



Federal Circuit Court Confirms States' Authority to Regulate Hemp-Derived Cannabinoids

AUGUST 2025

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On June 24, 2025, the Eighth Circuit Court of Appeals rejected claims by Arkansas manufacturers and retailers of hemp-derived products that the State of Arkansas lacked authority under federal law to regulate in-state sales of those products. Specifically, in *Bio Gen LLC v. Sanders*, 142 F.4th 591 (8th Cir. 2025), the Eighth District found that the federal Agricultural Improvement Act of 2018 (“the 2018 Farm Bill”) did not preempt the State’s authority to regulate hemp-derived products more strictly than that provided by the 2018 Farm Bill. In doing so, the Eighth Circuit joined the Fourth and Seventh Circuits in ruling that states have broad authority to regulate hemp-derived products within their borders, subject to the 2018 Farm Bill’s statutory exception that they cannot restrict the transportation or shipment of federally compliant hemp through their states. See *Northern Virginia Hemp and Agriculture v. Virginia*, 125 F.4th 472 (4th Cir. 2025); *C. Y. Wholesale Inc. v. Holcomb*, 965 F.3d 541 (7th Cir. 2020).[1]

For brief context, hemp and marijuana are both derived from the same plant, *Cannabis sativa*. While marijuana remains a Schedule I drug under the federal Controlled Substances Act (“CSA”), the U.S. Congress defined “hemp” in the 2018 Farm Bill as *Cannabis sativa* containing less than 0.3 percent delta-9 THC by dry weight and removed hemp from the definition of marijuana under the CSA. As a result, the 2018 Farm Bill led to a proliferation of “federally legal” products containing hemp-derived cannabinoids throughout the country, which (subject to a few exceptions not relevant here) remain unregulated under federal law. As the industry has expanded, however, state legislatures have stepped in to regulate hemp-derived products within their borders due to concerns about potential safety issues.

In *Bio Gen*, the Eighth Circuit reviewed a 2019 Arkansas statute that banned certain synthetically derived cannabinoids and effectively lowered the concentration of delta-9 THC used to distinguish between legal hemp and illegal marijuana. Rejecting plaintiffs’ argument that the Arkansas statute was preempted because it conflicted with the 2018 Farm Bill’s “purpose of legalizing hemp production,” the court noted that Congress did nothing more than facilitate state legalization of hemp for states that choose to do so. More significantly, the court recognized that the 2018 Farm Bill expressly provided that states could regulate hemp production in any manner more stringent than the 2018 Farm Bill. *Bio-Gen*, 142 F.4th at 603 (quoting 7 U.S.C. 1639p(a)(3)(A) of the 2018 Farm Bill). Accordingly, the court explicitly

rejected plaintiffs' contention that states must use the federal definition of hemp in seeking to regulate hemp-derived products. *Id.* In doing so, the court overruled the district court's conclusion that the Arkansas statute violated the Supremacy Clause of the U.S. Constitution. *Id.*

Based on reasoning similar to that of *Bio Gen*, courts around the country have upheld a variety of states' regulations of hemp-derived products, including those that defined hemp based on the concentration of all forms of THC in the products (as opposed to the federal definition that references only delta-9 THC); imposed potency limits and warning requirements on consumable hemp products; banned certain hemp-derived cannabinoids; prohibited the sale or distribution of products with chemically derived cannabinoids (e.g., synthesized from CBD); and banned smokable hemp products. While the hemp industry is likely to continue challenging state regulations of hemp-derived products depending on the specific provisions at issue, what *Bio Gen* and similar cases make clear is that states retain broad authority to limit or even ban the manufacturing and sale of these products in their states, so long as they do not attempt to restrict the transportation or shipment of federally compliant hemp through their states.

[1] The states covered by these circuits are Maryland, West Virginia, Virginia, North Carolina, and South Carolina (Fourth Circuit); Wisconsin, Illinois, and Indiana (Seventh Circuit); and North Dakota, South Dakota, Nebraska, Minnesota, Iowa, Missouri, and Arkansas (Eighth Circuit).

Additional Information

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