

# Oregon marijuana racketeering lawsuit dismissed

By MATEUSZ PERKOWSKI  
Capital Press



Mateusz Perkowski/Capital Press File/Capital Press

**Marijuana plants grow in a high tunnel at a farm near McMinnville, Ore. A federal judge has dismissed with prejudice a lawsuit accusing an Oregon marijuana operation of racketeering.**

Marijuana's alleged impact on property values cannot legally justify a racketeering lawsuit by Oregon landowners over the controversial crop, according to a federal judge.

A speculative drop in property value doesn't count as a "concrete financial loss" under the Racketeer Influenced and Corrupt Organizations Act, even if it reduces the amount of money that can be borrowed against the value of a home, the ruling said.

U.S. District Judge Michael McShane has dismissed with prejudice a complaint filed by neighbors of a marijuana-growing operation near Lebanon, Ore., which means they can't revive their RICO allegations.

The 10 plaintiffs claimed to be adversely affected by marijuana's "unmistakable skunk-like stench," noise from greenhouse fans, guard dogs running loose, as well as frequent traffic on previously quiet rural roads.

Since marijuana remains

illegal under federal law, the plaintiffs alleged the owners of the marijuana-growing parcel and their associates were engaged in a "criminal enterprise" to manufacture and sell a controlled substance.

Last year, the judge dismissed the original complaint because an "abstract

reduction in the fair market value of the plaintiffs' lands" doesn't provide sufficient grounds to sustain a RICO claim in federal court. However, the plaintiffs were allowed to refile the lawsuit to show they'd suffered a concrete financial loss.

In a revised version of the complaint, two of the plain-

tiffs — Karl and Lucinda Frink — argued they could have obtained a larger home equity loan if not for the depressed property value caused by the neighboring marijuana operation.

McShane ruled that borrowing a smaller amount of money isn't considered a "compensable property

injury" under the 9th U.S. Circuit Court of Appeals interpretation of RICO law.

Because they owe less money, the plaintiffs will end up paying less interest and their "financial position is no worse than it would have been absent the racketeering activity," the judge said.

For example, the allegedly reduced property value did not cause the plaintiffs to be "charged a higher interest rate or otherwise offered the same loan on less favorable terms," he said.

Rachel McCart, attorney for the plaintiffs, did not respond to requests for comment.

Although McShane's decision isn't binding, it's solidly in line with 9th Circuit precedent and its reasoning will likely doom similar RICO litigation against Oregon marijuana growers over property values, said Alex Tinker, an attorney for the defendants.

"That theory in the 9th Circuit has pretty well been dispatched," Tinker said.

However, the ruling probably won't end the controversy over alleged RICO

violations involving marijuana in Oregon, where voters fully legalized the crop under state law in 2014.

Another lawsuit over a marijuana-growing operation in Yamhill County also cites RICO without solely relying on marijuana's effect on property values.

Rather, the complaint argues that grapes grown by the Momtazi family were refused by a buyer because they'd been contaminated by the "pungent stench" of marijuana grown on a nearby property.

The plaintiff in that case is also represented by Rachel McCart, who's filed several lawsuits against marijuana producers in Oregon.

Alleging that marijuana rendered grapes unmarketable may allow that company to survive a motion to dismiss based on "concrete financial loss," though it's likely to encounter other difficulties, said Tinker, who's aware of the case but isn't representing the defendants.

"They're still going to have proof problems, they're still going to have causation problems," he said.

## Popular vote bill passes Senate, but not before discussion was derailed

By Aubrey Wieber  
Oregon Capital Bureau

A debate about progressive elections reform on the Senate floor was hijacked Tuesday when Sen. Dennis Linthicum, R-Klamath Falls, brought up the political treatment of slaves in the 1700s.

After Sens. James Manning, D-Eugene, and Lew

Frederick, D-Portland, talked about the historical disenfranchisement black people experienced due in part to the three-fifths compromise, Linthicum opined an unusual notion that the three-fifths compromise was intended to limit the power of slave states, rather than bolster it.

