

# Response to the absurd, anti-democratic presumptuous, anti-logical "White Paper"

GREEN PAPER 300 BULBS CHUCK REAM 11/12/2010 Fisher or O'Connell

"When words lose their meaning, the universe crumbles." (Ancient Chinese Proverb)

Before starting this essay I carefully planted more than 300 tulip and daffodil bulbs in front of my compassion center in Ann Arbor. I prayed that democracy be respected and suffering relieved. When these flowers bloom in their springtime glory the cannabis community will be growing even faster, providing good jobs and amazing medicine, and "reinventing Michigan" with the help of our mighty, ancient, healing flower.

All of our lives the powerful have said to us, "If you don't like the law then you should use the democratic process to change it". So we grew up and did it. Sixty three percent of Michiganders passed the Michigan Medical Marijuana Act. Every part of that act is now the law of the State of Michigan.

A significant antidemocratic reaction is coalescing in Michigan which seeks to make the law unworkable in practice and then take complete control of any patients or caregivers who persist in using cannabis medicine in Michigan. A draconian solution is being proposed where there is no real problem. They want to "fix" a system that isn't broken, so that the power and revenue of local government is enhanced.

The voters of Michigan expect that our new "Peoples Law" will be followed (using the normal dictionary definition of words). Patients should not have to learn that the medicine that gives hope to their lives has become a "political football" to be kicked around by big boys on the lookout for power and money. This herbal medicine could be cheap and easy to provide. Our state law gives us rights which cities and townships can't take away.

We remember that this is the second major illegitimate effort to restrict and take over implementation of the Michigan Medical Marijuana Act. It will suffer the same fate as the first. The initial set of rules promulgated by the Michigan Department of Community Health (cite) were far more detailed and restrictive than the language which the voters approved so strongly. At a huge public hearing on (cite) patients and caregivers explained to the MDCH that the language that was on the ballot must be followed, and we would litigate constantly until the regulations accurately reflected what the voters had approved. The MDCH "turned on a dime", and promulgated new rules which exactly comport with the language in the Act. Regulations are now clear and not excessive.

The Michigan Municipal League is now executing its own takeover of the MMMA, encouraging cities to break the law, litigate like crazy, and try to regulate, search, and inspect all participants in the Michigan Medical Marihuana program (which directly contradicts the law, (333.26426(h))). "There is a likelihood that litigation filed by proponents of medical marihuana use will ensue soon after the enactment of local ordinances" (pg. 26), says Fisher, since he knows that he is encouraging cities to directly violate the terms of the act in order to take it over and gain power and revenue. Fisher knows full well (pg. 48) that "some proponents of the Act will resist regulatory interference" (since it violates state law) "and litigation will undoubtedly ensue, and thus widespread litigation seems to be in the making". On the next page he says, "Once ordinances are in place, and litigation begins as anticipated...".

Fisher is being paid by tax dollars to write an essay which advocates that cities intentionally violate the Michigan Medical Marijuana Act by creating illegal ordinances, and then spend endless amounts of tax dollars in litigation to try to take over regulation of the program. This wasteful and anti-democratic scandal must be exposed. O'Connell warns that the litigation process will be rough, and some citizens will lose "both their liberty and their property" (pg.4). It is unconscionable that the MML has chosen to play brutal political hardball against sick people, using taxpayer funds. It is time for the MML to let ~~the~~ *Mm* present the other side of the story. *advocates*

They have a hard time understanding that the act was not written with "gaps" or "omissions" that they are called upon to fill with bureaucrats and inspectors. If something is "omitted" it obviously means that the highly experienced writers of this law did not want it in there. Our Act was crafted with extreme care, and was thoroughly examined and revised by the prestigious law firm Dykema, Gosset Inc.. Its goal was to win big and it did. No matter how long it takes, the medical marijuana community will litigate every point, at great cost to taxpayers, until the regulations match the initiative language which passed with 63% in favor. Local officials CAN'T CHANGE THE LAW to take rights away from citizens or to add burdens.

