

3. This lawsuit seeks to enjoin Defendants from enforcing two statewide bans on the manufacturing, processing, distribution, and retail sale of smokable hemp products.

Background

4. Discovery should be conducted under a Level 3 plan, pursuant to Texas Rule of Civil Procedure 190.4.

5. Hemp, or *Cannabis sativa L.*, is a plant grown for industrial and commercial purposes that has been in use for thousands of years.



6. Unlike its psychoactive cousin marijuana, hemp has no psychoactive effects if ingested or inhaled. The plant contains many cannabinoids, which are naturally occurring chemicals in the hemp plant.

7. Hemp was banned in the United States until Congress passed the 2014 Farm Bill. More recently, in December 2018, President Trump signed into law the Agriculture Improvement Act of 2018, more commonly known as the 2018 Farm Bill. The 2018 Farm Bill made hemp an ordinary agricultural commodity and removed hemp from control under federal drug control laws, paving the way for a nationwide hemp renaissance.

8. With the industry’s federal handcuffs removed, the national hemp market has now awakened from a 60-year slumber. The market has grown and will continue to grow at a rapid pace. Some analysts expect this market to grow at an astounding 34% compound annual growth rate, from \$4.6 billion in 2019 to **\$26.6 billion** in 2025.

9. To encourage the developing hemp market in each locality, the Trump Administration gave the states wide latitude to develop and regulate the local markets and create jobs. Wielding this significant power, rather than enact laws to promote the economic liberty of Texas farmers, ranchers, and businesses, the State of Texas mobilized against them.

10. On June 10, 2019, Governor Greg Abbott signed Texas House Bill 1325 (“H.B. 1325”) into law. H.B. 1325 established a hemp program in Texas, subject to approval by the federal government, and delegated regulatory authority over consumable hemp products to the Texas Department of State Health Services (“DSHS”). Despite smokable hemp being one of the fastest growing hemp sub-markets nationwide—growing at a rate of more than 500% between 2018 and 2019—one component of H.B. 1325, Texas Health & Safety Code § 443.204(4), requires DSHS to adopt rules prohibiting the processing and manufacture of hemp products for smoking. In addition, Texas Agriculture Code § 122.301(b) prohibits state agencies from authorizing the manufacture of products containing hemp for smoking. Smokable hemp commands by far the highest price per pound at wholesale of any form of farmed hemp (up to \$1,000 per pound for high quality hemp flower and \$2,600 per pound for refined tetrahydrocannabinol-free distillate) and is the most lucrative way for hemp farmers to market their raw materials.

11. The Legislature specifically did not include a retail ban on smokable hemp products in H.B. 1325. But one year after Governor Abbott signed H.B. 1325 into law, Defendant DSHS prohibited not just the manufacture and processing of smokable hemp products (as the law

required), but also banned distribution and retail (as the law forbade), doubling down on Texas's plan to curtail economic activity in the State.

12. If allowed to move forward, these bans on smokable hemp products will shutter businesses across the state, resulting in a loss of jobs and tax revenue. They impede the economic liberty of Texas businesses, pose an existential threat to Texas hemp manufacturers, farmers, and retailers, and are sure to stifle growth of a budding Texas industry. The hemp market is now in its growth stage—perhaps the most critical stage of an industry's lifecycle. Businesses will choose where to conduct business based on each state's regulatory climate. Texas has sent a clear message to other companies in the industry: take your business and jobs elsewhere.

13. While Texas has a storied history of protecting the economic liberty of Texans under our Texas Constitution, neither the manufacturing ban nor the retail ban comports with Texas law.

14. Since 1876, the Due Course of Law Clause has protected Texans against this very type of oppressive infringement by government. Put simply, the Texas Constitution protects economic liberty. In passing Texas Health and Safety Code, § 443.204(4) and Texas Agriculture Code § 122.301(b), the Legislature violated the Due Course of Law Clause, by irrationally burdening the rights of hemp manufacturers and processors to the point of oppression in relation to the supposed underlying governmental interest.

15. Agencies are creatures of the Legislature and therefore possess only that authority given to them by law. The statute, in plain terms, authorizes DSHS to adopt rules to prohibit “the processing or manufacturing of consumable hemp products for smoking”—nothing more. Instead of following that clear statutory directive, DSHS chose to legislate, prohibiting the “manufacture, processing, *distribution*, or *retail sale* of consumable hemp products for smoking.”

25 Tex. Admin. Code § 300.104. DSHS characterizes banning distribution and retail as “a logical extension” of banning manufacturing. But even if this were true (it is not), agencies have no authority to enact rules that they deem to be a “logical extension” of law. That is the job of the Legislature alone.

16. Plaintiffs bring this action for declaratory and injunctive relief seeking a declaration that Texas Health & Safety Code § 443.204(4) and Texas Agriculture Code § 122.301(b) are unconstitutional, and a declaration that 25 Texas Administrative Code § 300.104 is invalid and exceeds statutory authority. Plaintiffs also seek an injunction against implementation and enforcement of these provisions. If the State of Texas is going to be any kind of player in the multi-billion-dollar hemp market economy—and it should, given its breadth of growing climates and transportation infrastructure—it is critical that smokable hemp products not be excluded by unconstitutional and unlawful infringements of economic rights.

Parties

17. Plaintiff **Crown Distributing, LLC** (“Crown”) is a Texas limited liability company with its principal place of business located at 2861 Congressman Lane, Dallas, Texas 75220. Crown is a manufacturer of hemp-derivative goods, including smokable hemp products, and has called Texas its home for seventeen years. Mansoor Alibhai is the sole member of Crown. Crown is one of the largest manufacturers of smokable hemp products in the United States. It manufactures the Wild Hemp® brand of smokable products, including the well-known Wild Hemp Hempettes™, filtered cylindrical paper tubes filled with finely cut hemp for smoking. Crown sells its products across the United States and internationally. Crown also distributes smokable hemp products for retail sale across the United States, including hemp flower, hemp pre-rolls, and hemp rolling paper. Through July 2020, Crown reported \$11.5 million in aggregate revenue (including

retail and wholesale) from smokable flower alone. Crown submitted comments opposing the then-proposed distribution and retail ban for smokable hemp products to DSHS on June 7, 2020.

18. Plaintiff **America Juice Co. LLC** (“America Juice”) is a Texas limited liability company and affiliate of Crown with its principal place of business located at 2861 Congressman Lane, Dallas, Texas 75220. America Juice manufactures and distributes consumable hemp products, including smokable hemp products.

19. Plaintiff **Custom Botanical Dispensary, LLC** (“Custom Botanical”) is a Texas limited liability company with its principal place of business located at 906 East 5th Street, Austin, Texas 78702. Custom Botanical is a retail storefront that carries a variety of hemp products, including smokable hemp products and raw hemp flower. Sarah Kerver is Custom Botanical’s sole member. Kerver submitted comments opposing the then-proposed distribution and retail ban for smokable hemp products to DSHS on June 8, 2020, on behalf of herself, Custom Botanical, and her consumable hemp product manufacturing brand, 1937 Apothecary, LLC.

20. Plaintiff **1937 Apothecary, LLC** (“1937 Apothecary”) is a Texas limited liability company with its principal place of business located at 906 East 5th Street, Austin, Texas 78702. Since 2018, 1937 Apothecary has manufactured hemp-derived topical, ingestible, and smokable hemp products. 1937 Apothecary is also a brand name for a variety of hemp products, including hemp tea, hemp derived gummies, and smokable hemp products. Kerver researches, tests, and sources raw hemp varieties with different aromas and content and then selects combinations to create custom blends for smoking.

21. Defendant **Texas Department of State Health Services** (“Texas DSHS” or “DSHS”) is the state agency charged with and responsible for administering, executing, and enforcing the Texas Health and Safety Code, including 25 Texas Administrative Code § 300.104. Texas DSHS shall be served through its general counsel, Barbara Klein, at 1100 W. 49th Street, Mail Code 1919, Austin, Texas 78756-3101.

22. Defendant **John Hellerstedt** is the Commissioner of Texas DSHS. He is being sued in his official capacity. He shall be served at 1100 W. 49th Street, Mail Code 1919, Austin, Texas 78756-3101.

23. The Attorney General of the State of Texas, Ken Paxton, shall be served at 209 W. 14th St., Austin, Texas 78701. Tex. Civ. Prac. & Rem. Code § 37.006.

Jurisdiction and Venue

24. The Court has jurisdiction over the declaratory judgment claims and requests for injunctive relief against Defendants regarding the constitutionality of certain Texas statutes under Texas Government Code § 24.007; article V, Section 8, of the Texas Constitution; and Chapter 37 of the Texas Civil Practice and Remedies Code. The Court has jurisdiction over the rule challenge under Texas Government Code § 2001.038(a).

25. Venue is proper under Texas Civil Practice and Remedies Code § 15.002 and Texas Government Code § 2001.038.

26. This Court has personal jurisdiction over Defendants.

27. Plaintiffs seek non-monetary relief.

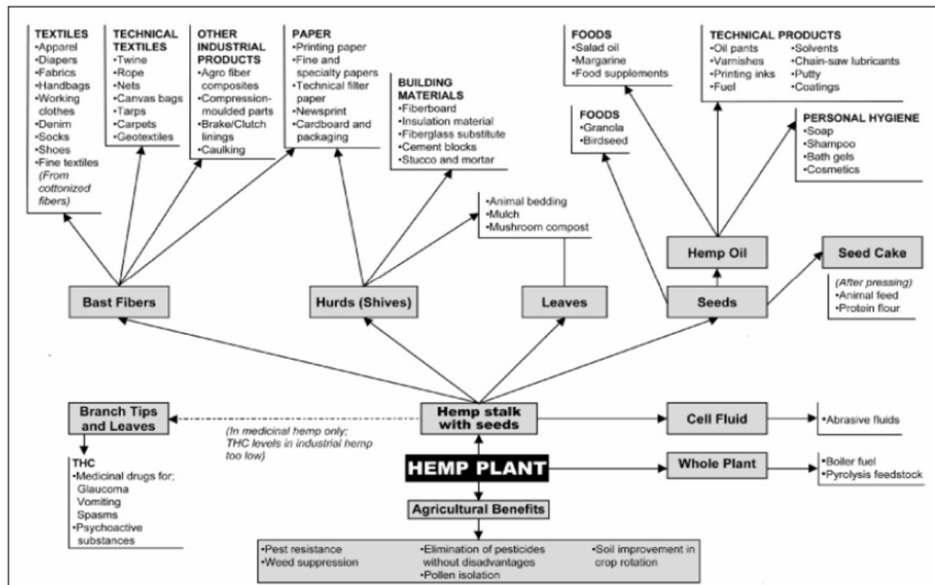
Facts Giving Rise to These Claims

A. The Resurgent Market for Hemp Products.

28. Hemp is a versatile plant that has been used for thousands of years. Hemp fibers that surround the cores of its stalks are used in fabrics and textiles; the woody cores of hemp

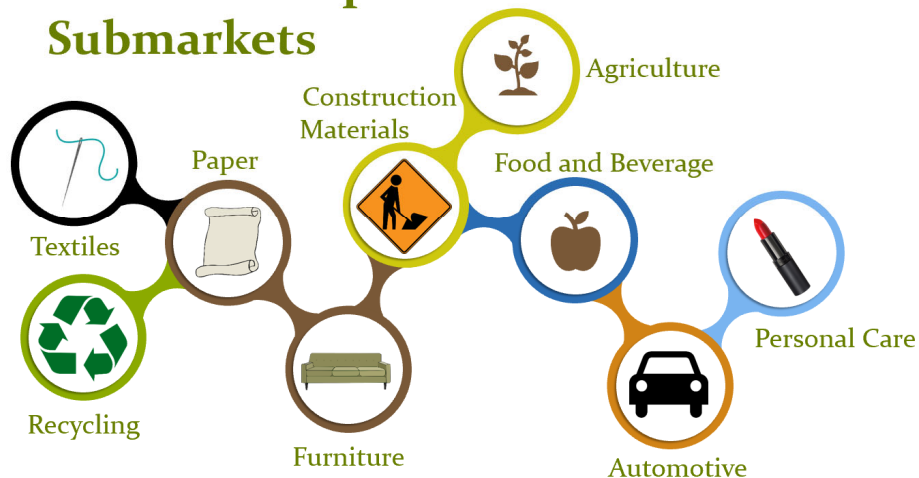
stalks are used in animal bedding, papermaking, and oil absorbents; and hemp seeds and oils are used in a range of foods, beverages, soaps, shampoo, lotions, bath gels, and cosmetics. Hemp is also used in nutritional supplements and in medicinal and therapeutic products, including pharmaceuticals.