The three-fifths com-

promise meant under the Constitution that slaves amounted to three-fifths of a person.

The Senate was voting on a bill that would join Oregon in a compact with other states to give their electoral college votes to the winner of the national popular vote.

The idea is to ensure a presidential candidate could not get elected while winning fewer votes than their competitor.

If the proposal is signed into law, Oregon would join 15 other states that

have already passed similar proposals, making a combined 196 electoral votes.

The compact would only be triggered when a combined 270 electoral votes — the amount needed to win the presidency — has joined.

But the discussion quickly changed when Linthicum stood and told the room there were some historical misunderstandings. The three-fifths compromise was a check on the power of slave states, he said.

"I am arguing its intent was to strip power from slave states, right?" Linthicum said. "Because it did."

"That is completely incorrect," Willamette University history professor Seth Cotlar said of Linthicum's historical interpretation.

The three-fifths compromise was agreed upon in 1787 to determine how slave ownership should impact taxes and congressional representation.


The south wanted slaves to be viewed as full people to gain seats in Congress, but still wanted them viewed as property that could not vote.

The north identified it as a power grab. The sides

settled on counting three of every five slaves as a person, though none could vote. It gave the south a third more seats in the House of Representatives.

Cotlar said if you start with the assumption that slaves were to be viewed as full people, then yes, the three-fifths compromise limited southern power.

At the time, slaves were viewed as property but southerners wanted them to be included in population to bolster their seats in Congress without giving them the right to vote. The north did not want slaves to be viewed as a full person because it would give the south a huge political boost.



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 **Cleanup Review Underway For Former Joseph Forest Products Wood Treatment Facility, Joseph, Oregon**

**Why a cleanup review?**  
Whenever contamination remains on a site, EPA does a routine site review every five years. Only a small amount of contamination remains at this site. This 2019 five-year review will determine whether the site cleanup carried out in the early 1990s still protects people and the environment.

**About the site**  
Joseph Forest Products was a wood treatment facility that operated from 1974 to 1985. The site is located about one mile north of the city of Joseph in Wallowa County. Contamination of the 18-acre site was a result of poor site management and a 1974 fire. That fire destroyed the treatment building and released hazardous wood treatment chemicals, contaminating soil and groundwater.

**About the cleanup**  
Joseph Forest Products was listed as a Superfund site in 1989 with site cleanup from 1991 to 1993. Cleanup measures included:

- Removing contaminated soil and debris from the site and disposal offsite
- Demolishing the treatment building
- Decontaminating the drip pad
- Removing asbestos from the wood drying building
- Removing underground storage tanks

For three years after cleanup, EPA and the Oregon Department of Environmental Quality conducted groundwater monitoring. Results did not show a need for any additional cleanup. In 1999, EPA deleted the Site from the National Priorities List.

**Site status**

- The site is within the watershed that provides drinking water to the city of Enterprise, Oregon. Sampling by the City of Enterprise at their water supply springs has not detected site related contamination in the town's water.
- Previous five-year reviews have determined that the site is protective of people and the environment. Only a small amount of subsurface contamination remains at the site.
- The site is zoned for non-residential use and is currently used as a pasture for livestock.

EPA staff is available to answer any questions about the Site or the Five-Year Review process.  
**Contact** Jacob Moersen, EPA Project Manager, at **206-553-0542** or [moersen.jacob@epa.gov](mailto:moersen.jacob@epa.gov)

**For more information** go to: <https://www.epa.gov/superfund/joseph-forest-products>

The **Joseph Forest Products Wood Treatment Facility Fifth Five-Year Review Report** will be finished by September 2019, and available on the site page listed above.

**TDD and/or TTY users may call the Federal Relay Service at 1-800-877-8339. Then please give the operator Jacob Moersen's phone number: 206-553-0542.**