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Judge stays smoking law pending hearing

EAST GREENWICH — Apparently swayed by the Town Council's willingness to postpone implementing its landmark restaurant smoking ordinance by three months, Superior Court Judge Nett C. Vogel yesterday ordered an additional 19-day delay to allow her to weigh whether communities can limit smoking in the restaurants they license.

The delay was sought by a dozen restaurants and the Rhode Island Hospitality Association, which are challenging the legality of the ordinance, passed last April 28 and originally set to take effect Dec. 1.

EAST GREENWICH

The restaurants had filed a constitutional challenge in June, but switched tactics in hopes of electing council members who opposed the smoking restrictions.

When the new council promised only to delay implementation until March 1, the restaurant owners, unable to craft a compromise proposal, resumed their court challenge.

The ordinance requires all restaurants either to ban smoking altogether, or to seal off an area for smokers and ventilate it so secondhand smoke doesn't drift into nonsmoking areas. The measure is tougher than state law on restaurant smoking areas.

Requiring the restaurants to comply with the ordinance "in some cases, could amount to irreparable harm," Brian A. Goldman, the lawyer for the restaurants and the Hospitality Association, told the judge in seeking a temporary stay.

Although Vogel granted the temporary order, she pledged to put the constitutional questions on a fast track.

"The issues apparently require immediate attention. I'm going to accelerate this," Vogel said.

She ordered Goldman to submit supporting documents immediately, gave Alves until Monday to submit his response, scheduled oral arguments for March 9, and promised a written decision on March 19, when the temporary order expires.

Earlier in yesterday's hearing, Goldman asked Vogel to consider removing herself from the case, telling the judge that "you chastised me" during an earlier court appearance. When Vogel asked for specifics, he said he couldn't remember the case or find any record of her comments.

But Vogel remembered. She said Goldman seemed to be referring to his effort to block legislation — inspired by her daughter, Georgi Rosen — that was introduced in the General Assembly in 1992. The bill, which was passed by the Senate but died in the House, would have allowed high school students to take biology classes without having to dissect animals.

Goldman then volunteered that he had been a lobbyist for Carolina Biological, a research firm.

Vogel said she had had no stake in the legislation, asserted that she wasn't overly concerned about whether it passed, and said her daughter didn't want her involved in the campaign. "If I made a joke in court to you and you took it the wrong way, I apologize," she said.

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