

Case Law Monitor

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Each issue of *Case Law Monitor* highlights cases from around the United States in the areas of public health and safety, substance use disorder, and the criminal justice system. Every other month, LAPPA will update you on cases that you may have missed but are important to the field. We hope you find the *Case Law Monitor* helpful, and please feel free to provide feedback at info@thelappa.org.

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***Tracey Edwards v. Benita J. Witherspoon, et al.*, U.S. Court of Appeals for the Fourth Circuit, Case No. 24-7049 (opinion filed September 10, 2026).** For previous updates on this case, please refer to the October 2024 issue of the LPPA *Case Law Monitor*, available [here](#). The Fourth Circuit has vacated a district court's dismissal of a former inmate's suit involving the North Carolina Correctional Institution for Women's (NCCIW) refusal to provide her with medication for addiction treatment (MAT) after she gave birth. Tracey Edwards was incarcerated at NCCIW from 2019 to 2021, during which time she learned that she was pregnant. Edwards had opioid use disorder (OUD) and thus was eligible to receive MAT at NCCIW pursuant to an internal policy that provides MAT only to pregnant offenders. Edwards gave birth while in custody and was shackled on her way to the hospital, during active labor and delivery, and while returning to NCCIW. While in the hospital, Edwards continued to receive MAT daily, and the hospital physician prescribed her buprenorphine upon discharge. When Edwards returned to NCCIW after giving birth, staff placed her in the inpatient medical unit. Edwards requested MAT, but NCCIW denied her request pursuant to its policy restricting MAT only to pregnant offenders. NCCIW staff instead gave her an oxycodone taper over nine days along with Tylenol and ibuprofen for pain management. Edwards claimed to have experienced withdrawal symptoms for several weeks after giving birth. In April 2022, Edwards sued several officials at the North Carolina Department of Adult Corrections (DAC) alleging violations of the Eighth Amendment of the U.S. Constitution for the shackling and the denial of MAT, as well as disability discrimination under the Americans with Disabilities Act (ADA; 42 U.S.C. § 12101, *et seq.*) and Section 504 of the Rehabilitation Act (29 U.S.C. § 794). Both parties moved for summary judgment and the district court granted the defendant's motion, thereby dismissing all of Edwards' claims. Edwards appealed. The district court had granted summary judgment to Dr. Elton Amos, the medical director at NCCIW, Dr. James Alexander, the healthcare facility's treatment administrator, and Dr. Gary Juncker, the behavioral health director for DAC, on Edwards' claim that denial of MAT upon her return to NCCIW violated her Eighth Amendment rights. According to the district court, Edwards did not make a prima facie showing of an Eighth Amendment violation because she did not show that any defendant subjectively knew that she faced a substantial risk of serious harm and disregarded that risk by discontinuing MAT after she gave birth. The Fourth Circuit disagreed with the district court with respect to Amos and Alexander, finding that there was sufficient evidence to create a genuine dispute as to whether they knew of the substantial and obvious risk of harm when they enforced NCCIW's policy denying MAT to all non-pregnant offenders. The court noted that as NCCIW's medical director, Amos not only drafted the handbook prohibiting MAT to non-pregnant offenders, but he was responsible for direct patient care. Moreover, Alexander, who reviewed and signed off on NCCIW's MAT policy, was a board-certified

physician in public health with experience treating women at NCCIW navigating pregnancy and/or OUD. Based on Amos and Alexander’s backgrounds and testimony, the Fourth Circuit concluded that a reasonable jury could find that they were subjectively aware of the risk associated with discontinuing MAT while creating NCCIW’s policies. The defendants argued that they were not deliberately indifferent to Edwards’ medical needs because NCCIW officials provided her with an oxycodone taper to lessen her withdrawal symptoms. However, the Fourth Circuit rejected that argument, finding that providing “some treatment” does not necessarily equate to constitutionally adequate treatment. Finding a genuine dispute as to whether there was a deliberate indifference to Edwards’ medical needs, the Fourth Circuit ruled that Amos and Alexander were not entitled to summary judgment. The Fourth Circuit agreed with the district court, however, with respect to Junker. While Junker was Amos’ supervisor, he was primarily responsible for the DAC’s mental health care procedures rather than OUD policy. Junker specifically testified that he did not work on OUD policy, and Edwards did not produce any evidence contradicting this testimony. Thus, the Fourth Circuit concluded that Junker did not have actual knowledge of the risk of harm to Edwards.

The district court had granted summary judgment to the defendants on Edwards’ ADA and Section 504 claims, holding that there was not a genuine dispute that Edwards failed to qualify for NCCIW’s MAT program after giving birth because she was no longer pregnant. On appeal, the Fourth Circuit determined that the district court misinterpreted Edwards’ claims, basing them on her pregnancy rather than her OUD diagnosis. Viewed from the lens of her OUD, the Fourth Circuit determined that Edwards may have a cognizable ADA and Section 504 claim. Thus, the Fourth Circuit vacated the dismissal of Edwards’ ADA and Section 504 claims and remanded the claims for further proceedings. The Fourth Circuit also vacated the grant of summary judgment as to several defendants regarding Edwards’ shackling claim. ([Return to In This Issue](#))

OVERDOSE PREVENTION GROUP HAS STANDING TO SUE CERTAIN STATE OFFICIALS OVER OTP MORATORIUM

Solutions Oriented Addiction Response West Virginia v. State of West Virginia, et al., U.S. District Court for the Southern District of West Virginia, Case No. 3:26-cv-00175 (opinion filed August 14, 2026). For previous updates about this case, please refer to the April 2026 issue of the LAPP *Case Law Monitor*, available [here](#). A federal court has ruled that a West Virginia overdose prevention group has standing to sue certain state officials over the state’s moratorium on new opioid treatment programs (OTPs.) Solutions Oriented Addiction Response West Virginia (SOAR-WV) is a West Virginia non-profit organization with the mission to “reduce harm and stigma, and empower individuals impacted by drug use through harm reduction, advocacy, and access to life-saving resources.” SOAR-WV claimed that its mission is hampered by a state moratorium on the licensure of new OTPs without a certificate of need (W. VA. CODE ANN. § 16B-13-12 (West 2026)). State law prevents the West Virginia Health Care Authority (HCRA) from issuing certifications of need to any OTP (W. VA. CODE ANN. § 16-2D-9(4) (West 2026)). In addition to the moratorium, zoning restrictions prevent “medication-assisted treatment programs” from being located within one-half mile of a daycare center or school unless it is an existing program and granted a variance (W. VA. CODE ANN. 16B-13-6(c) (West 2026)). West Virginia is the only state that has a moratorium on establishing new OTPs, which are the only facilities that are federally authorized to dispense methadone for the treatment of opioid use disorder (OUD). According to SOAR-WV, there are currently only nine approved OTPs in West Virginia, which leaves large portions of the state either underserved or not served at all.

On March 5, 2026, SOAR-WV filed a lawsuit against the state, the governor, the state secretary of health, the state department of health, the West Virginia Health Care Authority (HCRA), the executive director of the HCRA, and the chairman of the HCRA over the moratorium and the zoning restrictions. The suit asserted that the moratorium and the zoning restrictions violate: (1) Title II of the Americans with Disability Act (42 U.S.C. § 12131, *et seq.*) by discriminating against individuals with OUD; and (2) Section 504 of the Rehabilitation Act (29 U.S.C. § 794) by regulating OTPs more strictly than health facilities that treat people with other disabilities. Additionally, SOAR-WV asserted that the organization itself is harmed by the moratorium and

zoning restrictions because the laws: (1) limit its ability to refer the individuals it serves to effective treatment programs, forcing it to expend resources providing services to individuals who would otherwise be receiving effective treatment and not in need of SOAR-WV's services; and (2) force it to expend more resources in its statewide naloxone distribution efforts because there is a larger pool of individuals who are at risk of overdose. SOAR-WV asked the court for a declaratory judgment and an injunction prohibiting the defendants from enforcing the moratorium and zoning restrictions. The defendants filed a motion to dismiss, arguing that SOAR-WV lacks standing.

