STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: September 27, 2017)

RHODE ISLAND PATIENT ADVOCACY COALITION FOUNDATION (RIPAC) d/b/a RIPAC; JANE DOE, I; JANE DOE, II, *Plaintiffs,*	:	
v.	:	**C.A. No. PC-2017-2989**
TOWN OF SMITHFIELD, *Defendant.*	:	

DECISION

LICHT, J. Before the Court is Plaintiffs' request to enjoin the Defendant Town of Smithfield from enforcing an amendment to its zoning ordinance concerning medical marijuana. Jurisdiction is pursuant to G.L. 1956 § 8-2-13.

I

Facts and Travel

On April 18, 2017, the Town of Smithfield (the Town) unanimously adopted an ordinance (the Ordinance) amending the Town's zoning ordinance. The Ordinance's stated purpose is "to regulate the cultivation and distribution of medical marijuana." Zoning Ordinance Amendment § 1(B). The Ordinance is relatively comprehensive, addressing patient cultivation, caregiver cultivation, cooperative cultivation, and compassion centers. Broadly speaking, the Ordinance restricts who can grow marijuana, where and how it can be grown, and creates a licensing procedure for potential growers.

Individual pseudonymous plaintiffs Jane Doe I and II (together, the Does) are residents of Smithfield and medical marijuana patient cardholders licensed under The Edward O. Hawkins

and Thomas C. Slater Medical Marijuana Act (the Hawkins-Slater Act), G.L. 1956 §§ 21-28.6-1 et seq. Doe Affs. ¶¶ 1, 3. They are also members of organizational plaintiff Rhode Island Patient Advocacy Coalition (RIPAC). Compl. ¶ 33. RIPAC and the Does (together, Plaintiffs) challenge the Ordinance and seek both declaratory and injunctive relief from this Court, claiming the Ordinance tramples upon the protections and rights afforded the Does by the Hawkins-Slater Act. The Town responds by claiming that the Plaintiffs lack standing, and even if their standing is established, that Plaintiffs have not met the burden of showing they are entitled to a preliminary injunction.

II

Standard of Review

This Court can only issue a preliminary injunction when the moving party

> "(1) has a reasonable likelihood of success on the merits, (2) will suffer irreparable harm without the requested injunctive relief, (3) has the balance of the equities, including the possible hardships to each party and to the public interest, tip in its favor, and (4) has shown that the issuance of a preliminary injunction will preserve the status quo." Iggy's Doughboys, Inc. v. Giroux, 729 A.2d 701, 705 (R.I. 1999)

"The issuance and measure of injunctive relief rest in the sound discretion of the trial justice." Cullen v. Tarini, 15 A.3d 968, 981 (R.I. 2011).

III

Analysis

A

Threshold Issues

The Town has raised several issues that could preclude Plaintiffs from filing this suit in the first place. As a result, the Court must first determine whether Plaintiffs are stymied by a lack of a private right of action or by lack of standing.[1]

1

Private Right of Action

The Town argues that the Does are barred from bringing this suit because they already have a remedy—if cited under the Ordinance, the Does "may demand an evidentiary hearing, pursuant to . . . § 21-28.6-8(b) and gain a dismissal of the charge . . ." Def.'s Mem. 8. According to the Town, "[s]ince Plaintiffs have a remedy, the Court may not imply a further remedy not set forth in the [Hawkins-Slater] Act." Id. However, the Plaintiffs have not brought their Complaint under the Hawkins-Slater Act—they have brought it under the Uniform Declaratory Judgments Act (UDJA), G.L. 1956 §§ 9-30-1 et seq.[2] The UDJA vests the Superior Court with the authority to "determine[] any question of construction or validity" of a municipal ordinance for any person

[1] There is also one evidentiary issue outstanding: at oral argument, Plaintiffs attempted to introduce documentary evidence regarding police enforcement of marijuana laws. The Town objected to this evidence and has submitted a memorandum in support of its objection to which Plaintiffs have replied. Even though the rules of evidence do not apply on a motion for preliminary injunction, R.I. R. Evid. 101(B), and the Court can rely on affidavits, the Court has not considered this evidence. The Court will not rule on the objection at this time, as it is not necessary for the resolution of the instant motion.

