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COMMENT: THE ARGUMENT FOR THE LEGALIZATION OF INDUSTRIAL **HEMP**

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SUMMARY:

... Industrial **hemp** as a cash crop in the United States has a history as old as the United States itself. ... These are just a few of the reasons that California should pass legislation legalizing the growing of industrial **hemp** allowing it to become an economically viable crop in California. ... However, since 1995, twenty-five states (Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Oregon, South Dakota, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin) have introduced legislation allowing for industrial **hemp** cultivation. ... According to the National Organization for the Reform of Marijuana Laws (NORML), "DEA officials have stonewalled several state efforts to enact industrial **hemp** cultivation and research bills by threatening to arrest any farmers contracted to grow the crop. ... A report published by the USDA in 2000 makes similar arguments regarding the small market for industrial **hemp** products such as bast fiber, **hemp** seed, and **hemp** oil. ... Once the DEA has received the scientific and medical evaluation from HHS, the Administrator will evaluate all available data and make a final decision whether to propose that a drug or other substance be controlled and into which schedule it should be placed. ...

TEXT:

(* 85)

Introduction

Industrial **hemp** as a cash crop in the United States has a history as old as the United States itself. The Founding Fathers grew **hemp** and it was an integral crop in the economic structure of the colonial United States. n1 Industrial **hemp** supported our economy during World War II. n2 Currently it is illegal to grow **hemp** in the United States without a special Drug Enforcement Administration (DEA) permit being issued. n3 The United States is the only industrialized nation that currently does not allow the growing of **hemp**. n4 Unfortunately, the **hemp** issue has been confused and/or attached to the pro-marijuana movement in the United States.

As this comment will show, industrial **hemp** is perhaps the most versatile crop that can be grown. Its use can save trees and fossil fuel, clothe the world, and can be used as an ingredient in cosmetics and foodstuffs. It can even be used to replace fiberglass in automobiles. Growing industrial **hemp** uses less water and pesticides than does cotton. These are just a few of the reasons that California should pass (* 86) legislation legalizing the growing of industrial **hemp** allowing it to become an economically viable crop in California.

Hemp is not marijuana, as this comment will explain. This comment will also discuss the fact that one half of the states in the U.S. have introduced some form of industrial **hemp** legislation at the state level. California, a state known as a leader in agriculture, recently had legislation introduced but it was vetoed by Governor Gray Davis. n5 CA Assembly Bill 388 would have allowed the University of California system to grow **hemp** in order to study its viability as a cash crop in California. n6

I. Industrial **Hemp** is not Marijuana

"The term "industrial **hemp**" is a phrase that specifically denotes the use of benign strains of the cannabis plant strictly for agricultural and industrial purposes." n7 It is important to use the full term "industrial **hemp**" when discussing this particular strain of the cannabis plant because of the confusion with the term "**hemp**", which commonly refers to marijuana and the issue of the legalization of marijuana. The purpose of this comment is to focus on the industrial and agricultural uses of the strain of cannabis plant that contains less than 1% delta-9 tetrahydrocannabinol (THC). THC is the compound that produces a narcotic effect which makes marijuana illegal. Marijuana contains over 3% THC and thus has the narcotic effect upon those who ingest or smoke it. n8 Compare industrial **hemp** that is in the family Cannabaceae, genus Cannabis, species C. sativa and not only contains THC levels of less than 1% , but contains cannabidiol (CBD) which has been shown to block the effect of THC in the nervous system. n9 Species C. sativa is a member of the mulberry family. n10 Industrial **hemp** has a relatively (* 87) high level of CBD compared to THC. n11 Conversely, drug strains of **hemp**, i.e. marijuana, are high in THC and low to intermediate in CBD. n12 Smoking industrial **hemp** actually has the effect of preventing the marijuana high due to the high CBD to THC ratio. n13 Industrial **hemp** has even been shown to cross pollinate with marijuana and create the effect of lowering the THC level in the marijuana, thus acting as an eradicator of marijuana. n14

II. History of Industrial **Hemp** in the United States

A. Revolutionary Era

"The first law concerning industrial **hemp** in the colonies at Jamestown in 1619, ordered farmers to grow Indian **hemp**." n15 In 1631, a compulsory grow law was passed in Massachusetts. n16 Connecticut proposed a grow law in 1632. n17 The Chesapeake colonies ordered their farmers, by law, to grow industrial **hemp** in the mid-eighteenth century. n18 These laws were passed because industrial **hemp** was such a viable and versatile product. Among one of the important uses during this time was the use of industrial **hemp** for sailing ship sails and ropes. n19 Names like Hempstead or Hemphill dot the American landscape and reflect areas of intense industrial **hemp** cultivation. n20

