STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: May 23, 2017]

CHRISTINE CALLAGHAN, *Plaintiff,*	:	
v.	:	**C.A. No. PC-2014-5680**
DARLINGTON FABRICS CORPORATION and THE MOORE COMPANY, *Defendants.*	:	

DECISION

"I get high with a little help from my friends"

—The Beatles, 1967

LICHT, J. Over fifty years ago, pop culture addressed the use of marijuana in our society. Within the past decade, the General Assembly legalized the use of medical marijuana, and it became lawful to sell Rocky Mountain High cannabis in Colorado. Last fall, the voters of our neighbor, Massachusetts, authorized the legal possession and sale of marijuana. Today, the debate rages in Rhode Island political circles over legalizing the recreational use of "pot." Until recently, Rhode Island courts have dealt with the subject solely from the perspective of the criminal law. However, our civil jurisprudence will undoubtedly face an onslaught of litigation concerning the lawful use of marijuana. A colleague recently analyzed the zoning law of a town to determine if growing marijuana is agriculture. Carlson v. Zoning Bd. of Review of South Kingstown, No. WC-2014-0557, 2016 WL 7035233 (R.I. Super. Nov. 25, 2016). We read of towns enacting zoning ordinances outlawing the cultivation of medical marijuana, which

ordinances will most certainly be challenged. See, e.g., Ter Beek v. City of Wyoming, 846 N.W.2d 531 (Mich. 2014).

While the legal use of marijuana, whether medicinal or recreational, makes for interesting political and philosophical discourse from law review articles to the dinner table, a Superior Court justice cannot participate in that debate. Consequently, this Court's challenge is limited to discerning the intent of the General Assembly in enacting the Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act (the Hawkins-Slater Act), G.L. 1956 §§ 21-28.6-1 et seq. To adequately perform its task, this Court must wade into the weeds of the law of private rights of action, federal preemption, and statutory interpretation. Hopefully, it will not write out of key or analyze out of tune.

Plaintiff Christine Callaghan (Plaintiff) has brought this action against Defendants Darlington Fabrics Corporation (Darlington) and the Moore Company (together, Defendants), alleging employment discrimination with respect to hiring for an internship position because she held a medical marijuana card. Defendants have moved for summary judgment on all three counts under Superior Court Rules of Civil Procedure 56; Plaintiff has filed a cross-motion for summary judgment on Counts I and III, and otherwise opposes Defendants' motion on Count II. For the reasons stated below, the Court grants Plaintiff's cross-motion and denies the Defendants' motion.

I

Facts and Travel

Most of the facts in this case are undisputed. In June 2014, Plaintiff, then a Master's student studying textiles at the University of Rhode Island, sought an internship as a requirement of her program. Compl. ¶¶ 7, 11-12. Her professor referred her to Darlington, a division of the

Moore Company. Compl. ¶¶ 4, 13. Plaintiff met with Darlington Human Resources Coordinator Karen McGrath on June 30, 2014. Defs.' Mem. 3. At this meeting, Plaintiff signed Darlington's Fitness for Duty Statement, acknowledging she would have to take a drug test prior to being hired. Id. at 3-4. During this meeting, Plaintiff also disclosed that she held a medical marijuana card, authorized by the Hawkins-Slater Act. Id. at 4. The interview concluded shortly thereafter.

On the morning of July 2, 2014, Ms. McGrath and a colleague, Ms. Linda Ann Morales, had a conference call with Plaintiff. Id. Ms. McGrath asked Plaintiff if she was currently using medical marijuana, to which Plaintiff responded affirmatively. Id. Plaintiff also indicated that as a result, she would test positive on her pre-employment drug screening. Id. Ms. McGrath responded by informing Plaintiff that a positive test would "prevent the Company from hiring her." Id. Plaintiff informed Ms. McGrath that she was allergic to many other painkillers and that she would neither use marijuana in or bring it to the workplace. Defs.' Answers to Interrog. 3.

That afternoon, Ms. McGrath and Ms. Morales called Plaintiff to inform her that Darlington was "unable to hire her." Defs.' Mem. 5. According to Darlington,

> "Because Ms. Callaghan put the Corporation on notice that she was currently using marijuana, would not stop using marijuana while employed by the Company, and could not pass the required pre-employment drug test, and thus could not comply with the Corporation's drug-free workplace policy, the Corporation did not hire her." Defs.' Answers to Interrog. 7.

Plaintiff filed a three-count complaint on November 12, 2014. Count I seeks a declaration that the "failure to hire a prospective employee based on his or her status as a medical marijuana card holder and user is a violation of the" Hawkins-Slater Act. Compl. ¶ 29. Counts II and III seek damages: Count II alleges Defendants' conduct violated the Rhode Island Civil Rights Act (RICRA), G.L. 1956 §§ 42-112-1 et seq.; Count III alleges violations of the Hawkins-Slater Act due to employment discrimination.

II

Standard of Review

"Summary judgment is 'a drastic remedy,' and a motion for summary judgment should be dealt with cautiously." Estate of Giuliano v. Giuliano, 949 A.2d 386, 390 (R.I. 2008) (citation omitted). On a motion for summary judgment, the movant must "establish that there exists no genuine dispute with respect to the material facts of the case." Id. at 391. This Court can grant summary judgment only if it concludes, "after viewing the evidence in the light most favorable to the nonmoving party, that there is no genuine issue of material fact to be decided and that the moving party is entitled to judgment as a matter of law." Lacey v. Reitsma, 899 A.2d 455, 457 (R.I. 2006).

III

Analysis

Because Count I, the declaratory judgment request, and Count III, the Hawkins-Slater Act claim, both deal with the Hawkins-Slater Act, the Court will address those first. The Court deals with Count III initially as the reasoning therein informs the analysis of Count I. After those counts, the Court will move to Count II, the RICRA claim.

A

Count III: Employment Discrimination under the Hawkins-Slater Act

First, the Court must determine whether the Hawkins-Slater Act provides a private right of action through which Plaintiff can seek relief. Section 21-28.6-4(d)[1] of the Hawkins-Slater Act provides: "No school, employer, or landlord may refuse to enroll, employ, or lease to, or

[1] P.L. 2016, ch. 142, art. 14, § 1, shifted the sections of the Hawkins-Slater Act. In 2012, at the time of the incident at issue, this provision was at § 21-28.6-4(c). Additionally, P.L. 2014, ch. 515, § 2 amended this subsection in ways not germane to this case. The Court will refer to this provision as § 21-28.6-4(d) throughout this decision.

otherwise penalize, a person solely for his or her status as a cardholder." Plaintiff contends that she was not hired because she was a cardholder, and she contends that this prohibition against discriminatory hiring practices should apply to her. Despite this direct prohibition, the statute fails to provide an express private right of action. Thus the first of many questions this Court must tackle is whether the General Assembly intended § 21-28.6-4(d) to be enforceable or not. To do so, the Court must turn to statutory interpretation, as the intent of the Legislature is not obvious. "'In matters of statutory interpretation [the Court's] ultimate goal is to give effect to the purpose of the act as intended by the Legislature.'" Whittemore v. Thompson, 139 A.3d 530, 540 (R.I. 2016) (quoting GSM Indus., Inc. v, Grinnell Fire Prot. Sys. Co., Inc., 47 A.3d 264, 268 (R.I. 2012)). To discern that purpose, however, the Court must resolve several conflicting jurisprudential principles.

