

No. 23-365

IN THE
Supreme Court of the United States

MEDICAL MARIJUANA, INC.; DIXIE HOLDINGS,
LLC, AKA DIXIE ELIXIRS; RED DICE HOLDINGS,
LLC,
Petitioners,
v.
DOUGLAS J. HORN,
Respondent.

*On Writ of Certiorari to the United States Court of
Appeals for the Second Circuit*

**BRIEF OF U.S. HEMP ROUNDTABLE, INC. AS
AMICUS CURIAE SUPPORTING PETITIONERS**

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INTERESTS OF *AMICUS CURIAE*¹

Amicus is U.S. Hemp Roundtable, Inc. (the Roundtable), the hemp industry’s leading national advocacy group which is comprised of dozens of member companies and organizations who are united in bolstering the hemp industry through legislative advocacy, research, and the creation of sustainability standards. Its mission is “to advocate for science-driven, equitable, and inclusive law and regulation for hemp industries . . . to produce a reliable, sustainable supply chain of responsible commerce.”²

This case involves civil actions brought under the Racketeer Influenced and Corrupt Organizations Act (RICO).³ Congress limited the plaintiffs who can bring a RICO claim to those “injured in [their] business or property by reason of” racketeering activity, and those plaintiffs may “recover threefold the damages” suffered.⁴ Congress did not intend, as well-settled precedent establishes, that personal injuries constitute an injury to “business or property.” The Second Circuit nonetheless has vastly expanded RICO’s

¹ No party or counsel for a party authored any part of this brief, and no person or entity other than *amicus* and its counsel made a monetary contribution intended to fund the preparation or submission of the brief.

² U.S. Hemp Roundtable, <https://hempsupporter.com/about/> (last visited July 14, 2024).

³ 18 U.S.C. § 1964(c).

⁴ *Id.*

reach by holding that they do. Here, the RICO targets are industry participants. The threat of expansive liability aimed at those in the industry directly jeopardizes the Roundtable and its mission.

The Roundtable accordingly submits this amicus brief to illustrate the range of harm expanded RICO liability would inflict on all players within the industry. Beyond that, consumers would bear the brunt of the harm in the form of increased costs. And because of the wide-ranging benefits from hemp products, the public's health ultimately will suffer.

Hemp has played a significant role in United States history. The Founders' draft declarations of American independence were written on hemp paper⁵ and the plant played a critical role in the manufacture of materials to support the nation during World War II.⁶ In more recent times, because of its many beneficial properties, hemp has been cultivated for use in a variety of products such as food, beverages, cosmetics, nutritional supplements, fabrics and textiles, yarns and fibers, automotive parts, paper, construction, building, and insulation materials, and personal care products.⁷ Hemp is also known for its health benefits,

⁵ Robin Lash, *Industrial Hemp: The Crop for the Seventh Generation*, 27 AM. INDIAN L. REV. 313, 315 (2003).

⁶ Vanessa Rogers, *The Future of Hemp in Kentucky*, 4 KY J. EQUINE, AGRI., & NAT. RESOURCES L. 479, 482 (2012).

⁷ René Johnson, CONG. RSRCH. SERV., IF11860, *Production, Marketing, and Regulation of Hemp Products* (2021).

as it is a source of healthy fats that help reduce cholesterol, proteins, and magnesium.⁸

The hemp industry's supply chain has several components: farmers who grow, cultivate, and harvest the crop; processors and manufacturers who convert the raw hemp into finished products; and distributors who provide the products to consumers.⁹ Not all industry players, from beginning to end, are industrial or commercial behemoths. They are mostly small farmers and businesses who have carved out niches to diversify their activities and meet a specific public demand. The profit margins at each step, from growing to distribution, are not large. Every added cost is significant and impactful.