Industrial **hemp** paper was used to write the first two drafts of the U.S. Constitution, with the final draft being on animal skin. n21 Two of the strongest advocates for an industrial **hemp**-based economy were (* 88) George Washington and Thomas Jefferson, with each cultivating the crop for its fiber content. n22 In 1791, Benjamin Franklin published what is thought to be the first ever article on industrial **hemp** to appear in an American magazine. This article, written by Abbe Braille in London in 1790, describes the new mode of cultivating and dressing industrial **hemp**. The article also included a chart which broke down the cost of cultivating the industrial **hemp** and the profit made on the sale of industrial **hemp** produced on 20 acres of land. n23 Originally, "Old Ironsides", the namesake of the last remaining Constitution-class frigate ships, was outfitted with cannabis **hemp** sails and over 60 tons of cannabis **hemp** rigging. n24

B. WW II Era

1. 1937 Marihuana Tax Act n25

This act levied a one dollar tax paid through the purchase of a "marihuana stamp", on any activity dealing with Cannabis sativa. The Act did not differentiate the different types of C. sativa, nor did it even refer to levels of THC. It was this act that led to the current law today that also does not differentiate the different types of C. sativa or levels of THC. However, the Act did segregate out the mature stalks of C. sativa and any fiber made from the stalks, oil from the seeds of such stalks, or any other manufacture or preparation of such mature stalks (with the exception of the resin extracted therefrom). n26 The Act was very stringent in that it applied to anyone who imports, manufactures, produces, compounds, sells, deals in, dispenses, prescribes, administers, (* 89) or gives away marihuana. n27 Additionally, each instance and for each place that such a transaction took place was subject to the \$ 1 tax. n28 Penalties for a conviction of a violation for any provision of the Act was a maximum fine of \$ 2000 and/or imprisonment of up to 5 years. n29 Section 14 of the Act gave, via the Secretary of the Treasury, rights, privileges, powers, and duties to the Commissioner of Narcotics and the Commissioner of the Internal Revenue Service absolute administrative regulatory and police powers in enforcement of the Act. n30 Legislative history of the Act shows that the intent of the Act was "not to interfere materially with any industrial, medical, or scientific uses which the **hemp** plant may have." n31 Harry J. Anslinger, Commissioner of the Federal Bureau of Narcotics (FBN) (the predecessor to the Drug Enforcement Administration (DEA)), told the Senate Committee that those in the domestic industrial **hemp** industry "are not only amply protected under this act, but they can go ahead and raise **hemp** just as they have always done it." n32 However, the language of the Act made it very difficult for anyone to rigidly comply and the FBN lumped industrial **hemp** with marijuana, so the legal risks outweighed the economic benefit for growers of industrial **hemp**. n33

2. 1938 Popular Mechanics Article - Billion Dollar Crop

In 1938, Popular Mechanics Magazine published an article on industrial **hemp** entitled, "New Billion-Dollar Crop." n34 "This was the first time that any agricultural crop in America was referred to as being worth a "billion dollars."

n35 The article discussed a new machine, known as a decorticator, which was in service in Texas, Illinois, Minnesota, and other states that produced fiber at half a cent per pound. n36 The decorticator made it possible to remove the fiber-bearing cortex from the rest of the stalk, which in turn made **hemp** fiber available for use without prohibitive amounts of human labor. n37 The article predicted (*90) that "**hemp**, a crop that will not compete with other American products, will displace imports of raw material and manufactured products produced by underpaid coolie and peasant labor and it will provide thousands of jobs for American workers throughout the land." n38

3. 1942 USDA film "**Hemp** for Victory"

In 1942 the U.S. Department of Agriculture produced a film in order to promote industrial **hemp** production to aid the war effort. At the request of the United States government, farmers planted 36,000 acres of industrial **hemp** seed in 1942. This was an increase of several thousand percent. The goal for the following year was to have 50,000 acres of seed industrial **hemp** planted. n39

Despite the existence of the Marihuana Tax Act of 1937, the result of the "**Hemp** for Victory" Campaign was that "thousands of farmers grew hundreds of thousands of acres of **hemp** for wartime needs." n40 However, by the end of WW II, the government's allowance of industrial **hemp** cultivation also ended and by 1957, "prohibitionists had reasserted a total ban on **hemp** production." n41

C. Present/Modern

In 1995 one politician in Colorado introduced legislation allowing for industrial **hemp** cultivation but it was defeated. n42 The following year, Colorado along with, Missouri, Hawaii, and Vermont, proposed similar legislation which, although defeated, garnered significant support. n43 The DEA has only granted one industrial **hemp** permit in the last forty years. n44 However, since 1995, twenty-five states (Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Oregon, South Dakota, (*91) Tennessee, Vermont, Virginia, West Virginia, and Wisconsin) have introduced legislation allowing for industrial **hemp** cultivation. n45

