

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY**

TENNESSEE GROWERS COALITION,)
SAYLOR ENTERPRISES LLC d/b/a)
CBD PLUS USA,)
GOLD SPECTRUM CBD LLC,)

Plaintiffs,)

v.)

TENNESSEE DEPARTMENT OF)
AGRICULTURE)

Defendant.)

Case No. _____

JURY TRIAL DEMANDED

VERIFIED COMPLAINT
FOR EMERGENCY INJUNCTIVE
AND DECLARATORY RELIEF

Come now the Plaintiffs, Tennessee Growers Coalition, Saylor Enterprises LLC d/b/a CBD Plus USA, and Gold Spectrum CBD LLC and for their Complaint would show as follows:

INTRODUCTION

1. The Tennessee Uniform Administrative Procedures Act (“TUAPA”) forbids an agency from enacting emergency rules “based upon the agency’s failure to timely process and file rules through the normal rulemaking process.” Tenn. Code Ann. § 4-5-208(e). That is exactly what happened here.

2. Here, the Tennessee Department of Agriculture (the “Department”) had more than a year to promulgate final rules related to hemp products. Because it wasted time, it called its own delay an “emergency” and promulgated so-called “Emergency” Rules without notice, comment, or any of the other required rulemaking

procedures. The resulting rules are therefore “void and of no effect” as a matter of law. Tenn. Code Ann. § 4-5-216.

3. As a result, the Plaintiffs seek an order from the Court declaring that the Emergency Rules were issued in a manner contradictory to the TUAPA and void and without effect. This issue presents a pure question of law, not of fact.

PARTIES

4. Tennessee Growers Coalition is a non-profit, non-partisan political action committee headquartered in Hendersonville, Tennessee. It represents 55 members, the majority of which manufacture, distribute, or sell hemp-derived products that are impacted by the Emergency Rules.

5. Saylor Enterprises LLC d/b/a CBD Plus USA is a Tennessee limited liability company that has a principal office in Piney Flats, Tennessee. It sells hemp and hemp-derived products to consumers through multiple locations in Tennessee.

6. Gold Spectrum CBD LLC is a Tennessee limited liability company with a principal office in Gray, Tennessee. It manufactures, wholesales, distributes hemp-derived products to distributors and retails, in addition to selling such products to consumers at retail locations.

7. Defendant Tennessee Department of Agriculture is an executive branch agency for the State of Tennessee located at 440 Hogan Road, Nashville, TN 37220. The Department is sued pursuant to Tenn. Code Ann. § 4-5-225(a), which states that “the agency shall be made a party to the suit.” The Department may be served with process at P.O. Box 20207, Nashville, TN 37202.

JURISDICTION

8. This Court has subject matter jurisdiction over this case pursuant to Tenn. Code Ann. §§ 1-3-121, 29-1-101, and 29-14-101.

9. This Court has personal jurisdiction over this cause pursuant to Tenn. Code Ann. §§ 16-11-102, 20-2-222, and 20-2-223.

10. This Court has jurisdiction to enter a declaratory judgment in this matter pursuant to Tenn. Code Ann. §§ 4-5-223, 4-5-224, and 4-5-225.

11. Venue is proper in this Court because Tenn. Code Ann. § 4-5-225(a) mandates that the petition be filed in Davidson County Chancery Court. Venue is further proper pursuant to Tenn. Code Ann. § 20-4-101(a).

FACTUAL ALLEGATIONS

A. Federal Law Legalized Hemp.

12. In December 2018, Congress passed and the President signed the Agriculture Improvement Act of 2018, otherwise known as the “Farm Bill,” codified in part at 7 U.S.C. § 1639o(1) (“2018 Farm Bill”).

13. The 2018 Farm Bill was significant for its removal of industrial hemp and hemp-derived products from Schedule I of the Controlled Substances Act, making “hemp” an ordinary (and legal) agricultural commodity. *See AK Futures LLC v. Boyd St. Distro, LLC*, 35 F.4th 682, 690 (9th Cir. 2022).

14. The legislation immediately opened opportunities for hemp derivative products to be manufactured, distributed, and sold throughout the country without restriction. Over the past five years, this market has flourished, generating an

estimated \$2.8 *billion* in revenue in 2023. See BRIGHTFIELD GROUP; DELTA-8 & EMERGING CANNABINOID MARKET SIZING; 2023, available at <https://pxl.to/9zaybq> (last accessed July 20, 2024).

