

## Cannabis Study Group Minutes

July 30<sup>th</sup>

Alan Howard

Russell Blain

Paula Suvchencko

Diane Wells

Woody Pollack

Todd Green Sent email statement review

“Cannabis would conduct itself just as any other committee conducts itself with respect to proposing legislation and interacting with the BLS legislative team. The committees only legislative agenda would be to serve as a resource in furtherance of legislative changes that are deemed necessary in order to make existing laws, rules and regulations work more effectively and efficiently for businesses in the industry. The committee has no desire or intention to serve as an advocacy group in favor of expanding existing cannabis laws and trusts that its members would use proper discretion in this regard and would avoid making representation that their own personal views constitute the views of the Cannabis Law Committee or the BLS. Further, the Cannabis law committee is comfortable with the concept that any proposed cannabis law legislation shall be subject to the BLS triple motion process”

Alan Howard- “Where you and other Cannabis Law practitioners able to convene and deliberate amongst yourselves? Understand you may have taken the pen, but was there input from everyone on this?”

Todd- “there was input from a handful of members of the cannabis committee and gave opportunity for members to weigh in if they wanted and this was pretty much the uniform statement that came out of it.

Alan- Consensus around these issues?

Todd-Yes, sir

Alan- Great. We know that there had been some concern that one or more of the cannabis law practitioners had a different view so important to note that the members of the group, should they eventually constitute a committee, etc. within BLS has consensus around this issue. Any questions regarding the statement?

Diane- Question- pulled Bylaws- trying to understand if statement from group is different from what BLS bylaws say or they are saying the same thing as what bylaws say, but in different words. For example in Bylaws section A talks about all types of business, but in B it talks about legislation and the way it is understood is that legislation concerns the improvement of business laws or it relates to the substantive areas of business law. Words different in the committee statement from Todd, but didn’t know if they were in agreement that their focus in legislation would be business laws relating to or that affect the cannabis industry or they are talking about cannabis laws rules and regulations that affect businesses in the cannabis industry.

Cyndi- Have not dug that deep for a distinction. Just discussing that if there was going to be any proposed legislation that it was going to be to clarify so that the laws worked better and things work because a lot of cannabis laws right now don't work.

Alan- Any other responses to Diane's question?

Phil Schwartz- That was a fair statement by made by Diane. To the extent that we are going to be involved in advocacy for the statutes it would encompass both business and any other statute or rule or regulation in Florida that deals with cannabis and hemp.

Sally- Second Phil- 38196 companion statute for the new Florida hemp farming bill and all the proposed bills under this are keeping. It is hard to delineate between say those and a business law because those are the laws that are going to keep the businesses compliant so, arguably they are the business of cannabis.

Alan- Diane, does this raise a concern for you with your reference back to the bylaws of the section.

Diane- possibly, but not sure because we just don't know enough because for example there are many statutes and records on the books that deal with healthcare companies and other types of businesses, but the section doesn't necessarily get involved in that particular legislation. It sticks to the more standard business laws. Without knowing more, can't answer this question.

Alan- Phil Schwartz, prior to Diane circulating purposes you had done so on our first call and you touch on legislation in the memo you circulated. Do you have thoughts on how the proposed role of the cannabis group would fit within the sections purposes on legislative issues.

Phil Schwartz- we deal in our section with all kinds of business laws. We have a task force now looking at our non-compete statute for example, which needs some fixing. So I did not view what Todd said as anything except making business laws better and did not view that as that it happens to involve cannabis as being violative of this position, but its interesting Diane, we were both members of the same task force that wrote the bylaws and I see it as within the scope and you seem to be seeing it as potentially outside the scope.

Diane- The point I am really making is that it depends on what the committee wants to advocate for or comment on because the statute itself does not really address business law per say, but of course cannabis is a business, so I understand how it comes within the big scope of business, but I am not sure the section is going to want to comment on this statute if it goes outside of the framework of being something that is directly applicable to a business.