*A* At a Sept. 21, 2010 work session the Michigan Municipal League featured Grand Rapids city attorney Catherine Mish. She said that cities should band together in a "federal supremacy" lawsuit to challenge the validity of the MMMA. She suggested that cities enact moratoria, and then look for "test cases" to use to invalidate the Act – which was passed by a majority of voters in her own county! To generate test cases she suggested that police should arrest a spouse who waters plants that he or she doesn't have a card for! She wants cities to "park a police car outside the compassion club. Anytime your officers see there's gatherings inside, as people come out, get into motor vehicles and drive away, pull them over".

Every new level of fear, restrictions, and inspections means that more innocent people will suffer and die. Most Michiganders would not grow cannabis medicine if they knew the local police ~~would be told~~ and could check on them.

The reality of legal medical marijuana is deeply upsetting to all those who make their living from preying on fellow citizens, all the widely varied functionaries in the prison industrial complex. They will fight for their jobs. They plan to destroy our new act and regain all of their power. (They have been so successful that the USA imprisons about seven times as many people as other advanced nations – an indelible stain on the soul of our nation – but a consistent moneymaker. Now we have a <sup>*new*</sup> Michigan Attorney General (*Schnette*) whose stated goal is to reopen prisons and fill them up.) The majority of the "Drug War" is still about cannabis, so Drug Warriors will lose funding and jobs when our society relaxes its attitude toward cannabis. Many law enforcement jobs are directly paid for by terrorizing local families and seizing their home, vehicles, bank accounts, computers, children, boats, etc.. This distinctly un-American practice, called "civil forfeiture", (no trial or criminal charges are required) has become a major revenue source that the prison industrial complex depends on and fights to preserve. The reaction of these forces, which is now brewing against the Michigan Medical Marijuana Act, is about jobs, money, power, and "turf", it has nothing to do with science or public health. If drug warriors had any way to support their position they would agree to debate.

When observers howl that our new law is poorly written or full of "grey areas" they are simply saying that they are upset that we have a strong law now to protect medical marijuana users. They hate to adjust to the reality that our new law was not written by them, it was written by the opposing side, the "other team", and it passed with 63% in favor. Obviously it was brilliantly well written if the voters approved it so strongly.

**The counterattack against the medical marijuana "Peoples Law" in Michigan by the "Prison Industrial Complex" has begun in deadly earnest** (even though the law has been in effect for two years and has caused no problems). Law enforcement feels a threat ~~to their power and their revenue stream~~ and are striking back viciously, as in Oakland County.

**Two major essays have recently been offered to provide the intellectual basis for restricting and killing the Michigan Medical Marijuana Act. These are:**

The "White Paper", (how presumptuous, yes, it is printed on white paper) called "A LOCAL GOVERNMENT VIEW OF THE MICHIGAN MEDICAL MARIJUANA ACT" by Gerald A. Fisher, 63 pg., is the product of the Michigan Municipal League.

The Concurring Opinion in the case of Michigan v. Robert Redden and Torey Clark, by Judge P. J. O'Connell, Sept 14, 2010

These are unremittingly negative documents. O'Connell thinks the MMMA could be a "subterfuge for legalization" (pg. 29). He refers to a Judge Turner, who declared that the MMMA is "one of the worst pieces of legislation that I have ever seen in my life" (page 7, footnote 9). O'Connell says the MMMA was "well crafted in its obfuscations, ambiguous language, etc". Fisher puts "medical marijuana" in quotes (pg. 48) and says that qualifying sick people with doctor's recommendations are "generally described as patients". O'Connor calls the act "inartfully drafted" (pg.3), and implies that 63% of voters were somehow "tricked" into voting yes for medical marijuana. He quotes Sir Walter Scott and says "O what a tangled web we weave/When first we practice to deceive". My God, isn't the party that encourages breaking the law and intentionally fighting court battles in order to seize "turf" the one that is "practicing to deceive"?

