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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO et al., Plaintiffs and Appellants, v. SAN DIEGO NORML et al., Defendants and Respondents; WENDY CHRISTAKES et al., Interveners and Respondents.	D050333 (Super. Ct. Nos. GIC860665, GIC861051)

APPEAL from a judgment of the Superior Court of San Diego County, William R. Nevitt, Jr., Judge. Affirmed.

John J. Sansone, County Counsel (San Diego), Thomas D. Bunton and C. Ellen Pilsecker, Deputy County Counsel, for Plaintiff and Appellant County of San Diego.

Ruth E. Stringer, County Counsel (San Bernardino), Alan L. Green, Charles J. Larkin and Dennis Tilton, Deputy County Counsel, for Plaintiffs and Appellants County of San Bernardino and Gary Penrod.

American Civil Liberties Union Foundation, Adam B. Wolf, Allen Hopper; ACLU of San Diego & Imperial Counties and David Blair-Loy for Defendants and Respondents San Diego NORML, Wo/Men's Alliance for Medical Marijuana and Dr. Stephen O'Brien.

Edmund G. Brown, Jr., Attorney General, Christopher E. Krueger, Assistant Attorney General, Jonathan K. Renner and Peter A. Krause, Deputy Attorneys General, for Defendants and Respondents State of California and Sandra Shewry.

Americans for Safe Access and Joseph D. Elford for Interveners and Respondents Wendy Christakes, Norbert Litzinger, William Britt, Yvonne Westbrook and Americans for Safe Access.

In 2003, the California Legislature enacted the Medical Marijuana Program Act. (Health & Saf. Code, §§ 11362.7-11362.9, hereafter MMP.)[1] Among other provisions, the MMP imposed on counties the obligation to implement a program permitting a limited group of persons--those who qualify for exemption from California's statutes criminalizing certain conduct with respect to marijuana (the exemptions)--to apply for and obtain an identification card verifying their exemption.

In this action, plaintiffs County of San Diego (San Diego) and County of San Bernardino (San Bernardino) contend that, because the federal Controlled Substances Act (21 U.S.C. §§ 801-904, hereafter CSA) prohibits possessing or using marijuana for any purpose, certain provisions of California's statutory scheme are unconstitutional under the

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1 All statutory references are to the Health and Safety Code unless otherwise specified.

Supremacy Clause of the United States Constitution. San Diego and San Bernardino (together Counties) did not claim below, and do not assert on appeal, that the exemption from state criminal prosecution for possession or cultivation of marijuana provided by California's Compassionate Use Act of 1996 (§ 11362.5, hereafter CUA) is unconstitutional under the preemption clause. Instead, Counties argue the MMP is invalid under preemption principles, arguing the MMP poses an obstacle to the congressional intent embodied in the CSA.

The trial court below rejected Counties' claims, concluding the MMP neither conflicted with nor posed an obstacle to the CSA. On appeal, Counties assert the trial court applied an overly narrow test for preemption, and the MMP is preempted as an obstacle to the CSA. We conclude Counties have standing to challenge only those limited provisions of the MMP that impose specific obligations on Counties, and may not broadly attack collateral provisions of California's laws that impose no obligation on or inflict any particularized injury to Counties. We further conclude, as to the limited provisions of the MMP that Counties *may* challenge, those provisions do not positively conflict with the CSA, and do not pose any added obstacle to the purposes of the CSA not inherent in the distinct provisions of the exemptions from prosecution under California's laws, and therefore those limited provisions of the MMP are not preempted. We also reject San Bernardino's claim that the identification card provisions of the MMP are invalid under the California Constitution.

preempted by federal law, we conclude Counties have standing to raise preemption claims insofar as the MMP establishes the identification card system. Accordingly, we reach Counties' preemption arguments as to those statutes, and *only* those statutes, that require Counties to implement and administer the identification card system.[8]

