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A Sleeping Giant: How the Dormant Commerce Clause Looms Over the Cannabis Marketplace

Vaguely recalled by practicing attorneys, the Dormant Commerce Clause (DCC) is often the bane of first-year students' Constitutional Law courses. However, the DCC is poised to soon rise in prominence, and lawyers, lawmakers, regulators, and businesses should pay close attention as the doctrine has the potential to bedevil the emerging cannabis sector.

Congress is contemplating a national cannabis marketplace, ushering in the interstate commerce of cannabis. On September 30, 2021, the Marijuana Opportunity Reinvestment and Expungement Act (MORE Act) passed through the House Judiciary Committee by a vote of 26-15, with two Republicans crossing party lines (Reps. Matt Gaetz and Tom McClintock). It is probable that the bill's lead sponsor, Chairman Jerry Nadler, will seek to bring the bill to the House floor in the coming months. Senate Majority Leader Chuck Schumer, Senator Cory Booker, and Senator Ron Wyden released a discussion draft of their own version of a de-scheduling bill over the summer (the Cannabis Administration and Opportunity Act) and will likely promote that bill in the coming months. More recently, Republican Representative Nancy Mace, joined by Rep. McClintock and two other conservative co-sponsors, introduced a bill to legalize and regulate cannabis.

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