



# ~~GOLF / SPA / CLE~~

FRIDAY, SEPTEMBER 11, 2020

HOW COVID-19 IS CHANGING TECHNOLOGY, SPORTS AND THE LAW W/ *STINSON*

ROLLING INTO CANNABIS: A HIGH-LEVEL OVERVIEW W/ *THOMPSON COBURN*

EFFECTIVELY NAVIGATING POLITICAL DEBATES AND PROTESTS ON OUR STREETS  
AND IN OUR WORKPLACES W/ *OGLETREE DEAKINS*



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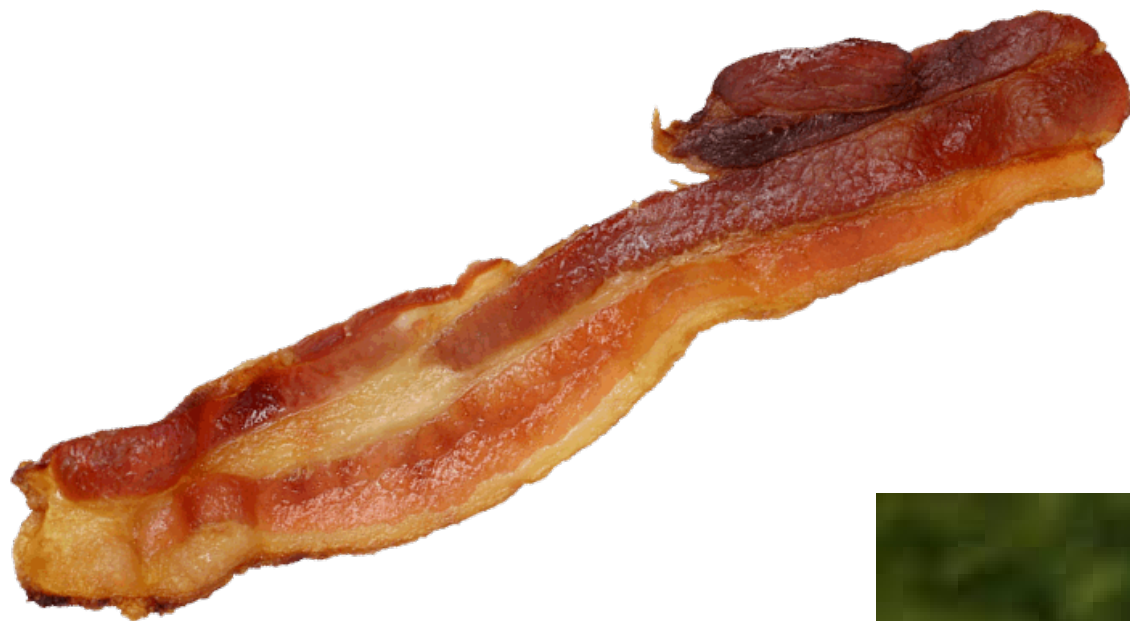


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# Effectively Navigating Political Debates and Protests on Our Streets and In Our Workplaces



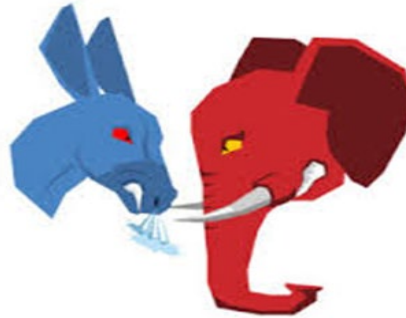
Andrew L. Metcalf  
James M. Paul



# Politics in the Workplace

**BIDEN**  
PRESIDENT

★ ★ ★ ★ ★  
**TRUMP**  
**2020**  
**KEEP AMERICA GREAT!**  
★ ★ ★ ★ ★

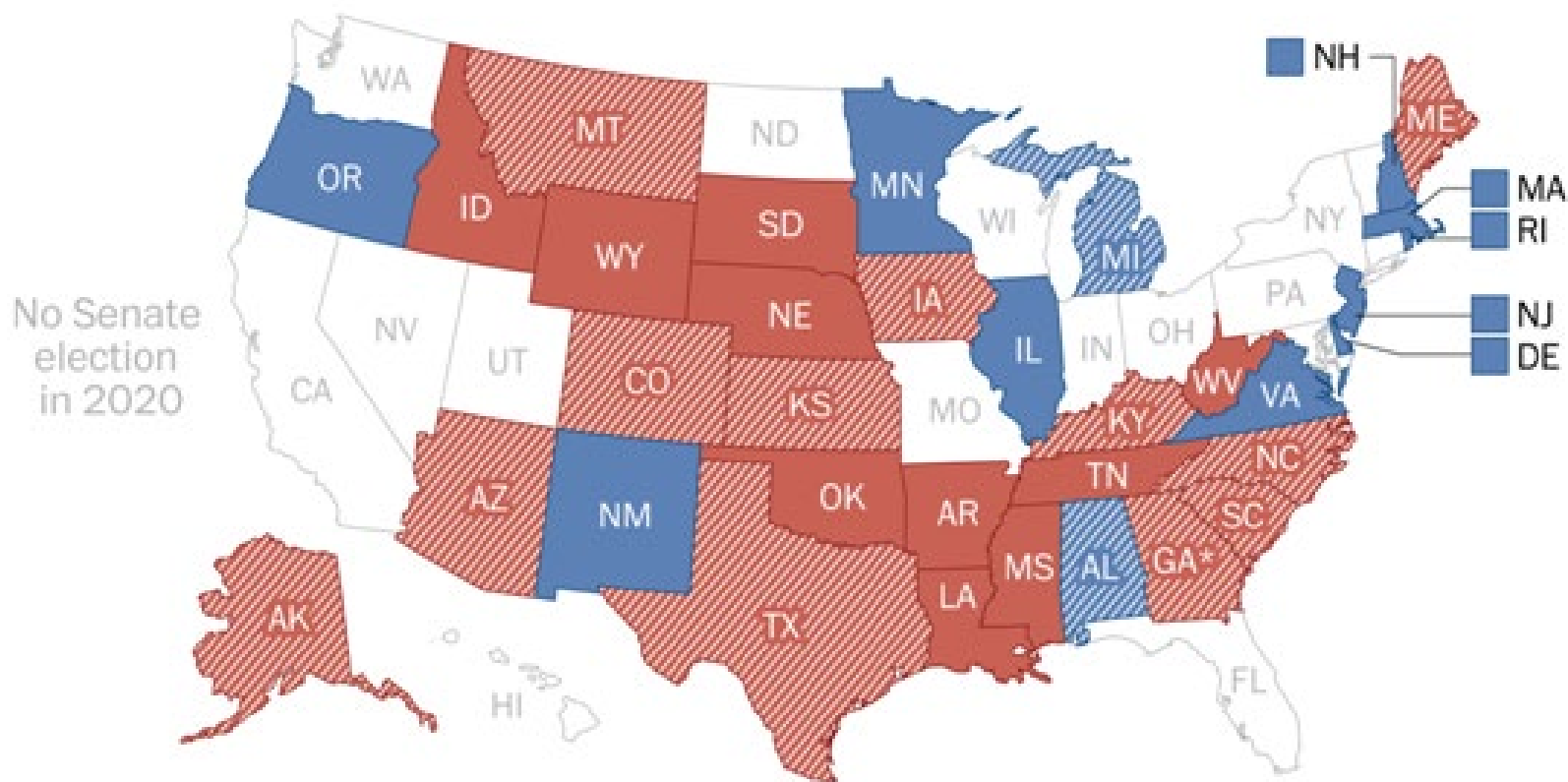




# Which Senate seats are in play in 2020?

Democrats need to pick up four seats to gain a majority in the Senate.

