Stephen M. Scott, OSB No. 134800
smscott@fisherphillips.com
Todd A. Lyon, OSB No. 076706
tlyon@fisherphillips.com
Janelle W. Debes, OSB No. 211543
jdebes@fisherphillips.com
FISHER & PHILLIPS LLP
111 SW Fifth Avenue, Suite 4040
Portland, Oregon 97204
(503) 242-4262 Telephone
(503) 242-4263 Facsimile

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

CASALA, LLC, dba Bubble's Hash, an Oregon limited liability company; and REC REHAB CONSULTING LLC, dba Ascend Dispensary, an Oregon limited liability company,

Plaintiffs,

v.

TINA KOTEK, Governor of the State of Oregon, in her official capacity; DAN RAYFIELD, Attorney General of the State of Oregon, in his official capacity; DENNIS DOHERTY, Chair of the Oregon Liquor and Cannabis Commission, in his official capacity; and CRAIG PRINS, the Executive Director of the Oregon Liquor and Cannabis Commission, in his official capacity,

Defendants.

Case No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

Plaintiffs Casala, LLC, dba Bubble's Hash ("Bubble's Hash"), and Rec Rehab Consulting LLC, dba Ascend Dispensary ("Ascend") (collectively, "Plaintiffs"), by and through its counsel, bring its Complaint against Defendants Tina Kotek, in her official capacity as the Governor of the State of Oregon ("Governor Kotek"); Dan Rayfield, in his official capacity as the Attorney General of the State of Oregon ("AG Rayfield"); Dennis Doherty, in his official capacity as the Chair of the Oregon Liquor and Cannabis Commission ("Chair Doherty"); and Criag Prins, in his official capacity as the Executive Director of the Oregon Liquor and Cannabis Commission ("Director Prins") (collectively, "Defendants"), and allege as follows:

NATURE OF THE ACTION

1. Plaintiffs filed this action for declaratory and injunctive relief pursuant to the Declaratory Relief Act, 28 U.S.C. §§ 2201-2202, to declare Oregon's United for Cannabis Worker Act, or Ballot Measure 119 ("Measure 119"), as unconstitutional under the United States Constitution.

2. Plaintiffs also seek temporary, preliminary, and permanent injunctive relief enjoining the enforcement of Measure 119 and other related actions undertaken by Defendants pursuant to these provisions.

JURISDICTION AND VENUE

3. Jurisdiction of this action arises under 28 U.S.C. § 1131, federal question jurisdiction, because Plaintiffs' claim arises under (i) the due process and equal protection provisions of the Fourteenth Amendment of the United States Constitution, which incorporates the free speech provisions of the First Amendment; (ii) the Supremacy Clause of the Constitution of the United States, Article VI, Clause 2, which designates the Constitution and the Laws of the

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(503) 242-4262

United States as the supreme Law of the Land; (iii) the laws of the United States, namely the National Labor Relations Act ("NLRA"), 29 U.S.C. § 151 *et seq*.; and (iv) the Contract Clause of the Constitution of the United States, Article I, Clause 1, which designates that no state shall pass any law impairing the obligations of contracts.

4. Jurisdiction of this action also arises under 28 U.S.C. §§ 2201-2202, since this is an actual controversy in which Plaintiffs seek declaratory judgment.

5. Venue in this judicial district and division is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this district and division.

PARTIES

6. Plaintiff Casala, LLC, dba Bubble's Hash, is an Oregon limited liability company with its principal place of business located at 4605 SW Beaverton Hillsdale Hwy, Portland, Oregon 97221.

7. Bubble's Hash is a recreational marijuana processor defined by ORS 475C.085. It processes marijuana into usable edibles, and concentrates for the sale to recreational marijuana retailers. Bubble's Hash's recreational processor license with the OLCC is 030-10229496F53. It has the following endorsements: concentrate processor, edible processor, industrial hemp, and topical processor. Bubble's Hash's license renewal is May 22, 2025.

8. Plaintiff Rec Rehab Consulting LLC, dba Ascend Dispensary, is an Oregon limited liability company with its principal place of business located at 13836 NE Sandy Blvd., Portland, Oregon 97230.

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9. Ascend is a recreational marijuana retailer defined by ORS 475C.097. It sells general use cannabinoid products, concentrates, and extracts to adults over the age of 21. Ascend's recreational retailer license with the OLCC is 050-1013413CA5B. It has the following endorsements: marijuana home delivery and medical marijuana retailer. Ascend's license renewal is February 18, 2025.

10. Defendant Tina Kotek is the Governor of the State of Oregon, whose office is located in Salem, Oregon. Governor Kotek is responsible for the appointment of the commissioners to the Oregon Liquor and Cannabis Commission. ORS 471.705; OAR 845-015-0101 (1). Governor Kotek has the authority to suspend any cannabis license, certificate, or permit in the event of imminent danger or disaster. ORS 475C.485. Governor Kotek can declare a state of emergency and issue executive orders related to cannabis regulation. ORS 401.165; ORS 401.168; ORS 401.236. Governor Kotek has issued a moratorium and caps on cannabis licenses, declaring an emergency. HB 4121. Governor Kotek is ultimately responsible for the enforcement of the cannabis regulations in the State of Oregon, including Measure 119 and is amenable to suit pursuant to the *Ex Parte Young* exception to sovereign immunity. 209 U.S. 123 (1908); *Sterling v. Constantin*, 287 U.S. 378, 53 S. Ct. 190, 77 L. Ed. 375 (1932).

11. Defendant Dan Rayfield is the Attorney General of the State of Oregon, whose office is located in Salem, Oregon. ORS 180.050. AG Rayfield is the chief law officer of the State of Oregon and all its departments. ORS 180.210. AG Rayfield may "appear, commence, prosecute, or defend any action, suit, matter, cause or proceeding in any court when requested by any state officer, board, or commission[.]" ORS 180.060 (1)(d). AG Rayfield is also responsible for the enforcement of the cannabis regulation in the State of Oregon, including Measure 119. ORS

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475C.413; ORS 183.452; OAR 845-003-0331. Defendant Rayfield is also involved in contested case proceedings and provides advice to the OLCC in matters involving retailer and processor cannabis licensure revocation, denial, and approval. OAR 845-003-0331. Defendant Rayfield is amenable to suit pursuant to the *Ex Parte Young* exception to sovereign immunity. 209 U.S. 123 (1908).

12. Defendant Dennis Doherty is the Chair of the Oregon Liquor and Cannabis Commission, whose office is located in Portland, Oregon. Chair Doherty is responsible for the Oregon Liquor and Cannabis Commission ("OLCC") and the enforcement of the cannabis regulation in the State of Oregon, including Measure 119. ORS 471.040 (2); ORS 471.720; OAR 845-003-0670. Chair Doherty oversees the OLCC tasked with the issuance, renewal, suspension, revocation, and refusal of marijuana licenses in the State of Oregon. ORS 475C.017; ORS 475C.033; ORS 475C.037; ORS 475C.049; OAR 845-003-0220 (1). Chair Doherty is amenable to suit pursuant to the *Ex Parte Young* exception to sovereign immunity. 29 U.S. 123 (1908).

13. Defendant Craig Prins is the Executive Director of the Oregon Liquor and Cannabis Commission, whose office is located in Portland, Oregon. Director Prins is responsible for the management of the Oregon Liquor and Cannabis Commission and the enforcement of the cannabis regulation in the State of Oregon, including Measure 119. ORS 471.040 (2); ORS 471.720; OAR 845-003-0670; OAR 845-015-0101 (1). Director Prins oversees the OLCC tasked with the issuance, renewal, suspension, revocation, and refusal of marijuana licenses in the State of Oregon. ORS 475C.017; OAR 845-003-0220 (1). Director Prins is amenable to suit pursuant to the *Ex Parte Young* exception to sovereign immunity. 209 U.S. 123 (1908).

