

No. 26-1013

**United States Court of Appeals
for the
Sixth Circuit**

JAMES DRAPER; CARRIE DRAPER,

PLAINTIFFS - APPELLANTS,

v.

NEWFIELD TOWNSHIP, MI; BRIAN HANNA, in his official capacity as the Executive Director of the Cannabis Regulatory Agency of the Michigan Department of Licensing and Regulatory Affairs; **HICLOUD, LLC; ENDRIT CALI; STEVEN MICKLIN**, in his official capacity as Zoning Administrator for Newfield Township, Michigan

DEFENDANTS - APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
HONORABLE PAUL L. MALONEY
CIVIL CASE No. 1:24-cv-01305-PLM-PJG

APPELLANTS' BRIEF

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**DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTERESTS**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and 6th Cir. R. 26.1, Plaintiffs-Appellants James Draper and Carrie Draper (“Plaintiffs-Appellants”) state the following:

Plaintiffs-Appellants are private individuals. There are no publicly owned corporations, not a party to the appeal, that have a financial interest in the outcome.

THE MUISE LAW GROUP, PLLC

/s/ Robert J. Muise
Robert J. Muise, Esq.

REASONS WHY ORAL ARGUMENT SHOULD BE PERMITTED

Pursuant to Rule 34(a) of the Federal Rules of Appellate Procedure and 6th Cir. R. 34(a), Plaintiffs-Appellants respectfully request that this Court hear oral argument. This case presents for review important legal issues, including, *inter alia*, the enforcement and interpretation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1964, as applied to a marijuana facility that is permitted to operate under local and state law even though the operation violates the Controlled Substances Act (“CSA”), 21 U.S.C. § 802.

Oral argument will assist this Court in reaching a full understanding of the issues presented and the underlying facts. In fact, there is currently a circuit split as to the application of some of the civil RICO provisions at issue. Moreover, oral argument will allow the attorneys for both sides to address any outstanding legal or factual issues that this Court deems relevant.

THE MUISE LAW GROUP, PLLC

/s/ Robert J. Muise

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INTRODUCTION¹

Plaintiffs are deprived of the use and enjoyment of their property and members of their family suffer physical harm as a direct result of the unlawful operation of HiCloud’s marijuana facility, which is operating in Newfield Township. The operation of this facility violates federal law (the Racketeer Influenced and Corrupt Organizations Act [“RICO”], 18 U.S.C. § 1964, and the Controlled Substances Act [“CSA”], 21 U.S.C. § 802) and state law (nuisance). Plaintiffs seek a preliminary injunction to halt the irreparable harm caused by the unlawful operation of this enterprise while this case proceeds.

STATEMENT OF JURISDICTION

On December 12, 2024, Plaintiffs filed this action, alleging violations arising under the United States Constitution, 42 U.S.C. § 1983, and Michigan law. (R.1, Compl.). On February 6, 2025, Plaintiffs filed a First Amended Complaint, alleging violations arising under the United States Constitution, 42 U.S.C. § 1983, RICO, and Michigan law. (R.8, First Am. Compl, PageID.47-86). The district court has jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1331 and 1343, and

¹ The parties to this appeal are Plaintiffs-Appellants James and Carrie Draper (collectively referred to as “Plaintiffs”); Defendants-Appellees Newfield Township, Michigan (“Newfield Township”); Brian Hanna (“Hanna”), in his official capacity as the Executive Director of the Cannabis Regulatory Agency of the Michigan Department of Licensing and Regulatory Affairs (hereinafter “CRA”); HiCloud, LLC (“HiCloud”); Endrit Cali (“Cali”); and Steven Micklin (Micklin), in his official capacity as the Zoning Administrator for Newfield Township.

supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).

On March 14, 2025, Plaintiffs filed a motion for a preliminary injunction and brief in support. (R.14, Mot. for Prelim. Inj., PageID.110-13; R.15, Br. in Supp. of Mot. for Prelim. Inj., PageID.114-43).

On April 11, 2025, Hanna filed a motion to dismiss (R.20), and on April 14, 2025, HiCloud and Cali filed a motion to dismiss (R.27). On April 14, 2025, Newfield Township and Micklin filed an answer. (R.23).

On December 9, 2025, the district court granted Hanna's, HiCloud's, and Cali's motions to dismiss and denied Plaintiffs' motion for a preliminary injunction. (R.36, Op. & Order, PageID.598-619). The district court's order dismissed Hanna, HiCloud, and Cali from the action. (*Id.* at 22, PageID.619).

On January 2, 2026, Plaintiffs filed a timely notice of appeal, seeking review of the district court's order denying Plaintiffs' motion for a preliminary injunction. (R.41, Notice of Appeal, PageID.633-35).

This Court has jurisdiction pursuant to 28 U.S.C. § 1292. Moreover, under 28 U.S.C. § 1292(a)(1), this Court has jurisdiction to decide any "predicate issue" that would prevent a district court from granting an injunction.

STATEMENT OF THE ISSUES FOR REVIEW

I. Have Plaintiffs advanced a viable claim for relief under RICO; that is, are Plaintiffs in the class of persons protected by RICO and have they suffered the kind of

risk at which RICO was targeted?

II. If Plaintiffs advanced a viable claim under RICO, is injunctive relief available to them under this claim?

III. If Plaintiffs advanced a viable claim under RICO and injunctive relief is available to them under this claim, did the district court err by not granting Plaintiffs' request for a preliminary injunction?

IV. If Plaintiffs advanced a viable claim under RICO, did the district court err by declining to exercise supplemental jurisdiction over Plaintiffs' state law nuisance claims?

V. If Plaintiffs advanced a viable claim under RICO and the district court erred by declining to exercise supplemental jurisdiction over Plaintiffs' state law nuisance claims but injunctive relief is not available under RICO, did the district court err by denying Plaintiffs' request for a preliminary injunction based on the nuisance claims?

VI. Are Newfield Township, Micklin, in his official capacity, and Hanna, in his official capacity, proper and necessary parties to this appeal as they are responsible for authorizing the RICO enterprise, in violation of federal law, and permitting the nuisance, in violation of state law?

STATEMENT OF THE CASE

I. Procedural Background.

Plaintiffs commenced this action on December 12, 2024. (R.1, Compl.). On February 6, 2025, Plaintiffs filed a First Amended Complaint, alleging violations arising under the United States Constitution, 42 U.S.C. § 1983, RICO, and Michigan law. (R.8, First Am. Compl, PageID.47-86).

Plaintiffs filed a motion for a preliminary injunction and brief in support on March 14, 2025. (R.14, Mot. for Prelim. Inj., PageID.110-13; R.15, Br. in Supp. of Mot. for Prelim. Inj., PageID.114-43).

On April 11, 2025, Hanna, HiCloud, and Cali filed motions to dismiss. (R.20 & R.27).

On December 9, 2025, the district court granted the motions to dismiss, dismissing Hanna, HiCloud, and Cali from this action, and in this same order, the court denied Plaintiffs' motion for a preliminary injunction. (R.36, Op. & Order, PageID.598-619).

On January 2, 2026, Plaintiffs filed a timely notice of appeal of the district court's order denying Plaintiffs' motion for a preliminary injunction. (R.41, Notice of Appeal, PageID.633-35). This appeal also seeks review of the "predicate issues" that prevented the court from granting the injunction.

II. Statement of Facts.

Plaintiffs' home is located on 184th Avenue in Hesperia, Michigan, which is physically located in Newfield Township. Plaintiffs and their five children live at this property. Plaintiffs purchased this property in 2011 and moved into their home that same year. (R.15-2, James Draper Decl. ¶ 2, at Ex. 1, PageID.146; R.15-3, Carrie Draper Decl. ¶ 2 at Ex. 2, PageID.218).

Less than 300 yards (approximately 728 feet) from Plaintiffs' property is a marijuana facility operating as HiCloud, LLC (HiCloud). HiCloud is physically located at 7655 E M-20 in Hesperia, Michigan. This marijuana enterprise began operating at this location in or about 2021,² and it was permitted by Newfield Township/Micklin to operate, in part, on property zoned residential. (R.15-2, James Draper Decl. ¶¶ 3, 4, Exs. A to E [Maps & Photos Showing HiCloud's Operation on Property Zoned Residential], at Ex. 1, PageID.146-47, 152-62).

The owner, operator, and resident agent for HiCloud is Endrit Cali (Cali). (R.15-2, James Draper Decl. ¶¶ 5, 7, 9, Ex. F [LARA Record], Ex. H [CRA Complaint], Ex. K [Planning Commission Minutes] at Ex. 1, PageID.147-49, 163-65, 168-82, 189-94).

² Accordingly, when Plaintiffs purchased and occupied their property in 2011, HiCloud's marijuana enterprise was not operating nor in existence at this location. (R.15-2, James Draper Decl. ¶¶ 2, 3 at Ex. 1, PageID.146-47; R.15-3, Carrie Draper Decl. ¶ 2 at Ex. 2, PageID.218).

According to the CRA, HiCloud holds active state licenses under the Michigan Regulation and Taxation of Marihuana Act (“MRTMA”), Mich. Comp. Laws § 333.27951, *et seq.*, to be a marijuana grower and processor and to operate an adult-use marijuana entity in Michigan. According to public records, HiCloud was subject to multiple formal complaints filed by the CRA regarding alleged violations of the MRTMA and/or related administrative rules, in addition to the fact that it is operating, in part, on property zoned residential. (R.15-2, James Draper Decl. ¶¶ 6, 7, Ex. G [CRA License Record], Ex. H [CRA Complaints] at Ex. 1, PageID.147-48, 166-67, 168-82). Despite these violations and others,³ the CRA and Hanna continue to renew HiCloud’s marijuana license and Newfield Township and Micklin continue to renew HiCloud’s permit to operate its marijuana enterprise in the township. (*Id.* ¶¶ 6-12, Ex. G [CRA License Record], Ex. I [Public Safety Ordinance Complaint], Ex. J [Email Thread] at Ex. 1, PageID.147-50, 166-67, 185-88).