Despite various support for industrial **hemp's** cultivation, the DEA is opposed to any such legislation. The DEA is also opposed to revising existing federal law which would allow industrial **hemp** to be cultivated. n46 Currently, only the DEA has the power to grant farmers licenses to grow industrial **hemp** and has only granted the state of Hawaii a license. n47 The DEA granted this license in 1999. n48 However, the security measures that were required and implemented in Hawaii, such as chain link fence with razor blade barbed wire and a twenty-four hour infrared security system n49 surrounding the industrial **hemp** plots, would hinder commercial production. According to the National Organization for the Reform of Marijuana Laws (NORML), "DEA officials have stonewalled several state efforts to enact industrial **hemp** cultivation and research bills by threatening to arrest any farmers contracted to grow the crop." n50

III. Arguments Against Legalization of Industrial **Hemp**

An article published by the Illinois State Police, "The Economic Truths About **Hemp**/ Marijuana and its Non-Existent Market Economy," argues that because there is no "zero-THC **hemp**", industrial **hemp** is marijuana. n51 The article argues that marijuana and industrial (*92) **hemp** are the same thing. The article also states that THC levels for industrial **hemp** are equivalent to that of marijuana in the 1970's. n52

A second argument made by the Illinois State Police is that "**hemp** advocacy groups intermingle the legalization of industrial **hemp** with that of marijuana." n53 They also argue that by legalizing industrial **hemp**, the cost of enforcing anti-marijuana laws would increase. n54 The increase would be because high THC and low THC **hemp** look the same and the only way to tell the difference is through testing. n55 Finally, the article argues that except as a small-scale specialty crop, industrial **hemp** is not economically viable and that demand is already being met by exports from countries that subsidize its production. n56 While this may be the case today, it may not be the case in the near future as other resources such as timber become more scarce. A report published by the USDA in 2000 makes similar arguments regarding the small market for industrial **hemp** products such as bast fiber, **hemp** seed, and **hemp** oil. n57

In 2001, the Family Research Council (FRC) published an Anti **Hemp** Treatise, which also had similar arguments against industrial **hemp** as those of the Illinois State Police article. n58 They argued that the promotion and use of industrial **hemp** products and fabrics encourages not only a marijuana subculture, but also the agenda of drug legalization. n59 Also argued by the FRC is that the THC in industrial **hemp** products poses health risks, that marijuana legalizers are pushing industrial **hemp**, and that special problems would be created for law enforcement with the legalization of industrial **hemp**. n60 However, on the other side of the demand argument is the argument that the commercial (*93) demand for industrial **hemp** may increase if the cultivation of it were made legal.

IV. Industrial **Hemp** as an Alternative to Growing Tobacco

In 1995, the USDA published an article entitled, "Industrial **Hemp** and other Alternative Crops for Small-scale Tobacco Producers." n61 This article focused on the statistical data that shows tobacco production in the top two tobacco producing states, North Carolina and Kentucky, is on a decline. While the article states the benefits of growing industrial **hemp**, it also acknowledges that "few estimates are available for modern production and processing costs." n62 Additionally, this article discusses an uncertain market potential for industrial **hemp**. n63

Kentucky's General Assembly created a 17-member board called the Industrial **Hemp** Commission in 2001, to look at industrial **hemp** as a cash crop. n64 The Georgia Farm Bureau, Georgia's largest farm group consisting of 322,500-members, approved a resolution calling for the University of Georgia to study industrial **hemp** in December 1999. n65 The spark for creating this study was two years of dry weather that extirpated some tobacco fields, government production cuts on tobacco, and low prices on conventional commodities which caused the Georgia tobacco farmers to become desperate for new crops. n66 Maryland has allocated \$ 78.7 million through 2010 to buy out tobacco farmers. n67 The source of these funds is the \$ 4 billion Maryland will receive (*94) from the national lawsuit against cigarette manufacturers. n68 Farmers will immediately grow alternative crops once they stop growing tobacco. n69 Original estimates are that 30 to 40% of the tobacco farmers would take the buyout. n70 Maryland has approximately 1,100 tobacco farmers. n71 This would give rise to 330 to 440 farmers who would be looking for new economically viable crops to grow.

