IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Joan Byrd et al.,

Plaintiffs and Appellants,

v.

County of Fresno et al.,
Defendants and Respondents.

Case No. _____

After a Decision by the Court of Appeal
Fifth Appellate District Case No. F070597

Fresno County Superior Court
Case No. 14CECG01502

Petition for Review

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1. ISSUES PRESENTED FOR REVIEW

This case presents two related constitutional issues, as well as one procedural issue:

First, under Article XI § 7 of the California Constitution, cities and counties "may make and enforce within [their] limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Under this provision, county and non-charter city ordinances that conflict with state laws are preempted.

The County of Fresno and the City of Fresno have completely banned the storage and cultivation of medical marijuana. The first issue is whether these bans conflict with state laws authorizing qualified patients to possess and cultivate limited quantities of marijuana for personal medical use.

Second, Article XI § 5 of the California Constitution authorizes charter cities to enact ordinances that conflict with state law, so long as those ordinances relate solely to "municipal affairs." The City of Fresno is a charter city. The second issue is whether the regulation of medical marijuana is a municipal affair such that charter cities' regulation of it may supersede conflicting state laws.

Third, a court will not issue a writ of mandate where the party requesting it has "a plain, speedy, and adequate remedy, in the ordinary course of law." Code Civ. Proc. § 1086. The Court of Appeal held that this allows a court to dismiss a petition for a writ of mandate whenever injunctive and declaratory relief would also be available. The third issue is whether this is correct.

The case thus presents the following issues:

1. Whether a local ordinance completely banning individual patients from storing and cultivating medical marijuana for personal medical use conflicts with state law and is therefore preempted.
2. Whether the regulation of medical marijuana is a municipal affair such that charter cities' regulation of it may supersede state law.
3. Whether superior courts have the discretion to dismiss a petition for a writ of mandate on the grounds that injunctive and declaratory relief would provide an adequate remedy in the ordinary course of law.

2. WHY REVIEW SHOULD BE GRANTED

This Court should grant review because of the importance of the first two issues presented and because the case presents a clean vehicle for this Court to settle an important question of preemption law that has divided California courts: the proper test to determine whether a local ordinance is preempted because it contradicts state law. *See* Rule of Court 8.500(b)(1). It should grant review of the third issue because doing so will allow it to resolve the first two and because the Court of Appeal's holding contradicts every prior case to have addressed the question.

First, the preemption issues are important not only because the City and County bans affect so many Fresno residents but also because numerous other cities have similarly banned cultivation, and sometimes storage as well, of medical

marijuana.[1] Other jurisdictions are considering bans.[2] The Court of Appeal has upheld these types of ordinances, although under a flawed analysis, as discussed below. *See Kirby v. Cnty. of Fresno*, 242 Cal.App.4th 940 (2015) (review pending); *Maral v. City of Live Oak*, 221 Cal.App.4th 975 (2013).

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[1] *See, e.g.*, Banning Municipal Code § 8.48.330, available at https://www.municode.com/library/ca/banning/codes/code_of_ordinances (all websites last visited Jan. 7, 2016); Beaumont Municipal Code § 5.62.030(B), available at http://www.ci.beaumont.ca.us/index.aspx?NID=851; California City Municipal Code § 9-2.2903, available at https://www.municode.com/library/ca/california_city/codes/code_of_ordinances; City of Colusa Municipal Code § 12E-3, available at https://www.municode.com/library/ca/colusa/codes/code_of_ordinances; David Axelson, Coronado City Council Passes Marijuana Ordinance, Coronado News, Dec. 28, 2015, http://www.coronadonewsca.com/news/coronado_city_news/coronado-city-council-passes-marijuana-ordinance-names-new-senior-center/article_0e48a370-adc4-11e5-8b9f-efd2d51e6d62.html; Fountain Valley Still Saying No to Medical Pot, Orange County Register, Nov. 20, 2015, http://www.ocregister.com/articles/marijuana-692980-valley-fountain.html; City of Lafayette Municipal Code § 6-528(d), available at https://www.municode.com/library/ca/colusa/codes/code_of_ordinances; City of Lincoln, Municipal Code § 18.34.210, available at https://www.municode.com/library/ca/lincoln/codes/code_of_ordinances; City of Susanville Ordinance No. 15-1002 (enacting Susanville Municipal Code § 17.104.140(C) banning all medical marijuana cultivation), available at http://www.cityofsusanville.net/wp-content/uploads/documents/agendas/2015/Agenda_2015-12-02.pdf, at 246-50; City of Tracy Municipal Code § 10.08.3196(c), available at https://www.municode.com/library/ca/tracy/codes/code_of_ordinances.

[2] http://www.sanluisobispo.com/opinion/editorials/article51852445.html; http://www.lassennews.com/story/2015/12/08/news/council-bans-medical-marijuana-gardens-in-susanville/528.html; http://www.latimes.com/socal/daily-pilot/news/tn-dpt-me-1111-marijuana-ordinance-20151110-story.html.

Second, review is necessary to resolve a split in authority as to the proper test for contradiction preemption under Article XI § 7 of the California Constitution. This Court has consistently held that local laws that "contradict" state law are preempted. *E.g., City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.*, 56 Cal.4th 729, 743 (2013); *Action Apartment Ass'n, Inc. v. City of Santa Monica*, 41 Cal.4th 1232, 1243 (2007); *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal.4th 893, 898 (1993). But it has employed two completely different tests to determine whether local law contradicts state law; the choice of tests often determines the outcome of the case.

One line of cases stretching back nearly a century holds that contradiction preemption invalidates ordinances that prohibit what a state "statute permits or authorizes." *Inland Empire*, 56 Cal.4th at 763 (Liu, J., concurring). Under this test, a local ordinance that bars individuals from exercising a privilege granted to them by state law or otherwise interferes with the purposes of state law are preempted. *See, e.g., id.*; *Action Apartment Ass'n,* , 41 Cal.4th at 1242-44 (invalidating ordinance that was "inimical to the important purposes" of a state statute and "cut against" that statute's "core purpose"); *Int'l Bhd. of Elec. Workers v. City of Gridley*, 34 Cal.3d 191, 202 (1983); *City of Torrance v. Transitional Living Ctrs. for Los Angeles, Inc.*, 30 Cal.3d 516, 520 (1982); *Ex parte Daniels*, 183 Cal. 636, 641–48 (1920).

In recent decades, however, this Court has also articulated another test under which the "contradictory and inimical form of

preemption does not apply unless the ordinance directly requires what the state statute forbids or prohibits what the state enactment demands." *Inland Empire*, 56 Cal.4th at 743. Under this test, no preemption exists if it is "reasonably possible to comply with both the state and local laws" by completely avoiding the activity in question. *Inland Empire*, 56 Cal.4th at 743, 754. This test is significantly narrower, and applying it will often result in upholding a local ordinance that would be preempted if the other one were applied. For example, in *Action Apartment Association* the majority invalidated a local law under the first test, but the dissent would have upheld it under the second. *Compare Action Apartment Ass'n*, 41 Cal.4th at 1243-44, 1249-50 *with id.* at 1253 (Corrigan, J., dissenting).

Decisions from the Court of Appeal have taken both approaches. As discussed below, cases that apply the broader rule sometimes find preemption, while those applying the narrower rule rarely, if ever, do. *Compare, e.g.*, *Harrahill v. City of Monrovia*, 104 Cal.App.4th 761, 769 (2002) (upholding truancy ordinance under narrow rule) *with id.* at 772-73 (Mosk, J., dissenting) (law preempted under broader test).

California should not have two competing rules of constitutional law that lead to contradictory outcomes. The narrow rule conflicts with nearly a century of precedent and is inconsistent with the constitutional text: as federal preemption cases recognize, a local law that prohibits what state law authorizes conflicts with that state law in any usual sense of the term. *See Inland Empire*, 56 Cal.4th 729, 764 (Liu, J.,

concurring). Finally, if applied consistently, the narrow rule would allow local governments to completely prohibit Californians from engaging in activities that state law expressly authorizes. This is likely why some courts continue to apply the broader rule even though doing so contradicts this Court's recent decisions.

As discussed below, under the correct test, the City's and County's absolute bans on the storage and cultivation of medical marijuana by individual patients for their personal medical use contradicts state law, both the voter-enacted Compassionate Use Act and the 2004 Medical Marijuana Program, which specifically states that qualified patients "may possess" and "may cultivate" specified quantities of marijuana for medical use. Health & Safety Code § 11362.77. Courts have consistently invalidated ordinances that completely prohibit individuals from doing what state law specifically says they "may" do.

The second issue – whether the regulation of medical marijuana is a municipal affair such that charter cities may regulate it in ways that conflict with state law – also merits review. California has 121 charter cities, including the state's 15 largest cities.[3] If the Court is going to decide whether counties and general-law cities can ban the cultivation and storage of medical marijuana, it should also resolve the question for charter cities such as the City of Fresno.

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[3] *See* http://www.cacities.org/Resources-Documents/Resources-Section/Charter-Cities/Charter_Cities-List (listing charter cities); https://en.wikipedia.org/wiki/List_of_largest_California_cities_by_population (listing California's 100 largest cities by population).

Finally, the Court should grant review of the Court of Appeal's holding that a superior court has the discretion to dismiss a petition for a writ of mandate because injunctive and declaratory relief constitute adequate remedies "in the ordinary course of law." This holding contradicts every case that has previously considered this issue and fails to acknowledge that this statutory language refers to legal remedies – such as damages – rather than equitable remedies. If adopted by other courts, it would grant superior courts the discretion to dismiss virtually any petition for a writ of mandate, because an injunction would always be a possible alternative to mandamus.

Plaintiffs note that the first issue for review is also presented in the Petition for Review in *Kirby v. County of Fresno*, 242 Cal.App.4th 940 (2015), which was decided by the same panel and on the same day as this case. Because that case involves only the County of Fresno, not the City, it does not present the issue of whether a charter city's regulation of medical marijuana can supersede conflicting state laws.

3. FACTS AND PROCEDURAL HISTORY

The Court of Appeal accurately stated the facts and procedural history. *See* Slip Op. at 2-3. In short, plaintiffs Joan Byrd and Susan Juvet have recommendations from their physicians to use medical marijuana to address extremely serious medical issues. They both have cultivated their own medical marijuana in the past and would like to continue to do so. They brought this suit challenging the bans both as persons who are directly affected by the City bans, as taxpayers, and as citizens invoking public-interest standing to request mandamus review.

See Green v. Obledo, 29 Cal.3d 126, 144-45 (1981) (citizen standing for mandamus); *Van Atta v. Scott,* 27 Cal.3d 424, 449-50 (1980) (taxpayer standing for mandamus) *abrogated on unrelated grounds as discussed in In re York,* 9 Cal.4th 1133, 1143 n.7 (1995).

Plaintiffs filed a combined petition for writ of mandate and complaint for declaratory and injunctive relief against both the County and the City. *See Bullock v. City & Cnty. of San Francisco*, 221 Cal.App.3d 1072, 1086 (1990) (mandamus petition may be joined with complaint for equitable relief). Because the City's ordinance was to go into effect in July 2014 but a hearing date for a noticed motion was not available until October, they submitted an *ex parte* application for an order to show cause why the writ should not issue. The application requested a writ prohibiting the County and the City from enforcing the medical marijuana ordinances.

In September 2014, without receiving a response from the Defendants or holding a hearing, the court denied the application and dismissed the writ petition, writing that Plaintiffs'

> Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief fails to allege any facts demonstrating that plaintiffs lack a plain, speedy, and adequate legal remedy. Instead, the existence of causes of action for declaratory relief and injunctive relief demonstrate that writ relief was neither necessary nor proper in this instance.
>
> *See* Slip Op. at 4-5.

The order did not give Plaintiffs leave to amend.

Plaintiffs then dismissed the remainder of their complaint so that they could immediately appeal the dismissal. *See Kurwa v.*

Kislinger, 57 Cal.4th 1097, 1104-06 (2013). They asked the Court of Appeal to consolidate this appeal with that in *Kirby v. County of Fresno*; the Court denied that motion but eventually heard both cases on the same day.