Figure 1. Modern Uses for Industrial Hemp



29. Today, the global market for hemp consists of more than 25,000 products in nine submarkets: agriculture, textiles, recycling, automotive, furniture, food and beverages, paper, construction materials, and personal care:

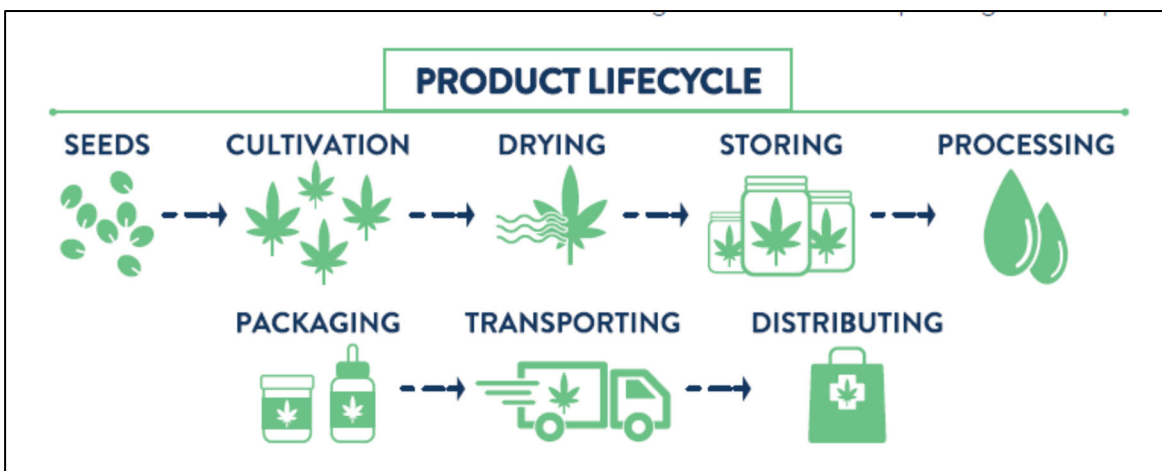
Industrial Hemp Submarkets



30. Companies across the world, from multinational conglomerates to small businesses, turn to hemp for its rapid harvest cycles and favorable environmental impact profile. For example, the maker of Legos® is researching alternative product formulations utilizing hemp bioplastics. Luxury hotels, such as the Ritz-Carlton, offer hemp-derivative products in their spas.

31. Despite hemp’s widespread utility, in the second half of the 20th century, federal law criminalized hemp cultivation, rendering the industry defunct. This changed after President Trump signed into law the 2018 Farm Bill which removed the most significant barriers to hemp production. And in the two years since, the hemp industry has taken root and grown in the United States, creating new jobs and economic activity.

32. The most well-known and currently most profitable segment of the hemp industry is cultivation and processing for cannabidiol (“CBD”). CBD is one of the natural cannabinoids found in the hemp plant. Like any agricultural product, hemp’s product development cycle from cultivation to sale is complex and requires the participation of many different businesses. This graphic illustrates the product development cycle for CBD and other cannabinoids when processed from raw hemp plant material:



33. Thus, in a time of declining employment, the legalization of hemp has created a new economy: many new jobs and significant tax revenue. And it will continue to do so in states that permit the industry to flourish.

B. The Market for Smokable Hemp Products.

34. Texas Health and Safety Code § 443.001(1) defines a consumable hemp product as a food, drug, device, or cosmetic that contains hemp or one or more hemp-derived cannabinoids, including CBD. Thus, consumable hemp products include products like salad oils, nutritional supplements, and soaps. The consumable hemp product market is not unlike the dairy product market, which includes both raw and processed dairy products like milk, cheese, butter, cream, yogurt, milk powder, desserts, and more.

35. Perhaps the most critical, profitable, and fastest growing segments of the consumable hemp product market is the market for smokables. The Texas Health and Safety Code does not define smokable hemp products, but it does define smoking as “burning or igniting a substance and inhaling the smoke or heating a substance and inhaling the resulting vapor or aerosol.” Tex. Health & Safety Code, § 443.001(11).

36. Because the smokable hemp product segment is high-margin, cultivators and processors of consumable hemp products often sell smokable hemp products alongside other consumable and non-consumable hemp products. Smokable hemp is also a popular arena for investment. New smokable hemp cultivation and manufacturing projects typically attract initial investments up to \$10 million. These projects can employ up to 50 people in factory, manufacturing, office, and sales jobs.¹

¹ See Decl. of Robin Goldstein, PhD, Ex. 2 at p. 6.

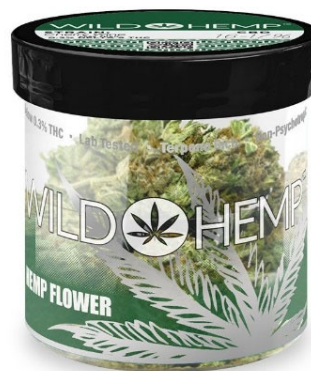
37. The smokable segment of the consumable hemp market is in some ways no different than a segment of the dairy market. Take cheese. There are many kinds of cheese, including American, provolone, cheddar, and muenster. Similarly, there are many kinds of smokable hemp products.

38. Combustibles are one kind of smokable hemp products, the use of which involves lighting the product with a heating source, such as a lighter or match, to produce smoke. Combustibles include hemp cigarettes, hemp cigars, and hemp flower. Hemp flower comprises the flower of the hemp plant that can be chopped to be smoked in a pipe or wrapping paper.

Hemp Cigarettes



Smokable Hemp Flower



39. Vaping products involve use of a battery-driven heating device to heat material (like hemp flower) to produce a vapor rather than smoke. Vaping products include hemp flower vaporization products, the use of which involves placing processed and/or moistened cut or ground flower or biomass into a chamber and heating it until the material in the chamber produces an aerosol vapor that releases on inhalation; heat-not-burn vaporization products, the use of which involves placing a small cylindrical rod of reconstituted moistened sheet hemp into a chamber that is electrically heated and releases aerosol vapor on inhalation; and liquid hemp extraction vaporization products, the use of which involves placing an extract of hemp in a liquid or oil form

in a cartridge/pod and heating with a battery powered heating source to produce an aerosol/vapor on inhalation. A vaping device using raw hemp flower is shown below:

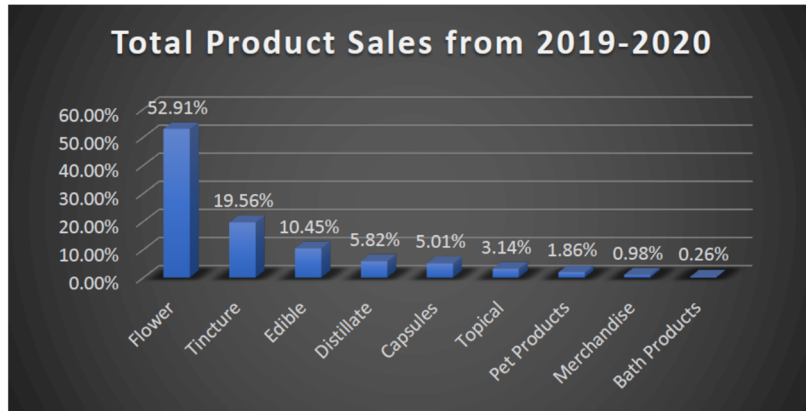


40. Consumers use smokable hemp products for many reasons. Some prefer smokables over edibles because smoking results in a faster delivery of CBD or other cannabinoids. Some enjoy the ritual or feel of smoking, but do not want to smoke tobacco or marijuana.

41. Unlike other products, hemp is neither psychoactive nor addictive. It will not make a user “high.” By smoking hemp, consumers can enjoy the feeling of smoking without having to smoke tobacco cigarettes or marijuana.

42. Not surprisingly, smokable hemp is now a cornerstone of the rapidly growing hemp economy. Texas hemp shops report that more than 50% of their revenue derives from “smokables” (flower, pre-rolls, and distillate used in vape cartridges). The following chart illustrates the revenue categories from Plaintiff Custom Botanical:²

² See also Brown, Edward, *Smokable Hemp Banned in Texas?*, Fort Worth Weekly (June 1, 2020), <https://www.fwweekly.com/2020/06/01/smokable-hemp-banned-in-texas/> (retail store owner stating that 50% of customers buy hemp flower, largely for smoking); Juarez, Camelia, *Prohibition of Smokable Hemp Products Proves Harmful to Local Businesses*, KCBD (Aug. 4, 2020), <https://www.kcbd.com/2020/08/04/prohibition-smokable-hemp-products-proves-harmful-local-businesses/> (shop owner stating that majority of sales revenue comes from hemp products meant for smoking).



C. Texas Outlaws the Manufacture and Processing of Smokable Hemp Products.

43. On June 10, 2019, Governor Abbott signed H.B. 1325 into law. The statute authorizes the growth of hemp crops by licensed producers and the manufacture of hemp products and consumable hemp products in Texas. But it does not allow the state to authorize—and requires DSHS to prohibit—the manufacture of hemp products “for smoking”:

Tex. Agric. Code Sec. 122.301. MANUFACTURE. (a) Except as provided by Subsection (b), a state agency may not prohibit a person who manufactures a product regulated by the agency, other than an article regulated under Chapter 431, Health and Safety Code, from applying for or obtaining a permit or other authorization to manufacture the product solely on the basis that the person intends to manufacture the product as a nonconsumable hemp product.

(b) A state agency may not authorize a person to manufacture a product containing hemp for smoking, as defined by Section 443.001, Health and Safety Code.

* * *

Tex. Health & Safety Code Sec. 443.001. DEFINITIONS. In this chapter: ... (11) “Smoking” means burning or igniting a substance and inhaling the smoke or heating a substance and inhaling the resulting vapor or aerosol.

* * *

Tex. Health & Safety Code Sec. 443.204. RULES RELATED TO SALE OF CONSUMABLE HEMP PRODUCTS. Rules adopted by the executive commissioner regulating the sale of consumable hemp products must to the extent allowable by federal law reflect the following principles: ... (4) the processing or manufacturing of a consumable hemp product for smoking is prohibited.

44. Notably, while this “Legislative Ban” (Tex. Agric. Code Sec. 122.301(b) and Tex. Health & Safety Code Sec. 443.204(4)) requires Defendant DSHS to adopt rules prohibiting the manufacturing and processing of smokable hemp products—including smokable hemp products that could be shipped out-of-state and sold legally in other states—it does not restrict or limit their (1) retail sale, (2) distribution, (3) consumption, or (4) possession.

45. The Legislative Ban’s effect is singular: shutting Texas farmers and companies like Crown out of the lucrative, global market for smokable hemp products. Prohibiting the processing or manufacture of smokable hemp products means no one in Texas can participate in the manufacturing or processing stages of the product’s lifecycle.

46. Nothing in the Legislative Ban purports to prohibit out-of-state manufacturers from *selling into* Texas. Thus, according to the Legislative Ban, domestic retailers can import and sell smokable hemp products from other states, but they cannot sell smokable hemp products made or processed in Texas:

Prohibited		Allowed	
✘	Texas manufacturer selling “Made in Texas” smokable products to Texas businesses and consumers.	✓	Oklahoma manufacturer selling “Made in Oklahoma” smokable product to Texas businesses and consumers.
✘	Texas manufacturer selling “Made in Texas” smokable products to Oklahoma businesses and consumers.	✓	Oklahoma manufacturer selling “Made in Oklahoma” smokable product to Oklahoma businesses and consumers.
✘	Texas manufacturer selling “Made in Texas” smokable products globally.	✓	Oklahoma manufacturer selling “Made in Oklahoma” smokable product globally.

47. There is no plausible law enforcement benefit from banning the Texas manufacture and processing of smokable hemp products. Imposing an arbitrary constraint here is particularly perverse because the law does not ban the use or consumption of smokable hemp

products. As such, Texas consumers will simply buy smokable products made out-of-state. Stated differently, if Texas had banned the processing and manufacture of cheese in Texas, Texans wouldn't stop eating cheese. Nor would stores stop selling cheese. Stores would meet the demand for cheese by importing cheese from Wisconsin or some other state.

48. Even assuming the Legislature had also authorized a ban on use of smokable hemp products in Texas (it did not) there would still not be a plausible law enforcement benefit in banning the manufacture of a product that can be exported to other states where the product can be legally distributed and sold.

