

# **EXHIBIT A**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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No. 19-35138

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BIG SKY SCIENTIFIC LLC,

Plaintiff-Appellant,

v.

IDAHO STATE POLICE, ADA COUNTY, and JAN M. BENNETTS, in her  
official capacity as Ada County Prosecuting Attorney,

Defendants-Appellees

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On Appeal from the United States District Court for the District of Idaho  
The Honorable Ronald E. Bush, Chief Magistrate Judge  
Case No. 1:19-cv-00049-REB

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**BRIEF OF *AMICUS CURIAE* THE AMERICAN TRADE ASSOCIATION  
OF CANNABIS AND HEMP IN SUPPORT OF APPELLANT AND  
REVERSAL OF THE DISTRICT COURT**

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**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1, *amicus curiae* the American Trade Association of Cannabis and Hemp (“ATACH”) states that it is not publicly traded, has no parent company, and no publicly traded company owns 10% or more of ATACH’s stock.

**STATEMENT REQUIRED BY FED. R. APP. P. 29(a)(4)(E)**

ATACH states that no counsel for a party authored this brief in whole or in part. No party, its counsel, or any other person other than ATACH has made a monetary contribution to fund the preparation and submission of this brief.

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**STATEMENT OF IDENTITY AND INTEREST OF *AMICUS CURIAE***

ATACH is a 501(c)(6) trade organization registered in Washington, DC, comprised of hemp and marijuana industry leaders from around the country. ATACH seeks to promote the marketplace expansion, protection, and preservation of businesses engaged in the legal trade of industrial hemp and medical and adult-use marijuana products. ATACH plays a leading role in advancing and developing the hemp and marijuana industry, and a number of state hemp, marijuana, and cannabis<sup>1</sup> trade associations have formal affiliations with ATACH. ATACH has also worked for years to develop industry standards and responsible regulation for the cannabis industry. *See, e.g.,* John Schroyer, ‘*Monumental*’ Meeting Culminates with Call for National Marijuana Business Standards, MJBIZDAILY.COM, <https://mjbizdaily.com/monumental-meeting-culminates-with-call-for-national-marijuana-business-standards/> (July 28, 2015) (ATACH participates in a meeting among industry leaders and twenty state attorneys general focused on the development of national cannabis business standards), attached to ATACH’s Motion for Judicial Notice (“MJN”), filed concurrently herewith, as Exhibit A.

ATACH’s membership is comprised of major operators of cannabis growing facilities and dispensaries such as Medicine Men, Urban Farmers and Keef Brands,

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<sup>1</sup> As discussed below, because both hemp and marijuana derive from the plant *Cannabis sativa L.*, “cannabis” refers to hemp and marijuana collectively.

as well as ancillary businesses such as Boveda, the leading manufacturer of two-way humidifier equipment, and Drug Plastics and Glass Company, a leading manufacturer of pharmaceutical packaging. ATACH has formal relationships with a number of state cannabis and hemp trade associations. Significantly for this case, ATACH's National Council of State Organizations includes major trade organizations in states comprising the Ninth Circuit: Montana Cannabis Industry Association, Washington Cannabusiness Association, Alaska Marijuana Industry Association, Western Regional Cannabis Business Alliance, Oregon Cannabis Business Council, and Washington's Cannabis Organization of Retail Establishments.

ATACH therefore has a direct and substantial interest in the outcome of this Action. This matter concerns whether a hemp cultivator in one state may lawfully ship cultivated hemp to a processor in another state without interference from a third state through which the hemp happens to be shipped. The Court's decision will have a direct effect on these businesses affiliated with ATACH. In particular, ATACH and its members are concerned that, if this Court upholds the lower court's decision, transportation of lawfully cultivated or processed hemp will be prohibited across many state lines. This will stop the growth of a rapidly developing industry and will have a significant negative effect on businesses

affiliated in any way with the hemp industry—both of which are in direct contravention of Congress in its enactment of the 2108 Farm Bill.

ATACH is uniquely positioned to inform the Court about the general impact that the lower court's decision would have on the industrial hemp industry.

ATACH is filing this *amicus curiae* brief in support of Appellant Big Sky Scientific, LLC to advise the Court of the potential consequences and harm the hemp industry would suffer should the Court affirm the decision of the trial court.

ATACH has been authorized by its Board of Directors to file this brief on behalf of its membership.

