

STATE OF MICHIGAN

FILED
CASSY H. GARRETT
WAYNE COUNTY CLERK

IN THE CIRCUIT COURT FOR WAYNE COUNTY: 31 A 841

LINDA LOTT and ROBERT LOTT,

Plaintiffs,

vs.

LOTT, LINDA , et al. v LIVONIA CI
Hon. Wendy M. Baxter 12/01/2010

CITY OF LIVONIA,
CITY OF BIRMINGHAM, and
CITY OF BLOOMFIELD HILLS,



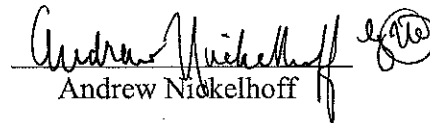
10-013917-CZ

Defendants.

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*There is no other pending or resolved civil
action arising out of the transaction or
occurrence alleged in this complaint.*


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COMPLAINT

INTRODUCTORY STATEMENT

1. This is a declaratory judgment action against three cities—Livonia, Birmingham, and Bloomfield Hills—that have banned medical marihuana in direct violation of the Michigan Medical Marihuana Act (“MMMA”).

2. The plaintiffs, Linda Lott and her husband Robert Lott, live in Birmingham and wish to use medical marihuana there to treat their debilitating medical conditions. The Lotts own a building in Livonia, and Robert wishes to grow medical marihuana there for his and Linda’s use. Linda Lott is a member of a private social club in Bloomfield Hills and wishes to bring medical marihuana to the club for her own use should the need arise. These activities are all protected by the MMMA but prohibited by city ordinances. Under well-established state preemption law, the city ordinances must yield.

3. Linda Lott has suffered from multiple sclerosis for over 25 years. She is confined to a wheelchair and legally blind. Her disease causes severe and persistent muscle spasms. Marihuana brings Linda instant and lasting relief from these painful symptoms.

4. Robert Lott, Linda’s husband, was recently diagnosed with glaucoma, a disease characterized by a build-up of pressure on the optic nerve leading to vision loss and blindness. Marihuana use reduces intraocular pressure and may thereby lessen or delay the optic nerve damage and vision loss caused by the disease.

5. Linda and Robert are qualifying patients under the MMMA and are registered as such with the state. Robert is also registered under the MMMA as Linda’s primary caregiver, which allows him to grow marihuana plants for Linda as well as himself.

6. Linda’s ability to use medical marihuana and Robert’s ability to grow medical marihuana, although protected by the MMMA, are now threatened by three city ordinances that

completely ban medical marihuana. Robert and Linda own a warehouse in Livonia and Robert wishes to grow medical marihuana there for himself and Linda, but Livonia's ordinance prohibits the use of their property for that purpose. Birmingham's ordinance makes it illegal for Linda and Robert to use medical marihuana in their own home. And Bloomfield Hills's ordinance does not allow Linda to possess or use medical marihuana at or near her private social club, where she takes classes and meets with friends.

7. In this lawsuit, Linda and Robert seek declaratory judgments that the three ordinances are preempted by the MMMA and thus invalid and unenforceable against them. Linda and Robert's use of medical marihuana is protected by the MMMA, and the cities of Livonia, Birmingham, and Bloomfield Hills do not have the power to override state law.

PARTIES

8. Plaintiff Linda Lott is an adult resident of Oakland County. She lives in the City of Birmingham and is a stock holding member of a private social club in the City of Bloomfield Hills. She is a registered medical marihuana patient and wishes to use and possess medical marihuana in Birmingham and Bloomfield Hills. She wishes to use medical marihuana that is grown by Plaintiff Robert Lott, who is registered under the MMMA as her primary caregiver.

9. Plaintiff Robert Lott is an adult resident of Oakland County. He is Linda Lott's husband and registered primary caregiver, and he is also a registered medical marihuana patient. He and Linda Lott own real property in the City of Livonia, which is located in Wayne County. He wishes to grow medical marihuana on his property in Livonia. He also wishes to use medical marihuana in Birmingham, where he resides.

10. Defendant City of Livonia is a municipality organized under the laws of the State of Michigan. The City of Livonia is located within Wayne County.

11. Defendant City of Birmingham is a municipality organized under the laws of the State of Michigan. The City of Birmingham is located within Oakland County.

