

# Atlantic Commonwealth Court of Chancery

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NAT'L ORG. FOR THE REFORM OF  
MARIJUANA LAWS, *Plaintiff*,

v.

MYHOUSEISONFIRE, GOVERNOR, *Defendant*,

IN RE: PENAL LAW § 221.55

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|  
| Case No. 21-02

| Doc. No. 21-02-A  
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**Before:** HurricaneofLies, C.; Mika3740, V.C.; Cold\_Brew\_Coffee, V.C.

## **ORDER DENYING PLAINTIFF'S APPLICATION FOR A PRELIMINARY INJUNCTION**

- [1] The application for a preliminary injunction arises in the case at bar from the constitutional challenge brought by the National Organization for the Reform of Marijuana Laws (N.O.R.M.L., hereinafter Plaintiff) against Penal Law § 221.55, which Plaintiff alleges exceeds the Legislature's power under the Commonwealth Constitution to advance the public health. For the reasons stated below, the Court **DENIES** the application.

### **Legal Standard**

- [2] An interim injunction is an extraordinary relief that is never granted as of right, but instead committed to the "sound discretion" of the court. *Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988). Where significant doubt remains about Plaintiff's right thereto, interim relief is not appropriate.

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**Cite as:** Full opinion: *N.O.R.M.L. v. MyHouseIsOnFire*, (2021) Atl. 02-A.  
Paragraph: *N.O.R.M.L. v. MyHouseIsOnFire*, (2021) Atl. 02-A, [para].

- [3] The moving party must establish (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor. *UnorthodoxAmbassador v. \_MyHouseIsOnFire\_*, (2020) Atl. 11, 20.

## Analysis

### A. Likelihood of Success

- [4] Because the legislative power is coequal to the judicial power, enactments of the Legislature “enjoy a strong presumption of constitutionality” against facial attack. *Schulz v. State*, 84 N.Y.2d 231, 241 (1994). This presumption is difficult to overcome: in the Atlantic Commonwealth, “those who challenge statutes bear a heavy burden of proving unconstitutionality beyond a reasonable doubt.” *City of New York v. State*, 76 N.Y.2d 479, 485 (1990).
- [5] These considerations enjoy particular salience in the criminal context, a domain of the law where the jurisdiction of the courts of equity are at their nadir. Indeed, it is the rule that a court of equity “will not ordinarily intervene to enjoin the enforcement of the law by the prosecuting officials,” *Reed v. Littleton*, 275 N.Y. 150, 153 (1937), and that such truly extraordinary relief should only issue “in cases where a clear legal right to that relief is established.” *Triangle Mint Corp. v. Mulrooney*, 257 N.Y. 200, 201 (1931) (per curiam). Thus, the examination of likelihood of success in this case at bar must be held against the broad discretion that the Legislature possesses in enacting criminal statutes.
- [6] We find it unlikely that Plaintiff has established unconstitutionality beyond a reasonable doubt. Because article I, section 15 of the Constitution “expressly [accords] to the Legislature discretion to promote the State's interest in [...] promoting public health,” *Hope v. Perales*, 83 N.Y.2d 563, 578 (1994), and does not

protect a personal constitutional right, we are bound, bar extraordinary circumstances, to accept the judgment of the Legislature.

- [7] While Plaintiff advances significant evidence that the Legislature has misprised the severity of the evidence, it fails to suggest that the the Legislature has patently misapprehended the existence of a public health concern. There is no doubt that “the protection of public health is a compelling, perhaps overriding, government interest,” *BirackObama v. TheCloudCappedStar*, (2019) Atl. 14, 4, and that “preventing the physical harm caused by the use” of a dangerous drug advances public health. *Employment Div. v. Smith*, 494 U.S. 872, 905 (1990) (O’Connor, J., concurring).
- [8] Plaintiff is almost certainly correct that the danger of marijuana is dramatically overstated, but this does not mean that marijuana is without deleterious effect on health. Good evidence suggests that cannabis use is associated with higher anxiety, impaired thinking, car accidents, and long-term behavioral changes, all of which are legitimate health issues that the Legislature is within its power to address—regardless of whether marijuana is physiologically addictive, lethal or a gateway drug (which it probably is not). Accordingly, while its claims are not implausible, Plaintiff has not demonstrated a clear likelihood of success at this stage.

