

STATE OF MICHIGAN
IN THE SUPREME COURT

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, KAPP WALLED LAKE, LLC, PURE ROOTS, LLC, and HRS RETAIL, LLC,
Plaintiffs-Appellants,

Supreme Court No. 164869

Court of Appeals No. 355989

Macomb County Circuit
Court No. 2019-004059-CZ

v

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,
Defendants/Cross-Defendants- Appellees,

The appeal involves a ruling that a provision of the Constitution, a statute, rule or regulation, or other state governmental action is invalid.

and

ROBERT BOCCOMINO and KEITH SADOWKSI,
Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,
Defendant,

and

LIVWELL MICHIGAN, LLC, LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC., LEVEL UP GARDEN, LLC, 8TH STREET WELLNESS, PC, LLC, and 989 VENTURES, LLC, doing business as NORTHERN ROOTS,
Intervening Defendants/Cross-Plaintiffs,

and

SOZO HEALTH, INC.,
Intervening Defendant/Cross-Plaintiff-
Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC,
DNVK 4, LLC, MDMS GROUP, LLC, WARREN
CAPITAL HOLDINGS, LLC, WEST FORT
HOLDINGS, LLC, and FRAZHO
PROVISIONING, LLC,
Intervening Defendants.

PINEBROOK WARREN, LLC, GREENHOUSE
FARMS WARREN, LLC, HAPPY TRAILS
GROUP, INC., AUBREY VENTURES, LLC,
BLUE SPRUCE VENTURES, ALTERNATIVE
RX, LLC, HCM WARREN, LLC, JAR CAPITAL
OF WARREN, LLC, PURE GREEN WARREN,
LLC, PURE WARREN, LLC, EMERALD
BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-
R WARREN, LLC, KAPP WALLED LAKE, LLC,
PURE ROOTS, LLC, and HRS RETAIL, LLC,
Plaintiffs-Appellants,

Supreme Court No. 164870

Court of Appeals No. 355994

Macomb County Circuit
Court No. 2019-004059-CZ

v

CITY OF WARREN, CECIL ST. PIERRE,
RONALD PAPANDREA, STEVEN WARNER,
RICHARD SABAUGH, and ETHAN VINSON,
Defendants/Cross-Defendants- Appellees,

and

ROBERT BOCCOMINO and KEITH
SADOWSKI,
Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA
REVIEW COMMITTEE,
Defendant,

and

LIVWELL MICHIGAN, LLC,
Intervening Defendant/Cross-Plaintiff-
Appellee,

and

SOZO HEALTH, INC., LE BATTLE CREEK,
INC., WEISBERGER VENTURES II, LLC,
VENDCO MICHIGAN, INC., LEVEL UP
GARDEN, LLC, 8TH STREET WELLNESS, PC,
LLC, and 989 VENTURES, LLC, doing business
as NORTHERN ROOTS
Intervening Defendants/Cross-Plaintiffs,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC,
DNVK 4, LLC, MDMS GROUP, LLC, WARREN
CAPITAL HOLDINGS, LLC, WEST FORT
HOLDINGS, LLC, and FRAZHO
PROVISIONING, LLC,
Intervening Defendants.

PINEBROOK WARREN, LLC, GREENHOUSE
FARMS WARREN, LLC, HAPPY TRAILS
GROUP, INC., AUBREY VENTURES, LLC,
BLUE SPRUCE VENTURES, ALTERNATIVE
RX, LLC, HCM WARREN, LLC, JAR CAPITAL
OF WARREN, LLC, PURE GREEN WARREN,
LLC, PURE WARREN, LLC, EMERALD
BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-
R WARREN, LLC, KAPP WALLED LAKE, LLC,
PURE ROOTS, LLC, and HRS RETAIL, LLC,
Plaintiffs-Appellants,

