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 RESPONSE & BRIEF IN OPPOSITION TO PLAINTIFFS' MOTIONS

April 8, 2020

INTRODUCTION

As this honorable Court is well aware, here in Michigan our local governmental entities "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."[1] This fact is crucial to the outcome of this case, because ultimately the Plaintiffs are asking this honorable Court to order the Clerk of the Village of Northport to take an action that she is not empowered to take.

Defendant does not contest the Plaintiffs' ability to initiate a ballot measure under the Michigan Regulation and Taxation of Marihuana Act (Initiated Law 1 of 2018 or "MRTMA"; MCL §333.27951 *et seq*.) for the purpose of prohibiting the types of recreational marihuana establishments that may be authorized under that statute within the Village of Northport. Section 6 of the MRTMA provides a statutory basis upon which the Village may entertain such a referendum. However, Plaintiffs want to use this provision from Michigan's recreational marihuana statute to authorize a referendum on *medical* marihuana facilities, which were established and are regulated by entirely different statutes; the Michigan Medical Marihuana Act (Initiated Law 1 of 2008 or "MMMA"; MCL §333.26421 *et seq*.) and the Medical Marihuana Facilities Licensing Act (Public Act 281 of 2016 or "MMFLA"; MCL §333.27101 *et seq*.), neither of which contain any authorization for a local petition or ballot initiative to allow or prohibit the facilities and activities authorized therein.[2] Moreover, neither the state Constitution, nor any other

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[1] *Hanselman v Wayne Co Concealed Weapon Licensing Bd*, 419 Mich 168, 187; 351 NW2d 544 (1984)("A power is 'necessarily implied' if it is essential to the exercise of authority that is expressly granted." *Michigan Municipal Liability & Property Pool v Muskegon Co Bd of Co Rd Comm'rs*, 235 Mich App 183, 191; 597 NW2d 187 (1999)).

[2] In fact, the MRTMA – in two separate instances—expressly disclaims any use of its statutory provisions to negatively impact the activities authorized under the medical marihuana statutes. *See* MCL §333.27954(2)("This act 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.")

statute or local charter or ordinance authorizes a ballot measure to be initiated at the local level for this or any other related purpose.

These claims are purely legal in nature, and there is no genuine issue of material fact regarding the lack of statutory or constitutional authority for medical marihuana ballot initiative. There is no constitutional or general right to initiate local legislation by ballot measure in the Village of Northport, and the lack of an express statutory authorization to initiate a ballot measure on medical marihuana facilities in the Village of Northport is fatal to the Plaintiffs' case. For these reasons, and those set forth more fully below, Defendant respectfully requests this Court to deny all of the Plaintiffs' remaining motions, and to instead grant summary disposition in favor of the Defendant pursuant to MCR 2.116(I)(2).[3]

I. STANDARD OF REVIEW

A motion under MCR 2.116(C)(10) "tests the factual sufficiency of the complaint," and the trial court considers all evidence submitted by the parties in the light most favorable to the non-moving party, granting summary disposition where the "evidence fails to establish a genuine issue regarding any material fact."[4] Matters of statutory interpretation have the "fundamental goal of giving effect to the intent of the Legislature."[5]

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and MCL §333.27956(1)("Except as provided in section 4 [MCL §333.27954], a municipality may completely prohibit or limit the number of marihuana establishments within its boundaries….").

[3] "If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." MCR 2.116(I)(2).

[4] *Maiden v Rozwood*, 461 Mich 109, 118, 120; 597 NW2d 817 (1999).

[5] *Zirnhelt v Township of Long Lake*, unpublished per curiam opinion of the Court of Appeals, issued October 29, 2019 (Docket No. 346895), p. 5 (**Attachment 1**).

II. BACKGROUND

A. Ordinances Passed by Village of Northport

At a special meeting in October of 2019, the Village Council of the Village of Northport, considered three ordinances; (1) an medical ordinance to "opt-in" to regulation of medical marihuana facilities pursuant to the MMFLA; (2) a recreational ordinance to prohibit recreational marihuana establishments under the MRTMA; and (3) a recreational ordinance to allow certain limited recreational marihuana establishments under the MRTMA.