To establish standing, SOAR-WV must show that: (1) it has suffered or likely will suffer an injury in fact; (2) the injury likely was caused or will be caused by the defendant, and (3) the injury likely would be redressed by the requested judicial relief. First, SOAR-WV alleged that the moratorium and zoning restrictions caused it to suffer an injury by directly interfering with its core business activities. The defendants argued that SOAR-WV cannot prove "an injury in fact" because it made an independent and voluntary decision to expend its resources and money in a particular way. The court determined that the allegations did not support the defendants' argument and found that SOAR-WV sufficiently alleged it suffered a "concrete and demonstrable injury" that impaired its core mission. Next, SOAR-WV argued that, but for the moratorium and zoning restrictions, additional OTPs would open across the state, which would provide it with a broad network to make referrals. The defendants argued that SOAR-WV's desire to have more options to connect individuals with OUD to treatment centers will have, at best, only an indirect impact on its mission. The court disagreed with the defendants and found that SOAR-WV sufficiently alleged a direct connection between the moratorium and zoning restrictions and injury to its mission. The defendants also argued that SOAR-WV failed to show that they, as individuals, have caused or could have caused its alleged injuries. The defendants asserted that the complaint does not state what role the individual defendants have in the moratorium and zoning restrictions, nor if any such defendant had a specific duty to enforce them. In response, SOAR-WV argued that each defendant was properly sued because they are charged with the enforcement of the moratorium and zoning restrictions and, if lifted, the defendants would have the power to issue certificates of need to OTPs. The court agreed with SOAR-WV that it has standing against the executive director of HCRA and the chairman of HCRA because these defendants are prohibited from issuing certificates of need to OTPs. Additionally, the court determined that SOAR-WV has standing against HCRA because it is responsible for issuing certificates of need but cannot under West Virginia law. However, the court found that SOAR-WV does not have standing as to the remaining defendants because it failed to explain any specific duty that these defendants have in enforcing the moratorium and zoning restrictions.

Finally, the defendants argued that SOAR-WV cannot establish the third element of standing because it is speculative that its injury will be redressed by a favorable decision. Specifically, the defendants asserted that lifting the moratorium and zoning restrictions will not ensure that more OTPs will open across the state and that redressability hinges on how third parties will react to the ruling. The court disagreed with the defendants, finding that, if the moratorium and zoning restrictions are lifted, it is likely that methadone providers will apply and fulfill the requirements necessary to receive certificates of need to establish facilities. In sum, the court ruled that SOAR-WV's allegations were sufficient to demonstrate standing against the three HCRA defendants but dismissed the suit as it pertained to the remaining defendants. ([Return to In This Issue](#))

MASSACHUSETTS ATTORNEY GENERAL ISSUES CITATION AGAINST ADDICTION TREATMENT CENTER FOR HAVING PARTICIPANTS PERFORM UNPAID LABOR

(Citation issued September 1, 2026). Massachusetts Attorney General Andrea Joy Campbell has issued \$1.15 million in citations against Adult & Teen Challenge - Northeast, Inc. (TCNE), a substance use disorder (SUD) treatment program, over claims that it required participants to perform unpaid labor for external clients of the organization. TCNE is a 501(c)(3) organization headquartered in Brockton, Massachusetts, with SUD

treatment centers around New England, and it is part of Adult and Teen Challenge USA, a national network of accredited and affiliated SUD programs in over 20 states. An investigation by the Massachusetts Attorney General's Office revealed that participants at two of TCNE's men's programs were required to perform labor for for-profit companies that paid TCNE under a program called "Labor Source." This labor included cleaning, landscaping, snow-shoveling, and food preparation. Additionally, participants were required to do in-person and telephone fundraising. TCNE did not compensate the participants for this work, asserting that the activities fell within an exemption to the state minimum wage requirement for rehabilitation and training programs (MASS. GEN. LAWS ANN. ch. 151, § 2 (West 2026)). The investigation concluded that the work performed by the participants did not qualify for the exemption and that the participants were entitled to be paid for their labor, which the attorney general's office determined was more than \$850,000 in earned wages. Furthermore, the Massachusetts Department of Labor Standards (DLS), the state agency responsible for interpreting the minimum wage laws in the commonwealth, issued a determination letter confirming that the work performed by the TCNE program participants fell outside of the rehabilitation and training exemption. The DLS's letter stated that "the work performed by the program participants appears to benefit TCNE and its clients more than the program participants themselves." DLS also noted that the work programs were not geared toward the participants' individual needs. The citation asserts that TCNE violated various state wage laws, including failure to pay minimum wage, failure to keep accurate records, and failure to permit employees to earn and use earned sick time. Under the citation, TCNE is ordered to pay restitution to the participants and penalties to the commonwealth. ([Return to In This Issue](#))

FORMER DRUG REHABILITATION PROGRAM PATIENT CAN PROCEED WITH FAIR LABOR STANDARDS ACT CLAIM AGAINST PROGRAM

***Shelby Lee Williams, et al. v. Cenikor Foundation, et al.*, U.S. District Court for the Southern District of Texas, Case No. 4:19-cv-02828 (opinion filed August 3, 2026).** A federal district court has ruled that a former drug rehabilitation program patient can proceed with claims that the program violated federal wage laws by not paying him for work that he completed while in the program. The Cenikor Foundation (Cenikor) is a non-profit rehabilitation center that assists individuals with substance use disorder. Cenikor's long-term in-patient treatment programs require participants to work for "community business partners." Cenikor bills these outside businesses directly for the labor performed by its participants, and the revenue goes back into the organization to help offset its operational expenses. Participants are not paid for the work that they perform for these outside businesses, which Cenikor refers to as "vocational work therapy." Upon admission to the program, participants are required to sign numerous acknowledgements and agreements, including statements that Cenikor's treatment program includes work assignments and that residents do not receive monetary compensation for assigned responsibilities. The documents further require participants to acknowledge that they are not employees of Cenikor. On May 22, 2019, Randy Pouncy and Shelby Williams, two former Cenikor program participants, filed suit against the organization over claims that it violated the Fair Labor Standards Act (FLSA; 29 U.S.C. § 201, *et seq.*) by failing to provide them with minimum wage and overtime compensation for the labor that they performed while in the treatment program. Cenikor filed a motion for summary judgment, arguing that the plaintiffs cannot show that they were employees of Cenikor. In the alternative, Cenikor, argued that: (1) there is no evidence that any violation of the FLSA was "willful," meaning that a two-year statute of limitations applies; and (2) the court should decline to award the plaintiffs liquidated damages because it acted in good faith.

The court began by addressing the issue of the statute of limitations. In general, an action under the FLSA must commence within two years after the cause of action accrued. However, "a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued." (29 U.S.C. §255(a)). Cenikor argued that the plaintiffs failed to produce any evidence of willfulness, meaning that the two-year statute of limitations applies. A violation of the FLSA is considered to be willful if the employer

“either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute.” The plaintiffs asserted that there is evidence of willfulness because Cenikor: (1) received complaints about not paying Williams and Pouncy; (2) had a history of litigation regarding the program; (3) caught the attention of members of Congress; and (4) flaunted regulations specifically promulgated to prevent the exploitations of program participants. While there was evidence that both Williams and Pouncy expressed dissatisfaction with their lack of compensation during the program, the court determined that this does not constitute evidence that Cenikor knew or should have known that its program violated the FLSA. The court also determined that the plaintiffs’ claims that Cenikor had a history of litigation regarding its vocational therapy program do not constitute evidence of willfulness because they failed to specify the litigation to which they refer. The plaintiffs also submitted a letter into the court record from Senators Elizabeth Warren and Tammy Baldwin to the U.S. Government Accountability Office (GAO), requesting the GAO to conduct an investigation into mandatory vocational requirements at drug and alcohol rehabilitation programs, including whether such programs violate the FLSA. However, the court ruled that even if this letter (which does not specifically mention Cenikor) could constitute evidence of a willful violation, it could not do so in this case because it is dated November 19, 2020, which is after the alleged FLSA violations occurred in this case. Finding that the plaintiffs failed to produce evidence that the violations of the FLSA were willful, the court ruled that the two-year statute of limitations applies to the plaintiffs’ claims. Based on the two-year statute of limitation, the court determined that Pouncy’s claims were time barred, but Williams’ claims could proceed.