15. Hemp is a versatile plant that belongs to the *Cannabis sativa* species. Depending on the variety, hemp generally contains trace amounts of delta-9-tetrahydrocannabinol (“Delta-9 THC”), which is one of the psychoactive compounds found in cannabis.

16. As defined by the 2018 Farm Bill, 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 [THC] concentration of not more than 0.3 percent on a dry weight basis.” 7 U.S.C. § 1639o(1).

B. Tennessee Law Legalized Hemp.

17. After the 2018 Farm Bill passed, the State of Tennessee changed its laws to align with the new federal hemp laws.

18. Specifically, in 2020, the Tennessee General Assembly passed, and the Governor signed, SB 357, which became Tenn. Code Ann. § 43-27-101 *et seq.* The new law defined “hemp” in the same exact manner as Congress had in the 2018 Farm Bill. See Tenn. Code Ann. § 43-27-101 (3); *cf.* 7 U.S.C. § 1639o(1).

19. From 2020 to 2022, there were no other regulations or restrictions placed on the sale or distribution of hemp or hemp-derived products in Tennessee.

20. But that changed on May 11, 2023, when the Tennessee General Assembly passed, and the Governor signed, a comprehensive set of statutes aimed at “regulat[ing] the sale and distribution of products containing hemp-derived cannabinoids.” Tenn. Code Ann. § 43-27-201.

21. The law, introduced as SB 378, defined a new category of products distinct from the hemp plant called “Hemp-derived cannabinoid[s].” Tenn. Code Ann. § 43-27-202(2).

22. Although Tennessee lawmakers did not change the legality of HDC products, they placed extensive restrictions on their manufacture and sale. For example, SB 378 prohibited the sale of HDC products to anyone under the age of 21, Tenn. Code Ann. § 43-27-203, promulgated retail display requirements, *id.* at § 43-27-204, crafted licensing requirements for manufacturers and retailers, *id.* at § 43-27-206, set packaging requirements, *id.* at § 43-27-209, mandated warning labels, *id.*, and established testing criteria, *id.* at § 43-27-207, among other things.

23. Some of these statutory requirements took effect in July 2023, while others went into effect in July 2024. *Compare* Tenn. Code Ann. §§ 43-27-202, 203(b)-(e), 204, 67-6-232 (took effect in July 2023), *with* Tenn. Code Ann. §§ 43-27-201, 203(a), 205-211 (took effect in July 2024).

24. In addition to regulating the manufacture and sale of HDC products, Tennessee lawmakers chose to tax them, as well. Tenn. Code Ann. § 67-6-232. Starting in July 2023, retailers were required to remit to the state a tax of 6% of the sales price of an HDC product. *Id.*

C. The Hemp Statute Required the Department to Promulgate Rules.

25. The 2023 hemp statute charged the Department with broad oversight and responsibility in the regulation of HDC products. Tenn. Code Ann. §§ 43-27-205(a) and 43-27-211.

26. Specifically, the General Assembly required the Department to have its rules in place by July 1, 2024. Tenn. Code Ann. § 43-27-206. This was nearly 14 months after the legislation was signed into law.

27. But the Department dragged its feet. The Department initially set out to promulgate its rules by the July 1 statutory deadline. To that end, on December 14, 2023, the Department submitted proposed rules for notice and comment. *See Exhibit A, 2023 Proposed Rules* (“Proposed Final Rules”).

28. Less than two months later, on February 6, 2024, the Department held a heavily attended public hearing about the Proposed Final Rules, where hundreds of hemp industry members provided public comment, criticism, and feedback.

29. This is how rulemaking is supposed to work. And, as best Plaintiffs know and believe, the Department then began the process of reviewing public comment, so that it could publish its Final Rules by May 1, 2024, so that they would be effective by the July 1, 2024 deadline.

30. In other words, the Department had three full months to take the Proposed Final Rules it drafted and prepare them for final release. It failed to do so.

D. The Department Abandoned the Normal Rulemaking Process.

31. Rather than issue the Proposed Final Rules based on the lengthy and public process it started the prior year, the Department abandoned the rulemaking process, and no final rules were promulgated following the public hearing.

32. Instead, on June 28, 2024, the Department published purported “Emergency” Rules to try to establish a licensing program for retailers and suppliers of HDC products by the July 1, 2024 deadline. *See* Tenn. Comp. R. & Regs. 0080-10-01-.01, *et seq.* (the “Emergency Rules,” attached as Exhibit B).

33. The Department claimed that Tenn. Code Ann. § 4-5-208 permitted it to promulgate and publish the Emergency Rules in this manner. *See* Exhibit B at 1.