After careful study it must be assumed that these documents were not created "in good faith". It makes you feel sick to read such dark tirades against democracy - which will end up hurting many innocent people. These are paid intellectual "hatchet jobs" by special interests. This can be inferred from the fact that the clumsy, tortured, childish false "logic" which the authors use to arrive at their predestined conclusions is the very best that they could come up with. Judge O'Connell begins with the assumption that medical marijuana patients are "fakers" (pg 3, pg 22, pg 29), and then tortures words until he thinks he has a way to invalidate our doctor's recommendations. These authors are smarter than to actually believe in the arguments they display. Long ago I had to "diagram logic" in my college philosophy classes. I remember puzzling over complex questions. The logical faults in these two documents, however, are "sophomoric", and their effect could be brutal. Neither of these documents ever once

mentions the wisdom and compassion of Michigan voters or the benefit of medical marijuana for Michigan medical patients (or the concepts of safe and "uninterrupted availability" (333.26428(2) in the Act) of medicine).

Most cities in Michigan belong to the Michigan Municipal League, which has decided that cities and townships must now take over the regulation and inspection of every aspect of the Michigan Medical Marijuana Law. This is, of course, directly contrary to the words in the law, which state:

**(g) Possession of, or application for, a registry identification card shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the person or property of the person possessing or applying for the registry identification card, or otherwise subject the person or property of the person to inspection by any local, county or state governmental agency.**

This is about as clearly as a concept can be expressed using the English language. People participating in the program have three clear rights under this section. They are to be held safe from **suspicion, search, or inspection** "by ANY state, county, or state governmental agency".

In order to surmount a seemingly impossible logical, linguistic, and intellectual challenge Mr. Fisher takes on the persona of Big Brother, in the George Orwell novel "1984". Big Brother said that the people should understand that, really, FREEDOM IS SLAVERY, and WAR IS PEACE. Fisher sets out to show that, really, the legal prohibition against search and inspection in our MMMA law means that the gang who paid him obviously must search and inspect. Listen carefully (pg. 55) "Local regulation of distribution activities is implicitly contemplated under the terms of the Act (he just feels it in his bones) in view of the glaring gaps opened by the terms of the Act", (which could inhibit the behavior of police and SWAT teams).

The logic comes down to "If the act does not let the prison/industrial complex carry out the status quo it must be because they simply forgot to give cities the power to regulate everything. Therefore we can violate the specific wording in the act about search and inspection". By pg 58 caregivers are required to "Describe all locations..." You will need to file precise reports (pg.58) describing your grow facility, your storage facility (including precise measurements), your security devices, any location where a caregiver might meet with a patient, "detailed specifications of all lights, equipment, and electrical or plumbing or other means", along with "the address and legal description of the precise premises" (pg.58.)

Try this one (pg.57) as an example of Orwell's "Newspeak" "The requirement of this ordinance is to license a location and not to license persons". He plans that every city, village, township, and county will expand their bureaucratic grip and have a "medical marijuana officer", to make sure that all regulations are followed (pg.57 & pg. 63).

Fisher never supplies a hint of compassion or any desire to insure the "uninterrupted availability" (333.26428(2) of the Act) of medicine to patients. He begins his argument by intentionally and egregiously misstating the "fundamental purpose of the act". Mr. Fisher's analysis is based on his definition of the "fundamental purpose of the act" (pg 3). He says "it would seem fair to say" (fair to whom?, ...not much of an evidentiary standard!), "that the fundamental purpose of the Act is the

creation of a private and confidential caregiver – patient relationship to facilitate the lawful cultivation, distribution, and use of marijuana strictly for medical purposes”.

This is disingenuous. Mr. Fisher has latched on to the fundamental implementation mechanism in the act and called it the fundamental purpose. In fact the fundamental purpose of the act relates to its title, “The Michigan Medical Marihuana Act”. The first line of this act says that its purpose is “to allow under state law the Medical use of Marihuana”. We know that a doctor’s recommendation is involved.

Therefore, “it would seem fair to say” that the “fundamental purpose of the Act” is “to allow under state law the medical use of marihuana when a doctor has recommended its use for specific, enumerated medical conditions”. According to Judge O’Connor (pg. 24, he quotes from the Act) the ballot proposal “was intended to protect from arrest ‘the vast majority of seriously ill people who have a medical need to use marihuana ( MCL 333.26424(2)(6))’”.

