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RHODE ISLAND PATIENT )  
ADVOCACY COALITION )  
FOUNDATION (RIPAC) d/b/a )  
RIPAC; JANE DOE, I; )  
JANE DOE, II, )  
Plaintiffs, )  
v. )  
TOWN OF SMITHFIELD, )  
Defendant. )

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C.A. NO. PC-2017-

**COMPLAINT**

**I.**  
**PARTIES**

1. The plaintiff, Jane Doe, I (“Doe I”), is a resident of the Town of Smithfield, Providence County, Rhode Island.
2. The plaintiff, Jane Doe, II (“Doe II”), is a resident of the Town of Smithfield, Providence County, Rhode Island.
3. The plaintiff, Rhode Island Patient Advocacy Coalition Foundation (RIPAC) d/b/a RIPAC (“RIPAC”), is a Domestic Non-Profit Corporation organized under the laws of the State of Rhode Island.
4. The defendant, Town of Smithfield, is located in Providence County, Rhode Island.

**II.**  
**JURISDICTION AND VENUE**

5. This Court possesses jurisdiction pursuant R.I.G.L. § 9-30-1 *et seq* in that a declaration of the rights, status, and legal relations of the parties is sought.
6. Venue is proper pursuant to R.I.G.L § 9-4-3 and because the Town of Smithfield is located in Providence County, Rhode Island.

**III.**  
**FACTS**

**A.**  
**THE EDWARD O. HAWKINS AND THOMAS C. SLATER**  
**MEDICAL MARIJUANA ACT, R.I.G.L. § 21-28.6-1 ET SEQ.**

**i.**  
**LEGISLATIVE FINDINGS**

7. The General Assembly passed The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act, R.I.G.L. § 21-28.6-1 *et seq.*, (“Act”) governing medical marijuana in the State of Rhode Island, as fully incorporated and attached hereto as **Exhibit A.**
8. The Act, R.I.G.L. § 21-28.6-2(1), finds and declares that “Modern medical research has discovered beneficial uses for marijuana in treating or alleviating pain, nausea, and other symptoms associated with certain debilitating medical conditions . . .”
9. The Act, R.I.G.L. § 21-28.6-2(5), finds and declares that “State law should make a distinction between the medical and nonmedical use of marijuana. Hence, the purpose of this chapter is to protect patients with debilitating medical conditions, and their physicians and primary caregivers, from arrest and prosecution, criminal and other penalties, and property forfeiture if such patients engage in the medical use of marijuana.”
10. The Act, R.I.G.L. § 21-28.6-2(6), finds and declares that “The general assembly enacts this chapter pursuant to its police power to enact legislation for the protection of the health of its citizens, as reserved to the state in the Tenth Amendment of the United States Constitution.”
11. The Act, R.I.G.L. § 21-28.6-2(7), finds and declares that “It is in the state’s interests of public safety, public welfare, and the integrity of the medical marijuana program to ensure that the possession and cultivation of marijuana for the sole purpose of medical use for alleviating symptoms caused by debilitating medical conditions is adequately regulated.”
12. The Act, R.I.G.L. § 21-28.6-2(8), finds and declares that “The goal of the medical marijuana program is to create a system that is transparent, safe, and responsive to the needs of patients. Consequently, the medical marijuana program requires regulation and a comprehensive regulatory structure that allows for oversight over all suppliers of medical marijuana while ensuring both safety and patient access.”

ii.

**HEALTH REGULATIONS**

13. The Act, R.I.G.L. § 21-28.6-5, provides that the Department of Health is charged with promulgating regulations to govern the manner in which it shall consider applications for, and renewals of, registry identification cards for qualifying patients, primary caregivers, and authorized purchasers.
14. Pursuant to the Act, R.I.G.L. § 21-28.6-5, the Department of Health has promulgated Rules and Regulations Related to the Medical Marijuana Program (“Health Regulations”), as fully incorporated and attached hereto as **Exhibit B**.

iii.

