

**IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA**

EMILY WHEELER,

Appellant and
Defendant,

v.

APPELLATE DIVISION OF THE
LOS ANGELES SUPERIOR
COURT,

Respondent.

PEOPLE OF THE STATE OF
CALIFORNIA,

Real Party in Interest
and Plaintiff

Case No. S272850

Superior Court, Los Angeles,
Appellate Division, No.
BR054851

Superior Court, Los Angeles, Trial
Ct. No. 9CJ003150-02
(Hon. H. Elizabeth Harris)

AFTER A DECISION OF THE COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION THREE

**APPLICATION TO FILE AMICUS CURIAE BRIEF OF CITY OF
SACRAMENTO IN SUPPORT OF PEOPLE OF THE STATE OF
CALIFORNIA**

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APPLICATION TO FILE

Pursuant to Rule 8.520(f) of the California Rules of Court, the City of Sacramento (“City”) respectfully requests leave to file the accompanying *amicus curiae* brief in support of Real Party in Interest the People of the State of California (“People”).

This brief was entirely drafted by counsel for the *amicus* and no party or counsel for a party in the pending case authored the proposed brief in whole or in part or made any monetary contribution intended to fund its preparation. (See Cal. Rules of Court, rule 8.520(f).)

INTEREST OF APPLICANT

Amicus City’s interest in this proceeding is to ensure that California’s municipalities retain their power to enact and enforce their own commercial cannabis and cannabis cultivation regulations, including the imposition of criminal penalties. California’s municipalities have long been empowered to “make and enforce within its limits all local, police, sanitary, and other ordinances and regulations” (Cal. Const., art. XI, § 7.) This includes the ability to impose restrictions on local land use. (*City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 743.)


Any finding that field preemption precludes local regulation of commercial cannabis would negatively impact the ability of municipalities to ensure that cannabis businesses follow local zoning, licensing, and cultivation rules, and to safeguard the health and safety of their residents.

The City believes this brief will provide additional background and context regarding the importance of the outcome of this case and the need to preserve the ability of municipalities to regulate commercial cannabis activities within their borders.

For these reasons, the City respectfully requests permission to file the accompanying brief as *amicus curiae* in support of the People of the State of California.

Dated: February 9, 2023

Respectfully submitted,

By: 
David Kim (SBN 324531)

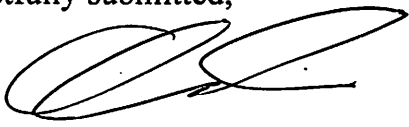
*Attorneys for Amicus Curiae City
of Sacramento*

CERTIFICATE OF INTERESTED PARTIES

Pursuant to California Rules of Court, rule 8.208, proposed *amicus* City of Sacramento makes the following disclosure regarding persons of entities having a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves: There are no interested entities or persons that must be listed in this certificate pursuant to California Rules of Court, rules 8.208 and 8.488.

Dated: February 9, 2023

Respectfully submitted,

By: 

David Kim (SBN 324531)

*Attorneys for Amicus Curiae City
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**BRIEF OF CITY OF SACRAMENTO AS AMICUS CURIAE IN
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**AMICUS CURIAE BRIEF IN SUPPORT OF REAL PARTY IN
INTEREST PEOPLE OF THE STATE OF CALIFORNIA**

I. INTRODUCTION

For the past 26 years, and since the passage of the Compassionate Use Act, local agencies such as the City of Sacramento (“City”) have regulated cannabis use and activity within their respective jurisdictions. Following the recent legalization of nonmedical adult-use cannabis, and the corresponding proliferation of the commercial cannabis industry,¹ local regulation and enforcement have become increasingly important.

To protect this interest, the City urges the Court to affirm the Court of Appeal’s ruling that state law does not occupy the field of commercial cannabis regulation, including cannabis cultivation, or the enforcement thereof.

