

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

CAPITOL HEMP, LLC

Plaintiff,

v.

DISTRICT OF COLUMBIA

Defendant.

Case No.: 2025-CAB-003730

Judge: Julie Becker

PLAINTIFF'S EMERGENCY REPLY TO DEFENDANT'S OMNIBUS OPPOSITION
AND CROSS-MOTION

Plaintiff Capitol Hemp LLC submits this emergency reply to correct factual misstatements and legal errors in Defendant's omnibus opposition and cross-motion to dismiss.

The District contends that Plaintiff's claims are hypothetical, not ripe, and unsupported, but the record shows credible threats, repeated enforcement, and a statutory void that makes relief not only appropriate but necessary.

A. Balance of Equities

1. Defendant contends that the proposed injunction would "insulate Plaintiff from health and safety regulations."
 - a. Yet Defendant has presented no evidence — because none exists — that any product sold by Plaintiff is unsafe.
 - i. There have been no complaints, allegations or findings of unsafe products.
 - ii. **Every product sold by Plaintiff is federally-legal, manufactured in a state with an established regulatory regime, and is accompanied by a certificate of analysis, available via QR code, at the point of sale.**
 - b. The District's failure to enforce in and of itself demonstrates that there is no countervailing public safety interest to weigh against the immediate harm to Plaintiff. If a genuine health emergency existed, Defendants would have acted long ago.
2. Defendant also contends that the injunction would "bar it from taking enforcement actions without a proper legal basis."

- a. In fact, that is precisely the issue in dispute: whether these enforcement actions rest on lawful authority.
 - i. Plaintiff does not seek to prevent investigation or enforcement under a valid statutory regime.
 - ii. Plaintiff seeks only to prevent padlocking and shutdown orders imposed without lawful authority, training, or codified standards.
 - iii. The District has no statutory or regulatory framework addressing hemp-derived products.
 - iv. Its actions rest only on its misclassification of lawful hemp as unlawful cannabis.
- b. This is precisely the unlawful enforcement activity injunctive relief is designed to prevent.

B. Imminent Irreparable Harm

3. Irreparability

- a. Defendant points to cases holding that economic and reputational harms can sometimes be remedied through damages, but those rulings ignore the context and circumstances that make this case fundamentally different.
- b. Under the District's own procedures, even if everything proceeds without delay, a business padlocked remains closed for a minimum of fifteen days before any relief is even possible.
- c. Even then, because the administrative board cannot resolve the underlying legal question – whether the District has any lawful basis to regulate hemp-derived products as cannabis – **availability of that process neither eliminates nor mitigates the irreparable harm.**
- d. Irreparability here is not simply economic loss – it is the culmination of a business stigmatized and destabilized by repeated threats and arbitrary enforcement, with ongoing governmental hostility amplifying and intensifying the harms in ways that money cannot repair.

4. Imminence

- a. **The District's insistence that there is no imminent threat of enforcement is untenable.**
 - i. But for repeated threats of enforcement communicated directly to organizers of the National Cannabis Festival, Capitol Hemp would not have aborted its plans to operate a sales booth on July 18-19.
 - 1. While characterized by counsel as "informal" because they were primarily oral, relayed second- or third-hand, and sensitive to

confidentiality concerns, the circumstances do not diminish their weight.

2. The threats were **credible, repeated, heard by multiple people, and conveyed with increasing urgency up to the eve of the festival.**
 3. At the moment Plaintiff was handing over final payment to the festival organizer, Plaintiff was again told that District officials were still asserting their intent to enforce, including arrest, on the grounds of the festival, specifically against hemp, regardless of federal legality.
- ii. Prior to and following NCF, District agencies and officials are on record, in public and private contexts, stating intent to shut down the City's only four dedicated hemp retailers.
1. After the enforcement action at and arrests made at Potomac Hemp, as one of those four and thus necessarily "similarly-situated" retailers, Plaintiff reasonably felt directly targeted.
 2. The District now tries to dismiss this as merely hypothetical, but that characterization is baseless: enforcement has already occurred; credible threats have already been made; and Plaintiff has already altered its business conduct to avoid further action.
- iii. This is not vague fear of enforcement - it is certain, impending and precisely why injunctive relief is necessary.
- b. For purposes of a hearing on injunctive relief, Plaintiff is prepared to show through affidavits, testimony, screenshots and other documentary evidence of repeated and widespread statements from officials at ABCA confirming intent to enforce against Capitol Hemp.**

C. Plaintiff Has Established Standing and Subject Matter Jurisdiction

5. The District argues Plaintiff lacks standing because it cannot prove an imminent threat of enforcement.
 - a. Plaintiff has already demonstrated that the threat of enforcement is both imminent and documentable.
6. Standing also requires injury-in-fact, causation, and redressability, each of which is satisfied here.
 - a. After two decades of lawful business operations, the District enforced against Plaintiff's operations as illegal, but with no explanation.

- b. Charges against Plaintiff ultimately were dropped, just days prior to hearing, without explanation, but dismissed without prejudice, also with no explanation.
- c. Defendant has explicitly reserved its right to enforce against Plaintiff on the same, unlawful basis.
- d. Plaintiff has complied with every requirement communicated by the District, and exhausted administrative remedies in good faith.
- e. Plaintiff's harm is not speculative: **challenging infractions and responding to credible threats of the intent to padlock its lawful business, in the context of selective and inconsistent enforcement, whether imminent or eventual, is a concrete and particularized injury, directly traceable to the District's unlawful enforcement practices.**
- f. Because declaratory relief would redress Plaintiff's injury, Plaintiff has standing to pursue this case in this forum.

