STATE OF MICHIGAN
CIRCUIT COURT FOR COUNTY OF OAKLAND

CITY OF TROY, Plaintiff-Appellee, v TIERRA POSEY, Defendant-Appellant.	Circuit Court No. 2020-184259-AR Hon. Rae Lee Chabot District Court No. 2016-002924/25-QM Hon. Maureen M. McGinnis, P-66069 **APPELLANT'S PRINCIPAL BRIEF ON APPEAL**
CITY OF TROY, Plaintiff-Appellee Lori Grigg Bluhm (P46908) Nicole MacMillan (P79003) Troy City Attorney's Office 500 W. Big Beaver Road Troy, MI 48084 248-524-3320	Attorneys for Defendant-Appellant Robin B. Wagner (P79408) Robert W. Palmer (P31704) Pitt McGehee Palmer Bonanni & Rivers, PC Cooperating Attorneys, American Civil Liberties Union Fund of Michigan 117 W. 4th Street, Suite 200 Royal Oak, MI 48067 248-398-9800 rwagner@pittlawpc.com rpalmer@pittlawpc.com Philip Mayor (P81691) Daniel S. Korobkin (P72842) American Civil Liberties Union Fund of Michigan 2966 Woodward Ave. Detroit MI 48201 pmayor@aclumich.org dkorobkin@aclumich.org STREET DEMOCRACY Charles D. Hobbs (P79715) 440 Burroughs, Ste 634 Detroit, MI 48202 313-355-4460

DEFENDANT-APPELLANT TIERRA POSEY'S PRINCIPAL BRIEF IN SUPPORT OF HER CLAIM OF APPEAL

There is no other action between these parties arising out of the same transaction or occurrence pending in this court.

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CLAIM OF APPEAL

Defendant-Appellant Tierra Posey appeals from the Opinion and Order entered on October 6, 2020, in the 52-4 Judicial District Court by Hon. Maureen M. McGinnis.[1]

On June 6, 2016, Tierra Posey was charged by Plaintiff-Appellee City of Troy with, *inter alia*, Possession of Marijuana. Ms. Posey ultimately pled guilty but did not appear for sentencing on July 19, 2016. A bench warrant was issued and subsequently recalled in July 2020.

Prior to Ms. Posey being sentenced, Michigan voters enacted by initiative the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq.*, which became effective on December 6, 2018. The MRTMA decriminalized possession of marihuana and specifically states that it repeals any "penalty *in any manner*" associated with such possession. MCL 333.27955(1)(a) (emphasis added).

On August 17, 2020, Defendant-Appellant filed a Motion to Quash the Complaint and Dismiss with Prejudice the marijuana charge on the grounds that the legal changes wrought by the MRTMA meant that she could no longer be punished for possessing an amount of marihuana that is now lawful in Michigan.

On August 25, 2020, the Court heard oral argument on Defendant's motion and issued a decision from the bench denying the motion. The Court then proceeded to sentencing. Defendant was sentenced to three months of probation and a $50.00 fine with the opportunities afforded by MCL 333.7411. On September 15, 2020, Defendant-Appellant timely filed a Motion for Reconsideration of the denial of her motion to quash. On October 6,

[1] Opinion and Order of the Court, Hon. Maureen M. McGinnis, Oct. 6, 2020. Attached as Exhibit 1.

2020, the District Court denied Defendant-Appellant's Motion in a written opinion. (See Exhibit 1.)

On May 11, 2021, this Court granted Defendant-Appellant's application for leave to appeal.

ALLEGATIONS OF ERROR

Defendant-Appellant alleges that the District Court made the following errors:

1. The District Court erred by failing to recognize that the MRTMA repealed the ordinance under which Ms. Posey was convicted. Furthermore, MCL 8.4a, Michigan's so-called "General Savings Statute," addresses only the preservation of criminal *statutes* after their repeal and does not apply to ordinances, such as the one under which Defendant was charged.

2. In the alternative, the District Court erred by failing to recognize that even if Section 8.4a did apply to ordinances, the MRTMA *does* prohibit punishment of conduct that is now legal. That is so for three reasons that the District Court failed to properly consider:

    a. Proposition 1 of 2018, which was enacted as MCL 333.27951 *et seq.*, expressly provided for the release and relinquishment of "arrest *and penalty* for personal possession and cultivation of marihuana by adults 21 years of age or older." MCL 333.27952 (emphasis added). Proposition 1 further provided that "to the fullest extent possible, this act shall be interpreted in accordance with the purpose and intent set forth in this section." Id.

b. Proposition 1 expressly provided that "all other laws inconsistent with this act do not apply to conduct that is permitted by this act," MCL 333.27954(5), further clarifying that Section 8.4a could not be used to preserve penalties against individuals in possession of small amounts of marihuana.

c. The MRTMA was passed through the popular vote of the citizens of Michigan as Proposition 1 of 2018, and as a popular legislative initiative, the MRTMA must be interpreted as it was presented to and would be understood by an ordinary voter.

RELIEF SOUGHT

Defendant-Appellant seeks the reversal of the lower court's decision and the issuance of an Order Granting her Motion to Quash and Dismiss the marijuana possession charge against her.

BRIEF IN SUPPORT OF APPEAL

Defendant-Appellant Tierra Posey appeals, by leave granted, the District Court's denial of her motion to quash the complaint and dismiss with prejudice, and denying her timely filed Motion for Reconsideration.[2]

On June 6, 2016, Tierra Posey was charged by Plaintiff-Appellee City of Troy with violation of Troy Ordinance 98.11.01[3], which states:

> No person shall knowingly or intentionally possess or use marijuana except as authorized by state law. A person who violates this section is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than 93 days or by a fine of not more than $500, or both.[4]

Ms. Posey plead guilty to possessing 0.5 grams of marijuana.[5] She was 24 years old at the time.[6] On June 14, 2016, Defendant pled guilty but did not appear for sentencing, which was scheduled for July 19, 2016.[7] A bench warrant was issued and subsequently recalled in July 2020.[8] On August 17, 2020, Defendant-Appellant filed her Motion to Quash the Complaint and Dismiss with Prejudice the marijuana charge.[9] The motion was denied, as was a timely motion for reconsideration, leading to the instant appeal.

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[2] See Ex. 1.
[3] Citation, June 6, 2016, attached as Exhibit 2.
[4] City of Troy, Michigan, "Chapter 98-Criminal Code", https://tinyurl.com/y4mxfxfg (last visited October 25, 2020).
[5] Plaintiff's Response to Defendant's Motion to Quash the Complaint and to Dismiss with Prejudice at 2. Attached as Exhibit 3.
[6] Exhibit 2.
[7] Ex. 1 at 1.
[8] *Id.*
[9] Defendant's Motion to Quash the Complaint and to Dismiss with Prejudice. Attached as Exhibit 4.

In the intervening period between Ms. Posey's plea in 2016 and the recall of her bench warrant in 2020, Michigan voters passed the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq.*, which became effective on December 6, 2018.[10] This initiated law, as presented on the ballot and voted upon, read:

> An initiation of legislation to allow under state law the personal possession and use of marihuana by persons 21 years of age or older; to provide for the lawful cultivation and sale of marihuana and industrial hemp by persons 21 years of age or older; to permit the taxation of revenue derived from commercial marihuana facilities; to permit the promulgation of administrative rules; and to prescribe certain penalties for violations of this act. If not enacted by the Michigan State Legislature in accordance with the Michigan Constitution of 1963, the proposed legislation is to be voted on at the General Election, November 6, 2018.

Id. The MRTMA states as its "Purpose and Intent":

> The purpose of this act is to make marihuana legal under state and local law for adults 21 years of age or older, to make industrial hemp legal under state and local law, and to control the commercial production and distribution of marihuana under a system that licenses, regulates, and taxes the businesses involved. The intent is to prevent arrest *and penalty* for personal possession and cultivation of marihuana by adults 21 years of age or older; remove the commercial production and distribution of marihuana from the illicit market; prevent revenue generated from commerce in marihuana from going to criminal enterprises or gangs; prevent the distribution of marihuana to persons under 21 years of age; prevent the diversion of marihuana to illicit markets; ensure the safety of marihuana and marihuana-infused products; and ensure security of marihuana establishments. *To the fullest extent possible, this act shall be interpreted in accordance with the purpose and intent set forth in this section*.

MCL 333.27952 (emphasis added).

Nonetheless, the district court held that Ms. Posey should be punished for possession of a tiny amount of marihuana that is now legal under the MRTMA. In so holding, the District

[10] Michigan Legislature, Initiated Law 1 of 2018, "Michigan Regulation and Taxation of Marihuana Act", https://tinyurl.com/y48dbapy (last visited Oct. 25, 2020).

Court determined that the language of the MRTMA did not include "explicit instruction to apply the statute retroactively."[11] It further concluded that the MRTMA was not retroactive because it was not a "remedial statute."[12] Finally, the District Court observed that had Defendant appeared for her original sentencing in 2016, she would have been sentenced under the now-repealed law.[13]

Standard of Review

A trial court's decisions on a motion to quash and motion for reconsideration are reviewed for an abuse of discretion. *People v Miller*, 288 Mich App 207, 209, 795 NW2d 156 (2010)*; Churchman v Rickerson,* 240 Mich App 223, 233, 611 NW 2d 333 (2000). A district court abuses its discretion when its decision "falls outside the range of principled outcomes." *People v Duncan*, 494 Mich 713, 722–23, 835 NW 2d 399, 404 (2013). Nonetheless, a district court "necessarily abuses its discretion when it makes an error of law." *Id.* at 723 (citing, *inter alia*, *Koon v United States*, 518 US 81, 100 (1996) ("A district court by definition abuses its discretion when it makes an error of law.")). "The abuse-of-discretion standard includes review to determine that the discretion was not guided by erroneous legal conclusions." *Koon*, 518 US at 100. Moreover, questions of statutory interpretation are reviewed *de novo*. *Brickey v McCarver*, 323 Mich App 639, 642; 919 NW 2d 412 (2018). Thus, because the questions at issue here all involve pure questions of law and statutory interpretation, review is effectively *de novo*. *Miller*, 288 Mich App at 209.