In June 2023, Plaintiff James Draper submitted a formal “Public Safety

³ One of the CRA complaints states:

On November 9, 2023, Respondent’s owner, E.C., was stopped by the Michigan State Police (MSP) while driving a rental truck east on Interstate 96 near Lansing, Michigan. The truck contained 43.5 pounds of suspected marijuana flower, 3 jars of suspected marijuana wax oil, and 3 jars of suspected marijuana powder. E.C. was arrested, and the Clinton County prosecuting attorney charged E.C. with a felony charge of possession with intent to deliver marijuana on November 10, 2023. E.C. did not report this charge to the CRA until November 14, 2023.

(R.15-2, James Draper Decl. ¶ 7, Ex. H [CRA Complaint ¶ 6], at Ex. 1, PageID.148, 175). “E.C.” is Endrit Cali. (*Id.* ¶ 7, PageID.148).

Ordinance Complaint” to Newfield Township, complaining about the fact that HiCloud was operating, in part, on property zoned residential, which is a violation of the township’s zoning ordinance. (R.15-2, James Draper Decl. ¶ 8, Ex. I [Public Safety Ordinance Complaint], *see also* Ex. M [Township Zoning Ordinance Excerpts at 85] at Ex. 1, PageID.148, 183-84, 198-214). Plaintiff also copied the CRA on the email containing this complaint as Michigan law also prohibits the operation of marijuana facilities on land zoned for residential use. (*Id.* ¶¶ 8, 11, Ex. J [Email Thread], at Ex. 1, PageID.148, 149, 185-88). Neither the CRA (through Hanna) nor Newfield Township (through Micklin) took any action against HiCloud based on Plaintiff’s complaint. (*Id.* ¶ 8, PageID.148).

In 2023, HiCloud submitted an application for a special use permit, seeking to expand its existing commercial marijuana operation onto a neighboring property zoned for residential use. (R.15-2, James Draper Decl. ¶ 9, Ex. K [Planning Commission Minutes], Ex. L [Board Minutes], at Ex. 1, PageID.148-49, 189-94, 195-97). This expansion request was contrary to Michigan law (Mich. Comp. Laws § 333.27959), as well as a violation of Newfield Township’s zoning ordinance. (R.15-2, James Draper Decl. ¶¶ 9, 10, 11 Ex. M [Zoning Ordinance Excerpts at 85] at Ex. 1, PageID.148-49, 198-214). Plaintiff James Draper publicly expressed opposition to this special use request, but the request was approved by the township nonetheless. (*Id.* ¶ 9, Ex. K [Planning Commission Minutes], Ex. L [Board Minutes], at Ex. 1,

PageID.148-49, 189-94, 195-97).

In January 2025, Newfield Township renewed HiCloud’s permit to operate a marijuana facility, and it did so without a public hearing, in violation of the township’s zoning ordinance. Pursuant to the Newfield Township zoning ordinance, “A Renewal Application for an existing Permit where either (i) the Applicant is proposing material changes to the Permitted Property, or (ii) received notice from the Township, state or local police, or any State of Michigan administrative body, or a citation, complaint or other administrative action, for a violation of this Ordinance or applicable state law; shall be subject to Public Hearing.” (*See* R.15-2, James Draper Decl. ¶ 10, Ex. M [Newfield Zoning Ordinance at 87-88] at Ex. 1, PageID.149, 198-214). Plaintiff James Draper made a formal complaint about this fact to Newfield Township, providing township officials with copies of the relevant CRA complaints. (*Id.* ¶ 12, Ex. N [Public Safety Ordinance Complaint], at Ex. 1, PageID.149-50, 215-16). Newfield Township renewed HiCloud’s permit to operate its marijuana enterprise without a public hearing, despite Plaintiff’s complaint. (*Id.* ¶ 12 at Ex. 1, PageID.149-50).

Plaintiffs live on a rural 5-acre parcel, and they enjoy spending time outside when the weather is nice. HiCloud’s marijuana enterprise produces a strong, heavy smell caused by the airborne terpenes and cannabinoids. The overwhelming smell of these emissions typically starts in June and continues to build in intensity thru

October. This is the best time of year to be outside; however, Plaintiffs have to leave their home to enjoy the outdoors due to the noxious emissions coming from the enterprise. When they are home, Plaintiffs cannot open their windows, but instead have to keep the house sealed up during the summer and early fall as a result of the noxious emissions. (R.15-2, James Draper Decl. ¶ 13 at Ex. 1, PageID.150; R.15-3, Carrie Draper Decl. ¶ 3 at Ex. 2, PageID.218-19).

As Christians, Plaintiffs do their best to raise their children with a Biblical worldview. Based on their sincerely held religious beliefs, Plaintiffs are strongly opposed to recreational drug use. Plaintiffs are now forced to raise their children in a home that smells of marijuana. Their clothes smell like marijuana. When they go to the grocery store and return to their car in the parking lot, their car smells like marijuana. It is reasonable to infer that people who do not know Plaintiffs would conclude that they are drug users. And it is difficult to have people visit their home because it smells like a drug house during the summer and early fall. (R.15-2, James Draper Decl. ¶ 14 at Ex. 1, PageID.150-51; R.15-3, Carrie Draper Decl. ¶ 4, at Ex. 2, PageID.219).

Several of Plaintiffs' children get headaches from the smell of the noxious emissions coming from the marijuana enterprise. One child's allergies flare up as a result. For their youngest child, the headaches often become migraines. Plaintiff Carrie Draper also suffers headaches as well as anxiety from the emissions. Her

doctor advised her to leave the home for the day when these symptoms occur, which she does. (R.15-2, James Draper Decl. ¶ 15 at Ex. 1, PageID.151; R.15-3, Carrie Draper Decl. ¶ 5 at Ex. 2, PageID.219).

Plaintiffs want to use and enjoy their private property, which is their primary residence, free from noxious and injurious emissions coming directly from HiCloud's marijuana enterprise. (R.15-2, James Draper Decl. ¶ 16 at Ex. 1, PageID.151; R.15-3, Carrie Draper Decl. ¶ 6 at Ex. 2, PageID.219). Without an injunction, Plaintiffs are unable to do so.

III. Decision Below.

Per the district court:

Plaintiffs bring claims under the federal civil RICO statute and state nuisance law. Plaintiffs are not entitled to either monetary or injunctive relief under the RICO statute. Without the RICO claims, there is no federal claim to which the state law nuisance claims are “so related” such that “they form part of the same case or controversy.” 28 U.S.C. § 1367(a). The Court will decline to exercise supplemental jurisdiction over the nuisance claims. Thus, Defendants’ motions to dismiss will be granted. Having disposed of the RICO and nuisance claims, the Court necessarily finds that Plaintiffs have little chance of success on the claims underlying their motion for a preliminary injunction, so that motion will be denied.

(R.36, Op. & Order at 1-2, PageID.598-99).

In its order, the district court held that Plaintiffs cannot advance any claim of relief against Hanna and Newfield Township under RICO, the Supremacy Clause, the Declaratory Judgment Act, the court’s equitable powers, or the “doctrine from *Ex*

parte Young, 209 U.S. 123 (1908).” More specifically, with regard to RICO, the court held, in relevant part, as follows:

Defendants could only have violated the substantive RICO provisions by acquiring or maintaining “any interest in or control of” HiCloud, *id.* § 1962(b), or by conducting or participating in HiCloud’s conduct, *id.* § 1962(c). The only alleged connection Defendant Hanna has to HiCloud is granting it a license, and the only alleged connection Defendant Newfield Township has to HiCloud is granting it a special use permit. These connections cannot constitute an interest or control for the purposes of § 1962(b), as those statutory terms refer solely to proprietary interests and control stemming from proprietary interests. . . . These connections also cannot establish a violation of § 1962(c), as that requires “proof that the defendant participated in the ‘operation or management’ of the enterprise.” . . . A license or a zoning permit fall far short of these requirements.

Since Plaintiffs have not alleged that Defendants Hanna or Newfield Township violated the substantive RICO provisions, injunctive relief is unavailable under § 1964(a), so the authority to grant the requested relief must come from somewhere else.

(R.36, Op. & Order at 4-5 [internal citations omitted], PageID.601-02). The court noted that “[t]he final place from which Plaintiffs argue the Court gains authority to grant them injunctive relief against Defendants Hanna and Newfield Township is their state law nuisance claims. This raises the question of whether the Court will, or even can, exercise jurisdiction over Plaintiffs’ nuisance claims.” (*Id.* at 6, PageID.603). The court ultimately declined to exercise jurisdiction over the claims. (*Id.* at 20-21, PageID.617-18).

Moving on to the substantive RICO claim, the district court stated that “[w]hile Plaintiffs fail to allege that other Defendants had violated the substantive provisions of

RICO, they adequately allege that Defendant Cali has.” (R.36, Op. & Order at 7, PageID.604). The court further stated:

Of course, satisfying these elements only demonstrates that Cali allegedly violated the substantive provisions in § 1962. Other questions arise for Plaintiffs to access the civil remedies in § 1964. Resolving these questions requires the Court to decide two issues on which neither the United States Supreme Court nor the Sixth Circuit Court of Appeals has provided definitive guidance. The first is whether the civil RICO statute incorporates common law zone of interest principles. The second is whether injunctive relief is available to a private plaintiff under the civil RICO statute.

(*Id.* at 9, PageID.606). The court ultimately held that common law zone of interest principles did apply and that Plaintiffs’ alleged harms are not within the zone of protected interests. (*Id.* at 9-15, PageID.606-23). Per the court, “The zone of interests analysis assesses whether the plaintiff is in the ‘class of persons’ the statute was meant to protect, and whether they were subject to the ‘class of risks’ the statute was meant to abate. . . . The correct question is whether the plaintiff was in the class of persons protected by the statute and suffered the kind of risk at which the statute was targeted.” (*Id.* at 13, PageID.610). In answering this “question,” the court stated:

The Court finds, though, that Plaintiffs were well outside the zone of interests protected by the relevant statute, the Controlled Substances Act (CSA). The CSA was not meant to protect the interests of property owners near marijuana grow operations, nor was it meant to abate risks posed by the smells of marijuana plants. “The main objectives of the CSA were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances.” *Gonzales v. Raich*, 545 U.S. 1, 12 (2005).

