

Federal Injunction Halts New York's Retail Dispensary Application Process - *Cannabis Business Executive*

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On November 10, 2022, a New York federal judge entered an order enjoining New York's retail cannabis dispensary application process in five regions of the state. This decision follows similar decisions from federal courts in Maine and Michigan that have found provisions in cannabis licensing rules that unfairly favor in-state residents over out-of-state residents violate the "dormant commerce clause" of the U.S. Constitution.

The plaintiff in this case, Variscite, submitted a complete application under New York's CAURD program for a retail dispensary license. One of the requirements of the application was to demonstrate that the applicant has a "significant presence" in New York. The relevant regulations provided that could be satisfied in several ways, including by having a principal corporate location in New York; being incorporated or otherwise organized under the laws of New York; or a majority of the ownership are residents of New York. Because Variscite was incorporated in New York it appeared that it could satisfy the New York presence requirements.

However, the application form added an additional requirement that the controlling owner of the applicant must be a New York resident. Because Variscite is not majority owned by a New Yorker it cannot obtain a license.

New York's licensing process asked applicants to select up to five regions in the state in which they wanted to operate. As a result, Variscite asked the court to enjoin the application process in the five

regions it had selected in its application.

The federal judge agreed with Variscite that the New York residency requirement discriminated against out of state applicants, was not narrowly tailored to serve a compelling state policy, and therefore violated the Constitution.

The rationale underlying the decision could apply across the state, but because the plaintiff sought to stay the application process only in the five regions it applied for, New York can proceed with processing applications in all other areas of the state. The five geographic regions affected by the decision are Brooklyn, Finger Lakes, Central New York, Western New York, and Mid-Hudson.

It remains to be seen how New York will respond to the decision and whether it will continue to enforce the residency requirement in other regions despite its unconstitutionality. New York also is expected to release regulations soon for other types of cannabis licenses and non-New York industry participants will undoubtedly be looking closely to see if similar unconstitutional provisions are included in those rules.