[11] Ex. 1 at 2-3.
[12] *Id.* at 3.
[13] *Id.* at 4.

The District Court Made Errors of Law and Statutory Interpretation

In denying Defendant-Appellant's motions, the District Court's reasoning was based on errors of law and statutory interpretation and should be reversed.

1. **Defendant-Appellant Was Charged with Violating an Ordinance, which Was Repealed by the MRTMA and Thus Could Not Be Applied Post-Repeal: the General Savings Clause Statute Does Not Dictate a Contrary Result.**

The District Court erred by relying on the General Savings Clause Statute, MCL 8.4a, to support its reasoning that the MRTMA did not explicitly reveal the Troy ordinance under which Defendant was charged.[14] Section 8.4a is inapplicable here because it applies only to *statutes* of the State of Michigan, and not to municipal ordinances.

Michigan law has long maintained a clear distinction between the *statutes* comprising the state's penal code, and *ordinances* enacted and enforced by localities. *See, e.g.*, *Huron Twp. v City Disposal Sys., Inc*., 448 Mich 362, 365; 531 NW 2d 153 (1995); *Delta Cty v City of Gladstone*, 305 Mich 50, 53; 8 NW 2d 908 (1943). Indeed, whereas other portions of the Michigan Compiled Laws discuss and define "ordinances" as enactments of municipalities and other subordinate public bodies, the term "statute" is reserved for enactments of the State.[15] *Compare* MCL 8.1 *et seq.*, Statutes, *and* MCL 42.15, Adoption of ordinances by township board; subject matter; issuance of licenses. *Cf. Czymbor's Timber, Inc. v City of Saginaw*, 269 Mich App 551, 556; 711 NW 2d 442 (2006), *aff'd on other grounds*, 478 Mich

[14] Ex. 1 at 3.

[15] Moreover, the companion "reviving" statute, MCL § 8.4, found adjacent to the General Savings Clause Statute, has been held to apply narrowly so as not to apply even to statutes rejected by referendum. *Davis v Roy Roberts*, Case No. 313297, Order of Nov 16, 2012, attached as Exhibit 6 (available at http://publicdocs.courts.mi.gov/coa /public/orders/2012/313297(9)_order.pdf).

348; 733 NW 2d 1 (2007) (discussing the preemptive effect of state statutes over municipal ordinances).

The District Court mistakenly relied upon Section 8.4a without considering its express language and role in the State's body of statutes. The default common-law rule under Michigan Law has long been that when a criminal prohibition is repealed, the repeal "operates from the moment it takes effect, to defeat all pending prosecutions." *People v Lowell*, 250 Mich 349, 353; 230 NW 202 (1930). That is to say, no one can be punished for criminal conduct once the underlying criminal prohibition has been repealed.[16] In response to *Lowell*, the legislature enacted MCL 8.4a, which provides a different default rule, at least in some instances. It reads:

> The repeal of any *statute* or part thereof shall not have the effect to release or relinquish any penalty, forfeiture, or liability incurred under such statute or any part thereof, unless the repealing act shall so expressly provide, and such statute and part thereof shall be treated as still remaining in force for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability.[17]

This language unambiguously applies solely to *statutes* that are repealed and makes no reference to ordinances.

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[16] *People v Campbell*, 289 Mich App 533; 798 NW2d 514 (2010), is not applicable here. Campbell concerned the retroactivity of an affirmative defense for crimes related to marijuana that was created by the Michigan Medical Marihuana Act (MMA). In holding that the affirmative defense was unavailable to a defendant whose charges were pending before the MMA went into effect, the Court reasoned that the *Lowell* rule was inapplicable "because the instant case does not involve the repeal of an existing criminal statute. Indeed, the possession, manufacture, and distribution of marijuana remain criminal acts, but now there is an affirmative defense available in some cases." *Campbell*, 289 Mich App at 537. Thus, *Campbell* explicitly distinguished the situation now before the court. Here, unlike in *Campbell*, the MRTMA was enacted to repeal all criminal prohibitions on the possession of small amounts of marihuana. Thus, the common-law *Lowell* rule plainly applies.

[17] MCL 8.4a (emphasis added).

The District Court failed to recognize that the General Savings Statute was inapplicable to the Troy ordinance, and thus did not consider that the Complaint against Defendant-Appellant should have been governed by the default common law rule articulated in *Lowell.* A straightforward application of the *Lowell* principle compels dismissal. Therefore, the District Court's order should be reversed.

Relatedly, the District Court failed to recognize that municipal laws are preempted "when a subsequent act of the Legislature clearly is intended to occupy the entire field covered by a prior enactment." *AK Steel Holding Corp. v Dep't of Treasury*, 314 Mich App 453, 464; 887 NW2d 209 (2016) (internal citations and emphasis omitted). "State law preempts a municipal ordinance in two situations: (1) where the ordinance directly conflicts with a state statute or (2) where the statute completely occupies the field that the ordinance attempts to regulate." *Czymbor's Timber*, 269 Mich App at 555 (citing *Rental Prop. Owners Ass'n of Kent Co. v Grand Rapids*, 455 Mich 246, 257, 566 NW 2d 514 (1997)).

The MRTMA, with its comprehensive regulatory structure addressing not just possession of marijuana, but also the manufacture, cultivation, operation and navigation of motor craft under the influence, licensure of operators and growers, as well as taxation and violations, would be plainly understood by the electorate to "completely occupy the field" of marijuana regulation. *See, e.g.*, *People v Llewellyn*, 401 Mich 314, 324-26 (1977) (holding that the state's obscenity statutes fully occupied the field and thereby preempted any local ordinance pertaining to obscenity). Thus, upon its enactment, the MRTMA preempted the ordinance under which Ms. Posey was convicted, and because Section 8.4a says nothing

about ordinances, it provides no basis for nonetheless punishing her for conduct previously prohibited by the ordinance.[18]

2. The District Court Erroneously Concluded that the MRTMA Does Not Expressly Prohibit Punishment for Conduct that Is Now Legal

The MRTMA was enacted pursuant to Article 2 Section 9 of the Michigan Constitution of 1963, which allows for the people of the state to enact laws through a voter initiative. Michigan Legislature, Initiated Law 1 of 2018, "Michigan Regulation and Taxation of Marihuana Act", https://tinyurl.com/y48dbapy (last visited Oct. 25, 2020).

> "Statutes enacted by the Legislature are interpreted in accordance with legislative intent; similarly, statutes enacted by initiative petition are interpreted in accordance with the intent of the electors." *People v Mazur*, 497 Mich 302, 308; 872 N.W.2d 201; 497 Mich. 302; 872 NW 2d 201 (2015). "We begin with an examination of the statute's plain language, which provides 'the most reliable evidence' of the electors' intent." *Id*. []"If the statutory language is unambiguous, . . . [n]o further judicial construction is required or permitted because we must conclude that the electors intended the meaning clearly expressed." *People v Bylsma*, 493 Mich 17, 26; 825 N.W.2d 543; 493 Mich. 17; 825 NW2d 543 (2012).

Deruiter v Twp of Byron, 505 Mich 130, 139; 949 NW2d 91 (2020). See also *Welch Foods v AG*, 213 Mich App 459, 461; 540 NW2d 693 (1995) ("Initiative provisions are liberally construed to effectuate their purposes and facilitate rather than hamper the exercise of reserved rights by the people.")

However, in evaluating whether the MRTMA applied retroactively, the District Court reasoned that "a review of the statute language confirms that nowhere within the statute does the Legislature expressly provide for retroactive application, nor does it include

[18] The Troy ordinance's inclusion of the phrase "except as authorized by state law" does not alter this analysis. It is unremarkable that a municipal code would employ such a phrase to avoid conflict with state law. Rather, here the exception in the Troy ordinance simply swallows the whole, since the MRTMA authorizes the conduct the ordinance had previously prohibited.

language regarding "pending" prosecution. . . ."[19] The Court erred by using an incorrect standard—that of legislative enactments and the technical words that legislators might have used, rather than the standard for interpreting voter initiatives with its focus on what an average voter would have understood themselves to be enacting. See, e.g., *Deruiter*, 505 Mich at 139.

In any event, and regardless of the interpretive principles used, Proposition 1 unequivocally provided that no one could be punished for a violation of the conduct that it legalized, and further provided that its terms prevailed over any countervailing statute (such as § 8.4a). Additionally, the MRTMA states that its provisions prevail over "all other laws inconsistent with this act." MCL 333.27954.

Proposition 1 of 2018, as presented to the electorate on the ballot in 2018 stated: "An initiation of legislation to allow under state law the personal possession and use of marihuana by persons 21 years of age or older. . . ."[20] The full language of the MRTMA states that possession of marijuana in quantities less than 2.5 ounces by a person 21 years of age or older is "not unlawful," is "not an offense," is "not grounds for arrest, prosecution, *or penalty in any manner*," and is "not grounds to deny any other right or privilege." MCL 333.27955(1)(a). The express intent and purpose of the MRTMA "is to make marihuana legal under state and local law for adults 21 years of age or older . . . ." The MRTMA further instructs that "[t]o the fullest extent possible, this act shall be interpreted in accordance with the purpose and intent set forth in this section." MCL 333.27952. By contrast, the city ordinance under which Defendant-Appellant was charged applied only to possession and its

[19] Ex. 1 at 3.
[20] Michigan Legislature, Initiated Law 1 of 2018, "Michigan Regulation and Taxation of Marihuana Act", https://tinyurl.com/y48dbapy (last visited Oct. 25, 2020).

prohibition extended to marijuana use that is not "authorized by state law." Troy Criminal Code 98.11.01.