[2] While the Court is only considering the request for a preliminary injunction at this time, the basis for the request for injunctive relief is the UDJA action, as "[a]n injunction is a remedy, not a cause of action." Long v. Dell, Inc., 93 A.3d 988, 1004 (R.I. 2014).

"whose rights, status, or other legal relations are affected . . ." Sec. 9-30-2; see also Canario v. Culhane, 752 A.2d 476, 479 (R.I. 2000).

2

Standing

"It is well established in this state that a necessary predicate to a court's exercise of its jurisdiction under the [UDJA] is an actual justiciable controversy." Sullivan v. Chafee, 703 A.2d 748, 751 (R.I. 1997). "For a claim to be justiciable, two elemental components must be present: (1) a plaintiff with the requisite standing and (2) 'some legal hypothesis which will entitle the plaintiff to real and articulable relief.'" N & M Props., LLC v. Town of West Warwick ex rel. Moore, 964 A.2d 1141, 1145 (R.I. 2009) (quoting Bowen v. Mollis, 945 A.2d 314, 317 (R.I. 2008)). "The requisite standing to prosecute a claim for relief exists when the plaintiff has alleged that 'the challenged action has caused him injury in fact, economic or otherwise[.]'" Bowen, 945 A.2d at 317 (quoting R.I. Ophthalmological Soc'y v. Cannon, 113 R.I. 16, 22, 317 A.2d 124, 128 (1974)). "An injury in fact is 'an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not 'conjectural' or 'hypothetical.'" Warwick Sewer Auth. v. Carlone, 45 A.3d 493, 499 (R.I. 2012) (quoting N & M Props., 964 A.2d at 1145).

The Town alleges that the Plaintiffs' injuries are "purely conjectural." Def.'s Mem. 4. The Town frames the Plaintiffs' potential injuries as ones of inconvenience and contends that the "Plaintiffs continue to have the ability to access medicinal marijuana in neighboring cities and towns and continue to have the ability to possess the same amount of usable marijuana contemplated under the state Medical Marijuana Act." Id. at 5. While such a characterization may reflect part of the Plaintiffs' Complaint, their concerns go deeper than that. The Does

indicate that "[t]he Ordinance requires the exposure of [their] confidential and protected health care information to Smithfield authorities." Doe Affs. ¶ 9. Under the Hawkins-Slater Act, the list of persons to whom the Department of Health has issued registration cards "shall be confidential . . . and not subject to disclosure." Sec. 21-28.6-6(i)(3). The Town has no way of accessing this information, as it is even insulated from public records requests. Id.; see also Smithfield Town Council Mins. 3, Apr. 18, 2017. The Plaintiffs face a pressing dilemma—register with the Town and lose their state-guaranteed privacy, or risk fines for the possibility of staying anonymous. This imminent invasion of privacy presents a concrete and particularized injury, leading this Court to find that the Does have standing to challenge the Ordinance.[3]

For an organization such as RIPAC, the "standing requirement is satisfied 'when [the organization's] members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested require the participation of individual members in the lawsuit.'" In re Town of New Shoreham Project, 19 A.3d 1226, 1227 (R.I. 2011) (mem.) (quoting Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 181 (2000)). Given that the Does are members of RIPAC and have standing in their own right, the first prong is satisfied. The continued vitality and protection of the medical marijuana program is germane to RIPAC's stated purpose of

[3] The Court notes that the Does have not explicitly stated that they grow or plan to grow marijuana. (An affidavit was submitted with Plaintiffs' Supplemental Memorandum of Law filed post-argument wherein the affiant states that he/she was growing twelve mature and twelve immature medical marijuana plants. There is no indication that the affiant is one of the Plaintiffs, and the affidavit was not considered. See footnote 1, supra.) Therefore, the Court does not base its standing analysis on those grounds. The Court, however, observes that marijuana cultivation remains illegal under federal law and could understand why a litigant might not want to expose themselves to prosecution. Were the Does to be growing marijuana, it could provide independent grounds for standing. See St. George Greek Orthodox Cathedral of W. Mass., Inc. v. Fire Dep't of Springfield, 967 N.E.2d 127, 131 (Mass. 2012) ("By maintaining its existing system, the church continues to violate the ordinance; in theory, the city could issue an enforceable violation notice at any time . . . .").

