IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff/Petitioner, v. ROGER WILLIAM MENTCH, Defendant/Respondent.	No. S148204

After Decision by the Court of Appeal
Sixth Appellate District, No. H028783
Santa Cruz County No. F077429
Honorable Samuel S. Stevens, Judge

BRIEF OF AMERICANS FOR SAFE ACCESS AS AMICUS CURIE IN SUPPORT OF RESPONDENT

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APPLICATION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Pursuant to California Rule of Court 8.520(f), *Amicus* Americans for Safe Access moves for leave to file the attached brief *Amicus Curiae* in Support of Respondent Roger Mentch.

Americans for Safe Access ("ASA") is the nation's largest member-based organization of patients, medical professionals, scientists, and concerned citizens working to promote safe and legal access to marijuana for therapeutic use and research. ASA works to overcome political and legal barriers to the provision of medical marijuana to the seriously ill through legislation, education, litigation, grassroots actions, advocacy and services for patients and their providers. ASA has over 30,000 active members with chapters and affiliates in more than 40 states. ASA has litigated many significant medical marijuana cases, including *Ross v. RagingWire Telecommunications, Inc.*, S138130, which is pending in this Court, as well as *County of San Diego v. San Diego NORML*, D050333 (4th Dist. 2007), *Spray v. Superior Court*, G037541 (4th Dist. 2007), and *City of Garden Grove v. Superior Court (Kha)*, G036250 (4th Dist. 2007).

The outcome of this case is of great concern to ASA because an overly restrictive or unclear definition of a "primary caregiver" under the Compassionate Use Act (Health & Saf. Code, § 11362.5), as proposed by the Attorney General, will deter would be primary caregivers from cultivating marijuana for those seriously persons who need it. This, in turn, frustrates the intent of the California electorate, which sought to ensure that qualified patients would have access to medical marijuana when deemed appropriate by a physician.

ASA wishes to bring to this Court's attention the perspective of medical marijuana patients and their primary caregivers, in particular, the legal and practical difficulties caregivers must endure to provide medicine to patients. ASA respectfully requests that the Court of Appeal's decision be affirmed.

DATED: October 2, 2007

Respectfully submitted,

JOSEPH D. ELFORD
Counsel for *Amicus Curiae*
AMERICANS FOR SAFE ACCESS

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INTRODUCTION

The voters of California enacted the Compassionate Use Act (Health & Saf. Code, § 11362.5) with the expectation that a distribution system would be created to fulfill the medical needs of the seriously ill (Health & Saf. Code, § 11362.5, subd. (b)(1)). Recognizing that many medical marijuana patients would be unable to cultivate their own medicine, the electorate provided for primary caregivers to cultivate medical marijuana for qualified patients. The only caveat placed upon this relationship by the electorate is that the primary caregiver must "consistently" do this. Here, the Attorney General tries to impose additional requirements for one to be eligible as a primary caregiver that are neither supported by the language nor consistent with the intent of the Compassionate Use Act. *Amicus curiae* Americans for Safe Access requests that this Court affirm that one may qualify as a primary caregiver by cultivating medical marijuana for qualified patients, so long as the trier of fact concludes that one has consistently done this.

LEGAL STANDARDS

"The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.]" (*People v. Pieters* (1991) 52 Cal.3d 894, 898; accord *Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 340.) In determining legislative intent, the court begins with the words of the statute, giving them their usual and ordinary meaning. (*Nolan, supra,* 33 Cal.4th at p. 340.) Legislation should be given a reasonable, commonsense construction consistent with the apparent purpose of the Legislature (*RRLH, Inc. v. Saddleback Valley Unified School Dist.* (1990) 222 Cal.App.3d 1602, 1609), considering the statute as a whole and harmonizing all parts in the context of the entire statutory framework (*Barratt American, Inc. v. City of Rancho*

Cucamonga (2005) 37 Cal.4th 685, 699; *People v. Jenkins* (1995) 10 Cal.4th 234, 246.) In particular, "the power of the initiative must be liberally construed . . . to promote the democratic process," with courts giving initiatives "a liberal, practical common-sense construction which will meet changed conditions and the growing needs of the people." (*Amador Valley Joint Union High School Dist. v. State Bd. of Equilization* (1978) 22 Cal.3d 208, 219 & 245 [quoting *San Diego Bldg. Contractors Assn. v. City Council* (1974) 13 Cal.3d 205, 210 fn. 3 & *Los Angeles Met. Transit Authority v. Public Util. Com.* (1963) 59 Cal.2d 863, 869].)

ARGUMENT

A "PRIMARY CAREGIVER" IS ONE WHO CONSISTENTLY CULTIVATES MARIJUANA FOR A QUALIFIED PATIENT

In passing the Compassionate Use Act in 1996, the California electorate declared its purposes as follows:

> (A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where the 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 the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(Health & Saf. Code, § 11362.5, subd. (b)(1).) To accomplish these purposes, the Compassionate Use Act exempts qualified patients and their primary caregivers from

criminal sanctions for cultivation and possession of marijuana (see Health & Saf. Code, § 11362.5, subd. (d)), and defines a "primary caregiver" as "the individual designated by the person exempted under [the Compassionate Use Act] who has consistently assumed responsibility for the housing, health, *or* safety of that person." (Health & Saf. Code, § 11362.5, subd. (e) [Italics added].) Thus, in enacting the Compassionate Use Act, the voters of California have made clear their intent that marijuana is medicine, which means that cultivating marijuana to provide to a qualified patient, standing alone, satisfies the requirement that an individual has assumed responsibility for the health of a qualified patient. (See *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1400 ["A primary caregiver who consistently grows and supplies physician-approved or prescribed medicinal marijuana for a section 11362.5 patient is serving a health need of the patient"].) So long as a person "consistently" does this for a qualified patient, he would qualify as a "primary caregiver" under the Compassionate Use Act.

