

JUN - 6 2012

Frederick K. Onirich Clerk

IN THE

**SUPREME COURT OF THE STATE OF CALIFORNIA**

CITY OF RIVERSIDE

Respondent,

vs.

INLAND EMPIRE PATIENT'S HEALTH  
AND WELLNESS CENTER, INC,  
WILLIAM JOSEPH SUMP II, LANNY  
DAVID SWERDLOW, ANGEL CITY  
WEST, INC., MENELEO CARLOS, AND  
FILOMENA CARLOS,

Appellants and Petitioners,

California Supreme Court,

Deputy

No: S198638

Fourth District Ct. Appeal,  
Div 2, No. E052400

Riverside County Superior  
Court Case  
No. RIC10009872

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**After a Decision By the Court of Appeal,  
4th Appellate District, Division Two**

**Honorable John D. Molloy, Judge  
Superior Court, County of Riverside**

**APPELLANTS' MOTION FOR JUDICIAL NOTICE;  
EXHIBITS A THROUGH F; DECLARATION OF J. DAVID  
NICK; DECLARATION OF LANNY SWERDLOW;  
PROPOSED ORDER**

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LAW OFFICES OF J. DAVID NICK (APC)  
**J. DAVID NICK** (SBN 157687)  
345 Franklin Street  
San Francisco, CA 94102  
Tel: 415/552-4444  
Fax: 415/358-5897

Attorney for  
Appellants/Petitioners

## MOTION FOR JUDICIAL NOTICE

Pursuant to *Evidence Code section 452, 453 and 459, Rule of Court 8.520 (g) and 8.252 (a)*, appellant moves the court for judicial notice of Exhibits A, B, C and E which are attached to this motion.

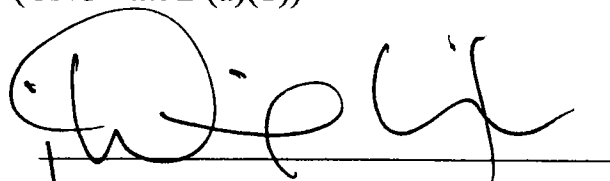
1. Exhibit A is an Audio Disc of July 5, 2011 Public Safety Committee hearing on Assembly Bill 1300.
2. Exhibit B, is a Letter from California State Senator Bill Emmerson referencing that he is providing the audio of July 5, 2011 Public Safety Committee hearing; this exhibit also contains a true copy of the envelope from the state senator containing the audio.
3. Exhibit C is a true and accurate transcript of the July 5, 2011 Public Safety Committee hearing on Assembly Bill 1300.
4. Exhibit E, is the "BILL ANALYSIS" for AB 1300 presented to the Senate's Public Safety Committee.
5. Exhibits D and F are the declarations of J. DAVID NICK and LANNY SWERDLOW authenticating the exhibits A, B, C and E.

Exhibits A, and E are part of the legislative history of Assembly Bill 1300 (Stats. 2011, ch.196) which amended Health and Safety Code section 1300, a statute at issue in this case. These documents were not available to the trial court as the bill did not become law until January 1, 2012 (the preliminary injunction had already been granted).

None of the matters to be noticed herein relate to proceedings that occurred after the issuance of the order being appealed.

I have attached a proposed order (CRC 8.252 (a)(1))

DATED: 5-31-12



J. DAVID NICK

**[PROPOSED] ORDER GRANTING APPELLANTS  
MOTION FOR JUDICIAL NOTICE**

Good Cause Having Been Shown; it is hereby grants judicial notice of the following exhibits attached:

Exhibit A, an Audio Disc of July 5, 2011 Public Safety Committee hearing on Assembly Bill 1300.

GRANT \_\_\_\_\_ DENY \_\_\_\_\_

Exhibit B, a Letter from California State Senator Bill Emmerson referencing that he is providing the audio of July 5, 2011 Public Safety Committee hearing; as well as a true copy of the envelope from the state senator containing the audio.

GRANT \_\_\_\_\_ DENY \_\_\_\_\_

Exhibit C a true and accurate transcript of the July 5, 2011 Public Safety Committee hearing on Assembly Bill 1300.

GRANT \_\_\_\_\_ DENY \_\_\_\_\_

Exhibit E, "BILL ANALYSIS" for AB 1300 presented to the Senate's Public Safety Committee.

GRANT \_\_\_\_\_ DENY \_\_\_\_\_

IT IS SO ORDERED;

DATED:

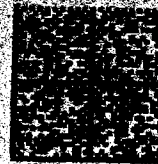
\_\_\_\_\_  
CHIEF JUSTICE

## **EXHIBIT A**

**AUDIO DISC OF JULY 5, 2011 HEARING ON  
ASSEMBLY BILL 1300 BEFORE THE SENATE  
PUBLIC SAFETY COMMITTEE**

## **EXHIBIT B**

**COPY OF ENVELOPE FROM STATE SENATOR BILL  
EMMERSON'S OFFICE WHICH CONTAINED AUDIO OF JULY 5,  
2011 HEARING ON ASSEMBLY BILL 1300 BEFORE THE SENATE  
PUBLIC SAFETY COMMITTEE. AND COPY OF LETTER FROM  
STATE SENATOR BILL EMMERSON INDICATING THE AUDIO  
IS OF THE JULY 5, 2011 HEARING ON BEFORE THE SENATE  
PUBLIC SAFETY COMMITTEE**



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<p><b>CALIFORNIA STATE SENATE</b>  <b>BILL EMMERSON</b>          STATE SENATOR          THIRTY-SEVENTH SENATE DISTRICT          STATE CAPITOL          SACRAMENTO, CALIFORNIA 95814-4900</p>
<p>TO:          Lanny Swerdlow          P. O. Box 418          Cabezon, CA 92230</p>

3/17



SENATOR BILL EMMERSON  
CALIFORNIA LEGISLATURE  
THIRTY-SEVENTH DISTRICT

March 14, 2012

Dear Lanny:

Enclosed is the audio recording of a Senate Public Safety Committee hearing held on July 5, 2011. I am delighted to help my constituents whenever possible and encourage you to continue contacting my office with any state-related questions or concerns.

Once again, thank you reaching out to my office and please feel free to call upon me if ever I can be of assistance to you at 951-680-6750.

Sincerely,

A handwritten signature in black ink that reads "Bill Emerson". The signature is written in a cursive, slightly slanted style.

BILL EMMERSON  
Senator, 37<sup>th</sup> District



## **EXHIBIT C**

Transcript of portion of Senate's Public Safety Committee addressing AB 1300 on  
July 5, 2011

Reporters  
Videographers  
Interpreters

San Diego  
(619) 233-0022

Los Angeles  
(323) 930-9940

Inland Empire  
(909) 885-5090

Orange County  
(714) 544-1996

Corporate Office - 17332 Irvine Blvd.  
Suite 220, Tustin, CA 92780 | (888) 740-1100

**TRANSCRIPTION OF CALIFORNIA STATE SENATE**

**PUBLIC SAFETY COMMITTEE HEARING**

**TUESDAY, JULY 5, 2011**

**ORIGINAL  
TRANSCRIPT**

TRANSCRIBED BY:  
KRISHA RUVALCABA CSR NO. 13255



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TRANSCRIPTION OF CALIFORNIA STATE SENATE  
PUBLIC SAFETY COMMITTEE HEARING  
JULY 5, 2011

Transcribed by:  
Krisha Ruvalcaba  
C.S.R. No. 13255

1 California State Senate Public Safety Committee Hearing  
2 July 5, 2011

3 -oOo-

4  
5 SENATOR HANCOCK: Okay. We're waiting for authors,  
6 Senator Blumenfield or Assemblyman -- Assemblyman  
7 Blumenfield or Assemblyman Cedillo. Perfect timing.

8 UNIDENTIFIED SPEAKER: Oh, 'cause you have -- look  
9 up and there you are.

10 SENATOR HANCOCK: You have two bills. Senator  
11 Blumenfield.

12 ASSEMBLYMAN BLUMENFIELD: What would you like me to  
13 start with?

14 SENATOR HANCOCK: You could start with AB1293.

15 ASSEMBLYMAN BLUMENFIELD: Great. Thank you, Madam,  
16 Chair Members. Here today on Bill AB1293. Too  
17 frequently, California seniors are victimized by those  
18 who prey on their vulnerable state. This is truly --  
19 especially true in financial matters.

20 Prosecuting financial elder abuse cases can be  
21 extremely complex, especially in cases where predators  
22 have stolen hundreds of thousands of dollars. Even when  
23 cases are successful, victims are unable to recover their  
24 stolen property, if it has been transferred or spent by  
25 the perpetrator.

1           To help address this problem, I've authored  
2 this bill, AB1293, which mirrors current law on white  
3 collar crime. What this bill does is it allows the  
4 courts, in cases where more than \$100,000 has been  
5 stolen, to freeze the assets of a financial predator.  
6 This ensures that he or she does not secret away or spend  
7 down the property stolen from the victim. This bill will  
8 help make victims whole, once the defendant has been  
9 convicted. Many of our seniors do not have the ability  
10 to recover from such high-dollar crimes, without the  
11 protection of their stolen assets. This bill is -- has  
12 wide support, including the California Advocates for  
13 Nursing Home Reform and the Los Angeles County District  
14 Attorney's Office, among others.

15           Today I have with me Prescit -- Prescott Cole,  
16 the Senior Staff Attorney for California Advocates for  
17 Nursing Home Reform. And Madam Chair, I ask for your aye  
18 vote in support of this bill.

19           SENATOR ANDERSON: Madam Chair, I move the bill when  
20 you're ready.

21           SENATOR HANCOCK: Well, thank you, Senator Anderson.  
22 We'll be -- continue. This is an indication that,  
23 perhaps, we could have short testimony.

24           ASSEMBLYMAN BLUMENFIELD: Fair enough.

25           MR. COLE: Thank you very much. Prescott Cole from

1 CANHR, California Advocates for Nursing Home Reform. And  
2 for the past 16 years, I have been dealing with family  
3 members and friends of individuals, who are elderly, who  
4 have been faced with financial elder abuse. The reports  
5 are that three -- I'm sorry, that the instances of death  
6 go up threefold for individuals who are elderly, once  
7 they have been financially abused.

8 And we also have reports coming in, various  
9 reports, about undue influence. And this bill addresses  
10 an area that is currently handled by white collar crime,  
11 in that it deals with all areas of financial abuse,  
12 including theft, which is the primary theft -- primarily  
13 crime against elders for financial abuse. Thank you.

14 SENATOR HANCOCK: Thank you. Others in support.

15 MR. FELIZZATTO: Madam, Chair Members, Dan  
16 Felizzatto, on behalf of the Los Angeles County District  
17 Attorney's Office. I'd be pleased to ask any -- answer  
18 any questions the committee has.

19 SENATOR HANCOCK: Thank you. The bill has been  
20 moved. Are there questions and comments from members of  
21 the committee or are there speakers in opposition?

