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House Bill 3183: Labor Peace Mandate Violates Federal Law

Prepared for: Chair Julie Fahey
Oregon House Committee on Rules

Prepared by: Geoff Lawrence, Director

Date: May 9, 2023

Dear Chair Fahey and members of the committee:

On behalf of Reason Foundation, I thank you for accepting these comments and making them part of the public record. Reason Foundation is committed to ensuring that state-regulated cannabis markets are designed in such a way that they remain dynamic and offer genuine economic opportunity to individuals from a range of backgrounds.

We are deeply concerned that House Bill 3183 would unconstitutionally usurp the exclusive jurisdiction of the National Labor Relations Board to govern private-sector labor relations. Section 2 would require an applicant for a new cannabis license or renewal of an existing license to submit one of two attestations. The applicant could attest that it “will not interfere with communications from a representative of a labor organization informing the employees of the applicant of the right afforded to employees” to engage in labor organizing. Alternatively, the applicant can attest that it has “entered into and will abide by the terms of a labor peace agreement.”

Under the federal National Labor Relations Act, as amended, employers already may not interfere with communications between a labor organization and employees. The Supremacy Clause to the U.S. Constitution elevates federal law above state and local laws that may be in conflict, and federal law reserves to the National Labor Relations Board the sole authority to regulate private-sector labor relations. The Oregon Liquor and Cannabis Commission has no appropriate role nor jurisdiction in determining whether applicants for licensure have complied with provisions of the National Labor Relations Act.

Further, to the extent the Oregon Liquor and Cannabis Commission would require an applicant to attest they have entered into a labor peace agreement as a condition of licensure, the agency would run afoul of relevant federal court precedents. The U.S. Supreme Court ruled in 1987 that the City of Los Angeles could not withhold the license of a taxicab company (a privileged license type similar to those for cannabis) based solely on the condition that the company resolve a labor dispute.¹ The city’s regulation of private-sector labor disputes, noted the Court, was preempted by the National Labor Relations Board’s authority and therefore no privileged license can be conditioned on a labor peace agreement. Similarly, a federal Court of Appeals ruled in 2005 that a provision in Wisconsin that would have required contractors with local governments to enter a labor peace agreement ran afoul of the National Labor Relations Act.²

¹ *Golden State Transit Corp. vs. City of Los Angeles*, 660 F Supp. 571 (1987).

² *Metro Milwaukee Commerce vs. Milwaukee County*. United States Court of Appeals, Seventh Circuit, 431 F 3d 277. Dec. 5, 2005.

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Proponents will likely point to a similar provision within California’s cannabis licensing scheme as support for the new proposed rule. California’s rules require a marijuana licensee with more than 20 employees to enter a labor peace agreement. Many legal scholars expect the California rule to eventually be struck down as violative of the National Labor Relations Act.³ In the meantime, many licensed cannabis growers in California have avoided the requirement altogether by contracting with farm labor services or otherwise structuring their operations such that no licensed entity exceeds the threshold of 20 direct employees.

We believe federal law is clear on these issues and excludes states from enacting requirements such as those contained in House Bill 3183. Even where states enact marijuana laws that may conflict with federal interpretation of the Controlled Substances Act, those states still have no leeway within such laws to simultaneously usurp or violate federal labor law. We are concerned that these actions—which have also been proposed elsewhere—could jeopardize state-regulated cannabis markets overall.

Sincerely,
Geoffrey Lawrence, Director of Drug Policy
Reason Foundation

³ See, e.g., Keahn N. Morris, “AB 1291 Forces California Cannabis Companies to Sign ‘Labor Peace Agreements’ with Unions, but Statute May Be Unconstitutional,” *The National Law Review*, October 23, 2019, <https://www.natlawreview.com/article/ab-1291-forces-california-cannabis-companies-to-sign-labor-peace-agreements-unions>; Chandler Armistead et al., “California Attempts to Weed Out Unfair Labor Practices at the State Level by Enacting Union-Friendly Regulation on Employers in the Cannabis Industry,” *JD Supra*, November 18, 2019, <https://www.jdsupra.com/legalnews/california-attempts-to-weed-out-unfair-48662/>.

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