Liability costs cannot readily be absorbed by anyone in the chain, and reduced profits or price increases are the inevitable results. Those costs, in turn, will fall on those who can least afford them. Less

⁸ Megan Ware., *What are the forms of hemp and what are their health benefits?*, Medical News Today (Jan. 22, 2024), <https://www.medicalnewstoday.com/articles/308044#forms>; Muhammad Yasir Naeem, et al., *Hemp: An Alternative Source for Various Industries and an Emerging Tool for Functional Food and Pharmaceutical Sectors*, Processes, 12 (2023), <https://www.mdpi.com/2227-9717/11/3/718/pdf?version=1677571349>.

⁹ *Hemp Processing and Supply China: From Farm to Market*, FloraFlex (June 15, 2023), <https://floraflex.com/default/blog/post/hemp-processing-and-supply-chain-from-farm-to-market>.

money will be available for investment, product development, and research into new and beneficial products. And where costs are passed on to consumers, the consequences are more than just economic: the increased cost of hemp products may make them unavailable to some who need or have come to rely on them, thereby impacting public health. Indeed, the ultimate harm here would fall on a growing population of people appreciating the many benefits of hemp. That includes people suffering from neurological disorders such as epilepsy who find relief through pharmaceuticals derived from hemp,¹⁰ people suffering from substance use disorder,¹¹ people who consume dietary supplement products for their general health and wellness, and people looking to food alternatives made with hemp seeds for their Omega-3 fatty acids, proteins, and anti-inflammatory, antioxidant properties. What is more, other industries are looking to hemp to make hemp-based plastics, fiberglass, and other products, which, in turn, vastly reduces the environmental impact of other traditional products.

¹⁰ See, e.g., *Study Reveals how Cannabidiol Counters Epileptic Seizures*, NYU Langone Health (Feb. 13, 2023), <https://nyulangone.org/news/study-reveals-how-cannabidiol-counters-epileptic-seizures> (discussing studies describing how CBD reduces seizures in treatment-resistant forms of pediatric epilepsy).

¹¹ See, e.g., Victoria Paulus, et al., *Cannabidiol in the context of substance use disorder treatment: A systematic review*, 132 *Addictive Behaviors* (May 2022), <https://doi.org/10.1016/j.addbeh.2022.107360>.

It is *amicus* the Roundtable's position that this Court should avoid the adverse impacts of expanded tort liability on the hemp industry and the public health by containing RICO within its settled and historic bounds.

SUMMARY OF ARGUMENT

Despite its historical significance and popularity, it was not until 2018 that the growth and cultivation of hemp became fully legal within the United States. As noted, hemp is used to produce countless products, including nutritional supplements, fabrics, textiles, paper, construction materials, automotive materials, food, and personal care products, thereby enhancing public health and offering environmentally friendly alternatives to many products. And, as also noted, the industry is reliant upon the supply chain, which starts with farmers and ends with consumers of many products with wide ranging uses.

It is well documented that expansive tort liability increases costs for businesses and consumers. Increased risk of tort liability forces businesses to reallocate resources to compliance and loss and away from product development, research, and innovation. This is especially so in the healthcare and pharmaceutical industries, where increased costs of tort liability impacts consumers by passing those costs on to them

and reducing product availability.¹²

RICO liability fits this paradigm, particularly because it can be such an attractive tool given its favorable (to plaintiffs) damages and venue provisions. If personal injury liability is made part of the statute’s regime, the cost of doing business (in an industry that is already facing evolving and varying regulation) would rise. That result is undesirable and should be avoided by keeping exposure to liability under RICO within the boundaries intended by Congress.

