



Connecticut Business & Industry Association

**Testimony of Kia F. Murrell, CBIA
Before the Committee on Labor & Public Employees
February 24, 2009**

S.B. 365 AAC Captive Audience Meetings

I am Kia Murrell, Assistant Counsel at the Connecticut Business and Industry Association (CBIA) which represents the interests of more than 10,000 companies across the state, the vast majority of which are businesses of 50 or fewer employees.

CBIA generally supports any legislation that does not increase the costs of doing business in the state or unreasonably increase administrative burdens on employers in dealing with employment and workplace issues. Unfortunately, **S.B. 365** is a measure that would be very problematic for employers because it would present a tremendous burden on their ability to effectively communicate with their employees; therefore we **oppose** this legislation.

Captive Audience measures like **S.B. 365** effectively prohibits employers from discussing matters deemed "political" with their employees some staff meetings. The term "political" is so broadly defined that it would prohibit communications about social and community events, matters affecting government operations or government contracts, charitable campaigns and any other issue that may fall under a collective bargaining agreement.

If the term "political" is broadly construed, then almost any and every topic could fall within its purview and therefore be off limits in the workplace. If that occurs, **S.B. 365** would restrict employers from informing their employees about many issues affecting political developments at the State Capitol and elsewhere that affect jobs and the workplace, employee health and safety, government contracts, employee health benefit plans, and a vast array of other subjects. This in turn would force employees to obtain information about issues affecting their jobs and workplace elsewhere.

Also, in regulating employer-employee communications about matters that fall under a collective bargaining agreement, S.B. 365 may be pre-empted by federal law, specifically the National Labor Relations Act. Congress created the National Labor Relations act (NLRA) to encourage a healthy relationship between private-sector workers and their employers and to "insure both the employers and labor organization full freedom to express their views to employees on labor matters." *National Labor Relations Act, Section 8(c).*

The NLRA is administered by the National Labor Relations Board (NLRB) a federal agency which exercises exclusive authority over the law governing relations between unions and private sector employers. Accordingly, **states are precluded from governing any area of law covered by the NLRA.**

The Office of Legislative Research also recognized in a 2006 report:

"The National Labor Relations Act (NLRA) generally governs labor-management relations in the private sector. Regarding employer speech, section 8(c) of the NLRA states: "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 of the provisions of this act, if such expression contains no threat of reprisal or force or promise of benefit."

The NLRA does not have an express preemption provision but courts have found preemption when a state attempts to regulate (1) activities the NLRA arguably protects or prohibits, in order to prevent conflict between state regulation and Congress' integrated scheme of regulation or (2) areas left to the control of the free play of economic forces, which protects against unsettling the balance of interests set by the NLRA.

We could not find a case on this precise issue. Thus we cannot provide a definitive answer. But it appears likely that, based on the history of the NLRA and court rulings, that the NLRA would preempt the bill's provisions as they relate to labor organizing." (Office of Legislative Research Report 2006-R-0204)

Inasmuch as **S.B. 365** would restrict employers from communicating freely with their employees in mandatory staff meetings, it is pre-empted by the NLRA.

In today's global economy, businesses are under great pressure to adapt quickly to changing economic situations and competition. The ability to openly communicate with employees about matters affecting government operations, the community-at-large or other factors impacting company operations is crucial to a business' survival and competitiveness in many cases. Employers often use staff meetings to keep employees informed, so legislation that limits such communication will ultimately hurt employers and employees alike.

For the above reasons, we urge the Committee to **reject S.B. 365.**