IV

THE PREEMPTION ISSUE

A. General Principles

Principles of preemption have been articulated by numerous courts. " 'The supremacy clause of article VI of the United States Constitution grants Congress the power to preempt state law. State law that conflicts with a federal statute is " 'without effect.' " [Citations.] It is equally well established that "[c]onsideration of issues arising under the Supremacy Clause 'start[s] with the assumption that the historic police powers of the States [are] not to be superseded by . . . Federal Act unless that [is] the clear and manifest purpose of Congress.' " [Citation.] Thus, " ' "[t]he purpose of Congress is the

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8 Specifically, we examine Counties' preemption claims only as to sections 11362.71, subdivision (b) (requiring counties to administer the identification card system established by the Department of Health Services), 11362.72 (specifying counties' obligations upon receipt of application for identification card), 11362.735 (specifying contents of identification card issued by counties), 11362.74 (specifying grounds and procedures for denying application), 11362.745 (specifying renewal procedures for cards), and section 11362.755 (permitting counties to establish fees to defray cost of administering system), which impose obligations on Counties. We conclude Counties do not have standing to challenge (and therefore we do not evaluate) whether the remaining sections, and in particular sections 11362.5, subdivision (d), and 11362.765 (providing specified persons with exemptions from state law penalties for specified offenses), are preempted by the CSA.

ultimate touchstone" ' " of pre-emption analysis." [Citation.]' " (*Jevne v. Superior Court* (2005) 35 Cal.4th 935, 949.)

The California Supreme court has identified "four species of federal preemption: express, conflict, obstacle, and field. [Citation.] [¶] First, express preemption arises when Congress 'define[s] explicitly the extent to which its enactments pre-empt state law. [Citation.] Pre-emption fundamentally is a question of congressional intent, [citation], and when Congress has made its intent known through explicit statutory language, the courts' task is an easy one.' [Citations.] Second, conflict preemption will be found when simultaneous compliance with both state and federal directives is impossible. [Citations.] Third, obstacle preemption arises when ' "under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." ' [Citations.] Finally, field preemption, i.e., 'Congress' intent to pre-empt all state law in a particular area,' applies 'where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation.' [Citations.]" (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 935-936, fn. omitted (*Viva!*).)

The parties agree, and numerous courts have concluded, Congress's statement in the CSA that "[n]o provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter" (21

U.S.C. § 903) demonstrates Congress intended to reject express and field preemption of state laws concerning controlled substances. (See, e.g., *People v. Boultinghouse* (2005) 134 Cal.App.4th 619, 623 [21 U.S.C. § 903's "express statement by Congress that the federal drug law does *not* generally preempt state law gives the usual assumption against preemption additional force"]; *Gonzales v. Oregon* (2006) 546 U.S. 243, 289 [dis. opn. of Scalia, J.] [characterizing section 903 as a "nonpre-emption clause"]; *City of Hartford v. Tucker* (Conn. 1993) 621 A.2d 1339, 1341 [describing 21 U.S.C. § 903 and "the antipreemption provision of the Controlled Substances Act"].) When Congress has expressly described the scope of the state laws it intended to preempt, the courts "infer Congress intended to preempt no more than that absent sound contrary evidence." (*Viva!, supra,* 41 Cal.4th at p. 945.)

B. Conflict and Obstacle Preemption

Although the parties agree that neither express nor field preemption apply in this case, they dispute whether title 21 United States Code section 903 signified a congressional intent to displace only those state laws that positively conflict with the provisions of the CSA, or also signified a congressional intent to preempt any laws posing an obstacle to the fulfillment of purposes underlying the CSA.

Conflict Preemption

Conflict preemption will be found when "simultaneous compliance with both state and federal directives is impossible." (*Viva!, supra,* 41 Cal.4th at 936.) In *Southern Blasting Services v. Wilkes County, NC* (4th Cir. 2002) 288 F.3d 584, the court construed