On appeal, the City argued that the superior court's reasons for dismissing the case were correct, that its ordinances were proper under any preemption analysis, and that its status as a charter city allows it to ban medical marijuana even if counties and general-law cities could not do so.

The County asked the Court of Appeal to affirm on the merits, making only "oblique references" to the procedural issue. Slip Op. at 10-11. Nevertheless, the Court of Appeal affirmed as to both the City and the County on the grounds that the superior court had the discretion to dismiss the petition because injunctive and declaratory relief were available. *Id.* The opinion is unpublished even though, as discussed below, it conflicts with every published decision that has addressed the issue. No party requested publication or rehearing.

4. STANDARD OF REVIEW

This Court reviews *de novo* a superior court's dismissal of a case on the pleadings, accepting as true plaintiff's factual allegations. *Gerawan Farming, Inc. v. Lyons*, 24 Cal.4th 468, 515-16 (2000) (citations omitted). The question of whether state law preempts a local ordinance presents a purely legal issue. *State Bldg. & Const. Trades Council of Cal., AFL-CIO v. City of Vista,* 54 Cal.4th 547, 558 (2012); *Johnson v. City & Cnty. of San Francisco,* 137 Cal.App.4th 7, 12 (2006).

The merits of this case are properly before this court because they were timely raised in both courts below. *See* Rule of Court 8.500(c)(1). That those courts decided the case on alternative grounds is no barrier to this Court's addressing the substantive issues, which are pure questions of law. *See id.*; *People v. Cross*, 61 Cal.4th 164, 171-72 (2015); *Bank of Am. v. Angel View Crippled Children's Found.*, 72 Cal.App.4th 451, 459 & n.6 (1999); *Schabarum v. Cal. Legislature*, 60 Cal.App.4th 1205, 1215-16 (1998); *Kahn v. Bower*, 232 Cal.App.3d 1599, 1610 (1991); *see also Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 97 (1993) ("[W]e are not prevented from considering the question … merely because a lower court thought it superfluous.").

5. LEGAL BACKGROUND: STATE MARIJUANA LAW AND THE LOCAL ORDINANCES

An analysis of whether the local ordinance conflicts with state law must begin with the laws at issue.

5(A) State law has long regulated the cultivation, possession, and storage of marijuana.

California state law has regulated marijuana since 1913. *See Gonzales v. Raich,* 545 U.S.1, 5-6 (2005). Since 1972, marijuana possession and cultivation have been prohibited by Health & Safety Code sections 11357 and 11358, respectively (all undesignated statutory references are to the Health & Safety Code). The term "marijuana" includes "all parts of the plant Cannabis sativa L., whether growing or not," except mature stalks, fiber, and sterile seeds. § 11018.

Possession of less than 28.5 grams of marijuana is an

infraction; possession of more than that amount is a misdemeanor. § 11357(b), (c). Cultivation carries a maximum punishment of three years in jail. § 11358. Buildings and other places used for "storing, keeping, [or] manufacturing" (*i.e.*, growing[4]) marijuana are subject to civil abatement. § 11570. Marijuana is also subject to forfeiture. § 11470(a).

5(B) The voters enacted the 1996 Compassionate Use Act (CUA) to allow access to medical marijuana.

In 1996, the voters adopted the CUA to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes." CUA § 1, codified as Health & Safety Code § 11362.5(b)(1)(A) (a copy of the CUA's ballot materials are attached to this Petition under Rule of Court 8.504(e)(1)(C)). The Legislative Analyst informed the voters that the initiative would "amend[] state law to allow persons to grow or possess marijuana for medical use when recommended by a physician." Individual cultivation is integral to the measure's purpose: as the ballot arguments in favor of the CUA explained, the law "allows patients to cultivate their own marijuana … because federal laws prevent the sale of marijuana, and a state initiative cannot overrule those laws."

To accomplish its objectives, the initiative created a medical defense to California's then-existing laws "relating to the possession … and … cultivation of marijuana":

> Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of

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[4] Growing marijuana is manufacturing it. *See United States v. Bernitt*, 392 F.3d 873, 879 (7th Cir. 2004).

> marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.
>
> CUA § 1, codified as § 11362.5(d).

Nothing in the CUA grants local jurisdictions any authority to ban the personal use, possession, or cultivation of medical marijuana. There is no indication that any local jurisdiction in this state banned or regulated the cultivation of marijuana before the CUA was enacted.

5(C) The Legislature enacted the 2004 Medical Marijuana Program (MMP) to further expand access to medical marijuana and promote uniformity throughout the state.

In 2004, the Legislature expanded the protections for medical-marijuana use by enacting the Medical Marijuana Program, § 11362.7 *et seq*. The MMP is intended to "promote uniform and consistent application of the [CUA] among the counties within the state." *Inland Empire.* 56 Cal.4th 729, 744 (2013) (quoting Stats. 2003, ch. 875, § 1(b)).

The MMP is more detailed than is the CUA. Most relevant to this matter, whereas the text of the CUA authorizes patients to grow and possess a "reasonable amount" of marijuana without being subject to certain sanctions, *People v. Kelly*, 47 Cal.4th 1008, 1017, 1028 (2010), the MMP affirmatively authorizes them to cultivate and grow specific quantities of medical marijuana: a

> qualified patient or primary caregiver *may possess* no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver *may also maintain* no more than six mature or 12 immature marijuana plants per qualified patient.

§ 11362.77(a) (emphasis added).

This provision applies to patients and caregivers as defined by the CUA regardless of whether they obtain an official MMP identification card. *See Kelly*, 47 Cal.4th at 1024-25; *id.* at 1016-17 & n.9.

The MMP provides additional protection to patients who *do* take the additional step of obtaining an official medical card; they are immune from "arrest for possession, transportation, delivery, or cultivation of medical marijuana" in amounts authorized by the MPA. § 11362.71(e); *see Kelly*, 47 Cal.4th at 1014.

The MMP expressly authorizes cities and counties to pass laws "allowing qualified patients or primary caregivers to exceed the state limits," but it does not authorize local governments to impose lower limits. § 11362.77(c). Thus, "the amounts set forth in [§ 11362.77(a)] were intended 'to be the threshold, not the ceiling'" of what qualified patients may lawfully possess or grow. *People v. Wright*, 40 Cal.4th 81, 97 (2006) (citing legislative history).

The MMP also expressly authorizes local governments to establish civil or criminal regulations of medical-marijuana cooperatives and dispensaries. §§ 11362.768(f), (g), 11362.83(a), (b). It does not include any corresponding authorization to regulate cultivation or possession by individual patients.

5(D) The County Ordinance prohibits the cultivation and storage of medical marijuana.

Since 2014, the County of Fresno has completely banned medical-marijuana cultivation: "Medical marijuana cultivation is

prohibited in all zone districts in the County." Fresno County Ord. § 10.60.060.[5] Marijuana has "the same definition as in California Health & Safety Code Section 11018," which, as noted above, defines the term to include "all parts of the plant Cannabis sativa L." *Id.* § 10.60.030(B). "Medical marijuana" means "marijuana used for medical purposes" under the MMP. *Id.* § 10.60.030(C).

The ordinance defines "cultivation" very broadly to include not just planting and growing but also marijuana storage: "'Cultivate' or 'cultivation' is the planting, growing, harvesting, drying, processing, or *storage* of one or more marijuana plants *or any part thereof* in any location." *Id.* § 10.60.030(D) (emphasis added). The ordinance does not contain any definition of the term "storage" that would suggest it means anything other than its dictionary definition: "the state of being kept in a place when not being used."[6] It thus prohibits the possession of any marijuana that is not currently being used (the state definition makes clear that "any part" of a marijuana plant means any marijuana).

Under the ordinance, the "establishment, maintenance, or operation of any prohibited cultivation of medical marijuana, as defined in this chapter, within the County is declared to be a

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[5] The County ordinances are available at https://www.municode.com/library/ca/fresno_county/codes/code_of_ordinances?nodeId=FRCOORCO.

[6] Merriam–Webster OnLine definition of "storage," available at http://www.merriam-webster.com/dictionary/storage?show=0&t=1422467656; *see Pope v. Super. Ct.*, 136 Cal.App.4th 871, 876-77 (2006) (dictionary definitions demonstrate unambiguous meaning of local ordinance).

public nuisance and each person or responsible party is subject to abatement." *Id.* § 10.60.070. Public officials are authorized to "remove, demolish, raze or otherwise abate" medical marijuana. *Id.* § 10.62.090.

Violations are punishable by a civil fine of $1000 per plant, plus additional fines of $100 per day that each plant remains in violation of an abatement order. *Id.* § 10.64.040(A). Unpaid fines accrue 10% interest per month (313% per year). *Id.* 10.64.080(A). Violations are also misdemeanors under § 10.60.080(A) and Penal Code sections 372 and 373a, which make all public nuisances misdemeanors. *See Bd. of Supervisors of L.A. Cnty. v. Simpson*, 36 Cal.2d 671, 674-75 (1951).

The ordinance also "continue[s] in effect Fresno County's prohibition of medical marijuana dispensaries." County Ord. § 10.60.010; *see id.* § 10.60.050.

5(E) The City Ordinance prohibits the cultivation and storage of medical marijuana.

In March, 2014, the City of Fresno also banned all cultivation of medical marijuana by enacting Ordinance No. 2014.20. The express purpose of this ordinance is "to prohibit the cultivation of marijuana." Fresno City Municipal Code § 12-2101.[7] It thus states that "Marijuana cultivation by any person, including primary caregivers and qualified patients … is prohibited in all zone districts within the city." *Id.* § 12-2104. It defines marijuana

[7] The Fresno City Code is available at https://www.municode.com/library/ca/fresno/codes/code_of_ordinances?nodeId=14478.

as "all parts of the plant Cannabis sativa L., whether growing or not, and includes medical marijuana." *Id.* § 12-2103(b). Like the County, the City bans not just growing medical marijuana but also storing medical marijuana. *Id.* § 12-2103(a) ("'Cultivation' means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location.").

Violations are punishable with civil fines of $1000 per plant, plus additional fines of $100 per day that each plant remains in violation of an abatement order and the City's enforcement costs. *Id.* § 12-2105(a), (b), (d). The City, like the County, may also abate any medical marijuana. *Id.* § 12-2105(c).

Violations of these provisions may be prosecuted as misdemeanors. *See id.* § 1-304(b). Because they are zoning code violations, they are public nuisances, *id.* § 10-605(j), a violation of which is a misdemeanor. *See* Penal Code §§ 372, 373a.

6. ARGUMENT

6(A) This Court Should Resolve the Split of Authority and Hold that *Daniels* and *Action Apartment Association*, not *Sherwin-Williams*, set forth the proper test for contradiction preemption.

"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." Cal. Const. Art. XI § 7. This provision is both a grant of, and a limitation upon, the police power of local governments in the state. *In re Sic*, 73 Cal. 142, 148 (1887), *overruled on other grounds by Ex parte Lane*, 58

Cal.2d 99 (1962). Thus, "[i]f otherwise valid local legislation conflicts with state law, it is preempted by such law and is void." *O'Connell v. City of Stockton*, 41 Cal.4th 1061, 1067 (2007).

A conflict exists if the local legislation (1) duplicates, (2) contradicts, or (3) enters an area fully occupied by general law, either expressly or by legislative implication. *Id.* at 1067.

Although this case turns primarily on the second of these three prongs – contradiction preemption – a brief discussion of the two other types of preemption is necessary to provide context for the application and limitations of that prong.

6(A)(1) Duplication Preemption

"A local ordinance *duplicates* state law when it is 'coextensive' with state law." *O'Connell*, 41 Cal.4th at 1067. This Court first applied duplication preemption to invalidate a local law that banned opium smoking, because state law already prohibited that activity. *In re Sic*, 73 Cal. at 144, 146, 149.

