

January 12, 2018

Day Pitney Files Amicus Brief in U.S. Court of Appeals Industrial Hemp Case

Day Pitney LLP, working with Whiteford, Taylor & Preston LLP, submitted an *amicus curiae* brief as *pro bono* counsel for 28 members of the U.S. Congress, in support of a legal challenge to a 2016 Administrative Rule issued by the Drug Enforcement Administration (DEA) that established that all extracts from the plant *Cannabis sativa* L., including industrial hemp extracts, are illegal under federal law.

The brief filed yesterday in a matter pending before the United States Court of Appeals for the Ninth Circuit, *Hemp Industries Association v. Drug Enforcement Administration*, supports Hemp Industries' argument that the DEA's rule is contrary to, and subverts, the Agricultural Act of 2014, commonly known as the Farm Bill, which carved out certain legal exceptions for the growth, cultivation and marketing of industrial hemp. The *amicus* argues that in passing the Farm Bill, Congress made clear "that industrial hemp and any derivatives, extracts, and uses thereof would be exempted from the definition of 'marijuana' under the Controlled Substances Act (CSA)."

The *amicus* asks the court to find that the DEA's position that industrial hemp extracts "will continue to be treated as Schedule I controlled substances" was an abuse of the DEA's administrative procedure and rulemaking authority.

The *amicus* was drafted on behalf of certain current members of Congress who crafted the "Legitimacy of Industrial Hemp Research" section of the Agricultural Act of 2014 and who were also similarly involved in the inclusion of the industrial hemp provisions in the Consolidated and Further Continuing Appropriations Act of 2015 and the Consolidated Appropriations Act of 2016. In passing these laws, Congress sought to clearly establish rules that both the Executive Branch and the individual states must follow in order to research the viability of industrial hemp as an agricultural crop, as the laws took steps to authorize state pilot programs to study the cultivation and market for industrial hemp. Based on their experiences, these members of Congress are familiar with the laws enacted and the underlying legislative process, and have an interest in courts construing the industrial hemp laws in accordance with their text and legislative purpose. The brief is intended to inform the 9th Circuit Court of Appeals of the views of these members of Congress. A copy of the brief as filed can be found [here](#).

"It is rare that members of Congress submit *amici* briefs, and even rarer to submit such a brief in a context such as agricultural and controlled substance policy. Day Pitney was honored to provide *pro bono* counsel to members of Congress and to assist in helping the Court address these complex issues, fully informed by the perspective of legislators who participated in drafting and passing the laws at issue," said Steven A. Cash of Day Pitney, one of the brief's authors. He continued, "the importance of this issue cannot be understated. The DEA's administrative rules at the center of this case are incompatible with legislation that defines industrial hemp as distinct from 'marijuana' and legalizes its cultivation and processing under licensing programs in place in 31 states. This case challenges these actions of the DEA."

In addition to Cash, counsel in Day Pitney's Washington, D.C. and New York offices, James P. Carlon, a partner in the firm's Stamford Office, led the effort on the brief and associates Ryan S. Osterweil, James B. Blackburn IV, Alex P. Garens and Gemma R. Cashman were instrumental in researching and drafting. Day Pitney lawyers worked closely with Adrian Snead, Esq. of the law firm Whiteford, Taylor & Preston LLP.

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