22 Seeing and hearing no speakers in opposition, the bill  
23 has been moved and no questions or comments. Secretary,  
24 please open the roll.

25 SECRETARY: Hancock.

1 SENATOR HANCOCK: Aye.

2 SECRETARY: Hancock aye. Anderson.

3 SENATOR ANDERSON: Aye.

4 SECRETARY: Anderson aye. Calderon. Harman.

5 SENATOR HARMAN: Aye.

6 SECRETARY: Harman aye. Liu.

7 SENATOR LIU: Aye.

8 SECRETARY: Liu aye. Price. Steinberg.

9 SENATOR HANCOCK: Your bill will pass. We're  
10 leaving the roll open for absent members.

11 ASSEMBLYMAN BLUMENFIELD: Thank you.

12 SENATOR HANCOCK: Thank you. Okay. AB1300,  
13 Assembly Member.

14 ASSEMBLYMAN BLUMENFIELD: Okay. Thank you, Madam, Chair  
15 Members. I'll be brief, because this bill also has  
16 support on both sides. What this bill does, is it  
17 clarifies the scope of local authority to an act or an  
18 instance affecting the establishment location and  
19 operations of medical marijuana dispensaries.

20 The bill ensures that communities have the  
21 tools to protect themselves from delinquent medical  
22 marijuana dispensary operators, who constitute a public  
23 nuisance or worse.

24 By clarifying the scope of local authority,  
25 local governments can work with law enforcement to weed

1 out bad dispensaries, so that law-abiding establishments  
2 may be left alone to help the sick Californians who are  
3 in need. A scan of headlines is proof positive that many  
4 dispensaries operate in the shadows, without any regard  
5 to local business licensing or zoning. Local government  
6 needs more -- to more clearly -- needs more clearly to  
7 find tools to confront the bad actors involved in the  
8 medical marijuana world.

9 This bill is written to be consistent with land  
10 use and police powers vested with local government.  
11 Among other groups, the bill has the support of PORAC,  
12 the L.A. City Attorney, L.A. County District Attorney,  
13 L.A. Sheriff Lee Baca. It passed the assembly with 71  
14 votes, in support, and I ask for your eye vote.

15 SENATOR ANDERSON: Madam Chair, I move the bill when  
16 you're ready.

17 SENATOR HANCOCK: Thank you. The bill has been  
18 moved. Speakers in support, and please be brief.

19 LIEUTENANT BILOWIT: Lieutenant Wayne Bilowit, on  
20 behalf of L.A. County Sheriff Lee Baca. We support for  
21 all the reasons mentioned. Just a little side note:  
22 Last year, there were 550 pot dispensaries in the City of  
23 Los Angeles alone. That's more than there were Starbucks  
24 or McDonald's, so we're here to support.

25 SENATOR HANCOCK: Thank you. Others in support.



1 MR. FELIZZATTO: Dan Felizzatto, on behalf of the  
2 Los Angeles County District Attorney's Office, in  
3 support. Pleased to answer any questions committee has.

4 SENATOR HANCOCK: Thank you.

5 MS. STRESAK: Sandra Stresak, with the Los Angeles  
6 City Attorney's office, in strong support.

7 SENATOR HANCOCK: Thank you. Others in support.  
8 Speakers in opposition. Seeing and hearing none,  
9 questions or comments? Oh, there are. Thank you. Come  
10 forward, speakers in opposition. We're gonna have two  
11 speakers, at two minutes each, and the rest are me too's,  
12 so decide what you're gonna do.

13 MR. SWERDLOW: My name is Lanny Swerdlow. I'm a  
14 registered nurse and have been acting in the medical  
15 marijuana move for over a decade. I'm a founder of the  
16 collective, in Riverside, that utilizes the only farmers  
17 market model of marijuana distribution in California.

18 The City of Riverside sought and received an  
19 injunction to close the Inland Empire Health and Wellness  
20 Center from a local Superior Court judge. This  
21 injunction was stayed by the Fourth District Court of  
22 Appeals. The Court has stayed numerous other injunctions  
23 of closed collectives, but we believe our case will be  
24 the precedent-setting one that determines cities can ban  
25 a state-permitted activity, like collectives, under the

1 zoning laws.

2           It has been estimated there are three-fourths  
3 of a million medical marijuana patients in the State of  
4 California and they are all legally entitled to obtain  
5 and use marijuana, medicinally. When that many people  
6 are allowed to use a product safe -- a safe, reliable,  
7 and legal distribution system is essential.

8           In 2003, the California State Legislator  
9 created this distribution system, with a pass it to  
10 senate bill, 420, which allowed patients to form  
11 collectives and co-ops. This was done in response to the  
12 mandate and Proposition 215, that the state, "Implement a  
13 plan to provide for the safe and affordable distribution  
14 of marijuana."

15           This was recognized in People versus Urziceanu,  
16 where the Third District Court ruled that collectives  
17 are, "The initial response to that directive." This  
18 system of distribution was upheld, yet again, by the  
19 Fourth District Court of Appeals, in People versus  
20 Hochanadel, in which the Supreme Court declined review.

21           At the behest of law enforcement, a substantial  
22 number of municipalities are looking for ways to close  
23 collectives. State law and court decisions be damned.  
24 Private law firms advise municipalities to enact bans and  
25 then to hire them --

1 SENATOR HANCOCK: Continue.

2 MR. SWERDLOW: Yes.

3 SENATOR HANCOCK: And members do speak to each  
4 other. It's allowed.

5 MR. SWERDLOW: Private law firms advise  
6 municipality --

7 SENATOR HANCOCK: So we're using your time.

8 MR. SWERDLOW: Well, I'm sorry, ma'am. You know, I  
9 came all the way from Riverside --

10 SENATOR HANCOCK: I know. Continue.

11 MR. SWERDLOW: -- to talk to these people and -- all  
12 right. All right.

13 SENATOR HANCOCK: You're gonna --

14 MR. SWERDLOW: All right. This system of  
15 distribution -- at the behest -- private law firms advise  
16 municipalities to enact bans and then hire them to defend  
17 these bans when a collective has the tenacity to open up  
18 in defense of the ban. The legislature has the  
19 responsibility to stop this rapidly-spiraling,  
20 out-of-control situation to private law firms, advising  
21 cities that bans are legal and then billing taxpayers for  
22 millions of dollars to defend bans, which are contrary  
23 to law in the first place.

24 Rather than sit down with patients and develop  
25 reasonable regulations, the cities follow the advice of

1 these private law firms and ban collectives. This is  
2 what causes the problems AB1300 is trying to address and  
3 collectives get blamed for it.

4 AB1300, by allowing cities to ban, will only  
5 make the problems worse and would most certainly lead to  
6 more expensive and prolonged litigation, benefiting  
7 private law firms and nobody else. Instead of being a  
8 vehicle for creating problems, AB1300 could solve the  
9 problems by the (Unintelligible) of these 28 words:  
10 "Nothing in this article shall be construed to permit any  
11 municipality from enacting a total ban and/or completely  
12 excluding collectives from the permitted use of land  
13 uses. AB1300 should simply declare that municipalities  
14 may regulate as they deem necessary, but they cannot  
15 ban."

16 SENATOR HANCOCK: Thank you.

17 MR. DUNCAN: Good afternoon. My name is Don Duncan.  
18 I'm the California Director of Americans for Safe Access.  
19 I hope you've had an opportunity to review the literature  
20 I sent in advance, regarding AB1300. Americans for Safe  
21 Access strongly supports regulation, because our research  
22 and our experience show that good regulations help  
23 prevent crime and complaints surrounding organizations.

24 However, we want to do something different with  
25 AB1300. We are -- we're concerned that it may provoke

1 bans of collectives and cooperatives around the state and  
2 what we've discovered is that most of our cooperatives  
3 and our collectives are good neighbors. Only a small  
4 number are problematic, because of where they're located  
5 or the way they're operated.

6 And so we would like a bill that facilitates  
7 regulation, just as much as it might encourage some to  
8 ban. We're concerned that AB1300, in the current  
9 political climate, will shut down Safe Access around the  
10 state and that communities will be denied the proven  
11 benefits of regulation, as they move, perhaps, too  
12 speedily, to ban cooperatives and collectives.

13 We have to remember, in this, that it's a  
14 patient's access issue. Most of the patients in this  
15 state rely on collectives and cooperatives to receive the  
16 medicine they need, and without these, the promise of  
17 Proposition 215 and the voters' mandate is unlikely to be  
18 fulfilled. Thank you.

19 SENATOR HANCOCK: Thank you. Others in opposition.

20 MR. MULL: Thank you. George Mull. The California  
21 Cannabis Association is in opposition. We provided our  
22 proposed amendment to clarify that while we support, that  
23 cities and counties may use their powers to regulate the  
24 operations of dispensaries, that they should not be able  
25 to ban their existence or zone them out of existence

1 and --

2 SENATOR HANCOCK: Thank you.

3 MR. MULL: Thank you.

4 MR. BACKES: Glenn Backes for Drug Policy Alliance,  
5 in opposition.

6 SENATOR HANCOCK: Others in opposition. Please just  
7 state your name and you're here.

8 MS. DAVIES: Lanette Davies, with Crusaders for  
9 Patient's Rights, in opposition, and I also have a letter  
10 for you.

11 SENATOR HANCOCK: Thank you. Yes, we got your  
12 letter. Would probably be useful to have the amendments,  
13 too. We did not get that.

14 MS. SMITH: I'm Patricia Smith, from Grass Root  
15 Solutions, a patient advocacy group, and we support  
16 regulation of medical marijuana dispensaries, but we  
17 totally are against being able to initial -- initiate  
18 bans against them. And we feel that if a city is so  
19 strongly opposed to having dispensaries in their midst,  
20 that it should at least be put to a vote of the citizens  
21 in that city, because medical marijuana is supported by  
22 70 percent of the population. Thank you.

23 SENATOR HANCOCK: Thank you.

24 MR. HARVEY: Alex Harvey. Well, I'm a resident of  
25 San Bernardino County and I'm opposing.

1 SENATOR HANCOCK: Thank you.

2 MR. BRADLEY: Nate Bradley, Executive Director of  
3 Lawmen Per -- Protecting Patients. We're retired and  
4 safe the law enforcement officers who've had to become  
5 medical marijuana patients. We believe the intent in  
6 this bill's good. We ask that it be amended that it  
7 doesn't ban small patient collectives or doesn't allow  
8 counties to ban.

9 SENATOR HANCOCK: Thank you.

10 MR. SUMP: William Sump, Director of Inland Empire  
11 Patients Health and Wellness Center and Director of  
12 Wildomar Patients Compassionate Group, here in  
13 opposition.

