U.S. Court of Appeals Case Nos. 10-50219 and 10-50264

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA
Plaintiff and Appellee/Cross-Appellant,

v.

CHARLES C. LYNCH
Defendant and Appellant/Cross-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
Honorable George Wu, United States District Judge
Dist. Ct. Case No. 00678-GW

BRIEF OF SENATOR MARK LENO (SD-11), SENATOR MIKE MCGUIRE (SD-02), AND FORMER SENATOR DARRELL STEINBERG AS *AMICI CURIAE* IN SUPPORT OF CHARLES C. LYNCH'S MOTION FOR REHEARING *EN BANC*

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I. PRELIMINARY STATEMENT

A. Interest of Amici Curiae

This brief is submitted on behalf of California Senators Mark Leno (SD-11) and Mike McGuire (SD-02) and former Senator Darrell Steinberg as *amici curiae* in support of Charles C. Lynch's motion for rehearing *en banc* in *United States v. Lynch*, Case Nos. 10-50219 and 10-50264.

Senator Leno is a member of the California Senate. He assumed office in 2008, having previously served in the Assembly since 2002. In 2003, Senator Leno was the principal coauthor of Senate Bill (SB) 420, which was enacted and signed into law that year. Entitled the Medical Marijuana Program Act ("MMPA"), Cal. Health & Safety Code § 11362.7 *et seq*., the MMPA clarified the scope and application of available defenses to criminal prosecutions for medical marijuana, established a State-run identification card program for medical marijuana patients and caregivers to prevent unwarranted arrests,[1] and authorized the establishment of medical marijuana collectives and cooperatives.

Senator McGuire is a member of the California Senate. Since assuming office in 2014, Senator McGuire has introduced comprehensive medical marijuana

[1] In 2000, when Senator Leno served on the San Francisco Board of Supervisors, he authored a local ordinance establishing an identification card program for medical marijuana patients in San Francisco. The MMPA's identification card program was based on this San Francisco ordinance.

legislation, Senate Bill (SB) 643, which would build on the MMPA's regulatory framework.

Former Senator Steinberg served as president pro tempore of the California Senate and the leader of the majority party from 2008 to 2014. Before that, he served in the Assembly from 1998 to 2004. In 2003, Mr. Steinberg voted in favor of passing the MMPA. While in office, he also introduced other legislation to tax and regulate medical marijuana.

As current and former members of the California Legislature, *amici* have an interest in ensuring that both federal and state courts understand the text of and intent underlying California statutes. As the principal coauthor of the MMPA, Senator Leno has a particular interest in ensuring that this Court understands the MMPA's purpose and scope and the importance of California's ability to implement the MMPA without the federal government's undue disruption and interference. *Amici*'s views are particularly relevant to this case because (1) it involves a pattern of federal action that, without this Court's intervention, will continue to undermine the implementation of California's medical marijuana laws, and (2) it raises the question of whether the federal government should impose its interpretation of California's laws over the interpretation of California's voters, legislators, courts, and law enforcement officials. *Amici* respectfully submit this brief to urge this Court to grant Mr. Lynch's Motion for Rehearing *En Banc*.

B. Consent of the Parties

Pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure, counsel for *amici curiae* state that on May 3 and 4, 2015, Mr. Lynch and the government, respectively, consented to the filing of this *amici curiae* brief.

C. Statement of Authorship and Funding

No counsel for a party authored this brief in whole or in part. No party, counsel for a party, or other person—other than amici curiae or their counsel—made a monetary contribution intended to fund the preparation or submission of this brief.

II. SUMMARY OF ARGUMENT

Almost twenty years ago, Californians went to the polls and, by a wide margin, voted to allow California patients with a valid doctor's recommendation, and their designated primary caregivers, to possess and cultivate marijuana for personal medical use.[2] That law, aptly named the Compassionate Use Act of 1996 ("CUA"), principally provided a limited immunity defense to marijuana prosecution under state law. Cal. Health & Safety Code § 11362.5. In 2003, the California Legislature expanded and clarified the CUA when it enacted Senate Bill 420, which became known as the Medical Marijuana Program Act. The MMPA, which was challenged in the California Supreme Court and upheld, expanded the

[2] Dozens of other states have followed California's lead on this issue.