6(A)(2) Field Preemption

"A local ordinance *enters a field fully occupied* by state law in either of two situations—when the Legislature 'expressly manifest[s]' its intent to occupy the legal area or when the Legislature 'impliedly' occupies the field." *O'Connell*, 41 Cal.4th at 1068. Because field preemption prevents local regulation of an entire field, it is subject to significant limitations: First, there is no field preemption where the Legislature has expressly authorized local regulation. *Inland Empire*, 56 Cal.4th at 729; *see IT Corp. v. Solano Cnty. Bd. of Supervisors*, 1 Cal.4th 81, 94 & n. 10 (1991) (collecting cases). Second, courts are reluctant to find

field preemption of areas that have traditionally been regulated locally. *O'Connell*, 41 Cal.4th at 1069.

6(A)(3) Contradiction Preemption

"A local ordinance *contradicts* state law when it is inimical to or cannot be reconciled with state law." *O'Connell*, 41 Cal.4th at 1068. Courts sometimes refer to this as "direct conflict" preemption. *See Societa Per Azioni De Navigazione Italia v. City of L.A.*, 31 Cal.3d 446, 463 (1982); *Great W. Shows, Inc. v. Cnty. of L.A.*, 27 Cal.4th 853, 866 (2002). This Court has often cited its 1920 opinion in *Ex parte Daniels* as the prototype of contradiction preemption, writing that it "f[ound] 'contradiction' where local legislation purported to fix a lower maximum speed limit for motor vehicles than that which general law fixed." *Sherwin-Williams Co.*, 4 Cal.4th at 898 (describing holding of *Ex parte Daniels*, 183 Cal. 636, 641-48 (1920)); *see*, *e.g.*, *O'Connell*, 41 Cal.4th at 1068; *Action Apartment Ass'n, Inc. v. City of Santa Monica*, 41 Cal.4th 1232, 1242-43 (2007).

California courts have long employed contradiction preemption to invalidate local laws that prohibit what a state "statute permits or authorizes." *Inland Empire*, 56 Cal.4th at 763 (Liu, J., concurring). For example, this Court invalidated a local ordinance that was "inimical to the important purposes" of a state law. *Action Apartment Ass'n*, 41 Cal.4th at 1243; *see id.* at 1244-46, 1249 (partially invalidating tenant-harassment ordinance as inimical to purpose of state-law privilege). Similarly, it has overturned local laws that "would frustrate the declared policies and purposes of" state labor law. *Int'l Bhd. of*

Elec. Workers v. City of Gridley, 34 Cal.3d 191, 202 (1983); *see id.* (city resolution invalid because it "interferes with both the policies and purposes of" state law). It has also invalidated a zoning ordinance that favored hospitals over mental-health facilities as preempted by a state law that requires cities and counties to allow psychiatric hospitals where they allow other hospitals. *City of Torrance v. Transitional Living Ctrs. for Los Angeles, Inc.*, 30 Cal.3d 516, 525 (1982); *see also Fisher v. City of Berkeley*, 37 Cal.3d 644, 698 (1984) (burden-shifting ordinance invalid because it "directly conflicts with Evidence Code."), *aff'd sub nom. Fisher v. City of Berkeley, Cal.*, 475 U.S. 260 (1986).[8]

Numerous opinions from the Court of Appeal have also applied this rule to uphold or invalidate ordinances as appropriate. *See, e.g., Palmer/Sixth St. Properties, L.P. v. City of L.A.*, 175 Cal.App.4th 1396, 1410 (2009); *First Presbyterian Church of Berkeley v. City of Berkeley*, 59 Cal.App.4th 1241, 1249 (1997); *Water Quality Ass'n v. Cnty. of Santa Barbara*, 44 Cal.App.4th 732, 738, 742 (1996); *San Bernardino Cnty. Sheriff's Emps. Benefit Ass'n v. San Bernardino Cnty. Bd. of Supervisors*, 7 Cal.App.4th 602, 613 (1992); *Sports Comm. Dist. 3 A. Inc. v. Cnty. of San Bernardino*, 113 Cal.App.3d 155, 159 (1980) ("Direct conflicts exist when the ordinance prohibits conduct which is expressly authorized by state law."); *Agnew v. City of Culver City*, 147 Cal.App.2d 144, 150 (1956) ("direct conflict" where

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[8] Although *City of Gridley* and *City of Torrance* do not use the term "contradiction preemption," the opinions make it clear that there was no field (or duplication) preemption. *See City of Gridley*, 34 Cal.3d at 202; *City of Torrance*, 30 Cal.3d 516, 520.

ordinance prohibited what state law permits). The Ninth Circuit also applies this test. *See Fireman's Fund Ins. Co. v. City of Lodi*, 302 F.3d 928, 943 (9th Cir. 2002) ("[W]e will find conflict preemption under California law when a local ordinance prohibits conduct that is expressly authorized by state statute or authorizes conduct that is expressly prohibited by state general law.") (citing *Sports Comm. Dist. 3A*, 113 Cal.App.3d at 159).

However, a separate line of cases has applied a much narrower test that first appeared in this Court's 1993 *Sherwin-Williams* opinion. The question in *Sherwin-Williams* was whether a state law designed to prevent graffiti by making it illegal to sell spray paint to minors preempted a local ordinance that attempted to do the same thing by requiring stores to display the paint out of the public's reach. *Sherwin-Williams*, 4 Cal.4th at 898-99, 901-02. Although the opinion mostly addressed field preemption, it stated that the ordinance did not contradict the state statute because it did "not prohibit what the statute commands or command what it prohibits." *Id.* at 902. The Court did not cite any authority for this new formulation; to the contrary, its only discussion of the contradiction preemption standard is a citation to *Daniels* with the standard description quoted above. *See id.* at 898. Nor did it explain why it was articulating a new test when it seems clear that the ordinance would not have contradicted state law under the traditional *Daniels* test (both laws acted to make it more difficult for minors to obtain spray paint, one by making it illegal for them to buy it, the other by making it harder for them to steal it).

Nevertheless, after *Sherwin-Williams*, many opinions have adopted this narrow language as the exclusive test for contradiction preemption. *See, e.g., Inland Empire*, 56 Cal.4th at 743; *Big Creek Lumber Co. v. Cnty. of Santa Cruz*, 38 Cal.4th 1139, 1161 (2006) (upholding logging ordinance); *Great W. Shows, Inc. v. Cnty. of L.A.*, 27 Cal.4th 853, 866 (2002) (upholding gun law); *Garcia v. Four Points Sheraton LAX*, 188 Cal.App.4th 364, 379 (2010) (upholding ordinance regulating gratuities); *Cal. Veterinary Med. Ass'n v. City of W. Hollywood*, 152 Cal.App.4th 536, 557 (2007) (upholding local ban on non-therapeutic animal declawing); *Harrahill v. City of Monrovia*, 104 Cal.App.4th 761, 769 (2002); (upholding truancy ordinance); *contra id.* at 772-73 (Mosk, J., dissenting) (law preempted under *Daniels* test).

These opinions rarely, if ever, find contradiction preemption.

6(A)(4) The *Daniels* rule is the proper test for contradiction preemption.

The narrow *Sherwin-Williams* test fails to implement the constitutional text and fails to recognize the Legislature's authority to preempt local laws; it thus makes it needlessly difficult for the Legislature to create statutory rights and protections for all Californians throughout the state without taking the drastic step of preempting an entire field and therefore foreclosing local attempts to enact further protections.

First, the narrow rule fails to give full effect to the constitutional text that local laws must not be "in conflict" with state law. A local law that prohibits people from doing what state law expressly authorizes conflicts with that state law under any

reasonable understanding of the term. Thus, in a related context, state laws "conflict" with federal law in two ways not only when "it is impossible to comply with both state and federal requirements" but also when state law stands as "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Peatros v. Bank of Am. NT & SA*, 22 Cal.4th 147, 153, 187 (2000) (citations omitted); *see Inland Empire*, 56 Cal.4th at 763-64 (Liu, J., concurring). This second type of conflict exists where, for example, a "Federal Statute authorizes national banks to engage in activities that the State Statute expressly forbids." *Barnett Bank of Marion Cnty. v. Nelson*, 517 U.S. 25, 31 (1996).

The *Sherwin-Williams* rule fails to capture this second type of conflict that exists where a local jurisdiction bans what state law authorizes. As a result, the narrow rule would allow cities and counties to pass laws to nullify protections granted by state statute. The only way that the Legislature could prevent this would be to preempt the entire field, thus precluding *any* supplemental local legislation, or by *requiring* individuals to exercise their statutory rights (for example, by requiring qualified patients to cultivate marijuana). The *Sherwin-Williams* rule thus places artificial and unjustified limits on the Legislature's power to pass statutes that preempt local laws. *See O'Connell*, 41 Cal.4th at 1076 n.4 (authority to preempt local laws "resides exclusively with the state Legislature"); *Comm. of Seven Thousand v. Sup. Ct.*, 45 Cal.3d 491, 500-01 (1988). This may not affect the result in some cases (such as *Sherwin-Williams* and

Inland Empire), but in many others, including the one at bar, the difference is critical.

This Court should therefore clarify that state law preempts local law when local law prohibits not only what a state statute demands but also what the statute permits or authorizes.

6(A)(5) Under the proper test, the City's and County's bans on medical-marijuana cultivation and storage are preempted by state law.

Although the local ordinances may well pass muster under the *Sherwin-Williams* rule, they are preempted under the *Daniels* test.

6(A)(5)(a) The ordinances would have been preempted before the passage of the CUA and MMP.

As an initial matter, the local bans would have been preempted by state drug laws before the passage of the CUA and MMP, for two reasons: First, the "comprehensive nature of [state law] in defining drug crimes and specifying penalties (including forfeiture) is so thorough and detailed as to manifest the Legislature's intent to preclude local regulation" relating to marijuana and other controlled substances. *O'Connell*, 41 Cal.4th at 1071; *see id.* at 1067, 1069-72. Local jurisdictions therefore cannot enact ordinances that create civil or criminal penalties for drug-related activities or make those activities a public nuisance subject to abatement except as specifically authorized by state law. *See id.* at 1074-75; *see also id.* at 1068.

Moreover, local ordinances that duplicate state drug laws are preempted. *See Sic.*, 73 Cal. at 146.

Thus, unless the enactment of state medical-marijuana laws

has changed this, the ordinances are preempted by the state's long-existing drug laws.

6(A)(5)(b)<u>The voters who enacted the 1996 CUA to allow access to medical marijuana did not intend to authorize local jurisdictions to prohibit personal medical-marijuana cultivation or storage.</u>

The CUA is meant to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes." § 11362.5(b)(1)(A), (B). As discussed above in § 5(B), the ballot materials informed the voters they were voting to allow patients to "grow" and "possess" marijuana for medical use, with the caveat that they could not change federal law. This is in fact the only way that patients could obtain medical marijuana under the CUA, because it did not authorize dispensaries or any transfers of marijuana except between a patient and her caregiver. *See People v. Mentch*, 45 Cal.4th 274, 283-87 (2008).

The CUA's goal is thus to allow every seriously ill Californian to, either alone or with the assistance of a caregiver, personally grow a limited amount of marijuana at the patient's residence for that patient's personal use and then store that marijuana for later use. *See* § 11362.5(d); *Inland Empire*, 56 Cal.4th at 747 (CUA makes every "patient [] primarily responsible for noncommercially supplying his or her own medical marijuana" either alone or with a caregiver.). Local laws that prohibit them from doing this contradict the will of the voters.

Nor is there anything in the CUA to suggest that the voters intended to give local governments the authority to interfere with patients' ability to grow or store marijuana for personal use. That the law expressly references state rather than local law simply

reflects the historical fact that when the voters enacted the CUA, there was no local regulation of marijuana and could be no such regulation under *Sic*. The law could therefore achieve its goal of stopping the use of the police power to prohibit qualified patients from using medical marijuana simply by providing a defense to the state laws "relating to the possession" and "cultivation of marijuana." § 11362.5(d). The electorate is presumed to have understood this existing allocation of regulatory authority when it passed the CUA and, absent an express intent to change this framework, to leave it as it was. *See Bailey v. Super. Ct.*, 19 Cal.3d 970, 977 n.10 (1977); *see also Am. Fin. Servs. Ass'n v. City of Oakland,* 34 Cal.4th 1239, 1255, 1261 (2005) (history of exclusive state regulation weighs heavily in favor of preemption); *Big Creek Lumber Co.*, 38 Cal.4th at 1149-50; *People v. Nguyen*, 222 Cal.App.4th 1168, 1186-87 (2014) ("There is no presumption against preemption when a local ordinance regulates in an area historically dominated by state regulation.") (citations omitted).

