

**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.

INJUNCTIVE RELIEF SOUGHT

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NPG, LLC, d/b/a Wellness Connection and Wellness and Pain Management Connection, LLC, file this Complaint for Declaratory and Injunctive Relief against the Department of Administrative and Financial Services (“Department”) and Kristine Figueroa, in her official capacity as Commissioner of the Department, as follows:

SUMMARY OF CLAIM

1. The adult use marijuana industry is about to launch in Maine and is expected to be highly lucrative. The legal marijuana industry is quickly growing nationwide, with retail sales reaching \$12 billion last year. In Maine, the medical

marijuana market is now the state's third largest industry, reaching retail sales of \$111.6 million last year.¹ And Maine's adult use marijuana market is expected to be even larger. The *Bangor Daily News* has reported that "industry experts expect adult-use marijuana businesses to take off quickly, in many cases displacing the already lackluster market for medical marijuana." Lori Valigra, *How the first year of Maine's recreational marijuana market will likely roll out*, *Bangor Daily News* (Jun. 17, 2019).

2. Though Maine's adult use marijuana industry is expected to create significant economic opportunities, a state statute reserves these opportunities in large part for four-year Maine residents, to the exclusion of non-residents. Under 28-B M.R.S. § 202(2) (the "Residency Statute"), non-residents are prohibited both from receiving adult use marijuana licenses and from owning a majority of any Maine company that holds an adult use license.

3. The purpose of the Residency Statute is to discriminate against non-residents. The Department of Administrative and Financial Services has declared on its website that Maine's marijuana program is designed to "[e]nsure that economic opportunities afforded by marijuana legalization is [sic] available chiefly for the citizens of Maine."

4. The Residency Statute violates the dormant Commerce Clause of the United States Constitution by explicitly and purposefully favoring Maine residents over non-residents. Before legal sales of adult use marijuana begin in Maine, the Court should enjoin the Defendants from enforcing the Residency Statute. This is the only

¹ See Penelope Overton, *State's medical marijuana market much bigger than anyone realized*, *Portland Press Herald* (Feb. 24 2019).

way to ensure that residents and non-residents alike, including Plaintiffs, are able to participate in Maine's adult use marijuana industry.

5. If its enforcement is not enjoined, the Residency Statute will also harm businesses owned by Maine residents who plan to participate in the program by arbitrarily limiting the universe of available investors and business partners available to these businesses. This impacts larger businesses like NPG, LLC, but also smaller Maine businesses that are looking for financial assistance from family members and acquaintances residing beyond Maine's borders.

PARTIES AND JURISDICTION

6. Wellness and Pain Management Connection, LLC ("WPMC") is a Delaware Corporation. More than 95 percent of WPMC's membership interests are owned by non-Maine companies which are, in turn, largely or entirely owned by non-Maine residents. WPMC has been a long-term and significant investor in Maine's medical marijuana program. If the Residency Statute did not exist, WPMC would apply for adult use licenses. It has not applied, however, because doing so would be futile for WPMC as long as the Residency Statute remains in effect. Unless enforcement of the Residency Statute is enjoined, WPMC will be unable to receive an adult use license in Maine. WPMC will thus be deprived of significant and valuable business opportunities due solely to a Maine law that specifically targets non-Maine companies like WPMC for the explicit purpose of advantaging Mainers.

7. NPG, LLC d/b/a Wellness Connection ("Wellness Connection") is a Maine company that has applied for multiple licenses to operate in Maine's adult use marijuana market. It is majority owned by Northeast Patients Group d/b/a Wellness Connection of Maine, which owns four of the eight registered dispensaries in Maine's

medical marijuana program. Because 51 percent of Wellness Connection is currently owned by Northeast Patients Group, with the other 49 percent being owned by a non-resident corporation, Wellness Connection is unable to sell any additional equity to out-of-state investors without violating 28-B M.R.S. § 202(2). Unless the Residency Statute is enjoined, Wellness Connection will be harmed by this limitation on its ability to sell equity and raise capital for its adult use marijuana operations. The Residency Statute also decreases the value of Wellness Connection by significantly limiting the universe of possible shareholders and investors in the company.

8. The Department of Administrative and Financial Services is the administrative department within the State of Maine responsible for implementing, administering and enforcing Maine's Marijuana Legalization Act, including the Residency Statute. *See* 28-B M.R.S. § 104(1).

9. Kristine Figueroa is the Commissioner of the Department. Kristine Figueroa and the Department are collectively referred to as the "Department" in this Complaint.

10. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 since Wellness Connection and WPMC have asked it to rule that Maine's Residency Statute violates the United States Constitution.

MAINE'S RESIDENCY STATUTE IS UNCONSTITUTIONAL

11. Adult use marijuana has been legal in Maine since 2016, when Maine voters approved Maine Question 1, *An Act to Legalize Marijuana*. Now, four years later, sales of recreational marijuana are about to begin.

12. Since the 2016 referendum, the launch of Maine's adult use marijuana program has been delayed by political back-and-forth in Augusta. In 2018, the

legislature significantly amended the Marijuana Legalization Act (Maine Rev. Stat. Title 28-B, Ch. 1) and created the regulatory framework necessary for adult use sales, including the Residency Statute.

13. The Residency Statute, 28-B M.R.S. § 202(2), explicitly privileges four-year Maine residents over residents of other states. The statute provides:

2. 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;
- 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.

A resident is defined by the Marijuana Legalization Act as follows:

Resident. “Resident” means 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. 28-B M.R.S. § 102(48).

14. In the spring of 2019, Maine’s Office of Marijuana Policy released rules to govern the industry; these rules, in final form, took effect later in 2019. 18-691 C.M.R. Ch. 1 – Adult Use Marijuana Program. The rules incorporate the statutory residency requirements, *id.* § 2.3.1(B), and allow the Department to “require information to verify that business structures, loans, franchise agreements, royalty agreements and other

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