First, California’s legislation of medical and recreational cannabis use under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”) expressly provides municipalities, such as the City, with broad authority to regulate the commercial cannabis industry. This includes the authority to both enact ordinances and enforce ordinances through either civil or criminal penalties. MAUCRSA’s plain language provides the Legislature intended to permit local regulation in this area of law. When the Legislature expresses its intent to permit local regulation,

¹ From 2018, the first full year of legalization of non-medicinal cannabis, through 2021, the commercial cannabis industry’s gross receipts nearly quadrupled, from \$218.6 million to \$820.4 million. (Sacramento Comprehensive Cannabis Study (Mar. 8, 2022), p. 15, at <https://www.cityofsacramento.org/-/media/Corporate/Files/CMO/Cannabis/SCCS-Final-Report-03-08-22.pdf> [as of Nov. 8, 2022].)

field preemption does not apply. (*Big Creek Lumber v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1157.)

Additionally, the plain language and legislative summary and analysis of Proposition 64 further shows that California’s voters did not intend to occupy the field of commercial cannabis regulation and enforcement.

Should the Court find that state law preempts the field of commercial cannabis regulation, it would have wide-reaching, devastating effects on localities such as Sacramento. Illegal cannabis activity is a magnet for other criminal activity, including gun violence and theft, and presents a danger to the health and safety of the public. If the Court finds that state law occupies the field of commercial cannabis regulation, localities would be powerless against cannabis-related criminal activity within its borders and, absent local enforcement, the underlying and associated criminal activity would thrive.

Accordingly, the City urges the Court to uphold the Court of Appeal’s determination that the appellate division of the Los Angeles County Superior Court correctly held that state law does not preempt the field of commercial cannabis regulation.²

² The Court in *Wheeler* also held that there is no field preemption over nuisance abatement. (*Wheeler v. Appellate Division* (2021) 72 Cal.App.5th 824, 841-42 [quoting Gov. Code, § 38771 (“By ordinance the city legislative body may declare what constitutes a nuisance”)].) Appellant, in her opening brief, does not argue otherwise.

II. CALIFORNIA LAW DOES NOT OCCUPY THE FIELD OF COMMERCIAL CANNABIS REGULATION.

A. California’s enactment of AUMA, MCRSA, and MAUCRSA.

In 2016, California’s electorate passed the Adult Use of Marijuana Act (“AUMA”) via Proposition 64.³ AUMA, among other things, legalized specified personal use and cultivation of cannabis for adults 21 years of age or older, and established a regulatory framework for nonmedical cannabis businesses.

The following year, the Legislature, in passing Senate Bill 94, Chapter 27, combined AUMA and the Medical Cannabis Regulation and Safety Act (“MCRSA”) into MAUCRSA, codified at Business and Professions Code section 26000 et seq.

B. By its plain language, MAUCRSA permits localities to enact and enforce commercial cannabis ordinances.

“The purpose and intent [of MAUCRSA] . . . is to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale” of both medical and adult-use cannabis and cannabis products. (Bus. & Prof. Code, § 26000, subd. (b).) MAUCRSA further “sets forth the power and duties of the state agencies responsible for controlling and regulating the commercial medicinal and adult-use cannabis industry.” (*Id.* at § 26000, subd. (c).)

MAUCRSA expressly confers upon localities broad authority to regulate commercial cannabis activity. The Act provides that MAUCRSA “shall not be interpreted to supersede or limit” localities from “adopt[ing] and enforc[ing] local ordinances to regulate businesses licensed under

³ For a detailed overview of California’s cannabis legislation prior to AUMA, MCRSA, and MAUCRSA, see Real Party in Interest’s Answer Brief at pp. 16-19.

[MAUCRSA]” or local law enforcement from “enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements.” (Bus. & Prof. Code, § 26200, subd. (a)(1)-(2).)

In doing so, “MAUCRSA explicitly disavows any legislative intention to occupy the field of commercial cannabis regulation.” (*Wheeler v. Appellate Division* (2021) 72 Cal.App.5th 824, 840.) Moreover, MAUCRSA “contemplates that cities and counties will also impose their own licensing requirements and other restrictions on commercial cannabis activities.” (*Ibid.*) In a pre-*Wheeler* case, the Court of Appeal, Second District held that MCRSA, like MAUCRSA, did not “supersede or limit local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.” (*Safe Life Caregivers v. City of Los Angeles* (2016) 243 Cal.App.4th 1029, 1049-50.) The court thus concluded that MCRSA did not preempt the field of medical marijuana regulation. (*Id.* at p. 1049.) As with MCRSA, MAUCRSA’s plain language evinces that state law does not occupy the field of commercial cannabis regulation.

