STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

KENT COUNTY PROSECUTING ATTORNEY,

Plaintiff,

v

CITY OF GRAND RAPIDS,

Defendant,

and

DECRIMINALIZEGR, an unincorporated voluntary association,

Intervening Defendant.

_____/

Case No. 12-11068-CZ

Hon. Paul J. Sullivan

OPINION & ORDER

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Before the Court is plaintiff's motion for a preliminary injunction. Plaintiff is the Kent County Prosecuting Attorney, who is challenging the validity of an amendment to the City of Grand Rapids' City Charter concerning the possession, control, use, or giving away of marijuana ("the charter amendment"). The defendant is the City of Grand Rapids ("the City"). DeCriminalizeGR, an unincorporated association that sponsored the petition for the charter

amendment, was allowed to intervene in this action after it was filed. Based on plaintiff's initial arguments and briefing, the Court issued a temporary restraining order on December 4, 2012 enjoining the enforcement of the charter amendment until a hearing on plaintiff's motion for a preliminary injunction. That hearing was held on January 9, 2013 and the Court took the matter under advisement. In the meantime, the temporary restraining order was extended pending the issuance of a written opinion.

For the reasons explained below, plaintiff's motion for a preliminary injunction is DENIED. The temporary restraining order is hereby vacated and the City may implement the charter amendment pending a final resolution of this case or further order of the Court.

This case has nothing to do with whether the charter amendment is good or bad as a matter of public policy. The merits of marijuana criminalization or decriminalization are not at issue. The underlying question in this case is whether the charter amendment is allowed by law. There are also unresolved questions regarding whether plaintiff has legal standing to raise these challenges at this time.

It must also be remembered that the decision today is only on a motion for a preliminary injunction. The legal merits of a case are relevant when deciding whether to grant such an injunction, but that is only part of the test. In this opinion the Court will express its current view of the merits of this case based on relevant law. This is not done to signal a final decision regarding the issues discussed. It is intended to help explain the decision made today and let the parties know where the Court currently stands to allow them to raise and further develop legal arguments. When the time comes for a final decision, the Court's views may change or they may remain essentially the same.

With that in mind, this opinion will first discuss the background and content of the charter amendment. Then, the standard for issuing a preliminary injunction will be discussed and applied to this case.

I. FACTS AND BACKGROUND

In 2012, DeCriminalizeGR was organized and registered to sponsor a petition to amend the Grand Rapids City Charter ("the City Charter"). The organization obtained the required signatures and submitted the petition to the Grand Rapids City Clerk, who certified the sufficiency of the petition and the signatures. The then-proposed charter amendment was to add (and eventually did add) the following language to Title XVIII of the City Charter:

> (a) No person shall possess, control, use, or give away marijuana or cannabis, which is defined as all parts of the plant cannabis sativa l., whether growing or not; its seeds or resin; and every compound, manufacture, salt, derivative, mixture, or preparation of the above, unless such possession, control, or use is pursuant to a license or prescription as provided in Public Act 196 of 1971, as amended. This definition does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compounds, manufacture, sale, derivative, mixture or preparation of the mature stalks, except

the resin extracted therefrom, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(b) Violations of this section shall be civil infractions. Persons convicted of violating this section shall be fined $25.00 for the first offense, $50.00 for the second offense, $100.00 for the third or subsequent offense and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed. Fines and all other costs shall be waived upon proof that the defendant is recommended by a physician, practitioner or other qualified health professional to use or provide the marijuana or cannabis for medical treatment. The court may waive all or part of the fine upon proof that the defendant attended a substance abuse program. It is an affirmative defense to a prosecution under this section that the use or intended use of the marijuana or cannabis relieves, or has the potential to relieve, the pain, disability, discomfort or other adverse symptoms of illness or medical treatment, or restores, maintains or improves, or has the potential to restore, maintain or improve, the health or medical quality of life of the user or intended user or users of the marijuana or cannabis. Requirements of this subjection shall not be construed to exclude the assertion of other defenses.