The CSA was concerned with drug use, abuse, and distribution; it was not concerned with the effects of marijuana plant growth but with the effects of marijuana use and distribution. The CSA's framework illustrates the lack of concern with marijuana plant growth as a general matter.

(*Id.* at 14, PageID.611). “Because Plaintiffs have not alleged that they were in the class of people protected by the CSA and were not subject to a risk the CSA was meant to abate, they fail to state a claim under § 1964(c). Despite alleging sufficient facts to suggest that Defendant Cali violated the substantive provisions of § 1962, Plaintiffs fail to meet the additional requirements for relief in § 1964(c).” (*Id.* at 15, PageID.612).

The court then turned to the question of whether injunctive relief is available to Plaintiffs under RICO. Per the court:

The Circuit Courts of Appeals are split on whether private plaintiffs may seek injunctive relief under the civil RICO statute. The Fourth, Fifth, and Ninth Circuits say no. . . . The Second and Seventh Circuits say yes. . . . This issue has split District Courts in this circuit as well: the Eastern District of Michigan said no, . . . while the Southern District of Ohio said yes . . . Other courts, including the Sixth Circuit, have expressed doubts that private plaintiffs can seek injunctive relief, but have not decided the question.

(R.36, Op. & Order at 15-16 [internal citations omitted], PageID.612-13). After analyzing the statute, the court concluded as follows: “[U]nder RICO, Plaintiffs are not authorized to receive injunctive relief at all. They have not demonstrated that they may recover damages from any of the Defendants either. These are sufficient grounds

to dismiss the RICO claims against the moving Defendants.” (*Id.* at 15-20, PageID.612-17).

As noted previously, because the court dismissed the RICO claim, it declined to exercise supplemental jurisdiction over Plaintiffs’ state law nuisance claims. (R.36, Op. & Order at 20-21, PageID.617-18). The court then turned to the preliminary injunction request and concluded as follows:

Plaintiffs may not seek injunctive relief under RICO. The Court is not exercising supplemental jurisdiction over Plaintiffs’ nuisance claims. No authority exists under which the Court could grant the preliminary injunction Plaintiffs seek. . . . But Plaintiffs have also failed to establish a substantial likelihood of success on the merits. Indeed, having resolved the merits of the RICO claim against Plaintiffs, the chances are as minimal as they can be. That would independently be reason enough to deny Plaintiffs’ motion. . . . The Court, though, need not go through each of the factors, as the Court simply could not grant the injunction even if the other factors strongly favored Plaintiffs.

(*Id.* at 21-22 [internal citations omitted], PageID.618-19).

STANDARD OF REVIEW

This is an appeal of the district court’s denial of Plaintiffs’ motion for a preliminary injunction. Under 28 U.S.C. § 1292(a)(1), this Court has jurisdiction to decide any “predicate issue” that would prevent a district court from granting an injunction. *See Catholic Healthcare Int’l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442, 447-48 (6th Cir. 2023). These “predicate issues” are set forth above in the Statement of the Issues for Review. The district court incorporated its order on the motions to dismiss with its order denying the preliminary injunction as the issues overlap. These

issues are also presented here for this Court's review.

This Court reviews for an abuse of discretion a district court's decision whether to issue a preliminary injunction. In doing so, the Court reviews legal questions *de novo*. *Catholic Healthcare Int'l, Inc.*, 82 F.4th at 447 (reversing denial of preliminary injunction).

SUMMARY OF THE ARGUMENT

Plaintiff are likely to succeed on the merits of their RICO claim. Plaintiffs have shown that Cali conducted the affairs of an enterprise (HiCloud) through a pattern of racketeering activity in violation of RICO. Additionally, Plaintiffs are in the class of persons protected by RICO, and they have suffered the kind of risk at which RICO was targeted. In other words, Plaintiffs are well inside the zone of interests protected by the relevant statute (CSA). And because RICO is to be read broadly to effectuate its remedial purposes, injunctive relief is available to Plaintiffs under this statute.

Additionally, because Plaintiffs have advanced a viable claim under RICO, the district court erred by declining to exercise supplemental jurisdiction over Plaintiffs' state law claims (nuisance).

Whether based on their likelihood of succeeding under RICO or under state law (nuisance), Plaintiffs have satisfied the elements for the requested injunction. Plaintiffs are suffering irreparable harm, and granting the injunction will not cause substantial harm to others. In fact, it is in the public interest to grant the injunction to

halt the illicit activity of HiCloud and to abate this nuisance. Furthermore, because the operation of HiCloud violates the Supremacy Clause, federal statutory law (RICO and CSA), and local and state law, and the Court has broad equitable power to remedy injuries caused by these violations, the Court has the authority to issue the requested injunction and enjoin the unlawful acts of Newfield Township, Micklin, and Hanna—acts which authorize and permit the operation of HiCloud under local and state law.

Finally, Plaintiffs do not possess the wealth of the marijuana industry nor the power of government. Plaintiffs are private citizens who simply want to use and enjoy their home without being subject to the noxious emissions coming from HiCloud's enterprise or suffering physical illnesses caused by this illicit operation. In light of the unique circumstances of this case where Plaintiffs are simply trying to do that which their government representatives and other government officials have failed to do (*i.e.*, halt the illicit operation of HiCloud), the Court should not require Plaintiffs to post security before granting the injunction.

ARGUMENT

The standard for issuing a preliminary injunction is well established:

In determining whether or not to grant a preliminary injunction, a district court considers four factors: (1) the plaintiff's likelihood of success on the merits; (2) whether the plaintiff could suffer irreparable harm without the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of the injunction on the public interest.

Connection Distrib. Co. v. Reno, 154 F.3d 281, 288 (6th Cir. 1998); *Winter v. Natural*

Res. Def. Council, Inc., 555 U.S. 7, 20 (2008) (same). Typically, the reviewing court will balance these factors, and no single factor will necessarily be determinative of whether or not to grant the injunction. *Connection Distributing Co.*, 154 F.3d at 288; *see generally USACO Coal Co. v. Carbomin Energy, Inc.*, 689 F.2d 94, 98 (6th Cir. 1982) (granting a preliminary injunction in a RICO case and noting that “[a] preliminary injunction is always appropriate to grant intermediate relief of the same character as that which may be granted finally”) (quoting *De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 220 (1945)).

I. Plaintiffs Satisfy the Standard for Granting the Requested Injunction.

A. Plaintiffs’ Likelihood of Success on the Merits.

As the district court properly noted, Plaintiffs have satisfied the elements to advance a viable claim under RICO as to Cali. (R.36, Op. & Order at 7, [finding that Plaintiffs “adequately allege that Defendant Cali has [violated RICO]”], PageID.604). We will address the substantive RICO claim first and then turn to the “zone of interest” issue and the issue of whether injunctive relief is available to Plaintiffs.

1. RICO.

“RICO . . . created a new civil cause of action for ‘[a]ny person injured in his business or property by reason of a violation’ of those prohibitions. §1964(c).” *RJR Nabisco, Inc. v. European Cmty.*, 579 U.S. 325, 329 (2016) (hereinafter “*RJR*”). “That is, RICO vests a private citizen with substantive rights to avoid ‘injur[ies]’ to

‘his business or property’ caused by a pattern of racketeering activity, and it explicitly creates a federal cause of action to vindicate those federal rights. 18 U.S.C. § 1964(c).” *Safe Sts. All. v. Hickenlooper*, 859 F.3d 865, 881 (10th Cir. 2017).

“RICO’s §1962 sets forth four specific prohibitions aimed at different ways in which a pattern of racketeering activity may be used to infiltrate, control, or operate ‘a[n] enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.’” *RJR*, 579 U.S. at 330. Two of these are relevant here. “Section 1962(b) makes it unlawful to acquire or maintain an interest in an enterprise through a pattern of racketeering activity [and] section 1962(c) makes it unlawful for a person employed by or associated with an enterprise to conduct the enterprise’s affairs through a pattern of racketeering activity.” *RJR*, 579 U.S. at 330.

“To maintain a cause of action under § 1964(c), a plaintiff must plead and ultimately prove: (1) that the defendant violated § 1962; (2) that the plaintiff’s business or property was injured; and (3) that the defendant’s violation is the cause of that injury.” *Safe Sts. All.*, 859 F.3d at 881. Accordingly, to assert a § 1964(c) claim for a violation of § 1962(c), Plaintiffs must show that Cali “(1) conducted the affairs (2) of an enterprise (3) through a pattern (4) of racketeering activity.” *Safe Sts. All.*, 859 F.3d at 882 (internal citations and quotations omitted); 18 U.S.C. § 1962(c).⁴ We

⁴ RICO requires that the person conducting the enterprise’s affairs be distinct from the enterprise. Accordingly, “a single person cannot be both the RICO enterprise and the RICO defendant.” *RJR*, 579 U.S. at 343 (internal quotations and citation omitted).

begin with the “racketeering activity” element.

a. Racketeering Activity.

“RICO is founded on the concept of racketeering activity. The statute defines ‘racketeering activity’ to encompass dozens of state and federal offenses, known in RICO parlance as predicates. These predicates include any act ‘indictable’ under specified federal statutes,” and among them is “drug-related activity that is ‘punishable’ under federal law.” *RJR Nabisco, Inc.*, 579 U.S. at 329-30. Accordingly, pursuant to RICO, “‘racketeering activity’ means,” *inter alia*, “dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act [21 U.S.C. § 802]), which is chargeable under State law and punishable by imprisonment for more than one year.” 18 U.S.C. § 1961(1)(A). It also includes, the “felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act [21 U.S.C. § 802]), punishable under any law of the United States.” 18 U.S.C. § 1961(1)(D). Marijuana is a Schedule I controlled substance under the CSA. *See* 21 U.S.C. § 812.