CUA by instituting an identification card system designed to protect Californians against unnecessary arrest.

Yet since the passage of the CUA and continuing beyond the enactment of the MMPA, federal law enforcement officials have severely undermined California's regulatory framework through various means, including criminal raids, property seizures and forfeitures, and felony prosecutions of law-abiding Californians. The Department of Justice ("DOJ"), which has never challenged California's medical marijuana laws in court, opposes allowing federal criminal defendants the ability to assert compliance with state law as a defense.

Although DOJ announced in 2009 that, as a matter of prosecutorial discretion, it would de-prioritize prosecutions of Californians who are in compliance with this state's medical marijuana laws,[3] the raids, seizures, and prosecutions have continued. While DOJ's guidelines purport to respect state law, they actually place federal prosecutors in the improper position of interpreting California laws, irrespective of determinations by California legislators, courts, or law enforcement officials. Californians have no way to know whether federal prosecutors will conclude that their conduct violates California law and will

[3] *See* Memorandum from David W. Ogden to Selected United States Attorneys (Oct. 19, 2009) ("Ogden Memorandum"), http://www.justice.gov/opa/blog/memorandum-selected-united-state-attorneys-investigations-and-prosecutions-states.

subject them to DOJ's discretionary enforcement decisions. And if federal prosecutors decide that a Californian is not in compliance with California's medical marijuana laws, that person will not be able to rely on the CUA or MMPA as a defense in federal court. Californians who want to use, possess, cultivate, or distribute medical marijuana in compliance with California law must subject themselves to the possibility of a raid and seizure, arrest, felony prosecution, and exposure to harsh mandatory minimum sentences without the immunity California law provides. Consequently, many Californians who otherwise would use, possess, cultivate, or distribute medical marijuana simply do not.

Recently, the United States Congress passed legislation prohibiting DOJ from expending federal funds to prevent the implementation of California's medical marijuana laws. *See* Consolidated and Further Continuing Appropriations Act, 2015 ("CAFCA"), Pub. L. No. 113-235, § 538, 128 Stat. 2130 (2014) (full text available at https://www.congress.gov/bill/113th-congress/house-bill/83/text). Yet DOJ continues to pursue medical marijuana prosecutions such as this one.

This Court should grant rehearing *en banc* of the panel's refusal to enforce Section 538 of CAFCA ("Section 538") for the following reasons:

- *First*, the continued federal prosecution of medical marijuana cases violates federal law, as set forth in Section 538 and the Anti-Deficiency Act.

- *Second*, these prosecutions are offensive to Californians, lawmakers, and voters alike, because they are an end-run around duly-enacted legislation and initiatives passed by voters through California's proposition system. This disregard for state sovereignty undermines public confidence that laws enacted by California's government are effective and will be honored by federal authorities.
- *Third*, DOJ's continued prosecutions involving medical marijuana leave Californians who wish to abide by the law not only guessing as to the criminality of their medical marijuana use, but without the ability to assert their compliance with California law as a defense in federal court. The threat of federal prosecution therefore chills activity that California's voters and legislators have deemed to be in the public interest.

In light of the ongoing risk to Californians of unauthorized federal criminal prosecution and the resulting disruption to California's ability to govern, the Court should grant Mr. Lynch's Motion for Rehearing *En Banc* without delay.

