Cannabis and the Dormant Commerce Clause

A Practical Guidance® Practice Note by Andrew Kline and Thomas Tobin, Perkins Coie LLP

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This practice note provides practical insight regarding the Dormant Commerce Clause as it applies to the cannabis industry.

The Commerce Clause is among the Constitution's most sweeping grants of authority to the federal government. Pursuant to the Commerce Clause, U.S. Const., Art. I, § 8, cl. 3, Congress may "regulate commerce . . . among the several states." Accordingly, the Constitution provides an express grant of authority to Congress to regulate interstate commerce. In turn, courts have interpreted the Commerce Clause's grant of such authority to act as a limitation on the states' ability to regulate in any way that might interfere with interstate commerce. This limitation upon the states' authority is known as the Dormant Commerce Clause (DCC).

The DCC is poised to rise in prominence as policy discussions heat up in the nation's cannabis industry and as Congress contemplates national legalization (otherwise known as descheduling). In 2021 alone, Congress saw three credible proposals to legalize and regulate cannabis at the federal level. Meanwhile, cannabis is legal in two-thirds of the states, whether for medical or recreational use. These three dozen states have each constructed individualized legal and regulatory regimes dedicated to governing the growth, sale, and distribution of cannabis within their jurisdictions. That is, the current cannabis marketplace consists of more than 36 individual jurisdictions, each with their own distinctions. Licensed cannabis businesses have invested heavily in reliance on and to comply with existing state regulatory structures. If—or when, if advocates are to be believed—interstate cannabis is legalized, the question of the interplay between proposed federal regulatory oversight of cannabis and existing state regulatory regimes is yet unanswered.

As of January 2021, there is no single national cannabis market as there is no interstate commerce in cannabis. In other words, the growth, sale, and distribution of cannabis is legal within jurisdictions that have legalized such activities, but not between these jurisdictions. By necessity then, each jurisdiction that has legalized the growth, sale, and distribution of cannabis prohibits out-of-state activity with regard to state-legal cannabis. Many states also impose residency requirements for licenses to conduct cannabis activities. Ordinarily, the prohibition on out-of-state activities or residency requirements would likely represent a violation of the DCC as these mandates would hinder interstate commerce. The introduction of interstate commerce means that existing paradigms in the regulatory oversight of cannabis will face substantial challenges, especially with regard to the DCC.

For more information about cannabis, see Cannabis Law Practice Overview, Advising a Cannabis-Related Business, Cannabis Legalization and the Insurance Industry, and Cannabis Resource Kit.

Dormant Commerce Clause Background

The Commerce Clause provides exclusive authority to Congress to regulate commerce among the states. The DCC is a default rule that follows directly from the Constitution's grant of authority to Congress, prohibiting state actions that place undue burdens on interstate commerce.

Constitutional Authority and Court Recognition

Calling the DCC "essential to the foundations of the Union," the Court wrote in Granholm v. Heald, 544 U.S. 460, 472 (2005) "[t]ime and again this Court has held that, in all but the narrowest circumstances, state laws violate the Commerce Clause if they mandate differential treatment of in state and out-of-state economic interests that benefits the former and burdens the latter." Reflecting decades of DCC jurisprudence, the Supreme Court in Utd. Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth., 550 U.S. 330, 338 (2007), also recognized the DCC was "an implicit restraint on state authority." Likewise, the Court in Tenn. Wine & Spirits Retailers Ass'n v. Thomas, 139 S. Ct. 2449, 2459 (2019) noted that the DCC "prevents the States from adopting protectionist measures and thus preserves a national market for goods and services."

