

FILED

Michelle L. Crocker

Leelanau 13th Circuit Court

04/08/2020

STATE OF MICHIGAN
LEELANAU COUNTY CIRCUIT COURT

NORTHPORT CITIZENS AGAINST
WEED SHOPS, RICHARD L. LANG, and
PAMELA S. STEFFENS,

Plaintiffs,

v.

JONI L. SCOTT, Clerk of the Village of
Northport,

Defendant.

Case No. 2020-10457-AW

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**DEFENDANT'S ANSWER TO COMPLAINT FOR DECLARATORY
JUDGMENT AND WRIT OF MANDAMUS**

April 8, 2020

Defendant, Joni Scott, the duly elected Clerk of the Village of Northport, a Michigan municipal corporation (“Defendant”), by and through her attorneys at OLSON, BZDOK & HOWARD, PC, files the following Answer and Affirmative Defenses in opposition to the Plaintiff’s Complaint for Declaratory Judgment and Writ of Mandamus:

1. Defendant neither admits nor denies Plaintiffs’ characterization of the nature of the alleged “CAWS” entity as Defendant is without sufficient information to form a belief about same, and therefore leaves Plaintiffs to their proofs. Further answering Plaintiffs’ allegations in Paragraph 1, Defendant avers that no corporate entity bearing the name provided by Plaintiffs is on file with the State of Michigan Department of Licensing and Regulatory Affairs.

2. Upon information and belief, Defendant admits that Plaintiffs Richard L. Lang and Pamela S. Steffens are electors in the Village of Northport and that both individuals signed the petitions presented to the Defendant Village Clerk in this matter. As to the balance of Plaintiffs’ allegations in Paragraph 2, Defendants neither admit nor deny same due to a lack of information with which to form a belief about the truth of same, and therefore leaves Plaintiffs to their proofs.

3. Admitted.

4. Defendant does not contest this honorable Court’s jurisdiction over this matter.

5. Plaintiffs’ allegations in Paragraph 5 characterize a statute of the State of Michigan which, as a written document, speaks for itself, and therefore, no answer is required. To the extent an answer is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of Plaintiffs’ allegations and therefore, leaves Plaintiffs to their proofs.

6. Plaintiffs’ allegations in Paragraph 6 characterize a statute of the State of Michigan which, as a written document, speaks for itself, and therefore, no answer is required. To the extent an answer is required, Defendant lacks knowledge or information sufficient to form a belief as to

the truth of Plaintiffs' allegations and therefore, leaves Plaintiffs to their proofs. Further answering Plaintiffs' paragraph 6, Defendant avers that Section 301 of the Medical Marihuana Facilities Licensing Act (Public Act 281 of 2016; MCL §333.27301) creates a "medical marihuana licensing board ... within the department of licensing and regulatory affairs." MCL §333.27301(1).

7. Plaintiffs' allegations in Paragraph 7 characterize statutes and administrative rules of the State of Michigan which, as written documents, speak for themselves, and therefore, no answer is required. To the extent an answer is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations and therefore, leaves Plaintiffs to their proofs.

8. Plaintiffs' allegations in Paragraph 8 characterize an administrative rule of the State of Michigan which, as a written document, speaks for itself, and therefore, no answer is required. To the extent an answer is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations and therefore, leaves Plaintiffs to their proofs.

9. Plaintiffs' allegations in Paragraph 5 characterize a statute of the State of Michigan which, as a written document, speaks for itself, and therefore, no answer is required. Defendant further admits that the Medical Marihuana Facilities Licensing Act, Public Act 281 of 2016 ("MMFLA"; MCL §333.27101 *et seq.*) contains no provisions authorizing voter-led initiative(s).

10. Plaintiffs' allegations in Paragraph 10 characterize duly enacted ordinances of the Village of Northport which, as written documents, speak for themselves, and therefore, no answer is required. Further answering Plaintiffs' paragraph 10, Defendant admits that Ordinance Number 124 of the Village of Northport is entitled the "Village of Northport Medical Marihuana Facilities Ordinance" and regulates certain activities authorized by (1) the Michigan Medical Marihuana Act ("MMMA"), Initiated Law 1 of 2008, as amended, MCL §333.26424 *et seq.*; and (2) the MMFLA,

2016 PA 281, as amended, MCL §333.27102 *et seq.* Further answering Plaintiffs' paragraph 10, Defendant denies Plaintiffs' allegation that Ordinance Number 125 of the Village of Northport (entitled the "Village of Northport Recreational Marihuana Establishments Ordinance") "permits 5 medical marihuana facilities in the Village" as untrue.

11. Plaintiffs' allegations in Paragraph 11 characterize a statute of the State of Michigan which, as a written document, speaks for itself, and therefore, no answer is required. To the extent an answer is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations and therefore, leaves Plaintiffs to their proofs.