C. The California Supreme Court’s decision in *O’Connell* is not controlling.

Appellant concedes that “MAUCRSA contains provisions allowing for local action in clearly delineated areas.” (Appellant’s Opening Brief, p. 40.) Nevertheless, Appellant insists that the Uniform Controlled Substances Act (“UCSA”) preempts local regulation in the field of penalizing crimes⁴ involving controlled substances, relying heavily on *O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061. (*Id.* at pp. 36-41.)

⁴ Plaintiff does not and cannot dispute that, absent a clear indication of preemptive intent, land use regulations are not preempted by state statute. (*City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.*

This argument, however, fails for several reasons.

First, Appellant’s reliance on *O’Connell* ignores that the Legislature, through MAUCRSA, conferred regulatory and enforcement authority to localities *after O’Connell* was decided. “Although cannabis is still listed in the UCSA as a controlled substance . . . under current law it is primarily regulated by MAUCRSA rather than prohibited by UCSA.” (*Wheeler, supra*, 72 Cal.App.5th at p. 840.) Moreover, “[s]tate criminal penalties apply to commercial cannabis-related activities only if they fail to comply with MAUCRSA.” (*Ibid.*; see also Bus. & Prof. Code, § 26038, subs. (a), (g).) Following *O’Connell*, the Legislature subsequently and explicitly expressed its intent, through MAUCRSA, to permit local regulation of commercial cannabis. And, when the Legislature has expressed its intent to permit local regulation, field preemption does not apply. (*Big Creek Lumber, supra*, 38 Cal.4th at p. 1157.)

Moreover, *O’Connell* is distinguishable. In *O’Connell*, the ordinance in question, *inter alia*, permitted the City of Stockton to seize and hold for forfeiture any motor vehicle used to acquire or attempt to acquire a controlled substance. (*O’Connell, supra*, 41 Cal.4th at p. 1069.) This Court held that the UCSA preempted this forfeiture ordinance “to the extent it calls for the forfeiture of vehicles used to acquire or attempt to acquire . . . controlled substances regulated under the UCSA.” (*Id.* at p. 1071 [internal quotation marks omitted].) This was because “the Legislature’s comprehensive enactment of penalties for crimes involving controlled

(2013) 56 Cal.4th 729, 742.) Further, municipalities may adopt ordinances that provide for the “immediate imposition of administrative fines or penalties [without providing notice and opportunity to correct the violation] for the violation of building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis.” (Gov. Code, § 53069.4, subd. (a)(2)(B) [emphasis added].)

substances, but exclusion from that scheme of any provision for vehicle forfeiture for simple possessory drug offenses, manifests a clear intent to reserve that severe penalty for very serious drug crimes involving the manufacture, sale, or possession for sale of specified amounts of certain controlled substances.” (*Id.* at p. 1072.)

Also, Appellant fails to distinguish between “drug crime ordinance[s] that would be preempted by state criminal laws” such as *O’Connell’s* ordinance punishing *possession* of cannabis, and “permissible enforcement mechanism[s] for the City’s land use ordinances and business licensing requirements for commercial cannabis activities.” (*Wheeler, supra*, 72 Cal.App.5th at p. 839 [internal quotation marks omitted].) Ordinances that have the effect of regulating cannabis-related activities on real property within the jurisdiction, as opposed to those that regulate other cannabis-related criminal activity, such as simple possession, are local land use regulations permissible under state law, and not preempted by the UCSA. (*Granny Purps Inc. v. County of Santa Cruz* (2020) 53 Cal.App.5th 1, 8-9 [citing *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 754].)

In contrast to ordinances that regulate criminal activity, such as the one in *O’Connell*, public welfare offenses, which generally do not require any wrongful intent, are regulatory in nature and involve widespread injury to the public. Such offenses impose relatively light criminal sanctions designed to regulate, rather than to punish or correct, and are typically viewed as permissible enforcement mechanisms that are not preempted. (*Wheeler, supra*, 72 Cal.App.5th at p. 839 [citing *In re Jorge M.* (2000) 23 Cal.4th 866, 872].)