"educat[ing] Rhode Island's medical marijuana patients, caregivers, doctors and others . . . and to educate the public about the medical attributes of the use of the cannabis plant and the legal status of use of the cannabis plant." Compl. ¶ 30. Finally, the nature of the claim—the legal protections of medical marijuana patients—"does not make the individual participation of each injured party indispensable to proper resolution of the cause . . ." Warth v. Seldin, 422 U.S. 490, 511 (1975). Thus, RIPAC also has standing to bring the claim.[4]

B

Injunctive Relief

This Court must now determine whether the Plaintiffs have shown the four requisite elements for granting injunctive relief: (1) a reasonable likelihood of success on the merits, (2) irreparable harm in the absence of the injunction, (3) equity weighs in the Plaintiffs' favor, and (4) issuance of a preliminary injunction will preserve the status quo. See Iggy's Doughboys, Inc., 729 A.2d at 705. Before beginning this analysis, this Court observes that "[a] plaintiff is generally entitled to injunctive relief when a municipality seeks to enforce an invalid ordinance." Women & Infants Hosp. v. City of Providence, 527 A.2d 651, 654 (R.I. 1987).

1

Likelihood of Success

In order to obtain injunctive relief, "[t]he moving party must . . . show that it has a reasonable likelihood of succeeding on the merits of its claim at trial." Fund for Cmty. Progress v. United Way of Se. New England, 695 A.2d 517, 521 (R.I. 1997). This is not "a certainty of success," but only "a prima facie case." Id. "Prima facie evidence is that amount of evidence

[4] Given that the Plaintiffs have established their own standing, "they may present the broader claims of the public at large." R.I. Ophthalmological Soc'y, 113 R.I. at 27, 317 A.2d at 130.

that, if unrebutted, is sufficient to satisfy the burden of proof on a particular issue." Paramount Office Supply Co. v. D.A. MacIsaac, Inc., 524 A.2d 1099, 1101 (R.I. 1987).

State Preemption

Plaintiffs have alleged that the Ordinance is preempted by the Hawkins-Slater Act. Indeed, the Ordinance purports to limit patient cardholder cultivation possession to two mature plants, Ordinance § 1(D)(5), while the Hawkins-Slater Act permits patient cardholders up to twelve, § 21-28.6-4(a). Additionally, the Ordinance bans all caregiver and cooperative cultivation, Ordinance § 1(E)-(F), which is permitted by the Hawkins-Slater Act, § 21-28.6-4(e), -14(a). "[A]s a general rule, a state law of general character and statewide application is paramount to any local or municipal ordinance inconsistent therewith." Mongony v. Bevilacqua, 432 A.2d 661, 664 (R.I. 1981). This "conflicts with a state statute on the same subject," making a prima facie case for direct preemption. Town of Warren v. Thornton-Whitehouse, 740 A.2d 1255, 1261 (R.I. 1999).

Furthermore, the Hawkins-Slater Act provides a "comprehensive regulatory structure" for the medical use and supply of medical marijuana. Sec. 21-28.6-2(8). "[E]very marijuana plant, either mature or seedling, grown by a registered patient or primary caregiver, must be accompanied by a physical medical marijuana tag purchased through the department of business regulation and issued by the department of health . . . ." Sec. 21-28.6-15(a). Not one but two state departments are involved in the administration of the medical marijuana program. The Department of Business Regulation alone has issued 107 pages of regulations about the program. The General Assembly has instituted an oversight committee to evaluate the compassion center program. Sec. 21-28.6-12(j). There are nineteen subsections detailing protections for the medical use of marijuana. Sec. 21-28.6-4. This level of attention and detail makes clear that "the

Legislature intended that its statutory scheme completely occupy the field of regulation on a particular subject." Town of Warren, 740 A.2d at 1261. Thus, the Ordinance "will be declared invalid if it disrupts the state's overall scheme of regulation . . ." Town of E. Greenwich v. O'Neil, 617 A.2d 104, 109 (R.I. 1992).