Thomas is particularly instructive as a full-throated and recent application of the DCC to a highly regulated industry—alcoholic beverages. In *Thomas*, the Court considered whether Tennessee's mandated durational residency requirement for obtaining state retail liquor store licenses violated the DCC. Among other things, the state required initial applicants for licensees to have resided in Tennessee for the prior two years. Two businesses that did not meet the residency requirements brought suit after applying to be licensed. The trade association representing wine and spirits retailers in the state threatened suit against the state regulator if it issued the licenses. The association attempted to defend the residency requirement on public health and safety grounds, including that residents would be amenable to direct process in the state court system and allowed the regulator to more thoroughly guard against "undesirable nonresidents" who might not be fit to sell alcoholic beverages. The Court was unconvinced, holding that the association did not explain why these objectives could not be easily achieved through ready alternatives, such as mandating that a nonresident designates a resident agent for service in-state courts. Ultimately, the Court held that the two-year residency requirement violated the DCC and was therefore unconstitutional.

Relatedly, two of the three cannabis legalization bills introduced in the House and Senate have largely based their proposed regulatory structure on the alcohol model, leveraging licensing, labeling approvals, and other alcohol-related experience to make the case that the Alcohol and Tobacco Tax and Trade Bureau (TTB) should have significant regulatory jurisdiction over cannabis. Assuming adoption, there is all the more reason we should apply lessons from that regulatory model to cannabis.

Review Frameworks

Courts apply one of two frameworks when evaluating DCC claims, asking first whether the challenged law is discriminatory on its face against interstate commerce. The plaintiff bears the initial burden of showing discrimination, but the state or local government bears the burden of identifying legitimate local purposes and establishing a lack of nondiscriminatory alternatives. Family Winemakers of Cal. v. Jenkins, 592 F.3d 1, 9 (1st Cir. 2010).

If the challenged law represents "economic protectionism," as determined by either "discriminatory purpose" or "discriminatory effect," then a Court applies strict scrutiny review. Courts recognize that these discriminatory mandates face a "virtually per se rule of invalidity." See Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 471 (1981). Given the high bar of strict scrutiny review, state mandates rarely succeed when challenged under this standard, as the state must demonstrate that the policy rationale behind the mandate could not be as well served by some other, nondiscriminatory means. See Maine v. Taylor, 477 U.S. 131, 138 (1986) (upholding Maine's ban on importing baitfish when it served a legitimate public purpose, and that purpose could not have been served by nondiscriminatory means). For example, in Bacchus Imports, Ltd. v. Dias, 468 U.S. 263, 270 (1984), the Court evaluated whether tax exemptions to encourage certain local Hawaiian alcohol manufacturers violated the DCC. Hawaii exempted two alcoholic beverages local to the state from the 20% excise tax on wholesale liquor sales. The Court held that the tax exemptions constituted "economic protectionism" as it was undisputed that the state legislature's goal was to aid the local industry and that the exemptions were "clearly discriminatory" in their effect as they applied only to locally produced beverages.

If a challenged mandate is not discriminatory on its face, it may nonetheless be discriminatory in its practical effect and violate the DCC. Under this test—named for the eponymous case, Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970)—

a law that imposes only "incidental" burdens on interstate commerce is unconstitutional when the burden imposed on interstate commerce is clearly excessive in relation to the putative local benefits. Courts applying this *Pike* test have invalidated more neutral state laws when these challenged state requirements would impose undue burdens on interstate commerce. See Kassel v. Consol. Freightways Corp., 450 U.S. 662, 671–75 (1981) (invalidating state mandate concerning limitations on truck length). For example, in Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 529 (1959), the Supreme Court assessed whether an Illinois state law requiring a certain type of rear mudguard violated the DCC. The requirement of a particular mudguard, contoured or straight, was not facially discriminatory against out-of-state businesses. Even so, the Court held that the state regulation nonetheless placed unreasonable burdens on interstate commerce, especially when changing mudguards was a time-consuming task without any justifiable need for such a requirement.