**BUSINESS REGULATIONS**

15. The Act, R.I.G.L. § 21-28.6-14, § 21-28.6-15, and § 21-28.6-16, provides that the Department of Business Regulation is charged with promulgating regulations to govern cooperative cultivations, medical marijuana plant tags, and licensed cultivators.
16. Pursuant to the Act, R.I.G.L. § 21-28.6-14, § 21-28.6-15, and § 21-28.6-16, the Department of Business Regulation has promulgated Rules and Regulations Related to the Medical Marijuana Program Administered (“Business Regulations”), as fully incorporated and attached hereto as **Exhibit C**.

iv.

**DEBILITATING MEDICAL CONDITION**

17. The Act, R.I.G.L. § 21-28.6-3(5)(i), states that a “Debilitating medical condition” means “Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, Hepatitis C, post-traumatic stress disorder, or the treatment of these conditions.”
18. The Act, R.I.G.L. § 21-28.6-3(5)(ii), states that a “Debilitating medical condition” means “A chronic or debilitating disease or medical condition, or its treatment, that produces one or more of the following: cachexia or wasting syndrome; severe, debilitating, chronic pain; severe nausea; seizures, including but not limited to, those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to, those characteristic of multiple sclerosis or Crohn’s disease; or agitation of Alzheimer’s Disease.”
19. The Act, R.I.G.L. § 21-28.6-3(5)(iii), states that a “Debilitating medical condition” means “Any other medical condition or its treatment approved by the department, as provided for in § 21-28.6-5.”

**B.**  
**THE PLAINTIFFS**

20. Doe I has been diagnosed with a “debilitating medical condition” as defined under the Act, R.I.G.L. § 21-28.6-3(5).
21. Doe I received a written certification from a “practitioner” as defined under the Act, R.I.G.L. § 21-28.6-3(16) that Doe I use medical marijuana to treat her debilitating medical condition.
22. Doe I applied for and received a “registry identification card” as defined under the Act, R.I.G.L. § 21-28.6-3(19) for medical marijuana on or about December 2016.
23. Doe I has been and continues to be a duly licensed patient “cardholder” as defined under the Act, R.I.G.L. § 21-28.6-3(2).
24. Doe I’s status as a duly licensed patient cardholder, and information related thereto, is protected and confidential.
25. Doe II has been diagnosed with a “debilitating medical condition” as defined under the Act, R.I.G.L. § 21-28.6-3(5).
26. Doe II received a written certification from a “practitioner” as defined under the Act, R.I.G.L. § 21-28.6-3(16) that Doe II use medical marijuana to treat her debilitating medical condition.
27. Doe II applied for and received a “registry identification card” as defined under the Act, R.I.G.L. § 21-28.6-3(19) for medical marijuana on or about January 2017.
28. Doe II has been and continues to be a duly licensed patient “cardholder” as defined under the Act, R.I.G.L. § 21-28.6-3(2).
29. Doe II’s status as a duly licensed patient cardholder, and information related thereto, is protected and confidential.
30. RIPAC’s purpose is to educate Rhode Island’s medical marijuana patients, caregivers, doctors and others who are interested in medical marijuana 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.
31. RIPAC regularly holds meetings to provide information to its members on various aspects of the medical marijuana program, including but not limited to classroom education on the cultivation of marijuana, notice as to the ever changing legal landscape of the program, and legislation of interest.

32. The members of RIPAC consist of medical marijuana patients, caregivers, cultivators, medical practitioners, and general members of the public.
33. Doe I and Doe II are members of RIPAC and benefit from its services and advocacy and education efforts in Rhode Island.

**C.**  
**THE TOWN OF SMITHFIELD'S**  
**ZONING ORDINANCE AMENDMENT**

34. Upon information and belief, there are more than 300 cardholder patients and 46 cardholder caregivers who reside in the Town of Smithfield.
35. Notwithstanding significant state governance and regulation, the Town of Smithfield unanimously passed and adopted Zoning Ordinance Amendment § 4.4L on April 18, 2017 (“Ordinance”), as incorporated and attached hereto as **Exhibit D**.
36. Upon information and belief, the Ordinance was passed, in part, because of a presentation provided by the Rhode Island Attorney General’s office.
37. The Town of Smithfield passed the Ordinance subsequent to the passage and effective date of the Act.
38. The Town of Smithfield passed the Ordinance subsequent to the Health Regulations being promulgated by the Department of Health.
39. The Town of Smithfield passed the Ordinance subsequent to the Business Regulations being promulgated by the Department of Business Regulation.
40. Upon information and belief, the Town of Smithfield passed the Ordinance in an effort to be as stringent as possible with respect to the growth, use, and cultivation of medical marijuana in the Town of Smithfield.