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THE FACTS

Oregon's Relevant Cannabis Regulations

14. In November 2014, the State of Oregon voted to legalize the recreational use of marijuana through Ballot Measure 91. Measure 91 permitted persons who were licensed, controlled, regulated, and taxed by the State of Oregon to legally manufacture and sell marijuana to persons over the age of 21. Measure 91 is now codified under Or. Laws Ch. 475C (formerly 475B).

15. Defendants through the OLCC have the authority to regulate the purchase, sale, production, processing, transportation, and delivery of marijuana in the State of Oregon. ORS 475C.017(2)(a). Defendants also have the authority to adopt, amend, or repeal rules and to carry out the provisions of the cannabis regulations including any law of the state that charges the OLCC with a duty, function, or power as it relates to marijuana. ORS 475C.017(2)(c)-(d).

16. Defendants through the OLCC have the authority to grant, refuse, suspend, or cancel licenses for the sale, processing, production, or other licenses as related to marijuana. ORS 475C.017(2)(b). Effective January 1, 2017, recreational marijuana could only be sold by those that had obtained a recreational license through the OLCC.

17. Applicants for a license or renewal of a license under ORS 475C.005-475C.525 must apply in the form that the OLCC requires. The OLCC may reject or refuse any application or renewal license. ORS 475C.033.

18. The processing of marijuana is subject to the regulations of the OLCC, and any marijuana processor in the State of Oregon must have a processor's license for the premises at which the marijuana is processed, including Plaintiff Bubble's Hash. ORS 475C.085.

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19. The retail sale of marijuana is subject to the regulations of the OLCC, and any marijuana retailer must have a retail license for the premises at which the marijuana items are sold, including Plaintiff Ascend. ORS 475C.097.

20. Without a valid license, registration, or applicable exemption, a person may not produce, process, transport, deliver or sell marijuana items in the State of Oregon.

21. Effective March 7, 2024, Governor Kotek extended the 2022 statewide caps and moratorium placed on all new applications for recreational marijuana producers, processors, wholesalers, and retailer licenses as managed by Defendants through the OLCC.

Brief History of HB 3183 (2023)

22. In the 82nd Oregon Legislative Assembly—2023 Regular Session, HB 3183 was introduced relating to labor peace agreements as a condition for cannabis licensure in the State of Oregon.

23. HB 3183, if passed, would have required the OLCC to accept cannabis applicants or renewal licenses from producers, wholesalers, retailers, and processors if they submitted a signed declaration that the applicant or licensee would not interfere with communications between labor representatives and employees regarding organizing rights. Or they offered a signed declaration that the applicant or licensee had entered into a labor peace agreement with the labor organization. HB 3183 is attached as Exhibit 1.

24. Had HB 3183 passed, any applicant or licensee that failed to comply with the declaration upon licensure or the terms of the labor peace agreement, were at risk of suspension or revocation.

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25. HB 3183 was introduced at the request of the United Food and Commercial Workers Local 555 ("UFCW 555"). It was pitched that California, New Jersey, New York, Illinois, and Virginia had similar state statutes requiring labor peace agreements between licensed cannabis businesses and labor organizations. Challenges to these state statutes as unconstitutional have ensued.

26. In February and March 2023, the House Committee on Business and Labor held a work group to discuss the impact of HB 3183. For the first time, the implications of HB 3183 on the NLRA were discussed. Further analysis was required.

27. At the request of Representative Paul Hovey, Senior Deputy Legislative Counsel Jessica A. Santiago was tasked with determining whether the NLRA preempted the state from enacting portions of HB 3183. A copy of Ms. Santiago's letter is attached as Exhibit 2.

28. Ms. Santiago determined that if HB 3183 and the -3 amendments to HB 3183 were enacted it would "most likely be preempted under preemption principles outlined in *San Diego Bldg. Constr. Trades Council v. Garmon,* 359 U.S. 236, 79 S. Ct. 773 (1959), and under *Int'l Assoc. of Machinists v. Wis. Emp. Rel. Comm'n*, 427 U.S. 132, 96 S. Ct. 2548 (1976).

29. HB 3183 died in committee upon adjournment in June 2023.

30. UFCW 555 spearheaded a failed recall election of Representative Paul Hovey as a result.

The United for Cannabis Workers Act—Ballot Measure 119 (November 2024)

31. In July 2024, UFCW 555 was instrumental in qualifying the United for Cannabis Workers Act for the November 2024 general election ("Measure 119"). Measure 119 ensures that licensed cannabis businesses enter into labor peace agreements. These are commonly referred to

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as "neutrality agreements" by the NLRA. The relevant problematic provisions of HB 3183 are similar to Measure 119. Measure 119 is attached as Exhibit 3.

32. On November 5, 2024, Measure 119 was approved and took effect on December 5, 2024.

33. Measure 119 is to be codified under ORS 475C.005 to 475C.525, Oregon's cannabis regulatory statutes, and is to be enforced by Defendants through the OLCC.

The Unconstitutionality of Measure 119's Labor Peace Agreement Requirement

34. Measure 119 applies to applications for licenses and certifications as well as renewal licenses and certifications received by the OLCC on or after December 5, 2024. Due to the caps and moratorium in effect by Governor Kotek, Measure 119 essentially applies only to renewal licenses.

35. Measure 119 applies to processor, retail, medical (processor), medical (retailer), researchers (certification), and laboratory cannabis licenses and certifications defined under ORS 475C.085, 475C.097, 475C.125, 475C.133, 475C.289, and 475C.548, referred to hereinafter as "the Licensees."

36. At issue here, Measure 119 contains a provision that mandates the Licensees to contract with a "bona fide labor organization" under a "labor peace agreement" ("LPA"), reprinted below from Exhibit 3.

> **(2) In addition to and not in lieu of any other requirement for licensure or certification, or renewal of a license or certification under ORS 475C.085, 475C.097, 475C.125, 475C.133, 475C.289 or 475C.548 with which an applicant must comply, the Oregon Liquor and Cannabis Commission shall require the applicant to submit, along with an application for a license or certification or renewal of a license or certification:**
>
> **(a) A signed labor peace agreement entered into between the applicant and a bona fide labor organization actively engaged in representing or attempting to represent the applicant's employees; or**
>
> **(b) An attestation signed by the applicant and the bona fide labor organization stating that the applicant and the bona fide labor organization have entered into and will abide by the terms of a labor peace agreement.**

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37. Measure 119 mandates the Licensees to submit an executed LPA or an attestation that an LPA was executed with a bona fide labor organization at the time of the Licensees' licensure renewal. Licensees must then comply with the terms of the LPA.

38. "Bona fide labor organization" is defined as those under 42 U.S.C. § 402.

39. Upon information and belief there are only two "bona fide labor organizations" that will enter into an LPA with the Licensees, UCFW 555 and the Teamsters, due to union politics.

40. Measure 119 fails to provide any dispute resolution process if the bona fide labor organization and the Licensees cannot agree to the terms of the LPA. The Licensees, including Plaintiffs, are left without choice or bargaining power in order to renew their licenses.

41. Measure 119 conflicts with federal labor law or has the effect of regulating aspects of labor-management relations governed by the NLRA.

42. Measure 119 fails to recognize an employee's right to choose (or not) their union representation (29 U.S.C. § 157; ORS 475C.281) while commanding the Licensees to enter into binding contracts, albeit improper contracts, or risk licensure.

43. Measure 119 also fails to define or sufficiently define key terms and processes leaving the Licensees, including Plaintiffs, to guess as to how to comply with Measure 119 when presented with one-sided terms that violate the OLCC's rules and the NLRA's stance on neutrality, thus subjecting the Licensees to lack of fair notice and arbitrary enforcement.

44. Measure 119 mandates that at minimum under the terms of the LPA, the Licensees agree "to remain neutral with respect to a bona fide labor organization's representatives communicating with employees" of the rights afforded under ORS 663.110, the right to self-

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organization, to join a labor organization and to bargain collectively, among other things. Measure 119, Section 3(1)(g), is reprinted below from Exhibit 3.

