STATE OF MICHIGAN
IN THE 71A DISTRICT COURT FOR THE COUNTY OF LAPEER

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

Case No. 18-[redacted]
Hon. Laura Cheger Barnard

[redacted],

Defendant.

_____/

ROBERT HINOJOSA (P72630)	MICHAEL A. KOMORN (P47970)
Assistant Prosecuting Attorney	Attorney for Defendant
255 Clay Street	30903 Northwestern Hwy, Ste 240
Lapeer, MI 48446	Farmington Hills, MI 48334
Phone: (810) 667-0326	Phone: (800) 656-3557

_____/

DEFENDANT'S MOTION TO DISMISS

NOW COMES Defendant, [redacted], by and through his attorney, Michael A. Komorn, and for his Motion to Dismiss pursuant to Proposal 1, hereby states as follows:

1. Defendant is currently charged with Manufacture of Marijuana, pursuant to MCL 333.7401(2)(d)(i) and Possession of a Controlled Substance, pursuant to MCL 333.7403(2)(a)(v).

2. On November 6, 2018, Michigan votes passed Proposal 18-1, which will become codified initiatiated law on or before December 6, 2018.

3. Pursuant to Section 5.1:

> [T]he following acts by a person 21 years of age or older are not unlawful, are not offense, are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution or penalty in any

manner… (b) within the persons residence, possessing, storing and processing not more than 10 ounces of marihuana and any marihuana produced by marihuana plants cultivated on the premises and cultivating not more than 12 marihuana plants for personal use, provided that no more than 12 marihuana plants are possessed, cultivated, or processed on the premises at once.

4. Furthermore, pursuant to Section 15.4:

Except for a person who engaged in conduct described in section 4, a person who possesses more than twice the amount of marihuana allowed by section 5, cultivates more than twice the amount of marihuana allowed by section 5, or delivers without receiving any remuneration to a person who is at least 21 years of age more than twice the amount of marihuana allowed by section 5, shall be responsible for a misdemeanor, but shall not be subject to imprisonment unless the violation was habitual, willful, and for a commercial purpose or the violation involved violence.

5. Although the Michigan Regulation and Taxation of Marihuana Act was not in effect on the date the Defendant is alleged to have committed the offense, and thus, did not preclude grounds for arrest, the passage of the MRTMA prohibits the instant prosecution.

WHEREFORE, Defendant Nathan [redacted] respectfully requests this Honorable Court to dismiss the case against him, pursuant to Proposal 18-1.

Dated: November 30, 2018

PROOF OF SERVICE
The undersigned certifies that the foregoing instrument was served via certified mail upon counsel for all parties to the above cause and to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on November 30, 2018

/s/Alyssa McCormick
Alyssa L. McCormick

Respectfully submitted,

/s/ Michael A. Komorn
Michael A. Komorn (P47970)
Attorney for Defendant

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BRIEF IN SUPPORT OF MOTION TO DISMISS

Defendant is currently charged with Manufacture of Marijuana, pursuant to MCL 333.7401(2)(d)(i) and Possession of a Controlled Substance, pursuant to MCL 333.7403(2)(a)(v). At the time of arrest, Defendant was allegedly in possession of more than 200 marihuana plants, as well as the alleged cocaine. Defendant is currently 43 years of age. For the following reasons, the charge regarding marihuana must be dismissed.

ARGUMENT

On November 6, 2018, Michigan voters passed Proposal 18-1, which will become a codified initiated law on or before December 6, 2018, cited as the Michigan Regulation and Taxation of Marihuana Act ("MRTMA"). Pursuant to Section 5,1 "the following acts by a person 21 years of age or older are not unlawful, are not an offense,

are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution, or penalty in any manner…" as relevant here: (b) within the persons residence, possessing, storing and processing not more than 10 ounces of marihuana and any marihuana produced by marihuana plants cultivated on the premises and cultivating not more than 12 marihuana plants for personal use, provided that no more than 12 marihuana plants are possessed, cultivated, or processed on the premises at once.

However, Section 15.4 states:

> Except for a person who engaged in conduct described in section 4, a person who possesses more than twice the amount of marihuana allowed by section 5, cultivates more than twice the amount of marihuana allowed by section 5, or delivers without receiving any remuneration to a person who is at least 21 years of age more than twice the amount of marihuana allowed by section 5, shall be responsible for a misdemeanor, but shall not be subject to imprisonment unless the violation was habitual, willful, and for a commercial purpose or the violation involved violence.

Section 4.1 provides, as relevant here, "This act does not authorize:"

> (f) cultivating marihuana plants if the plants are visible from a public place without the use of binoculars, aircraft, or other optical aids ***or outside of an enclosed area equipped with locks or other functioning security devices that restrict access to the area;***

Section 15.4 makes it clear that if an individual cultivates more than 12 plants, and does not violate section 4, they will be responsible for a misdemeanor. In this case, as stated in the police report, the plants within the garage were secured with a lock, as well as "plots 4, 5, and 6" officers took the paperwork and lock. Thus, showing that these plants were in an enclosed and locked facility. Furthermore, at the Van Dyke location, as stated in the police report, officers received a set of keys that fit all

of the pad locks. Again, showing that these plants were in an enclosed and locked facility.