A local ordinance prohibiting ownership of a building used for the unlicensed cultivation of marijuana, such as the one in *Wheeler*, is a land use and business licensing regulation designed to prevent widespread injury

to the public and protect the legal, regulated market. Unregulated cannabis cultivation, when left unabated, substantially increases the risk of violent criminal activity on the property, poses a significant electrical and fire hazard, and results in the accumulation of hazardous wastes and solvents. (Sacramento City Mun. Code, § 8.132.060, subd. (A); see also *People v. Simpson* (1998) 65 Cal.App.4th 854, 862 [observing that “[i]llegal drugs and guns are a lot like sharks and remoras. And just as a diver who spots a remora is well-advised to be on the lookout for sharks, an officer investigating cocaine and marijuana sales would be foolish not to worry about weapons.”].) Therefore, a locality may utilize criminal penalties as an indirect means to *enforce* its own land use ordinances and business licensing requirements for commercial cannabis activities, rather than as direct punishment for drug crimes. Such land use ordinances and business licensing requirements should withstand any claim of field preemption.

To the extent Appellant argues that state law occupies the field such that it preempts *any* ordinance imposing criminal penalties, that argument fails. First, the California Constitution permits municipalities to “make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” (Cal. Const., art. XI, § 7.) Moreover, MAUCRSA itself contains a provision expressly allowing for criminal enforcement of a municipality’s regulations of cannabis businesses. Specifically, MAUCRSA permits municipalities to engage in criminal enforcement of local ordinances regulating the location, operation, or establishment of medicinal cannabis cooperatives or collectives. (Health & Safety Code, § 11362.83, subds. (a)-(b).) It also authorizes municipalities to [e]nact[] other laws consistent with this article.” (*Id.*, subd. (c).) It follows that the enacting of an ordinance regulating the location, operation, or establishment of *non-medicinal* cannabis

cooperatives or collectives, and criminally enforcing such an ordinance, would be consistent with this statute.

D. Proposition 64 expressly intends for municipalities to regulate commercial cannabis activity.

In interpreting an initiative, courts apply the same principles governing statutory construction. (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 571.) If the plain language of the initiative is not ambiguous, courts will “presume the voters intended the meaning apparent from that language” (*Ibid.*) If the language is ambiguous, courts may consider ballot summaries and arguments in determining the voters’ intent and understanding of a ballot measure.” (*Ibid.*)

The plain language of Proposition 64, prior to its enactment as AUMA or AUMA’s inclusion in MAUCRSA, shows that California’s voters intended municipalities to have broad regulatory authority over commercial cannabis activity and to maintain local control consistent with the interests of the local community. Proposition 64 purports to set up a “comprehensive system governing marijuana businesses at the state level and *safeguards local control, allowing local governments to regulate marijuana-related activities, to subject marijuana businesses to zoning and permitting requirements*, and to ban marijuana businesses by a vote of the people within a locality.” (Ballot Pamp., Gen. Elec. (Nov. 8, 2016) text of Proposition 64, § 2, subd. (E), p. 179, at <https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf> [as of Nov. 8, 2022].)

Further, Proposition 64 provides that “[i]t is the intent of the people in enacting this act to accomplish the following:

* * *

(c) Allow local governments to enforce state laws and regulations for nonmedical marijuana businesses and enact additional local requirements for nonmedical marijuana businesses

* * *

(m) Allow local governments to reasonably regulate the cultivation of nonmedical marijuana for personal use by adults 21 years and older through zoning and other local laws”

(*Id.* at § 3, subds. (c) & (m), pp. 179-80.)

The Legislative Analyst’s summary of Proposition 64 further demonstrates the initiative’s intent to permit municipalities to broadly regulate commercial cannabis and cannabis cultivation. Under Proposition 64, “cities and counties could regulate nonmedical marijuana businesses. For example, cities and counties could require nonmedical marijuana businesses to obtain local licenses and restrict where they could be located. Cities and counties could also completely ban marijuana-related businesses.” (Ballot Pamp., Gen. Elec. (Nov. 8, 2016) Analysis of Proposition 64 by the Legislative Analyst, pp. 92-93.)

Conversely, there is *nothing* in Proposition 64 or MAUCRSA’s legislative history indicating that either California’s voters or the Legislature intended to limit municipalities’ authority to regulate commercial cannabis activity within their own borders.