Ultimately, the Village approved two of the three ordinances presented at that meeting. The Village approved the medical "opt-in" ordinance (number "(1)" above), which became Ordinance Number 124 and is entitled the "Village of Northport Medical Marihuana Facilities Ordinance"; Ordinance No. 124 regulates certain activities authorized by the MMMA and the MMFLA. The Village did not approve the ordinance to prohibit recreational marihuana establishments (number "(2)" above). Finally, the Village approved a recreational ordinance to allow specifically enumerated types and numbers of recreational marihuana establishments pursuant to the MRTMA, which became Ordinance Number 125 and is entitled the "Village of Northport Recreational Marihuana Establishments Ordinance."

As set forth herein, as well as in the Defendant's Answer, the Defendant does not contest the fact that Ordinance No. 125 is subject to the ballot measure initiative process set forth in Section 6 of the MRTMA, discussed in full below.[6]

[6] Prior to the onset of the global health emergency and viral pandemic known as the "coronavirus" or "Covid-19" which has required individuals and governmental entities to institute numerous protective measures in order to ensure and sustain life and the health, safety, and welfare of their citizens, the Village of Northport was preparing to add the matter of the certification of the Plaintiffs' ballot language pertaining to the recreational ordinance (Ord. No. 125) on the agenda for its next regular meeting as a discussion item, with advice and instructions from counsel as to the duties and obligations of the Village Clerk with respect to the Michigan Election Law and the certification of ballot language. By the time this matter is able to come on for a hearing before this honorable Court it is very possible (and indeed, likely) that such a meeting will have taken place, and that, all parties having been advised accordingly, the

III. ARGUMENT

A. Michigan Municipal Law

As recounted above, Michigan municipalities have limited authority. The Village of Northport is empowered, *inter alia*, both by the Constitution of the State of Michigan of 1963 as well as the General Law Village Act,[7] to take such actions as are consistent with the explicit grants of authority set forth therein. The Village is also empowered to take actions which are necessarily implied by such explicit grants of authority in the constitution or by statute, however, only where such a power is "essential to the exercise of authority that is expressly granted."[8]

Plaintiffs argue that "the people's power of referendum is sacrosanct," and that both the United States Constitution and the Constitution of the State of Michigan empower the Village to entertain their ballot measure on medical marihuana facilities despite the absence of explicit statutory authorization,[9] however these assertions are unsupported by applicable law and rest on mischaracterizations of the law that does exist pertaining to initiative ballot measures at this level of government.

First, in the matter of *Elliott v City of Clawson*,[10] the Michigan Court of Appeals unambiguously stated that "[t]here is no provision in the Constitution of 1963 reserving to the people the power of initiative and referendum with respect to local ordinances."[11] While there may be statutory authorization in certain instances for such initiatives/referenda, there is no constitutional right therefore established in the Constitution of the State of Michigan of 1963.

Village Clerk will have certified the ballot language as to the potential repeal of the recreational marihuana Ordinance No. 125.

7 Public Act 3 of 1895 (MCL §61.1 *et seq*.).

8 *Michigan Municipal Liability & Property Pool v Muskegon Co Bd of Co Rd Comm'rs*, 235 Mich App 183, 191; 597 NW2d 187 (1999).

9 Plaintiffs' Supporting Brief, at 9.

10 21 Mich App 363; 175 NW2d 821 (1970).

11 *Elliott*, 21 Mich App at 365.

Second, the Court went on to characterize "jurisdictions like Michigan" as those where "the power of initiative and referendum on local legislation is not constitutionally reserved but is delegated by statute as a permissible charter provision."[12] The Village of Northport has no such charter provision authorizing the power of initiative and referendum on local legislation, and therefore, in order to lawfully place a referendum on the ballot for a local election, the Village must be expressly authorized by state statute to do so.

