



Do the administrative search provisions of the Marihuana Regulation and Taxation Act violate the Fourth Amendment's prohibition on unreasonable searches and seizures? The Third Department tackled that novel question in reversing a preliminary injunction that Supreme Court had granted to enjoin the state enforcement agencies from conducting warrantless inspections of the petitioners' licensed cannabis businesses. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

THIRD DEPARTMENT

ADMINISTRATIVE LAW, CONSTITUTIONAL LAW, UNREASONABLE SEARCH AND SEIZURE

Matter of Super Smoke N Save LLC v New York State Cannabis Control Bd., 2026 NY Slip Op 03715 (3d Dept June 11, 2026)

Issue: Do the administrative search provisions of the Marihuana Regulation and Taxation Act violate the Fourth Amendment's prohibition on unreasonable searches and seizures?

Facts: "In March 2021, the Legislature enacted the Cannabis Law to legalize adult-use cannabis and regulate its production and sale. The legislation aimed to establish a licensed, well-regulated cannabis industry, reduce an illegal drug market, diminish the participation of otherwise law-abiding citizens in that enterprise and generate sales tax revenue." The Cannabis Control Board and the Office of Cannabis Management were created to "license and regulate entities engaged in cannabis-related activities, conduct inspections and enforce compliance with statutes and regulations." In April 2024, the statute was amended to authorize "any county or city to adopt a local law authorizing an officer or agency to conduct regulatory inspections of any place of business located within the county or city not listed on the directory maintained by OCM." The amendment also authorized the New York City Sheriff to "conduct regulatory inspections of any place of business . . . where cannabis, cannabis product, or any products marketed or labeled as such, are sold, or offered to be sold, where no registration, license, or permit has been issued pursuant to the cannabis law."

After being subjected to, or the threat of, warrantless inspections, petitioners—businesses engaged in the licensed retail sale of cannabinoid hemp products—"commenced this CPLR article 78 proceeding to enjoin enforcement of certain provisions of the Marihuana Regulation and Taxation Act and related regulations authorizing inspections of cannabis and cannabinoid hemp retailers. Following an evidentiary hearing, Supreme Court granted petitioners' request for a preliminary injunction, which prohibited respondents from conducting warrantless inspections of petitioners' businesses, limited certain enforcement and inspection activities, and ordered removal of certain notices of violation and the return of seized property . . . Supreme Court found that the inspections did not satisfy the administrative search exception to the Fourth Amendment's warrant requirement, then held that petitioners had demonstrated a likelihood of success on the merits, irreparable harm without injunctive relief and equities that weighed in their favor. As relevant here, Supreme Court determined that the statutory and regulatory scheme failed to provide a constitutionally adequate substitute for a warrant and that the inspections impermissibly focused on criminal enforcement. Supreme Court also held that the New York City Sheriff lacked statutory authority to conduct administrative inspections of *licensed* businesses in the first instance."

Holding: The Appellate Division, Third Department reversed, holding that petitioners were unlikely to succeed on the merits of their claims to enjoin enforcement of the Marihuana Regulation and Taxation Act's administrative search provisions and thus a preliminary injunction was not warranted. Emphasizing that petitioners were required to show, on their facial challenge, that those provisions of the statute were unconstitutional in every application, the court explained that although warrantless searches are per se unreasonable under the Fourth Amendment, one acknowledged exception to the warrant requirement is for administrative searches of "commercial property employed in a 'closely' or 'pervasively' regulated industry, where the privacy interests of the owner are weakened and the government interests in regulating particular businesses are concomitantly heightened. Because the closely regulated industry is the exception rather than the rule, the administrative search [exception] has been narrowly applied to select industries, such as gun dealerships, mining, automobile salvage yards, liquor dealers and commercial transportation."

The court explained, "[a]n administrative search is permissible when three requirements are met. First, there must be a substantial government interest informing the regulatory scheme; second, the warrantless inspections must be necessary to further that regulatory scheme; and finally, the inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant. The inspection scheme must limit the discretion of officials by defining the time, place and scope of inspections."

Petitioners did not seriously dispute the first or second prongs, but argued that the inspection scheme failed the third prong. Analyzing "whether the statutory and regulatory scheme furnish an adequate substitute for a warrant under the Fourth Amendment," the court

held, “the regulatory scheme must provide either a meaningful limitation on the otherwise broad discretion afforded to inspectors or a satisfactory means to minimize the risk of arbitrary or abusive enforcement by ensuring that inspections are limited in scope to that which is necessary to meet the governmental interest justifying the search.”

