House File 100: Labor Peace Mandate Violates Federal Law

Prepared for: Chairman Jamie Becker-Finn, Minnesota House Committee on Judiciary Finance and Civil Law

Prepared by: Geoff Lawrence, Director

Date: January 19, 2023

Dear Chairman Becker-Finn and Members of the Committee:

On behalf of the Reason Foundation, I thank you for accepting these comments and making them part of the public record. Among other things, the 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. As such, we are deeply concerned with a provision in HF 100 that would require entrepreneurs to enter into a labor peace agreement as a condition of licensure. Sec. 14, Sub. 1(a)(10) specifies that a cannabis license cannot be granted unless the application contains an attestation that "the applicant has entered into labor peace agreement." Sec. 14, Sub. 1(d) also requires "maintenance of a labor peace agreement" as an "ongoing material condition of maintaining and renewing the license."

We anticipate these provisions will cause delays in the market's development, render it less dynamic, give undue influence to unrelated third parties, and would violate federal labor laws.

There is a long series of legal precedents that make clear the proposed rule is federally unconstitutional. 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. 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.[1]

For its part, the National Labor Relations Act only requires employers to negotiate "in good faith" with a federally recognized union that has achieved majority support of workers in an NLRB-supervised election. It never requires an employer to enter into any form of contract with a union as a condition of opening its doors.

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.[2] Meantime, many licensed

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

[2] 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

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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.

Proponents may also argue the state has special powers to require a labor peace agreement by nature of the fact that a cannabis license is a privileged license required to operate a business type that would otherwise be illegal and this entitles the state to attach special conditions to its issuance. However, the U.S. Supreme Court ruled in 1987 that the City of Los Angeles could not withhold the license of a taxicab company based solely on the condition that the company resolve a labor dispute.[3] Regulation of private-sector labor disputes, noted the Court, was preempted solely to the National Labor Relations Board and therefore no privileged license can be conditioned on a labor peace agreement.

We believe federal law is clear on these issues and excludes states from enacting a requirement such as those contained in Sec. 14 of HF 100. 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.

The overall spirit of HF 100 is encouraging, but we urge strong caution before Minnesota imposes any requirement on cannabis licensing that is likely to be struck down upon a challenge in federal court.

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/.

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

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