

MICHIGAN COURT OF APPEALS RULES THAT MUNICIPALITIES CANNOT BAN MEDICAL MARIJUANA

The City of Wyoming's Ordinance regulating the use of medical marijuana has been invalidated by the Michigan Court of Appeals in a published decision released July 31, 2012. In *City of Wyoming v Ter Beek*, 2012 WL 3101758, ____ Mich App ____, ____ NW 2d ____, (2012), a three-judge panel reversed a decision by the Kent County Circuit Court, ruling unanimously that the City's Ordinance banning marijuana conflicted with the Michigan's Medical Marijuana Act ("MMMA"). The Court rejected the City's argument that the state law contradicts a federal ban on marijuana and agreed with a medical marijuana patient who argued that the City's Ordinance regulating medical marijuana conflicted with the will of the voters who approved medical marijuana in a 2008 voter-initiated referendum.

The City of Wyoming adopted an Ordinance banning marijuana, including medical marijuana, within the City's borders. Wyoming's Ordinance mirrored the federal government's ban of marijuana and was adopted on the premise that federal law preempted the state's medical marijuana law. A medical marijuana patient sued the City of Wyoming, seeking to void Wyoming's Zoning Ordinance on state preemption grounds, arguing that the City's Zoning Ordinance was enacted to prohibit conduct that was permitted by the MMMA, and was therefore invalid. The Circuit Court upheld the City's ban.

On appeal, the Court concluded that the City's Zoning Ordinance directly conflicted with the MMMA and the federal Controlled Substances Act. The Court of Appeals rejected the City's argument that state law contradicts the federal ban on marijuana and ruled that the City could not adopt an Ordinance banning marijuana. In its opinion, the Court stated

that Michigan and federal law do not conflict because the voter-approved statute acknowledged the federal prohibition, while providing an exemption for its cultivation and use under state law. The Court opined that although “Congress can criminalize all uses of medical marijuana, it cannot require the state to do the same.” The Court was clear that the federal drug law provisions “do not preempt the MMMA’s grant of immunity as found in the MMMA, because it is well established that Congress cannot require the states to enforce the federal law.”

As a result of the Court’s decision in *City of Wyoming*, Michigan municipalities can no longer ban the cultivation and use of medical marijuana. The Court of Appeals ruling is clear that local ordinances, such as the one adopted by the City of Wyoming, are clearly preempted by the state’s medical marijuana law, and that local governments can not use the federal prohibition on marijuana as a vehicle to ban it. The Court of Appeals ruling is a significant victory for advocates of medical marijuana, who have argued that cities, villages and townships have been trying to thwart the law approved by voters in a 2008 referendum by adopting ordinances which ban marijuana.

The Michigan Legislature is currently working on amendments to the MMMA. This website will continue to provide up to date information on all amendments, court decisions and recent developments regarding medical marijuana.