> **(g) 'Labor peace agreement' means an agreement under which, at a minimum, an applicant or licensee agrees to remain neutral with respect to a bona fide labor organization's representatives communicating with the employees of the applicant or the licensee about the rights afforded to such employees under ORS 663.110.**

45. By its express language, Measure 119 unlawfully restrains and restricts speech based on its content and viewpoint.

46. Also, by its express language, Measure 119 requires the Licensees to "remain neutral," which is in direct contention with the NLRA and what an employer and union can do related to unionization and what they cannot under 29 U.S.C. §158 or Section 8 of the NLRA.

The OLCC is Actively Enforcing Measure 119 as Approved

47. On November 18, 2024, the OLCC issued the "Recreational Marijuana Program Compliance Education Bulletin," Bulletin number CE2024-05 ("Bulletin") and proceeded to update the Bulletin on November 26, 2024. A copy of the Bulletin is attached as Exhibit 4.

48. OLCC's Bulletin confirmed Measure 119's mandate. The OLCC requires the Licensees to include a signed LPA, or an attestation that one has been signed and for which the terms will be abided by with their license renewals. The OLCC provided a sample attestation form for the Licensees to use.

49. On January 14, 2025, the OLCC provided an updated bulletin as to the enforcement of Measure 119, Bulletin number CE2025-01 ("Bulletin 2"). Bulletin 2 is attached as Exhibit 5.

50. OLCC's Bulletin 2 clarified that all the Licensees are required to execute an LPA even if they do not have employees or if even if their employees do not want to unionize.

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51. OLCC's Bulletin 2 also warned the Licensees who do not submit an executed LPA or attestation with the renewal application that they are at risk of losing their license or certification.

52. Failure to comply with Measure 119, Section 2(a)-(b), or the terms of the LPA are grounds for OLCC to deny a licensure or certification as expressly stated under Measure 119.

53. Upon information and belief, Defendants have denied renewal licensure applications pursuant to Measure 119 that lacked proof of an executed LPA.

54. Furthermore, if an LPA is terminated, regardless by whom, the Licensees have 30 days to enter into another LPA or be subject to suspension, revocation, and fines. Given the lack of "bona fide labor organizations," willing to enter into LPAs, the Licensees, including Plaintiffs, are under a constant threat of licensure revocation.

55. The OLCC's Bulletin 2 also cautioned that Licensees are required to follow all OLCC statutes and rules. Should the LPA violate any of those rules, it is at the Licensees' own risk. The OLCC will not excuse the Licensees from potential disciplinary action due to an improper LPA.

Irreparable Injury

56. Plaintiffs have subsequently filed a Motion for Temporary Restraining Order and Preliminary Injunction as further evidence thereof that Plaintiffs require immediate intervention by the Court to prevent the enforcement of Measure 119. Plaintiffs incorporate by reference its Motion for Temporary Restraining Order and Preliminary Injunction.

57. Ascend's retailer license is up for renewal on February 18, 2025. Ascend was forced to renew without entering into an LPA after numerous attempts to find a "bona fide labor

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organization" were unsuccessful or the terms of the LPA presented would require Ascend to violate federal and state law to renew its license.

58. On February 4, 2025, Ascend received communication from the OLCC that it could not process its license renewal until an LPA or attestation between Ascend and a labor union was submitted per Measure 119.

59. Bubble's Hash's processor's license is up for renewal on May 22, 2025. The terms of the LPA presented to it would require Bubble's Hash to violate federal and state law in order to renew its license.

First Claim for Relief—Declaratory and Injunctive Relief—28 U.S.C. § 2201

60. Plaintiffs reallege all preceding paragraphs as though fully set forth herein.

61. This case involves an "actual case in controversy" between Plaintiffs and Defendants concerning the constitutionality of Measure 119. Plaintiffs are subject to Measure 119 because they are recreational marijuana processors and retailers as defined by ORS 475.085, 475C.097.

62. Measure 119 is unconstitutional under numerous Amendments and Articles of the United States Constitution as described herein. By requiring Plaintiffs to sign an LPA or lose their licenses, Plaintiffs are forced to choose between losing their businesses or their constitutional rights and protections.

COUNT ONE
Measure 119 Violates the Supremacy Clause of the United States Constitution and is Preempted

63. Plaintiffs reallege all the proceeding paragraphs as though fully set forth herein.

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64. The NLRA governs labor relations for private sector employers. The NLRA contains exhaustive regulations for labor relations, including but not limited to collective bargaining, selection of representation, and dispute process. 29 U.S.C. §§ 151-169.

65. Whether an employer is covered by the NLRA is determined by the National Labor Relations Board (NLRB). The NLRB has exclusive jurisdiction to resolve disputes over whether and by whom employees are represented for collective bargaining purposes.

66. State or local government actions that purport to regulate activities that are protected, prohibited, or intentionally left unregulated by the NLRA are preempted. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959); *Int'l Ass'n of Machinists v. Wis. Emp. Rel. Comm'n*, 427 U.S. 132 (1796).

67. Measure 119 impermissibly intrudes into federally governed labor relations under the NLRA by requiring Plaintiffs to enter into an LPA with a "bona fide labor organization" authorizing the OLCC enforcement authority, to include license revocation, should Plaintiffs decline to do so.

68. Measure 119 attempts to impose requirements and restrictions in direct violation of the NLRA, that allows employees the right not to engage in union activity, or by silencing employers' communications with their employees about the pros and cons of unionization.

69. Measure 119 also commands Licensees to support a bona fide labor organizations' organizing efforts, which is a direct violation of an employees' Section 7 rights. *Ladies Garment Workers (Bernhard-Altmann) v. NLRB*, 366 U.S. 731, 739 (1961); *Dana Corp.*, 356 NLRB 256, 265 (2010). Likewise, a union's acceptance of such support also violates Section 8.

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70. The terms to the LPA are undefined, succumbing Licensees to a bona fide labor organization's attempts to negotiate terms that are in direct violation of the NLRA and its stance on neutrality agreements.

71. Measure 119 is preempted pursuant to the *Garmon* preemption set forth in *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959), in that it purports to frustrate or prohibit conduct permitted and rights guaranteed to employers under the NLRA.

72. Measure 119 is also preempted pursuant to the *Machinists* preemption under *Int'l Ass'n of Machinists and Aerospace Workers v. Wis. Emp. Rel. Comm'n,* 427 U.S. 132 (1976), in that it purports to regulate areas Congress intentionally left to be controlled by the free play of economic forces, including the right not to reach an agreement with a union.

73. Without a declaratory judgment and an injunction enjoining enforcement of Measure 119 Plaintiffs, and its employees, will be deprived of the rights this Complaint seeks to enforce.

COUNT TWO
Measure 119 Violates Due Process (Void for Vagueness) of the Fourteenth Amendment of the United States Constitution

74. Plaintiffs reallege all the proceeding paragraphs as though fully set forth herein.

75. Under the Due Process Clause, "[n]o state shall make or enforce any law which shall . . . deprive any person of life, liberty, or property, without due process of law." "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). "Even when speech is not at issue, the void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act

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accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way." *FCC v. Fox Television*, 567 U.S. 239, 254 (2012).

76. Measure 119 violates the constitutional due process requirement in that it does not properly distinguish from permissible to impermissible conduct and is unconstitutionally void for vagueness.

77. The following terms, definitions, or phrases render Measure 119 void for vagueness:

(a) The term "Labor Peace Agreement," as it is subject to a broad and unreasonable interpretation and could include anything demanded by any party at any time that is not facially consistent with the LPA, the OLCC, or the NLRA;

(b) The term "Licensee" even as statutorily defined, is broad and could encompass licensees that are not subject to the NLRA, thus having no rights or protections against a "bona fide labor organization" like those subject to the NLRA.

78. Measure 119 does not set forth a dispute resolution process for entering into an LPA. A few examples of key missing terms include, but are not limited to:

(a) Procedures for dispute resolution;

(b) What rules apply to dispute resolution;

(c) What terms of the LPA would be considered standard or acceptable in the event dispute resolution failed between Plaintiffs and a bona fide labor organization;

(d) Whether Plaintiffs would be bound by the LPA if the bona fide labor organization does not honor the applicable terms;

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(e) If and how an alleged penalty would be assessed against Plaintiffs for non-compliance; and

(f) Whether Plaintiffs are required to enter into an LPA if its employees already have a collective bargaining representative.