Here, the court held, “[t]he Cannabis Law and its implementing regulations, when considered together, adequately define how inspections are conducted. The regulations require applicants, as a condition of licensure, to consent in advance to regulatory inspections of their premises. Licensees are notified that their businesses are subject to ‘regulatory inspections’ of defined locations, including places of business and vehicles used in connection with such business, while inspections beyond those parameters require probable cause. Though the regulations require businesses to cooperate with inspectors, they do not authorize OCM to break into locked areas or storage cabinets. Rather, they authorize OCM to impose administrative penalties for noncooperation. Inspections under local laws are limited to a business’ operating hours and must be conducted for purposes of civil administrative enforcement with respect to the premises lacking applicable registrations, licenses or permits issued by OCM. The implementing regulations constrain the permissible scope of inspections by identifying the categories of items subject to examination, including specified products, records and related materials. The regulations notify licensees that inspectors accompanied by peace or police officers may conduct a site visit and which individuals connected to the business may be interviewed. Finally, if a violation of the Cannabis Law is discovered through an administrative inspection, the statute lists which products may be seized. When viewed as a whole, we find that the statutory and regulatory framework provides ‘meaningful limitations’ on an inspector’s discretion and ensures that the search is limited in scope to that necessary to meet the interest that legitimized the search in the first place.” Petitioners, therefore, were unlikely to succeed on the merits of their constitutional claims and the court held that Supreme Court abused its discretion in granting a preliminary injunction.

FOURTH DEPARTMENT

FAMILY LAW

Matter of Lockhart v Monica, 2026 NY Slip Op 03535 (4th Dept June 5, 2026)

Issue: May an attorney for the child file a family offense petition pursuant to Family Court Act article 8 on behalf of a child against a nonparent?

Facts: During a custody proceeding, the attorney for the child (AFC) who was assigned to represent the child learned that the child’s grandmother had made repeated calls to police seeking welfare checks and reporting allegations of child abuse. The Court Attorney Referee in that proceeding “essentially invited the AFC to file a family offense petition alleging harassment against the grandmother, which the AFC did that day on behalf of the child against the grandmother. The Referee subsequently recused herself, and Family Court referred the matter to a different Referee.”

The grandmother moved to dismiss the family offense petition, arguing that “the AFC, as a nonparent, lacked standing to file a family offense petition on behalf of the child. The court denied the motion. At the trial on the petition, the evidence established that the grandmother made multiple calls to the police requesting welfare checks on the child and also made multiple child abuse referrals. The father testified that the child was scared and frightened when questioned by the police, including one incident where the father had to wake the child up to speak with the police.”

Family Court adopted the Referee’s recommendation that the grandmother had committed the family offense of harassment and “issued an order of protection against the grandmother in favor of the child.”

Holding: The Fourth Department affirmed, holding that an AFC may bring a family offense petition on behalf of a child against a nonparent. The court reasoned that under Family Court Act § 822, any one of four categories of persons or entities may bring on a family offense petition: (1) “Any person in the relation to the respondent of spouse, or former spouse, parent, child, or member of the same family or household”; (2) a duly authorized agency; (3) a peace or police officer; or (4) a “person on the court’s own motion.” The court noted that Family Court was likely unaware of the prior Court Attorney Referee’s invitation to the AFC to bring the family offense petition, but nonetheless held that the AFC, standing in the shoes of the child, was authorized under the first category of filers: “the child is a person in the relation to the grandmother of . . . member of the same family.” Thus, the court held, “an AFC may also file a petition on behalf of the child pursuant to subdivision (a) of section 822.”

The court also noted that “[t]here are numerous cases where AFCs have filed petitions in Family Court seeking to modify a custody or visitation order, even though there is no explicit statutory authority allowing them to do so. An AFC was also found to have standing to file objections to an order of a support magistrate even though the Family Court Act does not specify that objections may be filed by the child’s attorney. We see no reason why an AFC cannot also file a petition on behalf of the child alleging a family offense. By allowing the AFC to file a family offense petition, we are furthering the AFC’s duty to protect the child’s interests, i.e., to prevent the further harassment of the child by the grandmother, which was raised and discussed in the child custody proceeding.”

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