The remaining question was whether Williams was an “employee” of Cenikor for the purposes of the FLSA. The key to determining employee status is the primary beneficiary test, whether the participant or the employer received the primary benefit from the relationship. Courts consider various factors as part of this test, including: (1) the plaintiffs’ expectations of compensation; (2) the therapeutic value of the program; and (3) whether the relationship displaces paid employees. Cenikor argued that Williams cannot claim employee status because he benefitted substantially from his participation in the program. Williams testified that he regularly worked 60 hours per week or more for third-party employers as part of his vocational therapy and that sometimes his work hours were so excessive that he had to skip counseling sessions. While the court agreed that Williams benefitted from certain aspects of Cenikor’s program, it determined that the benefits he gained from his unpaid labor were minimal. The court concluded that hours worked by Williams weighed in favor of employee status. Cenikor also argued that Williams entered its program to get sober and avoid a prison sentence—rather than to make money, so he was not an employee. While the court agreed with Cenikor that these facts weighed against employee status, it ruled that they do not categorically exclude Williams from compensation under the FLSA. The court concluded that a jury could reasonably find that Cenikor was the primary beneficiary of the work that Williams performed during his treatment and denied Cenikor’s motion for summary judgement with respect to Williams. However, it granted the motion with regard to Pouncy’s claims because they were barred by the statute of limitation. A jury trial has been scheduled for March 1, 2027. ([Return to In This Issue](#))

KRATOM RETAILERS SUE TO INVALIDATE MASSACHUSETTS’ EMERGENCY SCHEDULING OF KRATOM

Rihaan Corporation, et al. v. Massachusetts Department of Public Health, et al., Massachusetts Superior Court (Suffolk), Case No. 2684CV02521 (suit filed August 21, 2026). Four Massachusetts kratom retailers have filed a lawsuit against the Massachusetts Department of Health and its commissioner, seeking to invalidate an emergency scheduling order pertaining to kratom. On August 13, 2026, the commissioner issued an order and promulgated an emergency regulation (105 MASS. CODE REGS. 726.000, *et seq.* (2026)) that designated kratom as a Schedule I controlled substance in the commonwealth. The emergency regulation defined “kratom” as: “[t]he plant *Mitragyna speciosa*, mitragynine, 7-hydroxymitragynine (also known as 7-OH), mitragynine pseudoindoxyl (also known as MP), dihydro-7-hydroxymitragynine (also known as MGM-15), 9-fluoro-7-hydroxymitragynine (also known as MGM-16), including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is

possible. Kratom includes any product held out or holding itself out to be kratom.” (105 MASS. CODE REGS. 726.003 (2026)). Pursuant to MASS. GEN. LAWS ANN. ch. 94C, § 2A, the commissioner may, by order, place a substance in Schedule I on a temporary basis if the he or she finds that: (1) it is necessary to avoid an imminent hazard to the public safety; (2) it is necessary for the preservation of the public health, safety, or general welfare; (3) the substance is not listed in any other schedule; and (4) there is not an exception for the substance. Additionally, MASS. GEN. LAWS ANN. ch. 94C, § 3 states that for a substance to be placed in Schedule I, it must have: (1) a high potential for abuse; (2) no currently accepted medical use in treatment in the U.S.; and (3) a lack of accepted safety for use of the substance under medical supervision.

The plaintiffs argued that the emergency regulation fails to properly justify the inclusion of kratom in Schedule I. The commissioner’s order reads that kratom “is not well researched for efficacy in treatment of psychiatric and substance use disorders, nor for any other medical condition,” and that “there are no prescription or over-the-counter drug products containing kratom or its known alkaloids that are legally on the market.” The plaintiffs assert that these statements do not demonstrate that kratom: (1) has a high potential for abuse; (2) does not have any currently accepted medical use; or (3) lacks accepted safety under medical supervision that would justify its placement in Schedule I. The complaint asserts that by failing to make the findings required by § 3, the commissioner lacked the statutory authority to place kratom in Schedule I and, as a result, the emergency regulation is invalid. In the alternative, the plaintiffs argue that the commissioner failed to demonstrate that all forms of kratom met § 2A’s required imminent hazard determination, and they request the court to declare that the emergency regulation is invalid to the extent that it covers the plant *Mitragyna speciosa*, botanical kratom products, and products “held out” as kratom. The emergency regulation went into effect on August 28, 2026. ([Return to In This Issue](#))

AMERICAN KRATOM ASSOCIATION SEEKS CLARIFICATION ON THE DEA’S TEMPORARY SCHEDULING OF SYNTHETIC KRATOM ALKALOIDS

***American Kratom Association v. U.S. Drug Enforcement Administration, et al.*, U.S. District Court for the District of Columbia, Case No. 1:26-cv-02997-AHA (suit filed August 26, 2026).** The American Kratom Association (AKA), a non-profit trade association that represents kratom consumers and businesses, has filed a suit against the U.S. Drug Enforcement Administration (DEA) in attempt to resolve what it calls “an urgent interpretive uncertainty” created by the DEA’s August 26, 2026 temporary placement of mitragynine pseudoindoxyl, MGM-15, and MGM-16 in Schedule I of the Controlled Substances Act (91 Fed. Reg. 54,948). The AKA is seeking a declaration that the temporary scheduling order does not apply to “traditional botanical kratom” products. In the complaint, the AKA defines “traditional botanical kratom” as “powder and extract that maintain the same alkaloid ratios as those found in the natural plant, that have not been intentionally synthesized, isolated, enriched, fortified, or dosed with pseudoindoxyl, and that contain at least 100 parts mitragynine for every 1 part of combined 7-OH and pseudoindoxyl.” The AKA claims that traditional botanical kratom products need to be specifically excluded from the temporary scheduling order because modern testing may detect naturally occurring or naturally formed trace amounts of mitragynine pseudoindoxyl in traditional botanical kratom. The complaint asserts that the declaration would allow the temporary scheduling order to have its public safety purpose while avoiding the criminalization of traditional botanical kratom. The complaint also cites the DEA’s August 25, 2026 press release on the temporary scheduling order, which stated that the temporary rule was “directed at deliberately manufactured and concentrated opioid products, not traditional botanical kratom.” The complaint emphasizes that the AKA is not challenging the DEA’s authority to issue the temporary rule but instead merely seeking a declaration confirming the DEA’s press release statement that traditional botanical kratom products are outside the scope of the temporary scheduling order. The complaint notes that only if the temporary scheduling order is interpreted to affect traditional botanical kratom does the AKA’s alternative validity challenge arise. In that case, the AKA argues that the temporary scheduling order is invalid as applied to traditional botanical kratom

because the DEA did “not analyze the history or current pattern of abuse, the scope, duration, and significance of abuse, or the public-health risk” presented by trace amounts of mitragynine pseudoindoxyl in traditional botanical kratom and did not explain why a threshold-based cutoff like the one proposed for 7-hydroxymitragynine (7-OH) in the DEA’s separately proposed temporary scheduling order for 7-OH (91 Fed. Reg. 40,917) was unavailable for mitragynine pseudoindoxyl. On September 2, 2026, the AKA filed a motion for summary judgment. The defendants have until October 9, 2026 to file a response to the motion. ([Return to In This Issue](#))

ARIZONA ATTORNEY GENERAL SUES KRATOM MANUFACTURER BOTANIC TONICS FOR CONSUMER FRAUD



State of Arizona, ex rel Kristin K. Mayes v. Botanic Tonics, LLC, et al., Arizona Superior Court (Maricopa County), Case No. CV2026-039491 (suit filed September 23, 2026). Arizona Attorney General Kris Mayes has filed a lawsuit against Botanic Tonics, LLC (Botanic Tonics), the manufacturer of the kratom and kava beverage “Feel Free,” asserting that the company violated the Arizona Consumer Fraud Act (ACFA; ARIZ. REV. STAT. ANN. § 44-1521, *et seq.* (West 2026)) by failing to adequately disclose the risks associated with using the product. Specifically, the complaint asserts that the defendants omitted that Feel Free contained kratom, thereby failing to adequately disclose

its risks of addiction, dependence, withdrawal, or other adverse health effects. The attorney general is asking the court to issue a permanent injunction to enjoin the defendants from engaging in deceptive, misleading, or unfair acts or practice in violation of the ACFA and order them to pay the state a civil penalty of up to \$10,000 for each willful violation of the ACFA. ([Return to In This Issue](#))