1

Contradictory Canons

On the one hand, "[i]t is well settled in this jurisdiction that when the language of a statute is unambiguous and expresses a clear and sensible meaning, this Court must interpret the statute literally and must give the words of the statute their plain and obvious meaning." Bandoni v. State, 715 A.2d 580, 584 (R.I. 1998). "When a statute 'does not plainly provide for a private cause of action [for damages], such a right cannot be inferred.'" Stebbins v. Wells, 818 A.2d 711, 716 (R.I. 2003); but see Bandoni, 715 A.2d at 585 (denying a private right of action "where our Legislature has neither by express terms nor by implication provided" for one). Our Supreme Court has routinely refused to imply a private right of action. E.g., Great Am. E & S Ins. Co. v. End Zone Pub & Grill of Narragansett, Inc., 45 A.3d 571, 575 (R.I. 2012) (no private right of action under § 27-9.1-4, the Unfair Claims Settlement Practices Act); Tarzia v. State, 44 A.3d

1245, 1258 (R.I. 2012) (no private right of action under G.L. 1956 § 12-1-12(a), a records sealing statute); Heritage Healthcare Servs., Inc. v. Marques, 14 A.3d 932, 939 (R.I. 2011) (no private right of action under P.L. 2003, ch. 410, § 3, involving a workers' compensation fund); Stebbins, 818 A.2d at 716 (no private right of action under G.L. 1956 § 5-20.8-5, requiring real estate agents to provide buyers with disclosure statements); Cummings v. Shorey, 761 A.2d 680, 685 (R.I. 2000) (no private right of action under G.L. 1956 §§ 44-5-11(b) and 44-5-22 for missed tax certification deadlines); Bandoni, 715 A.2d at 584 (no private right of action under §§ 12-28-3 to 12-28-5.1, the Victim's Bill of Rights); Pontbriand v. Sundlun, 699 A.2d 856, 868 (R.I. 1997) (no private right of action under G.L. 1956 § 19-14-2, regarding those allowed to inspect financial records); Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996) (no private right of action under G.L. 1956 § 37-13-14, requiring governmental entities to demand bonds from contractors they employ); In re John, 605 A.2d 486, 488 (R.I. 1992) (no private right of action under G.L. 1956 § 15-7-7(1), regarding termination of parental rights); Citizens for Pres. of Waterman Lake v. Davis, 420 A.2d 53, 57 (R.I. 1980) (no private right of action under § 2-1-22, the Freshwater Wetlands Act).

Since the Hawkins-Slater Act does not contain an express private right of action, at first glance it appears that the aforementioned cases would militate against implying a private right of action under the Hawkins-Slater Act. However, there is another principle which cuts strongly the other way: that the Court "will not ascribe to the General Assembly an intent to enact legislation which is devoid of any purpose, inefficacious, or nugatory." Kingsley v. Miller, 120 R.I. 372, 376, 388 A.2d 357, 360 (1978). This canon of interpretation has long been recognized in Rhode Island. See Mowry v. Staples, 1 R.I. 10, 16 (1835); see also Brennan v. Kirby, 529 A.2d 633, 637 (R.I. 1987); State v. Gonsalves, 476 A.2d 108, 111 (R.I. 1984); Carrillo v. Rohrer, 448 A.2d

1282, 1285 (R.I. 1982); Town of Scituate v. O'Rourke, 103 R.I. 499, 509, 239 A.2d 176, 182 (1968); Long v. Fugere, 56 R.I. 137, 142 (1936). In each of the private cause of action cases listed earlier, refusing to recognize a private right of action did not result in the statute being inefficacious.

To see whether these two tenets can comfortably coexist here, it is instructive to examine these prior cases that have declined to recognize a private right of action by implication. The cases can generally be placed in one of four categories: those (1) imposing civil penalties, (2) authorizing government enforcement, (3) directing government action, or (4) stating policy considerations. The Court examines each in turn.

In Tarzia, the plaintiff sued the state for, inter alia, violations of § 12-1-12(a), "which governs the destruction or sealing of records of people who have been acquitted or otherwise exonerated." Tarzia, 44 A.3d at 1254. The plaintiff "argue[d] that although the only remedy explicitly included in the sealing statute [was] a monetary fine, there exist[ed] other causes of action available to him." Id. at 1257. The Court held that "the Legislature specifically limited the remedy for the violation of the statute to a monetary fine demonstrat[ing] 'that the [L]egislature provided precisely the redress it considered appropriate.'" Id. (quoting Sterling Suffolk Racecourse Ltd. P'ship v. Burrillville Racing Ass'n, Inc., 989 F.2d 1266, 1270 (1st Cir. 1993)). Thus, in Tarzia, there was clearly nothing nugatory about § 12-1-12(a)—the statute made a particular action subject to a civil penalty, enforceable by the designated government agency.

Several of the other listed cases stem from similar circumstances. In Stebbins, a "buyer attempted to allege a private cause of action for damages against defendants for their asserted violations of [Chapter 20.8 of Title 5's] disclosure provisions." Stebbins, 818 A.2d at 715. However, the court held that the $100 civil penalty was the "particular enforcement provision"

the Legislature had contemplated. Id. at 716. In Pontbriand, the statute in question had "three express remedies for its enforcement," including a $1000 civil fine and, potentially, dismissal from state employment. Pontbriand, 699 A.2d at 868. Finally, in Great American, a violation of the unfair insurance claim practice the statute prohibited was punishable by a substantial fine, see G.L. 1956 § 27-9.1-6, determined by the director of business regulation. Great Am. E & S Ins. Co., 45 A.3d at 575.[2] Thus, these statutes were not superfluous by virtue of their express enforcement mechanisms—just not the private one the plaintiffs in each case desired.

Similar to instances where the statute provided for a civil fine are cases where the statute enables or empowers a government agency to take some action. In In re John, for instance, at issue was § 15-7-7, which provided that, if certain facts were found, a "court shall, upon a petition duly filed after notice to the parent and hearing thereon, terminate any and all legal rights of the parent to the child." A woman sought to use this statute to terminate her former husband's parental rights. In re John, 605 A.2d at 487. However, the Court held that "[t]he state needs a method to terminate the parental rights of unfit or unable parents," and that "[t]ermination of parental rights in these instances achieves the purpose of § 15-7-7, which is to allow the state to make the children available for adoption." Id. Likewise, in Waterman Lake, a citizens' group attempted to privately enforce the Fresh Water Wetlands Act. Waterman Lake, 420 A.2d at 55. However, the Court "conclude[d] that all enforcement powers [were] vested in the director," who had "broad powers to remedy any violation of the wetlands act." Id. at 57. Therefore, the statutes at issue had purpose and effect. Like those cases where the statute at issue provided for a civil fine, these statutes enable the government to take action. Thus, in all of these

[2] Furthermore, the act under examination in Great American explicitly stated that it created no private right of action. Great Am. E & S Ins. Co., 45 A.3d at 575.

cases, there was no concern that the statutory language would be meaningless were no private right of action implied—the statute allowed the government to take action instead.