## I. INTRODUCTION

Big Sky Scientific, LLC, a Colorado-based hemp processor, purchased federally lawful hemp from a state-licensed hemp cultivator in Oregon. The parties arranged to ship the hemp from Oregon to Colorado via motor carrier. When *en route* to Colorado the shipment entered Idaho, the Idaho police seized the cargo and arrested the driver, alleging violations of Idaho state law. The specific facts of the case are set forth in Big Sky’s opening brief, which ATACH adopts by incorporation.

The Agriculture Improvement Act of 2018 (the “2018 Farm Bill”) explicitly forbids the actions of the Idaho police by providing that no state may prohibit the transportation of hemp when such hemp is cultivated pursuant to the 2018 Farm Bill *or* another federal law. Here, the hemp seized by the police was cultivated in accordance with Oregon’s industrial hemp program, a program that was developed pursuant to the Agriculture Act of 2014 (the “2014 Farm Bill”). Therefore, the hemp at issue was cultivated in accordance with a federal law, and under the 2018 Farm Bill, the Idaho police may not interfere with the product’s shipment through Idaho.

In denying Big Sky’s motion for a temporary restraining order and preliminary injunction, the lower court improperly concluded that the 2018 Farm Bill’s prohibition against state interference with the shipment of hemp is not

effective until the United States Department of Agriculture promulgates regulations and approves state hemp programs. The interstate commerce provision contains no such limitation and must be read in conjunction with the section of the new law grandfathering in the existing program.

The actions of the state of Idaho and Ada County injure not just Big Sky, but individuals and entities in the industrial hemp industry as a whole. The decision freezes the industrial hemp industry and restricts the supply of both hemp products and hemp-industry-related services, the very opposite of the result Congress intended in the 2018 Farm Bill.

## II. ARGUMENT

### A. **Hemp is Not Marijuana**

Although hemp and marijuana are both strains of the *Cannabis sativa L.* plant, they have distinct features. The fundamental difference is that marijuana contains more than .3 percent delta-9-tetrahydrocannabinol (“THC”), a psychoactive chemical, and hemp does not. Products derived from hemp do not have a narcotic effect. *See, e.g.,* Commissioner Scott Gottlieb, *Statement from FDA Commissioner Scott Gottlieb, M.D., on new steps to advance agency’s continued evaluation of potential regulatory pathways for cannabis-containing and cannabis-derived products*, FDA.GOV,

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(April 2, 2019) (“*Commissioner Gottlieb Statement*”) (explaining the 2018 Farm Bill “established a new category of cannabis classified as ‘hemp’ – defined as cannabis and cannabis derivatives with extremely low (no more than 0.3 percent on a dry weight basis) concentrations of the psychoactive compound delta-9-tetrahydrocannabinol (THC).”), at MJN Exhibit B; Pa. Dept. of Agriculture, *Frequently Asked Questions*, Agriculture.Pa.Gov, [https://www.agriculture.pa.gov/Plants\\_Land\\_Water/industrial\\_hemp/Pages/Industrial-Hemp-Program-FAQs.aspx](https://www.agriculture.pa.gov/Plants_Land_Water/industrial_hemp/Pages/Industrial-Hemp-Program-FAQs.aspx) (updated January 22, 2019) (“*Pa. Dept. of Agriculture FAQs*”) (“Industrial hemp and marijuana are different varieties of the same species of plant, *Cannabis sativa*. Marijuana is cultivated because of its production of the psychoactive plant chemical THC. Industrial hemp is cultivated for fiber, seed and other purposes”) at MJN Exhibit C; *see also Hemp Industries Ass’n. v. Drug Enf’t Admin.*, 357 F.3d 1012, 1017 (9th Cir. 2004) (“Appellants’ products do not contain the ‘synthetic’ ‘substances or derivatives’ that are covered by the definition of THC, and non-psychoactive hemp is explicitly excluded from the definition of marijuana.”).

The Controlled Substances Act however made no distinction between marijuana and hemp. It treated all forms of the *Cannabis sativa L.* as the same.

Only certain parts of the plant were excluded from the CSA. Those parts were of limited commercial value.

