

**COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
DIVISION I
CASE NO. 21-CI-00836**

KENTUCKY HEMP ASSOCIATION, et al.,

PLAINTIFFS

VS.

**RYAN QUARLES, In His Official Capacity
As Kentucky Commissioner of Agriculture, et al.,**

DEFENDANTS

JUDGMENT AND ORDER

This matter is before the Court on the Motion of Defendant, Kentucky State Police Commissioner, Colonel Phillip Burnett, Jr., (“KSP”) for Summary Judgment, Plaintiffs’ Motion for Summary Judgment, and the Motion of Defendant Kentucky Department of Agriculture Commissioner Ryan Quarles (“KDA”) for Summary Judgment. The parties requested the initial briefing schedule be reset for after close of the 2022 Regular Session because the General Assembly was considering legislation that, purportedly, might render the questions presented moot. Consequently, pursuant to an Agreed Order tendered by the parties, the matter was fully briefed and taken under submission effective May 11, 2022. Following that briefing, Plaintiffs submitted Notice of Supplemental Authority. Having reviewed the memoranda submitted by the parties, exhibits thereto, evidence presented at the evidentiary hearing, and being in all ways sufficiently advised, the Court enters this Order.

I. FACTUAL BACKGROUND

Beginning with the Agricultural Act of 2014 and, later, the Hemp Farming Act of 2018, which was part of the Farm Bill, industrial hemp was removed from the Controlled Substances Act and allowed to be farmed agriculturally. In doing so, Congress defined hemp as follows:

The term “hemp” means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.¹

This codified an exemption for industrial hemp, under which cannabis plants may not contain more than 0.3 percent of delta-9-THC (“Delta-9”). Kentucky, through its General Assembly, enacted statutes exempting hemp with a definition using nearly identical language. KRS 260.850 provides, in relevant part, as follows:

(5) “Hemp” or “industrial hemp” means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis;

(6) “Hemp products” or “industrial hemp products” means products derived from, or made by, processing hemp plants or plant parts;

Following the exemption, various products have been produced from hemp, including CBD oil. Through further processing, a form of THC identified as delta-8 (“Delta-8”) can be derived from CBD. According to evidence presented by Plaintiffs, and testimony presented at the hearing, products containing Delta-8 are in demand and sold at retail in the states surrounding Kentucky, including Indiana, Tennessee, West Virginia, and Ohio. Prior to April 19, 2021, Delta-8 products were also sold in Kentucky.

On April 19, 2021, the Kentucky Department of Agriculture issued a letter (the “KDA Letter”) stating Delta-8 is a Schedule I controlled substance, thus illegal, and warned that any manufacturing or distribution of products containing Delta-8 could result in hemp license revocation and criminal prosecution. Subsequent to issuance of the KDA Letter, KSP engaged in criminal enforcement actions against members of the Kentucky Hemp Association and others

¹ 7 U.S.C. 1639o(1).

relating to the possession or distribution of Delta-8. These actions included raids and criminal prosecution. In some instances, KSP relied on the KDA Letter in obtaining search warrants in identifying Delta-8 as a controlled substance.

The Court conducted an evidentiary hearing on December 16, 2021. By Order entered February 28, 2022, this Court entered a temporary injunction enjoining the KDA and the KSP from, respectively, taking any actions to revoke hemp grower or producer licenses, and engaging in any criminal enforcement action on the basis of legally compliant Hemp (the plant *Cannabis sativa* L. with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis), as well as any part of that plant that is compliant (that has a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis), including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, provided none of those materials have a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis; this includes any products that contain delta-8 tetrahydrocannabinol unless it contains more than 0.3 percent delta-9 tetrahydrocannabinol concentration on a dry weight basis.

II. ARGUMENTS PRESENTED

a. KSP'S Motion for Summary Judgment

Although KSP does not dispute it has engaged in enforcement actions against Kentucky Hemp businesses, KSP argues that it has taken no enforcement action specifically against any of the Plaintiffs. Consequently, KSP asserts that Plaintiffs cannot demonstrate an injury, much less an injury they can trace to KSP. Thus, according to KSP, Plaintiffs have failed to state a claim against it on which relief can be granted and this Court lacks jurisdiction.

