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No. 70396-0-I

DIVISION ONE OF THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON

CANNABIS ACTION COALITION, ET AL.,

Appellants

v.

CITY OF KENT, ET AL.,

Respondents

BRIEF OF RESPONDENT CITY OF KENT

(In Response to Brief of Amicus Curiae
American Civil Liberties Union of Washington)

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I. INTRODUCTION

Alison Holcomb, Criminal Justice Director for the American Civil Liberties Union of Washington ("ACLU"), clearly and articulately identifies some of the main problems with medical cannabis collective gardens in her letter to the state Liquor Control Board ("LCB"), dated November 13, 2013. She refers to them bluntly as an "unregulated patchwork of commercial collective gardens," which "became the legal loophole through which entrepreneurs would be able to leverage collective gardens to cycle hundreds and even thousands of patients through storefronts transacting commercial sales (referred to as 'safe access points' rather than 'dispensaries')." Highlighting the fact that "no medical marijuana regulations whatsoever exist under Washington state law," she continues to nail home the point that a collective garden "was not intended to operate as a commercial entity," "[n]or would it be good policy to continue allowing collective gardens to engage in unregulated commercial activity." *Letter from Alison Holcomb to LCB*, (November 13, 2013) (Appendix 1). Yet here the ACLU stands, a scant few months later, arguing to this Court that one of the City's fundamental positions is flawed because the collective garden statute cannot possibly be at odds with any of the goals of the federal Controlled Substances Act ("CSA") or current

Department of Justice policies regarding the use or prosecutorial resources.

The ACLU mischaracterizes the context in which the City discusses issues related to federal preemption, unnecessarily brings in matters related to recreational marijuana under Initiative 502 ("I-502") without citing to any legal authority justifying their inclusion, ignores portions of federal guidance memoranda that are relevant to the case at hand, and at one point asks no less than twelve questions in a row without answering any one of them. Brief of ACLU ("BOACLU") at 7-8. Nevertheless, to the extent that the ACLU asks the question, "Does MUCA [Chapter 69.51A RCW] require conduct prohibited by the CSA?" its brief does illuminate one issue correctly.

In its several briefs, the City has attempted to encapsulate the myriad issues associated with the passage of the ESSSB 5073 and the resultant proliferation of marijuana dispensaries purporting to act under the guise of medical cannabis "collective gardens."[1] It is apparent, however, that this reply brief is necessary in order to provide clarification of the background role that the federal Controlled Substances Act plays in the question of the City's traditional zoning authority.

[1] ESSSB 5073 changed the title of Chapter 69.51A RCW from "Medical Marijuana" to "Medical Cannabis." The terms "marijuana" and "cannabis" are used interchangeably throughout this brief.

II. ASSIGNMENTS OF ERROR

ACLU's amicus brief contains the following erroneous statements and conclusions:

A. The City "invited" the Court to "decide" whether the federal CSA preempts Chapter 69.51A RCW.

B. There is merely a "semantic distinction" between whether state law allows the City to zone for marijuana-based land uses or whether it requires the City to incorporate land uses that unquestionably constitute federal crimes into the City's zoning code over the City's objection.

C. The City alleges a claim of action that would require the Court to make "significant constitutional findings about the scope and validity of state and federal law," and compel the Court to disrupt political negotiation regarding recreational marijuana.

D. The issue regarding federal preemption was never brought before the superior court.

III. ARGUMENT

A. The City has not asked this court to decide whether any portion of Chapter 69.51A RCW is preempted by federal law.

The primary error the ACLU commits in its brief is its contention that the City has asked the Court to make a ruling that provisions in state law related to medical cannabis collective gardens are preempted by the federal CSA. It is clear that this is a case about the extent of municipal

zoning authority, and yet the ACLU, in furtherance of its own political agenda, tries to greatly expand the context in which federal preemption was discussed by the City. The City has never argued, nor does it here, that mere participation in collective gardens in preempted because it involves conduct illegal under federal law, despite the ACLU's contention to the contrary. BOACLU at 9. Rather, because this case is about the validity of a local ordinance and potential conflict with state law, the City has presented the issue of federal preemption as dissuading the Court from determining that cities must allow for collective gardens.

The City does not presume to waste the Court's time in re-presenting legal arguments submitted in its earlier briefs, but a cursory recap will demonstrate where the ACLU's errors lie. Part of Appellants' argument is that the City's ordinance is preempted by state law. In the context of statutory interpretation, as applied to local ordinances, the City has previously noted that absent express preemption, where the issue is one of implicit preemption instead, the court "'will not interpret a statute to deprive a municipality of the power to legislate on a particular subject unless that is clearly the legislative intent.'" *HJS Dev. v. Pierce County*, 148 Wn. 2d 451, 481, 61 P.3d 1141 (2003) (*citing Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 49 P.3d 867, 874 (2002)). In addition, both *HJS Dev.* and this Court's more recent decision,

Pasado's Safe Haven v. State, 162 Wn. App. 746, 259 P.3d 280 (2011), stand for the proposition that review by this Court is guided by "the fundamental principle that if a case can be decided on nonconstitutional grounds, an appellate court should refrain from deciding constitutional issues." *Pasado's* at 752 (*citing Isla Verde*, 146 Wn.2d 740 at 752).

The City has further pointed out that where statutory interpretation involves potentially conflicting laws, our courts have said on multiple occasions that local ordinances enjoy a strong presumption of validity, and that ambiguities are to be resolved in favor of harmonization wherever possible. *See, e.g., State v. Kirwin,* 165 Wn.2d 818, 825-826, 203 P.3d 1044 (2009).

Appellants have argued that the City's zoning prohibition is in conflict with and preempted by state law. Appellants bear "a heavy burden" of proving the ordinance unconstitutional. *Lawson v. City of Pasco*, 144 Wn. App. 203, 209, 181 P.3d 896 (2008); *Brown v. Yakima*, 116 Wn.2d 556, 559, 807 P.2d 353 (1991) ; *Hous. Auth. v. City of Pasco*, 120 Wn. App. 839, 86 P.3d 1217 (2004).

RCW 69.51A.085 does not <u>require</u> (and never intended to require) collective gardens. At most, it was intended to permit them. Conversely, the City's zoning prohibition does not require any conduct that Chapter 69.51A RCW would have forbidden. Clearly, the two regulations can

coexist, as a person who refrains from establishing a collective garden in Kent is not violating state law, and is not violating the City's zoning prohibition.

Appellants have argued that uniformity in the area of medical cannabis land uses is "necessary to avoid infringement on RCW 69.51A's statutory and constitutional rights." Brief of Appellant Sarich, p. 13. Appellants have asked this Court to determine that the City must allow medical cannabis collective gardens; but to do so, the result would be a state law in conflict with, and therefore subject to preemption by, the federal CSA. Again, the City reiterates that this is a determination that this Court must not make in order to carry out the exhortation that this Court "refrain from deciding constitutional issues." *Pasado's* at 752.

While the production and processing of cannabis through participation in collective gardens arguably presents an obstacle to the purpose of the federal CSA, especially as the ACLU itself recognizes the way in which many of these "collectives" truly operate, there could be nothing more contrary to the purpose of the federal CSA than a decision by this Court that a city must allow the production and processing of cannabis within its borders. A determination by this Court that the City must permit these types of land use activities could not possibly be

squared with the objectives of the federal CSA, and would place state law in direct conflict with federal law.

According to the Washington Supreme Court: "Conflict preemption is found where it is impossible to comply with both state and federal law or where state law 'stands as an obstacle to the accomplishment of the full purposes and objectives of Congress'" *McKee v. AT&T Corp.*, 164 Wn.2d 372, 387, 191 P.3d 845 (2008) (*citing Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248, 104 S. Ct. 615, 78 L. Ed. 2d 443 (1984)). It is true, to some extent, that "[t]he obstruction strand of conflict preemption focuses on both the objective of the federal law and the method chosen by Congress to effectuate that objective, taking into account the law's text, application, history, and interpretation." *Id.* Indeed, the ACLU devotes much of its brief to try and postulate the many ways in which there might be "obstacle preemption" issues, but does so more often than not by simply asking unanswered questions rather than providing thoughtful analysis on these points. BOACLU at 8.