6(A)(5)(c) The MMP expressly authorizes qualified patients to cultivate and possess specific quantities of medical marijuana.

Under the MMP, a "qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana" and "may also maintain no more than six mature or 12 immature marijuana plants." § 11362.77(a). By stating that qualified individuals "may" possess or grow the specified quantities of marijuana the statute means that these individuals "have a right, but not an obligation, to do so." *Howard Jarvis Taxpayers Ass'n. v. City of San Diego*, 120 Cal.App.4th 374, 386 (2004)

(collecting authorities using "may" to indicate this); *see Ferrara v. Belanger*, 18 Cal.3d 253, 262-63 (1976) (statute stating that initiative proponents "may" file a ballot argument "establish[ed] the[ir] right" to do so).

By stating that qualified patients "may" possess and cultivate the specified quantities of marijuana, the MMP preempts local bans under the *Daniels* rule and under past decisions that have addressed similarly worded statutes. For example, the Court of Appeal has held that Civil Code § 1954.53(a), which states that landlords "may establish the initial" rent for their properties, preempts local rent-control laws that would prevent them from doing so. *Palmer/Sixth St. Properties, L.P. v. City of L.A.*, 175 Cal.App.4th 1396, 1402, 1411 (2009). It has also held that a city's attempt to prohibit electroshock therapy is preempted by state laws stating that "such treatment 'may be administered'" in certain circumstances. *N. Cal. Psychiatric Soc'y v. City of Berkeley*, 178 Cal.App.3d at 103 (quoting Welfare and Institutions Code §§ 5326.7, 5326.75); *see id.* at 105-06 ("direct conflict with" state law).

Finally, this Court and the Court of Appeal have both held that a statute providing that "telephone corporations may construct lines of telegraph along and upon any public road" under certain circumstances supersedes local attempts to prohibit them from doing so. *See Cnty. of Los Angeles v. S. Cal. Tel. Co.*, 32 Cal.2d 378, 380 & n.1, 383-84 (1948) (county could not require company to obtain franchise or pay to do this); *Cnty. of Inyo v. Hess*, 53 Cal.App.415, 424-25 (1921) (Under this

provision, "telephone corporations are granted the right and privilege to use the public highways over which to construct and operate lines of telephone wires, free from any grant made by subordinate legislative bodies."); *see also Pac. Tel. & Tel. Co. v. City & Cnty. of San Francisco*, 51 Cal.2d 766, 774 (1959) (applying rule to charter city). As in these cases, by declaring that qualified patients "may" cultivate and possess certain quantities of marijuana for personal use, the Legislature has preempted local attempts to prohibit those activities.

6(A)(5)(d)Cases upholding local medical marijuana bans are wrongly decided.

The two Court of Appeal opinions upholding local bans on medical-marijuana cultivation are unpersuasive and rely on the wrong test for contradiction preemption. The first of them upheld a ban on growing (not storing) marijuana based on *Inland Empire*, with no substantive analysis. *See Maral v. City of Live Oak*, 221 Cal.App.4th 975, 984 (2013).

The second case noted the disagreement about the proper test for contradiction preemption and that the "impossibility-of-simultaneous-compliance test used in *Inland Empire* appears to be more difficult to meet than the test used previously" by this Court. *Kirby v. Cnty. of Fresno*, 242 Cal.App.4th 940, 195 Cal.Rptr.3d 815, 825-26 (2015) (review pending). It then stated it would apply the narrower *Inland Empire* rule, *id.*, but never evaluated the ordinance under that test. Instead, it analyzed the issue as one of whether state law creates a right to cultivate marijuana. *See id.* at 832-37. It placed great weight on its acceptance of the County's claim that its ban is a regulation of

land use – an area in which local jurisdictions have traditionally legislated – rather than a regulation of marijuana, even though it applies to a patient who would grow a single plant in a pot in her bedroom, or store a few grams of marijuana in her purse. *See id.* at 820, 827, 836-37; *contra People v. Nguyen*, 222 Cal.App.4th 1168, 1187-88 (2014) (holding that ordinance banning sex offenders from parks was preempted as improper regulation of sex offenders, not of parks, which were traditionally subject to local control). In fact, state law has traditionally regulated just this area, providing civil and criminal penalties for those who maintain a "building or place … for the purpose of unlawfully … storing, keeping, [or] manufacturing" controlled substances, including marijuana. § 11570. The *Kirby* court's faulty premise that the County is regulating land use led it to conclude that it should uphold the ordinances because it found an insufficiently "clear indication of preemptive intent" in state law. *Id.* at 833, 835-36. This is wrong for the reasons discussed at length above.

6(B) This Court Should Resolve the Question of Whether the Regulation of Medical Marijuana is a Municipal Affair.

"Charter cities are specifically authorized by our state Constitution to govern themselves, free of state legislative intrusion, as to those matters deemed municipal affairs." *State Bldg. & Const. Trades Council of Cal., AFL-CIO v. City of Vista,* 54 Cal.4th 547, 555 (2012); *see* Cal. Const. Art. XI § 5 ("City charters adopted pursuant to this Constitution … with respect to municipal affairs shall supersede all laws inconsistent therewith."). Thus, "the ordinances of charter cities supersede

state law with respect to 'municipal affairs' but state law is supreme with respect to matters of 'statewide concern.'" *City of Vista*, 54 Cal.4th at 552 (citations omitted). The question of whether a matter is subject to this home-rule provision is one of pure law and does not depend on facts relating to a specific city. *Id.* at 556-58.

In the Court of Appeal, the City argued that because it is a charter city, its "Ordinance prohibiting cultivation and storage of all marijuana is valid, even if the Ordinance would be preempted if adopted by a non-chartered city." City Brief at 39; *see id.* at 37-39. No published opinion addresses the question of whether charter cities' regulation of medical marijuana may supersede state law. *Cf. O'Connell*, 41 Cal.4th at 1076 (rejecting argument that "trafficking in controlled substances" was municipal affair). Thus, if this Court holds that counties and general-law cities cannot completely ban the storage and cultivation of medical marijuana, Fresno and California's other large cities will doubtless continue to maintain that they have the authority to do so.[9] This Court should take this opportunity to completely resolve the question of whether local jurisdictions can ban medical-marijuana cultivation and storage.

6(C) A court cannot dismiss a Petition for a Writ of Mandate simply because injunctive or declaratory relief are also available.

The holding below that injunctive and declaratory relief provide an adequate remedy at law that can justify dismissing a

[9] *See* footnotes 1-3, above.

petition for mandamus filed against a public entity ignores the fact that that injunctive and declaratory relief are equitable, not legal remedies, and contradicts every other case that has addressed the issue.

Mandamus lies to "challenge the validity of a [local] legislative measure" as preempted by state law. *Candid Enters., Inc. v. Grossmont Union High Sch. Dist.,* 39 Cal.3d 878, 885 & n.3 (1985) (citation omitted); *accord Johnson v. City & Cnty. of San Francisco*, 137 Cal.App.4th 7, 19 (2006). "The writ [of mandate] *must* be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." Code Civ. Proc. § 1086 (emphasis added). The court's "duty to issue" the writ where there is no alternative remedy is thus "mandatory." *Id.* (heading of section).

The Court of Appeal's decision is wrong for several reasons. First, a "remedy in the ordinary course of law" refers to an action for damages or other legal, as opposed to equitable, relief. *See Philpott v. Super. Ct.,* 1 Cal.2d 512, 514-17 (1934); 3 Witkin Cal. Procedure 199-200, Actions § 119 et seq. (5th Ed. and 2014 update). Thus, the rule that mandate will not issue when there is an adequate "remedy in the ordinary course of law" simply means that, as with equitable relief, the writ will not issue where a suit for damages or other traditional legal relief could make the plaintiff whole. *See Morris v. Iden,* 23 Cal.App.388, 395 (1913) (injunction appropriate because no "adequate remedy in the ordinary course of law"); *Blevins v. Mullally*, 22 Cal.App.519, 523 (1913) (injunction will not issue if a "remedy in the ordinary

course of law is adequate"); *see generally Philpott*, 1 Cal.2d at 517; *De Witt v. Hays*, 2 Cal. 463, 469 (1852); *Asare v. Hartford Fire Ins. Co.*, 1 Cal.App.4th 856, 867 (1991). Injunctive and declaratory relief are neither legal nor ordinary remedies. *See Intel Corp. v. Hamidi*, 30 Cal.4th 1342, 1352 (2003) (injunction is "extraordinary remedy") (quoting *Mechanics' Foundry v. Ryall*, 75 Cal. 601 (1888)). They are therefore not remedies "in the ordinary course of law" that can preclude mandamus relief. If anything, the availability of mandamus should preclude injunctive relief, not the other way around. *See San Diego Cnty. Dep't of Pub. Welfare v. Sup. Ct.*, 7 Cal.3d 1, 9 (1972) (mandamus is a legal remedy "largely controlled by equitable considerations").

In light of these fundamental principles, it is not surprising that every other court that has addressed the issue has held that the availability of injunctive or declaratory relief does not affect a party's right to mandamus relief against the government. This Court itself has squarely held, in a case requesting both mandamus and declaratory relief, that "[t]he fact … that an action in declaratory relief lies does not prevent the use of mandate." *Glendale City Emps.' Ass'n, Inc. v. City of Glendale*, 15 Cal.3d 328, 343 n.20 (1975) (citing *Brock v. Super. Ct.*, 109 Cal.App.2d 594, 603 (1952)) (internal punctuation omitted). Numerous decisions from the Court of Appeal have similarly held that in suits against public entities "the availability of injunctive relief is not a bar to mandate." *Cal. Teachers Ass'n v. Nielsen*, 87 Cal.App.3d 25, 28-29 (1978) (citations omitted); *see Timmons v. McMahon*, 235 Cal.App.3d 512, 518 (1991); *Elmore v. Imperial*

Irrigation Dist., 159 Cal.App.3d 185, 198 (1984); *L.A. Cnty. v. Dep't of Pub. Health*, 158 Cal.App.2d 425, 446 (1958); *Brock*, 109 Cal.App.2d at 603. Two of these case are indistinguishable from the one at bar in that the Court of Appeal reversed after the superior court had dismissed mandamus petitions on the pleadings on the grounds that other equitable relief was available. *Cal. Teachers Ass'n*, 87 Cal.App.3d at 28-29; *Elmore*, 159 Cal.App.3d at 198.

Moreover, an alternative remedy is only "plain, speedy, and adequate" so as to displace mandamus if it "is equally convenient, beneficial, and effective as … mandamus." *Dufton v. Daniels*, 190 Cal. 577, 582 (1923) (citations omitted). In cases like this one that raise only purely legal questions, mandamus is significantly speedier and more convenient than is injunctive relief because the court can issue the writ following a noticed motion, based on the facts set forth in verified pleadings. *See* Code Civ. Pro. § 1094. In contrast, obtaining declaratory and injunctive relief would require a trial or at least a motion for summary judgment, which requires a 75-day notice (rather than the 16-court-day notice for a regular motion) and a separate statement of undisputed facts. *Compare id.* § 437c and Rule of Court 3.1350 with Code Civ. Pro. § 1005(b). Moreover, plaintiffs moving for summary judgment cannot rely on their verified pleadings; they must instead submit separate evidence. *Coll. Hosp. Inc. v. Sup. Ct.*, 8 Cal.4th 704, 720 n. 8 (1994). Thus, injunctive and declaratory relief are not as speedy or convenient as mandamus. For this reason, "Mandamus, rather than mandatory injunction,

is the traditional remedy" in suits against the government. *Common Cause v. Bd. of Supervisors,* 49 Cal.3d 432, 442 (1989). The Court of Appeal's rule would turn this tradition on its head and allow a court to dismiss any mandamus petition against the government, because injunctive relief will always be an alternative to mandamus. *See id.*

The Court below gave no reason for departing from the 60 years of precedent holding that the availability of equitable relief does not affect a party's right to mandamus, except to characterize the superior court's dismissal as resting on a discretionary "finding of fact" that did not "exceed[] the bounds of reason," even though the trial court's terse order says nothing that would not apply equally to any case requesting equitable as well as writ relief. Slip Op. at 9. But appellate courts review a dismissal on the pleadings *de novo* without any deference to the trial court. *Gerawan Farming, Inc. v. Lyons*, 24 Cal.4th 468, 515-16 (2000). A superior court can therefore have no discretion to dismiss a case that states a viable cause of action. *See id.* Nor can it make factual findings at this stage of the proceedings. *Schabarum v. Cal. Legislature*, 60 Cal.App.4th 1205, 1216 (1998).

