

servants with deep subject matter expertise. Current law requires executive agencies to prepare a comprehensive, on-the-record, rationale supporting each regulation, including public input. Agencies must also explore a range of alternatives and prove that the adopted regulation is the most cost-effective and efficient one possible. The legislative vetoes contained in § 2-26-6(e) and § 21-28.6-6(g)(8)(ii) by contrast, require no analysis, no explanation and no public input. They threaten to transform a logical and comprehensive marijuana regulatory system into an arbitrary and fragmented one – a regime that may be both difficult for agencies to enforce and for the public to challenge.

PARTIES

1. Plaintiff Gina M. Raimondo is the duly elected Governor of Rhode Island.
2. Plaintiff Rhode Island Department of Business Regulation (DBR) is an executive branch agency charged with the licensure and regulation of certain businesses, including industrial hemp growers, CBD distributors and retailers and medical marijuana cultivators, cooperative cultivations and compassion center dispensaries.
3. Plaintiff Rhode Island Department of Health (RIDOH) is an executive branch agency charged with preventing the spread of disease and promoting the health and safety of the people of Rhode Island. Included within RIDOH's mandate is the regulation of consumable hemp products and the regulation of the use of medical marijuana.
4. Representative Nicholas A. Mattiello is the Speaker of the Rhode Island House of Representatives. He is sued in his official capacity.
5. Senator Dominick J. Ruggerio is the President of the Rhode Island Senate. He is sued in his official capacity.

6. Together, the House of Representatives and the Senate make up the Rhode Island General Assembly. The House and Senate are made parties to this action pursuant to R.I. Gen. Laws § 9-30-11.
7. Attorney General Peter F. Neronha is a generally elected constitutional officer with common law and statutory powers and duties. R.I. Const. Art. IX, section 12. He has been given notice of this action in his official capacity pursuant to R.I. Gen. Laws §9-30-11 which entitles him to be heard in any declaratory judgment action involving the constitutionality of a state statute.

JURISDICTION AND VENUE

8. Subject matter jurisdiction in this case is properly conferred in this Court pursuant to R.I. Gen. Laws § 9-30-1, *et seq.* and Rule 57 of the Superior Court Rules of Civil Procedure.

FACTS

The Constitutional Structure of Rhode Island Government

9. Article V of the Rhode Island Constitution distributes the powers of the government into “three separate and distinct departments: the legislative, executive and judicial.”
10. Pursuant to Article IX, section 1 of the Constitution, the Governor is vested with the State’s chief executive power and is charged with ensuring that its laws are faithfully executed. R.I. Const. Art. IX, section 2.
11. The Constitution vests the legislative power in “two houses, the one to be called the senate, the other the house of representatives; and both together the general assembly.” R.I. Const. Art. VI, section 2.

12. The exercise of legislative power to make laws requires the concurrence of the two houses of the General Assembly (bicameralism) and the presentation of the adopted bill to the Governor for endorsement (presentment). R.I. Const. Art. IX, section 14.
13. In 2004, the voters repealed the so-called “plenary powers” clause of the Constitution (Art. VI, section 10) which allowed the Legislature to exercise any power not otherwise prohibited by the Constitution.
14. The current constitutional structure thus prohibits the Legislature from usurping core functions of either of the other two branches of Rhode Island government.

Article 15 of the Budget

15. In June of 2019, the Legislature passed, and the Governor signed, HB 5151Aaa, An Act Relating to Making Appropriations in Support of FY 2020 (the “Budget”).
16. Article 15 of the Budget relates to Marijuana. It includes chapters on Hemp (the Industrial Hemp Growth Act, R.I. Gen. Laws § 2-26-1 et seq.) and on Medical Marijuana (The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act, R.I. Gen. Laws § 21-28.6-1 et seq.) (collectively referred to as the “Acts”). A true copy of Article 15 is attached as Exhibit A.

The Industrial Hemp Growth Act

17. The Industrial Hemp Growth Act authorizes DBR to adopt rules and regulations to implement the Act, including “prescrib[ing] rules and regulations for all operational requirements for licensed growers, handlers, CBD distributors and retailers, and to ensure consistency in manufactured products and appropriate packaging, labeling, and placement with respect to retail sales not inconsistent with law, to carry in effect the provisions of this chapter.” R.I. Gen. Laws §§ 2-26-6 (a), (b), (c) and (d); R.I. Gen. Laws § 2-26-5.

18. The Hemp Act also authorizes RIDOH to promulgate regulations governing food processing and food safety for hemp-derived consumable CBD products. R.I. Gen. Laws § 2-26-5(b).
19. Finally, the Hemp Act requires that “[a]ll new and revised rules and regulations promulgated by [DBR] and/or [RIDOH] pursuant to this chapter shall be subject to approval by the general assembly prior to enactment.” R.I. Gen. Laws § 2-26-6(e).