B. <u>There is more than a mere "semantic distinction" between whether state law allows the City to zone for marijuana-based land uses or whether it requires the City to incorporate land uses that unquestionably constitute federal crimes into the City's zoning code over the City's objection.</u>

The ACLU, in its brief, covers United States Supreme Court jurisprudence regarding federal obstacle preemption of state law at length, which the City will not regurgitate here.[2] The City does not dispute the contention that obstacle preemption requires inquiry into the purposes of the federal law and a close examination of the facts of the case; however, the ACLU's claim that there is "merely a semantic distinction" between state laws that all allow or decriminalize conduct and a state law that "compels local governments to 'allow' something" (BOACLU at 19) contains two basic flaws: first, it fails to demonstrate how general conflict preemption applies in this case; and second, it utterly disregards the fact that the city code would require affirmative conduct on the City's part if it were forced to allow collective gardens as permitted land uses.

1. Obstacle conflict is a species of conflict preemption.

As the ACLU itself notes, obstacle conflict preemption is but a subset of conflict preemption generally. BOACLU at 14. The Supreme Court more recently articulated part of this distinction in *Mutual Pharmaceutical Company, Inc. v. Bartlett*, 133 S. Ct. 2466, 186 L.Ed. 2d 607 (2013). Justice Breyer's dissent covers much of the same ground trod by the

[2] Such cases include *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 120 S. Ct. 2288 (2000); *Pliva, Inc. v. Mensing*, 131 S. Ct. 2567, 180 L.Ed. 2d 580, 79 (2011); *Wyeth v. Levine*, 555 U.S. 555, 583, 129 S. Ct. 1187, 173 L.Ed. 2d 51 (2009); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 83 S. Ct. 1210, 10 L. Ed.2d 248 (1963).

ACLU in its brief, but the more salient point is made by Justice Alito's majority opinion, in which he notes: "A holding of federal exclusion of state law is inescapable *and requires no inquiry into congressional design where compliance with both federal and state regulations is a physical impossibility* for one engaged in interstate commerce." *Id.* at 2473 (quoting *Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 83 S. Ct. 1210, 10 L. Ed.2d 248 (1963)* (emphasis added). In its briefs, the City indeed noted that one major purpose of the federal CSA, as set forth in 21 U.S.C. Sec. 801, was for there to be uniformity in the regulation of controlled substances across the nation, between the states, and within the states - a purpose that the Washington Supreme Court echoed in *Seeley v. State,* 132 Wn.2d 776, 790, 940 P.2d 604 (1997) - because "[l]ocal distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances." 21 U.S.C. Sec 801(4). An inquiry into other purposes is not relevant, however, when the Court considers the main contention of the ACLU:

> Moreover, even if the City's local zoning ban is struck down, the City would not be required to take any action prohibited by federal law. State law, even if imposed on the City, simply does not <u>require</u> any activity prohibited by the CSA.

BOACLU at 15.

2. The City's zoning code requires the adoption of permissive standards for new, or previously impermissible uses.

The ACLU self-identifies as having expertise in "constitutional and civil liberties"; "drug policy reform and criminal justice"; "support for the legalization and recreational use of marijuana for adults over the age of twenty-one;" and it "works to ensure that our criminal justice system comports with fundamental principles of fairness, justice, liberty, and equality." ACLU's Motion for Leave to File Amicus Curiae Brief at 2.

Unfortunately, this case implicates none of these areas of expertise, but rather is a simple matter of local zoning. As the City has established through its prior briefs, the question is not whether Chapter 69.51A RCW granted the City the authority to regulate and prohibit the establishment of collective gardens as a permitted land use within the city of Kent, but rather whether any portion of that statute restrained the inherent authority that the City possesses to do so.

The City's zoning ordinance, like those of many other Washington cities, is drafted in a permissive fashion, and no land uses are allowed unless they are described as a permitted, accessory or conditional use in one or more zoning districts. Section 15.09.065 of the Kent City Code provides as follows:

15.09.065 Interpretation of uses.

A. Land uses which are listed as principally permitted uses in the Land Use Tables shall be permitted subject to the review processes, standards, and regulations specified in Title 15. *If a use is not listed in the Land Use Tables, it shall be considered to be a prohibited use* unless the planning director determines it to be a permitted use following the process outlined below. If a proposed use is not specifically listed in the Land Use Tables, an applicant may request from the planning director an interpretation as to whether or not such use is a permitted use. In determining whether a proposed use closely resembles a use expressly authorized in the applicable zoning district(s), the planning director shall utilize the following criteria:

1. The use resembles or is of the same basic nature as a use expressly authorized in the applicable zoning district or districts in terms of the following:

a. The activities involved in or equipment or materials employed in the use;

b. The effects of the use on the surrounding area, such as traffic impacts, noise, dust, odors, vibrations, lighting and glare, and aesthetic appearance.

2. The use is consistent with the stated purpose of the applicable district or districts.

3. *The use is compatible with the applicable goals and policies of the Comprehensive Plan.*

(Emphasis added.)

The result of a ruling that the City must zone for collective gardens offers two possibilities: (1) the City would need to affirmatively adopt legislation listing collective gardens as a use permitted in one of its Land Use Tables; or (2) the city planning director would need to respond to a request for an administrative interpretation, in which the director would need to <u>determine</u> that a land use involving marijuana is compatible with

the goals and policies of the City's Comprehensive Plan. Under Chapter 36.70A RCW, the state Growth Management Act, one of the planning director's duties is to abide by WAC 365-195-725(1): "Comprehensive plans and development regulations adopted under the act are subject to the supremacy principle of Article VI, United States Constitution and of Article XI, Section 11, Washington state Constitution." This determination would place the planning director in an untenable position.

Furthermore, this would require the City to affirmatively make one or more zoning districts specifically available for growing and distributing marijuana.

21 U.S.C. Sec. 856 provides, in part:

> **§ 856. Maintaining drug-involved premises**
>
> (a) Except as authorized by this title, it shall be unlawful to—
>
> (1) *knowingly open*, lease, rent, use, or maintain any place, whether permanently or temporarily, *for the purpose of manufacturing, distributing, or using any controlled substance*;
>
> (2) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance. (Emphasis added.)

Whether analyzed under obstacle or direct conflict preemption theory, clearly a law <u>requiring</u> a landlord to rent to marijuana businesses would conflict with the federal CSA *ab initio*, whether or not a marijuana

business ever rented from a particular landlord in a particular city. What, then, is the practical distinction between a law that requires a city to provide for medical marijuana collective gardens in some zoning district, whether or not any marijuana business were to ever set up shop there? "Open," in its verb form, is not defined in Section 802 of the CSA or in Black's Law Dictionary; turning then to Webster's Third New International Dictionary (1961) (Appendix 2), the second definition of the verb "open" (after "to move from a shut position") is "to make available for . . . a particular function" or "to make accessible for a particular purpose." Neither the ACLU nor the City wishes to answer the question of the City's liability if it is forced to make a particular zoning district available for the purpose of manufacturing, storing, distributing, or using a controlled substance, but this possibility underscores the need to fully appreciate the ramifications if this Court determines that Chapter 69.51A RCW imposes such a positive obligation on the City.

3. The City urges the Court to rule on grounds other than federal preemption, and to follow existing precedent.

The ACLU's uses sleight-of-hand to state that the City "asks the Court to interpret the preemptive scope of the CSA" as it applies to the matter at hand. BOACLU at 9.