Other cases are linked by a different thread. In these instances, the statute at issue is directed at the government, not a private actor, and instructs it to take or not take some action. For instance, in Cummings, the statute in question provided that town tax assessors must certify revaluations, and must do so by a particular date. Cummings, 761 A.2d at 685. The plaintiff there availed herself of the two-step appeals process provided for by § 44-5-26, claiming that because the certification was not done pursuant to the statute, she was entitled to a full refund of her property tax payment. Id. at 682. However, the Court held that "the Legislature did not provide a remedy to taxpayers in plaintiff's position." Id. at 685. While it was clear that there was a "remedy available for relief from an alleged illegal assessment of taxes," it was of no benefit to plaintiff. Id. The Court found the certifications there "directory, not mandatory." Id. at 686; see also id. at 687 (Flanders, J., concurring) ("[F]or the reasons given by the Court, I do not believe that the challenged revaluation and tax assessment certifications were illegal . . . ."). Unlike a mandatory statute, "[t]he violation of a directory statute is attended with no consequences, since there is a permissive element." 1A Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction § 25:3, at 583 (7th ed. 2009). Thus, as a directory statute, the legislature meant it only as "a guide for the conduct of orderly business and procedure," id., and so failure to comport with it did "not eviscerate the goals, requirements, and mandates" of the statutory scheme, West v. McDonald, 18 A.3d 526, 535 (R.I. 2011).

In a somewhat similar way, the statutes in Bandoni, implementing the Victim's Bill of Rights, and Accent Store Design, requiring payment bonds on public works projects, were held to imply no private right of action. The Supreme Court did not address the argument in either

case that failure to recognize a private right of action would render the respective statutes nugatory. However, in both instances, the statute at issue provided instructions to government officials in how they were to carry out their duties. For instance, in Bandoni, the Victim's Bill of Rights provided victims the ability to be informed of the right to restitution, to have the right to address the court upon plea negotiation and at pretrial conferences, and that civil judgments shall be automatically entered when restitution is ordered. Bandoni, 715 A.2d at 584. While the Supreme Court held there was no implied private right of action for violation of those rights, the lack of the private right of action did not render those provisions illusory. Instead, they were directions to the coordinate branches of government on how to operate. Cf. Town of Tiverton v. Fraternal Order of Police, Lodge No. 23, 118 R.I. 160, 164, 372 A.2d 1273, 1275 (1977) ("[W]e recognize the general distinction between statutes aimed at public officers and those directed towards private individuals."). In much the same way, the Rhode Island public works bonding statute instructs the executive branch and municipalities to obtain bonds on public works projects. Sec. 37-13-14. Thus, the statute, which was at issue in Accent Store Design, was another directing the effective and efficient flow of government.

Finally, there is one last context where the Supreme Court has declined to recognize a private right of action: when dealing with prefatory or policy language. See 73 Am. Jur. 2d Statutes § 101 (2012) ("While a declaration of policy or a preamble may be used as a tool of statutory construction, it may not be used to create an ambiguity in an otherwise unambiguous statute."). Thus, in Heritage Healthcare, the Court found that the phrase "lowest possible price" in an insurance charter was "prefatory in nature and [did] not create any substantive private right." Heritage Healthcare, 14 A.3d at 938. According to the Court, the words were "a statement of policy," used "to clarify other substantive provisions" of the statute. Id. at 939. Thus, the

phrase "lowest possible price" was not useless—it was there to provide context and clarity for the remainder of the statute.

Thus, when the Supreme Court has declined to recognize an implied private right of action in the past, the statute being examined was not inefficacious, and therefore there was no conflict between the presumption against implied private rights of action and the presumption against nugatory enactments. The question remains, then, as to how § 21-28.6-4(d) fares under such an analysis.

As an initial matter, while the Hawkins-Slater Act does provide for civil enforcement of some of its provisions, see, e.g., § 21-28.6-7(c), there are no listed penalties for violations of § 21-28.6-4(d). Similarly, while the Department of Health is empowered to issue identification cards, see § 21-28.6-6, and while the Departments of Health and Business Regulation are authorized to regulate compassion centers, see § 21-28.6-12, no state department is given authority to administer § 21-28.6-4(d). No portion of the Hawkins-Slater Act authorizes, for instance, any department to intervene on behalf of a tenant who was refused a lease, a student who was declined enrollment, or an employee who was denied employment.

Furthermore, while many of the other provisions in § 21-28.6-4 are directed at public officials or the manner in which government operates, § 21-28.6-4(d) in particular is not. For instance, § 21-28.6-4(a) provides that qualifying cardholders "shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marijuana." This subsection of the statute, much as in the vein of the one in Bandoni, is directed at the coordinate branches of government and dictating how they should treat cardholders. Similarly, § 21-28.6-4(k) states that "[a]ny interest in, or right

to, property that is possessed, owned, or used in connection with the medical use of marijuana, or acts incidental to such use, shall not be forfeited."

In fact, all of the subsections in § 21-28.6-4 are directed at modifying or changing the official status of marijuana and cardholders with respect to various government programs and obligations—all except one, that is. Section 21-28.6-4(d) is not directed at government behavior. It does not focus on the rights and responsibilities of state and local government vis-à-vis the individual. Instead, it is concerned with schools, employers, and landlords, a target far broader than the government. Thus, the logic that saved the statutes in Bandoni and Accent Store Design from meaninglessness cannot do likewise for § 21-28.6-4(d).

If § 21-28.6-4(d) is not part of some overarching regulatory scheme, and if it is not a declaration of procedure or instructions to other government officials, might it be simply a statement of policy, as in Heritage Healthcare? It is unlikely. The statutory language at issue in Heritage Healthcare was, in its context, clearly a "statement of policy." Heritage Healthcare, 14 A.3d at 939. The public law subsections at issue began with the phrases "[t]he purpose of the fund" and "[t]he general assembly declares that." P.L. 2003, ch. 410, § 3(a), (f). The language used there explicitly denotes a "declaration of policy." See id. (quoting Ill. Indep. Tel. Ass'n v. Ill. Commerce Comm'n, 539 N.E.2d 717, 726 (Ill. Ct. App. 1989)). Contrariwise, the language of § 21-28.6-4(d) is a directive, not a policy statement. Additionally, it is in § 21-28.6-4, titled "Protections for the medical use of marijuana," and is surrounded by other sections that provide for specific directives, not mere policy gestures. To read § 21-28.6-4(d) as a general policy statement would ignore its position in the text and the forceful language it employs.