the effect of a federal preemption clause substantively identical to title 21 United States Code section 903.[9] In rejecting the plaintiffs' argument that the local ordinances were invalid because they were in "direct and positive conflict" with the federal law, the *Southern Blasting* court concluded that "[t]he 'direct and positive conflict' language in 18 U.S.C. § 848 simply restates the principle that state law is superseded in cases of an actual conflict with federal law such that 'compliance with both federal and state regulations is a physical impossibility.' [Quoting *Hillsborough County v. Automated Medical Labs.* (1985) 471 U.S. 707, 713]. Indeed, § 848 explains that in order for a direct and positive conflict to exist, the state and federal laws must be such that they 'cannot be reconciled or consistently stand together.' " (*Southern Blasting, supra*, at p. 591; accord *Florida Avocado Growers v. Paul* (1963) 373 U.S. 132, 142-143 [state law preempted where "compliance with both federal and state regulations is a physical impossibility"].)

Congress has the power to permit state laws that, although posing some obstacle to congressional goals, may be adhered to without requiring a person affirmatively to violate federal laws. (*Geier v. American Honda Motor Co.* (2000) 529 U.S. 861, 872 [dicta].) In *Gonzales v. Oregon, supra,* 546 U.S. 243, the court considered whether the

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9 The preemption clause evaluated by the *Southern Blasting* court provided that, "No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together." (18 U.S.C. § 848.)

CSA, by regulating controlled substances and making some substances available only pursuant to a prescription by a physician "issued for a legitimate medical purpose" (21 C.F.R. § 1306.04(a)), permitted the federal government to effectively bar Oregon's doctors from prescribing drugs pursuant to Oregon's assisted suicide law by issuing a federal administrative rule (the Directive) that use of controlled substances to assist suicide is not a legitimate medical practice and dispensing or prescribing them for this purpose is unlawful under the CSA. The majority concluded the CSA's preemption clause showed Congress "explicitly contemplates a role for the States in regulating controlled substances" (*Gonzales v. Oregon,* at p. 251), including permitting the states latitude to continue their historic role of regulating medical practices. In dissent, Justice Scalia concluded title 21 United States Code section 903 was "embarrassingly inapplicable" to the majority's preemption analysis because the preemptive impact of section 903 reached only state laws that affirmatively mandated conduct violating federal laws. (*Gonzales v. Oregon, supra,* 546 U.S. at p. 289, dis. opn. of Scalia, J.)[10] Thus, it appears Justice Scalia's interpretation suggests a state law is preempted by a federal

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10 Justice Scalia explained that title 21 United States Code section 903 only "affirmatively *prescrib*[*ed*] federal pre-emption whenever state law creates a conflict. In any event, the Directive does not purport to pre-empt state law in any way, not even by conflict pre-emption--unless the Court is under the misimpression that some States *require* assisted suicide. The Directive merely interprets the CSA to prohibit, like countless other federal criminal provisions, conduct that happens not to be forbidden under state law (or at least the law of the State of Oregon)." (*Gonzales v. Oregon, supra,* 546 U.S. at pp. 289-290, dis. opn. of Scalia, J.)

"positive conflict" clause, like 21 U.S.C. section 903, only when the state law affirmatively requires acts violating the federal proscription.

Obstacle Preemption

Obstacle preemption[11] will invalidate a state law when " ' "under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." ' [Citations.]" (*Viva!, supra,* 41 Cal.4th at p. 936.) Under obstacle preemption, whether a state law presents "a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects: [¶] 'For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished--if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect--the state law must yield to the regulation of Congress within the sphere of its delegated power.' " (*Crosby v. National Foreign Trade Council* (2000) 530 U.S. 363, 373.)

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11 The parties dispute whether obstacle preemption is merely an alternative iteration of conflict preemption, or whether obstacle preemption requires an analytical approach distinct from conflict preemption. Our Supreme Court, although recognizing that the courts have often "group[ed] conflict preemption and obstacle preemption together in a single category" (*Viva!, supra,* at pp. 935-936, fn. 3), has concluded the two types of preemption are "analytically distinct and may rest on wholly different sources of constitutional authority [and] we treat them as separate categories . . . ." (*Ibid*.)

C. The State Identification Card Laws and Preemption

The parties below disputed the effect of the language of title 21 United States Code section 903, which provides:

> "No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, *unless there is a positive conflict* between that provision of this subchapter and that State law *so that the two cannot consistently stand together*." (Italics added.)