(c) In all arrests and prosecutions for violations of this section, appearance tickets and the relevant procedures set forth in Michigan Public Act 147 of 1968, as amended, shall be used.

(d) No Grand Rapids police officer, or his or her agent, shall complain of the possession, control, use, or giving away of marijuana or cannabis to any other authority except the Grand Rapids City Attorney; and the City Attorney shall not refer any said complaint to any other authority for prosecution.

(e) No Grand Rapids police officer, or his or her agent, shall complain and the City Attorney shall not refer for prosecution any complaint, of the possession, control, use, giving away, or cultivation of marijuana or cannabis upon proof that the defendant is recommended by a physician, practitioner or other qualified health professional to use or provide the marijuana or cannabis for medical treatment.

(f) Should the State of Michigan enact lesser penalties than that set forth in subsection (b) above, or entirely repeal penalties for the possession, control, use, or giving away of marijuana or cannabis, then this section, or the relevant portions thereof, shall be null and void.

For purposes of this action, the most relevant subsections are (a), (b), and (d). Subsections (a) and (b) combine to make the possession, control, use, or giving away of marijuana a civil infraction, punishable by fine and no incarceration. Subsection (d) forbids officers of the Grand Rapids Police Department (GRPD) from complaining of the possession, control, use, or giving

away of marijuana to anyone other than the Grand Rapids City Attorney ("the City Attorney"), who is then prohibited from referring the complaints to other authorities for prosecution.[1]

The then-proposed charter amendment was labeled "Proposal 2" and included on the ballot of the November 6, 2012 general election. The ballot language read as follows:

> PROPOSAL 2
>
> PROPOSED AMENDMENT TO TITLE XVIII (MISCELLANEOUS PROVISIONS) OF THE CHARTER OF THE CITY OF GRAND RAPIDS, CONCERNING THE DECRIMINALIZATION OF MARIJUANA
>
> A proposal to decriminalize possession, control, use, or gift of marijuana, through a Charter amendment prohibiting police from reporting same to law enforcement authorities other than the City Attorney; prohibiting the City Attorney from referring same to other law enforcement authorities for prosecution; prohibiting City prosecution except as civil infractions enforced by appearance tickets with a maximum fine of $100.00 and no incarceration; waiving fines if a physician, practitioner or other qualified health professional recommends the defendant use marijuana; and providing an affirmative defense to prosecution for defendants intending to use marijuana to relieve pain, disability, or discomfort.

Proposal 2 passed after a substantial majority of those voting in the November 2012 general election voted in favor of the amendment. The final tally was 44,647 votes in favor and 31,207 votes in opposition, or in terms of percentage, roughly 58.5% in favor and 41.5% opposed.

The charter amendment was scheduled to be implemented on December 6, 2012. On November 30, 2012, plaintiff filed the present action in his official capacity as the Kent County Prosecuting Attorney. In this action, plaintiff raises two distinct challenges to the charter amendment. First, it is argued that subsections (a) and (b) render the charter amendment invalid because MCL 117.4*l* of the Home Rule City Act (HRCA) prohibits the City from creating a civil infraction for these types of marijuana-related offenses. Second, plaintiff argues that subsection (d) of the charter amendment improperly prohibits the GRPD and the City Attorney from referring complaints regarding marijuana to other authorities. Plaintiff expresses concern with the effects that the charter amendment may have on his ability to enforce state law.

II. THE PRELIMINARY INJUNCTION STANDARD

When reviewing a motion for a preliminary injunction, a court must consider the following four factors:

> (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the

[1] The language of the charter amendment was modeled after a charter amendment originally passed in 1974 by the voters of the City of Ann Arbor. *See* Ann Arbor Charter, § 16.2 (amended by elections in 1990 and 2004). The most significant difference is that Ann Arbor's charter amendment also addresses the "sale" of marijuana, which is not addressed in Grand Rapids' charter amendment.

> injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. [*Alliance for Mentally Ill of Mich v Dep't of Cmty Health*, 231 Mich App 647, 661 (1998).]

