

New York Welcomes Close of First Unrestricted Cannabis Licensing Window with Fresh Lawsuit

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At 5:00 p.m. EST on December 18, the New York Cannabis Control Board (CCB) and its implementing agency, the Office of Cannabis Management (OCM), closed its first, and perhaps only, open application window for Adult-Use Cannabis Licenses. The application window, which opened on October 4, was the first opportunity for individuals without either an active hemp license or a previous conviction for a marijuana offense in New York to apply for what is expected to be one of the most valuable adult-use marijuana licenses in the United States. Before that day was over, applicants were greeted with a new lawsuit, filed in the U.S. District Court for the Northern District of New York (*Variscite NY Four, LLC v. New York State Cannabis Control Board*, 1:23-CV-1599), seeking to enjoin OCM and CCB from processing any applications submitted during the application window. The lawsuit is the fourth lawsuit filed against New York cannabis regulators since they began implementing New York's Marijuana Regulation and Taxation Act (MRTA) in 2022.

The *Variscite NY Four* plaintiffs allege that the regulations implementing MRTA, the license application process, and the selection criteria each violate the dormant commerce clause of the U.S. Constitution insofar as they favor New York residents over residents of other states in the application and license selection processes. The complaint alleges that the OCM application process—which grants “extra priority” in the processing of applications by applicants that are owned and controlled by a majority of individuals who have either been convicted of a marijuana offense in New York or who have lived in certain areas of New York State disproportionately impacted by the enforcement of the cannabis prohibition—impermissibly discriminates against individuals who, despite meeting all other criteria for “extra priority,” are not, or have never been, residents of the state of New York.

The plaintiffs in the current case are both affiliates of Variscite NY One, LLC, the plaintiff that, in September 2022, filed the first lawsuit against the state agencies in connection with the implementation of MRTA. The Variscite NY One lawsuit delayed the issuance of Conditional Adult-Use Retail Dispensary Licenses in certain regions of New York and ultimately resulted in a settlement pursuant to which Variscite NY One was granted a Conditional Adult-Use Retail Dispensary License by CCB. The agency defendants have not yet responded to the complaint.

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Rachael L. Aspery

Perry Salzhauer