III. CALIFORNIA LEGALIZED MEDICAL MARIJUANA AND ESTABLISHED A COMPREHENSIVE REGULATORY REGIME

In 1996, California voters overwhelmingly enacted the Compassionate Use Act, Cal. Health & Safety Code § 11362.5, through voter initiative, Proposition 215, General Election (Nov. 5, 1996). The CUA's stated purpose is to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical

purposes." Cal. Health & Safety Code § 11362.5(b)(1)(A). To make that right a reality in California—where marijuana is otherwise prohibited—the Act provides physicians who recommend marijuana, and patients and primary caregivers who possess or cultivate marijuana, limited immunity from prosecution. *Id.* § 11362.5(c) & (d); *see also People v. Mower*, 28 Cal.4th 457, 482 (2002) ("As a result of the enactment of [the CUA], the possession and cultivation of marijuana is no more criminal—so long as its conditions are satisfied—than the possession and acquisition of any prescription drug with a physician's prescription."). The CUA left the implementation of comprehensive medical marijuana regulation to the Legislature. *See* Cal. Health & Safety Code § 11362.5(b)(1)(C).

In 2003, the California Legislature enacted the Medical Marijuana Program Act, Cal. Health & Safety Code § 11362.7 *et seq*. The MMPA facilitates the consistent and uniform application of California's medical marijuana laws by: (1) specifying the amount of medical marijuana that individuals can lawfully possess, *see id.* § 11362.77; (2) establishing an identification card program to identify legitimate medical marijuana patients, *see id.* §§ 11362.71-11362.76; (3) clarifying the available immunities for medical marijuana, *see id.* § 11362.765; and (4) authorizing medical marijuana collectives and cooperatives, *see id.* §§ 11362.768 & 11362.775; *see also People v. Anderson*, 232 Cal.App.4th 1259

(2005) (explaining that the MMPA's immunities also apply to individuals operating storefront dispensaries).

In passing the MMPA, the Legislature sought to facilitate uniform enforcement of its medical marijuana laws and clarify the potential criminal liability for Californians' medical marijuana activities. *See* Cal. Bill Analysis, S.B. 420 Sen. (Sept. 9, 2003) (stating that the "intent of Legislature" was, among other things, to "clarify the scope and application of the Act" and to "promote uniform application of the act"). In particular, the Legislature implemented an identification card program so that law enforcement agencies can readily distinguish between medical marijuana users entitled to immunity and fraudulent or non-compliant marijuana users subject to criminal prosecution. *See* Cal. Bill Analysis, S.B. 420 Sen. (May 6, 2003) ("California law enforcement officers will benefit by reducing the time and energy" dealing with medical marijuana situations because the MMPA "will provide an almost instantaneous evaluation of whether or not a crime is being committed.").

IV. THE CONTINUED PROSECUTION OF CHARLES LYNCH VIOLATES FEDERAL LAW AND STATED FEDERAL POLICY

On December 16, 2014, President Barack Obama signed into law a bipartisan appropriations bill. *See* CAFCA. Section 538 of CAFCA, also known as the Rohrabacher-Farr Amendment, lists thirty-three jurisdictions that have enacted medical marijuana laws and provides that "[n]one of the funds made

available by this Act to the Department of Justice may be used . . . to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana." *Id.* § 538. California is listed as one of the thirty-three jurisdictions. *Id.* The plain language of Section 538 prohibits DOJ from expending federal funds to prevent California from implementing its medical marijuana laws.[4] Yet DOJ is doing precisely that by

[4] In addition to Section 538 of CAFCA, both DOJ and President Obama have stated that it wastes federal resources to prosecute medical marijuana activities that comply with state laws.

Beginning in 2009, DOJ promulgated Federal Medical Marijuana Guidelines that de-prioritize the prosecutions of individuals in compliance with their states' medical marijuana laws. *See* Ogden Memorandum; Memorandum from James M. Cole to United States Attorneys (June 29, 2011) ("Cole's 2011 Memorandum"), http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/dag-guidance-2011-for-medical-marijuana-use.pdf; Memorandum from James M. Cole to All United States Attorneys (Aug. 29, 2013), http://www.justice.gov/iso/opa/resources/305201382913275685 7467.pdf (the "Cole's 2013 Memorandum"); Memorandum from James M. Cole to All United States Attorneys (Feb. 14, 2014), http://www.justice.gov/usao/co/news/2014/feb/DAG%20Memo%20-%20Guidance%20Regarding%20Marijuana%20Related%20Financial%20Crimes%202%2014%2014.pdf. These guidelines even recognize that "the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws." Cole's 2013 Memorandum.