The Medical Marijuana Act

20. The Medical Marijuana Act authorizes DBR and/or RIDOH to promulgate rules and regulations in connection with all aspects of the operation, licensure and registration of the State’s medical marijuana compassion centers, cultivators, cooperative cultivations, cannabis testing labs, primary caregivers, authorized purchasers and patients, along with enforcement of the Act’s provisions.
21. Like the Hemp Act, the Medical Marijuana Act also requires that “[a]ll new and revised rules and regulations promulgated by [DBR] and/or [RIDOH] pursuant to this chapter shall be subject to approval by the general assembly prior to enactment.” R.I. Gen. Laws § 21-28.6-6(g)(8)(ii). The legislative pre-approval provisions of the Acts are hereinafter referred to as the “Legislative Veto Provisions.”

The Constitutional Infirmities of the Legislative Veto Provisions

22. Once the Legislature enacted the Hemp and Medical Marijuana Acts – including the robust delegation of rulemaking authority in each act – its control over the regulation of industrial Hemp and Medical Marijuana ended.
23. The promulgation of administrative regulations necessary to implement these Acts is a core executive function within the purview of DBR and RIDOH.

24. The Legislative Veto Provisions undermine the Executive's ability to faithfully execute the law by allowing the Legislature to control executive agency rulemaking in the areas of hemp and medical marijuana regulation and oversight including rules regarding cultivation, distribution, sale, use, registration, licensing, operations and enforcement.
25. The Legislative Veto Provisions also undermine the Executive's ability to enforce the law in these sensitive areas. The exercise of the veto permits nullification of all or selected parts of what would otherwise be coherent agency regulatory schemes.
26. And, unlike the agencies charged with rulemaking authority, the Legislature is not required to explain its rationale for any veto, potentially leaving the public and agencies with little regulatory interpretive guidance.
27. Legislative vetoes exert a policy-making effect equivalent to amending or repealing existing legislation. Any such legislative action is, therefore, subject to the enactment and presentment requirements of Article IX, section 14 of the Constitution. Yet, the Legislative Veto Provisions contain no enactment or presentment requirement.
28. The legislative veto of executive rulemaking is a violation of the separation of powers guaranteed by Article V of the Constitution.

COUNT I – DECLARATORY JUDGMENT

29. The Plaintiffs incorporate herein all previous paragraphs.
30. The Plaintiffs seek a declaration pursuant to R.I. Gen. Laws 9-30-1, *et seq.* and Rule 57 of the Superior Court Rules of Civil Procedure that the Legislative Veto Provisions of Article 15 are unconstitutional and further that the Legislative Veto Provisions of R.I. Gen. Laws §§ 2-26-6(e) and 21-28.6-6(g)(8)(ii), are unconstitutional.

31. The Plaintiffs seek a declaration that the Legislative Veto Provisions are severable from the remaining provisions of the respective statutes and Article 15.

32. The Plaintiffs seek such further relief as the Court deems just.

COUNT II - PRELIMINARY INJUNCTION

33. The Plaintiffs incorporate herein all previous paragraphs.

34. In accordance with the changes to the Hemp and Medical Marijuana Acts pursuant to Article 15, the DBR and RIDOH are preparing to promulgate Rules and Regulations for the implementation and enforcement of both Acts.

35. These proposed Rules and Regulations will govern “all operational requirements for licensed growers, handlers, CBD distributors and retailers, and to ensure consistency in manufactured products and appropriate packaging, labeling, and placement with respect to retail sales not inconsistent with law, to carry in effect the provisions of [chapter 26 of Title 2]”, (R.I. Gen. Laws §§ 2-26-6 (a), (b), (c) and (d); R.I. Gen. Laws § 2-26-5), as well as all aspects of the operation, licensure and registration of the State’s medical marijuana compassion centers, cultivators, cooperative cultivations, cannabis testing labs, primary caregivers, authorized purchasers and patients, along with enforcement of the Act.

36. Interference with the Executive’s exercise of its constitutional and statutory obligations will cause irreparable harm by not only interfering with the timely and complete oversight of the respective Hemp and Medical Marijuana licenses and licensed facilities identified in the respective statutes and Article 15, but also cause irreparable harm to the constitutional rights guaranteed by the separation of powers.

37. For the reasons stated supra, the Plaintiffs have demonstrated a likelihood of success on the merits thus warranting a preliminary injunction pending resolution of the instant declaratory action.

38. Plaintiffs respectfully request a Preliminary Injunction preventing the Defendants from implementing R.I. Gen. Laws § 2-26-6(e) and R.I. Gen. Laws § 21-28.6-6 (g)(8)(ii) during the pendency of the within action or otherwise interfering with the Executive's exercise of rulemaking.

Respectfully Submitted,

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Governor of the State of Rhode Island.
By her attorney,

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CERTIFICATE OF SERVICE

I hereby certify that, on October 22, 2019

I electronically filed and served this document through the electronic filing system on the following:

The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Marc DeSisto

Marc DeSisto