Again: the MRTMA specifically provides that its provisions prevail over "all other laws inconsistent with this act." MCL 333.27954. The Act specifically contemplates that no one is to suffer "penalty in any manner" for the conduct legalized by its enactment. Thus, to the extent Section 8.4a could be interpreted to allow for punishment for the conduct at issue here that has now been legalized, it is Section 8.4a, which is a general statute applying to all criminal repeals, that must yield in light of the specific instruction in the MRTMA itself that its particular provisions prevail over inconsistent laws. *See In re Forfeiture of One 1987 Chevrolet Blazer*, 183 Mich App 182, 184; 454 NW 2d 201 (1990) ("If two statutes conflict, then the specific prevails over the general.") C.f., *Braska v Challenge Mfg Co*, 307 Mich App 340, 364; 861 NW2d 289, 302 (2014) (holding that the MMMA superseded conflicting provisions of the unemployment law disqualifying claimants with a positive drug test); *People v Koon*, 494 Mich 1, 7; 832 NW2d 724, 727 (2013) (holding that the Michigan Vehicle Code's zero-tolerance provision conflicted with the MMMA and was to give way to the MMMA, when a medical marijuana user was not "under the influence" of marijuana but had traces in their system); *Ter Beek v City of Wyoming*, 495 Mich 1, 20; 846 NW2d 531, 541 (2014); *People v Thue*, No. 353978, 2021 WL 519716, at *4 (Mich Ct App, February 11, 2021) (holding that the Michigan Probation Act conflicted with and thus must yield to the MMMA in that it was impermissible under the MMMA "to prohibit a probationer's MMMA-complaint use of marijuana");

Here, a voter—or anyone else, including this Court—considering the plain language presented in the ballot and the fuller text of the MRTMA's intent and purpose, would

understand the Act to repeal any and all existing ordinances that conflicted with it and to prohibit any punishment under such ordinances.

Because the District Court erroneously interpreted the MRTMA to authorize punishment of conduct that it legalized, its decision should be reversed.

Conclusion

For all of the reasons stated above, this Court should reverse the District Court's denial of her Motion to Quash and Dismiss the Complaint for marijuana possession because the District Court erred as a matter of law.

Respectfully submitted,

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Dated: July 30, 2021

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was filed with the Oakland County Circuit Court through the MiFile system and that all parties to the above cause was served via the MiFile system on July 30, 2021.

Signature: /s/ Kathy Prochaska

EXHIBIT 1

STATE OF MICHIGAN
IN THE 52-4 JUDICIAL DISTRICT COURT

HONORABLE MAUREEN M. McGINNIS, P-66069

CITY OF TROY,

Plaintiff,

vs. Case No. 2016-002924/25-OM

TIERRA POSEY,

Defendant.

/

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OPINION AND ORDER OF THE COURT

After reviewing Plaintiff's Motion for Reconsideration, the Court makes the following findings without oral argument pursuant to MCR 2.119(F)(2).

PROCEDURAL HISTORY

The case before the Court is a misdemeanor criminal case where Defendant, TIERRA POSEY, was charged by the City of Troy with Possession of Marijuana, Driving While Unlicensed, and No Insurance on June 6, 2016. Defendant appeared before the Court on June 14, 2016, and ultimately pled guilty to Possession of Marijuana and No Valid Operator's License. Defendant's case was set for sentencing on July 19, 2016. Defendant failed to appear for sentencing and a bench warrant was issued. The bench warrant was recalled in July 2020. Shortly after, Defendant filed a Motion to Quash the Complaint and Dismiss with Prejudice.

In preparation for the motion, the Court reviewed Defendant's Motion, filed on or about August 17, 2020, and Plaintiff's Answer to the Motion, filed on August 20, 2020. Both parties were given an opportunity to supplement their pleadings with oral argument heard by the Court via Zoom on August 25, 2020. After a lengthy discussion, the Court denied Defendant's motion and proceeded to sentencing. Defendant was sentenced to

three months of probation and a $50.00 fine. She was given the opportunities afforded to her under MCL 333.7411.

Defendant filed a Motion for Reconsideration Pursuant to MCR 2.119(F) on September 15, 2020.

ISSUE

The issue is whether Defendant has demonstrated a palpable error by which the Court was misled in reaching its decision on the underlying Motion to Quash the Complaint and Dismiss with Prejudice, where a different disposition must result from the correction of the error.

ANALYSIS

MCR 2.119(F)(3) states:

> Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

"A Court's decision to grant a motion for reconsideration is an exercise of discretion." *Kokx v Bylenga*, 241 Mich App 655, 659, 617 NW2d 368, 370 (2000).

In this case, Defendant makes several arguments as to why the Court should reconsider its August 25, 2020, ruling. A thorough review of the pleadings submitted in support of Defendant's Motion for Reconsideration as compared to the pleadings in support of Defendant's Motion to Quash demonstrate that the legal arguments are similar, relying on the same statutes and case law that were used in support of the underlying motion.

Defendant argues that the passage of the Michigan Regulation and Taxation of Marihuana Act by voter referendum on November 6, 2018, requires that Defendant can no longer be prosecuted for Possession of Marihuana. Defendant does not contest that she pled guilty to the offense more than two years prior to the change in the law, however, for the reasons outlined in her brief, Defendant argues that the MRTMA should be applied retroactively.

This Court went to great lengths to listen to the argument made on behalf of each party in the underlying motion and to review the case law cited. There remains no argument that can be made as to what the Court must consider in determining whether a statute should be applied retroactively or prospectively, "The primary and overriding rule is that legislative intent governs. All other rules of construction and operation are

subservient to this principle." *Franks v White Pine Copper Division,* 422 Mich 636, 670, 375 NW2d 715, 729 (1985), overruled on other grounds by *Gen Motors Corp v Romein*, 503 US 181, 112 S Ct 1105, 117 L Ed 2d 328 (1992). Furthermore, " 'statutes are presumed to operate prospectively unless the contrary intent is clearly manifested.' " *Id.* at 671 (quoting *Selk v Detroit Plastic Prod*, 419 Mich 1, 9, 345 NW2d 184, 187 (1984)). This decision was reaffirmed again in 2008 when the Michigan Court of Appeals decided *People v Conyer*, holding that "[a] statute is presumed to operate prospectively 'unless the Legislature either expressly or impliedly indicated an intention to give it retroactive effect.'" 281 Mich App 526, 529, 762 NW2d 198, 200 (2008) (quoting *People v Russo*, 439 Mich 584, 594, 487 NW2d 698 (1992)).

Defendant argues generally that "MRTMA is both explicitly and impliedly intended to be applied retroactively." (pg. 15, Defendant's Motion for Reconsideration). Defendant fails to specifically include language contained in the statute to support this position, particularly as it relates to the inclusion of explicit instruction to apply the statute retroactively. Furthermore, a review of the statute language confirms that nowhere within the statute does the Legislature expressly provide for retroactive application, nor does it include language regarding "pending" prosecution, although this is what Defendant asks us to infer. Case law clearly does not require statutory language that explicitly provides **for** prospective application, despite Defendant arguing that a lack of this type of language somehow implies that the MRTMA must be applied retroactively (pg. 14, Defendant's Motion for Reconsideration).

A remedial statute is a recognized exception to this general rule that statutes are presumed to apply prospectively. *Russo*, 439 Mich at 594. "A statute is remedial if it operates in furtherance of an existing remedy and neither creates nor destroys existing rights." *People v Campbell*, 289 Mich App 533, 535, 798 NW2d 514, 515 (2010). Here, as in *Campbell*, the Court does not find the enactment of the MRTMA was designed to operate in furtherance of an existing remedy. Furthermore, the Act definitively states its purpose "is to make marihuana legal under state and local law for adults 21 years of age or older," affording the people of Michigan the right to legally use marijuana subject to the limitations proscribed in the Act, which was a right the people did not possess prior to December 6, 2018, the effective date of the law. MCL 333.27952.

Defendant relies heavily on *People v Lowell*, 250 Mich 349, 230 NW 202 (1930), a 1930 Michigan Supreme Court opinion, to support her argument relative to the doctrine of abatement. However, it is not contested that the opinion in *Lowell* clearly states that the decision was predicated on a lack of a general savings clause. Furthermore, Defendant agrees that the opinion suggests that a general savings clause should be enacted by the Michigan Legislature to preserve criminal liability in certain instances. (pg. 7, Defendant's Motion for Reconsideration). MCL 8.4a, the general savings statute was enacted the year after the *Lowell* opinion was issued. As the Court previously ruled, the general savings clause can and should be considered in this case. "By enacting § 8.4a, the Legislature has expressed its intent that conduct remains subject to punishment whenever a statute imposing criminal liability either is repealed outright or reenacted with modification, even

though a specific saving clause has not been adopted." *People v Schultz*, 435 Mich 517, 528, 460 NW2d 505, 510 (1990).

In referencing *Schultz* and other cases supported by the Defendant, it should be noted that there is a factual difference in the case at hand that was not at issue in the other cases. This was a case that was in bench warrant status for over four years and the time frame between the proceedings and the passage of the MRTMA only overlapped as a result of the Defendant's failure to address the outstanding warrant with the court. Had she appeared for sentencing in any reasonable time frame after the plea was accepted, even the maximum amount of jail time or probation that could have been ordered would have completed before the passage of the Act, leaving her without any ability to claim the recourse that she is seeking now. To the extent that there is precedence on this unique set of circumstances, it has not been presented for consideration by either party.

Despite the additional opportunity to present Defendant's original arguments to the Court for reconsideration, the Court does not find new or compelling legal support to decide the same issue differently.

In reviewing the arguments that have been incorporated into Defendant's Motion for Reconsideration, as a whole, the Court finds that the moving party has not made the requisite showing of palpable error by which the Court has been misled. For these reasons and pursuant to MCR 2.119(F)(3), Defendant's Motion is DENIED.