Portions of the Ordinance dealing with the requirements of the building in which the marijuana will be grown, such as § 1(D)(4), may also be preempted by other state statutes. See, e.g., G.L. 1956 § 23-27.3-100.1.7 ("[T]he local cities and towns shall be prohibited from enacting any local building codes and ordinances in the future."); § 23-27.3-101.3 ("When the provisions in this code specified for structural strength, adequate egress facilities, sanitary conditions, equipment, light and ventilation, and fire safety conflict with the local zoning ordinances, [the State Building Code] shall control the erection or alteration of buildings."); § 23-28.1-2(b)(3) (providing that municipal fire safety ordinances "shall be effective only upon the approval by rule of the fire safety code board of appeal and review"). While the Ordinance purports to deal with fire safety issues concerning the electrical apparatus used to grow marijuana, see, e.g., Ordinance § 1(D)(3)(c), (4)(c), there is no evidence that the Town obtained any such approval.

The Town's Zoning Authority

The Attorney General[5] astutely observes that in various places, the Hawkins-Slater Act and its corresponding regulations gives deference to municipalities and their zoning laws, indicating that the General Assembly did not intend to occupy the entire field. This may be true

[5] Both sides in this case have challenged a law's constitutionality—the Town, as will be seen infra, challenges the constitutionality of the Hawkins-Slater Act, and the Plaintiffs, by virtue of preemption, challenge the Ordinance. In accordance with § 9-30-11, the parties served the Attorney General with a copy of the proceedings. The Attorney General has only to date elected to file, as amicus, a memorandum arguing that there is no conflict between the Ordinance and the Hawkins-Slater Act.

to some extent, but this argument cuts both ways. The instances where the legislature has built in such deference is limited to compassion centers, licensed cultivators, and cooperative cultivators, all of who operate on a larger scale than the individual. See § 21-28.6-14(a)(7) (providing that cooperative cultivations must display documentation that the location and cultivation comply with applicable municipal housing and zoning codes); § 21-28.6-16(i) (providing that licensed cultivators, who sell medical marijuana to compassion centers, must abide by all zoning ordinances); 230 R.I.C.R. 80-5-1 1.1(C)(1) (limiting the Department of Business Regulation's role in the medical marijuana program to "compassion centers, licensed cultivators, and cooperative cultivations"); see also Att'y Gen.'s Mem. 5 ("Indeed, the Medical Marijuana Act recognizes the right of local cities and towns to regulate compassion centers, cooperative cultivations and licenses [sic] cultivators."). Thus, while the General Assembly may have specifically carved out space for towns to regulate medical marijuana cultivation, it has only been in the context of larger-scale operations, not individual ones.[6]

Furthermore, this Court questions whether it is within the power of municipalities to regulate an individual's small-scale cultivation of medical marijuana for personal use under its zoning authority.[7] The Town claims authority to regulate medical marijuana growth under G.L. 1956 § 45-24-37(g), which states, in part, that "plant agriculture is a permitted use within all zoning districts of a municipality, including all industrial and commercial zoning districts, except where prohibited for public health or safety reasons . . ." Interestingly, the Town pointed to no

[6] Even if this Court were inclined to agree that the state has not fully occupied the field, this argument fails to address the direct preemption discussed supra.

[7] These arguments were not fully briefed. However, "the office of a preliminary injunction is not ordinarily to achieve a final and formal determination of the rights of the parties or of the merits of the controversy . . ." Coolbeth v. Berberian, 112 R.I. 558, 564, 313 A.2d 656, 659 (1974). This Court will give the parties full opportunity to brief the matter before final adjudication. Here, though, this Court "limit[s] [its] inquiry to whether the plaintiffs have shown at least a reasonable probability, rather than a certainty, of ultimate success on a final hearing." Id. at 566, 313 A.2d at 660.