Although MRTMA Section 5 and 15 were not in effect on the date Defendant is alleged to have committed the offense, and thus, did not preclude grounds for arrest. However, with the passage of MRTMA, and Defendant currently being submitted to prosecution, the MRTMA prohibits the instant prosecution from proceeding, for Defendant's cultivating more than 12 marihuana plants Section 5.1.

Section 5,1. of the MRTMA is nearly identical to §4 of the Michigan Medical Marihuana Act, which provides that "A qualifying patient who has been issued and possesses a registry identification card is not subject to arrest, prosecution or penalty in any manner…" MCL §333.26424(a). Under the Michigan Medical Marihuana Act, "a person can fail to qualify for immunity from arrest pursuant to §4(a), but still be entitled to immunity from prosecution or penalty. Therefore, courts must inquire whether a person 'possesses a registry identification card at the time of arrest, prosecution, or penalty separately.'" *People v Nicholson,* 297 Mich App 191, 199; 822 NW 2d 284 (2012).

In *Nicholson,* defendant was arrested on May 1, 2011, for possession of approximately one ounce of marijuana. At the time of his encounter with law enforcement, defendant informed them that he was a medical marihuana patient, that he has been approved for the medical use of marihuana, but that he had not year received his registry identification card. He claimed to have paperwork showing his approval for the use of marijuana for medical purposes, but did not have the paperwork on him at the time he was arrested.

Defendant filed a motion to dismiss, and argued that although he did not have the paperwork with him at the time of arrest, he had applied for a registry identification card on February 16, 2011, and although he had not received the actual card before his arrest, his application became his card on March 18, 2011 by virtue of MCL §333.26429(b) (automatic grant of registry card if the department fails to act within 20 days). Defendant's application, dated February 16, 2011, and his registry identification card that was backdated to March 18, 2011, were submitted to the district court. The district court denied his motion, and the circuit court affirmed on the grounds that defendant acknowledged that he had applied for, but had not received a medical marijuana card at the time of the offense.

The Court first addressed the rule of construction that applied to the interpretation of an initiative law:

> The words of an initiative law are given their ordinary and customary meaning as would have been understood by the voters. *Welch Foods, Inc. v Attorney General,* 213 Mich App 459, 461; 540 NW 2d 693 (1995). We presume that the meaning as plainly expressed in the statute is what was intended. *Id.* This Court must avoid a construction that would render any part of a statute surplusage or nugatory, and "we must consider both the plain meaning of the critical words or phrases as well as their placement and purpose in the statutory scheme." *People v Williams,* 268 Mich App 416, 425; 707 NW 2d 624 (2005).
>
> *Nicholson,* at 197.

The parties made arguments in the Court of Appeals focusing on the proper interpretation of the "possesses" requirement with respect to the registry identification card. However, strikingly, the Court of Appeals found that "[i]t is apparent from these arguments that both defendant and the prosecution presume that whether a defendant is a person who 'possesses a registry identification card' at

the time of his or her arrest is determinative regarding whether he or she meets the §4(a) "possesses" requirement in order to be immune from not only arrest, but also prosecution or penalty."

The Court "conclude[d] that a person can fail to qualify for immunity from arrest pursuant to §4(a), but still be entitled to immunity from prosecution or penalty. Therefore, courts must inquire whether a person "possesses a registry identification card" at the time of arrest, prosecution, or penalty separately." *Id.* "The words 'or' is disjuntive and, accordingly, it indicates a choice between alternatives." *Id.* citing *Michigan v McQueen,* 293 Mich App 644, 671; 811 NW 2d 513 (2011).

> Thus, the immunity from arrest, prosecution, or penalty set forth in §4(a) is applicable separately under each circumstance. Accordingly, whether a person is one who possesses a registry identification card so as to be immune from arrest is a separate question from whether the person is immune from prosecution or penalty. *Nicholson,* at 200.

While triggering condition for protection under the MMMA is the issuance and possession of a registry identification card, the triggering conditions for protection from prosecution and penalty under the MRTMA is being a person 21 years of age or older and possessing 2.5 ounces or less of marijuana. Here, like in *Nicholson,* because Defendant is "21 years of age or older, and allegedly was in possession of 2.5 ounces or less of marijuana" at the time of this prosecution, his actions "are not grounds for arrest, prosecution, or penalty in any manner…" Therefore, the charge against Defendant must be dismissed.

WHEREFORE, Defendant [redacted] respectfully requests that this Honorable Court grant his Motion and Dismiss the charges against him.

Dated: November 30, 2018

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served via certified mail upon counsel for all parties to the above cause and to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on November 30, 2018

/s/Alyssa McCormick
Alyssa L. McCormick

Respectfully submitted,

/s/ Michael A. Komorn
Michael A. Komorn (P47970)
Attorney for Defendant