V. Modern Uses for Industrial **Hemp**

A. Bio-Diesel Vehicle Fuel

"Rudolph Diesel designed his diesel engine to run on **hemp** oil." n72 On July 4, 2001, a 1985 Mercedes Turbo Diesel powered on **hemp** oil began a 10,000 mile trek across the U.S. and Canada. n73 Apple Energy of Ohio processes industrial **hemp** seeds into biodiesel fuel. n74 Kellie Sigler, co-founder of the industrial **hemp** car project, states that "if six percent of America were planted with industrial **hemp**, all of America's transportation and energy demands could be met." n75

B. Replaces Fiberglass in Vehicles

Henry Ford felt it would be advantageous to build and fuel cars from farm products so he experimented with industrial **hemp** to build car bodies. n76 As recently as 1997, BMW was experimenting with industrial **hemp** materials in automobiles as part of an effort to make cars more recyclable. n77 In 1997, Popular Mechanics published an article about using industrial **hemp** in automobiles. In the article, company spokesman for the Daimler-Benz company noted that the engineers liked using industrial **hemp** fibers because they are more rigid and (*95) pest-resistant than flax. n78

American car makers have begun to replace fiberglass with natural plant fibers. n79

Using such fibers can save much of the energy needed to make a car and result in parts that are 40 percent lighter and biodegradable. By 2010, the New Jersey consulting firm Kline & Company expects natural fibers to replace a fifth of the fiberglass in today's automobile interiors. In North America, plant stalks replaced 2 percent of the fiberglass in mats, seat backs, and other plastic composites in 2000; industrial **hemp** dominated this field. The crop is at least 65 cents cheaper per pound than fiberglass; it also grows perennially and can be recycled easily. n80

C. Construction

Industrial **hemp** can be used to make products such as medium density fiber board, oriented strand board, and even beams, studs, and posts, all of which have construction uses. n81 Because industrial **hemp** has long fibers, these products are stronger and/or lighter than those made from wood. n82 Recently in England, the Suffolk Housing Society commissioned a project to build entire houses from industrial **hemp** products. n83 The society concluded that these houses require less energy to build, produce less waste, and cost less to heat. n84 However, compared to traditional brick and mortar houses, the houses cost ten percent more to build. n85 It is possible, however, that the price will fall as the building technique develops. n86

D. Paper

The long fibers found in industrial **hemp** create high-quality paper for books, magazines, and stationery, while the shorter fibers are excellent (*96) material for newspaper, tissue paper, and packaging materials. n87 Industrial **hemp** paper not only resists decomposition, but it is not subject to the age-related yellowing of wood-derived papers. n88 Kimberly Clark, a Fortune 500 company, has an industrial **hemp**-paper mill in France which produces industrial **hemp** paper preferred for bibles due to both its durability and failure to yellow with age. n89

The 1995 USDA report discussed industrial **hemp** use for the specialty and recycled paper market. Products in the specialty paper markets include currency, cigarette papers, filter papers, and tea bags. n90 HurterConsult, Inc., a company based in Ottawa, Canada, has done a pre-feasibility study for Prairie Pulp and Paper Co. for the use of flax straw and industrial **hemp** to produce either pulp and/or un-coated printing and writing paper. n91

E. Clothing & Fashion

Industrial **hemp** has a twofold appeal for the fashion industry. The intrinsic qualities are first and foremost on the list and include the following: stronger than cotton, warmer than linen, and more absorbent than nylon. n92 Additionally, industrial **hemp** is environment friendly. Cotton requires huge amounts of water and enormous quantities of pesticides, herbicides, and fertilizers. n93 Whereas industrial **hemp** needs little or no pesticides or herbicides and significantly less water than cotton crops do. n94 Pesticides sprayed on cotton account for one half of the pesticide use in the United States. n95 Six thousand tons of pesticides (*97) and defoliants are used on cotton each year in California alone. n96 Owen Sercus, a professor in the textile development and marketing department of Manhattan's prestigious Fashion Institute of Technology predicted that industrial **hemp** is going to be the natural fiber for the 21st century. n97 Fashion designers Ralph Lauren and Calvin Klein have been using industrial **hemp** fabric. In 2000, Ralph Lauren disclosed that he secretly used industrial **hemp** fabric in his clothing as far back as 1984. n98 Calvin Klein used industrial **hemp** for his 1995 home collection items, including decorative pillows, and has announced plans to use industrial **hemp** in his clothing lines. n99 Shoe manufacturers including Adidas and Vans have either marketed industrial **hemp**-topped sneakers or plan to do so in the future. n100

Woody Harrelson, a well-known actor and proponent of industrial **hemp**, was recently outfitted in a Giorgio Armani designed tuxedo made from industrial **hemp** fabric. n101 Armani's company has participated in a consortium of Italian farmers and seed producers to restart Italian industrial **hemp** cultivation in Italy. n102 The consortium will initially plant 494 acres. n103 Additionally, Armani's consortium is building a factory that will have the capacity to process industrial **hemp** produced from 2,470 acres. n104