14 SENATOR HANCOCK: Thank you. Others in opposition.  
15 Are there questions or comments from the committee or  
16 would you like to respond, Assemblyman Blumen --

17 ASSEMBLYMAN BLUMENFIELD: Yeah. Thank you. This bill --  
18 I actually haven't heard things, the opposition, that --  
19 that has troubled me too much, 'cause this bill really is  
20 not intended on waiting into the issue of -- of bans.  
21 That's being, right now, heard by the Supreme Court,  
22 California Supreme Court, and we'll wait to see how they  
23 interpret the proposition, as it -- as it is.

24 The bill -- really, the intent of the bill was  
25 to try to walk the line and not -- not get into sort of

1 the -- the trickier issues on -- on marijuana, but to  
2 just make it real clear that, like -- like everything  
3 else, local government has the ability to -- to regulate  
4 it, just like other -- just like other powers that the  
5 local government has.

6 So that's the intent of the bill. That's how I  
7 think it is. That's how I think it reads. I'm happy to  
8 look at further amendments, as they're proposed. I'm --  
9 I'm weary about getting into the issue of -- of ban. I  
10 know some folks were asking us to say, well, prohibit  
11 counties or cities from being able to ban and some folks  
12 are saying, mandate that they can ban, and I just as soon  
13 stay away from that issue and be very narrow in the scope  
14 of this bill.

15 SENATOR HANCOCK: If I could ask a question.  
16 Medical marijuana use was okay through a citizen  
17 initiative. I don't think you could -- a ban would be  
18 possible, would it?

19 ASSEMBLYMAN BLUMENFIELD: The courts are determining -- I  
20 mean, there are localities that have put bans out there  
21 and the courts are determining whether that is --

22 SENATOR HANCOCK: Is it a matter of -- of looking at  
23 a set of regulations and whether they would be a de facto  
24 ban? But I don't think there could be an outright ban on  
25 the citizen initiative. I -- would surprise me. Okay.



1 Are there any other comments? The bill has been moved.

2 I am gonna -- I think that you've closed, Assemblyman.

3 ASSEMBLYMAN BLUMENFIELD: Just, I respectfully ask for  
4 your aye vote.

5 SENATOR HANCOCK: Okay. I'm gonna vote for the bill  
6 today, because, although I do support medical marijuana,  
7 and I will say that my own mother, when she was dying of  
8 cancer, used medical marijuana, which was one of the few  
9 things that would allow her to eat and to be pain-free.

10 Having said that, I've also seen the  
11 proliferation of highly lucrative businesses, with all  
12 due respect, which appear to me to have -- be  
13 prescription mills and it does seem, to me, like any  
14 other business, they should be regulated and that  
15 communities need to -- I think there's really more  
16 discussion that ought to happen between the -- the -- the  
17 proponents of the use of medical marijuana to how to make  
18 them, in fact, places that fit into communities and that  
19 deal with medical marijuana, which is what the people of  
20 California said they approved. So anyway, I will vote  
21 for the bill today and the bill has been moved by Senator  
22 Anderson. Will the secretary open the roll, please.

23 SECRETARY: Hancock.

24 SENATOR HANCOCK: Aye.

25 SECRETARY: Hancock aye. Anderson.

1 SENATOR ANDERSON: Aye.

2 SECRETARY: Anderson aye. Calderon. Harman.

3 SENATOR HARMAN: Aye.

4 SECRETARY: Harman aye. Liu.

5 SENATOR LIU: Aye.

6 SECRETARY: Liu aye. Price. Steinberg.

7 SENATOR HANCOCK: That bill does have enough votes.

8 I'm gonna hold the roll open for the absent members.

9 ASSEMBLYMAN BLUMENFIELD: Thank you very much.

10 Appreciate it, Members.

11 SENATOR HANCOCK: We have one bill left. Senator  
12 Cedillo is here. And again, it's three o'clock in the  
13 afternoon and we're gonna have two speakers on each side,  
14 two minutes each, and -- and then me too's. Senator  
15 Cedillo, welcome to the committee. Hello. Thank you.  
16 You may present your bill.

17 SENATOR CEDILLO: Members, I'm really happy to be  
18 back here in the senate. I'm pleased to be with you.  
19 Senator Liu.

20 SENATOR HANCOCK: Yeah, pull -- you need to pull the  
21 mic closer. Yes. Thank you.

22 SENATOR CEDILLO: Okay. Senator Harman. I was  
23 saying I'm very pleased to see you, be back here with you  
24 guys, again, on an issue that you know that I have been  
25 working on, since I first got to this legislation.

1           Prepared some comments earlier, in anticipation  
2 of a presentation that I thought was gonna be different,  
3 but I was viewing the -- the hearing earlier on the Alan  
4 (Unintelligible). I think it's important to set those  
5 aside and talk about what we're trying to accomplish  
6 here, what we're trying to correct, what our goals, our  
7 values, our principals are in this instance.

8           Let's be very clear, up-front, that driving in  
9 this county, in this state, is a privilege and not a  
10 right. We wanna be very clear about that. There's no  
11 question about that. And driving's more than that, it's  
12 a responsibility and it is inherently dangerous. It's an  
13 inherently dangerous activity and that's why we regulate  
14 it. That's why we don't let people drive when they're  
15 drunk. That's why we don't let teenagers drive, unless  
16 they have a certain maturity. Unless they've  
17 demonstrated an ability to recognize the customs,  
18 practices, laws.

19           We remove that privilege from seniors, at a  
20 certain point. They lose capacity. My -- both my  
21 parents have lost that capacity, no longer can drive.  
22 And we prohibit people from driving a vehicle when they  
23 take drugs, whether it's legal drugs or -- or illegal  
24 drugs.

25           And so that is something that I've been working

1 on since I got here, since day one. It's no question it  
2 was a component of my campaign. The unlawful taking of  
3 vehicles, from immigrant motorists in the communities I  
4 represent, had begun to proliferate and it was an issue  
5 that was brought to me.

6 It's a tragedy that we're here today, and I  
7 heard of a tragedy this morning. The loss of a son is  
8 unacceptable. Unacceptable unto the extent our laws or  
9 our failures to enact laws that would address that is  
10 unacceptable. The loss of a father is also unacceptable,  
11 as is the loss of a woman who's both a daughter -- both a  
12 daughter and a mother, and in addition, a wife is also  
13 unacceptable. These are tragedies for which we do not  
14 know the pain or suffering of those who confront them.

15 Let me say to you that, in addition, that all  
16 life is precious. That I believe, and I believe we share  
17 the values that all life is precious, that God does not  
18 recognize someone's legal status, someone's color, race,  
19 creed, sexual preference, sexual identity. That all life  
20 is precious, and so we should acknowledge that, because  
21 there are tragedies that are abundant, because of our  
22 failure to act and to do what is best and to do the right  
23 thing and not to be bullied by those who are shrill,  
24 those who push us, those who intimidate us, who make us  
25 uncomfortable.

1           The fact of the matter is, 2.5 million people  
2 in this state cannot get a license, if they wanted to.  
3 Now, this state chose 1930's with the beginning of the  
4 Department of Motor Vehicles to -- to develop a strategy  
5 to make our highway safe. That's the number one  
6 obligation that we have as law -- as -- as public  
7 servants is to make our community safe. It's the number  
8 one obligation we have.

9           And our strategy to accomplish that obligation  
10 was to test and license motorists and vehicles. All  
11 motorists, all vehicles. And that strategy served us  
12 well, until 1993. And in 1993, (Unintelligible) to the  
13 anti-immigrant hysteria that created Proposition 187,  
14 that remains with us, that was a product of a bad  
15 economy, and politicians manipulating the legitimate fear  
16 and anxiety of the community. We did something that was  
17 just stupid. Something that, in part, we may be here  
18 because of the failure to be courageous and to act  
19 affirmatively at that time.

20           We removed the driving privilege from community  
21 of 2.5 million people and we created a class of 2.5  
22 million people who could not be licensed, tested and  
23 insured. Who would do that? It's inherently dangerous  
24 to drive a vehicle, and we said, You know what? We're  
25 gonna take 10 percent of all motorists in the state and

1 we're gonna make sure that they're not tested, that  
2 they're not insured, that they're not licensed. They're  
3 prohibited from doing that.

4           The idea, wrong-minded at the time, was that we  
5 were somehow gonna deter immigration, that immigrants  
6 would stop coming to this country, because they didn't  
7 have a license. It's a joke. Immigrants from a license  
8 where they come from. They don't come here for a  
9 license. They come here to work. Come here to do the  
10 jobs that many of us don't do. They do the most  
11 difficult jobs. We all know that.

12           So we're trying to correct that, because it's  
13 come into conflict with another law that we all support.  
14 There's a law written by Richard Kats, Quentin Kopp, Bill  
15 Lockyer, people we respect and admire, and that law was  
16 designed to remove abusive DUI motorists from the  
17 highways.

18           People were abusing their privilege of driving  
19 in this state. It wasn't an immutable characteristic.  
20 It wasn't because they had come here as undocumented  
21 workers, but because they had made life choices to drink  
22 and drive, and they continued to drive, even though we  
23 suspended their licenses, even though we took their  
24 licenses away.

25           And at some point, Richard Kats said, Enough is

1 enough, and appropriately so. And we said, You know  
2 what? Let's take away the -- the -- the licenses from  
3 these drunker motorists, and that is appropriate. Let's  
4 take it away from people. And if you -- if you drive and  
5 you've been a DUI motorist and your license is suspended  
6 or revoked, we will take your license away. And if you  
7 don't have a -- and we will take your -- we will take  
8 your license away and if we catch you driving again, we  
9 will take your vehicle for 30 days. Good idea. Maybe 30  
10 days isn't long enough; maybe 60, maybe six months.

11 At some point, DUI motorists are repeat  
12 offenders. At some point, we have to have them find  
13 sobriety and responsibility, so maybe 30 days isn't long  
14 enough. But what we did in addition to that is we  
15 expanded that net too far and said, All motorists who  
16 don't have a license.

17 Now, these are two silos of government,  
18 operating side by side. 1994, the law's writ comes into  
19 effect in 1994. The -- the removal of the -- the  
20 driver's license from immigrant motorist. In 1994, we do  
21 the law for DUI motorists. Two silos, side by side, in  
22 this building, crossing each other, not figuring out  
23 what's the unintended consequence. Right?

24 People barely noticed this the first three  
25 years. When I ran, in 1998, this was brought to my

1 attention, but the tragedy is, that cities become cash  
2 strapped. Towing companies recognize profit. Local  
3 government officials have a need for resources for their  
4 city. What happens? We begin to see a proliferation of  
5 DUI checkpoints throughout the state. And are those  
6 checkpoints outside the bars and the sports bars and in  
7 the communities where people go to have dinner and --  
8 and -- and have beverages, responsibility, legally? No.

9           You see them at low income immigrant  
10 communities; Saturday mornings, Sunday mornings,  
11 on corridors, when people go to work, outside churches,  
12 schools. Why? Because that's where you'll find  
13 unlicensed motorists, immigrant motorists who cannot get  
14 a license. And these checkpoints proliferate, and we  
15 have maps published, newspapers that show you.