other instances where its zoning ordinance regulated agriculture in a residential zone. At oral argument, Plaintiffs contested that the growing of medical marijuana constituted plant agriculture. The Town cites to two Superior Court decisions in support of its contention that marijuana cultivation constitutes agriculture under § 45-24-37(g). However, these two cases do not quite stand for such a proposition.[8] One, Carlson v. Zoning Bd. of Review of S. Kingstown, No. WC-2014-0557, 2016 WL 7035233, at *5 (R.I. Super. Nov. 25, 2016), simply found that the plaintiff's medical marijuana cultivation did not constitute "agricultural products manufacturing." The second found that "growing medical marijuana was a horticulture exercise," but also held that it was not a "traditional agricultural land use." Baird Props., LLC v. Town of Coventry, No. KC-2015-0313, 2015 WL 5177710, at *8-9 (R.I. Super. Aug. 31, 2015).

However, "a zoning restriction imposed for considerations or purposes not embodied in an enabling act will be held invalid, not as exceeding the scope of the police power per se, but as an ultra vires act beyond the statutory authority delegated." Edward H. Ziegler, Jr., Rathkopf's The Law of Zoning and Planning § 2:15 (4th ed. 2016).

> "[C]ases where zoning ordinances and decisions thereunder may be held ultra vires include situations where regulation: (1) involves the details or the manner of on-site use, such as heating systems or laundry facilities, etc., which do not directly involve the use of land or impose externalities on nearby land; . . . or (6) restricts the use of land to deal with some community problem, such as an economic boycott, demonstrations, or school desegregation, etc., that is only tangentially related, if at all, to the use of land at a particular location or the pattern of land use within the community." Id. at § 2:10.

The regulation of personal medical marijuana cultivation may be outside the scope of the authority granted to municipalities under the Zoning Enabling Act. The Zoning Enabling Act allows municipalities to enact a zoning ordinance, which is defined as "[a]n ordinance . . . that

[8] Furthermore, while persuasive, they are not binding on this Court.

establish[es] regulations and standards relating to the nature and extent of uses of land and structures[.]" Sec. 45-24-31(72). A use is "[t]he purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained." Sec. 45-24-31(65). The word "use" "traditionally has been understood to refer to the type of activity that is allowed at a particular site, such as residential, educational, religious, industrial, retail or mining." Lord Family Windsor, LLC v. Planning & Zoning Comm'n of Windsor, 954 A.2d 831, 836-37 (Conn. 2008). There are "de minimis uses of private property which are neither regulated nor contemplated by the zoning regulations." In re Scheiber, 724 A.2d 475, 478 (Vt. 1998); see also City of New Orleans v. Estrade, 8 So. 2d 536, 555 (La. 1942) ("But, surely, it could not be seriously contended that it is a violation of the zoning ordinance for one to erect a shuffle-board or a badminton court in his own yard for the use and enjoyment of himself, his family and friends, or that it is illegal for children to engage in their various games and amusements in the yards of their homes."). It is entirely possible that the personal cultivation of medical marijuana is not a "use" that can be regulated under the Zoning Enabling Act.

Both parties presented the Court with the minutes from the Town Council meeting at which the Ordinance was enacted. Neither in these minutes nor in the Ordinance itself did the Town Council make any legislative findings. While not required to do so, the Town Council by that mechanism might have justified some of the limitations being placed on cardholders. Moreover, at the hearing, the Town offered no evidence to support its contention that two plants is sufficient for cardholders' needs, notwithstanding the fact that the General Assembly found twelve plants to be the appropriate number of plants to allow an individual cardholder to grow.

The Court is ever mindful that the Hawkins-Slater Act was enacted because the General Assembly found that it was in the interest of the health of certain Rhode Islanders to allow them

to use and grow marijuana for medicinal purposes. The Court gleans from the minutes of the Town Council meeting that the police chief and others believed, for some reason, that two plants was sufficient for a cardholder's needs, and feared the excess could be sold illegally or make cardholder growers subject to potential robbery. Again, there is no evidence in this record or known to the Court that supports a claim that two plants is sufficient for a patient's use. Given that the Hawkins-Slater Act was drafted to protect the health of those with debilitating medical conditions, the Court hopes that the Town was acting on more than a hunch when it decided to alter the protections granted to cardholders by the General Assembly. Moreover, there is no precedent of which the Court is aware that says zoning ordinances are to be drafted as crime prevention tools. That would be an unusual stretch of "the police power." If that were the case, a municipality could use its zoning ordinance to eliminate banks as they are susceptible to robbery or prohibit pharmacies from dispensing opioids because of the health threat they pose.

