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RE: LD 314

You asked us to review the constitutionality of LD 314.

In our opinion, the law changes proposed in LD 314 would violate the Foreign Commerce Clause, the Supremacy Clause, and the Equal Protection Clause of the United States Constitution.

LD 314 would suspend a parcel's eligibility for tree growth property tax law benefits if the parcel of land is harvested using bonded labor (i.e. labor from Canada). LD 314 would also impose an additional forest fire suppression tax with respect to parcels of land that are harvested using bonded labor. These provisions discriminate against foreign commerce.

State laws discriminating against interstate commerce on their face are "virtually per se invalid." *Fulton Corp. v. Faulkner*, 516 U.S. 325, 331 (1996). The same rule applies to foreign commerce. Foreign commerce is subject to even greater scrutiny than interstate commerce because of the concern that the Federal Government "must speak with one voice in regulating commercial relations with foreign governments." *Japan Lines v. County of Los Angeles*, 441 U.S.425(1980). Foreign commerce is a matter of national concern, and state taxes which discriminate against foreign commerce may cause foreign governments to retaliate. *Id.*

The proposals to deny eligibility for the tree growth tax program if bonded labor is used and to increase the forest fire suppression tax if bonded labor is used discriminate on their face against Canadian and other foreign wood harvesters. The United States Supreme Court has previously struck down a Maine property tax exemption for summer camps that was available for camps that predominantly served

in-state residents. The exemption discriminated against out of state residents. The same analysis would be applied to strike down the amendments proposed by LD 314: "Avoiding this sort of "economic Balkanization and the retaliatory acts of other States that may follow, is one of the central purposes" of the Commerce Clause." *Camps Newfoundland/Owetonna, Inc. v. Town of Harrison*, 520 U.S. 564 (1997).

In addition to violating the Foreign Commerce Clause, it is our opinion that LD 314 would violate the Supremacy and Equal Protection Clauses of the Constitution.

The Supremacy Clause has long been interpreted to mean that federal law preempts contrary state law. The federal government's regulation of employing foreign workers is so dominant that it "occupies the field" and, under the Supremacy Clause, Maine cannot alter those federal regulations by creating additional hurdles and costs to employing authorized foreign workers. *Chamber of Commerce v. Edmondson*, 594 F.3d 742, 767-68 (10th Cir. 2010.

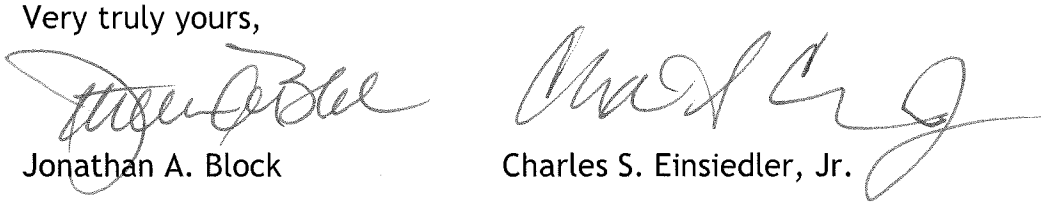
In the recent (and much publicized) case *Arizona v. U.S.*, 132 S.Ct. 2492, 2503-2505 (2012), the United States Supreme Court held that Arizona's similar attempt to impose penalties on *unauthorized* workers was preempted because IRCA imposes a comprehensive framework governing the employment of aliens and additional penalties would be an obstacle to that federal regulatory scheme. LD 314 would impose additional costs or penalties in the way of additional taxes on employers who hire *authorized* foreign workers. There is no room in the comprehensive federal immigration scheme for Maine to impose such hurdles.

In addition, LD 314 has the purpose and effect of encouraging landowners to violate federal anti-discrimination laws, such as Title VII and IRCA's anti-discrimination provisions. To avoid the additional taxes, landowners would be required to discriminate against bond workers in violation of state and federal law simply because they are Canadian. Therefore, LD 314 would present a clear "obstacle to the accomplishment and execution" of the intent of federal immigration and anti-discrimination law and would be preempted. *Edmondson*, 594 F.3d at 766-79 (quoting *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141 (1982)).

Finally, LD 314 differentiates between a suspect class (Canadian bond workers) and similarly situated U.S. workers in violation of the Equal Protection Clause. Under the Equal Protection Clause, classifications based on national origin or citizenship are suspect and are only constitutional if there is a compelling state interest and the statute is narrowly tailored to meet that interest. *See Mills v State of Me.*, 118 F.3d 37, 46 (1st Cir. 1997). The only state interest that the sponsors of LD 314 appear to be articulating is Maine's interest in preferring U.S. workers over Canadian workers. Such a purpose is facially discriminatory and not compelling, particularly in light of

the comprehensive federal regulatory scheme governing the employment of foreign workers.

Very truly yours,



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