**B. The Rapid Expansion of the Hemp Industry Throughout the United States Under the 2014 Farm Bill**

The status of hemp dramatically changed in 2014 under the 2014 Farm Bill. 2014 Farm Bill, Pub. L. No. 113-79, 128 Stat. 649. The 2014 Farm Bill explicitly authorized states to establish programs for the in-state cultivation of industrial hemp to study its growth, cultivation, or marketing. *Id.* at § 7606. The 2014 Farm Bill defined “industrial hemp” as “the plant *Cannabis sativa L.* and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol [THC] concentration of not more than 0.3 percent on a dry weight basis.” *Id.*

States throughout the country, including both Colorado and Oregon, responded to the 2014 Farm Bill by developing industrial hemp programs. *See* Colo. Rev. Stat. § 35-61-101 *et seq.* (Colorado); Or. Rev. Stat. § 571.300 *et seq.* (Oregon); *see also, e.g.,* Va. Code Ann. § 3.2-4112 *et seq.* (Virginia); N.C. Gen. Stat. § 106-568.50 *et seq.* (North Carolina); Ind. Code § 15-15-13-0.5 *et seq.* (Indiana). In fact, both Colorado and Oregon’s industrial hemp programs explicitly refer to the interstate transportation of industrial hemp. *See* Colo. Rev. Stat. § 35-61-108 (“Nothing in this article 61 limits or precludes the exportation of industrial hemp in accordance with the federal ‘Controlled Substances Act. . .’”); Or. Admin. R. § 603-048-1500 (“[a] person may not sell an industrial hemp

commodity or product to a consumer unless the industrial hemp used to process the commodity or product complied with the laws and regulations for the jurisdiction where the hemp was grown. . .”) (emphasis added).

Today, forty states have industrial hemp programs. *See* National Conference of State Legislatures, *State Industrial Hemp Statutes*, NCSL.ORG, <http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx> (February 1, 2019), at MJN Exhibit D. Of those that do not have industrial hemp programs, at least three—Ohio, Georgia, and Texas—are actively considering such programs and have legislation pending in their respective state legislatures. *See* S.B. No. 57, 133rd Gen. Assemb., Reg. Sess. (Oh. 2019); H.B. No. 213, 2019-2020 Gen. Assemb., Reg. Sess. (Ga. 2019); S.B. 1240, 86<sup>th</sup> Gen. Assemb., Reg. Sess. (Tx. 2019).

The 2014 Farm Bill was the first step in investigating whether there could be a commercial market for hemp, and the answer came quickly. Since 2014, the hemp industry enjoyed explosive growth. A report by Hemp Industry Daily, an industry publication, which surveyed hemp cultivators, processors, and retailers throughout the United States, shows the industry’s staggering year-over-year expansion. *See* Hemp Industry Daily, *Annual Hemp & CBD Industry Factbook*, (2018) (hereafter “*Hemp Factbook*”), at MJN Exhibit E. The total acres of hemp grown in the United States in 2016 was 9,767; in 2017 that number grew by more

than 250%, to 26,217 acres. *Id.* at 9. Only 36% of hemp cultivators generated revenue in 2017, but at the time of surveying, 77% of cultivators expected to generate revenue in 2018. *Id.* at 42. Hemp processors generated an average of \$250,000 in revenue in 2017, but expected revenue to climb by more than \$100,000 in 2018, to \$355,000. *Id.* at 59.

The versatility of the plant has fueled hemp’s year-over-year marketplace growth. Hemp can be used to make many products, including paper, rope, concrete (“hempcrete”), clothing, and much more. *See* National Hemp Association, *Hemp Facts and Statistics*, NATIONALHEMPASSOCIATION.ORG, <https://nationalhempassociation.org/facts-statistics-hemp/> (last visited April 3, 2019) (hereafter “*Hemp Facts*”), at MJN Exhibit F. Forbes reported there are as many as 25,000 products that can be made from hemp. Logan Yonavjak, *Industrial Hemp: A Win-Win for the Economy and the Environment*, FORBES.COM, <https://www.forbes.com/sites/ashoka/2013/05/29/industrial-hemp-a-win-win-for-the-economy-and-the-environment/#6036564e289b> (May 29, 2013), at MJN Exhibit G. One of the most popular hemp products is hemp-derived cannabidiol (“CBD”).<sup>2</sup> The annual U.S. Hemp-derived CBD market, a *subset* of the overall

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<sup>2</sup> Cannabidiol is a substance found in the *Cannabis sativa L.* plant that some believe provides therapeutic benefits for persons dealing with conditions such as chronic pain, anxiety, and depression. *See* Project CBD, *What is CBD?*, PROJECTCBD.ORG, at <https://www.projectcbd.org/cbd-101/what-is-cbd> (last visited April 3, 2019), at MJN Exhibit H. It does not have narcotic properties or

hemp market, is expected to see retail sales grow from \$490-\$540 million in 2018 to **\$2.5-\$3.1 billion** in 2022. *Hemp Factbook* at 14, MJN Exhibit E.