12. Defendant City of Bloomfield Hills is a municipality organized under the laws of the State of Michigan. The City of Bloomfield Hills is located within Oakland County.

JURISDICTION AND VENUE

13. This Court has jurisdiction because this is a civil action for a declaratory judgment under MCR 2.605, no other court has exclusive jurisdiction over this action, and no law denies the circuit courts jurisdiction over this action.

14. Venue is proper because Defendant City of Livonia is located in Wayne County and is a governmental unit that exercises or may exercise its governmental authority in Wayne County.

FACTS

Linda Lott's Medical Condition

15. Plaintiff Linda Lott is 61 years old and lives in Birmingham.

16. Linda has had multiple sclerosis for 28 years. As a result of this disease, she is confined to a wheelchair and is legally blind.

17. Also as a result of her disease, Linda experiences severe and persistent muscle spasms in her arms and legs. She is in extraordinary pain virtually every day.

18. Linda's doctors have prescribed heavy doses of FDA-approved medications to treat the symptoms of her disease. But as is the case with many patients who have had multiple sclerosis as long as Linda, these medications are no longer effective at managing her painful condition.

Robert Lott's Medical Condition

19. Plaintiff Robert Lott is 61 years old and lives in Birmingham with his wife, Linda.

20. Robert was recently diagnosed with glaucoma, a disease characterized by a build-up of pressure on the optic nerve.

21. Over time, the intraocular pressure caused by glaucoma leads to vision loss and in some cases blindness.

The Michigan Medical Marihuana Act

22. In 2008, the people of Michigan enacted the Michigan Medical Marihuana Act ("MMMA") by voter initiative. See Initiated Law 1 of 2008, MCL 333.26421 *et seq.*

23. The measure passed with approximately 63% of the vote—including 71% in Birmingham, 63% in Livonia, and 62% in Bloomfield Hills.

24. The first two stated purposes of the MMMA are "to allow under state law the medical use of marihuana" and "to provide protections for the medical use of marihuana."

25. In the MMMA, the people of the State of Michigan found and declared as follows: "Modern medical research, including as found by the National Academy of Sciences' Institute of Medicine in a March 1999 report, has discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions."

26. In the MMMA, the people of the State of Michigan further found and declared as follows: "Although federal law currently prohibits any use of marihuana except under very limited circumstances, states are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. The laws of Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, New Mexico, Oregon, Vermont, Rhode Island, and

Washington do not penalize the medical use and cultivation of marihuana. Michigan joins in this effort for the health and welfare of its citizens.”

27. The MMMA decriminalized the medical use of marihuana for “debilitating medical conditions”—including multiple sclerosis and glaucoma.

28. Specifically, the MMMA provides that medical marihuana patients, registered as such with the State of Michigan based on a written certification from their physician, “shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty” for the medical use of marihuana.

29. The MMMA provides the same protections to registered primary caregivers who grow marihuana and persons other than registered primary caregivers who assist a patient with using or administering marihuana or who are in the presence or vicinity of the medical use of marihuana.

30. The “medical use” of marihuana is defined by the MMMA to include, among other things, the acquisition, possession, cultivation, use, and transportation of marihuana relating to the administration of marihuana to treat or alleviate a registered patient’s debilitating medical condition.

31. Although the possession, cultivation, and use of marihuana for any purpose violates the federal Controlled Substances Act, 21 USC 801 *et seq.*, the United States Department of Justice has an official policy of not enforcing federal drug laws against medical marihuana patients, caregivers and others who comply with their state’s medical marihuana law. Therefore, patients and their caregivers and other assistants who comply with the MMMA will not be prosecuted under federal law.

Linda Finds Relief in Medical Marihuana

32. Linda has been under the regular care of Dr. Sami Mounayer, the director of neurology at Beaumont Hospital, for 25 years.

33. Shortly after the enactment of the MMMA, Linda visited Dr. Mounayer and asked him about medical marihuana.

34. Because it was Dr. Mounayer's professional opinion that Linda was likely to benefit from the medical use of marihuana to alleviate the severe and persistent muscle spasms caused by her multiple sclerosis, he provided her with the written certification required to register as a qualifying medical marihuana patient with the Michigan Department of Community Health.

35. Linda applied for and received a registry identification card.

36. Linda's medical use of marihuana in accordance with the MMMA dramatically improved her quality of life. When suddenly struck by an intensely painful muscle spasm, Linda finds relief within minutes when she ingests a small amount of marihuana.

