



**OKLAHOMA  
STATE  
COURTS  
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**RED DIRT INDUSTRIES, LLC v. STATE OF OKLA. ex rel. OMMA**

**2026 OK CIV APP 14**

**Case Number: 123004 (cons. w/ 123005)**

**Decided: 08/01/2025**

**Mandate Issued: 05/21/2026**

**COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION I**



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Cite as: 2026 OK CIV APP 14, \_\_ P.3d \_\_

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RED DIRT INDUSTRIES, L.L.C., Plaintiff/Appellant,

vs.

STATE OF OKLAHOMA ex rel., OKLAHOMA MEDICAL MARIJUANA AUTHORITY, Defendant/Appellee.

APPEAL FROM THE DISTRICT COURT OF  
GRADY COUNTY, OKLAHOMA

HONORABLE KORY KIRKLAND, TRIAL JUDGE

**AFFIRMED IN PART, REVERSED IN PART AND REMANDED**

Jaclynn R. Loney, LOVA LEGAL, Tulsa, Oklahoma, For Plaintiff/Appellant,

Kevin L. McClure, Redmond Wortham, Assistant Attorneys General, STATE OF OKLAHOMA ATTORNEY GENERAL'S OFFICE, Oklahoma City, Oklahoma, For Defendant/Appellee.

B.J. GOREE, PRESIDING JUDGE:

¶1 In this consolidated appeal, Appellant, Red Dirt Industries, L.L.C., seeks review of the Grady County District Court's summary judgment order affirming the Oklahoma Medical Marijuana Authority's (OMMA) denial of Red Dirt's application for a commercial grower's license. The record shows the district court sustained OMMA/Appellee's motion for summary judgment, due to the fact Red Dirt was not in compliance with the residency ownership requirements of 63 O.S. Supp.2021 §422(B)(4).

¶2 The issues presented for review in this appeal are whether the Commerce Clause of the U.S. Constitution prohibits Oklahoma from placing residency limits on entities applying for a license to grow marijuana, and what is the proper procedure for reviewing an agency decision denying such a license. This court holds that Oklahoma is not prohibited from limiting interstate commerce with respect to medical marijuana licensing. This is a market Congress has determined to be illegal. Upon remand, the district court is instructed to review the agency record submitted to the district court and the corresponding decision denying Red Dirt's application according to the applicable standard of review.

I. Background

¶3 The people of Oklahoma reserve to themselves the power to propose and enact laws at the polls independent of the Legislature. Okla. Const. art. V, § 1. In 2018, Oklahoma voters approved State Question 788, after support of an initiative petition to enact a medical marijuana program. <sup>1</sup> The following year, the Legislature created the Oklahoma Medical Marijuana Authority (OMMA) and empowered it to issue medical marijuana business licenses according to eligibility criteria. <sup>2</sup>

¶4 Red Dirt Industries, L.L.C. applied for a commercial grower license in July 2022. <sup>3</sup> The OMMA denied the application, finding Red Dirt failed to show 75% of its owners were Oklahoma residents as required under 63 O.S. Supp.2021 §422(B). This controversy ultimately involves the validity, interpretation, and application of the residency criteria of 63 O.S. 2021 §422(B) and 63 O.S. 2021 §427.14(7) and (11). <sup>4</sup>

¶5 The record indicates Red Dirt's application shows it is a business entity comprised of 100 units of ownership. One Oklahoma resident holds 75 of those units and five non-residents hold the remaining 25 units. According to Red Dirt, the statute requiring 75% ownership by an Oklahoma resident was satisfied using this ownership arrangement. However, under the ownership format used by Red Dirt, the OMMA determined the value attributable to the Oklahoma resident's ownership units was substantially lower than the value of the non-resident units. The effect of Red Dirt's ownership format being that the Oklahoma resident did not actually own 75% of the business. <sup>5</sup>

¶6 In its petition for judicial review, Red Dirt alleges the OMMA erroneously concluded that 75% of Red Dirt's actual beneficial ownership was not held by Oklahoma residents, meaning the OMMA was in error when it found Red Dirt did not comply with 63 O.S. Supp.2021 §422(B). In Count I, Red Dirt requested review of the agency order, pursuant to 75 O.S. §§318-323, and asserted the agency erroneously interpreted the meaning of the term "owner." In Count II, Red Dirt requested a declaratory judgment pursuant to 12 O.S. Supp.2004 §§1651-1657, asking for a determination that it had not misrepresented the ownership interests in its application. In Count III, Red Dirt asserted the Oklahoma residency statutes violate the Commerce Clause.