Consequently, HiCloud’s marijuana operation, which includes the growing, manufacture, concealment, buying, selling, or otherwise dealing in marijuana, a Schedule I controlled substance under the CSA, is “racketeering activity” as a matter of law.

b. Enterprise.

RICO broadly defines “enterprise” to “include[] any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.” 18 U.S.C. 1961(4). HiCloud, which is a limited liability company operating in Michigan, is an “enterprise” under RICO.

c. Conducting the Enterprise’s Affairs.

To maintain a § 1964(c) claim against any particular defendant, Plaintiffs must show that the defendant “conduct[ed] or participate[d], directly or indirectly, in the conduct of [the] enterprise’s affairs.” 18 U.S.C. § 1962(c). Here, Cali is the owner, operator, and resident agent for HiCloud. He conducts or participates, directly or indirectly, in the conduct of HiCloud’s affairs. This element is met.

d. Pattern.

“A predicate offense implicates RICO when it is part of a ‘pattern of racketeering activity’—a series of related predicates that together demonstrate the existence or threat of continued criminal activity.” *RJR*, 579 U.S. at 330. “[T]he threat of continuity may be established by showing that the predicate acts or offenses are part of an ongoing entity’s regular way of doing business.” *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 242 (1989).

Since approximately 2021, HiCloud has been continuously operating its “racketeering activity” (growing, manufacturing, selling, distributing, or otherwise

dealing in a controlled substance from its property located in Newfield Township), and Cali has been conducting and/or participating in HiCloud's affairs since this time. Consequently, HiCloud has been engaging in a pattern of racketeering activity as a matter of fact and law.

e. Injury Directly and Proximately Caused.

RICO's "reference to injury to 'business or property' . . . cabin[s] RICO's private cause of action to particular kinds of injury—excluding, for example, personal injuries. . . ." *RJR*, 579 U.S. at 350. Plaintiffs have suffered an injury to their "property" due to the "racketeering activity" of the enterprise (HiCloud).⁵ "Injury to property' for RICO purposes is generally determined by state law." *Isaak v. Trumbull Sav. & loan Co.*, 169 F.3d 390, 397 (6th Cir. 1999) (citation omitted); *see also Beck v. Prupis*, 529 U.S. 494, 504 (2000) ("Congress meant to incorporate common-law principles when it adopted RICO.").

Under Michigan law, Plaintiffs have a protected property interest in the value, use, and enjoyment of their property. *See Livonia v. Dep't of Soc. Servs.*, 423 Mich. 466, 507, 378 N.W.2d 402, 421 (1985) ("We recognize that plaintiff homeowners have a protected property interest in the value, use, and enjoyment of their property . . ."); *see also Goulechi v. Serra*, No. 322489, 2015 Mich. App. LEXIS 2129, at *4 (Mich. Ct. App. Nov. 17, 2015) ("Nuisance is an interference with a landowner's use

⁵ Plaintiffs' allegations regarding their personal injuries are in support of their nuisance claims under Michigan law.

and enjoyment of his property interest.”). Such “injury” to the use and enjoyment of property has been held sufficient for advancing a claim under RICO. *See, e.g., Isaak*, 169 F.3d at 397 (ultimately concluding that the RICO claims against the defendant banks were time barred but finding a cognizable injury for standing under RICO where “[t]he record . . . indicates that the [banks’] RICO violations caused Plaintiffs to suffer injury both to their use and enjoyment of the Campgrounds property and to their ability to dispose of or transfer the property”); *Safe Sts. All.*, 859 F.3d at 886 (finding an injury to the use and enjoyment of private property sufficient for advancing a civil RICO cause of action).

(1) Noxious Emissions.

As demonstrated here, the noxious emissions caused by HiCloud’s “racketeering activity”—its unlawful marijuana business—are directly and proximately causing injury to Plaintiffs’ use and enjoyment of their property in violation of RICO. Indeed, HiCloud’s illicit operation is a nuisance under Michigan law as discussed in § I.2.B. below.

In *Safe Streets Alliance v. Hickenlooper*, 859 F.3d 865, 881 (10th Cir. 2017), a case that is factually similar, the Tenth Circuit “conclude[d] that the [plaintiffs] plausibly pled an injury to their property in the form of a present interference with their use and enjoyment of [their] land, an interference that is caused by the enterprise’s recurring emissions of foul odors.” *Id.* at 886.

In sum, the noxious emissions caused by HiCloud’s racketeering activity are directly and proximately causing injury to Plaintiffs’ property in violation of RICO.

(2) Diminution in Value.

While the diminution in value of Plaintiffs’ property directly and proximately caused by the “racketeering activity” of the “enterprise” is not an irreparable harm for purposes of this current motion, it is an injury under RICO and thus serves as a basis for demonstrating a likelihood of success on the merits of the RICO claim in this case. This point was also confirmed in *Isaak* and *Safe Streets Alliance*. See, e.g., *Isaak*, 169 F.3d at 398 (finding that the defendants’ actions caused an injury under RICO by “reduc[ing] any potential resale value” of the plaintiffs’ property). And more to the point, the Tenth Circuit in *Safe Streets Alliance*, stated:

we conclude that it is reasonable to infer that a potential buyer would be less inclined to purchase land abutting an openly operating criminal enterprise than she would be if that adjacent land were empty or occupied by a lawfully-operating retailer. Based on the [plaintiffs’] assertion that the Marijuana Growers’ operation is anything but clandestine, the [plaintiffs’] land plausibly is worth less now than it was before those operations began. Therefore, we conclude that the [plaintiffs] pled a plausible diminution in the value of their property caused by the public operation of the Marijuana Growers’ enterprise.

Safe Sts. All., 859 F.3d at 888.

f. Plaintiffs Satisfy the “Zone of Interest” Test.

As noted above, the district court held that RICO incorporates common law zone of interest principles and that Plaintiffs’ alleged harms are not within the zone of

protected interests. (R.36, Op. & Order at 9-15, PageID.606-12). The court is mistaken.

To begin, the district court claimed that it “follows the Second, Seventh, and Eighth Circuits in incorporating a zone of interest analysis.” (R.36, Op. & Order at 13, PageID.610). However, as stated by the Second Circuit:

Thus, statutory standing is included in our proximate cause analysis. Two other circuits have applied the zone-of-interests test independently from the proximate cause analysis. *See Newton v. Tyson Foods, Inc.*, 207 F.3d 444, 447 (8th Cir. 2000); *Israel Travel Advisory Serv., Inc. v. Israel Identity Tours, Inc.*, 61 F.3d 1250, 1258 (7th Cir. 1995). We have no quarrel with that approach, but *because our RICO proximate cause analysis adequately incorporates the zone-of-interests test’s concerns in most cases, we have never applied that test independently from our RICO proximate cause analysis.* We now clarify that it is inappropriate to apply a zone-of-interests test independent of this circuit’s proximate cause analysis.

Baisch v. Gallina, 346 F.3d 366, 373 (2d Cir. 2003); *see also Lerner v. Fleet Bank, N.A.*, 318 F.3d 113, 121 n.6 (2d Cir. 2003) (“[T]he reasonably foreseeable victim of a RICO enterprise will often be, unsurprisingly, the type of victim the RICO statute seeks to protect.”); *see generally Sedima v. Imrex Co.*, 473 U.S. 479, 497-98 (1985) (“RICO is to be read broadly. This is the lesson not only of Congress’ self-consciously expansive language and overall approach, . . . , but also of its express admonition that RICO is to ‘be liberally construed to effectuate its remedial purposes,’ Pub. L. 91-452, § 904(a), 84 Stat. 947. The statute’s ‘remedial purposes’ are nowhere more evident than in the provision of a private action for those injured by racketeering

activity.”) (internal citation omitted). Thus, based on the Second Circuit’s reasoning, which the district court claimed to follow, the court’s finding that Plaintiffs have established proximate cause under RICO conflicts with the court’s conclusion that Plaintiffs are not within the “zone of interest” protected by RICO (or the underlying CSA). Nonetheless, even assuming that the “zone of interest” test is independent of the proximate cause analysis, Plaintiffs still meet this prudential-standing test.

“The prudential-standing test is not meant to be especially demanding.” *Patel v. United States Citizenship & Immigration Servs.*, 732 F.3d 633, 635 (6th Cir. 2013) (internal quotation marks omitted). “The [zone of interest] test forecloses suit only when a plaintiff’s interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit.” *Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians v. Patchak*, 567 U.S. 209, 225 (2012). In finding that Plaintiffs are outside the “zone of interests,” the district court ignores the text of the CSA and selectively quotes from *Gonzales*. The CSA is not limited to concerns over “drug abuse and to control the legitimate and illegitimate traffic in controlled substances.” The CSA explicitly states that “[t]he illegal importation, *manufacture*, distribution, and possession and improper use of controlled substances *have a substantial and detrimental effect on the health and general welfare of the American people.*” 21 U.S.C. § 801(2) (emphasis added). Further, *Gonzales v. Raich*, 545 U.S. 1 (2005), on which the court exclusively

relies to find that Plaintiffs are not within the zone of interests, acknowledges and cites this provision. *Id.* at 12 (“The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.”) (quoting 21 U.S.C. § 801). The district court’s analysis is particularly confusing considering that *Gonzales* centered on the growing (*i.e.* manufacturing) of six marijuana plants, and it extensively discussed the manufacturing of controlled substances. *Id.* at 7 (noting the action was brought to “prohibit[] the enforcement of the federal . . . CSA . . . to the extent it prevents them from possessing, obtaining, or manufacturing cannabis for their personal medical use”); *id.* at 14 (“Each schedule [of drugs] is associated with a distinct set of controls regarding the manufacture, distribution, and use of the substances listed therein.”).