DCC as a Default Rule

The Constitution singularly empowers Congress to legislate over issues of interstate commerce. The DCC operates as a limitation on state power to impose substantial burdens on interstate commerce. For decades, the Supreme Court has recognized that Congress can exercise its authority under the Commerce Clause to expressly authorize state action that would otherwise violate the DCC. See S.-Cent. Timber Dev., Inc. v. Wunnicke, 467 U.S. 82, 87–88 (1984) (quoting Southern Pacific Co. v. Arizona, 325 U.S. 761, 769 (1945)) ("It is equally clear that Congress may 'redefine the distribution of power over interstate commerce' by permitting the states to regulate the commerce in a manner which would otherwise not be permissible."); Maine v. Taylor, 477 U.S. 131, 138 (1986) ("It is well established that Congress may authorize the States to engage in regulation that the Commerce Clause would otherwise forbid."); Hillside Dairy Inc. v. Lyons, 539 U.S. 59, 66 (2003) ("Congress certainly has the power to authorize state regulations that burden or discriminate against interstate commerce."). In this way, the DCC operates as a default rule. See Thomas, 139 S. Ct. at 2465 ([DCC] "restrictions apply only when Congress has not exercised its Commerce Clause power to regulate the matter at issue."). Congress can suspend the application of the DCC's default rule. To do so, Congress must make its intention "unmistakably clear." S.-Cent. Timber Dev., Inc. v. Wunnicke, 467 U.S. 82, 91 (1984) ("[F]or a state regulation to be removed from the reach of the dormant Commerce Clause, congressional intent must be unmistakably clear.").

Existing State Regulatory Powers and Proposed Federal Legislation

With 36 states legalizing cannabis for either medicinal or recreational use, states have developed intricate regulatory systems to govern the production, sale, processing, and transportation of cannabis within their jurisdictions. Many states have either created new cannabis-focused agencies or incorporated cannabis regulatory oversight within an existing agency. For example, Washington and Oregon expanded their liquor control boards to also include cannabis. By contrast, California and New York have developed new agencies to oversee their state cannabis marketplaces.

State Regulation

Cannabis rules among the states differ considerably. These state-based rules cover a wide array of cannabis industry activities, which may include but are not limited to:

- Labeling and Packaging Requirements
- Product Purchase Limits
- Permitting/Licensing
- Product Liability
- Taxation
- Track-and-trace Systems
- Recall Processes
- Fines and Enforcement
- Laboratory Testing
- Processing Requirements, including the Approval of Certain Solvents, Residential Material Limits, and Pesticide Levels
- Limitations on Product Claims
- Age Verification for Product Sales
- Product Delivery to Consumer
- Restrictions on the Sale of Certain Cannabis Products
- Potency Caps
- Premises Specifications and Security Requirements
- Qualifying Conditions for Medicinal Use
- Permissible Sales Locations
- Warning Labels
- Allowable Cannabinoids
- Environmental Standards
- Social Equity Initiatives

The regulation of cannabis businesses has been state-driven with states exercising their regulatory powers to govern the activities of cannabis consumers and businesses in their jurisdictions. The interplay between existing state regulatory structures, and their promulgated requirements, with potential federal oversight of a legal cannabis marketplace at the federal level has not yet been comprehensively addressed.

Federal Legislative Proposals

In 2020, a bill that would have descheduled marijuana passed the House of Representatives—the first time a descheduling or legalization proposal passed a chamber of Congress. In 2021, Congress saw three credible proposals for the introduction of interstate commerce in cannabis. In the coming years, more proposals are likely to follow.

MORE Act

The Marijuana Opportunity Reinvestment and Expungement Act (MORE Act) was introduced by House Judiciary Committee Chair Jerrold Nadler in May 2021. The MORE Act would deschedule and decriminalize cannabis at the federal level. Among other things, the bill would also create social equity programs such as a licensing and employment program that would focus on assisting individuals adversely affected by the War on Drugs. On September 30, 2021, the bill advanced past committee and is rumored to reach the House floor sometime this year in 2022. The bill does not create a regulatory plan to address existing state regulatory structures.

Cannabis Administration and Opportunity Act

In Summer 2021, Senators Charles Schumer (D-NY), Ron Wyden (D-Ore.), and Cory Booker (D-NJ) circulated a discussion draft of the Cannabis Administration and Opportunity Act (CAOA). The CAOA would also deschedule and decriminalize cannabis. The proposal would also set a national minimal age of 21 for cannabis sales and a maximum of 10 ounces of cannabis for retail sale. Among other things, the bill would establish a grant program for nonprofit organizations providing services to individuals adversely affected by the War on Drugs.