Third, the authority cited by the Plaintiffs is misplaced in this context and should be disregarded by the Court as inapplicable to this case. First, the Plaintiffs' citation to *Michigan United Conservation Clubs v Sec'y of State*[13] does not and cannot serve as any sort of guiding precedent for this Court because it relates to the use of the statewide initiative power (not local initiatives) that is expressly reserved to the voters of the state of Michigan in Section 9 of Article II of the Constitution of Michigan of 1963.[14] In fact, that case stands in contrast to the position of the Plaintiffs in this case, as the Court recognized that even the power of referendum under the Michigan Constitution has limitations as set forth in Section 9 of Article II, including the fact that it "does not extend to acts making appropriations for state institutions."[15] Plaintiffs further cite to the United States Supreme Court case of *James v Valtierra*, which concerns the intersection of federal housing law and the explicit reservation of the power of voters in the state of California to initiate legislation by referendum.

The context for Plaintiffs citations here is unclear, as Defendant does not contest the existence of the various ways legislation may be initiated by voters – in this case, the issue is that Michigan law does not authorize local ballot measures to be initiated by referendum without

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12 *Id.* at 369.
13 464 Mich 359; 630 NW2d 297 (2001).
14 Const 1963, art 2, §9.
15 *Michigan United Conservation Clubs*, 464 Mich at 365.

explicit statutory authorization of the type set forth in Section 6 of the recreational MRTMA statute, and that there is no such authorization for such a referendum relating to facilities governed by the medical facilities or MMFLA statute.

In sum, the Village of Northport is a local governmental entity in the state of Michigan imbued with limited authority to adopt ballot measures (and therefore, municipal legislation) that have been initiated by citizens' petitions, and Plaintiffs have produced no binding precedent or relevant authority to the contrary. While the 2018 MRTMA allows for such a ballot measure with respect to local ordinances to prohibit or allow recreational marihuana establishments (and the Village and Defendant concede that point and do not contest the legality of the Plaintiffs petitions as to the recreational ordinance adopted by the Village last year), such authorization is limited to recreational marihuana establishments and does not constitute authority to prohibit or allow medical marihuana facilities, which are separately authorized and separately governed, as set forth in the following section.

B. Marihuana Law in Michigan

1. Michigan Medical Marihuana Act | MMMA

In 2008, pursuant to the statewide initiative power of Section 9 of Article II of the Constitution of Michigan of 1963 cited above, a majority of the state's voters approved an initiated law to, among other things "allow under state law the medical use of marihuana; [and] to provide protections for the medical use of marihuana…."[16] This statute is commonly referred to as the MMMA, and primarily provides certain authorization for patients and caregivers (as those terms are defined in the act)[17] to possess, grow, and use certain amounts of marihuana for medical

[16] 2008 IL 1; MCL §333.26421 *et seq*.
[17] *See* MCL §333.26423(k)-(l).

purposes, pursuant to a licensing scheme developed by the state of Michigan. Among other provisions, Section 4 of the MMMA provides protections from state-level prosecution under the Public Health Code related to the medical use of marihuana in accordance with the requirements imposed by the act.[18]

2. Medical Marihuana Facilities Licensing Act | MMFLA

After the passage of the MMMA, there was a great deal of litigation throughout the state (including some within this judicial circuit) relating to various ambiguities in the initiated law and challenges in its implementation as written. As such, the Michigan legislature passed the Medical Marihuana Facilities Licensing Act in 2016 in order to address these shortcomings and provide some clarity to the operation of the industry in the state.[19]

Section 201[20] of the MMFLA similarly provides certain protections for persons operating within the strict requirements and guidelines set forth in the statute, and the act establishes a specific set of licensure classes which are collectively referred to as "marihuana facilities,"[21] allowing for licensees to operate as, for example, a "grower," a "processor," a "provisioning center," a "safety compliance facility," or a "secure transporter."[22] Of particular importance to the instant case is that the term "marihuana establishment" is not defined or used within the MMFLA.

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[18] MCL §333.26424. *See also¸ People v Hartwick*, 498 Mich 192; 870 NW2d 37 (2015); *People v Tuttle*, 304 Mich App 72; 850 NW2d 484 (2014). Section 8 of the MMMA also provides a "medical purpose" defense as well.