ARGUMENT

I. The Hemp Industry is Multi-Layered and Creates A Myriad Of Societal Benefits.

“Botanically, hemp and marijuana are from the same species of plant, *Cannabis sativa*, but from different varieties or cultivars.”¹³ Hemp and marijuana “are distinguished by their use and chemical composition as well as differing cultivation practices in their

¹² See, e.g., *Air & Liquid Systems Corp. v. DeVries*, 586 U.S. 446, 463-464 (2019) (Gorsuch, J., Thomas, J., & Alito, J., dissenting); Eric Helland et al., *Consequences of Products Liability: Evidence from the Pharmaceutical Market*, 36 J. L. ECON. & ORG., 598, 599 (2020); K.M. Lybecker, et al., *Liability risk in the pharmaceutical industry: Tort law in the US and UK.*, The Social Science Journal, 13 (2014).

¹³ Renée Johnson, CONG. RSCH. SERV., R44742, *Defining Hemp: A Fact Sheet*, at 1 fn.1 (2019).

production.”¹⁴ Marijuana refers to a cultivated plant used as a psychotropic drug, whereas hemp is cultivated for use in a variety of consumer products.¹⁵

By contrast, “[t]he term *industrial hemp* . . . refers to cannabis varieties that are grown primarily as an agricultural crop, such as seeds and fiber, and byproducts, such as oil, seed cake, and hurds.”¹⁶ Hemp is characterized as being low in tetrahydrocannabinol (THC), the psychotropic compound, with higher levels of cannabidiol (CBD), a non-psychotropic compound with many therapeutic properties.¹⁷

The hemp industry itself is not new: globally, it has existed and thrived for centuries. “[Hemp] is believed to have been the world’s most cultivated crop and primary industry for 3,000 years.”¹⁸ Beginning in approximately the 1600s, farmers grew hemp to supply the British navy with sails and rope.¹⁹ By the 1700s, some states began to encourage hemp production.²⁰ In the 1800s, the economic potential of the

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 5.

¹⁷ *Id.*

¹⁸ Rogers, *supra* note 6 at 481.

¹⁹ *Id.*

²⁰ *Id.*

hemp industry became clear with several states, including Kentucky, Illinois, Nebraska, Michigan, Minnesota, Iowa, Arkansas, California, and Wisconsin, leading the way.²¹ During World War II, the United States turned to hemp to manufacture its war supplies, resulting in the cultivation of over 400,00 acres of hemp.²²

Despite this storied history, hemp cultivation, once “one of the world’s largest industries,” came to an abrupt halt when hemp was classified as marijuana.²³ The Marihuana Tax Act of 1937 increased costs within the supply chain and the simultaneous fight against drugs led to the misconception that the hemp industry was a “dope conspiracy.”²⁴ The Marihuana Tax Act “placed all *Cannabis* culture under the regulatory control of the U.S. Treasury Department . . . [and] required the registration and licensing of all hemp growers with the Federal Government in an effort to restrict production of marijuana in the United States.”²⁵ Although the Marijuana Tax Act excluded

²¹ *Id.*

²² *Id.* at 482.

²³ *Id.*

²⁴ *Id.* at 484.

²⁵ Jonathan Miller, et al., *The Evolving Law and Regulation of Industrial Hemp in the United States*, 8 J. ANIMAL & ENVTL. L. 12, 15 (2017) (quoting USDA, *Industrial Hemp in the United States: Status and Market Potential*, ERS.USDA.GOV, at 3) (internal quotation marks omitted).

hemp from the definition of marijuana, when Congress repealed it in favor of the Controlled Substances Act (CSA), it “distinguished the non-psychoactive parts of the cannabis plant from the definition of marijuana.”²⁶ As a result, it has always been legal to import non-psychoactive cannabis products, as petitioners did here.

Nevertheless, the domestic “growth and cultivation of industrial hemp” remained illegal under the CSA.²⁷ The CSA’s broad definition of marijuana largely “placed the entire use of the hemp plant, whether for drug use or as industrial hemp, squarely within the control of the CSA.”²⁸

On February 7, 2014, the Agriculture Act of 2014 (“2014 Farm Bill”), provided a small breakthrough. It legalized domestic growth and cultivation of industrial hemp.²⁹ Pursuant to the relevant sections, “state departments of agriculture and institutions of higher education are authorized to grow and cultivate indus-

²⁶ *Id.* at 16.

