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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

JEFFERSON PACKING HOUSE, LLC,

Plaintiff,

v.

TINA KOTEK, in her official capacity as
Governor of the State of Oregon, DAN
RAYFIELD, in his official capacity as
Attorney General of the State of Oregon,
TARA WASKIAK, in her official Capacity
as Executive Director of the Oregon Liquor
and Cannabis Commission, and LISA
CHARPILLOZ HANSON, in her official
capacity as Director of the Oregon
Department of Agriculture,

Defendants.

Case No. 3:25-cv-1791-AR

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

Plaintiff JEFFERSON PACKING HOUSE, LLC (“JPH”) files this complaint for Declaratory and Injunctive Relief against TINA KOTEK, in her official capacity as Governor of the State of Oregon, DAN RAYFIELD, in his official capacity as Attorney General of the State of Oregon, TARA WASKIAK, in her official capacity as Executive Director of the Oregon Liquor

and Cannabis Commission, and LISA CHARPILLOZ HANSON, in her official capacity as Director of the Oregon Department of Agriculture, and states as follows:

INTRODUCTION

1. This is a lawsuit challenging the validity and enforceability of ORS 475C.229, an Oregon statute which purports to restrict and regulate the production, processing, transport, and sale of cannabis and cannabis products in ways that violate federal constitutional and statutory law.

2. For many years, all forms of cannabis were illegal to manufacture or possess under the Controlled Substances Act (“CSA”). The 2018 Farm Bill decriminalized “hemp,” *i.e.*, cannabis low in delta-9 tetrahydrocannabinol, and allowed states to regulate hemp production pursuant to federally approved state plans. “[T]he only statutory metric for distinguishing controlled marijuana from legal hemp is the delta-9 THC concentration level.” *AK Futures LLC v. Boyd St. Distro, LLC*, 35 F.4th 682, 690 (9th Cir. 2022).

3. Oregon’s state recreational marijuana program, enacted by 2014 Oregon Ballot Measure 91, is administrated by the Oregon Liquor and Cannabis Commission (“OLCC”), which issues and administrates marijuana production, processing, wholesale, and retail licenses. The OLCC began issuing these licenses in early 2016.

4. At the time Measure 91 was drafted and passed, the United States Department of Justice adhered to an enforcement memorandum, dated August 29, 2013, authored by Deputy Attorney General James M. Cole (the “Cole Memo”), which provided, among other things, that enforcement of the CSA against state-legal marijuana businesses was deprioritized to the extent that marijuana from legal states was not being trafficked to other states.¹

¹ It is unclear to what extent the Cole Memo reflects concern regarding transfers from “legal”

5. Originating within the text of Measure 91, what is now ORS 475C.229 provides that it is illegal in the state of Oregon for anyone to import or export a marijuana item from Oregon. ORS 475C.229 was included in Measure 91 in an effort to insulate Oregon’s state-level marijuana program from federal scrutiny, by structuring it in conformity with the Cole Memo.

6. The definition of “marijuana item” in ORS 475C.229(b) currently includes not only (a) items that are “marijuana” under both the 2018 Farm Bill and Oregon law, but also (b) items that are “marijuana” under Oregon law, but “hemp” under the 2018 Farm Bill.

7. As a result, ORS 475C.229 prohibits the import and export of a federally legal product (hemp, as defined under the 2018 Farm Bill), as well as a federally illegal product (marijuana, as defined under the CSA), although OLCC licensees may sell both types of products within Oregon.

8. OLCC licensees are also prohibited from importing or exporting items which are “hemp” under BOTH Oregon law AND the 2018 Farm Bill, although, again, OLCC licensees may sell these items within Oregon.

9. Plaintiff is a business which holds an OLCC marijuana wholesale license and engages in the business of buying and selling cannabis products.

states to other “legal” states. The Cole Memo provides, in relevant part:

The Department [of Justice] is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent and rational way. In furtherance of these objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

...

- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states[.]

.....
Memorandum for all United States Attorneys, Cole, James M., August 29, 2013.

10. While Plaintiff's OLCC license allows Plaintiff to purchase and sell cannabis and cannabis products (including marijuana) within the state of Oregon, ORS 475C.229, together with the rules promulgated by the OLCC and the Oregon Department of Agriculture ("ODA") and the Oregon Health Authority ("OHA"), prohibit Plaintiff from importing or exporting any type of cannabis.

11. Plaintiff operates its business in Southern Oregon, in the heart of a traditional cannabis farming bioregion, and its business model is to serve as a "hub" for the region's farms and distribute their products statewide (or, if allowed, nationwide). But for ORS 475C.229 and the regulations promulgated thereunder, Plaintiff would distribute these products to wholesale customers in other states. Additionally, if not prevented from doing so by Oregon law, Plaintiff would purchase products from out-of-state producers for sale in both Oregon and in other states.