49. Put simply, the Legislative Ban discriminates against Texans and impinges on the economic liberty of Texas farmers and Texas businesses like Crown. It does nothing to advance the interest of Texas and Texans. Instead, it (a) drives Texas businesses out of state, (b) discourages companies from operating in Texas, (c) moves Texas jobs to other states, (d) deprives Texas of millions of dollars in tax revenue, and (e) sets Texas and Texans behind, if not entirely out of the most lucrative segment of the emerging market for hemp and hemp consumables for no rational reason whatsoever.³

D. Texas DSHS Expands the Smokable Hemp Ban to Include Retail Sales.

50. In 2020, DSHS enacted rules to govern the Texas consumable hemp program, which became effective on August 2, 2020.

51. The "Rule" (25 Tex. Admin. Code § 300.104) dictates that "distribution" and "retail sale" of smokable hemp products are now added to the list of banned activities:

Sec. 300.104. The manufacture, processing, *distribution*, or *retail sale* of consumable hemp products for smoking is prohibited.

³ See Decl. of Robin Goldstein, PhD, Ex. 2 at pp. 4-7.

52. DSHS has publicly recognized that H.B. 1325 does not authorize a retail ban. During the comment period, DSHS received comments regarding its proposed rules from 1,726 commenters. 1,690 commenters opposed the prohibition of the retail sale and distribution of smokable hemp products contained in § 300.104. Commenters noted that banning the retail sale of smokable hemp products would have a devastating effect on the overall consumable hemp product businesses in Texas, particularly with respect to businesses already selling the smokable hemp products. Commenters also noted that DSHS lacks authority to include the retail ban in the proposed rule when it was not included in the language of H.B. 1325.

53. DSHS disagreed. It noted “the retail ban in proposed § 300.104 [is] a logical extension of the manufacturing ban in Texas Health and Safety Code, § 443.204(4).” Thus, the agency made no change to the Rule in response to these comments.

54. DSHS also addressed the issue of hemp flower. According to DSHS, hemp flower is not a consumable hemp product that is inherently “for smoking.” It can be used in ways other than for smoking, for example, to make tea. DSHS noted that “[p]roperly tested and labeled hemp flower, marketed for use other than smoking (e.g. as a tea or a food additive) does not fall under the retail ban contained in § 300.104.” But of course, hemp flower “for smoking” and hemp flower for tea not only look the same—*they are the same*.



55. This is form over substance. While little prevents consumers from purchasing hemp flower labeled or marketed as tea and smoking it, the issue of hemp flower under the Rule does leave retailers, distributors, processors, and manufacturers vulnerable to reprisals from the State. In fact, on a May 19, 2020, webinar hosted by the Texas Hemp Coalition, a DSHS employee instructed viewers that “[l]oose flower that is packaged and marketed as tea or as a food additive as long as it has been properly tested and does not exceed the 0.3 percent is good to go.”

56. The retail ban—especially in view of DSHS’s public comments—has no more logic to it than the ban on processing and manufacturing smokables. Texans can still purchase and use smokable hemp products manufactured out-of-state. Texans can also purchase hemp that is not labeled or marketed “for smoking”—for example, hemp marketed as “tea”—and they can use that hemp to make their own smokables or with the vaporizing devices shown above. If anything, the Rule and DSHS commentary encourages Texas farmers and retailers to mislabel hemp flower so that consumers will still be able to purchase hemp flower grown in Texas.

57. From both an economic and public safety perspective, it would be better to keep properly labeled sales in-state, rather than encourage unseemly work-arounds that force consumers to purchase hemp and to make their own smokables.

58. The ban on the distribution and retail sale will gut the financial viability of hemp businesses, especially small local businesses like Custom Botanical that rely on the sale of smokables to stay in business.

First Cause of Action
(Substantive Due Course of Law – Tex. Const. art. XI, § 19)

59. The material facts alleged above are incorporated by reference.

60. The Texas Constitution provides that “[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.”

61. In *Patel v. Texas Dep’t of Licensing & Regulation*, 469 S.W.3d 69 (Tex. 2015), the Supreme Court reaffirmed the right to economic liberty in the State of Texas. Statutes and regulations that regulate economic activity and whose purpose cannot arguably be rationally related to a legitimate governmental interest, or whose effect as a whole is so unreasonably burdensome that it becomes oppressive in relation to the underlying governmental interest, are unconstitutional infringements of economic liberty.

62. The Legislative Ban’s prohibition on the processing and manufacture of smokable hemp products in Texas is unconstitutional. The statute erects an economic barrier of entry into the market for manufacturing and processing consumable hemp products by denying businesses the ability to manufacture and process the most lucrative component of the industry.

63. For this reason, the Legislative Ban will drive Crown’s smokable hemp manufacturing facilities either out of the state or out of business.

64. Indeed, after passage of H.B. 1325, Mr. Alibhai began searching for a commercial facility to purchase in Oklahoma for purposes of moving Crown’s entire smokable hemp division out of Texas. Through a commercial property company in which Mr. Alibhai is a managing member, Mr. Alibhai purchased a warehouse in Caddo, Oklahoma, for potential use by Crown.

65. Crown typically receives shipments of hemp material from farms across the United States at its Dallas facility. That hemp material is then dried and processed using specialized machinery and included in Crown’s final manufactured products. But because of the Legislative

Ban and the Rule, Crown no longer can process or manufacture its smokable hemp products in Texas.

66. Moving Crown's entire smokable hemp division to Oklahoma will cost Crown considerable time, effort, labor, and money, including but not limited to:

- substantial renovations required to prepare the building for Crown's smokable hemp manufacturing division;
- an \$8000.00 per month lease obligation for the Oklahoma facility;
- the purchase of new equipment for the Oklahoma facility, including a new clean room for product development and new bottling and labeling fulfillment lines; and
- the termination of employees in its Dallas facility, in addition to replacing those positions with Oklahoma workers at the Oklahoma facility.

67. Crown has incurred and continues to incur significant extra costs, scheduling problems, budget implications, and loss of competitiveness that would not exist but for the processing and manufacturing ban.

68. Texas has no valid governmental interest in selectively prohibiting the manufacture and processing of smokable hemp products. To the extent the Legislative Ban purports to address law enforcement concerns or health related concerns, *it does nothing*. The statute does not ban the consumption, sale, or use of smokable hemp products. Possession and use of smokable hemp continues to be legal in Texas, and hemp flower is and will remain legal to possess and smoke in Texas.

69. The Legislative Ban cannot rationally be understood to reduce the prevalence of smokable hemp in Texas. On the contrary, it works against promoting safe and effective products for consumers. Rather than keeping the manufacture and processing of smokable hemp products in-state, the products will be manufactured and processed out-of-state

and shipped into Texas outside its full regulatory reach for consumer safety. The State of Texas will have little to no regulatory oversight over these products.

70. The prohibition of manufacture and processing of smokable hemp products will cause Crown to suffer significant damages, *including up to more than \$50 million in lost revenue over a five-year period*. In addition, the prohibition of manufacture and processing of smokable hemp products will cause up to 60 jobs to be lost at Crown and its affiliated companies.⁴

Second Cause of Action
(Invalidity of Agency Rule – Tex. Gov't Code § 2001.038)

71. The material facts alleged above are incorporated by reference.

72. Plaintiffs, as sellers of smokable hemp products, are threatened and directly impacted by the Rule, which interferes, impairs, threatens to interfere with or threatens to impair, the legal rights and privileges of Plaintiffs.

73. An administrative agency is a creature of the legislature and only has power expressly provided by statute or necessarily implied to carry out the express powers the Legislature has given it. *Pub. Util. Comm'n of Texas v. GTE-Sw., Inc.*, 901 S.W.2d 401, 406 (Tex. 1995).

74. The Rule exceeds DSHS's authority under H.B. 1325. The Legislature expressed no intent to ban the retail sale or distribution of smokable hemp product. In fact, it expressly chose not to. The express mention of "manufacture" and "processing" evidences an affirmative intent to permit other activities. *Gables Realty Ltd. P'ship v. Travis Cent. Appraisal Dist.*, 81 S.W.3d 869, 873 (Tex. App.–Austin 2002, pet. denied) (“[W]e should read every word, phrase, and expression in a statute as if it were deliberately chosen, and presume the words excluded from the statute are done so purposefully.”).

⁴ See Decl. of Robin Goldstein, PhD, Ex. 2 at p. 3; p. 6.

75. The Legislature did not overlook the retail sale and distribution of smokable hemp products. Many other provisions of H.B. 1325 relate to the retail sale of consumable and non-consumable hemp products. *See, e.g.*, Tex. Agric. Code § 122.303 (“Retail Sale of Out-of-State Products”) (prohibiting retail sale of non-consumable hemp if the hemp used to manufacture the product was cultivated illegally or the retail sale of the product would violate federal law).

76. Sections 443.201 to 443.207 comprehensively lay out provisions and principles to be followed in regulating the retail sales of consumable hemp. Nowhere in these sections did the Legislature authorize a ban on the distribution and retail sale of smokable hemp. Section 443.204 entitled “Rules Related to the Sale of Consumable Hemp Products,” lays out four principles for rules. Not one authorizes anything except rules prohibiting the processing or manufacturing of a consumable hemp product for smoking.

77. Even if the manufacturing ban may be unconstitutionally oppressive to entities like Crown, the text and scheme of H.B. 1325 show that the Legislature considered and rejected authorizing DSHS to enact rules banning retail sales of smokable hemp products to further cripple Texas retailers like Plaintiffs America Juice and Custom Botanical that rely on retail sales of smokable hemp to stay in business.

78. The Rule’s prohibition of distribution and retail sale is also not “necessary to administer and enforce” the prohibition on processing or manufacturing enacted by the Legislature. Tex. Health & Safety Code § 443.501. Agencies may not “on a theory of necessary implication from a specific power, function, or duty expressly delegated, erect and exercise what really amounts to a new and additional power or one that contradicts the statute, no matter that the new power is viewed as being expedient for administrative purposes.” *Sexton v. Mount Olivet Cemetery Ass’n*, 720 S.W.2d 129, 137-38 (Tex. App.—Austin 1986, pet. denied) (internal citations

omitted). It is, of course, entirely possible to prevent businesses in Texas from *making* smokable hemp products without prohibiting retailers from *selling* smokable hemp products. Thus, it is not “necessary” to imply authority in DSHS to prohibit the retail sale of smokable hemp products to prohibit the manufacture of smokable hemp products.

79. In addition, “implications from any statutory passage or word are forbidden when the legislative intent may be gathered from a reasonable interpretation of the statute as it is written.” *Id.* at 138. A reasonable interpretation of a statutory passage is that it means what it says. Here, DSHS has authority to enact rules prohibiting the manufacture and processing of smokable hemp products. Nothing more.

80. The Rule is invalid on its face. It contravenes specific statutory language; imposes additional burdens, conditions, or restrictions exceeding or inconsistent with H.B. 1325; and is not necessary to carry into execution any part of H.B. 1325. Nor is the Rule “in harmony” with the actual law the Legislature passed. *Williams v. Texas State Bd. of Orthotics & Prosthetics*, 150 S.W.3d 563, 569 (Tex. App.—Austin 2004, no pet.)

**Application for Temporary Restraining Order,
Temporary Injunction, and Permanent Injunction**

81. The material facts alleged above are incorporated by reference.

82. Under Texas Civil Practice & Remedies Code § 65.011 and Texas Rule of Civil Procedure 680, *et seq.*, to preserve the status quo pending a full trial on the merits, *see Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002), Plaintiffs request a temporary restraining order and temporary injunction that enjoins DSHS from enforcing the Legislative Ban (Tex. Health & Safety Code § 443.204(4), and Tex. Agric. Code § 122.301(b)) and the Rule (25 Tex. Admin. Code § 300.104), assessing any fines from violation of the Rule, or otherwise penalizing any entity in any way from violating the Rule.

83. Defendants are state entities or state officers with no pecuniary interest in this suit and no monetary damages that would result from a temporary injunction.

A. Success on The Merits

84. The Petition and accompanying papers show that Plaintiff Crown has a substantial probability of success on its constitutional claim regarding the statutory ban on processing and manufacturing of smokable hemp. The Petition and accompanying papers show that Plaintiffs have a substantial probability of success on their claim that the Rule is an invalid agency rule. *See Butnaru*, 84 S.W.3d at 204.