IT IS HEREBY ORDERED that Defendant's Motion for Reconsideration is DENIED.

Dated: 10/6/2020

Honorable Maureen M. McGinnis, P-66069
52-4 District Court Judge

CERTIFICATE OF MAILING

I certify that on this date copies of this order were served upon the attorneys by ordinary mail at the address(s) listed above.

Dated: 10/6/2020

Ruth Gerber
Judicial Assistant
Hon. Maureen M. McGinnis

Exhibit 2

State of Michigan
Uniform Law Citation

US

Ticket No. **16TR05015** ** ☐ Victim Involved

Incident No. 160017336

The People of: ☐ the State of Michigan ☐ Township ☒ City ☐ Village ☐ County
OF: TROY

Local Use/Arrest No.

Detection Device

BAC

1 of 1

THE UNDERSIGNED SAYS THAT ON:	Month	Day	Year	At approximately	Date of Birth	Month	Day	Year
	06	06	16	02:03 ☐ A.M. ☒ P.M.		08	13	91

State	☒ Oper./Chauff. ☐ CDL	Driver License Number	SSN (last 4 digits)
MI		P200793067633	

Race	Sex	Height	Weight	Hair	Eyes	Occupation/Employer
B	F	5' 01"	158		BRO	

Name (First, Middle, Last): TIERRA ANN POSEY

Street: 14711 MACK AVE STE B216

City: DETROIT State: MI Zip Code: 48215-2531

Vehicle Plate No.	Year	State	Vehicle Description (Year, Make, Color)	Veh. Type
DGA3758	2016	MI	2000 BUICK GREEN	P | A

THE PERSON NAMED ABOVE, in violation of ☒ Local Ordinance ☐ State Law ☐ Administrative Rule

UPON STEPHENSON HWY

AT OR NEAR ROCHESTER RD

WITHIN ☒ CITY ☐ VILLAGE ☐ TOWNSHIP OF TROY

COUNTY OF OAKLAND

DID THE FOLLOWING

Type	MCL Cite/PACC Code/ Ordinance	Description (Include any bond amount collected on each charge)	Charge No.
☐ C/I ☐ Warn ☒ Misd ☐ Fug ☐ Fel ☐ Waiv	☐ Authorization pend. 4454000	NO INSURANCE	1
☐ C/I ☐ Warn ☒ Misd ☐ Fug ☐ Fel ☐ Waiv	☐ Authorization pend. Ord: 257.904A 3011000	DRIVER'S LICENSE REQUIRED; DROVE WHILE UNLICENSED	2
☐ C/I ☐ Warn ☒ Misd ☐ Fug ☐ Fel ☐ Waiv	☐ Authorization pend. Ord: 333.74032D 9200000	POSSESSION OR USE OF MARIJUANA	3

TO THE COURT: Do not arraign on a felony charge until an authorized complaint is filed.

Offense Code(s)
1 106.5.70C(2) 2 106.5.62(1) 3 98.11.01

Key for Type: C/I = Civil Infraction Misd = Misdemeanor Fel = Felony Warn = Warning Fug = Fugitive
Waiv = Violation for Which Fines/Costs May be Waived Authorization pend. = Authorization pending

Remarks:

CHECK IF APPROPRIATE
☒ Vehicle Impounded ☐ Traffic Crash ☐ Damage to Property ☐ Injury ☐ Death
Person in Active Military Service ☐ Yes ☒ No

☐ Local Court Bond $ ☐ License Posted in Lieu of Bond ☐ Appearance Certificate ☒ None

SEE DATE BELOW. SEE BACK OF CITATION FOR EXPLANATION AND INSTRUCTIONS

Appearance Date on or before **06/29/2016 08:30AM**

Hearing Date (if applicable) on ☒ Contact Court

☐ Juvenile Traffic Misd. (Court will Notify) ☐ Formal Hearing Required. (Court will Notify)

In the 52ND DISTRICT COURT Court of TROY

Court Address & Phone Number: 52ND DISTRICT COURT, 4TH DIVISION
520 WEST BIG BEAVER ROAD
(248) 528-0400 TROY, MI 48084

☒ I served a copy of the civil infraction complaint upon the defendant (or owner/occupant by posting if applicable).

I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.

Complainant's Signature and receiptif applicable	Month	Day	Year
A. LANE	06	06	16

Officer's Name (printed)	Officer's ID No.
A. LANE	46

Agency ORI	Agency Name
MI- 6378400	TROY PD

UC-01a (rev. 6/05) **Payment: https://courts.oakgov.com/OakEtix/**
** **Revised: REMOVED CHARGE #4 (DTCD)**

Ticket 16TR05015 Name POSEY, TIERRA Case No.

Exhibit 3

STATE OF MICHIGAN
IN THE 52-4 DISTRICT COURT

PEOPLE OF THE CITY OF TROY,
Plaintiff,

vs.

Hon. MAUREEN M. MCGINNIS
Case Nos. 16-002924/25

TIERRA POSEY,
Defendant.
/

NICOLE MACMILLAN (P79003)
Attorney for Plaintiff
Troy City Attorney's Office
500 W. Big Beaver Road
Troy, MI 48084
(248) 524-3320

CHARLES D. HOBBS (P79715)
Attorney for Defendant
Street Democracy
440 Burroughs, Ste. 634
Detroit, MI 48202
(313) 355-4460
/

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO QUASH THE COMPLAINT AND TO DISMISS WITH PREJUDICE

Defendant argues that even though her conduct was illegal in 2016, and even though she is at fault for the delay in her sentencing, her case should be dismissed under the doctrine of abatement, since the Michigan Regulation and Taxation of Marihuana Act has subsequently legalized Defendant's conduct.

However, this is not supported by statute or the case law cited by Defendant. In fact, when taken in context and read in their entirety, the cases cited by Defendant actually support the opposite conclusion. Therefore, the City requests that this Court deny Defendant's Motion.

STATEMENT OF FACTS

On June 6, 2016, Defendant was in the City of Troy and had 0.5 grams of marijuana in her purse. As a result, she was issued a citation for possession of marijuana, amongst other criminal offenses. On June 14, 2016 Defendant plead guilty to possession of marijuana. Defendant was scheduled to be sentenced on July 19, 2016, but failed to appear, which resulted in a bench warrant being issued. Over two years later, Michigan voters passed the Michigan Regulation and Taxation of Marihuana Act. Of importance, there is no express or implied language in the Act that gives it retroactive application. Nevertheless, Defendant has filed a Motion requesting that this Court dismiss her case.

ARGUMENT

1. STATUTE AND CASE LAW MAKE IT CLEAR THAT STATUTES ARE TO BE APPLIED PROSECTIVELY, UNLESS THERE IS EXPRESS LANGUAGE TO THE CONTRARY.

MCL 8.4a provides:

> The repeal of any statute or part thereof shall not have the effect to release or relinquish any penalty, forfeiture, or liability incurred under such statute or any part thereof, *unless the repealing act shall so expressly provide*, and such statute and part thereof shall be treated as still remaining in force for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability. (*Emphasis Supplied*).

Similarly, case law is unambiguous that statutes are presumed to operate prospectively unless the legislature either expressly or impliedly indicated an intention to give the statute retroactive effect. *People v. Conyer*, 281 Mich. App. 526, 529; 762 N.W.2d 198 (2008). Therefore, since there is no language in the Michigan Regulation and Taxation of

Marihuana Act that reflects an intent to apply the Act retroactively, this Court must apply the Act prospectively. As such, the Act has no bearing on Defendant's case. The cases cited by Defendant actually support this conclusion, as well.

A. PEOPLE V. LOWELL

People v. Lowell is a 1930 case decided by the Michigan Supreme Court. *People v. Lowell*, 250 Mich. 349; 230 N.W. 202 (1930). The Court made it abundantly clear that it was basing its ruling "in the absence of a savings clause." *Id*. at 352, 353, 356, 374. Subsequently, and as a result of *Lowell*, the legislature created a savings clause via MCL 8.4a, to address this specific issue[1]. Therefore, since we now have an applicable savings clause, *Lowell* supports the City's position that the Michigan Regulation and Taxation of Marihuana Act applies prospectively.

B. PEOPLE V. SCHULTZ

In *People v. Schultz*, the Michigan Supreme Court considered the application of MCL 8.4a when an amendment to a statute still criminalized an offense, but merely reduced the punishment. *People v. Schultz*, 435 Mich. 517, 528-529; 460 N.W.2d 505 (1990). The Court ruled that "…the [l]egislature intended § 8.4a to prevent technical abatements from barring actions to enforce criminal liability and thereby excusing offenders from punishment." *Id*. at 529. In other words, MCL 8.4a was specifically created so that offenders could still be punished for their criminal activity, even if the criminal statute was subsequently repealed or amended. The Court specifically noted that pursuant to

[1] The Statute was enacted in 1931.

MCL 8.4a, "…[a] defendant's conduct [is] still subject to punishment notwithstanding an ameliorative amendment enacted subsequent to the date of the offense." *Id*. at 530.

Therefore, the rule from Schultz is that when the legislature creates an amendment that still proscribes certain activity, but merely amends the potential punishment, the amended punishment should apply. *Id*. at 532. It is a very limited rule, and absent this specific situation, the Court still whole heartedly supported the conclusion that MCL 8.4a is intended to hold criminals responsible for their crimes. *See Supra*. Since the Michigan Regulation and Taxation of Marihuana Act does not merely modify the punishment for Defendant's conduct, *Schultz* does not support her position.

