

[State government](#)

## Gardening center or dispensary? Baltimore shop tests limits of cannabis law

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Published 9/11/2023 5:30 a.m. EDT, Updated 9/11/2023 1:21 p.m. EDT

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Julius Franks, Devin Melton and Donte Johnson pose for portraits on Sept. 5, 2023, outside Baltimore Hydroponics, their indoor gardening store in Fells Point. (Kaitlin Newman/The Baltimore Banner)

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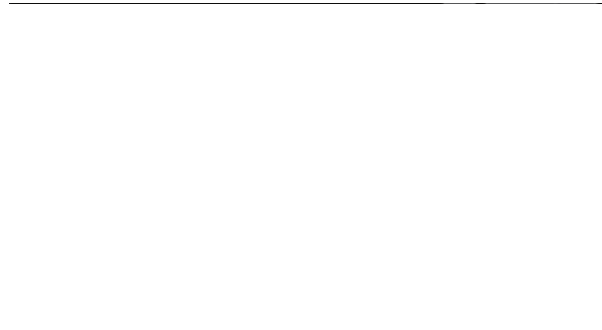


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The photo my editor sent me showed a Fells Point storefront flaunting cannabis leaf graphics. Hot pink bubble letters on the boutique's glass shouted the arrival of a novel cannabis business.

"Learn to Grow at Home, Smart, Legally & Safe" and "COMING SOON" read the ads for Baltimore Hydroponics.



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"Interesting angle on the industry," my editor wrote beneath his photo.

For the past year, I'd followed the making of Maryland's landmark cannabis laws as the state established business licensing and taxes for the industry.

From the company's social media, it looked like they planned to teach people how to grow cannabis. Genius, I thought. Since the law allows anyone 21 and older to grow two plants per household, surely first-time home-growers would need guidance. Wouldn't you?

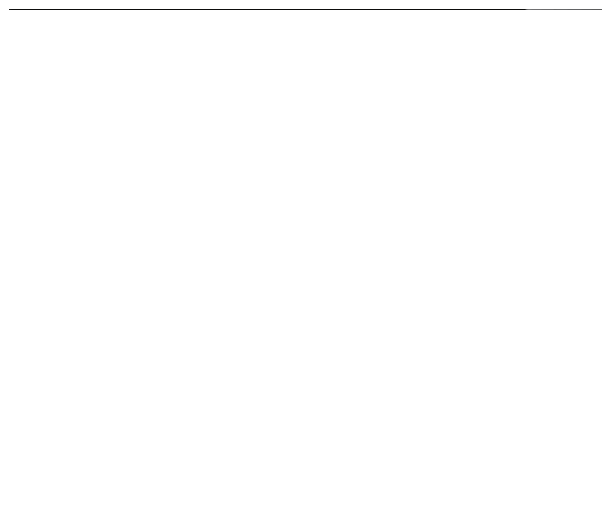
But they were going to sell the plants, too. This is where the needle scratched the record for me. Was this legal?

I thought only licensed dispensaries could sell cannabis plants for home cultivation, and the state wasn't giving out any new dispensary licenses

until January.

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Had this business found a loophole beyond the reach of Maryland's cannabis laws? The answer wasn't simple — and neighbors, Baltimore Police and state regulators also were asking the question.



## The visit

My colleague and Banner [TikTok host](#) Krishna Sharma and I went to meet the owners.

We brainstormed what to expect on the walk over. Were they compliant with state law? Did they have weed plants in the store?

Sitting on the shop's black leather couches, the three Baltimore Hydroponics owners shared their story. They were an indoor gardening center, not a dispensary. They planned to teach cannabis growing classes, sell plants, supplies and a cannabis-inspired clothing line, called Loudy Puff. CEO Devin Melton named the label by combining references to The Powerpuff Girls and a slang term for high quality, or "loud," weed. They wanted to build community and eventually open an indoor smoking lounge.



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The plans started in the backyard of COO and spokesperson Julius Franks' Northeast Baltimore home the day after voters approved recreational cannabis. They rented a space and got free starter plants from an underground event where someone was giving away various marijuana strains.

Melton said he gathered a team of people, "and we got as many cups as we could get."



The exterior of Baltimore Hydroponics on Thursday, Aug. 17, 2023. (Kylie Cooper/The Baltimore Banner)

"These are things that a lot of people do individually, but no one does it all together," Franks said. Franks met Donte Johnson, the business' vice president, in third grade, and his neighbor, Melton, about eight years ago.