In the proceedings below, State and other respondents contended this language evidenced a congressional intent to preempt only those state laws in direct and positive conflict with the CSA so that compliance with both the CSA and the state laws is impossible. Counties asserted this language was merely intended to eschew express and field preemption and should be construed as declaring Congress's intent to preempt any state laws that posed a substantial obstacle to the fulfillment of purposes underlying the CSA in addition to those in direct conflict. The trial court, after concluding title 21 United States Code section 903 was intended to preserve all state laws except insofar as compliance with both the CSA and the state statute was impossible, found the MMP and CUA were not preempted because they did not mandate conduct violating the CSA.

21 U.S.C. Section 903 Limits Preemption to Positive Conflicts

The intent of Congress when it enacted the CSA is the touchstone of our preemption analysis. (*Jevne v. Superior Court*, *supra*, 35 Cal.4th at p. 949.) When Congress legislates in a "field which the States have traditionally occupied[,] . . . we start

with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." (*Rice v. Santa Fe Elevator Corporation* (1947) 331 U.S. 218, 230.) Because the MMP and CUA address fields historically occupied by the states--medical practices (*Medtronic v. Lohr* (1996) 518 U.S. 470, 485) and state criminal sanctions for drug possession (*City of Garden Grove v. Superior Court, supra,* 157 Cal.App.4th at pp. 383-386)--the presumption against preemption informs our resolution of the scope to which Congress intended the CSA to supplant state laws, and cautions us to narrowly interpret the scope of Congress's intended invalidation of state law. (*Medtronic, supra*.)

Our evaluation of the scope of Congress's intended preemption examines the text of the federal law as the best indicator of Congress's intent and, where that law "contains an express pre-emption clause, our 'task of statutory construction must in the first instance focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent.' " (*Sprietsma v. Mercury Marine* (2002) 537 U.S. 51, 62-63.) Because "[i]n these cases, our task is to identify the domain expressly pre-empted [citation] . . . 'an express definition of the pre-emptive reach of a statute . . . supports a reasonable inference . . . that Congress did not intend to pre-empt other matters [citation].' " (*Lorillard Tobacco Co. v. Reilly* (2001) 533 U.S. 525, 541; accord, *Viva!, supra,* 41 Cal.4th at pp. 944-945 [inference that express definition of preemptive reach means Congress did not intend to preempt other matters "is a simple corollary of ordinary statutory interpretation principles and in particular 'a variant of the familiar principle of

expressio unius est exclusio alterius: Congress' enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted.' ")

The language of title 21 United States Code section 903 expressly limits preemption to only those state laws in which there "is a *positive conflict* between [the federal and state law] *so that the two cannot consistently stand together*." (Italics added.) When construing a statute, the courts seek to attribute significance to every word and phrase (*United States v. Menasche* (1955) 348 U.S. 528, 538-539) in accordance with their usual and ordinary meaning. (*Strong v. State Bd. of Equalization* (2007) 155 Cal.App.4th 1182, 1193.) The phrase "positive conflict," particularly as refined by the phrase that "the two [laws] cannot consistently stand together," suggests that Congress did not intend to supplant all laws posing some conceivable obstacle to the purposes of the CSA, but instead intended to supplant only state laws that could not be adhered to without violating the CSA. Addressing analogous express preemption clauses, the court in *Southern Blasting Services v. Wilkes County, NC, supra,* 288 F.3d 584 held the state statute was not preempted because compliance with both the state and federal laws was not impossible, and the court in *Levine v. Wyeth* (Vt. 2006) 944 A.2d 179, 190-191 construed a federal statute with an analogous express preemption clause (which preserved state laws unless there is a direct and positive conflict) as "essentially remov[ing] from our consideration the question of whether [state law] claims [are preempted as] an obstacle to the purposes and objectives of Congress." Because title 21 United States Code section 903 preserves state laws except where there exists such a *positive* conflict

that the two laws *cannot* consistently stand together, the *implied* conflict analysis of obstacle preemption appears beyond the intended scope of title 21 United States Code section 903.