F. Food

Hempseed contains eight essential amino acids, two essential fatty acids, and Gamma Linolenic Acid (GLA), which is an Omega-6 Super GLA, which is less commonly found in fish and flaxseed oils. n105 (*98)

A study in 2000, funded by the Canadian government and coordinated by Leson Environmental Consulting in Berkeley, CA, concluded that as long as industrial **hemp** seed processors continue to adhere to thorough seed cleaning methods, people who frequently consume quality industrial **hemp** foods now found in stores, will not fail urine tests for marijuana. n106 These thorough cleaning methods will generally keep THC levels in industrial **hemp** oil below 5 ppm and the level in hulled seeds below 2 ppm. n107 The study required employers and administrators of drug testing programs to follow established federal guidelines for urine testing, requiring that urine samples, which fail the screening test, must be confirmed by GC/MS (gas chromatography/mass spectrometry). n108 The use of the GC/MS testing provides a more stringent testing method and therefore would prove or disprove the failed urine test.

G. Paint & Varnish

In 1935, more than 58,000 tons of industrial **hemp** seed were used to make paint and varnish which were non-toxic. When industrial **hemp** was banned, these safe paints and varnishes were replaced by toxic petrochemicals. n109

VI. Controlled Substance Act

The Controlled Substances Act (CSA), Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, is the legal foundation of the government's fight against the abuse of drugs and other substances. This law is a consolidation of numerous laws regulating the manufacture and distribution of narcotics, stimulants, depressants, hallucinogens, anabolic steroids, and chemicals used in the illicit production of controlled substances. The CSA places all substances that are regulated under existing federal law into one of five schedules. This placement is based upon the substance's medicinal value, harmfulness, and potential for abuse or addiction. Schedule I is reserved for the most dangerous drugs that have no recognized medical use, while Schedule V is the classification used for the least dangerous drugs. The act also provides a mechanism for substances to be controlled, added to a schedule, decontrolled, removed from control, rescheduled, or transferred from one schedule to another. (*99)

Proceedings to add, delete, or change the schedule of a drug or other substance may be initiated by the Drug Enforcement Administration (DEA), the Department of Health and Human Services (HHS), or by petition from any interested party, including the manufacturer of a drug, a medical society or association, a pharmacy association, a public interest group concerned with drug abuse, a state or local government agency, or an individual citizen. When

a petition is received by the DEA, the agency begins its own investigation of the drug.

The DEA also may begin an investigation of a drug at any time based upon information received from law enforcement laboratories, state and local law enforcement and regulatory agencies, or other sources of information.

Once the DEA has collected the necessary data, the DEA Administrator, by authority of the Attorney General, requests from the HHS a scientific and medical evaluation and recommendation as to whether the drug or other substance should be controlled or removed from control. This request is sent to the Assistant Secretary of Health of the HHS. Then, the HHS solicits information from the Commissioner of the Food and Drug Administration and evaluations and recommendations from the National Institute on Drug Abuse, and on occasion, from the scientific and medical community at large. The Assistant Secretary, by authority of the Secretary, compiles the information and transmits back to the DEA a medical and scientific evaluation regarding the drug or other substance, a recommendation as to whether the drug should be controlled, and in what schedule it should be placed.

The medical and scientific evaluations are binding to the DEA with respect to scientific and medical matters. The recommendation on scheduling is binding only to the extent that if HHS recommends that the substance not be controlled, the DEA may not control the substance.

Once the DEA has received the scientific and medical evaluation from HHS, the Administrator will evaluate all available data and make a final decision whether to propose that a drug or other substance be controlled and into which schedule it should be placed.

The CSA also creates a closed system of distribution for those authorized to handle controlled substances. The cornerstone of this system is the registration of all those authorized by the DEA to handle controlled substances. All individuals and firms that are registered are required to maintain complete and accurate inventories and records of all transactions involving controlled substances, as well as security for the storage of controlled substances. n110

(* 100)

VII. Case Law

On October 9, 2001, the DEA issued an interpretive rule which purported to make industrial **hemp** foods containing harmless infinitesimal traces of naturally-occurring THC immediately illegal under the CSA of 1970. n111 However, because trace infinitesimal THC in industrial **hemp** seed is non-psychoactive and insignificant, the U.S. Congress exempted non-viable industrial **hemp** seed and oil from control under the CSA. This is consistent with Congress' exemption of poppy seeds from the CSA, even though they contain trace opiates otherwise subject to control under the CSA. n112 The DEA' s interpretive ruling alarmed health food stores because they carry products such as industrial **hemp** oil and food products that contain industrial **hemp** oil and/ or industrial **hemp** seed. However, on March 7, 2002, the U.S. Court of Appeals for the Ninth Circuit stayed the DEA' s ruling when it granted the **Hemp** Industries Association (HIA) motion. n113 On April 8, 2002, the HIA argued before the Ninth Circuit that the DEA' s interpretive ruling misinterprets the CSA and violates the Administrative Procedures Act. n114 Public and Congressional outcry followed the DEA' s interpretive ruling when over 115,000 public comments were submitted to the DEA and 25 members of Congress wrote to the DEA to tell them that their interpretive rule was overly restrictive. n115

