

Town Enjoined from Using Zoning Laws to Circumvent RI Medical Marijuana Act

Description

A Rhode Island Superior Court judge has halted the Town of Smithfield's attempts to limit medical marijuana cultivation by patients through its zoning laws.

In April, the Smithfield (RI) Town Council passed an ordinance that amended the Town's zoning laws by prohibiting licensed medical marijuana patients from possessing more than two mature marijuana plants and two marijuana seedlings at the patient's primary residence. The new ordinance also created a licensing procedure for potential growers. At the meeting where the Town Council approved the ordinance, the Town's Police Chief testified that two plants should be sufficient, and expressed fears that patients could sell the excess illegally or could be subject to potential robbery. By contrast, the Rhode Island Medical Marijuana Act (RIMMA) specifically permits for the cultivation of 12 mature plants, and specifies where medical marijuana can be grown.

Judge Richard Licht's decision seemed particularly concerned that the Town offered no evidence to support its contention that two plants is sufficient for cardholders' needs, despite the fact that the General Assembly found twelve plants to be the appropriate number of plants for an individual to grow. The decision also finds that the Town exceeded its zoning authority in enacting the ordinance, and that federal law does not preempt the RIMMA.

At this point, the Town has not indicated whether it will appeal the decision. At the same time, the Providence Journal quoted Stephen Brown, the executive director of the American Civil Liberties Union of RI, as stating that a volunteer attorney is reviewing similar ordinances in eight other Rhode Island towns that have restricted patient growing in similar ways.

The decision is important because it limits the authority of cities and towns to place restrictions on the provisions of the RIMMA, particularly as they apply to individual patients, under the guise of zoning ordinances. The decision also is consistent with previous Superior Court decisions regarding zoning ordinances in North Kingstown and South Kingstown. However, the RIMMA gives the cities and towns more latitude to require cultivators and compassion centers to comply with zoning rules. Because the plaintiffs in these cases were patients, whether cities and towns may properly place zoning restrictions on cultivators and compassion centers is still an open question.

[The complete decision can be found here.](#)

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