Supreme Court No. 164871

Court of Appeals No. 355995

Macomb County Circuit
Court No. 2019-004059-CZ

CITY OF WARREN, CECIL ST. PIERRE,
RONALD PAPANDREA, STEVEN WARNER,
RICHARD SABAUGH, and ETHAN VINSON,
Defendants/Cross-Defendants- Appellees,

and

ROBERT BOCCOMINO and KEITH
SADOWSKI,
Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA
REVIEW COMMITTEE,
Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH,
INC., LE BATTLE CREEK, INC., WEISBERGER
VENTURES II, LLC, VENDCO MICHIGAN,
INC., and 989 VENTURES, LLC, doing business
as NORTHERN ROOTS,
Intervening Defendants/ Cross-Plaintiffs,

and

LEVEL UP GARDEN, LLC, and 8TH STREET
WELLNESS, PC, LLC,
Intervening Defendants/ Cross-Plaintiffs-
Appellees,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC,
DNVK 4, LLC, WARREN CAPITAL HOLDINGS,
LLC, WEST FORT HOLDINGS, LLC, and
FRAZHO PROVISIONING, LLC,
Intervening Defendants-Appellees,

and

MDMS GROUP, LLC,
Intervening Defendant.

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, EMERALD BUSINESS 5 PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, KAPP WALLED LAKE, LLC, PURE ROOTS, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellants,

v

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,
Defendants/Cross-Defendants- Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWSKI,
Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,
Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC., LEVEL UP GARDEN, LLC, 8TH STREET WELLNESS, PC, LLC, and 989 VENTURES, LLC, doing business as NORTHERN ROOTS,
Intervening Defendants/Cross-Plaintiffs,

and

Supreme Court No. 164872

Court of Appeals No. 356005

Macomb County Circuit
Court No. 2019-004059-CZ

AE&K, LLC, BDECO I, INC., BDECO II, LLC,
DNVK 4, LLC, WARREN CAPITAL HOLDINGS,
LLC, WEST FORT HOLDINGS, LLC, and
FRAZHO PROVISIONING, LLC,
Intervening Defendants,

and

MDMS GROUP, LLC,
Intervening Defendant-Appellee.

PINEBROOK WARREN, LLC, GREENHOUSE
FARMS WARREN, LLC, HAPPY TRAILS
GROUP, INC., AUBREY VENTURES, LLC,
BLUE SPRUCE VENTURES, ALTERNATIVE
RX, LLC, HCM WARREN, LLC, JAR CAPITAL
OF WARREN, LLC, PURE GREEN WARREN,
LLC, PURE WARREN, LLC, EMERALD
BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-
R WARREN, LLC, KAPP WALLED LAKE, LLC,
PURE ROOTS, LLC, and HRS RETAIL, LLC,
Plaintiffs-Appellants,

Supreme Court No. 164873

Court of Appeals No. 356044

Macomb County Circuit
Court No. 2019-004059-CZ

v

CITY OF WARREN, CECIL ST. PIERRE,
RONALD PAPANDREA, STEVEN WARNER,
RICHARD SABAUGH, and ETHAN VINSON,
Defendants/Cross-Defendants- Appellees,

and

ROBERT BOCCOMINO and KEITH
SADOWSKI, Defendants-Appellees, and CITY
OF WARREN MEDICAL MARIHUANA
REVIEW COMMITTEE,
Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH,
INC., LE BATTLE CREEK, INC., WEISBERGER

VENTURES II, LLC, VENDCO MICHIGAN,
INC., LEVEL UP GARDEN, LLC, and 8TH
STREET WELLNESS, PC, LLC,
Intervening Defendants/Cross- Plaintiffs

and

989 VENTURES, LLC, doing business as
NORTHERN ROOTS,
Intervening Defendant/Cross-Plaintiff-
Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, INC.,
DNVK 4, LLC, MDMS GROUP, LLC, WARREN
CAPITAL HOLDINGS, LLC, WEST FORT
HOLDINGS, LLC, and FRAZHO
PROVISIONING, LLC,
Intervening Defendants.

