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Counsel for Proposed Intervening Defendants

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

14 COUNTY OF SAN DIEGO, )

15 Plaintiff, )

16 v. )

17 STATE OF CALIFORNIA, SANDRA )  
18 SHEWRY, Director of the California Department )  
19 of Health Services in her official capacity; and )  
20 DOES 1 through 50, inclusive, )

21 Defendants. )  
22 )  
23 )

No. 06-cv-0130 WQH JMA

**PROPOSED ANSWER  
OF INTERVENING  
DEFENDANTS**

Date: March 13, 2006

Time: 11 a.m.

Place: Courtroom 4

24 NOW COME intervening defendants, Wendy Christakes, Pamela Sakuda,

25 Norbert Litzinger, William Britt, Yvonne Westbrook, Bill Zimmerman, Stephen O'Brien,

Valerie Corral, the American Civil Liberties Union Foundation Drug Law Reform Project

1 and the American Civil Liberties Union Foundation of San Diego & Imperial Counties  
2 (together “ACLU”), Americans for Safe Access (“ASA”), the Drug Policy Alliance  
3 (“DPA”), Wo/Men’s Alliance for Medical Marijuana (“WAMM”) and answer the  
4 Complaint. Except as hereafter expressly admitted, qualified, or otherwise admitted,  
5 intervening defendants specifically deny each and every allegation contained in the  
6 Complaint. Intervening defendants respond to the numbered allegations in the Complaint  
7 on personal knowledge or on information and belief as to other matters, as follows:

8 No response is required as to the preliminary statement of the Complaint,  
9 which are the plaintiffs’ characterization of their claims.

10 1. Intervening defendants admit the allegations in paragraph 1 of the Complaint.

11 2. Intervening defendants admit the allegations in paragraph 2 of the Complaint.

12 3. Intervening defendants admit that Sandra Shewry is the Director of the  
13 California Department of Health Services. Intervening defendants neither admit nor deny  
14 the remaining allegations in paragraph 3 of the Complaint, lacking knowledge or  
15 information sufficient to form a belief as to the truth or falsity thereof.

16 4. Intervening defendants neither admit nor deny the allegations in paragraph 4  
17 of the Complaint, lacking knowledge or information sufficient to form a belief as to the  
18 truth or falsity thereof.

19 5. Intervening defendants deny the allegations in paragraph 5 of the Complaint.

20 6. Intervening defendants admit that the United States is a party to the Single  
21 Convention on Narcotic Drugs, 1953, as amended by the 1972 Protocol (“Single  
22 Convention”). Intervening defendants neither admit nor deny the remaining allegations  
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1 in paragraph 6 of the Complaint, lacking knowledge or information sufficient to form a  
2 belief as to the truth or falsity thereof.

3 7. Intervening defendants admit that marijuana is specifically addressed in the  
4 Single Convention. The remainder of allegations in contained in paragraph 7 set forth a  
5 conclusion of law to which no response is necessary. To the extent a response is  
6 required, intervening defendants deny the remainder of allegations contained in  
7 paragraph 7 of the Complaint.

8 8. Paragraph 8 sets forth a conclusion of law to which no response is necessary.  
9 To the extent a response is required, intervening defendants deny the allegations  
10 contained in paragraph 8 of the Complaint.

11 9. Paragraph 9 sets forth a conclusion of law to which no response is necessary.  
12 To the extent a response is required, intervening defendants deny the allegations  
13 contained in paragraph 9 of the Complaint.

14 10. Paragraph 10 sets forth a conclusion of law to which no response is necessary.  
15 To the extent a response is required, intervening defendants deny the allegations  
16 contained in paragraph 10 of the Complaint.

17 11. Intervening defendants admit that Congress passed the Controlled Substances  
18 Act in 1970. Intervening defendants neither admit nor deny that Congress passed the  
19 Controlled Substances Act in order to comply with its obligation under the Single  
20 Convention, lacking knowledge or information sufficient to form a belief as to the truth  
21 or falsity thereof. The remaining allegations set forth conclusions of law to which no  
22 response is required. To the extent a response is required, intervening defendants deny  
23 the remaining allegations set forth in paragraph 11.  
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1           12.    Intervening defendants neither admit nor deny the allegations in paragraph 12  
2 of the Complaint, lacking knowledge or information sufficient to form a belief as to the  
3 truth or falsity thereof.

4           13.    No response is necessary as to the first sentence of paragraph 13 of the  
5 Complaint, as this is merely plaintiffs' characterization of the California voters' actions.  
6 Intervening defendants admit the remainder of allegations in paragraph 13 of the  
7 Complaint.

8           14.    Whether the recited "declarations" are "contrary to the federal Controlled  
9 Substances Act" is a conclusion of law to which no response is necessary. To the extent  
10 further response is required, intervening defendants deny the allegations in paragraph 14  
11 of the Complaint.

12           15.    Intervening defendants admit the allegations in the first sentence of paragraph  
13 15 of the Complaint. The remaining allegations set forth conclusions of law to which no  
14 response is required.

15           16.    Paragraph 16 sets forth conclusions of law to which no response is necessary.  
16 To the extent a response is required, intervening defendants deny the allegations in  
17 paragraph 16 of the Complaint.

