

California Bans Cannabis Billboards on All Highways that Cross the California Border

By Brendan Charney and Nicole Phillis

On January 11, 2021, in the case of *Farmer v. Bureau of Cannabis Control (Bureau) & Lori Ajax*, the San Luis Obispo County Superior Court entered a formal judgement ruling that Section 5040(b)(3) of the Bureau's regulations is invalid. In the *Farmer* case, the Superior Court for the County of San Luis Obispo granted a petition to ban cannabis billboards or similar outdoor advertising on the 4000-plus miles of California highway that, at some point, wind across the California border. As a result, the California Bureau of Cannabis Control ("BCC") has advised licensed operators that Section 5040(b)(3) of the BCC's regulations, which only prohibited billboard advertising within a 15-mile radius of the California border on an interstate or state highway that crosses the California border, is invalid and no longer in effect.

Reflecting sensitivity to interstate marketing of cannabis while it remains federally illegal, California's cannabis regulatory statute provides that cannabis companies shall not "advertise or market on a billboard or similar advertising device located on an Interstate Highway or on a State Highway which crosses the California border."¹ When California's cannabis regulator – the Bureau of Cannabis Control – passed implementing regulations, they sensibly construed this requirement to mean that cannabis billboards and other outdoor advertising shall "[n]ot be located *within a 15-mile radius of the California border* on an Interstate Highway or on a State Highway that crosses the California border."²

The *Farmer* action was brought by a private citizen who claimed that the regulation was in conflict with the statute, and that his status as a taxpayer gave him standing to challenge the claimed conflict. The Honorable Ginger E. Garrett granted the petition, holding that the Bureau must meet and confer to propose an order to withdraw the regulation – and presumably implement a much stricter ban on *all* outdoor advertising on any interstate or state highway that crosses the California border.

The Court's decision appears to give short shrift to speech concerns. The applicable terms "Interstate Highway" and "State Highway" are not defined in the statute, while California's definition of cannabis "advertising" is broad, and lacks specific exceptions for educational or noncommercial messages which other states have adopted to avoid chilling speech about cannabis. An expansive interpretation of the statutory ad restrictions would prohibit a wide range of outdoor cannabis communications on a large swathe of California's roadways.

The decision may be subject to appeal on a variety of issues, including not only the merits of the claimed "conflict", but also the plaintiff's standing to sue, since there is no live dispute concerning a particular ad or billboard – just a legal question framed in the abstract. But for now, the BCC has advised that to comply with the law under *Farmer*, "Per the BCC, "licensees may not place new advertising or marketing on any interstate highway or state highway that crosses the California border. Licensees should also begin the process of removing current advertising and marketing that meets this criteria."

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¹ Cal. Bus. & Prof. C. § 26152

² Cal. C. Reg. § 5040(b)(3) (emphasis added).