PINEBROOK WARREN, LLC, GREENHOUSE
FARMS WARREN, LLC, HAPPY TRAILS
GROUP, INC., AUBREY VENTURES, LLC,
BLUE SPRUCE VENTURES, ALTERNATIVE
RX, LLC, HCM WARREN, LLC, JAR CAPITAL
OF WARREN, LLC, PURE GREEN WARREN,
LLC, PURE WARREN, LLC, EMERALD
BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-
R WARREN, LLC, KAPP WALLED LAKE, LLC,
PURE ROOTS, LLC, and HRS RETAIL, LLC,
Plaintiffs-Appellants,

v

CITY OF WARREN, CECIL ST. PIERRE,
RONALD PAPANDREA, STEVEN WARNER,
RICHARD SABAUGH, and ETHAN VINSON,
Defendants/Cross-Defendants- Appellees, and
ROBERT BOCCOMINO, KEITH SADOWSKI,
and CITY OF WARREN MEDICAL
MARIHUANA REVIEW COMMITTEE,
Defendants-Appellees,

Supreme Court No. 164874

Court of Appeals No. 356017

Macomb County Circuit
Court No. 2019-004059-CZ

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC., and 989 VENTURES, LLC, doing business as NORTHERN ROOTS,
Intervening Defendants/Cross- Plaintiffs,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,
Intervening Defendants.

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, KAPP WALLED LAKE, LLC, PURE ROOTS, LLC, and HRS RETAIL, LLC,
Plaintiffs-Appellants,

Supreme Court No. 164875

Court of Appeals No. 356023

Macomb County Circuit
Court No. 2019-004059-CZ

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,
Defendants/Cross Defendants- Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWSKI, Defendants-Appellees, and CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,
Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., 9 LEVEL UP GARDEN, LLC, 8TH STREET WELLNESS, PC, LLC, and 989 VENTURES, LLC, doing business as NORTHERN ROOTS,
Intervening Defendants/Cross-Plaintiffs,

and

LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, and VENDCO MICHIGAN, INC.,
Intervening Defendants/Cross-Plaintiffs-Appellees,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC,
Intervening Defendants.

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, KAPP WALLED LAKE, LLC, PURE ROOTS, LLC, and HRS RETAIL, LLC,
Plaintiffs-Appellants,

Supreme Court No. 164876

Court of Appeals No. 359269

Macomb County Circuit
Court No. 2019-004059-CZ

v

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER,

RICHARD SABAUGH, ETHAN VINSON,
ROBERT BOCCOMINO, and KEITH
SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA
REVIEW COMMITTEE,

Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH,
INC., LE BATTLE CREEK, INC., WEISBERGER
VENTURES II, LLC, VENDCO MICHIGAN,
INC., LEVEL UP GARDEN, LLC, 8TH STREET
WELLNESS, PC, LLC, 989 VENTURES, LLC,
doing business as NORTHERN ROOTS, AE&K,
LLC, BDECO I, INC., DNVK 4, LLC, MDMS
GROUP, LLC, WARREN CAPITAL HOLDINGS,
LLC, WEST FORT HOLDINGS, LLC, and
FRAZHO PROVISIONING, LLC,

Intervening Defendants-Appellees,

and

BDECO II, LLC,

Intervening Defendant.

PINEBROOK WARREN, LLC, GREENHOUSE
FARMS WARREN, LLC, HAPPY TRAILS
GROUP, INC., AUBREY VENTURES, LLC,
BLUE SPRUCE VENTURES, ALTERNATIVE
RX, LLC, HCM WARREN, LLC, JAR CAPITAL
OF WARREN, LLC, PURE GREEN WARREN,
LLC, PURE WARREN, LLC, EMERALD
BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-
R WARREN, LLC, KAPP WALLED LAKE, LLC,
PURE ROOTS, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellants,