The Court of Appeal's conclusion that a court has the discretion to dismiss a petition for a writ of mandate on the pleadings simply because declaratory and injunctive relief are also available is incorrect.

7. CONCLUSION

For the reasons discussed above, this Court should grant review in this matter.

Respectfully submitted,

Dated: January 11, 2016

_____
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CERTIFICATE OF WORD COUNT

I certify that the text in the attached Brief contains 8,326 words, as calculated by Microsoft Word, including footnotes but not the caption, the table of contents, the table of authorities, signature blocks, or this certification.

Dated: January 11, 2016

By: _____
Michael T. Risher

Attachment: 1996 Compassionate Use Act Ballot Materials

(Rule of Court 8.504(e)(1)(C))

California

BALLOT PAMPHLET

Important Notice to Voters
Information regarding measures that might be placed on the ballot by the Legislature after August 12, 1996 will be included in a supplemental ballot pamphlet that will be mailed to you. You can also obtain one from your county elections office or by calling 1-800-345-VOTE.

General Election

NOVEMBER 5, 1996

CERTIFICATE OF CORRECTNESS

I, Bill Jones, Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the GENERAL ELECTION to be held throughout the State on November 5, 1996, and that this pamphlet has been correctly prepared in accordance with law.

Witness my hand and the Great Seal of the State in Sacramento, California, this 12th day of August, 1996.

BILL JONES
Secretary of State

November 5, 1996, Ballot Measures—Continued

	SUMMARY	WHAT YOUR VOTE MEANS	
		YES	NO
214 **HEALTH CARE. CONSUMER PROTECTION.** Initiative Statute Put on the Ballot by Petition Signatures	Regulates health care businesses. Prohibits discouraging health care professionals from informing patients or advocating treatment. Requires health care businesses to establish criteria for payment and facility staffing. Fiscal Impact: Increased state and local government costs for existing health programs and benefits, probably in the tens to hundreds of millions of dollars annually.	A **YES** vote on this measure means: Physical examinations would be required before health plans or insurers could deny recommended care. State staffing standards would be expanded to more types of health facilities, taking the needs of individual patients into account. Health care businesses could not offer financial incentives to doctors and others to reduce care. Certain health care employees and contractors would have additional protections.	A **NO** vote on this measure means: There would be no requirements regarding physical examinations prior to denial of recommended care. There would not be any change to current state and federal laws regarding health facility staffing, health care employee and contractor protections, and restrictions on financial incentives to reduce care.
215 **MEDICAL USE OF MARIJUANA.** Initiative Statute Put on the Ballot by Petition Signatures	Exempts from criminal laws patients and defined caregivers who possess or cultivate marijuana for medical treatment recommended by a physician. Provides physicians who recommend use shall not be punished. Fiscal Impact: Probably no significant fiscal impact on state and local governments.	A **YES** vote on this measure means: Persons with certain illnesses (and their caregivers) could grow or possess marijuana for medical use when recommended by a physician. Laws prohibiting the nonmedical use of marijuana are not changed.	A **NO** vote on this measure means: Growing or possessing marijuana for any purpose (including medical purposes) would remain illegal.
216 **HEALTH CARE. CONSUMER PROTECTION. TAXES ON CORPORATE RESTRUCTURING.** Initiative Statute Put on the Ballot by Petition Signatures	Regulates health care businesses. Prohibits discouraging health care professionals from informing patients. Prohibits conditioning coverage on arbitration agreement. Establishes nonprofit consumer advocate. Imposes taxes on corporate restructuring. Fiscal Impact: New tax revenues, potentially hundreds of millions of dollars annually, to fund specified health care. Additional state and local government costs for existing health programs and benefits, probably tens to hundreds of millions of dollars annually.	A **YES** vote on this measure means: New taxes would be imposed on health care businesses to fund specified health care services. Physical examinations would be required before health plans or insurers could deny recommended care. State staffing standards would be set for all health facilities, taking the needs of individual patients into account. Health care businesses could not offer financial incentives to doctors and others to reduce care. Certain health care employees and contractors would have additional protections.	A **NO** vote on this measure means: New taxes would not be imposed on health care businesses to finance health care services. There would be no requirement regarding physical examinations prior to denial of recommended care. There would not be any change to current state and federal laws regarding health facility staffing, health care employee and contractor protections, and restrictions on financia incentives to reduce care.
217 **TOP INCOME TAX BRACKETS. REINSTATEMENT. REVENUES TO LOCAL AGENCIES.** Initiative Statute Put on the Ballot by Petition Signatures	Retroactively reinstates highest tax rates on taxpayers with taxable income over $115,000 and $230,000 (current estimates) and joint taxpayers with taxable incomes over $230,000 and $460,000 (current estimates). Allocates revenue from those rates to local agencies. Fiscal Impact: Annual increase in state personal income tax revenues of about $700 million, with about half the revenues allocated to schools and half to other local governments.	A **YES** vote on this measure means: Income taxes will be raised on the highest income taxpayers in the state, with the increased revenues going to schools and other local governments.	A **NO** vote on this measure means: Income taxes on the highest-income taxpayers in the state will not be raised.
218 **VOTER APPROVAL FOR LOCAL GOVERNMENT TAXES. LIMITATIONS ON FEES, ASSESSMENTS, AND CHARGES.** Initiative Constitutional Amendment Put on the Ballot by Petition Signatures	Requires a majority of voters to approve increases in general taxes. Requires property-related assessments, fees, charges be submitted to property owners for approval. Fiscal Impact: Short-term local government revenue losses of more than $100 million annually. Long-term local government revenue losses of potentially hundreds of millions of dollars annually. Comparable reductions in spending for local public services.	A **YES** vote on this measure means: Local governments' ability to charge assessments and certain property-related fees would be significantly restricted. Spending for local public services would be reduced accordingly. Many existing and future local government fees, assessments, and taxes would be subject to voter-approval.	A **NO** vote on this measure means: Local governments could continue to collect existing property-related fees, assessments, and taxes to pay for local public services. Local governments would have no new voter-approval requirements for revenue increases.

November 5, 1996, Ballot Measures—Continued

ARGUMENTS		WHOM TO CONTACT FOR MORE INFORMATION	
PRO	**CON**	**FOR**	**AGAINST**
Proposition 214 protects freedom of speech between patients and doctors, and patients' right to the care that their health insurance has already paid for. It prevents HMOs and insurers from using gag rules, intimidation, or financial incentives to discourage doctors from providing needed care. Please, vote yes on Proposition 214.	Proposition 214, like 216, is bogus health care reform. It increases health insurance by up to 15% (costing *billions*), costs taxpayers hundreds of millions, and helps trial lawyers file more frivolous lawsuits. 214 and 216 could cost 60,000 workers their jobs but don't provide health coverage to anyone. Vote *no*.	Californians for Patient Rights 560 Twentieth Street Oakland, CA 94612 (510) 433-9360 Internet Address: http://www.yes-prop214.org	Taxpayers Against Higher Health Costs Stop the Hidden Health Care Tax 915 L Street, Suite C240 Sacramento, CA 95814 (916) 552-7526 (800) 996-6287 Fax: (916) 552-7523 Web Site: http://www.noprop214.org
Marijuana can relieve pain and suffering in serious illnesses like cancer, glaucoma and AIDS. Proposition 215 permits patients to use marijuana, *but only if they have the approval of a licensed physician.* Tight controls limiting marijuana to patients only will remain in place. Cancer doctors and nurses groups support 215.	*Propositon 215 legalizes marijuana. Vote no.* It allows people to grow and smoke marijuana for stress or "any other illness." No written prescription or examination is required, even children can smoke pot legally. The American Cancer Society rejects smoking marijuana for medical purposes and no major doctor's organization supports 215.	Californians for Medical Rights 1250 Sixth Street, #202 Santa Monica, CA 90401 (310) 394-2952 Fax: (310) 451-7494 Internet home page: http://www.prop215.org	Citizens for a Drug-Free California Sheriff Brad Gates, Chairman 4901 Birch Street Newport Beach, CA 92660 (714) 476-3017
Protects consumers against unsafe care by insurance companies and HMOs. Outlaws bonuses to doctors for denying treatment. Restores control of patient care to doctors and nurses. Saves lives. Reduces costs to taxpayers, businesses. Bans unjustified premium increases. Creates independent watchdog. Backed by California Nurses Association, Harvey Rosenfield and Ralph Nader.	Propositions 216 and 214 are near twins—phony health care reform that costs taxpayers and consumers billions without providing coverage to the uninsured. 216 means: four new taxes; dramatically higher health insurance costs; more government bureaucrats; more frivolous lawsuits for trial lawyers; and up to 60,000 lost jobs. Vote *no*.	Harvey Rosenfield Consumers and Nurses for Patient Protection 1750 Ocean Park #200 Santa Monica, CA 90405 (310) 392-0522 E-Mail: network@primenet.com	Taxpayers Against Higher Health Costs Stop the Hidden Health Care Tax 915 L Street, Suite C240 Sacramento, CA 95814 (916) 552-7526 (800) 996-6287 Fax: (916) 552-7523 Web Site: http://www.noprop216.org
Proposition 217 restores a little fiscal sanity to California. It cancels a tax cut for the wealthiest 1.2%—a cut the rest of us won't get—to protect schools and restore local funding the state took away. Support your local schools, law enforcement, libraries, parks, and child protection. Vote *yes*.	*Taxes already are too high!* Retroactive tax increase effectively gives California highest personal income tax rate nationwide. Small businesses would be hurt. *Absolutely no guarantees or accountability how the new tax money would be spent.* Contains too many provisions with uncertain and even potentially dangerous economic consequences. *No* on 217!	Yes on Proposition 217 2500 Wilshire Blvd., Suite 508 Los Angeles, CA 90057 213-386-4036 Web site address: http://www.prop217.org	Californians for Jobs, Not More Taxes/No on 217 111 Anza Boulevard, Suite 406 Burlingame, CA 94010 (415) 340-0470
Proposition 218 simply gives taxpayers the right to vote on taxes. Proposition 218 provides only registered Californians vote on taxes. Nonresidents, foreigners, corporations get no new rights. Proposition 218 doesn't cut traditional "lifeline" services; allows taxes for police, fire, education. *Your right to vote on taxes: Yes on Proposition 218.*	Gives large landowners—including noncitizens—more voting power than average homeowners. Denies assessment voting rights for renters. Cuts *existing* funding for local police, fire, library services. Adds *new taxes* on public property like neighborhood schools, cutting funds available for teaching and classroom supplies and computers; increases *school crowding.*	The Howard Jarvis Taxpayers Association The Right to Vote on Taxes Act, Yes on Prop. 218 621 S. Westmoreland Avenue, Suite 202 Los Angeles, CA 90005 (213) 384-9656	Citizens for Voters' Rights 2646 Dupont Dr., Suite 20-412 Irvine, CA 92612 (714) 222-5438 http://www.prop218no.org

Medical Use of Marijuana. Initiative Statute.

Official Title and Summary Prepared by the Attorney General

MEDICAL USE OF MARIJUANA. INITIATIVE STATUTE.

