Published on *The National Law Review* https://natlawreview.com

Federal Court Rejects Constitutional Challenge To Marijuana's Classification As Schedule I Drug

Article By:

Sarah R. Skubas

A federal district court in the Southern District of New York rejected a constitutional challenge to marijuana's classification as a Schedule I drug under the federal Controlled Substances Act ("CSA"). *Washington, et al. v. Jefferson Beauregard Sessions, III, et. al.,* 17 Civ. 5625 (AKH) (S.D.N.Y. Feb. 26, 2018).

Plaintiffs consisted of a group of individual medical marijuana users and the Cannabis Cultural Association, Inc. ("Association"). They sued the U.S. Attorney General and others, arguing that the CSA's classification of marijuana as a Schedule I drug – the highest level of classification – is unconstitutional.

The CSA classifies drugs into five different categories, or schedules. These classifications determine the severity of possible criminal penalties as well as the type of controls imposed. Schedule I drugs have (1) a high potential for abuse; (2) no currently accepted medical use in treatment in the United States, and, (3) a lack of accepted safety for use of the drug or other substance under medical supervision. 21 U.S.C. § 812(b)(1). The U.S. Attorney General has the authority to classify or reclassify drugs to the various CSA schedules; however, the Attorney General has delegated this authority to the Drug Enforcement Agency. Interested parties may petition the DEA to reclassify drugs, consistent with medical and scientific data provided by the U.S. Department of Health and Human Services. If a petitioner receives an adverse ruling from DEA, the petitioner may seek judicial review. The DEA most recently denied petitions to reschedule marijuana in 2016.

Plaintiffs raised several constitutional arguments in support of their attempt to have the Court rule that the federal government's ban on marijuana is unlawful. The arguments ranged from claims that the federal government lacked a rational basis for classifying marijuana as a Schedule I substance to allegations that this classification violated the First Amendment because one of the plaintiffs could not travel to speak with Congress about decriminalization of medical marijuana as doing do would have required her to fly on an airplane and enter a federal building, thereby, risking potential arrest for marijuana possession.

While the plaintiffs raised a myriad of arguments in support of their claims that the federal government's position on marijuana is unconstitutional, the Court rejected all of them. Among other things, the Court held that there is an administrative remedy available to those seeking to reclassify

marijuana under the CSA — petitioning the DEA — yet plaintiffs did not avail themselves of this remedy. The Court further noted that it was not irrational for Congress to have classified marijuana as a Schedule I drug, and that the Second Circuit previously held that Congress had a rational basis to do so. Most recently, in August 2016, the DEA denied petitions to reschedule marijuana, due to its "various psychoactive effects," its potential to cause a "decrease in IQ and general neuropsychological performance," and its potential effects on prenatal development.

The Association also argued that the CSA violates the Equal Protection Clause because it was passed with racial animus. The Court held that the Association lacked standing to advance this claim and that it failed to show that a favorable decision would redress plaintiffs' alleged injuries.

Employers navigating the ever-changing landscape of marijuana workplace issues should continue to monitor legal developments as we watch the push and pull between state and federal laws continue to play out in the courts. Employers are advised to get ahead of the issue, review applicable state laws, determine their company's stance on medical marijuana, and set out a thoughtful plan to address potential issues resulting from positive marijuana drug test results before they happen.

National Law Review, Volume VIII, Number 60