79. Plaintiffs are entitled to a declaration that Measure 119 is unconstitutionally vague, in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

COUNT THREE
Measure 119 Violates Due Process (First Amendment Freedom of Speech) of the Fourteenth Amendment of the United States Constitution

80. Plaintiffs reallege all the proceeding paragraphs as though fully set forth herein.

81. Measure 119 violates the Fourteenth Amendment to the United States Constitution, which protects the freedom of speech guarantee found in the First Amendment to the United States Constitution in ways that include, but are not limited to:

(a) Engaging in content based discrimination by forcing Plaintiffs to agree not to disrupt efforts by a bona fide labor organization to communicate with, and attempt to organize and represent, Plaintiffs' employees, which results in repressing Plaintiffs' expression concerning the merits of unionization;

(b) Engaging in viewpoint based discrimination by forcing Plaintiffs to agree not to express criticism regarding unionization, resulting in the ban of any viewpoint that disagrees with unionization; and

(c) Being so vague as to chill the exercise of protected free speech rights.

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82. Plaintiffs are entitled to a declaration that Measure 119 is unconstitutional, in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution due to the constraints on Plaintiffs' First Amendment Right protections.

COUNT FOUR
Measure 119 Violates Equal Protection of the Fourteenth Amendment of the United States Constitution

83. Plaintiffs reallege all the proceeding paragraphs as though fully set forth herein.

84. Measure 119 violates the Equal Protection Clause guarantees of the Fourteenth Amendment of the United States Constitution in ways that include, but are not limited to:

(a) Favoring unions desiring to advance their cause with employees while requiring Plaintiffs to forego constitutional rights and protections; and

(b) Treating all of the Licensees differently for purposes of licensure renewal because not all of the Licensees are subject to the same rights and protections afforded under the NLRA when dealing with unionization.

85. Plaintiffs are entitled to a declaration that Measure 119 is unconstitutional, in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution under Equal Protections of the law.

COUNT FIVE
Measure 119 Violates Due Process (Right to Contract) of the Fourteenth Amendment of the United States Constitution

86. Plaintiffs reallege all the proceeding paragraphs as though fully set forth herein.

87. The Contract Clause of Article 1, Section 10, Clause 2 of the United States Constitution prevents Oregon from disrupting contractual arrangements.

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88. Measure 119 has stripped Plaintiffs of all negotiating power as they must obtain a binding LPA, allowing the bona fide labor organization to withhold its agreement unless and until it obtains significant concessions or else lose its cannabis license.

89. These provisions, alone and in combination, impermissibly skew the "playing field" between labor and Plaintiffs by giving unfettered leverage to a bona fide labor organization dealing with Plaintiffs.

90. Measure 119 accepts that it is wholly within the bona fide labor organization's discretion whether to commit to an LPA with Plaintiffs and Plaintiffs have no ability to leverage or negotiate with the bona fide labor organization because the LPA is a mandate by Defendants. Plaintiffs are then forced to enter into contracts under duress and without voluntary consent.

91. In the event the bona fide labor organization and Plaintiffs are unable to agree to an LPA, or a dispute arises between Plaintiffs and the bona fide labor organization related to the LPA, there is no mechanism by which the dispute will be settled.

92. Measure 119 forces Plaintiffs to agree to unfair and illegal terms under state and federal law.

93. In addition, although Plaintiffs must enter into an LPA, or risk its licensure, there is no corresponding obligation of the bona fide labor organization to request an LPA or to honor a request by Plaintiffs to enter into an LPA.

94. Measure 119 does not appear to provide any sanction against a bona fide labor organization. Plaintiffs, on the other hand, face the imposition of costs and other penalties by Defendants, including the loss of their right to do business altogether.

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95. Measure 119 operates as a substantial impairment to a contractual relationship that is not reasonable to advance any significant and legitimate public purpose.

96. Plaintiffs are entitled to a declaration that Measure 119 is unconstitutional, in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution as an unlawful restraint on the freedom to contract.

JURY DEMAND

Plaintiffs hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief from this Court as follows:

1. Issue a Declaratory Judgment that Measure 119 is (1) unconstitutional under the United States Constitution and preempted by the NLRA, (2) unconstitutional under the United States Constitution as void for vagueness, (3) unconstitutional under the United States Constitution as an unlawful restraint on speech, (4) unconstitutional under the United States Constitution and the equal protections of the law, and (5) unconstitutional under the United States Constitution and the right to contract.

2. Issue a temporary, preliminary, and permanent injunction:

(a) Restraining and enjoining Defendants, their agents, and employees and all persons acting in concert or participation with them, from in any manner or by any means, enforcing or seeking to enforce Measure 119 and other law that requires Plaintiffs to enter into an LPA, determined by this Court to be invalid, preempted by federal law, impermissibly vague, or otherwise unconstitutional;

FISHER & PHILLIPS LLP
111 SW Fifth Avenue, Suite 4040
Portland, Oregon 97204
(503) 242-4262

(b) Requiring Defendants to issue such notices and take steps as shall be necessary and appropriate to carry into effect the substance and intent of paragraph 2(a) above, including but not limited to, the requirement that Defendants publicly withdraw and rescind any directions, requests, or suggestions to Plaintiffs that it is bound by or must be bound by Measure 119; and

(c) Grant such other, further, or different relief as to which Plaintiffs may be entitled.

3. Award Plaintiffs' its reasonable costs and attorney fees pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1988, or any other applicable law.

4. Grant any such other further relief that this Court may deem just and proper.

DATED this 12th day of February, 2025.

FISHER & PHILLIPS LLP

s/ Stephen M. Scott

Stephen M. Scott, OSB No. 134800
smscott@fisherphillips.com
Todd A. Lyon, OSB No. 076706
tlyon@fisherphillips.com
Janelle W. Debes, OSB No. 211543
jdebes@fisherphillips.com
Telephone: (503) 242-4262
Facsimile: (503) 242-4263

Attorneys for Plaintiffs

FISHER & PHILLIPS LLP
111 SW Fifth Avenue, Suite 4040
Portland, Oregon 97204
(503) 242-4262

82nd OREGON LEGISLATIVE ASSEMBLY--2023 Regular Session

House Bill 3183

Sponsored by Representative BOWMAN, Senator GORSEK, Representative GRAYBER (at the request of United Food and Commercial Workers Local 555)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Requires Oregon Liquor and Cannabis Commission to require applicant for cannabis-related license or license renewal to submit signed attestation that applicant will refrain from interfering with labor organizing efforts or submit attestation that applicant and labor organization that is certified to represent employees of applicant have entered into and will abide by terms of labor peace agreement.

A BILL FOR AN ACT

Relating to labor peace requirements as a condition for cannabis-related licensure.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS 475C.005 to 475C.525.

SECTION 2. (1) As used in this section:

(a) "Labor dispute" has the meaning given that term in ORS 663.005.

(b) "Labor organization" means a bona fide organization of any kind, or an agency or an employee representation committee, group, association or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work, and which may be characterized by one or more of the following:

(A) Being a party to one or more collective bargaining agreements with an employer who holds a license issued under ORS 475C.005 to 475C.525.

(B) The adoption of organizational bylaws or a written constitution as required by 29 U.S.C. 431 (a).

(C) The filing of annual financial reports as required by 29 U.S.C. 431 (b).

(D) Having a record of an audit of the financial reports described in subparagraph (C) of this paragraph within the three years immediately preceding the most recent filing of such reports.

(E) An affiliation with any regional or national association of labor organizations.

(F) Membership in a national labor organization that has at least 500 general members throughout a majority of the United States.