● Democrat-held seat    ● Republican-held seat    ● Potentially competitive





# Policies to Revisit

- Remote work/flex time
- Leave of Absence
- Sick leave and attendance
- Workplace safety
- Layoff/furlough/recall
- Disability Accommodations
- Drug Testing
- Expense reimbursement
- ***Social Media***

# Social Media Policies and Procedures

- Do you have a social media use policy?
  - Need to explain what employees can and cannot do on their personal social media accounts.
  - Supervisors should be held to higher/different standards
- However, off-duty conduct can't and shouldn't be regulated with a heavy hand!



# Equipment and Expenses

- Who pays for equipment?
- Who pays for phone line?
- Who pays for Wi-Fi?
- Unfair advantages?
- Discriminatory impact based on who can afford these expenses?



# The Washington Post

## *Democracy Dies in Darkness*

**Coronavirus**

[Latest news](#)

[U.S. map](#)

[World map](#)

[Reopening tracker](#)

[FAQ](#)

[Vaccine tracker](#)

[Life at Home](#)

[Extraordinary People](#)

[Business](#)

# Working from home reveals another fault line in America's racial and educational divide

While many are hunkered down with laptops at home, others must show up for work. The difference splits starkly along race and educational level.

# Smartphone Use

- Bring Your Own Device Policies
- 82% of companies let employees use personal devices in the office
- Attractive to employees for a variety of reasons
- Increasing work mobility
- Reducing expenses for employer-owned computing devices
- Increased employee satisfaction

# Social Media

- 44.7% of employees waste time surfing the internet at work
- 23.4% of employees surveyed waste time emailing at work
- Average worker spends 2 hours a day doing personal business on the computer
- 70% of non-productive time is attributed to computers
- 11% of Internet users say they've tried to hide their online activity from an employer, supervisor, or co-worker

# Employee Speech/Clothing Considerations

- Should you have an outright ban on posts/communications/clothing during work time or using company equipment?
- Speech cannot be racist or harassing in nature
- You can train employees to be respectful (yeah, right!)
- Document instances of aggressive or unprofessional behavior
- Take action if/when it interferes with operations or other employees

# Implications of Limiting Employee Political Speech

- Things to consider under the NLRA:
  - Is the employee posting or speaking about working conditions?
  - Is the post or speech a protected concerted activity?
  - Does the workplace policy “chill” employee rights under NLRA?
- Other considerations:
  - Are you intimidating employees to vote a certain way?
  - Are you favoring certain speech over another?
  - What are the social/PR implications?



# Section 7 of the NLRA

- Employee rights to “engage in . . . concerted activities for the purpose of . . . mutual aid or protection.”
- Protects employee rights to discuss wages, hours, and working conditions.

# Section 7 of the NLRA

- Employees may have the right to wear buttons or pins with political messages that relate to terms and conditions of employment, unless special conditions are present.
- Employers may enforce rules on solicitation, distribution, discrimination, harassment, electronic communication, and social media.



**BLACK  
LIVES  
MATTER**



# Social media

- Posts that disparage the company
- Posts that seem to suggest an employee was untruthful about a need for leave
- Posts that indicate unfair competition
- Posts that harass or offend a co-worker

# Policies

- Consider how policies can use **plain language** to make your workplace open to everyone
- Include language about social and political expression
- Ground rules for non-solicitation, bulletin boards, and electronic communications
- Anti-discrimination policies that address off-duty conduct





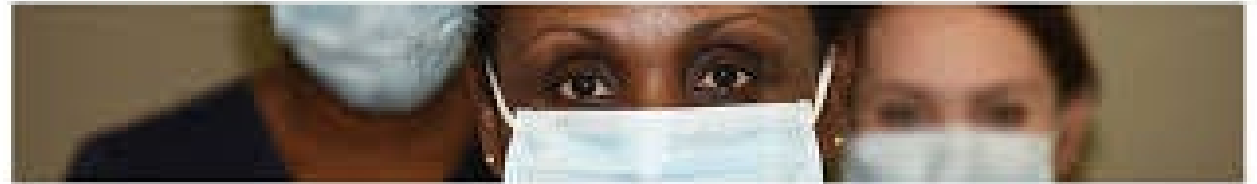
# Training

- Training that addresses a respectful workplace generally – not just the law
- Explain that we have choices about who we associate with outside of work – but not at work
- ***So, we need to make the workplace a welcome place for everyone.***





**Right to express  
political views in  
the workplace?**



**FREE SPEECH AND COVID-19**

# First Amendment?

- Generally, the First Amendment free speech rights apply:
  - To public employers.
  - If the speech not pursuant to the employee's official duties.
  - If the speech involves a public concern.
  - If the employee's interest to speak as a citizen outweighs the employer's interests.

# First Amendment?

- In most states, no law ***directly*** provides employment protections for political speech.
- As a result, often, employers have discretion to limit political speech in the workplace.
- Legitimate, business-related reasons for discharge are generally allowed – disrupting business, causing unrest among co-workers – even if politics is involved.





**or**







or



# Corrective Action

- Documented discussion?
- Warning?
- Encouraging the employee to tell the employee to bring the issue to us directly?
- Termination?
- Weigh general risk considerations:
  - What have we done to (1) document the issue; (2) put the employee on notice of it; and (3) give the employee an opportunity to comply.

# Tread with Caution

- With adverse actions, perception is reality
- Be mindful of discipline and discharge where politics come into play.



# Document, Document, Document!

- In litigation, our decisions about sensitive topics are under a microscope.
- What-happened-and-when is critical.
  - Timing is everything.
  - Reasoning is everything.
  - Backup is everything.

# Be Election Ready

- Monitor issues leading up to election day
- Remind managers to report complaints
- Emphasize your non-retaliation policy
- Keep your work systems work related

# How to deal with it

- Make announcement in advance?
- Monitor issues leading up to election day.
- Remind managers to report complaints.
- Emphasize your non-retaliation policy.
- Keep your work systems work related.

# Political Speech

- In most states, no law ***directly*** provides employment protections for political speech
- As a result, often, employers have discretion to limit political speech in the workplace
- Legitimate, business-related reasons for discharge are generally allowed – disrupting business, causing unrest among co-workers – even if politics is involved

# State Laws

- Barring discrimination based on political opinions
- Barring discrimination based on party membership
- Barring discrimination based on engaging in electoral activities
- Barring discrimination based on signing an initiative, referendum or petition
- Barring discrimination based on making campaign contributions
- And more!



# Political Activity - Missouri

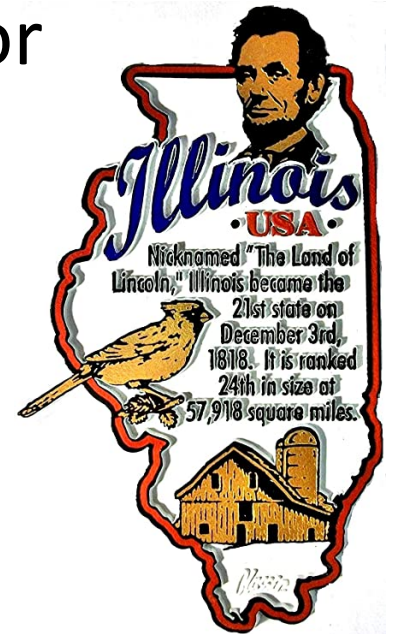
It is a misdemeanor and basis for civil action if an employer discriminates or threatens to discriminate:

- against any employee by reason of political beliefs or opinions
- against any employee for contributing or refusing to contribute to any candidate, political committee or separate political fund



# Political Activity - Illinois

- The use of threats or intimidation to prevent any person from supporting or opposing an individual's nomination or election for public office is unlawful
- Employers may not maintain records of an employee's off-duty political activities



# Empathetic phrasing

- I respect your interest in the political process.
- I understand how much your beliefs mean to you.
- Of course we appreciate that you – and others – are interested in what's going on politically.
- I know you are passionate about these issues – and I respect that.