16           For example, in Southern California, Pasadena,  
17 lovely place, Westwood, fine place, Santa Monica, Beverly  
18 Hills, Hollywood, West Hollywood, lots of bars and  
19 restaurants. Where are the DUI checkpoints? South L.A.,  
20 Maywood, Bell Gardens, Montebello. Right? Places where  
21 immigrants live. Saturday mornings, in front of Home  
22 Depots. I was in Pomona, pulled over at checkpoint, in  
23 front of a -- a -- a little mall, where you can go get  
24 supplies and -- and work and do construction.

25           And so what's happened is these two silos have



1 existed and created a whole series of tragedies. We  
2 removed the driving privileges. A man get pulled over,  
3 the car gets taken away from him. He's with a companion,  
4 they walk down the street to make a call, he gets  
5 stabbed, he's killed. Someone's son.

6           Woman and her daughter cannot drive, can't  
7 afford to lose a vehicle, get up early in the morning so  
8 they can walk. Walk up here in Northern California.  
9 Daughter walks with the mother, so she can be safe.  
10 Sun's rising, they get pummeled to death. I had to go  
11 meet that family. Walking, because they could not drive.  
12 The car would be taken away.

13           We heard this morning from the Rosenbergs,  
14 great, great pain, tragedy, suffering. Our laws aren't  
15 serving us. This bill will improve the situation. It's  
16 not a perfect bill. It's not the best bill. The best  
17 bill would be to make driving with a license mandatory,  
18 to make sure that every motorist was licensed, tested and  
19 insured. That would be the best bill. I've carried that  
20 bill for 14 years straight, since I've been here. Have a  
21 vehicle to -- to move that and hopefully the discussion  
22 that took place today and the understanding of how this  
23 can no longer be ignored, can help us move that bill  
24 forward in the discussion that politicians are willing to  
25 engage in, in spite of what the -- the -- the people on

1 AM radio say. Hopefully we can move that discussion  
2 forward. But this bill makes it better.

3 I know Police Chief Bill Bratton. While he was  
4 the police chief of our city, crime dropped every single  
5 year. He had a simple strategy: Put the police where  
6 the crime is. Concentrate your forces. He stopped this  
7 practice of the towing in our City of Los Angeles and he  
8 reduced crime, because it's a simple thing. Right?

9 When they asked Jesse James, "Why do you rob  
10 banks?" He says, "Because that's where the money is."  
11 Right? And so when -- I'm sure if Bill Bratton had been  
12 asked, he'd say, Well, why are you putting the cops at  
13 the bank? He'd say, Well, that's because that's where  
14 the crime is.

15 And so it's a simple thing. It says, let's  
16 stop, as we know they did in Bell, these checkpoints that  
17 are used to raise money for corrupt politicians. Let's  
18 stop these checkpoints that raise hundreds of thousands  
19 of dollars for local government in one night. Let's stop  
20 those and let's focus on what their purpose is, and  
21 that's to catch DUI motorists. And let's put those DUI  
22 checkpoints.

23 When we eliminate the profit motive, eliminate  
24 the profit motive from these DUI checkpoints, guess where  
25 they're gonna start be located? Where the drunken

1 motorists are. And our highways will be safer and more  
2 secure. And that's the challenge that we have with us  
3 today, amidst all the incredible suffering that we've  
4 heard this morning. Heard other issues on public safety  
5 on the assembly side of -- of tremendous pain and  
6 suffering.

7 I, having lost someone, as you all know, know  
8 that. I don't know the pain and suffering of this  
9 family. We cannot know that. It's unknowable. But I  
10 know the loss of a wife. When I met that family, lost a  
11 wife, a daughter and a mother. I knew my experience. We  
12 must do better. Better today. And better today is to  
13 support this legislation, that ends the abuse and the  
14 indifference. The indifference of law enforcement  
15 officials, to the tragedies that were put forth today,  
16 because I would be as mad as I could be if the law  
17 enforcement members of my community were chasing  
18 immigrants on a Saturday morning, outside their church  
19 or -- or outside their -- their -- their Home Depot or  
20 outside their church on Sunday and they weren't chasing  
21 and weren't available to stop and pull over and prosecute  
22 DI -- DUI motorists and repeat offenders, in the places  
23 where they should be. This bill does that. It moves us  
24 in that direction. It's not a perfect bill, but it's a  
25 better bill.

1           The status quo is unacceptable. We cannot have  
2 a myriad of communities: Los Angeles, San Francisco,  
3 Bell Gardens, Yolo County, Berkeley, Santa Cruz, a myriad  
4 of communities having one policy as you drive through and  
5 then driving into another community with another policy.  
6 The time is now that calls out for us to have a uniform  
7 policy that makes the say -- the -- the -- our highway  
8 safer and more secure and brings justice to those who  
9 have suffered as (Unintelligible).

10           SENATOR HANCOCK: Okay. Thank you. Speakers in  
11 support of the bill, I do feel like I wanna briefly go  
12 over what the bill says, just to make sure that we keep  
13 the commentary in the scope of this bill. This bill  
14 says, "A car will only be impounded at a sobriety  
15 checkpoint if the driver is drunk, if the driver has had  
16 his or her license suspended or revoked for reckless  
17 driving or for a DUI, or is a habitual traffic defender  
18 or refuses to take a chemical test when stopped for a  
19 DUI, or if the vehicle in itself was used for evading a  
20 peace officer or if there is probable cause to believe  
21 that it was used in a public offense, and if there's  
22 probable cause to believe that the vehicle tends to show  
23 that a crime has been committed or contains evidence,  
24 other than that of driving without a license. The  
25 driver --" or "If the driver does not have a valid

1 driver's license, and either cannot obtain one or park  
2 the vehicle in a safe place, until a licensed driver can  
3 retrieve it." So it's basically about impoundment.  
4 Speakers in support.

5 MS. MOCK: Tiffany Mock, on behalf of the ACLU.  
6 We're pleased to support AB353. Believe it'll create a  
7 uniform process for impounding vehicles at checkpoints  
8 and allow unlicensed drivers or their agents to retrieve  
9 their car the following day. Uniform legal clarity is  
10 necessary on when and how cars can be impounded at  
11 sobriety checkpoints. Without clear guidelines, sobriety  
12 checkpoints have turned into a gateway for illegal  
13 seizures of cars.

14 This bill codifies Miranda versus City of  
15 Cornelius, which is a Ninth Circuit Court of Appeals  
16 decision that provides that "A car can be safely parked  
17 by a licensed driver, then it will not be impounded under  
18 the Community Caretaking Doctrine and provides a uniform  
19 number of days that the car may be impounded." Thank  
20 you.

21 SENATOR HANCOCK: Thank you.

22 MS. ZANIPATIN: Jeannette Zanipatin, attorney with  
23 the Mexican American Legal Defense and Educational Fund,  
24 also in strong support for the reasons already cited.

25 SENATOR HANCOCK: Thank you. Others in support.

1 MR. LOPEZ: Nativo Lopez, representing the Mexican  
2 American Political Association and the Hermandad Mexicana  
3 Latinoamericana. I just wanted to point out a Fresno Bee  
4 article that appeared today. "Fresno DUI patrols on  
5 Fourth lead to nine arrest." There are actually 27  
6 vehicles that were impounded that day, because their  
7 drivers were unlicensed, but only nine of those  
8 individuals were cited for -- for driving under the  
9 influence. That is the pattern that we've seen in city  
10 after city, throughout California, and that's the  
11 correction that's required with AB353. Thank you.

12 SENATOR HANCOCK: Thank you.

13 MS. LUJAN-STRESAK: Sandra Lujan-Stresak, with the  
14 L.A. City Attorney's office, and if I can just have --  
15 make a very brief statement. I wanted to mention that in  
16 Los Angeles, the LAPD Chief of Police has already  
17 implemented a checkpoint policy, similar to the policy  
18 proposed in Assembly Member Cedillo's bill.

19 The LAPD policy is supported by the LAPD Chief,  
20 the Mayor and the City Attorney, to better protect public  
21 safety. The LAPD checkpoint policy is consistent with a  
22 goal of AB353, which is why my office supports the  
23 concept of the bill. I wanted to clarify, quickly, that  
24 in our position in the analysis, as we have not taken an  
25 official position, but we certainly support the purpose

1 of the legislation, and appreciate what the author is  
2 trying to accomplish. At the same time, we're still  
3 trying to work through the possible implications of the  
4 version of the bill, in print, and we are very much  
5 looking forward to working with the author and our law  
6 enforcement partners. Thank you.

7 SENATOR HANCOCK: Thank you. Me too's after this,  
8 please.

9 MS. ZAMORA: My name's Amelia Zamora. I'm State  
10 Deputy Director, here, representing California State  
11 LULAC and it's 100 councils throughout the state. We are  
12 here in support of AB353.

13 SENATOR HANCOCK: Thank you.

14 MR. HERNANDEZ: Ignacio Hernandez, here on behalf of  
15 the California Immigrant Policy Center, in support of the  
16 bill.

17 MR. GONZALEZ: Julio Gonzalez, here to represent  
18 Lorenzo Patito, council of Sacramento, LULAC. We urge  
19 your -- a yes vote for support of AB353. Thank you.

20 MR. LINDBURG: Jim Lindburg, on behalf of the  
21 Friends Committee on Legislation of California, in  
22 support.

23 MS. FURGER: Roberta Furger, Pico, California.  
24 We're a faith-based community organizing network,  
25 representing 400 congregations and 450,000 families, in

1 support.

2 MS. SANCHEZ: Libby Sanchez, on behalf of the  
3 California Public Defenders Association, in support.

4 MR. FELIZZATTO: Dan Felizzatto, on behalf of the  
5 Los Angeles County District Attorney's Office. While we  
6 haven't yet been able to take a position on AB353, we  
7 have been working with the Assemblyman's office and  
8 they've been very cooperative with all of our --  
9 addressing most of all of our concerns.

10 SENATOR HANCOCK: Thank you. Are there other  
11 speakers in support? Speakers in opposition to the bill.  
12 Good afternoon. Two and two.

13 MS. ROSENBERG: Yes, I'll do my best. Keep it to --  
14 as short as I can. I was presenting this morning and  
15 most of you look familiar, so you've all heard our story,  
16 which --

17 SENATOR HANCOCK: Yes, we have.

18 MS. ROSENBERG: -- P.S., Mr. Carrillo, you do not  
19 have permission to use our name, ever. Okay? So let me  
20 just tell you a little bit --

21 SENATOR CEDILLO: I don't need your permission.

22 MS. ROSENBERG: Yes, you do.

23 SENATOR CEDILLO: Council.

24 MS. ROSENBERG: This is my son. His name is Drew  
25 Ari Rosenberg, 25 years old, who was murdered on November



1 16th, by an unlicensed driver in San Francisco, who had  
2 previously been caught and in -- in June, and released.  
3 And the charge for driving without a license was  
4 dismissed. He was caught driving on a one-way street.