[19] Public Act 281 of 2016; MCL §333.27101 *et seq*. The enacting Section 2 of Act 281 provided the legislature's finding that "the necessity for access to safe sources of marihuana for medical use and the immediate need for growers, processors, secure transporters, provisioning centers, and safety compliance facilities to operate under clear requirements establish the need to promulgate emergency rules to preserve the public health, safety, or welfare." *Id*.

[20] MCL §333.27201.

[21] MCL §333.27102(l)("Marihuana facility" means a location at which a licensee is licensed to operate under this act.").

[22] *See* MCL §333.27102(g), (u), (v), (aa), and (bb), respectively.

Section 205 of the MMFLA is the act's "opt-in" provision; in short, unless a municipality "has adopted an ordinance that authorizes that type of facility," the state medical marihuana licensing board[23] "shall not issue a state operating license to an applicant."[24] As set forth below, by passing Ordinance Number 124 in 2019, the Village of Northport "opted-in" to allow certain limited types and numbers of medical marihuana facilities pursuant to the rights and obligations established in the MMFLA.

3. Michigan Regulation and Taxation of Marihuana Act | MRTMA

Similar to the statewide initiative in 2008 that enacted the MMMA, in 2018 the voters of the state of Michigan approved the Michigan Regulation and Taxation of Marihuana Act.[25]

a. Purpose and Intent of the MRTMA

Section 2 of the MRTMA sets forth the "Purpose and intent" of the act, which reads as follows:

> The purpose of this act is to make marihuana legal under state and local law for adults 21 years of age or older, to make industrial hemp legal under state and local law, and to control the commercial production and distribution of marihuana under a system that licenses, regulates, and taxes the businesses involved. The intent is to prevent arrest and penalty for personal possession and cultivation of marihuana by adults 21 years of age or older; remove the commercial production and distribution of marihuana from the illicit market; prevent revenue generated from commerce in marihuana from going to criminal enterprises or gangs; prevent the distribution of marihuana to persons under 21 years of age; prevent the diversion of marihuana to illicit markets; ensure the safety of marihuana and marihuana-infused products; and ensure security of marihuana establishments. To the fullest extent possible, this act

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[23] The MMFLA establishes both this licensing board (in Section 301; MCL §333.27301) as well as a marihuana advisory panel (in Section 801; MCL §333.27801), both of which were created within the state Department of Licensing and Regulatory Affairs.

[24] MCL §333.27205(1).

[25] Initiated Law 1 of 2018; MCL §333.27951 *et seq*.

> shall be interpreted in accordance with the purpose and intent set forth in this section.[26]

This provision of the MRTMA is notable in this case for at least two important reasons. First, it is important to note what is missing - there is no reference to medical marihuana or medical marihuana facilities anywhere in Section 2, nor is there any reference to local ballot measures to allow or prohibit medical or recreational marihuana in a municipality. No, instead the purpose and intent of the statute is narrowly tailored to the recreational marihuana business, and the specific entities and activities set forth in the act. Second, the final clause and its direction to interpret the MRTMA in accordance with Section 2 "[t]o the fullest extent possible" is also important in the context. As discussed below, Plaintiffs attempt to argue that Section 6 of the MRTMA was intended to also include the possibility of citizen initiatives to ban medical marihuana facilities and/or activities governed by the separate MMFLA. However, there can be no mistake that the statutorily declared purpose and intent of the MRTMA has nothing to do with medical marihuana facilities or operations under the MMFLA, and the last clause of Section 2 requires that the statute be interpreted with that in mind "[t]o the fullest extent possible."

In fact, the MRTMA goes to great lengths to expressly disclaim any direct or incidental effect of the operation of its provisions on persons acting in accordance with the MMFLA or MMMA. Aside from the complete absence of any reference to or use of the term "medical marihuana" anywhere in the definitions used in the MRTMA in Section 3, the first instance of the use of the phrase "medical marihuana" in the MRTMA comes in Section 4(2), which has been quoted previously but reads in full as follows:

> This act 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

[26] MCL §333.27952.

