

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-20-73

UNITED CANNABIS PATIENTS AND
CAREGIVERS OF MAINE, DAWSON
JULIA, and CHRISTIAN J. RONEY,

Plaintiffs,

v.

MAINE DEPARTMENT OF
ADMINISTRATIVE AND FINANCIAL
SERVICES, and KIRSTEN FIGUEROA,
as Commissioner,

Defendants,

AUGUSTA COURTS
MAY 29 '20 AM 10:58

**COMPLAINT
FOR DECLARATORY JUDGMENT**

Plaintiffs United Cannabis Patients and Caregivers of Maine, Dawson Julia, and Christian J. Roney, by their undersigned counsel, state the following as their Complaint for Declaratory Judgment against the Maine Department of Administrative and Financial Services and Kirsten Figueroa, in her official capacity as Commissioner of the Department of Administrative and Financial Services:

Introduction

1. The Maine Legislature has enacted laws at 28-B M.R.S. § 202(2) prohibiting issuance of any adult use marijuana license to any person or entity that its not a Maine resident (the "Residency Requirement"). The Maine Department of Administrative and Financial Services is charged with enforcing Maine's Marijuana Legalization Act, 28-B M.R.S. §§ 101 *et seq.* (the "Act"), including the Maine Residency Requirement. The Maine Legislature has not removed the Residency Requirement from the Act, and no court of competent jurisdiction has issued a judgment declaring the Residency Requirement invalid. The Department, nonetheless,

has publicly announced that it will knowingly *violate* the statutory Residency Requirement by issuing Maine adult use marijuana sales licenses without consideration of Maine residency status. Plaintiffs ask the Court to enter judgment declaring that the Maine Department of Administrative and Financial Services must enforce all provisions of the Marijuana Legalization Act, including the Residency Requirement, and enjoin the Department from issuing any marijuana license in violation of 28-B M.R.S. § 202(2) until the Residency Requirement is either repealed by the Legislature or voided by a court of competent jurisdiction.

The Parties

2. Plaintiff United Cannabis Patients and Caregivers of Maine, a/k/a United Cannabis Coalition of Maine (“United Cannabis”), is a Maine non-profit corporation with its primary place of business located in Unity, Maine. United Cannabis is composed of individual members and businesses that are residents of the State of Maine, as defined by 28-B M.R.S. §§ 102(48) and 202(2).

3. Plaintiff Dawson Julia is a citizen of South China, Maine, who owns and operates a licensed medical caregiver store in Unity, Maine.

4. Plaintiff Christian J. Roney is a citizen of Waterville, Maine, who has applied for an adult use marijuana license from the Department in full compliance with the Residency Requirement.

5. The Department of Administrative and Financial Services is the Maine administrative agency responsible for implementing, administering, and enforcing Maine’s Marijuana Legalization Act, 28-B M.R.S. § 104(1), and its principal place of business is in Augusta, Maine.

6. Kirsten Figueroa is the Commissioner of the Department and is named in her official capacity as Commissioner.

The Marijuana Legalization Act and Residency Requirement

7. In 2018, the Maine Legislature amended the Marijuana Legalization Act and established the regulatory framework for the sale of adult use recreational marijuana in Maine.

8. The Act provides that applicants “for a license to operate a marijuana establishment *must* meet each of the” general licensing criteria. 28-B M.R.S. § 202 (emphasis added).

9. The Residency Requirement criteria set out in 28-B M.R.S. § 202(2), is one of the general licensing criteria and specifically states:

Resident. If the applicant is a natural person, the applicant must be a resident. If the applicant is a business entity:

A. Every officer, director, manager and general partner of the business entity must be a natural person who is a resident; and

B. A majority of the shares, membership interests, partnership interests or other equity ownership interests as applicable to the business entity must be held or owned by natural persons who are residents or business entities whose owners are all natural persons who are residents.

10. Additionally, 28-B M.R.S. § 102(48) of the Act defines “resident” as:

[A] natural person who:

A. Has filed a resident individual income tax return in this State pursuant to Title 36, Part 8 in each of the 4 years prior to the year in which the person files an application for licensure under this chapter. This paragraph is repealed June 1, 2021.

