

SECRET WARDLE

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JOHN DOE and RICHARD ROE,

Plaintiffs,

Hon. D. Langford-Morris

v.

Case No. 10-115591-CZ

BLOOMFIELD TOWNSHIP,

Defendant.

THOMAS M. LOEB (P 25913)  
Attorney for Plaintiffs  
32000 Northwestern Highway, Suite 170  
Farmington Hills, MI 48334-1507  
Farmington Hills, MI 48334-1507  
(248) 851-2020

SECRET WARDLE, PC  
William P. Hampton (P 14591)  
Shannon K. Ozga (P 59093)  
Attorneys for Defendant  
30903 Northwestern Highway  
P.O. Box 3040  
Farmington Hills, MI 48333-3040  
(248) 851-9500

NEIL ROCKIND, PC  
By: Neil S. Rockind (P 48618)  
Co-Counsel for Plaintiffs  
28411 Northwestern Highway, Ste. 1150  
Southfield, MI 48034  
(248) 208-3800

**ANSWER TO COMPLAINT FOR DECLARATORY RELIEF**

NOW COMES Defendant, BLOOMFIELD TOWNSHIP, by and through counsel, SECRET WARDLE, and for its Answer to Complaint for Declaratory Relief states as follows:

INTRODUCTION

1. Defendant admits that Plaintiffs filed the present lawsuit as a declaratory judgment action. In further answer, Defendant denies that the ordinances at issue in the present action are in violation of the Michigan Medical Marihuana Act.

2. Defendant admits that Ordinance No. 627 requires a qualifying patient to register with the Township Police Department. As to the remainder of the allegations, Defendant denies in the

manner and form alleged as any information received by the Township Police Department is not subject to disclosure.

3. Defendant denies that Township Ordinance No. 628 conflicts with and is in violation of the Michigan Medical Marihuana Act.

4. Defendant denies that the Township ordinances at issue in this matter are preempted by the Michigan Medical Marihuana Act. As to the remainder of the allegations, Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information upon which to form a belief and leaves Plaintiffs to their proofs.<sup>1</sup>

THE PARTIES

5. Defendant denies that Plaintiff John Doe is legally permitted to remain anonymous in this matter. As to the remainder of the allegations, Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information upon which to form a belief and leaves Plaintiffs to their proofs.

6. Defendant denies that Plaintiff Richard Roe is legally permitted to remain anonymous in this matter. As to the remainder of the allegations, Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information upon which to form a belief and leaves Plaintiffs to their proofs.

7. Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information upon which to form a belief and leaves Plaintiffs to their proofs.

8. Defendant denies that it is legally permissible for Plaintiffs to remain anonymous in this matter. Further, Defendant denies that the Michigan Medical Marijuana Act and the administrative rules adopted thereunder allow a Plaintiff to remain anonymous in bringing court action to challenge a local ordinance.

9. Defendant admits the allegations contained therein.

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<sup>1</sup> Plaintiffs' complaint makes reference to "city ordinances"; however, Defendant Bloomfield Township is a charter township, not a city.

JURISDICTION AND VENUE

10. Defendant admits that this Court has jurisdiction to entertain a request for declaratory relief; however, Defendant denies that Plaintiffs have established the Court's jurisdiction to entertain Plaintiffs' current request.

11. Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information upon which to form a belief and leaves Plaintiffs to their proofs.

FACTS

12. Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information upon which to form a belief and leaves Plaintiffs to their proofs.

13. Defendant admits the allegations contained therein.

14. Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information upon which to form a belief and leaves Plaintiffs to their proofs.

15. Defendant neither admits nor denies the allegations, as the allegations state a legal conclusion for which no answer is required.

16. Defendant neither admits nor denies the allegations, as the allegations state a legal conclusion for which no answer is required.

17. Defendant neither admits nor denies the allegations, as the allegations state a legal conclusion for which no answer is required.

18. Defendant denies the allegation that the Michigan Medical Marijuana Act decriminalizes use of marijuana under federal law. Defendant neither admits nor denies the remainder of the allegations for lack of sufficient knowledge or information upon which to form a belief and leaves Plaintiffs to their proofs.

19. Defendant neither admits nor denies the allegations, as the allegations state a legal conclusion for which no answer is required.

20. Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information upon which to form a belief and leaves Plaintiffs to their proofs.

21. Defendant neither admits nor denies the allegations, as the allegations state a legal conclusion for which no answer is required.

22. Upon information and belief, Defendant denies as untrue.

23. Defendant admits the allegations contained therein. In further answer, upon information and belief, the federal government's policy has recently been amended and the federal government has sought, through issuance of subpoenas, information regarding caregivers.

24. Defendant admits only that Bloomfield Township ordinances require a certified patient to register with the Township Police Department.

25. Defendant denies the allegations contained therein for the reason that the same are untrue.

26. Defendant admits that the Michigan Department of Community Health administers the State's obligations concerning registration information under the Act. As to the remainder of the allegations, Defendant denies the allegations contained therein for the reason that the same are untrue.