Finally, the district court’s reasoning—that “[t]he CSA’s framework illustrates the lack of concern with marijuana plant growth as a general matter” and that “[t]he CSA allowed use of marijuana in research studies and delegated authority to the Attorney General to change its designation and allow its growth and use for other purposes”—ignores both the holding in *Gonzales* and the framework of the CSA. The majority of drugs in the CSA are permitted to be manufactured but only with strict compliance to the manufacturing requirements *in the CSA*. *See, e.g.*, 21 U.S.C. § 841(a)(1) (making it unlawful for anyone to manufacture a controlled substance

except as provided for in the CSA); 21 U.S.C. § 842(a)(2) (making it unlawful for anyone “to manufacture a controlled substance not authorized by his registration”); *Gonzales*, 545 U.S. at 27 (“The CSA requires manufacturers, physicians, pharmacies, and other handlers of controlled substances to comply with statutory and regulatory provisions mandating registration with the DEA, compliance with specific production quotas, security controls to guard against diversion, recordkeeping and reporting obligations, and prescription requirements.”).

Here, Plaintiffs are suffering a cognizable injury to their property as a direct result of the illegal manufacturing of a controlled substance—an act that is prohibited by the CSA. Plaintiffs are also suffering a cognizable injury to their property as a result of this “openly operating criminal enterprise”—a criminal enterprise that is manufacturing, distributing, and possessing a controlled substance in violation of the CSA. In short, Plaintiffs’ alleged harms are within the zone of protected interests. The illegal “manufacture, distribution, and possession” of marijuana by the enterprise has had, and continues to have, “*a substantial and detrimental effect on the health and general welfare of*” of Plaintiffs—interests the CSA is expressly intended to protect. 21 U.S.C. § 801(2) (emphasis added).

g. Injunctive Relief Is Available under RICO.

The district court held that injunctive relief is not available to Plaintiffs under RICO. The court is mistaken. As the district court noted, neither the Supreme Court

nor this Court has affirmatively decided this issue. *But see USACO Coal Co. v. Carbomin Energy, Inc.*, 689 F.2d 94, 98 (6th Cir. 1982) (granting a preliminary injunction in a RICO case and noting that “[a] preliminary injunction is always appropriate to grant intermediate relief of the same character as that which may be granted finally”) (quoting *De Beers Consol. Mines, Ltd.*, 325 U.S. at 220). Indeed, there is a circuit split. *Compare Gingras v. Think Fin., Inc.*, 922 F.3d 112, 124 (2d Cir. 2019) (“[B]inding Circuit precedent compels us to hold that RICO authorizes private rights of action for injunctive relief.”), *with Religious Tech. Ctr. v. Wollersheim*, 796 F.2d 1076 (9th Cir. 1986) (holding that injunctive relief is not available under RICO to private plaintiffs). In Plaintiffs’ view, the Seventh Circuit’s lengthy discussion of the issue in *NOW, Inc. v. Scheidler*, 267 F.3d 687 (7th Cir. 2001), *rev’d on other grounds*, *Scheidler v. NOW, Inc.*, 537 U.S. 393, 411 (2003), is compelling, and it dismantles the reasoning of the Ninth Circuit’s decision in *Wollersheim*, as well as the reasoning of the district court.

As stated, in relevant part, by the Seventh Circuit:

Our study of Supreme Court decisions since the 1986 *Wollersheim* opinion convinces us that the approach of the Ninth Circuit (which relied almost exclusively on the legislative history of RICO to reach its result, as opposed to the actual language of the statute) no longer conforms to the Court’s present jurisprudence, assuming for the sake of argument that it was a permissible one at the time. We are persuaded instead that the text of the RICO statute, understood in the proper light, itself authorizes private parties to seek injunctive relief.

NOW, Inc., 267 F.3d at 695-700; *see also United States v. Hensley*, 110 F.4th 900, 905

(6th Cir. 2024) (“The use of legislative history has been all but discontinued.”).⁶

The case at bar is a good example as to why injunctive relief is an appropriate remedy. The irreparable harm to the use and enjoyment of Plaintiffs’ private home can only be remedied by enjoining the activity that is causing this harm. *See Sedima*, 473 U.S. at 497-98 (stating that “RICO is to be read broadly,” that it should “be liberally construed to effectuate its remedial purposes,” Pub. L. 91-452, § 904(a), 84 Stat. 947,” and that the “remedial purposes’ are nowhere more evident than in the provision of a private action for those injured by racketeering activity”). Without an injunction, Plaintiffs will be forced to move out of their home. And they will have to

⁶ The court in *Motorola Credit Corp. v. Uzan*, 202 F. Supp. 2d 239, 243-44 (S.D.N.Y. 2002), offered this persuasive reasoning as to why injunctive relief is available to a plaintiff in a civil case:

The present Court agrees with the result in *Scheidler*, but for somewhat different reasons.

As even the court in *Wollersheim* recognized, the right to grant injunctive relief in private civil actions in accordance with traditional principles of equity jurisdiction is one of the equitable powers given to federal courts by the Judiciary Act of 1789. *See Wollersheim*, 796 F.2d at 1083; *see generally*, *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318-19 (1999). It would be extraordinary indeed if Congress, in enacting a statute that Congress expressly specified was to be “liberally construed to effectuate its remedial purposes,” Pub. L. NO.91-452, § 904(a), 84 Stat. 947 (1970), intended, without expressly so stating, to deprive the district courts of this utilizing this classic remedial power in private civil actions brought under the act. Whether or not the language of § 1964 expressly confers this power as “unambiguously” as the Seventh Circuit asserts, it nowhere expressly denies courts this power in private civil actions, and thus the normal presumption favoring a court’s retention of all powers granted by the Judiciary Act of 1789 prevails.

try and sell a home that is now adjacent to a criminal enterprise that makes the property practically uninhabitable. Plaintiffs have been injured by racketeering activity, and the principal remedy for this injury is an injunction. *See also* 18 U.S.C. § 1964(a) (“The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders . . .”).

h. Conclusion

As the district court properly concluded, Plaintiffs have advanced a RICO claim in this case against Cali. (Op. & Order at 7-9, PageID.604-606). However, as argued above, the court was wrong about the application of the “zone of interest” test and about the availability of injunctive relief to Plaintiffs under RICO.

Marijuana is a Schedule I controlled substance under the CSA, and dealing in such a controlled substance as Cali does here through the operation of HiCloud pursuant to a license issued by the CRA (Hanna) and a permit issued by Newfield Township (Micklin) constitutes unlawful racketeering activity under RICO. This racketeering activity is causing a *direct* injury to Plaintiffs’ property, warranting the requested injunctive relief. RICO grants a court broad equitable powers to “prevent and restrain violations of” its provisions. 18 U.S.C. § 1964(a). Accordingly, appropriate remedies include an order directly enjoining and thus halting HiCloud’s illicit enterprise, an order directing Newfield Township (Micklin) to terminate its permit to HiCloud (*i.e.*, enjoining the operation and effect of the permit), and/or an

order directing the CRA (Hanna) to revoke HiCloud’s license to engage in its illicit marijuana enterprise (*i.e.*, enjoining the operation and effect of the license). *See generally Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015) (“[I]n a proper case, relief may be given in a court of equity . . . to prevent an injurious act by a public officer.”) (internal quotations and citation omitted). In sum, there are multiple ways for a federal court to exercise its broad equitable power to preliminarily enjoin the harmful and illicit operation of HiCloud.

2. Nuisance.

a. The District Court Erred by Declining Supplemental Jurisdiction over Plaintiffs’ State Law Claims.

Because the district court erroneously dismissed Plaintiffs’ RICO claim, this Court should reverse the lower court’s decision to decline supplemental jurisdiction over the state law nuisance claims. *Kalitta Air, LLC v. GSBD & Assocs.*, 591 F. App’x 338, 347 (6th Cir. 2014) (“Because we conclude that the district court erred in dismissing Kalitta’s federal RICO claims against both the defaulted and non-defaulted defendants, it abused its discretion in declining supplemental jurisdiction under 28 U.S.C. § 1367(c)(3), which applies only if the court has ‘dismissed all claims over which it has original jurisdiction.’”);⁷ *Wiggins v. Metro. Gov’t of Nashville &*

⁷ It should be noted that the district court did not dismiss “all claims over which it has original jurisdiction.” The First Amendment retaliation, Fourteenth Amendment equal protection, and conspiracy to violate civil rights claims against Newfield Township and/or Micklin are advancing below. Consequently, dismissing the RICO claim did

Davidson Cty., No. 16-5519, 2017 U.S. App. LEXIS 21913, at *10 (6th Cir. May 8, 2017) (“Having dismissed Wiggins’s federal claims for lack of subject-matter jurisdiction, the district court also dismissed Wiggins’s state-law claims without prejudice ‘for lack of supplemental jurisdiction.’ Because we determine that the district court has subject-matter jurisdiction over Wiggins’s federal claims, on remand the district court should also consider Wiggins’s state-law claims.”); *see also Baca v. Sklar*, 398 F.3d 1210, 1222 n.4 (10th Cir. 2005) (“Because we remand Baca’s First Amendment retaliation claim, the district court should reconsider its decision to decline supplemental jurisdiction over Baca’s state law claims.”).

As set forth below, Plaintiffs are likely to prevail on their nuisance claim, and regardless of whether injunctive relief is available to Plaintiffs under RICO (which it is), Plaintiffs’ nuisance claims provide an independent basis for granting the requested injunction.

b. Plaintiffs Are Likely to Prevail on Their Nuisance Claims.

In addition to violating RICO, the operation of HiCloud is a nuisance as a matter of state law. Michigan courts recognize essentially two categories of nuisance: private nuisance and public nuisance. *Adkins v. Thomas Solvent Co.*, 440 Mich. 293, 302 (1992). “A private nuisance is a nontrespassory invasion of another’s interest in the private use and enjoyment of land,” *id.* at 302, whereas “[a] public nuisance is an

not deprive the district court of its jurisdiction over the case.

unreasonable interference with a common right enjoyed by the general public.” *Cloverleaf Car Co v. Phillips Petroleum Co*, 213 Mich. App. 186, 190 (Mich. Ct. App. 1994). The operation of HiCloud’s marijuana facility is both a private and a public nuisance.