Counties argue this construction is too narrow, and we should construe Congress's use of the term "conflict" in section 903 as signifying an intent to incorporate both positive and implied conflict principles into the scope of state laws preempted by the CSA. Certainly, the United States Supreme Court has concluded that federal legislation containing an express preemption clause and a savings clause does not necessarily preclude application of implied preemption principles. (See *Geier v. American Honda Motor Co., supra*, 529 U.S. 861; *Buckman Co. v. Plaintiffs' Legal Comm.* (2001) 531 U.S. 341; *Sprietsma v. Mercury Marine, supra*, 537 U.S. 51.) However, none of Counties' cited cases examined preemption clauses containing the "positive conflict" language included in title 21 United States Code section 903, and thus provide little guidance here.[12] Indeed, Counties' proffered construction effectively reads the term

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12 In *Geier* and *Sprietsma*, the express preemption clauses precluded a state from establishing any safety standard regarding a vehicle (*Geier*) or vessel (*Sprietsma*) not identical to the federal standard, but separate "savings" clauses specified that compliance with the federal safety standards did not exempt any person from any liability under common law. (*Geier v. American Honda Motor Co., supra*, 529 U.S. at pp. 867-868; *Sprietsma v. Mercury Marine, supra*, 537 U.S. at pp. 58-59.) The analysis of the interplay between two statutes, as addressed by the *Geier* and *Sprietsma* courts, bears no resemblance to the issues presented here. In *Buckman Co. v. Plaintiffs' Legal Comm., supra,* 531 U.S. 341, the issues examined by the court are even more remote from the issues we must resolve. First, the *Buckman* court specifically recognized that the preemption issue there involved "[p]olicing fraud against federal agencies[, which] is hardly 'a field which the States have traditionally occupied,' [citation] such as to warrant a presumption against finding federal pre-emption of a state-law cause of action."

"positive" out of section 903, which transgresses the interpretative canon that we should accord meaning to every term and phrase employed by Congress. (*United States v. Menasche*, *supra*, 348 U.S. at 538-539.) Moreover, when Congress has intended to craft an express preemption clause signifying that *both* positive and obstacle conflict preemption will invalidate state laws, Congress has so structured the express preemption clause. (See 21 U.S.C. 350e(e)(1) [Congress declared that state requirements would be "preempted if-- [¶] (A) complying with [the federal and state statutes] is not possible; or (B) the requirement of the State . . . as applied or enforced is an obstacle to accomplishing and carrying out [the federal statute]".) Where statutes involving similar issues contain language demonstrating the Legislature knows how to express its intent, " 'the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes.' " (*In re Jennings* (2004) 34 Cal.4th 254, 273.)

Because Congress provided that the CSA preempted only laws positively conflicting with the CSA so that the two sets of laws could not consistently stand together, and omitted any reference to an intent to preempt laws posing an obstacle to the CSA, we interpret title 21 United States Code section 903 as preempting only those state laws that positively conflict with the CSA so that simultaneous compliance with both sets of laws is impossible.

(*Buckman*, at p. 347.) Moreover, *Buckman* effectively relied on field preemption concerns to delimit state fraud claims. (*Id*. at pp. 348-353.) Neither of these aspects of *Buckman* is relevant to the issues we must resolve.

The Identification Laws Do Not Positively Conflict With the CSA

Counties do not identify any provision of the CSA necessarily violated when a county complies with its obligations under the state identification laws.[13] The identification laws obligate a county only to process applications for, maintain records of, and issue cards to, those individuals entitled to claim the exemption. The CSA is entirely silent on the ability of states to provide identification cards to their citizenry, and an entity that issues identification cards does not engage in conduct banned by the CSA.