C. PEOPLE V. CAMPBELL

Finally, *People v. Campbell* dealt with whether Michigan's Medical Marijuana Act should have retroactive application. *People v. Campbell*, 289 Mich. App. 533, 535; 798 N.W.2d 514, 515 (2010). Naturally, the court observed that "[g]enerally, statutes are presumed to operate prospectively unless the Legislature either expressly or impliedly indicated an intention to give the statute retroactive effect." *Id*. Since the Michigan Medical Marijuana Act created a *new* right that did not exist before the enactment of the Medical Marijuana Act, it concluded that the right should be applied prospectively. *Id*. at 536. Similarly in Defendant's case, the Michigan Regulation and Taxation of Marihuana Act created a new right, which must have a prospective application.

CONCLUSION

Therefore, the City requests that this Honorable Court **DENY** Defendant's Motion.

Respectfully Submitted,

Date: August 20,2020

/s/Nicole MacMillan
Nicole MacMillan (P79003)
Attorney for Plaintiff

PROOF OF SERVICE

The undersigned certifies that on **August 20, 2020** the foregoing document was served upon the Clerk of this Court by email to 524criminal@oakgov.com and to Defendant via email to charles@streetdemocracy.org

/s/Nicole MacMillan
Nicole MacMillan

Exhibit 4

STATE OF MICHIGAN
52nd JUDICIAL DISTRICT COURT 4th DIVISION
COUNTY OF OAKLAND

CITY OF TROY,
Complainant,

vs.

TIERRA A. POSEY,
Defendant

CASE NO. 16-000295-OM

DEFENDANT'S MOTION TO QUASH COMPLAINT AND & DISMISS WITH PREJUDICE

HON. MAUREEN M. MCGINNIS

Charles D Hobbs (P79715)
Street Democracy
Attorneys for Defendant
440 Burroughs, Ste 634
Detroit, MI 48202
(313) 355-4460

Lori Grigg Bluhm (P46908)
Attorneys for City of Troy
500 West Big Beaver Road
Troy, MI 48084
(248) 524-3320

MOTION TO QUASH THE COMPLAINT AND TO DISMISS WITH PREJUDICE

Defendant, **Tierra Posey**, by and through her attorney, **Charles D Hobbs**, states as follows:

1. That Defendant was charged with one count of possession of marihuana on or about June 6, 2016 in violation of Troy Ordinance 98.11.01.

2. That Defendant appeared before this court and entered a guilty plea on or about June 14, 2016.

3. That Defendant is scheduled to be sentenced before this court on August 25, 2020.

4. That Defendant contacted our office after the entry of the plea to discuss potentially dispositive legal issues associated with the above-captioned matter.

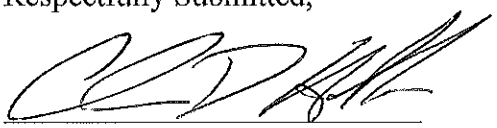
5. Passage of Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018 by voter referendum on November 6, 2018, makes personal possession and use of marijuana legal for those over 21 years of age, and abrogates prosecutorial authority to pursue this charge pursuant to the doctrine of abrogation, *see People v. Lowell*, 250 Mich 349 (1930).

6. This motion is timely.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter an Order to quash the complaint, dismiss the pending charge with prejudice, and granting any other relief as is agreeable with equity and good conscience.

Respectfully Submitted,

Dated: August 17, 2020



Charles D Hobbs
Street Democracy
Attorney for Defendant

STATE OF MICHIGAN
52nd JUDICIAL DISTRICT COURT 4th DIVISION
COUNTY OF OAKLAND

CITY OF TROY, Complainant, vs. **TIERRA A. POSEY,** Defendant	**CASE NO. 16-000295-OM** **BRIEF IN SUPPORT OF DEFENDANT'S MOTION QUASH COMPLAINT** **HON. MAUREEN M. MCGINNIS**

Charles D Hobbs (P79715)
Street Democracy
Attorneys for Defendant
440 Burroughs, Ste 634
Detroit, MI 48202
(313) 355-4460

Lori Grigg Bluhm (P46908)
Attorneys for City of Troy
500 West Big Beaver Road
Troy, MI 48084
(248) 524-3320

BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO QUASH THE COMPLAINT AND TO DISMISS WITH PREJUDICE

STATEMENT OF FACTS

On June 6, 2016, Ms. Posey was citied, among other charges, for violating Troy Ordinance 98.11.01, which states "No person shall knowingly or intentionally possess or use marijuana except as authorized by state law."[1] On the date of the offense, Ms. Posey was 24-years old. She pled guilty to that count on June 14, 2016. However, Sentencing was never competed.

[1] Troy's authority to regulate marijuana use was seemingly based on the Public Health Code's MCL 333.7403(2)(d)'s prohibition of marihuana and other substances, see citation listed on Ticket 16TR05015.

Prior to sentencing, the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, was passed by voter referendum on November 6, 2018 (hereafter the "MRTMA").[2] Ms. Posey is scheduled for sentencing in the instant case on August 25, 2020.

ARGUMENT

Generally, in the United States, statutes apply prospectively. Michigan adheres to this rule of construction unless otherwise clearly intended by the Legislature. At common law, the unqualified repeal of a criminal statute resulted in the abatement of all prosecutions that had not been finalized.[3]

The common law doctrine of abatement works to terminate punishment once a statute is repealed. Punishment after the decriminalization of previously criminal conduct is unnecessary unless the statute clearly indicates otherwise and specifies that the law is to be proscribed prospectively.[4] When a statute's repeal is unqualified, the State no longer deems the conduct offensive and continued punishment thereunder runs counter to the State's prerogative.

Michigan common law adheres to the doctrine of abatement.

The common law is well settled that "the repeal of a criminal statute operates from the moment it takes effect, to defeat all pending prosecutions under the repealed statute." *People v. Lowell*, 250 Mich 349, 353 (1930). In *Lowell* the prohibition act was amended to increase the

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[2] This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

[3] *Today's Law and Yesterday's Crime: Retroactive Application of Ameliorative Criminal Legislation*, 121 U. Pa. L. Rev. 120, 121 (1972); *Regina v. Mawgan*, 112 Eng. Rep. 927 (Q.B. 1838). *See Bell v. Maryland*, 378 U.S. 226 (1964), in which the Court stated that the "universal common-law rule" is that [w]hen the Legislature repeals a criminal statute or otherwise removes the State's condemnation from conduct that was formerly deemed criminal, this action requires the dismissal of a pending criminal proceeding charging such conduct. The rule applies to any such proceeding, which, at the time of the supervening legislation, has not yet reached final disposition in the highest court authorized to review it."

[4] *Id.* at 144-45.

maximum punishment, but only after the defendant had been charged. That Court affirmed the lower court's quashing of the bindover because "[u]nder the common-law abatement doctrine, the act authorizing the prosecution had been repealed by the amendatory act" and "prosecution under the amended act, which provided a term of punishment that had been increased subsequent to the date of offense, was barred by the constitutional Ex Post Facto Clause."

The Lowell court, recognizing the unintended consequence of this doctrine and merely amendatory acts, suggested that the Legislature enact a general savings statute to preserve criminal liability when the act's amendment proscribes the same act. The Legislature responded by enacting MCL 8.4a, Michigan's general savings statute. In *People v Schultz*, 435 Mich 517 (1990), the Michigan Supreme Court wrestled with an ameliorated sentencing regime which reduced the mandatory minimum for a drug conviction and the application of MCL 8.4a. In *Schultz*, the Court determined that MCL 8.4a was enacted to "to prevent technical abatements from barring actions to enforce criminal liability and thereby excusing offenders from punishment." *Id.* at 529. The Court, acknowledging earlier the continued application of doctrine of abatement, noted that "[t]he courts of other states that have adopted general saving statutes have also held that, ***in the absence of a contrary statement of legislative intent***[,] criminal defendants are to be sentenced under an ameliorative amendatory act that is enacted subsequent to the date of offense and becomes effective during the pendency of the prosecution." [emphasis added]. *Id.* at 530.

In *People v. Campbell*, a defendant charged with manufacturing marijuana, possession of marijuana with intent to deliver, and misdemeanor possession of marijuana moved to dismiss the charges on the basis that the Medical Marihuana Act (hereafter "MMA") provided an affirmative defense for a criminal defendant facing marijuana-related charges. The *Campbell* Court,

although rejecting the defendant's argument, reaffirmed the applicability of the doctrine of abatement, stating: "Defendant's reliance on Lowell is misplaced because the instant case does not involve the repeal of an existing criminal statute. Indeed, the possession, manufacture, and distribution of marijuana remain criminal acts, but now there is an affirmative defense available in some cases."

MRTMA is clear in its intent to repel the criminalization of marijuana.

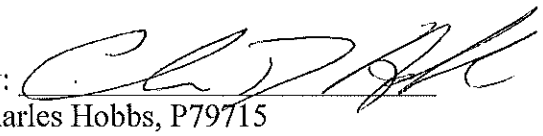
The Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, was passed by voter referendum on November 6, 2018. More than a mere ameliorative amendatory act, the MRTMA decriminalizes what was previously prohibited conduct. "The purpose of this act is to make marihuana legal under ***state and local law*** for adults 21 years of age or older… The intent is to prevent arrest and penalty for personal possession and cultivation of marihuana by adults 21 years of age or older…[emphasis added]." *See* MCL 333.27952. Further, Section 5 of the MRTMA states that "the use, manufacture, possession, and purchase of marihuana accessories by a person 21 years of age or older and the distribution or sale of marihuana accessories to a person 21 years of age or older is authorized, ***is not unlawful, is not an offense, is not grounds for seizing or forfeiting property, is not grounds for arrest, prosecution, or penalty in any manner, and is not grounds to deny any other right or privilege***. [*emphasis added*]" See MCL 333.27755. The plain language of the MRTMA is manifestly clear. Moreover, the MRTMA lacks any indicia, such an effective date, that would imply voters' intention that MRTMA to apply only to prospective acts.[5]

[5] In the event there were any confusion as to the statute, the rule of lenity requires any ambiguity in a **criminal** statute be interpreted in favor of the defendant. *United States v Bass*, 404 US 336 (1971); *McBoyle v United States*, 283 US 25 (1931); *United States v Gradwell*, 243 US 476 (1917).

