

## **Monti v. Garcia Update: Plaintiffs File First Amended Complaint and Move for Summary Judgment in Federal Challenge to Texas's Schedule I Classification of Hemp-Derived THC's**

*Update for the Texas Hemp Business Council — October 1, 2026*

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**The short version:** We've asked the federal judge to decide the case without a trial. Until the Judge rules, Texas's rule treating hemp-derived THC's as Schedule I drugs (other than up to 0.3% delta-9 THC) remains in effect and is enforceable.

Read the Motion for Summary Judgment here → *[embed link to MSJ]*

**Background - How we got here:** We filed the original lawsuit July 31<sup>st</sup>, the day Texas's rule took effect. We asked the court for immediate emergency relief, arguing the rule was unclear, conflicted with federal law, and unfairly burdened interstate commerce. On August 9<sup>th</sup>, the judge denied that emergency request — he wasn't convinced we'd win on the "unclear" or "interstate burden" arguments. But on our strongest argument - that federal law overrides the state's rule here - he said only that our emergency showing wasn't enough by itself and left the core legal question open. Based on that, we dropped the interstate commerce argument and built the case around our two strongest remaining arguments.

**The First Amended Complaint - What we're arguing now:** We have made the preemption claim more precise and reframed the vagueness arguments.

1. **Federal law controls.** Congress specifically removed hemp and its derivatives from the Controlled Substances Act and federal Schedule I. Texas used its own Controlled Substances Act to place that same category into Texas Schedule I, in direct conflict with the federal law. When a state's controlled-substance classification conflicts with the federal's, federal law controls. If Count I prevails, there is nothing further to decide.
2. **The rule doesn't give fair warning.** If the Court instead says the provisions can operate together, we argue that the Texas law is unconstitutionally vague. Texas laws point in four different directions about the same products — describing hemp-derived THC products as “foods, not controlled substances” and specifically excluding them from coming under the definition of “controlled substance,” while at the same time listing them as Schedule I — and nothing in the rule tells a retailer, a consumer, or a police officer which one actually controls. The law fails to provide clear notice of what conduct is lawful and what constitutes a felony, inviting inconsistent enforcement and violating fundamental due process rights.

**Who is involved now:** Botany Scientifics, a nationwide hemp product distributor based in San Antonio, has joined Monti and Happy Cactus as a plaintiff, and Lifted Liquids is no longer a party.

**What we're asking for:** We are seeking (1) a declaration that the rule is invalid, and (2) an order stopping its enforcement. The declaration request is broad — we're asking the court to rule on the regulation itself, not only as it applies to our clients. We're not asking for money damages.

**What Comes Next:** Defendants are required to respond to our amended complaint by October 9<sup>th</sup>, and to our summary judgment motion by October 20<sup>th</sup>, unless the court grants more time. The first case-management conference is set for November 4<sup>th</sup>, and the parties will submit a proposed case schedule before then. We will continue to provide updates as the case progresses.

The figure below reflects the text of the provisions at issue.

Figure 1: Text Comparison

|                              | FEDERAL LAW                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | TEXAS LAW                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | NEW TEXAS THC CLASSIFICATION                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Tetrahydrocannabinols</b> | <p>21 U.S.C. § 812(c), SCH. I(c)(17)<br/>"Tetrahydrocannabinols, <b>except for tetrahydrocannabinols in hemp</b> (as defined under section 1639o of title 7)."</p> <p>21 C.F.R. § 1308.11(p)(31)<br/>"Tetrahydrocannabinols (i) Meaning tetrahydrocannabinols, except as in paragraph (d)(31)(ii) of this section (ii) Tetrahydrocannabinols <b>does not include any material, compound, mixture, or preparation that falls within the definition of hemp</b> set forth in 7 U.S.C. 1639o."</p> | <p>TEX. HEALTH &amp; SAFETY CODE § 481.002(5)<br/>"Controlled substance' means a substance . . . listed in Schedules I through V or Penalty Group 1, 1-A, 1-B, 2, 2-A, 3, or 4. <b>The term does not include hemp, as defined by Section 121.001, Agriculture Code, or the tetrahydrocannabinols in hemp.</b>"</p> <p>TEX. HEALTH &amp; SAFETY CODE § 481.103(A)(1)<br/>"Penalty Group 2 consists of: (1) any quantity of the following hallucinogenic substances : <b>Tetrahydrocannabinols, other than marihuana</b>."</p> | <p>SCHEDULE I, ITEM *(31)<br/>"Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), <b>except for up to 0.3% delta-9-tetrahydrocannabinols in hemp</b> (as defined under Texas Agriculture Code 121) "</p>                                                                                                                                                     |
| <b>Marihuana</b>             | <p>21 U.S.C. § 802(16)(B)<br/>"The terms 'marihuana' and 'marijuana' <b>do not include—(i) hemp</b>, as defined in section 1639o of title 7 "</p>                                                                                                                                                                                                                                                                                                                                               | <p>TEX. HEALTH &amp; SAFETY CODE § 481.002(26)<br/>"Marihuana' means the plant Cannabis sativa L., whether growing or not, the seeds of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds. <b>The term does not include: . . . (F) hemp</b>, as that term is defined by Section 121.001, Agriculture Code."</p>                                                                                                                                              | —                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Marihuana extract</b>     | <p>21 C.F.R. § 1308.11(p)(58)<br/>"Meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, <b>containing greater than 0.3% delta-9-tetrahydrocannabinol</b> on a dry weight basis, other than the separated resin (whether crude or purified) obtained from the plant."</p>                                                                                                                                                          | —                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p>SCHEDULE I, ITEM *(58)<br/>"Marihuana extract, meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, <b>except for extracts derived from hemp</b> (as defined under Texas Agriculture Code 121) <b>containing up to 0.3% delta-9-tetrahydrocannabinol</b> on a dry weight basis, other than separated resin (whether crude or purified) obtained from the plant;"</p> |

*This update is for informational purposes only and is not legal advice. If you have questions about the litigation or how it may affect your business, please reach out to legal counsel.*