Counties appear to argue there is a positive conflict between the identification laws and the CSA because the card issued by a county confirms that its bearer may violate or is immunized from federal laws.[14] However, the applications for the card expressly state the card will not insulate the bearer from federal laws, and the card itself does not imply the holder is immune from prosecution for federal offenses; instead, the card merely identifies those persons California has elected to exempt from California's

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13 San Bernardino concedes on appeal that compliance with California law "may not require a violation of the CSA," although it then asserts it "encourages if not facilitates the CSA's violation." However, the *Garden Grove* court has already concluded, and we agree, that governmental entities do not incur aider and abettor liability by complying with their obligations under the MMP (*City of Garden Grove v. Superior Court, supra,* 157 Cal.App.4th at 389-392), and we therefore reject San Bernardino's implicit argument that requiring a county to issue identification cards renders that county an aider and abettor to create a positive conflict with the CSA.

14 San Diego also cites numerous subdivisions of the CUA and MMP, which contain a variety of provisions allegedly authorizing or permitting persons to engage in conduct expressly barred by the CSA, to show the CUA and MMP in positive conflict with the CSA. However, none of the cited subdivisions are contained in the statutes that Counties have standing to challenge (see fn. 8, *ante*), and we do not further consider Counties' challenges as to those provisions.

sanctions. (Cf. *U.S. v. Cannabis Cultivators Club* (N.D. Cal. 1998) 5 F.Supp.2d 1086, 1100 [California's CUA "does not conflict with federal law because on its face it does not purport to make legal any conduct prohibited by federal law; it merely exempts certain conduct by certain persons from the California drug laws"].) Because the CSA law does not compel the states to impose criminal penalties for marijuana possession, the requirement that counties issue cards identifying those against whom California has opted not to impose criminal penalties does not positively conflict with the CSA.

Accordingly, we reject Counties' claim that positive conflict preemption invalidates the identification laws because Counties' compliance with those laws can "consistently stand together" with adherence to the provisions of the CSA.

D. The Identification Card Laws and Obstacle Preemption

Although we conclude title 21 United States Code section 903 signifies Congress's intent to maintain the power of states to elect "to 'serve as a laboratory' in the trial of 'novel social and economic experiments without risk to the rest of the country' " (*United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, 502 [conc. opn. of Stevens, J.]) by preserving all state laws that do not positively conflict with the CSA, we also conclude the identification laws are not preempted even if Congress had intended to preempt laws posing an obstacle to the CSA. Although state laws may be preempted under obstacle preemption when the law " ' "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" ' " (*Viva!, supra,* 41 Cal.4th at p. 936), not every state law posing some de minimus impediment will be

preempted. To the contrary, "[d]isplacement will occur only where, as we have variously described, a *'significant conflict'* exists between an identifiable 'federal policy or interest and the [operation] of state law,' [citation] or the application of state law would 'frustrate specific objectives . . .' [citation]." (*Boyle v. United Technologies Corp.* (1988) 487 U.S. 500, 507, italics added.) Indeed, *Boyle* implicitly recognized that when Congress has legislated in a field that the states have traditionally occupied, rather than in an area of unique federal concern, obstacle preemption requires an even sharper conflict with federal policy before the state statute will be invalidated. (*Ibid*.)

We conclude the identification card laws do not pose a significant impediment to specific federal objectives embodied in the CSA. The purpose of the CSA is to combat recreational drug use, not to regulate a state's medical practices. (*Gonzalez v. Oregon, supra,* 546 U.S. at pp. 270-272 [holding Oregon's assisted suicide law fell outside the preemptive reach of the CSA].) The identification card laws merely provide a mechanism allowing qualified California citizens, if they so elect, to obtain a form of identification that informs state law enforcement officers and others that they are medically exempted from the state's criminal sanctions for marijuana possession and use. Although California's decision to enact statutory exemptions from state criminal prosecution for such persons arguably undermines the goals of or is inconsistent with the CSA--a question we do not decide here--any alleged "obstacle" to the federal goals is presented by those California statutes that *create the exemptions*, not by the statutes providing a system for rapidly identifying exempt individuals. The identification card

statutes impose no significant *added* obstacle to the purposes of the CSA not otherwise inherent in the provisions of the exemptions that Counties do not have standing to challenge, and we therefore conclude the limited provisions of the MMP that Counties *may* challenge are not preempted by principles of obstacle preemption.