12. An effect of ORS 475C.229 is to protect Oregon cannabis producers and manufacturers from competition from out-of-state producers and manufacturers. For example, all cannabis within the OLCC license system must stay within Oregon, even if it could be processed more efficiently out-of-state; correspondingly, Oregon processors may not import product from out-of-state. *See Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970) (holding that Arizona law that required cantaloupes grown in state to be processed and packed in state violated Dormant Commerce Clause).

13. Moreover, Oregon cannabis producers and manufacturers are spared from competing with out-of-state producers and manufacturers, who might seek to bring competing products to the Oregon market.

14. As a result, ORS 475C.229 should be held unconstitutional because it violates the core antidiscrimination principles of the Dormant Commerce Clause of the United States Constitution, as well as facially discriminating against interstate commerce.

15. Additionally, to the extent ORS 475.229 prohibits the transport of Adult Use Hemp through Oregon, it is expressly preempted by the 2018 Farm Bill.

16. A brief note on cannabis nomenclature: from this point forward in this Complaint, the following terms are defined as:

- a. “**Cannabis**” means “the plant *Cannabis sativa* L., and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not.” For the sake of brevity, “Cannabis” includes products made from Cannabis.
- b. “**Marijuana**” means Cannabis with a delta-9 tetrahydrocannabinol concentration of *more* than 0.3 percent on a dry weight basis. Marijuana is illegal under the CSA, but is regulated in Oregon under ORS Chapter 475C, and OLCC-licensed businesses are authorized under Oregon law to engage in in-state commerce in Marijuana. For the sake of brevity, “Marijuana” includes products made from Marijuana.
- c. “**Hemp**” refers to the definition of “hemp” under 7 USC § 1639o(1), and means “the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” For the sake of brevity, “Hemp”

includes products made from Hemp. Hemp is federally legal under the 2018 Farm Bill.

- d. **“Total THC”** means “the sum of the concentration or mass of delta-9-THCA multiplied by 0.877 plus the concentration or mass of delta-9-THC.” ORS 475.009(42).
- e. **“State-defined Hemp”** means Cannabis that (i) has a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis; AND (ii) has a Total THC concentration of *not more than* 0.3 percent on a dry weight basis. For the sake of brevity, “State-defined Hemp” includes products made from State-defined Hemp. State-defined Hemp is both federally legal under the 2018 Farm Bill and legal under Oregon law. Under Oregon law, businesses and individuals who hold hemp licenses from the Oregon Department of Agriculture may engage in interstate commerce in State-defined Hemp.
- f. **“State-excluded Hemp”** means Cannabis that meets the definition of Hemp under 7 USC § 1639o(1) but does not meet the definition of State-defined Hemp; in other words, Cannabis which (i) has a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis; AND (ii) has a Total THC concentration *exceeding* 0.3 percent on a dry weight basis. For the sake of brevity, “State-excluded Hemp” includes products made from State-excluded Hemp AND products made from Hemp or State-defined Hemp which qualify as State-excluded Hemp.² State-excluded Hemp is federally legal under the 2018 Farm Bill but is

² For example, a Cannabis plant which qualifies as Hemp or State-defined Hemp may be processed into oil which has a concentration of THC and/or THCA which exceeds 0.3% by weight. High-quality THCA oil which contains less than 0.3% THC is therefore “Hemp” under the 2018 Farm Bill, but is “State-excluded Hemp” under Oregon law, even though it was

considered “Marijuana” under Oregon law; Oregon law makes commerce in State-excluded Hemp illegal for all, other than OLCC licensees, and OLCC licensees such as JPH may not import or export State-excluded Hemp.

- g. Conceptually, all “State-defined Hemp” is “Hemp,” but not all “Hemp” is “State-defined Hemp,” as some “Hemp” is “State-excluded Hemp.”

PARTIES AND JURISDICTION

17. Plaintiff JEFFERSON PACKING HOUSE, LLC (“JPH”) is an Oregon limited liability company, located in Jackson County, Oregon, that holds a recreational marijuana wholesaler license under Oregon law.

18. Defendant TINA KOTEK is the Governor of Oregon and is ultimately responsible for enforcing ORS 475C.229.

19. Defendant DAN RAYFIELD is the Attorney General of Oregon and is responsible for enforcing ORS 475C.229.

20. Defendant TARA WASKIAK is the Executive Director of the OLCC. Based on ORS 475C.229, the OLCC’s rules and policies prohibit marijuana licensees from exporting marijuana and marijuana products, and Director Waskiak is responsible for enforcing ORS 475C.229 through those rules and policies.

21. Defendant LISA CHARPILLOZ HANSON is the Director of the Oregon Department of Agriculture, and is responsible for enforcing ORS 475C.229, to the extent it applies to Oregon-licensed hemp growers and processors.

22. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 since JPH has asked it to rule that Oregon’s law violates the United States Constitution.

processed from cannabis that was State-defined Hemp.

BACKGROUND

23. JPH would import and export Marijuana to and from other states with legal marijuana programs if Oregon law did not prohibit it from doing so.

24. JPH has identified customers in other states with legal marijuana programs and is ready, willing, and able to engage in commerce in Marijuana with such customers but is prevented from doing so under Oregon law.

25. JPH would import and export Hemp to and from other states if Oregon law did not prohibit it from doing so.

26. JPH has identified customers in other states and is ready, willing, and able to engage in commerce in Hemp with such customers but is prevented from doing so under Oregon law.

27. JPH would import and export State-defined Hemp to and from other states if Oregon law did not prohibit it from doing so.

28. JPH has identified customers in other states and is ready, willing, and able to engage in commerce in State-defined Hemp with such customers but is prevented from doing so under Oregon law.

29. JPH would import and export State-excluded Hemp to and from other states if Oregon law did not prohibit it from doing so.

30. JPH has identified customers in other states and is ready, willing, and able to engage in commerce in State-excluded Hemp with such customers but is prevented from doing so under Oregon law.

31. Oregon law harms JPH by increasing its operating costs and preventing it from taking advantage of economies of scale.

32. Oregon law also harms JPH by putting it at a competitive disadvantage in the market for Hemp because it cannot source Hemp from out-of-state, and it cannot ship Hemp out-of-state, both of which limit its customer base and ability to offer a complete range of products at the best prices.

33. Oregon law also harms JPH by putting it at a competitive disadvantage in the market for Marijuana because it cannot source Marijuana from out-of-state, and it cannot ship Marijuana out-of-state, both of which limit its customer base and ability to offer a complete range of products at the best prices.

34. Oregon law also harms JPH by putting it at a competitive disadvantage in the market for State-defined Hemp because it cannot source State-defined Hemp from out-of-state, and it cannot ship State-defined Hemp out-of-state, both of which limit its customer base and ability to offer a complete range of products at the best prices.

35. Oregon law also harms JPH by putting it at a competitive disadvantage in the market for State-excluded Hemp because it cannot source State-excluded Hemp from out-of-state, and it cannot ship State-excluded Hemp out-of-state, both of which limit its customer base and ability to offer a complete range of products at the best prices.

36. If JPH disregards Oregon law and imports or exports Marijuana, Hemp, State-defined Hemp, or State-excluded Hemp, JPH, its owner, and its employees, will face civil and criminal penalties.

ORS 475C.229 IS UNCONSTITUTIONAL

37. ORS 475C.229 expressly privileges Oregon residents over non-residents, unambiguously prohibiting any export or import of marijuana from or to Oregon.

38. ORS 475.229 provides:

475C.229 Prohibition against importing or exporting marijuana items. (1) For purposes of this section:

(a) “Export” includes placing a marijuana item in any mode of transportation for hire, such as luggage, mail or parcel delivery, even if the transportation of the marijuana item is intercepted prior to the marijuana item leaving this state.

(b) “Marijuana item” includes an industrial hemp commodity or product that exceeds the greater of:

(A) A concentration of 0.3 percent total delta-9-tetrahydrocannabinol; or

(B) The concentration of total delta-9-tetrahydrocannabinol allowed under federal law.

(2) A person may not import marijuana items into this state or export marijuana items from this state.

(3) A violation of this section is a Class B violation, except:

(a) As provided in subsection (4) of this section; or

(b) If the item is industrial hemp and does not exceed a total delta-9-tetrahydrocannabinol concentration of one percent.

(4) A violation of this section is a:

(a) Class A misdemeanor, if the importation or exportation:

(A) Is not for consideration and the person holds a license issued under ORS 475C.065, 475C.085, 475C.093 or 475C.097; or

(B) Concerns an amount of marijuana items that exceeds the applicable maximum amount specified in ORS 475C.337 (1)(a) to (f).

(b) Class C felony, if the importation or exportation:

(A) Is for consideration and the person holds a license issued under ORS 475C.065, 475C.085, 475C.093 or 475C.097;

(B) Concerns an amount of marijuana items that exceeds 16 times the applicable maximum amount specified in ORS 475C.337 (1)(a) to (f); or

(C) Concerns a cannabinoid extract that was not purchased from a marijuana retailer that holds a license issued under ORS 475C.097.

39. ORS 475C.229 discriminates against interstate commerce by nakedly prohibiting such commerce, without any legitimate, nonprotectionist purpose, and is therefore prohibited by the Dormant Commerce Clause of the U.S. Constitution (“DCC”).

40. There is no constitutionally adequate reason for Oregon, or any other State, to bar the import or export of Marijuana.

