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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. )  
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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.

18           18.     Enacted on September 27, 2005, Ordinance No. 05-9 becomes effective on October  
19 12, 2005, if not enjoined immediately. This presents a present, as well as a future danger to the rights  
20 of seriously ill California citizens represented by plaintiffs.

21           19.     As a direct and proximate result of the enactment of Ordinance No. 05-9, plaintiffs  
22 have suffered, and will continue to suffer, the loss of their right to open and operate medical  
23 marijuana collectives to furnish marijuana to qualified patients and primary caregivers. This, in turn,  
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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

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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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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial of this action.

DATED: October 6, 2005

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JOSEPH D. ELFORD

Counsel for Plaintiffs

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