

1 JOSEPH D. ELFORD (S.B. No. 189934)
2 Americans for Safe Access
3 1322 Webster Street, Suite 208
4 Oakland, CA 94621
5 Telephone: (415) 573-7842
6 Fax: (510) 251-2036

7 DAVID R. WILLIAMS (S.B. No. 176081)
8 803 Main Street
9 Susanville, CA 96130
10 Telephone: (530) 257-0333
11 Fax: (530) 257-2507

12 Counsel for Plaintiffs

13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF LASSEN

15 UNLIMITED JURISDICTION

16 AMERICANS FOR SAFE ACCESS, TIMOTHY)
17 ZIEGLER, and ROBIN RUST,)

18 Plaintiffs,)

19 v.)

20 CITY OF SUSANVILLE, a municipal corporation,)

21 Defendant.)
22)
23)
24)

Civil Action No.

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

25 **I. INTRODUCTION**

26 1. This is an action for declaratory and injunctive relief arising out of an unlawful
27 ordinance passed by the City of Susanville banning all medical marijuana collectives throughout the
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1 city. Plaintiff Timothy Ziegler (“Ziegler”) is a qualified medical marijuana patient who took steps
2 towards forming a medical marijuana collective in accordance with California Health and Safety
3 Code sections 11362.5 and 11362.775. Together with plaintiff Americans for Safe Access, plaintiff
4 Ziegler, on behalf of himself and other qualified medical marijuana patients who are detrimentally
5 affected by the Susanville City Ordinance, including plaintiff Robin Rust, seek an order declaring
6 Susanville Municipal Code Section 17.04.110 (Susanville City Ordinance No. 05-0919) unlawful and
7 enjoining its continued implementation. The City of Susanville’s rigid policy of banning all medical
8 marijuana collectives deprives qualified medical marijuana patients of the medicine promised them
9 by the Compassionate Use Act (Cal. Health & Safety Code § 11362.5(d)), thereby causing them
10 wholly unnecessary suffering and pain. Section 17.04.110 conflicts with the Compassionate Use Act
11 (Cal. Health & Safety Code §§ 11362.5(d) & 11352.775) and is, therefore, void.
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14 2. In the general election of November 4, 1996, fifty-seven percent of the California
15 electorate approved a ballot measure enacting Proposition 215 (“Proposition 215” or “the
16 Compassionate Use Act” or “the CUA”). In so doing, the California voters declared that their intent
17 in passing this new law was “[t]o ensure that seriously ill Californians have the right to obtain and
18 use marijuana for medical purposes where that medical use is deemed appropriate and has been
19 recommended by a physician who has determined that the person’s health would benefit from the use
20 of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis,
21 migraine, or any other illness for which marijuana provides relief.” (Cal. Health & Safety Code §
22 11362.5(b)(1)(A)) Furthermore, the law sought “[t]o encourage the federal and state governments to
23 implement a plan to provide for the safe and affordable distribution of marijuana to all patients in
24 medical need of marijuana.” (Cal. Health & Safety Code § 11362.5(b)(1)(C)).
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1 3. To meet the voters’ challenge, on September 10, 2003, the California Legislature
2 passed SB 420, also known as the “Medical Marijuana Program Act.” (*People v. Urziceanu* (2005)
3 132 Cal.App.4th 747, 33 Cal.Rptr.2d 859, 881). This legislation provides that “Qualified patients,
4 persons with valid identification cards, and the designated primary caregivers of qualified patients
5 and persons with identification cards, who associate within the State of California in order
6 collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis
7 of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366,
8 11366.5, or 11570.” (Cal. Health & Safety Code § 11362.775). The courts have construed this
9 legislation, which authorizes medical marijuana collectives and cooperatives, as the State’s initial
10 response to the voters’ request for a safe and affordable distribution system for marijuana. (*See*
11 *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 33 Cal.Rptr.2d 859, 881). Under these laws,
12 plaintiffs had a right to associate with other qualified patients and primary caregivers to furnish sick
13 and dying persons with the medicine they need.

14 4. Notwithstanding plaintiff Ziegler’s right to open a collective to furnish marijuana to
15 qualified patients and their primary caregivers, the City of Susanville enacted Susanville Municipal
16 Code Section 17.04.110 (Ordinance No. 05-0919), which defines a “medical marijuana dispensary”
17 as “any facility or location where medical marijuana is made available to and/or distributed by or to
18 three or more of the following: a primary caregiver, a qualified patient, or a person with an
19 identification card, in strict accordance with California Health and Safety Code Section 11362.5 et
20 seq.” (Susanville Municipal Code Section 17.04.110(A)). Subsection 17.04.110(B), in turn, provides
21 that a “‘Medical marijuana dispensary’ is a prohibited use in all zones. Furthermore, no conditional
22 use permit, or temporary permit or permit of any nature, shall be issued for such prohibited use.”
23 (Susanville Municipal Code Section 17.04.110(A)). As a result of this policy, plaintiff Ziegler has
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1 all times mentioned herein was, a resident of the County of Lassen. Plaintiff Ziegler also resides in
2 the City of Susanville and pays taxes there. Plaintiff Ziegler is an ASA member.

3 10. Plaintiff ROBIN RUST is, and at all times mentioned herein was, a qualified medical
4 marijuana patient who uses marijuana to treat symptoms associated with multiple sclerosis. Plaintiff
5 Rust is, and at all times mentioned herein was, a resident of the County of Lesson and the City of
6 Susanville and she pays taxes in Susanville. She is also an ASA member.

8 **B. Defendant**

9 11. Defendant CITY OF SUSANVILLE is, and at all times mentioned herein was, a
10 municipal corporation within the State of California.