5 In November, on November 6th, once again,  
6 Roberto Gallo, driving on 16th and Harrison, rammed into  
7 my 25-year-old son, who was coming home from law school,  
8 killed him. Tried to flee. Killed him, ran over him,  
9 ran over him, ran over him. He was under the wheels of  
10 his tire. He's been in the country for 15 years, no  
11 license.

12 I wanna share with you what happened in June.  
13 In June, when he was pulled over and the charge was  
14 dismissed for no license, the car was impounded. Oh,  
15 goodness, for 24 hours. And his friend, who had a  
16 license, got the car out, signed over title to him, put  
17 him on her insurance and gave it back to him.

18 So excuse me and explain to me how your  
19 committee, Public Safety Committee, is going to make it  
20 better when you're trying to say, we won't even impound  
21 now. Licenses do good things. Licenses teach our  
22 children how to drive. Our children all have licenses.  
23 They all know the rules of the road. They know when  
24 they're going a wrong street. They know when someone has  
25 the right of way and they're gonna kill 'em.

1           Unlicensed drivers do not, because they don't  
2 know. They don't go to driver's ed. They don't know how  
3 to drive. The fatalities of unlicensed drivers are  
4 staggering. So what are we gonna do here? What we're  
5 gonna do is we're gonna say, pull over. Stop. Some  
6 licensed driver's gonna come and he's gonna drive the car  
7 away from you. Yeah, right. Right. That's gonna  
8 happen. The guy's gonna be driving again. Beware of  
9 your children. Mine is gone, and he was a really good  
10 driver. He was paying his own way through law school.  
11 How could I not be furious at the double speak I'm  
12 hearing here?

13           We're gonna say you're above the law, because  
14 you can't get a license? No, we're not. Put on our  
15 thinking caps here. Make them get licenses or make them  
16 not drive. This is not convenience, this was death.  
17 This was murder.

18           SENATOR HANCOCK: Thank --

19           MS. ROSENBERG: This was murder.

20           SENATOR HANCOCK: Thank you very -- thank you very  
21 much.

22           MS. ROSENBERG: And don't ever use my name again.

23           SENATOR HANCOCK: Thank you very much. I have given  
24 you more than -- than the two minutes.

25           MS. ROSENBERG: Given the circumstances,

1 Ms. Hancock, --

2 SENATOR HANCOCK: Thank you. And we -- and we --

3 MS. ROSENBERG: -- I certainly appreciate it.

4 SENATOR HANCOCK: Thank you.

5 MS. ROSENBERG: Reconsider this bill. Oppose this  
6 bill.

7 SENATOR HANCOCK: Okay. Next witness in opposition.

8 MR. McDONALD: My name is Gary McDonald. I'm the  
9 State Director for MADD California, Mothers Against Drunk  
10 Driving. This bill -- this bill, if it passes, would  
11 require vehicle impounds, at a checkpoint, to be released  
12 the following day, even for people driving on a suspended  
13 or revoked license. It would allow repeat DUI offenders  
14 to pick up their car the very next day, along with  
15 driving under the influence of drugs.

16 In 2009, there were 170,622 total convictions  
17 for driving on a suspended license. About 44,000 were  
18 convicted of driving on a suspended license, as a result  
19 of a DUI. Highly publicized DUI checkpoints are an  
20 excellent deterrent for drunk driving. They're meant as  
21 a deterrent. So when you compare the number of DUI  
22 arrests to the number of cars that are being impounded,  
23 it's not a fair comparison, because, again, a checkpoint  
24 is meant as a deterrent.

25 If it's being used by certain law enforcement

1 agencies for other purposes, we -- we feel that that is  
2 not the norm. The claim that impounding a car that could  
3 lawfully be parked is unconstitutional, against the law  
4 is clearly and correct. It's not what the Ninth Circuit  
5 decided in Miranda versus City of Cornelius.

6 In addition, the Ninth Circuit in Salazar  
7 versus The City of Maywood, upheld the constitutionality  
8 of seizing cars from unlicensed drivers. Therefore, the  
9 legal argument behind AB353 is inconsistent with what has  
10 been determined by the Federal Court of Appeals.

11 Drivers without licenses, especially those with  
12 revoked or suspended licenses, who get their car back the  
13 very next day, may drive again, illegally, as soon as the  
14 very next day. The fact is: Drivers that do not have a  
15 valid driver's license are three to five times more  
16 likely to involved in a car crash and kill innocent  
17 people.

18 20 percent of all fatal crashes involve an  
19 unlicensed driver. More than 8,000 people are killed  
20 each year in these crashes. Unlicensed drivers are 4.9  
21 times more likely to be involved in a fatal crash. 3.7  
22 times more likely to drive while impaired. 4.4 times  
23 more likely to be in a hit-and-run crash. 60 percent of  
24 those hit by a hit-and-run are pedestrians. 20 percent  
25 of pedestrian fatalities are hit-and-run victims.

1           Several studies have been carried out, that  
2 show the benefits of California's impoundment law. Here  
3 are some of the findings: For first-time offenders whose  
4 vehicles are impounded, versus those whose vehicles were  
5 not impounded. For the following 12 months, there were  
6 25 percent fewer crashes. 24 percent fewer driving  
7 convictions. 18 percent fewer traffic convictions. For  
8 repeat offenders whose vehicles were impounded, versus  
9 those who were not impounded for the following 12 months,  
10 there were 38 percent fewer crashes. 34 percent fewer  
11 driving convictions. 22 percent fewer traffic  
12 convictions.

13           To say that DUI checkpoints have been held at  
14 certain areas outside of schools and other locations to  
15 target low income neighborhoods, it is, for the most  
16 part, incorrect. That -- that's not to say it didn't  
17 happen, but when you superimpose the sobriety  
18 checkpoints, with the alcohol-involved fatal collisions  
19 and all alcohol injured -- alcohol-involved injury  
20 collisions, you'll see that it's consistent, for the most  
21 part.

22           And I'll leave this with you, Madam Chair. And  
23 to -- to finish, to -- to close, there are some flaws  
24 with AB353 and, for the most part, there's a  
25 disproportionate number of people, who are unlicensed,

1 whether they can get a license or -- or not a license, if  
2 they're -- have the -- it's been revoked, suspended or  
3 just simply expired, they are more likely to cause injury  
4 and death than other licensed individuals. Thank you  
5 very much for your time.

6 UNIDENTIFIED SPEAKER: Thank you very much.

7 SENATOR HANCOCK: Are there others in opposition?  
8 Please state your name and organization of position. Me  
9 too's at this point.

10 MR. SALZILLO: Madam, Chair members, Cory Salzillo,  
11 on behalf of the California District Attorneys  
12 Association. We are not formally in opposition to this  
13 bill, because it was amended later in the process. We've  
14 been in conversations with the author and staff regarding  
15 the bill and we're happy to continue working with them.  
16 We don't have a position at this time. We're concerned  
17 that it potentially goes further than Miranda, but we'll  
18 continue to work with the author.

19 SENATOR HANCOCK: Thank you very much. We call that  
20 a wobbler in our committee.

21 UNIDENTIFIED SPEAKER: I'd say it's a wobbler.

22 MS. WADA: Hi. Jennifer Wada, here on behalf of the  
23 California Peace Officers Association. We, too, had  
24 concerns, but have no formal position on the bill and  
25 appreciate the author's willingness to work with us and

1 look forward to working on amendments.

2 SENATOR HANCOCK: Thank you.

3 MR. RAGLAND: My name's David Ragland. I'm the  
4 Director of Safe Track at U.C. Berkeley. We're a  
5 research group that does research on traffic safety.  
6 We've -- we administer the contracts for about half the  
7 sobriety checkpoints.

8 SENATOR HANCOCK: Okay. Me too.

9 MR. RAGLAND: You too?

10 SENATOR HANCOCK: You're opposed?

11 MR. RAGLAND: Yes.

12 SENATOR HANCOCK: In between? Okay. Thank you.

13 MR. RAGLAND: And I -- one thing that hasn't been  
14 said --

15 SENATOR HANCOCK: No. Thank you.

16 MR. RAGLAND: Okay.

17 SENATOR HANCOCK: We've heard you before. We're  
18 happy to accept your materials. Okay. Are there others  
19 in opposition, who wish to register their opposition?  
20 Seeing and hearing none, are there -- Senator Cedillo --  
21 Cedillo, would you like to address some of the comments  
22 in opposition? And then I'll take questions or comments  
23 from members of the committee.

24 SENATOR CEDILLO: Sure. As I said, there is  
25 something fundamentally wrong about putting resources in

1 places where we take vehicles for 30 days from sober  
2 motorists, who happen to be undocumented, who cannot get  
3 a license, and yet, allow a motorist, who is drunk, to  
4 pick up his car the very next day. I mean, there's  
5 something fundamentally wrong here.

6           There's something fundamentally wrong about  
7 putting our resources in communities that feed  
8 corruption. Well documented, the City of Bell is one of  
9 them that feeds corruption. There's a corruption taking  
10 place here, that, in many respects, is part of why we're  
11 here in the first place, 'cause people are unwilling to  
12 stand up to -- to the shrill voices, to the -- to the  
13 anger, to the hostility and to say, look, this doesn't  
14 make sense. We must put our law enforcement resources  
15 where they're the most effective. Right? Put 'em where  
16 the drunken motorists are, and that's -- and we should  
17 take advantage of all the resources and strategies that  
18 work for that.

19           I don't have to tell anyone here that -- I  
20 don't know if there's another person in this state, maybe  
21 this nation, who's spent more time of their life trying  
22 to make sure that every motorist in the state is  
23 licensed. Perhaps, in this nation, who spent an entirety  
24 of a political career for one singular purpose.  
25 There's -- there's a reason they call me One Bill Gil.



1 Right? Close to 90 bills are part of the law of this  
2 state that I've authored, but the focus is only on One  
3 Bill Gil. He's the driver's license guy. Because I  
4 understand this, that the way to make our highway safe is  
5 to make sure that all motorists are licensed, tested and  
6 insured. And hopefully, we've come to a point, a tipping  
7 point, in this discussion, that we can move this dialogue  
8 forward.

9 So I can tell you and assure you that this  
10 bill, not the best proposal, not the perfect solution.  
11 There's no law that will -- will prevent all tragedies.  
12 There's no such law that will do that, but our obligation  
13 is to create the best laws. This bill is better than the  
14 status quo. It's that plain and simple. It focuses our  
15 resources. It allows our strategies to be more exact,  
16 more precise. It's narrowly construed. It does not  
17 violate our prin -- our constitutional principals, nor  
18 our values and our sense of what's fair and what's just  
19 for everyone.