- Exempts patients and defined caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from criminal laws which otherwise prohibit possession or cultivation of marijuana.
- Provides physicians who recommend use of marijuana for medical treatment shall not be punished or denied any right or privilege.
- Declares that measure not be construed to supersede prohibitions of conduct endangering others or to condone diversion of marijuana for non-medical purposes.
- Contains severability clause.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Adoption of this measure would probably have no significant fiscal impact on state and local governments.

Analysis by the Legislative Analyst

BACKGROUND

Under current state law, it is a crime to grow or possess marijuana, regardless of whether the marijuana is used to ease pain or other symptoms associated with illness. Criminal penalties vary, depending on the amount of marijuana involved. It is also a crime to transport, import into the state, sell, or give away marijuana.

Licensed physicians and certain other health care providers routinely prescribe drugs for medical purposes, including relieving pain and easing symptoms accompanying illness. These drugs are dispensed by pharmacists. Both the physician and pharmacist are required to keep written records of the prescriptions.

PROPOSAL

This measure amends state law to allow persons to grow or possess marijuana for medical use when recommended by a physician. The measure provides for the use of marijuana when a physician has determined that the person's health would benefit from its use in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or "any other illness for which marijuana provides relief." The physician's recommendation may be oral or written. No prescriptions or other record-keeping is required by the measure.

The measure also allows caregivers to grow and possess marijuana for a person for whom the marijuana is recommended.

The measure states that no physician shall be punished for having recommended marijuana for medical purposes. Furthermore, the measure specifies that it is not intended to overrule any law that prohibits the use of marijuana for *nonmedical* purposes.

FISCAL EFFECT

Because the measure specifies that growing and possessing marijuana is restricted to medical uses when recommended by a physician, and does not change other legal prohibitions on marijuana, this measure would probably have no significant state or local fiscal effect.

For text of Proposition 215 see page 104

215 Medical Use of Marijuana. Initiative Statute.

Argument in Favor of Proposition 215

PROPOSITION 215 HELPS TERMINALLY ILL PATIENTS

Proposition 215 will allow seriously and terminally ill patients to legally use marijuana, if, and only if, they have the approval of a licensed physician.

We are physicians and nurses who have witnessed firsthand the medical benefits of marijuana. *Yet today in California, medical use of marijuana is illegal.* Doctors cannot prescribe marijuana, and terminally ill patients must break the law to use it.

Marijuana is not a cure, but it can help cancer patients. Most have severe reactions to the disease and chemotherapy—commonly, severe nausea and vomiting. One in three patients discontinues treatment despite a 50% chance of improvement. When standard anti-nausea drugs fail, marijuana often eases patients' nausea and permits continued treatment. It can be either smoked or baked into foods.

MARIJUANA DOESN'T JUST HELP CANCER PATIENTS

University doctors and researchers have found that marijuana is also effective in: lowering internal eye pressure associated with glaucoma, slowing the onset of blindness; reducing the pain of AIDS patients, and stimulating the appetites of those suffering malnutrition because of AIDS 'wasting syndrome'; and alleviating muscle spasticity and chronic pain due to multiple sclerosis, epilepsy, and spinal cord injuries.

When one in five Americans will have cancer, and 20 million may develop glaucoma, shouldn't our government let physicians prescribe any medicine capable of relieving suffering?

The federal government stopped supplying marijuana to patients in 1991. Now it tells patients to take Marinol, a synthetic substitute for marijuana that can cost $30,000 a year and is often less reliable and less effective.

Marijuana is not magic. But often it is the only way to get relief. A Harvard University survey found that almost one-half of cancer doctors surveyed would prescribe marijuana to some of their patients if it were legal.

IF DOCTORS CAN PRESCRIBE MORPHINE, WHY NOT MARIJUANA?

Today, physicians are allowed to prescribe powerful drugs like morphine and codeine. It doesn't make sense that they cannot prescribe marijuana, too.

Proposition 215 allows physicians to recommend marijuana in writing or verbally, but if the recommendation is verbal, the doctor can be required to verify it under oath. Proposition 215 would also protect patients from criminal penalties for marijuana, but ONLY if they have a doctor's recommendation for its use.

MARIJUANA WILL STILL BE ILLEGAL FOR NON-MEDICAL USE

Proposition 215 DOES NOT permit non-medical use of marijuana. Recreational use would still be against the law. Proposition 215 does not permit anyone to drive under the influence of marijuana.

Proposition 215 allows patients to cultivate their own marijuana simply because federal laws prevent the sale of marijuana, and a state initiative cannot overrule those laws.

Proposition 215 is based on legislation passed twice by both houses of the California Legislature with support from Democrats and Republicans. Each time, the legislation was vetoed by Governor Wilson.

Polls show that a majority of Californians support Proposition 215. Please join us to relieve suffering and protect your rights. VOTE YES ON PROPOSITION 215.

RICHARD J. COHEN, M.D.
Consulting Medical Oncologist (Cancer Specialist), California-Pacific Medical Center, San Francisco

IVAN SILVERBERG, M.D.
Medical Oncologist (Cancer Specialist), San Francisco

ANNA T. BOYCE
Registered Nurse, Orange County

Rebuttal to Argument in Favor of Proposition 215

AMERICAN CANCER SOCIETY SAYS: ". . . *Marijuana is not a substitute for appropriate anti-nausea drugs for cancer chemotherapy and vomiting. [We] see no reason to support the legalization of marijuana for medical use.*"

Thousands of scientific studies document the harmful physical and psychological effects of smoking marijuana. It is not compassionate to give sick people a drug that will make them sicker.

SMOKING MARIJUANA IS NOT APPROVED BY THE FDA FOR *ANY* ILLNESS

Morphine and codeine are FDA approved drugs. The FDA has not approved smoking marijuana as a treatment for *any* illness.

Prescriptions for easily abused drugs such as morphine and codeine must be in writing, and in triplicate, with a copy sent to the Department of Justice so these dangerous drugs can be tracked and kept off the streets. Proposition 215 requires absolutely *no* written documentation of any kind to grow or smoke marijuana. It will create legal loopholes that would protect drug dealers and growers from prosecution.

PROPOSITION 215 IS MARIJUANA LEGALIZATION—NOT MEDICINE

- Federal laws prohibit the possession *and* cultivation of marijuana. Proposition 215 would encourage people to break federal law.
- Proposition 215 will make it legal for people to smoke marijuana in the workplace . . . or in public places . . . next to your children.

NOT ONE MAJOR DOCTOR'S ORGANIZATION, LAW ENFORCEMENT ASSOCIATION OR DRUG EDUCATION GROUP SUPPORTS PROPOSITION 215—IT'S A SCAM CONCOCTED AND FINANCED BY DRUG LEGALIZATION ADVOCATES! PLEASE VOTE *NO*.

SHERIFF BRAD GATES
Past President, California State Sheriffs' Association

ERIC A. VOTH, M.D., F.A.C.P.
Chairman, The International Drug Strategy Institute

GLENN LEVANT
Executive Director, D.A.R.E. America

 Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

Argument Against Proposition 215

READ PROPOSITION 215 CAREFULLY • IT IS A CRUEL HOAX

The proponents of this deceptive and poorly written initiative want to exploit public compassion for the sick in order to legalize and legitimatize the widespread use of marijuana in California.

Proposition 215 DOES NOT restrict the use of marijuana to AIDS, cancer, glaucoma and other serious illnesses.

READ THE FINE PRINT. Proposition 215 legalizes marijuana use for *"any other illness for which marijuana provides relief."* This could include stress, headaches, upset stomach, insomnia, a stiff neck . . . or just about anything.

NO WRITTEN PRESCRIPTION REQUIRED
• EVEN CHILDREN COULD SMOKE POT LEGALLY!

Proposition 215 does not require a written prescription. Anyone with the "oral recommendation or approval by a physician" can grow, possess or smoke marijuana. No medical examination is required.

THERE IS NO AGE RESTRICTION. Even children can be legally permitted to grow, possess and use marijuana . . . without parental consent.

NO FDA APPROVAL • NO CONSUMER PROTECTION

Consumers are protected from unsafe and impure drugs by the Food and Drug Administration (FDA). This initiative makes marijuana available to the public without FDA approval or regulation. Quality, purity and strength of the drug would be unregulated. There are no rules restricting the amount a person can smoke or how often they can smoke it.

THC, the active ingredient in marijuana, is already available by prescription as the FDA approved drug Marinol.

Responsible medical doctors wishing to treat AIDS patients, cancer patients and other sick people can prescribe Marinol right now. They don't need this initiative.

NATIONAL INSTITUTE OF HEALTH, MAJOR MEDICAL GROUPS SAY *NO* TO SMOKING MARIJUANA FOR MEDICINAL PURPOSES

The National Institute of Health conducted an extensive study on the medical use of marijuana in 1992 and concluded that smoking marijuana is *not* a safe or more effective treatment than Marinol or other FDA approved drugs for people with AIDS, cancer or glaucoma.

The American Medical Association, the American Cancer Society, the National Multiple Sclerosis Society, the American Glaucoma Society and other top medical groups have *not* accepted smoking marijuana for medical purposes.

LAW ENFORCEMENT AND DRUG PREVENTION LEADERS SAY *NO* TO PROPOSITION 215

The California State Sheriffs Association
The California District Attorneys Association
The California Police Chiefs Association
The California Narcotic Officers Association
The California Peace Officers Association
Attorney General Dan Lungren

say that Proposition 215 will provide new legal loopholes for drug dealers to avoid arrest and prosecution . . .

Californians for Drug-Free Youth
The California D.A.R.E. Officers Association
Drug Use Is Life Abuse
Community Anti-Drug Coalition of America
Drug Watch International

say that Proposition 215 will damage their efforts to convince young people to remain drug free. It sends our children the false message that marijuana is safe and healthy.

HOME GROWN POT • HAND ROLLED "JOINTS"
• DOES THIS SOUND LIKE MEDICINE?

This initiative allows unlimited quantities of marijuana to be grown anywhere . . . in backyards or near schoolyards without any regulation or restrictions. This is not responsible medicine. It is marijuana legalization.

VOTE *NO* ON PROPOSITION 215

JAMES P. FOX
President, California District Attorneys Association

MICHAEL J. MEYERS, M.D.
Medical Director, Drug and Alcohol Treatment Program, Brotman Medical Center, CA

SHARON ROSE
Red Ribbon Coordinator, Californians for Drug-Free Youth, Inc.

Rebuttal to Argument Against Proposition 215

SAN FRANCISCO DISTRICT ATTORNEY TERENCE HALLINAN SAYS . . .

Opponents aren't telling you that law enforcement officers are on both sides of Proposition 215. I support it because I don't want to send cancer patients to jail for using marijuana.

Proposition 215 does not allow "unlimited quantities of marijuana to be grown anywhere." It only allows marijuana to be grown for a patient's personal use. Police officers can still arrest anyone who grows too much, or tries to sell it.

Proposition 215 doesn't give kids the okay to use marijuana, either. Police officers can still arrest anyone for marijuana offenses. Proposition 215 simply gives those arrested a defense in court, *if they can prove they used marijuana with a doctor's approval.*

ASSEMBLYMAN JOHN VASCONCELLOS SAYS . . .

Proposition 215 is based on a bill I sponsored in the California Legislature. It passed both houses with support from both parties, but was vetoed by Governor Wilson. If it were the kind of irresponsible legislation that opponents claim it was, it would not have received such widespread support.

CANCER SURVIVOR JAMES CANTER SAYS . . .

Doctors and patients should decide what medicines are best. Ten years ago, I nearly died from testicular cancer that spread into my lungs. Chemotherapy made me sick and nauseous. The standard drugs, like Marinol, didn't help.

Marijuana blocked the nausea. As a result, I was able to continue the chemotherapy treatments. Today I've beaten the cancer, and no longer smoke marijuana. I credit marijuana as part of the treatment that saved my life.