# Empathetic phrasing

- But I hope you can understand that we want our workplace to be a place for everyone, regardless of differing beliefs.
- But we need to make sure that we're focused on accomplishing our mission.
- But there's a time and place for everything, and we want to make sure that our work time is mostly dedicated to meeting our goals together, as a team.

**If allow this . . .**



**. . . then what  
about this?**



## **To the one who POSTED on Facebook:**

“It has been brought to our attention that your public Facebook [or other social media platform] page shows your role and employment by the Company. We generally have no interest in regulating your personal, off-duty social media activity unless and until it interferes with Company operations or other employees. Since another employee [or “a customer”] took offense to a comment or posting by you, we are compelled to request that you remove the Company name from your public profile (or disable it) on Facebook and any other social media platform on which you are expressing your personal views that some might find objectionable or controversial. Again, as long as you are otherwise complying with Company policies at work and not interfering with operations, your personal views and social media activity are wholly within your control. But, when you publically identify as a manager [or “employee” or other role] with the Company on your social media account, we have to make this request.”



## **To the one who COMPLAINED about it:**

“Thank you for bringing this information to our attention. We generally have no interest in regulating any employee’s personal, off-duty social media activity unless and until it interferes with Company operations or other employees. Since you brought this to our attention, we contacted the other employee and explained that he/she must remove the Company name from their public profile (or disable it). We did not identify you as the person bringing this to the Company’s attention. Again, as long as an employee is otherwise complying with Company policies at work and not interfering with operations or harassing another employee, their personal views and social media activity are wholly within their control (and within your control to the extent you can “unfriend” or disconnect from that other employee on Facebook or any other social media platform). But, when they identify as a manager [or “employee” or other role] with the Company, we choose to make this request they disable their Company affiliation.”

# Religion in the Workplace?

- EEOC Guidance: displaying religious objects in private office is not undue hardship, but may be problem in area open to the public because it could be perceived as the employer's view
- When does one's religious expression crosses into harassment of others?





# Voting Time Laws – Missouri

- Employees must have three hours between the opening and closing of the polls to vote.
- Employee cannot be discharged for the time off.
- “nor shall any deduction be made on account of such absence from his usual salary or wages.”
- But, polls are open 6am to 7pm

***Section 115.639, RSMo***



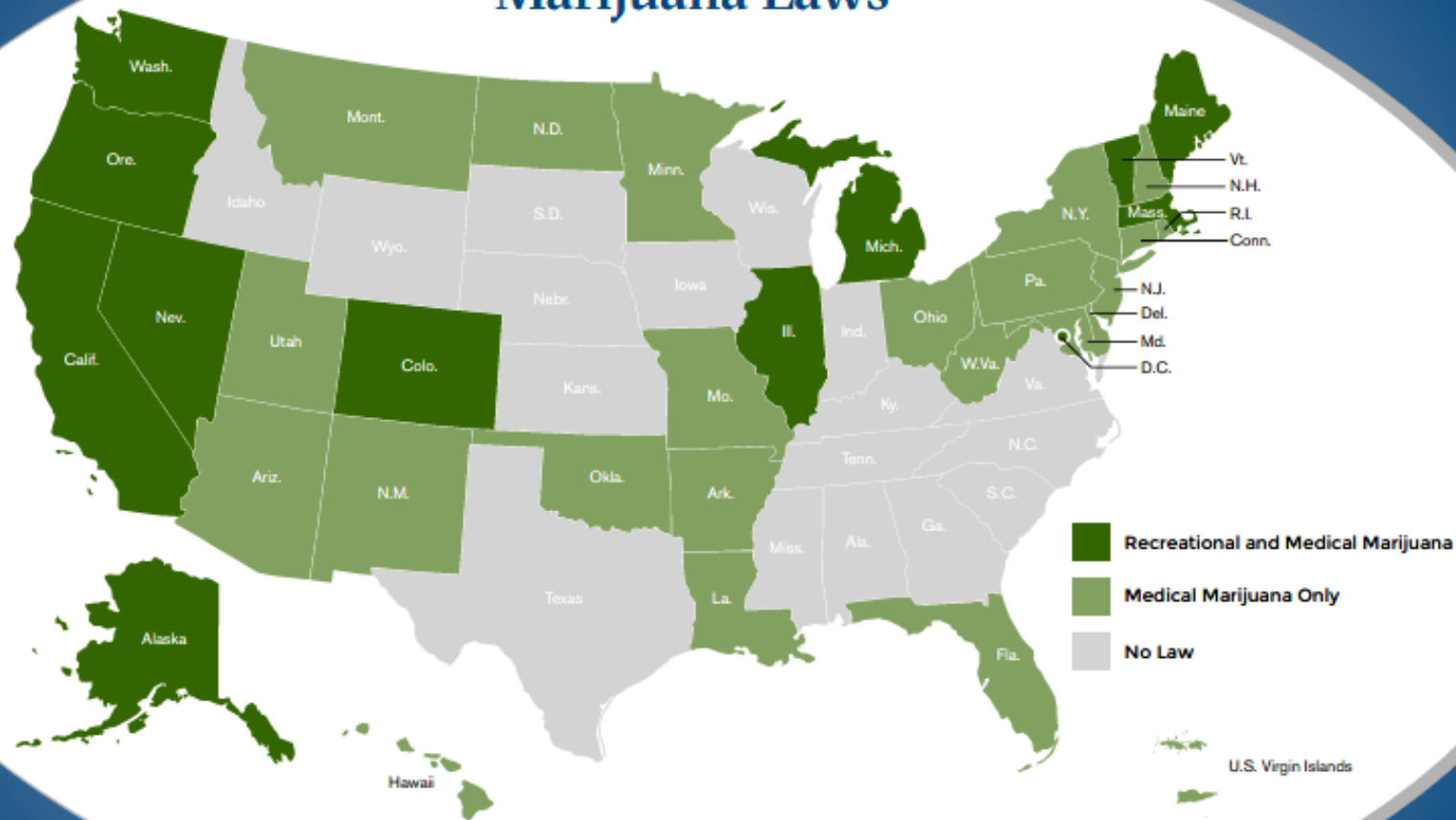
# Voting Time Laws – Illinois

- 2 hours off to vote
- Reduction in compensation note allowed.

***10 ILCS 5/17-15***



## Marijuana Laws\*



\* This map reflects state and local marijuana laws only and not laws permitting cannabidiol or other low-THC products. The sale, possession, and use of marijuana remains illegal under applicable federal law

Updated 7-2020

# Marijuana Use Practice Pointers

- Legalization ≠ accommodation
  - But what if smoking pot is a “lawful off-duty activity”?
  - What about in “home office”?
- Duty to provide safe workplace
  - No state restricts employer prohibition on recreational use ***affecting*** work activities
  - Drug testing policies must be uniformly enforced to avoid discrimination



# Final Thoughts

- Build a culture of respect and civil debate
- Ensure management models respectful behavior
- Promote workplace boundaries
- Promote civil discourse by asking questions, seeking to understand, being open-minded, not vilifying different views, and recognizing when to disengage
- ***BE CONSISTENT !!!***

# ***Any Questions?***



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[James.Paul@Ogletree.com](mailto:James.Paul@Ogletree.com)



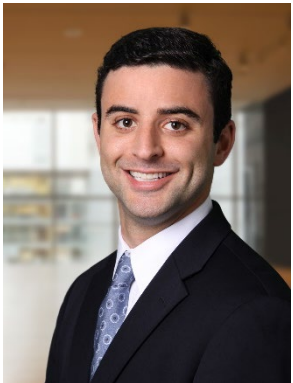
# An Overview of the Cannabis Legal Landscape and a Cannabis Client Case Study

# OUR PRESENTERS



**Steve Garlock, Partner**

Steve is a litigator with more than 30 years of experience representing clients in high stakes litigation. An intellectual property litigator with a product liability background, Steve understands the importance of protecting clients' important assets, especially in emerging industries like cannabis. Steve has led the successful relationship with one of Thompson Coburn's most prolific cannabis clients in IP protection, labor and employment issues, funding and mergers and acquisitions.