FEDERAL COURT RULES ALL EVIDENCE OBTAINED AFTER AN OFFICER’S UNWARRANTED ALPR SEARCH MUST BE SUPPRESSED

United States v. Melisa Susan Kyle, U.S. District Court for the Northern District of Oklahoma, Case No. 26-CR-00189-SEH (opinion filed October 1, 2026). A federal district court has suppressed all evidence obtained after a police officer initiated an unwarranted automated license plate reader (ALPR) search. Tulsa County Deputy Sheriff Freddie Alaniz investigates crimes on the highways in and around Tulsa Oklahoma. Alaniz’s patrol vehicle is equipped with exterior cameras that record the license plate number of the cars that pass him. These cameras feed into larger, fixed-position camera networks that automatically capture and log license plate numbers along with accompanying information like the date, time, and location in which a license plate is seen by one of the cameras in that network. This technology is known as ALPR technology.¹ While on duty one evening, Alaniz noticed a Mazda SUV with a California license plate drive by him on the highway. Alaniz followed the car merely because it had a California license plate. He ran a query check on the car’s license plate number through the ALPR system and learned that the car had made a trip from Oklahoma, toward the California/Arizona border, and was heading back to the Missouri area after a short trip. Alaniz testified that the Mazda was in the California area for about one day, but it was unclear from the record exactly how long the car was there. While following the car, Alaniz believed that he observed two traffic violations: (1) that the driver failed to signal a lane change at least 100 feet before making a lane change; and (2) that the driver followed a vehicle in front of it more closely than is safe. Alaniz pulled over the vehicle and spoke with the driver and defendant Melisa Kyle. Kyle informed Alaniz that the vehicle was a rental and that she had

¹ For more information on ALPR systems, please refer to LAPP’s Model Automatic License Plate Recognition System Act, available [here](#).

gone to California for a couple of days. Kyle lit a cigarette as Alaniz approached her vehicle but extinguished it at the request of Alaniz. Over the course of their conversation, Kyle informed Alaniz that she had traveled to California to visit her cousins who she had not seen in years. She had been gone for six days but had only stayed in California for two nights. Alaniz asked her why she had so much luggage for a short trip, and she responded that “she likes to pick up clothes for her kids.” When asked what she did in California, Kyle responded that she “went swimming” and visited her cousins at their farm. Alaniz then asked why she traveled so far for a short trip, and Kyle responded that she had not been able to travel in many years, but now that she was divorced and her kids were older, she could go wherever she wanted. After their conversation, Alaniz returned Kyle’s driver’s license and gave her a written warning regarding the traffic violations. Then Alaniz informed Kyle that he works in criminal interdiction on the highways and that he is looking for people transporting drugs, currency, or guns. He explained to Kyle that based on his training and experience, people who take “very short trips to California and come right back are usually transporting large amounts of drugs.” Alaniz asked Kyle for consent to search her vehicle, and she denied the request. Immediately after Kyle refused the search, Alaniz asked for backup and told Kyle that she was detained so he could have a dog sniff her car. While Alaniz explained the next steps, Kyle disclosed that she had some cannabis in the car. A police dog sniffed the car, alerted, and the officers conducted a search of the vehicle, which resulted in Kyle’s arrest. The opinion does not specify with what the officers charged Kyle.

Kyle asked the court to suppress all evidence obtained as result of an unconstitutional search and seizure. A traffic stop is valid under the Fourth Amendment of the U.S. Constitution if the stop is based on an observed traffic violation or if the police officer has a reasonable, articulable suspicion that a traffic or equipment violation has occurred or is occurring. The court determined that Alaniz had an objectively reasonable basis to stop Kyle for following the car in front of her too closely. However, once an officer returns the driver’s license and registration, the traffic stop has ended, and questioning must cease and the driver must be free to leave. Continued detention is lawful only if the encounter becomes consensual or if, during the initial lawful traffic stop, the officer develops a reasonable suspicion that the detained person is engaged in criminal activity. In this case, to extend the traffic stop, Alaniz had to have a reasonable suspicion of criminal activity before he returned Kyle’s license to her. The government asserted six reasons why Alaniz had reasonable suspicion that Kyle was engaging in criminal conduct beyond the observed traffic infractions: (1) her quick trip to California and the purpose of her travel; (2) the large amount of luggage she had for a short trip; (3) that she lit a cigarette as Alaniz approached the vehicle (the government argued it could have been to mask the smell of contraband); (4) that she was driving a rental vehicle; (5) she appeared to be nervous; and (6) she disclosed that she had cannabis in the car. Based on the totality of the circumstances, the court determined that Alaniz did not have enough information to reasonably believe that Kyle was engaged in unlawful conduct because the factors upon which the government relied were similar to the circumstances that citizens encounter on legitimate road trips. Accordingly, the court ruled to suppress all of the evidence recovered as a result of the traffic stop.

Kyle also challenged the constitutionality of Alaniz’s use of the ALPR system in his investigation, arguing that the ALPR search was an unreasonable governmental intrusion of her protected privacy rights. Kyle further argued that the evidence derived from her detention and search of her vehicle as well as her statements about possessing cannabis, should be suppressed as “fruit of the poisonous tree.” The government responded to Kyle’s argument by asserting that the data obtained by ALPR technology is in plain view on public roadways, and thus, she did not have a reasonable expectation of privacy in this information. Neither the Tenth Circuit nor the U.S. Supreme Court has decided whether the use of ALPR technology by law enforcement is deemed to be a search for Fourth Amendment purposes. The court determined that because the ALPR system that Alaniz used to search “Kyle’s historical location information intruded on her reasonable expectation of privacy in the whole of her physical movements,” it constituted a search under the Fourth Amendment. The court further determined that the search was not supported by probable cause, and it was conducted without a warrant in violation of Kyle’s Fourth Amendment rights. Accordingly, the court suppressed all of the evidence obtained after Alaniz initiated the ALPR search, considering it “fruit of the poisonous tree.” ([Return to In This Issue](#))

FEDERAL COURT DETERMINES ANTITRUST LAWSUIT CAN PROCEED AGAINST VIVITROL MANUFACTURER

***Value Drug Company v. Alkermes, Inc.*, U.S. District Court for the District of Massachusetts, Case No. 1:25-cv-12872 (opinion filed September 24, 2026).** For previous updates in this case, please refer to the December 2025 issue of the LAPP Case Law Monitor, available [here](#). A federal district court has ruled that a putative class action involving anti-trust allegations can continue against the pharmaceutical company Alkermes, Inc. (Alkermes). In October 2025, wholesale drug distributor, Value Drug Company (Value Drug) filed a putative class action lawsuit against Alkermes, asserting that the company engaged in anticompetitive conduct in violation of Section 2 of the Sherman Act (15 U.S.C. § 2) by defrauding the U.S. Patent and Trademark Office (USPTO) to obtain a patent in 2011 for its brand-name drug, Vivitrol (naltrexone). Value drug alleged in its complaint that Alkermes, in its 2005 patent application and in a 2009 supporting declaration submitted by Dr. Elliot Ehrick, its employee and the named inventor, failed to disclose a 2000 study as material prior art² and falsely stated in that application and supporting declaration that the patent claimed an “unexpected discovery.” Value drug claimed that Alkermes engaged in this “scheme” to monopolize the injectable naltrexone market and delay generic competition to Vivitrol. Absent such conduct, Value Drug alleged that cheaper generic injectable naltrexone would have been available in the U.S. around May 26, 2020, the day after Alkermes’ other patents for Vivitrol expired. Value Drug asserted that the absence of those generic drugs has caused purchasers to pay more for Vivitrol. In bringing this suit, Value Drug sought to represent a class composed of those who similarly purchased Vivitrol in the U.S. directly from Alkermes at any time on or after May 26, 2020. Alkermes moved to dismiss the complaint for failure to state a claim.

Section 2 of the Sherman Act “makes it unlawful for any person to monopolize or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states or with foreign nations.” Alkermes moved to dismiss the claim based on the *Noerr-Pennington* doctrine, which “provides a party immunity from anti-trust liability for petitioning the government for redress, including when enforcing one’s intellectual property rights in court.” (*Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.* (365 U.S. 127 (1961)) and *United Mine Workers v. Pennington* (381 U.S. 657 (1965))). Value Drug responded by invoking the *Walker Process* fraud exception to the *Noerr-Pennington* doctrine which prohibits *Noerr-Pennington* immunity where the anti-trust defendant has obtained the challenged patent through fraud on the USPTO (*Walker Process Equipment, Inc. v. Food Mach. & Chem. Corp.* (382 U.S. 172 (1965))). To invoke this exception, Value Drug must allege that Alkermes made materially false representations with intent to mislead or deceive the patent office, “but for which the patent would not have been issued.” According to the complaint, Alkermes and Ehrich allegedly knew that a study that Ehrich co-authored in 2000 yielded similar results to the claimed invention yet failed to disclose it in the 2005 patent application or his 2009 declaration. The court determined that such factual allegations support a reasonable inference that Alkermes and Ehrich withheld invalidating prior art with the specific intent to deceive the USPTO. Having adequately alleged materiality and intent, the court ruled that Value Drug properly stated a *Walker Process* claim and thus a plausible violation of Section 2 of the Sherman Act. Accordingly, the court denied Alkermes’ motion to dismiss. The court further noted, however, that the Sherman Act has a four-year statute of limitations (15 U.S.C. § 15b) and determined that Value Drug may not recover for any purchases of Vivitrol that it made prior to October 2, 2021, which is four years before the filing of this lawsuit. ([Return to In This Issue](#))

² “Prior art” is knowledge that is publicly known, used by others, or available on the date of invention to a person of ordinary skill in an art, including what would be obvious from that knowledge. Prior art includes information: (1) in applications for previously patented inventions; (2) that was published more than one year before a patent application is filed; and (3) in other patent applications and inventor's certificates filed more than one year before the application is filed. *Art* (3), BLACK’S LAW DICTIONARY (12th ed. 2024).