41. There is no constitutionally adequate reason for Oregon, or any other State, to bar the import or export of Hemp.

42. There is no constitutionally adequate reason for Oregon, or any other State, to bar the import or export of State-defined Hemp.

43. There is no constitutionally adequate reason for Oregon, or any other State, to bar the import or export of or State-excluded Hemp.

44. Protecting the local cannabis industry (from competition, federal law enforcement, or any other reason) is a purely protectionist motive and is therefore plainly unconstitutional under the DCC.

45. Attempting to appease the perceived enforcement priorities of the federal government to induce the DOJ to continue its policy of nonenforcement of state-legal marijuana activities (which violate federal law equally as much as interstate commerce in marijuana) implicates fatal separation of powers concerns, as only Congress can authorize the States to regulate interstate commerce, not the DOJ, an agency of the executive branch. “The DOJ cannot use enforcement treats to supply the states with a convenient nonprotectionist excuse for restricting interstate commerce in cannabis because that would be tantamount to authorizing the states to restrict such commerce.” Robert A. Mikos, *Interstate Commerce in Cannabis*, 101 B.U. L. Rev. 857 (2021).

46. ORS 475C.229 is stifling Oregon’s marijuana producers and industry participants as they are unable to access the enormous out-of-state demand for their Oregon-produced products.

47. Additionally, ORS 475C.229 protects in-state producers and manufacturers from competition with out-of-state producers and manufacturers, harming wholesalers such as JPH, as well as consumers.

COUNT I

U.S. Const. Art. I, § 8, Cl. 3, 42 U.S.C. § 1983

48. JPH realleges the preceding paragraphs as if fully set forth herein.

49. The U.S. Constitution prohibits state laws that discriminate against citizens of other states.

50. A state law that discriminates against interstate commerce on its face “invokes the strictest scrutiny of any purported legitimate local purpose and of the absence of nondiscriminatory alternatives.” *Hughes v. Oklahoma*, 441 U.S. 322, 337 (1979). *See also Camps Newfound/Owatonna, Inc. v. Town of Harrison, Me.*, 520 U.S. 564, 581 (1997) (strict scrutiny of a law that facially discriminates against non-residents “is an extremely difficult burden, so heavy that facial discrimination by itself may be a fatal defect”).

51. ORS 475C.229 expressly seeks to regulate interstate commerce in marijuana by prohibiting it.

52. ORS 475C.229 does not have a legitimate local purpose.

53. JPH is harmed by ORS 475C.229 because the law interferes with JPH’s ability to participate in commerce with residents of other states, including in other states where such commerce would, but for an import/export ban, be legal under the laws of that state (i.e., other states which have legal adult use marijuana). ORS 475C.229 also devalues JPH by significantly limiting the universe of potential customers it can reach. ORS 475C.229 also harms JPH by preventing it from taking advantage of economies of scale, which would significantly increase its ability to profit.

54. Injunctive and declaratory relief are needed to resolve this dispute between the Defendants and JPH because ORS 475C.229 violates the United States Constitution and subjects JPH to serious, concrete, and irreparable injuries.

55. Because this is an action to enforce JPH's constitutional rights brought pursuant to 42 U.S.C. § 1983, JPH should receive its reasonable attorneys' fees in the case. *See* 42 U.S.C. § 1988.

COUNT II

U.S. Const. Art. I, § 8, Cl. 3, 28 U.S.C. § 2201

56. JPH realleges the preceding paragraphs as if fully set forth herein.

57. JPH has taken the position that ORS 475C.229 violates the Dormant Commerce Clause of the United States Constitution and is thus unenforceable.

58. ORS 475C.229 directly harms JPH as a marijuana wholesaler because it limits JPH's ability to sell its product to customers outside of Oregon.

59. Defendants have taken the position that ORS 475C.229 is enforceable and is enforcing ORS 475C.229 against Oregon's marijuana licensees, such as JPH.

60. An actual controversy exists between Plaintiffs and the Department as to whether ORS 475C.229 is enforceable. JPH is currently unable to sell marijuana and marijuana products outside the state of Oregon, even though it has national recognition and consistently sells out of its product in Oregon. This situation hinders JPH's ability to raise capital, frustrates its business plans, and harms it financially.

61. Declaratory and injunctive relief are needed to resolve this dispute between JPH and the Defendants.

62. Under 28 U.S.C. § 2201 the Court has the power to declare the rights of the parties.

WHEREFORE, JPH requests that this Court enter judgment:

- A) declaring that ORS 475C.229 violates the United States Constitution;
- B) enjoining Defendants from restricting interstate Commerce in Marijuana, Hemp, State-defined Hemp, and State-excluded Hemp;
- C) awarding JPH its attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and,
- D) granting such other and further relief as the Court deems just and proper.

Dated: October 1, 2025

Respectfully submitted,

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By: /s/ Andrew C. DeWeese

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