KSP also contends that Delta-8 is not included in the hemp exemption because it is not expressly listed in the legislation. KSP further asserts that exempting Delta-8 would not serve

the intended purpose of the hemp statutes because it is not all natural, and consumption of it could pose risks to the public. Finally, KSP asserts that Delta-8 should be deemed an analogue to Delta-9 and, therefore, treated as a controlled substance under KRS 218A.010(9).

In Response, Plaintiffs state that, although KSP did not raid the named Plaintiffs, it did raid at least one member of the Kentucky Hemp Association (“KHA”), namely Eastern Kentucky Hemp. Plaintiffs point to the testimony of Rose Seeger that she stopped offering Delta-8 products at Ky Girl Hemp, LLC, and threw away approximately \$15,000 in inventory because she felt threatened by the raids and arrests conducted by KSP. Ky Girl Hemp, LLC, is a named Plaintiff and also a member of Plaintiff KHA. Plaintiffs cite affidavits of KSP Commissioner Col. Phillip Burnett, Jr., and testimony of Col. Michael Rogers, that KSP has used the KDA Letter as a basis for obtaining search warrants for raids and prosecution, and to convince businesses to stop selling Delta-8.

Thus, Plaintiffs insist, Ky Girl Hemp, LLC, has direct standing and the KHA has associational standing. According to Ky Girl Hemp, LLC, she is under threat of being raided and prosecuted if she continues to sell Delta-8, and that threat is directly traceable to the KSP because of its enforcement actions against others throughout the state. Plaintiff KHA insists that it has associational standing through its member(s) that have been raided and prosecuted by the KSP.

As to KSP’s argument that Delta-8 is prohibited under KRS 218A.010(9) as an analogue, Plaintiffs counter that the hemp exemption is specific; that, under the exemption all derivatives of hemp that do not contain more than 0.3 percent Delta-9 THC are exempt; that Delta-8 is a derivative of cannabidiol (“CBD”), and that CBD is a derivative of hemp. Hence, Plaintiffs assert, to the extent there is any conflict between the statutory exemption of hemp and the

statutes prohibiting analogues, the statutory hemp exemption takes precedence because it is specific, whereas the statute concerning analogue association is general.

In Reply, KSP contends that Plaintiffs cannot obtain relief by an injunction against KSP. According to KSP, Plaintiff must seek relief by an injunction against the specific public officials charged with enforcement of statutes, not the state's law enforcement agency. Further, KSP argues that a permanent injunction should not be entered on grounds of public safety. As to this, KSP asserts that "the risk of permitting unregulated Delta-8 THC products to be marketed to the Commonwealth is evident."²

b. Plaintiffs' Motion for Summary Judgment

Plaintiffs argue that, by statute, all hemp products—which specifically includes all derivatives—are exempt, and that both Congress and the General Assembly have expressly excluded the same from classification as a controlled substance. Plaintiffs point to the evidence and testimony that Delta-8 is a derivative of CBD, and that CBD is a derivative of hemp. Consequently, Plaintiffs insist, that Defendants KDA and KSP may neither take, nor threaten to take, any adverse action against Plaintiffs or KHA members for processing, possessing or selling products containing Delta-8 THC.

Plaintiffs assert that, despite the hemp exemption statutes, the KDA, by letter, declared Delta-8 THC to be illegal and threatened its licensees with license revocation and criminal prosecution if they engage in processing, possessing or selling products containing Delta-8. Plaintiffs point to evidence showing that the KDA added Delta-8 investigation criteria to its inspection protocols. Plaintiffs further argue that the KSP and KDA worked together to enforce the KDA's classification of Delta-8 as a controlled substance, that KSP relied upon and used the

² KSP Reply, p. 4.

KDA Letter in obtaining search warrants, and that the KSP conducted raids, made arrests and criminally charged individuals in Kentucky on the basis of their possessing or processing Delta-8. According to Plaintiff KHA, KSP raided and criminally charged at least one of KHA's members. Consequently, Plaintiffs insist, they have standing to seek injunctive and declaratory relief from the courts concerning the legality of hemp and Delta-8 THC.