Cities and townships certainly have the power to extend the act, within their boundaries, to help insure that qualified patients have safe access to “uninterrupted availability” of the medicine they require. Cities may also refuse to extend the act, but they cannot restrict rights which have been provided by state law. Fisher simply decrees (pg 13) that “primary caregivers and qualifying patients cannot legally form a cooperative and grow marijuana in a shared facility”. Thank you for sharing Gerald, but cities like Ann Arbor (and others) are specifically licensing large grow facilities (and “compassion centers”).

It is a transparent attempt at “chicanery” (pg. 15, O’Connell) to assert that the fundamental initial IMPLEMENTATION MECHANISM outlined in the Act is the fundamental purpose OF THE ACT ITSELF. No amount of authority can turn apples into oranges or wrong into right. Our Act is NOT called the “Michigan Caregiver and Patient Relationship Act”. In Mr. Fisher’s mind the patients and caregivers (who live in constant terror of people like him) have plenty of protections, but “local governments and the general public are not as clearly protected” (Fisher, pg 4).

He feels that cities are in danger because of the MMMA since the “status quo” is so important! Drug warriors maintain that they have an overriding need to be able, because of a plant called cannabis, to smash your door down, shoot the dogs, and take your children, your property, your money, and your freedom. Few Michiganders still support this enforcement scenario. The “status quo” has changed.

Police agencies indulge in an incestuous interbreeding of their own questionable data and opinions. Mr. Fisher and Judge O’Connell constantly cite irrelevant data from California police (which was gathered during a period during which the city of Los Angeles refused to provide any regulation or licensing for dispensaries).

The Michigan Municipal League, through Mr. Fisher, is telling local governments (pg 12) that cannabis businesses will lead to “significant and serious secondary effects”, such as an increase in “out of area criminals in search of prey”, incidents of resale or sharing near pot shops, murder, armed robbery, aggravated assaults, burglary from autos, armed gangs, organized crime, children who might be “subtly influenced”, the “downgrading” of whole neighborhoods, (pg 16) and police officers who may feel inhibited when they are planning to come crashing into your home.

Beyond that, the Michigan Medical Marijuana Act will lead to uninspected installations of plumbing and electrical equipment that "may create dangerous health, safety, and fire conditions" (Fisher pg. 16). (We all agree that cardholders who significantly expand their electrical system to grow cannabis must have the job done up to code and then inspected. Our law makes it clear, however, that cardholders may not be subject to any special or discriminatory level of suspicion, search, or inspection.) Michigan cities are now passing illegal laws which restrict patients and caregivers; all of this will be ~~constantly~~ litigated until we get back to the words that were on the ballot in 2008.

The author consistently shows no understanding of cannabis as medicine. He wants a "physician stated dosage and frequency of marijuana consumption" (Fisher, pg.19), ignoring the fact that cannabis dosages are completely individual and variable.

Is it appropriate for the MML to use tax dollars to advocate the destruction of legislation which passed with 63% voting yes, and passed in every one of Michigan's 83 counties? The first impulse of the MML and Mr. Fisher is to alter the Michigan Medical Marijuana Act into meaninglessness or to stamp it out altogether with a "federal supremacy" lawsuit. The MML must be sued for its ill intentioned profligacy. Michigan cities that respect democracy should drop out of it. The MML makes it clear that if you follow their outline it will end in mountains of litigation (pg26), but they are shooting for a takeover of the program. They want a "Medical Marijuana officer" in every city (Fisher, pg. 57), and lots more inspectors.

#### CHANGING OUR MMMA LAW IN THE LEGISLATURE.

The Michigan Municipal League advocates that the Michigan state legislature change the law that 63% of voters approved. They think that "expressly requiring permits and inspections would be appropriate", (Fisher, pg. 19) no matter what is said in the law. They doubt they can assemble the  $\frac{3}{4}$  majority which is necessary if they wish to tamper with our law.