(c) "Labor peace agreement" means an agreement entered into between an applicant for a license or renewal of a license issued under ORS 475C.005 to 475C.525 and a labor organization certified to represent the employees of the applicant under which:

(A) The applicant has agreed to remain neutral with respect to the labor organization's representatives communicating with the applicant's employees about the rights afforded to employees under ORS 663.110; and

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

(B) The labor organization has agreed to refrain from engaging in strikes, work stoppages, boycotts or other economic interference with the applicant's business to resolve a labor dispute.

(d) "Strike" has the meaning given that term in ORS 662.205.

(2) In addition to and not in lieu of any other requirement with which an applicant for a license or renewal of a license issued under ORS 475C.005 to 475C.525 must comply, the Oregon Liquor and Cannabis Commission shall require an applicant to submit, along with an application for a license or renewal of a license:

(a) A signed declaration or attestation stating that the applicant will not interfere with communications from a representative of a labor organization informing the employees of the applicant of the rights afforded to employees under ORS 663.110; or

(b) An attestation signed by the applicant and the labor organization certified to represent the employees of the applicant stating that the applicant and the labor organization have entered into and will abide by the terms of a labor peace agreement.

(3) Failure to comply with the requirements of subsection (2) of this section or to abide by the terms of a labor peace agreement described in subsection (2)(b) of this section is grounds for the commission to:

(a) Suspend or revoke a license issued under ORS 475C.005 to 475C.525.

(b) Deny an application for licensure or renewal of a license issued under ORS 475C.005 to 475C.525.

SECTION 3. The requirements of section 2 of this 2023 Act apply to applications for licenses and license renewals received by the Oregon Liquor and Cannabis Commission on or after the effective date of this 2023 Act.

Dexter A. Johnson
LEGISLATIVE COUNSEL

900 COURT ST NE S101
SALEM, OREGON 97301-4065
(503) 986-1243
FAX: (503) 373-1043
www.oregonlegislature.gov/lc

STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

April 13, 2023

Representative Paul Holvey
900 Court Street NE H277
Salem OR 97301

Re: House Bill 3183

Dear Representative Holvey:

You asked three questions regarding House Bill 3183, which relates to labor peace requirements as a condition for cannabis-related licensure. We begin with a brief summary of the relevant provisions of HB 3183 and then proceed in answering each of your specific questions.

House Bill 3183

Section 2 (2) of HB 3183 requires the Oregon Liquor and Cannabis Commission to require an applicant,[1] as a condition for a cannabis-related license or renewal, to submit either of the following, along with an application for a license or renewal:

> (a) A signed declaration or attestation stating that the applicant will not interfere with communications from a representative of a labor organization informing the employees of the applicant of the rights afforded to employees under ORS 663.110; or
> (b) An attestation signed by the applicant and the labor organization certified to represent the employees of the applicant stating that the applicant and the labor organization have entered into and will abide by the terms of a labor peace agreement.

The -3 amendments[2] to HB 3183 replace the language in section 2 (2)(a) to require an applicant to submit with an application for licensure or renewal "a signed labor peace agreement entered into between the applicant and a bona fide labor organization actively engaged in representing or attempting to represent the applicant's employees." (Emphasis added.)

[1] As used in this opinion, "applicant" means an applicant for or a holder of a cannabis-related license or certification or renewal of a license or certification.

[2] The -3 amendments to HB 3183 make numerous changes to language of the introduced version of the bill that are neither relevant to this discussion nor change the outcome of our answers set forth in this opinion. Those changes include, but are not limited to the following:

- Providing the specific statutory references to the licenses and certificates that are subject to the licensure and certification requirements upon which the issuance and renewal of a cannabis-related license or certification are based.
- Defining "bona fide labor organization.
- Defining "employee" to exclude employees who perform agricultural labor.
- Providing a penalty structure in the event that a labor peace agreement is terminated.

Under both the introduced and amended versions of HB 3183, the meaning of a "labor peace agreement" can essentially be reduced to an agreement under which, at a minimum:

- The applicant agrees to remain neutral with respect to the bona fide labor organization's representatives communicating with the applicant's employees of the applicant regarding the rights concerning union organization and collective bargaining; and
- A labor organization has agreed to refrain from engaging in strikes, work stoppages, boycotts or other economic interference with the applicant's business of the applicant or licensee to resolve a labor dispute.[3]

Questions and Answers

1. Does the NLRA preempt the state from enacting parameters for union/labor management activities contained in HB 3183?

If enacted, we think that both House Bill 3183 and the -3 amendments to HB 3183 would most likely be preempted under preemption principles outlined in *San Diego Bldg. & Constr. Trades Council v. Garmon*[4] as a state law that seeks to regulate conduct that is, at the very least, arguably protected or prohibited by the National Labor Relations Act (NLRA)[5]. We also think that the provisions of both the introduced and amended versions of HB 3183 requiring the applicant and the labor organization to enter into a labor peace agreement as a condition of licensure, would likely be preempted under principles of *Int'l Assoc. of Machinists v. Wisconsin Employment Relations Commission*[6] as an attempt to regulate conduct that Congress left "to be controlled by the free play of economic forces."[7]

The Supremacy Clause of the United States Constitution states, in part:

> "[t]he Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."[8]

The Supremacy Clause allows federal law—and, in some instances, federal regulations—to nullify contravening state laws and rules. The NLRA contains no express preemption provision; however, the United States Supreme Court has concluded that Congress intended the Act to preempt state laws and rules by reason of implied preemption under two theories of preemption, outlined below.

In *Garmon*, the United States Supreme Court determined that Congress intended to nullify state laws or rules that "[set] forth standards of conduct inconsistent with the substantive requirements of the NLRA," and to prevent states "from providing their own regulatory or judicial remedies for conduct prohibited or arguably prohibited by the Act."[9] It is well settled principle that

[3] House Bill 3183, section 2 (1)(c); -3 amendments to House Bill 3183, section 2 (1)(g).
[4] 359 U.S. 236, 79 S. Ct. 773 (1959).
[5] 29 U.S.C. 151-169.
[6] 427 U.S. 132, 96 S. Ct. 2548 (1976).
[7] *NLRB v. Nash-Finch Co.*, 404 U.S. 138, 92 S. Ct. 373, 144 (1971).
[8] Article VI, clause 2, United States Constitution.
[9] *Wisconsin Department of Industry, Labor & Human Relations v. Gould Inc.*, 475 U.S. 282, 106 S. Ct. 1057, 286 (1986), *citing Garmon* at 247.

under the *Garmon* rule, "[s]tates may not regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits."[10]

In a subsequent preemption case, the United States Supreme Court held that Congress intended to leave certain types of labor-related activities unregulated and left to be controlled by the free play of economic forces.[11] This is known as the *Machinists* preemption rule. Essentially, the *Machinists* preemption rule prohibits state and local regulation that "upset[s] the balance of power between labor and management expressed in our national labor policy"[12] by "introduc[ing] some standard of properly 'balanced' bargaining power . . . [or defining] what economic sanctions might be permitted negotiating parties in an 'ideal' or 'balanced' state of collective bargaining."[13]

Turning to the question of whether the NLRA preempts HB 3183, we believe that section 2 (2) of HB 3183, either as introduced or as amended by the -3 amendments, would likely be preempted under *Garmon* because it seeks to regulate conduct or activity that is actually or arguably protected or prohibited by the NLRA.

As previously stated, under the *Garmon* preemption rule, "[s]tates may not regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits."[14] When evaluating a question of *Garmon* preemption, the first inquiry necessarily must be "whether the conduct that the state seeks to regulate or to make the basis of liability is actually or arguably protected or prohibited by the NLRA."[15]

The NLRA governs labor interactions between private sector employees and employers and unions. As a threshold matter, we must first discuss whether employers and employees engaged in the cannabis industry are subject to the protections and prohibitions under the NLRA.