12. Defendant lacks knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations and therefore, can neither admit nor deny Plaintiffs' allegations in this Paragraph 12, leaving Plaintiffs to their proofs. Further answering Plaintiffs' Paragraph 12, Defendant avers that the Village received signed petitions from numerous individuals, some relating to medical marihuana and others relating to recreational marihuana.

13. Defendant admits the receipt of several signed petition forms, but lacks knowledge or information sufficient to form a belief as to the truth of the balance of the Plaintiffs' allegations and therefore, can neither admit nor deny Plaintiffs' allegations in this Paragraph 13, leaving Plaintiffs to their proofs.

14. Defendant admits receipt of several signed petition forms in October of 2019 which failed to conform to various legal requirements, but denies the balance of the allegations set forth in Plaintiffs' Paragraph 14 as untrue. Further answering Plaintiffs' Paragraph 14, Defendant avers that counsel to the Village informed Plaintiffs' counsel of the legal deficiencies of the previously submitted petition forms, after which Plaintiffs' counsel submitted newly gathered petitions with said deficiencies corrected.

15. Defendant admits receipt of several signed petition forms in November of 2019 which reflected the outcome of discussions between counsel to Defendant and Plaintiffs' counsel as to form. Further answering Plaintiffs' Paragraph 15, Defendant avers that she received in November of 2019 two separate and distinct sets of petitions: one relating to rescission of the Village of Northport Medical Marihuana Facilities Ordinance (Ordinance No. 124 cited above; hereinafter, the "Medical Ordinance") and the Village of Northport Recreational Marihuana Establishments Ordinance (Ordinance No. 125 cited above; hereinafter, the "Recreational Ordinance"). As to the balance of Plaintiffs' allegations set forth in Paragraph 15, Defendant lacks knowledge or information sufficient to form a belief as to the truth of said allegations and therefore, can neither admit nor deny same, leaving Plaintiffs to their proofs.

16. Defendant admits receipt of several signed petition forms in November of 2019 which reflected the outcome of discussions between counsel to Defendant and Plaintiffs' counsel as to form.

17. Plaintiffs' allegations in Paragraph 17 characterize a statute of the State of Michigan which, as a written document, speaks for itself, and therefore, no answer is required. To the extent an answer is required, Defendant admits that Section 477(1) of the Michigan Election Law (MCL §168.477(2)) provides that the "board of state canvassers shall complete the canvass of a referendum petition within 60 days after the petition is filed with the secretary of state..." and as to the balance of the allegations in Paragraph 17 Defendant lacks knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations and therefore, leaves Plaintiffs to their proofs.

18. Defendant can neither admit nor deny the allegations of Plaintiffs' Paragraph 18 as Defendant lacks knowledge or information sufficient to form a belief as to the truth of said allegations and therefore, leaves Plaintiffs to their proofs.

19. Defendant admits that she reviewed the signatures on the received petition forms to verify the signatories' status as qualified electors in the Village of Northport in early December of 2019 and completed said review prior to the December 11, 2019 meeting of the Village Finance Committee. Defendant can neither admit nor deny the balance of the allegations of Plaintiffs' Paragraph 19 as Defendant lacks knowledge or information sufficient to form a belief as to the truth of said allegations and therefore, leaves Plaintiffs to their proofs.

20. Plaintiffs' allegations in Paragraph 20 characterize a statute of the State of Michigan which, as a written document, speaks for itself, and therefore, no answer is required.

21. Plaintiffs' allegations in Paragraph 21 state a legal conclusion to which no answer is required. To the extent an answer is required, Defendant avers that the MRTMA, MMMA, and MMFLA are statutes of the State of Michigan which, as written documents, speak for themselves, and Defendant denies the selective interpretation and legal conclusion proffered by the Plaintiffs herein as incorrect.

22. Plaintiffs' allegations in Paragraph 22 state a legal conclusion to which no answer is required. To the extent an answer is required, Defendant avers that the MRTMA, MMMA, and MMFLA are statutes of the State of Michigan which, as written documents, speak for themselves, and Defendant denies the selective interpretation and legal conclusion proffered by the Plaintiffs herein as incorrect.

23. Plaintiffs' allegations in Paragraph 23 state a legal conclusion to which no answer is required. To the extent an answer is required, Defendant avers that the MRTMA, MMMA, and

MMFLA are statutes of the State of Michigan which, as written documents, speak for themselves, and Defendant denies the selective interpretation and legal conclusion proffered by the Plaintiffs herein as incorrect.