None of our Supreme Court's aforementioned precedents, which denied implied private right of action but found other ways to make a statute efficacious, can breathe life into § 21-28.6-

4(d). Thus, without a private right of action, § 21-28.6-4(d) would be meaningless. The Court is hesitant, then, to apply one presumption—that against implied rights of action—that would directly collide with another—that against nugatory enactments.

Another presumption that often appears in cases dealing with implied private rights of action is that "a statute that establishes rights not recognized by law is subject to strict construction." Accent Store Design, 674 A.2d at 1226; see also Bandoni, 715 A.2d at 584; In re John, 605 A.2d at 488. To that end, Defendants contend that the Hawkins-Slater Act "abrogates an employer's common law right to employ individuals 'at will'" and therefore should be construed strictly. Defs.' Mem. 21. This argument, however, must be juxtaposed with § 21-28.6-13, which states in full: "This chapter shall be liberally construed so as to effectuate the purposes thereof." This language is unambiguous, direct, and to the point. Regardless of whether § 21-28.6-4(d) is in derogation of the common law, the judiciary has been explicitly instructed to interpret it liberally, thereby disturbing any case law to the contrary. O'Connell v. Walmsley, 156 A.3d 422, 477 n.4 (R.I. 2017) (observing that even if a statute "operates in derogation of the common law, [the Court's] task of strict statutory construction must give way to the clear intent of the General Assembly").

Sometimes our Supreme Court has ruminated over implied private rights of action articulating the principle that "[t]he General Assembly could easily have exercised its power to create a cause of action, . . . but it chose not to do so." Accent Store Design, 674 A.2d at 1226; see also Bandoni, 715 A.2d at 584-85; In re John, 605 A.2d at 488. While such a notion presents a powerful argument, it is also "presumed that the General Assembly knows the 'state of existing relevant law when it enacts or amends a statute.'" Ret. Bd. of Emps.' Ret. Sys. of R.I. v. DiPrete, 845 A.2d 270, 287 (R.I. 2004) (quoting Smith v. Ret. Bd. of the Emps.' Ret. Sys. of R.I., 656

A.2d 186, 189 (R.I. 1995)); see also Horn v. Southern Union Co., 927 A.2d 292, 296 (R.I. 2007) (applying this presumption in the employment discrimination context).

It is precisely in the civil rights context where courts have been most open to implying private rights of action—including Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 (Title IX). See Cannon v. Univ. of Chicago, 441 U.S. 677, 696 (1979); see also 45B Am. Jur. 2d Job Discrimination § 1843 (2012) ("[A] cause of action may be implied where a statute defines an unfair employment practice but does not provide an express method of redress."). Given this principle, it is more understandable why the General Assembly may not have explicitly provided a private right of action. The state of the law naturally includes an awareness of "judicial interpretation." First Fed. Sav. & Loan Ass'n of Providence v. Langton, 105 R.I. 236, 245, 251 A.2d 170, 176 (1969); see also Horn (Suttell, J., dissenting) at 300 (observing RICRA drafters "'must have been aware of the precedents interpreting the federal statute'" (quoting Rathbun v. Autozone, Inc., 361 F.3d 62, 67 (1st Cir. 2004))). Thus, it is reasonable to conclude that the General Assembly, when passing § 21-28.6-4(d), understood that private rights of action are more commonly implied in the employment discrimination context.

Ultimately, then, the presumptions that have guided previous analyses of whether to recognize a private right of action all are undercut when applied to § 21-28.6-4(d). The reflexive reaction against implied private rights of action butts up against the presumption that the Legislature would not enact a nugatory statute. The assumption that the Legislature would simply add a private right of action if that was their intent is weakened by the subject matter of the statute itself. And the rule construing statutes in derogation of the common law narrowly is explicitly countermanded by the liberal construction mandate of § 21-28.6-13.

2

Giving Effect

Having survived the gauntlet of presumptions with only one clear directive—to read the Hawkins-Slater Act liberally—the Court, then must "interpret the statute [the General Assembly] has passed to determine whether it displays an intent to create not just a private right but also a private remedy." Alexander v. Sandoval, 532 U.S. 275, 286 (2001).

This Court "begin[s] with the language of the statute itself." Transamerica Mortg. Advisors, Inc. v. Lewis, 444 U.S. 11, 16 (1979) [hereinafter TAMA]. As the Court has mentioned, § 21-28.6-4(d) provided: "No school, employer, or landlord may refuse to enroll, employ, or lease to, or otherwise penalize, a person solely for his or her status as a cardholder." There is another portion of the Hawkins-Slater Act, however, that is also relevant to this inquiry. Section 21-28.6-7(b)(2) states that ***"[n]othing in this chapter shall be construed to require . . . [a]n employer to accommodate the medical use of marijuana in any workplace.***" (Emphasis added.) This intriguing provision is the only other portion of the Hawkins-Slater Act that references employers.

"It is a well-settled principle of statutory interpretation that an isolated part of a particular statute cannot be viewed in a vacuum; rather, each word and phrase must be considered in the context of the entire statutory provision." Power Test Realty Co. Ltd. P'ship v. Coit, 134 A.3d 1213, 1221 (R.I. 2016). "It is also a canon of statutory construction that the Legislature is presumed to have intended each word or provision of a statute to express a significant meaning, and the court will give effect to every word, clause, or sentence, whenever possible." State v. Bryant, 670 A.2d 776, 779 (R.I. 1996). This Court finds it crucial that the statute does not say that nothing within the chapter would require an employer to accommodate the medical use of

marijuana entirely. Instead, it cabins that proscription to use "in any workplace." Sec. 21-28.6-7(b)(2). The natural conclusion is that the General Assembly contemplated that the statute would, in some way, require employers to accommodate the medical use of marijuana outside the workplace. This provision undermines Defendants' contention that its actions did not violate the Hawkins-Slater Act because its refusal to hire Plaintiff was based not on her cardholder status, but her use of marijuana outside the workplace that prevented her from passing a drug test.

Plaintiff urges this Court to apply the factors the United States Supreme Court analyzed in Cannon. Pl.'s Mem. 18-21. There, the Supreme Court analyzed § 901(a) of Title IX, which stated, in pertinent part, "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Cannon, 441 U.S. at 681-82. The Court proceeded to analyze the statute under the four-factor test laid out in Cort v. Ash, 422 U.S. 66 (1975). As the United States Supreme Court has subsequently made clear, the factors in Cort were not meant to supplant the intent of the Legislature. TAMA, 444 U.S. at 23. However, "the first three factors discussed in Cort—the language and focus of the statute, its legislative history, and its purpose—are ones traditionally relied upon in determining legislative intent." Touche Ross & Co. v. Redington, 442 U.S. 560, 575-76 (1979). This Court's current mission is to determine legislative intent, and so comparison with Cannon, while not dispositive, could be fruitful.