KSP counters that Plaintiffs do not contend that they received the KDA Letter from KSP, and that Plaintiffs have not alleged that KSP has raided, arrested or charged any of the named Plaintiffs specifically. According to KSP, because it is only one of many law enforcement agencies within the Commonwealth, an injunction against it would be under-inclusive and, thus, Plaintiffs cannot obtain an adequate remedy even if the Court were to grant a permanent injunction. Further, KSP insists this is not an issue proper for the courts. Rather, KSP asserts that the Court should defer to the legislative branch to address these issues.

KSP again argues that, if the Court decides the merits, Delta-8 THC should be considered an analogue to Delta-9 THC, and that the Court should find the legislative intent would not have been to exclude Delta-8 THC.

The KDA argues in its Response that Plaintiff KHA identified only one member as being licensed with the KDA who intended to process hemp, namely, Rocky Ridge Hemp Co., LLC. However, the KDA states that Rocky Ridge let its hemp licenses lapse. Thus, the KDA asserts, Rocky Ridge cannot argue that it is injured or threatened by the KDA Letter because it no longer has a license to lose, nor can it suffer adverse actions by the KDA because it is no longer subject to the KDA. According to the KDA, the KHA lacks standing because, for it to have standing as an Association on behalf of its member(s), it must demonstrate some of its member(s) would have standing.

As to Ky Girl Hemp, LLC, the KDA argues that since she is not a licensee of the KDA's program, and does not need to be as a retailer, she lacks standing as well. The KDA also states that it has not conducted any raids, and that it neither directed nor could direct the KSP to do so. Consequently, the KDA (emphasizing that Rocky Ridge Hemp, LLC, abandoned its license) argues the KHA lacks standing to bring suit on behalf of its members. The KDA also challenges the KHA's contention that it has direct standing resulting from reduced convention exhibitor registrations. According to the KDA, that is insufficient for standing and, if it otherwise were sufficient, the testimony Plaintiffs presented from Tate Hall concerning that claim is insufficient and mere hearsay.

Finally, the KDA asserts that, if the Court reaches the merits, it should find Delta-8 THC is not exempt. The KDA insists that applying the statutory exemption for hemp to Delta-8 THC would lead to an absurd result because Delta-8 is a derivative of a derivative, and only so by use of additives.

Plaintiffs, in their Reply to the KDA, point to another member other than Rocky Ridge Hemp, LLC, as being injured by the KDA Letter and related actions. Specifically, the KHA points to Commonwealth Extracts as holding a processor's license and having taken concrete steps to process and produce Delta-8 THC from hemp. According to the KHA, Commonwealth Extracts discontinued those efforts solely because of the KDA Letter. In support, Plaintiff KHA presents an affidavit by John Taylor, a principal of Commonwealth Extracts. The affidavit further states that Commonwealth Extracts decided not to attend the KHA's 2021 conference for the same reason.

In their Reply to KSP, Plaintiffs argue that KSP's "own testimony" and affidavits "are more than sufficient to establish Plaintiffs' standing." Plaintiffs insist that KSP has made its intention clear by both testimony and action, namely: that KSP has and will take enforcement

action against anyone possessing Delta-8 THC. According to Plaintiffs, the law does not require that they wait until they are prosecuted with a felony to seek redress. Thus, Plaintiffs assert, they have standing.

As to KSP's contention that Delta-8 THC is not exempt, or otherwise should be deemed an analogue, Plaintiffs reiterate and expand upon their arguments presented in their Response to KSP's Motion.

c. KDA's Motion for Summary Judgment

The KDA reiterates that Rocky Ridge Hemp, LLC, abandoned its licenses. Thus, it cannot claim to be either a grower or processor. The KDA states that, although it previously withdrew its motion to dismiss, the KDA now reasserts that Plaintiffs lack standing. The KDA also reiterates and expands its argument that this Court should rule Delta-8 THC should not be exempt under the statutory exemptions.

Plaintiffs, in their Response, point to additional members of the KHA that they purport are licensees and are injured by the KDA's actions. Plaintiffs also respond that, because the statutory exemption is plain on its face, that ends the Court's analysis.