While the CAOA recognizes state law as controlling the possession, production, and distribution of cannabis, and would prohibit the shipment of cannabis into a state that has not legalized cannabis, it is not clear about the specific regulatory authorities that would be retained by the states. The discussion draft does not fully articulate how oversight powers over the cannabis industry are to be shared between federal and state authorities, and further detail may be available in future versions of the proposal. In a summary, the proposal's proponents argued that existing models of state and federal cooperation regarding alcohol regulation are instructive in creating new regulatory oversight of cannabis. Further, the proposal would not expressly authorize a state to discriminate against out-of-state cannabis businesses, thereby explicitly setting aside the DCC's default rule.

States Reform Act

In November 2021, five Republican representatives, led by Congresswoman Nancy Mace (R. SC), introduced the States Reform Act. The bill would decriminalize and deschedule cannabis at the federal level. Among other things, the bill would split regulatory jurisdiction for cannabis between state regulatory authorities and federal agencies, namely the TTB and FDA. It would also transfer criminal regulatory authority for cannabis from the U.S. Drug Enforcement Administration to the Bureau of Alcohol, Tobacco, Firearms, and Explosives. The bill provides the following text regarding the Commerce Clause:

> (d) Rule Of Construction.—It is the intention of Congress that this Act be read consistently with the jurisprudence interpreting the Acts amended above and not as superseding or changing prior construction of the Acts with respect to the laws of the United States generally or the article I Commerce Clause.

As the bill advances in committee, further context regarding the precise intent of this passage may become available. It appears that the bill would not expressly authorize a state to discriminate against out-of-state cannabis businesses. The specific delegation of certain regulatory powers to federal authorities might be further developed as the proposal moves through the legislative process.

Litigation Environment

At the federal level, cannabis is a controlled substance and is illegal to produce, sell, and distribute. Thirty-six states have legalized cannabis for medical or recreational use, and each of these jurisdictions have created individual regulatory regimes to govern the production, sale, and distribution of cannabis. These myriad state mandates regarding cannabis often contradict each other, such as when states require that different symbols must be included on cannabis product packaging. As cannabis is a controlled substance, activities regarding cannabis are tightly controlled at the federal level, including making the sale of cannabis illegal. The production, sale, processing, or transportation of cannabis across state lines is, therefore, problematic under the federal Controlled Substances Act. Given the federal illegality of cannabis, states are inherently regulating against out-of-state cannabis in the absence of interstate commerce.

Background

Under the DCC, state cannabis regulatory structures are likely to face substantial challenges in the coming years, absent specific Congressional action.

First, states are currently facially discriminating against out-of-state cannabis being grown, bought, processed, or sold in their jurisdictions. This situation is tolerated—at least tacitly for now—given the federal illegality of cannabis and the federal prohibition on interstate commerce of this federally illegal substance. If or when interstate commerce in cannabis is permitted, experts predict immediate challenges to the current insular state-legal cannabis markets on DCC grounds. See Robert A. Mikos, *Interstate Commerce in Cannabis*, 101 B.U. L. Rev. 857, 861 (2021) (stating that if left unchecked, the DCC "is likely to spell the demise of the strange, state-based cannabis markets we have today and the rise of a national cannabis market in which local firms must compete with out-of-state firms"); 101 B.U. L. Rev. at 864 ("[T]he DCC will force legalization states to open their doors to cannabis imports and exports and to permit nonresidents to own and operate local cannabis businesses on the same terms as residents.").