## II. Procedural Background and Consolidation of Appellate Cases

¶7 In July 2022, Red Dirt submitted an application to the OMMA for a grower license pursuant to 63 O.S. Supp.2021 §422. Red Dirt's grower license was ultimately rejected by the OMMA and Red Dirt sought review of the agency decision in the Grady County District Court, filing a petition for judicial review of the agency action and request for declaratory judgment on August 29, 2023. 75 O.S. 2011 §318(A). Thereafter, the OMMA filed a motion to dismiss Red Dirt's petition on January 16, 2024.

¶8 The district court in its "Order on Motion to Dismiss", filed July 23, 2024, denied the OMMA's motion to dismiss with respect to Counts I and II and granted the OMMA's motion to dismiss with respect to Count III. In granting the OMMA's motion with respect to Count III, the district court stated:

[T]he Court finds as to Count III, seeking Declaratory Relief that Oklahoma's Residency Requirement violates the Dormant Commerce Clause, that there is no interstate market, and therefore, Respondent fails to state a claim upon which relief can be granted.

The district court further certified the decision for immediate appeal as to Count III, stating in the order itself that an appellate decision "may materially advance the ultimate termination of the litigation."

¶9 On July 29, 2024, after having held a hearing on June 27, 2024 and issuing an order on July 23, 2024, the district court maintained the decision it made in the July 23, 2024 order, to dismiss Count III and certify the matter for immediate appeal. Red Dirt sought review before the Oklahoma Supreme Court (August 27, 2024), which became appellate Case No. 122,463. By order filed November 6, 2024, the Oklahoma Supreme Court denied the OMMA's motion to dismiss. The Oklahoma Supreme Court also denied Red Dirt's "Petition for Certiorari Certified Interlocutory Order" on November 6, 2024.

¶10 Back in the district court, the OMMA filed a Rule 13 motion, setting out the agency's assertion of undisputed material facts, attached documentation and an affidavit, and requested judgment. Red Dirt objected and submitted its own affidavits. The Grady County District Court announced its ruling at the conclusion of the hearing. The district court decided, "all the questions of fact lead to the conclusion that less than 75 percent of the value in this L.L.C. is held by people who live in the state." Making no mention of the agency order, the district court entered judgment. Red Dirt appealed the summary judgment, resulting in appellate Case No. 123,004, and the dismissal of the constitutional question resulted in appellate Case No. 123,005. <sup>6</sup> The appeals were consolidated by order of the Oklahoma Court of Civil Appeals. <sup>7</sup>

### III. Standard of Review

¶11 In first addressing the constitutionality of the statutes, the appellate court's review is conducted pursuant to a *de novo* standard. *Lee v. Bueno*, 2016 OK 97, ¶6, 381 P.3d 736, 739. The party challenging a legislative enactment has a heavy burden to show it is unconstitutional. *CDR Systems Corp. v. Oklahoma Tax Commission*, 2014 OK 31, ¶10, 339 P.3d 848, 852. "Every presumption is to be indulged in favor of the constitutionality of a statute." *Id.* Where an appellant fails to prove a statute unconstitutionally discriminates against interstate commerce, the dormant Commerce Clause will not be applied. *Id.* at ¶137.

### IV. Analysis

¶12 The United States Constitution provides that "[t]he Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]" U.S. Const. art. I, §8, cl. 3. "[W]hile a literal reading evinces a grant of power to Congress, the Commerce Clause also directly limits the power of the States to discriminate against interstate commerce." *Wyoming v. Oklahoma*, 502 U.S. 437, 454, 112 S.Ct. 789, 800, 117 L. Ed. 2d 1 (1992). This "'negative' or 'dormant' aspect of the Commerce Clause prohibits States from advance[ing] their own commercial interests by curtailing the movement of articles of commerce, either into or out of the state." *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Natural Res.*, 504 U.S. 353, 359, 112 S.Ct. 2019, 2023, 119 L. Ed. 2d 139 (1992) (quoting *H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 535, 69 S.Ct. 657, 663, 93 L.Ed. 865 (1949)). When a state statute clearly discriminates against interstate commerce, it will be struck down, unless the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism. *Wyoming v. Oklahoma*, 502 U.S. at 454, 112 S.Ct. at 800.