Ultimately, there is a likelihood that the Plaintiffs can establish that the Town exceeded its zoning authority in enacting the Ordinance.

Federal Preemption

The Town's final argument with respect to the Plaintiffs' likelihood of success on the merits is that the Hawkins-Slater Act itself is preempted by federal law, specifically the Controlled Substances Act (CSA), 21 U.S.C. §§ 801 et seq. However, if the Ordinance is beyond the scope of the Zoning Enabling Act, it is immaterial whether the Hawkins-Slater Act is valid. If the Town acted ultra vires when enacting the Ordinance, the Ordinance is unenforceable and a nullity. See Hardy v. Zoning Bd. of Review of Coventry, 113 R.I. 375, 377, 321 A.2d 289, 290-91 (1974) ("[A]ny attempt to expand or abridge in the zoning ordinance rights granted by

the enabling act is ultra vires of the jurisdiction conferred upon such a local legislature by the General Assembly and, therefore, is void."); see also Women & Infants Hosp., 527 A.2d at 653.

The Court does not rely on the foregoing, however, to conclude that the Hawkins-Slater Act is not preempted by the CSA. Of course, "[t]he Supremacy Clause of the United States Constitution, Article VI, clause 2, preempts or invalidates state law that interferes or conflicts with any federal law." Verizon New England Inc. v. R.I. Pub. Utils. Comm'n, 822 A.2d 187, 192 (R.I. 2003). But what constitutes a conflict has confounded courts. The CSA helpfully describes how it should be interpreted with regard to state law:

> "No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together." 21 U.S.C. § 903.

Congress has not chosen to completely occupy the field, instead only choosing to preempt laws that are in "positive conflict" with the CSA "so that the two cannot consistently stand together." Id.

As this Court recently observed in Callaghan v. Darlington Fabrics Corp., No. PC-2014-5680, 2017 WL 2321181, at *14 (R.I. Super. May 23, 2017), this clause fits nicely within the doctrine of "conflict preemption." Conflict preemption comes in two forms. The first arises "where compliance with both federal and state regulations is a physical impossibility . . ." Fla. Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963). The second occurs "where 'under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" Crosby v.

Nat'l Foreign Trade Council, 530 U.S. 363, 373 (2000) (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)).

The Supreme Court of Michigan recently dealt with conflict preemption in extremely similar circumstances in Ter Beek v. City of Wyoming, 846 N.W.2d 531 (Mich. 2014). In Ter Beek, the city of Wyoming penalized, inter alia, growing medical marijuana under their zoning ordinance. This ordinance conflicted with a Michigan statute that provided a regulatory scheme for medical marijuana. The city argued the CSA preempted the Michigan statute. The Supreme Court of Michigan first determined that there was no impossibility preemption because "it does not require that the City violate" the CSA. Tar Beek, 846 A.2d at 538. Such a conclusion is eminently logical and applicable to the case at bar. Nothing in the Hawkins-Slater Act requires the Town—or anyone—to "manufacture, distribute, or dispense, or possess" marijuana or to otherwise violate the CSA. 21 U.S.C. § 841(a)(1).