III. MUNICIPALITIES LIKE SACRAMENTO HAVE A SIGNIFICANT INTEREST IN MAINTAINING LOCAL CONTROL OVER COMMERCIAL CANNABIS REGULATION AND ENFORCEMENT.

The Supreme Court has expressed reluctance to “infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to

another [I]f there is a significant local interest to be served which may differ from one locality to another then the presumption favors the validity of the local ordinance against an attack of state preemption.” (*City of Riverside, supra*, 56 Cal.4th at p. 744 [citing *Big Creek Lumber Co., supra*, 38 Cal.4th at p. 1149] [internal quotation marks omitted].)

A. The City of Sacramento has a significant local interest in preventing illegal cannabis cultivation.

Cannabis grown illegally presents a real and imminent threat to the health, safety, and welfare of Sacramento citizens. (Sacramento City Mun. Code, § 8.132.060, subd. (A).) The unregulated cultivation of a large number of cannabis plants on any property substantially increases the risk of violent criminal activity on the property, including home invasion, robbery, burglary, assault, and homicide. (*Ibid.*) Moreover, illegal cannabis grows, especially in residential houses, often also have other code violations, such as building and fire hazards. Illicit growers, for example, frequently make unpermitted alterations to a residence or property to allow the illegal cultivation to thrive, such as illegal fortification of windows, doors, and exits, as well as exposed wiring, terminals, and connections designed to allow artificial lights to operate at maximum efficiency. These alterations result in electrical and fire hazards that could endanger the health and safety of the growers and other occupants of the property, as well as neighboring residents. (*Ibid.*)

After the passage of Proposition 64, for reasons specific to the social, environmental, and housing climates prevalent during that time, the City saw an unprecedented number of residential and commercial properties converted to maintain illegal cannabis grows. To combat the risks outlined above, the City established a regulatory program for commercial cannabis activity, including cannabis cultivation, within its jurisdiction. Today, local commercial cannabis businesses must obtain and

maintain a valid permit, and must follow specific regulatory requirements regarding cannabis cultivation, testing, manufacturing, and distribution. (Sacramento City Mun. Code, §§ 5.150 et seq.) Non-commercial cultivation of cannabis, such as that conducted within a private residence, is strictly limited and regulated. (*Id.*, § 8.132.040; see also Health & Safety Code, § 11358.) Failure to follow the City’s commercial cannabis or cannabis cultivation ordinances may result in criminal sanctions, administrative penalties, and/or civil actions. (Sacramento City Mun. Code, §§ 5.150.190, 8.132.050.)

The City’s implementation and enforcement of its cannabis regulatory program has been highly effective in minimizing the health and safety risks resulting from illegal cannabis grows in Sacramento. Through this regulatory program, and enforcement thereof, the City has issued, to date, 653 administrative penalties for violating Sacramento’s residential cannabis cultivation regulations and another 42 administrative penalties for violating Sacramento’s cannabis business licensing regulations. Additionally, the City’s Marijuana Compliance Team authored or investigated approximately 90 cannabis cultivation search warrants, resulting in approximately 75 arrests for cannabis-related violations under state law. Because of these efforts, the number of suspected illegal cannabis growth sites in Sacramento decreased dramatically between 2019 and August 2022, from nearly 400 to fewer than an estimated 100.

B. Municipalities have differing interests in preventing illegal cannabis cultivation.

However, the City’s decisions regarding local control are specific to the unique needs of Sacramento’s residents. As previously noted, Sacramento has faced an unprecedented number of illegal residential and commercial cannabis cultivations and has made addressing this issue a local priority. Other municipalities, however, have tailored their regulatory

programs to address cannabis-related issues unique to their residents and businesses. For example, the City of Chula Vista, due to an epidemic of unlicensed dispensaries illicitly selling cannabis, had to take significant enforcement action to seize contraband and broadly prosecute businesses operating illegally. Put simply, because Chula Vista faced a different set of problems from Sacramento, Chula Vista took a different approach to enforcing and regulating cannabis activity within its borders.⁵

California's municipalities vary greatly in population, land area, gross income per capita, cost of living, ethnic, racial, political, and other demographics, drug-related history, and a host of other factors, many of which relate to a municipality's decision-making regarding cannabis regulation. These municipalities, in turn, have differed greatly in determining how to manage cannabis cultivation and commercialization within their borders. For instance, of the 539 cities and counties in California, 61% prohibit cannabis retail operations, 66% prohibit cannabis manufacturing, and 69% prohibit commercial cannabis cultivation.⁶ Moreover, of the municipalities that *do* permit cannabis businesses to operate, there are significant differences in the types of activity prohibited, and the level of penalty, sanction, or punishment resulting from each violation. These differences result from calculated decision-making from local elected officials best equipped to understand the unique challenges of their jurisdictions, and the type and level of regulation and enforcement necessary to address those challenges.