The City instead asks this Court to consider the possible, and future, preemptive consequences of determining that the City must zone for collective gardens. Furthermore, the irrelevance of the ACLU's inclusion of Tenth Amendment anti-commandeering principles is highlighted by the fact that the City asks nothing more than that this Court follow its own precedent – not federal policy.

In *McMillian v. King County*, 161 Wn. App. 581 (2011), this Court recently considered whether someone trespassing on a neighbor's property was barred from claiming legal nonconforming status for the existing use because the underlying trespass was an illegal act. The Court acknowledged that there is not unanimity among jurisdictions whether a legal nonconforming use must be in compliance with all applicable laws – not just those regulating land use – in order to become lawfully established. *McMillian* at 594-595. In deciding that proof of trespass would mean the underlying land use was therefore not lawfully established, this Court held that "the latter rule – that an illegality, even one arising from a violation of legislation other than land use laws, would render a use unlawful such that it could not be established as a valid nonconforming use – applies in our state." *Id.* at 595 (*citing First Pioneer Trading Co. v. Pierce County*, 146 Wn. App. 606 (2008), and distinguishing *Van Sant v. City of Everett*, 69 Wn. App. 641 (1993)). All

uses of marijuana remain a violation of the federal CSA, and thus no collective garden could ever claim to have lawfully established a legal nonconforming use related to marijuana under the rule illustrated by this Court in *McMillian*. It would be an absurdity to suggest that the City cannot prohibit a land use that this very Court has declared could never achieve legal nonconforming status, obviating the need to consider "anti-commandeering principles" altogether. BOACLU at 9.

C. **The scope of the City's preemption argument is narrow, and the ACLU offers no basis to substantiate its claim that the Court must not interfere with "broader political negotiation."**

While the City has argued in its several briefs that the Court should avoid the preemption issue for several reasons, any preemptive effects would be limited to only those portions of Chapter 69.51A RCW that pertain to collective gardens. The City has demonstrated why this state law does not preempt Ordinance 4036, but understands that this Court may reach a different conclusion. If that is indeed the Court's conclusion, however, the City has attempted to show how that would force the kind of direct conflict with the federal CSA in a way that would make preemption impossible to ignore. In this brief, as with its others, the City has explained the legal reasoning supporting this, but the City has never

suggested that this in any way implicates other portions of state law that may or may not pertain to the use of marijuana.

In contrast, the ACLU devotes more than three consecutive pages of its brief urging the Court to consider the implications of the "broader political negotiation currently unfolding between the federal government and several states" regarding marijuana laws, specifically I-502. BOACLU at 9-12. At no point during this long-winded exploration does the ACLU cite to any legal authority for the proposition that the Court cannot consider federal preemptive effects because voters of the State of Washington passed I-502 in November of 2012, months after the passage of the City's ordinance and the instigation of Appellants' lawsuit against the City. Without a legal basis for including these arguments, the City is concerned that the ACLU is attempting to use this as a platform for further advocacy of I-502 because the ACLU is a "strong supporter of I-502" (ACLU's Motion for Leave to File Amicus Curiae Brief at 2) and Alison Holcomb herself is routinely referred to as "the chief author of [I-502]."[3]

The Court should not be swayed by such strong-armed and poorly-backed arguments involving a completely separate statutory scheme that

[3] *See, e.g.,* Bob Young, "Pot-delivery service fills void for eager buyers," *Seattle Times*, Feb. 8, 2014 (http://seattletimes.com/html/localnews/2022868059_potdeliveryxml.html)

has no bearing on medical cannabis collective gardens and local zoning authority. Although the City believes these arguments to be largely useless to the matter at hand, to the extent that this Court has granted the ACLU leave to present them, the City wishes to clarify a significant omission in the ACLU's discussion of federal enforcement priorities. The ACLU makes further reference here to the Guidance Memorandum Regarding Marijuana Enforcement issued by James M. Cole, Deputy Attorney General, on August 29, 2013, as it does earlier in its brief. BOALCU at 7 and 11. What the ACLU fails to add is that in the Statement of Jenny A. Durkan, U.S. Attorney for the Western District of Washington on federal marijuana enforcement policy (Appendix 3), issued contemporaneously with the Cole Memorandum, Ms. Durkan states: "The continued operation and proliferation of *unregulated, for-profit entities outside of the state's regulatory and licensing scheme is not tenable and violates both state and federal law*." (Emphasis added.) It would appear that while the federal government is prepared to take a "wait and see" approach regarding the way in which the state implements its recreational marijuana program, the U.S. Attorney for this District sees no correlation between what the state and the LCB are attempting to accomplish regarding I-502, and actions taken to enforce laws against the "unregulated patchwork" of collective gardens for which "no medical

marijuana regulations whatsoever exist under state law." *See supra*, p. 1.

Whether I-502 succeeds or fails is irrelevant to the City's zoning ordinance prohibiting collective gardens, and it is disingenuous at best to suggest the two are related. The City sees no legal reason why this Court should concern itself with anything having to do with I-502, and indeed, the ACLU has provided none.

D. <u>The City briefed the issue of federal preemption for consideration by the superior court.</u>

The ACLU claims that the issue of federal preemption "was not decided or even discussed by the superior court." BOACLU at 1. The City questions the ACLU's facile and misleading dismissal on this point. True, the ruling of the superior court was not based on any issues of preemption, but the record clearly shows that the City briefed the matter. City's Motion for Summary Judgment ("CMFSJ") at 22-24. It should be emphasized, once again, that the issue of federal preemption was discussed in the context, as it remains in discussion here, solely for purpose of illustrating the City's contention that Ordinance 4036 should be interpreted in a manner that preserves its constitutionality, if at all possible. CMFSJ at 24.

IV. CONCLUSION

While the City takes issue with the way in which the ACLU attempts to cast its argument, the City agrees with the ACLU that this Court should avoid the specter of federal preemption at all costs, albeit for different reasons. This Court need not go down the rabbit hole of direct conflict, obstacle conflict, or any other type of preemption analysis, and indeed it is bound to avoid just that, where a decision can be reached on other grounds. Simply stated, nothing in state law prevents the City from prohibiting collective gardens through the exercise of its zoning authority, and a contrary ruling by this Court would be impermissible due to the created federal preemption of state law.

RESPECTFULLY SUBMITTED this 12th day of February, 2014.

CITY OF KENT

By: _____
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DECLARATION OF SERVICE

I, Kim Komoto, declare as follows:

I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, competent to be a witness herein, and have personal knowledge of the facts stated below.

On February 12, 2014, I caused to be filed the foregoing City of Kent's Response to Brief of Amicus Curiae American Civil Liberties Union of Washington, with the Clerk of the Court via Legal Messenger and Regular U.S. Mail. On this same date, and in the manner indicated below, I caused the City's Response Brief and this appended Declaration of Service to be served upon:

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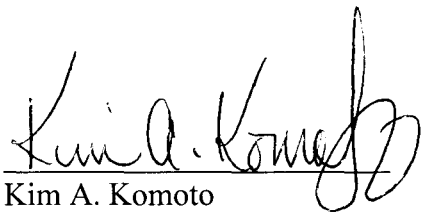
[X] Regular U.S. Mail

DATED at Kent, Washington on this 12th day of February, 2014.



Kim A. Komoto
Legal Analyst

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Appendix 1

ALISON HOLCOMB
CRIMINAL JUSTICE DIRECTOR

November 13, 2013

Washington State Liquor Control Board
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JEAN ROBINSON
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

Dear Board Members,

Washington has been a pioneer of rational marijuana policy. It was among the first states to provide protection from criminal penalties to medical marijuana patients, and now it is leading the way in establishing a new approach that replaces counterproductive prohibition with a comprehensive system of responsible regulation of all marijuana production and distribution.