Second, many states have incorporated residency requirements into permitting or licensing application processes. These may operate as either restrictions (i.e., applicants must have been resident in the jurisdiction for a certain time period) or positive marks (i.e., applicants with certain residency status obtain preference or additional points) in the application process. For example, many states have implemented social equity programs to address the disproportionate impact of the War on Drugs on communities of color. These state social equity programs often promote participation in the state-legalized cannabis market by individuals from these communities through extra points in the licensing process or through exclusive opportunities especially for social equity applicants. Other benefits might include exclusive funding, fee waivers, specialized training, or particular educational opportunities. These social equity benefits are generally based on an applicant's residence in a particular area within the particular jurisdiction, meaning that states are limiting participation in social equity programs to state residents and that could raise substantial DCC concerns. See Scott Bloomberg & Robert A. Mikos, *Legalization Without Disruption: Why Congress Should Let States Restrict Interstate Commerce in Marijuana*, Pepp. L. Rev. at 21 (Forthcoming 2022).

Selected Cases

The DCC has already demonstrated its ability to invalidate certain aspects of state cannabis systems as evidenced by the cases reviewed below.

Northeast Patients Grp. v. Me. Dep't of Admin. and Fin. Servs.

In Northeast Patients Grp. v. Me. Dep't of Admin. and Fin. Servs., 2021 U.S. Dist. LEXIS 151027 (D. Me. Aug. 11, 2021), two businesses challenged a Maine statute mandating that officers and directors of licensed dispensaries be residents of the state. One plaintiff business was entirely owned by out-of-state residents and was looking to purchase a Maine dispensary, the second plaintiff. They brought suit alleging that the dispensary residency requirement violated the DCC as it expressly discriminated against out-of-state residents and the state had failed to show a legitimate public purpose for the requirement.

Plaintiffs argued that the residency requirement reserved enormous economic opportunities for state residents. Defendants contended that there was no national market for cannabis, meaning that the state's residency restriction could not burden the interstate commerce in cannabis, as no such interstate commerce existed. The Court emphasized that defendants had not met their burden to demonstrate the controlled status of cannabis under federal law, and consequently the prohibition on interstate commerce, meant that Congress had acted to approve discriminatory action by the states by prohibiting an interstate market in the substance.

The District of Maine ruled for plaintiffs and struck down Maine's residency requirement as violative of the DCC. The Court held that defendants had not met their burden of showing that Congress' intent was "unmistakably clear" in allowing Maine to set aside the DCC and the institute discriminatory residency requirement. The case is now on appeal to the First Circuit.

NPG, LLC v. City of Portland, Maine

In NPG, LLC v. City of Portland, Maine, 2020 U.S. Dist. LEXIS 146958, (D. Me. Aug. 14, 2020), the same plaintiffs as in the above-discussed *Northeast Patients Group* case brought suit alleging the city of Portland's point-based system unconstitutionally benefited in-state residents and burdened interstate commerce in violation of the DCC. The city awarded the top 20 applicants with municipal licenses to sell cannabis at retail, and 9 out of a possible 34 points in the application process were awarded on the basis of residency or prior Maine-based license. The City Council suggested that the rules were intended to "advantage or give a slight preference for individuals and entities that have been Maine residents," and to "allow the local market to grow before there was an opportunity for outside investment to come in."

Plaintiffs contended that the preferential point system based on residency violated the DCC and was therefore

unconstitutional. Defendants argued that the controlled status of marijuana acted as a Congressional approval to set aside the DCC's default rule.

The District of Maine held that the city had created a preferential system for resident-owned cannabis retail stores. The Court also held that "although the Controlled Substances Act criminalizes marijuana, it does not affirmatively grant states the power to burden interstate commerce 'in a manner which would otherwise not be permissible." The Court noted it had "no authority to invent such an affirmative grant where Congress has not provided it." The Court then entered a preliminary injunction enjoining the city from awarding these nine residency-based points in its license point matrix.

Lowe v. City of Detroit

In Lowe v. City of Detroit, 2021 U.S. Dist. LEXIS 113444 (E.D. Mich. June 17, 2021), a city resident challenged a city ordinance giving preference to longtime Detroit residents, defined as individuals who had lived in the city for at least 15 of the past 30 years or who met certain other conditions if they lived in the city for at least 10 years. The city's licensing program provided a six-week early application window exclusively for these so-called "legacy" applicants. The city also reserved at least 50% of its adult-use cannabis retail licenses for legacy applicants.