### **B. Irreparable Injury**

- [9] It is a clearly established rule of equity that the alleged constitutional infirmity of a criminal statute is not, *per se*, sufficient to merit injunctive relief. NY Jur. 2d Injunctions § 111. This is because criminal proceedings provide more than adequate remedies at law to protect defendants against unconstitutional prosecutions, as the Appellate Division observed in a well-cited opinion:

There are at least three ways in which the plaintiffs could raise the question that the statute for the violation of which they have been indicted is

unconstitutional and void—either by motion to dismiss, by habeas corpus, or by plea. Those are the methods which have always been followed in this state. They afford the plaintiffs and all others full protection and ample opportunity to raise the question which it is sought to raise in this action.

*Buffalo Gravel Corp. v. Moore*, 194 N.Y.S. 225, 228 (App. Div. 1922).<sup>1</sup>

Because a person charged for possession of cannabis under the Penal Law can move to dismiss the indictment on the grounds at issue in this case, an adequate remedy at law clearly exists and injunctive relief is unwarranted at this stage.

- [10] But let us assume for the sake of argument that Plaintiff has no adequate remedy at law because they do not face imminent indictment. In this hypothetical scenario, Plaintiff has no injury at all.
- [11] Under CPLR § 6301, irreparable injury must be “immediate” and imminent to be incurred “unless the defendant is restrained before the hearing can be had.” As the unanimous agreement of the appellate departments supports, “remote or speculative” harms can never be irreparable. *Golden v. Steam Heat, Inc.*, 216 A.D.2d 440, 442 (1995). Because one faces only an abstract, stigmatic injury from the benign existence of a criminal statute, the harm incurred would be neither immediate nor irreparable.<sup>2</sup>
- [12] Plaintiff here faces a Catch-22 situation that is ultimately fatal to their attempted demonstration of irreparable harm: if they do face a reasonable prospect of indictment, they have a perfectly adequate remedy at law in the form of the motion

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<sup>1</sup> *Aff’d*, 234 N.Y. 542 (1922).

<sup>2</sup> While the strong presumption “against deciding substantive matters by [...] procedural machinations,” *UnorthodoxAmbassador v. \_MyHouseIsOnFire\_*, (2020) Atl. 11, 16, means that we will generally proceed to a final adjudication on the merits in the absence of an injury-in-fact, we have never seen it fit to extend this standard to the grant of a preliminary injunction, which is an extraordinary remedy. One must still plead an irreparable injury to oneself, to members of one’s association, or to similarly situated persons.

to dismiss; if they do not face any reasonable chance of indictment, they will suffer no injury *at all*. Either way, Plaintiff can plead no irreparable injury.

### C. Balance of Equities

[13] Because interim equitable relief favors the preservation of the *status quo*, it is generally not in the public interest to enjoin the enforcement of statutory enactments in the absence of clear and patent unconstitutionality. Likewise, the Commonwealth would suffer significant harm from the inability to enforce an enactment of the Legislature.

[14] Conversely, whatever harm incurred by Plaintiff in the absence of interim relief is *de minimis*. It is unclear what harm can reasonably be expected to occur to Plaintiff from the continued enforcement of a twenty-six year old statute for the short duration of these instant proceedings. Moreover, as we have noted in the previous section, we seriously doubt that Plaintiff has pled any cognizable irreparable injury; there are no harms to balance if Plaintiff is not irreparably harmed.

### Conclusion

[15] Plaintiff establishes no irreparable injury in the absence of equitable relief and the balance of equities favors the enforcement of a presumptively constitutional enactment of the Legislature.

[16] For the aforementioned reasons, the Court **DENIES** the application for a preliminary injunction.

*It is so ordered.*

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| Dated: June 15, 2021 |  | <u>/s/ Hurricane</u> |
| _____                |  | Hon. HurricaneofLies |
| <b>BY THE COURT.</b> |  | Chancellor           |
| _____                |  |                      |