

**TESTIMONY OF
CONNECTICUT HOSPITAL ASSOCIATION
BEFORE THE
JUDICIARY COMMITTEE
Wednesday, March 14, 2007**

HB 7326, An Act Concerning Captive Audience Meetings

The Connecticut Hospital Association (CHA) appreciates the opportunity to testify on **HB 7326, An Act Concerning Captive Audience Meetings.**

HB 7326 would prohibit private and public employers from requiring their employees to attend an employer-sponsored meeting if the primary purpose of the meeting is to communicate the employer's opinion concerning, among other things, the decision to join or not join a union. HB 7326 would also prohibit private and public employers from discharging, disciplining or otherwise penalizing or threatening such actions, any employee or person acting on behalf of the employee for making a good faith report of a violation or suspected violation of the captive audience prohibition, unless the employee knows that the report is false. HB 7326 should not be enacted for the following reasons.

HB 7326 is preempted by the National Labor Relations Act (NLRA) and would be invalid if enacted. The doctrine of preemption arises from the Supremacy Clause of the United States Constitution and operates to invalidate state laws that frustrate the purpose of national legislation or impair the efficiency of agencies of the federal government entrusted to discharge the duties for which they were created. The NLRA was enacted in 1935 in large part because Congress wanted to provide an administrative mechanism to peacefully and expeditiously resolve questions concerning union representation. Section 7 of the NLRA affords employees the right "to self-organization" and "to form, join, or assist labor organizations," and "to refrain from ... such activities." Section 8 creates a network of prohibitions on employer and union conduct that has a reasonable tendency to interfere with employees' Section 7 rights. Section 8(c), which was an amendment to the NLRA, sets forth an explicit "free speech" exemption for employees and employers alike, which provides that "the expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any provisions of the Act, if such expression contains no threat of reprisal or force or promise of benefit." The United States Supreme Court has ruled that Section 8(c) is a codification of the First Amendment of the United States Constitution.

Following the passage of Section 8(c), the NLRB in 1948, reversing an earlier ruling in which it prohibited employers from compelling attendance at employer speeches on self-organization, approved the use of employer captive audience speeches provided the union was given an opportunity to reply in similar circumstances. In 1953, the NLRB further refined its position and held that "an employer does not commit an unfair labor practice if

he makes a preelection speech on company time and premises to his employees and denies the union's request for an opportunity to reply," provided the captive audience speech is not delivered within 24 hours preceding an election. The NLRB has consistently applied this rule since that time and it has received approval from the United States Supreme Court.

Accordingly, it is simply not the case, as some have argued in the past regarding previous iterations of this proposed bill, that federal law does not protect an employer's right to hold mandatory meetings with its employees to advise them concerning its position on labor organizing activities – federal law absolutely protects that right. There can be no question that HB 7326 seeks to overturn federal labor policy that was established by the NLRB more than 57 years ago and is, therefore, preempted.

Second, HB 7326 would have the unintended effect of subjecting employees to conduct currently unlawful under the NLRA. For example, HB 7326 does not prohibit employers from asking employees voluntarily to attend meetings or participate in casual conversations regarding union activities and employees are free to choose to attend or participate in those conversations as they so wish. Under the proposed law, employees would be put in the position of identifying themselves to their employer and co-workers as supporting or being against unionization when they choose or choose not to attend or participate. Such self-identification is a form of polling, and it would run counter to the protection afforded by secret ballot elections and would interfere with the established body of NLRB law protecting employees in these circumstances. With mandatory attendance and participation, employees are not put in this position.

Third, enactment of HB 7326 would interfere with employees' rights by creating impediments to the union organizing process since the inevitable outcome would be an increase in unfair labor practice charges and lawsuits until the law is set aside as preempted.

Fourth, because HB 7326 would also prohibit the employer's "agents, representatives and designees" from engaging in any of the same conduct that is prohibited for employers, and because the definitions of "agents, representatives and designees" are unclear in certain contexts, elected politicians who speak before employees at the invitation of an employer run a risk of violating the proposed law when they express an opinion that is consistent with the employer's on whether or not the employees should join a union. They run the same risk under HB 7326 when they give opinions on political party affiliation or the decision to join or not join any lawful political, social or community group.

HB 7326, which is not neutral but seeks to limit the free speech rights of employers but not unions, appears to have its genesis in a belief that federal law does not provide a balanced approach to labor relations. Although critics of the NLRA have argued the NLRA allows employers an undue opportunity to influence employees to reject unionization, it is the job of the United States Congress and not the State of Connecticut to amend federal law. There is certainly a benefit in having a national labor relations policy. Federal law encourages collective bargaining and establishes a framework that is fair, impartial, and carefully regulated to protect the rights of employees. The federal

body of law has been thoughtfully crafted and refined over decades of case law to guarantee and protect employee rights while maintaining a careful balance in the critical areas of free speech and employee access to information.

If HB 7326 is enacted, not only would it be preempted by federal law, its anti-business message including its threat of treble damages and attorneys fees would discourage employers who have the option to relocate from moving to or staying in Connecticut.

Thank you for your consideration of our position.

For additional information, contact CHA Government Relations at (203) 294-7310.