In its Reply, the KDA contends the KHA has no members that could have standing, despite its attempt to present others beside Rocky Ridge Hemp, LLC. According to the KDA, it requested that information from the KHA in discovery three different times but the KHA refused, and thereafter never supplemented its discovery responses. And, pursuant to an Order agreed to by the parties, the deadline for discovery had closed months prior.

III. ANALYSIS

Although all Motions were brought pursuant to CR 56, the Court conducted an evidentiary hearing where all parties had opportunity to present evidence supporting their claims or defenses. Plaintiffs and the KDA have acknowledged in their memoranda that the evidentiary

hearing was tantamount to trial on the merits and that all evidence has been presented. Thus, they both agree that, despite the characterization of their Motions, CR 56 is not the appropriate standard. Prior to the evidentiary hearing, all parties but KSP agreed that it should constitute the trial for final judgment rather than temporary injunctive relief. Consequently, the matter was left open for further formal presentation of evidence or trial, and discovery deadlines were set accordingly. However, KSP has neither requested an additional trial, nor presented any questions that require the presentation of additional evidence for the Court to resolve. Consequently, this Court declines to act under CR 56 but is entering final judgment with findings of fact on the merits based upon the evidence presented.

a. Standing

Pursuant to § 112(5) of the Kentucky Constitution, “[t]he Circuit Court shall have original jurisdiction of all justiciable causes not vested in some other court.” To have standing to sue, the cause of action must be justiciable. Kentucky’s appellate Courts have defined standing by the following three requirements: “(1) injury, (2) causation, and (3) redressability.” *Commonwealth Cabinet for Health and Family Services v. Sexton*, 566 S.W.3d 185, 196 (Ky. 2018). “A plaintiff must allege personal injury fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested relief.” Further, the “litigant must demonstrate that it has suffered a concrete and particularized injury that is either actual or imminent.” *Id.*³ That is, “the injury must be . . . ‘distinct and palpable,’ and not ‘abstract’ or ‘conjectural’ or ‘hypothetical.’” *Id.* “The injury must be ‘fairly’ traceable to the challenged action, and relief from the injury must be ‘likely’ to follow from a favorable decision.” *Id.*

³ Internal citations omitted.

The Court finds that Plaintiffs lack standing as to their claims against the KDA. The KDA has demonstrated none of the Plaintiffs are licensed by the KDA as processors with an intention to produce Delta-8 THC. Consequently, none of the Plaintiffs can demonstrate that the KDA's Letter or its actions have put their license or businesses in jeopardy. Initially, Rocky Ridge Hemp, LLC, was the KHA member that it relied upon for this purpose. Apparently, however, they have since called it quits. Although the KHA has pointed to other members that might otherwise have had standing—as the KDA points out—the KHA is doing so after having refused to disclose this before the close of discovery. The KHA's claim that it has direct standing due to loss of convention participation also fails. That potential participants declined to attend because of the KDA's position on Delta-8 is attributable to the decisions of those participants, which may not necessarily be solely due to the KDA's actions. Even if the KHA is correct that it had a bearing on the participants' decision, it is not “a concrete and particularized injury that is either actual or imminent,” nor is it “distinct and palpable.” Rather, it is more “abstract” or “conjectural.”

However, as to KSP, Plaintiffs do have standing. Both Ky Girl Hemp, LLC and the KHA have adequately demonstrated a justiciable cause as to their claims against KSP. The KHA membership includes a population of persons beyond those licensed by the KDA. It has demonstrated that among its membership are persons that not only are under threat of potentially being raided by the KSP, at least one of its members has been. Further, Ky Girl Hemp, LLC, who is also a member of the KHA, testified she threw out \$15,000 in inventory to keep from being raided and criminally charged with a felony. These are “concrete and particularized” injuries that are “either actual or imminent,” as well as “distinct,” and “palpable,” and that are traceable to the actions of KSP.