Phil- Example- When we comment on 517 in securities clause or financial institute clause we would have had a similar issue, but I think that is what the EC council is all about, The scope of what we might advocate for in this area is going to require the same amount of dialogue discussion with leadership and an EC triple motion before anything can be the subject of a legislative position. Whether it is our 607 bill or anything else it has to go through that triple motion process. So, I think that will define the scope, Diane, of what you are discussing

Alan- Important that we draw distinction between commenting on laws as a committee of the section and serving as an advocate. Agree with Diane that our bylaw language speaks to advocacy for legislative positions, such as the rewrite of 607, etc. but for all of those of us in the section and just about

everyone that has been a long time member of the section and those on the legislation committee know that we are routinely called upon to comment on laws affecting various industries within the state. That seems to be a crucial distinction- laws we are advocating for and for the triple motion and rule 9.50 provide a safe guard and those laws( strikes as something cannabis practitioners are confronted with) those laws where asked to comment on as a committee. Meaningful distinction? Yes?

Schwartz- Not sure it's any different. For example, on non compete statute last year we wrote a white paper which was discussed with legislature and ultimately decided not to take a position, a triple motion, to advocate against a particular bill. I see it all as part of the legislative process. Not sure that some in the cannabis group are quite as in tune with the historical way that we have dealt with legislation but I don't see what they might be doing is any different. And also think that the EC process and legislative process with solve any concerns that people will have in that regard.

Alan- Contrary thoughts?

Bates- yes, but I don't think it will work that way.

Alan- Concerned that there will be advocacy positions taken from the cannabis committee that the EC cannot protect against.

Bates- number of concerns about how it would work in practice.

Alan- appreciate it, but open to hearing concerns. During last call, Bates had articulated a concern that the section gives great deference (Greg Yadley joined in concern) to the work undertaken by its substantive committees and that might pose an issue together with the fact that there may be individual members of a cannabis committee of the section who, while not acting through the section, or not advocating for legislation on behalf of the section, might wear the epilate of the section in their individual advocacy so that they would say, " Member of cannabis law committee of the BLS and a 30 year lawyer and I think that this law should be changed, etc." Some concerns captured, Mr. Bates?

Bates- Yes

Cyndi- Think that the joint statement of those who practice in this area addresses that because that was raised last time and I think that we addressed it, hopefully to the satisfaction of the committee, were specifically stated that, "avoid making representations of our personal views as views of committee or the BLS." Concern respectfully-Bates, because it sounds like it is based on speculation. Casts dispersions on those who practice this law would somehow do something that other people in the BLS would not do because they do not practice in this area.

Robbins- Well said Why different than any other effort on part of BLS like Schwartz noted on non compete statues. It seems these issues are no different than any other practicing attorney in the section would face, it's just that this happens to deal with cannabis.

Alan- John respectfully, this is different because at least at the moment and who knows what the future will hold, there is a dichotomy between state and federal law and this would probably fall within the highly divisive category set out in rule 9.50 so in Schwartz memo that was circulated acknowledges that the triple motion process may preclude BLS from adopting legislative positions that would be deemed as advocacy, so it is different.

Kacy- Robbins, took from that this idea that someone from cannabis committee would represent themselves as either speaking on behalf of the BLS or in any way being a mouthpiece for the section if they were wearing their advocacy hat in other ways. The point is what would stop me as a securities attorney, what would stop me from having a conversation with a legislator and going, you know I am on the BLS, so the idea is tat everyone is on our honor to only be representing the interest in which we are a representative. And that we are not to be representing the section when we are not doing section business. John I don't know if that is your point.

John- Agree

Alan- Other thoughts regarding joint statement? Diane, do you have comfort from the statement and it falling within the sections bylaws

Diane- tinker with language and be more familiar with bylaws. Want everyone on the same page. Don't want them to think that the BLS will support something that the BLS is not going to support. Trying to figure out what legislative changes they were going to request and talking from ignorance, not knowing Florida statutes. Not sure it will align with what EC will approve and don't want anyone wasting their time. It is a great idea probably to have this type of committee but want it to fit together so that everyone comes together with eyes wide open.

Alan- good point- been statements made that existing FL statutes "don't work" is this something that can be summarized and if so, is there a proposed fixed and is that not advocacy?

Todd- recently the laws were held unconstitutional by the district court of appeals, so as you can see there is a lot of disagreement at multiple levels and multiple areas of FL government relating to the laws, rules, etc. Nothing directly on point that we want to address right now, it's just that when those issues become ripe and make sense for us to try to address we would make those recommendations to the EC BLS and work through the triple motion process to make sure we are all on the same page and all agree to the approach we would be taking when trying to help with legislative fixes.