Plaintiff did not meet the legacy conditions. He argued that the conditions were invalid as discriminatory on their face and therefore "virtually per se invalid" under the DCC. The city advanced three contentions. First, the city argued there was no interstate market for cannabis to burden. Second, Congress' continued prohibition of cannabis at the federal level represented a grant of authority to set aside the DCC's default rule. They argued that cannabis could not benefit from DCC protection because "Congress is using its Commerce Clause powers to confer upon states an ability to restrict the flow of marijuana that they would not otherwise enjoy." Third, the city distinguished its social equity goals, arguing that these laudable social equity goals were not the type of economic protectionism that the DCC sought to curtail.

The Eastern District of Michigan held that the ordinance violated the DCC as its "facial favoritism toward Detroit residents of at least 10–15 years embodies precisely the sort of economic protectionism that the Supreme Court has long prohibited." The Court further held that the city had not met its burden to demonstrate that its social equity goals could be advanced by reasonable nondiscriminatory alternatives. The Court argued that it was irrational to grant preferences to residents of Detroit when other surrounding communities may have also suffered from the War on Drugs to a similar extent.

Toigo v. Dep't of Health and Senior Servs.

In Toigo v. Dep't of Health and Senior Servs., 2021 U.S. Dist. LEXIS 228062 (W.D. Mo. June 21, 2021), plaintiff, an out-of-state minority owner in a licensed Missouri cannabis dispensary, wanted a majority stake in the business. Missouri law restricted majority ownership in licensed medical cannabis facilities to state residents who had resided in the state for at least one year. As a result of this durational residency requirement, the plaintiff could not obtain a license as an out-of-state resident.

Plaintiff argued that the durational residency requirement violated the DCC. The state did not dispute the facially discriminatory nature of the durational requirement, but instead argued that it was both faster and easier for the state to conduct background searches on in-state residents because the records were in the state and state agencies had access to those records.

The Western District of Missouri held that it was undisputed that the durational residency requirement was facially discriminatory. The Court further held that the proffered justification was not narrowly tailored given available nondiscriminatory alternatives. The state did not explain "explain how the task of securing an applicant's out-of-state records would be eased by the simple fact that the applicant had lived in Missouri for the past year." The Court reviewed recent Supreme Court precedent which held "unconstitutional facially discriminatory durational residency requirements grounded in the State's interest in being able to thoroughly assess the background of out-of-state business license applicant," writing that "the Supreme Court has been clear that invocation of the police power alone is not enough to overcome the dormant commerce clause."

Looking Ahead

As Congress discusses the potential introduction of interstate commerce in cannabis, the question of an articulated balance of powers between the federal and state government remains largely unanswered. Currently, state governments around the country have constructed intricate regulatory systems, and regulated businesses have invested heavily in reliance upon and to comply with these mandates. These systems often discriminate against out-of-state interests, whether prohibiting the introduction of out-of-state products for sale or granting preferential application points for local applicants. Challengers to these out-of-state distinctions have already seen several wins and invalided municipal and state mandates on DCC grounds. With regard to the cannabis industry, the DCC stands to rise further in prominence as Congress wrestles with regulating a national cannabis marketplace.

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Andrew Kline advises companies involved in all aspects of cannabis law and policy, regulatory compliance, civil litigation, and investigations. He brings a rare combination of public policy, cannabis, and prosecutorial experience to the firm, following decades of service in the highest levels of government and in the private and nonprofit sectors. Andrew also has a deep and celebrated background in coalition creation and management. Drawing on his nearly 15 years of experience as a federal prosecutor, and public service working as policy advisor to then-Vice President Biden and counsel to then-Senator Biden, Andrew represents clients in some of most sensitive areas of law and policy.

Most recently, Andrew served as public policy director for the National Cannabis Industry Association, the leading trade organization for the state-legal cannabis industry. There, he led public policy development and created and led its policy council—the "think tank" for the cannabis industry. Under Andrew's leadership, the council developed public policies to promote, grow, and protect state-legal cannabis businesses. The council's work served to inform and influence members of the U.S. Congress, Executive Branch officials, state legislators and regulators, the media, and industry stakeholders on matters critical to the future of the burgeoning industry.