**Michael Rosenblum, Associate**

Michael is a corporate and securities attorney who, as an active member of the Firm's cannabis group, advises cannabis investors, cultivators, distributors, manufacturers, retailers and ancillary businesses on a variety of legal issues including corporate formation and governance, licensing and compliance, capital raising transactions, licensing agreements and real estate transactions.



# NATIONAL OVERVIEW

- ▶ Cannabis is a schedule 1 controlled substance under the Federal Controlled Substances Act (“CSA”)
- ▶ The U.S. Department of Justice
  - ▶ Enforces the CSA
- ▶ Works with the Drug Enforcement Agency and other federal agencies to enforce criminal violations
- ▶ Current enforcement actions somewhat limited by Federal legislation
  - ▶ Rohrabacher-Blumenauer Amendment
  - ▶ Formerly also by Cole Memorandum





# NATIONAL OVERVIEW

- ▶ California became the first state to legalize cannabis for medical purposes in 1996;
- ▶ 32 other states and the District of Columbia have followed suit;
- ▶ Washington became the first state to legalize cannabis for adult recreational use in 2012;
- ▶ 10 other states and the District of Columbia have followed suit
  - ▶ Most recent is Illinois in 2019, with first adult use sales beginning 2020

# NATIONAL OVERVIEW

- ▶ Medical legalization legislation is pending in 8 states
  - ▶ Georgia
  - ▶ Iowa
  - ▶ Kansas
  - ▶ Nebraska
  - ▶ North Carolina
  - ▶ South Carolina
  - ▶ Tennessee
  - ▶ Wisconsin



# NATIONAL OVERVIEW

- ▶ Recreational legalization legislation is pending in an additional 10 states
  - ▶ Delaware
  - ▶ Hawaii
  - ▶ Iowa
  - ▶ Minnesota
  - ▶ New Hampshire
  - ▶ New York
  - ▶ Pennsylvania
  - ▶ Tennessee
  - ▶ Vermont
  - ▶ Wisconsin



# NATIONAL OVERVIEW

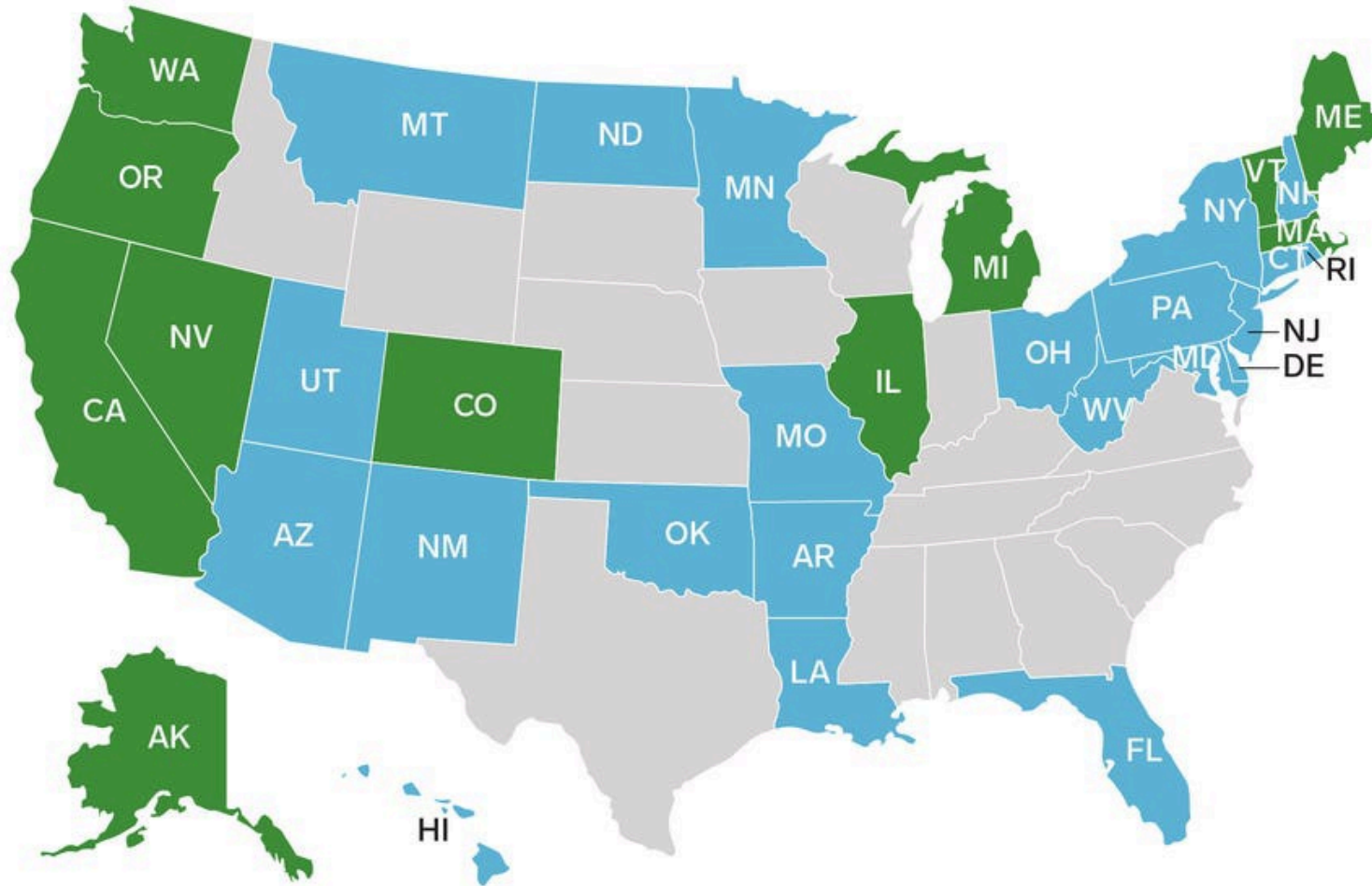
- ▶ Decriminalization legislation is pending in 6 states
  - ▶ Indiana
  - ▶ Iowa
  - ▶ New Jersey
  - ▶ Oklahoma
  - ▶ South Carolina
  - ▶ Vermont





## States where marijuana is legal

■ Legalized recreational and medical marijuana   ■ Legalized medical marijuana



# Authority of Local Governments

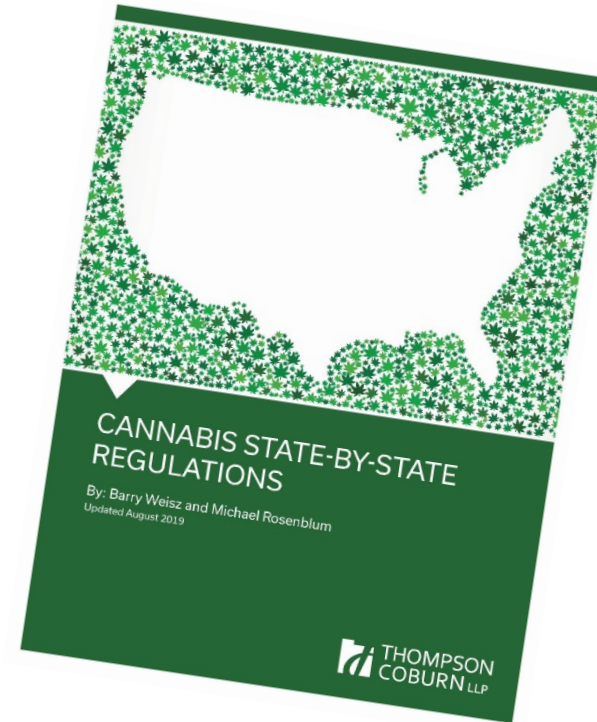
- ▶ In California and other states, municipalities have the authority to authorize or prohibit commercial cannabis activity within their jurisdictions



# OUR RANKING OF STATES

A GUIDE FROM THOMPSON COBURN

- ▶ We ranked the business favorability of state cannabis laws based on required qualifications for medical cannabis, availability, caps and restrictions with respect to commercial cannabis licenses for adult use cannabis, the authority and qualifications of state cannabis regulatory agencies, support for ongoing cannabis legalization measures, and the number of operator, consumers and the amount of “untapped industry potential.”