**i.**  
**MEDICAL MARIJUANA**  
**PROHIBITIONS BY ORDINANCE**

41. Notwithstanding the Act, Health Regulations, and Business Regulations in their entirety, the Ordinance, § 4.4L(C), states that “Unless specifically authorized by this section, all growing and cultivation of marijuana is prohibited within the boundaries of the Town of Smithfield.”

**a.**  
**PATIENT CULTIVATION AND POSSESSION**  
**PROHIBITIONS BY ORDINANCE**

42. R.I.G.L. § 21-28.6-4(a) states 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; provided, that the qualifying patient cardholder possesses an amount of marijuana that does not exceed twelve (12) mature marijuana plants that are accompanied by valid medical marijuana tags, two and one-half (2.5) ounces of usable marijuana, or its equivalent amount, and an amount of wet marijuana to be set by regulations promulgated by the departments of health and business regulation . . .”
43. Notwithstanding R.I.G.L. § 21-28.6-4(a), the Ordinance, § 4.4L(D)(1), states that “Patient Cultivation shall only be allowed at the Patient Cardholder’s primary residence.”
44. Notwithstanding R.I.G.L. § 21-28.6-4(a), the Ordinance, § 4.4L(D)(5), states that: “Patient Cultivation possession limits shall be as follows:

	Mature Plants	Immature Plants (Seedlings) and Unusable Marijuana	Usable Marijuana
Patient Cardholder	2 plants	2 plants	2.5 Ounces

45. Notwithstanding R.I.G.L. § 21-28.6-4(a), the Ordinance, § 4.4L(D)(5), eliminates a qualifying patient cardholder’s ability to cultivate twelve mature marijuana plants.

**b.**  
**CAREGIVER CULTIVATION AND POSSESSION**  
**PROHIBITIONS BY ORDINANCE**

46. R.I.G.L. § 21-28.6-4(e) states that “A primary caregiver 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 assisting a patient cardholder, to whom he or she is connected through the department of health’s registration process, with the medical use of marijuana; provided, that the primary caregiver cardholder possesses an amount of marijuana that does not exceed twelve (12) mature marijuana plants that are accompanied by valid medical marijuana tags, two and one-half (2.5) ounces of usable marijuana, or its equivalent amount, and an amount of wet marijuana set in regulations promulgated by the departments of health and business regulation for each qualified patient cardholder to whom he or she is connected through the department of health’s registration process.”

47. Notwithstanding R.I.G.L. § 21-28.6-4(e), the Ordinance, § 4L(E), states that:  
“Caregiver Cultivation, as defined in this section, shall be prohibited in all Zoning Districts.”
48. Notwithstanding R.I.G.L. § 21-28.6-4(e), the Ordinance, § 4.4L(E), eliminates a primary caregiver cardholder from assisting a patient cardholder, to whom he or she is connected through the department of health’s registration process.

c.  
**COOPERATIVE CULTIVATION  
PROHIBITIONS BY ORDINANCE**

49. R.I.G.L. § 21-28.6-14(a) states that “Two (2) or more qualifying cardholders may cooperatively cultivate marijuana in residential or non-residential locations subject to the following restrictions...”
50. Notwithstanding R.I.G.L. § 21-28.6-14(a), the Ordinance, § 4.4L(F)(1), states that:  
“Residential Cooperative Cultivation, as defined in this section, shall be prohibited in all Zoning Districts.”
51. Notwithstanding R.I.G.L. § 21-28.6-14(a), the Ordinance, § 4.4L(F)(2), states that:  
“Non-Residential Cooperative Cultivation, as defined in this section, shall be prohibited in all Zoning Districts.”