> 333.27101 to 333.27801, or any other law of this state allowing for or regulating marihuana for medical use.[27]

The next use of the term "medical marihuana" is found in Section 6(5) of the MRTMA, which reads as follows:

> A municipality may not adopt an ordinance that restricts the transportation of marihuana through the municipality or prohibits a marihuana grower, a marihuana processor, and a marihuana retailer from operating within a single facility or from operating at a location shared with a marihuana facility operating pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801.[28]

These provisions make clear that the MRTMA is (a) careful to avoid impacts to existing statutory rights and obligations established in the MMMA and MMFLA; and (b) focused solely on recreational marihuana and the businesses and tax revenue related to recreational marihuana. As described below, this latter provision is also particularly notable in the context of this case because it is part of the authorization in Section 6(1) by which Plaintiffs' are empowered to petition to initiate an ordinance to prohibit recreational marihuana establishments.

b. Section 6

While the Plaintiffs claims necessarily fail with respect to the Village Ordinance No. 124 (as set forth in "c." below), Plaintiffs are entitled to utilize (and Defendant does not contest or challenge the effectiveness of) the provisions of Section 6 of the MRTMA to place a ballot measure on the ballot of the next regular election for voters within the Village to consider whether to ban or prohibit recreational marihuana establishments.

Due to its centrality to this case, it is worth utilizing the full operative portion of Section 6 for ease of reference:

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[27] MCL §333.27954(2).
[28] MCL §333.27956(5).

> Except as provided in section 4, a municipality may completely prohibit or limit the number of marihuana establishments within its boundaries. Individuals may petition to initiate an ordinance to provide for the number of marihuana establishments allowed within a municipality or to completely prohibit marihuana establishments within a municipality, and such ordinance shall be submitted to the electors of the municipality at the next regular election when a petition is signed by qualified electors in the municipality in a number greater than 5% of the votes cast for governor by qualified electors in the municipality at the last gubernatorial election. A petition under this subsection is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488.

The term "marihuana establishments" is addressed below, as are the specifically referenced portions of Michigan's election law as cited in Section 488 (MCL §168.488). However, it is important to note here again, that even this particular section authorizing the use of petitions to initiate an ordinance includes a single exception from that authorization: "[e]xcept as provided in section 4…"[29] As stated in Section III.B.3.a above, Section 4 of the MRTMA is the provision which states that "[t]his act does not limit any privileges, rights, immunities, or defenses of a person as provided" in the MMMA or MMFLA or "any other law regulating marihuana for medical use."[30]

Furthermore, and again, as referenced above, Section 6(5) of the MRTMA – just three subsections after authorizing municipal ordinances to prohibit or allow recreational marihuana establishments or ballot measures to accomplish same – prohibits municipalities from restricting or prohibiting certain activities that are expressly authorized in the MMFLA. To the extent the MRTMA references medical marihuana facilities or medical marihuana at all, it is uniformly for the purpose of excepting such facilities and medical marihuana from the application of the provisions of the MRTMA, and Plaintiffs have provided no support – legal, factual, or otherwise, in support of their argument to the contrary.

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[29] MCL §333.27956(1).
[30] MCL §333.27954(2).

c. Definition of Marihuana Establishments

The MRTMA defines a "marihuana establishment" as "a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by the department."[31] In order to prevail in this case, Plaintiffs' must establish that the phrase "…or any other type of marihuana-related business licensed by the department" was intended to include and therefore does include "medical marihuana facilities" as separately defined in the MMFLA.

Plaintiffs' argument fails for several reasons.

First, put simply, the statute does not use the term "medical marihuana facilities." Second, this lack of express language supporting their interpretation means that Plaintiffs must point to alternate language and argue that this alternate language was intended to include medical marihuana facilities, because normal guidelines pertaining to statutory interpretation require the Court to give effect to the intent of the legislature when interpreting the language of a statute.[32] In this case that is harder to accomplish because the statute was enacted by way of a statewide initiative process, and therefore, the ordinary hallmarks of legislative history and other typical indicia of intent are not present.[33] Thankfully, Section 2 of the statute itself provides its "[p]urpose

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[31] MCL §333.27953(h).

[32] *See Zirnhelt v Township of Long Lake*, unpublished per curiam opinion of the Court of Appeals, issued October 29, 2019 (Docket No. 346895), p. 5 (Attachment 1).