# OUR RANKING OF STATES – TOP 3

CALIFORNIA



# OUR RANKING OF STATES – TOP 3

NEVADA





# OUR RANKING OF STATES – TOP 3

COLORADO



# OUR RANKING OF STATES – LAST PLACE

NEBRASKA



# MISSOURI AND ARTICLE XIV

## AMENDMENT 2



- ▶ Amendment 2 passed in November 2018 with almost 66% of votes cast
- ▶ Constitutional amendment that set forth the guidelines for Missouri's medical cannabis program
  - ▶ Shields licensed patients, caregivers, cultivators, processors, and distributors from liability
  - ▶ Also shields doctors and lawyers from liability
- ▶ Levies a 4% tax on the sale of medical cannabis to go to a veteran's assistance fund

# MISSOURI AND ARTICLE XIV

## AMENDMENT 2

- ▶ Article XIV sets up a constitutional framework for a state legal medical cannabis program
  - ▶ Only licensed businesses, qualified patients and their caregivers may possess medical cannabis
  - ▶ Physicians may certify (not prescribe – this distinction is extremely important to the DEA) to the state that a patient has one or more qualifying conditions set forth in Article XIV
  - ▶ Qualified patients are limited to 4 ounces of medical cannabis per month, unless their physician certifies that a greater amount is necessary
  - ▶ Qualified patients may also apply for a home cultivation license to grow up to 4 plants
  - ▶ Doctors and attorneys are shielded from repercussions from state licensing bodies for the sole reason that they are aiding and abetting federally-illegal activities

# MISSOURI AND ARTICLE XIV

## AMENDMENT 2

- ▶ Qualified patient license applications opened in mid-2019
- ▶ Many pre-commencement requirements on license awardees (i.e. commencement inspections and approval of SOPs)
- ▶ Applications for commercial licenses to cultivate, process, and dispense medical cannabis were accepted in August 2019; over 2,200 applications submitted
- ▶ License awardees were announced in December 2019 and January 2020
- ▶ Regulators awarded 192 dispensary, 60 cultivation and 86 processing licenses
- ▶ More than 800 licensing appeals have been filed

# MISSOURI AND ARTICLE XIV

## AMENDMENT 2

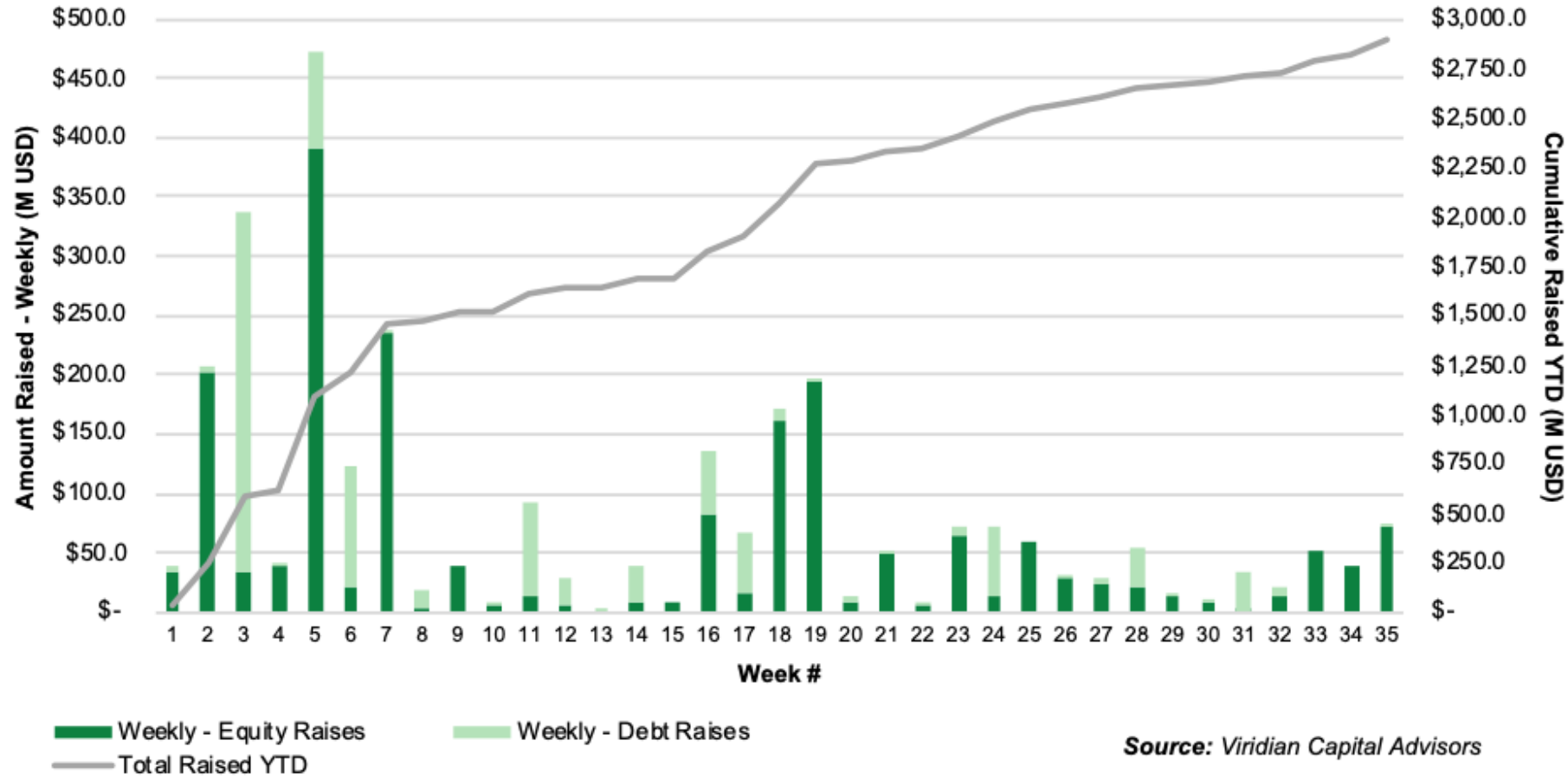
- ▶ Licensing appeals primarily based on complaints regarding fairness of scoring and selection process
- ▶ In June 2020, a Missouri state judge declined to dismiss a suit challenging Missouri's licensing process as unconstitutional
- ▶ Plaintiffs asked to issue a temporary restraining order against the Missouri Department of Health
- ▶ Efforts to place recreational cannabis on the 2020 Missouri ballot failed when organizers did not obtain the required number of signatures



# NATIONAL REGULATORY UPDATES

- ▶ Hemp CBD
  - ▶ Farm Bill of 2018
  - ▶ FDA Regulations of CBD
- ▶ Banking
  - ▶ SAFE Banking Act (Secure and Fair Enforcement Banking Act of 2019)
  - ▶ CARES Act (Coronavirus Aid, Relief, and Economic Security Act)
- ▶ Federal Legalization
  - ▶ STATES Act (Strengthening the Tenth Amendment Through Entrusting States Act)
  - ▶ MORE Act (Marijuana Opportunity Reinvestment and Expungement Act of 2019)