20 SENATOR HANCOCK: Thank you. Would you ask -- is  
21 that your close?

22 SENATOR CEDILLO: I'm asking for an aye vote. I --  
23 I was making myself available for questions from the --

24 SENATOR HANCOCK: Thank you.

25 SENATOR CEDILLO: -- from the dais, but --

1 SENATOR HANCOCK: Thank you. Are there questions or  
2 comments from members of the committee? Senator Price.

3 SENATOR PRICE: Yeah, I just wanna thank the -- the  
4 author for his -- his leadership and his sticktoitiveness  
5 on this -- on this issue. It is a very difficult one, as  
6 we've -- as we've heard from -- from both sides, but I  
7 think the fact this legislation will help, not only  
8 immigrant communities. I mean, others have also been  
9 subjected to these kinds of -- these kinds of stops. And  
10 so I'm -- I'm pleased to -- pleased to move the bill and  
11 I hope that, as you've mentioned, it's not the perfect  
12 solution, but it is a solution that hopefully will  
13 provide a little more comfort and a little more fairness  
14 in the disposition of justice in our community.

15 SENATOR HANCOCK: Thank you. The bill has been  
16 moved by Senator Price. Secretary, would you open the  
17 roll.

18 SECRETARY: Hancock.

19 SENATOR HANCOCK: Aye.

20 SECRETARY: Hancock aye. Anderson.

21 SENATOR ANDERSON: No.

22 SECRETARY: Anderson no. Calderon. Harman.

23 SENATOR HARMAN: No

24 SECRETARY: Harman no. Liu.

25 SENATOR LIU: Aye.

1 SECRETARY: Liu aye. Price.

2 SENATOR PRICE: Aye.

3 SECRETARY: Price aye. Steinberg.

4 SENATOR HANCOCK: Okay. Three to two. That bill is  
5 on call and we need to have some of the absent members  
6 come, so that we can open the roll and add on to bills.

7 UNIDENTIFIED SPEAKER: Go ahead and take that  
8 (Inaudible).

9 SENATOR HANCOCK: Okay.

10 UNIDENTIFIED SPEAKER: Yeah, (Inaudible).

11 SENATOR HANCOCK: We have one other vote only; that  
12 is AB446, Carter reconsideration on Restorative Justice  
13 Program for juveniles.

14 UNIDENTIFIED SPEAKER: Is there a motion?

15 SENATOR HANCOCK: Is there a motion on --

16 UNIDENTIFIED SPEAKER: (Inaudible).

17 SENATOR HANCOCK: The bill's been moved.

18 SECRETARY: (Inaudible). Call the roll? Should I  
19 call the roll?

20 SENATOR HANCOCK: Yeah.

21 SECRETARY: Okay. Hancock.

22 SENATOR HANCOCK: No.

23 SECRETARY: Hancock no. Anderson.

24 SENATOR ANDERSON: No.

25 SECRETARY: Anderson no. Calderon. Harman.

1 SENATOR HARMAN: No.

2 SECRETARY: Harman no. Liu.

3 SENATOR LIU: Aye.

4 SECRETARY: Liu aye. Price.

5 SENATOR PRICE: Aye.

6 SECRETARY: Price aye. Steinberg.

7 SENATOR HANCOCK: Okay. That bill is on call as  
8 well. So --

9 SECRETARY: (Inaudible) make the calls? We have  
10 some bills all indicate (Inaudible) motions.

11 SENATOR HANCOCK: Okay. Does anyone wanna add on to  
12 the consent calendar?

13 SECRETARY: That's on here. Okay. Sorry.  
14 (Inaudible). That's on the last page.

15 SENATOR HANCOCK: Okay.

16 UNIDENTIFIED SPEAKER: I have already (Inaudible).

17 SENATOR HANCOCK: Yeah. So you don't need to.

18 SENATOR HARMAN: Madam Chair, I do have a number of  
19 other bills that I wanna add on that are on call.

20 SENATOR HANCOCK: Fine. Okay.

21 SENATOR HARMAN: I have two other committees that  
22 I'm supposed to be in right now, --

23 SENATOR HANCOCK: I -- I -- I --

24 SENATOR HARMAN: -- so I'd appreciate it if you  
25 could open roll and permit me to vote on bills that are

1 on call.

2 SENATOR HANCOCK: I will do that, --

3 SENATOR HARMAN: Thank you.

4 SENATOR HANCOCK: -- Senator Harman. We're gonna  
5 open the bill on AB90, by Swanson.

6 SECRETARY: We need a motion.

7 SENATOR HANCOCK: And we need a motion on that,  
8 because we heard it --

9 SENATOR ANDERSON: (Inaudible).

10 SENATOR HANCOCK: -- when we were in a committee.  
11 Okay. It's been moved by Senator Anderson. Was that  
12 you?

13 SENATOR ANDERSON: Yes.

14 SENATOR HANCOCK: Senator Anderson. Call the roll,  
15 please.

16 SECRETARY: Hancock.

17 SENATOR HANCOCK: Aye.

18 SECRETARY: Hancock aye. Anderson.

19 SENATOR ANDERSON: Aye.

20 SECRETARY: Anderson aye. Calderon. Harman.

21 SENATOR HARMAN: Aye.

22 SECRETARY: Harman aye. Liu.

23 SENATOR LIU: Aye.

24 SECRETARY: Liu aye. Price.

25 SENATOR PRICE: Aye.

1 SECRETARY: Price aye. Steinberg. (Inaudible).

2 SENATOR HANCOCK: I'm gonna hold these open for one  
3 more round. The Item No. 4, AB308, eye -- Eyewitness  
4 Identification Lineups. Chair voting aye. Please lift  
5 the call.

6 SECRETARY: Anderson.

7 SENATOR ANDERSON: No.

8 SECRETARY: Anderson no. Harman.

9 SENATOR HARMAN: No.

10 SECRETARY: Harman no. Liu.

11 SENATOR LIU: Aye.

12 SECRETARY: Liu aye. Price.

13 SENATOR PRICE: Aye.

14 SECRETARY: Price aye. Steinberg.

15 SENATOR HANCOCK: Okay. That bill is out. Four to  
16 two.

17 SECRETARY: (Inaudible) Senator --

18 SENATOR HANCOCK: Steinberg? Everybody else has  
19 voted.

20 SECRETARY: No, that's fine. I'm sorry, Senator.

21 SENATOR HANCOCK: Okay.

22 SECRETARY: Thank you.

23 SENATOR HANCOCK: That bill has passed, four to two.  
24 Item 5, AB322, Portantino, on rape kits. Please open the  
25 roll.

1 SECRETARY: Hancock.

2 SENATOR HANCOCK: Aye.

3 SECRETARY: Hancock aye. Anderson.

4 SENATOR ANDERSON: Aye.

5 SECRETARY: Anderson aye. Calderon.

6 SENATOR CALDERON: Aye.

7 SECRETARY: Calderon aye. Steinberg.

8 SENATOR HANCOCK: That bill is out, six to zero.

9 Item 6, AB353, Cedillo. Please call the absent members.

10 SECRETARY: Calderon.

11 SENATOR CALDERON: Aye.

12 SECRETARY: Calderon aye. Steinberg.

13 SENATOR HANCOCK: Okay. That bill is out. Four to  
14 two. Item 7, AB366, involuntary anti-psychotic  
15 medication in the state's mental hospitals needs a  
16 motion.

17 SENATOR ANDERSON: So moved.

18 SENATOR HANCOCK: It's been moved by Vice Chair  
19 Anderson. Please open the roll.

20 SECRETARY: Hancock.

21 SENATOR HANCOCK: Aye.

22 SECRETARY: Hancock aye. Anderson.

23 SENATOR ANDERSON: Aye.

24 SECRETARY: Anderson aye. Calderon.

25 SENATOR CALDERON: Aye.

1 SECRETARY: Calderon aye. Harman.

2 SENATOR HARMAN: Aye.

3 SECRETARY: Harman aye. Liu.

4 SENATOR LIU: Aye.

5 SECRETARY: Liu aye. Price.

6 SENATOR PRICE: Aye.

7 SECRETARY: Price aye. Steinberg.

8 SENATOR HANCOCK: That bill has passed. Six to  
9 zero. Item 9, AB412, by Williams Emergency Medical  
10 Services. Please call the absent members.

11 SECRETARY: Hancock.

12 SENATOR HANCOCK: Aye.

13 SECRETARY: Hancock aye. Anderson.

14 SENATOR ANDERSON: Aye.

15 SECRETARY: Anderson aye. Calderon.

16 SENATOR CALDERON: Aye.

17 SECRETARY: Calderon aye. Steinberg.

18 SENATOR HANCOCK: Six to zero. That bill has  
19 passed.

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C E R T I F I C A T E

I, Krisha Ruvalcaba, a transcriber and court reporter for Barrett Reporting, do hereby certify:

That said audio recordings were listened to by me and were transcribed into typewriting under my direction and supervision; and I hereby certify that the foregoing transcript of the audio recordings is a full, true, and correct transcript, to the best of my ability.

I further certify that I am neither counsel for nor related to any party to said action, not in any way interested in the outcome thereof.

In witness whereof, I have hereunto subscribed my name.

Dated: 3/29/12

Krisha Ruvalcaba

KRISHA RUVALCABA

CSR NO. 13255


## **EXHIBIT D**

Declaration of Lanny Swerdlow as to authenticity of Exhibit A, audio of Senate's Public Safety Committee addressing AB 1300 on July 5, 2011

**DECLARATION OF LANNY SWERDLOW IN SUPPORT OF  
APPELLANTS/PETITIONERS' REQUEST TO TAKE JUDICIAL NOTICE.**

1. I am the appellant in the instant matter. Prior to March 14 , 2012 I made a request to the offices of State Senator Bill Emmerson to provide the audio recording of the California Senate Public Safety Committee hearing on AB 1300 which occurred in the afternoon session on July 5, 2011.
2. On or about March 15, 2012 I received the envelope which is addressed to me; I have attached a true copy of the envelope I received with a return address for State Senator Bill Emmerson and is marked as Exhibit B to this application. Inside said envelope was a letter signed by State Senator Bill Emmerson which is also attached as exhibit B to this application.
3. I appeared before the California Senate Public Safety Committee hearing on AB 1300 on July 5, 2011. I have listened to the audio (Exhibit A) and have identified my voice therein.

I DECLARE UNDER PENALTY OF PERJURY THAT THIS DECLARATION IS TRUE AN CORRECT AND WAS EXECUTED THIS 30TH DAY OF MAY 2012 AT RIVERSIDE, CALIFORNIA.



LANNY SWERDLOW

## **EXHIBIT E**

"BILL ANALYSIS" for AB 1300 presented to the Senate's Public Safety Committee.