Plaintiff, as the moving party, has the burden of demonstrating that a preliminary injunction should be issued. MCR 3.310(A)(4).

III. ANALYSIS

Again, this case involves two challenges based on completely separate theories. This can have important legal consequences. Before the Court could make a final decision on the merits of a challenge, plaintiff must first establish his legal standing to bring that particular challenge. Furthermore, each one of the challenges may have different consequences for the charter amendment. For example, if subsection (d) were to eventually be found invalid, then there may be questions regarding to what extent it is invalid and to what extent that may affect the other subsections.

Despite the distinctness of the challenges, there is substantial overlap in much of the analysis for purposes of the Court's decision today. This opinion will go through each of the four preliminary injunction factors and explain the distinctions where applicable.

A. IRREPARABLE INJURY

Importantly, "a particularized showing of irreparable harm . . . is . . . an indispensable requirement to obtain a preliminary injunction." *Mich Coal of State Emp Unions v Mich Civil Serv Comm'n*, 465 Mich 212, 225-26 (2001). "[I]t is well settled that an injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural." *Michigan AFSCME Council 25 v Woodhaven-Brownstown School Dist*, 293 Mich App 143, 149 (2011) (quotations omitted). When evaluating an alleged injury a court must consider "the totality of the circumstances affecting, and the alternatives available to, the party seeking injunctive relief." *Id.*

In plaintiff's complaint he generally alleges that the charter amendment interferes with his rights and responsibilities to enforce the laws of the State of Michigan. Similarly, in his supplemental brief in support of this motion he alleges that the irreparable harm is "to the very power of the prosecutor to enforce state law." Plaintiff has not distinguished between potential harms from each of his challenges. However, subsections (a) and (b) are distinct from subsection (d), and may have different effects on plaintiff.

In plaintiff's challenge to subsections (a) and (b) of the charter amendment, he complains that the creation of a civil infraction for certain marijuana-related offenses violates MCL 117.4*l* of the HRCA. It is undisputed that, as a county prosecutor, plaintiff is not in a position requiring or even allowing him to enforce the charter amendment. That responsibility belongs to the City and its police force—the GRPD. Plaintiff is an officer of Kent County and has no supervisory power over the City or its police force. *See, e.g.*, Const 1963, art 7, § 4 (creating the office of

county prosecuting attorney), § 22 (setting forth a general grant of power to cities which is not subject to county supervision). No one has been charged with a civil infraction at this time, and there is no one before the Court alleging a likelihood of eventually being charged.

Even though plaintiff is not *directly* impacted by the creation of a civil infraction, he alleges that the charter amendment will interfere with his responsibilities as a county prosecutor. At least at this time, it is unclear how the creation of a civil infraction would do this. Perhaps the existence of a civil infraction could result in fewer complaints to the prosecutor regarding the conduct covered by the charter amendment. However, that it is speculative and no evidence has been provided to suggest whether and to what extent the City's ability to issue civil infraction tickets might affect plaintiff.

Furthermore, even if such evidence were provided, plaintiff has not shown a legal entitlement to receive these marijuana-related complaints at the expense of the City in the first place. The City could take any number of actions that would have a similar effect on plaintiff. For example, plaintiff concedes that the City could make this marijuana-related activity a criminal offense with a substantially lesser punishment than under state law. This would also seem to result in fewer complaints being made to the county. Similarly, budget cuts and staff reductions could have the same effect. How would the "harm" to plaintiff be any different in those cases?

Cities are often forced to make difficult choices and prioritize the use of limited resources. Just like the Kent County Prosecutor's office, the City generally can exercise discretion regarding how it uses those resources within the boundaries of the law. There is no law compelling the City to investigate and report violations of marijuana laws to Kent County at the City's expense. Without any supervisory power over the City or entitlement to these complaints, the harm alleged by plaintiff appears to reflect a general policy disagreement rather than a particularized and concrete harm to the rights and responsibilities of his office.