37. When medical marihuana was decriminalized by the MMMA, Linda was able to use the drug without fear of arrest, prosecution, or any other penalty.

38. Linda was able to leave her house more often because she could bring medical marihuana with her in case she was suddenly attacked by painful muscle spasms. For example, Linda was able to spend more time at her private social club in Bloomfield Hills, where she takes classes and meets with friends.

39. Linda was able to "come out" to her friends as a medical marihuana patient without fear that she would be socially isolated or that she would place her friends at risk of criminal penalty if she were to use medical marihuana in their presence. For example, Linda teaches a weekly Bible study group in her home, and she was able to tell the members of her group that

she was a medical marihuana patient and that she might have to use a small amount of medical marihuana if suddenly attacked by painful muscle spasms while they are there.

40. Linda was able to rely on her husband and her home healthcare aide to assist her in using medical marihuana without fear that they would be at risk of penalty for helping her.

Robert Registers as a Medical Marihuana Patient and as Linda's Caregiver

41. After Robert was diagnosed with glaucoma, he asked his ophthalmologist, Dr. Marc Siegel at the Glaucoma Center of Michigan, about medical marihuana.

42. Because it was Dr. Siegel's professional opinion that Robert was likely to benefit from the medical use of marihuana to treat his glaucoma, he provided Robert with the written certification required to register as a qualifying medical marihuana patient with the Michigan Department of Community Health.

43. Robert has registered as a patient, and Linda has also designated Robert as her registered primary caregiver.

44. As a registered patient and Linda's registered primary caregiver, Robert is allowed under the MMMA to grow up to 24 marihuana plants (12 plants per patient). According to the MMMA, Robert must keep his plants in an enclosed, locked facility.

45. Robert and Linda own a building located in the City of Livonia. Part of the building is being used to operate a business Robert and Linda own, but the building also contains approximately 10,000 square feet of vacant warehouse space. Robert wishes to use his vacant warehouse space as an enclosed, locked facility to grow marihuana plants for medical use by himself and Linda.

Three Unlawful Ordinances

46. Defendants City of Livonia, City of Birmingham, and City of Bloomfield Hills have each adopted ordinances effectively banning medical marihuana.

47. Although those cities' residents voted in overwhelming numbers to approve the MMMA, their city commissioners responded by voting to make medical marihuana illegal within city limits.

48. Each of the three defendant cities has made it a criminal violation of city ordinance to violate any federal law.

49. Although the ordinances contain no explicit reference to medical marihuana, their purpose and effect is to criminalize medical marihuana.

50. Because the use of marihuana in any amount and for any purpose remains illegal under federal law, the ordinances operate as a complete ban on all medical marihuana within city limits.

51. Although the MMMA provides that registered patients and their caregivers "shall not be subject to arrest, prosecution, or penalty in any manner" for the medical use of marihuana, the medical use of marihuana in accordance with the MMMA is a crime within the cities of Livonia, Birmingham, and Bloomfield Hills.

The Livonia Ordinance

52. On or about December 2, 2009, the Livonia City Commission adopted Ordinance No. 2846, which amends the City of Livonia Zoning Ordinance to provide that "Uses for enterprises or purposes that are contrary to federal, state or local laws or ordinances are prohibited."

53. The City of Livonia Zoning Ordinance defines “Use” as “The purpose for which land or buildings thereon are designed, arranged or intended to be occupied or used, or for which they are occupied or maintained.”

54. Although Ordinance No. 2846 contains no explicit reference to medical marihuana, its purpose and effect is to criminalize medical marihuana.

55. Because the use and cultivation of marihuana in any amount and for any purpose remains illegal under federal law, Ordinance No. 2846 operates as a complete ban on all use of land or buildings to use or grow medical marihuana within the City of Livonia.

56. Under the City of Livonia Zoning Ordinance, the violation of any provision of that ordinance is deemed a misdemeanor offense.

57. Thus, although the MMMA provides that registered patients and primary caregivers “shall not be subject to arrest, prosecution, or penalty in any manner” for the medical use of marihuana, including the cultivation of up to 12 plants per registered patient, the use of land or buildings by a registered patient or caregiver to grow up to 12 plants per patient is a crime within the City of Livonia.