#### A. The Marijuana Market is Illegal Interstate Commerce under Federal Law

¶13 Under the federal Controlled Substances Act, 21 U.S.C. §801 *et seq.*, it is unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the Controlled Substances Act (CSA). *Gonzales v. Raich*, 545 U.S. 1, 13, 125 S.Ct. 2195, 2203, 162 L. Ed. 2d 1 (2005); 21 U.S.C. Supp.2018 §841(a)(1) and 21 U.S.C. Supp.2010 §844(a). Marijuana is a Schedule I substance, meaning it has no currently accepted medical use in treatment under the terms of the CSA. 21 U.S.C. Supp.2018 §812. "[A] primary purpose of the CSA is to control the supply and demand of controlled substances in both lawful and unlawful drug markets." *Gonzales*, 545 U.S. at 19, 125 S.Ct. at 2207. <sup>8</sup> Conduct prohibited by federal law is illegal, regardless of what state law may permit. *Fourth Corner Credit Union v. Fed. Reserve Bank of Kansas City*, 861 F.3d 1052, 1055 (10th Cir. 2017).

¶14 Though illegal under federal law, the marijuana market is nevertheless a part of interstate commerce. "The CSA regulates the production, distribution, and consumption of commodities for which there is an established, and lucrative, interstate market." *Gonzales*, 545 U.S. at 26, 125 S.Ct. at 2211. The CSA is a statute that directly regulates economic and commercial activity. *Id.* Marijuana is "a fungible commodity for which there is an established, albeit illegal, interstate market." *Gonzales*, 545 U.S. at 18, 125 S.Ct. at 2206.

#### B. The Purpose of the Commerce Clause is to Promote The Free Flow of Goods across Nationwide Markets

¶15 "The very purpose of the Commerce Clause was to create an area of free trade among the several States." *McLeod v. J. E. Dilworth Co.*, 322 U.S. 327, 330, 64 S.Ct. 1023, 1026, 88 L. Ed. 1304 (1944).<sup>9</sup> The Commerce Clause presumes the existence of a free national market and the free flow of commerce in that national market. *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383, 393, 114 S.Ct. 1677, 1683, 128 L. Ed. 2d 399 (1994); *Southern Pac. Co. v. State of Arizona ex rel. Sullivan*, 325 U.S. 761, 767, 65 S.Ct. 1515, 1519, 89 L. Ed. 1915 (1945). It is relevant to ascertain what role the Commerce Clause plays in this cause if Congress has determined that the subject national market is illegal. The dormant Commerce Clause would not be applied to broaden the medical marijuana market given that Congress has plainly categorized it as an unlawful controlled substance that has no currently accepted medical use in treatment in the United States.<sup>10</sup>

C. State Limitations on Markets Declared Illegal  
Under Federal Law Do Not Offend the Commerce Clause

¶16 The 18<sup>th</sup> Amendment to the Constitution of the United States prohibited the manufacture, sale, and transportation of intoxicating liquors.<sup>11</sup> During the time liquor was an illegal interstate market, states were free to enact laws which might otherwise have been restricted by the Commerce Clause. *United States v. Lanza*, 260 U.S. 377, 381, 43 S.Ct. 141, 142, 67 L. Ed. 314 (1922).<sup>12</sup> The Commerce Clause does not apply to state statutes which limit a national market disapproved by Congress. "Where Congress has proscribed certain interstate commerce, Congress has determined that that commerce is not in the national interest. Where such a determination has been made by Congress, it does not offend the purpose of the Commerce Clause for states to discriminate or burden that commerce." *Pic-A-State PA, Inc. v. Pennsylvania, Dep't Revenue*, 42 F.3d 175, 179 (3d Cir. 1994).<sup>13</sup>