**C. The Federal Government Decides to Legalize Hemp and Declare it an Agricultural Commodity**

On December 20, 2018, President Trump signed the 2018 Farm Bill into law.<sup>3</sup> The 2018 Farm Bill broadened the ability of states to regulate the cultivation, processing, and sale of hemp in several important ways.

First, the 2018 Farm Bill expanded the definition of “industrial hemp” from the definition in the 2014 Farm Bill, removing the qualifier “industrial,” and explicitly including derivatives, extracts, and cannabinoids:

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

2018 Farm Bill, Pub. L. No. 115-334 § 10113, 132 Stat. 4490.

Second, and crucially, it removed hemp from the CSA. *See* 2018 Farm Bill at § 12619; *see also* 21 U.S.C. § 802(16).

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effect. *See Commissioner Gottlieb Statement*, at MJN Exhibit B; *Pa. Dept. of Agriculture FAQs*, at MJN Exhibit C.

<sup>3</sup> ATACH disagrees with Big Sky’s position that states may still ban the cultivation and processing of industrial hemp in the wake of the 2018 Farm Bill. That issue is not before this Court and will not be addressed here.

Third, hemp is declared an agricultural commodity like any other crop. *See* 2018 Farm Bill at § 10113 (amending the Agricultural Improvement Act to include Section G, for hemp production). Crop insurance and other agricultural programs are made available to hemp farmers. *See* 2018 Farm Bill at § 11101 (amending Section 502(b) of the Federal Crops Insurance Act, 7 U.S.C. 1502(b)).

Fourth, the 2018 Farm Bill explicitly permits interstate transportation of hemp: Subtitle G of the 2018 Farm Bill added Sections 297A-297E of the Agricultural Marketing Act of 1946. *See* 2018 Farm Bill at § 10113; *see also* 7 U.S.C. § 1639o-s (pertinent portions of the Agricultural Marketing Act of 1946). Section 297B(f) of the 2018 Farm Bill provides, :

Nothing in this section prohibits the production of hemp in a State or the territory of an Indian tribe—(1) for which a State or Tribal plan is not approved under this section, if the production of hemp is in accordance with section 297C or ***other Federal laws (including regulations)***.

*Id.* at § 10113 (emphasis added); *see also* 7 U.S.C. § 1639p(f) (same).

The 2014 Farm Bill is such a federal law, which permits cultivation and marketing of industrial hemp if done in accordance with a state program. Both Oregon and Colorado have enacted industrial hemp programs pursuant to the 2014 Farm Bill. The hemp shipment that the appellees seized in Idaho was produced by a state-licensed cultivator in Oregon, in accordance with Oregon's industrial hemp program. As a result, the 2018 Farm Bill's prohibition on interference with the

interstate transportation of hemp applies directly to the shipment of hemp that the Idaho state police have seized.

A number of state departments of agriculture understood the new law to permit the free flowing transportation between states and issued statements on the interstate transportation of hemp in light of the 2018 Farm Bill. For instance, Pennsylvania’s Department of Agriculture explained that “[t]hrough the 2018 Farm Bill, the federal government has changed the legal status of industrial hemp . . . *ending any restrictions on import or interstate movement of hemp seed, plants, or products.*” *Pa. Dept. of Agriculture FAQ*, at MJN Exhibit C; *see also* WV Dept. of Agriculture, *Next Steps for West Virginia Industrial Hemp*, Agriculture.WV.Gov, <https://agriculture.wv.gov/news/Pages/Next-Steps-for-West-Virginia-Industrial-Hemp.aspx>, (January 14, 2019) (“*Now farmers can grow hemp like any other cash crop, transport it across state lines and use the plant in the processing of numerous products.*”) (emphasis added), at MJN Exhibit I.