²⁷ *Id.* at 17.

²⁸ Thomas Duppong, *Industrial Hemp: How the Classification of Industrial Hemp as Marijuana under the Controlled Substances Act Has Caused the Dream of Growing Industrial Hemp in North Dakota to Go Up in Smoke*, N.D. L. REV. 403, 418 (2009).

²⁹ 7 U.S.C. § 5940, Pub. L. 113-79, 128 Stat. 649.

trial hemp for research conducted under an agricultural pilot program.”³⁰ The 2014 Farm Bill “makes clear that Congress’ current intent [was] to define industrial hemp as all parts of the plant, as long as the THC level is less than 0.3%.”³¹

Four years later, in December 20, 2018, the Agriculture Improvement Act of 2018 (“2018 Farm Bill”), produced an even more significant breakthrough.³² This law removed hemp from the CSA’s definition of marijuana, thereby permitting “the cultivation, processing, marketing, and sale of hemp and any cannabinoid derived from hemp that is produced by an authorized grower in accordance with the 2018 Farm Bill, associated federal USDA regulations, and applicable state regulations.”³³ This, among other changes, “returned U.S. hemp production to the status of an agricultural commodity and thus eligible for USDA-supported farm programs, similar to the status it had in the United States before the late 1950s.”³⁴

³⁰ Miller, et al., *supra* note 25 at 18 (citing 7 U.S.C. § 5940(a)(1)-(2)).

³¹ *Id.* at 20.

³² P.L. 115-334, Section 12619.

³³ Johnson, *supra* note 13 at 4.

³⁴ *Id.* at 5. Still, the FDA has oversight of hemp-derived consumer products as a food ingredient, as well as hemp included as an ingredient in body products, dietary supplements, cosmetics, and other therapeutic products. *See* Johnson, *supra* note 7 at 3.

The hemp industry begins with farmers who grow and cultivate the crop for processing. Manufacturers then take the processed hemp materials and formulate them into various products: the fiber is spun into yarn or textiles; seeds and oil are used in food and drink products; CBD extracts can be used in oils, topical ointments, or other pharmaceuticals. The products then can be distributed to wholesalers, retailers, and directly to consumers.

The beneficial uses of these hemp products are endless. “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.”³⁵ Different parts of the plant are used to manufacture “fabrics and textiles, yarns and spun fibers, paper, carpeting, home furnishings, construction and insulation materials, auto parts, and composites . . . animal bedding, material inputs, papermaking, and oil absorbents.”³⁶ Fabrics and textiles made with hemp are valued because of its “exceptional strength, durability, antimicrobial and UV-resistant properties, natural resistance of mold, mildew and rot

³⁵ Renée Johnson, CONG. RSRCH. SERV., RL32725, *Hemp as an Agricultural Commodity*, at 2 (2018).

³⁶ *Id.*

and its ability to readily accept dyes.”³⁷ And “[o]il from the crushed hemp seed is used in soap, shampoo, lotions, bath gels, and cosmetics. . . . [as well as] nutritional supplements and in medicinal and therapeutic products, including pharmaceuticals.”³⁸

Hemp also can be used as a building material, “lightweight insulation material and in hemp plastics and related composites for use as fiberglass alternative by the automotive and aviation sectors. . . . [it] is also promoted as a potential biodiesel feedstock.”³⁹ “[O]il from hemp seeds can [also] be used as a substitute for petroleum and other fossil fuels as an energy source.”⁴⁰

The health benefits of hemp-derived nutraceuticals are becoming more well-known. Hemp seeds are nutrient dense and can be incorporated into food, including using hemp seeds and oils to make milk substitutes, cheese substitutes, and protein powder.⁴¹ Hemp also contains healthy fats, including Omega-3 fatty acids, that help reduce cholesterol, and is rich in

³⁷ Anjori Grover Vasesi, *From fields to fabrics: Hemp leading the charge for sustainability*, Apparel Resources (Nov. 8, 2023), <https://apparelresources.com/business-news/sustainability/fields-fabrics-hemp-leading-charge-sustainability/>.

