

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HEMP INDUSTRIES ASSOCIATION; and RE
BOTANICALS, INC.

Case No.: 1:20-cv-2921

Plaintiffs,

vs.

UNITED STATES DRUG ENFORCEMENT
ADMINISTRATION;
and TIMOTHY SHEA, in his Official Capacity

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Hemp Industries Association (“HIA”) and RE Botanicals, Inc. (“RE Botanicals,” and together with HIA, “Plaintiffs”), by and through their undersigned counsel, allege as follows:

INTRODUCTION

1. This case is the latest chapter in the Drug Enforcement Administration’s (“DEA”) long-running attempt to regulate the production of legal hemp in excess of its statutory and delegated authority.

2. In August 2020, DEA published an interim final rule entitled *Implementation of the Agriculture Improvement Act of 2018*, 85 Fed. Reg. 51639 (the “IFR”). The IFR purports to implement amendments to the Controlled Substances Act (the “CSA”) made by the Agricultural Improvement Act of 2018, codified at 7 U.S.C. § 1639o *et seq.* (the “2018 Farm Bill”). However, the IFR’s regulatory changes do not track the 2018 Farm Bill’s amendments.

3. Through the 2018 Farm Bill, Congress acted decisively and drew clear regulatory lines. The 2018 Farm Bill defines hemp broadly to explicitly include any part of the hemp plant, including its extracts, derivatives, cannabinoids, isomers, acids, salts, and salts of isomers; carves out “hemp” from the CSA’s definition of marijuana; and removes “tetrahydrocannabinols in hemp” from the CSA’s list of Schedule I substances. The 2018 Farm Bill also delegates exclusive authority over hemp production to the United States Department of Agriculture (“USDA”), with only one narrow exception for the Food and Drug Administration (“FDA”).

4. Contrary to the plain language and intent of the 2018 Farm Bill, DEA through the IFR, now claims that the statutory amendments in the 2018 Farm Bill do not remove essential steps of hemp production from DEA’s purview.

5. Specifically, DEA’s faulty interpretation of the 2018 Farm Bill criminalizes key steps of hemp production by improperly making intermediate hemp material (“IHM”) and waste hemp material (“WHM”)—two necessary and inevitable byproducts of hemp processing—Schedule I substances.

6. DEA’s latest jurisdictional overstep threatens every stage of the hemp production supply chain and jeopardizes the entire hemp industry. If allowed to stand, DEA’s intrusion will undermine a lynchpin of the new hemp economy that has created tens of thousands of new jobs and provided a lucrative new crop for America’s struggling farmers.

7. Through this action, Plaintiffs seek a declaratory judgment to reset the lines Congress drew in the 2018 Farm Bill and confirm that the hemp production process does not violate the CSA. Plaintiffs and the hemp industry deserve basic regulatory clarity and should not be forced to operate under constant threat of DEA enforcement that would be both crippling and unlawful.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343. This action arises under the Constitution and laws of the United States.

9. This Court has the authority to issue the relief sought pursuant to 28 U.S.C. §§ 1343(a), 2201, and 2202.

10. Venue is proper under 28 U.S.C. § 1391(e).

11. This Court has *Leedom* jurisdiction.

THE PARTIES

12. Plaintiff HIA is a 501(c)(6) trade association whose mission is to advance the hemp economy, educate the market about hemp, and maintain and defend the integrity of hemp products. HIA represents approximately 1,050 member-hemp businesses who cultivate, manufacture, process, store, transport, distribute, and/or sell hemp and hemp-derived products. HIA's members include approximately 300 hemp processors, all of whom manufacture, process, and/or store IHM and WHM. The majority of HIA's non-processing members transact with and/or rely on persons or businesses who manufacture, process, and/or store IHM and WHM.

13. Plaintiff RE Botanicals is a private corporation with its principal place of business in South Carolina. In 2019, RE Botanicals acquired Palmetto Synergistic Research LLC dba Palmetto Harmony ("Palmetto Harmony"). Founded by Janel Ralph, a mother of a child with

severe epilepsy, Palmetto Harmony manufactures and sells consumer products derived from hemp. RE Botanicals was founded by John Roulac, a pioneer of the hemp seed industry. Its mission is to produce and market lawful, high quality hemp products.