Likewise, President Obama has stated since at least 2008 that federal resources should not be used "'to circumvent state [medical marijuana] laws.'" *See* Ben Conery, "WH: New federal medical marijuana policy," *The Washington Times* (Oct. 19, 2009), http://www.washingtontimes.com/news/2009/ oct/19/white-house-new-federal-medical-marijuana-policy/?page=all.

continuing to prosecute Mr. Lynch and other Californians for medical marijuana activities.

California's medical marijuana laws seek to ensure that chronically ill patients can access medical marijuana when recommended by a doctor. *See* Cal. Health & Safety Code § 11362.5(b)(1). Because the only way to implement California's policy is to decriminalize the activities (such as possession, use, distribution, transportation, and cultivation) necessary for individuals to obtain medical marijuana, Californians enacted the CUA and MMPA, which granted individuals engaged in such activities immunity from prosecution. *See id.* §§ 11362.5(c) & (d), 11362.765, 11362.775. DOJ's continued prosecutions of medical marijuana cases dismantle these statutes' core provisions by criminalizing and punishing the very activities that California has immunized from criminal prosecution. By prosecuting patients and providers for engaging in the activities necessary to provide access to medical marijuana, DOJ is thwarting California's intent to ensure that seriously ill individuals can access medical marijuana. There can be no clearer prevention of the implementation of California's medical marijuana laws than the direct contravention of those laws and their stated purposes.

DOJ's continued prosecution of medical marijuana activities not only violates Section 538 of CAFCA, but also ignores the stated policies of DOJ itself and the President.

In addition to the plain language of Section 538, the legislative history makes equally clear that Congress intended to stop federal prosecutions of medical marijuana altogether. *See, e.g.*, 160 Cong. Rec. H4984 (daily ed. May 29, 2014) (statement of Rep. Barbara. Lee) ("It is past time for the Justice Department to stop its unwarranted persecution of medical marijuana . . . . "); *id.* (statement of Rep. Sam Farr) (arguing that pursuant to Section 538, "the "Feds" cannot "bust" individuals who are "following State law"). DOJ's continued prosecution of Mr. Lynch flies in the face of Congress's intent to end DOJ's medical marijuana prosecutions.

Beyond simply halting DOJ prosecutions, Congress also expressed an intent to cede medical marijuana enforcement to the states and their historical police power. *See id.* at 4983 (statement of Rep. Dana Rohrabacher) (describing Section 538 as a "states' rights . . . amendment"); *id.* at 4984 (statement of Rep. Paul Broun) (arguing that medical marijuana is a "states' rights, states' power issue"); *id.* at 4984 (statement of Rep. Earl Blumenauer) (arguing for "respect for states' rights"). By allowing states to regulate and enforce their own laws, Congress sought to eliminate the atmosphere of uncertainty created by DOJ's unpredictable intrusion into medical marijuana enforcement and prosecution. *See id.* at 4984 (statement of Rep. Dina Titus) (arguing that Section 538 "ensures that patients do not have to live in fear when following the laws of their State[]"). Congress's

delegation of medical marijuana enforcement to the states recognizes that the states, not the federal government, are in the best position to interpret and enforce state laws.