The language of § 21-28.6-4(d) is quite similar to the "'rights-creating' language so critical to the [United States Supreme] Court's analysis in Cannon." Alexander, 532 U.S. at 279. The structure is the same: "§ 601 decrees that '[n]o person . . . shall . . . be subjected to

discrimination,"' id. (quoting 42 U.S.C. § 2000d), while § 21-28.6-4(d) decrees that "no . . . employer . . . may[3] refuse to . . .employ . . . a person solely for his or her status as a cardholder." The General Assembly drafted § 21-28.6-4(d) "with an unmistakable focus on the benefited class." Cannon, 441 U.S. at 691. "[T]he right- or duty-creating language of the statute has generally been the most accurate indicator of the propriety of implication of a cause of action." Id. at 690 n.13. Looked through this lens, implication of a private right of action appears appropriate.

The Court is mindful of the general—and rightful—reluctance of courts to imply private rights of action. However, the Court also believes that there is only one sensible interpretation of § 21-28.6-4(d). The Hawkins-Slater Act must have an implied private right of action. Without one, § 21-28.6-4(d) would be meaningless. The Act provides no "particular remedy or remedies" such that the "court must be chary of reading others into" the statute. TAMA, 444 U.S. at 20. The statute is not '"phrased as a directive to . . . agencies engaged in the disbursement of public funds."' Alexander, 532 U.S. at 286 (quoting Univs. Research Ass'n, Inc. v. Coutu, 450 U.S. 754, 772 (1981)). And other provisions of the Hawkins-Slater Act reinforce the notion that the General Assembly expected § 21-28.6-4(d) to be enforced. Given the above, and the context of the provision—an anti-discrimination statute—this Court finds that there is an implied private right of action for violations of § 21-28.6-4(d).

[3] While the distinction between "may" and "shall" is sometimes consequential, see Singer & Singer, supra, § 25:4, the Court is not concerned with the difference here. This section is prohibitory, and so employers are prohibited from discrimination. Cf. Cabana v. Littler, 612 A.2d 678, 683 (R.I. 1992) ("Negative words in a grant of power should never be construed as directory . . . .").

3

Scope of § 21-28.6-4(d)

Having determined there is an implied private right of action, the Court is faced with yet another question. Section 21-28.6-4(d) prohibits employers from refusing to employ "a person solely for his or her status as a cardholder." Defendants persistently argue that they did not refuse to hire Plaintiff because of her status as a cardholder, but because of her inability to "pass a mandatory pre-employment drug screen." Defs.' Mem. 25-26. At oral arguments for both their Super. R. Civ. P. 12(b)(6) motion to dismiss and Super. R. Civ. P. 56 motion for summary judgment, Defendants continually made the incredulous argument that the General Assembly was making a distinction between cardholders and users of medical marijuana. Defendants would have the Court believe that a patient cardholder might never use medical marijuana.[4]

Again, Defendants' argument requires the Court to delve into the statutory language. While Defendants would again have the Court interpret the Hawkins-Slater Act narrowly because it "is in derogation of an employer's common law right to employ individuals 'at will,'" id. at 25, the Court will not do so. As explained above, the General Assembly explicitly instructed the courts to construe the Hawkins-Slater Act broadly. Sec. 21-28.6-13. The Court initially notes that despite Defendants' insistence that the protections only apply to cardholders and not the medical use of marijuana, § 21-28.6-4(d) falls within subsection four, titled "[p]rotections for the medical use of marijuana." Admittedly, "headings and notes are not binding, may not be used to create an ambiguity, and do not control an act's meaning by injecting a legislative intent or purpose not otherwise expressed in the law's body." Singer & Singer, supra, § 47:14. However, such a meaning is expressed in the body.

[4] The Court recognizes that caregivers and cultivators are also cardholders and that they might not use medical marijuana. However, the instant matter involves a patient cardholder. Regardless, this distinction made by Defendants is discussed below.

Also relevant is Section 21-28.6-4(a), which provides that "[a] qualifying patient cardholder who has in his or her possession a registry identification card shall not be . . . denied any right or privilege . . . for the medical use of marijuana." Employment is neither a right nor a privilege in the legal sense. However, the protection provided by § 21-28.6-4(d) is. Thus, reading the two statutes together, this Court gleans that the Hawkins-Slater Act provides that employers cannot refuse to employ a person for his or her status as a cardholder, and that that right may not be denied for the medical use of marijuana. The statutory scheme is premised on the idea that "State law should make a distinction between the medical and nonmedical use of marijuana." Sec. 21-28.6-2(5). If the Court were to interpret § 21-28.6-4(d) as narrowly as Defendants propose, Plaintiff and other medical marijuana users would be lumped together with nonmedical users of marijuana. The protections that § 21-28.6-4(d) affords would be illusory—every medical marijuana patient could be screened out by a facially-neutral drug test. In fact, this practice would place a patient who, by virtue of his or her condition, has to use medical marijuana once or twice a week in a worse position than a recreational user. The recreational user could cease smoking long enough to pass the drug test and get hired, and subsequently not be subject to future drug tests, allowing him or her to smoke recreationally to his or her heart's content. The medical user, however, would not be able to cease for long enough to pass the drug test, even though his or her use is necessary to "treat[] or alleviat[e] pain, nausea, and other symptoms associated with certain debilitating medical conditions." Sec. 21-28.6-2(1).

Defendants argue that there are other non-patient individuals who hold cards. They aver that since § 21-28.6-4(d)'s protections extend to people who do not use medical marijuana, the Court should not read the section so broadly. This argument is not convincing. First, it is absurd to think that the General Assembly wished to extend less protection to those suffering with

debilitating medical conditions and who are the focus of the Hawkins-Slater Act. Second, this argument ignores the legislative history. When the Hawkins-Slater Act was initially passed, the statute did not use the term "cardholder"—instead, it specifically called out registered qualifying patients and registered primary caregivers separately. P.L. 2005, ch. 442, § 1 (then codified at § 21-28.6-4(b)). The General Assembly changed the term to cardholder, broadening the protections, but still encompassing the original scope of registered qualifying patients. See P.L. 2009, ch. 16, § 1.

Defendants finally contend that the Hawkins-Slater Act does not, and should not be interpreted to, require employers to accommodate medical marijuana use. Defendants emphasize that their manufacturing facility has dangerous equipment and couch their concern as one of workplace safety. They suggest that if this Court were to rule in favor of Plaintiff, an employer would have to accommodate "an employee who shows up to work in the morning under the influence after spending the entire night—or possibly the entire weekend—ingesting medical marijuana, simply because they used the drug outside the physical workplace." Defs.' Mem. 32. This argument utterly ignores the plain words of the General Assembly, which has explicitly contemplated this scenario. The Hawkins-Slater Act shall not permit "[a]ny person to undertake any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice." Sec. 21-28.6-7(a)(1). If an employee came to work under the influence, and unable to perform his or her duties in a competent manner, the employer would thus not have to tolerate such behavior.