Finally, this Court concludes that the Hawkins-Slater Act does not stand as an obstacle to the purposes and objectives of the CSA. The key to understanding why lies in a simple proposition: "even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts." New York v. United States, 505 U.S. 144, 166 (1992). But while the "several states must be considered as sovereign and independent," M'Culloch v. Maryland, 17 U.S. 316, 342 (1819), "[i]t is well established that cities and towns have no power to enact legislation except in reliance upon those powers delegated to them from time to time by the General Assembly." Vukic v. Brunelle, 609 A.2d 938, 941 (R.I. 1992); see also R.I. Const. art. XIII, § 4 ("The general assembly shall have the power to act in relation to the property, affairs and government of any city or town by general laws . . . ."). The Hawkins-Slater Act provides

that a "qualifying patient cardholder who has in his or her possession a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege . . . . for the medical use of marijuana[.]" Sec. 21-28.6-4(a); see also § 21-28.6-4(b), (e), (j) & (m) (providing the same or similar protections for authorized purchasers, primary caregiver cardholders, and practitioners); §§ 21-28.6-12(h), -16(m) (providing the same or similar protections for compassion centers and registered cultivators).

The State of Rhode Island has granted certain individuals immunity from state prosecution under the Hawkins-Slater Act. The Hawkins-Slater Act does not (and could not) deny the federal government the ability to enforce the CSA, and does not (and could not) immunize medical marijuana users from prosecution. Accord Ter Beek, 846 N.W.2d at 540 ("Granting Ter Beek his requested relief does not limit his potential exposure to federal enforcement of the CSA against him, but only recognizes that he is immune under state law for MMMA-compliant conduct, as provided in § 4(a)."). Medical marijuana is a matter of statewide concern, and the Hawkins-Slater Act was enacted under the state's police power out of concern for the health of certain of its residents. See § 21-28.6-2(6). Thus, while cities and towns have the "right of self government in all local matters," R.I. Const. art. XIII, § 1, this "in no way affect[s] the sovereignty of the state with regard to the exercise of the police power . . ." Lynch v. King, 120 R.I. 868, 876, 391 A.2d 117, 122 (1978); see also State v. Krzak, 97 R.I. 156, 161, 196 A.2d 417, 421 (1964) ("[T]he sovereignty of the state in the matter of elections and education was not surrendered to those cities and towns which adopted a home rule charter. Neither was the sovereignty of the state with relation to the exercise of the police power transferred to such cities and towns.") (citations omitted).

The General Assembly, in exercising its police power, has withdrawn the power from the cities and towns to punish the medical use of marijuana under its own ordinances. The CSA is still in effect in Smithfield, as it is throughout Rhode Island. Nothing prevents the federal government from enforcing the CSA. Rhode Island has, simply, elected not to independently prohibit the conduct proscribed under the CSA. Even if the CSA did contain direction to the states to adopt certain laws, it would be moot, as "Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs." Printz v. United States, 521 U.S. 898, 925 (1997). Thus, this Court concludes that the CSA does not preempt the Hawkins-Slater Act. Because the Plaintiffs have made a prima facie case that the Town has failed to rebut, this Court also concludes that Plaintiffs have a likelihood of success on the merits.

Other Provisions

The Plaintiffs have challenged other provisions of the Ordinance. Since this matter is before the Court on preliminary injunction, it is not the final adjudication of this matter, and these arguments will be considered when the case is considered on preliminary or permanent injunction.

2

Irreparable Harm

"The purpose of an injunction is to prevent imminent, irreparable injury." Ward v. City of Pawtucket Police Dep't, 639 A.2d 1379, 1382 (R.I. 1994). As this Court has detailed supra, one harm the Plaintiffs have highlighted is the potential invasion of their privacy—if the Plaintiffs want to comply with the Ordinance, they must reveal what is, under the Hawkins-Slater Act, confidential information. Whether the right is given by statute or by the Constitution, "the right

of privacy must be carefully guarded for once an infringement has occurred it cannot be undone by monetary relief." Deerfield Med. Ctr. v. City of Deerfield Beach, 661 F.2d 328, 338 (5th Cir. 1981); see also Oil, Chem. & Atomic Workers Int'l Union, Local 2-286 v. Amoco Oil Co. (Salt Lake City Refinery), 885 F.2d 697, 707 (10th Cir. 1989) (finding the invasion of privacy and potential stigmatization and humiliation of a drug-testing program, despite "assurances of confidentiality," to constitute an irreparable injury). Hence, the Court finds that the unwarranted disclosure of Plaintiffs' status as medical marijuana cardholders constitutes irreparable harm.