DELAWARE COURT APPLIES DELAWARE LAW TO DENY INSURER DEFENSE COSTS IN OPIOID LAWSUITS

***Arrowood Indemnity Co. v. AmerisourceBergen Corp.*, Delaware Superior Court, Case No. N22C-01-182 (report and recommendation issued August 28, 2026).** A Delaware state court has recommended applying Delaware law to govern insurance coverage disputes involving thousands of opioid distribution lawsuits brought against a major pharmaceutical distributor. AmerisourceBergen Corp. (now known as Cencora Inc.) is one of the nation's largest prescription drug distributors and has faced thousands of municipal and state claims alleging that the company contributed to the nationwide opioid epidemic. In 2022, insurers, including units of American International Group Inc. and Hartford Insurance Group Inc., filed a declaratory judgment action seeking to establish that they did not have a duty to defend or indemnify AmerisourceBergen against these claims. In December 2024, the court granted partial summary judgment to the insurers, holding that policies were not triggered where underlying suits sought purely economic damages rather than recovery for specific individual bodily injuries. AmerisourceBergen subsequently urged the court to conduct a choice-of-law analysis and apply Pennsylvania law instead of Delaware law to the remaining 2,413 contested claims. On August 28, 2026, the special magistrate judge in Delaware Superior Court issued a report and recommendation rejecting the distributor's request, finding that there is no true conflict between Delaware and Pennsylvania law on the topic and adhering to the standard established in the Delaware Supreme Court's August 2025 ruling in *In re CVS Opioid Insurance Litigation*. (For more information about the *CVS* case, please refer to the October 2025 issue of the *LAPPA Case Law Monitor*, available [here](#).) The court warned that switching legal standards would be a "tremendous waste of time" because it risked prompting an amended complaint from AmerisourceBergen that would require an individualized, case-by-case review of thousands of suits when Delaware law already had established that there is no duty to defend for the insurers. ([Return to In This Issue](#))

SECOND CIRCUIT RULES LOCAL GOVERNMENT NUISANCE SUITS AGAINST PBMS BELONG IN FEDERAL COURT

***County of Westchester v. Mylan Pharmaceuticals Inc.*, U.S. Court of Appeals for the Second Circuit, Case No. 24-1639 (opinion filed September 2, 2026).** A federal appeals court has ruled that public nuisance lawsuits brought by local governments against major pharmacy benefit managers (PBMs) over their role in the opioid epidemic must be adjudicated in federal court rather than New York state court. A coalition of 57 New York counties and municipalities filed dozens of civil actions in New York state courts against the PBMs Express Scripts Inc. and OptumRx Inc., asserting that the companies had contributed to a widespread public nuisance by improperly administering prescription drug benefits and processing claims for excessive opioid shipments. After the individual county actions were consolidated in Westchester County Supreme Court, the PBM defendants removed the consolidated litigation to federal court, asserting that their administration of health plans directly implicated federal operations, including drug benefits for the U.S. military and federal healthcare programs. Federal district judges in Manhattan and Brooklyn rejected this jurisdictional argument and remanded the cases to state court, concluding that the companies' private and federal businesses could be separated at trial. On September 2, 2026, the U.S. Court of Appeals for the Second Circuit reversed the orders to remand, holding that the lawsuits could not lawfully be returned to state court because evaluating the local governments' claims and any proposed liability disclaimers would require courts to determine whether the harms arising from federal versus non-federal prescription drug distribution could be disentangled, directly entangling federal defenses with the merits of the litigation. The case will remain in federal district court for further proceedings. ([Return to In This Issue](#))

FEDERAL COURT RULES WHISTLEBLOWER'S SUIT REQUESTING A PORTION OF WALGREENS' MULTISTATE SETTLEMENT FUNDS IS BETTER SUITED FOR STATE COURT

***United States ex rel. Novak v. Walgreens Boots Alliance, Inc., et al.*, U.S. District Court for the Northern District of Illinois, Case. 1:18-cv-05452 (opinion filed September 29, 2026).** For previous updates on this case, please refer to the April 2026 issue of the LPPA *Case Law Monitor*, available [here](#). A federal court has declined to exercise supplemental jurisdictions over a whistleblower's claims that he was entitled to a share of state settlement funds from the Walgreens' multistate opioid settlement. T.J. Novak, a former Walgreens pharmacist, filed a whistleblower suit in August 2018 on behalf of the United States and 29 states, asserting claims under the False Claims Act (31 U.S.C. § 3729) and each state's analogous false claims statute. In December 2022, Walgreens executed a \$4.7 billion multistate settlement agreement to resolve opioid-related claims that those governments had asserted against the company. Novak was not a party to the multistate settlement. On November 26, 2025, Novak moved for a declaratory judgment claiming that he is entitled to a share of the states' settlement funds as a whistleblower. The motion seeks a share from 28 of the 29 states (New Hampshire is omitted) that were included in Novak's original August 2018 lawsuit. The suit demands the maximum whistleblower award available under each state's statute. The court ruled to dismiss Novak's claims without prejudice, determining that it was not appropriate for a federal court to exercise supplemental jurisdiction over these state law claims. The court noted that the suit presents open questions of state law and that the answers may differ from state to state and ruled that state courts should address these questions.

WALMART AGREES TO \$50 MILLION SETTLEMENT WITH U.S. DEPARTMENT OF JUSTICE TO RESOLVE OPIOID LAWSUIT

***United States v. Walmart, Inc., et al.*, U.S. District Court for the District of Delaware, Case No. 1:20cv01744-CFC (settlement reached August 28, 2026).** For previous updates on this case, please refer to the April 2024 issue of the LPPA *Case Law Monitor*, available [here](#). The U.S. Department of Justice has agreed to a \$50 million settlement with Walmart Inc. (Walmart) to resolve allegations that Walmart pharmacies illegally filled thousands of invalid prescriptions for controlled substances in violation of the Controlled Substances Act (21 U.S.C. § 801, *et seq.*). The government's suit had claimed that since June 26, 2013, Walmart filled invalid prescriptions despite its compliance team and its pharmacists knowing that they were invalid. The suit asserted that the pharmacist knew the prescriptions were invalid because they were either written by a known "pill mill" prescriber or the prescriptions had obvious red flags, such as dangerous drug combinations, repeated fills of high-dosages, or repeated requests for early refills. In addition to the monetary payment, the settlement requires Walmart to enter into a memorandum of agreement with the U.S. Drug Enforcement Administration to address its future obligations in dispensing controlled substances. The agreement requires Walmart to: (1) establish a hotline for both employees and patients to report suspected illegal dispensing of controlled substances; (2) proactively monitor the dispensing patterns of its pharmacies to identify and address potentially illegal dispensing; and (3) establish a process to evaluate prescribers suspected of illegal prescribing. ([Return to In This Issue](#))