Particularly relevant here, Congress's intent to allow states to enforce their own medical marijuana laws without federal interference demonstrates that whether Mr. Lynch actually complied with California's medical marijuana laws is irrelevant to his motion to enforce Section 538. Whether a defendant complied with California law under Section 538 is a question for California, not DOJ. Indeed, as discussed below, California authorities already determined that Mr. Lynch acted appropriately under state law and never filed charges against him. The government's argument that Mr. Lynch's motion under Section 538 merges with the merits briefing regarding whether Mr. Lynch complied with California laws is therefore wrong. Mr. Lynch's motion addresses the strictly legal question of Section 538's meaning and application, and thus, should be addressed now.

V. THE CONTINUED PROSECUTION OF MR. LYNCH THWARTS THE STATES' ABILITY TO SELF-GOVERN AND TO PROVIDE CLEAR NOTICE OF UNLAWFUL CONDUCT

The continued prosecution of Mr. Lynch and others like him thwarts California's ability to govern itself in several important ways, each of which undermines state sovereignty and subjects citizens to seemingly arbitrary prosecutions.

First, DOJ's continued prosecutions interfere with California's enforcement of its medical marijuana laws by substituting DOJ's determination of which citizens have violated California's laws for the determination of California law enforcement officers and prosecutors. By de-prioritizing prosecutions of individuals who are complying with state medical marijuana laws, DOJ's guidelines place federal prosecutors in the inappropriate and unnecessary position of interpreting and applying state laws.[5] California's law enforcement agencies monitor medical marijuana activities to determine their compliance with state laws, and California actively prosecutes and convicts individuals who are non-compliant with those laws.[6] To take the example of Mr. Lynch's case, California's law enforcement agencies surveilled Mr. Lynch's dispensary for almost a year but found no violation of California law and therefore did not file charges. (Mr. Lynch's Mot. for Rehearing *En Banc* (Case No. 10-50219, ECF No. 101-1) at 6.)

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[5] *See* Ogden Memorandum; Cole's 2011 Memorandum.

[6] *See, e.g.*, *People v. London*, 228 Cal.App.4th 544 (2014) (affirming defendant's conviction for cultivation and possession of marijuana for sale because of insufficient evidence to support a jury instruction on defendant's lawful cultivation defense); *People v. Solis*, 217 Cal.App.4th 51 (2013) (affirming defendant's conviction for possession of marijuana for sale because defendant's dispensary did not qualify as a cooperative or collective under the MMPA); *People v. Hochanadel*, 176 Cal.App.4th 997 (2009) (reversing dismissal, in part, because operators of storefront dispensary were not entitled to the primary caregiver defense under the CUA and MMPA); *People v. Mentch*, 45 Cal.4th 274 (2008), *as modified* (Dec. 17, 2008) (affirming criminal conviction of defendant for cultivating and possessing marijuana for sale because the primary caregiver defense under the CUA did not apply).

By continuing to prosecute Mr. Lynch, DOJ disregards California's determination that Mr. Lynch complied with California law and imposes its own view, usurping the role of the states in enforcing their own laws.

Second, DOJ's second-guessing of California's law enforcement efforts undermines the public policy behind California's medical marijuana laws by creating non-uniformity, leaving Californians to speculate as to the criminal exposure associated with their medical marijuana activities. Mr. Lynch's case illustrates the inconsistency created by having two regimes enforcing medical marijuana laws. Mr. Lynch was subjected to increased punishment—a one-year mandatory minimum sentence—for distributing medical marijuana to individuals under twenty-one years old. *See* 21 U.S.C. § 859(a); Appellant's First Cross-Appeal Brief (Case No. 10-50219, ECF No. 37-1) at 8. In contrast, California only prohibits "unlawful" sales to individuals under eighteen years of age.[7] *See* Cal. Health & Safety Code § 11361(a); Judicial Council of California Criminal Jury Instructions, No. 2390 (2015). Moreover, when DOJ chooses to prosecute individuals like

[7] Additionally, California does not impose age limits on medical marijuana patients. *See* Cal. Health & Safety Code § 11362.7(e) (primary caregiver can be under eighteen years old, if he or she is the parent of a minor who is a qualified patient or identification card holder); *id.* § 11362.715 (birth certificate is sufficient proof of identity for identification card applicants under eighteen years old).