# CANNABIS - CAPITAL MARKETS AND M&A



Source: Viridian Capital Advisors

# CANNABIS - CAPITAL MARKETS AND M&A



# A Cannabis Client Case Study



# Cannabis Client Case Study

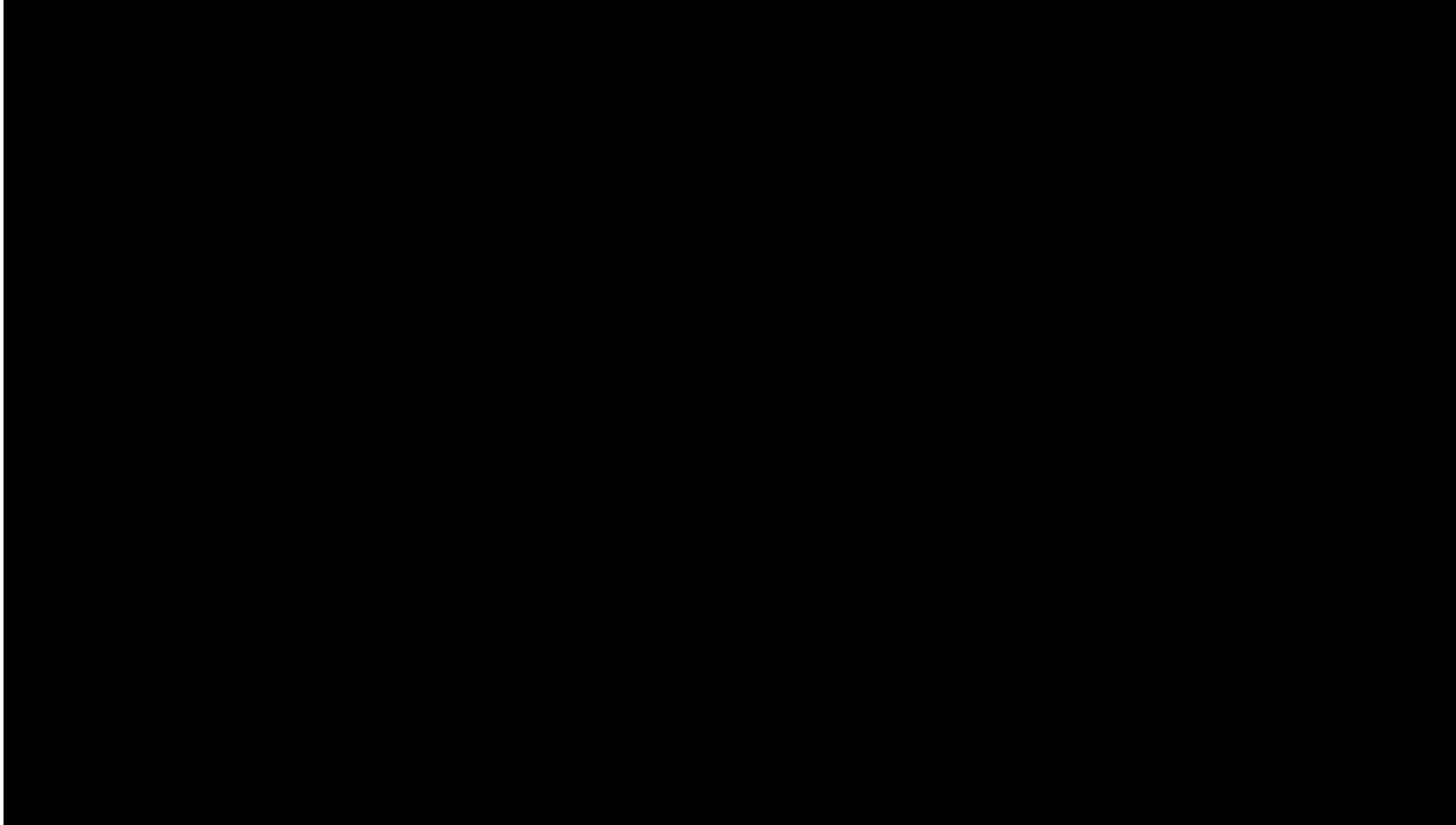


PLUS<sup>TM</sup>

CSE: PLUS | OTCQX: PLPRF



# Cannabis Client Case Study



# Cannabis Client Case Study

Success is driven by a commitment to high quality, dosable products

PLUS  
Strategic  
Approach



## PLUS Gummies

- Manufactured and batch-tested inside 12,000 sq. ft. food manufacturing facility
- Contain at most 5mg THC per serving
- Safe and approachable for all levels of cannabis consumers
- Products developed by Michelin Star Sous Chef

PLUSPRODUCTS.COM CSE: PLUS | OTCQX: PLPRF



# Cannabis Client Case Study



US 20180271827A1

(19) **United States**

(12) **Patent Application Publication** (10) **Pub. No.: US 2018/0271827 A1**  
**HEIMARK et al.** (43) **Pub. Date: Sep. 27, 2018**

(54) **CANNABINOID COMPOSITIONS AND METHODS OF MAKING**

## Publication Classification

(71) Applicant: **Pasenture, Inc.**, Palo Alto, CA (US)

(72) Inventors: **JACOB FOSTER HEIMARK**, Palo Alto, CA (US); **Justin Thomas Gwin**, Palo Alto, CA (US); **William Royden McFarland**, Palo Alto, CA (US)

(21) Appl. No.: **15/762,391**

(22) PCT Filed: **Sep. 23, 2016**

(86) PCT No.: **PCT/US16/53346**

§ 371 (c)(1),

(2) Date: **Mar. 22, 2018**

## Related U.S. Application Data

(60) Provisional application No. 62/232,187, filed on Sep. 24, 2015.

(51) **Int. Cl.**

**A61K 31/352** (2006.01)

**B01D 11/02** (2006.01)

**A23G 4/06** (2006.01)

**A23L 33/105** (2006.01)

**A61K 31/05** (2006.01)

**A61K 47/56** (2006.01)

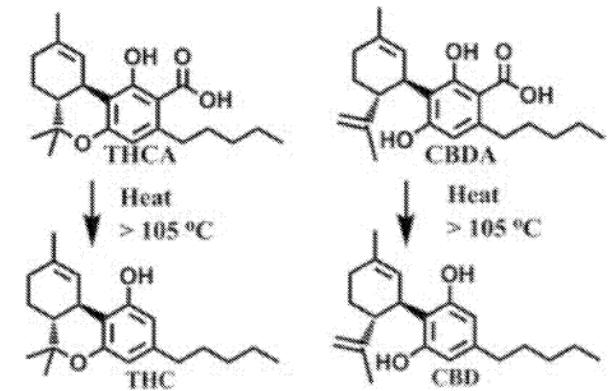
(52) **U.S. Cl.**

CPC ..... **A61K 31/352** (2013.01); **B01D 11/0288** (2013.01); **A23G 4/068** (2013.01); **A23V 2002/00** (2013.01); **A61K 31/05** (2013.01); **A61K 47/56** (2017.08); **A23L 33/105** (2016.08)

(57)

## ABSTRACT

A food additive comprising cannabinoids but lacking at least in part the taste and aroma associated with *cannabis* while retaining the psychoactive and medicinal properties thereof is provided for as well as methods of making.