It is important to note that questions of the scope of jurisdiction of the National Labor Relations Board (NLRB) may ultimately be decided by the board.[16] For instance, where a labor dispute's effect on commerce is not "sufficiently substantial to warrant the exercise of its jurisdiction," the board may decline to assert jurisdiction.[17]

To date, the NLRB has not issued any formal decision regarding whether the protections and prohibitions under the NLRA apply generally to employers and employees in the cannabis industry. That said, the board appears to have demonstrated its willingness to assert jurisdiction in cases concerning allegations of unfair practices brought against employers operating cannabis businesses.[18] We cannot say with certainty that the employers and employees in the cannabis industry are covered employers and employees for purposes of the protections and prohibitions of the NLRA. However, because the NLRA broadly defines the terms "employer" [19] and

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[10] *Wisconsin Department of Industry* at 286.
[11] *Int'l Assoc. of Machinists* at 140, *quoting NLRB v. Nash-Finch Co.*, 404 U.S. 138 (1971).
[12] Roger C. Hartley, "*Preemption's Market Participant Immunity--A Constitutional Interpretation: Implications for Living Wage and Labor Peace Policies*" 5 U. PA. J. Lab. & Emp. L. 229, 231 (2003), *quoting Garner v. Teamsters Union*, 346 U.S. 485, 500 (1953).
[13] *Id.*, *citing Golden State Transit Corp. v. City of Los Angeles*, 475 U.S. 608, 619 (1986) (*Golden State I*).
[14] *Wisconsin Department of Industry* at 286.
[15] *Local 926, Int'l Union of Operating Engineers v. Jones*, 460 U.S. 669, 103 S. Ct. 1453, 676 (1983).
[16] 29 U.S.C. 164 (c)(1).
[17] *Id.*
[18] *See, e.g., Curaleaf Massachusetts, Inc. and United Food and Commercial Workers Union Local 328*, 2021 WL 3036484 (2021).
[19] 29 U.S.C. 152 (2).

"employee"[20] we believe it's reasonable to expect that the board will assert jurisdiction and bring such employers and employees within the scope of coverage of the NLRA.

Employee rights under the NLRA include "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."[21] Concerted activities protected under the NLRA include the right to strike, economic picketing and other work stoppages. [22] The NLRA also protects employees' right to refrain from engaging in those protected activities.[23]

Section 2 (2) of HB 3183 requires applicants, as a condition for cannabis-related licensure or renewal, to either engage in or refrain from engaging in certain labor-related activities that are protected under the NLRA, and therefore would likely be preempted under *Garmon* preemption principles.

First, under the provisions of section 2 (2)(b) of the -3 amendments to HB 3183, the state essentially compels an applicant and a bona fide labor organization actively engaged in representing or attempting to represent the applicant's employees to enter into a labor peace agreement as a condition of licensure or renewal. As noted above, employee rights under the NLRA include "the right to bargain collectively through representatives of their own choosing."[24] The requirement that an applicant enter into a labor peace agreement with a bona fide labor organization that is "attempting to represent the applicant's employees" arguably interferes with the rights of employees to select a representative of their own choosing.

Moreover, under the NLRA, employers also have the right to express views regarding the advantages and disadvantages of joining or forming a union, provided that such expression "contains no threat of reprisal or force or promise of benefit."[25] By conditioning cannabis-related licensure and renewal upon an applicant's attesting to remain neutral regarding labor organization communication with the applicant's employees, we believe that HB 3183 and the -3 amendments to HB 3183 also infringe on an employer's ability to express noncoercive views regarding union organization.

We also think that the provisions of HB 3183 and the -3 amendments to HB 3183 requiring the applicant and a bona fide labor organization to enter into a labor peace agreement would likely be preempted under *Machinists* preemption principles as an attempt to regulate conduct that Congress left "to be controlled by the free play of economic forces."[26] A "labor peace agreement" as defined in HB 3183 and the -3 amendments to HB 3183, must require, at a minimum, that a signatory bona fide labor organization "refrain from engaging in strikes, work stoppages, boycotts or other economic interference" with the business of the applicant or licensee "to resolve a labor dispute," all of which are concerted activities protected under the NLRA[27] and

[20] 29 U.S.C. 152 (3).
[21] 29 U.S.C. 157.
[22] 29 U.S.C. 163.
[23] *Id*.
[24] 29 U.S.C. 157.
[25] 29 U.S.C. 158 (c).
[26] *NLRB* 404 U.S. at 144.
[27] 29 U.S.C. 163 (stating that "[n]othing in this [Act], except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.").

which the *Machinists* doctrine makes clear are economic "weapon[s] of self-help" that were meant to be left unregulated.[28]

For the reasons stated above, we believe that the language of HB 3183, either as introduced or as amended by the -3 amendments, attempts to regulate activities that are, at the very least, arguably protected or prohibited under the NLRA and would most likely be preempted under the *Garmon* rule. We also believe that the provisions under section 2 (2)(b) conditioning cannabis-related licensure and renewal upon the entering of a labor peace agreement would contravene the principles set forth in *Machinists* by removing a labor organization's ability to engage in activities that were meant to be left unregulated.

2. Does the NLRA or other federal regulation preempt state legislation enacting union/labor management activities in an industry considered illegal at the federal level as presented in HB 3183?

As discussed in our answer to question 1, we think that the provisions of HB 3183 that seek to regulate labor relations between private sector employers and employees and unions would be preempted under both *Garmon* and *Machinists* principles. Our answer remains the same regardless of whether the labor relations occur in an industry that is considered illegal at the federal level.

For the reasons that follow, we believe that the fact that an industry is considered illegal under one federal law does not necessarily constrain the NLRA's application over private sector labor relations in that industry. For purposes of determining whether federal law preempts a state law that seeks to regulate private sector labor relations, the relevant inquiry would still depend on whether the state law seeks to regulate labor relations that are protected or prohibited or arguably protected or prohibited by the NLRA, or whether the state law attempts to regulate in areas that Congress intended to be left unregulated. The preemption question would not turn on the fact that cannabis enterprise activities are illegal under federal law.

Regardless of the cannabis industry's illegal status at the federal level,[29] federal agencies continue to exercise jurisdiction over employers in the industry. For instance, the federal Occupational Health and Safety Administration recently conducted an investigation at a cannabis business in response to a fatality that arose from an employee's asthma attack from exposure to cannabis dust.[30]

In the context of federal labor law, a legal advice memorandum released by the NLRB's Office of General Counsel concluded that the NLRB had jurisdiction over a labor dispute between employers and the marijuana processing assistants employed by the employer, despite the fact that the underlying marijuana enterprise violated federal law.[31] Specifically, the memo suggested that the board should exercise jurisdiction over medical marijuana companies, stating: "[t]hat the

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[28] *See American Hotel and Lodging Association v. City of Los Angeles*, 834 F.3d 958, 963 (9th Cir. 2016), *citing Int'l Assoc. of Machinists* at 146.
[29] Marijuana remains classified as a Schedule I drug under the Controlled Substances Act (21 U.S.C. 812(c)); *see also* 21 U.S.C. 844 (prohibiting possession of marijuana).
[30] *See* Occupational Safety and Health Administration, Inspection Detail for Inspection Nr. 1572011.015, Trulieve Holyoke Holdings LLC, https://www.osha.gov/ords/imis/establishment.inspection_detail?id=1572011.015 (last visited April 11, 2023).
[31] National Labor Relations Board, Advice Memorandum from Office of the General Counsel re: Northeast Patients Group dba Wellness Connection of Maine, Case Number 01-CA-104979 (October 25, 2013), https://www.nlrb.gov/case/01-CA-104979 (last visited April 11, 2023).

[e]mployer is violating one federal law, does not give it license to violate another."[32] Although the NLRB's advice memorandum is not binding precedent, the memo provides some indication that the NLRB would likely assert jurisdiction over labor disputes concerning employers and employees in the cannabis industry that meet the monetary jurisdictional thresholds, regardless of the illegality of the underlying industry.

3. Does the state without a proprietary interest have authority to dictate terms between private sector business and private sector unions under the Taft Hartley Act or other constitutional or federal provisions?

We understand you to be asking whether, absent a proprietary interest, state regulation may require, as a condition of licensure, applicants and labor organizations to enter into labor peace agreements, the terms of which require the applicant to remain neutral with respect to a labor organization's organizing efforts in exchange for the labor organization's pledge not to strike or engage in other forms of work stoppages or interference with the applicant's business. The answer is no.