24. Defendant denies the unsupported allegations as to any alleged “refusal” as set forth in Paragraph 24 as untrue. Further answering Plaintiff’s Paragraph 24, Defendant avers that, as stated in Paragraph 25 below, Defendant is not required to certify the wording of ballot language to be used on the ballots for the next upcoming regular election on November 3, 2020 until August 11, 2020. Defendant further answers Plaintiff’s Paragraph 24, as set forth in the accompanying Response to Plaintiffs’ Motion for Summary Disposition as well as in the February 24, 2020 letter from Defendant’s counsel cited in Paragraph 24, that Michigan municipal entities and local governments “have no inherent powers and possess only those limited powers which are expressly conferred upon them by the state constitution or state statutes or which are necessarily implied therefrom.” *Hanselman v Wayne Co Concealed Weapon Licensing Bd*, 419 Mich 168, 187; 351 NW2d 544 (1984). Defendant is prepared to approve the ballot language of the petition initiative relating to the Recreational Ordinance within the statutory time frame required by the Michigan Election Law, which has not concluded and will not conclude for more than four months after the filing of this Answer.

25. Admitted.

26. Plaintiff’s allegations in Paragraph 26 state a legal conclusion, requiring no answer.

27. Defendant denies the Plaintiffs’ unsupported and incorrect allegations in Paragraph 27 as untrue.

28. Defendant denies the Plaintiffs’ allegations in Paragraph 28 as untrue, as stated above in response to Paragraph 24.

29. Plaintiff's allegations in Paragraph 29 state an unsupported and incorrect legal conclusion, requiring no answer.

30. Plaintiff's allegations in Paragraph 30 state an unsupported and incorrect legal conclusion, requiring no answer. To the extent an answer is required, as stated above in response to Paragraph 24, Defendant and the Village she serves "have no inherent powers and possess only those limited powers which are expressly conferred upon them," and therefore, the action that the Plaintiffs' are requesting this Court order her to perform is not within her authority under the Constitution of the State of Michigan of 1963, the General Law Village Act, the MMMA, MMFLA, MRTMA, nor the common law of the state of Michigan.

31. Plaintiffs' allegations in Paragraph 31 state a legal conclusion, requiring no answer. To the extent an answer is required, Defendant denies the Plaintiffs' allegations in Paragraph 31 as untrue, as stated above in response to Paragraph 24.

32. Defendant denies the allegations set forth in Plaintiffs' Paragraph 32 as both untrue. Further answering Plaintiffs' Paragraph 32, Plaintiffs cannot establish that Defendant has any authority—not to mention no "clear legal duty" as required in order to grant the extraordinary remedy of mandamus—to perform the act they are demanding of her.

33. Defendant denies that any actual controversy exists as between herself and the Plaintiffs with respect to their desire to see the potential repeal of the Recreational Ordinance placed on the ballot in November of 2020. As to the balance of the allegations in Plaintiffs' Paragraph 33, the same being a legal conclusion, no answer is required.

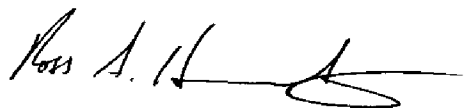
34. As stated above, Defendant does not contest this honorable Court's jurisdiction over this matter.

35. Plaintiffs' allegations in Paragraph 35 state a legal conclusion, requiring no answer.

36. Defendant denies the selective and incorrect factual and legal conclusions proffered in the Plaintiffs' Paragraph 36 and its subparts a. through g. As set forth above, and more fully in the accompanying Response, Plaintiffs' selective interpretation of one portion of the MRTMA—a statute which governs *recreational* “marihuana establishments”, not *medical* facilities—ignores the fact that the term “marihuana establishments” is neither used nor even defined in the medical marihuana statutes (MMMA and MMFLA). Plaintiffs' further ignore the unambiguous statement in Section 4 of the MRTMA (MCL §333.27954(2)) that the MRTMA “does not limit any privileges, rights immunities, or defenses of a person as provided in the Michigan medical marihuana act, 2008 IL 1, MCL 333.26421 to 333.26430, the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, or any other law of this state allowing for or regulating marihuana for medical use.”

37. Defendant denies that the Plaintiffs have satisfied the requirements necessary for the issuance of a writ of mandamus by this honorable Court. Defendant further denies that a declaratory judgment is appropriate in this context. As stated, Defendant is prepared to approve the sought-after ballot initiative raising the question of whether the voters of the Village of Northport will approve the repeal of the Recreational Ordinance. Moreover, Plaintiffs' demand to place the repeal of the Medical Ordinance on the ballot in November exceeds the Defendant's limited authority and should be dismissed in its entirety.

Respectfully Submitted,
OLSON, BZDOK & HOWARD, PC



Date: April 8, 2020

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Attorneys for Defendant