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

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

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

3 14. Precisely as the voters of California and their Legislature intended, plaintiff Ziegler
4 took steps to form a medical marijuana collective.
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6 15. Since the Spring of 2005, plaintiff Ziegler has had ongoing discussions with the Police
7 Chief of Susanville, Chris Gallagher, about opening a medical marijuana collective dispensary, but he
8 deterred from doing so based on these discussions.

9 16. Also, on August 8, 2005, plaintiff Ziegler appeared at a meeting of the Susanville City
10 Counsel and stated the need for a medical marijuana collective in the community and he stated his
11 interest in opening such facility.
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13 17. Despite Ziegler's protestations, the City Counsel of the City of Susanville enacted
14 Ordinance No. 05-0919, which added Section 17.104.110 to the Susanville Municipal Code. That
15 section forbids medical marijuana dispensaries in the following manner. Section 2, subsection (A) of
16 Section 17.04.110 defines a "medical marijuana dispensary" as "any facility or location where
17 medical marijuana is made available to and/or distributed by or to three or more of the following: a
18 primary caregiver, a qualified patient, or a person with an identification card, in strict accordance
19 with California Health and Safety Code Section 11362.5 et seq." (Susanville Municipal Code
20 Section 17.04.110(A)). Subsection 17.04.110(B), in turn, provides that a "'Medical marijuana
21 dispensary' is a prohibited use in all zones. Furthermore, no conditional use permit, or temporary
22 permit or permit of any nature, shall be issued for such prohibited use." (Susanville Municipal Code
23 Section 17.04.110(A)). As a result of this policy, plaintiff Ziegler has been forbidden from opening
24 and operating a medical marijuana collective and medical marijuana patients represented by
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1 Americans for Safe Access and plaintiff Rust have had to suffer and/or turn to the black market to
2 obtain the medicine they need.

3 18. As a direct and proximate result of the enactment of Section 17.104.110, plaintiffs
4 have suffered, and will continue to suffer, the loss of their right to open and operate medical
5 marijuana collectives to furnish marijuana to qualified patients and primary caregivers. This, in turn,
6 deprives the seriously ill qualified patients represented by ASA, including plaintiff Rust, of the
7 medicine promised them by the voters of California through the passage of Proposition 215. (*See*
8 *also* Cal. Health & Safety Code § 11352.775).
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11 19. An actual and substantial controversy exists between plaintiffs and defendant as to
12 their respective legal rights and duties. Plaintiffs contend that, as applied to them and to others
13 similarly situated, Susanville Municipal Code Section 17.104.110 is unlawful and unconstitutional.
14 Defendant contends the opposite.

15 20. If not enjoined by the Court, defendant will continue to implement Susanville
16 Municipal Code Section 17.104.110 in derogation of the rights of plaintiffs, others similarly situated,
17 and qualified medical marijuana patients. Such implementation will impose irreparable injury on the
18 plaintiffs and these other persons.
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20 21. Plaintiffs have no plain, speedy, and adequate remedy at law.
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22 **V. CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**

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

25 22. Plaintiffs reallege and incorporate by reference paragraphs 1 through 21 of this
26 complaint as though fully set forth herein.
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1 23. Article 11, Section 7 of the California Constitution and Government Code section
2 37100 prohibit the enactment of municipal laws that conflict with the general laws of the State.

3 24. Through the passage of the Compassionate Use Act, the California voters declared as
4 their purpose “[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for
5 medical purposes where that medical use is deemed appropriate and has been recommended by a
6 physician who has determined that the person’s health would benefit from the use of marijuana. . . .”
7 (Cal. Health & Safety Code § 11362.5(b)(1)(A)) Furthermore, they sought out to ensure a safe and
8 effective distribution system, as enacted by the State. (See Cal. Health & Safety Code §
9 11362.5(b)(1)(C)).
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12 25. To advance the will of the California voters, the Legislature enacted SB 420, which
13 established cooperatives and collectives as the recognized forms of medical marijuana cultivation and
14 distribution to those who are too sick or are otherwise unable to cultivate it for themselves. (See Cal.
15 Health & Safety Code § 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 33 Cal.Rptr.2d
16 859, 881).
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18 26. In passing these laws, the voters of California and their Legislature have defined
19 medical marijuana collectives and cooperatives as legal under state law and this is a matter of
20 pressing statewide concern. Because Susanville Municipal Code Section 17.04.110 conflicts with
21 these general laws by curtailing the right of seriously ill Californians to obtain the medicine they need
22 through the distribution channels identified by the State, the general rule of California must prevail
23 over the Susanville City Ordinance. (See *City of Fresno v. Pinedale County Water Dist.* (1986) 184
24 Cal.App.3d 840, 845; *City of Los Angeles v. State of California* (1982) 138 Cal.App.3d 526, 532.)
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1 **V. RELIEF SOUGHT**

2 WHEREFORE, plaintiffs, on behalf of themselves and others similarly situated, seek the
3 following relief:

4 1. A declaration that Susanville Municipal Code Section 17.04.110 is unlawful and
5 unconstitutional;

6 2. A preliminary and permanent injunction enjoining defendant and its agents and
7 employees from enforcing, or threatening to enforce, Susanville Municipal Code Section 17.04.110;

8 3. Costs and attorneys fees incurred in this action pursuant to California Code of Civil
9 Procedure § 1021.5, or other applicable authority; and

10 4. Such other and further relief as may be just and proper.
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16 DATED: October 5, 2005

JOSEPH D. ELFORD

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18 DATED: October 6, 2005

DAVID R. WILLIAMS

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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1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby demand a jury trial of this action.

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5 DATED: October 5, 2005

6 JOSEPH D. ELFORD

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8 DATED: October 6, 2005

9 DAVID R. WILLIAMS

10 Counsel for Plaintiffs
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