

February 24, 2009

To Members of the Labor Committee:

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 8 of the NLRA 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) sets forth an explicitly free speech exemption for employees and employers alike, which provides 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. Following the passage of 8 (c), the NLRB in 1948, 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 pre-election 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.

With that historical context, we oppose this bill for the following reasons:

1. It is preempted by the NLRA and would be invalid if enacted.
2. It would have the unintended effect of subjecting employees to conduct currently unlawful under the NLRA, i.e. voluntarily asking employees to attend meetings. 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 would run counter to the protection afforded by secret ballot elections and established NLRB law protecting employees in these circumstances.



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3. It would interfere with employees' rights by creating impediments to the union organizing process by increasing unfair labor practice charges and lawsuits.

4. It would prohibit the employer's "agents, representatives and designees" from engaging in any of the same conduct that is prohibited for employers, and because of unclear definitions, elected politicians who speak before employees at the invitation of an employer, run the risk of violating the law when they express an opinion that is consistent with the employer's on issue of unionizing, social organizations, religion or politics.

This law is not only preempted by federal law, which 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, its anti-business message would discourage employers who have the option to relocate from moving to or staying in Connecticut.

Sincerely,

Peter J Sheehan

Peter J Sheehan
Member Manager
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