85. To show a probable right of recovery or success, a party need not establish that it will prevail in the litigation; rather, it must only present some evidence that, under the applicable rules of law, tends to support its cause of action and shows a bona fide issue exists as to that party's right to relief. *Camp v. Shannon*, 348 S.W.2d 517, 519 (Tex. 1961).

86. It is probable Plaintiffs will prevail after a trial on the merits because, for the reasons stated above, the statute banning the processing and manufacturing of smokable hemp products is unconstitutional under *Patel* and the Rule adding the ban of distribution and retail sale of smokable hemp products is invalid.

B. Immediate and Irreparable Injury

87. If the Rule takes effect and Crown is prohibited from manufacturing, processing, distributing, or selling smokable hemp products as the Rule requires, Crown will permanently lose revenue, incur unrecoverable costs, and will have to shut down or take permanent steps to relocate its entire smokable hemp division. Relocation has already cost Crown substantial money, time, and labor and could cost Crown up to a new investment of \$3 million in capital and will result in Crown being forced to operate its business in two different states. The Rule also will

cause loss of market share and prevent Crown further accessing the high-growth hemp and smokable markets.

88. The harm that will result if injunctive relief is not issued is imminent and irreparable. There is no way for Crown to recover revenue lost or substantial costs incurred in being forced to relocate an entire division of its manufacturing facility out-of-state, and possibly losing market share. These effects cannot be reversed. Crown also cannot be adequately compensated in damages because there is no monetary relief that can be obtained from Defendants to compensate Crown for the disruption to its business, costs incurred, and being subject to potential financial liability. *See Combs v. Entm't Publications, Inc.*, 292 S.W.3d 712, 724 (Tex. App.—Austin 2009, no pet.).

89. Similarly, if the Rule is enforced, Plaintiffs America Juice and Custom Botanical will be prohibited from distributing and selling smokable hemp products, as the Rule requires, that comprise an overwhelming portion of their revenue. Custom Botanical will permanently lose revenue, incur unrecoverable costs, and might have to shut down its business. Without sales of smokable hemp products, Custom Botanical might not be able to turn a profit. America Juice will lose a large portion of its revenue.

90. 1937 Apothecary will also suffer irreparable harm if the Rule is enforced. It has had to pull products and will likely suffer from brand erosion. It also will no longer be able to curate and select hemp varieties to create custom blends designed for smoking and accurately describe its efforts to distributors, retail stores, and customers. 1937 Apothecary has already had to revise its product-line catalog and change the labeling for its numerous flower products.

C. Balance of Harms and the Public Interest

91. The threat of immediate and irreparable injury to Plaintiffs substantially outweighs the harm, if any, that the DSHS or Texas would suffer from having to forestall enforcement of the Rule and Legislative Ban, pending disposition in this action.

92. Plaintiffs have no adequate remedy at law. Complying with the Rule will not only cause a loss of revenue and incur unrecoverable costs, but defying the Rule subjects Plaintiffs—and all other Texas manufacturers and retailers of smokable hemp products—to fines and possible shut down by DSHS. Defying the rules also risks Plaintiffs being denied the manufacturing, distribution, or retail licenses and/or registrations from DSHS that is required in Texas.

93. Plaintiffs are willing to post bond.

Attorney Fees

94. Plaintiffs request an award of their attorney fees. Tex. Civ. Prac. & Rem. Code § 37.009; *Texas Educ. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994).

Prayer for Relief

For these reasons, after a final hearing or trial, Plaintiffs respectfully requests the following relief:

- a. that Defendants be cited to appear and answer in this case;
- b. a declaration that Texas Health and Safety Code, § 443.204(4) and Texas Agriculture Code, § 122.301(b) violate the Texas Constitution;
- c. a declaration that 25 Texas Administrative Code § 300.104 is invalid;
- d. the injunctive relief requested in this Original Petition;

- e. award Plaintiffs their reasonable and necessary attorneys' fees and costs and expenses; and
- f. all other relief to which Plaintiffs are entitled, whether at law or in equity.

Respectfully submitted,


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ATTORNEY FOR PLAINTIFFS
CUSTOM BOTANICAL DISPENSARY,
LLC; 1937 APOTHECARY, LLC

Plaintiffs cannot be adequately compensated in damages because there is no monetary relief that can be obtained from Defendants. Such injuries would be compounded should Defendants not be immediately restrained from their activities.

The Court further finds that a balance of the equities between Plaintiffs and Defendants favors issuing temporary injunctive relief. The Court finds that by issuing the temporary restraining order herein, Defendants will not suffer any damages or harm, or if any such damages or harm is suffered it will be slight and will be protected by the bond ordered herein.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that Defendants and all other persons or entities in active concert or participation with Defendants who receive actual notice of this Order by personal service or otherwise are enjoined as follows:

1. Defendants shall not, directly or indirectly, enforce 25 Tex. Admin. Code § 300.104, assessing any fines from violation of 25 Tex. Admin. Code § 300.104, or otherwise penalize any entity or person in any way from violating 25 Tex. Admin. Code § 300.104.

This prohibition lasts until the date of the temporary injunction hearing ordered below, or until further notice of the Court.

Actual notice of this temporary restraining order shall be made by personal service in accordance with the Texas Rules of Civil Procedure.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that this Order shall expire at 12:00 midnight on _____, 2020, unless extended or earlier terminated by further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that a hearing on Plaintiffs' Application for Temporary Injunction shall commence on _____, 2020 at _____ in the ___ Judicial District of Travis County, Texas.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiffs shall post with the Clerk of this Court a bond in the amount of \$_____.

SIGNED on _____, 2020, at _____.

HONORABLE JUDGE PRESIDING

California Bureau of Medical Marijuana Regulation) on the economic impacts of proposed cannabis regulations.

6. In my capacity as Principal Economic Counselor at the UC Agricultural Issues Center in Davis, I drafted and co-authored three versions of a Standardized Regulatory Impact Assessment, submitted to the California Department of Finance, that evaluated the costs and economic effects of cannabis regulations proposed by state government agencies; and I have also prepared other economic reports for the Bureau of Cannabis Control.

7. I am co-author of the first full-length book on cannabis to be published by professional economists. The book is under contract with the University of California Press with an expected hardcover release date (at the discretion of the publishers) in the fall of 2021.

8. I have co-authored three book chapters on cannabis economics, including a chapter in *The Routledge Handbook of Interdisciplinary Cannabis Research* (Dominic Corva and Josh Meisel, eds.), forthcoming in 2021, and Chapter 13, "*Taxed and Regulated Cannabis in California: A Likely Evolution of the Industry*", of the Giannini Foundation monograph *California Agriculture*, published in 2020.

9. I have published a variety of peer-reviewed academic articles on cannabis economics, including articles regarding retail prices, regulatory compliance costs, effects of taxation and licensing, and testing costs. My most recent publication, "Costs of cannabis testing compliance: Assessing mandatory testing in the California cannabis market," was published in April 2020 in *PLOS One*. Other publications include, but are not limited to:

Goldstein, R., Saposhnik, R., and Sumner, D. (2020). Prices of cannabis in California from licensed and unlicensed retailers. *ARE Update* 23(3): 1–4. University of California Giannini Foundation of Agricultural Economics.

Goldstein, R. (2019). Half-blind tasting: A deception-free method for sizing placebo and nocebo responses to price and packaging attributes. *Journal of Wine Economics* 14:3, 321-331.

Goldstein, R., Sumner, D., and Fafard, A. (2019). Retail cannabis prices in California through legalization, regulation and taxation. *California Agriculture* 73:3–4, 136–145.

Goldstein, R., and Sumner, D. (2019). California cannabis regulation: an overview. *California Agriculture* 73:3–4, 101–102.

Valdes-Donoso, P., Sumner, D., and Goldstein, R. (2019). Costs of mandatory cannabis testing in California. *California Agriculture* 73:3–4, 154–160.

10. I have lectured on cannabis economics at the Agricultural and Applied Economics Association annual meeting in Chicago and other industry conferences.

11. I was retained by Plaintiff Crown Distributing LLC (“Crown”) as an expert in this matter. Specifically, I was asked to review and form an opinion on the economic impacts of Texas House Bill 1325 and the associated Texas Department of State Health Services regulations on Crown and other Texas businesses, on Texas consumers, and on the Texas state government.

12. Attached to this Declaration is the Executive Summary of my findings, which I drafted and prepared after consultation with Plaintiffs in this matter. Exhibit 2.

13. Included in this Executive Summary are my findings on the economic losses to Plaintiff Crown Distributing LLC, the losses to other smokable hemp manufacturers in Texas, the

lost jobs in Texas, the lost economic activity and investment in Texas, and the impact on law enforcement interests. *Id.*

Executed in Hampshire County, Northampton, Massachusetts, on August 5, 2020.

A handwritten signature in blue ink, appearing to read 'R. Goldstein', is written over a light blue horizontal line.

Robin Goldstein, PhD

Robin Goldstein

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**Education**

- 2019 Ph.D. in economics
 University of Bordeaux, France
- 2002 J.D.
 Yale Law School, New Haven, CT
 Cross-registered at Yale School of Management for finance and accounting
- 1998 A.B. *magna cum laude* in neuroscience and philosophy
 Harvard University, Cambridge, MA

Employment history

- 2015– Principal Economic Counselor (research faculty)
 University of California Agricultural Issues Center, Davis, CA
- 2015 Adjunct Professor of Law
 McGeorge School of Law, Sacramento, CA
- 2004–2014 Founder and Publisher
 Fearless Critic Media, New York, NY (independent, 2005–2008; acquired by Workman Publishing and operated as a Workman imprint, 2008–)
- 2003–2004 Associate, Media Group
 McKinsey & Company, New York, NY
- 2001 Summer Associate, International Capital Markets, US Law Group
 Allen & Overy LLP, London, UK
- 2000 Summer Associate, Intellectual Property Group
 Dewey Ballantine LLP, New York, NY
- 1995–2008 Writer, *Fodor's* travel guides (Random House), *Let's Go* travel guides (St. Martin's Press), and *UpClose* travel guides (Random House), and Concierge.com (Condé Nast), on location in Italy, Spain, Argentina, Chile, Mexico, Ecuador, El Salvador, Thailand, and Hong Kong. Weekly restaurant critic, *New Haven Advocate* and *Play* magazine.

Unpaid positions

- 2016–present Associate, Robert Mondavi Institute Center for Wine Economics, University of California, Davis
- 2016–2018 Sensory Evaluation Foreign Expert Panel, Division of Food Inspection and Supervision, Shenzhen Entry-Exit Inspection and Quarantine Bureau of the People’s Republic of China (SZCIQ)
- 2010–2011 University of California, Berkeley, Visiting Scholar, Department of Economics (adviser: Prof. David Card)
- 2009–2011 *New York Times* “Freakonomics” blog, regular contributor
- 2001–2002 Yale Law & Technology Society, Yale Law School, President
- 1999–2001 *Yale Journal of International Law*, Editor

Awards and certifications

- 2019 Keynote address and best student papers scholarship, Beeronomics Society Biannual Meeting, Pilsen, Czech Republic
- 2013– Fellow, US-China Young Leaders’ Forum (diplomatic program of the National Committee on US-China Relations)
- 2013– Fellow, American Association of Wine Economists (AAWE)
- 2008 Best Paper Award, American Association of Wine Economists Conference, Portland, OR
- 2008 WSET Level 3 advanced wine & spirits certificate with merit, International Wine Center, New York, NY
- 2004 Certificate in Cooking, French Culinary Institute, New York, NY
- 2004 Winner, Yale Entrepreneurial Society “Y50K” business plan competition
- 2002 Admitted to Massachusetts Bar
- 1997 Elected to Phi Beta Kappa, Harvard College, one of 24 members in class of 1,600 chosen as a junior

Selected publications

Articles in refereed journals

- 1) Goldstein, R., Saposhnik, R., and Sumner, D. (2020). [Prices of cannabis in California from licensed and unlicensed retailers](#). *ARE Update* 23(3): 1–4. University of California Giannini Foundation of Agricultural Economics.
- 2) Goldstein, R. (2019). [Half-blind tasting: A deception-free method for sizing placebo and nocebo responses to price and packaging attributes](#). *Journal of Wine Economics* 14:3, 321-331.
- 3) Goldstein, R., Sumner, D., and Fafard, A. (2019). [Retail cannabis prices in California through legalization, regulation and taxation](#). *California Agriculture* 73:3–4, 136–145.
- 4) Goldstein, R., and Sumner, D. (2019). [California cannabis regulation: an overview](#). *California Agriculture* 73:3–4, 101–102.
- 5) Valdes-Donoso, P., Sumner, D., and Goldstein, R. (2019). [Costs of mandatory cannabis testing in California](#). *California Agriculture* 73:3–4, 154–160.
- 6) Catapano, R., Buttrick, N., Widness, J., Goldstein, R., and Santos, L.R., (2014). [Capuchin monkeys do not show human-like pricing effects](#). *Frontiers in Decision Neuroscience* 5(1330).
- 7) Bohannon, J., Goldstein, R., and Herschkowitsch, A. (2010). [Can people distinguish pâté from dog food?](#) *Chance*, 23(2), 43–46.
- 8) Goldstein, R. (2010). [Book review, *Parker's Wine Bargains*, by Robert M. Parker, Jr.](#) *Journal of Wine Economics*, 5(1), 209–216.
- 9) Goldstein, R., Almenberg, J., Dreber, A., Emerson, J., and Herschkowitsch, A. (2008). [Do more expensive wines taste better? Evidence from a large sample of blind tastings](#). *Journal of Wine Economics*, 3(2), 1–9. (~200 Google Scholar citations.)
- 10) Goldstein, R. (2000). Book review, *Trademark Counterfeiting, Product Piracy, and the Billion-Dollar Threat to the US Economy*, by Paul Paradise. *Yale Journal of International Law* 25(2), 563–567.
- 11) Goldstein, R. (1997). Machine Analogies and Categories of Consciousness. *Harvard Brain* 3(1), 19–26.