There is nothing in the statutory language or intent of the Act indicating that additional requirements, such as providing medical advice, must be met. To the contrary, interpreting the Compassionate Use Act in the manner proposed by *Amicus* – consistently cultivating marijuana for provision to a qualified patient would suffice -- will effectuate the goal of the California electorate to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where the medical use is deemed appropriate and has been recommended by a physician. . . ." (Health & Saf. Code, § 11362.5, subd. (b)(1)(A).)

Requiring more from primary caregivers, on the other hand, will frustrate the ability of the seriously ill to obtain the medicine they need, as the voters intended. In

contrast to the straightforward, bright-line definition of a primary careg iver as consistently providing for the health of a qualified patient by cultivating marijuana for him, which is easily understood by the public, a definition that requires "something more" creates uncertainty, which deters putative primary caregivers from acting as such. Under California law, primary caregivers are forbidden from earning a profit for their efforts (Health & Saf. Code, § 11362.765, subd. (a) ["nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit"]; *Peron, supra*, 59 Cal.App.4th at p. 1391), so there is no economic incentive to cultivate for the seriously ill. Although many cultivators will be motivated by their humanitarianism to provide for the sick and dying; many others will not wish to risk a criminal prosecution and trial where the jury will have to determine whether they have done enough in addition to cultivating marijuana to quality as a primary caregiver. This will result in a shortage of medicine for qualified patients, which is contrary to the voters' intent. (Cf. *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1550 [noting that "practical realities" dictate that there be some leeway in applying the state's medical marijuana laws where strict enforcement of the general prohibition of marijuana would defeat or obstruct the purpose of the Compassionate Use Act]; see also *Amador Valley Joint Union High School Dist, supra,* 22 Cal.3d at pp. 219 & 245 [noting that voter-approved initiatives must be liberally construed].)[1]

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[1] Although several lower courts have expressed fear that the mere *distribution* of marijuana may not qualify one as a primary caregiver, since this would provide protection to street-corner dealers (see *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 771 [expressing fear that "a patient could designate any of a number of corner drug dealers as his or her primary caregiver in seriatim fashion"]; *Peron, supra,* 59 Cal.App.4th at p. 1396 [expressing fear that an overly expansive construction of the primary caregiver provision would simply protect "drug dealers on street corners"];

Exacerbating this problem is that cultivating safe and effective medical marijuana is an arduous task that requires extensive knowledge and care. (See Chris Conrad, *Cannabis Yields and Dosage: A Guide to the Production and Use of Medical Marijuana* 9 (2005) [found at http://www.safeaccessnow.net/adversitycanopy.htm] ["Contrary to cannabis' reputation as a weed, it's not easy to grow quality medicine."].) Replicating strains that produce quality medicine with certain effects, such as stimulating appetite or relieving pain, requires great expertise. Furthermore, only female plants produce usable marijuana, so an inexperienced cultivator may accidentally cultivate unusable male or hermaphrodite plants. When marijuana is cultivated outdoors, insects and animals, such as deer, snails, spider mites, mealy bugs, thrips and aphids, which feed on marijuana, may destroy an entire garden. (*Ibid.*) Indoor cultivation is even more complicated, and, in most instances, requires the proper installation of electrical lamps and water system. Other dangers to marijuana include mold, fungi, and mildew, as their presence makes marijuana unusable. (*Ibid*) Only a limited number of persons know how to avoid these pitfalls and produce quality strains of marijuana. Allowing these experienced cultivators to assert a defense based on their status as primary caregivers where they can show that they have consistently assumed the responsibility for cultivating and providing marijuana to a qualified patient will achieve the objectives of the Compassionate Use Act without opening the door to widespread abuse.

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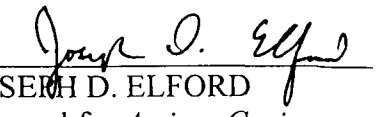
People v. Galambos (2002) 104 Cal.App.4th 1147, 1168 [holding that primary caregiver provision had to be narrowly construed "to avoid the creation of loopholes for drug dealers"]), most marijuana dealers do not cultivate the marijuana they sell, so they would not qualify as primary caregivers under a definition requiring them to cultivate marijuana for provision to the seriously ill. Cultivating marijuana, as is explained below, requires intensive labor and commitment on behalf of a qualified patient.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeal should be affirmed.

DATED: October 2, 2007

Respectfully submitted,



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CERTIFICATE OF WORD COUNT

I, JOSEPH D. ELFORD, declare as follows:

I am the attorney for *Amicus Curiae* Americans for Safe Access in this matter. On October 2, 2007, I performed a word count of the above-enclosed brief, which revealed a total of 1,604 words.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of October in Oakland, California.

JOSEPH D. ELFORD

DECLARATION OF SERVICE

I am a resident of the State of California and over the age of eighteen years. My business address is Americans for Safe Access, 1322 Webster St., Suite 402, Oakland, CA 94612. On October 2, 2007, I served the within document(s):

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