Turning to KSP's argument that Plaintiffs cannot obtain an adequate remedy against KSP without naming a higher executive or enforcement officer, the Court disagrees. The issue here is not the constitutionality of a statute or its enforcement. Rather, KSP has acted upon its own determination that Delta-8 THC is not exempt despite the plain text of the hemp exemption statutes. Further, KSP has engaged in criminal enforcement and prosecution on the basis of its own interpretation—and that of the KDA Letter—and argues it should have power to continue doing so. It is undisputed that, in its determination and actions, KSP was not following the direction or decree of a higher executive office. Nor is it enforcing a statute enacted by the General Assembly. Consequently, a remedy would not require the naming of the Constitutional enforcement authority.

“It goes without saying that a person who is injured or prejudiced by an unconstitutional law can complain of it.” *Akers v. Floyd Cnty. Fiscal Ct.*, 556 S.W.2d 146, 149 (Ky. 1977) (internal citations omitted). It likewise goes without saying that a person injured or prejudiced by enforcement actions taken by a police agency can complain when the agency does so on its own volition.

For all the foregoing reasons, the Court finds Plaintiffs have standing as to their claims against the KSP.

b. Statutory Hemp Exemption and Delta-8 THC

The central question is whether, under the law, Delta-8 THC is prohibited or exempted by duly enacted legislation. In its Motion, KSP acknowledges the statutes exempt hemp containing less than 0.3 percent Delta-9 THC but then states that “[t]here is no such exemption for delta-8 [THC].” This, however, mischaracterizes the hemp legislation as if it exempts Delta-9 THC. Rather, as is clear by the text, the statute does the reverse. All hemp is exempted except that containing Delta-9 THC in quantities greater than 0.3 percent on a dry weight basis. And in

defining what is exempted as hemp, KRS 260.850(5) is unmistakably broad, reciting that the exemption includes “the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and *all* derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent”⁴ The only real question is whether Delta-8 THC is a derivative of hemp.

Dr. Lewis Jackson testified as an expert for Plaintiffs. Dr. Jackson holds a B.A. and Ph.D. in Chemistry and has experience in the cannabis industry. Dr. Jackson explained the process involved in producing Delta-8. The process of extraction, he explained, is performed through chemical reactions. He testified that the first step in producing Delta-8 is to extract CBD. This is done by separating the flower, drying it, grinding it and applying an organic solvent (such as oil) to solubilize the cannabinoids for extraction from the plant material. Then, from resulting CBD, whether as a crude extract or isolate, the CBD is solubilized again with what he termed a friendly organic solvent to liquify the material and induce further reactions to derive or extract Delta-8. Dr. Jackson testified that the resulting Delta-8 is a derivative of CBD, which is a derivative of hemp. Dr. Jackson testified that Delta-8 is not Delta-9 and that, in fact, Delta-8 can contain concentrations of Delta-9 THC. The concentrations may be greater or less than 0.3% Delta-9 THC, which is what determines whether it is exempt under the statute.

KSP also contends that because Delta-8 THC is a derivative of a derivative, it is a synthetic creation and not a derivative of hemp. Again, the Court disagrees. In a recent federal decision, the 9th Circuit U.S. Court of Appeals addressed the very question of whether Delta-8 THC is exempted as a derivative of hemp, holding in relevant part as follows:

⁴ Emphasis added.

When engaging in statutory interpretation, ‘we start where we always do: with the text.’ As we explain further, the plain and unambiguous text of the Farm Act compels the conclusion that the delta-8 THC products before us are lawful. . . .

. . .

Importantly, the only statutory metric for distinguishing controlled marijuana from legal hemp is the delta-9 THC concentration level. In addition, the definition extends beyond just the plant to “all derivatives, extracts, [and] cannabinoids.” 7 U.S.C. § 1639o(1). The use of “all” indicates a sweeping statutory reach. . . .

. . .

Clear statutory text overrides a contrary agency interpretation.

AK Futures LLC v. Boyd Street Distro, LLC, 35 F.4th 682, 690-91 (9th Cir. 2022).⁵

Based upon the evidence provided, and in accord with the foregoing persuasive authority, this Court finds that Delta-8 THC is a derivative of CBD, which is a derivative of hemp and that, consequently, Delta-8 THC is a derivative of hemp pursuant to KRS 260.850(5).