¶17 Red Dirt relies on *Northeast Patients Group v. United Cannabis Patients and Caregivers of Maine*, 45 F.4<sup>th</sup> 542 (1<sup>st</sup> Cir. 2022), arguing Oklahoma's residency requirements for marijuana licenses violate the Commerce Clause. *Northeast Patients Group* held that a Maine statute that placed residency restrictions on marijuana licenses transgressed the Commerce Clause because it imposed a substantial burden on the interstate marijuana market. See *Northeast Patients Group*, 45 F.4<sup>th</sup> at 548. The court conceded, however, that Congress has criminalized this national market. *Id.* at 553.

¶18 The decision in *Northeast Patients Group* was criticized particularly by the dissent, "[t]he Commerce Clause does not recognize an interest in promoting a competitive market in illegal goods or services . . ." Gelpí, J. dissenting, *Northeast Patients Group*, 45 F.4<sup>th</sup> at 559. Several district courts have agreed with this dissent. "The dormant Commerce Clause does not apply to federally illegal markets, including Washington's cannabis market and, thus, it does not apply to Washington's residency requirements." *Brinkmeyer v. Washington State Liquor & Cannabis Bd.*, 2023 WL 1798173, (W.D. Wash. Feb. 7, 2023). "[I]t makes little sense why the dormant Commerce Clause would protect an interstate market that Congress affirmatively prohibited, given that protecting this market would facilitate illegal interstate activity." *Peridot Tree WA Inc. v. Washington State Liquor & Cannabis Control Bd.*, 2024 WL 69733, (W.D. Wash. Jan. 5, 2024). "Put simply, it defies common sense to find that the dormant Commerce Clause, drawn from Congress' power to regulate interstate commerce, prevents the states from passing laws which inhibit a market which Congress has already declared prohibited." *Jensen v. Maryland Cannabis Admin.*, 719 F. Supp.3d 466, 483 (D. Md. 2024). The *Jensen* court was "strongly persuaded" by a decision of the District Court for the Western District of Oklahoma which refused declaratory relief to a non-resident who was denied a marijuana business license. *Original Inv., L.L.C. v. State*, 542 F.Supp.3d 1230 (W.D. Okla. 2021). The *Original Investments* court noted it is a crime to produce or distribute marijuana, and it declined to "facilitate plainly criminal activity in which plaintiff proposes to engage." *Id.* at 1231.

¶19 We are not persuaded that the dormant Commerce Clause, which is premised on the free flow of interstate commerce, should be applied to enlarge the number of licensees in the medical marijuana market, a market which Congress has declared to be illegal. For this reason, the Grady County District Court did not err when it denied Red Dirt's constitutional challenge to the residency requirements of Oklahoma's licensing statutes.<sup>14</sup>

D. The District Court Improperly Granted Summary Judgment Instead of  
Reviewing a Final Agency Order of the Oklahoma Medical Marijuana Authority

¶20 Red Dirt appealed the district court's disposition of its petition for judicial review of a final agency order. This court reviews *de novo* whether the district court applied the correct legal standard. *Scoufos v. State Farm Fire & Cas. Co.*, 2001 OK 113, ¶1, 41 P.3d 366, 367.

¶21 The Legislature created the OMMA with duties including the issuance of medical marijuana business licenses. 63 O.S. Supp. 2021 §427.3(A). Red Dirt submitted its application for a grower license to the OMMA in July 2022. Misrepresentations in an application are grounds for administrative action against the applicant by the OMMA. Oklahoma Administrative Code 442:10-5-1. The OMMA denied Red Dirt's application and Red Dirt filed a petition in the district court for judicial review alleging it was aggrieved by a final agency order of the OMMA. Administrative Procedures Act, Title 75 O.S. 2011 §318(A).

¶22 Red Dirt proceeded, seeking review of the agency decision in the district court pursuant to 75 O.S. 2011 §318. Within 60 days after a petition for review is filed, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. 75 O.S. 2011 §320. The district court shall conduct a non-jury review. 75 O.S. Supp.1963 §321. It may hear oral argument and receive briefs upon request, but the review shall be confined to the agency record, except where agency procedural irregularities are at issue. 75 O.S. Supp.1963 §321.