The ACLU-WA is submitting the following comments in relation to the Liquor Control Board's task of working with the Department of Health and the Department of Revenue to develop recommendations for the legislature regarding the interaction of medical marijuana regulations and the provisions of Initiative Measure No. 502 (as provided for in Section 141 of Third Engrossed Substitute Senate Bill 5034, the 2013-15 state operating budget).

As Washington law currently recognizes, marijuana provides invaluable medicinal assistance in alleviating the suffering from a range of medical conditions. In crafting policies for use of marijuana for medicinal purposes under Initiative 502 (I-502), the emphasis should be on accommodating needs of patients. We believe those needs can largely be accommodated within the framework of I-502.

The Board's recommendations to the legislature should focus on ensuring that patients retain rights currently granted by the medical marijuana law that the new regulatory system does not include, especially:

- the right to grow one's own medical supply; and
- the right to defend oneself against charges of possessing more marijuana than what most patients need to have.

Retain Personal Cultivation

The ACLU-WA strongly opposes elimination of patients' right to produce their own cannabis, a right they have enjoyed since the passage of Initiative 692 in

1998. And even before adoption of Washington's medical marijuana law, patients could avail themselves of the common law medical necessity defense if charged with marijuana manufacturing, a right recently reaffirmed by the Washington State Supreme Court.[1]

The availability of I-502 retail stores will accommodate the needs of most patients. However, due to federal obstruction of scientific research into the potential therapeutic uses of the cannabis plant, some patients have been forced to rely on trial and error to identify, and then reproduce, the specific strains of plants that possess the cannabinoid profiles most helpful for providing relief for their particular conditions. So, the option of personal cultivation needs to be retained. Moreover, the right to grow their own gardens ensures access to cannabis should a patient's city or county refuse to allow a state-licensed store within its boundaries and force protracted litigation. It is unnecessary, and would be unfair and harmful, to take away patients' right to produce their own cannabis when they have developed a strain of marijuana specially tailored to their personal medical needs.

Affirmative Defense

The right to defend oneself against charges of possessing more marijuana than what most patients need to have is an essential protection for fairness. The affirmative defense has been a core protection of Washington's medical marijuana law since its inception. And when the state Department of Health was tasked with developing a definition of a "sixty-day supply" of medical marijuana, the legislature made clear that the definition would be presumptive only; the right to prove need of a greater amount was reserved to the patients.

An affirmative defense is not a blank check to abuse the law. Patients who exceed presumptive limits can be charged and prosecuted if they are violating the law.

Medical Marijuana Endorsement?

The rules adopted by the board to implement Initiative 502 (I-502) provide at least the same level of regulatory oversight as other states' medical marijuana laws, if not more. Patients who choose to purchase, rather than produce, their medicine will have greater assurance of quality and safety than is available to them under the current unregulated patchwork of commercial collective gardens. Given these conditions, it makes little sense to create a parallel system of production and distribution and incur duplicative administrative and enforcement expenses. Nor would it be good policy to continue allowing collective gardens to engage in unregulated commercial activity.

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[1] *State v. Kurtz*, ___ Wn.2d ___, 309 P.3d 472 (2013).

The idea of a special "medical marijuana endorsement" for stores should be considered cautiously and carefully. If the new I-502 regulations exceed current standards for products sold to patients, it seems inadvisable to create additional requirements. If marijuana of high quality is made available, retailers may market it as such in their stores.

If, on the other hand, the state decides that medical marijuana products should be subject to higher quality and safety standards than those offered for general adult use, then the endorsement – or certification – should be for the product rather than the retail outlet.

History of Washington's Medical Use of Cannabis Act

We also would like to provide some necessary historical background on marijuana law in Washington state.

The Washington State Medical Use of Marijuana Act (Chapter 69.51A RCW) was adopted in 1998 via Initiative 692, passed with 59-41 percent voter approval. The measure identified three categories of individuals to receive protection from existing laws criminalizing the possession and use of marijuana: qualifying patients, primary caregivers, and physicians.[2] A "primary caregiver" was defined as a person who:

(a) Is eighteen years of age or older;
(b) Is responsible for the housing, health, or care of the patient;
(c) Has been designated in writing by a patient to perform the duties of primary caregiver under this chapter.[3]

Initiative 692 further required a primary caregiver to possess "no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty day supply," and to serve as a primary caregiver "to only one patient at any one time."[4]

Amendments to the Medical Use of Marijuana Act were made in 2007 that renamed primary caregivers "designated providers" and removed the requirement that they be "responsible for the housing, health, or care of the patient." The requirement that designated providers serve "only one patient at any one time" remained in place.

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[2] The full text of Initiative 692 is available online at http://www.sos.wa.gov/elections/initiatives/text/i692.pdf.
[3] Initiative 692, sec. 6(2), codified at former RCW 69.51A.010(2).
[4] Initiative 692, sec. 5(4)(b) and (e), codified at former RCW 69.51A.040(4)(b) and (e).

Two other substantive changes made required the state Department of Health, by July 1, 2008, to define "the quantity of marijuana that could reasonably be presumed to be a sixty-day supply for qualifying patients," and to:

> gather information from medical and scientific literature, consulting with experts and the public, and reviewing the best practices of other states regarding access to an adequate, safe, consistent, and secure source, including alternative distribution systems, of medical marijuana for qualifying patients.[5]

Eight years of experience with the medical marijuana law had established that "sixty-day supply" was too vague a standard to allow law enforcement officers to quickly determine whether a patient or provider was in compliance and thereby avoid unnecessarily intrusive investigations. It was also clear that the only-one-patient-per-provider system was impracticable; growing marijuana requires months before a first harvest can be made, and many patients need access to cannabis immediately after their diagnosis.

In 2011, the legislature passed a bill[6] that would have created a tightly regulated system of state-licensed producers and dispensaries that would finally provide patients with "access to an adequate, safe, consistent, and secure source" of medical marijuana that they would not have to grow themselves. Unfortunately, Gov. Chris Gregoire vetoed all of the provisions that would have established that system. Accordingly, no medical marijuana regulations whatsoever exist under Washington state law.[7]

Collective Gardens

One new provision survived Gov. Gregoire's veto: the "collective garden." The collective garden was intended to be an alternative source of cannabis for patients who had no reasonable access to a licensed dispensary or simply preferred to participate directly in the production of their medicine. It was not intended to operate as a commercial entity:

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[5] ESSB 6032 (2007), sec. 8(3), codified at former RCW 69.51A.080 (repealed by E2SSB 5073 in 2011).

[6] Engrossed Second Substitute Senate Bill 5073 (the legislation also changed the name of the law from "the Washington state medical use of *marijuana* act" to "the Washington state medical use of *cannabis* act."

[7] Pursuant to the mandate of ESSB 6032, the state Department of Health adopted a rule in 2008 providing a presumptive definition of a "sixty-day supply"– fifteen plants and twenty-four ounces of useable marijuana. WAC 246-75-010. DOH repealed this rule after the legislature codified the definition in E2SSB 5073. WSR 12-05-076 (2/16/12).

(1) Qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to the following conditions:

(a) No more than ten qualifying patients may participate in a single collective garden at any time;

(b) A collective garden may contain no more than fifteen plants per patient up to a total of forty-five plants;

(c) A collective garden may contain no more than twenty-four ounces of useable cannabis per patient up to a total of seventy-two ounces of useable cannabis;

(d) A copy of each qualifying patient's valid documentation or proof of registration with the registry established in *section 901 of this act, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden; and

(e) No useable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden.

(2) For purposes of this section, the creation of a "collective garden" means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.

(3) A person who knowingly violates a provision of subsection (1) of this section is not entitled to the protections of this chapter.[8]

That the collective garden was intended to complement, not replace, the commercial dispensaries that had been included in E2SSB 5073 is supported by the fact that just eleven days after the veto, the prime sponsor of the legislation, Sen. Jeanne Kohl-Welles, introduced Senate Bill 5955. SB 5955 would have created "nonprofit patient cooperatives" that would have been allowed to sell cannabis to members, and also would have clarified that, on the other hand, contributions to a collective garden by members of that garden could not be "solely monetary."[9]

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[8] E2SSB 5073, sec. 403, codified at RCW 69.51A.085 (the registry referenced in subparagraph (1)(d) was vetoed).

