

REAL PROPERTY LAW SECTION
Respectfully submits the following position on:

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Amicus Brief in *Ter Beek v. City of Wyoming*

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The Real Property Law Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Real Property Law Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Real Property Law Section is 3,184.

The position was adopted after an electronic discussion and vote. The number of members in the decision-making body is 17. The number who voted in favor to this position was 17. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:

Real Property Law Section

Contact person:

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Regarding:

Amicus Brief in the Michigan Supreme Court case of Ter Beek v. City of Wyoming

Date position was adopted:

September 13, 2013

Process used to take the ideological position:

Position adopted after an electronic discussion and vote

Number of members in the decision-making body:

17

Number who voted in favor and opposed to the position:

17 Voted for position

0 Voted against position

0 Abstained from vote

0 Did not vote

Position:

Other

Explanation of the position, including any recommended amendments:

The Real Property Law Section Council authorized preparation of an amicus curiae brief on September 13, 2013, as required by the bylaws of the Real Property Law Section and the bylaws of the State Bar of Michigan after discussion and electronic vote, in support of the Court of Appeals opinion and the position advocated by the plaintiffs/appellees in John Ter Beek v City of Wyoming, Supreme Court Case No. 145816 (Court of Appeals Case No. 306240, Kent County Circuit Court Case No. 10-011515-CZ).

The Michigan Supreme Court granted leave to consider the following two issues: (1) whether the defendant city's zoning code ordinance, which prohibits any use that is contrary to federal law, state law, or local ordinance is subject to state preemption by the Michigan Medical Marihuana Act ("MMMA"), MCL 333.26421 et seq.; and (2) if so, whether the MMMA is subject to federal preemption by the federal Controlled Substances Act ("CSA"), 21 USC 801 et seq., on either impossibility or obstacle conflict preemption grounds. The April 3, 2013 Order of the

Supreme Court invited groups interested in the determination of the issues to move the Court for permission to file briefs amicus curiae.

The Section authorized the preparation and filing of an amicus brief which would advance the important legal and policy considerations in support of state law preemption. Moreover, an affirmance would serve to prohibit a multiplicity of municipal decisions on this issue of overriding state policy. It is important that the Section weigh in on these issues so that the Supreme Court does not modify or overturn years of longstanding legal precedent in this area of law and thereby potentially create a situation of uncertainty and inconsistency in the zoning and land use arena.

Specifically, the Ter Beek case involves important issues of state preemption in the zoning and land use arena. In this case, the plaintiff sought to void the City's zoning ordinance on state preemption grounds because the zoning ordinance was enacted to prohibit conduct permitted by the MMMA. The Court of Appeals held that the zoning ordinance conflicts with the MMMA and that the CSA does not preempt the MMMA. The Court of Appeals, however, reversed and remanded the case in favor of plaintiff. The City filed for leave to appeal to the Supreme Court, which was granted on April 3, 2013.

The Section believes the issue of state statutes preempting local ordinances, particularly as it applies in the zoning arena, is an important consideration and the Section supports the Court of Appeals decision. See *Walsh v City of River Rouge*, 385 Mich 623 (1971). Moreover, an affirmance would serve to prohibit a multiplicity of municipal decisions on this issue of overriding state policy.

The amicus brief would also address the recently decided case of *Arizona v InterTribal Council of Arizona*, 570 U S ____ (Sup Ct Docket # 12-71, 6/17/13), which deals with the presumption against federal preemption over state legislation.