We are unpersuaded by Counties' arguments that the identifications laws, standing alone, present significant obstacles to the purposes of the CSA.[15] For example, Counties assert that identification cards make it "easier for individuals to use, possess, and cultivate marijuana" in violation of federal laws, without articulating why the absence of such a card--which is entirely voluntary and not a prerequisite to the exemptions available for such underlying conduct--renders the underlying conduct significantly more difficult.

Counties also appear to assert the identification card laws present a significant obstacle to the CSA because the bearer of an identification card will not be arrested by California's law enforcement officers despite being in violation of the CSA. However, the unstated predicate of this argument is that the federal government is entitled to conscript a state's law enforcement officers into enforcing federal enactments, over the objection of that state, and this entitlement will be obstructed to the extent the identification card precludes California's law enforcement officers from arresting medical

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15 The bulk of Counties' arguments on obstacle preemption focus on statutory provisions other than the identification card statutes. Because Counties do not have standing to challenge those statutes, we decline Counties' implicit invitation to issue an advisory opinion on whether those statutes are preempted by the CSA, and instead examine only those aspects of the statutory scheme imposing obligations on Counties.

marijuana users. The argument falters on its own predicate because Congress does not have the authority to compel the states to direct their law enforcement personnel to enforce federal laws. In *Printz v. United States* (1997) 521 U.S. 898, the federal Brady Act purported to compel local law enforcement officials to conduct background checks on prospective handgun purchasers. The United States Supreme Court held the 10th Amendment to the United States Constitution deprived Congress of the authority to enact that legislation, concluding that "in [*New York v. United States* (1992) 505 U.S. 144 we ruled] that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." (*Printz*, at p. 935.)[16] Accordingly, we conclude the fact that

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16 San Diego argues the anti-commandeering doctrine discussed in *Printz* is inapplicable because the court in *Hodel v. Virginia Surface Mining & Recl. Assn.* (1981) 452 U.S. 264, 289-290 explicitly rejected the assertion the Tenth Amendment delimited Congress's ability under the Commerce Clause to displace state laws. However, *Printz* rejected an analogous claim when it held that, although the Commerce Clause authorized Congress to *enact* legislation concerning handgun registration, the Brady Act's *direction of the actions of state executive officials* was not constitutionally valid under Article I, § 8, as a law "necessary and proper" to the execution of Congress's Commerce Clause power to regulate handgun sales, because when "a 'La[w] . . . for carrying into Execution' the Commerce Clause violates the principle of state sovereignty reflected in the various constitutional provisions we mentioned earlier [citation] it is not a "La[w] . . . *proper* for carrying into Execution the Commerce Clause.' " (*Printz, supra*, at pp. 923-924.) Thus, although the Commerce Clause permits Congress to *enact* the CSA, it does not permit Congress to *conscript state officers* into arresting persons for violating the CSA.

California has decided to exempt the bearer of an identification card from arrest by state law enforcement for state law violations does not invalidate the identification laws under obstacle preemption. (Cf. *Conant v. Walters, supra*, 309 F.3d at p. 646 [conc. opn. of Kozinski, J.] ["That patients may be more likely to violate federal law if the additional deterrent of state liability is removed may worry the federal government, but the proper response--according to *New York* and *Printz*--is to ratchet up the federal regulatory regime, *not* to commandeer that of the state."].)

We conclude that even if Congress intended to preempt state laws that present a significant obstacle to the CSA, the MMP identification card laws are not preempted.

V

THE AMENDMENT ISSUE

The CUA was adopted by initiative when the voters adopted Proposition 215. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 767.) Article II, section 10, subdivision (c) of the California Constitution provides the Legislature may "amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." San Bernardino asserts on appeal that the identification laws, which are among the statutes adopted by the Legislature without voter approval when it enacted the MMP, are invalid because they amend the CUA.

This issue, although not pleaded in the complaints filed by either San Bernardino or San Diego, was initially raised by County of Merced's (Merced) complaint in