# Cannabis Client Case Study

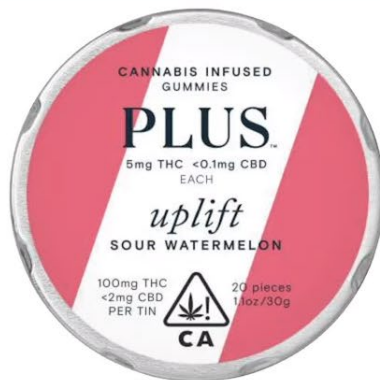
## Casper Partnership



# Cannabis Client Case Study

PLUS has established its iconic product

PLUS  
Strategic  
Approach



PLUS Gummies



**#1 best-selling** cannabis product in CA<sup>1</sup>

**2x units sold** as next best-selling non-PLUS gummy product<sup>1</sup>

**#2 best-selling** cannabis product in CA<sup>1</sup>

**#1 best-selling** CBD inclusive product in CA<sup>1</sup>

(1) According to BDS Analytics GreenEdge™ Platform in 2019

PLUSPRODUCTS.COM CSE: PLUS | OTCQX: PLPRF

# Cannabis Client Case Study

▶ Areas of law in which Thompson Coburn has helped Plus:

- ▶ Patents
- ▶ Trademarks/Branding
- ▶ Licenses
- ▶ Employment/H.R. Issues
- ▶ Litigation
- ▶ Mergers and Acquisitions
- ▶ Securities
- ▶ Distribution Contracts
- ▶ Celebrity Endorsement Contracts
- ▶ Lobbying
- ▶ Real Estate



THOMPSON  
COBURN LLP



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# How COVID-19 is Changing Technology, Sports and the Law



September 11, 2020

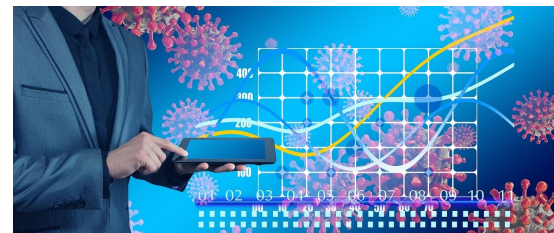
Samir Mehta, David Kim,  
and Aalok Sharma





# Agenda

- Disruption to Sports
- Responding to the Disruption
- Protecting Innovation in the Response
- Panel Discussion



# Why Sports?

- Among first industries to face economic consequences
- Revenue at risk
  - NFL: \$16 billion
  - NBA: \$8.6 billion
  - MLB: \$10 billion
  - NHL: \$5.8 billion
  - NCAA: \$875 million



# Why Sports?

- Affecting every level of sports including:
  - The supply chain
  - Bars/restaurants
  - Apparel companies
  - Public transportation/ride-share
  - Stadium operations
  - Sports wagering businesses
  - Infrastructure





# Length/Scope of Disruption Unclear

- Will fans be allowed to attend in-person (or will they even want to)?
- Will we have collegiate sports?
- Impacts to television rights, scheduling, and promotional contracts with sponsors?
- Additional revisions to collective bargaining agreements between players and leagues?

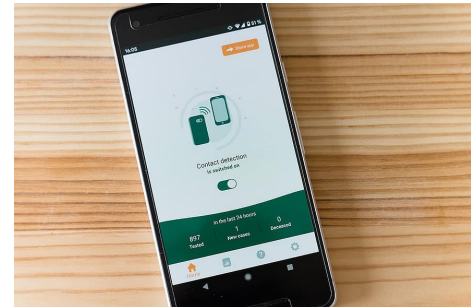
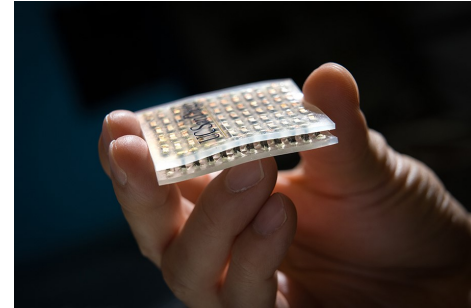


# Want to Play Ball! – Technology Can Assist

“The best thing and the easiest thing would be if at some point if we could complete the regular season and then go into the playoffs as we normally do.” – NHL Commissioner, Gary Bettman

“Nothing is off the table for us right now. There's a lot of ideas out there, and we are open to all of them.” – MLB Commissioner, Rob Manfred

- Leagues have been able to start up because of technology.



# COVID-19 Framework for Sports

- League “bubbles” in secure locations where athletes can be sequestered from the virus.
  - MLS/NBA – Orlando, Florida
  - NWSL – Salt Lake City, Utah
  - NHL – Toronto/Edmonton
- No bubbles; but strict rules to keep players safe
  - MLB – Empty stadiums in home markets
- NCAA Division II and III sports were cancelled
- Cooperation from everyone – government, league, team, player organizations, healthcare providers, testing labs, television crews.



# Reopening Venues After the Bubble

- Most professional leagues view the bubble as a “1-off”; unlikely to repeat in the future because players unlikely to agree.
- Need to return to home markets and capitalize on traditional revenue stream.



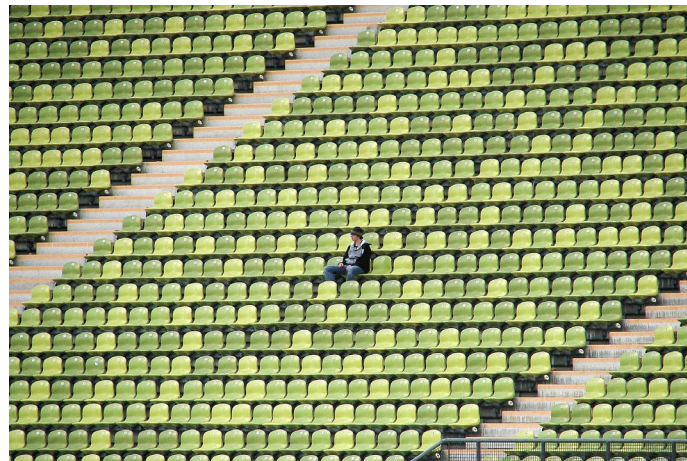
# Protecting Fans

- Physical barriers/social distancing/control the venue traffic flow.
- Strategies for masking and hygiene.
- Cashless Transactions
  - Apple Pay, Credit Card, or In-App.
    - Must protect financial data of end users.
  - Allegiant Field (Las Vegas Raiders), Atlanta Falcons/Atlanta United (Mercedes Benz Arena), Tampa Bay Rays (Tropicana Field).



# Protecting Fans

- Duty of care to ensure that business activities do not jeopardize public health and safety
- Take reasonably practicable steps to eliminate (or minimize as much as reasonably practicable) spread of COVID-19 arising from business activities
  - Restrictions on who can attend sporting events (e.g., thermal scanners)
  - Social distancing requirements (e.g., spaced seating)
  - Hygiene and cleaning requirements
  - Procedures for responding to suspected or confirmed cases



# Protecting Athletes

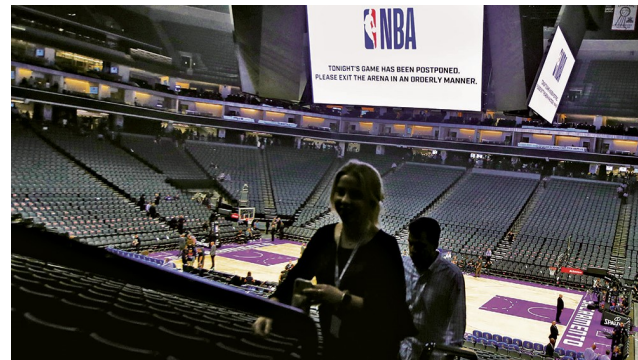
- Duty of care to ensure that business activities do not jeopardize health and safety of workers
- Take reasonably practicable steps to eliminate (or minimize as much as reasonably practicable) spread of COVID-19 within workplace
  - Education and training
  - Restrictions on who can come in to work
  - Social distancing requirements
  - Hygiene and cleaning requirements
  - Procedures for responding to suspected or confirmed cases





# Future of live sports after COVID-19

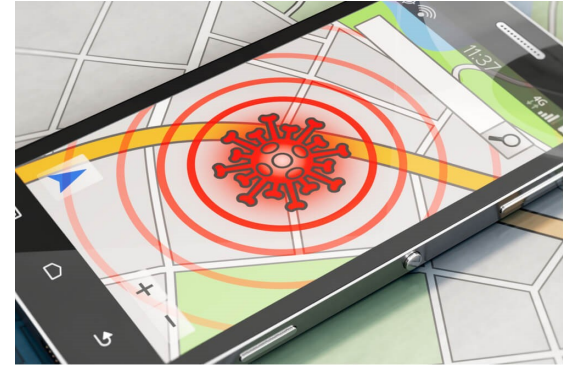
- Focus on technologies to increase fan experience.
  - Two-screen experience will be critical; continued growth at maximizing internal infrastructure in arena (sports betting lounges).
  - Third party apps that will limit congregating in concourses (more focus on delivery to premium/in-seat experiences)
  - Bring the “stadium” to the home; apps that will make fans part of the game. (virtual arena background; artificial crowd noise).