⁵ See Chula Vista Police Department, *Police Media Advisory* <https://www.chulavistaca.gov/home/showpublisheddocument/21020/637261658431870000> [as of Dec. 12, 2022].

⁶ California Department of Cannabis Control, *Where Cannabis Businesses are Allowed* <https://cannabis.ca.gov/cannabis-laws/where-cannabis-businesses-are-allowed> [as of Nov. 8, 2022].

C. Absent local authority, the City could not adequately protect its interests in regulating commercial cannabis.

Sacramento and many other municipalities cannot prosecute violations of state cannabis laws. City attorneys may generally only prosecute misdemeanors arising out of violations of state law with the consent of the District Attorney. (Gov. Code, § 41803.5, subd. (a).) However, to date, the Sacramento County District Attorney has not consented to permitting the Sacramento City Attorney's Office to prosecute state law misdemeanors.⁷

Without the ability to enforce their own ordinances, cities such as Sacramento would have no choice but to rely on the State Attorney General or the County District Attorney, who are both elected by different constituencies, for local commercial cannabis enforcement. And, because the state and counties have become increasingly unwilling to intervene through prosecution of cannabis-related crimes, cities in which the District Attorney has not provided authority to prosecute will simply have no recourse to effectively manage illegal commercial cannabis activity. This would undo decades of progress in regulation and enforcement, and open the door to more illegal cannabis activity. An increase in illegal cultivation, in particular, would threaten the public health and safety by increasing the risk of arson, violent crime, property damage, human trafficking, and other criminal activity.

⁷ See City of Sacramento, *Item No. 34: Supplemental Material for City of Sacramento, City Counsel, Agenda Packet* <[http://sacramento.granicus.com/MetaViewer.php?view_id=8&clip_id=2331&meta_id=201358#:~:text=Government%20Code%20section%2041803.5\(a,arising%20out%20of%20violation%20of](http://sacramento.granicus.com/MetaViewer.php?view_id=8&clip_id=2331&meta_id=201358#:~:text=Government%20Code%20section%2041803.5(a,arising%20out%20of%20violation%20of)> [as of Dec. 5, 2022] [noting that, as of June 2010, 14 California charter cities had authority to prosecute state misdemeanors, but Sacramento did not].

D. A finding of preemption as to criminal penalties would inhibit the City from addressing its local interests.

Even a finding that the UCSA preempts municipalities *only* from imposing *criminal* penalties to enforce its own commercial cannabis and cannabis cultivation ordinances would inhibit the City from adequately regulating cannabis businesses within its jurisdiction. For instance, the Sacramento City Municipal Code empowers the City to impose “criminal sanctions, civil actions, and administrative penalties” to enforce any provision of its cannabis cultivation regulations. (Sacramento City Mun. Code, § 8.132.050, subd. (A).) This includes the City’s prohibition on ownership of property in which cannabis is being illicitly cultivated. (*Id.*, § 8.132.030.) If the City could not impose criminal penalties to enforce these ordinances, it would encourage illicit cannabis cultivation – without the deterrent of potential criminal prosecution, cannabis cultivators would be free to violate the City’s myriad ordinances governing cannabis businesses, and simply pay off any civil or administrative penalties as an inconsequential business expense. In other words, administrative penalties would simply be a “cost of doing business” for illegal cannabis businesses.