Franks had grown cannabis for years. He'd even been arrested for it but got off because he told the court he had a medical need: to relieve lingering pain after a motorcycle accident.

In fact, all three men had past cannabis-related charges. They figured why not profit from something that once complicated their lives?

"And that we were good at," added Franks.

But the friends weren't interested in programs to help entrepreneurs like themselves. They wanted little to do with a government that had cosigned the complications in their lives.

"We wanted to try to steer clear of as much red tape as possible," Franks said.



## The dilemma

"So, what do you think?" Krishna asked me as we walked back to the office. I told him I couldn't fathom how this was allowed, based on what I understood about the laws. But even though I can read, I'm not a lawyer.

Back at the office, we ran all of this by our editor.

What were we looking at here? Was a regulatory reckoning in the company's future? Can we write about these engaging entrepreneurs without getting them into trouble?



We decided the right thing to do would be to share with them what we knew. So we printed out a copy of the state regulations, highlighted the parts referencing plants, and gave it to them.

- [Maryland website will help cannabis entrepreneurs check special license eligibility](#)
- [Want to work in Maryland's cannabis industry? There are classes and degrees for that.](#)
- [With cannabis industry expanding, a Baltimore company sees an opportunity to clean up](#)
- [How others' mistakes could help Maryland get cannabis legalization right](#)

Franks, from the black leather couch, called the regulations “vague and ambiguous” and said they changed nothing for him.

“Federally, they can’t regulate the plant,” he said, referring to his crop. “Because federally, there’s no THC in it.”

He based his legal opinion on the U.S. Drug Enforcement Agency’s definition of hemp: a cannabis plant with less than .3% delta-9 tetrahydrocannabinol, or THC, dry weight. If it contains more, it’s marijuana. The state law uses the same definition.

The company didn’t have a lawyer, but as Franks read the cannabis law, Maryland didn’t regulate retail sales of cannabis plants below the THC threshold, and the Maryland Cannabis Administration, the agency overseeing cannabis industry regulations, only oversaw licensed cannabis businesses.

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He seemed confident that since his plants were not flowering, the flowers or buds being the most potent part of the plant, that they were still below the marijuana threshold. He called it a loophole: “Every law that’s made has to have a loophole,” he said.

“And if the state wants to challenge us, we’re more than willing to take on that challenge,” Franks said.

It wouldn’t be long before he got his chance.

## Is there a problem, officer?

Around 9:30 the next morning, the state showed up.

An agent from the Alcohol, Tobacco, and Cannabis Commission, the agency tasked with enforcing laws regarding unlicensed cannabis businesses, told Franks she was there because she had received a complaint, Franks said. His Fells Point neighbors were concerned the Wild, Wild West of legal cannabis had moved into their part of town.

She told him she wasn’t there to shut them down, just to find out what they were up to, Franks recalled.

He told the agent their plan: teach people how to grow cannabis and sell cannabis plants.

She told him only licensed dispensaries can sell cannabis plants.

“Your authority is only over anyone that has a cannabis license,” he recalled telling her, pointing to the same stack of regulations I had left with him the day before. “So you don’t have authority over me.” Besides, he told her, his plants weren’t by federal definition cannabis.

Before her 15-minute visit ended, Franks said the agent told him to expect more visits; top state and city officials knew about Baltimore Hydroponics,

which had been profiled a few days earlier in the [Baltimore Business](#)

[Journal](#).

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When he told me about the agent’s visit, I asked him if what she said had rattled him.

”It didn’t bother me,” he said. “I know I’m right.”

Several weeks before the state agent came, a cadre of Baltimore City Police officers showed up on his South Broadway threshold. Two days in a row.

A few dozen officers showed up each day — they “came in force,” Franks said. “But we weren’t intimidated.”



In an effort to greet potential customers, Baltimore Hydroponics had set cannabis plants on a folding table. The legs of the table couldn’t be touching the red bricks, the officers told them.

They moved the table off the red bricks, but the cops didn’t leave, prompting Franks to ask, “What’s the problem now?”

One officer said the plants were a Schedule 1 substance as defined by the federal Controlled Substances Act. An officer who appeared to outrank



him corrected him, Franks recalled. After that, things calmed down, and the police left.