¶23 In response to Red Dirt's request for review, the OMMA argued the denial of Red Dirt's grower license application was not a final order and the denial was not issued in an individual proceeding. For these reasons, the OMMA argued Red Dirt was not entitled to the district court judicial review provided under 75 O.S. 2011 §318. Despite the OMMA's jurisdictional challenge, the proceeding continued in the district court, resulting in the grant of OMMA's Rule 13 motion and the district court's determination the dormant Commerce Clause did not apply.

¶24 Title 75 O.S. Supp.1963 §322 outlines the district court's scope of review. The district court may (1) affirm the agency, (2) set aside or modify the agency's order, or (3) remand the case to the agency for further proceedings. 75 O.S. Supp.1963 §322. With respect to affirming the agency order, §322(3) provides, "[t]he reviewing court shall affirm the order and decision of the agency, if it is found to be valid and the proceedings are free from prejudicial error to the appellant."

¶25 If the district court finds the agency order should not be affirmed, the court must apply the standard of review set forth at §322(1):

The district [court] . . . in the exercise of proper judicial discretion or authority, may set aside or modify the order, or reverse it and remand it to the agency for further proceedings, if it determines that the substantial rights of the appellant or petitioner for review have been prejudiced because the agency findings, inferences, conclusions or decisions, are:

(a) in violation of constitutional provisions; or

(b) in excess of the statutory authority or jurisdiction of the agency; or

(c) made upon unlawful procedure; or

(d) affected by other error of law; or

(e) clearly erroneous in view of the reliable, material, probative and substantial competent evidence, as defined in [§310] of this act, including matters properly noticed by the agency upon examination and consideration of the entire record as submitted; but without otherwise substituting its judgment as to the weight of the evidence for that of the agency on question of fact; or

(f) arbitrary or capricious; or

(g) because findings of fact, upon issues essential to the decision were not made although requested.

¶26 With respect to remanding the agency order, §322(2) provides, "[t]he reviewing court, also in the exercise of proper judicial discretion or authority, may remand the case to the agency for the taking and consideration of further evidence, if it is deemed essential to a proper disposition of the issue."

¶27 In filing its motion for summary judgment, the OMMA interposed a pretrial procedure that conflicted with an agency review. The object of Rule 13 is recognition that a trial is unnecessary when the facts of substance are not conflicting, avoiding a useless trial. *Flick v. Crouch*, 1967 OK 131, ¶17, 434 P.2d 256, 262; see Rules for the District Courts of Oklahoma Rule 13, 12 O.S. 2021, Ch.2, app. Summary judgment is a special procedural track to search for facts that may be undisputed. *Jackson v. Oklahoma Memorial Hospital*, 1995 OK 112, ¶15, 909 P.2d 765, 773. The movant attaches "evidentiary materials" which it contends "would be" admissible in evidence if there were to be a trial. Rules for the District Courts of Oklahoma Rule 13(c), 12 O.S. 2021, Ch.2, app. In using Rule 13, the trial court is making a pretrial adjudication based on documentation submitted by the parties. "By its very terms, Rule 13 applies to pre-judgment issues only" and does not apply to a remedy seeking relief from a judgment. *Patel v. OMH Medical Center, Inc.*, 1999 OK 33, ¶18, 987 P.2d 1185, 1193. When confronted with a motion for summary judgment, the district court should examine its meaning and effect. *Stripling v. State ex rel. Oklahoma Health Care Auth.*, 2017 OK CIV APP 6, ¶ 9, 394 P.3d 293, 297.