It is important to note that the charter amendment cannot and does not decriminalize under state law (or federal law for that matter) the possession, control, use, or gift of marijuana. Persons engaging in such activity within the city limits of Grand Rapids remain subject to traditional prosecution by county, state, and/or federal authorities. Plaintiff is fully entitled to investigate and prosecute such offenses, including those committed within the City of Grand Rapids. What plaintiff cannot do is dictate to the citizens of Grand Rapids, the City Commission, City Manager, City Attorney, or Police Department how, whether, and to what extent they choose to enforce state law or allocate their limited resources. Plaintiff and Kent County still have the means to investigate relevant marijuana-related crimes in Grand Rapids. For example, the charter amendment does not and could not restrain the Kent County Sheriff's Department (KCSD), which has jurisdiction in Grand Rapids, from making marijuana arrests in Grand Rapids. Plaintiff can also use investigative subpoenas. *See* MCL 767A.2.

In short, plaintiff's allegations of harm regarding the creation of a civil infraction are speculative and generalized. Perhaps the charter amendment could incidentally result in fewer complaints being reported to plaintiff, but that is not currently demonstrated by evidence and plaintiff has shown no legal entitlement to receive such complaints at the expense of the City.

Respectfully, plaintiff has failed to demonstrate particularized irreparable harm regarding his challenge to subsections (a) and (b) of the charter amendment.

Similarly, plaintiff has also failed to demonstrate irreparable harm with respect to his challenge to subsection (d). Subsection (d) prohibits GRPD officers from complaining of certain marijuana-related activity to authorities other than the City Attorney, and the City Attorney is barred from referring those complaints to other authorities for prosecution.

Plaintiff's position does not require or allow him to enforce subsection (d). He is not a GRPD officer or the City Attorney, so the amendment does not prohibit him from doing anything. Plaintiff has no supervisory power over the City or the GRPD. Thus, plaintiff's concern here also seems to be the possibility of the incidental reduction in marijuana-related complaints being made to his office, which allegedly interferes with his power and right to enforce state law.

This creates many of the same issues discussed above. Plaintiff has no legal entitlement to receive marijuana-related complaints at the expense of the City. Subsection (d) seems to represent a policy choice that it would be best for the City's police force not to spend time and resources preparing certain types of marijuana-related complaints. This arguably could free up additional time and resources to address other crimes which the voters may view as more serious. At least in theory, the drop in marijuana-related complaints could even correspond with an increase in complaints for other crimes being made to plaintiff. There are serious disagreements regarding the wisdom of this policy and what the actual effects may be. Regardless of the wisdom, that is a choice that the people of the City made. Plaintiff may subjectively believe that the charter amendment is counterproductive and that he is "harmed" by this policy. However, this again appears to be a policy disagreement rather than "a particularized showing of concrete irreparable harm or injury" that would justify granting a preliminary injunction. *Mich Coal of State Emp Unions v Mich Civil Serv Comm'n*, 465 Mich 212, 225 (2001). Plaintiff still has the assistance of the KCSD and other means of investigating state law violations that he may feel the City is neglecting.

Furthermore, the City's officials have shown they intend to interpret subsection (d) narrowly. They have testified by affidavit they will not prosecute any GRPD officers under subsection (d). They will also order the GRPD to continue to report marijuana-related activity to plaintiff under certain circumstances, such as when an individual has committed another crime and has marijuana in his or her possession. Especially given this narrow reading of subsection (d), there is no indication that the charter amendment will stifle the communication and cooperation between the City and plaintiff. If and when the City's actions are shown to be inconsistent with its interpretations and intentions as reflected in the above referenced affidavits, plaintiff at such time may be entitled to seek the relief this Court today is unwilling to grant.

Respectfully, plaintiff has failed to demonstrate particularized and irreparable harm that would justify a preliminary injunction with respect to subsection (d).

Given that plaintiff has failed to demonstrate irreparable harm related to either of his challenges, his motion must be denied.[2] *See Mich Coal of State Emp Unions, supra* at 225-26. However, the remaining preliminary injunction factors will still be discussed to help clarify the issues and further explain why denial of plaintiff's motion is appropriate at this time.