[9] SB 5955, sec. 6(1)(k) and Sec. 5(1)(c).

Only One Patient at Any One Time

On December 11, 2012, the language that had proven itself unworkable as a means of providing patients "access to an adequate, safe, consistent, and secure source" of cannabis became the legal loophole through which entrepreneurs would be able to leverage collective gardens to cycle hundreds and even thousands of patients through storefronts transacting commercial sales (referred to as "safe access points" rather than "dispensaries"). That was the day the Washington State Court of Appeals, Division III, reversed the conviction of Scott Shupe, who had operated the Change dispensary in Spokane.

In the years leading up to the *Shupe* decision, a few risk-tolerant individuals opened dispensaries under the theory that "only one patient at any one time" simply meant that the paperwork designating the provider to serve a particular patient had to be shredded between each transaction, and a new document executed by the next customer. In other words, the person behind the counter could serve as a designated provider to Patient A at 8:00, Patient B at 8:15, and so on, shredding each patient's designating paperwork between each sale.

Mr. Shupe's jury rejected this argument and convicted him on March 17, 2011, while the legislature was considering Senate Bill 5073. Nevertheless, E2SSB 5073 clarified the phrase "only one patient at any one time" by requiring *designated providers* to wait fifteen days after ending one care relationship before taking on a new patient.[10]

However, the new *collective garden* provision in E2SSB 5073 contained no such temporal restriction. RCW 69.51A.085(1)(a) simply states, "No more than ten qualifying patients may participate in a single collective garden *at any time*" (emphasis supplied). On December 11, 2012, the Court of Appeals announced that "the proper interpretation of 'to only one patient at any one time' is an interpretation that allows the greatest number of qualified patients to receive the medical marijuana treatment that they need. In other words, 'only one patient at any one time' means *one transaction after another so that each patient gets individual care.*" *State v. Shupe*, 172 Wn. App. 341, 289 P.3d 741, 748 (2012) (emphasis supplied). Therefore, the identities of the ten members of a collective garden may change as soon as paperwork can be shredded and replaced, and one patient leaves the counter to make room for another.

Regulation of Commercial Transactions

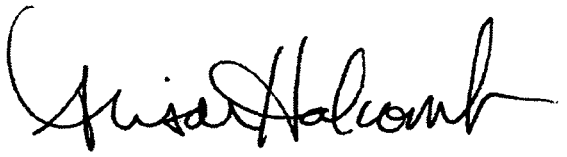
Despite important legislative and agency advancements from 2007 through 2010, and a valiant effort by legislators and agency leadership in 2011, Washington's medical marijuana law was not allowed to evolve into a marketplace where

[10] E2SSB 5073, sec. 401(5), codified at RCW 69.51A.040(5).

patients with terminal and debilitating medical conditions had "access to an adequate, safe, consistent, and secure source" of cannabis that had been subject to regulatory oversight and thereby provided some assurance that quality and safety standards were being met. This is unfortunate, because regulatory oversight of commercial transactions is especially important for products intended for use by patients with terminal and debilitating medical conditions who may have compromised immune systems.

We thank the Liquor Control Board and agency staff for the tremendous work that has gone into development of rules to implement Initiative 502. You have been thorough, inclusive, and transparent. Your team has delivered admirable results that will provide a solid foundation for the launch of an unprecedented and historic shift in marijuana policy.

Sincerely,



Alison Holcomb
Criminal Justice Director

Appendix 2

opal·iza·tion \,ōpələ'zāshən, -,lī'z-\ *n* -s : the process of opalizing

opal·ize \'ōpə,līz\ *vt* -ED/-ING/-S **1** : to replace with or convert into opal ⟨*opalized* trunks of trees, most of them of prehistoric species —*Nat'l Geographic*⟩ **2** : to make opalescent ⟨~ glass⟩

opal lamp *n* : an incandescent electric lamp with a bulb of opal glass

opal matrix *n* : a matrix of opal

opal·oid \'ōpə,lȯid\ *adj* [*opal* + *-oid*] : milky and translucent : OPALINE

[1]**opaque** \(')ō'pāk\ *adj, sometimes* -ER/-EST [alter. (influenced by F *opaque*) of earlier *opake*, fr. L *opacus* shaded, dark, perh. fr. *op-, ob* to, before — more at EPI-] **1** *archaic* : lacking illumination **2** : neither reflecting nor emitting light — not in current technical use **3 a** : impervious to the rays of visible light : not transparent or translucent ⟨his eyes were light, large, and bright, but it was that kind of brightness which belongs to an ~, and not to a transparent body —Anthony Trollope⟩ **b** : impervious to forms of radiant energy other than visible light (as infrared radiation or radio waves) ⟨organic compounds containing iodine or bromine are also ~ to roentgen rays —C.H.Thienes⟩ **4 a** : hard to understand, solve, or explain : not simple, clear, or lucid ⟨how ~ and incredible the past seems to us —L.P.Smith⟩ **b** : impervious to reason : STUPID, DULL, DENSE ⟨too ~ to recognize the insult⟩ **syn** see DARK

[2]**opaque** \"\ *n* -s : something that is opaque : an opaque medium or space: as **a** : an opaque paint or other preparation for blocking out portions of a photographic negative or print **b** : an opaque photographic print — contrasted with *transparency*

[3]**opaque** \"\ *vt* -ED/-ING/-S **1** : to make opaque **2** : to apply opaque to (as parts of a photographic negative or positive)

opaque·ly *adv* : in an opaque manner

opaque·ness \ō'pākn̩əs\ *n* -ES : the quality or state of being opaque

opaque projector *n* : a projector for projection by reflected light of an image of an opaque object or of a picture or other graphic matter on an opaque support

opaqu·er \ō'pākə(r)\ *n* -S : a worker who applies photographic opaque

opa·ta \ō'pädə\ *n, pl* **opata** *or* **opatas** *usu cap* [Pima, lit., hostile people] **1 a** : a Taracahitian people or group of peoples of the northeastern part of the state of Sonora, Mexico **b** : a member of such people or group of peoples **2** : the language of the Opata people

op cit *abbr* opere citato; opus citatum

[1]**ope** \'ōp\ *adj* [ME, alter. of [1]*open*] : OPEN

[2]**ope** \"\ *vb* -ED/-ING/-S [ME *open*, alter. of *openen* to open] : OPEN

[3]**ope** \"\ *n* -S [[1]*ope*] **1** *archaic* **a** : APERTURE, OPENING **b** : OPPORTUNITY **2** *dial chiefly Eng* : a narrow covered passage between houses

-ope \,ōp\ *n comb form* -S [F, fr. LL *-op-, -ops* having (such) eyes, fr. Gk *ōp-, ōps* eye, face — more at EYE] : one having eyes with a (specified) defect ⟨hypermetr*ope*⟩

opeg·ra·pha \ō'pegrəfə\ *n, cap* [NL, fr. Gk *opē* hole, opening (akin to Gk *ōp-, ōps*) + *graphē* writing, fr. *graphein* to write — more at CARVE] : a genus of crustaceous lichens occurring chiefly on bark and forming markings like writing or hieroglyphics

opei·do·scope \ō'pīdə,skōp\ *n* [Gk *opa* (acc.) voice + *eidos* form + E *-scope* — more at VOICE, IDOL] : an instrument consisting essentially of a tube across one end of which is stretched a thin flexible membrane bearing a small mirror and used for exhibiting upon a screen by rays reflected from the mirror vibratory motions caused by sounds

ope·let \'ōplət\ *n* -S [[1]*ope* + *-let*] : a bright-colored European actinian (*Anemonia sulcata*) with permanently expanded tentacles

ope·lu \'ōpə,lü\ *n* -S [Hawaiian '*ōpelu*] **1** *Hawaii* : JAPANESE MACKEREL **2** *Hawaii* : a common Pacific mackerel scad (*Decapterus sanctae-helenae*) much used as bait