A nuisance in fact (also referred to as a nuisance *per se*) is a subcategory of public nuisance. *Johnson v. Tilton*, No. 232374, 2002 Mich. App. LEXIS 1435, at *3 (Mich. Ct. App. Oct. 15, 2002). A public nuisance “includes conduct that (1) significantly interferes with the public’s health, safety, peace, comfort, or convenience, (2) is proscribed by law, or (3) is known or should have been known by the actor to be of a continuing nature that produces a permanent or long-lasting, significant effect on these rights.” *Cloverleaf Car Co.*, 213 Mich. App. at 190. “[T]he activity must be harmful to the public health, or create an interference in the use of a way of travel, or affect public morals, or prevent the public from the peaceful use of their land and the public streets.” *Garfield Twp. v. Young*, 348 Mich. 337, 342 (1957) (citations omitted).

“A private citizen may file an action for a public nuisance against an actor where the individual can show he suffered a type of harm different from that of the general public.” *Cloverleaf Car Co.*, 213 Mich. App. at 190-91 (1995) (stating that “[b]ecause plaintiff Arthur Hambley claimed that his mental health problems resulted from this incident, plaintiffs were entitled to file this [public nuisance] claim”).

“A nuisance that affects public health is typified by the release of hazardous substances.” *Gooch v. Dollar Tree Stores, Inc.*, No. 23-10887, 2024 U.S. Dist. LEXIS 131741, at *9 (E.D. Mich. July 25, 2024) (citing cases); *Organic Chem. Site PRP Grp. v. Total Petroleum Inc.*, 58 F. Supp. 2d 755, 765 (W.D. Mich. 1999); *Norton Shores v. Carr*, 81 Mich. App. 715 (Mich. Ct. App. 1978) (holding that a business that caused black dirt dust to blow off of its property constituted a public nuisance); *Davis v. Wal-Mart Stores East, LP*, No. 18-13901, 2019 U.S. Dist. LEXIS 217956, at *2 (E.D. Mich. Dec. 19, 2019) (“The types of individual claims that have been recognized in the public health category typically involve disposal or release of hazardous substances or chemicals that present a threat to public health.”) (citing cases); *compare Fagan v. Speedway, LLC*, No. 15-10211, 2016 U.S. Dist. LEXIS 67150, at *5 (E.D. Mich. May 23, 2016) (holding that a crack in pavement or a pothole on private property does not amount to a public nuisance); *Davis*, 2019 U.S. Dist. LEXIS 217956, at *3 (holding that a hanger on a floor was not a public nuisance); *Hawthorne v. Wal-Mart Stores East, LP*, No. 18-12628, 2021 U.S. Dist. LEXIS 131849, at *3 (E.D. Mich. July 15, 2021) (“A spill on a Wal-Mart floor present for a relatively short period of time simply does not rise to the level of a public nuisance.”); *Holland v. State Farm Mut. Auto. Ins. Co.*, No. 322438, 2015 Mich. App. LEXIS 1694, at *10 (Mich. Ct. App. Sept. 10, 2015) (holding that an icy patch on a driveway does not give rise to a public nuisance claim).

Additionally, under the Michigan Zoning Enabling Act (“MZEA”), Mich. Comp. Laws § 125.3407, the use of land or a building *in violation of a zoning ordinance* is a nuisance *per se*. *Sakorafos v. Charter Twp. of Lyon*, No. 362192, 2023 Mich. App. LEXIS 8430, at *10 (Mich. Ct. App. Nov. 21, 2023) (citing *Twp of Fraser v. Haney*, 509 Mich. 18, 26 (2022) & *Soupal v. Shady View, Inc*, 469 Mich. 458, 465 (2003)). In certain circumstances, a private party may pursue a nuisance claim against a property owner for the violation of a zoning ordinance. In *Ansell v. Delta County Planning Commission*, 332 Mich. App. 451, 461 (Mich. Ct. App. 2020), the court explained:

A violation of a zoning ordinance constitutes a public nuisance that, by itself, “gives no right of action to an individual and must be abated by the appropriate public officer.” *Towne v. Harr*, 185 Mich. App. 230, 232; 460 N.W.2d 596 (1990). However, a private individual who can “show damages of a special character distinct and different from the injury suffered by the public generally” may bring an action to abate a public nuisance arising from the violation of a zoning ordinance. *Id.*

See also Lamkin v. Hamburg Twp. Bd. of Trustees, 318 Mich. App. 546, 555 (Mich. Ct. App. 2017) (Ronayne Krause, P.J., concurring in part and dissenting in part) (observing that a private citizen may bring an action to abate a nuisance caused by a violation of a zoning ordinance when impacted “in some way distinct from the general public”) (emphasis added).

In general, and as noted above, to successfully bring an action for a nuisance, the plaintiff must demonstrate standing, which may be proven by showing that the

“defendant’s activities directly affected the plaintiff[’s] recreational, aesthetic, or economic interests.” *Kallman v. Sunseekers Prop. Owners Ass’n, LLC*, 480 Mich. 1099; 745 N.W.2d 122 (2008) (quotation marks and citation omitted). Accordingly, a private citizen may bring an action “to abate public nuisances, arising from the violation of zoning ordinances or otherwise, when the individuals can show damages of a special character distinct and different from the injury suffered by the public generally.” *Towne v Harr*, 185 Mich. App. at 232; *Ansell*, 332 Mich. App. at 461.

For example, in *Travis v. Preston (On Rehearing)*, 249 Mich. App. 338, 346 (Mich. Ct. App. 2002), the plaintiffs successfully asserted injury of a “special character distinct and different from the injury suffered by the public generally” because the odors from the defendant hog farm affected only the residences near the hog farm and not the community at large. The plaintiffs therefore asserted standing sufficient to initiate a lawsuit to abate the nuisance, and standing in that case was not defeated by the fact that certain other residents also experienced the odors from the hog farm. *Id.* at 346. Consequently, a plaintiff’s injury need not be unique in the community to confer standing to abate a nuisance *per se*. Similarly, in *Sakorafos v. Charter Township of Lyon*, No. 362192, 2023 Mich. App. LEXIS 8430 (Mich. Ct. App. Nov. 21, 2023), the court held that the plaintiffs, who were seeking to abate a nuisance based on a zoning violation allegedly caused by a neighboring dog kennel, had standing to assert the claim, stating:

Plaintiffs' damages need not be singular to confer standing to bring a nuisance claim; the fact that other nearby residents also may have suffered ill effects from the dog kennel does not defeat plaintiffs' standing to bring a suit alleging nuisance. Moreover, plaintiffs' status as an adjacent property owner lends support to the finding that plaintiffs have demonstrated special damages different from injury suffered by others in the community generally.

Id. at *16.

Here, Plaintiffs are currently suffering “special damages” from the odors and release of substances into the air by HiCloud’s marijuana facility, and this is causing physical harm to Plaintiffs, and it is depriving Plaintiffs of the use and enjoyment of their private property (*i.e.*, their home). Plaintiffs’ “status as” a nearby (less than 300 yards away) “property owner lends support to the finding” that they can demonstrate “special damages different from injury suffered by others in the community generally.” Moreover, and as discussed further in Section B below, the injuries Plaintiffs are suffering are irreparable.

In addition to violating federal law as argued above, the operation of HiCloud’s marijuana establishment violates state and local zoning laws. This is yet another reason for concluding that HiCloud’s operation is a nuisance *per se*.

The MRTMA provides that “the property where the proposed marijuana establishment is to be located” may “not [be] within an area zoned exclusively for residential use.” Mich. Comp. Laws § 333.27959. Newfield Township’s zoning ordinance further provides that marijuana establishments are only permitted in certain

non-residential districts. (See R.15-2, James Draper Decl. ¶ 10, Ex. M [Zoning Ordinance Excerpts at 85 (“Approved zoning districts for Commercial Marihuana Permits/Facilities. Grow permits and processor permits may be done in AR-1 or C-1. Compliance facility permits and transporter permits are only allowed in C-1.”)], at Ex. 1, PageID.149, 207).

Despite the fact that state and local zoning laws prohibit the operation of such facilities on property zoned exclusively for residential use, Newfield Township, through its Zoning Administrator (Micklin), and the CRA, through its executive director (Hanna), permit HiCloud to operate on property zoned residential, and the township issued a special use permit to allow HiCloud to expand its facilities onto such property, in violation of these laws. As a result, HiCloud’s operation of its marijuana enterprise within Newfield Township is a nuisance *per se*.

Having established a substantial likelihood of succeeding on the merits of their claims, we turn now to the remaining preliminary injunction factors.

B. Irreparable Harm to Plaintiffs.

A plaintiff seeking injunctive relief must show that the irreparable harm is not merely “possible” but that it is “likely,” absent an injunction. *Winter*, 555 U.S. at 22. This Court has held that a party’s injury is “irreparable” when its losses are “unrecoverable,” *Ky. v. Biden*, 57 F.4th 545, 556 (6th Cir. 2023); the injury is “not fully compensable by monetary damages,” *Overstreet v. Lexington-Fayette Urb. Cnty.*

Gov't., 305 F.3d 566, 578 (6th Cir. 2002); and when the nature of the loss would make damages “difficult to calculate.” *Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992).