Andrew held several critical roles in the Obama-Biden administration including as crime and drug policy advisor to the vice president, chief of staff, and senior advisor to the intellectual property enforcement coordinator, and enforcement counsel at the Federal Communications Commission (FCC). As policy advisor to then-Vice President Biden, Andrew was responsible for strategic oversight of the Office of National Drug Control Policy, including a $15 billion interagency budget process, President Obama's drug control strategy, and the anti-drug youth media campaign. He also led White House/Executive Branch interagency working groups on complex policy issues, including prisoner reentry and drug demand policies. Andrew also co-led the strategic development, interagency coordination, and successful implementation of the president's intellectual property enforcement strategy including establishing the first Office of the Intellectual Property Enforcement Coordinator. There, he successfully negotiated public-private partnerships across government agencies and fintech, pharmaceutical, shipping, advertising, and media industries to ensure global protection of domestic companies intellectual property assets and U.S. national security and consumer safety concerns.

Andrew's experience as a federal prosecutor includes six years as an assistant U.S. attorney in the District of Columbia. He also served as a federal prosecutor for six years in the Civil Rights Division's Criminal Section where as special litigation counsel he led teams investigating and prosecuting complex and high-profile federal criminal civil rights cases, including excessive use of force under color of law, human trafficking, and hate crimes. Andrew has first-chaired over 40 criminal jury trials, 12 bench trials, and argued numerous criminal appeals. He also conducted hundreds of multi-agency investigations during the course of his 14-year tenure at the department.

Andrew is a frequent speaker and media resource and has keynoted or offered expert commentary for the American Bar Association (ABA), Attorney General's Alliance, Cannabis World Congress and Business Expo, MJBizCon, Cannavest, Defense Resource Institute (DRI), Claims and Litigation Management Alliance (CLM), Cadwalader Finance Forum, NCIA's Cannabis Business Summit and Expo, Cannabis Industry Journal, New York Bar Association (NYBA), the United Nations (Vienna), and Vanity Fair.

His community service work includes serving on the board of directors of the Anti-Defamation League, Rocky Mountain States. He also continues to serve as a mentor to at-risk youth in Washington, D.C.

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Thomas Tobin's practice focuses on complex commercial litigation and class action matters involving statutory, constitutional, and regulatory issues in a range of industries, including food and beverage, consumer packaged goods, and cannabis. In the food and beverage sector, Tommy has experience defending false advertising claims and consumer protection claims for well-known international corporations. He regularly writes articles on food law and policy issues and is chair of the American Bar Association's Food, Cosmetics and Nutraceuticals Committee. Tommy recently edited the American Bar Association's Food Law: A Practical Guide, a resource book for practitioners to assist them in meeting the unique needs of food and beverage clients across various domains of legal practice.

Tommy's litigation background includes drafting complaints, dispositive motions, and other filings in high-stakes litigation as well as participating in depositions and case strategy. He also has experience assisting with internal investigations.

Maintaining an active pro bono practice, Tommy has represented clients in administrative appeals for public benefits, including food stamps, disability benefits, and veteran benefits. For three years, he taught a food law and policy module at the UC Berkeley Goldman School of Public Policy. With Perkins Coie Partner David Biderman, Tommy now teaches the seminar "Food Litigation: Consumer Protection, Regulation, and Class Actions" at UCLA Law.

Prior to joining Perkins Coie, Tommy served as a law clerk to the Hon. Max O. Cogburn, Jr. of the U.S. District Court for the Western District of North Carolina. In 2012, Tommy was awarded the George Mitchell Scholarship for travel to the island of Ireland. He holds degrees from Stanford University, Harvard Law School, and the Harvard Kennedy School. While earning his J.D., he served as president of the Harvard Food Law Society, was an online editor for the Harvard Law & Policy Review, and worked as a teaching fellow in the Harvard Economics Department.

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