The Birmingham Ordinance

58. On or about April 26, 2010, the Birmingham City Commission adopted Ordinance No. 2026, which amends the Birmingham City Code to make it “unlawful for any person or business to engage in any activity, conduct, use or venture in the City that is contrary to federal, state or local laws”

59. Although Ordinance No. 2026 contains no explicit reference to medical marihuana, its purpose and effect is to criminalize medical marihuana.

60. In urging the city commission to adopt the ordinance, the city attorney explained that marihuana remains illegal under federal law and the purpose of the ordinance was to provide a clear statement that the city is not going to allow illegal activities.

61. Because the use of marihuana in any amount and for any purpose remains illegal under federal law, Ordinance No. 2026 operates as a complete ban on all medical marihuana within the City of Birmingham.

62. Under the Birmingham City Code, the violation of any ordinance is deemed a misdemeanor offense.

63. Thus, although the MMMA provides that registered patients and their caregivers “shall not be subject to arrest, prosecution, or penalty in any manner” for the medical use of marihuana, the medical use of marihuana in accordance with the MMMA is a crime within the City of Birmingham.

The Bloomfield Hills Ordinance

64. On or about June 8, 2010, the Bloomfield Hills City Commission adopted Ordinance No. 385, which is identical in all material respects to the Birmingham ordinance. Ordinance No. 385 amends the Bloomfield Hills City Code to make it “unlawful for any person or business to engage in any activity, conduct, use or venture in the City that is contrary to federal, state or local laws”

65. Although Ordinance No. 385 contains no explicit reference to medical marihuana, its purpose and effect is to criminalize medical marihuana.

66. The city attorney urged the city commission to adopt the ordinance, stating, “Even though the state law permits dispensing and use of medical marijuana, it’s still a schedule one controlled substance under federal law.”

67. Because the use of marihuana in any amount and for any purpose remains illegal under federal law, Ordinance No. 385 operates as a complete ban on all medical marihuana within the City of Bloomfield Hills.

68. Under the Bloomfield Hills City Code, the violation of any ordinance is deemed a misdemeanor offense.

69. Thus, although the MMMA provides that registered patients and their caregivers “shall not be subject to arrest, prosecution, or penalty in any manner” for the medical use of marihuana, the medical use of marihuana in accordance with the MMMA is a crime within the City of Bloomfield Hills.

The Ordinances Threaten Linda and Robert’s Ability To Use Medical Marihuana

70. The dramatic improvement in Linda’s quality of life made possible by the MMMA, and Robert’s ability to grow marihuana plants for himself and Linda as permitted by the MMMA, are now threatened by the ordinances adopted by Livonia, Birmingham, and Bloomfield Hills.

71. In Livonia, Robert is unable to use vacant warehouse space in his own building as an enclosed, locked facility to grow marihuana plants for medical use by himself and Linda.

72. If Robert uses his building to grow marihuana plants for medical use by himself and Linda, he will be committing a misdemeanor offense in violation of the City of Livonia Zoning Ordinance.

73. In Birmingham, where Linda resides, the MMMA previously allowed Linda to use medical marihuana without fear of arrest, prosecution, or any other penalty. But Linda now lives in fear that her medical use of marihuana in accordance with state law will subject her to

criminal penalty under the Birmingham ordinance—even for using medical marihuana in her own home.

74. Robert also fears criminal penalty under the Birmingham ordinance for using medical marihuana in accordance with state law in his own home and for performing his duties as Linda's primary caregiver.

75. The MMMA previously allowed Linda to rely on Robert and her home healthcare aide to assist her in using medical marihuana without fear that they would be at risk of penalty for helping her. But Linda now fears that their assistance will subject them to penalty under the Birmingham ordinance as well.

76. Linda "came out" to her friends as a medical marihuana patient after the MMMA was enacted. But she now refrains from using medical marihuana in their presence so as not to place them in legal jeopardy. She also refrains from discussing her use of medical marihuana socially for fear of being reported to the authorities for a violation of local ordinance.

77. The MMMA previously allowed Linda to leave her house more often because she could bring medical marihuana with her in case she was suddenly attacked by painful muscle spasms. But she is now reluctant to leave her house because her use of medical marihuana where others might see her could subject her to criminal penalty.