Other recent articles, book chapters, working papers, research reports

- 1) Goldstein, R., and Sumner, D. (2020). Cannabis in 2050: Economic predictions for the California Department of Food and Agriculture. Accepted, in revision.
- 2) Goldstein, R., and Sumner, D. (2020). The economic impact of state regulations and taxes on legal and illegal cannabis markets. In Corva, D., and Meisel, J., Eds., *Routledge Handbook of Interdisciplinary Cannabis Research* (Routledge). Accepted, in press.
- 3) Goldstein, R., Sumner, D., and Sambucci, O., and Lapsley, J. (2019). Economic impacts of regulatory alternatives for creating nonprofit cannabis license types. Prepared for the California Bureau of Cannabis Control. Submitted and accepted, December 2019.
- 4) Sumner, D., Goldstein, R., and Matthews, W. (2018). California's Cannabis Industry. In *California Agriculture: Dimensions and Issues*, Giannini Foundation Information Series Monograph 18-01, Chapter 12.
- 5) Goldstein, R., Almenberg, J., Dreber, A., Emerson, J.W., Herschkowitsch, A., and Katz, J. Do More Expensive Wines Taste Better? Evidence from a Large Sample of Blind Tastings. Reprinted in Ashenfelter, O., Gergaud, O., Storchmann, K., and Ziemba, W., Eds. (2018), *Handbook of the Economics of Wine*, Vol. 1 (World Scientific Press).
- 6) Sumner, D., Goldstein, R., Matthews, W., Pan, Y., Lee, H., and Lapsley, J. (2018). Standardized Regulatory Impact Analysis, Medicinal and Adult-Use Cannabis Regulation and Safety Act, including Appendix. Prepared for the California Bureau of Cannabis Control by the and submitted to the California Department of Finance.
- 7) Goldstein, R. (2018). [Ping Pong Paradise](#). *Racquet* 6, 34–45.
- 8) Goldstein, R. (2017). [Treasured Island](#). *China Daily*, 17 July 2017.
- 9) Goldstein, R. (2016). [Why You Don't Need Fish Oil Supplements](#). *Men's Health*, April 20, 2016.
- 10) Almenberg, J., Dreber, A., and Goldstein, R. (2014). Hide the Label, Hide the Difference? American Association of Wine Economics Working Paper #165.

Published books (as lead author or co-author)

- 1) Campbell, S., and Goldstein, R. (2010). *The Beer Trials*. New York: Workman.
- 2) Goldstein, R. (2008). *The Wine Trials*. New York: Workman. 2nd Ed., with A. Herschkowitsch and T. Walters, Workman (2010). 3rd Ed., Workman (2011).
- 3) Goldstein, R., Duffy, S., and Yu, J (2007). *Fearless Critic Houston Restaurant Guide*. Austin: Fearless Critic Media. 2nd Ed., Fearless Critic Media (2008). 3rd Ed., New York: Workman (2010). 4th Ed., Workman (2012).
- 4) Goldstein, R., Markovits, R., and Nelson, M. P (2006). *Fearless Critic Austin Restaurant Guide*. New Haven: Off the Map Press. 2nd Ed., Austin: Fearless Critic Media (2008). 3rd Ed., New York: Workman (2009). 4th Ed., Workman (2010). 5th Ed., Workman (2012).
- 5) Goldstein, R., and Murumba, C. (2004). *The Menu: Northampton, Amherst, and the Five-College Area Restaurant Guide*. New Haven: Off the Map Press.
- 6) Goldstein, R., and Murumba, C. (2003). *The Menu: New Haven Restaurant Guide*. New Haven: Off the Map Press. 2nd Ed., Off the Map Press (2005). 3rd Ed., as *Fearless Critic New Haven Restaurant Guide*, New York: Workman (2009).

Published books (as editor-in-chief)

- 1) Goldstein, R., Ed. (2012). *Fearless Critic Dallas Restaurant Guide*. New York: Workman.
- 2) Goldstein, R., Ed. (2012). *Fearless Critic San Antonio Restaurant Guide*. New York: Workman.
- 3) Goldstein, R., Ed. (2011). *Fearless Critic Seattle Restaurant Guide*. New York: Workman.
- 4) Goldstein, R., Ed. (2010). *Fearless Critic Portland Restaurant Guide*. New York: Workman.
- 5) Goldstein, R., Ed. (2009). *Fearless Critic Washington DC Area Restaurant Guide*. New York: Workman.
- 6) Goldstein, R., Ed. (1997). *Let's Go: Mexico 1998*. New York: St. Martin's Press.

Published books (as contributing writer)

- 1) Catton, P., and Suntree, C., Eds. (2010). *Be Thrifty: How to Live Better with Less*. New York: Workman.
- 2) Bluestone, C., et al., Eds. (2009). *Fodor's Mexico 2010*. New York: Random House.
- 3) Johansen, H., et al., Eds. (2009). *Fodor's Thailand 2010*. New York: Random House.
- 4) Bluestone, C., et al., Eds. (2008). *Fodor's Central America 2009*. New York: Random House.
- 5) Bluestone, C., et al., Eds. (2008). *Fodor's Mexico 2009*. New York: Random House.
- 6) Kidder, L., et al., Eds. (2008). *Fodor's Hong Kong 2009*. New York: Random House.
- 7) Lombardi, M., et al., Eds. (2008). *Fodor's Italy 2009*. New York: Random House.
- 8) Bluestone, C., et al., Eds. (2007). *Fodor's Mexico 2008*. New York: Random House.
- 9) Gold, S., et al., Eds. (2007). *Fodor's Thailand 2008*. New York: Random House.
- 10) Lombardi, M., et al., Eds. (2007). *Fodor's Italy 2008*. New York: Random House.
- 11) Bluestone, C., et al., Eds. (2006). *Fodor's Mexico 2007*. New York: Random House.
- 12) Gold, S., et al., Eds. (2006). *Fodor's Hong Kong 2007*. New York: Random House.
- 13) Lombardi, M., et al., Eds. (2006). *Fodor's Italy 2007*. New York: Random House.
- 14) Lombardi, M., et al., Eds. (2006). *Fodor's Venice 2007*. New York: Random House.
- 15) Lombardi, M., et al., Eds. (2006). *Fodor's Rome 2007*. New York: Random House.
- 16) Kidder, L., et al., Eds. (2006). *Fodor's Argentina 2007*. New York: Random House.
- 17) Kidder, L., et al., Eds. (2006). *Fodor's Buenos Aires 2007*. New York: Random House.
- 18) Kidder, L., et al., Eds. (2006). *Fodor's Chile 2007*. New York: Random House.
- 19) Kidder, L., et al., Eds. (2005). *Fodor's Argentina 2006*. New York: Random House.
- 20) Lombardi, M., et al., Eds. (2005). *Fodor's Italy 2006*. New York: Random House.
- 21) Lombardi, M., et al., Eds. (2005). *Fodor's Northern Italy 2006*. New York: Random House.
- 22) Lombardi, M., et al., Eds. (2005). *Fodor's Rome 2006*. New York: Random House.
- 23) Lombardi, M., et al., Eds. (2004). *Fodor's Italy 2005*. New York: Random House.
- 24) Lombardi, M., et al., Eds. (2003). *Fodor's Italy 2004*. New York: Random House.
- 25) Lombardi, M., et al., Eds. (2002). *Fodor's Italy 2003*. New York: Random House.
- 26) Lombardi, M., et al., Eds. (2001). *Fodor's Italy 2002*. New York: Random House.
- 27) Rockwood, C., et al., Eds. (2000). *Fodor's Italy 2001*. New York: Random House.
- 28) Rockwood, C., et al., Eds. (1999). *Fodor's Italy 2000*. New York: Random House.
- 29) Rockwood, C., et al., Eds. (1999). *UpClose Italy 2000*. New York: Random House.

- 30) Schneider, E., Ed. (1998). *Let's Go: Spain and Portugal 1999*. New York: St. Martin's Press.
- 31) Weiss, T., et al., Eds. (1998). *The Unofficial Guide to Life at Harvard 1999*. Cambridge, MA: Harvard Student Agencies Press.
- 32) Bergan, N., Ed. (1997). *Let's Go: Central America 1998*. New York: St. Martin's Press.
- 33) Beidler, F., Ed. (1997). *Let's Go: USA 1998*. New York: St. Martin's Press.
- 34) Portnoy, A., Ed. (1997). *Let's Go: California 1998*. New York: St. Martin's Press.
- 35) Valtz, V., et al., Ed. (1997). *The Unofficial Guide to Life at Harvard 1998*. Cambridge, MA: Harvard Student Agencies Press.
- 36) Unterman, K., Ed. (1996). *Let's Go: Ecuador and the Galápagos Islands 1997*. New York: St. Martin's Press.
- 37) Rathod, J., Ed. (1995). *Let's Go: Mexico 1996*. New York: St. Martin's Press.

Selected presentations

- 1) Odds Salon, Bad Gastein, Austria, July 2019. "The Gruner Veltliner challenge."
- 2) American Association of Wine Economists, Annual Meeting, Vienna, Austria, July 2019. "What is the Price of Excellence? The Case of Restaurant Wine Awards."
- 3) Beeronomics Society, Biannual Meeting, Pilsen, Czech Rep., June 2019. Keynote Address: "The Economics of Pretension: Lessons from Beer"; "Cheaper By The Keg? Price-Quantity Relationships in U.S. Retail Beer Prices."
- 4) 23rd International Consortium on Applied Bioeconomy Research (Regulation and Finance of Innovations for a Sustainable Economy), Ravello, Italy, June 2019. "The Economic Impacts of Legalization and Regulation on the Legal and Illegal Cannabis Markets."
- 5) 30th International Conference of Agricultural Economists (IAAE), Vancouver, BC, August 2018. Cannabis economics panel.
- 6) American Association of Wine Economists, Annual Meeting, Ithaca, NY, July 2018. "Price-quality inversion in U.S. retail consumer markets"; "Legal cannabis prices in California"; song, "Regulation's on."
- 7) 1st Kulangsu Viola Festival, Xiamen, China, September 2017. Introductory speech and musical performance: "Waves of Kulangsu."
- 8) Jing & Students Concert, Xiamen, China, September 2017. Song: "Waves of Kulangsu."
- 9) Cross Straits Blind Tasting Competition and Wine Market Symposium, Xiamen, China, September 2017. "Premiumization, Country-of-Origin Branding, and Challenges for the Chinese Wine Import Market."
- 10) An Evening With Jing & Friends, Xiamen, China, September 2017. Songs: "It Was Beer," "Muckraker," "Waves of Kulangsu."