On March 21, 2003, the DEA issued its final rule, which was almost identical to its interpretive rule, regarding **hemp** food products. n116 Once again the HIA, along with several **hemp** food and cosmetic manufacturers and the Organic Consumers Association, petitioned the Ninth Circuit to prevent the DEA from stopping the currently legal sale of **hemp** seed and oil products in the United States. n117 On April 16, 2003, five days before the DEA' s final rule was to go into effect, (* 101) the Ninth Circuit once again issued a stay blocking the DEA' s attempt to halt the sale of food products containing **hemp** seed and/or oil. n118 Without this stay, companies such as Nature' s Path, who produces **hemp** granola and waffles, would have lost up to three percent of its sales. n119 In the past year sales of Nature' s Path **hemp** food products has increased approximately twenty percent. n120 Nature' s Path will continue to change the process for reviewing **hemp** food by pushing to have the Food and Drug Administration (FDA) involved in the reviewing process instead of the DEA. n121

On the international front, a North American Free Trade Agreement (NAFTA) suit is pending with the U.S. State Department. The Canadian agro-firm Kenex Ltd. has been growing and processing industrial **hemp** oil, seed, and fiber products in Canada and has been investing heavily over the past five years in its expansion into the United States markets for edible oil, seed, and fiber. n122 On August 2, 2002, Kenex filed its NAFTA Notice of Arbitration under NAFTA Chapter 11 in response to the DEA' s recent ruling seeking to effectively prevent Kenex from accessing American markets for its industrial **hemp** food products. n123 Kenex and the U.S. State Department plan to select a threemember (* 102) arbitration panel to determine if at least \$ 20 million compensation is due to Kenex for losses stemming from the DEA' s attempt to ban industrial **hemp** seed food products. n124 As of April 28, 2003, no final decision has been made.

VIII. Governor Signed Legislation in States Other Than California

A. Hawaii

Hawaii is currently the only state the DEA has granted permits to grow industrial **hemp**. n125 The DEA granted the state of Hawaii a license to grow industrial **hemp** in 1999. n126 As discussed above, the security measures that were required and implemented in Hawaii, such as chain link fence with razor blade barbed wire and a twenty-four hour infrared security system surrounding the industrial **hemp** plots, would hinder commercial production due to their high cost. n127 In April 2002, Hawaii passed House Bill 57 that would extend until June 30, 2005, the time in which privately-funded industrial **hemp** research can be conducted in the State. n128

B. Kentucky

On March 20, 2001, the Governor of Kentucky signed House Bill 100 into law. n129 HB 100 allows the Kentucky Department of Agriculture to work with a selected Kentucky university or universities' agricultural research program to create an industrial **hemp** research program. n130 HB 100 further permits said universities to conduct research (*103) on industrial **hemp** as an agricultural product in Kentucky. n131 Due to the aforementioned controversy surrounding industrial **hemp**, implementation of any research has been very slow going. n132 The only school to apply to the Council of Secondary Education for permission to experiment with industrial **hemp** is the University of Kentucky. n133

As Kentucky' s tobacco crop dwindles due to the federal tobacco settlement, Kentucky farmers are looking to farm other crops. One farmer, whose family worked hundreds of acres for six generations, has lost nearly sixty percent of its tobacco production since the federal tobacco settlement has kicked in. n134

C. Maryland

On May 15, 2000, the Governor of Maryland signed into law House Bill 1250. n135 This bill provides for the establishment of a pilot program to study the growth and marketing of industrial **hemp**. n136

D. Montana

On April 23, 2001, the Governor of Montana signed into law Senate Bill 261. n137 SB 261 authorizes the production of industrial **hemp** as an agricultural crop in Montana. n138 SB 261 goes perhaps the farthest of any enacted state legislation in that it specifically provides for an exemption (*104) to criminal possession of dangerous drugs and criminal production or manufacture of dangerous drugs for industrial **hemp** production as an agricultural crop. n139 SB 261 goes even further because it requires the Department of Agriculture to request a change or waiver in federal law. n140 SB 261 limits the THC level in industrial **hemp** to three percent. n141

E. West Virginia

On March 17, 2002, the Governor of West Virginia signed into law Senate Bill 447. The purpose of SB 447 is as follows:

The Legislature finds that the development and use of industrial **hemp** can serve to improve the state' s economy and agricultural vitality and that the production of industrial **hemp** can be regulated so as not to interfere with the strict regulation of controlled substances in this state. The purpose of the industrial **hemp** development act is to promote the economy and agriculture by permitting the development of a regulated industrial **hemp** industry while maintaining strict control of marijuana. n142

SB 447 limits the THC level to one percent in industrial **hemp** grown for agricultural purposes in West Virginia. n143 SB 447, like Montana legislation SB 261, provides that the Commissioner of Agriculture will "promulgate rules . . . which are consistent with the United States Department of Justice and the DEA." n144 Also similar to Montana' s SB 261, is SB 447' s provision for the defense to prosecution for the possession or cultivation of industrial **hemp** if grown under the provisions of SB 447. n145

IX. Legislation in California

A. California Democratic National Party Supports Industrial **Hemp**

On February 22, 1999, the Democratic Party of Orange County adopted a resolution in support of industrial **hemp** and on March 26-28, 1999, proposed that the California Democratic Party in Sacramento also adopt the resolution.

n146 For the first time in recent history a major (* 105) political party embraced industrial **hemp** when the California Democratic National Party adopted the resolution in support of industrial **hemp**. n147

B. HR 32 - 1999-2000

On September 10, 1999, House Resolution 32 was adopted by the California Assembly by a vote of forty-one to thirty. n148 Assemblywoman Virginia Strom-Martin (Democrat - Duncan Mills) was the sponsor of House Resolution 32.

C. AB 448 - 2001

The passing of HR 32 led to the creation of Assembly Bill 448 which failed by a vote of 6 to 4 in the Assembly Agriculture Committee in May 2001. n149 AB 448 was a proposed act to "add Division 26 (commencing with Section 81100) to the Food and Agricultural Code, relating to industrial **hemp**." n150 Synopsis of AB 448: "Provides that, notwithstanding any other provision of state law, and in conformance with any applicable provision of federal law, any person who meets specified requirements and is issued a license by the Secretary of Food and Agriculture shall be authorized to plant, grow, harvest, possess, process, sell, or buy industrial **hemp** for commercial purposes. Defines "industrial **hemp**." n151 Industrial **hemp** is defined as "all parts and varieties of the plant *cannabis sativa*, cultivated or possessed by a licensed grower, whether growing or not, that contain a tetrahydrocannabinol (THC) concentration of three tenths of one percent or less by weight." n152 AB 448 specifically states that industrial **hemp** does not include marijuana. n153 The bill went on to have two revisions but failed (* 106) passage in the Assembly on May 21, 2001. n154

D. AB 388 - 2002

Assembly Bill 388 was the third bill Strom-Martin introduced with regard to industrial **hemp**. AB 388 was first introduced to the Assembly on February 20, 2001. n155 In the fall of 2001, it was in the Senate Agriculture and Water Resources Committee. n156 This bill was an act to add Article 9.5 (commencing with Section 590) to Chapter 3 of Part 1 of Division 1 of the Food and Agricultural Code, relating to specialty fiber crops. n157 AB 388 provides for University of California to conduct an assessment of economic opportunities available through the production of specialty or alternative fiber crops. n158 Basically, the purpose of AB 388 is to allow specialty fiber crops, such as industrial **hemp**, research to be conducted in order to further conduct economic and agricultural viability studies of industrial **hemp** in California. This version of the industrial **hemp** bill was expected to get the ball rolling with regard to industrial **hemp** being cultivated in California and having a high degree of government control over its growth in the process. The theory is that if there is a high degree of government control the public health and welfare will be protected and the production of marijuana will be curtailed.

California Assembly Bill 388 reads as follows:

An act to add Article 9.5 (commencing with Section 590) to Chapter 3 of Part 1 of Division 1 of the Food and Agricultural Code, relating to specialty fiber crops.

LEGISLATIVE COUNSEL' S DIGEST

AB 388, Strom-Martin. Specialty fiber crops.

Existing law provides for the University of California to conduct various studies, pilot demonstration projects, and programs designed to provide information and support to the Department of Food and Agriculture and California' s agricultural community.

This bill would request that the University of California conduct an assessment of economic opportunities available through the production of specialty or alternative fiber crops. This bill would request the University of California to report its finding to the Legislature by January 1, 2004.

The people of the State of California do enact as follows: (* 107)

SECTION 1. Article 9.5 (commencing with Section 590) is added to Chapter 3 of Part 1 of Division 1 of the Food and Agricultural Code, to read:

Article 9.5. Specialty or Alternative Fiber Crops

590. (a) The University of California is requested to conduct an assessment of economic opportunities available through the production of specialty or alternative fiber crops including industrial **hemp**, kenaf, and flax by extrapolating data on productivity and production costs available from trials conducted in other states and countries to California' s conditions. The assessment shall include, but not be limited to, the following:

(1) An estimation of market demand and likely crop prices.