Supreme Court No. 164877

Court of Appeals No. 359285

Macomb County Circuit
Court No. 2019-004059-CZ

CITY OF WARREN, CECIL ST. PIERRE,
RONALD PAPANDREA, STEVEN WARNER,
RICHARD SABAUGH, ETHAN VINSON,
ROBERT BOCCOMINO, KEITH SADOWSKI,
and CITY OF WARREN MEDICAL
MARIHUANA REVIEW COMMITTEE,
Defendants-Appellees,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH,
INC., LE BATTLE CREEK, INC., WEISBERGER
VENTURES II, LLC, VENDCO MICHIGAN,
INC., LEVEL UP GARDEN, LLC, 8TH STREET
WELLNESS, PC, LLC, 989 VENTURES, LLC,
doing business as NORTHERN ROOTS, AE&K,
LLC, BDECO I, INC., BDECO II, LLC, DNVK 4,
LLC, MDMS GROUP, LLC, WARREN CAPITAL
HOLDINGS, LLC, WEST FORT HOLDINGS,
LLC, and FRAZHO PROVISIONING, LLC,
Intervening Defendants.

**AMICUS BRIEF OF ATTORNEY GENERAL DANA NESSEL
IN SUPPORT OF NEITHER PARTY**

ORAL ARGUMENT NOT REQUESTED

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Dated: February 7, 2024

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STATEMENT OF QUESTION PRESENTED

1. A threshold question in any Open Meetings Act case is whether the entity at issue is a “public body” under MCL 15.262(a). The definition of “public body” includes both the requirement that an entity be a “legislative or governing body” and that it be empowered by law “to exercise governmental or proprietary authority or perform a governmental or proprietary function.” Is the City of Warren’s Medical Marihuana Review Committee a “public body” as defined by MCL 15.262(a)?

Appellants’ answer: Yes.

Appellees’ answer: No.

Trial court’s answer: Yes.

Court of Appeals’ answer: No.

Amicus’s Answer: Does not answer, but argues that the “governing body” requirement entails decision-making authority.

STATUTES INVOLVED

MCL 15.262 provides:

As used in this act:

(a) “Public body” means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o.

(b) “Meeting” means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy, or any meeting of the board of a nonprofit corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o.

(c) “Closed session” means a meeting or part of a meeting of a public body that is closed to the public.

(d) “Decision” means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

STATEMENT OF INTEREST OF AMICUS CURIAE

In addition to the Attorney General's general statutory authorization to intervene in cases "in which the people of this state may be a party or interest," MCL 14.28, she also has enforcement authority under the Open Meetings Act (OMA) to "challenge the validity of a decision of a public body made in violation of th[e] act," MCL 15.270(1), and to "commence a civil action to compel compliance or to enjoin further noncompliance with th[e] act," MCL 15.271(1). The proper application of the OMA to public bodies is thus of import to the Attorney General. Further, to the extent the term "public body" is improperly expanded in a manner inconsistent with the plain language of the OMA, state government will be negatively impacted by increased administrative burdens, which may require additional funding and cause inefficiencies in the day-to-day operations of the State.

The Michigan Court Rules permit the Attorney General to file an amicus curiae brief without a motion for leave to do so. MCR 7.312(H)(2).

INTRODUCTION

The threshold question in any case under the Open Meetings Act (OMA), MCL 15.261, *et seq.*, is whether the entity at issue is a “public body” subject to the OMA’s terms. Although this Court has explained that the term “public body” has two requirements—the “legislative or governing body” requirement and the “governmental or proprietary authority” requirement—it has not opined on the meaning of the first. This case presents that opportunity as the Court of Appeals held that the City of Warren’s Marihuana Review Committee was not a governing body and thus is not a “public body” under the Act. While the Attorney General does not opine on the propriety of this decision, she highlights two interrelated points to guide this Court’s analysis in the event this Court grants leave to appeal.

