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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA
UNLIMITED JURISDICTION

12 AMERICANS FOR SAFE ACCESS, STEPHEN)
13 DeANGELO, and ANDREW GANN,)

14 Plaintiffs,)

15 v.)

16 CITY OF CONCORD, a municipal corporation,)

17 Defendant.)
18)
19)
20)
21)

Civil Action No.

**VERIFIED COMPLAINT FOR
DECLARATORY RELIEF,
PRELIMINARY INJUNCTION,
AND PERMANENT INJUNCTION**

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I. INTRODUCTION

1. This is an action for declaratory and injunctive relief arising out of an unlawful ordinance passed by the City of Concord banning all medical marijuana collectives throughout the city. Plaintiff Steven DeAngelo (“DeAngelo”) is a qualified medical marijuana patient who took steps towards forming a medical marijuana collective in accordance with California Health and Safety Code sections 11362.5 and 11362.775. Together with plaintiff Americans for Safe Access,

1 plaintiff DeAngelo, on behalf of himself and other qualified medical marijuana patients who are
2 detrimentally affected by the Concord City Ordinance, including plaintiff Andrew Gann, seek an
3 order declaring Concord Municipal Code Ordinance No. 05-9 unlawful and enjoining its continued
4 implementation. The City of Concord's rigid policy of banning all medical marijuana collectives
5 deprives qualified medical marijuana patients of the medicine promised them by the Compassionate
6 Use Act (Cal. Health & Safety Code § 11362.5(d)), thereby causing them wholly unnecessary
7 suffering and pain. Ordinance No. 05-9 conflicts with the Compassionate Use Act (Cal. Health &
8 Safety Code §§ 11362.5(d) & 11352.775) and is, therefore, void.

11 2. In the general election of November 4, 1996, fifty-seven percent of the California
12 electorate approved a ballot measure enacting Proposition 215 ("Proposition 215" or "the
13 Compassionate Use Act" or "the CUA"). In so doing, the California voters declared that their intent
14 in passing this new law was "[t]o ensure that seriously ill Californians have the right to obtain and
15 use marijuana for medical purposes where that medical use is deemed appropriate and has been
16 recommended by a physician who has determined that the person's health would benefit from the use
17 of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis,
18 migraine, or any other illness for which marijuana provides relief." (Cal. Health & Safety Code §
19 11362.5(b)(1)(A)) Furthermore, the law sought "[t]o encourage the federal and state governments to
20 implement a plan to provide for the safe and affordable distribution of marijuana to all patients in
21 medical need of marijuana." (Cal. Health & Safety Code § 11362.5(b)(1)(C)).

24 3. To meet the voters' challenge, on September 10, 2003, the California Legislature
25 passed SB 420, also known as the "Medical Marijuana Program Act." (*People v. Urziceanu* (2005)
26 132 Cal.App.4th 747, 33 Cal.Rptr.2d 859, 881). This legislation provides that "Qualified patients,
27 persons with valid identification cards, and the designated primary caregivers of qualified patients
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1 and persons with identification cards, who associate within the State of California in order
2 collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis
3 of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366,
4 11366.5, or 11570.” (Cal. Health & Safety Code § 11362.775). The courts have construed this
5 legislation, which authorizes medical marijuana collectives and cooperatives, as the State’s initial
6 response to the voters’ request for a safe and affordable distribution system for marijuana. (*See*
7 *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 33 Cal.Rptr.2d 859, 881). Under these laws,
8 plaintiffs had a right to associate with other qualified patients and primary caregivers to furnish sick
9 and dying persons with the medicine they need.
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12 4. Notwithstanding plaintiff DeAngelo’s right to open a collective to furnish marijuana to
13 qualified patients and their primary caregivers, the City of Concord enacted Concord Ordinance No.
14 05-9 on September 27, 2005, which defines a “medical marijuana dispensary” as “ any facility or
15 location, whether fixed or mobile, where medical marijuana is made available to or distributed by or
16 distributed to one (1) or more of the following: a primary caregiver, a qualified patient, or a patient
17 with an identification card. All three of these terms are identified in strict accordance with California
18 Health and Safety Code Section 11362.5 et seq.” (Concord Municipal Ordinance No. 05-9, Section
19 1). The Ordinance, in turn, provides that “[a] medical marijuana dispensary as defined in Section 18-
20 330 is prohibited in all zones and no conditional use permit shall be issued therefore.” (Concord
21 Municipal Ordinance No. 05-9, Section 1). As a result of this policy, plaintiff DeAngelo has been
22 forbidden from opening and operating a medical marijuana collective, which causes medical
23 marijuana patients represented by Americans for Safe Access and plaintiff Gann to suffer and/or turn
24 to the black market to obtain the medicine they need.
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1 accidental gunshot wound to his head. Plaintiff Gann is, and at all times mentioned herein was, a
2 resident of the County of Contra Costa and the City of Concord and he pays taxes in Concord.