II.  
**PATIENT CONFIDENTIALITY**

52. R.I.G.L. § 21-28.6-6(i)(1) states that “Applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers, authorized purchaser, and practitioners, are confidential and protected under the federal Health Insurance Portability and Accountability Act of 1996, and shall be exempt from the provisions of chapter 2 of title 38 et seq. (Rhode Island Access to Public Records Act) and not subject to disclosure, except to authorized employees of the department of health as necessary to perform official duties of the department, and pursuant to subsection (j).”
53. R.I.G.L. § 21-28.6-6(k) states that “It shall be a crime, punishable by up to one hundred eighty (180) days in jail and a one thousand dollar (\$ 1,000) fine, for any person, including an employee or official of the departments of health, business regulation, public safety, or another state agency or local government, to breach the confidentiality of information obtained pursuant to this chapter . . .”

54. R.I.G.L. § 21-28.6-6.1(j)(1) states that “(1) Applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and practitioners, are confidential and protected under the federal Health Insurance Portability and Accountability Act of 1996, and shall be exempt from the provisions of chapter 2 of title 38 et seq. (Rhode Island Access to Public Records Act) and not subject to disclosure, except to authorized employees of the department as necessary to perform official duties of the department, and pursuant to subsection (k) of this section.”
55. R.I.G.L. § 21-28.6-6.1(l) states that “It shall be a crime, punishable by up to one hundred eighty (180) days in jail and a one thousand dollar (\$ 1,000) fine, for any person, including an employee or official of the department or another state agency or local government, to breach the confidentiality of information obtained pursuant to this chapter . . .”
56. Notwithstanding R.I.G.L. §§ 21-28.6-4, 21-28.6-6(i)(1), 21-28.6-6(k), 21-28.6-6.1(j)(1), and 21-28.6-6.1(l), the Ordinance, § 4.4L(D)(2), states that “The Patient Cardholder shall apply for all appropriate approvals and inspections with the Smithfield Fire Department.”
57. Notwithstanding R.I.G.L. §§ 21-28.6-4, 21-28.6-6(i)(1), 21-28.6-6(k), 21-28.6-6.1(j)(1), and 21-28.6-6.1(l), the Ordinance, § 4.4L(D)(2), states that “The Patient Cardholder shall apply for all appropriate Zoning, Building, Electrical, Mechanical, and Plumbing Permits as required by the Rhode Island State Building Code.”
58. Notwithstanding R.I.G.L. §§ 21-28.6-4, 21-28.6-6(i)(1), 21-28.6-6(k), 21-28.6-6.1(j)(1), and 21-28.6-6.1(l), the Ordinance, § 4.4L(D)(3), states that “The Application for a Zoning Certificate shall include, at a minimum, the following documentation: (a) A detailed and accurate narrative description of the proposed cultivation operation; (b) Proof of registration with the Rhode Island State Police if required by State law; (c) Proof of approval of the proposed project by the Smithfield Bureau of Fire Prevention; (d) Building plans signed and stamped by a Rhode Island licensed architect or engineer, including project certification if required by Section 128.0 of the Rhode Island State Building Code; and (e) Evidence of approved sewer or ISDS service.”
59. Notwithstanding R.I.G.L. §§ 21-28.6-4, 21-28.6-6(i)(1), 21-28.6-6(k), 21-28.6-6.1(j)(1), and 21-28.6-6.1(l), the Ordinance, § 4.4L(D)(4), states that “The Patient Cardholder shall demonstrate to the Building Official that the following requirements have been met: (a) That the area used for growing is secured by locked doors; (b) That the area used for growing has two (2) means of egress; (c) That the area used for growing shall not be within ten (10) feet of a heating or other ignition source such as an electric, propane, natural gas or oil fired furnace or heater, or such larger distance as may be required by manufacturer specifications; (d) That the area used for growing shall have



proper ventilation to mitigate the risk of mold; (e) That the area used for growing shall have carbon filters installed to reduce odors and that proper measures are to be employed to prevent odors from reaching neighboring properties; and (f) That smoke alarms/detectors are installed in accordance with the State Fire Code and/or to the satisfaction of the Fire Department.”