34. Although the purported Emergency Rules did not require public comment, a hearing, or any of the statutorily mandated review processes, *see* Tenn. Code Ann. § 4-5-201 *et seq.*, they are still “rules” as defined by the TUAPA. *See* Tenn. Code Ann. § 4-5-102(12).

35. In normal circumstances, “[t]he TUAPA requires a state agency in Tennessee to follow uniform procedures when making rules.” *Abdur’Rahman v. Bredesen*, 181 S.W.3d 292, 311 (Tenn. 2005) (citing Tenn. Code Ann. § 4-5-201 *et seq.*). These detailed procedures govern public hearings on the content of proposed rules, the conduct of those hearings, approval of the rules by the Attorney General, filing of the rules with the Secretary of State, and publication in the administrative register. *See* Tenn. Code Ann. § 4-5-201 *et seq.*

36. None of that happened here. By publishing rules where there was no cognizable emergency that permitted them to be enacted in this manner, the Department violated the TUAPA, specifically Tenn. Code Ann. § 4-5-208(e).

37. That section of the TUAPA forbids an agency from enacting emergency rules “based upon the agency’s failure to timely process and file rules through the normal rulemaking process.” Tenn. Code Ann. § 4-5-208(e).

E. The Emergency Rules Prove the Lack of an Emergency.

38. In the “Statement of Necessity” for the Emergency Rules, the Department claimed that the rules were enacted pursuant to Tenn. Code Ann. § 4-5-208(a)(5). *See* Exhibit B at 1.

39. This subsection of the TUAPA allows an agency to enact emergency rules if the agency “is required by an enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of rulemaking procedures described elsewhere in this chapter for the promulgation of permanent rules.”

40. But was not the case here. The Department had 14 months to promulgate rules to create the hemp licensing program, and it provided no explanation for why it had it failed to timely process and file the rules to do so through the normal rulemaking process in the prior 14 months.

41. By the Department’s own admission, the Emergency Rules were not enacted in the face of any actual emergency. Most notably, many of the so-called Emergency Rules will never go into effect.

42. This is clear because, elsewhere in the “Statement of Necessity,” the Department states:

“Under this rule the department also provides notification of regulatory requirements *that are anticipated* if the current statute continues past expiration of this emergency rule set. The requirements below, e.g., *will not be effective prior to January 1, 2025.*”

(Emphases added.)

43. Nowhere did the Department explain why it had to publish rules on an emergency basis that did not go into effect for at least six months.

44. Nor did the Department explain how the rules that “will not be effective prior to January 1, 2025” could *ever* be effective when the Emergency Rules themselves expire 180-days later, on December 25, 2024. *See Exhibit B at 1; see also Tenn. Ann. Code § 4-5-208(b).*

45. The Department also made clear that the Emergency Rules are far from purely advisory. Even though the Department acknowledged many of the rules were not in effect, it still announced its intent to use the Emergency Rules in a manner that would greatly impact Plaintiffs’ businesses and many others:

“*Despite* these requirements *not being enforceable* prior to January 1, 2025, the department will conduct inspection surveys with licensed firms for all provisions under statute and these rules, including product testing, for purposes of *education and outreach* re[garding] all potential future HDC product requirements.”

(Emphases added.)

46. “Education and outreach” are not valid reasons to enact Emergency Rules under the TUAPA, nor is providing notice of what the “anticipated” future rules might be.

47. As a final twist, the Department has said publicly that, although the Emergency Rules went into effect on June 28, 2024, they would not be enforced until October 1, 2024. *Hemp-Derived Cannabinoids*, Tenn. Dep’t. of Agriculture, at <https://www.tn.gov/agriculture/businesses/hemp/hemp-derived-cannabinoids.html> (last accessed Sept. 6, 2024) (“We will begin enforcement of license requirements on **October 1, 2024.**”) (emphasis in original).

48. This three-month enforcement delay further shows that there was no emergency; the Department simply chose the path of least resistance to issue the rules it preferred—absent any involvement from the public. This violates the TUAPA.

CAUSE OF ACTION

COUNT ONE

(Unlawful Rulemaking – Violation of Tenn. Code Ann. § 4-5-225(c))

49. Plaintiffs incorporate each and every preceding paragraph as if restated in full.

50. This Court must declare the challenged rules invalid because the Emergency Rules violate constitutional provisions, exceed the statutory authority of the agency, were adopted without compliance with the rulemaking procedures provided for in this chapter, and otherwise violate state or federal law.