CONCLUSION

The MRTMA constitutes a repeal of all criminalization of personal possession and use of marihuana by those over 21 years of age. It is clear in its intent that all criminalization and punishment of personal possession and use of marihuana by those over 21 years of age cease. The MRTMA effectively repeals Troy Ordinance 98.11.01. The common law doctrine of abatement operates to defeat all prosecution of a repealed law. For theses reasons, continued prosecution of Ms. Posey under Troy Ordinance 98.11.01 is improper, and Ms. Posey's Motion to Quash be granted and the instant matter be dismissed with prejudice.

Respectfully Submitted,

By: 
Charles Hobbs, P79715
Street Democracy
Attorney for Defendant

Dated: August 17, 2020

Exhibit 5

STATE OF MICHIGAN
IN THE 52-4 DISTRICT COURT

City of Troy,

Complainant,

vs.

Case No.: 16-002924/25
Hon. Maureen M. McGinnis

Tierra Posey,

Defendant

Charles Hobbs (P79715)
Street Democracy
Attorneys for Defendant
440 Burroughs St Ste 634
Detroit, MI 48202-3429
(313) 355-4460

Nicole MacMillan (P79003)
Attorney for Plaintiff
Troy City Attorney's Office
500 West Big Beaver
Troy, MI 48084
(248) 425-3320

MOTION TO RECONSIDER DEFENDANT'S MOTION TO QUASH THE COMPLAINT AND TO DISMISS WITH PREJUDICE

NOW COMES, Tierra Posey, Defendant, by and through her attorneys, Charles D Hobbs of Street Democracy, and for her Motion for Reconsideration states as follows:

1. That Defendant was charged with one count of possession of marihuana on or about June 6, 2016 in violation of Troy Ordinance 98.11.01 (the "Ordinance").

2. That Defendant appeared before this court and entered a guilty plea on or about June 14, 2016.

3. That the passage of Michigan Regulation and Taxation of Marihuana Act ("MRTMA"), Initiated Law 1 of 2018, by voter referendum on November 6, 2018, which decriminalizes the personal possession and use of marihuana legal for those over 21 years of age, became effective before the sentencing of Ms. Posey.

4. That on August 25, 2020, the Court heard Ms. Posey's Motion to Quash on the ground that the doctrine of abatement defeated all prosecution of ordinance violations of concerning same behavior of a repealed law, denying the motion and sentencing Ms. Posey to a delayed sentence with non-reporting probation and a $50 fine.

5. That the Court's application of Michigan's general savings statute, MCL 8.4a, to preserve the prosecution of Ms. Posey was incorrect under the Ordinance and constitutes palpable error, and that the Court's consideration of additional bases and authorities will demonstrate that a different disposition of Ms. Posey's Motion to Quash would result from correction of said error.

6. And that this motion, pursuant to MCR 2.119, is timely.

WHEREFORE, Defendant respectfully requests that this Honorable Court reconsider Ms. Posey's Motion to Quash on the bases presented herein and enter an order quashing the complaint, vacating her plea and conviction, dismissing the pending charge with prejudice, and granting any other relief as is agreeable with equity and good conscience.

Respectfully Submitted,

By: _____
Charles Hobbs, P79715
Street Democracy
Attorney for Defendant

Dated: September 15, 2020

STATE OF MICHIGAN
IN THE 52-4 DISTRICT COURT

City of Troy,

Complainant,

vs.

Case No.: 16-002924/25
Hon. Maureen M. McGinnis

Tierra Posey,

Defendant

Charles Hobbs (P79715)
Street Democracy
Attorneys for Defendant
440 Burroughs St Ste 634
Detroit, MI 48202-3429
(313) 355-4460

Nicole MacMillan (P79003)
Attorney for Plaintiff
Troy City Attorney's Office
500 West Big Beaver
Troy, MI 48084
(248) 425-3320

BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR RECONSIDERATION

STATEMENT OF FACTS

On June 6, 2016, Ms. Posey was citied, among other charges, for violating Troy Ordinance 98.11.01 (the "Ordinance"), which states "No person shall knowingly or intentionally possess or use marijuana except as authorized by state law."[1] Troy, Michigan, Municipal Code 98.11.01. On the date of the offense, Ms. Posey was 24-years old. She pled guilty to that count on June 14, 2016.

[1] Troy's authority to regulate marihuana use was seemingly based on the Public Health Code's MCL 333.7403(2)(d)'s prohibition of marihuana and other substances, see citation listed on Ticket 16TR05015.

Prior to sentencing, the Michigan Regulation and Taxation of Marihuana Act, Initiated Law 1 of 2018, was passed by voter referendum on November 6, 2018 ("MRTMA").[2] On August 25, 2020, the Court heard Ms. Posey's Motion to Quash on the ground that the doctrine of abatement defeated all prosecution of a repealed law. The Court rejected the argument, finding that Michigan's general savings statute, MCL 8.4a, preserved the operation of the Ordinance, and accordingly sentenced Ms. Posey to a delayed sentence with non-reporting probation and a $50 fine.

ARGUMENT

The continued prosecution of Ms. Posey under the Ordinance violates Michigan law. First, the Michigan Constitution prohibits the exercise of municipal authority that is direct conflict with state statute. Second, MCL 8.4a applies only to statutes as they relate to subsequent repealing or amendatory acts of the legislature and therefore cannot be extended by proxy to a subordinate body's ordinance that was not in fact repealed. Third, Michigan adheres to the doctrine of abatement, and its application in this case would bar prosecution under the Ordinance. And lastly, MRTMA, even if deemed an ameliorative act rather than an absolute repeal, passes the Michigan's test for retroactivity and entitles Ms. Posey to the relief sought, as the prescribed enforcement under MRTMA for personal possession and use of marihuana is non-prosecution and non-penalty thereof.

[2] This new act was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. The proposed language was certified to the legislature on April 26, 2018 with the 40-day consideration period lapsing on June 5, 2018. The initiative petition was submitted to the voters as proposal 18-1 at the November 6, 2018 general election where it was approved 2,356,422 for and 1,859,675 against.

I. THE MICHIGAN CONSTITUTION PROHIBITS THE CITY'S ENFORCEMENT OF THE ORDINANCE THAT DIRECTLY CONFLICTS WITH MRTMA

Under the Michigan Constitution, a city's "power to adopt resolutions and ordinances relating to its municipal concerns" is "subject to the constitution and the law." Const 1963, art 7, § 22. "While prescribing broad powers, this provision specifically provides that ordinances are subject to the laws of this state, i.e., statutes." *AFSCME v. Detroit*, 468 Mich 388, 410; 662 NW2d 695 (2003). The city, therefore, "is precluded from enacting an ordinance if . . . the ordinance is in direct conflict with the state statutory scheme, or . . . if the state statutory scheme preempts the ordinance by occupying the field of regulation which the municipality seeks to enter, to the exclusion of the ordinance, even where there is no direct conflict between the two schemes of regulation." *People v. Llewellyn*, 401 Mich 314, 322; 257 NW2d 902 (1977) (footnotes omitted). A direct conflict exists when "the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits." *Id.* at 322 n 4. The Michigan Supreme Court extended this principle to even tangential regulation of statutorily-defined legal activity when it invalidated the city's attempt to use a zoning ordinance to prohibit the exercise of rights conferred to registered patients under the Michigan Medical Marihuana Act (the "MMA"), a voter initiated law. *Ter Beek v. City of Wyoming*, 495 Mich 1; 846 NW2d 531 (2014).

The purpose of MRTMA "is to make marihuana legal under state and local law for adults 21 years of age or older… The intent is to prevent arrest and penalty for personal possession and cultivation of marihuana by adults 21 years of age or older…" MCL 333.27952. Section 5 states that the possessing, using or consuming, internally possessing, purchasing, transporting, or processing 2.5 ounces or less of marihuana, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate "is not unlawful, is not an offense, is not grounds for seizing or forfeiting property, is not grounds for arrest, prosecution, or penalty in any manner,

and is not grounds to deny any other right or privilege." *See* MCL 333.27955. This section not only authorizes the possession and use of limited quantities of marihuana, but also prohibits the arrest, prosecution, or penalty on the basis of such possession or use.

The Ordinance reads: "No person shall knowingly or intentionally possess or use marijuana except ***as authorized by state law***. A person who violates this section is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than 93 days or by a fine of not more than $500, or both." Troy, Michigan, Municipal Code 98.11.01 [*emphasis added*]. The Ordinance represents a direct conflict to MCL 333.27955, both as to the proscribed behavior and the prescribed penalty, as well as an abrogation of the state's regulation of this field. Thus, the City continued prosecution of Ms. Posey under the Ordinance for behavior authorized by state statute constitutes an unconstitutional exercise of municipal authority.

II. MCL 8.4a IS INAPPLICABLE AS TO THE TROY ORDINANCE BECAUSE MCL 8.4a APPLIES TO STATUTES, NOT ORDINANCES

MCL 8.4a states:

> The repeal of any statute or part thereof shall not have the effect to release or relinquish any penalty, forfeiture, or liability incurred under such statute or any part thereof, unless the repealing act shall so expressly provide, and such statute and part thereof shall be treated as still remaining in force for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability.

The purpose of the statute is to prevent inadvertent technical abatement by subsequent legislative acts that increases penalties for an existing crime. The statute does not expressly mention or imply the inclusion of derivative ordinances. Had the legislature intended MCL 8.4a to apply to derivative municipal ordinances, it would have expressly included ordinances in the statute.