[33] Plaintiffs' Supporting Brief at page 15 makes an important error on this point, as they state that the MRTMA was enacted by the Michigan Legislature in 2018. Again, the MRTMA was enacted by a statewide constitutional initiative, and the proponents of that initiative would be the best source of information related to their intent in drafting Section 6 and the other provisions of the MRTMA. Plaintiffs' have provided no such information that would tend to support their interpretation of the MRTMA. Thus, there is no presumption that the Michigan Legislature was purposefully attempting to "grant[] the ballot initiative petition power to *The People* [sic] to completely prohibit any type of State-licensed marihuana-related business." This blatant factual error undercuts the Plaintiffs statement that "[n]o other analysis can withstand scrutiny."

and intent,"[34] but that is not helpful to Plaintiffs' argument, because as set forth above, there is no reference to such intent in Section 2.

Third, pursuant to the doctrine of statutory construction known as *ejusdem generis*, *"*where a general term [such as "any other type of marihuana-related business"] follows a series of specific terms, the general term is interpreted 'to include only things of the same kind, class, character or nature as those specifically enumerated.'"[35] In the Michigan Supreme Court case of *Neal v Wilkes*, the Court held that "fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, [and] snowmobiling" were not of the same kind, class, character or nature as "jump-roping and playing hopscotch, pin-the-tail-on-the-donkey, shuffleboard, and horseshoes."[36]

In this case, Plaintiffs interpretation would require the Court to effectively amend the MRTMA statute by adding the term "medical marihuana facilities" into the definition of the recreational statute's specific language defining "marihuana establishments," despite the fact that neither "medical marihuana facilities" nor "medical marihuana" more generally are defined in nor even referenced at all in any of the definitions of commercial operations or other terms defined in Section 3 of the MRTMA.

Defendant's position is clear. The Court is faced with two completely separate statutory schemes, both of which include separate definitions for the specific terms at issue. The MRTMA's definition of recreational "marihuana establishments" is of a different kind, class, and character of the MMFLA's definition of "medical marihuana facilities," both based on the separate types of operations governed by each statute, but also by the language of the statutes themselves. Moreover, as referenced above, Plaintiffs' argument requires an interpretation of this definition in a way that

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[34] MCL §333.27952.

[35] *Neal v Wilkes*, 470 Mich 661, 669; 685 NW2d 648 (2004) (citing *Huggett v Dep't of Natural Resources*, 464 Mich 711, 718-19; 629 NW2d 915 (2001)). In *Neal*,

[36] *Neal*, 470 Mich at 669-70.

is contrary to the intent and purpose of the MRTMA and is contrary to several specific provisions of the MRTMA which expressly disclaim any impacts of the MRTMA's provisions on persons or activities operating pursuant to the MMMA or MMFLA. In short, Plaintiffs can point to no portions of the statutory schemes at issue in this case, nor to any statutory intent that would tend to support their interpretation of this statute in this manner. As such, Plaintiffs claims fail as they relate to the medical marihuana facilities and Plaintiffs' efforts to initiate local legislation that would prohibit same under the procedure set forth in Section 6 of the recreational MRTMA.

d. Intersection with Michigan Election Law

In order to properly initiate the ballot initiative process provided under Section 6 of the MRTMA, the petition(s) must: (1) comply with Section 488 of the Michigan Election Law (MCL §168.488; Public Act 116 of 1954); and (2) must contain a number of signatures of qualified electors within the municipality "greater than 5% of the votes cast for governor" in the most recent gubernatorial election. If a petition meets those two thresholds, it would be able to be placed before the voters.