TERENCE HALLINAN
San Francisco District Attorney

JOHN VASCONCELLOS
Assemblyman, 22nd District
Author, 1995 Medical Marijuana Bill

JAMES CANTER
Cancer survivor, Santa Rosa

asserting as a defense or otherwise relying on any of the antitrust law exemptions contained in Section 16770 of the Business and Professions Code, Section 1342.6 of the Health and Safety Code, or Section 10133.6 of the Insurance Code, in any civil or criminal action against it for restraint of trade, unfair trading practices, unfair competition or other violations of Part 2 (commencing with Section 16600) of Division 7 of the Business and Professions Code.

(d) The remedies contained in this chapter are in addition and cumulative to any other remedies provided by statute or common law.

Article 14. Severability

1399.960. (a) If any provision, sentence, phrase, word, or group of words in this chapter, or their application to any person or circumstance, is held to be invalid, that invalidity shall not affect other provisions, sentences, phrases, words, groups of words or applications of this chapter. To this end, the provisions, sentences, phrases, words and groups of words in this chapter are severable.

(b) Whenever a provision, sentence, phrase, word, or group of words is held to be in conflict with federal law, that provision, sentence, phrase, word, or group of words shall remain in full force and effect to the maximum extent permitted by federal law.

Article 15. Amendment

1399.965. (a) This chapter may be amended only by the Legislature in ways that further its purposes. Any other change in the provisions of this chapter shall be approved by vote of the people. In any judicial proceeding concerning a legislative amendment to this chapter, the court shall exercise its independent judgment as to whether or not the amendment satisfies the requirements of this chapter.

(b) No amendment shall be deemed to further the purposes of this chapter unless it furthers the purpose of the specific provision of this chapter that is being amended.

Article 16. Definitions

1399.970. The following definitions shall apply to this chapter:

(a) "Affiliated enterprise" means any entity of any form that is wholly owned, controlled, or managed by a health care business, or in which a health care business holds a beneficial interest of at least twenty-five percent (25%) either through ownership of shares or control of memberships.

(b) "Available for public inspection" means available at the facility or agency during regular business hours to any person for inspection or copying, or both, with any charges for the copying limited to the reasonable cost of reproduction and, when applicable, postage.

(c) "Caregiver" or "licensed or certified caregiver" means health personnel licensed or certified under Division 2 (commencing with Section 500) of the Business and Professions Code, including a person licensed under any initiative act referred to therein, health personnel regulated by the State Department of Health Services, and health personnel regulated by the Emergency Medical Services Authority.

(d) "Health care business" means any health facility, organization, or institution of any kind that provides, or arranges for the provision of, health services, regardless of business form and whether or not organized and operating as a profit or nonprofit, tax-exempt enterprise, including all of the following:

(1) Any health facility defined herein.

(2) Any health care service plan as defined in subdivision (f) of Section 1345 of the He and Safety Code.

(3) Any nonprofit hospital service plan as governed by Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(4) Any disability insurer providing hospital, medical, or surgical coverage as governed by Section 11012.5 and following of the Insurance Code.

(5) Any provider of emergency ambulance services, limited advanced life support, or advanced life support services.

(6) Any preferred provider organization, independent practice association, or other organized group of health professionals with 50 or more employees in the aggregate contracting for the provision or arrangement of health services.

(e) "Health care consumer" or "patient" means any person who is an actual or potential recipient of health services.

(f) "Health care services" or "health services" means health services of any kind, including, but not limited to, diagnostic tests or procedures, medical treatments, nursing care, mental health, and other health care services as defined in subdivision (b) of Section 1345 of the Health and Safety Code.

(g) "Health facility" means any licensed facility of any kind at which health services are provided, including, but not limited to, those facilities defined in Sections 1250, 1200, 1200.1, and 1204, and home health agencies, as defined in Section 1374.10, regardless of business form, and whether or not organized and operating as a profit or nonprofit, tax-exempt or non-exempt enterprise, and including facilities owned, operated, or controlled, by governmental entities, hospital districts, or other public entities.

(h) "Private health care business" means any health care business as defined herein except governmental entities, including hospital districts and other public entities. "Private health care business" shall include any joint venture, partnership, or any other arrangement or enterprise involving a private entity or person in combination or alliance with a public entity.

(i) "Health insurer" means any of the following:

(1) Any health care service plan as defined in subdivision (f) of Section 1345 of the Health and Safety Code.

(2) Any nonprofit hospital service plan as governed by Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(3) Any disability insurer providing hospital, medical, or surgical coverage as governed by Section 11012.5 and following of the Insurance Code.

Proposition 215: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds a section to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Section 11362.5 is added to the Health and Safety Code, to read:

11362.5. (a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b)(1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) 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.

(C) To encourage the federal and state governments to implement a plan to provide for . safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

SEC. 2. If any provision of this measure or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

Proposition 216: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

Division 2.4 (commencing with Section 1796.01) is added to the Health and Safety Code to read:

Division 2.4. The Patient Protection Act

Chapter 1. Purpose and Intent

1796.01. This division shall be known as the "Patient Protection Act." The people of California find and declare all of the following:

(a) No health maintenance organization (HMO) or other health care business should be able to prevent doctors, registered nurses, and other health care professionals from informing patients of any information that is relevant to their health care.

(b) Doctors, registered nurses, and other health care professionals should be able to advocate for patients without fear of retaliation from HMOs and other health care businesses.

(c) Health care businesses should not create conflicts of interest that force doctors to choose between increasing their pay or giving their patients medically appropriate care.

(d) Patients should not be denied the medical care their doctor recommends just because their HMO or health insurer thinks it will cost too much.

(e) HMOs and other health insurers should establish publicly available criteria for authorizing or denying care that are determined by appropriately qualified health professionals.

(f) No HMO or other health insurer should be able to deny a treatment recommended by a patient's physician unless the decision to deny is made by an appropriately qualified health professional who has physically examined the patient.

(g) All doctors and health care professionals who are responsible for determining in any way the medical care that a health plan provides to patients should be subject to the same professional standards and disciplinary procedures as similarly licensed health professionals who provide direct care for patients.

(h) No hospital, nursing home, or other health facility should be allowed to operate unless it maintains minimum levels of safe staffing by doctors, registered nurses, and other health professionals.

(i) The quality of health care available to California consumers will suffer if health becomes a big business that cares more about making money than it cares about taking g care of patients.

(j) It is not fair to consumers when health care executives are paid millions of dollars in salaries and bonuses while consumers are being forced to accept more and more restrictions on their health care coverage.

(k) The premiums paid to health insurers should be spent on health care services for

Attachment: Court of Appeal Opinion

Filed 12/1/15 Byrd v. County of Fresno CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

JOAN BYRD et al.,

Plaintiffs and Appellants,

v.

COUNTY OF FRESNO et al.,

Defendants and Respondents.

F070597

(Super. Ct. No. 14CECG01502)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Carlos A. Cabrera, Judge.

Michael T. Risher and Novella Y. Coleman for Plaintiffs and Appellants.

Aleshire & Wynder, Jeff M. Malawy; Douglas T. Sloan and Francine M. Kanne for Defendant and Respondent City of Fresno.

Best Best & Krieger, Jeffrey V. Dunn and Seena Samimi for Defendant and Respondent County of Fresno.

-ooOoo-

Appellants filed a combined petition for writ of mandate and complaint for declaratory and injunctive relief to challenge medical marijuana ordinances adopted by

the County of Fresno (County) and the City of Fresno (City). The ordinances prohibit the cultivation and storage of medical marijuana within each jurisdiction.

Appellants allege the ordinances were unconstitutional because they conflict with state marijuana statutes, including the Compassionate Use Act (Health & Saf. Code, § 11362.5)[1] and the Medical Marijuana Program (§ 11362.7 et seq.).

The trial court dismissed the petition for writ of mandate on the grounds that appellants failed to demonstrate they had no plain, speedy, and adequate legal remedy. The court noted that appellants' causes of action for declaratory relief and injunctive relief showed writ relief was neither necessary nor proper in this case.

We conclude that trial courts have the discretion to dismiss a petition for writ of mandate when it finds the petitioner has a plain, speedy and adequate remedy at law. (See Code Civ. Proc., § 1086.) In this case, appellants have not established that the trial court prejudicially abused its discretion by dismissing the petition and allowing appellants to proceed with their complaint for declaratory and injunctive relief.

We therefore affirm the order dismissing the petition for writ of mandate.

FACTS

Appellants

Appellant Joan Byrd is a resident of Fresno, California and was 67 years old when she filed this lawsuit. Byrd is a retired employee of the Fresno County Sheriff's Department who was electrocuted while working at the jail. She suffered (1) a traumatic brain injury causing memory loss and anxiety, (2) broken teeth and several hairline fractures in her jaw resulting in infections and loss of teeth, and (3) herniated disks in her neck and back. Byrd also suffers from fibromyalgia, severe osteoporosis and gastrointestinal problems caused by a botched gastric bypass surgery. Byrd has a

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[1] All unlabeled statutory references are to the Health and Safety Code.

recommendation from her physician to use medical marijuana to alleviate her pain, anxiety and nausea.

Byrd lives on a fixed income and her health insurance provider often changes what medications it will cover. As a result, it is difficult for Byrd to consistently use the medication prescribed by doctors. Byrd alleges that she is concerned about driving outside Fresno County to obtain medical marijuana because of the cost and the exposure to criminal penalties if she is stopped while transporting it in her car.

Appellant Susan Juvet is a resident of Fresno, California and uses medical marijuana to treat the pain resulting from her arthritis and fibromyalgia, which she has had since she was 11 years old. She has allergic reactions to prescription pain medication, particularly those containing morphine and other opiates. One such allergic reaction necessitated the removal of 18 inches of her colon, which further complicated Juvet's ability to use prescription medication. Also, the prescription medication for fibromyalgia causes her terrible swelling and itching. Juvet has a recommendation from her physician to use medical marijuana and, in the past, has grown her own plants in a secure area of her property without encountering problems. One reason Juvet wished to use medical marijuana grown by her is the risk that medical marijuana obtained elsewhere will contain pesticide residue that will cause her to have an allergic reaction.

Ordinances

In January 2014, County's board of supervisors considered and unanimously adopted Ordinance No. 14-001, which amended the Fresno County Code (FCC) and prohibited medical marijuana dispensaries and cultivation "in all zone districts in the County."[2] (FCC, §§ 10.60.050 & 10.60.060)

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[2] Ordinance No. 14-001 was not the first enactment by County to address medical marijuana. "In September 2010, the Fresno County Board of Supervisors, citing recent violence, passed an emergency initiative to ban the outdoor cultivation of medical marijuana." (Starr, *The Carrot and the Stick: Tailoring California's Unlawful Marijuana*

In March 2014, the city council of the City voted six to one to adopt Ordinance No. 2014-20 and amend the Fresno Municipal Code (Municipal Code).[3] As a result, Municipal Code section 12-2104 states: "Marijuana cultivation by any person, including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, is prohibited in all zone districts within the city."

The administrative penalties imposed for each marijuana plant cultivated were set at $1,000 per plant plus $100 per plant for each day the plant remained unabated after the deadline specified in the administrative citation. (FCC, § 10.64.040(A); Municipal Code, § 12-2105(b).)

PROCEEDINGS

In May 2014, appellants filed a petition for writ of mandate. About a month later, appellants filed a verified first amended petition for writ of mandate and complaint for declaratory and injunctive relief against both the County and the City. Appellants addressed the issue of standing by alleging they owned real property in the City and paid property taxes on that property within the last year.

Two weeks after appellants filed their amended pleading, they submitted an ex parte application for alternative writ of mandate and order to show cause. The ex parte aspect of the application was supported by allegations that (1) City's ordinance would go into effect on July 25, 2014, and (2) a hearing date for a noticed motion was not available until October. The application requested a writ prohibiting County and City (1) from

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Cultivation Statute to Address California's Problems (2013) 44 McGeorge L.Rev. 1069, 1087 (*Starr*).)

[3] City, like County, had addressed medical marijuana earlier. "In December 2011, the City of Fresno passed [an outdoor cultivation] ban after a man was killed trying to steal marijuana from an outdoor cultivation site. In January 2012, the city extended the ban, asserting that outdoor marijuana cultivation led to violent crime." (*Starr, supra,* 44 McGeorge L.Rev. at p. 1087, fns. omitted.)

enforcing the medical marijuana ordinances and (2) from entering onto private property to enforce their laws relating to marijuana without a warrant complying with the statutory and constitutional requirements for search warrants.