- 11) American Agricultural and Applied Economics Association (AAEA) Annual Meeting, Chicago, IL, August 2017. “Craft Beer is Wine,” including song: “It Was Beer.” (Track Session, Australasia Section, “Beer Versus Wine”); “Prices and Premiumization in the Legal Cannabis Market: A review of data from the UC Agricultural Issues Center Retail Cannabis Price Survey, November 2016–March 2017.”
- 12) 21st International Consortium on Applied Bioeconomy Research (“Bioeconomy in Transition: New Players and New Tools”), Berkeley, CA, July 2017. “A Selective History of Muckraking in the U.S. and Britain, 1906–2017”; Songs: “Waves of Kulangsu,” “Muckrakers.”
- 13) American Association of Wine Economists (AAWE) 11th Annual Conference, Padova, Italy, June 2017. “Do Premium and Generic Consumer Prices Diverge Over Time? Normal and Snob Demand in the Markets for Alcohol and Marijuana.”
- 14) 13th Annual Conference of the NeuroPsychoEconomics Association, Antwerp, Belgium, June 2017 (“Neuroeconomic foundations of bounded rationality and heuristic decision making”). “Do premium and generic prices diverge over time? Evidence for the snob effect in the US and UK beer, wine, and marijuana markets.”
- 15) 5th Beeronomics Conference, Copenhagen, Denmark, June 2017 (“The Economics of Beer and Brewing”). “Dark days for normal beer in America,” including song: “It Was Beer.”
- 16) University of California, Davis, Agricultural and Resource Economics Brown-Bag Lunch Seminar, May 2017. “The Bullshit Horizon: Do the Generic and Premium Prices of Consumer Goods Diverge Over Time? Evidence from Beer, Wine, and Marijuana.”
- 17) Xiamen Air New Year’s Concert, Kulangsu Concert Hall, Xiamen, China, January 2017. Spoken-word performance: “Listening to Kulangsu.” Songs: “Waves of Kulangsu,” “Auld Lang Syne.”
- 18) Jing & Friends Concert: “Love Songs from the World To Kulangsu.” Kulangsu Concert Hall, Xiamen, China, September 2016–December 2016 (3 performances). Spoken-word performance: “Listening to Kulangsu.” Songs: “Treehouse Girl,” “Waves of Kulangsu.”
- 19) World premiere of classical piece “Serenade for 5-string Viola and Piano, Op. 1,” International Sommerakademie Concert, Leo Culture Hall, Bad Leonfelden, Austria.
- 20) Returning Overseas Students Annual Banquet, Xiamen, China, May 2016. “How to Avoid Wine Bullshit: A Primer on Tasting and Talking.”
- 21) 4th Beeronomics Conference, Seattle, WA, August 2015. “Hide the Label, Hide the Difference?” Joint work with Johan Almenberg and Anna Dreber.
- 22) American Association of Wine Economists (AAWE) 9th Annual Conference, Mendoza, Argentina, May 2015. “Price-Quality Inversion: Unexpected Effects of Information Signals on Consumer Experience in Wine, Beer, and Other Hedonic Product Markets.”
- 23) University of Bordeaux, Department of Economics, Laboratory of Analysis and Research in Economics and International Finance, April 2015. “The Inferiority Premium: Evidence for Price-Quality Inversion in Consumer Markets.”

- 24) American Association of Wine Economists, Walla Walla, WA, June 2014. “Do More Expensive Things Taste Worse? Some Working Economic Hypotheses on Snobbery.”
- 25) American Association of Wine Economists, Stellenbosch, South Africa, June 2013. “Combining the Love and the Hate: Hedonic Asymmetries in Wine Rating Scales.”
- 26) Eastern Economic Association, New York, NY, May 2013. “The Benefits of Being Tipsy: Behavior Under the Influence of Moderate Amounts of Alcohol.”
- 27) Roosevelt University, Chicago, IL, April 2013. “Doctors of Strange Love: Deliberate Disutility in Markets for Beer, Food, and Medical Marijuana.”
- 28) Enometrics XIX, Vineyard Data Quantification Society and European Association of Food Economists, Coimbra, Portugal, May 2012. “Strange Brew: European Lagers Not So Distinct?” Joint work with Johan Almenberg, Seamus Campbell, Anna Dreber, and Alexis Herschkowitsch.
- 29) Association for Private Enterprise Education, Las Vegas, Nevada, March 2012. “Can Americans Distinguish Between Different Brands of European Pale Lager Beer?” Joint work with Johan Almenberg, Seamus Campbell, Anna Dreber, and Alexis Herschkowitsch.
- 30) International Food Bloggers Conference (IFBC), Santa Monica, CA, November 2011. “Blogging Your Values: Panel Discussion.” With Barnaby Dorfman, Dianne Jacob, and Linda Miller Nicholson.
- 31) International Food Bloggers Conference (IFBC), New Orleans, LA, August 2011. “Ethics and Values In Food Blogging.”
- 32) American Association of Wine Economists, Bolzano, Italy, June 2011. “Do Expert Ratings Measure Quality? The Case of Restaurant Wine Awards.” Joint work with Orley Ashenfelter and Craig Riddell.
- 33) Keynote address, Healthy Menus R&D Collaborative, The Culinary Institute of America at Greystone, St. Helena, CA, June 2011. “Behavioral Economics: How Expectations, From Pricing to Health Messaging, Influence Consumer Food and Drink Decisions.”
- 34) FENAVIN, Spanish national wine fair, Ciudad Real, Spain, May 2011. “Critiquing the Critics.”
- 35) Fifth Nordic Behavioral and Experimental Economics Conference, Helsinki, Finland, November 2010. “Modeling the Nocebo Effect: Some Early Experimental Evidence for Negative Price Signals in Blind Tastings.”
- 36) International Food Bloggers Conference (IFBC), Seattle, WA, August 2010. “The Law and Ethics of Food Blogging.”
- 37) Federal Reserve Bank, San Francisco, CA, July 2010. “Do Expert Ratings Measure Quality? The Case of Restaurant Wine Awards.” Presented by Orley Ashenfelter; joint work with Craig Riddell.
- 38) American Association of Wine Economists, Davis, CA, June 2010. “Do Expert Ratings Measure Quality? The Case of Restaurant Wine Awards.” Presented by Orley Ashenfelter; joint work with Craig Riddell.

- 39) American Association of Wine Economists, Davis, CA, June 2010. “Can People Tell the Difference Between Brands of European Pale Lager Beer?” Joint work with Johan Almenberg, Seamus Campbell, and Alexis Herschkowitsch.
- 40) American Association of Wine Economists, Davis, CA, June 2010. Plenary panel on wine competitions and judging. With Orley Ashenfelter, Robert Hodgson, George Taber, and “Pooch” Pucilowski.
- 41) University of Houston Alumni Association, Houston, TX, May 2010. “Placebo Effects and the Neuroscience of Food and Wine Tasting.”
- 42) Authors Weekend, Fairmont Hotel, Scottsdale, AZ, February 2010. “How the Brain Fools the Palate: Lessons From Blind Tasting.” With chefs Michael Mina, Michelle Bernstein, Bobby and Jamie Deen, and wine author Karen MacNeil.
- 43) Yale Entrepreneurial Institute, New Haven, CT, July 2009. Entrepreneurs & Innovators Series. ”The Fearless Critic: Guerrilla Marketing, Entrepreneurship, and Consumer Advocacy.”
- 44) American Association of Wine Economists, Reims, France, June 2009. “Can People Tell the Difference Between Dog Food and Pâté?” Joint work with John Bohannon and Alexis Herschkowitsch.
- 45) FENAVIN, Spanish National Wine Fair, Ciudad Real, Spain, May 2009. “Blind Tasting and the Honest Wine Movement.”
- 46) Junior League of Milwaukee, Harley-Davidson Museum, Milwaukee, WI, February 2009. “The Wine Trials.” With Alexis Herschkowitsch.
- 47) Catavino, Madrid, Spain, November 2008. “The Wine Trials.”
- 48) American Association of Wine Economists, Portland, OR, August 2008. “Do More Expensive Wines Taste Better? Evidence From A Large Sample of Blind Tastings.” Presented with Johan Almenberg; joint work with Anna Dreber, Jay Emerson, Alexis Herschkowitsch, and Jake Katz.
- 49) Muhlenberg College, Allentown, PA, 2004. “Food Criticism: Ethical, Financial, and Logistical Challenges.” With Clare Murumba.
- 50) Università degli Studi di Roma (La Sapienza), Rome, Italy, March 2001. “Antitrust and Innovation in the US: The Case of Microsoft.”
- 51) LUISS Guido Carli University, Rome, Italy, March 2001. “The Law and Economics of the Microsoft Antitrust Case.” With Valerio De Luca and Ernest Miller.
- 52) Brain and Self Workshop, Elsinore, Denmark, 1997. “Animal Cognition and Consciousness: Defining The Terms.”

Selected TV and radio appearances

CBC (Canadian national radio), Eat Street (The Food Network, national), ESPN Radio, Freakonomics Radio (NPR, national), Good Morning Connecticut (WTNH, ABC TV, New Haven, CT), KGW (NBC TV, Portland, OR), KINK TV (Portland, OR), KOIN TV (Portland, OR), KPTV (FOX TV, Portland, OR), KXAN (ABC TV, Austin, TX), KTBC (FOX TV, Austin, TX), The Leonard Lopate Show (WNYC radio, NPR, New York), Martha Stewart Radio (national), Marketplace (NPR, national), New England Cable News, News 8 (Austin, TX), Rai Uno (Italian national TV), The Splendid Table (NPR, national), WKUT radio (NPR, Austin), WTIC (FOX TV, Hartford, CT). Work discussed on *Colbert Report* (national).

Selected media profiles and articles

North American books: profiled extensively in Stephen Dubner and Steven Levitt, *Think Like a Freak* (William Morrow, 2014); Chris Berdik, *Mind over Mind: The Surprising Power of Expectations* (Penguin, 2012); and George Taber, *A Toast to Bargain Wines: How Innovators, Iconoclasts, and Winemaking Revolutionaries Are Changing the Way the World Drinks* (Simon & Schuster, 2011).

North American newspapers and magazines: Atlanta Journal-Constitution, The Atlantic, Austin American-Statesman, Austin Chronicle, Austin Magazine, Boston Globe, BusinessWeek, Calgary Herald, California magazine, Charlotte Observer, Chicago Tribune, D Magazine, Dallas Morning News, El Mundo, Florida Times-Union, Fort Worth Star-Telegram, Houston Chronicle, Houston Press, Los Angeles Times, New Haven Advocate, New Haven Register, New York magazine, New York Daily News, New York Post, New York Times, Newsweek, Oregonian, Pittsburgh Post-Gazette, Portland Mercury, Reuters, Sacramento Bee, San Antonio Current, San Francisco Chronicle, USA Today, Wine Business, Wine Connoisseur, Yale Daily News

Asia/Pacific: The Age (Australia), Bangkok Post (Thailand), Esc Magazine (Korea), Medical Today (Korea), Sina (China), WineChina (China).

Western Europe: ABC de Sevilla (Spain), Benzina (Spain), BK Wine Magazine (Sweden), Borsa (Hungary), Dagens Næringsliv (Norway), Der Spiegel (Germany), Dnes (Czech Republic), E24 (Sweden), El Correo Gallego (Spain), El País (Spain), El Singular (Spain), Gastronomía y Cía (Spain), The Guardian (UK), The Independent (UK), International Herald-Tribune (France), L'Absurd Diari (Spain), La Gazzetta del Sud (Italy), La Cerca (Spain), La Repubblica (Italy), Marketing de Vinhos (Portugal), Matgalen (Sweden), Restauratören (Sweden), Reuters UK, Scotsman (Scotland), Τα Νέα (Greece), 394 Catalunya (Spain), The Times of London (UK), Verdens Gang (Norway), Vertaa (Finland), Vino Gallego (Spain).

Latin America: Bolsa de Mulher (Brazil), El Clarín (Argentina), El Universo (Ecuador), La Nación (Argentina), Playboy (Brazil), Reuters América Latina, Terra (Mexico).

Middle East: Marker (Israel), Vatan (Turkey).

Report on the economic impacts of HB 1325 and associated regulations

Executive Summary Prepared by Robin Goldstein

This report evaluates the expected economic impacts of Texas HB 1325 and associated Texas Department of State Health Services (“DSHS”) regulations on Crown Distributing and other Texas businesses, on Texas consumers, and on the Texas state government. The statute affects the smokable hemp businesses growing, manufacturing, distributing, and retailing smokable hemp in Texas.

The executive summary is organized as follows. In Section I, I provide an overview of my research methods, approach to calculations, and other factors relevant to my analysis. In Section II, I summarize the impacts on Crown and associated companies and provide a table that shows the main results by year over the five-year period from 2020 to 2024. In Section III, I summarize the statewide impacts.