Such a finding would also insulate certain types of violators from meaningful punishment. Assume, for example, that the City was on notice that a tenant of a residential property was illicitly cultivating cannabis inside the property. Under Sacramento’s Municipal Code, the City could apply administrative penalties to either the landowner (if the landlord knew or should have known of the cultivation) or the tenant cultivator. (Sacramento City Mun. Code, §§ 8.132.030; 8.132.040.) Typically, the administrative penalty is enforced via a lien on real property if the penalty is not satisfied. While that penalty is effective with respect to the landowner, it would be ineffective against the tenant, who may very well not own any property to which the City could attach a lien. In other words,

the tenant could avoid having to pay the administrative penalty and be insulated from the threat of a lien. In such an example, the City's sole recourse would be to charge the tenant with a misdemeanor under Sacramento City Municipal Code, section 8.132.050, subdivision (D). But, if this Court determines that the UCSA precludes municipalities from imposing criminal sanctions on such tenants, that option would no longer be available to the City. The City would be left with only the hope that the County District Attorney's Office and/or the State Office of Attorney General might intervene in what is a matter of local concern.

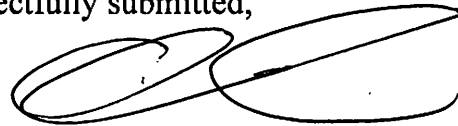
IV. CONCLUSION

For the foregoing reasons, the City requests that the Court affirm the Court of Appeal's determination that field preemption does not preclude municipalities from engaging in commercial cannabis regulation, including the imposition of criminal penalties.

Dated: February 9, 2023

Respectfully submitted,

By:



David Kim (SBN 324531)

*Attorneys for Amicus Curiae City
of Sacramento*

(2023)

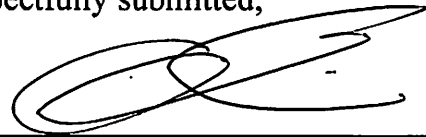
**CERTIFICATE OF COMPLIANCE PURSUANT TO
CAL. RULES OF CT. 8.520, subd. (c)(1)
FOR CASE NUMBER S272850**

Pursuant to Rule 8.520(c)(1) of the California Rules of Court, I hereby certify that this brief contains 3871 words, including footnotes and uses a 13-point Times New Roman font. In making this certification, I have relied on the word count function of the computer program used to prepare the brief.

Dated: February 9, 2023

Respectfully submitted,

By:



David Kim (SBN 324531)

*Attorneys for Amicus Curiae City
of Sacramento*

PROOF OF SERVICE

I, the undersigned, declare:

I am over age 18 years of age and not a party to this action; my business address is 915 I Street, Room 4010, Sacramento, CA 95814.

On February 8, 2023, I served the within **APPLICATION TO FILE AMICUS CURIAE BRIEF OF CITY OF SACRAMENTO IN SUPPORT OF PEOPLE OF THE STATE OF CALIFORNIA; BRIEF OF CITY OF SACRAMENTO AS AMICUS CURIAE IN SUPPORT OF PEOPLE OF THE STATE OF CALIFORNIA**, on each of the persons named below by serving a true copy thereof, via the TrueFiling e-filing system as follows:

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On February 9, 2023, following ordinary business practices, I placed for collection and mailing at the Sacramento City Attorney’s Office located at 915 I Street, Room 4010, Sacramento, CA 95814, a copy of the attached **APPLICATION TO FILE AMICUS CURIAE BRIEF OF CITY OF SACRAMENTO IN SUPPORT OF PEOPLE OF THE STATE OF CALIFORNIA; BRIEF OF CITY OF SACRAMENTO AS AMICUS**

CURIAE IN SUPPORT OF PEOPLE OF THE STATE OF

CALIFORNIA in a sealed envelope, with postage fully prepaid, addressed to the following persons:

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LOS ANGELES, CA 90012

COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
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111 N. HILL ST., RM 105E
LOS ANGELES, CA 90012

MRS. EMILY L. WHEELER
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COMPTON, CA 90220

I declare under penalty of perjury that the above is true and correct and that I have signed an original, printed paper copy of this declaration and it is available for inspection per CRC 8. 7 5. Executed on February 9, 2023, at Sacramento, California.



ERICA DILLARD

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **WHEELER v. APPELLATE DIVISION (PEOPLE)**

Case Number: **S272850**

Lower Court Case Number: **B310024**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **dskim@cityofsacramento.org**
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

2/9/2023

Date

/s/Erica Dillard

Signature

Kim, David (324531)

Last Name, First Name (PNum)

Sacramento City Attorney's Office

Law Firm