14. Defendant DEA is the federal agency that administers the CSA.

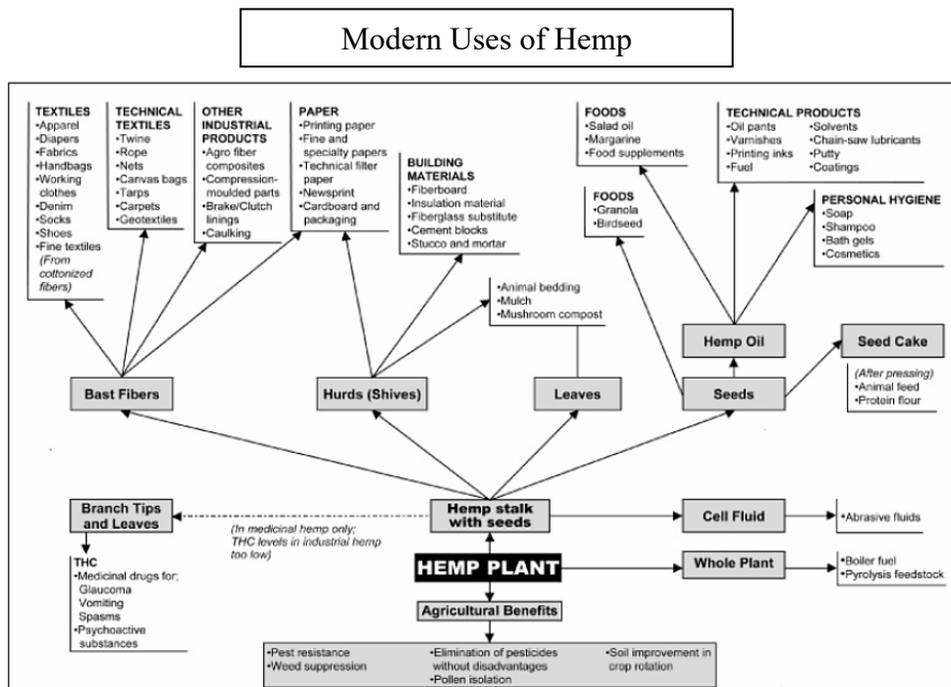
15. Defendant Timothy Shea is a government official serving as DEA's Acting Administrator.

FACTUAL BACKGROUND

I. Hemp is a Versatile, Non-Psychoactive Agricultural Commodity.

16. Hemp is a variant of the plant *Cannabis Sativa L.* with a delta-9 tetrahydrocannabinol (“ Δ^9 -THC”) concentration of not more than 0.3% on a dry weight basis. In sufficiently high concentrations, Δ^9 -THC can produce psychoactive effects. Such concentrations, however, are not present in hemp.

17. As an agricultural commodity, hemp has thousands of industrial and commercial applications. It can be grown indoors, outdoors, organically, and in a variety of climates; fits within typical crop rotation systems; and consumes nutrients similar to other agricultural crops, like corn. Hemp is used in fabrics and textiles; the woody cores of hemp stalks are used in animal bedding, papermaking, and oil absorbents; hemp seeds are used in a range of foods and beverages; and hemp extracts are used in a wide range of products, including soaps, shampoo, lotions, bath gels, and cosmetics. The following chart illustrates the modern uses of hemp:



II. Early Legislation Eliminates Domestic Hemp Cultivation.

18. Hemp has a storied place in our nation's history. It was introduced in America around 1545 and was cultivated in the Jamestown colony as early as 1611. Over a century later, many of our founding fathers, including George Washington, Thomas Jefferson, and Benjamin Franklin, cultivated and used hemp. George Washington spoke extensively about hemp in his diaries. Benjamin Franklin launched one of America's first paper mills making hemp paper. Thomas Jefferson invented a better "hemp brake" to separate hemp fibers from stalks. U.S. officials throughout the nineteenth century, including former House Speaker Henry Clay, cultivated the plant.

19. Although hemp forms an integral part of our nation's history, between 1937 and 2014, the hemp economy was dormant largely due to prohibitive tax schemes relating to the production of marijuana—another variety of the Cannabis plant—and, subsequently, the outright prohibition of marijuana.

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