In its most important land use decision since 2011, the California Supreme Court has upheld local governments' power to ban marijuana dispensaries within

their jurisdictions. Last week the court unanimously rejected marijuana advocates' claim that such local bans are preempted by California state law. The Supreme Court's opinion in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* can be found here.

The seeds of this dispute can be found in California's Compassionate Use Act, enacted by state voters as an initiative measure in 1996. Promoted by its sponsors as a narrow exception to California's criminal laws generally prohibiting pot use, the initiative decriminalizes marijuana use for purely medicinal purposes under a doctor's care. The problem is that the measure was poorly drafted, and over the years pot dispensaries proliferated throughout California, with advertising and marketing efforts targeted mostly at recreational pot users. That, in turn, created a political backlash in California, and numerous land use conflicts with neighboring schools, churches and residents.

In recent years, a growing number of California cities and counties gave up trying to resolve those conflicts, choosing instead to simply prohibit pot dispensaries within their local borders. (Some 193 California cities and 20 counties have instituted such bans.) Numerous commercial dispensaries and marijuana advocates went to court, challenging the local bans as preempted by the 1996 initiative and follow-up 2003 legislation. In other cases–including the one just decided by the California Supreme Court–local governments filed public nuisance actions against dispensary owners who refused to comply with the municipal bans on pot dispensaries. In both instances, the marijuana shops took the position that the local bans were preempted by the 1996 initiative and related state laws.

The California Supreme Court has now rejected that preemption challenge. Writing for the court in *Inland Empire*, Justice Marvin Baxter declared that California state laws "remove state level criminal and civil [penalties] from specified medical marijuana activities but they do not establish a comprehensive state system of legalized medical marijuana, or grant a right of convenient access to marijuana for medicinal use…or mandate local accommodation of medical cooperatives, collectives or dispensaries."

The *Inland Empire* decision resolves a dispute among California's six intermediate Courts of Appeal. All six had previously opined on the preemption question, reaching inconsistent results.

What the Supreme Court's decision does not resolve is a separate, related and even more important preemption issue: whether California's Compassionate Use Act is itself preempted by *federal* law. The use and possession of marijuana is a criminal offense under the federal Controlled Substances Act, which makes no exception for medicinal use of marijuana. Thus, many law enforcement officials and marijuana opponents have argued that California's Compassionate Use Act is preempted by contrary federal law. (The California Supreme Court actually had a case on its docket raising this latter issue, but it was dismissed before the justices could decide the issue on the merits.)

In 2011, California's four U.S. Attorneys launched a coordinated effort to prosecute pot offenses under federal criminal law in this state. (So far, federal prosecutors have focused their criminal enforcement efforts on large-scale marijuana growers and marketers, rather than individual users.) California was the first state to decriminalize marijuana use under a doctor's care, in 1996. Since then, however, a number of other states including Colorado and Washington have gone further, legalizing marijuana use even for recreational purposes. It will be interesting to see if federal prosecutors respond to this latter development by re-focusing their criminal enforcement efforts on those jurisdictions that now reflect a more relaxed view of marijuana use than does California.

Meanwhile, the California Supreme Court's decision in *Inland Empire* represents a major victory for California local governments that exercise their land use authority to proscribe private activities government leaders deem a threat to public health and safety. In recent years the California Legislature has circumscribed local land use authority in several areas–e.g., by abolishing California redevelopment agencies and through state efforts to mitigate greenhouse gas emissions. But *Inland Empire* demonstrates that California cities and counties still retain substantial land use authority, at least when local land use regulations are not in direct conflict with state law.