FEDERAL LAWSUIT CHALLENGES TEXAS' BAN ON HEMP PRODUCTS CONTAINING THC

***Thomas Monti, et al. v. Imelda Garcia, et al.*, U.S. District Court for the Southern District of Texas, Case No. 3:26-cv-00254 (suit filed July 21, 2026).** A lawsuit filed in federal court asserts that Texas's rule banning hemp products that contain THC is inconsistent with federal and state law. On June 10, 2019, the Texas legislature enacted H.B. 1325, which excluded hemp and the tetrahydrocannabinols (THCs) in hemp from the

definition of a controlled substance (TEX. HEALTH & SAFETY CODE § 481.002(5) (West 2026)) and established a state regulatory framework consistent with the federal 2018 Farm Bill (Pub. L. No. 115-334).³ A year later, under the authority of TEX. HEALTH & SAFETY CODE § 481.034, the Texas Department of State Health Services (Department) reinstated the THC⁴ in hemp as Schedule I controlled substances except for up to 0.3 percent of delta-9 THC⁴ as part of its 2021 annual republication of controlled substances. A Texas court enjoined the Department's enforcement of the reinstated definitions, and the injunction remained in place for over four years. On May 1, 2026, the Texas Supreme Court dissolved that injunction on sovereign immunity and jurisdictional grounds. (*Texas Department of State Health Services, et al. v. Sky Marketing Corp., et al.*, 733 S.W.3d 689, for more information about this case please refer to the June 2026 issue of the LAPP Case Law Monitor, available [here](#).) In light of the ruling from the Texas Supreme Court, on July 10, 2026, the Department republished the challenged definitions (51 Tex. Reg. 4597) which had an effective date of July 31, 2026. Two hemp businesses and one individual hemp user filed a lawsuit against Imelda Garcia in her official capacity as the interim commissioner of the Department along with other state officials, arguing that the reinstated definitions materially depart from the federal and state statutory definition of hemp and are legally incompatible. The plaintiffs asserted that they structured their businesses and conduct on federal and Texas law that legalized hemp and the THC in hemp and argued that they now face a credible and imminent threat of investigation, seizure, prosecution, and civil and administrative enforcement because of the Department's reinstated definitions. The plaintiffs claimed that the reinstated definitions violate the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution because they fail to provide fair notice and authorize or encourage arbitrary and discriminatory enforcement. Additionally, the plaintiffs asserted that the reinstated definitions are preempted by the 2018 Farm Bill and are unconstitutional under the Commerce Clause. The plaintiffs asked the court to preliminarily and permanently enjoin the defendants from enforcing the reinstated definitions against them or any other person or entity in Texas. On August 9, 2026, the court denied the plaintiffs' motion for a temporary restraining order, finding that they failed to show that they would: (1) likely prevail on the Fourteenth Amendment and Commerce Clause claims; and (2) face irreparable harm absent an injunction. On September 17, 2026, the plaintiffs filed an amended complaint, and on September 29, 2026, they filed a motion for summary judgment. ([Return to In This Issue](#))

FEDERAL COURT DETERMINES THAT HAWAII'S HEMP RULES ARE NOT PREEMPTED BY FEDERAL LAW

***Lance Saher Alyas, et al. v. Anne E. Lopez, et al.*, U.S. District Court of the District of Hawaii, Case No. 1:26-cv-00035-JAO-WRP (motion to dismiss granted September 4, 2026).** A federal district court has ruled that Hawaii's definition of a legal hemp product and related testing standards are not preempted by federal law. In 2020, the Hawaii legislature enacted Act 14, which adopted the federal definition of hemp⁵ from the 2018 Farm Bill (Pub. L. No. 115-334; 7 U.S.C. § 1639o), except that Hawaii's definition added that the delta-9 THC⁶ concentration levels would be "measured post-decarboxylation⁷ or by other similar reliable methods." (HAW. REV. STAT. ANN. § 328G-1 (West 2026)). The Hawaii Department of Health (DOH)

³ Note that the Continuing Appropriations and Extensions Act of 2026 (Pub. L. No. 119-37) modified the definition of hemp, and the new definition is set to go into effect on December 11, 2026 (previously November 12, 2026). For more information, please refer to LAPP's [Closing the Hemp Loophole: The New Federal Definition of Hemp and its Impact](#) factsheet.

⁴ For more information on delta-9 THC and how it differs from other types of THC, please refer to LAPP's [Explaining Cannabinoids](#) factsheet.

⁵ Note that the Continuing Appropriations and Extensions Act of 2026 (Pub. L. No. 119-37) modified the definition of hemp, and the new definition is set to go into effect on December 11, 2026 (previously November 12, 2026). For more information, please refer to LAPP's [Closing the Hemp Loophole: The New Federal Definition of Hemp and its Impact](#) factsheet.

⁶ For more information on delta-9 THC and how it differs from other types of THC, please refer to LAPP's [Explaining Cannabinoids](#) factsheet.

⁷ Hawaii law defines "decarboxylated" as "the completion of the chemical reaction that converts naturally occurring cannabinoid acid into a cannabinoid, including delta-9 tetrahydrocannabinol's acids (THCA) into delta-9-tetrahydrocannabinol. The decarboxylated value for delta-9-tetrahydrocannabinol may be calculated using a conversion formula that sums delta-9-tetrahydrocannabinol and eighty-seven and seven tenths (87.7) per cent of THCA." HAW. REV. STAT. ANN. § 328G-1 (West 2026)

promulgated rules to establish compliance standards and enforcement procedures for Act 14 (HAW. CODE R. § 11-37-1, *et seq.* (West 2026)). The regulations employ a conversion methodology of THCa⁸ into delta-9 THC to calculate the total THC level for compliance purposes. In 2025, the Hawaii legislature enacted Act 269, which criminalized the distribution and sale of hemp products that fail to comply with Hawaii's state-specific hemp requirements even if those products are lawful under federal law (HAW. REV. STAT. ANN. § 328G-10 (West 2026)). The plaintiffs operate businesses in Hawaii that distribute and sell hemp, which they asserted complies with the federal definition of hemp but may not comply with Hawaii's divergent definition and testing requirements. They claimed that this places them at an imminent threat of enforcement actions by the state, including inspection, seizure, and destruction of inventory. The plaintiffs filed suit against the attorney general of Hawaii and the director of the DOH, arguing that the state's definition of hemp and its regulations violate federal law. Specifically, the plaintiffs claimed violations of the Supremacy Clause, the Dormant Commerce Clause,⁹ and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. The plaintiffs filed a motion for a preliminary injunction and the defendants moved to dismiss. The 2018 Farm Bill preempts states from prohibiting the interstate transportation of hemp, but it allows states to establish their own hemp production rules. While the 2018 Farm Bill does not address a state's power to regulate the sale and distribution of hemp, the court noted that federal courts are directed to assume state laws are not superseded without clear intent. The plaintiffs argued that because federal law decriminalizes cannabis containing no more than 0.3 percent delta-9 THC, any state law that criminalizes hemp products outside of that percentage is preempted. The court disagreed, finding that besides general statements that their products may not be compliant with state law, the plaintiffs failed to allege any facts that the state's testing methodology conflicts with the federal definition of hemp. The court concluded that Hawaii's more stringent laws regarding the sale and distribution of hemp are not preempted by federal law. The court also ruled that the plaintiffs failed to state a claim under the Dormant Commerce Clause because Hawaii's regulations apply uniformly to both in-state and out-of-state businesses. Finally, the court ruled that the plaintiffs' due process claim also failed because they did not provide evidence suggesting that they faced a credible threat of seizure and destruction of their products. The court granted the defendants' motion to dismiss and denied the plaintiffs the opportunity to amend their complaint. ([Return to In This Issue](#))

FEDERAL COURT RULES CONNECTICUT FARMERS DO NOT HAVE STANDING TO CHALLENGE REGULATIONS GOVERNING HIGH THC HEMP PRODUCTS

***Michael Goodenough, et al. v. Ned Lamont, et al.*, U.S. District Court for the District of Connecticut, Case No. 3:25-cv-01371 (opinion filed September 8, 2026).** A federal court has ruled that a group of Connecticut farmers do not have standing to challenge the state's regulatory scheme for high THC hemp products. After the enactment of the federal 2018 Farm Bill (Pub. L. No. 115-334), Connecticut submitted and received approval from the U.S. Department of Agriculture for its hemp plan, which defined hemp in a manner consistent with the 2018 Farm Bill (7 U.S.C. § 1639o).¹⁰ A few years later, Connecticut enacted a series of new laws that created a regulatory scheme for high and moderate THC hemp products, including restrictions on where the products are sold and regulations for synthetic cannabinoids.¹¹ These new laws modified CONN. GEN. STAT. § 21a-240, *et seq.* (West 2026), which are the statutes governing the sale of

⁸ For more information on THCa and how it differs from delta-9 THC, please refer to LAPPa's [Explaining Cannabinoids](#) factsheet.

⁹ The Dormant Commerce Clause is a constitutional principle that the Commerce Clause of the U.S. Constitution prevents state regulation of interstate commercial activity even when Congress has not acted under its Commerce Clause power to regulate that activity. *Dormant Commerce Clause*, BLACK'S LAW DICTIONARY (12th ed. 2024).

¹⁰ Note that the Continuing Appropriations and Extensions Act of 2026 (Pub. L. No. 119-37) modified the definition of hemp, and the new definition is set to go into effect on December 11, 2026 (previously November 12, 2026). For more information, please refer to LAPPa's [Closing the Hemp Loophole: The New Federal Definition of Hemp and its Impact](#) factsheet.