D. Plaintiff States a Ripe, Cognizable Claim on Which Relief May be Granted

- 7. The District argues that the Plaintiff seeks an advisory opinion, seemingly ignoring the fact that Plaintiff has been subjected to baseless enforcement and threats of padlocking for more than a year.
 - a. The District has enforced, dropped charges without prejudice, asserted its right to enforce, has explicitly stated its intent to enforce, and has re-enforced against similarly-situated retailers.
 - b. Defendant has publicly and credibly asserted its enforcement right, and recently exercised that right against Potomac Hemp, a similarly-situated retailer.
 - c. In a city with only four dedicated hemp-only retailers, statements that the District intends to “shut down hemp stores” necessarily includes Capitol Hemp.
 - d. This is not pre-enforcement or speculative fear — it is a concrete and immediate controversy.
 - e. Defendant is in effect telling Plaintiff “wait until we padlock you” before seeking relief, yet Plaintiff's business has already been destabilized by inconsistent enforcement and credible threats.
- 8. Defendant contends there can be no controversy without knowing more about the particular products on Plaintiff's shelves, hypothesizing that there is a factual void.
 - a. Defendant seemingly ignores Plaintiff's repeated and consistent assertions – in pleadings and at the time of premise inspection – that every product it sells is federally-legal, manufactured in a state with an established regulatory regime, and is accompanied by a certificate of analysis, available via QR code, at the point of sale.

- b. The District's contention here belies the fundamental defect identified by the Superior Court in November, before Plaintiff had exhausted administrative remedies: **the District has no statutory or regulatory scheme governing hemp-derived products at all.**
 - c. Enforcement in the absence of a statutory scheme is unlawful, regardless of product type.
- 9. Defendant disregards Plaintiff's claims that uneven enforcement – asserting authority over “all cannabinoids,” while subjecting only independent hemp storefronts and alcohol licensees to enforcement – presents justiciable controversy.
 - a. Here too, Defendant seems to suggest that any controversy depends on the nature of the products Plaintiff sells, as compared to those sold by the already-padlocked hemp retailer or by national retailers and food markets.
 - b. Hemp-derived products remain openly available at many other businesses across the city, including national retailers, whose suppliers – like Plaintiff's – depend on consistent legal interpretation, especially with regard to the legality of a substance and products regulated differently on the federal and local levels.
 - c. **For purposes of a hearing on injunctive relief, Plaintiff is prepared to show through affidavits, testimony, and other documentary evidence of regulated products containing federally legal cannabinoids available for sale throughout the city at major retailers, and via affidavit from product suppliers who ship nationwide as to their interpretations of DC law due to the absence of a definition of or scheme for regulating hemp.**
- 10. Defendant makes various misstatements regarding Plaintiff's assertions and legal positions: suggesting that Plaintiffs are "arguing that the District cannot regulate the sale of hemp;" characterizing its lawsuit as "raising a single question regarding the District's definition of cannabis;" and labeling Plaintiff's argument as “untethered.”
 - a. Plaintiff has never challenged the District's right to regulate hemp, and in fact, has consistently encouraged the District to do so, lawfully and transparently.
 - b. Plaintiff's suit does not turn solely on whether the District's cannabis definition – which does not even include the word hemp – somehow also defines it and distinguishes it from medical marijuana, without any framework directing regulatory or licensing requirements.
 - c. In fact, the Court can consider Plaintiff's claim without reaching the issue of the definition, because Plaintiff's claim is not tethered to specific words.
 - d. Plaintiff's suit brings to light the absence of words, or of any statutory provision in the District Code defining or mentioning hemp or hemp-derived products, and is rooted in Plaintiff's lived history of enforcement actions, and continuing business uncertainty.

- e. Plaintiff seeks to establish its right to be free from enforcement for which no basis appears anywhere in statute or regulation.
11. The District falsely states that Plaintiff is not asserting any claim under District or federal law, and that declaratory relief would not conclusively resolve the controversy.
- a. Plaintiff's claim is clear: the District seeks to enforce a law that does not exist on its books, and Plaintiff is entitled to judicial resolution of that overreach.
 - b. Plaintiff has the right to be free from unjust, unsubstantiated, illegal, and statutorily baseless enforcement.
 - c. Judicial resolution of whether the District may padlock hemp businesses without statutory authority is precisely what will resolve the ongoing uncertainty and unlawful overreach.

E. Plaintiff Has a High Likelihood of Success on the Merits

12. Plaintiff recognizes the overwhelmingly high hurdle that applies to requests for emergency relief from government enforcement.
13. Ultimately, it is Plaintiff's likelihood of success on the merits that drives the decision, and in this instance, that showing is exceptionally strong.
14. The District's position – that it can lawfully enforce against products and businesses when the governing statute does not even contain the word “hemp” and also demand that the Plaintiff obtain a license for conduct it has not regulated, and cannot regulate, under its own code – defies common sense and the most basic principles of statutory interpretation.
15. That the District's approach effectively demands legal clairvoyance to anticipate unstated, nonexistent requirements is apparent to any reasonable observer.
16. Plaintiff is therefore likely to succeed on the merits, and emergency relief is warranted.

Plaintiff recognizes that the time between now and the scheduled September 12 hearing on this very matter is short already, in part due to procedural missteps. Nevertheless, the District was promptly placed on notice, Plaintiff's business was afforded some measure of protection, and the urgency of the dispute was crystallized.

Plaintiff has established irreparable harm, standing, a ripe and justiciable controversy, and a strong likelihood of success on the merits, and injunctive relief – whether temporary, preliminary or consolidated – is warranted, and Plaintiff is prepared to proceed immediately on the merits, within any schedule the Court deems appropriate.

Dated: **August 22, 2025**

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I certify that on August 22, 2025, I sent a copy of the foregoing via electronic mail to:

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