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Battle over local bans on medical marijuana set for Michigan Supreme Court

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The Michigan Supreme Court is scheduled to hear a landmark case Thursday that will decide whether Michigan communities can bar medical marijuana within their borders and possibly whether Michiganders can keep using marijuana at all for health purposes.

Those joining forces against medical cannabis include the State Bar of Michigan and the Prosecuting Attorneys Association of Michigan, both of which contend that the entire state act allowing medical marijuana should be thrown out.

Yet that would nullify the wishes of the 63% of Michigan voters who passed the act into law in 2008, according to opposing groups that include the American Civil Liberties Union of Michigan and the conservative Cato Institute in Washington, D.C.

Detroiter Tim Beck, 61, who for years has pushed to relax marijuana laws, said a handful of Michigan communities passed bans on medical marijuana “that carry serious penalties, and that includes jail time.” The ordinances “didn’t even mention medical marijuana — they just said any activity that was illegal under federal law was also illegal in their community,” Beck said.

In Wyoming, a Grand Rapids suburb of about 73,000 residents, retired attorney John Ter Beek sued in 2010 to overturn a medical cannabis ban. Ter Beek is a state-registered user who has diabetes and a painful neurological disorder, according to the lawsuit.

Ter Beek lost in a local court but won in the Michigan Court of Appeals. In April, the Michigan Supreme Court granted the city of Wyoming’s request to appeal.

Wyoming’s ban was followed by an almost identical ordinance in Livonia, which has filed a brief siding with Wyoming in the appeal; and by ordinances in Birmingham, Bloomfield Hills and Lyon Township. Ter Beek, who could not be reached this week, said in 2012 that he sued because he feared he’d be arrested if he grew or used medical marijuana. That was after a state Appeals Court ruled 3-0 in his favor.

“I’ve tried narcotic-based drugs like Vicodin and OxyContin, and nothing worked like medical marijuana,” Ter Beek told the Free Press in a 2012 statement. “I just couldn’t sit by as our

elected officials try to ignore the will of the people and take this option from me and thousands of others.”

The Court of Appeals ruling declared Wyoming’s ordinance to be pre-empted by Michigan’s medical marijuana act. It also said that local governments could not use federal drug laws as grounds for ignoring the state act.

“Congress can criminalize all uses of medical marijuana, (but) it cannot require the state to do the same,” the court ruled. This year, federal authorities made plain that they will not intervene in states where medical marijuana is allowed and regulated.

Despite that, a brief supporting Wyoming filed by the Prosecuting Attorneys Association of Michigan argues that Michigan’s medical marijuana act “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress and is therefore preempted.” And the brief of the State Bar of Michigan’s public corporation law section states in bold-faced type: “The supremacy clause of the United States Constitution applies. . . to void the Michigan Medical Marihana Act in its entirety” – incidentally misspelling Michigan’s statutory term for the drug, “marihuana.”

Also arguing in support of local ordinances that ban medical marijuana is the Michigan Municipal League, the Lansing-based lobby group for 524 cities, villages and townships across the state, according to the group’s Web site. The League’s brief says that Michigan municipalities should be free “to zone and regulate their own unique land use activities” in ways that ban medical marijuana.