John Robbins- not going to have rouge members of this committee or section that are doing anything without full support and approval of section. Ex: the implementing statute 381986 was promulgated after the voters of the state of Florida passed constitutional amendment 2 back in Nov. 2016 without advocating how you want the program to look one way or the other because I have certain clients that would want the system to look one way and others that want it to look another, but the issue of whether the statute is consistent with the language in the constitutional amendment is for example an issue we might take up, and I have been in litigation over this, trying to not sound like and advocate but if you have an implementing statue that arguably unconstitutionally narrows or differs from the language in the constitutional amendment, that statute is going to be subject to challenge. And indeed it was and it is going to affect the program and it is a major issue for the medical marijuana program in FL. So with the input of members of a cannabis committee working closely with legislature to ensure that the language is constitutionally consistent, that is one example. Don't want you to think I am saying this as an advocate. If we are able to actually help develop the statute before it is promulgated, I firmly believe we would not e in the position that we are now.

Schwartz- Adding on- I think this is going to be a 2 way street. Our lawyers that practice in other substantive areas will want to participate in this cannabis committee and I suspect that members of the

cannabis law committee will want to participate in some of our substantive law committees. If it works like I hope it will, then I think there is going to be a lot of cross pollination like we saw with Computer Technology committee several years ago. Make sure we are all working together. Don't think cannabis is going to be off on their own. Need to put all of that together to see how this would work. We run into statutes that don't work all the time and we are dealing right not looking at Chapter 48 and I don't see how this is all that different at the end of the day.

Alan- Others? Schwartz- ask about joint statement- not given deep thought or reviewed bylaws, but would it be possible in constituting a cannabis committee to circumscribe its abilities as a committee to conform to this joint statement? Any reason that the EC could not have a resolution establishing a special committee with those restrictions?

No- the way I read the email from Todd earlier, was trying to respond to the issue of what was in the memo from the last meeting. Agree with Diane that if we were tinkering with the wording and policy to make it clear and play with words that is how the BLS does things. If we do this we are going to have to put these down in writing so that everyone goes in with the common understanding. Legislation is the most significant area from his standpoint of making sure that everyone goes into this with the understanding that we have a process that applies to all of our legislation and we have to follow that process and it relates to everything we do in legislative process, We have a lobbyist, legislation committee follow lots of bills and comment on lots of bills. This committee would have to bring forward their concerns the way all the committees do. Yea, whatever the organizing memo might say the resolution would in fact prescribe those things with not disagreement.

Alan- good. Others? One issue you raised Bates in your memo was raised before that we need to reach out to legislatures to see what their thoughts would be on having a cannabis law committee. I have only had one discussion with Paul Renner- speaker of the house designate- partner. His comments were along the following lines, we are passing laws for cannabis left and right in tally. Nothing inherently wrong with having a cannabis in BLS but he made specific statement that he is not sure if he would be comfortable if he was the BLS if cannabis was advocating on the behalf of an expansion. Shares the concern as a business lawyer who occasionally litigates. Nothing about the hemp/cannabis/marijuana is being morally reprehensible in the legislature these days, but he would be concerned about advocacy. We need to ask more

Cyndi- back to joint statement, says that we have no intention or desire as advocacy group in favor of expanding existing cannabis laws. We round tabled this in response to specific request because there was concern that different members of the group might have different views and wanted to make sure that the group had a consensus and if there was to let them know. What we put together should put to rest the concern.

Alan- Russ Blain- listening tentatively, but have not added, do you have anything to add? Russ signed off. Regarding legislators on legislative issues, want to reach out to lobbyists and ask her if there are other legislators that we can talk to. Others on call that have members of house or senate in their firm

Schwartz- Thinks that Aimee is good to talk to

Alan- reach out to Aimee and report on next call

Alan- Asking if all are comfortable with the following:

1 Should the section move forward with formation of cannabis law committee it would be the recommendation of this group that the committee be subject to certain prescriptions as set forth in the organizing resolution around the issues of legislation in accordance with the joint statement with some modifications to incorporate Diane Wells concerns. We can massage that in any report that the study group provides. Is that where we are heading with the noted exceptions of Bates and proxy for Mr. Workman.

Schwartz- Memo intended to summarize a bunch of discussion and put into categories. My thoughts exactly.

Alan- contrary thoughts? Noting Bates and Workman concerns, this may be where we have landed on the legislative issue. Before we move on give everyone a last chance wrap up?