As to KSP’s argument that Delta-8 THC should be deemed prohibited as an analogue, the Court disagrees. As Plaintiffs point out, the hemp exemption statutes are specific whereas the analogue prohibitions are broad and general. Therefore, the specific controls. *Commonwealth v. Phon*, 17 S.W.3d 106, 107 (Ky. 2000). The text of the hemp statutes clearly exempt “the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and *all* derivatives”⁶ so long as they do not contain Delta-9 THC in quantities greater than 0.3 percent on a dry weight basis. Further, KRS 260.858(1) provides that: “***Notwithstanding any other provision of law to the contrary***, it is lawful for a licensee, or his or her agent, to cultivate, handle, or process

⁵ Internal citations omitted.

⁶ Emphasis added.

hemp or hemp products in the Commonwealth.”⁷ Clearly, the definition of hemp includes *all* derivatives, extracts and isomers.

c. Proper Role of Judiciary

Although the foregoing findings are sufficient to end the analysis, the assertions by both Defendants that this constitutes judicial overreach should also be addressed. Because the KDA will be dismissed as a party, the Court will address only those arguments presented by KSP. On this, KSP complains that “Plaintiffs urge the Court to . . . legislate from the bench a declaration that such an unregulated substance is legal.”⁸ At the outset, the Court notes that it is not regulation that makes a substance legal. Substances are not presumptively illegal because they are unregulated. On the contrary, regulation typically curtails access and use of a substance. The fact that it is unregulated indicates that agencies may not take adverse actions much less prosecute persons as if it had been prohibited by law. Apparently, Defendants miss the irony that it is their own argument—*i.e.*, that the Court should find Delta-8 THC to be illegal on grounds of public safety—that seeks legislation on policy from the bench.

Further, according to KSP:

[T]his is an issue that is properly rectified—one way or other—by the General Assembly. Amendment of the relevant Kentucky Revised Statutes will dispose of this issue one way or another in a way that is applicable to all state and local law enforcement agencies tasked with enforcing Kentucky Statutes. Declaratory judgment is therefore not proper.⁹

To paraphrase this more directly: the Court should wait for the General Assembly to act but, in the meantime—or if it chooses not to act at all—KSP should be allowed to continue prosecuting individuals as if the legislature had. There are several problems with this reasoning.

⁷ Emphasis added.

⁸ KSP Resp., p. 12.

⁹ KSP Resp., p. 7.

First and foremost, before a person can be criminally prosecuted, the purported offense must be prohibited by law. And if prohibited, the prohibition must be enacted in language that is clear. Throughout history, that standard has been central to all systems that prize justice and due process. “[N]o penal law can be sustained unless its mandates are so clearly expressed that any ordinary person can determine in advance what he may and what he may not do under it.” *Louisville & N.R. Co. v. Commonwealth*, 35 S.W. 129, 130 (Ky. 1896). Therefore, making this determination is not only the province, but the duty, of the Courts.

Secondly, punishment cannot be imposed without an adjudication of guilt in a forum that provides an accused due process of law. Just as Courts must not allow prosecutions under an unconstitutional statute¹⁰, they may not allow prosecution of purported “crimes” that are not based upon law duly enacted by the General Assembly. “To punish a person because he has done what the law plainly allows him to do is a due process violation ‘of the most basic sort.’” *U. S. v. Goodwin*, 457 U.S. 368, 372 (1982). Thus, subjecting citizens to raids and prosecution for what is not plainly prohibited by law—but rather has been plainly authorized and exempted by law passed by the legislative body according to the Constitution—constitutes serious injury. And for redress, pursuant to § 14 of the Kentucky Constitution, “[a]ll courts shall be open, and every person for an injury . . . shall have remedy by due course of law, and right and justice administered without sale, denial or delay.”

Thirdly, the deadlines in this case were continued because the General Assembly was purportedly considering whether to amend its statutory hemp exemption. The General Assembly chose to keep the hemp exemption as it stands.