3 **B. Defendant**

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5 11. Defendant CITY OF CONCORD is, and at all times mentioned herein was, a
6 municipal corporation within the State of California.

7 **IV. FACTS APPLICABLE TO ALL CAUSES OF ACTION**

8 12. On November 4, 1996, California voters passed Proposition 215, which is codified as
9 “the Compassionate Use Act” at California Health & Safety Code § 11362.5, to “ensure that seriously
10 ill Californians have the right to obtain and use marijuana for medical purposes. . . .” (*See Cal.*
11 *Health & Safety Code § 11362.5(b)(1)*).

12
13 13. Seven years later, on September 10, 2003, the California Legislature enacted Senate
14 Bill 420, Stats. 2003 c.875 (“SB 420”), to provide that “Qualified patients, persons with valid
15 identification cards, and the designated primary caregivers of qualified patients and persons with
16 identification cards, who associate within the State of California in order collectively or cooperatively
17 to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to
18 state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.”
19 (Cal. Health & Safety Code § 11362.775) Under these laws, plaintiff Zielger had a right to associate
20 with other qualified patients and primary caregivers to furnish sick and dying persons with the
21 medicine they need. (*See People v. Urziceanu* (2005) 132 Cal.App.4th 747, 33 Cal.Rptr.2d 859,
22 881).

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25 14. Precisely as the voters of California and their Legislature intended, plaintiff DeAngelo
26 took steps to form a medical marijuana collective.
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1 15. He formed a not-for-profit corporation known as the “Patients Mutual Assistance
2 Collective Corporation” on July 31, 2005.

3 16. Through his agent, he applied for a conditional use permit with the Concord Planning
4 Department, but was told that no such permits were allowed in Concord.

5 17. Despite the legality of medical marijuana collectives under California law, the City
6 Counsel of the City of Concord enacted Ordinance No. 05-9 on September 27, 2005. This Ordinance
7 defines a “medical marijuana dispensary” as “ any facility or location, whether fixed or mobile,
8 where medical marijuana is made available to or distributed by or distributed to one (1) or more of
9 the following: a primary caregiver, a qualified patient, or a patient with an identification card. All
10 three of these terms are identified in strict accordance with California Health and Safety Code Section
11 11362.5 et seq.” (Concord Municipal Ordinance No. 05-9, Section 1). The Ordinance, in turn,
12 provides that “[a] medical marijuana dispensary as defined in Section 18-330 is prohibited in all
13 zones and no conditional use permit shall be issued therefore.” (Concord Municipal Ordinance No.
14 05-9, Section 1). As a result of this policy, plaintiff DeAngelo has been deterred from opening and
15 operating a medical marijuana collective and medical marijuana patients represented by Americans
16 for Safe Access and plaintiff Gann have had to suffer and/or turn to the black market to obtain the
17 medicine they need.
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22 18. Enacted on September 27, 2005, Ordinance No. 05-9 becomes effective on October
23 12, 2005, if not enjoined immediately. This presents a present, as well as a future danger to the rights
24 of seriously ill California citizens represented by plaintiffs.