¶28 In contrast, a final agency order is the written determination of findings of fact and conclusions of law *after* the conclusion of an individual proceeding. 75 O.S. 2011 §318. The findings of fact are based on the evidence received during the proceeding. 75 O.S. Supp.1994 §309(H). The record in an administrative individual proceeding consists of pleadings, motions, intermediate rulings, evidence received, statements of matters officially noticed, questions and offers of proof and rulings, proposed findings and exceptions; any decision, opinion, or report of the officer presiding at the hearing; and all other evidence or data submitted to the hearing officer. 75 O.S. Supp.1994 §309(F)(1)-(7). <sup>15</sup>

¶29 At its essence, summary judgment is a pretrial tool using evidentiary materials submitted by the parties to identify issues that do not require a trial, whereas judicial review is a post-trial examination of the actual record of the completed agency proceeding. Because the standard for summary judgment, and the record upon which it is based, is significantly different from that implemented in a judicial review of a final agency order, this error cannot be considered harmless.

¶30 The Record on Accelerated Appeal in this case does not include a final agency order; there is only an "E-mail Audit Record" making reference to the agency denial. Further, the summary judgment exhibits included three affidavits which were executed *after* the agency proceedings and could not have been part of the administrative record. Finally, there is no certification or other reliable means to confirm that the Record on Accelerated Appeal includes the complete record of the administrative proceedings as required by 75 O.S. Supp.1994 §309(F). As a result, even if the district court's summary judgment decision could be considered the functional equivalent of affirming the final agency order, this court would still be unable to review the decision due to an inadequate record. When the district court's order is not supported by the record of the administrative agency, it must be reversed. *In re Mainstreet Pharmacy*, 2003 OK CIV APP 68, ¶12, 76 P.3d 91, 94. <sup>16</sup> Upon remand the Grady County District Court must determine if there is a sufficient agency record to permit the district court to engage in review of the agency order and render a decision pursuant to 75 O.S. Supp.1963 §322.

## V. Conclusion

¶31 The purpose of the dormant Commerce Clause is to create a free flow of commerce among the states. It does not apply to invalidate restrictions on marijuana licenses, because to do so would enlarge the marijuana market which Congress has declared to be illegal. The *Order on Motion to Dismiss* filed July 23, 2024, and the *Order on*

Hearing of June 27, 2024, are affirmed insofar as the district court decided the residency requirements do not violate the Commerce Clause.

¶32 The district court's *Final Order*, filed March 6, 2025, is reversed because the district court reviewed the final agency order utilizing Rule 13 summary judgment procedure instead of applying the agency review procedure outlined in 75 O.S. 2011 §318 and 75 O.S. Supp.1963 §322. The cause is remanded for further proceedings consistent with this opinion.

¶33 AFFIRMED IN PART, REVERSED IN PART and REMANDED.

SWINTON, J., and PRINCE, J., concur.

## FOOTNOTES

B.J. GOREE, PRESIDING JUDGE:

<sup>1</sup> Opinion of Okla. Atty. Gen. Hunter, 2020 OK AG 1, ¶1; 63 O.S. Supp.2019 §427.3(C).

<sup>2</sup> The medical marijuana question, sent to voters via State Question 788, was premised on Initiative Petition No. 412. As a result of the people's vote, the Legislature created the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. Supp.2019 §427.1, initially directing the State Department of Health to implement the provisions of the Act consistently with voter-approved State Question No. 788. The Oklahoma Medical Marijuana Authority was simultaneously created as a division of the State Department of Health, but later became a distinct agency. 63 O.S. Supp.2019 §427.3

<sup>3</sup> Five categories of medical marijuana business licenses are recognized: 1) commercial grower, 2) processor, 3) dispensary, 4) transporter, and 5) testing laboratory. 63 O.S. 2021 §427.14(A).

<sup>4</sup> "The applicant, if applying as an individual, must show residency in the State of Oklahoma;" 63 O.S. Supp.2021 §422(B)(2); "All applying entities must show that all members, managers, and board members are Oklahoma residents;" 63 O.S. Supp.2021 §422(B)(3); "An applying entity may show ownership of non-Oklahoma residents, but that percentage ownership may not exceed twenty-five percent (25%);" 63 O.S. Supp.2021 §422(B)(4); "[I]f applying as an entity, proof that seventy-five percent (75%) of all members, managers, executive officers, partners, board members or any other form of business ownership are Oklahoma residents pursuant to paragraph 11 of this subsection[.]" 63 O.S. Supp.2021 §427.14(E)(7)(c); "In order to be considered an Oklahoma resident for purposes of a medical marijuana business application, all applicants shall provide proof of Oklahoma residency for at least two (2) years immediately preceding the date of application or five (5) years of continuous Oklahoma residency during the preceding twenty-five (25) years immediately preceding the date of application." 63 O.S. Supp.2021 §427.14(E)(11).