# Contact Tracing

- Public health authorities are using apps to facilitate contact tracing using Bluetooth technology
  - Bluetooth does not use location data per se
  - Apps must meet Google/Apple's requirements regarding privacy, security, and data control
  - Users have to voluntarily download the app and explicitly provide consent to share data with public health authorities or other entities, including contact information and/or symptoms. The app will check to see if the user has provided consent each time it launches.



# App Limitations

- Assumes phone = human; phones have to be carried
- Must be voluntarily downloaded
- Must be voluntarily used; users may elect to NOT share when they test positive
- Bluetooth functionality must be enabled, which can drain battery
- Signals are broadcast as seldom as every 5-10 minutes
- Detected signal strength is not necessarily indicative of epidemiological relevance
- Positive cases will not be caught in real time; have to wait for regular download



# How the App Works

- App broadcasts Bluetooth signals including randomly-generated code to other enabled devices.
  - Bluetooth range of most devices is about 30 feet
  - Codes change every 10-20 minutes
- Received codes are recorded and securely stored locally on the device, i.e., codes are not sent to a centralized server. Time, date, length of contact, and/or proximity may also be recorded.
  - Codes are stored for 14 days and then automatically deleted



# How the App Works

- If a user learns that they have COVID-19, they must voluntarily decide to alert others using the app. The app would upload a key used to generate their codes to a cloud-based server.
- App regularly downloads a list of keys that have been verified by health authorities as belonging to people confirmed as positive for COVID-19. The keys are used to generate codes that can be checked against the recorded codes to see if there are any matches
  - Phone owners and physical locations are not identified
- If a match is made, app notifies the user that they've been exposed to COVID-19 and advises them how to proceed



# Other Emerging Technologies

- Enhanced personal sensors
- Cybersecurity
- Facial recognition
- Artificial intelligence
- Supply chain management
- Medical technologies
- PPE, disinfectants, and cleaning services
- Contactless technologies
- Delivery services and ecommerce
- Home and home-life improvement (e.g., home projects, meal kits, Netflix, online services)
- IT / teleworking (e.g., Zoom)



# Emerging Legal Issues

- COVID testing and compliance
  - How and when to re-open?
- Data security and data privacy
  - General
  - Health
- Supply chains
- Transportation and shipping
- IT infrastructure



# Data Security and Data Privacy

- Data security and data privacy
  - Cybersecurity incidents are spiking
- Impact to businesses has increased as more work is done remotely
- New solutions in development



# Protecting Innovation

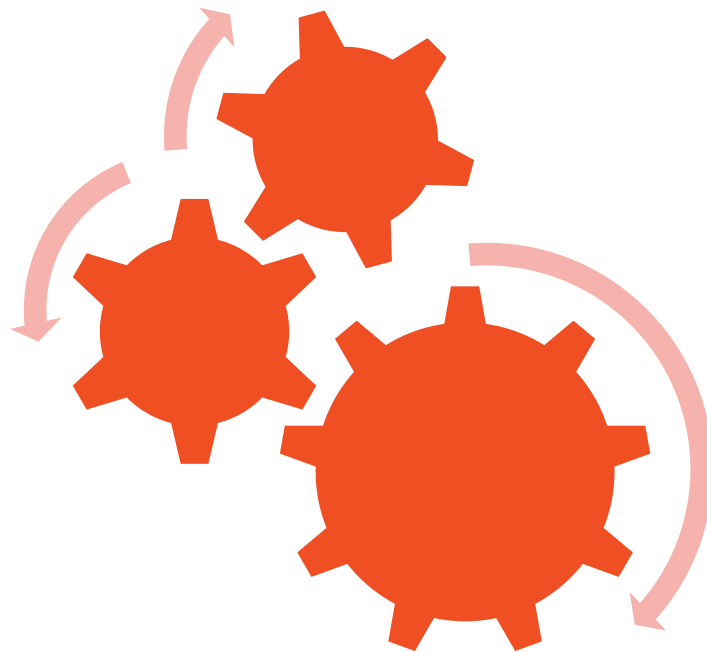
- Before rushing to market, consider filing patent and trademark applications
  - Conventional route is to file non-provisional patent application and/or use-based trademark application
  - Provisional patent application can be filed at fraction of cost, and intent-to-use trademark application can be filed prior to actual use





# Protecting Innovation

- Other benefits of provisional patent applications include:
  - **Time.** Establishes priority date and creates runway to develop product and collect market data
  - **Flexibility.** Allows updates and other changes to be incorporated in later-filed patent applications
  - **Usability.** Improves ability to license technology
  - **Notice.** Gives right to use “patent pending” and scare away potential competitors or copycats



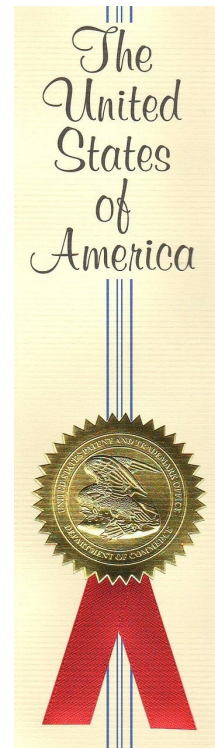
# Tips for Protecting Innovation

- File first
  - Filing promptly can help mitigate the amount of available prior art.
  - Publicly using, selling, or disclosing innovation before filing can compromise ability to obtain a patent. There is a one-year grace period in U.S., but foreign rights in many countries are forfeited.
- Consider global strategy



# Tips for Protecting Innovation

- Adequately disclose the innovation
  - Be specific, but avoid using limiting or restrictive language.
  - To establish a viable priority date, patent applications must satisfy the written description and enablement requirements, whether filed provisionally or non-provisionally.
  - Patent applications cannot be updated. Any new matter must be incorporated in a new patent application. Continued improvements can be protected using serial provisional patent applications.
- Obtain confidentiality agreements when possible



# USPTO Programs

- COVID-19 Prioritized Examination Pilot Program for patents
  - Applications with at least one claim directed to a product or process subject to an applicable FDA approval for COVID-19 use are eligible for prioritized examination without requiring payment of prioritized examination fees
  - A final decision could be made in as few as 6 months, even faster than Track One's guarantee of 12 months
  - Program is only available to small and micro entities
  - As of 09/09/2020, 290 filed / 162 granted / 338 available



# USPTO Programs

- COVID-19 Prioritized Examination Pilot Program for trademarks
  - Petitions to advance the initial examination of trademark applications will be received without petition fees
  - Examination can be expedited by approximately two months
  - To be eligible, marks must identify medical goods and services related to COVID-19, including pharmaceutical products, diagnostic tests, ventilators, personal protective equipment, and medical services or medical research services for the prevention, diagnosis, treatment of, or cure for COVID-19



# USPTO Programs

## • Patents 4 Partnerships (P4P)

- Publicly-accessible repository of patents and published patent applications related to COVID-19 that are indicated as available for licensing
- Patent owners and patent applicants can monetize their IP assets
- Licensees can get involved early on in the patenting process, which may allow them to influence patent claiming strategies (e.g., in exchange for contributions toward patent prosecution costs)
- P4P content drawn from variety of public sources, including the Federal Laboratory Consortium for Technology Transfer (FLC Business), the AUTM Innovation Marketplace (AIM), the NIH, the CDC, the FDA, NASA, the Department of Energy, the Department of Defense, and the Department of Veterans Affairs databases
- As of 09/09/2020, 892 results found on P4P platform



Any Questions?



# Thank You



**Samir Mehta**



**David Kim**



**Aalok Sharma**