Section 488 falls under Chapter XXII of the Michigan Election Law, which is subtitled "Initiative and Referendum." However, this section merely serves as a pinpoint cross-reference to other portions of the election law dealing primarily with petition formatting requirements. For example, under Section 488(2), any petition of this type must comply with the requirements of "Section 482(1), (4), (5), and (6)," as well as subparagraphs (7) and (8) of Section 482 and Section 544c(1) (all of which are directly referenced by and incorporated within Section 482(6)) in order

to "place a question on the ballot before the electorate of a political subdivision" such as the Village of Northport.[37]

Plaintiffs' Complaint and Motions directly state in numerous instances that the Village of Northport tried to impose "unconstitutional" ballot requirements on the signature gatherers and petition advocates. Such statements are both completely wrong, and again, demonstrate the Plaintiffs' failure to understand the operation of Michigan law in this context. First, the sections of the Michigan Election Law and the MRTMA cited and quoted above have not been held to be invalid by any court of competent jurisdiction in the state of Michigan. In fact, these operative provisions of Michigan law are binding both upon the Village as well as upon the Plaintiffs; the Village may not authorize a petition form without compliance with these requirements simply because the Plaintiffs feel they are unnecessary.

Second, Plaintiffs cite to Attorney General Opinion No. 7310 (**Attachment 2**) for the proposition that the Defendant was wrong to consider certain portions of the Michigan Election Law in conjunction with her review of the forms utilized by the petition advocates (specifically, those relating to signature gatherers). Again, these are provisions of Michigan law that are in effect and binding upon the Village, as well as the Plaintiffs. While an official attorney general opinion is instructive, the Defendant's quarrel is not with the substance of the OAG but with the fact that it does not constitute binding precedent upon this Court nor the Village. No matter how convincing

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[37] MCL §168.488(2). For example, Plaintiffs state they shouldn't have had to include the statement regarding the Congressional district in which the qualified electors live, because "all Northport electors can only be from [Michigan's 1st Congressional District]." Plaintiffs' Supporting Brief, at 3. Furthermore, Section 482(7) requires that each petition "must provide at the top of the page check boxes and statements printed in 12-point type to clearly indicate whether the circulator of the petition is a paid signature gatherer or a volunteer signature gatherer." MCL §168.482(7). No such language was included on the initially submitted petitions. Second, under Section 482(8) any such petition "must clearly indicate below the statement required under subsection (7) and be printed in 12-point type that if the petition circulator does not comply with all of the requirements of this act for petition circulators, *any signature obtained by that petition circulator on that petition is invalid and will not be counted*." MCL §168.482(8) (emphasis added). In addition, the petition language failed to completely comply with the requirements of Section 482(4).

such an opinion may be, the Village is not empowered to simply disregard an operative statute in the absence of a ruling by a court of competent jurisdiction invalidating that statute; an OAG simply does not rise to that level.

As a result of the foregoing, while Plaintiffs concede that they did not want to litigate these issues, it is important in the context of this case to demonstrate both that the Defendant acted at all times within her legal duties and obligations under binding and effective law, and that the authority upon which the Plaintiffs rely in their argumentation is either paper thin or non-existent, and certainly does not constitute good law on these issues, whether Plaintiffs are substantively relying upon them in this matter or not.

C. Plaintiffs' Demands

As the Court considers the Plaintiffs' motions and the Defendant's counter motion here under MCR 2.116(I)(2), it is worth stepping back and referring to the Plaintiffs' demand for a writ of mandamus against the Village Clerk of the Village of Northport.

Plaintiffs' Complaint and motions include factual assertions and legal errors too numerous to count, many of which are too trivial to specifically address in exhaustive detail in this Response without distracting from the central issues addressed herein,[38] which are as follows: Plaintiffs seek

[38] For example, when you look into the details of the local governmental decisions cited by Plaintiffs in their Supporting Brief for the proposition that those municipalities also sought to and successfully banned medical marihuana facilities as well as recreational marihuana establishments, most, if not all of those actions involved the municipal bodies themselves enacting the local ordinance specifically authorized in Section 6 of the MRTMA or Section 205 of the MMFLA. None of the communities that recently voted to prohibit recreational marihuana establishments did so while including medical marihuana facilities within that prohibition as the Plaintiffs argue in this case. Even if they did, such an argument would still be subject to the substantive arguments Defendant sets forth above, but the point is that there is not an overwhelming tide, nor really any tide at all, of communities using Section 6 of the MRTMA to prohibit medical marihuana facilities governed by the MMFLA, despite Plaintiffs' allegations and characterizations to the contrary. In fact, Plaintiffs' own citation to the ordinance(s) passed by Mancelona Township actually make this point in a way that supports the Defendant's arguments here. Furthermore, Plaintiffs' self-serving characterizations of the Defendant's actions with respect to informing the Village Council of her substantive review of her authority under existing Michigan law are completely unfounded and without basis in truth or fact. Defendant would be happy to testify to that if it became necessary in the course of this case.