BILL ANALYSIS

SENATE COMMITTEE ON PUBLIC SAFETY  
Senator Loni Hancock, Chair  
2011-2012 Regular Session

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B  
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0

AB 1300 (Blumenfield)  
As Amended June 1, 2011  
Hearing date: July 5, 2011  
Health and Safety Code  
JM:dl

MEDICAL MARIJUANA COOPERATIVES AND COLLECTIVES:

LOCAL REGULATION OF LOCATION, ESTABLISHMENT OR OPERATION

HISTORY

Source: Author

Prior Legislation: AB 2650 (Buchanan) - Chapter 603, Stats. 2010  
SB 420 (Vasconcellos) - Chapter 875, Stats. 2003  
Proposition 215, November 1996 General Election

Support: Los Angeles City Attorney; Los Angeles County Sheriff

Opposition:None known

Assembly Floor Vote: Ayes 71 - Noes 1

KEY ISSUES

\_\_\_\_\_ SHOULD A LOCAL GOVERNMENT ENTITY BE SPECIFICALLY AUTHORIZED TO ADOPT AN ORDINANCE REGULATING THE LOCATION, OPERATION OR ESTABLISHMENT OF A MEDICAL MARIJUANA COOPERATIVE OR COLLECTIVE, AS SPECIFIED?

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SHOULD A LOCAL ENTITY BE AUTHORIZED TO ENFORCE LOCAL MEDICAL MARIJUANA ORDINANCES THROUGH CRIMINAL AND CIVIL REMEDIES AND ACTIONS?

SHOULD A LOCAL GOVERNMENT ENTITY BE AUTHORIZED TO ENACT ANY LAW CONSISTENT WITH THE MEDICAL MARIJUANA PROGRAM, AS SPECIFIED?

PURPOSE

The purposes of this bill are to 1) specifically provide that a local government entity may enact an ordinance regulating the location, operation or establishment of a medical marijuana cooperative or collective; 2) authorize local government entity to enforce such ordinances through civil or criminal remedies and actions; and 3) authorize a local government entity to enact any ordinance that is consistent with the Medical Marijuana Program, which is intended to implement the Compassionate Use Act (medical marijuana initiative).

Existing law, the Compassionate Use Act (CUA) of 1996 (Health & Saf. Code 11362.5), includes the following purposes:

To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where such use

is deemed appropriate and has been recommended by a physician for treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

To ensure that patients and primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution.

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 and Saf. Code ♦ 11362.5, subd. (b)(1)(A)-(C).)

Existing law , the Compassionate Use Act also provides:

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- ♦ The act shall not be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes. (Health & Saf. Code ♦ 11362.5, subd. (b)(2).)
- ♦ No physician in California shall be punished or denied any right or privilege for recommending medical marijuana to a patient. (Health & Saf. Code ♦ 11362.5, subd. (c).)
- ♦ Penal laws relating to the possession of marijuana and 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. (Health & Saf. Code ♦ 11362.5, subd. (d).)

Existing law, the Medical Marijuana Program (MMP), provides that qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under existing law. (Health & Saf. Code ♦ 11362.775.)

Existing law provides that nothing in the MMP shall prohibit a local governing body from adopting and enforcing laws consistent with the MMP. (Health & Saf. Code ♦ 11362.83.)

Existing law prohibits any medical marijuana cooperative, collective, dispensary, operator, establishment, or provider, as specified, from being located within 600 feet of a school. (Health & Saf. Code ♦ 11362.768.)

Existing law provides that the 600-foot restriction shall not apply to medical marijuana cooperatives or dispensaries, as specified, which are also licensed residential medical or elder care facilities. (Health & Saf. Code ♦ 11362.768, subd. (d).)

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Existing law provides that 660-foot restriction shall only apply to a medical marijuana facility, as specified, authorized by law to possess, cultivate or distribute medical marijuana that has a



storefront or mobile retail outlet that ordinarily requires a business license. (Health & Saf. Code [◆](#) 11362.768, subd. (e).) -

Existing law states that a local entity can only adopt local ordinances concerning the proximity of a medical marijuana facility to a school that impose more restrictive requirements than the 60 feet state standard. (Health & Saf. Code [◆](#) 11362.768, subd. (f).) -

Existing law does not preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana facility, as specified, as concerns proximity to a school. (Health & Saf. Code [◆](#) 11362.768, subd. (g).)

Existing provisions of the California Constitution authorize a city or county to make and enforce local police, sanitary and other ordinance and regulations not in conflict with state law. If a local ordinance is in conflict with general law, the local law is invalid. (Cal. Const. Art. XI, [◆](#) 7.) -

This bill allows cities or other local governing bodies to adopt and enforce local ordinances that regulate the location, operation or establishment of a medical marijuana cooperative or collective.

This bill provides that a local government entity may enforce a medical marijuana ordinance through civil or criminal remedies and actions.

This bill provides that a local government entity may enact other laws consistent with the Medical Marijuana Program (MMP), as specified.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

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For the last several years, severe overcrowding in California's prisons has been the focus of evolving and expensive litigation.

As these cases have progressed, prison conditions have continued to be assailed, and the scrutiny of the federal courts over California's prisons has intensified.

On June 30, 2005, in a class action lawsuit filed four years earlier, the United States District Court for the Northern District of California established a Receivership to take control of the delivery of medical services to all California state prisoners confined by the California Department of Corrections and Rehabilitation ("CDCR"). In December of 2006, plaintiffs in two federal lawsuits against CDCR sought a court-ordered limit on the prison population pursuant to the federal Prison Litigation Reform Act. On January 12, 2010, a three-judge federal panel issued an order requiring California to reduce its inmate population to 137.5 percent of design capacity -- a reduction at that time of roughly 40,000 inmates -- within two years. The court stayed implementation of its ruling pending the state's appeal to the U.S. Supreme Court.

On Monday, June 14, 2010, the U.S. Supreme Court agreed to hear the state's appeal of this order and, on Tuesday, November 30, 2010, the Court heard oral arguments. A decision is expected as early as this spring.

In response to the unresolved prison capacity crisis, in early 2007 the Senate Committee on Public Safety began holding legislative proposals which could further exacerbate prison overcrowding through new or expanded felony prosecutions.

This bill does not appear to aggravate the prison overcrowding crisis described above.

COMMENTS

1. Need for This Bill

According to the author:

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AB 1300 ensures that communities have the tools to protect themselves from delinquent medical marijuana dispensary operators who constitute a public nuisance or worse. By clarifying the scope of local authority, local governments can work with law enforcement to weed out bad dispensaries so that law abiding establishments may be left alone to help sick Californians in need.

A scan of headlines paints a controversial picture of dispensaries. Some have been caught selling marijuana to people not authorized to possess it, many intentionally operate in the shadows without any business licensure or under falsified documentation, and some have been the scene of violent robberies and murder. These abuses have prompted a range of reactions from communities across California. 42 cities and 9 counties have local ordinances regulating dispensaries, 103 cities and 15 counties have moratoriums, and 143 cities and 12 counties have bans in place. Adding to the controversy, members of the growing medical marijuana industry have filed numerous legal challenges against local ordinances, often arguing that state laws are the only standard with which dispensaries must comply. If this claim were substantiated, communities would be virtually powerless in deciding dispensary concentration, location, crime mitigation, business licensure,

taxation, and use permit conditions. This argument is fueled by the lack of conformity between Section 11362.768 and 11362.83 and the lack of explicit local control language. Subsequently, in the City of LA, the city attorney routinely faces arguments that the city is not allowed to adopt local ordinances or enforce them.

2. Compassionate Use Act of 1996 (Proposition 215) - Medical Marijuana

The Compassionate Use Act (CUA) was enacted in 1996. (Health &

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Saf. Code ♦ 11362.5.) The CUA established the right of patients to "obtain and use" marijuana to treat specified illnesses and any other illness for which marijuana provides relief. Additionally, the CUA specifically protects physicians who recommend the use of marijuana to patients for medical purposes and exempts qualified patients and their primary caregivers from California drug laws prohibiting possession and cultivation of marijuana.

The CUA is very general and arguably vague. As to implementation, the initiative simply encourages the state and federal governments to "implement a plan for safe and affordable distribution or marijuana ♦ to qualified patients]." It has been argued that very little has been done to implement the initiative. (McCabe, It's High Time: California Attempts to Clear the Smoke Surrounding the Compassionate Use Act, (2004) 35 McGeorge L. Rev. 545, 546.) Instead of a comprehensive implementation plan, numerous uncoordinated bills have been

introduced in the Legislature.

3. California Constitutional Provisions Limit the Ability of the Legislature to Amend the CUA

Legislative Power to Amend Initiatives Generally

The California Constitution states, "The Legislature ? may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." (Cal. Const., art. II, Sec. 10.) Therefore, unless the initiative expressly authorizes the Legislature to amend an initiative, only the voters may alter statutes created thereby.

Legislation Affecting the Compassionate Use Act - Legislature Cannot Limit the Amount of Medical Marijuana a Patient may Possess

The California Supreme Court recently ruled on the power of the Legislature to amend or affect the Compassionate Use Act (CUA). (People v. Kelly (2010) 47 Cal.4th 1008.) In Kelly, the court

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ruled that the legislative restriction on the number of plants a qualified medical marijuana patient may possess was unconstitutional as it interfered with the rights established by the CUA initiative. Although the Legislature may clarify or expand the rights established in the CUA, it may not enact legislation that interferes with those. (Id., at p. 1044.)

Health and Safety Code Section 11362.775<1> specifically

authorizes patients and primary caregivers to create and operate collectives and cooperatives and be free from criminal prosecution for possession, cultivation, sale or distribution and transportation of medical marijuana. (Health & Saf. Code 11362.775.) California appellate courts appear to indicate that this statute is valid under the CUA as advancing the intent of the initiative. (County of Butte v. Superior Court (2009) 175 Cal.App.4th 729, 732-733; People v. Urziceanu (2005) 132 Cal.App.4th 747, 785.)

A cooperative (co-op) is a creature of state law and subject to detailed regulations. (Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, Cal. A.G.. Aug. 2008, p. 8.) It appears that a co-op would ordinarily require a local business license. Unlike cooperatives, collectives are largely undefined. (Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, Cal. Attorney General. Aug. 2008, p. 8.) The application of local ordinances to collectives could be complicated. For example, the operators of a true collective claim that they are not engaged in commerce and thus need not obtain a business license.

#### 4. Local Land Use and Business Regulation

The case of Claremont v. Kruse (2009) 177 Cal.App.4th 1153 considered the validity of local land use and business regulation ordinances as applied to a medical marijuana

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<1> Section 11362.775 is not part of the CUA itself. Rather, it was enacted in SB 420 (Vasconcellos), Ch. 875, Stats. 2003, with the intent of implementing the CUA.

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dispensary.<2> Darrel Kruse, the defendant, opened his business without obtaining a permit and without directly challenging the denial of his permit application.