25 19. As a direct and proximate result of the enactment of Ordinance No. 05-9, plaintiffs
26 have suffered, and will continue to suffer, the loss of their right to open and operate medical
27 marijuana collectives to furnish marijuana to qualified patients and primary caregivers. This, in turn,
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1 deprives the seriously ill qualified patients represented by ASA, including plaintiff Gann, of the
2 medicine promised them by the voters of California through the passage of Proposition 215. (*See*
3 *also* Cal. Health & Safety Code § 11352.775).
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5 20. An actual and substantial controversy exists between plaintiffs and defendant as to
6 their respective legal rights and duties. Plaintiffs contend that, as applied to them and to others
7 similarly situated, Concord Municipal Ordinance No. 05-9 is unlawful and unconstitutional.
8 Defendant contends the opposite.

9 21. If not enjoined by the Court, defendant will implement Concord Municipal Ordinance
10 No. 05-9 in derogation of the rights of plaintiffs, others similarly situated, and qualified medical
11 marijuana patients. Such implementation will impose irreparable injury on the plaintiffs and these
12 other persons.
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14 22. Plaintiffs have no plain, speedy, and adequate remedy at law.
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16 **V. CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

18 **Violation of California Constitution, Article 11, § 7 and Government Code § 37100**

19 23. Plaintiffs reallege and incorporate by reference paragraphs 1 through 22 of this
20 complaint as though fully set forth herein.
21

22 24. Article 11, Section 7 of the California Constitution and Government Code section
23 37100 prohibit the enactment of municipal laws that conflict with the general laws of the State.

24 25. Through the passage of the Compassionate Use Act, the California voters declared as
25 their purpose “[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for
26 medical purposes where that medical use is deemed appropriate and has been recommended by a
27 physician who has determined that the person’s health would benefit from the use of marijuana. . . .”
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1 (Cal. Health & Safety Code § 11362.5(b)(1)(A)) Furthermore, they sought out to ensure a safe and
2 effective distribution system, as enacted by the State. (See Cal. Health & Safety Code §
3 11362.5(b)(1)(C))
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5 26. To advance the will of the California voters, the Legislature enacted SB 420, which
6 established cooperatives and collectives as the recognized forms of medical marijuana cultivation and
7 distribution to those who are too sick or are otherwise unable to cultivate it for themselves. (See Cal.
8 Health & Safety Code § 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 33 Cal.Rptr.2d
9 859, 881).
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11 27. In passing these laws, the voters of California and their Legislature have defined
12 medical marijuana collectives and cooperatives as legal under state law and this is a matter of
13 pressing statewide concern. Because Concord Municipal Ordinance No. 05-9 conflicts these general
14 laws by curtailing the right of seriously ill Californians to obtain the medicine they need through the
15 distribution channels identified by the State, the general rule of California must prevail over the
16 Concord City Ordinance. (See *City of Fresno v. Pinedale County Water Dist.* (1986) 184 Cal.App.3d
17 840, 845; *City of Los Angeles v. State of California* (1982) 138 Cal.App.3d 526, 532.)
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19 **V. RELIEF SOUGHT**

20 WHEREFORE, plaintiffs, on behalf of themselves and others similarly situated, seek the
21 following relief:
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23 1. A declaration that Concord Municipal Ordinance No. 05-9 is unlawful and
24 unconstitutional;

25 2. A preliminary and permanent injunction enjoining defendant and its agents and
26 employees from enforcing, or threatening to enforce, Concord Municipal Ordinance No. 05-9;
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1 3. Costs and attorneys fees incurred in this action pursuant to California Code of Civil
2 Procedure § 1021.5, or other applicable authority; and

3 4. Such other and further relief as may be just and proper.
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7 DATED: October 6, 2005

8 JOSEPH D. ELFORD

9 Counsel for Plaintiffs
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1 **VERIFICATION**

2 I am the attorney for plaintiffs in this action. I declare under penalty of perjury under the laws
3 of the State of California that the foregoing is true and correct based upon my investigation and
4 interviews with plaintiffs. The individual named plaintiffs are unable to verify the Complaint
5 because they are absent from Alameda County, which is where I maintain my office for Americans
6 for Safe Access.
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8 Executed this ___ day of October in Oakland, California.

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11 _____
12 JOSEPH D. ELFORD
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of this action.

DATED: October 6, 2005

JOSEPH D. ELFORD

Counsel for Plaintiffs

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