

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LIMA TOWNSHIP RESIDENTS,
Residents of a Michigan Township,
CITIZENS OF LIMA FOR CANNABIS.
a Michigan General Partnership.

Plaintiffs,

Case No. 2:24-cv-10666

v.

HON. SUSAN K. DECLERCQ

LIMA TOWNSHIP, DUANE LUICK,
NANETTE HAVENS, GREG MCKENZIE, and
DALE LUICK,

Defendants.

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO DISMISS
FOR WANT OF SUBJECT MATTER JURISDICTION**

In response to Defendants' Motion to Dismiss for want of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), Plaintiffs seek entry of an order denying Defendant's motion for dismissal of this action.

This response is supported by a brief.

Counsel for Plaintiffs have denied concurrence in the relief requested in Defendants' Motion to Dismiss believing they have pled a proper complaint. Regardless, Plaintiffs have timely filed an Amended Complaint specifically pleading a federal cause of action which provides this Court with subject matter jurisdiction of Plaintiffs' claims.

Respectfully Submitted,

RESIDENTS OF LIMA TOWNSHIP and
CITIZENS OF LIMA FOR CANNABIS

Date: April 23, 2024

By: /s/ James E. R. Fifelski
James E. R. Fifelski (P65148)
Fifelski Legal, PLC
Attorney of Record for Plaintiffs
2723 S. State Street, Suite 150
Ann Arbor, MI 48104
(734) 726-0225
james@annarborslawyer.com

Date: April 23, 2024

By: /s/ Dan E. Garbis
Dan E. Garbis
Co-Counsel for Plaintiffs
The Garbis Law Firm, LLC
7330 North Cicero Avenue
Lincolnwood, Illinois 60712
(847) 982-9518
Firm No. 43757
dgarbis@garbislawfirm.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LIMA TOWNSHIP RESIDENTS,
Residents of a Michigan Township,
CITIZENS OF LIMA FOR CANNABIS.
a Michigan General Partnership,

Plaintiffs,

Case No. 2:24-cv-10666

v.

HON. SUSAN K. DECLERCQ

LIMA TOWNSHIP, DUANE LUICK,
NANETTE HAVENS, GREG MCKENZIE, and
DALE LUICK,

Defendants.

**PLAINTIFFS' BRIEF IN SUPPORT OF RESPONSE
TO DEFENDANTS' MOTION TO DISMISS**

NOW COME Plaintiffs, LIMA TOWNSHIP RESIDENTS, (“Lima”) and CITIZENS OF LIMA FOR CANNABIS, (“Citizens”) by and through its attorneys, Fifelski Legal, PLC, and The Garbis Law Firm, LLC, with their response to Defendants’ Motion to Dismiss for lack of subject matter jurisdiction and in support of state as follows:

This matter involves a Due Process action/civil conspiracy action brought by the Plaintiffs against the Defendants. Defendants have filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1), for want of subject matter jurisdiction. Defendants claim that Plaintiffs only reference a 42 U.S.C. § 1983 violation in Paragraph 7 of its Complaint. See, ECF No. 9, (Defendants’ Motion to Dismiss).

Defendants conveniently ignore Paragraph 81 of Plaintiffs' Complaint, where Plaintiffs claim a 14th Amendment Due Process violation has occurred, in furtherance of the Civil Conspiracy. See ECF No. 1, PageID.16 (Complaint, ¶ 81).

"The party seeking to invoke federal jurisdiction bears the burden to demonstrate standing and he 'must plead its components with specificity.' *Coyne v. Am. Tobacco Co.*, 183 F.3d 488, 494 (6th Cir. 1999). A complaint will be dismissed for failure to state a claim only when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Wright v. MetroHealth Med. Ctr.*, 58 F.3d 1130, 1138 (6th Cir. 1995). "For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Warth v. Seldin*, 422 U.S. 490, 501 (1975).

The elements of a 14th Amendment Due Process violation are: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. 14th Amend, Sect. 1.

Plaintiffs pled with great specificity that over a three-year period, Defendants ignored the request of the Plaintiffs to establish a commercial grow and a provisioning center on a vacant lot which satisfies the requirements of Michigan law with respect to distancing from schools and churches. See ECF No. 1, PageID. 3-11, (Complaint Pages 3-11). At no time did the Defendants ever discuss Plaintiffs' initiative, regardless of the fact that Defendants, as Township Trustees, were obligated to do so. Next, after losing confidence in the Defendants, Plaintiffs dispatched its agents to procure signatures so as to have the initiative placed on the ballot. Upon presenting the requisite

amount of signatures to Defendants, Defendant Duane Luick said to his counsel, “do everything in your power to keep this matter off of the May ballot”. It is apparent that Defendants’ conduct is not only negligent, but malicious.

To state a Section 1983 claim, the plaintiff is required to allege that (1) the conduct complained of was committed by a person acting under the color of state law; and (2) the conduct deprived the Plaintiff of a constitutional right. 42 U.S.C. § 1983. The traditional definition of acting under the color of state law requires that the defendant have exercised power “possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law. *West v. Atkins*, 487 U.S. 42, 49 (1988).

It is undisputed that the Trustees were duly elected in 2020. Following the election, each Trustee was required to take an oath which requires the Trustee to support the laws of the U.S. and Michigan, and to fulfill their duties to the best of their abilities. Moreover, all requests by the Plaintiffs were made publicly to Defendants at numerous monthly hearings. There is no record of the Defendants ever discussing Plaintiffs’ initiative following the numerous meetings. Defendants further violated Section 1983 in conspiring to keep Plaintiffs’ initiative off of the May 2024 ballot. The record, supported by evidence and lack thereof, demonstrates that not only were inept in exercising their duties, but were malicious in their conduct of depriving Plaintiff of their rights.

Lastly, if the Court is inclined to rule on behalf of the Defendants with regard to the original Complaint, Defendants did, pursuant to Fed. R. Civ. P. 15(a)(1)(B), timely file an Amended Complaint on April 12, 2024, and included a separate 1983 claim, pled with specificity. See ECF No. 10, PageID.88-90, (Amended Complaint pp. 16-18). The filing of the Amended Complaint also precludes granting Defendants’ motion.

WHEREFORE, for the reasons set forth above, Plaintiffs request that this Honorable Court enter an order denying Defendants' Motion to Dismiss, order the Defendant to answer the Amended Complaint, set this matter for hearing of Plaintiffs' Writ, and for whatever other relief this Honorable Court deems just.

Respectfully Submitted,

RESIDENTS OF LIMA TOWNSHIP and
CITIZENS OF LIMA FOR CANNABIS

Date: April 23, 2024

By: /s/ James E. R. Fifelski
James E. R. Fifelski (P65148)
Fifelski Legal, PLC
Attorney of Record for Plaintiffs
2723 S. State Street, Suite 150
Ann Arbor, MI 48104
(734) 726-0225
james@annarborslawyer.com

Date: April 23, 2024

By: /s/ Dan E. Garbis
Dan E. Garbis
Co-Counsel for Plaintiffs
The Garbis Law Firm, LLC
7330 North Cicero Avenue
Lincolnwood, Illinois 60712
(847) 982-9518
Firm No. 43757
dgarbis@garbislawfirm.com