The court in Kruse explained the basis for local land use ordinances, including the deference typically granted such laws:

Absent a clear indication of preemptive intent from the Legislature, we presume that local regulation in an area over which the local government traditionally has exercised control is not preempted by state law. A local government's land use regulation is one such area. When local government regulates in an area over which it traditionally exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is not preempted by state statute. (Id., at p. 1169, citations and quotation marks omitted.)

The court then discussed the various circumstances under which state law preempts a local ordinance: 1) State law expressly preempts local ordinances. 2) State law fully occupies the field so as to establish an exclusive state concern. 3) State law partly covers a subject that establish a paramount state interest that permits no local interference. 4) State law partly covers a subject and the adverse effects of an ordinance on non-residents would outweigh the benefit of a local law.



The court found that the CUA and the MMP (Medical Marijuana Program enacted by SB 420 in 2003) did not expressly or impliedly preempt local zoning, land use and business licensing. In particular, the CUA did not mention land use law, but the CUA did expressly state that it did not supersede legislation

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<2> The opinion in Kruse described the operation as a dispensary, although the description of the business in Kruse's permit application was "the Medical Cannabis Caregivers Collective and Information Service. Medical Marijuana Plants Cuttings, Dried Flowers and Edibles." (Id., at p. 1159.) It is unclear whether or not Kruse operated as a true collective within the meaning of the MMP.

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prohibiting persons from endangering others. Local ordinances are based on the local government entities power to enact laws to protect the public safety and welfare. (Id., at pp. 1172-1175.)

Similarly, the MMP did not mention, let alone expressly prohibit, local regulation of medical marijuana dispensaries. The MMP grants qualified immunity to patients who cooperatively or collectively cultivate medical marijuana from prosecution for possession, sale and cultivation of marijuana<3>. Further, the MMP specifically authorizes local laws that are consistent with its terms. (Id., at pp. 1175-1176.)

The court in Kruse then found that neither the CUA nor the MMP impliedly preempted local land use and business regulation. The CUA and the MMP did not mention such matters, let alone occupy the field. Neither the CUA nor the MMP included comprehensive regulations indicating that land use and business regulation of

medical marijuana facilities were matters of statewide concern. Neither law partially covered land use or business regulation as a matter of paramount state concern that could not tolerate local action. Finally, local ordinances would not burden transient citizens. (Id., at pp. 1176-1177.)

5. Balance Between Preserving the Integrity of the CUA Medical Marijuana Initiative and the Power of Local Government to Regulate Businesses and Land Use

This bill authorizes local ordinances concerning medical marijuana cooperatives and collectives. It does not directly regulate medical marijuana facilities. Arguably, the bill simply restates long-standing law on the power of local entities to adopt ordinances that protect public safety, health and welfare.

The intersection of local ordinances and the CUA and MMP will likely produce legal collisions. Most of these contentious issues can only be decided in the courts. The CUA did not provide how medical marijuana can be distributed. The MMP also

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<3> (Health & Saf. Code ◆ 11362.775.)

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did not comprehensively address the issues about the distribution of medical marijuana. Many local government entities are becoming very aggressive in regulating medical marijuana facilities, particularly so-called dispensaries that are not mentioned in the CUA or the MMP. Any local ordinance adopted pursuant to this bill that overly restricts patients to

organize a collective or cooperative could be found to violate the CUA.

SHOULD STATE STATUTORY LAW SPECIFICALLY PROVIDE THAT A LOCAL GOVERNMENT ENTITY MAY ENACT AN ORDINANCE REGULATING THE LOCATION, OPERATION OR ESTABLISHMENT OF A MEDICAL MARIJUANA COLLECTIVE OR COOPERATIVE?

SHOULD A LOCAL ORDINANCE REGULATING THE LOCATION, OPERATION OR ESTABLISHMENT OF A MEDICAL MARIJUANA COLLECTIVE OR COOPERATIVE BE ENFORCEABLE THROUGH CIVIL AND CRIMINAL REMEDIES AND ACTIONS?

6. State Law Regulating Locating of Medical Marijuana Facilities Near Schools; Pending Senate Bill Would Prohibit Dispensaries Near Residences

School Proximity Restrictions

Health and Safety Code Section 11362.768 prohibits location of a storefront or mobile retail medical marijuana facility, as defined, from being located within 600 feet of a school. This section was enacted by AB 2650 (Buchanan), Ch. 603, Stats. 2010.

If enacted after the January 1, 2011 operative date, a local ordinance regulating the proximity of such businesses to schools is only valid if it is more restrictive than state standard of 600. However, any local ordinance enacted prior to January 1, 2011 is valid.

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Residential Proximity Restrictions and Regulations

SB 847 Correa - now pending in Assembly Local Government - would prohibit a storefront or mobile retail medical marijuana facility, as defined, from being located within 600-feet of a residential zone or residential use. The bill would allow a local government entity to enact an ordinance concerning establishment of medical marijuana establishments in relation to residences. The local ordinance may be either more restrictive or less restrictive than state law.

Coordinating this Bill with Existing Restrictions on Medical Marijuana Facilities

This bill grants general authority to a local government entity to enact ordinances on the location, operation or establishment.

How this bill would be interpreted in light of the current law on school proximity and the pending bill on residential proximity will depend on statutory construction or interpretation by the courts. A basic rule of statutory construction provides that where there is a specific law and a general law on the same subject, the specific law trumps. Thus, any local ordinance enacted under this bill could not contradict Health and Safety Code Section 11362.768, which sets very specific rules for state and local laws governing the proximity of medical marijuana facilities to school. If SB 847 (Correa) - restrictions on locations of medical marijuana facilities in proximity to residences - is enacted in its current form, there would be no conflict between SB 847 and this bill.

7. Los Angeles Ordinance Illustrates the Difficulty of Regulating Medical Marijuana

Terms of the Ordinance

The Los Angeles City Council adopted a medical marijuana dispensary ordinance in January, 2010. Two of the main reasons

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stated by proponents of the measure were that dispensaries were proliferating too rapidly and concentrating in certain areas. It appears that residents in some areas complained of excess traffic, congregation of patients near sites, litter and other problems.

The Los Angeles ordinance prohibits medical marijuana dispensaries from being located within 1,000 feet of sensitive locations, including schools, churches and parks. A provision in the ordinance allows police to obtain patient lists and doctor's recommendations from a dispensary without a warrant. It also appears that a violation of the Los Angeles ordinance is punishable by a jail term of up to six months and civil fines of up to \$2,500 per day.

Court Challenges

It appears that numerous challenges to the ordinance were filed in Los Angeles courts. An April 21, 2011, article in the Los Angeles Times noted:

The next round of the costly, drawn-out legal brawl over how to control medical marijuana dispensaries in Los Angeles has begun with two new lawsuits challenging the city's latest ordinance. The lawsuits, filed in Los Angeles County Superior Court, follow scores of other suits that stymied the city's fitful attempts to crack down on an unknown number of renegade dispensaries. The new ones could launch another series of judicial hearings and thwart the city's bid to enforce its ordinance.

Some of the oldest medical marijuana collectives in Los Angeles sued on April 13 to overturn the ordinance, which will choose the dispensaries to be allowed in a lottery, a process the lawsuit mocks as "a euphemism for a municipal game of 'Russian Roulette.'" The 21 dispensaries suing the city are among those the City Council let operate when it adopted a moratorium on new stores in 2007. The city's first ordinance would have allowed them to stay

AB 1300 (Blumenfield)  
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open if they complied with restrictions on locations. But a judge ruled that key aspects of the law were unconstitutional, and the City Council passed a second ordinance that relies on a random drawing to select 100 dispensaries.

ARE CHALLENGES TO THE LOS ANGELES ORDINANCE STILL BEING LITIGATED?

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## **EXHIBIT F**

Declaration of J. David Nick as to authenticity of Exhibit C and E.

**DECLARATION OF ATTORNEY J. DAVID NICK IN SUPPORT OF APPELLANTS/PETITIONERS' REQUEST TO TAKE JUDICIAL NOTICE.**

1. I am the attorney for appellants/petitioners.
2. I received from appellant Lanny Swerdlow exhibits A and B which are attached to this application. Exhibit A is the audio of the California Senate Public Safety Committee hearing on AB 1300.
3. Based on the letter from Senator Bill Emmerson which is attached to this application as exhibit B, I believe the audio disc submitted as exhibit A to this application to be a true copy of the official audio recording of the California State Senate.
3. After listening to the audio of the California Senate Public Safety Committee hearing on AB 1300, I requested that a professional court reporting service transcribe only the portions of the audio of said hearing addressing AB 1300 as it concerned many other bills not relevant to this litigation.
4. The portions of exhibit A that I requested transcription of is the entirety of all dialogue concerning AB 1300.
5. Exhibit E, is the "BILL ANALYSIS" for AB 1300 presented to the Senate's Public Safety Committee; I obtained it from the official web site of the California Senate; the web address is:

[http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_1251-1300/ab\\_1300\\_cfa\\_20110701\\_115748\\_sen\\_comm.html](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1251-1300/ab_1300_cfa_20110701_115748_sen_comm.html)

I DECLARE UNDER PENALTY OF PERJURY THAT THIS DECLARATION IS TRUE AN CORRECT AND WAS EXECUTED THIS 31ST DAY OF MAY 2012 AT SAN FRANCISCO.

  
\_\_\_\_\_  
J. DAVID NICK

**PROOF OF SERVICE**

I, the undersigned, declare as follows:

I am employed in the City and County of San Francisco, State of California; I am over the age of eighteen years and not a party to the within entitled action; my business address is 345 Franklin Street, San Francisco, CA 94102.

On this date, I caused to be served a true copy of the attached document(s):

**APPELLANTS'/PETITIONERS' MOTION FOR JUDICIAL NOTICE**

on parties named below, addressed as follows:

**JEFFREY V. DUNN, Best, Best & Krieger**, 5 Park Plaza, Suite 1500 Irvine, CA 92614

Timothy Coates, Gary D. Rowe; **GREINES, MARTIN, STEIN & RICHLAND**  
5900 Wilshire BLVD. 12th floor Los Angeles, CA 90036.

Gregory Priamos City Attorney, **NEIL OKAZAKI, DEPUTY RIVERSIDE CITY ATTORNEY**, James E. Brown; **OFFICE OF THE CITY OF ATTORNEY, CITY OF RIVERSIDE**  
3900 Main Street Riverside, CA 92522

**SUPERIOR COURT**  
Clerk of the Superior Court, Riverside County  
4050 Main Street  
Riverside, CA 92501.

**Court of Appeal, 4th Dist, Div 2**  
3389 12th Street  
Riverside, CA 92501.

Law Office Of **E. D. Lerman** (PERSONAL SERVICE)

(x) BY MAIL: I placed said documents in a sealed envelope, with the appropriate postage thereon fully prepaid for first class mail, for collection and mailing at San Francisco, California, following ordinary business practices.

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

Executed on May 31, 2012 at San Francisco, California.

  
\_\_\_\_\_  
**J. DAVID NICK**