

# Ordinance is preempted by Michigan's Medical Marihuana statute

## FACTS:

John Ter Beek, a resident of the city of Wyoming, filed an action seeking to have the city's zoning ordinance declared void. The ordinance generally prohibits uses that are contrary to federal law, state law, or local ordinance, and permits punishment of violation by civil sanctions.

The Michigan Medical Marihuana Act (MMMA), enacted pursuant to a voter initiative, affords certain protections under state law for the medical use of marijuana. In particular, section 4(a) immunizes registered qualifying patients from "penalty in any manner" for specified MMMA-compliant medical marijuana use. In 2010, Wyoming adopted an ordinance (the ordinance) amending the zoning chapter of the city code and providing:

Uses not expressly permitted under this article are prohibited in all districts. Uses that are contrary to federal law, state law or local ordinance are prohibited.

The federal controlled substances act (CSA) classifies marijuana as a Schedule I controlled substance and largely prohibits its manufacture, distribution, or possession. By prohibiting all "uses that are contrary to federal law," the ordinance incorporates the CSA's prohibition of marijuana. The ordinance further provides that certain violations of that prohibition are punishable by civil sanctions and subject to injunctive relief.

## QUESTION 1:

Does the CSA preempt section 4(a) of the MMMA?

### A: Answer according to the Michigan Supreme Court:

No. The trial court rejected Ter Beek's challenge to the ordinance, finding that section 4(a) of MMMA is preempted by the CSA. The Michigan Court of Appeals reversed. The Michigan Supreme Court affirmed the judgment of the Court of Appeals, noting that the issue of federal preemption is grounded in the Supremacy Clause of the U.S. Constitution which "invalidates state laws that 'interfere with, or are contrary to' federal law." The Court framed the issue of whether the MMMA is preempted

by the CSA as requiring a finding of a "positive conflict" between the two statutes. The Court found that it was not impossible to comply with both the CSA and the MMMA and further that the MMMA was not an obstacle to the execution of the CSA. The state's limited state-law immunity for medical use of marijuana was not found to frustrate the purpose of the CSA.

## QUESTION 2:

Does the MMMA preempt the ordinance?

### A: Answer according to the Michigan Supreme Court:

Yes. According to the Court, a city is precluded from enacting an ordinance if the ordinance is in direct conflict with a statutory scheme or if the statutory scheme occupies the field of regulation which the municipality seeks to enter even if no direct conflict exists. The Court noted that "[a] direct conflict exists when 'the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits.'" The Court found that the ordinance directly conflicted with the state statute (MMMA) and was invalid. "The ordinance directly conflicts with the MMMA not because it generally pertains to marijuana, but because it permits registered qualifying patients, such as Ter Beek, to be penalized by the city for engaging in MMMA-compliant medical marijuana use."

In a footnote, the Court stated that "[c]ontrary to the city's concern, this outcome does not 'create a situation in the State of Michigan where a person, caregiver, or a group of caregivers would be able to operate with no local regulation of their cultivation and distribution of marijuana.'"

*Ter Beek v City of Wyoming*, No. 145816 (Feb. 6, 2014)

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