<sup>5</sup> The 75 units held by the Oklahoma resident were valued at \$100 per unit, for a total stock value of \$7,500, and the 25 units held by non-residents were valued at \$1,000 per unit, for a stock value of \$25,000. In addition, the units held by the Oklahoma resident allowed no voting privileges in the company, no access to profit sharing and the non-resident unit holders had discretion to limit and control authority the resident's units might have otherwise provided.

<sup>6</sup> The appealed order in Case No. 123,004 issued by the Grady County District Court, sustaining the OMMA's motion to dismiss, was filed March 6, 2025. The appealed orders in Case No. 123,005, attached to the petition in error are the July 23, 2024 district court order titled "Order on Motion to Dismiss" and the July 29, 2024 order titled "Order on Hearing of June 27, 2024".

<sup>7</sup> Appellate Case Nos. 123,004 and 123,005 were consolidated under Case No. 123,004 by order of the Oklahoma Court of Civil Appeals on June 20, 2025.

<sup>8</sup> Congress has in recent years declined to appropriate funding to prevent the states from implementing their own laws governing medical marijuana; however, the possession, distribution, or manufacture of medical marijuana remains prohibited by federal law. *United States v. Phu*, 2025 WL 646987, (W.D. Okla. Feb. 27, 2025), citing *United States v. Trevino*, 7 F.4th 414, 427 (6th Cir. 2021), and *United States v. McIntosh*, 833 F.3d 1163, 1179 n.5 (9th Cir. 2016) (concerning the effect of an appropriations rider, the Rohrabacher-Farr Amendment, on the CSA).

<sup>9</sup> The Oklahoma Supreme Court acknowledged this purpose in *In re Assessment of Personal Property Taxes Against Missouri Gas Energy, Div. of S. Union Co., for Tax Years 1998, 1999, & 2000*, 2008 OK 94, ¶42, 234 P.3d 938, 952.

<sup>10</sup> The Commerce Clause also has the goal of preventing states from enacting protectionist measures to gain an economic advantage. *Tennessee Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 518, 139 S.Ct. 2449, 2461, 204 L.Ed. 2d 801 (2019). A state law that discriminates against out-of-state goods or nonresident economic actors can be sustained only on a showing that it is narrowly tailored to advance a legitimate local purpose. *Id.* But the prohibition against protectionism is premised on preserving a national market for goods and services; and Congress has made clear by enacting the CSA that it does not recognize a legitimate national market for marijuana. *Tennessee Wine*, 588 U.S. at 514, 139 S.Ct. at 2459.

<sup>11</sup> "After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited." U.S. Const. amend. XVIII, §1.

<sup>12</sup> The 10<sup>th</sup> Amendment to the U.S. Constitution provides, "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." The states possessed power in full measure "save for some restrictions arising out of the federal Constitution, chiefly the commerce clause . . ." *U.S. v. Lanza*, 260 U.S. at 381, 43 S.Ct. at 142. Prohibition, specifically the second section of the 18<sup>th</sup> Amendment, "put an end to restrictions upon the state's power arising out of the federal Constitution . . ." *Id.*

<sup>13</sup> *Pic-A-State* described a two-fold inquiry "in those instances where Commerce Clause challenges to state regulation have been mounted in an area where Congress has made it a crime to conduct such commerce . . ." *Pic-A-State*, 42 F.3d at 179. A court should ask, "(1) whether federal law precludes all state legislation in that area, and (2) if state regulation is not precluded, whether the state statute conflicts with the federal provision." *Id.* The Oklahoma Supreme Court has held that an initiative petition that would legalize, regulate, and tax the use of marijuana by adults would not be preempted by the Controlled Substances Act, 21 U.S.C. §§801-904. *In re State Question No. 807, Initiative Petition No. 423*, 2020 OK 57, ¶35, 468 P.3d 383, 393.