³⁸ Johnson, *supra* note 35 at 2.

³⁹ *Id.*

⁴⁰ Rogers, *supra* note 6 at 495.

⁴¹ Ware, et al., *supra* note 8.

proteins and magnesium.⁴² CBD-derived pharmaceuticals also have been known to treat neurological disorders such as epilepsy and aid in the treatment of substance use disorder.⁴³ Research continues, but studies show a reduction in seizures for epilepsy patients taking CBD-derived pharmaceutical drugs and a reduction in drug-seeking behavior in those suffering from substance use disorder.⁴⁴

There are agricultural and environmental advantages as well. Hemp’s chemical compounds can be extracted from the entire plant, reducing waste⁴⁵ and boosting yields of other crops, when used in crop rotation crop.⁴⁶ Hemp also “can be planted on land not suitable for other crops and helps to replenish the soil by removing heavy metals and other contaminants.”⁴⁷

⁴² *Id.*

⁴³ See, e.g., *Study Reveals how Cannabidiol Counters Epileptic Seizures*, *supra* note 10 (discussing studies describing how CBD reduces seizures in treatment-resistant forms of pediatric epilepsy); Paulus, et al., *supra* note 11.

⁴⁴ See, e.g., *CBD For Seizures—Use, Effectiveness, Side Effects, and More*, Neurology Center for Epilepsy and Seizures (Feb. 21, 2024), <https://www.neurocenternj.com/blog/cbd-for-seizures-use-effectiveness-side-effects-and-more/>; Paulus, et al., *supra* note 11.

⁴⁵ *Commodities at a glance: Special issue on industrial hemp*, UN Trade & Development (Nov. 29, 2022), <https://unctad.org/publication/commodities-glance-special-issue-industrial-hemp>.

⁴⁶ *Id.*

⁴⁷ *Id.*

Hemp therefore is an environmentally friendly alternative to many other traditional materials because no part of the plant is wasted and it requires minimal pesticides for growth.⁴⁸

Studies show that hemp “has such a diversity of possible uses, [and] is being promoted by extremely enthusiastic market developers.”⁴⁹ Studies also show that there are “production advantages associated with hemp” and “acknowledge hemp’s benefits as a rotational crop” because it is “less environmentally degrading than other agricultural crops.”⁵⁰

II. The Hemp Industry Will Be Adversely Impacted By The Costs Associated With Expanded Tort Liability.

The impact and adverse consequences associated with expansive tort liability are well-documented.

⁴⁸ Rogers, *supra* note 6 at 495; Johnson, *supra* note 7 at 1-2; see also Lea Terry, *Key Players in Hawaii’s Legalization of Industrial Hemp Farming*, Newsmax (Dec. 16, 2015), <https://nationalhempassociation.org/key-players-in-hawaiis-legalization-of-industrial-hemp-farming/> (discussing Hawaii’s prioritization of the cultivation of hemp to boost the economy); Jon Woodhouse, *Building a sustainable future out of locally grown hemp*, Maui News (June 6, 2024) <https://www.mauinews.com/news/local-news/2024/06/building-a-sustainable-future-out-of-locally-grown-hemp/> (discussing increasing number of homes built with hemp in a move toward more eco-friendly construction materials).

⁴⁹ Johnson, *supra* note 35 at 6.

⁵⁰ *Id.*

“[T]he percentage increases in tort payouts in real dollars during the twenty-one-year period between 1950 and 1971 and the forty-seven-year period between 1970 and 2017 were . . . generally several hundred percent.”⁵¹ Expanded tort liability “force[s] many manufacturers of safe products to spend time and money educating themselves and writing warnings about the dangers of other people’s more dangerous products.” *Air & Liquid Systems Corp. v. DeVries*, 586 U.S. 446, 463-464 (2019) (Gorsuch, J., Thomas, J., & Alito, J., dissenting).

