



OFFICE OF THE GOVERNOR

November 10, 2021

The Honorable Marty J. Walsh
Secretary of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Walsh,

The recent decision by the Department of Labor's Office of Labor-Management Standards (OLMS) to cut off California transit agencies from billions of dollars in federal transit funding, on the purported basis of Section 13(c) of the Urban Mass Transportation Act of 1964, is extremely concerning. That OLMS is doing this during the national emergency caused by the COVID-19 pandemic and in disregard of multiple federal judicial decisions is even more troubling. For the reasons below, I urge you to restore California's access to federal transit grants.

OLMS's decision deprives financially beleaguered California public transit agencies that serve essential workers and our most vulnerable residents of critical support, including American Rescue Plan Act funds that those agencies need to survive through the pandemic. Because of a dramatic decline in ridership, public transit agencies rely more than ever on these federal grants just to keep trains and buses running and their workforces employed. The grants being withheld also help provide vital mobility to low-income seniors, individuals with disabilities, and other transit-dependent riders.

This decision is a complete reversal of OLMS's final determination in 2019 that California's statewide pension reform legislation, the Public Employees' Pension Reform Act of 2013 (PEPRA), "does not present a bar to certification under section 13(c)"—a determination upon which California and local transit agencies have justifiably relied for budgeting, planning, and strategy. By reversing itself, OLMS has created tremendous confusion and uncertainty for

numerous infrastructure projects on which California has closely partnered with the federal government and local transit agencies, and in which it has already invested hundreds of millions of dollars in state funding. For example, the Transbay Corridor Core Capacity Program—which is intended not only to improve service and increase system ridership in the Bay Area, but also to improve regional air quality and lower greenhouse gas emissions—cannot be completed as planned without continued federal funding. Other major transit infrastructure projects in California will suffer similar adverse impacts. Furthermore, OLMS's decision directly undermines the goals of the recently enacted infrastructure bill by cutting off transit agencies in the nation's most populous state from the very infrastructure funds just approved by Congress.

The Department's approach also disregards its past assurances to California that it would abide by the federal judiciary's resolution of the PEPPRA/Section 13(c) issue and work cooperatively to avoid disrupting California's access to federal funding during litigation. After multiple years of litigation, the reviewing federal court found in California's favor three times, and the Department did not pursue appeals. The Department's own lawyers noted that the federal court's decisions were "thoroughly reasoned," and in 2019 OLMS formally concluded that PEPPRA "does not impermissibly impair collective bargaining rights." That should conclude the matter. In addition, far from merely reverting to its prior position under the Obama-Biden Administration (as OLMS has claimed), the Department has taken the extraordinary step of cutting off California's access to federal transit grants—something the Obama-Biden Administration avoided.

The Department's decision rests on the false premise that PEPPRA has impaired collective bargaining in California. But federal and state courts alike have repeatedly rejected this argument, finding that PEPPRA does not impair collective bargaining agreements or collective bargaining rights. The numerous agreements successfully negotiated over the last nine years by transit workers utilizing collective bargaining processes under PEPPRA further directly refute OLMS's position. And it is undisputed that California's public employees continue to enjoy some of the most robust collective bargaining rights in the country, which I have championed as Governor. In fact, in 2019, I signed legislation expanding collective bargaining rights to tens of thousands of childcare workers.

Finally, OLMS's central position—that PEPPRA conflicts with federal labor policy—is no sounder now than when the federal district court rejected it. Among other

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things, OLMS continues to base that position on the National Labor Relations Act, which by its terms does not apply to public employees. OLMS's position is also surprising given that the federal government itself instituted similar pension reforms after the Federal Employees' Retirement System Act was enacted in 1986 by Congress with broad bipartisan support. OLMS has never explained why the same kinds of reforms that the federal government adopted (which apply to the Department's own employees) are inconsistent with federal labor policy.

California objects in the strongest possible terms to the premature and inappropriate effort to unilaterally implement OLMS's deeply flawed decision pending federal judicial review. I respectfully urge you instead to restore California's access to federal transit grants pending judicial resolution of these issues. Withholding billions of dollars in crucial funding on the basis of a nine-year-old state law, while California wrestles with the COVID-19 pandemic, does great harm and injustice to the people of California. If not set aside by the federal court or otherwise corrected, California will be forced to ask its delegation in Congress to remedy this situation as a matter of highest priority.

Sincerely,



Gavin Newsom
Governor of California

cc: Merrick Garland, Attorney General, U.S. Department of Justice
Pete Buttigieg, Secretary, U.S. Department of Transportation
Ron Klain, Chief of Staff to the President