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Opioids: Controlled Substances Act Does Not Bar Safe Injection Sites

United States v. Safehouse, No. 19-0519 (E.D. Pa. Oct. 2, 2019).

In a decision likely to have major implications for some municipalities seeking solutions to drug addiction, the Eastern District of Pennsylvania had determined that merely providing facilities where drugs are used under monitored, sterile conditions—but no controlled substances are provided—does not violate the Controlled Substances Act.

Safehouse, a nonprofit organized to combat drug addiction and overdose, announced plans to open an "Overdose Prevention Site" in Philadelphia which will offer a variety of services aimed at preventing the spread of disease, administering medical care, and encouraging drug users to enter treatment. Drug users will receive a variety of services, including provision of sterile syringes, fentanyl test strips, reversal agents to prevent fatal overdose, and observation. Certified peer counselors, as well as recovery specialists, social workers, and case managers will be available to offer services and encourage treatment.

In April 2019, the Department of Justice advised Safehouse that such activities violated the Controlled Substances Act, 21 U.S.C. § 856(a)(2) ("CSA"), and brought suit seeking declaratory judgment to prohibit Safehouse's operation. Yesterday, the Eastern District announced its conclusion that Safehouse's operations do not violate the CSA:

> Having examined the text and employed a number of tools of statutory construction, I conclude that the provision on which the Government relies is

reasonably capable of more than one interpretation. This supports a further conclusion that consideration of the legislative evidence surrounding passage of this provision is appropriate. As discussed below, courts must exercise extreme care in discerning the objective sought by Congress in enacting a statute. That said, having reviewed materials I consider appropriate in discerning what Congress sought to address in enacting § 856(a)(2), there is no support for the view that Congress meant to criminalize projects such as that proposed by Safehouse. **Although the language, taken to its broadest extent, can certainly be interpreted to apply to Safehouse's proposed safe injection site, to attribute such meaning to the legislators who adopted the language is illusory. Safe injection sites were not considered by Congress and could not have been, because their use as a possible harm reduction strategy among opioid users had not yet entered public discourse.** Particularly in the area of criminal law, it is the province of Congress to determine what is worthy of sanction. A line of authority dating back to Chief Justice John Marshall cautions courts against claiming power that properly rests with the legislative branch. A responsible use of judicial power under those circumstances is to decline to expand the scope of criminal liability under the statute and allow Congress to address the issue.

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