Labor peace agreements are a tool by which private employers and unions may balance their respective interests regarding labor relations. Nothing in federal labor law prohibits those private actors from voluntarily deciding to enter into agreements that demonstrate a commitment to neutrality.

However, states may impose requirements of labor peace agreements on private enterprises only when the state is acting as a "market participant" and has an economic or proprietary interest in the business.[33] When a state is acting in a proprietary capacity versus that as a regulator, the state acts as a "market participant" and may be immune from preemption. To determine whether the state is acting in a proprietary capacity or acting as a regulator, the court applies a two-prong test which first asks whether "the challenged governmental action [is] undertaken in pursuit of the 'efficient procurement of needed goods and services,' as one might expect of a private business in the same situation,"[34] and second, whether "the narrow scope of the challenged action defeat[s] an inference that its primary goal was to encourage a general policy rather than [to] address a specific proprietary problem."[35]

Here, by requiring a labor peace agreement as a condition for cannabis-related licensure, the state is acting as a regulator of private conduct. The labor peace agreement provisions do not concern the state as a party to a contract with either of the private businesses. On the contrary, the labor peace agreement provisions only involve a private contractual relationship between private entities. Additionally, it is difficult to see how the state could demonstrate having a proprietary interest where the state is not engaged in doing business or procuring goods or services from an applicant, nor providing any public funds or other financial support to the private entities. Absent such a showing, we think a court would find the labor peace agreement provisions as attempting to regulate labor activities rather than serving the state's need to protect any proprietary interest. Accordingly, the market participant immunity would not attach, and the provisions would likely be preempted.

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[32] *Id.* at 11, *citing Lucas v. Jerusalem Cafe, LLC*, 721 F.3d 927, 939 (8th Cir. 2013).
[33] *See Johnson v. Rancho Santiago Community College District*, 623 F.3d 1011, 1023 (9th Cir. 2010) (explaining that for purposes of federal labor law preemption, Congress preempts only state regulation and not actions a state takes as a market participant).
[34] *Airline Service Providers Association v. Los Angeles World Airports*, 873 F.3d 1074, 1080 (2017), *citing Johnson* at 1023.
[35] *Johnson* at 1023-1024.

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

By
Jessica A. Santiago
Senior Deputy Legislative Counsel

RECEIVED
JUN 12, 2023 9:25am
Elections Division

Initiative Petition: UNITED FOR CANNABIS WORKERS

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) This act may be referred to as the "United For Cannabis Workers"

(2) The people of Oregon find that:

(a) Due to ambiguity in federal law, cannabis workers are being denied workplace rights;

(b) Denial of such rights can result in unsafe workplaces, wage theft, and other abuses; and

(d) Judicial precedent clearly allows state laws to fix problems that are unaddressed by the federal government.

(3) THIS MEASURE WOULD DO THE FOLLOWING:

(a) Ensure that businesses licensed to sell or process cannabis enter into an agreement that allows their employees to organize and speak out without fear of retaliation.

SECTION 2. Section 3 of this 2024 Act is added to and made a part of ORS 475C.005 to 475C.525.

SECTION 3. (1) As used in this section:

(a) 'Applicant' means an applicant for a license or certification or renewal of a license or certification issued under ORS 475C.085, 475C.097, 475C.125, 475C.133, 475C.289 or 475C.548.

(b) 'Bona fide labor organization' means a labor organization as defined in 29 U.S.C. 402:

(A) That is recognized to be engaged in an industry affecting commerce; and

(B) The operations of which are not deemed to be a part of an integrated enterprise that includes a licensee or licensee representative or an association of licensees or licensee representatives.

(c) 'Employee' does not include employees who perform agricultural labor as described in ORS 657.045.

(d) 'Industry affecting commerce' has the meaning given that term in 29 U.S.C. 402.

(e) 'Integrated enterprise' means an enterprise in which the operations of two or more separate entities are sufficiently intertwined, as determined in consideration of the factors provided under ORS 653.422, such that the operations of one entity are considered to be under the control of another entity.

(f) 'Labor dispute' has the meaning given that term in ORS 663.005.

(g) 'Labor peace agreement' means an agreement under which, at a minimum, an applicant or licensee agrees to remain neutral with respect to a bona fide labor organization's representatives communicating with the employees of the applicant or the licensee about the rights afforded to such employees under ORS 663.110.

(h) 'Licensee' means a holder of a license or certification issued under ORS 475C.085, 475C.097, 475C.125, 475C.133, 475C.289 or 475C.548.

(i) 'Strike' has the meaning given that term in ORS 662.205.

(2) In addition to and not in lieu of any other requirement for licensure or certification, or renewal of a license or certification under ORS 475C.085, 475C.097, 475C.125, 475C.133, 475C.289 or 475C.548 with which an applicant must comply, the Oregon Liquor and Cannabis Commission shall require the applicant to submit, along with an application for a license or certification or renewal of a license or certification:

(a) A signed labor peace agreement entered into between the applicant and a bona fide labor organization actively engaged in representing or attempting to represent the applicant's employees; or

(b) An attestation signed by the applicant and the bona fide labor organization stating that the applicant and the bona fide labor organization have entered into and will abide by the terms of a labor peace agreement.

(3) Failure to provide a signed labor peace agreement or attestation or to abide by the terms of a labor peace agreement described in subsection (2) of this section is grounds for the commission to deny an

application for licensure or certification or renewal of a license or certification under ORS 475C.085, 475C.097, 475C.125, 475C.133, 475C.289 or 475C.548.

(4)(a) If a labor peace agreement described under subsection (2) of this section is terminated for any reason after issuance of a license or certification under ORS 475C.085, 475C.097, 475C.125, 475C.133, 475C.289 or 475C.548, the licensee or certificate holder shall notify the commission in writing of the termination within 10 business days of the date of termination.

(b) The licensee or certificate holder shall include with the notice an attestation stating that the licensee or certificate holder will enter into a new labor peace agreement within 30 days following the date on which the previous agreement was terminated.

(c) Not later than 30 days following the date of termination, the licensee or certificate holder shall provide evidence to the commission that the licensee or certificate holder has entered into a new labor peace agreement by submitting the following information to the commission:

(A) A signed copy of the new labor peace agreement entered into between the licensee or certificate holder and the bona fide labor organization; or

(B) An attestation signed by the licensee or certificate holder and the bona fide labor organization stating that the licensee or certificate holder and the bona fide labor organization have entered into and will abide by the terms of a labor peace agreement.

(d) The administrator of the Oregon Liquor and Cannabis Commission shall impose the following sanctions against a licensee or certificate holder that fails to provide evidence that the licensee or certificate holder has entered into a new labor peace agreement in accordance with paragraph (c) of this subsection:

(A) If the licensee or certificate holder fails to provide the evidence within 30 days following the date of termination of the previous labor peace agreement, suspension of the license or certificate for not more than 10 days or imposition of a fine in the amount of $1,650.

(B) If the licensee or certificate holder fails to provide the evidence within 60 days following the date of termination of the previous labor peace agreement, suspension of the license or certificate for not more than 30 days or imposition of a fine in the amount of $4,950.

(C) If the licensee or certificate holder fails to provide the evidence within 90 days following the date of termination of the previous labor peace agreement, suspension of the license or certificate for not more than 30 days.

(D) If the licensee or certificate holder fails to provide the evidence within 120 days following the date of termination of the previous labor peace agreement, revocation of the license or certification.

(5) The requirements of this 2024 Act apply to applications for licenses and certifications and renewals for licenses and certifications received by the Oregon Liquor and Cannabis Commission on or after the effective date of this 2024 Act.

Recreational Marijuana Program Compliance Education Bulletin

Bulletin CE2024-05
November 18, 2024 –
updated November 26, 2024

The Oregon Liquor & Cannabis Commission (OLCC) is providing the following information to recreational marijuana licensees and applicants. The bulletin is part of OLCC's compliance education. It is important that you read it and understand it. If you don't understand it, please contact the OLCC for help.