Taken as a whole, the 2018 Farm Bill transforms hemp from an illegal narcotic into a legal crop like wheat and corn, within a regulatory framework, including the free flow of hemp and hemp products in interstate commerce.

**D. Federal Law Preempts State Laws that Would Disrupt the Transport of Federally Lawful Goods in Interstate Commerce**

It is hornbook law that the Constitution vests Congress with the power to regulate interstate commerce. U.S. Const. art. 1 cl. 8 (“The Congress shall have

Power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”); *see, e.g., Wickard v. Filburn*, 317 U.S. 111, 125 (1942) (“even if appellee’s activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce.”); *Gonzales v. Raich*, 545 U.S. 1, 18 (2005) (“*Wickard* thus establishes that Congress can regulate purely intrastate activity that is not itself ‘commercial,’ in that it is not produced for sale, if it concludes that failure to regulate that class of activity would undercut the regulation of the interstate market in that commodity.”).

It is equally well established that, when Congress acts in an area over which it has authority, states may not enforce inconsistent state laws. U.S. Const. art. 6 cl. 2 (“This Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).

Federal law has repeatedly preempted inconsistent state law in issues of interstate commerce. *See, e.g., Pike v. Bruce Church, Inc.*, 397 U.S. 137, 138 (1970) (order from state official that prohibited interstate transportation of cantaloupes under certain conditions, made under the Arizona Fruit and Vegetable Standardization Act, invalid as an unlawful burden on interstate commerce); *Rowe v. New Hampshire Motor Transport Ass’n*, 552 U.S. 364 (2008) (invalidating Maine law

related to the motor carrier transportation of tobacco); *Montana Shooting Sports Ass'n v. Holder*, 727 F.3d 975, 982 (9th Cir. 2013) (finding that the Montana Firearms Freedom Act is preempted and invalid because it conflicts with Congress's power to regulate commodities under the commerce clause).

Through the 2014 Farm Bill, the 2018 Farm Bill, and previously the CSA, Congress has acted to regulate interstate commerce with respect to hemp. The 2018 Farm Bill does provide that states may enact a state plan for the regulation of hemp that "is more stringent than this subtitle." *See* 2018 Farm Bill § 10113; 7 U.S.C. § 1639P(a)(3)(A)(ii). However, the law also provides that such a state regulatory plan for industrial hemp "may include a reference to a law of the State or Indian tribe regulating the production of hemp, to the extent that law *is consistent with this subchapter*." 2018 Farm Bill § 10113; 7 U.S.C. § 1639P(a)(3)(B). Idaho state law in conflict with these federal laws is therefore preempted.

**E. The Lower Court's Opinion, if Not Overturned, Would Immediately Damage the Hemp Industry**

Hemp is a once-in-a-generation crop that is showing its economic power. In Kentucky alone the numbers are remarkable. "The state's hemp processors reported \$57.75 million in gross product sales last year [2018], compared with \$16.7 million in 2017." *See* Hemp Industry Daily, *Sales of Hemp Products in Kentucky Surged in 2018*, HEMPINDUSTRYDAILY.COM,

<https://hempindustrydaily.com/sales-hemp-products-kentucky-surged-2018/>

(March 19, 2019), at MJN Exhibit J. And, a healthy hemp industry has a positive effect on the entire economy; in 2018 Kentucky’s hemp processors spent \$23.4 million on capital improvements, and employed almost 500 people. *Id.*

In New York, the number of licensed hemp cultivators grew from 21 in late 2017 to almost 150 by early 2019. *See* Hemp Industry Daily, *White-Hot New York CBD Manufacturing Scene Undeterred By Tougher Regulations*, HEMPINDUSTRYDAILY.COM, <https://hempindustrydaily.com/new-york-cbd-manufacturing-scene-undeterred-tougher-regulations/> (February 14, 2019), at MJN Exhibit K. As in Kentucky, the growth of the hemp industry in New York has been widespread. Two hemp companies announced plans for additional processing facilities, one in Binghamton, the other in Buffalo, “to compete with huge manufacturing investments expected from out of state.” *Id.*

Hemp has become such a popular commodity that it is seen as a potential replacement crop for American tobacco farmers. From 1992 to 2012, United States’ tobacco acreage declined from 831,231 to 342,932 acres. *See* Campaign for Tobacco-Free Kids, *The Shrinking Role of Tobacco Farming and Tobacco Product Manufacturing in the United States’ Economy*, TOBACCOFREEKIDS.ORG, <https://www.tobaccofreekids.org/assets/factsheets/0344.pdf> (last visited April 3, 2019), at MJN Exhibit L. This left a void in the farming community, and over the

course of about five years, state industrial hemp programs developed under the 2014 Farm Bill showed that hemp could fill that void.