First, in deciding what constitutes a “governing body,” this Court should adopt the analysis set forth in *Davis v City of Detroit Financial Review Team*, 296 Mich App 568 (2012). There, the court correctly held that a governing body is one that “makes or administers public policy for a political unit or exercises independent authority.” *Id.* at 597. And “concomitant with that independent authority is the power of that governing body to *make decisions.*” *Id.* (emphasis added). The power to merely make recommendations will not suffice.

Second, in crafting its interpretation of “governing body,” this Court should not rely on its holdings in *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211 (1993), or *Herald Co v Bay City*, 463 Mich 111 (2000). Although both cases are good law, they are of little help in determining the scope of the requirement here because neither case involved the “governing body” requirement.

ARGUMENT

I. This Court should adopt the test set forth in *Davis v City of Detroit Financial Review Team* to determine whether an entity is a public body under the OMA.

The plain language of the OMA provides the test that courts must use to determine whether an entity is a public body under the OMA. Under MCL 15.262(a), courts must ask the following questions: (1) whether the entity is a legislative or governing body; and (2) whether the entity has been empowered by “state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function.” MCL 15.262(a). If the answer to both questions is “yes,” the entity is a public body and subject to the requirements of the OMA.

This case implicates the first question—specifically, whether the Review Committee is a governing body. While the Attorney General does not address the answer to this question here, she urges this Court to adopt the analysis set forth in *Davis v City of Detroit Financial Review Team*, 296 Mich App 568 (2012). Under *Davis’s* analysis, a “governing body” is “a body that makes or administers public policy for a political unit or exercises independent authority.” *Id.* at 597. And “concomitant with that independent authority is the power . . . to make decisions[.]” *Id.* The Attorney General further asserts that because neither *Booth Newspapers, Inc v University of Michigan Board of Regents*, 444 Mich 211 (1993), nor *Herald Co v Bay City*, 463 Mich 111 (2000), involved the “governing body” requirement, they should be limited in their application to resolution of that requirement here.

A. The OMA requires that a public body be a “governing body,” which necessarily entails decisionmaking authority.

This case requires the interpretation of MCL 15.262(a), which defines “public body.” As with all statutes, the goal when interpreting the OMA “is to effectuate the intent of the Legislature.” *Sunrise Resort Ass’n, Inc v Cheboygan Cnty Road Comm*, 511 Mich 325, 333 (2023), citing *Madugula v Taub*, 496 Mich 685, 695 (2014). To accomplish this goal, a court must “ ‘focus[] first on the statute’s plain language’ and ‘examine the statute as a whole, reading individual words and phrases in the context of the entire legislative scheme.’ ” *Id.* (citation omitted). “When a word or phrase is not defined by the statute in question, it is appropriate to consult dictionary definitions to determine the plain and ordinary meaning of the word or phrase.” *People v Rea*, 500 Mich 422, 428 (2017), citing *People v Feeley*, 499 Mich 429, 437 (2016). And while courts have “historically interpreted the [OMA] broadly,” *Booth Newspapers*, 444 Mich at 223, this principle “cannot be used to supersede the plain language of the Act,” *Armstrong v Ottawa County Board of Commissioners*, __ Mich App __ (Docket No. 366906) (2024), citing *Vermilya v Delta College Board of Trustees*, 325 Mich App 416, 419–420 (2018).

With these principles in mind, this case requires the determination of whether the Review Committee is subject to the OMA. In determining whether the OMA applies in any case, the threshold question is whether the entity at issue is a “public body” as defined by the Act. See MCL 15.263(1) (requiring that “[a]ll meetings of a *public body* must be open to the public”) (emphasis added). The OMA provides the definition of a public body as follows:

“Public body” means any state or local *legislative or governing body*, including a board, commission, committee, subcommittee, authority, or council, that is *empowered* by state constitution, statute, charter, ordinance, resolution, or rule *to exercise governmental or proprietary authority or perform a governmental or proprietary function*; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 4o of the home rule city act [MCL 15.262(a) (emphasis added).]