B. Is domiciled in this State; and

C. Maintains a permanent place of abode in this State and spends in aggregate more than 183 days of the taxable year in this State.

11. The Act provides that the Department “shall implement, administer and enforce this chapter and the rules adopted pursuant to this chapter,” and also grants the Department the “sole authority” to “[g]rant or deny applications for licensure of marijuana establishments under this chapter.” 28-B M.R.S. § 104(1).

12. The Department issued final rules to govern the adult use marijuana industry in Maine, which took effect in late 2019. *See* 18-691 C.M.R. ch. 1 – Adult Use Marijuana Program. These rules incorporate the Residency Requirement as provided by the Act. *See* 18-691 C.M.R. ch. 1, § 2.3.1(B).

13. Accordingly, as provided by the Act and the Department’s Rules, in order for the Department to grant an application for a license to operate an adult use marijuana establishment in Maine, the applicant must meet the Residency Requirement.

Plaintiffs’ Interests in the Residency Requirement

14. United Cannabis comprises individual members and businesses that are residents of the State of Maine, as defined by the Act, 28-B M.R.S. §§ 102(48) and 202(2), and the Department’s Rules 18-691 C.M.R. ch. 1, § 2.3.1(B) (the “members”).

15. Plaintiff United Cannabis’s members, including Plaintiff Dawson Julia, operate licensed medical marijuana storefronts, as provided by the Maine Medical Use of Marijuana Act, 22 M.R.S. §§ 2421 *et seq.*, as caregivers involved with the cultivation and sale of medical marijuana.

16. Licensure and operation of new adult use dispensaries will create new economic competition that affects licensed medical marijuana caregivers’ business operations, including the businesses of Plaintiff United Cannabis’s members and Plaintiff Dawson Julia.

17. Plaintiff Christian Roney has applied for an adult use medical marijuana license in compliance with all requirements of the Act, including the Residency Requirement.

18. Plaintiff Roney has developed business plans in order to obtain the necessary grow and sales licenses from the Department to operate an adult use marijuana establishment as provided by the Act.

19. Plaintiffs have all invested in their Maine marijuana businesses, and developed and tailored their anticipated business operations in reliance on the express language of the Department's Rules and the Act, including the Residency Requirement.

20. The Residency Requirement provides an economic advantage to Plaintiffs by limiting the eligibility for adult use marijuana businesses to Maine residents.

21. Plaintiffs have reasonably relied upon the economic advantage provided by the Residency Requirement in the Act and the Department's Rules.

22. Plaintiffs have an economic interest in the Department's enforcement of the Residency Requirement when the Department exercises its exclusive statutory authority to grant or deny applications for licensure as marijuana establishments under the Act.

23. Issuance of an adult use marijuana license to any individual or entity that cannot comply with all requirements of the Act injures Plaintiffs by wrongfully increasing economic competition to Plaintiffs' business operations that the Maine Legislature expressly excluded from Maine's marijuana marketplace.

The Department's Non-Enforcement

24. On March 20, 2020, a complaint was filed in Federal Court in the District of Maine against the Department alleging that the Residency Requirement was unconstitutional and the complaint sought to enjoin the Department from enforcing the Residency Requirement. *See*

Complaint, *NPG LLC et al. v. Maine Dept. of Administrative and Financial Services et al.*, Docket No. 1:20-cv-00107-NT (D. Me. Mar. 20, 2020).

25. On May 11, 2020, the Department filed a stipulation of dismissal in the federal court action (the “Stipulation”).

26. A true and accurate copy of the Stipulation is attached hereto as **Exhibit A**.

27. The Stipulation dismissed the federal court action without prejudice and indicated that “defendants will not be enforcing the Residency Requirement or any agency rules, regulations or guidance which enforce or implement the Residency Requirement.”

28. On or about May 11, 2020, the Department issued a public notice stating that the Department would “cease enforcement of the State of Maine’s adult use marijuana program residency requirements.”

29. A true and accurate copy of the Department’s public notice on nonenforcement is attached hereto as **Exhibit B** (the “Nonenforcement Notice”).

30. The United States District Court for the District of Maine never entered a judgment in the action, or otherwise adjudicated the constitutionality or validity of the Residency Requirement.