I. Overview and methods

I use statistical analysis of company financial information, hemp industry data, and regulatory shocks to estimate the impact of HB 1325 on the expected financial performance of Crown Distributing (“Crown”), a Dallas-based company that produces and sells smokable hemp, for 5 years after the effective date of HB 1325. I also consider the impacts on the smokable hemp divisions of two closely connected businesses, America Juice Company (“AJC”) and Global Tobacco (“Global”), which have partially common ownership with Crown, distribute some Crown products, and manufacture other Crown products. Together I call these the “Smokable Hemp Companies.” The individual impacts on the three companies are separated out in the full report, but are aggregated for simplicity in this Executive Summary.

Data

I have obtained and analyzed financial data from Crown covering the 21.5-month time period from April 1, 2018, to July 14, 2020. During this time, Crown reported \$11.5 million in aggregate revenue (including retail and wholesale) from smokable flower (about \$11.0 million from Hempettes, \$72,000 from raw flower, and \$448,000 in revenue from smokable oil products). AJC and Global reported additional revenue from smokable hemp products (not including products sold to Crown) of \$2.3 million. Total 2019 (calendar year) aggregate smokable hemp revenue for the Smokable Hemp Companies was approximately \$9.65 million.

Calculation of HB 1325 effects¹

For this report I have evaluated Crown’s past and future expected financial performance in the context of past performance and the introduction of HB 1325 restrictions. Based on trends I

¹ Before the anticipated shutdown of its business due to HB 1325, Crown was already severely impacted by COVID-19-related restrictions, including the complete loss of sales through certain wholesale and retail channels between April and June 2020. Similarly situated smokable hemp manufacturers in Texas have faced similar sales barriers during the pandemic. Shipping costs have also increased under COVID-19. The July 2020 Hemp Benchmarks report

observed in sales data (omitting data from the months impacted by COVID-19), and accounting for general market conditions, I have estimated Crown's revenues over the five calendar years from 2020 to 2024 and projected profits based on an average expected net operating margin.

I begin by constructing what I call Scenario 1 or the "baseline." Scenario 1 is the hypothetical situation where HB 1325 is not in effect and Crown is permitted to continue operating normally.

Next, I evaluate the effects of three scenarios with HB 1325 in place.

- Scenario 2 models a scenario where Crown, and all other similarly situated businesses in Texas, permanently shut down operations and dissolve their businesses. Crown's future revenues, profits, and jobs are lost to Crown and to Texas.
- Scenario 3 assumes that Crown moves its entire smokable hemp production to Oklahoma and 12 months of company closure.
- Scenario 4 assumes that Crown moves its entire smokable hemp production to Oklahoma and 5 months of company closure.

Crown has considered moving to Oklahoma and obtained pricing on some costs of the transition. But the Oklahoma plan presents many unknowns for Crown, especially with COVID-related uncertainties. It requires major new investment of more than \$3 million in capital (including \$1.75 million for buying and installing a new cleanroom) plus the risk of suspending relationships with existing buyers, sales reps, and staff. During the transition period, Crown must temporarily cease operations, secure land, build out new facilities, move equipment and inventory, hire new staff in Oklahoma, etc. In the meantime, Crown must continue to spend on overhead and moving costs while temporarily losing its revenue from smokable hemp sales.

Scenarios 3 and 4 differ only in their assumptions about how long the move to Oklahoma would take Crown, which affects Crown's interim losses. Scenario 3 assumes, conservatively, that Crown's move to Oklahoma, accounting for slowdowns due to COVID-19 labor and travel restrictions, takes a total of 12 months. Scenario 4 assumes, more aggressively, that Crown is able to complete the transition in 5 months and resume normal operations on January 1, 2021.

In the three scenarios with HB 1325 in place, I assume the loss of 16.5% of Crown's total sales due to the prohibition on retail sales and distribution in Texas under the DSHS implementation of HB 1325.

observes that prices to ship hemp out of Texas have increased during the COVID-19 pandemic, as well as shipping costs into and out of other major U.S. locations including California, Oregon, Colorado, and North Carolina. HB 1325 losses will dovetail with COVID-19 losses to create a combined situation of unusually acute financial hardship for smokable hemp manufacturers in Texas.

II. Impacts on the Smokable Hemp Companies

In the bullet points below, I summarize the estimated impacts of HB 1325 and associated regulations on the revenues and profits of the Smokable Hemp Companies, in the four scenarios described above, over the five-year period between 2020 and 2024. Numbers are reported in U.S. dollars, rounded to nearest \$10,000. Projected and estimated revenues and profits are separated out by individual years (2020–2024) in Table 1 below.

Scenario 1: HB 1325 and associated regulations are not in effect. The Smokable Hemp Companies continue normal operations.

- Under Scenario 1 (the “**baseline**” scenario), I project that between 2020 and 2024, **the companies will earn \$59.1 million in total revenue and will earn \$25.4 million in total profits.**

Scenario 2: HB 1325 and associated regulations are in effect. The companies shut down their smokable hemp operations permanently. No revenues or profits are ever collected from smokable hemp after August 2020.

- Under Scenario 2, compared with baseline Scenario 1, I estimate that **because of HB 1325 and associated regulations, the companies will lose \$56.4 million in total revenue and will lose \$24.2 million in total profits.**

Scenario 3: HB 1325 and associated regulations are in effect. The companies shut down their operations in Texas and re-open their operations at a new facility in Oklahoma 12 months later. Revenues and profits are lost between August 1, 2020, and July 31, 2021.

- Under Scenario 3, compared with baseline Scenario 1, I estimate that **because of HB 1325 and associated regulations, the companies will lose \$18.2 million in total revenue and will lose \$12.1 million in total profits.**

Scenario 4: HB 1325 and associated regulations are in effect. The companies shut down their operations in Texas and re-open their operations at a new facility in Oklahoma 5 months later. Revenues and profits are lost between August 1 and December 31, 2020.

- Under Scenario 4, compared with baseline Scenario 1, I estimate that **because of HB 1325 and associated regulations, the companies will lose \$13.1 million in total revenue and will lose \$9.4 million in total profits.**

Note 1: Numbers are simple sums and not net present values discounted for interest or inflation.

Note 2: Since my estimated 2020 revenues are based partly on partial 2020 reported revenues (January–June 2020), I call them “projections.” Since my estimated 2021–2024 revenues are based only on expectations based on statistical trends of historical sales data, I call them “estimates.”

Table 1. Estimated impacts of HB 1325 and regulations on Crown, AJC & Global	Baseline Scenario 1	HB 1325 Scenario 2	HB 1325 Scenario 3	HB 1325 Scenario 4
HB 1325 and associated regulations	Not in effect	In effect	In effect	In effect
Length of companies' closure	None	Permanent	12 months 8/1/20– 7/31/21	5 months 8/1/20– 12/31/20
Projected revenue, 2020–2024 (\$ millions)				
2020	7.26	2.76	2.76	2.76
2021	10.83	0.00	3.94	9.05
2022	12.40	0.00	10.35	10.35
2023	13.73	0.00	11.47	11.47
2024	14.91	0.00	12.45	12.45
Total	59.14	2.76	40.97	46.08
Difference vs. baseline	-	-56.38	-18.17	-13.06
One-time costs of moving companies' smokable hemp businesses to Oklahoma (\$ millions)				
2020	-	-	-3.76	-3.76
2021	-	-	-0.50	-
Total	-	-	-4.26	-3.76
Projected profits (\$ millions)				
2020	3.12	1.42	-2.34	-2.34
2021	4.66	0.00	1.53	4.66
2022	5.33	0.00	5.33	5.33
2023	5.91	0.00	5.91	5.91
2024	6.41	0.00	6.41	6.41
Total	25.43	1.42	16.84	19.97
Difference vs. baseline	-	-24.24	-12.07	-9.38

Note 1: Profits are projected based on 43% estimated average net profit margin, which was the three companies' consolidated average net profit margin for 2020 to date, January through July, calculated as gross sales minus COGS (about 25% of gross sales) minus SG&A (about 45% of gross sales).

Note 2: Revenue projections include total Crown revenue (86% of total revenue), plus additional AJC and Global revenue for sales of non-Crown products (14% of total revenue).

Note 3: Future numbers are not discounted for interest or inflation.

III. Impacts on Texas businesses, consumers, and the state

The final portion of the analysis evaluates the economic impact of HB 1325 and associated regulations on the Texas state economy and tax collections.

1. Losses to Texas retailers and Texas state tax collections

Crown manufactures all Hempettes sold in the United States. Crown sells almost all Hempettes as wholesale cartons. Retail sales constitute a negligible fraction of Crown’s total revenues (about \$37,000 of \$11 million in total Hempettes revenue from October 2018 to July 2020). Crown’s wholesale prices for Hempettes range from \$40 to \$60 per carton and average about \$45. Retail prices for Hempettes range from \$9.99 per pack to \$12.99 per pack, depending on the retail outlet and the quantity pack (individual pack vs. 10-pack carton). I assume an average retail price of \$11.49 per pack, or \$114.90 per carton, the average of the minimum and maximum prices in the range. This translates to an average retail-to-wholesale multiple of $(\$114.90 / \$45) = 2.56$. I estimate total retail spending on Hempettes by multiplying Crown’s Hempettes wholesale revenue by 2.56. This retail spending, along with their associated net profits, are lost to retailers, many (but not necessarily all) of whom are located in Texas.

The Smokable Hemp Companies estimate that 16.5% of their products, by value, are sold to end consumers in Texas. I convert total U.S. retail spending on Hempettes to Texas retail spending on Hempettes by multiplying total U.S. retail spending by 16.5%. I then estimate lost tax collections based on the 6.25% state sales tax rate. I assume that the smokable hemp retail sales were \$70.6 million in 2020. I assume that Texas’ share of retail sales of smokable hemp are proportional to Texas’ share of the U.S. population (8.8%). I assume that overall Texas hemp retail sales grow at the same rate as I estimate that Hempettes retail sales will grow from 2020 to 2024. **Overall, over the five-year period from 2020 to 2024, I estimate lost Texas retail sales from all smokable hemp at about \$46.8 million, and I estimate lost Texas tax revenue at about \$2.9 million.** These results are detailed in Table 2.

Table 2. Lost Texas retail sales and state sales tax collections from Hempettes due to HB 1325 and associated regulations

Year	Lost TX retail sales from Hempettes	Lost TX state tax revenue from Hempettes	Lost TX retail sales from all smokable hemp	Lost TX state tax revenue from all smokable hemp
2020	\$ 1,265,461	\$ 79,091	\$ 2,577,778	\$ 161,111
2021	\$ 3,472,937	\$ 217,059	\$ 9,165,455	\$ 572,841
2022	\$ 3,997,448	\$ 249,840	\$ 10,549,697	\$ 659,356
2023	\$ 4,447,330	\$ 277,958	\$ 11,736,985	\$ 733,562
2024	\$ 4,846,477	\$ 302,905	\$ 12,790,378	\$ 799,399
Total	\$ 18,029,653	\$ 1,126,853	\$ 46,820,293	\$ 2,926,268

2. Losses to other smokable hemp manufacturers in Texas

Crown and associated companies are not the only smokable hemp manufacturers impacted by HB 1325. At least five other companies were actively producing and wholesaling smokable hemp in Texas as of July 2020, and are similarly impacted by HB 1325 and associated regulations. As for the Smokable Hemp Companies, some competitors may close, while others, including prospective manufacturers that have not yet opened, may relocate to other states such as Oklahoma. Although the private financial data from competitors of the Smokable Hemp Companies is not available to me, I would not expect the impacts on these competitors to be materially different, in proportion to their scale. To give an example, if the Smokable Hemp Companies accounted for two-thirds of total Texas smokable hemp wholesale revenues in the state as of July 2020, then the other companies producing and selling the remaining third of the state's smokable hemp could lose an additional \$7–\$28 million in aggregate revenues and lose \$5–\$12 million in aggregate profits.

3. Lost jobs in Texas

Based on analysis of the Smokable Hemp Companies' business documents, I estimated that as of the date, about 40 Texas jobs will be lost at the Smokable Hemp Companies (including related Crown, AJC, and Global jobs) due to the impact of HB 1325 and associated regulations. If the companies shut down operations permanently, these jobs will be lost. If the companies relocate to Oklahoma, then some or all of the jobs lost in Texas may be gained in Oklahoma.

I do not have an accurate estimate of the aggregate size of all smokable hemp producers in Texas, as these companies are privately held, but if the Smokable Hemp Companies make up two-thirds of all smokable hemp production in Texas, then about 20 additional Texas jobs will be lost at other companies, for a total of 60 overall jobs lost in Texas.