78. In Bloomfield Hills, Linda is a member of a private club where she takes classes and socializes with friends. The MMMA allowed Linda to spend hours at the club because she could bring medical marihuana with her in case she was suddenly attacked by painful muscle spasms. But she is now reluctant to commit to classes and other social events at the club because her use of medical marihuana there or anywhere else in Bloomfield Hills could subject her to criminal penalty.

79. Linda and Robert, like all registered patients and caregivers, are entitled to use or assist in the use of medical marihuana in accordance with the MMMA without being subject to arrest, prosecution, or penalty in any manner by the defendant cities.

COUNT ONE

DECLARATORY JUDGMENT

LIVONIA ORDINANCE

80. This Court is empowered to enter a declaratory judgment under MCR 2.605.

81. Municipalities in Michigan may not adopt ordinances in direct conflict with a Michigan state statute. Such ordinances are preempted by Michigan state law and therefore void.

82. City of Livonia Ordinance No. 2846, to be codified as amending Section 3.08 of the City of Livonia Zoning Ordinance, is in direct conflict with—and therefore preempted by—the Michigan Medical Marihuana Act.

83. Ordinance No. 2846 is thus void and unenforceable against Plaintiffs for their medical use of marihuana, including their cultivation of up to 12 marihuana plants per registered patient, as allowed under the Michigan Medical Marihuana Act.

COUNT TWO

DECLARATORY JUDGMENT

BIRMINGHAM ORDINANCE

84. City of Birmingham Ordinance No. 2026, codified as Section 1-18 of the Birmingham City Code, is in direct conflict with—and therefore preempted by—the Michigan Medical Marihuana Act.

85. Ordinance No. 2026 is thus void and unenforceable against Plaintiffs for their medical use of marihuana as allowed under the Michigan Medical Marihuana Act.

COUNT THREE

DECLARATORY JUDGMENT

BLOOMFIELD HILLS ORDINANCE

86. City of Bloomfield Hills Ordinance No. 385, to be codified as Section 1-12 of the Bloomfield Hills City Code, is in direct conflict with—and therefore preempted by—the Michigan Medical Marihuana Act.

87. Ordinance No. 385 is thus void and unenforceable against Plaintiffs for their medical use of marihuana as allowed under the Michigan Medical Marihuana Act.

DEMAND FOR RELIEF

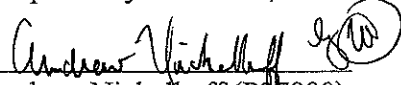
Plaintiffs therefore request that this Court:

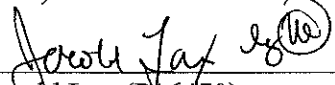
- a. assert jurisdiction over this matter;
- b. declare as follows:
 - i. City of Livonia Ordinance No. 2846, to be codified as amending Section 3.08 of the City of Livonia Zoning Ordinance, is preempted by the Michigan Medical Marihuana Act to the extent it prohibits the medical use of marihuana as allowed under the Michigan Medical Marihuana Act. It is thus void and unenforceable against Plaintiff Robert Lott for his cultivation of up to 12 marihuana plants per registered patient in an enclosed, locked facility in the City of Livonia;
 - ii. City of Birmingham Ordinance No. 2026, codified as Section 1-18 of the Birmingham City Code, is preempted by the Michigan Medical Marihuana Act to the extent it prohibits the medical use of marihuana as allowed under the Michigan Medical Marihuana Act. It is thus void

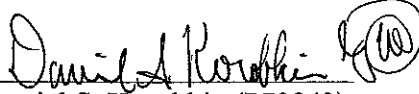
and unenforceable against Plaintiffs Linda Lott and Robert Lott for their medical use of marihuana in their own home and elsewhere in the City of Birmingham except where prohibited by the Michigan Medical Marihuana Act; and

- iii. City of Bloomfield Hills Ordinance No. 385, to be codified as Section 1-12 of the Bloomfield Hills City Code, is preempted by the Michigan Medical Marihuana Act to the extent it prohibits the medical use of marihuana as allowed under the Michigan Medical Marihuana Act. It is thus void and unenforceable against Plaintiff Linda Lott for her medical use of marihuana in the City of Bloomfield Hills except where prohibited by the Michigan Medical Marihuana Act;
- c. enter a declaratory judgment in favor of Plaintiffs and against Defendants; and
- d. grant any other relief this Court deems just and proper.

Respectfully submitted,


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Dated: December 1, 2010