Regardless, this Court agrees that Defendants are not required to make any accommodations for Plaintiff as they are defined in the employment discrimination context. They do not need to make existing facilities readily accessible. Sec. 42-87-1.1(4)(i). They do not

need to restructure jobs, modify work schedules, reassign to a vacant position, or acquire or modify devices or examinations. Sec. 42-87-1.1(4)(ii). They do not even need to alter their existing drug and alcohol policy, which prohibits "the illegal use, sale or possession of drugs or alcohol on company property." While that policy provides that "all new applicants who are being considered for employment will be tested for drug or chemical use," it does not state that a positive result of such test will be cause for withdrawal of the job offer.[5] Ex. 1 to Defs.' Ex. C.

4

Application to the Instant Case

Ultimately, having found that the Hawkins-Slater Act can theoretically support Plaintiff's action, the final question is whether the facts entitle Plaintiff to summary judgment. Unlike the questions of statutory interpretation the Court has faced thus far, the facts at issue in this case are relatively straightforward. Plaintiff was denied the opportunity to apply for a job with Defendants because she believed she could not pass the pre-employment drug test. Plaintiff did inform Defendants that she was a medical marijuana cardholder and that she would obey state law and not bring marijuana into the workplace. Defendants do not contest that they denied her employment based on the fact that she could not pass the drug screening. Therefore, Defendants have violated the Hawkins-Slater Act. As a result, the Court grants Plaintiff's motion for summary judgment and correspondingly denies Defendants' motion.

B

Count I: Declaratory Judgment

Plaintiff also asks for a declaratory judgment that "failure to hire a prospective employee based on his or her status as a medical marijuana card holder and user is a violation of the Act."

[5] The Fitness for Duty Statement signed by Plaintiff also does not state the penalty for failing the drug test. Ex. 2 to Defs.' Ex. C.

Compl. ¶ 29. Defendants argue that it is inappropriate to use the Declaratory Judgment Act to circumvent the lack of a private right of action, pointing to Pontbriand, 699 A.2d at 868.

As in any case that comes before this Court, "the party seeking declaratory relief must present the court with an actual controversy." Providence Teachers Union v. Napolitano, 690 A.2d 855, 856 (R.I. 1997). Even in declaratory judgment actions, "trial justices may not dispense with the traditional rules prohibiting them from rendering advisory opinions." Id. Thus, to the extent that Plaintiff seeks a generalized construction of the statute, see Defs.' Mem. 37, removed from the facts in this particular case, the Court cannot render such an opinion. To do so would be to "'sit like a kadi under a tree dispensing justice.'" Sullivan v. Chafee, 703 A.2d 748, 753 (R.I. 1997) (quoting Terminiello v. City of Chicago, 337 U.S. 1, 11 (1949) (Frankfurter, J., dissenting)).

The Court, in accordance with its liberal pleading rules, will read Count I to request a declaration specific to Plaintiff and to the facts in the case at hand. Given that Count I is a declaration under the Hawkins-Slater Act, however, all the discussions in Part A, supra, apply here—it is an application of the same law to the same facts. Therefore, for the same reasons articulated in Part A3, the Court grants Plaintiff's motion for summary judgment and denies Defendants' motion with respect to Count I as well.

C

Count II: RICRA

1

Disability

Count II alleges unlawful discrimination under RICRA, which prohibits, inter alia, discrimination based on disability in the making and enforcement of contracts. Sec. 42-112-1(a).

RICRA is expansive, and "provides broad protection against all forms of discrimination in all phases of employment." Ward v. City of Pawtucket Police Dep't, 639 A.2d 1379, 1381 (R.I. 1994). Here, there is no question a private right of action exists. Sec. 42-112-2. While Defendants move for summary judgment on Count II, Plaintiff does not. Defendants have an array of arguments against the applicability of RICRA to Plaintiff's claim, which the Court will consider in turn.

First, Defendants contend that "[a]ctive drug use is not a disability under the RICRA." Defs.' Mem. 7. For purposes of RICRA, "[t]he term 'disability' has the same meaning as that term is defined in § 42-87-1." Sec. 42-112-1(d). Defendants would limit RICRA's disability coverage to anyone who is protected by the federal Americans with Disabilities Act (ADA). Defs.' Mem. 7. RICRA's definition of disability is broader than that, however. While including those covered by the ADA, § 42-87-1(1)(iv), Chapter 87 also defines disability as "[a] physical or mental impairment that substantially limits one or more . . . major life activities," if there is a "record of such impairment." Sec. 42-87-1(1)(i)-(ii). Plaintiff is a medical marijuana cardholder. In order to qualify for such a card, Plaintiff must have a "debilitating medical condition." Sec. 21-28.6-3(10) (2013).[6]

A "debilitating medical condition" under the Hawkins-Slater Act must necessarily "substantially limit[] one or more . . . major life activities" under § 42-87-1. The examples of conditions which automatically qualify as debilitating medical conditions are severe: cancer, glaucoma, HIV/AIDS, and Hepatitis C. Sec. 21-28.6-3(3)(i) (2013).[7] All of these diseases impair "the operation of a major bodily function," such as the immune system, normal cell growth, or the like. See § 42-87-1(5). Further, all of the symptoms which would qualify a cardholder are

[6] This section is now at § 21-28.6-3(18).

[7] This section is now at § 21-28.6-3(5)(i). Post-traumatic stress disorder has since been added to this list.

also severe: "wasting syndrome; severe, debilitating, chronic pain; severe nausea; seizures; . . . or severe and persistent muscle spasms." Sec. 21-28.6-3(3)(ii) (2013).[8] Again, these would all naturally substantially limit a major life activity. Even just a plain reading of the terms, without reference to the definitions, makes it clear—"debilitating medical condition" connotes disability on its own. See Merriam-Webster's Collegiate Dictionary 296 (Frederick C. Mish et al. eds., 10th ed. 2001) (equating debilitate with weaken or enfeeble).

Thus, Plaintiff is disabled under the terms of RICRA. Her status as a medical marijuana cardholder signaled that to Defendants—she could not have obtained such a card without a debilitating medical condition that would cause her to be disabled.

2

Illegal Drug Use

However, the Court's dalliance with the RICRPDA is not over. Defendants point to § 42-87-1(6), which defines a "qualified individual." Defendants embrace sub-subsection (v), which states that "[a] qualified individual with a disability shall not include any . . . applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use." Plaintiff's drug use is legal under Rhode Island law, but illegal under federal law. The Court, however, does not have to determine to which body of law the General Assembly was referring. Assuming arguendo that Plaintiff is engaged in illegal drug use, this provision is not applicable to RICRA. While the term "qualified individual" is used throughout Chapter 42-87, those words do not appear anywhere within § 42-112-1. None of the definitions incorporated in § 42-112-1(d) reference qualified individuals. Had the Legislature wanted to incorporate the restrictions of that language into § 42-112-1, they could have easily done so. In fact, the General Assembly incorporated a limited set of terms from §§ 42-87-1 and 42-87-1.1; however, they did

[8] This section is now at § 21-28.6-3(5)(ii).

not include "qualified individual." Sec. 42-112-1(d).[9] "[I]t is not within the province of this court to insert in a statute words or language that does not appear therein except in those cases where it is plainly evident from the statute itself that the legislature intended that the statute contain such provisions." New England Die Co. v. Gen. Prods. Co., 92 R.I. 292, 298, 168 A.2d 150, 154 (1961). Furthermore, per the maxim expressio unius est exclusion alterius, the Court infers that in explicitly including certain definitions from Chapter 42-87, the General Assembly intended to exclude all others. See Gorman v. Gorman, 883 A.2d 732, 738 n.9 (R.I. 2005).

