

## **MICHIGAN SUPREME COURT RULES MUNICIPALITIES CANNOT BAN MEDICAL MARIJUANA**

In a landmark decision issued last week, the Michigan Supreme Court in *TerBeek v City of Wyoming*, --- Mich --- (2014), ruled unanimously that municipalities in Michigan may not ban the use of medical marijuana within their boundaries. This decision is expected to overturn local ordinances in Bloomfield Hills, Birmingham, Lyon Township, Birmingham and the City of Wyoming, all of whom enacted local ordinances banning medical marijuana within their borders.

In 2010, Defendant John TerBeek, who had been issued a state-registered medical marijuana card, sued the City of Wyoming, a suburb of Grand Rapids, to overturn the City's Ordinance banning medical marijuana. The City of Wyoming had adopted an Ordinance which prohibited any activity that was contrary to federal law, thus prohibiting medical marijuana within the City. The Kent County Circuit Court upheld the City of Wyoming's Ordinance, concluding that since marijuana was illegal under federal law, local communities could also ban medical marijuana outright within their borders.

The Court of Appeals overturned the lower court's decision, declaring Wyoming's Ordinance to be preempted by Michigan's Medical Marijuana Act ("MMMA"). The Court opined that local governments could not use federal drug laws as grounds for ignoring the Act.

Last year, the Michigan Supreme Court granted the City of Wyoming's request to appeal the Court of Appeals' decision. In its recent ruling, written by Justice Bridget McCormack, the Supreme Court affirmed the Court of Appeals' decision that Wyoming's Ordinance was preempted by the MMMA. In its holding, the Supreme Court found that it was not impossible to comply with both federal drug laws and the MMMA, as the City of Wyoming contended.

The state's high court also determined that Wyoming's Ordinance directly conflicted with the state's MMMA, thus creating a violation of the way in which Michigan's Constitution separates powers of the state and its municipalities. In concluding that Wyoming's Ordinance was preempted by the MMMA, the Court reasoned that the Ordinance directly conflicted with the MMMA by permitting what the MMMA expressly prohibited: the imposition of any penalty, including a civil one, on a registered qualifying patient whose medical use of marijuana falls within the scope of the immunity granted the MMMA. The *TerBeek* decision effectively prohibits municipalities from enacting ordinances banning medical marijuana within their borders.