With such positive growth in such a short period of time, it is not surprising that forty states developed industrial hemp programs pursuant to the 2014 Farm Bill, with more actively considering such programs.

Understandably, both state agencies and citizens have expressed deep concern over state interference with the transportation of hemp, and the impact the resultant uncertainty has had on the hemp industry. *See, e.g.*, Letter from Alexis Taylor, Or. Dept. of Agriculture, to Sonny Perdue, Secretary of the United States Department of Agriculture (March 6, 2019) (although not mentioning the present dispute by name, stating “Oregon’s hemp industry is being subjected to unnecessary transportation and commerce restrictions and has examples to provide if needed”), at MJN Exhibit M. The USDA held a listening session in March 2019, to allow public comment on a program to regulate hemp. *See* USDA, *2018 Farm Bill Listening Session on Domestic Hemp Production Program*, ZOOM.US, <https://zoom.us/recording/play/4joqzWH50TVZTi3oGz2YymTHmBmwcSJF4SeREeOMXXzv-ZYMVSvqaA-XYV6hiKZt?continueMode=true> (a video recording of the listening session) (last visited April 3, 2019), at MJN Exhibit N. A number of participants, while not directly discussing this case, raised the issue of interstate transportation of hemp; for instance, a representative from the Pennsylvania

Department of Agriculture “encourage[d] USDA to quickly provide national standards for laboratory testing procedures, including plant sampling and certification of laboratories. ***This is imperative for interstate commerce . . .*** Growers are planting in multiple states and need consistency, especially when shipping product to processing facilities that may require transport across state lines.” *Id.* (emphasis added); *see id.* (North Dakota’s Agriculture Commission, Doug Goehring: “We feel the true place for USDA to assist states is in matters regarding ***interstate commerce and international markets.***”) (emphasis added).

These concerns are well founded. During the USDA listening session, Courtney Moran, of Earth Law, LLC, who worked with the offices of Senators McConnell and Wyden on the Hemp Farming Act of 2018 (provisions of which were incorporated into the 2018 Farm Bill) provided this assessment: “we continue to learn of hemp crop and product seizures by law enforcement for simple transportation of the commodity. As a result, ***many trucking and shipping companies are not offering hemp business owner shipping services.***” *Id.* (emphasis added).

If this Court upholds the lower court’s denial of Big Sky’s motion for a temporary restraining order and preliminary injunction, hemp-related interstate commerce could grind to a halt because it would give a green light to seizures like the one in Idaho at issue in this case. This would restrain the growth of cultivators,

processors, and distributors throughout the country. It would deter transportation companies from providing services to hemp producers for fear their drivers would be arrested, as in this case. The risks to businesses in the hemp industry would simply be too great, especially in light of the fact the truck driver here was arrested and charged with a felony. This is the very opposite of what Congress intended in the 2018 Farm Bill.

### III. CONCLUSION

For all the foregoing reasons, *amicus curiae* ATACH urges this Court to reverse the decision of Magistrate Judge Bush, and remand to the District Court with instructions to issue a preliminary injunction prohibiting the state of Idaho from continuing to interfere in the interstate transportation of industrial hemp.

DATED: April 3, 2019

Respectfully submitted,

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**COMBINED CERTIFICATIONS**

The undersigned hereby certifies the following:

**CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH  
FED. R. APP. P. 32**

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(b) because it contains 3,978 words, excluding the parts of the Brief exempted by Fed. R. App. P. 32(f). This brief also complies with the typeface and typestyle requirements of Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 14 point, Times New Roman font.

**STATEMENT OF RELATED CASES**

Pursuant to Circuit Rule 28-2.6, the American Trade Association of Cannabis and Hemp states it is not aware of any related cases pending in this Court.

By: s/ David E. Landau  
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Dated: April 3, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that on April 3, 2019, I electronically filed the foregoing Motion for Leave to Appear as *Amicus Curiae* and supporting brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit, and on the following attorneys of record, by using the Court's electronic filing system:

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