51. The TUAPA provides that “[a]n agency’s finding of an emergency pursuant to this section shall not be based upon the agency’s failure to timely process and file rules through the normal rulemaking process.” Tenn. Code Ann. § 4-5-208(e).

52. From the time SB 378 was approved in May 2023, the Department had nearly 14 months to promulgate rules by July 1, 2024, as the legislation directed. *See* Tenn. Code Ann. § 43-27-211.

53. The Department undertook the traditional rulemaking process, drafted Proposed Final Rules, and held the required public hearing in February 2024. This process drew thousands of comments and hundreds of hearing attendees.

54. Instead of completing the normal rulemaking process, the Department enacted the purported “Emergency” Rules three days before the statute required them to have permanent rules in place.

55. When the Department published the Emergency Rules on June 28, it did so because it abandoned the normal rulemaking process it previously started. That makes the Emergency Rules void.

56. “Any agency rule not adopted in compliance with [the TUAPA] shall be void and of no effect and shall not be effective against any person or party nor shall it be invoked by the agency for any purpose.” Tenn. Code Ann. § 4-5-216.

57. The Emergency Rules were not adopted due to a valid emergency, as defined by Tenn. Code Ann. § 4-5-208(a), that would permit the Department to proceed without prior notice or hearing.

58. The nearly 14 months the Department had to enact rules in no way “preclude[d] utilization of rulemaking” as would require emergency measures. Tenn. Code Ann. § 4-5-208(a)(5).

59. A court should declare rules invalid if it finds the rule “was adopted without compliance with the rulemaking procedures” contained in the TUAPA. Tenn. Code Ann. § 4-5-225(c).

60. The Department’s Emergency Rules were promulgated in an “emergency” fashion because of the agency’s own failure to timely process and file rules through the normal rulemaking process, a task it had already spent nearly a year undertaking.

61. The Emergency Rules are void and without effect because they were promulgated pursuant to adopted in a manner that violates the TUAPA. Tenn. Code Ann. § 4-5-216.

62. The potential for immediate enforcement of facially void rules that the Department itself has admitted are not enforceable until January 1, 2025, poses an immediate risk of irreparable harm to Plaintiffs.

63. The sole issue is whether the Emergency Rules are void and without effect as a matter of law. The exhaustion of an administrative remedy is not required when, as here, the party seeking judicial review presents questions of law rather than questions of fact. For this reason, Plaintiffs were not required to petition the agency for a declaratory order to satisfy the exhaustion requirement.

64. In any event, the Department has not promulgated any procedures for petitioning the agency for a declaratory order. Therefore, the exhaustion doctrine does not apply.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request:

a. A declaratory order that the Department's Emergency Rules are void and without effect as a matter of law.

b. A declaratory order that the Department's Emergency Rules are unenforceable against Plaintiffs.

c. The Court hold a consolidated hearing on the merits pursuant to Tenn. R. Civ. P. 65.04(7);

d. Enter a temporary restraining order and temporary injunction prohibiting the Department from enforcing, administering, or otherwise utilizing the Emergency Rules in any manner;

e. Enter a preliminary and permanent injunction enjoining the Department from enforcing or utilizing the Emergency Rules in an manner;

f. Waive the requirement for bond or set bond in a reasonable manner;

g. Award Plaintiffs' damages, costs, and reasonable attorneys' fees incurred in this action;

h. Grant such other relief this Court determines is just and proper.

Dated: September 6, 2024

Respectfully submitted,

/s/ Alex Little

J. Alex Little (TN BPR #29858)

Zachary C. Lawson (TN BPR #36092)

John R. Glover (TN BPR #37772)

Litson PLLC

54 Music Square East, Suite 300

Nashville, Tennessee 37203

Telephone: 615-985-8205

alex@litson.co

zack@litson.co


jr@litson.co

Attorneys for Plaintiffs

VERIFICATION

I, Kelley Hess on behalf of plaintiff Tennessee Growers Coalition, declare under penalty of perjury under the laws of the State of Tennessee that I have read the foregoing Verified Complaint, including all attachments and exhibits. I declare that the facts stated in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief.

Pursuant to Tenn. R. Civ. P. 72, I declare under penalty of perjury under the laws of the State of Tennessee that the foregoing is true and correct.

DocuSigned by:

800FB4E372284CE...

KELLEY HESS
o/b/o Plaintiff Tennessee Growers Coalition

Executed this 6th day of September, 2024.