[1]**open** \'ōpən, *esp before consonants* -p°m\ *adj* **opener** \-p(ə)nə(r)\ **openest** \-p(ə)nəst\ [ME, fr. OE; akin to OHG *offan* open, ON *opinn*; all fr. a prehistoric NGmc-WGmc past part. of a verb derived from the root of OE *ūp* up] **1** : so arranged or governed as to permit ingress, egress, or passage: as **a** : having no enclosing or confining barrier : free from fences, boundaries, or other restrictive margins ⟨an ~ village⟩ ⟨the ~ moor⟩ **b (1)** : adjusted in a position that permits passage : not shut or fast ⟨an ~ door⟩ ⟨these ~ gates⟩ **(2)** : having a movable barrier so adjusted ⟨the house is ~⟩ **c (1)** : not stopped by a finger ⟨the four ~ strings of a violin⟩ **(2)** : unstopped by the hand or by a mute ⟨~ horn⟩ **(3)** : produced by an open string or on a wind instrument by the lip without the use of slides, valves, or keys ⟨~ tone or note⟩ **(4)** : having clarity and resonance unimpaired by undue tension or constriction of the throat ⟨an ~ vocal tone⟩ **2 a** : completely free from concealment : exposed to general or particular perception or knowledge ⟨now lay ~ all your plans⟩ ⟨an ~ ballot⟩ ⟨~ total war⟩ **b** : free from reserve or pretense : natural, forthright, and free : not concealing or intended to conceal one's thoughts or actions ⟨very ~ about his plans⟩ ⟨~ and uninhibited in speech⟩ ⟨a very ~ manner⟩ **3 a** : having no roof, lid, or other covering ⟨an ~ boat⟩ **b** : having no protective or concealing cover : BARE, NAKED ⟨~ wiring⟩ ⟨laying the arm ~ to the bone⟩ **c (1)** *obs, of the face* : UNCOVERED, UNABASHED **(2)** : not covered with wool or enshrouding hair ⟨a ewe with an ~ face⟩ **d** : lacking some immaterial protection : LIABLE, SUBJECT ⟨~ to infection⟩ ⟨~ to challenge⟩ **e (1)** : not covered, enclosed, or scabbed over ⟨an ~ lesion⟩ ⟨an ~ running ulcer⟩ **(2)** : not involving or encouraging a covering (as by bandages or overgrowth of tissue) or enclosure ⟨~ treatment of burns⟩ **(3)** : shedding the infective agent to the exterior ⟨~ tuberculosis⟩ **f (1)** : not completely enclosed by defining lines ⟨an ~ drawing⟩ **(2)** : not defined by a figure or outline — used in the phrase *open color* **g (1)** : lacking covers or parts that restrict ventilation : not enclosed ⟨an ~ motor⟩ **(2)** : FREE 13e **h** : using a plain language text in conjunction with code or cipher: as **(1)** : using a concealment cipher **(2)** : using a jargon code **4 a** : requiring no special status, identification, or permit for entry or participation : generally available or known ⟨this house is ~ to all that need help⟩ ⟨an ~ Communion service⟩ ⟨an ~ secret⟩ **b** : not restricted to a particular group or category of participants ⟨~ to the public⟩ ⟨~ bowling⟩ **c** : enterable by both amateur and professional contestants ⟨an ~ golf tournament⟩ **d** : enterable by competitors of different classes ⟨~ to dogs of all breeds⟩ **5** : fit to be traveled over or through : presenting no serious obstacle to passage or view: as **a** : free from hampering obstructions ⟨an ~ stretch of road⟩ **b** : free from woods, buildings, or large rocks ⟨an ~ field⟩ ⟨~ country⟩ **c** : presenting no surface impediment (as ice) or underwater hazard (as shoals) to the passage of a boat **d (1)** : unobstructed by congestion ⟨~ sinuses⟩ **(2)** : not constipated ⟨~ bowels⟩ **e (1)** : relatively free from snow and cold ⟨~ winter⟩ **(2)** : not foggy or misty ⟨as the sun warmed the air patches of ~ water began to appear⟩ **(3)** : not frozen solid ⟨an ~ harbor⟩ **6 a** *obs* : lying or sailing in full view **b** : having a visible opening between ⟨steer so as to keep the two spires ~⟩ **7 a** : spread out : UNFOLDED : having the parts or surfaces laid back in an expanded position : not drawn together, folded, or contracted ⟨an ~ letter⟩ ⟨left the book ~⟩ ⟨an ~ rose⟩ **b** : removed from a carcass by splitting down the mid-ventral line and along the inner surfaces of each limb and cured and dressed flat ⟨an ~ hide⟩ **8 a** *obs* : uttered with the mouth open **b (1)** *of a vowel* : LOW 1a (5) **(2)** *of one of two vowels constituting a pair because similar in articulation or orthography or in both* : formed with the tongue in a lower position (Italian has stances : not finally closed or determined ⟨considered it an ~ question⟩ **c** : kept available for future custom ⟨an ~ pattern⟩ ⟨~ stocks⟩ **d** : remaining available for use or filling until canceled ⟨an ~ order for four more⟩ : OPERATIVE : not terminated or liquidated **e** : legally available for hunting, fishing, and similar sports ⟨an ~ season on deer⟩ ⟨an ~ brook⟩ **f** : unoccupied and undefended by military forces and divested of any military installation and when so proclaimed and acknowledged immune under international law from enemy bombardment ⟨an ~ city⟩ **10** : characterized by ready accessibility and usu. cooperative attitude: as **a** : generous in giving **b** : willing to hear and consider or to accept and deal with : RESPONSIVE ⟨~ to suggestion⟩ ⟨~ to an offer⟩ **c** : permitting the registration of a high-grade animal conforming to breed type as well as of an animal having both sire and dam registered ⟨an ~ studbook⟩ **d** : accessible to the influx of new factors (as new members and ideas or foreign goods) ⟨an ~ class system⟩ ⟨an ~ market⟩ **e** : tolerant of internal change (as by social mobility, reforms, and the development of new ideas, values, and customs) and permissive of diversity in social, religious, and political institutions ⟨an ~ society⟩ **11** : having openings, interruptions, interstices, or spaces ⟨~ banks⟩ ⟨*open*-grained lumber⟩: as **a** : light, porous, and friable so as to be easily tilled and receptive to water infiltration ⟨~ soil⟩ **b** : sparsely distributed : SCATTERED ⟨~ population⟩ **c (1)** : having relatively wide spacing between words or lines ⟨~ type⟩ ⟨~ printed matter⟩ **(2)** : having each leaf separate and distinct from the others after the bolts are opened or trimmed off ⟨the ~ signatures of a book⟩ **d** : having the warp threads of a shed always divided into two sections and never coming together as one section **e** : having cambium between the xylem and phloem portions — used of a vascular bundle **f (1)** : widely apart — used of dancers or the position of their feet **(2)** : having the participants well separated — used of a dance or dance figure **g** : characterized by open-chain structure **h** : GRANULAR, HARD ⟨soap in an ~ condition⟩ — used in soap manufacturing **12** : ready to operate : actively functioning : ACTIVE ⟨the store is ~ from 9 to 5⟩ ⟨an ~ microphone⟩ **13 a (1)** : characterized by lack of effective control or regulation of various commercial enterprises (as amusements) ⟨notorious as an ~ town⟩ **(2)** : not repressed by legal controls ⟨~ gambling⟩ **b** : using a minimum of physical restrictions and custodial restraints upon the freedom of movement of inmates ⟨an ~ prison⟩ **c** : not yielding to usu. controlling factors : free from checking or hampering restraints ⟨an ~ economy⟩ ⟨faced with ~ inflation⟩ **d** : relatively unguarded by opponents in a sports competition ⟨~ ice⟩ ⟨~ court⟩ **14** *of an expression in logic* : containing one or more free variables **15** : not crossed ⟨an ~ pulley belt⟩ ⟨~ eccentric rods⟩ **16** : characterized by a free development of chess pieces in front of the pawns **17 a** : having been opened by a first ante, bet, or bid ⟨an ~ pot in poker⟩ ⟨the bidding is ~⟩ **b (1)** : having cards properly exposed ⟨the dummy is the ~ hand⟩ **(2)** : played or to be played with cards exposed **c** : interrupted or incomplete by a break in card sequence ⟨an ~ straight⟩ **18 a** *of punctuation* : characterized by omission of commas when possible without ambiguity **b** *of the punctuation of a letter* : characterized by the omission of punctuation marks at the end of the lines of the heading and after the complimentary close — opposed to *close* **syn** see FRANK, LIABLE