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A police incident report confirmed the table was an issue. A department spokesperson said police returned the second day because the table was back up, according to her review of body-worn camera footage. Detective Niki Fennoy also said in a statement only six officers were there, and a total of 15 officers and two sergeants were on duty in the Central District during this shift.

Franks said six officers did talk to them, but there were more standing behind them.

At this point, Krishna, me, the Baltimore Police Department and the state agent all had one thing in common: None of us seemed to know if what Baltimore Hydroponics was doing was allowed.

We needed people who understood cannabis law.

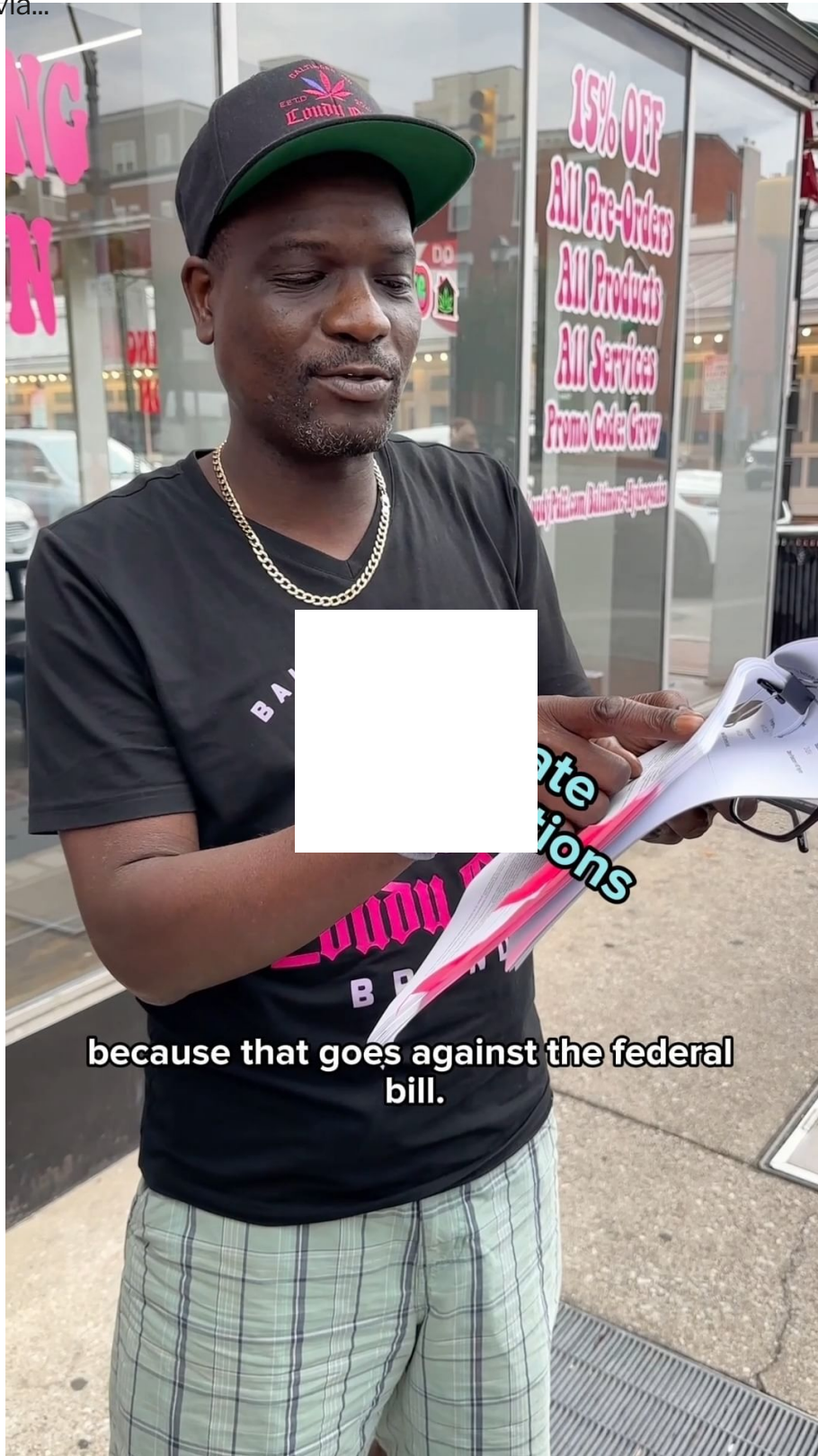


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We visited [@baltimorehydroponics1122](#), which is not your average gardening store. They sell all the products and knowledge you need to grow cannabis indoors.