FEDERAL SUPREMACY? They then advocate that cities band together and fight a "federal supremacy" lawsuit, ~~to fight~~ against the Michigan Medical Marijuana Act program that was approved by their own voters (Fisher pg. 21-26). Isn't this a betrayal of their voter's intent and a huge waste of resources during very tough times? Any public official who spends tax dollars to fight against the wishes of their own voters will see an immediate recall campaign mounted against them.

LOCAL ORDINANCES Mr. Fisher then begins his spooky, Orwellian attempt to craft a local ordinance for Michigan cities and townships. He admits "that the Act mandates that those engaged in lawful cultivation, distribution, and use of medical marijuana must remain anonymous" (pg.39). Given this law that mandates anonymity, he maintains, (pg37) that cities "should be permitted to regulate marijuana cultivation, distribution, and use activities". Does he really see no contradiction?

Mr. Fisher asserts (pg.43) the difference between addresses and "locations". "Address" is defined by the Oxford American Dictionary (Avon books, 1982) as "the place where a person lives". He admits that all patient and caregiver addresses are absolutely confidential according to the law and then says that all the "locations where marijuana cultivation and distribution has been permitted under the Act should be

known to law enforcement" (pg. 43). This is the type of Kafkaesque duplicity that damages "the Children", or anyone who would like to believe in common sense, fair play, or democratic government. Words have actual meanings, even if you are a professor or a judge.

Although 63% of voters approved the wording of our current Medical Marijuana Act the Michigan Municipal League's response "would be to replace the existing statute" (Fisher pg. 49) with something that more closely resembled their beloved "status quo" (Fisher pg. 45,49,and 62).

Fisher simply declares that "a violation issue arises when a patient dispenses medical marijuana to another patient" (pg. 15). This is absurd, and, if "patient to patient transfer" was made illegal a lot of patients would suffer; patient's could never be confident of an "uninterrupted availability" (333.26428(2)) of their medicine.

In his conclusion (pg. 48) Mr. Fisher fully admits that cities will face endless costly litigation if they follow his advice - to break the law of Michigan and try to search or inspect legitimate medical cannabis cardholders in a discriminatory manner. Irate citizens are already suing municipalities (like Wyoming, Michigan), who have tried to remove rights which have been clearly granted by state law. It is strange that Fisher's vicious and relentlessly confrontational essay concludes with the sentiment "let's all be friends and work this out", after he has made such a strident and antidemocratic plea for municipalities to totally take over the program, terrify people with searches and inspections, and make it harder for patients to get their medicine. Given the chilling effect of the attack that Fisher has mounted, on a program that is causing no real problems; we know that people who think like him simply cannot be trusted.

Fisher's essay for the Michigan Municipal League ends with his creatively atrocious and illegal "SAMPLE CONCEPT OF LICENSING AND REGULATION ORDINANCE" for Michigan cities. It was the most profoundly disturbing anti-democratic, totalitarian document I have ever read, the ultimate triumph of the Orwellian twisting of words until they are said to mean the opposite of their dictionary definition. It is an attack on democracy and on medical patients. If you deeply believe in government "by the people" it makes you sick to read it. On page 55 it says that "The Act requires that information concerning identity and location of caregivers is to be **confidential**". He then cites pages of irrelevant "horror stories" from California (gathered when California cities were refusing to provide any regulations for cannabis businesses). By page 57 he has twisted words until all caregivers will have to divulge "the location of a facility" to a local government.

Judge O'Connell says "Many Michiganders are faced with the often unwelcome intrusion of medical marijuana dispensaries" (O'Connell pg. 12). Why be negative? He could come to Ann Arbor, where we have a dozen dispensaries and they have hardly been noticed (Lansing has 18). If we allow marijuana businesses, Fisher says that they will have bad "secondary effects" on children, the neighborhood, and every sort of crime. It is useful in Michigan to present to city officials the major article from the November, 2010 "Ann Arbor Observer" which shows well scrubbed, happy and healthy people showing off their lovely dispensaries and describing their services. It is titled, "The Wild West, Medical marijuana