¹¹ Public Act 23-79 (introducing classifications for high-THC hemp products), Public Act 24-76 (classifications of moderate-THC hemp products and infused beverages), Public Act 23-166 (hemp products sold through cannabis dispensaries and hybrid retailers), and Public Act 24-76 (banning synthetic cannabinoids).

consumable hemp products. However, they did not alter the Connecticut hemp plan or the definition of hemp as it applies to agricultural production and as consistent with federal law. The plaintiffs in this case are a group of Connecticut farmers and processors of hemp, and none of them alleged to be retailers of consumable hemp products. The farmers filed a lawsuit against several state officials, arguing that the state impermissibly changed the definition of hemp under state law so that it is now inconsistent with federal law. The defendants filed a motion to dismiss, arguing that the Connecticut laws at issue are not alleged by the farmers to have caused an injury to the farmers themselves. The farmers claimed that they have experienced injuries to their business interests and their property rights in their state-issued hemp licenses. Specifically, the farmers asserted two injuries in their complaint: “(1) the reduction of a cultivation area of hemp, and (2) stranded investment in processing equipment.” However, the farmers did not identify why the reduction in cultivation acres was undertaken and how the reduction was related or caused by the challenged laws, nor did they allege why the equipment was stranded or unusable. The farmers further argued that they are prevented from farming and producing hemp in a manner consistent with federal law and the Connecticut hemp plan which has negatively impacted their incomes. The court noted that nothing in the public acts at issue prevent farming or producing hemp and that the public acts are primarily focused on consumer sales. The court noted that the farmers still have their hemp licenses and do not allege that the state has revoked or removed their licenses. The court determined that “a nebulous decrease in the value of a hemp license is not enough to give rise to a due process claim.” Because the farmers’ hemp licenses have not been completely revoked or suspended, the court ruled that any property rights upon which the farmers have in their licenses have not been infringed. It also ruled that the farmers failed to demonstrate how any of their alleged injuries are traceable to the statutory violations that they alleged. Finding that the farmers failed to identify a concrete, traceable injury, the court ruled that the farmers did not have standing and granted the defendants’ motion to dismiss. ([Return to In This Issue](#))

FEDERAL COURT RULES NEW JERSEY CANNABIS LAW’S LABOR PEACE MANDATE IS PREEMPTED BY FEDERAL LABOR LAW

***Curaleaf Holdings, Inc., et al. v. New Jersey Cannabis Regulatory Commission, et al.*, U.S. District Court for the District of New Jersey, Case No. 3:25-cv-16397 (final judgment issued August 10, 2026).** A federal judge has ruled that the requirement to obtain Labor Peace Agreements (LPAs)¹² for cannabis businesses in New Jersey is preempted by the National Labor Relations Act (NLRA; 29 U.S.C. § 151, *et seq.*). New Jersey’s Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA; N.J. STAT. ANN. § 24:6I-31, *et seq.* (West 2026)) legalizes and regulates recreational cannabis for adults and, among other things, requires all adult-use cannabis businesses to obtain a license. As part of its licensing scheme, CREAMMA: (1) requires cannabis businesses to sign LPAs with labor unions; (2) limits the unions with which those businesses can sign an LPA; and (3) requires the cannabis businesses to negotiate a collective bargaining agreement with the union within 200 days of opening (N.J. STAT. ANN. § 24:6I-36 (West 2026)). Under an LPA requirement, when a business applies for a cannabis license, it must submit an attestation from a bona fide labor organization stating that the labor organization and the business have an LPA. The business is then required to abide by and maintain that the LPA is an ongoing and material condition of the license. If the cannabis business violates the LPA or allows it to lapse, its license could be suspended, revoked, or not renewed. Curaleaf, a cannabis provider, holds annual licenses covering four New Jersey facilities and has held these licenses since 2022. In April 2022, Curaleaf signed an LPA with a bona fide labor organization. The company claimed, however, that it had to waive certain rights available to it under the NLRA when negotiating the LPA. In April 2025, the LPA expired after the parties were unable to agree to renewal terms.

¹² CREAMMA does not define “labor peace agreement,” but in general, a labor peace agreement is a contract between an employer and a union, in which the employer agrees to be neutral during a union organizing campaign and not interfere with union organizing. In turn, the union agrees not to engage in picketing, work stoppages, boycotts, or any other economic interference with the employer. Labor Peace Agreements, Cornell Uni. Sch. of Indus. & Labor Rel. (last visited Sept. 17, 2026), <https://www.ilr.cornell.edu/labor-and-employment-law-program/labor-peace-agreements-lpa>.

On May 6, 2025, the New Jersey Cannabis Regulatory Commission (Commission) sent a notice to Curaleaf stating that it was in noncompliance with the LPA requirement and had 20 business days to remedy the violation. On August 25, 2025, the Commission sent a notice of enforcement action to Curaleaf imposing a civil monetary penalty of \$610,000 due to its failure to maintain an LPA as a material condition of its business license. On October 9, 2025, Curaleaf filed its complaint against the defendants, arguing that they cannot lawfully enforce the LPA requirement against Curaleaf because it is preempted by the NLRA. On October 24, 2025, Curaleaf filed a motion for preliminary injunction seeking to prevent the defendants from withholding its license, and on November 17, 2025, the defendants filed a motion to dismiss.

Despite cannabis being illegal under federal law, the court determined that the NLRA applies to cannabis businesses and noted that other courts have similarly found that the NLRA arguably applies to the labor market that exists within the cannabis industry. Pursuant to *San Diego Building Trades Council v. Garmon* (Garmon; 359 U.S. 236), states may not regulate activity that the NLRA “protects, prohibits, or arguably protects or prohibits.” Curaleaf argued that the LPA requirement is preempted under *Garmon* because it: (1) forces employers to agree to an LPA; (2) “impermissibly intrudes upon the exclusive federal domain of uniform national labor policy, particularly in the areas of collective bargaining and union organizing, which are regulated solely by the NLRA;” and (3) adds new penalties, including financial penalties and the loss of a license, for conduct otherwise governed by federal law. The defendants asserted that the state has an interest in regulating a state-created cannabis market that remains federally illegal and, as such, an exception to the *Garmon* preemption applies. The court agreed with Curaleaf, finding that the LPA requirement impermissibly conditions a state license on an employer refraining from conduct protected by federal labor law. It ruled that the *Garmon* preemption applies and that an exemption does not apply. Despite finding that the NLRA preempted the LPA requirement, the court denied Curaleaf’s motion for a preliminary injunction. Curaleaf had argued that absent a preliminary injunction, it would be irreparably harmed because: (1) without a new LPA, it would be forced to cease operations; and (2) the LPA requirement would continue to interfere with Curaleaf’s rights under the NLRA. The court, in rejecting Curaleaf’s motion for a preliminary injunction, noted Curaleaf’s lack of urgency in filing the request. The court noted that Curaleaf had been subject to the LPA requirement since April 2022 and that if it were actually facing irreparable harm, it would not have waited until October 2025 to file suit against the defendants. On August 10, 2025, the court granted final judgment to the plaintiffs to allow the defendants to file an appeal. On August 13, 2025, the defendants filed an appeal with the Third Circuit. ([Return to In This Issue](#))

NEBRASKA SUPREME COURT RULED PRIVATE INDIVIDUAL LACKED STANDING TO CHALLENGE STATE’S MEDICAL CANNABIS LAWS

John Kuehn v. James D. Pillen, et al., Supreme Court of Nebraska, Case No. S-25-503 (opinion filed September 11, 2026). The Nebraska Supreme Court has ruled that a private citizen of Nebraska does not have taxpayer standing to challenge the state’s medical cannabis legalization laws. In the November 2024 general election, Nebraska voters approved an initiative petition legalizing medical cannabis in the state. Failing to succeed with a preelection challenge of the medical cannabis initiatives, former Nebraska State Senator John Kuehn filed a complaint in state district court on December 10, 2024, challenging the validity of the two initiatives. The complaint named the governor and the Nebraska secretary of state as defendants. With the complaint, Kuehn filed a motion for a temporary restraining order and temporary injunction to prevent the governor from declaring that the two initiative measures were enacted into law. The district court denied the motion, and the governor thereafter signed a proclamation certifying the enactment of the initiative measures into law. The initiatives were codified as the Nebraska Medical Cannabis Patient Protection Act (NEB. REV. STAT. §§ 71-24,103 to 71-24,105 (West 2026)), which removed penalties for possession and use of medical cannabis, and the Nebraska Medical Cannabis Regulation Act (NEB. REV. STAT. §§ 71-24,106 to 71-24,111 (West 2026)), which removed penalties for the manufacture and distribution of medical cannabis and created a

commission to regulate cannabis establishments. Kuehn filed an amended complaint in January 2025 and a second amended complaint on June 16, 2025. In the latter, Kuehn alleged that he was an individual resident, voter, and property owner in Nebraska who pays income, property and sales taxes in the state and described himself as a “citizen opponent” of the medical cannabis initiative measures. Kuehn argued that the medical cannabis acts were unconstitutional under both Nebraska and federal law because they violated the Supremacy Clause. Kuehn sought a declaratory judgment that the medical cannabis laws were preempted by, and invalid under, federal law and a declaratory judgment that the commitment of state employee time and the expenditure of state tax money to carry out the medical cannabis acts was unlawful. On June 26, 2025, the district court granted the defendants’ motion to dismiss, ruling that Kuehn lacked standing because he had not suffered an injury-in-fact and did not qualify for any of the exceptions to the injury-in-fact rule that he asserted. Kuehn filed an appeal.