Mr. Lynch in federal court, they are unable to raise their compliance with California law as a defense, despite having relied on California law.[8]

In enacting the MMPA, California sought to clarify the scope of criminal liability for medical marijuana activities and promote uniform enforcement of its medical marijuana laws. DOJ's continued prosecution of medical marijuana activities based on internal department guidelines—which do not seem to be followed in every case—and prosecutorial discretion creates an unpredictable and seemingly arbitrary enforcement system for medical marijuana. The unpredictability created by DOJ's conduct is at odds with the Constitution's due process guarantees because it does not "enable the ordinary citizen to conform his or her conduct to the law" before acting. *City of Chicago v. Morales*, 527 U.S. 41, 42 (1999). Instead, Californians must risk federal prosecution whenever they engage in state-sanctioned activities.[9] The uncertainty created by DOJ's enforcement chills medical marijuana activities in California.[10]

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[8] Mr. Lynch was prohibited from introducing state law during his trial, (*see* Mr. Lynch's Motion to Enforce Section 538 (Case No. 10-50219, ECF No. 91-1) at 3), and others likewise have been precluded from raising compliance with state law as a defense, *see, e.g.*, *United States v. Stacy*, 734 F.Supp.2d 1074, 1084 (S.D. Cal. 2010) (granting motion *in limine* to preclude reference to state laws to prove medical marijuana defense).

[9] Mr. Lynch is far from the only individual to be prosecuted by DOJ for state-compliant activities. *See, e.g.*, Carly Schwartz, "Federal Judge Rules In Favor of California's Oldest Marijuana Dispensary," *Huffington Post* (Feb. 10, 2015), http://www.huffingtonpost.com/2015/02/10/berkeley-patients-

VI. THE COURT SHOULD ACT IMMEDIATELY TO PREVENT FURTHER INJURY TO CALIFORNIA

On February 24, 2015, Mr. Lynch moved this Court for an order directing DOJ to cease expending resources on Mr. Lynch's continued prosecution, as required by Section 538. In its April 13, 2015 Order, the Court denied Mr. Lynch's motion without prejudice to renewing these arguments in briefing before the merits panel. On April 27, 2015, Mr. Lynch moved for rehearing *en*

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group_n_6648268.html (DOJ sued to seize property of a dispensary, Berkeley Patients Group, and local lawmakers intervened to stop DOJ); Matt Ferner, "DEA Raids 2 Los Angeles Medical Marijuana Dispensaries," *Huffington Post* (Oct. 24, 2014), http://www.huffingtonpost.com/2014/10/24/dea-raid-medical-marijuana-los-angeles_n_6038926.html (DEA raids two dispensaries well-regarded as being in compliance with state and local laws); Adam Nagourney, "In California, It's U.S. v. State Over Marijuana," *N.Y. Times* (Jan. 13, 2013), http://www.nytimes.com/2013/01/14/us/14pot.html?_r=0 (DOJ prosecutes California man who established dispensaries in compliance with state law); Press Release, "Office of the City Attorney, Oakland City Attorney and Morrison & Foerster Sue Federal Government to Prevent Seizure of Building Used by Medical Cannabis Dispensary" (Oct. 10, 2012), http://www.oaklandcityattorney.org/News/Press%20releases/Fed%20complaint%20med%20cannabis%20Oct%2010%202012.html (Oakland City sues DOJ to stop the seizure of real property where Harborside Health Center, a state-compliant dispensary, was located).

