

Gonzalez Case Revisited Amid Potential Circuit Split

Four Active Appeals Challenge State Cannabis License Preferences Under Dormant Commerce Clause Doctrine, Setting the Stage for Potential Supreme Court Intervention

The legal landscape surrounding state cannabis programs is facing increased scrutiny as four active appeals challenge trial court decisions that held the dormant Commerce Clause does not apply to [state cannabis license preferences](#). These cases have the potential to influence how cannabis businesses operate across state lines and may even prompt the U.S. Supreme Court to revisit its landmark ruling in *Gonzalez v. Raich* (2005).

Understanding the Dormant Commerce Clause and Its Implications for Cannabis, an Industry Caught Between Federal Prohibition and State-Level Legalization

Cannabis regulation remains a complex issue, with federal prohibition conflicting with state-level legalization efforts. One key constitutional principle at play is the dormant Commerce Clause, which serves as a limitation on states enacting laws that impose substantial burdens on interstate commerce. While Congress has the power to regulate interstate commerce under the Commerce Clause, the Supreme Court has recognized that states cannot enact protectionist measures that discriminate against out-of-state economic actors.

This principle has recently been tested in state cannabis licensing programs, where certain states have favored in-state applicants over out-of-state entities. So far, courts in New York, Maryland, Washington, and California have ruled that the dormant Commerce Clause does not apply to cannabis because there is no federally recognized interstate cannabis market. However, challengers argue that these state-specific preferences violate constitutional principles and require further judicial review.

Current Legal Challenges and the Emerging Circuit Split That Could Trigger a Supreme Court Showdown

The four active appeals currently challenging these trial court decisions include:

Variscite NY Four, LLC v. New York State Cannabis Control Board (Second Circuit, Case No. 24-384)

Jensen v. Maryland Cannabis Administration (Fourth Circuit, Case No. 24-1216)

Peridot Tree, Inc. v. City of Sacramento (Ninth Circuit, Case No. 24-7196)

Variscite, Inc. v. City of Los Angeles (Ninth Circuit, Case No. 25-773)

A significant aspect of these cases is the emerging divide between federal circuit courts. The First Circuit Court of Appeals, in *Northeast Patients Grp. v. United Cannabis Patients and Caregivers of Maine* (2022), ruled that an interstate cannabis market does exist, making the dormant Commerce Clause applicable. This decision directly contradicts the rulings from trial courts in the ongoing appeals, which have declined to apply the dormant Commerce Clause on the basis that cannabis remains federally illegal.

The Second and Fourth Circuits have already heard oral arguments and are expected to issue decisions soon, while the Ninth Circuit cases are progressing through the appellate process. If the Second, Fourth, or Ninth Circuits rule differently from the First Circuit, a circuit split will be established, increasing the likelihood that the Supreme Court will intervene.

The Supreme Court's Role and Potential Impact: A Decision That Could Reshape State Cannabis Licensing Nationwide

If the Supreme Court grants certiorari in one of these cases, it may be forced to reconcile its prior decision in *Gonzalez v. Raich*. In *Gonzalez*, the Court ruled that Congress had the authority to regulate cannabis under the Commerce Clause, emphasizing that cannabis is a “fungible commodity for which there is an established, albeit illegal, interstate market.” If the Court chooses to revisit this principle, it could have profound implications for state cannabis licensing programs.

The Court could take one of two major approaches:

Affirm the First Circuit's reasoning, concluding that the dormant Commerce Clause applies to the cannabis market, thereby striking down state licensing preferences that favor in-state applicants.

Hold that the dormant Commerce Clause does not apply, reinforcing states' rights to regulate their own cannabis markets without federal interference.

In either scenario, the decision would have major ramifications for cannabis businesses, particularly those seeking to expand operations beyond their home states. If the dormant Commerce Clause is applied, state cannabis programs may be forced to eliminate residency-based preferences. Alternatively, if state licensing preferences are upheld, out-of-state businesses may face ongoing barriers to entry.

Looking Ahead: What's Next for Cannabis Regulation as the Industry Waits for Judicial Clarity?

Until federal cannabis reform occurs, these legal battles will continue to shape the industry. If a circuit split is confirmed, the Supreme Court may step in to resolve the issue, providing long-awaited clarity on the constitutionality of state cannabis licensing preferences. In the meantime, cannabis businesses, regulators, and policymakers must carefully monitor the evolving legal landscape to anticipate how future rulings could impact state-level programs and market access for out-of-state businesses.

The upcoming decisions from the Second, Fourth, and Ninth Circuits will be pivotal in determining the trajectory of these legal arguments and could set the stage for a landmark Supreme Court ruling that reshapes cannabis regulation nationwide.

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