[2]**open** \"\ *vb* **opened** \-pənd,-p°md\ **opened** \"\ **opening** \-p(ə)niŋ, -pnēŋ\ **opens** \-pənz,-p°mz\ [ME *openen*, fr. OE *openian;* akin to OHG *offanōn* to open, ON *opna;* all fr. a prehistoric NGmc-WGmc denominative fr. the root of OE [1]*open*] *vt* **1 a** : to move (as a door or lid) from its shut position ⟨~ the windows⟩ ⟨slowly ~*ed* her eyelids⟩ ⟨~ a switch⟩ **b** : to make available for entry or passage by turning back (as a barrier), removing (as a cover), or clearing away (as an obstruction) ⟨the janitor ~*s* the building at 7 o'clock⟩ ⟨~*ing* the road after the flood⟩ ⟨~ your heart to mercy⟩: as **(1)** : to free (a body passage) of an occluding agent ⟨used cathartics to ~ the bowels⟩ ⟨an inhalator for ~*ing* congested nasal passages⟩ **(2)** : to make available for or active in a regular function ⟨plan to ~ a new store soon⟩ ⟨at what time do you ~ your office⟩; *also* : to make accessible for a particular purpose ⟨~*ed* new land for settlement⟩ **(3)** : to declare (as a public building or park) to be open to the public usu. by a formal ceremony **2 a** : to expose to view : DISCLOSE, REVEAL, UNBOSOM **b** *archaic* : INTERPRET, EXPOUND **c** : to make more discerning or responsive : ENLIGHTEN **d** : to bring into view or come in sight of by changing position so as to remove an intervening object from the line of sight ⟨sailed on until we ~*ed* a bay⟩ **3 a** : to make one or more openings in : cut or break into ⟨~*ed* the boil⟩ ⟨planned to ~ the tombs of the ancient kings⟩ **b** : to loosen and make less compact usu. by separating the constituent parts ⟨~ the soil by cultivating⟩ ⟨~*ed* the matted wool by shaking vigorously⟩ **c** : to salt out — used in soap manufacturing **4** : to spread out : UNFOLD, UNROLL, EXTEND ⟨the rose ~*s* its dewy petals⟩ ⟨~*ed* the book near the middle⟩ **5 a** : to enter upon : BEGIN ⟨~*ed* the meeting⟩ ⟨will ~ his campaign soon⟩ **b (1)** : to make the statement by which the trial of (a case) is begun and put before the court **(2)** : to be the first to speak in summing up or arguing (a case) **c** : to commence action in a card game by making (a first bid), putting a first bet in (the pot), or playing (a specified card or suit) as first lead **6** : to restore or recall (as an order, rule, judgment) from a finally determined state to a state in which the parties are free to prosecute or oppose by further legal proceedings **7** : to shift the feet so as to assume (an open stance) in golf or batting ~ *vi* **1 a** : to become open : UNCLOSE ⟨the door ~*ed* slowly⟩ **b** : to open a door or other barrier or make open a closed place usu. so as to give admittance ⟨~ in the name of the law⟩ **c** : to have the doors opened for admittance of the public ⟨the store ~*s* at 9⟩ **2 a** : to spread out : EXPAND ⟨the buds are beginning to ~⟩ **b** : to separate or come apart usu. with an effect of spreading out ⟨the wound ~*ed* under the strain⟩ ⟨the book ~*ed* to my place⟩ **c** : to expand into view : become disclosed : spread out in the sight esp. so that elements come to be seen as distinct ⟨a lovely vista ~*ed* before us⟩ **3** : to become enlightened or responsive ⟨my heart ~*s* to your words⟩ **4 a** : to give access ⟨an arch ~*s* into the dining room⟩ **b** : to have an opening, passage, or outlet ⟨all the rooms ~ onto a long hall⟩ **c** : to open in an indicated direction ⟨the door ~*s* toward the hall⟩ **5** : to bark on first finding scent : give tongue to a scent trail ⟨the dog ~*ed* almost at once⟩ **6** : to bare or make plain one's mind, feelings, or knowledge by speaking : speak out : be open in speech ⟨finally ~*ed* freely on the subject⟩ **7 a** : to begin action : commence in some course or activity ⟨the artillery ~*ed* on the enemy⟩ ⟨the stock ~*ed* at par⟩ **b** : to commence by a first incident (as a performance of a drama, a concert, or a day's hunting) ⟨the opera season ~*s* Friday⟩ **c** : to make a bet, bid, or lead in commencing a round or hand of a card game — **open one's eyes 1** : to cause one to stare with wonder or amazement **2** : to awaken one to a knowledge or realization of something usu. unpleasant — **open one's heart 1** : to disclose one's intimate thoughts or feelings **2** : to behave with generosity — **open one's mouth 1** : to begin speaking **2** : to give power of speech : induce to speak (as by bribery) **3** : to speak indiscreetly or disclose confidential matters in speech — **open one's shoulders** *cricket* : to use the long handle in batting — **open ranks** : to execute a movement in infantry drill in which the third rank stands fast and the others take a varying number of steps forward or back from it — **open the books** : to resume use of corporation or other record books after temporary closing: as **a** : to reopen stock transfer books after they have been closed because of a forthcoming stockholders' meeting or other purpose **b** : to begin to accept subscriptions to a new offering ⟨*the books will be opened* for the new Treasury issue⟩

water esp.
state or positi
type characterized

o·batrachia \,ōp
+ N

LIKE

5 : a break in an electric circuit **6**
petition, or tournament (as in a sport)

open·able \'ōp(ə)nəbəl\ *adj* : capable of bei

open·access \,ō·p·,s\ *adj, Brit* : OPEN-SHELF

open account *n* **1** : CURRENT ACCOUNT 1a **2** : an
with a debtor or creditor having a balance due or paya

open air *n* : the space where air is unconfined; *esp* : out o
doors ⟨exercise in the *open air*⟩

open·air \,ō·p·\ *adj* [*open air*] **1** : taking place, done, existing in, or characteristic of the open air : OUTDOOR ⟨an *open-air* meeting⟩ **2** : plein air

open·and·shut \,ōp(ə)nən,shət\ *adj* **1** : perfectly simple : OBVIOUS **2** *chiefly dial* : partly cloudy : alternately overcast and clear

open-and-shut block *n* : a football block preceded by a side step to gain position and used by a lineman or a wingback to block inwardly a tackler who is on his outside shoulder

open-and-shut case \,ō·p·\ *n* [so called fr. the fact that it may be closed as soon as opened] : a case open to no doubts as to the legal principles to be applied and the necessary result

open arc lamp *n* : an arc lamp operated in the open air — compare ENCLOSED ARC LAMP

open arms *n pl* : an eager or warm welcome ⟨greeted them with *open arms*⟩

open-arse \'ō·p·\ *n* [ME *openers*, fr. OE *openærs*, fr. *open* + *ærs*, *ears* ass; fr. the large open disk between the lobes of the calyx — more at ASS] *dial Brit* : [1]MEDLAR 1

open back *n* : HOLLOW BACK

openband \'ō·p·\ *adj, of a twist in textile manufacture* : right-hand or Z-shaped — compare CROSSBAND

openbeak \'ō·p·\ *n* : OPENBILL

openbill \'ō·p·\ *n* : a stork of the genus *Anastomus* characterized by a grooved bill with the upper and lower parts touching only at the base and tip

open book *n* : something that is widely or fully known : a thing completely free from mystery or concealment ⟨her life is an *open book*⟩

open-book examination *n* : a written examination during which an examinee is permitted to consult references to answer questions calling for organization, analysis, or judgment, rather than memorization

open bridle *n* : a bridle having no blinders

open caisson *n* : a small cofferdam that is set in place, pumped dry, and filled with concrete to form a foundation (as for a pier)