Dave's Place v. Liquor Control Commission, 277 Mich 551, 555; 269 NW 594 (1936) ("'It is a general principle of interpretation that the mention of one thing implies the exclusion of another thing; *expressio unius est exclusio alterius*' 25 R.C.L. 981. *See Taylor v. Michigan Public Utilities Commission*, 217 Mich. 400, 186 NW 485."). Moreover, this counsel found only one reference where the legislature extended MCL 8.4a to local ordinances, it only having done so by enacting legislation that expressly extended the savings statutes to local traffic ordinances.[3] Thus it is clear that MCL 8.4a applies only to legislative acts, not municipal ones and that absent an enabling statute that explicitly extends to a specific class of derivative ordinances, the City cannot assert MCL 8.4a as a defense to the continued operation of its ordinance.[4]

III. THE DOCTRINE OF ABATEMENT OPERATES INDEPENDENT OF MICHIGAN'S SAVINGS CLAUSE

The common law is well settled that "the repeal of a criminal statute operates from the moment it takes effect, to defeat all pending prosecutions under the repealed statute." *People v. Lowell*, 250 Mich 349, 353; 230 NW 202 (1930). In *Lowell*, Michigan's prohibition act was amended to increase the maximum punishment, but only after the defendant had been charged. That Court affirmed the lower court's quashing of the bindover because "[u]nder the common-law abatement doctrine, the act authorizing the prosecution had been repealed by the amendatory act" and "prosecution under the amended act, which provided a term of punishment that had been increased subsequent to the date of offense, was barred by the constitutional Ex Post Facto Clause." *People v. Schultz*, 435 Mich 517, 538; 460 NW2d 505 (1990), *discussing Lowell*, 250

[3] Compiler's Notes to MCL 8.4a: "Section 3 of Act 510 of 1978 provides: 'Section 4a of chapter 1 of the Revised Statutes of 1846, being section 8.4a of the Michigan Compiled Laws applies to violations of Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or a local ordinance substantially corresponding thereto, which occurred before the effective date of this amendatory act and which would otherwise be designated as civil infractions upon the effective date of this amendatory act.'"

[4] Troy's general savings ordinance, 1-2-3(B), is equally inapplicable as it would only apply to a repeal or amendment of an ordinance by the local deliberative body, which is not at issue here.

Mich at 352. The *Lowell* court, recognizing the unintended consequence of this doctrine and merely amendatory acts, suggested that the Legislature enact a general savings statute to preserve criminal liability when an amendatory act proscribes the same act, but increases the punishment. The Legislature responded by enacting MCL 8.4a, Michigan's general savings statute in 1931.

Nine years later, the Michigan Supreme Court reaffirmed the doctrine of abatement in the instance of outright repeal, holding that "Where a criminal statute is repealed, it is as if it never existed, except for the purpose of proceedings previously commenced, prosecuted, and concluded, ***and even a plea of guilty before the repeal will not authorize the court to pass sentence.***" [*emphasis added*]. *Ex parte Jerry*, 294 Mich 689 at 691; 293 NW 909 (1940). The Court, quoting *United States v. Chambers*, 291 US 217; 54 S Ct 434; 78 L Ed 763 (1934), stated that "[t]he law here sought to be applied was deprived of force by the people themselves as the inescapable effect of their repeal of the Eighteenth Amendment. The principle involved is thus not archaic, but rather is continuing and vital-that the people are free to withdraw the authority they have conferred and, when withdrawn, neither the Congress nor the courts can assume the right to continue to exercise it." *Id.* MCL 8.4a was not discussed in the opinion.

The Michigan Supreme Court has adopted a narrow reading of MCL 8.4a. In *People v Schultz*, the Michigan Supreme Court wrestled with an ameliorated sentencing act that reduced the mandatory minimum for a drug conviction and the application of MCL 8.4a. The Court noted that "Section 8.4a was specifically adopted to abrogate an anomaly resulting from the interplay between the common-law abatement doctrine and the constitutional Ex Post Facto Clause." *Id.* at 527. The court specifically rejected a purely textual reading of the statute—one proffered by the prosecutor in both that and the instant case—as that would "gloss over the historical and philosophical underpinnings of § 8.4a." *Id. at 529.* "To ignore the plain intent of the Legislature

in this case would lead to an equally anomalous result." *Id.* at 533. The *Schultz* court thus held that "[i]n the absence of a contrary statement of Legislative intent, criminal defendants are to be sentenced under an ameliorative amendatory act that is enacted subsequent to the date of the offense and becomes effective during the pendency of the prosecution." *Id.* at 530-531. Michigan's application of the amelioration doctrine and the resultant historically-rooted, narrow reading of Michigan's savings statute mirrors the US Supreme Court's reading of its federal savings statute.[5] *See Hamm v. City of Rock Hill*, 379 US 306 at 314; 85 S Ct 384; 13 L Ed 2d 300 (1964).[6]

Lastly, in *People v. Campbell*, 289 Mich App 533; 798 NW2d 514 (2010), the court addressed the question of whether MMA functioned as a remedial act or a repeal of a criminal statute. The court held in that case that the MMA did not function as an ameliorative act because it provided a new right in the form of an affirmative defense to the charge of marihuana possession. *Id.* at 537. The court emphasized that Campbell's case did not invoke *Lowell*, because the MMA "did not involve repeal of a criminal statute" as the underlying behavior remained criminal. *Id.* The *Campbell* court makes it clear that the doctrine of amelioration as adopted by the Michigan Supreme Court under *Schultz* and the doctrine of abatement under *Lowell* are separate and distinct.

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[5] The application of the amelioration doctrine in Michigan has been proposed as a "model for reform for the rest of the country." Eileen L. Morrison, Resurrecting the Amelioration Doctrine: A Call to Action for Courts and Legislatures, 95 Boston U. L. Rev. 335, 339 (2015).

[6] *Hamm v. City of Rock Hill*, 379 U.S. 306 at 314 (1964): "The federal saving statute was originally enacted in 1871, 16 Stat. 432. It was meant to obviate mere technical abatement such as that illustrated by the application of the rule in *Tynen,* decided in 1871. There, a substitution of a new statute with a greater schedule of penalties was held to abate the previous prosecution. In contrast, the Civil Rights Act works no such technical abatement. It substitutes a right for a crime. So drastic a change is well beyond the narrow language of amendment and repeal. It is clear therefore that, if the convictions were under a federal statute, they would be abated."

Thus, Michigan law with respect to the criminal statutes amended prior to the conclusion of a criminal proceedings can summarized as follows: (i) where the amendatory act enhances the punishment associated with prior crime, MCL 8.4a operates to preserve criminal sanction under the prior act; (ii) where the amendatory act ameliorates the punishment associated with a prior crime, a *Schultz* analysis is required to determine the retroactivity of the amendment (*discussed infra*); and (iii) where the amendatory act constitutes an absolute repeal and the behavior is no longer held as criminal and worthy of societal sanction, *Lowell* and the doctrine of abatement operate to defeat all pending prosecutions under the repealed statute.

As stated above, the purpose of MRTMA "is to make marihuana legal under ***state and local law*** for adults 21 years of age or older… [and] To the fullest extent possible, this act shall be interpreted in accordance with the purpose and intent set forth in this section." [*emphasis added*]. *See* MCL 333.27952. MRTMA constitutes an absolute repeal of the criminalization of the personal possession and use of marihuana, the specific act the City seeks to punish Ms. Posey for. As an absolute repeal, MRTMA implicates the doctrine of abatement and its defeat of all prosecution and penalty under any contrary state statute or subordinate ordinance.[7] In the instant case, the doctrine compels the City to not continue prosecuting Ms. Posey and the Court to refuse to entertain any such prosecution.

[7] *Hamm v. City of Rock Hill*, is instructive here as well. In that case, the petitioners, who were Black, were convicted of state trespass statutes for participating in "sit-ins" at lunch counters of retail stores, behavior subject to protection under the later-passed Civil Rights Act of 1964. The Court concluded that those state convictions must abate, holding that "[s]ince the provisions of the Act would abate all federal prosecutions it follows that the same rule must prevail under the Supremacy Clause which requires that a contrary state practice or state statute must give way. Here the Act intervened before either of the judgments under attack was finalized. Just as in federal cases abatement must follow in these state prosecutions." *Hamm v. City of Rock Hill,* 379 U.S. 306, 315 (1964).

IV. MRTMA, AS AN AMELIORATIVE ACT, WOULD APPLY RETROACTIVELY AND FUNCTION TO DEFEAT PROSECUTION AND PENALTY

Should this Court deem MRTMA an ameliorative act—and not absolute repeal—the same result, i.e. defeating any prosecution and punishment of Ms. Posey, as the MRTMA still applies retroactively and the prescribed "punishment" for the personal possession and use of marihuana is nil.

"The determination whether a statute should be applied retroactively is a legal issue that is reviewed de novo." *People v. Doxey*, 263 Mich App 115, 118-119; 687 NW2d 360 (2004); *People v. Thomas*, 260 Mich App 450, 458; 678 NW2d 631 (2004); *People v. Conyer*, 281 Mich App 526, 528 (2008).

It is an established rule that "[i]n the absence of a contrary statement of Legislative intent, criminal defendants are to be sentenced under an ameliorative amendatory act that is enacted subsequent to the date of the offense and becomes effective during the pendency of the prosecution." *People v. Schultz*, 425 Mich 517 (1990); *People v. Scarborough*, 189 Mich App 341; 471 NW2d 567 (1991); *People v. Doxey*, 263 Mich App 115 (2004); *People v. Murray*, 2003 Mich Ci LEXIS 715 (2003). In *Schultz*, the defendant was arrested and sentenced for possession of cocaine pursuant to MCL 333.7403(2)(a)(ii) and appealed his conviction. At the time of Schultz's sentencing, the sentencing statute, MSA 14.15(7403), provided a mandatory minimum sentence of twenty years in prison with no allowance for judicial discretion in departure from the sentence. *Schultz*, 425 Mich at 520. Shultz was sentenced to the twenty-to-thirty years in prison. While the defendant's case was pending on direct appeal, MSA 14.15(7403) was revised by the legislature to provide a significantly reduced minimum term of imprisonment and to allow for judicial discretion in departure from the minimum sentence for

"substantial and compelling reasons." *Schultz*, 425 Mich at 521-523. The Supreme Court held that the defendant should have been sentenced based on the amended statute. Applying the revised penalty promoted the goals of "[f]airness," "deterrence," and "the certainty of punishment." *Schultz*, 425 Mich at 531-532.