Alan- moving on- would like to suggest reviewing areas discussed because in Schwartz memo it provides roadmap for areas of discussion. Acceptable? We use memo from Schwartz as template for net discussion area because he has organized his memo to touch on most or all of issues that have been touched on in prior conversations.

Cyndi- outline to go item by item.

Alan- Yes! Moving on to the involvement area of memo. Is there a discussion around morality concern?

Schwartz- in the memo because concerns had been raised in past. Also membership because we need to be thinking about growing.

Alan- Tameka not on call because in car crash, and 6 months pregnant so on way to hospital for check

Alan- Next heading- legality concerns. Asking cannabis practitioners speak to evolving and current legislative efforts, understand that there are some at federal level to bring them in alignment with state law.

John- First, note that when we talk about marijuana on one hand which is illegal under federal law and hemp on the other which is no longer illegal under federal law and legal under some states and not others. So there is that distinction, so on hemp side, an active part of all of the folks that practice in this space practice area there is a statute in FL that has been signed by governor and there are rules that are being promulgated now so that deals with that and don't think that is big issue in terms of legality. On the federal side marijuana, with current administration does not think it will be rescheduled or declassified under controlled substances act in the next year or 2 but have been lots of legislative efforts on federal side in order to do so. Either to leave it up to states or to regulate it like alcohol. But in immediate future, do know that the US Congress has been addressing issue of banking and financial services and are working legislature to allow people operating in the industry to more easily access banking and financial devices. Heading in direction full blown legalization or removal from controlled substances act is inevitable.

Alan- important to section because while we are not Avant Garde, we do try to avoid in business laws to avoid being behind the curve or outliers in trend of developing laws around country. Noteworthy for our report to full EC that trends are toward descheduling or relaxation of control here.

Cyndi- if Democrats take presidency- movement toward decriminalizing or reclassifying from schedule 1 to lower schedule. Almost all democrats on record of being in favor of scaling back or decriminalization. Seeing from democratic side, degrees of movement. Republican side there is slower movement, but there is movement of scaling back of the schedule 1 narcotics.

Alan- can that be done by agency action or does it require congressional action legislation? For DE scheduling or rescheduling.

Schwartz- Believe that the DOJ does have authority to reschedule or deschedule. Gut says will not happen without congressional action

Alan-other things fall in line without need for separate legislation?

Absolutely .

Cyndi-Single track legislation moving ahead regardless of the schedule 1 classification, so possible that we may have a bank moving forward even though marijuana is still a schedule 1 narcotic. Also, in wider world, police forces across country no longer making arrests on a variety of factors. Cannot tell if it is marijuana or hemp without sending to lab so there has been complete relaxation as far as enforcement from criminal aspect.

Todd- currently conversations going on about hemp and how to regulate it. with that is IP and trademark issues. Going on at federal level

Schwartz- did not understand the hemp issue. Happening faster than expected

IP Arena there has been relaxation. If question is if feds make a move, will everything else fall in line, it will be fore sure

Becoming defacto decriminalized.

Alan- other thoughts on legality concerns? Next headnote- discussed on previous occasions. Couple of dozen states that have information on how to advise clients. Any debate question remaining in anyones minds regarding the ethical restriction of lawyers in cannabis area?

Bates- if it's a crime, we advise clients about what they are getting ready to do is a crime. Same way that we would advise someone that a transaction was or would likely be found to be a fraudulent transfer. For Example. We might also advise a client to make a fraudulent transfer and assist in that process. The former is not unethical, the later is. And so to the extent that you are advising a client about whether their conduct is or might be illegal that is not an ethical problem. To the extent that you participate in the transactions getting rise to that particular event, you are complicit in a crime.

Alan-no one disagrees in the ethics rules

Schwartz- you are right, but we lawyers. Always a line that you have to be careful of and think not different in this space than in any other space where the law is not as all clear as we would like it to be.

Alan- thoughts on issue?

Cyndi- Sounds like all in agreement as to what you can and what you can't do ethically. And what is acting unethically. Advising as to what is legal and not legal. Not crossing ethical lines if you are advising what is legal

Todd- adds further justification as to why we need this committee. To help people understand what they can and cannot do.

Kacy- Ethical piece in judicial survey- about their ethics related concerns or not related to what they might bring forward to the EC.

Alan- footnote to concern around judiciary issues.

Alan homework- reach out to Aimee