The injury caused to Plaintiffs’ use and enjoyment of their private property by the noxious emissions caused by HiCloud’s marijuana enterprise is irreparable. *See, e.g., Charter White Lake v. Ciurlik Enters.*, No. 14-141776-CZ, 2014 Mich. Cir. LEXIS 687, at *13 (Sixth Judicial Cir. 2014) (“The compost’s smell was unbearable and putrid and neighboring citizens are not able to enjoy their property because of the smell. This Court credits Plaintiff’s neighbor witnesses’ testimony fully. The Plaintiff has a duty to protect its residents and enforce zoning ordinances. Monetary relief would not make the Plaintiff whole. As such, this Court concludes that Plaintiff will suffer an irreparable harm if the preliminary injunction is not granted.”); *see also City of Mt. Clemans v. Carroll*, No. 219085, 2001 Mich. App. LEXIS 2196, at *8 (Ct. App. June 29, 2001) (citing cases) (“However, the use of land in violation of an ordinance is a nuisance *per se*; therefore, plaintiff was not required to prove the existence of irreparable harm resulting from the ordinance violation.”); *Addison Twp. v. Dep’t of State Police*, 220 Mich. App. 550, 559 (Mich. Ct. App. 1996) (“A plaintiff is not required to show the existence of irreparable harm resulting from the maintenance of the nuisance.”) (superseded by statute on other grounds); *Smith v. Ann Arbor*, 303 Mich. 476, 484, 6 N.W.2d 752, 755 (1942) (“While smoke and odor from

burning leaves and brush cannot generally be considered to be ground for abating a nuisance, excessive smoke, especially if accompanied with any odor of burning rags or offensive material, might afford ground for abatement.”); *see generally CSX Transp., Inc. v. Graham*, No. 1:22-CV-116-BJB, 2024 U.S. Dist. LEXIS 135339, at *19 n.8 (W.D. Ky. July 31, 2024) (“Under Kentucky caselaw, being ‘deprived of the use and enjoyment of [one’s] land’ constitutes an ‘irreparable injury’ that has ‘no adequate or complete remedy at law.’”).

Finally, in many respects, the harm caused by HiCloud’s illicit enterprise is an injury similar to an environmental injury. As noted by the Supreme Court, “[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable. If such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment.” *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987).

In sum, the injury at issue is irreparable as a matter of fact and law.

C. Balance of Harms.

The harm to Plaintiffs’ interests (*i.e.*, their right to use and enjoy their home free from the nuisance and physical injuries caused by HiCloud’s operations) outweighs any interest that HiCloud may have with engaging in an operation that is a nuisance

per se and that constitutes illicit “racketeering activity” under federal law.⁸

D. The Public Interest.

This motion requests an order preliminarily enjoining an operation that is a public nuisance and that constitutes illicit “racketeering activity” under federal law. Indeed, this operation is a violation of federal criminal law. Enjoining this operation is in the public interest. *See, e.g., Charter White Lake*, 2014 Mich. Cir. LEXIS 687, at *15 (“This Court holds that there will not be harm to the public interest if an injunction is issued. In this case, the public is suffering from the putrid and unbearable smell emanating from the defendant’s property. Additionally, this Court concluded that defendant’s property does not qualify as a farm. The plaintiff township has a responsibility to enforce its zoning ordinance. The public will benefit from issuing a preliminary injunction so that the neighbors can enjoy their property.”); *Schall v. Martin*, 467 U.S. 253, 264 (1984) (“The ‘legitimate and compelling state interest’ in protecting the community from crime cannot be doubted. [citing cases] We have stressed before that crime prevention is ‘a weighty social objective’”); *United States v. Salerno*, 481 U.S. 739, 745 (1987) (stating that the federal government has “compelling interests in public safety”); *United States v. Miami Univ.*, 91 F. Supp. 2d 1132, 1160 (S.D. Ohio 2000) (“The Court agrees that matters involving personal safety and prevention of crime are important public issues.”);

⁸ The civil and criminal elements under RICO are the same.

United States v. Miller, 604 F. Supp. 2d 1162, 1171 (W.D. Tenn. 2009) (“The importance of crime prevention cannot be doubted . . .”).

II. Permitting the Operation of HiCloud Violates Federal and State Law, and the Court Has the Equitable Power to Remedy the Harm Caused by these Violations by Granting the Requested Injunction, including Enjoining the Unlawful Acts of Newfield Township, Micklin, and Hanna.

Under the Supremacy Clause, state and local laws that interfere or conflict with federal law are preempted and “without effect.” *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992). In other words, they cannot be enforced. And here, their enforcement is causing a cognizable injury to Plaintiffs.

A preemption analysis typically begins with “the assumption that the historic police powers of the States [are] not to be superseded” by federal law, “unless that [is] the clear and manifest purpose of Congress.” *Id.* at 516 (internal quotations and citation omitted). However, “an ‘assumption’ of non-preemption is not triggered when the State regulates in an area where there has been a history of significant federal presence,” *United States v. Locke*, 529 U.S. 89, 108 (2000), as in this case. Marijuana is a Schedule I controlled substance under the CSA.

Federal preemption exists when it is “explicitly stated [in the language of a statute or regulation] or implicitly contained in its structure and purpose.” *Cipollone*, 505 U.S. at 516 (citation and internal quotations omitted). “In the absence of an express congressional command, state law is pre-empted if that law actually conflicts with federal law, . . . or if federal law so thoroughly occupies a legislative field ‘as to

make reasonable the inference that Congress left no room for the States to supplement it.” *Id.* (citation and internal quotations omitted). Under principles of conflict preemption, federal law displaces state law that “stands as an obstacle to the accomplishment and execution of the full purposes and objectives” of federal law. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

The Supreme Court’s decision in *Gonzales* is on point:

The CSA designates marijuana as contraband for *any* purpose; in fact, by characterizing marijuana as a Schedule I drug, Congress expressly found that the drug has no acceptable medical uses. Moreover, the CSA *is a comprehensive regulatory regime* specifically designed to regulate which controlled substances can be utilized for medicinal purposes, and in what manner. Indeed, most of the substances classified in the CSA “have a useful and legitimate medical purpose.” 21 U.S.C. § 801(1). Thus, even if respondents are correct that marijuana does have accepted medical uses and thus should be redesignated as a lesser schedule drug, the CSA would still impose controls beyond what is required by California law. The CSA requires manufacturers, physicians, pharmacies, and other handlers of controlled substances to comply with statutory and regulatory provisions mandating registration with the DEA, compliance with specific production quotas, security controls to guard against diversion, recordkeeping and reporting obligations, and prescription requirements. *See* 21 U.S.C. §§ 821-830; 21 CFR § 1301 *et seq.* (2004). Furthermore, the dispensing of new drugs, even when doctors approve their use, must await federal approval. *United States v. Rutherford*, 442 U.S. 544 (1979). Accordingly, the mere fact that marijuana—like virtually every other controlled substance regulated by the CSA—is used for medicinal purposes cannot possibly serve to distinguish it from the core activities regulated by the CSA.

Gonzales, 545 U.S. at 27-28 (emphasis added); *see also* *Sensoria, Ltd. Liab. Co. v. Kaweske*, 581 F. Supp. 3d 1243, 1257-58 (D. Colo. 2022) (“Not only does the CSA make it unlawful to grow, possess, dispense, and distribute marijuana, but it creates a

comprehensive scheme that criminalizes the full range of marijuana-related activities, including providing operational space for such activities. . . . Moreover, the CSA continues to apply in full force even in states that have de-criminalized marijuana. . . . Simply put, it is illegal for any private person to possess marijuana for any purpose, even as a medical treatment.”) (internal citations and quotations omitted) (emphasis added).

State law and Newfield zoning regulations that permit the establishment of marijuana production and distribution facilities in Michigan clearly conflict with federal law that makes such practices illegal (practices that also violate RICO and that operate as a nuisance as a matter of state law). Under the Supremacy Clause, federal law prevails and renders the state and local laws “without effect.” In other words, the laws enforced by the CRA (Hanna) and Newfield Township (Micklin)⁹ that authorize the operation of HiCloud—authorizations that are causing direct harm to Plaintiffs—are “without effect.”

Moreover, the operation of HiCloud on property that is zoned residential is a violation of local and state laws—laws that Hanna, Micklin, and Newfield Township are mandated to enforce.¹⁰ The Michigan Regulation and Taxation of Marihuana Act

⁹ Micklin remains a party in his official capacity insofar as he is a local official that is also enforcing state law/policy with regard to the unlawful operation of HiCloud. *See Pusey v. City of Youngstown*, 11 F.3d 652, 657 (6th Cir. 1993) (“Thus, a city official pursues her duties as a state agent when enforcing state law or policy.”).

¹⁰ As the Newfield Township planning commission minutes illustrate, township

(MRTMA) provides that “the property where the proposed marihuana establishment is to be located” may “not [be] within an area zoned exclusively for residential use.” Mich. Comp. Laws § 333.27959. Newfield Township’s zoning ordinance further provides that marijuana establishments are only permitted in certain non-residential districts. (R.15-2, James Draper Decl. ¶ 10, Ex. M [Zoning Ordinance Excerpts at 85 (“Approved zoning districts for Commercial Marihuana Permits/Facilities. Grow permits and processor permits may be done in AR-1 or C-1. Compliance facility permits and transporter permits are only allowed in C-1.”)], PageID.207).

There is no fact dispute that HiCloud is currently operating, in large part, its marijuana business on property zoned residential. Hanna, Micklin, and Newfield Township were aware of this prior to renewing HiCloud’s permits and licenses for 2025 (and beyond). Additionally, Newfield Township/Micklin cannot circumvent the zoning requirements by issuing a special land use permit.

Under the Michigan Zoning Enabling Act (MZEA), Mich. Comp. Laws § 125.3502, “The legislative body may provide in a zoning ordinance for special land uses in a zoning district.” However, “[t]he zoning ordinance *shall* specify all of the following: (a) The special land uses and activities *eligible for approval* and the body or official responsible for reviewing and granting approval.” *Id.* § 125.3502(1)(a)

officials knew they were treading on thin ice when they recommended approval of HiCloud’s special land use permit in 2023 to expand its operations onto residential property. (*See* R.15-2, James Draper Decl. ¶ 9, Ex. K, PageID.192-94). These minutes also show that there were others who oppose the operation of HiCloud. (*Id.*).