“All this would, as well, threaten to leave consumers worse off.” *Id.* 464.⁵² Industries are forced to “pass [on] to the consuming public the costs of tort damages in the prices of [] products.” *Harley-Davidson Motor v.*

⁵¹ Kenneth Abraham, et al., *Rethinking the Development of Modern Tort Liability*, 101 B.U. L. Rev. 1289, 1310-11 (2021); see also Helland et al., *supra* note 12 at 599 (“Payments in products liability suits even excluding legal fees and other indirect costs account for 1.74% of GDP. In health care . . . suits against drug companies amount to 2.26% of all drug expenditures.”).

⁵² See also George L. Priest, *The Modern Expansion of Tort Liability: Its Sources, Its Effects, and its Reform*, 5 J. OF ECON. PERSP. 31, 44 (1991) (“The [general aviation] industry has claimed that the impact of [] liability costs have led to the decline in U.S. production from 17,048 planes in 1979 to 1,143 planes in 1988.”); George L. Priest, *The Current Insurance Crisis and Modern Tort Law*, 96 YALE L.J. 1521, 1525 (1987) (“[C]ontinued expansion of tort liability on insurance grounds leads to a reduction in total insurance coverage available to the society . . . parties most drastically affected by expanded liability and by the current insurance crisis are the low-income and poor, exactly the parties that courts had hoped most to aid.”).

Powersports, Inc., 319 F.3d 973, 987 (7th Cir. 2003). With necessary products often becoming cost-prohibitive, legislatures are forced to step in “to limit costs of [tort] insurance and thereby lessen the costs of products to consumers.” *Standard Fire Ins. Co. v. Ford Motor Co.*, 723 F.3d 690, 698 (6th Cir. 2013) (explaining the “clear” purpose of a Tennessee tort reform act limiting product liability recovery to limit costs of insurance and prices of products). Legislatures often enact tort reform legislation due to the “fear that manufacturers [are] being driven to the wall because . . . of the long tail of [tort] liability.” *U.S. Aviation Underwriters Inc. v. Nabtesco Corp.*, 697 F.3d 1092, 1097 (9th Cir. 2012) (citations omitted) (discussing Congress’s purpose in enacting tort reform limiting liability for airplane manufacturers); *see also City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 395 (2d Cir. 2008) (upholding federal tort reform law in the firearms industry because “Congress rationally perceived a substantial effect on the industry of the [tort] litigation”).

Of particular relevance here given the health benefits of hemp-based products, expanded tort liability threatens to make healthcare products prohibitively expensive for those who need them most. “[T]he long shadow of tort liability cast by [expanded tort liability for health care products] would drive up prices and eventually force [] suppliers out of the market.” *O’Connell v. Shalala*, 79 F.3d 170, 172-73 (1st Cir. 1996) (citations omitted). Where healthcare products

are still being developed and tested, “as a practical matter, a higher risk of [tort] liability . . . would increase costs . . . while decreasing the supply of contractors and research and development.” *Ripley v. Foster Wheeler LLC*, 841 F.3d 207, 210 (4th Cir. 2016) (citations omitted).⁵³ Worse still, some manufactures may opt to “avoid uncertain liability” rather than introduce new products into the market. *See, e.g., Browning-Ferris Indus. v. Kelco Disposal*, 492 U.S. 257, 282 (1989) (O’Connor, J., dissenting in part).⁵⁴

The adverse consequences of tort expansion apply with equal force here. To be sure, RICO “has been taken from this anti-mafia, anti-organized crime statute, and now applies to ordinary run of the mill business disputes,” including those concerning personal

⁵³ *See also*, Gideon Parchomovsky, et al., *Torts and Innovation*, 107 MICH. L. REV. 285, 289 (2008) (“[T]he increased [tort] liability innovators face raises the total cost of producing innovations and, consequently, the price consumers must pay for new technologies and products that do reach the market.”).