(2) Identification of potential barriers to profitability.

(3) Identification of production, legal, processing, and marketing issues that would need to be addressed in future demonstration research or pilot commercial trials.

(b) Not later than January 1, 2004, the University of California is requested to report its findings to the Assembly Committee on Agriculture, and the Senate Committee on Agriculture and Water Resources. n159

Assembly Bill 388 passed the house on June 11, 2002, by a six to two vote, with action to amend, and re-refer to the Committee. n160 Interestingly enough, AB 448 had a topic listing of "Industrial **Hemp**: License for Commercial Purposes" when it went for vote. AB 388 had the topic listing as "Specialty Fiber Crops". Perhaps one reason that 388 passed was that the words "industrial **hemp**" were not in the title, as well as the fact that it is allowing industrial **hemp** to be grown for research and study purposes only.

Re-referral hearing date was set for June 24, 2002, and was placed on second reading file pursuant to Senate Rule 28.8. n161 On June 25, 2002, the bill was read a second time and was then submitted for a third reading. n162 On August 8, 2002, AB 388 went to a vote in the Senate and passed 23 to 10. n163 On August 15, 2002, AB 388 was read for the third time and went to an Assembly vote. n164 The Assembly passed the bill forty-five to thirty. n165 On August 21, 2002, at 3:00 PM AB 388 was enrolled and sent to the Governor with the title of : "An act to add Article 9.5 (commencing with Section 590) to Chapter 3 of Part 1 of Division 1 of the Food and Agricultural Code, relating to specialty fiber crops." n166 On September 15, 2002, Governor Gray Davis (*108) vetoed Assembly Bill 388. n167

X. Conclusion

Assembly Bill 388 was the first step to the production of industrial **hemp** in California. If the Governor had signed AB 388, California would have been at the forefront of research of industrial **hemp** as a viable agricultural crop. The biggest obstacles are the DEA and the CSA due to the Controlled Substance Act. Perhaps if the California legislation had been written similar to West Virginia's and Montana's with specific acceptable levels of THC, the governor would have been more inclined to sign it. Additionally, because universities and private parties are hesitant to grow a crop that the Federal Government deems illegal, the California legislation should provide an exemption to criminal prosecution if the industrial **hemp** is grown under the guidelines set forth in the legislation. If research can show the levels of THC in industrial **hemp** is trace or non-existent and that the growth of industrial **hemp** can actually sabotage the growth of marijuana, then the future of industrial **hemp**, not only in California, but in the entire United States, will be positive.

Furthermore, it appears there is the proverbial "catch-22" where the CSA is concerned. There does not appear to be any attempt to change the CSA without first passing state legislation authorizing growing industrial **hemp** for research. But the research is necessary so that scientific evidence can be submitted to the DEA and the Department of Health and Human Services (HHS). The DEA and the HHS require the research in order to change the CSA.

There has not been any challenge to change the CSA itself. Any industrial **hemp** legislation has been done at the state level. There has not been any at the federal level. An avenue to pursue would be to change the CSA so that it would not include industrial **hemp** by way of changing the CSA to list a minimum level of THC required to constitute industrial **hemp** or marijuana as being illegal. If this change could be made a major obstacle to industrial **hemp** legislation in the various states would be gone. Any growing and research done on industrial **hemp** which had THC levels below the minimum would not be deemed illegal. Thereby paving the way for more research to be done on the economic viability of industrial **hemp** in the U.S.

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n155 A.B. 388 Bill History, at <http://www.leginfo.ca.gov/pub/bill/asm/ab0351-0400/ab388bill20020915history.html> (last visited Sept. 21, 2002) (on file with San Joaquin Agricultural Law Review).

n156 See id.

n157 A.B. 388 as submitted to Governor Gray Davis (Cal. 2002), at <http://www.leginfo.ca.gov> (on file with San Joaquin Agricultural Law Review).

n158 See id.

n159 See id.

n160 A.B. 388, Bill History, (Cal. 2002).

n161 A.B. 388, Bill History, (Cal. 2002).

n162 A.B. 388, Bill History, (Cal. 2002).

n163 A.B. 388, Bill History, (Cal. 2002).

n164 A.B. 388, Bill History, (Cal. 2002).

n165 A.B. 388, Bill History, (Cal. 2002).

n166 A.B. 388, Bill History, (Cal. 2002).

n167 A.B. 388 Bill Status, (Cal. 2002), at <http://www.leginfo.ca.gov/pub/bill/asm/ab0351-0400/ab388bill20020917status.html> (last visited on Sept. 21, 2002) (on file with San Joaquin Agricultural Law Review).

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