On appeal, Kuehn argued that the district court erred in determining that he: (1) did not have taxpayer standing; and (2) did not have standing for a matter of great public concern. In the district court, Kuehn conceded that he did not suffer an injury-in-fact and did not challenge that concession on appeal. One of the exceptions to the requirement of an injury-in-fact is taxpayer standing. Because taxpayers have an equitable interest in public funds, a resident taxpayer may bring an action to enjoin the illegal expenditure of public funds raised for governmental purposes. In his second amended complaint, Kuehn alleged that the governor, the Nebraska Department of Health and Human Services and the Nebraska Medical Cannabis Commission had spent or would spend public funds and governmental employee time to implement the medical cannabis acts or to fulfill duties imposed by the medical cannabis acts and that such expenditures were illegal because the medical cannabis acts were unconstitutional. Kuehn’s claim was not that state officers violated laws or constitutional provisions governing expenditures but rather that they made expenditures of public funds to implement or comply with laws that he alleged were unconstitutional for reasons not directly related to the expenditures. The court noted that taxpayer standing requires the allegation of an illegal expenditure of public funds and determined that the constitutional challenge in this case relates to the substance of the medical cannabis acts, not to the expenditure of public funds. The court determined that recognizing taxpayer standing under Kuehn’s rationale was unwarranted and would expand the taxpayer exception beyond its proper limits. Because almost any statute would require some use of employee time and expenditure of funds to implement, the court determined that recognizing taxpayer standing on that basis would allow almost any taxpayer to challenge the constitutionality of almost any statute. Kuehn further argued that he had standing because his constitutional claims raised a matter of great public concern. The court agreed with the district court, finding that Kuehn did not have standing for a matter of great public concern because not every claim alleging a violation of separation of powers or federal preemption is automatically a matter of great public concern. Finding that Kuehn did not have either taxpayer standing or standing for a matter of great public concern, the court affirmed the district court’s order dismissing Kuehn’s complaint without prejudice. ([Return to In This Issue](#))

MASSACHUSETTS COURT ORDERS CITY TO REPAY CANNABIS BUSINESSES MILLIONS IN UNLAWFUL IMPACT FEES

Ascend Mass LLC v. City of Newton, Massachusetts Superior Court (Middlesex County), Case No. 2581CV00398 (opinion filed August 4, 2026). A state trial court has ruled that a Massachusetts municipality unlawfully charged local cannabis dispensaries millions of dollars in “community impact fees.” According to the 2016 recreational cannabis legalization framework, municipalities in Massachusetts may collect community impact fees from cannabis dispensaries to the extent that the fees directly correlate to actual, documented municipal costs imposed by a cannabis establishment’s operations. In 2025, dispensary operator Ascend Mass LLC and other cannabis businesses sued the City of Newton, alleging that the city had improperly imposed \$2.4 million in mandatory fees and redirected the funds toward general municipal initiatives, including a community resource dog, a street redevelopment initiative, and part-time school psychologists. On August 4, 2026, the Massachusetts Superior Court ruled in favor of the dispensaries on their

statutory claim, finding that Newton failed to establish that its expenditures were connected to a fair or moderate degree to actual costs imposed by the retail facilities. Although the court dismissed the dispensaries' separate breach of contract claims because the underlying agreements lacked explicit proportionality terms, it also rejected the city's breach of contract counterclaims and ordered full repayment of the unlawful fees. On September 24, 2026, the city filed a notice of appeal. ([Return to In This Issue](#))

MICHIGAN HIGH COURT LIMITS BLANKET CANNABIS BANS AS PROBATION CONDITIONS

***People of the State of Michigan v. Danielle Heaven-Leah Hess*, Michigan Supreme Court, Docket No. 167895 (opinion filed July 6, 2026).** The Michigan Supreme Court has ruled that sentencing judges cannot prohibit criminal defendants from using recreational cannabis, which is legal in Michigan, as a condition of probation solely because cannabis is illegal under federal law. Under the Michigan Regulation and Taxation of Marihuana Act (MRTMA; MICH. COMP. LAWS ANN. § 333.27951, *et seq.* (West 2026)), Michigan permits adults 21 and older to possess and use cannabis, specifying that lawful consumption must not be grounds for any penalty or the denial of any right or privilege. Michigan's general probation statute (MICH. COMP. LAWS ANN. § 771.1, *et seq.* (West 2026)), however, requires probationers to refrain from violating any federal criminal laws. Danielle Heaven-Leah Hess pleaded guilty to third-degree retail fraud and received 12 months of probation under the Holmes Youthful Trainee Act (MICH. COMP. LAWS ANN. § 762.11 (West 2026)).¹³ The probation order prohibited Hess from using or possessing cannabis, but the trial court did not provide a reason for imposing that prohibition. While on probation, Hess tested positive for cannabis, and the trial court found that she violated her probation, thereby revoking her youthful trainee status and sentencing her to jail. Both the circuit court and the Michigan Court of Appeals affirmed the trial court's decisions, stating that the federal Controlled Substances Act (21 U.S.C. § 801, *et seq.*) criminalizes cannabis and that Michigan's probation statute incorporates federal law. On July 6, 2026, the Michigan Supreme Court unanimously reversed the lower court's ruling, holding that federal law does not preempt MRTMA and that, to the extent the state probation act incorporates federal cannabis prohibitions, it is inconsistent with the MRTMA's express protections and cannot be applied to lawful cannabis use. The supreme court remanded the case to the trial court for reconsideration. ([Return to In This Issue](#))

SIXTH CIRCUIT VACATES \$31.8 MILLION CANNABIS BREACH OF CONTRACT VERDICT DUE TO FEDERAL ILLEGALITY

***Hello Farms Licensing MI LLC v. GR Vending MI LLC*, U.S. Court of Appeals for the Sixth Circuit, Case No. 25-1759 (opinion filed September 10, 2026).** A federal appeals court has overturned a \$31.8 million breach-of-contract judgment awarded to a cannabis cultivator, holding that federal courts cannot enforce contracts rooted in commercial transactions that violate federal criminal law. In November 2020, Michigan cannabis cultivator Hello Farms entered into a supply agreement with two subsidiaries of the multistate cannabis operator Curaleaf Holdings, Inc., (Curaleaf) to sell its entire 2020 and 2021 cannabis harvests. After wholesale cannabis prices collapsed in 2021, the Curaleaf subsidiaries stopped accepting shipments, forcing Hello Farms to sell its remaining crop to other buyers at significantly lower prices. Hello Farms filed for breach of contract in state court, which was removed to federal court under diversity jurisdiction. The district court rejected Curaleaf's affirmative defense of illegality, and a federal jury subsequently awarded Hello Farms \$31.8 million in damages. Curaleaf appealed, and on September 10, 2026, the Sixth Circuit reversed the judgment, concluding that because the agreement required the parties to commit felonies under the Controlled Substances Act (21 U.S.C. § 801, *et seq.*), the contract was illegal when formed and unenforceable in federal court, regardless of whether the transaction involved state-authorized medical or

¹³ The Michigan Holmes Youthful Trainee Act allows eligible young adults between the ages of 18 and 26 to avoid a permanent criminal record by completing a term of probation.

recreational cannabis or whether federal cannabis policies have subsequently shifted. Hello Farms has until October 8, 2026 to file a petition for a rehearing en banc. ([Return to In This Issue](#))

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