B. LIKELIHOOD OF SUCCESS ON MERITS

Grand Rapids is a "home rule city" incorporated under the laws of Michigan. The Michigan Constitution generally gives such cities broad power of self-government:

> Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section. [Const 1963, art 7, § 22.]

The Michigan Constitution also provides that "[t]he provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor." Const 1963, art 7, § 34.

The Michigan Supreme Court has explained that generally "home rule cities enjoy not only those powers specifically granted, but they may also exercise all powers not expressly denied. Home rule cities are empowered to form for themselves a plan of government suited to their unique needs and, upon local matters, exercise the treasured right of self-governance." *City of Detroit v Walker*, 445 Mich 682, 690 (1994) (citing Const 1963, art 7, § 22). However, cities derive all of their power and authority from the Michigan Constitution and the Legislature. *City of Taylor v Detroit Edison Co*, 475 Mich 109, 115 (2006). As such, cities cannot enact an ordinance or charter amendment that conflicts with the general law of the state or is otherwise preempted. *People v Llewellyn*, 401 Mich 314, 322 (1977); Const 1963, art 7, § 22; MCL 117.36.

Plaintiff's two challenges to the charter amendment involve alleged conflicts with different parts of state law. The likelihood of success on the merits will now be discussed separately for each challenge.

1. PLAINTIFF'S CHALLENGE TO SUBSECTIONS (a) AND (b)

Plaintiff argues that the civil infraction portion of the charter amendment conflicts with MCL 117.4*l*(3) of the HRCA. This part of the HRCA provides that "[a]n ordinance shall not make an act or omission a municipal civil infraction or a blight violation if that act or omission constitutes a crime under any of the following: (a) Article 7 of the public health code, 1978 PA

[2] For reasons similar to those just described, there may also be serious underlying issues regarding plaintiff's standing to bring these challenges against the City. *See Lansing Schools Educ Ass'n v Lansing Bd of Educ*, 487 Mich 349 (2010) (describing the necessity of standing and the framework for standing analysis under Michigan law). Whether or not plaintiff has standing to bring either of his challenges is not decided today.

368, MCL 333.7101 to 333.7545. . . . (j) Any law of this state under which the act or omission is punishable by imprisonment for more than 90 days." The possessing, controlling, using, or giving away of marijuana is a violation of Article 7 of the public health code and punishable by imprisonment for more than 90 days under state law, so according to plaintiff, Grand Rapids cannot make this a civil infraction. However, the City has no *ordinance* making this a civil infraction. This is a charter amendment. Plaintiff argues that regardless of what the City calls it, the result is the same and the charter amendment is invalidated by MCL 117.4*l*(3).

This presents an issue of statutory interpretation. As explained by the Michigan Supreme Court:

> When interpreting the meaning of a statute, our primary goal is to discern the intent of the Legislature by first examining the plain language of the statute. Statutory provisions must be read in the context of the entire act, giving every word its plain and ordinary meaning. When the language is clear and unambiguous, we will apply the statute as written and judicial construction is not permitted. [*Driver v Naini*, 490 Mich 239, 246-47 (2011).]

The plain language of MCL 117.4*l*(3) bars only ordinances and not charter provisions. There is a clear and important distinction between a city's charter and its ordinances. The Michigan Constitution gives the voters of each city the power to "adopt and amend its charter", while a city operating under its charter is granted the power to "adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law". Const 1963, art 7, § 22 (emphasis added). Similarly, the HRCA forbids a charter amendment "unless approved by a majority of the electors voting on the question." MCL 117.5(e). The HRCA is filled with distinctions between charter provisions and ordinances. There are sections regarding what a charter must contain (*e.g.*, MCL 117.3), what a charter may contain (*e.g.*, MCL 117.4d), what cities may or may not do by ordinance (*e.g.*, MCL 117.4*l*), and what cities have no power to do at all (*e.g.*, MCL 117.5). The language is clear and no judicial construction is necessary or permissible. *See Driver, supra* at 247. MCL 117.4*l*(3) does not bar charter amendments.

