



December 19, 2022

To: 2022 Special Committee on Medical Marijuana

From: Leighann Thone, Research Analyst

Re: Litigation Regarding Marijuana Social Equity Programs

This memorandum provides a brief summary of recent selected lawsuits filed regarding marijuana social equity programs in response to a request made during the December 9, 2022, meeting of the Special Committee on Medical Marijuana.

Connecticut

In July 2022, the Connecticut Social Equity Council chose 16 cultivation permit winners from a pool of 41 applicants.¹ At least 14 of the losing applicants have sued the state, arguing that the process for selecting licensees was flawed. In order to qualify for a social equity license, applicants were required to meet criteria for residency, income, and ownership and control.

One plaintiff, Nautilus Botanicals, claims the state's denial of their application was because "the social equity applicant owns 65 percent of the company, but only has a 33 percent say in decisions regarding the business." The company claims that this was a misinterpretation by the state, and they were not offered an opportunity to amend the application or provide additional documentation or explanation. Another plaintiff claims there was insufficient instruction included with the application, with "no insight into what would be required to prove ownership and control before the application period opened." Additionally, the definition of "control" used by the state in denial letters does not appear anywhere in statute or regulation.

New York

In November 2022, a federal judge temporarily barred the state of New York from issuing its first 63 of 150 retail licenses for recreational cannabis pending resolution of a lawsuit filed by Variscite NY One, a Michigan-based company, regarding the parameters of the state's social equity program.² Variscite argues that requirements that applicants have a cannabis-related conviction under New York state law and significant ties to the state violates constitutional protections of interstate commerce.

1 <https://www.nbcconnecticut.com/investigations/lawsuits-challenge-connecticuts-social-equity-process/2855215/>

2 <https://www.nytimes.com/2022/11/11/nyregion/cannabis-dispensary-license-blocked.html>

Applications for the licenses were accepted in August and September 2022, and people who had been arrested on cannabis-related charges in New York, but not convicted, were excluded, as were people who only had federal or out-of-state convictions. Applicants could show a “significant presence in the state” through the majority owner’s residence or the company’s corporate headquarters. The judge ruled the state had not made a convincing case for how the legalization law and regulations were narrowly tailored to serve a legitimate purpose.

Los Angeles, California

In December 2022, a U.S District Judge in Los Angeles refused to stop a scheduled lottery for social equity cannabis licenses in the city.³ The plaintiff, Variscite Inc., is also the plaintiff in the New York case mentioned above. Similar to the lawsuit filed in New York, Variscite Inc. claims that Los Angeles’ plan for regulating their social equity program violates the U.S. Constitution’s Dormant Commerce Clause by excluding individuals who do not have connections to California. The Dormant Commerce Clause is a legal doctrine that bars states from enacting policies that intentionally discriminate against goods or economic actors from other states.

The judge did not grant Variscite’s request for an injunction, reasoning that it did not meet the standard of preventing “irreparable harm” if the lottery did proceed: “Plaintiff’s argument that they will suffer irreparable harm are based on their speculation that they would be able to successfully enter the commercial retail cannabis market, establish a loyal customer base, and make a profit. Thus . . . the plaintiff’s monetary losses associated with the challenged provisions are purely speculative and insufficient.”

Maricopa County, Arizona

In March 2022, three social equity applicants filed a lawsuit in Maricopa County, Arizona, claiming that the Arizona Department of Health Services had not fully vetted the 1,500 applicants in the license lottery prior to the drawing planned for April 2022.⁴ Of the 169 adult-use cannabis retail licenses Arizona approved, 26 are reserved for social equity applicants. The plaintiffs argued that without more thorough vetting, the state could award social equity licenses to ineligible applicants, which would then need to be revoked. Ineligible applicants in the pool would also decrease the odds for eligible applicants to be chosen.

The Maricopa County Superior Court denied the request for a preliminary injunction before the scheduled drawing, noting that the Department of Health Services used proper procedures and discretion in preparing for the license lottery.⁵ The drawing was allowed to occur on April 8, 2022, and 26 social equity licensees were chosen. As part of their agreement, social equity licensees must have their business open to the public within 18 months, or by October 2023.

3 <https://www.greenmarketreport.com/judge-declines-to-stop-l-a-social-equity-lottery/>

4 <https://www.phoenixnewtimes.com/marijuana/new-lawsuit-could-delay-arizonas-social-equity-pot-license-drawing-13297817>

5 <https://www.phoenixnewtimes.com/marijuana/judge-clears-way-for-arizona-social-equity-drawing-on-friday-13378432>

Other Related Lawsuits

In August 2022, the 1st Circuit Court of Appeals threw out a Maine law requiring all licensed cannabis company owners to be state residents, ruling the law was a violation of the U.S. Constitution's Dormant Commerce Clause in that the law "explicitly discriminates against residents of other states and Maine cannot show a legitimate local purpose for this requirement."⁶ Because the ruling opened the state's medical and recreational cannabis markets to out-of-state business interests, it could become relevant for lawsuits alleging that out-of-state residents should be able to apply for social equity programs.

The decision comes after the 2019 Supreme Court case, *Tennessee Wine and Spirits Retailers Assn. v. Thomas*, in which the Supreme Court concluded that states could not require a person to live within a state for two years before obtaining a liquor license. The Supreme Court noted that such a requirement would violate the Constitution's Interstate Commerce Clause by imposing trade barriers between the states.

6 <https://www.forbes.com/sites/ajherrington/2022/08/22/federal-court-strikes-down-maines-residency-requirement-for-cannabis-business-owners/?sh=5ed5a5057146>