4. Lost economic activity and investment in Texas

Smokable hemp generates more revenue per acre than almost any other agricultural commodity that is legal for interstate trade. Smokable hemp is by far the highest-margin form of hemp-based product. Current wholesale prices for the most refined forms of smokable hemp, such as THC-free distillate, CBG distillate, and CBG isolate, range from \$450 to \$2,600 per pound. On average, bulk CBD hemp flower sells for more than \$150 per pound. When smokable hemp is successfully marketed, it generates substantially higher revenues per acre than any other agricultural commodity that is legal for interstate trade, and cotton, corn, and wheat.

The U.S. smokable hemp market is small but growing rapidly. The Brightfield Group estimates that U.S. retail smokable hemp flower sales grew by about 500% from 2018 to 2019, from \$11.7 million to \$70.6 million. Smokable hemp is currently a popular arena for speculation by venture capitalists and health care firms, and is attracting substantial amounts of venture capital and private equity investment. New smokable hemp cultivation and manufacturing projects typically attract initial investments of \$1 to \$10 million and employ between 5 and 50 people in factory, manufacturing, office, and sales jobs.

There are good economic reasons to expect that but for the effects of HB 1325 and associated regulations, Texas could be a particularly attractive state for smokable hemp production and expect additional investment and growth in the smokable hemp sector in coming years. Texas, with relatively low water, electricity, land, and labor costs, is a major exporter of agricultural commodities to other U.S. states. For instance, in 2019, according to the USDA, Texas produced about one-third of America's cotton (6.3 million of 19.9 million 480-pound bales). Texas producers also export large amounts of corn, wheat, beef, and other commodities.

For producers that currently grow hemp in Texas or foresee growing hemp in the future, it would be economically inefficient to launch a business that excludes the production of smokable hemp. Hemp businesses would leave the market for other states, and potential entrants would not choose to open hemp businesses in Texas.

5. No effect on law enforcement interests in Texas

I estimate that HB 1325 and associated regulations will not reduce the prevalence of smokable hemp in Texas, and thus will have no impact on the ability of law enforcement to enforce marijuana laws. My reasoning is as follows.

Possession and use of smokable hemp continues to be legal in Texas. Hemp flower is and will remain legal to possess and smoke in Texas. If legal smokable hemp is problematic for law enforcement because it is impossible to distinguish from illegal marijuana upon inspection, then this situation a prohibition on smokable hemp production in Texas will not address this situation.

By analogy, a prohibition on the manufacturing of computer monitors inside Texas would be unlikely to affect the rates of ownership or use of computer monitors in Texas. Similarly, under HB 1325, smokable hemp consumers will continue to buy, possess, and consume as much in Texas as they do now. This is seen in states where it is legal to possess and use cannabis, but where local laws prohibit production or sale. Consumers in these localities do not tend to consume less cannabis. They simply obtain cannabis from neighboring regions. Under HB 1325, Texas consumers can legally obtain smokable hemp by mail from any other state and can possess and use that smokable hemp. Even if Texas regulations eventually ban e-commerce shipments of smokable hemp into Texas by mail, consumers can easily and legally bring smokable hemp in by car, possess smokable hemp in Texas, and consume smokable hemp in Texas.

The main effect of HB 1325 will move a certain portion of economic manufacturing jobs and economic activity out of Texas to other states where the same amount of hemp will be produced and ultimately consumed in Texas.

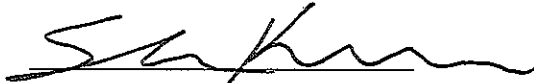
In sum, I estimate that HB 1325 and associated regulations have little to no substantial impact on smokable hemp consumption. This economic activity will simply move to other states and Texas consumers will continue to possess and consume approximately the same amount of smokable hemp as they would possess and consume without HB 1325 or associated regulations in place.

VERIFICATION

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

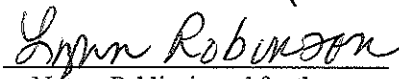
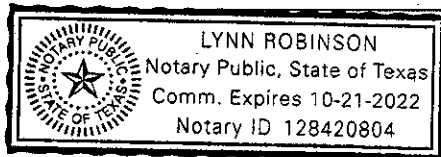
BEFORE ME, the undersigned authority, on this day personally appeared Sarah Kerver, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

My name is Sarah Kerver. I am capable of making this verification. I am the managing member of Custom Botanical Dispensary LLC and 1937 Apothecary LLC. I have read the Plaintiffs' Original Verified Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction, paragraphs 7-9, 16-17, 25-27, 29-30, 34-39, 51-52, 54-55, 77, 89-90. I verify that the facts stated in them are within my personal knowledge and are true and correct.



Sarah Kerver

Sworn to and subscribed before me by Sarah Kerver on the 5 day of August, 2020.



Notary Public, in and for the
State of Texas

Challenge to Constitutionality of a State Statute

Print

This form must be completed by a party filing a petition, motion or other pleading **challenging the constitutionality of a state statute**. The completed form must be filed with the court in which the cause is pending as required by Section 402.010 (a-1), Texas Government Code.

Cause Number *(For Clerk Use Only):*

Court *(For Clerk Use Only):*

Styled: Crown Distributing, LLC, et al. v. Texas Dept. of State Health Services and John Hellerstedt

(e.g., John Smith v. All American Insurance Co.; in re Mary Ann Jones; In the Matter of the Estate of George Jackson)

Contact information for party* challenging the constitutionality of a state statute. (*If party is not a person, provide contact information for party, party's representative or attorney.)

Name: Matthew C. Zorn

Telephone: 713-632-8000

Address: 811 Main Street, Suite 4100

Fax: 713-632-8002

City/State/Zip: Houston, Texas 77002

State Bar No. (if applicable): 24106625

Email: mzorn@vettercoleman.com

Person completing this form is: Attorney for Party Unrepresented Party Other:

Identify the type of pleading you have filed challenging the constitutionality of a state statute.

Petition Answer Motion (Specify type):

Other:

Is the Attorney General of the State of Texas a party to or counsel in this cause?

Yes No

List the state statute(s) being challenged in your pleading and provide a summary of the basis for your challenge. (Additional pages may be attached if necessary.)

Tex. Health & Safety Code § 443.204(4) and Texas Agriculture Code § 122.301(b).

These statutes are unconstitutional under the Texas Due Course of Law Clause and the standards described in *Patel v. Texas Dep't of Licensing & Regulation*, 469 S.W.3d 69 (Tex. 2015).



SERVICE REQUEST FORM

VELVA L. PRICE

District Clerk, Travis County
Civil Division (512) 854-9457

REQUESTED BY:

ATTORNEY/FILER: Matthew C. Zorn

PHONE #: 713-632-8000

EMAIL: mzorn@yettercoleman.com

SUBMITTED BY: Crown Distributing, LLC, et al.

TITLE: Counsel for Plaintiffs

SIGNATURE: /s/ Matthew C. Zorn

ISSUE PROCESS FOR:

CAUSE #:

CASE STYLE: Crown Distributing LLC et al. v. Texas Department of State Health and Safety and John Hellerstedt

QUICK CITATION REQUEST: (FOR SERVICE OF CITATION ON ALL DEFENDANTS BY PERSONAL)

ISSUE CITATION TO ALL DEFENDANTS LISTED IN THE ORIGINAL PETITION AT THE ADDRESS SPECIFIED IN THE PETITION AND FORWARD THE CITATION(S) TO THE FOLLOWING:

- TRAVIS CO. CONSTABLE (specify): CERTIFIED MAIL BY CLERK ATTORNEY/REQUESTER
- PRIVATE PROCESS AGENCY (specify): I HAVE INCLUDED ATTACHMENTS TO THIS REQUEST (e.g. DISCOVERY) TO INCLUDE

DETAILED SERVICE REQUEST: (ON PARTICULAR PARTIES, BY VARIOUS DELIVERY METHODS, OR FOR NON-CITATION)

DESCRIPTION OF INSTRUMENT(S) TO BE SERVED:	Plaintiffs' Original Verified Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction	
<input checked="" type="checkbox"/> I HAVE INCLUDED ATTACHMENTS TO THIS REQUEST (e.g. discovery) TO INCLUDE IN THE CITATION Proposed TRO, Expert Report and Declaration in Support		
TYPE OF PROCESS TO ISSUE:	<input checked="" type="checkbox"/> CITATION <input type="checkbox"/> CERTIFIED NOTICE <input type="checkbox"/> PROTECTIVE ORDER* <input type="checkbox"/> TRO*^ <input type="checkbox"/> INJUNCTION*^ <input type="checkbox"/> SEQUESTRATION*^	
	<input type="checkbox"/> ATTACHMENT* <input type="checkbox"/> EXECUTION* <input type="checkbox"/> ABSTRACT* <input type="checkbox"/> SUPERSEDEAS^ <input type="checkbox"/> SCIRE FACIAS* <input type="checkbox"/> OTHER^	
*SPECIFY TITLE AND DATE OF UNDERLYING ORDER IN CASE RECORD:		^ATTACH A COPY OF BOND AND/OR OTHER SUPPORTING DOCUMENT

SERVICE TO BE ISSUED:

PARTY NAME: Texas Department of State Health Services c/o Barbara Klein, General Counsel PARTY TYPE: Defendant <input checked="" type="checkbox"/> USE ADDRESS IN ORIGINAL PETITION <input type="checkbox"/> SECRETARY OF STATE <input type="checkbox"/> OTHER ADDRESS:	EMAIL PROCESS TO: <input type="checkbox"/> TRAVIS CO. CONSTABLE <input type="checkbox"/> ATTORNEY/REQUESTOR <input checked="" type="checkbox"/> PRIVATE PROCESS AGENCY: Process Agency Name: srichey@yettercoleman.com	SERVE VIA: <input checked="" type="checkbox"/> PERSONAL SERVICE <input type="checkbox"/> CERTIFIED MAIL (BY CONSTABLE) <input type="checkbox"/> CERTIFIED MAIL (BY CLERK) <input type="checkbox"/> CITATION BY POSTING* <input type="checkbox"/> CITATION BY PUBLICATION*
PARTY NAME: John Hellerstedt, Commissioner of the Texas Department of State Health Services PARTY TYPE: Defendant <input checked="" type="checkbox"/> USE ADDRESS IN ORIGINAL PETITION <input type="checkbox"/> SECRETARY OF STATE <input type="checkbox"/> OTHER ADDRESS:	EMAIL PROCESS TO: <input type="checkbox"/> TRAVIS CO. CONSTABLE <input type="checkbox"/> ATTORNEY/REQUESTOR <input checked="" type="checkbox"/> PRIVATE PROCESS AGENCY: Process Agency Name: srichey@yettercoleman.com	SERVE VIA: <input checked="" type="checkbox"/> PERSONAL SERVICE <input type="checkbox"/> CERTIFIED MAIL (BY CONSTABLE) <input type="checkbox"/> CERTIFIED MAIL (BY CLERK) <input type="checkbox"/> CITATION BY POSTING* <input type="checkbox"/> CITATION BY PUBLICATION*
PARTY NAME: PARTY TYPE: <input type="checkbox"/> USE ADDRESS IN ORIGINAL PETITION <input type="checkbox"/> SECRETARY OF STATE <input type="checkbox"/> OTHER ADDRESS:	EMAIL PROCESS TO: <input type="checkbox"/> TRAVIS CO. CONSTABLE <input type="checkbox"/> ATTORNEY/REQUESTOR <input type="checkbox"/> PRIVATE PROCESS AGENCY: Process Agency Name:	SERVE VIA: <input type="checkbox"/> PERSONAL SERVICE <input type="checkbox"/> CERTIFIED MAIL (BY CONSTABLE) <input type="checkbox"/> CERTIFIED MAIL (BY CLERK) <input type="checkbox"/> CITATION BY POSTING* <input type="checkbox"/> CITATION BY PUBLICATION*

*THIS TYPE OF SERVICE MAY REQUIRE A COURT ORDER. ENTER DATE OF SERVICE ORDER IN CASE RECORD:

ADDITIONAL INSTRUCTIONS FOR CLERK OR FOR OFFICER SERVING PROCESS:

Please email the issued e-citations to Samantha Richey at srichey@yettercoleman.com

FOR ADDITIONAL PARTIES TO BE SERVED, USE e-FILED PROCESS ISSUANCE REQUEST FORM ADDENDUM