

United States Court of Appeals For the First Circuit

No. 21-1719

NORTHEAST PATIENTS GROUP, d/b/a Wellness Connection of Maine;
HIGH STREET CAPITAL PARTNERS, LLC,

Plaintiffs, Appellees,

v.

UNITED CANNABIS PATIENTS AND CAREGIVERS OF MAINE,

Intervenor-Defendant, Appellant,

MAINE DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES;
KIRSTEN FIGUEROA, Commissioner of the Maine Department of
Administrative and Financial Services,

Defendants.

No. 21-1759

NORTHEAST PATIENTS GROUP, d/b/a Wellness Connection of Maine;
HIGH STREET CAPITAL PARTNERS, LLC,

Plaintiffs, Appellees,

v.

KIRSTEN FIGUEROA, Commissioner of the Maine Department of
Administrative and Financial Services,

Defendant, Appellant,

MAINE DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES;
UNITED CANNABIS PATIENTS AND CAREGIVERS OF MAINE,

Defendants.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. Nancy Torresen, U.S. District Judge]

Before

Barron, Chief Judge,
Lynch and Gelpí, Circuit Judges.

Matthew Warner, with whom Jonathan Mermin, Alexandra Harriman, and Preti, Flaherty, Beliveau & Pachios, LLP were on brief, for appellees.

James G. Monteleone, with whom Bernstein Shur was on brief, for appellant United Cannabis Patients and Caregivers of Maine.

Christopher C. Taub, Chief Deputy Attorney General of Maine, with whom Aaron M. Frey, Attorney General of Maine, Thomas A. Knowlton, Deputy Attorney General of Maine, and Paul E. Switter, Assistant Attorney General of Maine, were on brief, for appellant Kirsten Figueroa.

August 17, 2022

BARRON, Chief Judge. This appeal concerns whether the Maine Medical Use of Marijuana Act, 22 M.R.S. §§ 2421-2430 (2009) ("Maine Medical Marijuana Act"), violates what is known as the dormant Commerce Clause of the United States Constitution by requiring "officers" and "directors" of medical marijuana "dispensar[ies]," id. § 2428(6)(H), operating in Maine to be Maine residents. The United States District Court for the District of Maine held that Maine Medical Marijuana Act's residency requirement does violate the dormant Commerce Clause, notwithstanding that Congress enacted the Controlled Substances Act ("CSA"), 21 U.S.C. § 801 et seq., to "eradicate the market" in marijuana, see Gonzalez v. Raich, 545 U.S. 1, 19 n.29 (2005). The District Court concluded that is so, because the residency requirement is a facially protectionist state regulation of an interstate market in medical marijuana that continues to operate even in the face of the CSA. We affirm.

I.

Maine enacted the Maine Medical Marijuana Act in 2009 to authorize participation in the market in medical marijuana in that state in specified circumstances. See Maine Medical Use of Marijuana Act, 22 M.R.S. §§ 2421-2430 (2009) (the "Medical Marijuana Act") (permitting the "acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana" relating to prescribed treatments for

certain medical conditions). Among other things, the Maine Medical Marijuana Act provides that a "dispensary" may sell medical marijuana in the state, so long as certain requirements are satisfied. Id. It then goes on to define a "dispensary" as "an entity registered under [22 M.R.S. § 2425-A] that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana plants or harvested marijuana or related supplies and educational materials to qualifying patients and the caregivers of those patients." Id. § 2422(6).

The residency requirement that is at issue in this appeal appears in § 2428(6)(H) of the Maine Medical Marijuana Act. It provides that, for a "dispensary" to be authorized under state law to sell "medical marijuana" in Maine, "all [the] officers or directors of a dispensary must be residents of [Maine]." Id. § 2422(6)(H) (the "residency requirement"). The phrase "[o]fficer or director" is then defined broadly in a separate provision of the Maine Medical Marijuana Act to include "a director, manager, shareholder, board member, partner, or other person holding a management position or ownership interest in the organization." Id. § 2422(6-B).

Northeast Patients Group is a corporation that is wholly owned by three Maine residents and that owns and operates three of Maine's seven licensed dispensaries as a for-profit corporation.

High Street Capital is a Delaware corporation that is owned exclusively by non-Maine residents and that wants to acquire Northeast Patients Group. If the deal between the two companies were to proceed, as both High Street Capital and Northeast Patients Group desire, then the resulting company would not be able to function as a dispensary under Maine law in consequence of the Maine Medical Marijuana Act's residency requirement, because the "officers or directors" of that new company would not be only Maine residents.

Northeast Patients Group and High Street Capital ("plaintiffs") filed this suit under 42 U.S.C § 1983 and 28 U.S.C. § 2201 against the Maine Department of Administrative and Financial Services ("the Department") and Kirsten Figueroa, the Commissioner of the Department, on December 17, 2020, in the District of Maine to challenge the Maine Medical Marijuana Act's residency requirement. The complaint alleges that the residency requirement violates the dormant Commerce Clause by permitting only in-staters to serve as "officers or directors" of "dispensaries."

Figueroa and the Department answered the complaint on January 29, 2021. Shortly thereafter, United Cannabis Patients, a nonprofit advocacy group that represents medical marijuana businesses owned by Maine residents, moved to intervene in the

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.