A public body must therefore satisfy two requirements: it must be a “state or local legislative or government body,” and it must be empowered by law “to exercise governmental authority or perform a governmental or proprietary function.” *Id.* A necessary consequence of these two distinct requirements is that “not all governmental bodies empowered to exercise a governmental function are public bodies within the meaning of the [OMA].” *Davis*, 296 Mich App at 599.

The definition of a “governing body” is an issue of first impression before this Court. The Court of Appeals, however, has properly interpreted this term. In *Davis*, the Court of Appeals held that the Detroit Financial Review Team was not a public body because it was not a governing body. 296 Mich App at 593–594. In reaching its holding, the court noted that the OMA “does not define the term ‘governing body,’ ” *id.*, and the court thus looked to dictionary definitions in interpreting the term, see *People v Denio*, 454 Mich 691, 699 (1997) (“[W]hen terms are not expressly defined by a statute, a court may consult dictionary definitions.”). It ultimately opined that “a governing body should be one that is [s]elf-governing; independent”; that is, a body that makes or administers public policy for a political unit or exercises independent authority.” *Id.* at 597. And, significantly, the court

held that “concomitant with that independent authority is the power of that governing body to make decisions.” *Id.*

The requirement that a governing body be empowered to make decisions is consistent with the language of MCL 15.262(a). As explained in *Davis*,

[t]reating *any* state or local body that is empowered by law to exercise governmental or proprietary authority or perform a governmental or proprietary function as a public body under the [OMA] would improperly render nugatory the Legislature’s use of the adjective “governing” to *limit* the types of bodies that are public bodies subject to the [OMA]. [*Id.* at 598.]

Decision-making authority thus sets apart an entity that merely exercises a governmental or proprietary function (as do most, if not all, governmental entities) from those that exercise that authority *and* govern (as do many, but not all, governmental entities). And in determining whether an entity has decision-making authority, courts must look to “‘the authority *delegated* to [the entity], not the authority it *exercised*.” *Id.* at 594, quoting *Schmiedicke v Clare Sch Bd*, 228 Mich App 259, 264 (1998).

Davis made another salient point in this regard: decision-making authority does not include the mere act of making a recommendation. *Id.* at 600. The OMA itself provides support for this point. Take, for example, MCL 15.262(d), which defines “decision” as

a determination, action, vote, or disposition *upon* a motion, proposal, *recommendation*, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy. [Emphasis added.]

The Legislature, in using the word “upon,” has delineated a recommendation as something that occurs *before* a decision is made. *Id.* In other words, it is not the

decision itself. *Davis* properly identified this nuance as well. 296 Mich App at 600 (rejecting the plaintiffs’ contention that “the act of making a recommendation alone constitutes a decision within the meaning of the [OMA] definition” because of the Legislature’s use of the word “upon”).

Finally, the *Davis* rule makes practical sense as well. As the *Davis* court observed, “rarely do recommendations coming from a public body originate from the entire public body itself.” *Id.* For example, “when a local city council meets to consider a budget, the recommendation for approval of the budget usually comes from the mayor, not the city council itself.” *Id.* So, too, with many state public bodies. This process allows public bodies to act more efficiently in making deliberations and decisions, as contemplated by the OMA. See MCL 15.262(d) (defining “[d]ecision” as “a determination, action, vote, or disposition *upon a . . . recommendation . . .* on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy”) (emphasis added). Those decisions and deliberations, of course, must take place at a meeting open to the public. MCL 15.263(2) (requiring that “[a]ll decisions of a public body must be made at a meeting open to the public”); MCL 15.263(3) (requiring that “[a]ll deliberations of a public body constituting a quorum of its members must take place at a meeting open to the public . . .”).

In summary, in determining whether the Review Committee is a “public body” under the OMA, this Court should not read the term “governing body” out of the Act. Further, in interpreting “governing body,” this Court should adopt the

Davis court’s interpretation of the term. A “governing body” is one “that makes or administers public policy for a political unit or exercises independent authority[.]” which necessarily includes the power to make decisions. *Id.* at 597.