to have this Court disregard the limited nature of the authority of Michigan's local governmental entities, and to judicially amend a statutory definition to include a term separately defined, used, and regulated in a different statute in the face of numerous provisions and the statute's own "[p]urpose and intent," all of which argue to the contrary. The Defendant's actions do not represent an "impermissible pre-election determination of validity"—in truth, the Defendant has followed the requirements of and duties and obligations imposed by Michigan law at every turn throughout this matter. Defendant's ability to recognize the limitations of her office and of the powers of the Village writ large is an asset in her role as Village Clerk, and Plaintiffs' subjective disagreement does not further enlarge the Defendant's power to take actions that are outside the scope of her statutory authority.

IV. FEES AND COSTS SHOULD BE AWARDED TO THE DEFENDANT

Starting last fall, Plaintiffs' counsel initiated and caused the Defendant Clerk, the Village of Northport staff, its elected officials, and its legal counsel to respond to innumerable emails, phone calls, and written correspondence making many variations of the same misguided and mistaken arguments set forth in their Motions and Supporting Brief. As Plaintiffs refer to "extensive correspondence" between the parties in conjunction with the Plaintiffs' request to be awarded attorneys' fees and costs in this case, samples of the Village's responses to Plaintiffs' counsel are attached for the Court's consideration.[39] At all times, the Village responded by setting forth its legal position clearly, agreeing with Plaintiffs' counsel where it could, and disagreeing agreeably where the law dictated that the Village do so. The Village went out of its way to give Plaintiffs and Plaintiffs' counsel ample opportunities to provide binding precedent and/or legal

[39] *See* **Attachments 3** through **5**.

interpretations that would survive the various analyses put forth by the Village in the course of this matter.

Plaintiffs produced nothing in response to the Village's repeated requests that would credibly have caused the Village to reconsider its legal position on any one of the various issues the Plaintiffs attempt to raise. Other than several inapplicable opinions, Plaintiffs have offered only an attenuated stretching of a definition in one statute that disregards separate contrary provisions within the same statute, not to mention the other independent statutes governing this matter. Nevertheless, the Plaintiffs now come before this honorable Court and have the audacity to argue that the Village of Northport should be responsible for the Plaintiffs' attorneys' fees and costs because the Defendant is asserting "frivolous" arguments and its "position is devoid of arguable legal merit." Quite emphatically to the contrary, it has been Plaintiffs' modus operandi to inundate the Village with frivolous legal arguments devoid of merit and to hound the Village staff until a response is received thereto. In the event the Court sees fit to award attorneys' fees and costs in this case, Defendant would respectfully suggest that it is not the Plaintiffs who should be entitled to such remuneration.

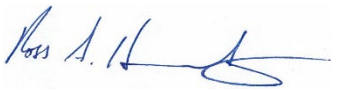
V. CONCLUSION

As stated above, as well as in the Defendants Answer filed earlier, the Plaintiffs have failed to satisfy the requirements necessary for the issuance of a writ of mandamus or for a declaratory judgment by this honorable Court. Plaintiffs' ballot initiative raising the question of whether the voters of the Village of Northport will approve the repeal of the Recreational Ordinance will move forward to the November election as required by law, however, Plaintiffs' demand to place the

repeal of the Medical Ordinance on the ballot in November exceeds the Defendant's limited authority and, based on the foregoing, should be dismissed in its entirety.

Defendant respectfully requests that this honorable Court dismiss the Plaintiffs' Complaint and deny all associated and still-pending motions with prejudice, and instead award summary disposition in favor of the Defendant pursuant to MCR 2.116(I)(2), as well as attorneys' fees and costs so wrongfully incurred by the Village in having to defend this frivolous action, and such other and further relief as the Court deems to be just under these circumstances.

Respectfully Submitted,
OLSON, BZDOK & HOWARD, PC



Date: April 8, 2020

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