The trial court did not hold a hearing on the ex parte application. In September 2014, after considering the papers submitted, the court filed an order denying the ex parte application for an alternative writ of mandate and dismissing the writ petition. The court explained its decision by stating:

> "Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy; the respondent has a duty to perform; and the petitioner has a clear and beneficial right to performance. (Code Civ. Proc., §§ 1085, 1086; *Payne v. Superior Court* (1976) 17 Cal.3d 908, 925.)
>
> "Here the Verified First Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief fails to allege any facts demonstrating that plaintiffs lack a plain, speedy, and adequate legal remedy. Instead, the existence of causes of action for declaratory relief and injunctive relief demonstrate that writ relief was neither necessary nor proper in this instance."

Consistent with this rationale, the trial court stated its order did not affect the validity of the complaint for declaratory and injunctive relief.

In October 2014, appellants filed a voluntary request for dismissal of their complaint without prejudice, which was entered as requested. After notice of entry of the dismissal was served, appellants appealed from the September 2014 order denying their ex parte application for an alternative writ of mandate.

DISCUSSION

I. OVERVIEW OF PRINCIPLES GOVERNING WRITS OF MANDATE

A. Statutes

A writ of ordinary mandate may be issued against a public body or public officer "to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station …." (Code Civ. Proc., § 1085, subd. (a).) Two

requirements essential to the issuance of the writ are (1) a clear, present and usually ministerial duty upon the part of the respondent and (2) a clear, present and beneficial right in the petitioner to the performance of that duty. (*People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 491.)

Section 1086 of the Code of Civil Procedure provides that a writ of mandate "must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." The use of the word "must" means that the issuance of a writ is mandatory when the essential requirements are met *and* an adequate legal remedy is not available. (*May v. Board of Directors* (1949) 34 Cal.2d 125, 133-134.)

In contrast to situations where there is no adequate legal remedy, the Legislature has not expressly identified how a trial court should proceed when it finds that there is a plain, speedy, and adequate remedy at law. For instance, the Legislature has not forbidden the issuance of a writ if another adequate remedy exists. (*Phelan v. Superior Court* (1950) 35 Cal.2d 363, 366 (*Phelan*).) Alternatively, the Legislature has not expressly given trial courts the authority to consider the merits of a writ petition when there is a plain, speedy and adequate remedy at law.

B. Case Law Addressing Alternate Remedies at Law

Based on what the Legislature addressed in section 1086 of the Code of Civil Procedure and what it left open, California courts have "established as a general rule that the writ will not be issued if another such remedy was available to the petitioner. [Citations.]" (*Phelan*, *supra*, 35 Cal.2d at p. 366; see *Flores v. Department of Corrections & Rehabilitation* (2014) 224 Cal.App.4th 199, 205 (*Flores*).)

Our Supreme Court's description of the rule as "general" leads us to conclude that exceptions exist and, where there is a plain, speedy and adequate remedy at law, trial courts have the discretion to dismiss the petition on that procedural ground or, alternatively, to consider the merits of the petition. Where a trial court has discretionary

power to decide an issue, an appellate court will not disturb the trial court's exercise of that discretion without a clear showing the trial court exceeded the bounds of reasons and its decision resulted in injury sufficiently grave as to amount to a manifest miscarriage of justice. (See *Brawley v. J.C. Interiors, Inc.* (2008) 161 Cal.App.4th 1126, 1137 [general test for abuse of discretion].)

As to the underlying issue of whether there is a "plain, speedy, and adequate remedy" at law for purposes of Code of Civil Procedure section 1086, courts treat that issue as a question of fact and its resolution depends upon the circumstances of each particular case. (*Flores, supra*, 224 Cal.App.4th at p. 206.) The burden is on the petitioner to show that he or she does not have such a remedy. (*Id*. at p. 205.) The superior court's determination of whether there is a plain, speedy and adequate remedy at law and whether the petitioner has carried his or her burden are regarded as matters largely within the court's sound discretion. (*Id*. at p. 206.)

II. DISMISSAL OF PETITION FOR WRIT OF MANDATE

A. Contentions of the Parties

1. Appellants

Appellants contend that the trial court erred in dismissing their petition for writ of mandate on the ground that adequate alternative remedies of injunctive and declaratory relief were available. They cite *Glendale City Employees' Assn., Inc. v. City of Glendale* (1975) 15 Cal.3d 328 for the proposition that the availability of an action in declaratory relief does not prevent the use of mandate. (*Id*. at p. 343, fn. 20.) They also cite *California Teachers Assn. v. Nielsen* (1978) 87 Cal.App.3d 25 for the principle that in suits against public entities "the availability of injunctive relief is not a bar to mandate." (*Id*. at pp. 28-29.) In addition, they argue:

> "'Mandamus, rather than mandatory injunction, is the traditional remedy' to require government officials to obey the law. [(*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442.)] The superior court's rule

> would turn the use of the writ of mandate on its head and essentially eliminate the use of the writ of mandate against government agencies, because injunctive and declaratory relief will *always* be possible alternatives to mandamus. *See id.* (mandate and injunctive relief) …."

Appellants contend they have a right to a writ of mandate if they establish the ordinances are unconstitutional and this right is unaffected by the availability of declaratory or injunctive relief.

2. City

City contends the dismissal of the petition for writ of mandate must be affirmed because the trial court found that plain, speedy and adequate alternative remedies were available in the form of declaratory or injunctive relief. Based on this finding, City argues that the trial court was well within its discretion in dismissing the mandamus claim.

3. County

County's respondent's brief acknowledged the possibility that this court might uphold the dismissal of the petition for writ of mandate on the procedural ground adopted by the trial court, but did not argue directly that the procedural ground was correct. Instead, County argues the merits, asserting the petition should be denied "even if this Court disagrees with the lower court regarding whether mandate will issue against the government regardless of whether injunctive and declaratory relief are also available." During oral argument, counsel for County asserted that the procedural ground adopted by the trial court provided a basis for affirming the trial court's order.

B. The Dismissal Was Not an Abuse of Discretion

First, we conclude that the law does not make dismissal of a writ petition automatic once the trial court finds the petitioner has a plain, speedy and adequate remedy at law. (Code Civ. Proc., § 1086.) There are exceptions to the rule stated in *Phelan* that a writ of mandate will not issue if an adequate legal remedy is available. (See pt. I.B, *ante*.)

Second, we disagree with appellants' position that they are *entitled* to pursue a petition for writ of mandate regardless of whether they have a plain, speedy and adequate remedy in the form of injunctive or declaratory relief. Under applicable law, a trial court has the discretionary authority (not a mandatory obligation) to consider a petition for writ of mandate after finding that the petitioner has a plain, speedy and adequate remedy at law. In other words, once the court makes such a finding, the dismissal of the petition is committed to the discretion of the trial court. (*Flores, supra*, 224 Cal.App.4th at p. 205.)

Based on the foregoing rules, the question presented is whether the trial court abused its discretion in the circumstances of this case because appellants have not expressly challenged the underlying finding of fact that they had adequate legal remedies. The test for an abuse of discretion is whether the trial court exceeded the bounds of reason, which requires a clear showing of abuse along with a resulting injury. (See *Brawley v. J.C. Interiors, Inc.*, *supra*, 161 Cal.App.4th at p. 1137.)

Here, appellants have argued the trial court committed error based on the incorrect view that they are entitled to have their writ petition decided on its merits despite having alternative legal remedies available. Based on this approach, they have not attempted to show that the trial court exceeded the bounds of reasons when it (1) relied on section 1086 of the Code of Civil Procedure and related cases and (2) restricted appellants to seeking declaratory and injunctive relief. In particular, appellants' appellate briefing did not provide an explanation for why requiring them to pursue those remedies exceeded the bounds of reason and was injurious.

During oral argument, counsel for appellants argued that writ relief is more convenient than pursuing declaratory relief through a motion for summary judgment. This argument can be interpreted as an attempt to show the trial court exceeded the bounds of reason by dismissing their petition for writ of mandate. If interpreted in this manner, we conclude that this argument regarding convenience is insufficient to make a clear showing that the trial court acted unreasonably (i.e., exceeded the bounds of reason)

by requiring appellants to pursue declaratory or injunctive relief instead of a writ of mandate. (See *Brawley v. J.C. Interiors, Inc.*, *supra*, 161 Cal.App.4th at p. 1137.)

C. Appellants' Waiver of Argument

During oral argument, counsel for appellants argued that County "never raised the procedural issue" relating to the adequacy of legal remedies in this case and, as a result, County waived any contention that this court should not reach the merits of the writ petition. We reject this argument because, in fact, County did raise the procedural issue in the trial court and also referred to the issue in its appellate brief.

County's answer is part of the appellate record. County's fourth affirmative defense is labeled "Adequacy of Remedy at Law" and asserts that appellants "have a complete and adequate remedy at law." We conclude the inclusion of this affirmative defense in County's answer to appellants' petition and complaint was sufficient to raise the procedural issue decided by the trial court in its order dismissing the petition for writ of mandate.

In this court, part IV of County's respondent's brief includes oblique references to the procedural issue. County's brief explicitly acknowledged the possibility that this court could affirm the trial court's decision on the rationale set forth in the trial court's order and, in effect, left it to City's respondent's brief to provide a detailed analysis of the adequacy of appellants' alternative remedies and the trial court's application of section 1086 of the Code of Civil Procedure.

We conclude County has not waived or forfeited the adequate-legal-remedies defense set forth in its answer. First, even if County had failed to file a respondent's brief, that failure would not be treated as a default (i.e., an admission of trial court error) or a waiver of arguments supporting the trial court's order. (See Cal. Rules of Court, rule 8.220(a)(2); *In re Marriage of Riddle* (2005) 125 Cal.App.4th 1075, 1078, fn. 1.) Where a respondent's brief is not filed, appellants still bear the affirmative burden of showing

prejudicial error. (*Smith v. Smith* (2012) 208 Cal.App.4th 1074, 1077; see *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [appellants must affirmatively demonstrate error because order of trial court is presumed correct].)

Second, appellants have provided no legal authority for the proposition that a *respondent* waives or forfeits an argument if it does not provide a detailed argument on appeal where (1) the trial court's order adopted that argument as its rationale and (2) another party in the appeal has presented a detailed analysis of the issue. In such circumstances, a waiver or forfeiture cannot be justified by procedural due process concerns relating to notice and an opportunity to be heard because, as in this case, appellants would have been given notice of the trial court's rationale and a full opportunity to challenge that rationale when they presented their arguments on appeal. Therefore, appellants cannot claim surprise by our decision to affirm the trial court on the grounds stated in its order and argued before this court in City's respondent's brief.

DISPOSITION

City's motion for judicial notice of its city charter is denied. Appellants' request for judicial notice of various administrative penalties upheld by County during September and October 2014 is denied.

The order dismissing appellants' petition for writ of mandate is affirmed. Respondents shall recover their costs on appeal.

_____
FRANSON, J.

WE CONCUR:

_____
HILL, P. J.

_____
PEÑA, J.

PROOF OF SERVICE

I, Kamala Buchanan, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am employed in the City of San Francisco, County of San Francisco, California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee of the AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, and my business address is 39 Drumm Street, California 94111.

On January 11, 2016, I served the following document(s):

Petition for Review

In the Following Case:
Joan Byrd, et al. v. County of Fresno, et al.

on the parties stated below by the following means of service:

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__X__ By U.S. Mail enclosing a true copy in a sealed envelope in a designated area for outgoing mail, addressed with the aforementioned addressees. I am readily familiar with the business practices of the ACLU of Northern California for collection and processing of correspondence for mailing with the United States Postal Service and correspondence so collected and processed is deposited with the United States Postal Service on the same date in the ordinary course of business.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on January 11, 2016 at San Francisco, California.

_____
Kamala Buchanan, Declarant