Plaintiff argues that even if not barred by MCL 117.4*l*(3), issuing a civil infraction ticket based on the charter itself would then violate MCL 117.4i, which allows for a city charter to provide for "[t]he punishment of persons who violate city ordinances *other than ordinances described in* [*MCL 117.*]*4l*." MCL 117.4i(k) (emphasis added). Plaintiff reads this to mean that the City cannot create a civil infraction by charter when it could not do so by ordinance. However, the charter amendment does not provide for the "punishment of persons who violate city ordinances". The plain language of this section is also inapplicable.[3]

[3] When viewed only in the context of plaintiff's argument, MCL 117.4i(k) initially appears odd because it seems to forbid a charter from punishing ordinances which could not have been enacted in the first place. However, MCL 117.4i(k) references ordinances "described in 4*l*". All of the subsections in 4*l* other than subsection (3) actually *authorize* various ordinances. MCL 117.4i(k) contains a $500 limit on punishment and the "other than" language was added to allow the possibility of greater punishment of those ordinances authorized by 4*l*. *See City of Livonia v Goretski Construction Co*, 229 Mich App 279, 287-91 (1998) (upholding a fine in excess of $500 based on the "other than" language in MCL 117.4i(k) and explaining the legislative history). That is, it appears this was actually an expansion of cities' power to punish for certain types of authorized ordinances and is essentially irrelevant to this case.

According to plaintiff, the Legislature was anticipating that an ordinance was the only way of accomplishing what it attempted to prohibit, and this is simply an unintended and impermissible circumvention of the HRCA. However, there is no legal basis for that assumption. Indeed, the HRCA itself seems to anticipate self-executing charter provisions and distinguishes these from ordinances. MCL 117.31 provides that "[a]ll fines collected or received by the district court for or on account of *violations of the charter* ***or*** *ordinances of the city*, shall be distributed by the district court . . . ." (emphasis added).[4] It is presumed that the Legislature had full knowledge of the provisions. *Johnson v Recca*, 492 Mich 169, 187 (2012). The Court is in no position to rewrite this statute.

The Legislature can distinguish and has distinguished between the ability of a city's electors to amend a charter and the ability of a city commission to enact ordinances. There may a variety of reasons why the Legislature would prohibit the city commission from doing by ordinance what the people may do by charter amendment. Plaintiff argues, "Call it a charter amendment; call it an ordinance; by any other name, it smells the same." However, that is not necessarily true; these are important structural distinctions which the Legislature is free to make. The Legislature could easily prohibit such a civil infraction from being made by charter amendment, but it has not.

Based on the foregoing, plaintiff has failed to demonstrate a likelihood of success on the merits regarding his HRCA challenge to subsections (a) and (b).

2. PLAINTIFF'S CHALLENGE TO SUBSECTION (d)

Plaintiff's second challenge is to subsection (d) of the charter amendment. This subsection provides:

> No Grand Rapids police officer, or his or her agent, shall complain of the possession, control, use, or giving away of marijuana or cannabis to any other authority except the Grand Rapids City Attorney; and the City Attorney shall not refer any said complaint to any other authority for prosecution.

Plaintiff argues that this impermissibly conflicts with state law, which authorizes municipal police officers to enforce state law. *See Joslin v Fourteenth District Judge*, 76 Mich App 90, 96 (1977). However, plaintiff does not represent the GRPD or the City. "Generally, persons do not have standing to assert constitutional or statutory rights on behalf of another person." *In re HRC*, 286 Mich App 444, 458 (2009). To the extent plaintiff may have any standing to challenge this subsection, it must be based on a conflict with his own rights under the law. Regarding plaintiff's own rights, the Michigan Constitution states that "[t]here shall be elected for four-year terms in each organized county . . . a prosecuting attorney, whose duties and powers shall be provided by law." Const 1963, art 7, § 4. The Legislature has also provided that "[a] violation of

[4] Although the plain language and structure of the statute resolves the issue, it should also be noted that MCL 117.4*l*(3) appears to have been drafted in the 1990s, well after the City of Ann Arbor's nearly identical charter amendment was passed in 1974. (*See* footnote 1, *supra*.) That is, even though this had previously been made a civil infraction by charter amendment, the Legislature chose language only addressing ordinances.

state criminal law shall be prosecuted in the district court by the prosecuting attorney." MCL 600.8313.