¹⁰ “An unconstitutional statute is void ab initio. Any statute or ordinance passed in contravention of the Constitution is without force or effect, and any action had or taken under such ordinance or statute is a nullity.” *City of Henderson v. Liebe’s Ex’r*, 192 S.W. 830, 831 (Ky. 1917).

Courts adjudicate based upon the law. If only *natural* hemp (that is, unadulterated by any chemical) is worthy of exemption, then Congress, and the General Assembly, could have made their statutes say so. They did not. Likewise, if the extraction or production of derivatives using non-hemp solvents should have remained a controlled substance, then the legislators could have, by statute, said so. They did not. Nor did the legislative body choose to limit Delta-8 THC concentrations as it did with Delta-9. Again, they could have but did not. Courts “cannot question the wisdom or policy of the general assembly” but, rather, “must follow the plain provisions of its enactment” *Boyd v. Land*, 97 Ky. 379, 30 S.W. 1019, 1020 (1895). In applying the law, courts must “look first to the language of the statute, giving the words their plain and ordinary meaning.” *Richardson v. Louisville/Jefferson Cty. Metro Gov’t*, 260 S.W.3d 777, 779 (Ky. 2008). Where intent is suggested that is contrary to the language of the statute, “legislative intent is at best a nebulous will-o’-the-wisp.” *Gateway Const. Co. v. Wallbaum*, 356 S.W.2d 247, 249 (Ky. 1962).

It is clear from the testimony presented that the agents and officers who testified have the best of intentions. But there are many harmful things offered to the public that may injure them physically, mentally, or morally. Regardless of that fact, however, no agency or officer can prohibit possession or distribution without legislative enactment. There is a reason our system does not allow those charged with enforcing the law to also make the law.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs’ Complaint against Defendant Kentucky Department of Agriculture Commissioner Ryan Quarles is **DISMISSED with prejudice** in that the Court finds Plaintiffs lack standing and that, consequently, the **DECLARATORY RELIEF** Plaintiffs sought as to Defendant Kentucky Department of Agriculture Commissioner Ryan Quarles is **DENIED**.

DECLARATORY JUDGMENT IS FURTHER HEREBY ENTERED in favor of Plaintiffs against Kentucky State Police Commissioner Colonel Phillip Burnett, Jr., and **DECLARATORY RELIEF** is **GRANTED**, and that, consequently, the Court finds, adjudicates and Orders that Delta-8 tetrahydrocannabinol, as a derivative of Hemp, and any products that contain Delta-8 tetrahydrocannabinol are legally compliant Hemp pursuant to KRS 260.850(5) and 7 U.S.C. 1639o(1) so long as the same contain a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

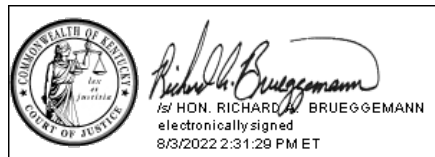
JUDGMENT IS FURTHER HEREBY ENTERED in favor of Plaintiffs and **PERMANENT INJUNCTIVE RELIEF** is **GRANTED** against Kentucky State Police Commissioner Colonel Phillip Burnett, Jr., in that Defendant Colonel Phillip Burnett, Jr., in his official capacity as Commissioner of the Kentucky State Police, as well as its officers, agents, and other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are **PERMANENTLY ENJOINED** from instituting or continuing any criminal enforcement action on the basis of legally compliant Hemp (*i.e.*, the plant *Cannabis sativa* L. with a Delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis), as well as any part of that plant that is compliant (*i.e.*, that has a Delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis), including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, provided none of those materials have a Delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis; this includes any products that contain Delta-8 tetrahydrocannabinol unless the same contain a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis.

IT IS FURTHER HEREBY ORDERED that Kentucky State Police Commissioner Colonel Phillip Burnett, Jr.'s Motion for Summary Judgment is **DENIED**.

There being no just cause for delay in the entry of this Judgment, this Judgment is final and appealable.

The Clerk shall serve notice of entry hereof in accordance with CR 77.

IT IS SO ORDERED.



**JUDGE RICHARD A. BRUEGGEMANN
BOONE CIRCUIT COURT**

CC: ALL COUNSEL AND PARTIES OF RECORD.

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