18           17.    Paragraph 17 sets forth a conclusion of law to which no response is necessary.  
19 To the extent a response is required, intervening defendants deny the allegations in  
20 paragraph 17 of the Complaint.

21           18.    Paragraph 18 sets forth a conclusion of law to which no response is necessary.  
22 To the extent a response is required, intervening defendants deny the allegations in  
23 paragraph 18 of the Complaint.  
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**RESPONSE TO PLAINTIFFS' FIRST CAUSE OF ACTION**

19. Intervening defendants incorporate by reference their responses to the allegations of paragraphs 1-18 as set forth above.

20. Paragraph 20 sets forth a conclusion of law to which no response is necessary. To the extent a response is required, intervening defendants deny the allegations in paragraph 20 of the Complaint.

21. Paragraph 21 sets forth a conclusion of law to which no response is necessary. To the extent a response is required, intervening defendants deny the allegations in paragraph 21 of the Complaint.

22. Paragraph 22 sets forth a conclusion of law to which no response is necessary. To the extent a response is required, intervening defendants deny the allegations in paragraph 22 of the Complaint.

23. Paragraph 23 sets forth a conclusion of law to which no response is necessary. To the extent a response is required, intervening defendants deny the allegations in paragraph 23 of the Complaint.

24. No response is required as to the allegations in paragraph 24 of the Complaint, which are the plaintiffs' characterization of their claims.

**RESPONSE TO PLAINTIFFS' SECOND CAUSE OF ACTION**

25. Intervening defendants incorporate by reference their responses to the allegations of paragraphs 1-24 as set forth above.

26. Paragraph 26 sets forth a conclusion of law to which no response is necessary.

1 To the extent a response is required, intervening defendants deny the allegations in  
2 paragraph 26 of the Complaint.

3 27. Paragraph 27 sets forth a conclusion of law to which no response is necessary.

4 To the extent a response is required, intervening defendants deny the allegations in  
5 paragraph 27 of the Complaint.

6 No response is required to the remainder of the Complaint, which sets forth  
7 plaintiffs' prayer for relief. To the extent that a response is required, intervening  
8 defendants deny the remaining allegations in the Complaint.

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10 **AFFIRMATIVE DEFENSES**

11 Intervening defendants assert the following affirmative defenses based on their  
12 current knowledge and information:

13 1. The Complaint fails to state a claim upon which relief can be granted because,  
14 among other reasons, neither the federal Controlled Substances Act nor the Single  
15 Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol pre-empt, under  
16 the Supremacy Clause of the U.S. Constitution, California's medical marijuana laws,  
17 codified at California Health & Safety Code §§ 11362.5 and 11362.7 through 11362.83.

18 2. This court lacks subject-matter jurisdiction over the Complaint because,  
19 among other reasons, the County of San Diego is a political subdivision of the State of  
20 California and as such lacks standing to bring claims premised upon the Supremacy  
21 Clause of the U.S. Constitution against the State of California in federal court, under  
22 controlling Ninth Circuit precedent announced in South Lake Tahoe v. California Tahoe  
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1 Regional Planning Agency, 625 F.2d 231 (9th Cir.1980) and Burbank-Glendale-Pasadena  
2 Airport Authority v. City of Burbank, 136 F.3d 1360, 1363-1364 (9th Cir. 1998).

3 3. California's medical marijuana laws, codified at California Health & Safety  
4 Code §§ 11362.5 and 11362.7 through 11362.83, are valid and binding upon San Diego  
5 County, the State of California is entitled to enforce these laws, and San Diego County is  
6 required to comply with and implement these laws.

7 4. Intervening defendants state that they assert these affirmative defenses on the  
8 basis of knowledge or information presently available and in order to avoid waiver.  
9 Intervening defendants reserve the right to withdraw any of these defenses or to assert  
10 additional affirmative defenses as further information becomes available.

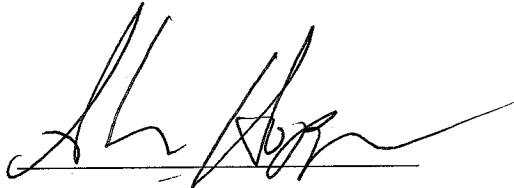
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13 Wherefore, intervening defendants pray for a judgment dismissing the Complaint  
14 with prejudice and awarding them the costs and disbursements of this action, together  
15 with attorneys' fees, and such additional relief as the court may deem just and proper.  
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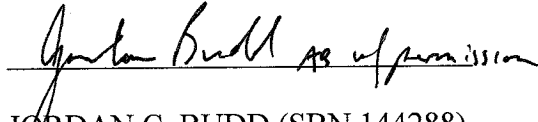
By Attorneys for Proposed Intervening  
Defendants,

Respectfully Submitted,

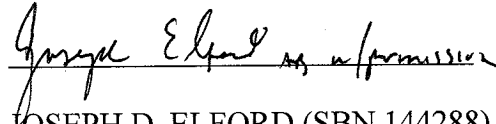
Dated: January 29, 2006



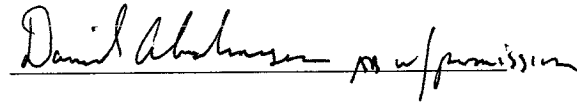
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