[10] There can be little question that the realistic threat of criminal prosecutions chills the activity subject to prosecution. As the Ninth Circuit has recognized in other contexts, "'[e]very criminal law, by its very existence, may have some chilling effect on personal behavior. That was the reason for its passage.'" *San Diego Cnty. Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1129 (9th Cir. 1996) (quoting *Doe v. Duling*, 782 F.2d 1202, 1206 (4th Cir. 1986)); *see also Dombrowski v. Pfister*, 380 U.S. 479, 486 (1965) (recognizing in the First Amendment context that "[a] criminal prosecution under a statute regulating expression . . . may inhibit the full exercise of First Amendment freedoms").

banc so that there is no delay in addressing the legality of DOJ's continued prosecution of Mr. Lynch.

Amici agree there is an urgent need for this Court to address the questions presented by Mr. Lynch's motion to enforce Section 538. Every day that DOJ threatens prosecution for medical marijuana, Californians are harmed because they are effectively prevented from enjoying the benefits of the CUA and MMPA and the benefit that Congress conferred in passing Section 538. The harm suffered by Californians as a result of DOJ's continued prosecution of otherwise lawful medical marijuana activities is real and acute. By continuing to prosecute Mr. Lynch, and by continuing to threaten prosecution of similarly situated individuals, DOJ has usurped the role of California lawmakers in implementing its medical marijuana laws—an issue that Congress and the President agree should be left to the states. *See* CAFCA § 538. At a minimum, the threat of criminal prosecution under federal law discourages California citizens from engaging in conduct that the majority of California citizens and lawmakers have deemed to be in the public interest and permissible under California law. *See* Cal. Health & Safety Code §§ 11362.5, 11362.7 *et seq.* That federal actors could countermand state law in this way erodes the trust of California voters that their government can enact meaningful legislation on their behalf.

This erosion of public confidence in government is exacerbated by the fact that, in continuing to prosecute Mr. Lynch, DOJ is ignoring a number of federal laws. As discussed above, Section 538 prohibits the expenditure of federal funds for prosecution of medical marijuana activities in a state that has made it legal. In addition, the Anti-Deficiency Act makes it a criminal offense for any federal employee to expend unauthorized funds, regardless of the amount; such acts are punishable by up to two years in prison and a fine of $5,000. *See* 31 U.S.C. §§ 1350, 1519. For DOJ—the very agency responsible for federal law enforcement—to disregard the limitations imposed by federal law—including federal criminal law—damages the public's respect for law enforcement. DOJ's continued use of funds for a purpose that is expressly prohibited by federal law also undermines public confidence in the government's use of taxpayer dollars.

VII. CONCLUSION

For years, federal law enforcement has impeded California's ability to provide patients with access to medical marijuana and uniformly regulate that distribution system by raiding dispensaries, seizing marijuana, and prosecuting Californians based on shifting guidelines and unpredictable prosecutorial discretion. Recognizing that these law enforcement activities invade the state's sphere of governance and create an untenable legal environment for millions of individuals, Congress put an end to DOJ's enforcement activities by passing

Section 538. DOJ's continued prosecution of Mr. Lynch and other Californians circumvents Section 538 and stated federal policy, as well as the will of California's voters and representatives. DOJ's conduct harms public confidence in the fairness and efficacy of state and federal government, law enforcement, and the expenditure of taxpayer dollars. To prevent the unauthorized expenditure of taxpayer dollars and the further erosion of public confidence in government at all levels, it is imperative that this Court address Mr. Lynch's motion to enforce Section 538 without further delay.

DATED: May 7, 2015

Respectfully submitted,

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VIII. STATEMENT OF RELATED CASES

Amici Curiae Senator Mark Leno (SD-11), Senator Mike McGuire (SD-02), and Former Senator Darrell Steinberg are unaware of any cases deemed related in this Court.

DATED: May 7, 2015

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief uses a proportionally spaced Times New Roman typeface, 14-point, and that the text of the brief contains 4,197 words according to the word count provided by Microsoft Word, excluding the parts of the brief exempted by Federal Rules of Appellate Procedure 32(a)(7)(B)(iii). *See* Fed. R. App. Proc. 32; Ninth Cir. R. 29-2(c)(2).

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