At least at this time, the Court is not convinced that subsection (d) conflicts with the prosecutor's rights to enforce state law. Plaintiff's argument is based on an extremely broad interpretation of the charter amendment. He seems to suggest that the charter amendment effectively criminalizes the reporting of state law violations by the GRPD and will stand as a barrier to discovering these marijuana-related crimes. The charter amendment need not be interpreted as broadly as plaintiff alleges. Subsection (d) forbids GRPD officers only from "complaining" to authorities other than the City Attorney. The City Attorney is forbidden only from "referring" any "said complaint" to other authorities. There are different ways this could be interpreted, and as previously explained, the City appears to be interpreting this narrowly. There is also nothing in this provision forbidding plaintiff from contacting the GRPD or the City Attorney and asking for information regarding suspected violations of marijuana-related criminal law. Moreover, plaintiff maintains additional methods of investigating crimes through the KCSD and investigative subpoenas.

For many of the same reasons discussed above in the section addressing irreparable harm, subsection (d) does not seem to necessarily conflict with plaintiff's rights and duties under state law. Rightly or wrongly, this subsection arguably represents a policy choice that the GRPD's limited resources should not be expended actively filing formal complaints for these marijuana-related offenses when there are other crimes which the voters view as more problematic for the City. Plaintiff has no legal right to direct how the City or its police force allocate their resources.

Respectfully, plaintiff has failed to demonstrate a likelihood of success on the merits with respect to his challenge to subsection (d) of the charter amendment.[5]

C. RELATIVE HARM TO THE PARTIES

As previously discussed, any potential harm to plaintiff from the charter amendment seems uncertain, speculative, and generalized at this time. Denial of the preliminary injunction could allow for sharpening of the issues and may give a better indication of how plaintiff, defendants, and the people of Grand Rapids are affected by the charter amendment. This could assist all of the parties and the Court. As such, this factor weighs against granting the preliminary injunction.

D. HARM TO THE PUBLIC INTEREST

There is a public interest in allowing plaintiff to efficiently fulfill his duties to enforce state law. Plaintiff is understandably concerned with receiving as much information and assistance from the City as possible. The Court does not doubt that plaintiff's office has the interests of the residents of Kent County in mind, including the residents of Grand Rapids.

[5] To be clear, this opinion only addresses the likelihood of success on the merits in this particular case based on the alleged conflict with plaintiff's rights under the law. The Court expresses no opinion regarding whether the GRPD or anyone else might be able to show a conflict created by the charter amendment based on their own rights.

On the other hand, "[h]ome rule cities are empowered to form for themselves a plan of government suited to their unique needs and, upon local matters, exercise the treasured right of self-governance." *City of Detroit v Walker*, 445 Mich 682, 690 (1994) (citing Const 1963, art VII, § 22). The charter amendment arose from the political action of the people of Grand Rapids who voted by a significant majority to enact it. Although the people of a city cannot override state law, the public interest in self-governance is best served by being deferential and respecting the will of a city's voters when possible. *See* Const 1963, art 7, § 34. For the reasons explained in the discussion of the merits above, it appears such deference is possible here. This factor also weighs against granting the preliminary injunction at this time.

IV. CONCLUSION

All four of the preliminary injunction factors weigh in favor of defendants. Respectfully, plaintiff has failed to meet his burden to show that a preliminary injunction should be issued.

Order

Based on the foregoing, plaintiff's motion for a preliminary injunction is DENIED. The Court's prior temporary restraining order enjoining the implementation and enforcement of the charter amendment is hereby vacated.

PAUL J. SULLIVAN

Dated: January 23, 2013

Paul J. Sullivan, Circuit Judge (P24139)