3

Basis for Termination

Having determined that marijuana users are not precluded from making a claim under RICRA, and that Plaintiff had a disability, the Court is now faced with Defendants' next contention: that Defendants' decision not to hire Plaintiff was based solely on her use of marijuana, not her underlying disability. This distinction breaks down upon further examination. Defendants essentially ask this Court to completely separate the medical condition from the treatment, which would circumvent the broad intent of RICRA. However, the only reason a given patient cardholder uses marijuana is to treat his or her disability. This policy prevents the hiring of individuals suffering disabilities best treated by medical marijuana.

Defendants, nevertheless, assert that Plaintiff never informed them of her underlying condition. Thus, contend Defendants, Darlington "was not aware of her migraine condition when it decided not to hire her." Defs.' Mem. 11. While Plaintiff is uncertain as to whether she informed Defendants of her condition, there is no dispute that Defendants knew she possessed a medical marijuana card and was thus disabled. It is irrelevant that Defendants did not know her

[9] The Court also observes that the same analysis applies to RIFEPA. See § 28-5-6(5) (importing the definition of disability, but not qualified individual).

precise disability. It is sufficient to show that Defendants discriminated against a class of disabled people—namely, those people with disabilities best treated by medical marijuana.

This framing of the disability also disposes of Defendants' next contention—that RICRA does not allow for a "mixed motives" analysis of discrimination, but instead requires "but-for" causation. Here, but for Plaintiff's disability—which her physician has determined should be treated by medical marijuana—Plaintiff seemingly would have been hired for the internship position. The Court need not address whether a mixed-motives analysis is required, as there is but-for causation.[10]

4

Disparate Impact

Next, Defendants contend that their enforcement of a neutral Alcohol and Drug Policy "cannot be the basis of a disparate treatment discrimination claim."[11] Defs.' Mem. 14. Under a Title VII analysis, there are two types of federal employment discrimination cases: disparate-treatment and disparate-impact. Casey, 861 A.2d at 1036 (citing Newport Shipyard, Inc. v. R.I. Comm'n for Human Rights, 484 A.2d 893, 898 (R.I. 1984)). Assuming, without deciding, that Defendants are correct in that the facts here do not support a disparate-treatment case, such

[10] The Court notes that the case Defendants cite in support of the argument that a mixed-motives analysis should not be conducted under RICRA does not sweep as broadly as they imply. Dwyer v. Sperian Eye & Face Protection, Inc., Civil No. 10-cv-255-JD, 2012 WL 16463, at *5 (D.R.I. Jan. 3, 2012) ("Dwyer does not show that this is a mixed motive case . . . . Even if mixed motive were an issue in this case, however, Dwyer makes no developed argument that the Rhode Island Supreme Court would analyze mixed-motive age discrimination claims . . . . In the absence of a developed argument, the court will not consider Dwyer's theory.").

[11] The Court pauses to note the slightly unusual nature of Count II, in that it is a RICRA action for employment discrimination brought without an accompanying RIFEPA claim. The Rhode Island Supreme Court, when analyzing RICRA alongside RIFEPA, has looked "to the federal interpretations of Title VII of the Civil Rights Act of 1964." Casey v. Town of Portsmouth, 861 A.2d 1032, 1036 (R.I. 2004). Thus, despite the fact that there "is a significant functional distinction between the two statutory means of redress provided under" RIFEPA and RICRA, Horn, 927 A.2d at 301 (Suttell, J., dissenting), when analyzing theories of discrimination, the Court applies a Title VII analysis.

reasoning only eliminates the first theory of discrimination. Instead, while Defendants may have a facially-neutral policy, RICRA is concerned with "the consequences of employment practices, not simply the motivation." Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971). A disparate-impact claim "does not require discriminatory intent." Lewis v. City of Chicago, Ill., 560 U.S. 205, 215 (2010). Thus, the argument that Defendants had no discriminatory intent does not foreclose Plaintiff's RICRA claim under a Title VII analysis.

Even so, Defendants pose the question: does RICRA prevent disability-based discrimination when the reasonable accommodation involves use of medical marijuana?[12] As discussed earlier, unlike RICRPDA, RICRA's scope is not limited to "qualified individuals," which exempts from its scope those engaged in the illegal use of drugs. RICRA does look to § 42-87-1.1 to define a "reasonable accommodation." Sec. 42-112-1(d). Given that "qualified individual" is neither included in § 42-112-1(d), nor in the definition of "reasonable accommodation" in § 42-87-1.1(4), this Court will not judicially insert the term into the statute. In fact, the definition of reasonable accommodation refers not to qualified individuals, but to the broader superset of all "individuals with disabilities." Sec. 42-87-1.1(4)(i)-(iv).

The Court, also, has difficulty imagining what reasonable accommodation is required. The term encompasses either a modification of facilities, equipment, work schedule or conditions, or the like. Sec. 42-87-1.1(4). While the definition also uses the term "policies," the Court believes that refers to workplace policies and not hiring policies. However, as previously discussed, the written drug screening policy does not state the consequence of failing the drug test. Thus, changing the unwritten practice not to automatically disqualify a cardholder who tests

[12] Defendants contend that Plaintiff failed to plead a cause of action for failure to accommodate. First, such a cause of action would more appropriately be brought in a RIFEPA action. See G.L. 1956 § 28-5-7. Regardless, since Plaintiff "pled a number of facts relevant" to a failure to accommodate, "[t]his was sufficient to preserve the argument." Reeves ex rel. Reeves v. Jewel Food Stores, Inc., 759 F.3d 698, 701 (7th Cir. 2014).

positive for marijuana would be deemed a reasonable accommodation. RICRA, therefore, poses no obstacle. The duties that RICRA imposes for employers to institute reasonable accommodations, if any, are thus not limited by the restrictions in § 42-87-1(6)(v).

Thus, with respect to Count II, the Court finds that RICRA can support a cause of action under the facts alleged here, and that Plaintiff has properly stated a claim.