Plaintiffs also contend that the Ordinance hinders "their ability to access medication prescribed to them by their doctor"—namely, medical marijuana. Pls.' Mem. 24. The Town observes that "there are certainly alternative sources of medical marijuana available to the individual Plaintiffs outside of the Town." Def.'s Mem. 11. Apparently, the Town feels there is no harm in patient cardholders with "[a] chronic or debilitating disease or medical condition," such as "severe, debilitating, chronic pain," "seizures," or "severe and persistent muscle spasms," having to drive out of town to obtain medication. Sec. 21-28.6-3(5)(ii). However, the General Assembly concluded otherwise and permitted these patients the right to grow their medication in their own homes.

3

Balance of the Equities and Status Quo

Testing the balance of the equities involves "examining the hardship to the moving party if the injunction is denied, the hardship to the opposing party if the injunction is granted and the public interest in denying or granting the requested relief." Fund for Cmty. Progress, 695 A.2d at 521. The hardships to the Does include revealing their medical status prematurely and increased difficulty or inability to either grow or obtain their medicine. The General Assembly has found

that "[m]odern medical research has discovered beneficial uses for marijuana in treating or alleviating pain, nausea, and other symptoms associated with certain debilitating medical conditions . . ." Sec. 21-28.6-2(1). Thus, "pursuant to its police power to enact legislation for the protection of the health of its citizens," the General Assembly enacted the Hawkins-Slater Act. Sec. 21-28.6-2(6). The State has implemented a regulatory scheme in the interests of "public safety, public welfare, and the integrity of the medical marijuana program . . ." Sec. 21-28.6-2(7). Town interference in this system, designed to be "transparent, safe, and responsive to the needs of patients," could impair the public interest as laid out by the General Assembly. Sec. 21-28.6-2(8). Thus, considering the burdens on the parties and the impact to the public interest, this Court finds the balance of the equities lies with the Plaintiffs.

Any concerns raised before the Town Council can be addressed through enforcement of other laws and the exemptions in the Hawkins-Slater Act. See § 21-28.6-4(p) (providing that "[a] qualifying patient or primary caregiver cardholder may give marijuana to another . . . provided that no consideration is paid for the marijuana"); § 21-28.6-7(a)(2)(vi) (providing that the Hawkins-Slater Act does not permit smoking of marijuana "[w]here exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare of children"). The General Assembly has endowed the Plaintiffs with certain rights relative to their health care, and the Town has put forward no evidence of any of its interests; thus, it is more equitable to deny the preliminary relief.

The status quo analysis is straightforward. The Ordinance disturbed the legislative regime set up by the Hawkins-Slater Act. The Town argues that "preventing enforcement of this measure would remove necessary public safeguards which have been in place since April 18, 2017 . . ." Def.'s Mem. 13. Yet, the Town has not pointed to any effort to charge anyone for

violating the Ordinance. Moreover, "a restraining order is meant to preserve or restore the status quo and . . . this status quo is the last peaceable status prior to the controversy." E.M.B. Assocs. v. Sugarman, 118 R.I. 105, 108, 372 A.2d 508, 509 (1977). Granting the restraining order would indeed maintain the status quo.

IV

Conclusion

The Court finds that the Plaintiffs have standing to pursue their declaratory judgment action and their request for injunctive relief. The Court also finds that the Plaintiffs have a reasonable likelihood of success on the merits, will suffer irreparable harm without the requested relief, have the balance of the equities, and that issuance of the injunction will preserve the status quo. Therefore, the Court grants the Plaintiffs' motion for a preliminary injunction. Counsel will prepare the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Rhode Island Patient Advocacy Coalition Foundation (RIPAC) d/b/a RIPAC, et al. v. Town of Smithfield**
CASE NO:	**PC-2017-2989**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**September 27, 2017**
JUSTICE/MAGISTRATE:	**Licht, J.**
ATTORNEYS:	
For Plaintiff:	**John D. Meara, Esq.** **Carl A. Chiulli, Esq.** **Matthew R. Plain, Esq.**
For Defendant:	**Edmund L. Alves, Esq.** **Marc Desisto, Esq.**