⁵⁴ *See also O’Connell*, 79 F.3d at 172-73 (discussing federal tort reform for vaccine-related personal injury lawsuits); *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 227–28 (2011) (“Whereas between 1978 and 1981 only nine products-liability suits were filed against DTP manufacturers, by the mid-1980’s the suits numbered more than 200 each year. This destabilized the DTP vaccine market, causing two of the three domestic manufacturers to withdraw . . . To stabilize the vaccine market and facilitate compensation, Congress enacted the NCVIA in 1986.”); *Shalala v. Whitecotton*, 514 U.S. 268, 269 (1995) (discussing the statutory scheme of the National Childhood Vaccine Injury Act of 1968 for addressing and preventing injuries from vaccines as a better solution for vaccine injuries than tort liability).

injury claims.⁵⁵ But Congress never intended for RICO to be applied in these circumstances. In expressly authorizing suits for injuries to “business or property,” Congress implicitly excluded authorization of suits alleging other types of injuries, including personal injuries.

To ignore this distinction would “render[] meaningless or mostly meaningless RICO’s very clear business or property restriction,” and cause RICO to “explode[] into a supercharged state tort statute.”⁵⁶ And it is not hyperbolic to say that; it is a litigation fact. Known as “possibly the most potent and flexible weapon in commercial litigation today[,]”⁵⁷ plaintiffs’ attorneys have commented that “it is virtually malpractice not to add a RICO cause of action to [a] complaint” if there is “a legitimate claim that can be cast in RICO terms” because of the treble damages and attorney’s fees available.⁵⁸ And RICO’s expansive venue

⁵⁵ Callan Stein, *RICO Report: Supreme Court to Settle Circuit Split Regarding RICO Damages Arising From Personal Injuries*, Troutman Pepper (Apr. 30, 2024), at 4, https://www.troutman.com/a/web/sMCXdgPe4ZXNq8D1c75K9h/8YSMNB/transcript_rico_supreme_court_to_settle_circuit_split_regarding_rico_damages_arising_from_personal_injuries.pdf.

⁵⁶ *Id.*

⁵⁷ Timothy Patton, *Civil RICO: Statutory and Implied Elements of the Treble Damage Remedy*, 14 TEX. TECH L. REV. 377, 379 (1983).

⁵⁸ Gerard Lynch, *A Conceptual, Practical, and Political Guide to RICO Reform*, 43 VAND. L. REV. 769, 794 (1990).

provision permits a court to exercise jurisdiction over “any other RICO defendant if the charges against the additional defendants are connected to the case against the first defendant and the case against the first defendant cannot be fully adjudicated without the presence of the additional defendants.”⁵⁹ All of this makes the RICO statute a very attractive tool. Expanding the RICO regime to encompass liability for personal injuries would legitimize the statute’s use as a litigation “weapon” in a context not intended by Congress.

And because product safety, including when it comes to ingestible and topical products, is already highly regulated, expanded RICO liability will not lead to any added benefit. The FDA strictly regulates food, drugs, and cosmetics and “sets optimal safety standards . . . [that] best balance between safety, effectiveness, cost, and other relevant factors, taking into account that some . . . may be harmed even under such a standard.”⁶⁰ The tort law system governing

⁵⁹ Benjamin Rolf, *The Ends of Justice Revised: How to Interpret RICO’s Procedural Provision*, 18 *U.S.C. § 1965*, 80 *NOTRE DAME L. REV.* 1225, 1228 (2005).