When applying *Schultz* to decide whether a defendant should receive the benefit of an ameliorative act or amendment, courts consider three questions: (1) whether the passage of the enactment of the revised act or amendment took place during the pendency of a criminal case, (2) if the act or amendment is ameliorative or remedial, and (3) whether the legislature intended that the act apply to cases pending at the time of the revision. In the instant case, the answer to all three questions is yes.

The time frame in which the provisions of amended ameliorative acts must be applied is discussed in *People v. Scarborough*, 189 Mich App 341 (1991). The defendant in *Scarborough* was arrested in 1987 and charged with possession with intent to distribute cocaine pursuant to MCL 333.7403(2)(a)(iii). In 1990, the defendant was convicted and sentenced pursuant to the terms of the statute that had been in effect at the time of his arrest. During the period of time between defendant's arrest and his conviction, the legislature had made several changes to the statute, including amendments to reduce the mandatory minimum sentence and to authorize the sentencing court to depart from the minimum sentence in certain cases. *Id.* at 343. Applying *Schultz*, the court vacated the defendant's sentence, reiterating that "the amended penalty provisions of the controlled substances act should be applied in cases which were pending in the trial court when the amendments took effect." *Id.* at 343, *citing People v. Schultz*, 435 Mich. 517, 526-531, 533-534 (1990). The court noted further that "[i]t would be wasteful of judicial

resources to disregard Schultz....Moreover, we are persuaded that the holding of the Schultz decision was correct." *Id.* at 344.[8]

Because MRTMA was passed in the window between Ms. Posey's conviction and her sentencing, *Schultz* clearly applies in the instant case.

The second question courts must address is whether the act or amendment in question is ameliorative or remedial. "A statute is remedial if it is designed to correct an existing oversight in the law or redress an existing grievance, or if it operates in furtherance of an existing remedy, and neither creates nor destroys existing rights." *People v. Conyer*, 281 Mich App 526, 529 (2008), *citing Saylor v Kingsley Area Emergency Ambulance Service*, 238 Mich App 592, 598; 607 NW2d 112 (1999). In *People v. Doxey*, 263 Mich App 115 (2004), the Court addressed the question of whether a statute is ameliorative or remedial. There the defendant was convicted in January 2003 of possessions with intent to deliver cocaine under MCL 333.7403(2)(a)(iv) and was sentenced in March of that year. At the time of the defendant's conviction, the statute provided that terms of imprisonment for violation of MCL 333.7403(2)(a)(iv) were required to run consecutively with terms of imprisonment imposed for another felony. *Doxey*, 263 Mich App at 116-117. In the intervening period between the defendant's conviction and his sentencing, MCL 333.7403(2)(a)(iv) was amended by the legislature to allow for judicial discretion in whether sentences would run concurrently or consecutively. The court determined that, although the passage of the revised statute did defendant's case did fit into the Shultz window, the changes to the statute were not purely ameliorative. The court reasoned that the "amending act [in that

[8] *People v Murray*, 2003 Mich. Cir. LEXIS 715 at 8, similarly observes that the holding in *Schultz* applies in "circumstances in which the defendant was charged and convicted under the original sentencing structure, but sentenced following the effective date of the amended sentencing structure."

case]...not only amelioratively amended the sentencing provision of the statute, but also changed the breakdown of the prohibited conduct contained in the statute," including the addition of several new crimes. *Doxey*, 263 Mich App at 120-121. Thus, "unlike in Schultz and Scarborough, the amended statutes...[did] not proscribe the same conduct as did the former drug law." *Id.* at 120-121.

MRTMA is clearly remedial, as it was designed to repeal an existing statute and correct an oversight in the law.

Finally, the court must consider whether the legislature intended for MRTMA to apply to pending cases despite the presence of the saving clause. MCL 333.27952 of MRTMA clearly states that the intent of the statute is "to prevent arrest and penalty for personal possession and cultivation of marihuana by adults 21 years of age or older...". MCL 333.27952. The section states, further, "***To the fullest extent possible, this act shall be interpreted in accordance with the purpose and intent set forth in this section.***" MCL 333.27952 [*emphasis added*].[9] It is not uncommon for public acts to provide explicitly for prospective application. For example, in 2002 PA 670, at issue in *State v. Doxey*, the legislature clearly signaled the act's prospective application by establishing early parole opportunities for individuals convicted of drug offenses before the date the amended drug laws became effective.[10] MRTMA includes no such prospective provisions. The plain reading of MRTMA indicates that the intent of the voters that

[9] *See also* MCL 333.27967: "This act shall be broadly construed to accomplish its intent as stated in section 2 of this act."

[10] In *Doxey*, the court considered the question of whether 2002 PA 665 should be applied retroactively. The court concluded that the plain reading of the statute indicated that it should not be applied retroactively because not only did the act provide for the creation of new crimes, but "the language included in 2002 PA 670 established early parole opportunities for individuals convicted of drug offenses before the date the amended drug laws became effective. Hence, a fair and practical interpretation of the companion legislation...require[[d] the court] to interpret that 2002 PA 665 be applied prospectively only and only to offenses committed on or after the effective date of the legislation..." *People v. Doxey,* at 263 Mich.App. at 122.

the repealing statute apply to cases pending on the statute's effective date.[11] Perhaps, most importantly, the inclusion of the prohibition of "arrest, prosecution, or penalty in any manner" can only be read as applicable to pending prosecutions as the statute itself would preclude any prospective prosecution.

MRTMA is both explicitly and impliedly intended to be applied retroactively.

MRTMA, having satisfied *Schultz's* three-prong test, must thus be applied retroactively. The prescribed ameliorative "penalty" under MRTMA for the use and possession of marihuana is non-prosecution and non-penalty, *see* MCL 333.27955. "The ultimate goal of sentencing in this state is not to exact vengeance but to protect society through just and certain punishment reasonably calculated to rehabilitate...." *Schultz*, 435 Mich at 532, *citing People v. Lorintzen*, 387 Mich 167; 194 NW2d 827 (1972). Not to apply MRTMA's ameliorative sentencing regime in this case would not be only cruel to this Ms. Posey, who has demonstrated her commitment to reform and her good character through successful completion of the Street Outreach Court Detroit program, but would also be contrary to precedent, a waste of resources, and would fail to give effect to the statutory intent of MRTMA, which was supported a by significant margin by the people of Michigan.

[11] Relevant to this case is *State v. Gradt*, 192 Wn. App. 230 (2016). Gradt was charged with possession of a small amount of marihuana before enactment of Washington state's statute decriminalizing marihuana, but his conviction occurred after the statute's effective date. In reversing Gradt's conviction the Washington Supreme Court noted that, "the language [of the statute]...fairly convey[ed] an intention to apply the initiative's decriminalization of marijuana possession to charges for possession of small amounts of marijuana that were pending on [the statute's] effective date." Thus, "the intent language of [the repealing statute] [could] be reasonably interpreted as applying to charges pending when the initiative took effect." *State v. Gradt*, 192 Wn. App. at 236. Further, "[I]if the State continued to prosecute possession of small amounts of marijuana occurring before [the statute's] effective date, law enforcement resources would continue to be diverted from violent and property crimes..." *State v. Gradt*, 192 Wn. App. at 236.

CONCLUSION

For these reasons, the continued prosecution of Ms. Posey under the Ordinance is improper under Michigan law. Accordingly, Ms. Posey's Motion to Quash should be granted, Ms. Posey's plea and conviction be vacated, and the instant matter be dismissed with prejudice.

Respectfully Submitted,

By: 

Charles Hobbs, P79715
Street Democracy
Attorney for Defendant

Dated: Sept 15, 2020

Exhibit 6

Court of Appeals, State of Michigan

ORDER

Robert Davis v Roy Roberts

Docket No. 313297

Kirsten Frank Kelly
Presiding Judge

Christopher M. Murray

Michael J. Riordan
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The application for leave to file a complaint for quo warranto is DENIED. As a result of the November 6, 2012 election, no part of 2011 Public Act 4, MCL 141.1501 *et seq.* ("PA 4") remains operative. Therefore, the section of PA 4 repealing 1990 Public Act 72, MCL 141.1201 *et seq.* ("PA 72") did not survive the referendum and has no effect. Respondent Roberts was appointed under PA 72 after PA 4 was suspended and thus lawfully holds office.

Petitioner's reliance on the anti-revival statute, MCL 8.4, is unavailing. The plain language of MCL 8.4 includes no reference to statutes that have been rejected by referendum. The statutory language refers only to statutes subject to repeal. Judicial construction is not permitted when the language is unambiguous. *Driver v Naini*, 490 Mich 239, 247; 802 NW2d 311 (2011). Accordingly, under the clear terms of the statute, MCL 8.4 does not apply to the voters' rejection, by referendum, of PA 4. Even if the rejection of PA 4 is deemed to operate as a repeal subject to MCL 8.4, the voters rejected PA 4 in its entirety by way of the referendum.

Petitioner consequently has failed to disclose sufficient apparent merit to justify further inquiry by quo warranto proceedings. *Penn School District 7 v Bd of Ed of Lewis-Cass Intermediate School Dist,* 14 Mich App 109, 118; 165 NW2d 464 (1969).

COURT OF APPEALS OF THE STATE OF MICHIGAN
TUEBOR
CIRCUMSPICE
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A true copy entered and certified by Larry S. Royster, Chief Clerk, on

NOV 16 2012
Date

Chief Clerk