(emphasis added). Newfield Township's zoning ordinance lists the special land uses that can be approved in R-1 ("residential") as "A. Public and semi-public uses including, but not limited to the following: Public and Private Schools, Churches, Recreation Areas, Parks and B. Earth Sheltered Dwellings." (R.26-2, HiCloud & Cali Opp'n, Ex. B [Zoning Ordinance Excerpts], PageID.407). Commercial marijuana operations are clearly *not* an approved special land use for property zoned residential. Accordingly, the operation of HiCloud is a nuisance *per se*. Mich. Comp. Laws § 125.3407 (using land in violation of a zoning ordinance is a nuisance *per se*).

Because HiCloud's operation is illicit under RICO, the CSA, and local and state laws that prohibit the operation of marijuana facilities on property zoned residential, and this illicit operation is causing irreparable harm to Plaintiffs, injunctive relief is appropriate.

The district court concluded that there is no basis for the requested injunctive relief against Newfield Township, Micklin, or Hanna (even though it is their authorizations that permit HiCloud's operation) as the court lacks authority to grant such relief. Certainly, a federal court has the authority to issue an injunction to abate the public nuisance caused by HiCloud's operation. *Charter White Lake v. Ciurlik Enters.*, No. 14-141776-CZ, 2014 Mich. Cir. LEXIS 687 (Sixth Judicial Cir. 2014) (granting a preliminary injunction to abate a nuisance). This alone is sufficient to grant the requested relief. Nonetheless, as the Supreme Court affirmed in *Armstrong*

v. Exceptional Child Center, Inc., 575 U.S. 320, 327 (2015), “[I]n a proper case, relief may be given in a court of equity . . . to prevent an injurious act by a public officer.” (internal quotations and citation omitted). This is such a case. *See generally League of Residential Neighborhood Advocates v. City of L.A.*, 498 F.3d 1052, 1056 (9th Cir. 2007) (“Municipalities may not waive or consent to a violation of their zoning laws, which are enacted for the benefit of the public. . . . Any such agreement to circumvent applicable zoning laws is invalid and unenforceable.”). Public officers from Newfield Township (Micklin) and the CRA (Hanna) are issuing licenses and approvals for HiCloud to operate, thereby causing irreparable harm to Plaintiffs.

And while “the power of federal courts of equity to enjoin unlawful executive action is subject to express and implied statutory limitations,” *Armstrong*, 575 U.S. at 327 (citing *Seminole Tribe of Fla v. Fla.*, 517 U.S. 44, 74 (1996)), no such limitations are present in this case. *See also Ex parte Young*, 209 U.S. at 148 (holding that the shareholders of a railroad could seek an injunction preventing the Minnesota attorney general from enforcing a state law setting maximum railroad rates as the federal court had the “power” in equity to “grant a temporary injunction”). Indeed, 18 U.S.C. § 1964(a) provides as follows:

The district courts of the United States *shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from*

engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of *any enterprise, making due provision for the rights of innocent persons.*

18 U.S.C. § 1964(a) (emphasis added). The illicit “enterprise” in this case is made possible by the permits and authorizations issued by Newfield Township (Micklin) and the CRA (Hanna). The district court has jurisdiction “to prevent and restrain violations of [RICO] by issuing appropriate orders.” Enjoining such permits and authorizations would “prevent and retrain” the RICO violation at issue here as well as abate the nuisance.

III. The Court Should Grant the Injunction without Requiring the Posting of Security.

Without access to the Court and its equitable powers, Plaintiffs are without power to stop the harm they are suffering as a result of the illicit marijuana enterprise operating in their neighborhood. Plaintiff James Draper has been trying for years to get the government to enforce its ordinances, laws, and rules to stop this harm, but his pleas have fallen on deaf ears. In fact, his opposition has triggered retaliatory actions against him from certain Defendants. (*See* R.8, First Am. Compl.). Plaintiffs do not possess the wealth of the marijuana industry nor the power of government. They are private citizens who simply want to use and enjoy their home without being subject to the noxious emissions coming from the neighborhood marijuana enterprise or suffering physical illnesses caused by this illicit operation.

Federal Rule of Civil Procedure 65(c) provides that a court may issue a

preliminary injunction “only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). Despite the mandatory language of the rule, “the rule in [this] circuit has long been that the district court possesses discretion over whether to require the posting of security,” if any. *Appalachian Reg’l Healthcare, Inc. v. Coventry Health and Life Ins. Co.*, 714 F.3d 424, 431 (6th Cir. 2013). Indeed, “[o]rdering an injunction bond is an exercise of the court’s equitable powers and, as such, is subject to the court’s usual equitable discretion. See 11 C. Wright & A. Miller, *Federal Practice and Procedure* § 2954, at 525-32 (1973). Accordingly, the court may order a bond that does not completely secure the enjoined party or the court may decline to order a bond, if necessary for the purpose of effecting justice between the parties.” *Div. No. 1, Bhd. of Locomotive Eng’rs v. Consol. Rail Corp.*, 844 F.2d 1218, 1227 n.15 (6th Cir. 1988) (internal quotations and citation omitted).

While there do not appear to be any hard and fast rules for determining whether the posting of security upon the granting of an injunction is required as it is within the discretion of the Court to do so, factors the Court may consider for not requiring security (or for simply requiring the posting of a nominal bond) include the strength of the party’s claim and public interest considerations. See, e.g., *Moltan Co. v. Eagle-Picher Indus.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (affirming the district court’s ruling

that “no security was needed because of the strength of Eagle-Picher’s case and the strong public interest involved” and noting that “the rule in our circuit has long been that the district court possesses discretion over whether to require the posting of security”); *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999) (holding that “[t]he district court did not err in requiring the plaintiffs to post a nominal bond of \$1,000 pursuant to Fed. R. Civ. P. 65(c)” and noting that the district court “specifically noted the public interest underlying the litigation and the unremarkable financial means of the class as a whole”);¹¹ *Ime Watchdog, Inc. v. Gelardi*, 732 F. Supp. 3d 224, 243-44 (E.D.N.Y. 2024) (“[T]he Court makes an independent determination that a security bond is not necessary in this case. The Court has concluded that Plaintiff is highly likely to prevail on the merits in this litigation and that the hardship to Defendants from a preliminary injunction, if any, would therefore be minimal. *Golden Krust Patties, Inc. [v. Bullock]*, 957 F. Supp. 2d 186, 203 (E.D.N.Y. 2013)] (‘Some courts have considered the strength of a movant’s case in analyzing the likelihood of harm to a potentially wrongfully enjoined non-movant.’ (collecting cases)); *see also Eastman Kodak Co. v. Collins Ink Corp.*, 821 F. Supp. 2d 582, 590 (W.D.N.Y. 2011) (‘The greater plaintiff’s likelihood of success on the merits, the lower the probability that an injunction in plaintiff’s favor will later be determined to have been issued in error, and consequently that [the defendant] will be

¹¹ The Court, in its discretion, could also require Plaintiffs to post a bond of \$1,000 or some other nominal amount.

found to have wrongfully suffered harm.’). Accordingly, the Court finds that no bond is required.”). In light of the unique circumstances of this case where Plaintiffs are simply trying to do that which their government representatives and other government officials have failed to do (*i.e.*, halt the illicit operation of HiCloud), the Court should find that no bond is required.

CONCLUSION

Plaintiffs satisfy the requirements for issuing the requested injunction.

Respectfully submitted,

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Counsel for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 32(a), the foregoing Brief is proportionally spaced, has a typeface of 14 points Times New Roman, and contains 12,957 words, excluding those sections identified in Fed. R. App. P. 32(f).

THE MUISE LAW GROUP, PLLC

/s/ Robert J. Muise

Robert J. Muise, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that all of the participants in this case are registered CM/ECF users.

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

Robert J. Muise (P62849)

**ADDENDUM: DESIGNATION OF RELEVANT
DISTRICT COURT DOCUMENTS**

Record No.	PageID #	DESCRIPTION
R.1		Complaint
R.8	47-86	First Amended Complaint
R.14	110-13	Motion for Preliminary Injunction
R.15	114-43	Brief in Support of Motion for Preliminary Injunction
R.15-2	145-51	Exhibit 1: Declaration of Plaintiff James Draper
	152-53	Exhibit A: Newfield Township Zoning Map
	154-55	Exhibit B: Photographs of HiCloud's Operation prior to 2023 Expansion
	156-58	Exhibit C: Map of HiCloud's Operation on Property Zoned Residential
	159-60	Exhibit D: GIS Map Showing HiCloud's Operation prior to 2023 Expansion
	161-62	Exhibit E: GIS Map Showing HiCloud's Operation after 2023 Expansion
	163-65	Exhibit F: LARA Record
	166-67	Exhibit G: CRA License Record
	168-82	Exhibit H: CRA Complaints against HiCloud
	183-84	Exhibit I: Public Safety Ordinance Complaint of June 9, 2023
	185-88	Exhibit J: Email Thread with CRA

	189-94	Exhibit K: Planning Commission Meeting Minutes
	195-97	Exhibit L: Minutes for Special Meeting of Township Board
	198-214	Exhibit M: Newfield Township Zoning Ordinance Excerpts
	215-16	Exhibit N: Public Safety Ordinance Complaint of January 2025
R.15-3	217-19	Exhibit 2: Declaration of Plaintiff Carrie Draper
R.24	345-59	Defendants Newfield Township and Steven Micklin Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction
R.24-1	360-63	Defendants' Exhibit 1: Township Board Decision
R.26	365-96	Defendants HiCloud, LLC and Endrit Cali Response to Plaintiffs' Motion for Preliminary Injunction
R.26-1	397-405	Defendants' Exhibit A: Township Board Decision
R.26-2	406-08	Defendants' Exhibit B: Township Zoning Ordinance (excerpts)
R.26-3	409-19	Defendants' Exhibit C: Township Zoning Ordinance (excerpts)
R.26-4	420-23	Defendants' Exhibit D: Declaration of Endrit Cali
R.36	598-619	Opinion and Order Granting Motions to Dismiss and Denying Plaintiffs' Motion for a Preliminary Injunction
R.41	633-35	Notice of Appeal