27. Defendant admits only that this Court has the authority to entertain Plaintiffs' request for declaratory relief. However, Defendant denies that Plaintiffs are entitled to declaratory relief in this matter.

28. Defendant denies that the Township ordinances at issue in this case are preempted by state law. As to the balance of the allegations, Defendant neither admits nor denies the allegations, as the allegations state a legal conclusion for which no answer is required.

29. Defendant neither admits nor denies the allegations, as the allegations state a legal conclusion for which no answer is required. In further answer, the cultivation and distribution of marijuana, medical or otherwise, remains a crime under federal law.

30. Defendant denies the allegations contained therein for the reason that the same are untrue.

31. Defendant denies the allegations contained therein for the reason that the same are untrue.

S E C R E T W A R D L E

32. Defendant denies the allegations contained therein for the reason that the same are untrue.

DEMAND FOR RELIEF

WHEREFORE, Defendant, Bloomfield Township, respectfully requests this Honorable Court deny the relief prayed for in Plaintiffs' Complaint for Declaratory Relief and award Defendant Bloomfield Township costs and attorney fees in having to respond to Plaintiffs' Complaint.

SECRET WARDLE

BY: /s/ Shannon K. Ozga  
WILLIAM P. HAMPTON (P-14591)  
SHANNON K. OZGA (P 59093)  
Attorneys for Defendant  
30903 Northwestern Highway  
P.O. Box 3040  
Farmington Hills, MI 48333-3040  
(248) 851-9500

PROOF OF SERVICE  
*The undersigned certifies that a copy of the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses as directed on the pleadings on January 4, 2011*  
By:      U.S. Mail                           Fax  
          Hand Delivery                     UPS  
          Federal Express                 X   Wiznet  
Signature: /s/ Julie A. Hinkle  
              Julie A. Hinkle

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By: Neil S. Rockind (P 48618)  
Co-Counsel for Plaintiffs  
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**AFFIRMATIVE DEFENSES**

NOW COMES Defendant, BLOOMFIELD TOWNSHIP, by and through its counsel, SECRET WARDLE, and for its Affirmative Defenses states as follows:

1. Plaintiffs lack standing to sue the Township.
2. Plaintiffs do not have a legal right to remain anonymous in this matter.
3. This Court lacks subject matter jurisdiction.
4. There is no case or controversy.
5. Plaintiffs claims are not ripe for review.

6. Plaintiffs have not exhausted their administrative remedies.
7. The Township ordinances at issue were properly enacted and are constitutional.
8. The Township ordinances at issue are not preempted by state law.
9. The Township ordinances at issue concerning distribution and cultivation are consistent with federal law, which preempts state law.
10. The Michigan Medical Marijuana Act does not deprive local jurisdictions of their police and zoning powers.
11. All Township decisions and actions in connection with this matter, at all relevant times, complied with the Constitution and laws of the State of Michigan; were based upon proper procedure; were supported by competent, material, and substantial evidence on the record; and represented the reasonable exercises of discretion granted by law.
12. The Township has the authority to adopt ordinances to promote the health, safety and welfare of its citizens.
13. Plaintiffs have failed to state a claim upon which relief can be granted.
14. Under the Michigan Constitution, the Township's power and authority to adopt police power and zoning ordinances is to be construed liberally.
15. Marijuana, medical or otherwise, is a Controlled Substance under federal law.
16. Plaintiffs have assumed the risk by conducting activities in violation of federal law.
17. Based upon information and belief, Plaintiffs' claims are barred in total, or at least in part, by virtue of the equitable doctrine of laches.
18. Based upon information and belief, Plaintiffs' claims are barred in total, or at least in part, by virtue of the equitable doctrines of consent, waiver, and estoppel.
19. Plaintiffs' demands for relief are unreasonable, unwarranted and based upon an unreasonable and incorrect interpretation of the law.

S E C R E T W A R D L E

20. The ordinances at issue in this case and their application are presumed to be constitutional.

21. There is no genuine issue as to any material fact and Defendants are entitled to judgment as a matter of law and equity.

12. Defendant Bloomfield Township reserves the right to amend and add to these Affirmative Defenses up to the time of trial.

SECRET WARDLE

BY: /s/ Shannon K. Ozga  
WILLIAM P. HAMPTON (P-14591)  
SHANNON K. OZGA (P 59093)  
Attorneys for Def. City of Bloomfield Hills  
30903 Northwestern Highway  
P.O. Box 3040  
Farmington Hills, MI 48333-3040  
(248) 851-9500

PROOF OF SERVICE

*The undersigned certifies that a copy of the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses as directed on the pleadings on January 4, 2011*

By:     U.S. Mail                       Fax  
       Hand Delivery                 UPS  
       Federal Express                Wiznet

Signature: /s/ Julie A. Hinkle  
              Julie A. Hinkle

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