**IV.**  
**COUNTS**

**COUNT I**  
**DECLARATORY RELIEF**  
**PURSUANT TO R.I.G.L. § 9-30-1 ET SEQ.**

60. The plaintiffs reallege and incorporate by reference the allegations contained in all prior paragraphs.
61. The Ordinance harms, violates, restricts, and infringes upon the rights of the plaintiffs as comprehensively established by and through the Act and regulated by the Health Regulations and Business Regulations.
62. The Ordinance harms and threatens the health and wellbeing of the plaintiffs by, including but not limited to, restricting, preventing, and complicating their access to medical treatment for their debilitating medical condition.
63. The Ordinance harms the privacy rights and interests of the plaintiffs by, including but not limited to, exposing, requiring the exposure, and causing the exposure of confidential and protected health care information.
64. The Ordinance unjustly targets and discriminates against the plaintiffs based upon their debilitating medical condition status and status as a duly licensed patient cardholders.

**WHEREFORE**, the plaintiffs respectfully request that this Court: (a) Declare that the Ordinance is contrary to and violates the laws of the State of Rhode Island and Providence Plantations, namely the Act; (b) Award attorneys’ fees and costs; and (c) All and any other judgment or relief this Court deems proper and just.

**COUNT II**  
**EQUAL ACCESS TO JUSTICE FOR SMALL BUSINESS AND INDIVIDUALS**  
**PURSUANT TO R.I.G.L. § 42-92-1 ET SEQ.**

65. The plaintiffs reallege and incorporate by reference the allegations contained in all prior paragraphs.

66. The Town of Smithfield acted without substantial justification in enacting the Ordinance as it on its face and as applied violates, restricts, and infringes upon the rights of the plaintiffs as comprehensively established by and through the Act and regulated by the Health Regulations and Business Regulations.
67. The Town of Smithfield acted without substantial justification in enacting the Ordinance as it is discriminatory on its face and as applied.
68. Upon conclusion of the instant action and being deemed prevailing parties, the plaintiffs will seek reasonable litigation expenses, including, but not limited to attorneys' fees, witness fees, and other costs and expenses as were reasonably incurred.

**WHEREFORE**, the plaintiffs respectfully request that this Court: (a) Find and declare the plaintiffs as prevailing parties in this action; (b) Find and declare that the Town of Smithfield acted without substantial justification in passing the Ordinance; (c) Award the plaintiffs reasonable litigation expenses, including, but not limited to attorneys' fees, witness fees, and other costs and expenses as were reasonably incurred; and (d) All and any other judgment or relief this Court deems proper and just.

**COUNT III**  
**INJUNCTIVE RELIEF**

69. The plaintiffs reallege and incorporate by reference the allegations contained in all prior paragraphs.
70. The plaintiffs will be irreparably harmed if this Court does not grant injunctive relief restraining the enforcement of the Ordinance because they have been and will be restricted from accessing treatment for their debilitating medical conditions.
71. The public interest will be substantially harmed if this Court does not grant injunctive relief restraining the enforcement of the Ordinance because the public will continue to be restricted from accessing treatment for their debilitating medical conditions.
72. Any alleged harm or prejudice suffered by the Town of Smithfield if enjoined from enforcing the Ordinance is outweighed by the irreparable harm and damage that the plaintiffs and public will continue to suffer if an injunction does not issue enjoining the Town of Smithfield.
73. The status quo will be preserved if the Town of Smithfield is restricted from enforcing the Ordinance because medical marijuana in Rhode Island is contemplated and governed by the Act and regulated by the Health Regulations and Business Regulations.

**WHEREFORE**, the plaintiffs respectfully request that this Court: (a) Order a preliminary injunction barring enforcement of the Ordinance; (b) Order a permanent injunction barring enforcement of the Ordinance; and (c) All and any other relief this Court deems proper and just.

**PLAINTIFFS DEMAND A TRIAL BY JURY AS TO ALL ISSUES AND ALL COUNTS OF PLAINTIFFS' COMPLAINT.**

**PLAINTIFFS DEMAND A SPEEDY HEARING AS TO ALL ISSUES AND ALL COUNTS OF THE PLAINTIFFS' COMPLAINT PURSUANT TO RULE 57 OF THE SUPERIOR COURT RULES OF CIVIL PROCEDURE.**

The Plaintiffs,  
Jane Doe I, Jane Doe II, and RIPAC  
By their attorneys,



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