This education bulletin has been updated to include a link to the Labor Peace Agreement Attestation Form, and additional FAQs:

- Measure 119
- Labor Peace Agreement Attestation Form

Summary

Oregon voters recently passed **Ballot Measure 119**, requiring OLCC licensed **processors, retailers, medical only processors, medical only retailers, research certificates and labs** to provide the OLCC with a signed labor peace agreement (LPA) or attestation prior to licensure or renewal.

The new law goes into effect December 5, 2024.

Any application for a license or renewal application received on or after December 5th will be required to include:

- A signed labor peace agreement entered into between the applicant and a bona fide labor organization actively engaged in representing or attempting to represent the applicant's employees; or
- An attestation signed by the applicant and the bona fide labor organization stating that the applicant and the bona fide labor organization have entered into and will abide by the terms of a labor peace agreement.

As the OLCC learns more about the new law we will update this compliance bulletin with additional information.

FAQs

What is a Labor Peace Agreement (LPA)?

A. *'Labor peace agreement' means an agreement under which, at a minimum, an applicant or licensee agrees to remain neutral with respect to a bona fide labor organization's representatives communicating with the employees of the applicant or the licensee about the rights afforded to such employees under ORS 663.110 (Employee organization, bargaining rights**).***

What is a bona fide labor organization?

A. *'Bona fide labor organization' means a labor organization as defined in **29 U.S.C. 402**: ''Labor organization'' means a labor organization engaged in an industry affecting*

commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

Does this mean my employees are unionized?

A. *No, an LPA does not mean your employees are automatically members of a union.*

How do I get a LPA?

A. *You will need to work with a bona fide labor organization to sign a LPA or fill out an attestation form that is available on the OLCC website that you and the labor organization sign saying you have entered an agreement.*

My license is set to renew on December 10th, but I have already turned in my renewal application and it has been approved. Do I still need an LPA?

A. *No, the requirement for an LPA is only for new applications or renewals received on or after December 5, 2024.*

I have no employees. Will I still be able to sign a LPA?

A. *It is our understanding that you will still be able to sign an LPA even without employees.*

How do I submit the LPA or attestation to OLCC?

A. *You can submit the LPA or attestation with your application or renewal paperwork to OLCC through the CAMP on-line licensing system.*

What if my company vertically integrated and I share employees between licenses?

A. *The details of the LPA will be up to you and the labor organization, the OLCC will only be requiring the LPA for Processors, Retailers, Labs, Research Certificates, Medical only Processors and Medical only Retailers.*

When will the attestation form be available for applicants and licensees?

A. *The attestation form is now available on the OLCC website and can be found here. The form will also be available in the CAMP licensing system prior to December 5th.*

Again, the OLCC will be updating this bulletin as we learn more about the new law. If you have any questions, please send them to marijuana.licensing@olcc.oregon.gov.

Recreational Marijuana Program

Compliance Education Bulletin

Bulletin CE2025-01

January 14, 2025

The Oregon Liquor & Cannabis Commission (OLCC) is providing the following information to recreational marijuana licensees and hemp certificate holders.

The bulletin is part of OLCC's compliance education. It is important that you read it and understand it. If you don't understand it, please contact the OLCC for help at marijuana.licensing@olcc.oregon.gov.

A Compliance Education Bulletin regarding Measure 119 was published on November 18 and updated on November 26, 2024. **This education bulletin is part two in the series and includes additional FAQs regarding Measure 119.**

- Measure 119
- Labor Peace Agreement Attestation Form

Summary

Oregon voters recently passed **Ballot Measure 119**, requiring OLCC licensed **processors, retailers, medical only processors, medical only retailers, research certificate holders and labs** to provide the OLCC with a signed labor peace agreement (LPA) or attestation prior to licensure or renewal.

The new law went into effect December 5, 2024.

Any application for a license or renewal application or certificate in the categories listed above, received on or after December 5, 2024, will be required to include:

- A signed labor peace agreement entered into between the applicant and a bona fide labor organization actively engaged in representing or attempting to represent the applicant's employees; or
- An attestation signed by the applicant and the bona fide labor organization stating that the applicant and the bona fide labor organization have entered into and will abide by the terms of a labor peace agreement.

FAQs

I have no employees; do I need an LPA?

A. *Yes, even though you don't have employees, you will still need an LPA. Yes, M119 does not have an exception for applicants, licensees or certificate holders that do not currently have employees.*

My employees say they have no intention of unionizing and don't want to. Do I still need an LPA?

A. *Yes. M119 does not have an exception for applicants, licensees or certificate holders whose employees state no intent to unionize.*

How do I find a labor organization? I've been sending out inquiries and I'm not getting any responses.

A. *We cannot make recommendations for how you would contact a labor organization, nor does OLCC have a list of bona fide labor organizations. You will need to conduct your own search.*

I found a labor organization, and I have a Labor Peace Agreement to sign, but there are sections within the LPA that violate OLCC rules, regulations and statutes. What do I do?

A. *Applicants, licensees and certificate holders are required to follow all OLCC statutes and rules. A licensee or certificate holder will not be excused from potential disciplinary action by OLCC because it complied with an LPA. A licensee or certificate holder that complies with an LPA instead of OLCC statutes and rules does so at its own risk. OLCC is aware that some LPAs require a licensee or certificate holder to agree to permit union representatives to have access to all parts of a licensed premises. Licensees and certificate holders should keep in mind, these, and other OLCC Oregon Administrative Rules:*
   - *OAR 845-025-1230: Licensed Premises Restrictions and Requirements*
   - *OAR 845-025-1440: Required Camera Coverage and Camera Placement*
   - *OAR 845-025-1450: Video Recording Requirements for Licensed Facilities*

What If I don't submit an LPA or signed attestation with my license renewal?

A. *Not submitting an LPA or attestation with your renewal application is grounds for OLCC to refuse to renew your license or certification. If you submit all other requirements for your renewal application but you don't have an LPA or signed attestation, OLCC will investigate and may issue you a legal notice proposing to refuse to renew your license or certification. If you submitted a timely renewal application, you are still allowed to operate until a final decision is issued.*

The OLCC will continue to update this bulletin as we learn more about the new law. If you have any questions, please send them to marijuana.licensing@olcc.oregon.gov.

JS 44 (Rev. 03 24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

CASALA, LLC, dba Bubble's Hash; and REC REHAB CONSULTING LLC, dba Ascend Dispensary

(b) County of Residence of First Listed Plaintiff Clackamas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Stephen Scott, Todd Lyon, Janelle Debes; Fisher & Phillips LLP, 111 SW 5th Ave., #4040, Portland, OR 97204: 503.242.4262

DEFENDANTS

Tina Kotek; Dan Rayfield; Dennis Doherty, and Craig Prins (all in their official capacities)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal uestion *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITI ENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

FORFEITURE PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMI RATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BAN RUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RI HTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC DIWW (405(g))
- ☐ 864 SSID Title VI
- ☐ 865 RSI (405(g))

FEDERAL TA SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 ui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable Sat TV
- ☐ 850 Securities Commodities Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act Review or Appeal of Agency Decision
- ☒ 950 Constitutionality of State Statutes

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RI HTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing Accommodations
- ☐ 445 Amer. w Disabilities - Employment
- ☐ 446 Amer. w Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

V. ORI IN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. 2201-2202

Brief description of cause:
Declaratory and Injunctive Relief

VII. RE UESTED IN COMPLAINT

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND

CHECK YES only if demanded in complaint:
JURY DEMAND ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
2/12/2025

SIGNATURE OF ATTORNEY OF RECORD
s/ Stephen M. Scott, OSB No. 134800

FOR OFFICE USE ONLY

RECEIPT _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETIN CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an " " in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an " " in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below **NOTE federal question actions take precedence over diversity cases.**)

III. Residence (citi enship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an " " in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an " " in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORI IN CODE . Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. Requested in Complaint. Class Action. Place an " " in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.