

Troutman Pepper Cannabis Communications Newsletter — February 23, 2024

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Troutman Pepper's Cannabis Practice helps clients throughout their business cycle enter or expand into the cannabis space. Our team combines the resources of attorneys in areas such as licensing and taxation, regulatory compliance, corporate and transactional, intellectual property, and real estate, among others, to provide comprehensive services.

Our Cannabis Practice provides advice on issues related to applicable federal and state law. Marijuana remains an illegal controlled substance under federal law.

CANNABIS REGULATORY UPDATES

FEDERAL COURTS AND CANNABIS DISPUTES: A NEW PERSPECTIVE FROM *BARTCH V. BARCH*

By Jean Smith-Gonnell and [Carmen Williams](#)

On February 1, Senior U.S. District Judge R. Brooke Jackson of the U.S. District Court for the District of Colorado denied Mackie A. Barch (Mackie) and Trellis Holdings Maryland, Inc. (Trellis and together with Mackie, defendants) motion to vacate the original judgment entered into on September 7, 2022, awarding \$6.4 million to David J. Bartch (plaintiff) as a result of defendants' breach of contract. In reaching his ruling, Judge Jackson was unpersuaded by defendants' argument that the court lacks subject matter jurisdiction over this matter because the plaintiff's injury is not redressable by a federal court because marijuana is illegal under federal law, and federal courts therefore cannot adjudicate marijuana cases. Judge Jackson further went on to specify that the conduct at the center of this dispute (defendants' agreement to return plaintiff's ownership interest upon the successful licensing of Doctor's Orders Maryland (DOMD)) would not have "affected the amount of cannabis that the company [DOMD] cultivated or distributed" in violation of the Controlled Substances Act (CSA). The decision to ultimately defend and extend Article III jurisdiction in cases arising out of cannabis business disputes is an interesting shift that highlights the sway of public opinion to the side of the legalization of marijuana on the federal level.

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LAWSUIT HIGHLIGHTS THE COMPLEXITY OF REGULATING THE INTRASTATE USE OF MARIJUANA

By Jean Smith-Gonnell and [Cole White](#)

One of the most interesting aspects of marijuana law and policy in the U.S. is its tendency to strike at our most foundational democratic principles. In 2005, the U.S. Supreme Court held, in *Gonzales v. Raich*, that Congress has the power to regulate the purely *intrastate* cultivation, manufacture, distribution, possession, and use of marijuana under the commerce clause, even if the marijuana never crosses state lines, because marijuana-related activity has a “substantial affect” on *interstate* commerce. Several challenges have been made to this conclusion since *Gonzales* was decided, none of which have been successful to date.

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