B. *Booth* and *Herald* are not on point for the question of whether the Marihuana Review Committee is a governing body.

Both the parties and the Court of Appeals have discussed two cases from this Court—*Booth Newspapers*, 444 Mich 211 (1993), and *Herald Co v Bay City*, 463 Mich 111 (2000)—in the context of determining whether the Review Committee is a “governing body” for purposes of MCL 15.262(a). (Appellants’ Br, pp 5–10; Appellee’s Br, pp 17–27); *Pinebrook Warren, LLC v City of Warren*, __ Mich App __ (Docket Nos. 355989, 355994, 355995, 356005, 356011, 356017, 356023, 359269, 359285) (2023); slip op at 19–20. But neither case is relevant to the initial question of whether the Review Committee is a governing body. A review of these cases illustrates this point.

In *Booth*, the Court reviewed whether the presidential selection procedures used by the University of Michigan Board of Regents violated the OMA. 444 Mich at 215. In answering this question, the Court determined that the entities in question were public bodies, but, in doing so, it defined the term “public body” *without reference* to the legislative or governing body requirement. *Id.* at 224–225 (explaining that “[t]he OMA defines a ‘public body’ to include a ‘committee, subcommittee, authority, or council, which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or

proprietary authority”). Indeed, the Court noted that “a key determination of the OMA’s applicability is whether the body in question exercises governmental or proprietary authority.” *Id.* at 225 (citation omitted). And it answered this question in the affirmative, holding that “the selection of a public university president constitutes the exercise of governmental authority” and thus the individual and entity at issue were “‘public bodies’ within the scope of the OMA.” *Id.* at 226; see *id.* at 225 (“The selection of a university president is one of the board’s most important *exercises of governmental authority.*”) (emphasis added).¹ Therefore, while *Booth* provides guidance in determining whether the second requirement of “public body” status has been met, its holdings were in that context only and should not be ascribed to the first requirement.

Herald is similarly unhelpful here. While the *Herald* Court’s definition of “public body” appropriately included the legislative or governing body requirement, the Court was presented with different question—whether “an individual executive acting in his executive capacity is . . . a public body for purposes of the OMA.” 463 Mich at 130. The Court held that an individual was not subject to the OMA because a “public body” necessarily requires “a collective entity.” *Id.* It also explained that “an individual executive making a recommendation to a deciding body [does not] constitute[] a *delegation* of authority,” reasoning that the body retained its

¹ This Court, in *Federated Publications, Inc v Board of Trustees of Michigan State University*, 460 Mich 75, 83, 88 (1999) later departed from this holding by concluding that the “application of the OMA to committees formed by governing boards of public universities to assist in the selection of university presidents is unconstitutional” under Const 1963, art 8, § 5.

authority “to make the final determination.” *Id.* at 132. In making this determination, the Court noted that, *even if* the recommendation authority constituted a delegation of authority, “[t]his arguable conclusion does not establish the first requirement—that the city manager was a legislative or governing body.” *Id.* at 132 n 15. In other words, any delegation of authority argument fits within an analysis of the second requirement of public body (whether the entity exercises governmental or proprietary authority) and not the first requirement (whether the entity is a legislative or governing body).

Given that neither *Booth* nor *Herald* involved discussions of whether the entities at issue were “legislative or governing bod[ies],” neither case is particularly relevant in a case—such as this one—requiring such a determination. For this reason, *Booth* and *Herald* should be limited in their application here.

CONCLUSION AND RELIEF REQUESTED

If this Court grants leave and determines whether the Review Committee is a “public body” under MCL 15.262(a), it should make clear that the term “governing body” requires that an entity have the power to make decisions, not merely recommendations.

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Dated: February 7, 2024

WORD COUNT STATEMENT

This document complies with the type-volume limitation of Michigan Court Rules 7.312(A) and 7.212(B) because, excluding the part of the document exempted, this **amicus brief** contains no more than 16,000 words. This document contains 2,653 words.

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