

# Minnesota AG Moves to Dismiss Lawsuit on Homegrown Cannabis Sales

Minnesota's attorney general has asked a judge to dismiss a lawsuit filed by four cannabis homegrowers who claim that the state constitution allows them to sell their crops without a license. The lawsuit challenges the state's implementation of a new law regulating cannabis, and a hearing on the motion to dismiss is scheduled for July 22.

## The Lawsuit's Basis

The lawsuit, filed in May, argues that a 120-year-old constitutional provision permits small farmers to sell their products without a license. This provision, originally meant to protect small farmers, states, "Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor." The plaintiffs claim this should apply to their [homegrown cannabis](#) following the 2023 legalization and limited homegrow allowance.

## Attorney General's Argument

The attorney general's office contends that the lawsuit is unfounded. Their dismissal request states, "Plaintiffs fail to state a claim because cannabis is not a 'product of the farm or garden,' the Minnesota Constitution does not create a right to purchase farm products, and state law does not authorize criminal penalties for unlicensed sales." They argue that cannabis remains a controlled substance and shouldn't be treated like other farm products.

## Historical Context and Challenge

The constitutional provision cited by the plaintiffs dates back to a case involving a melon farmer who tried to sell his excess crop without a local permit. When cannabis was illegal, courts ruled that this provision didn't apply. However, the plaintiffs argue that the 2023 legalization changes the context.

## Expected Legal Battle

This case was anticipated before the recreational cannabis law was passed. In a 2020 memo, Minnesota Management and Budget warned that a proposed licensing requirement could be challenged under the state constitution. Legalization advocates have frequently cited the constitutional provision, arguing that the licensing system violates it.

## State's Response

The state's response asserts that allowing limited home cultivation does not equate to a right to sell cannabis without a license. They argue that unlicensed sales of small amounts of cannabis are subject to civil, not

criminal, penalties under the recreational cannabis law. The state also claims that the plaintiffs lack standing because they haven't suffered direct injury from state regulations.

## **Plaintiffs' Perspective**

The lawsuit was filed by Minneapolis attorney Jeffrey O'Brien on behalf of four plaintiffs, including Patrick McClellan, a medical cannabis advocate with muscular dystrophy. McClellan grows cannabis at home for personal use but produces more than he can consume. The plaintiffs argue that selling the excess would help offset the costs of cultivation.

## **Settlement Efforts and Future Proceedings**

O'Brien participated in a settlement conference with the assistant attorneys general but reached no agreement. He plans to file a formal reply before the July 22 hearing. O'Brien argues that the state opened the door to this issue by allowing home cultivation and permitting the gifting of up to two ounces of cannabis.

## **Licensing Challenges**

Obtaining a license to sell cannabis in Minnesota will be a complex and expensive process. The smallest cultivator license, called a microbusiness license, requires adherence to extensive rules and a \$500 application fee plus a \$2,000 annual renewal fee. Home growers, allowed to have up to eight plants with only four flowering at once, are unlikely to pursue such a license just to sell their excess product.

## **Future Implications**

If the court rules against the plaintiffs, an appeal is expected, potentially taking the case to the Minnesota Supreme Court. The outcome could have significant implications for the state's cannabis laws and homegrow regulations.

The legal battle over Minnesota's new cannabis regulations highlights the ongoing complexities of marijuana legalization and regulation. As the case progresses, it will address critical questions about constitutional rights, state regulation, and the future of cannabis sales in Minnesota. The scheduled hearing on July 22 will be a crucial step in this legal journey.

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