31. No other court of competent jurisdiction, including no Maine state court, no panel of the United States Court of Appeals for the First Circuit, nor the United States Supreme Court has issued an order or judgment declaring that the Residency Requirement in the Act is unconstitutional or otherwise invalid.

32. Additionally, no United States federal court has held that it is unconstitutional or otherwise unlawful for a state to limit the potential applicants for licenses to sell adult use recreational marijuana to residents of that state.

33. The Maine Legislature has not introduced, debated, or passed any new legislation removing the Residency Requirement in the Act.

34. The Department, therefore, lacks any statutory or other legal basis for violating the Act by disregarding the enacted Residency Requirement.

COUNT I
Declaratory Judgment

35. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

36. The plain language of the Act requires that applicants for a marijuana establishment license meet the Residency Requirement as provided by 28-B M.R.S. § 202(2).

37. The Department is required to implement and enforce the Act, which includes the Residency Requirement, when granting or denying an application for a marijuana establishment license. *See* 28-B M.R.S. §§ 104, 202(2).

38. The Department's decision not to enforce the Residency Requirement violates the Act and its statutory mandate to enforce the provisions of the Act.

39. The Department also lacks a valid legal basis to refuse to enforce the Residency Requirement because the Legislature has not changed or removed the Residency Requirement and no court of competent jurisdiction has issued a judgment declaring the Residency Requirement unlawful or otherwise invalid.

40. This Court has jurisdiction over this matter pursuant to 4 M.R.S. § 105 and 14 M.R.S. §§ 5951 *et seq.*

41. Venue is proper in this Court pursuant to 14 M.R.S. § 501.

42. Plaintiffs have standing to raise this issue before this Court pursuant to 14 M.R.S. § 5954 because the Department's knowing violation of the Residency Requirement causes Plaintiffs economic injury.

WHEREFORE, Plaintiffs respectfully request that the Court declare that the Department and Commissioner Kirsten Figueroa must enforce the Residency Requirement provided by 28-B M.R.S. 202(2); order the Department to reimburse Plaintiff for its costs, interest and attorney's fees in this matter; and grant such other and further relief as the Court deems just and proper.

COUNT II
Injunctive Relief

38. Plaintiffs repeat and reallege every fact set forth above as if fully set forth herein.

39. Plaintiffs seek to enjoin the Department and Commissioner Kirsten Figueroa from issuing any marijuana license to any non-resident in violation of 28-B M.R.S. § 202(2).


40. Plaintiffs and the general public will both suffer irreparable injury if the injunction is not granted because the Department may be limited in its ability to revoke licenses issued in knowing violation of Maine law.

59. The aforementioned injury outweighs any harm that granting the injunctive relief could inflict on the Department or its Commissioner.

60. The public interest will be served by granting the injunction and ensuring lawful application and enforcement of Maine's Marijuana Legalization Act, 28-B M.R.S. §§ 101 *et seq.*

WHEREFORE, Plaintiffs request that this Court enjoin the Department and Commissioner Kirsten Figueroa from issuing any marijuana license to any non resident in violation of 28-B M.R.S. § 202(2), and grant any other relief the Court deems necessary and just.

Dated at Portland, Maine, this 28th day of May 2020.


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Attorneys for Plaintiffs

EXHIBIT

A

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

NPG, LLC d/b/a Wellness Connection,

AND

Wellness and Pain Management
Connection, LLC

Plaintiffs

v.

Department of Administrative and
Financial Services, State of Maine,

AND

Kristine Figueroa, in her official
capacity as Commissioner of the
Department of Administrative and
Financial Services, State of Maine,

Defendants.

Civil Action No. 1:20-cv-00107-NT

STIPULATION OF DISMISSAL

The defendants have been advised by the Attorney General that the Maine Marijuana Legalization Act's residency requirement, 28-B M.R.S. sec. 202(2) (the "Residency Requirement"), is subject to significant constitutional challenges and is not likely to withstand such challenges. The Attorney General thus does not intend to defend the Residency Requirement, given the constitutional issues raised in this lawsuit. Accordingly, defendants will not be enforcing the Residency Requirement or any agency rules, regulations or guidance which enforce or implement the Residency Requirement.

Based on the forgoing, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), the parties stipulate and agree that all claims are dismissed without prejudice and without fees and costs.

DATED: May 11, 2020

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