[1]**opencast** \'ō·p·\ *n, chiefly Brit* : [1]OPENCUT 1

[2]**opencast** \"\ *adv (or adj), chiefly Brit* : [2]OPENCUT ⟨~ mining⟩

open chain *n* : an arrangement of atoms represented in a structural formula by a chain whose ends are not joined so as to form a ring — opposed to *closed chain*

open charge *n* : a charge placed against a defendant usu. to enable the police to gain time for the discovery of further evidence so that another more serious charge may be made

open check *n, Brit* : an unindorsed check payable to the order of the bearer

open circuit *n* : an electrical circuit in which the continuity is broken so that current does not flow

open cluster *n* : a cluster of stars in which all the individual members may be discerned with an optical aid and which is much less compact and has fewer members than a globular cluster; *often* : a galactic cluster

open commission *n* : a commission to take testimony in which the witnesses to be examined are not named or in which the scope of the inquiry is not limited to specific questions

open communion *n* : Communion open to all Christians and not restricted to those of a particular denomination or those meeting a specific qualification (as baptism by immersion) — opposed to *close communion*

open compound *n* : a compound whose word components are separated by a space in printing or writing — compare SOLID COMPOUND

open couplet *n* : a couplet the sense of which requires completion by what follows

open court *n* **1** : a court that is in session and lawfully organized and engaged in the transaction of official business as distinguished from a court taking evidence in camera or from a judge in chambers or elsewhere exercising his powers as a magistrate rather than as a court **2** : a session of court at the transactions of which the public are free to be present

open craps *n* : craps in which a house or banker undertakes to cover all bets at its established odds but also permits players to bet among themselves

open cure *n* : hot vulcanization of rubber in the presence of steam

[1]**opencut** \,ō·p·\ *n* **1** : a mine working in which excavation is performed from the surface — compare STRIP MINE **2** : a trench for the passage of a roadway or railway through an obstruction (as a hill) — distinguished from *tunnel*

[2]**opencut** \"\ *adv (or adj)* : with the surface exposed to the air or worked from the exposed surface ⟨an ~ iron mine⟩ ⟨a copper mine worked ~⟩

open-delta connection *n* : a usu. temporary or emergency connection of a three-phase electrical circuit in which one of the three transformers is omitted and its load carried by the two transformers — called also *V-connection*

open diapason *n* : a pipe organ foundation stop having a full sonorous tone and consisting usu. of metal pipes of 8-foot pitch open at the top

open door *n* **1 a** : a recognized right of admittance (as to the presence or attention of a superior) : freedom of access **b** : free and unhampered opportunity or a source of such ⟨education is an *open door* to advancement⟩ **2** : a policy giving all nations equal opportunity for commercial and other intercourse with a country controlled by more powerful states and abolishing special concessions to a favored nation

open-door \,ō·p·\ *adj* [*open door*] **1** : done or carried on with or as if with the doors open : PUBLIC **2** : of, relating to, or sustaining the open door in foreign relations ⟨trade was on an *open-door* basis⟩ ⟨an *open-door* policy was initiated⟩

open-eared \,ō·p·\ *adj* **1** : attentive to what is heard **2** : responsive to appeal, suggestion, or other utterance

opened *past of* OPEN

open-end \,ō·p·\ *adj* : organized, formulated, or constituted to contain possibilities for various contingencies whether unspecified, merely inferable, or definitely stated: as **a** : permitting additional debt to be incurred under the original indenture subject to specified conditions ⟨an *open-end* bond issue⟩ — compare OPEN-END MORTGAGE **b** : offering for sale or having issued outstanding capital shares redeemable on demand usu. at liquidating value or at a slight discount ⟨an *open-end* investment company⟩ — opposed to *closed-end* **c** : calling for the filling by a particular contractor of all government needs for a specific product during a specified period ⟨an *open-end* contract⟩ **d** : having blank spaces for the insertion of commercials ⟨*open-end* transcription for a new TV program⟩ **e** *usu* **open-ended** \,ō·p·\ : having no fixed set of alternative replies and permitting spontaneous and unguided responses for expression (as of attitudes, opinions, and intent) ⟨an *open-ended* question⟩ ⟨*open-ended* interview⟩

open-end mortgage *n* : a mortgage under which additional funds may be borrowed without making a new mortgage — contrasted with *closed mortgage*

open-end straight *n* : four cards in poker sequence (as 4, 5, 6, 7) that can be filled at either end

Appendix 3

NEWS

United States Attorney Jenny A. Durkan
Western District of Washington

Statement of U.S. Attorney Jenny A. Durkan on federal marijuana enforcement policy announcement

FOR IMMEDIATE RELEASE

August 29, 2013

Today, the U.S. Department of Justice announced an update to its federal marijuana enforcement policy in light of recent state ballot initiatives that legalize, under state law, the possession of small amounts of marijuana by adults and provide for the state regulation of marijuana production, processing and sale. The Department also issued a memorandum to all U.S. Attorneys that makes clear that the Department will continue to enforce the Controlled Substances Act and details the federal interests that guide federal enforcement relating to marijuana. Based on assurances that Washington and Colorado will impose an appropriately strict regulatory system, the Department has informed the governors of both states that it is deferring its right to challenge their legalization laws at this time.

The following is a statement from Jenny A. Durkan, U.S. Attorney for the Western District of Washington:

We have consistently focused on federal enforcement priorities in Western Washington, and have worked with our state and local partners to ensure the safety of our communities. That will not change. We will continue to enforce the Controlled Substances Act. We will continue an aggressive focus on the promotion and sale of drugs to minors, violence and the use of firearms, and the trafficking of marijuana across state or international lines. We will continue our work against organized criminal organizations and their underground economy, and against those who would use drug proceeds to fund other criminal activity.

The Department guidance is premised on the expectation that the state will implement strong and effective regulatory and enforcement systems. This also is what Washington voters were promised and we expect no less today. I look forward to meeting with state leaders to hear how the promises of enhanced public safety will be met.

The continued operation and proliferation of unregulated, for-profit entities outside of the state's regulatory and licensing scheme is not tenable and violates both state and federal law. While our

resources are limited, we will continue to enforce federal law in this arena by focusing on the critical public and federal interests outlined in the Department memo today.

This is an important moment for Washington, and I remain committed to working with law enforcement partners to focus on our priorities and address threats to public safety.

. . .

The Department's announcement and a link to the guidance memorandum can be found here: http://www.justice.gov/opa/pr/2013/August/13-opa-974.html.

Members of the public are also advised that it remains against federal law to bring any amount of marijuana onto federal property, including all federal buildings, federal lands including national parks and forests, military installations, and courthouses. Individuals that do so will be subject to federal penalties.

Press contact for the U.S. Attorney's Office is Executive Assistant United States Attorney Thomas Bates at (206) 553-7970 or Thomas.Bates@usdoj.gov.