⁶⁰ Peter H. Schuck, *FDA Preemption of State Tort Law in Drug Regulation: Finding the Sweet Spot*, 13 *ROGER WILLIAMS U. L. REV.* 73, 77-78 (2008).

products co-exists with this FDA oversight, and together they provide a “dual safety system.”⁶¹ Still, commentators looking at these two safeguards have cautioned that “if one system is set up to work well, adding another can be harmful to the health and pocket book of patients.”⁶² That is because overlapping and sometimes competing regulatory and liability regimes “just raise[] costs to [manufacturers] and thus increases product delays and prices faced by patients.”⁶³ The Roundtable does not resist the application of existing regulatory frameworks and traditional product liability law to hemp products. Instead, the point here is that adding RICO as yet another regime—where the industry already is highly regulated and the subject of tort law—will only serve to exacerbate potential adverse consequences.

These risks of expanded tort liability for personal injuries are real for the hemp industry. The likely targets of such RICO liability would be product distributors. Faced with this reality, distributors would be forced to add extra layers of insurance (if insurance

⁶¹ Tomas Philipson, *Overdosing on Protection: The Overlapping Purposes Of The FDA And Product Liability*, Forbes (Dec. 7, 2015), <https://www.forbes.com/sites/tomasphilipson/2015/12/07/overdosing-on-protection-the-overlapping-purposes-of-the-fda-and-product-liability/>; Schuck, *supra* note 60 at 78.

⁶² Philipson, *supra* note 61.

⁶³ *Id.*

covering RICO claims is even available), with accompanying increase in costs. Lawyers would need to be retained to defend lawsuits. Extraordinary verdicts might not be covered by insurance (even if insurance is available) and would have to be paid by the defendant itself. And, if tort lawsuits become more prevalent, insurance costs will at least rise, if insurance is even available at all.

But there is little likelihood that product distributors would be the only targets. Looking for more enhanced recoveries, enterprising lawyers would join growers, processors, and manufacturer businesses with equally small, if not smaller, profit margins and who likewise cannot readily absorb the costs. The cycle of increased costs for them, whether through insurance, defense, or verdicts, would be the same. The entire industry would be dealt a crippling blow.

And where would the targets turn to spread or account for the costs? Price increases would be one avenue, passed on through each link in a product's life cycle. Reducing investment in new product development would be another. Reduction in potential salary increases or employee benefits would be another place to go. None of these impacts are desirable.

One other thing is certain. The ultimate harm that follows from increased liability costs falls on those who buy the products. To account for these increased costs to those in the supply chain, prices to consumers

must go up and here those increases would ripple through sectors of the economy, like healthcare, where consumers need the beneficial products but may not be able to afford them. These consumers will be forced to make hard choices, including going without the life-enhancing products the hemp industry produces.

And there will be other collateral consequences as well. As noted, there are benefits that flow from a vigorous hemp industry for agriculture, the environment, and other economic sectors. Yet, the reduced investment and increased costs that enhanced liability exposure engenders will threaten all of this, too.

In sum, with the increased burden of expanded tort liability, all hemp industry participants will be faced with perverse incentives that may curtail innovation.⁶⁴ The benefits of the hemp industry cannot be overstated, and concomitantly, nor can the potential harms that would inevitably result from expanded RICO liability in personal injury litigation. For this

⁶⁴ Parchomovsky, et al., *supra* note 53 at 289 (“The heightened risk of liability for tort damages induces innovators to limit their [research and development] endeavors to the conventional technological frameworks. Instead of focusing upon genuine technological breakthroughs, innovators will strive to produce incremental improvements on customary and conventional technologies.”); Steven Garber, *Product Liability, Punitive Damages, Business Decisions and Economic Outcomes*, 1998 WIS. L. REV. 237, 269 (1998).

reason, RICO should be limited to circumstances expressly intended by Congress—injury to business or property.

CONCLUSION

Congress spoke clearly regarding its intent for RICO liability. *Amicus* the Roundtable supports Petitioners' position that RICO should be restricted to its intended boundaries and not expanded to personal injury lawsuits.

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