D

Federal Preemption

The final arrow in Defendants' quiver is federal preemption. Defendants argue that even if the Hawkins-Slater Act or RICRA entitles Plaintiff to relief, such an action cannot be maintained due to preemption by the federal Controlled Substances Act (CSA), 21 U.S.C. §§ 801 et seq. It is without question that federal law can preempt state law. The crucial inquiry is whether or not it, in fact, does in this case. The Court notes that only § 21-28.6-4(d) is at issue in this analysis; "if this section were declared invalid, it does not follow that the remainder must fall because this section is not indispensable to the other parts of the act." Chartier Real Estate Co. v. Chafee, 101 R.I. 544, 556, 225 A.2d 766, 773 (1967). Indeed, the General Assembly has provided for the severability of the statute. Sec. 21-28.6-10.

"The Supremacy Clause of the United States Constitution, Article VI, clause 2, preempts or invalidates state law that interferes or conflicts with any federal law." Verizon New England Inc. v. R.I. Pub. Utils. Comm'n, 822 A.2d 187, 192 (R.I. 2003). In general, there are three types of preemption: express preemption, field preemption, and conflict preemption. Id. The CSA describes how it should be interpreted with regard to state law:

> "No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would

> otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together." 21 U.S.C. § 903.

How § 903 fits into the standard tripartite delineation of preemption is, on a plain reading, unclear; it is an express clause, but speaks of fields and conflicts as well. See People v. Crouse, 388 P.3d 39, 44 (Colo. 2017) (Gabriel, J., dissenting). The United States Supreme Court, however, has distinguished a similar provision "indicating that a provision of state law would only be invalidated upon a 'direct and positive conflict' with [federal law]" from an "express pre-emption provision." Wyeth v. Levine, 555 U.S. 555, 567 (2009). Such a distinction indicates this is not a traditional express preemption clause. Additionally, Congress did not choose to completely occupy the field—it instead chose to only preempt state laws that could not consistently stand with the CSA. Thus, field preemption is not implicated. See Verizon New England, 822 A.2d at 193 ("'In § 251 Congress specifically refused to preclude state regulations . . . that provide access to networks, are consistent with § 251, and do not 'substantially prevent implementation of the requirements of this section and the purposes of this part.' As a result, there is no field preemption."' (quoting 47 U.S.C. § 251(d)(3)(C))).

The Court is left to analyze conflict preemption, which comports nicely with the language of § 903. Conflict preemption requires there to be a "positive conflict" between state and federal law such that they "cannot consistently stand together." The question is, then, does the protection Rhode Island affords employees come into such a positive conflict? One way for conflict preemption to arise would be if it were impossible for an employer to comply with both the CSA and the Hawkins-Slater Act or RICRA. Id. (Conflict preemption exists when "'compliance with both federal and state regulations is a physical impossibility . . . .'" (quoting Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963))). There is no physical

impossibility here. As detailed above, the Hawkins-Slater Act does not require "[a]n employer to accommodate the medical use of marijuana in any workplace." Sec. 21-28.6-7(b)(2). Marijuana need not enter the employer's premises. Indeed, this is all that is required to maintain a drug-free workplace. See 41 U.S.C. § 8101(a)(5) (defining "drug-free workplace" as "a site of an entity . . . at which employees of the entity are prohibited from engaging" in federally-prohibited uses of controlled substances). What an employee does on his or her off time does not impose any responsibility on the employer.

The other instance in which conflict preemption can arise is when a state law "creates an unacceptable 'obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" Wyeth, 555 U.S. at 563-64 (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)). It is important to remember that there is a presumption against preemption, however, in cases involving powers traditionally delegated to the states. Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947) ("So we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress."). Employment law and anti-discrimination law are examples of two such delegated powers. See Gary v. Air Group, Inc., 397 F.3d 183, 190 (3d Cir. 2005) (observing that preemption is disfavored "in the employment law context which falls 'squarely within the traditional police powers of the states'" (quoting Branche v. Airtran Airways, Inc., 342 F.3d 1248, 1259 (11th Cir. 2003) (citation omitted))); Kroske v. U.S. Bank Corp., 432 F.3d 976, 981 (9th Cir. 2005) (describing "the State's historic police powers to prohibit discrimination on specified grounds").

Ultimately, this Court finds the purpose of the CSA—the "illegal importation, manufacture, distribution, and possession and improper use of controlled substances"—to be

quite distant from the realm of employment and anti-discrimination law. 21 U.S.C. § 801(2). The CSA is concerned with stopping the illegal trafficking and use of controlled substances. To read the CSA as preempting either the Hawkins-Slater Act or RICRA would imply that anyone who employs someone that violates federal law is thereby frustrating the purpose of that law. The connection must, at some point, be deemed too attenuated. Cf. Wyeth, 555 U.S. at 583 (Thomas, J., dissenting) ("Because implied pre-emption doctrines that wander far from the statutory text are inconsistent with the Constitution, I concur only in the judgment."). It may be that Congress does wish to preempt laws such as the Hawkins-Slater Act or RICRA with respect to employment discrimination, but if they do so, they have not expressed that intent in the CSA.[13]

One last consideration reassures the Court in finding that the CSA does not preempt Rhode Island law in this narrow question. "The case for federal pre-emption is particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to 'stand by both concepts and to tolerate whatever tension there [is] between them.'" Bonito Boats, Inc. v. Thunder Craft Boats, Inc., 489 U.S. 141, 166-67 (1989) (quoting Silkwood v. Kerr–McGee Corp., 464 U.S. 238, 256 (1984)). Congress is definitely aware of the existence of various states' medical marijuana schemes. Indeed, over the past several years, Congress has passed an amendment to various omnibus spending bills preventing the funds appropriated therein to the Department of Justice to be used to prevent any of a number of listed states, including Rhode Island, "from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana." Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, § 537. It would be easy to overstate the importance of this enactment. It has not repealed or modified the CSA itself. It was not

[13] Again, the Court is focused solely on § 21-28.6-4(d) within the Hawkins-Slater Act. Whether the CSA might preempt other parts of the Act is not before the Court.

contemporaneous with the passage of the CSA. However, it is a direct and unambiguous indication that Congress has decided to tolerate the tension, at least for now, between the federal and state regimes. See Bonito Boats, 489 U.S. at 166-67. Congress seems to want, as Justice Brandeis said, the States to be the laboratories of democracy with respect to medical marijuana. See 161 Cong. Rec. H3746 (daily ed. June 2, 2015) (statement of Rep. Cohen).

IV

Conclusion

The Court finds that there is an implied cause of action under the Hawkins-Slater Act, and further finds that there is no genuine issue of material fact with respect to the counts regarding that effect. Thus, the Court grants Plaintiff's Motion for Summary Judgment on Counts I and III. Correspondingly, Defendants' motion, regarding Counts I and III, is denied. Furthermore, for the reasons stated above, Defendants' Motion for Summary Judgment is also denied for Count II. Counsel shall enter an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Christine Callaghan v. Darlington Fabrics Corporation, et al.
CASE NO:	C.A. No. PC 2014-5680
COURT:	Providence County Superior Court
DATE DECISION FILED:	May 23, 2017
JUSTICE/MAGISTRATE:	Licht, J.
ATTORNEYS:	
For Plaintiff:	Carly Beauvais Iafrate, Esq.
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