<sup>14</sup> It can be noted in its July 23, 2024 Order on Motion to Dismiss, the Grady County District Court stated, "that there is no interstate market" for marijuana. This statement is not in accord with the U.S. Supreme Court's findings in *Gonzales*, 545 U.S. at 18, 125 S.Ct. at 2206.

<sup>15</sup> 75 O.S. Supp.1994 §309(F)(1)-(7):

F. The record in an individual proceeding shall include:

1. All pleadings, motions and intermediate rulings;
2. Evidence received or considered at the individual proceeding;
3. A statement of matters officially noticed;
4. Questions and offers of proof, objections, and rulings thereon;
5. Proposed findings and exceptions;

6. Any decision, opinion, or report by the officer presiding at the hearing; and

7. All other evidence or data submitted to the hearing examiner or administrative head in connection with their consideration of the case provided all parties have had access to such evidence.

<sup>16</sup> Although the Record on Accelerated Appeal is inadequate to permit this court's review of the district court's disposition of the merits determination made by the agency, the constitutional validity of the residency statutes is not dependent on the parties' administrative filings because it is purely a question of law.

## Citationizer<sup>®</sup> Summary of Documents Citing This Document

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<a href="#">2017 OK CIV APP 6, 394 P.3d 293,</a>	<a href="#">STRIPLING v. STATE ex rel. OKLAHOMA HEALTH CARE AUTHORITY</a> Discussed
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<a href="#">2001 OK 113, 41 P.3d 366, 72 OBJ 3685,</a>	<a href="#">SCOUFOS v. STATE FARM FIRE &amp; CASUALTY CO.</a> Discussed
<a href="#">1967 OK 131, 434 P.2d 256,</a>	<a href="#">FLICK v. CROUCH</a> Discussed
<a href="#">1995 OK 112, 909 P.2d 765, 66 OBJ 3292,</a>	<a href="#">Jackson v. Oklahoma Memorial Hosp.</a> Discussed
<a href="#">2008 OK 94, 234 P.3d 938,</a>	<a href="#">IN THE MATTER OF THE ASSESSMENT OF PERSONAL PROPERTY TAXES</a> Discussed
<a href="#">2014 OK 31, 339 P.3d 848,</a>	<a href="#">CDR SYSTEMS CORPORATION v. OKLAHOMA TAX COMMISSION</a> Discussed
<a href="#">2016 OK 97, 381 P.3d 736,</a>	<a href="#">LEE v. BUENO</a> Discussed
<a href="#">2020 OK 57, 468 P.3d 383,</a>	<a href="#">IN RE: STATE QUESTION No. 807, INITIATIVE PETITION No. 423</a> Discussed
<a href="#">1999 OK 33, 987 P.2d 1185, 70 OBJ 1353,</a>	<a href="#">Patel v. OMH Medical Center, Inc.</a> Discussed
<b>Title 63. Public Health and Safety</b>	
Cite	Name Level
<a href="#">63 O.S. 422,</a>	<a href="#">Commercial Grower License - Application - Criteria - Sales - Report - Penalties - Registration</a> Discussed at Length
<a href="#">63 O.S. 427.1,</a>	<a href="#">Short Title</a> Cited
<a href="#">63 O.S. 427.3,</a>	<a href="#">Oklahoma Medical Marijuana Authority - Duties and Functions</a> Discussed at Length
<a href="#">63 O.S. 427.14,</a>	<a href="#">Medical Marijuana Business License - Fee - Application - Rules</a> Discussed at Length
<b>Title 75. Statutes and Reports</b>	
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<a href="#">75 O.S. 320,</a>	<a href="#">Transmission of Record to Reviewing Court - Stipulations</a> Cited
<a href="#">75 O.S. 318,</a>	<a href="#">Judicial Review</a> Discussed at Length
<a href="#">75 O.S. 309,</a>	<a href="#">Individual Proceedings - Notice - Hearing</a> Discussed at Length
<a href="#">75 O.S. 321,</a>	<a href="#">Review Without Jury - Additional Testimony.</a> Discussed
<a href="#">75 O.S. 322,</a>	<a href="#">Setting Aside, Modifying, or Reversing of Orders - Remand - Affirmance</a> Discussed at Length

