

NYS FACING FIRST LAWSUIT OVER RETAIL CANNABIS DISPENSARY LICENSING PROCESS

Hodgson Russ Cannabis & Hemp Alert
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Less than a month after New York's Conditional Adult Use Retail Dispensary ("CAURD") license application window closed, the State has already been named in a lawsuit related to its licensing process. Variscite NY One ("Variscite"), a Michigan entity, filed a federal lawsuit in the United States District Court for the Northern District of New York challenging the CAURD licensing criteria. Also named as defendants in the suit are the State's Office of Cannabis Management ("OCM"), and OCM Executive Director Christopher Alexander.

New York's Marijuana Regulation & Taxation Act ("Cannabis Law"), and the regulations creating the CAURD program, allow an applicant with "a significant presence in New York State" to apply for a CAURD license. An entity with a "significant presence" is one that is incorporated or organized in New York, has a principal corporate location in New York, or has a majority of its owners living as New York residents. The CAURD licensing requirements also require ownership or control of applicants by one or more "justice-involved" individuals. A "justice-involved" individual is a person who was convicted of a cannabis-related offense in New York State prior to March 31, 2021; or a person whose parent, legal guardian, child, spouse, or dependent was convicted of a cannabis-related offense in New York State prior to March 31, 2021.

In its lawsuit, Variscite claims it is 51% owned by an individual who has a cannabis-related conviction in Michigan (not New York). Variscite alleges that New York State's Cannabis Law discriminates against citizens of other states in violation of a constitutional concept called the "Dormant Commerce Clause." The Supreme Court has relied on the "Dormant Commerce Clause" concept to strike down state laws that favor the commercial interests of state residents over those of out-of-state competitors. Variscite points to the United States Court of Appeals for the First Circuit, which ruled in August that the residency requirements of Maine's cannabis program violated the Dormant Commerce Clause. In response, Maine dropped its residency requirements.

Variscite has requested an injunction to stop New York from processing any applications for storefront cannabis dispensary licenses under the CAURD program. Variscite also asked the Court to prohibit New York from enforcing any parts of the Cannabis Law that favor New York residents over out-of-state residents.

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Variscite's request for a temporary restraining order pending the outcome of the case was initially denied on procedural grounds, and the date for a hearing will likely be set next month. It remains to be seen whether the Court will put a stop to OCM's work while the case is pending. That stoppage could send shockwaves through all aspects of New York's cannabis program, creating major headaches for existing producers and aspiring retailers while the State reworks its licensing requirements.

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