Including the plants.

Are they able to do that without a dispensary license? We followed part of their journey as they prepared for the grand opening.

## The experts

I asked international cannabis lawyers and state agency officials to weigh in.

First, the Maryland Cannabis Administration confirmed that they are only responsible for licensed cannabis businesses, and that this business wasn't one. They also verified that if a plant tests above the THC threshold in Maryland, it's marijuana, and a business needs a license to sell, grow or process it.

So what if Baltimore Hydroponics' plants contained less than the threshold? Would that mean they're technically selling hemp?

Marijuana and hemp are separate varieties of the same plant species — *Cannabis sativa*. The two cultivars are [chemically and genetically different](#) and bred for different purposes. Hemp naturally contains low amounts of THC, and while it's possible for hemp to breach the federal THC threshold, it's not common, according to Jim Drews, who regulates seed and turf programs, including hemp growing, for the Maryland Department of Agriculture.

Drews said the botanical difference between hemp and marijuana is like the difference between a wolf and a dog: "They're the same species, but they're very different."

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Baltimore Hydroponics' cannabis plants, as seen on Thursday, Aug. 17, 2023. (Kylie Cooper/The Baltimore Banner)

If the store was selling hemp strains, the flower buds likely won't contain intoxicating THC. And Maryland law [requires any hemp grower to have a license](#) anyway, Drews said.

So, how would Baltimore Hydroponics or regulators know for sure under which category the plants fall?

By testing them.

That's what Andrea Steel told me. She's an attorney in practice for fourteen years, concentrating in the cannabis and hemp industries for the last five. The only way to know for sure whether a substance is marijuana or hemp is to determine how much THC a plant holds, and the only way to do that is to test it, she said. Based in Texas, Steel represents clients across the country, including business owners in Maryland.

Even after a test, finding resolution at the crossroads of federal and state hemp and cannabis laws is “complex,” she said.

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“There’s a lot of statutes and regulations that get layered on top of each other that you have to pick apart to determine what the actual answer is,” she said, advising any business operating in a “murky area” to seek legal counsel.

So what came of the visit from the Alcohol, Tobacco, and Cannabis Commission?

Jeffrey Kelly, the commission’s executive director, wrote in an email that the visiting agent “did not find any plants or any evidence of anything that falls within the authority of the commission.”

But should agents find plants defined as marijuana in businesses lacking licenses to sell them, they would tell the owners to remove and stop selling them, he said.

## The grand opening

After wading through reams of bureaucratic red tape securing their building permits — 20 minutes before they opened — Baltimore Hydroponics cut the ribbon on Aug. 25.

“We made it,” Franks said. Johnson said he felt a weight had been lifted off of his shoulders.

Their shelves were stocked with everything needed to grow vegetation inside: tents, grow lights, filters, pruning shears, plant food. A spare room called Da Nurzery sheltered baby cannabis plants.

Baltimore Hydroponics was ready to go. But were government officials ready for them?



Baltimore City Councilman Zeke Cohen, who represents the business' district, said he recently met with the co-owners and as he understands it, they intend to sell plants that fall below the THC threshold.

However, the Democrat said he sees a need for clear, consistent zoning standards, just like for liquor and tobacco shops. The city is still in the process of finalizing those plans.

Back on the black leather couch in their front room, I watched a couple stroll past, only to back up for a second look at the fan-shaped leaves sprouting from spindly stems.



Cannabis plants line the windows of Baltimore Hydroponics on Thursday, Aug. 17, 2023. (Kylie Cooper/The Baltimore Banner)

Did they have questions, too?

The only thing I knew for sure was that those plants soaking up the warm sunshine were for sale. What happens next with Baltimore Hydroponics requires a crystal ball — or a front row seat to some state agency meetings.



Since they opened, Baltimore Hydroponics has not had any more visits from law enforcement, Franks said.

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But one thing has changed.

The partners plan to apply for a cannabis business license. All three team members live and went to school in communities with an above-average number of cannabis-related charges — the same areas that lawmakers have prioritized for license eligibility.

What made them change their minds? “The government has been so accommodating recently,” Franks said, “we might as well utilize the love that we have received.”

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