 7) allows it to define nuisances for local purposes, and to seek abatement of such nuisances." (*Riverside* Slip Op. at p. 36.)

These same considerations make it perfectly clear that the provisions of the CUA and MMP exempting such medical marijuana activities from seven specific state criminal statutes do not affect local penal provisions. Just as with nuisance abatement, the ability to enforce local ordinances through misdemeanor criminal penalties is an inherent aspect of the constitutional police power, existing even without statutory authorization. (*Ex parte Isch* (1917) 174 Cal. 180, 181-182.) Ordinances imposing such penalties are valid, like nuisance ordinances, unless exercised in clear conflict with the general law. (*Ibid; People v. Fages* (1916) 32 Cal.App. 37, 40-41; 60 Ops.Cal.Atty.Gen. 83 (1977). See also *City of Stockton v. Frisbie & Latta* (1928) 93 Cal.App. 277, 289 ["Thus it would seem that it is left for such corporation or town or county to determine for itself the particular mode for enforcing such regulations within its limits"].) For the reasons set forth at length in *Riverside*, the state's decision that *it* will not "regard the described acts as nuisances or criminal violations, and that the state's enforcement mechanisms will thus not be available against these acts" does not establish such a conflict, nor undermine the pre-existing constitutional authority of local governments to enforce their ordinances through

effective criminal penalties when necessary.[12]

Examination of the authorities discussed in *Riverside* further confirms that an exemption from state criminal statutes does not confer or imply exemption from (or preemption of) local criminal penalties for the same conduct. Specifically, *Nordyke v. King* (2002) 27 Cal.4th 875 (discussed extensively on pages 32-35 of the *Riverside* slip opinion) concerned this very issue. In that case, Penal Code section 171b exempted gun shows from the criminal prohibition against possessing guns in public buildings. However, an Alameda County ordinance made such possession a misdemeanor without exempting gun shows – thereby *criminalizing* an activity that the Legislature expressly exempted from state criminal penalty.

The Supreme Court upheld the ordinance, using exactly the same reasoning applicable here: "As we explained, section 171b "merely exempts gun shows from the state criminal prohibition on possessing guns in public buildings, thereby permitting local government entities to authorize such shows. It does not mandate that local government entities permit such a use . . . ." (*Riverside* Slip Op. at pp. 32-33 quoting *Nordyke, supra,* 27 Cal.4th at p. 884.) The fact that the penalty for violating the ordinance was criminal rather than civil was of no consequence – to either the *Nordyke* court or *Riverside*.[13]

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[12] It is also worth noting that local authority to impose criminal penalties for ordinance violations is now expressly recognized by Government Code sections 25132 (counties), and 36900 and 36901 (cities). The Legislature could easily have exempted marijuana "collectives" from local criminal ordinances simply by including these statutes among the list of exemptions in the MMP – *but it didn't.* Instead, the Legislature expressed precisely the opposite policy choice in Section 11362.83.

[13] Our jurisprudence is replete with valid local bans on activities exempted from, or otherwise outside the scope of, the state's penal laws – and many of these bans have been enforceable (or actually enforced) through criminal penalties. (See, e.g., *Personal Watercraft Coalition v. Board of Supervisors* (2002) 100 Cal.App.4th 129, 150 [use of jet skis (infraction)]; *California Veterinary Medical Ass'n v. City of West Hollywood* (2007)

Conejo Wellness Center, Inc. v. City of Agoura Hills (2013) 214 Cal.App.4th 1534, issued shortly before *Riverside*, is directly on point. That case, like this one, was a direct challenge to a local dispensary ban carrying criminal penalties. Correctly anticipating *Riverside*, the Court of Appeal upheld the ordinance, concluding that nothing in the CUA or MMP preempts local dispensary bans, and that the recent addition of Section 11362.83 confirms that "local civil and criminal enforcement" of such ordinances is entirely permissible. (*Id.* at p. 1557.) For the reasons set forth above, that conclusion is clearly correct and equally applicable here.

In sum, neither the CUA nor the MMP, nor the Supreme Court's construction of those provisions in *Riverside*, distinguishes between local criminal and nuisance penalties,[14] or provides any basis for concluding that criminal enforcement of local dispensary bans would be preempted. To the extent that Appellants' briefing can be read to separately challenge the criminal provisions of Anaheim's ordinance, that challenge must likewise fail.

IV. CONCLUSION

The question of local authority to accommodate, regulate, or prohibit land uses related to medical marijuana has reached a fever pitch in recent years, resulting in significant diversity of opinion among litigants and the lower courts. The Supreme Court has now laid all of that uncertainty to rest, holding firmly that such decisions are within

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152 Cal.App.4th 536, 557-562 [animal declawing (unspecified "criminal offense")]; *In re Benson* (1985) 172 Cal.App.3d 532, 537 [game of panguingue (misdemeanor)]; *People v. Mueller* (1970) 8 Cal.App.3d 949, 954 ["chumming" (misdemeanor)]; *In re Bartha* (1976) 63 Cal.App.3d 584 [fortune-telling (misdemeanor)].) The local agency's choice of remedy has not generally been deciding factor in the preemption analysis.

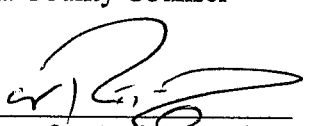
[14] Indeed, such a distinction would be quite anomalous, as creation of a public nuisance is itself a crime subject to misdemeanor penalties. (Pen. Code, § 372.)

the traditional constitutional police power of cities and counties, unaffected by the CUA and MMP. Anaheim's considered determination that marijuana dispensaries are not compatible in their community, and its choice to ban such facilities, are a perfectly appropriate exercise of this authority. The challenge to Ordinance No. 6067 must fail in light of *Riverside*, and the judgment of the Superior Court dismissing that challenge should therefore be affirmed.

Dated: June 6, 2013

Respectfully submitted,

ARTHUR J. WYLENE
Tehama County Counsel



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OF COUNTIES

CERTIFICATION OF COMPLIANCE WITH WORD LIMIT

Pursuant to California Rule of Court 8.204(c)(1), I certify that this Brief of Amicus Curiae contains 3,336 words, not counting the tables, and this attachment, as determined by the word count function of Microsoft Office Word 2003.

Dated: June 6, 2013

Respectfully submitted,

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Tehama County Counsel

Attorneys for Amicus Curiae
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ASSOCIATION OF COUNTIES

CERTIFICATE OF SERVICE

Title of Action: Qualified Patients Association, et al., v City of Anaheim
Case No. **G046417**

Orange County Superior Court Case No. 07CC09524

I, the undersigned, am employed in the City of Red Bluff, County of Tehama, State of California; my business address is 727 Oak Street, Red Bluff, CA 96080. I am over the age of eighteen years and not a party to the within action. On the date below I caused the following papers to be served as follows:

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF RESPONDENT CITY OF ANAHEIM

[PROPOSED] BRIEF OF AMICUS CURIAE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF RESPONDENT CITY OF ANAHEIM

Causing a true copy thereof to be delivered to the office of each party shown below at the address indicated and by leaving the same with a person apparently in charge and over the age of eighteen years;

(X) Placing a true copy thereof, enclosed in a sealed envelope with first-class postage thereon fully prepaid, in the United States mail at Red Bluff, California, addressed as follows:

(4 COPIES)
Court of Appeal
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I declare under penalty of perjury that the foregoing is true and correct, executed at Tehama County, California, on June 6, 2013.

Robin Bennett