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**State of Connecticut**

**TESTIMONY OF  
ATTORNEY GENERAL RICHARD BLUMENTHAL  
BEFORE THE JUDICIARY COMMITTEE  
MARCH 14, 2007**

I appreciate the opportunity to support House Bill 7326, An Act Concerning Captive Audience Meetings.

This proposal would protect employees from coercion by an employer to attend a meeting to discuss religious or political issues. Importantly, the legislation would not prohibit an employer from holding meetings to discuss such topics or taking other means of communicating the employer's position on these topics. It would bar an employer from forcing employee attendance at such meetings. Moreover, the legislation specifically exempts certain conversations and meetings that further legitimate employer interests.

Employees and employers must have a cooperative working relationship. Attendance at meetings is often necessary to ensure that everyone understands business issues. Topics such as religion and politics are irrelevant to that cooperative relationship.

Concerns have been raised about whether the National Labor Relations Act preempts states from passing such a law. A general exercise of state labor regulation such as contained in House Bill 7326 is constitutional and I will vigorously defend it. I have attached to my testimony, my letter to the co-chairs of the Labor and Public Employees Committee explaining my reasoning for concluding that this legislation should not be rejected on preemption grounds.

Preemption is disfavored by the courts. Every state law is presumed to be constitutional. No court nor the National Labor Relations Board has issued any definitive ruling applying current federal law to captive audience state statutes. Preemption concerns should not dissuade this committee from supporting House Bill 7326.

I urge the committee's favorable consideration of House Bill 7326 as an important employee protection.

# State of Connecticut

RICHARD BLUMENTHAL  
ATTORNEY GENERAL



Hartford

March 14, 2007

The Honorable Edith Prague  
The Honorable Kevin Ryan  
Co-chairs, Labor and Public Employees Committee  
Legislative Office Building  
Hartford, Connecticut 06106

Dear Senator Prague and Representative Ryan:

I am writing in response to your letter requesting an opinion on whether substitute House Bill 5030, An Act Concerning Captive Audience Meetings from the 2006 General Assembly session, is preempted by the National Labor Relations Act. I am aware that there is substitute language for a proposed bill, House Bill 7326 from the 2007 session, that similarly prohibits mandatory employee meetings for political or religious reasons but includes in the definition of political matters "the decision to join or not join any lawful, political, social or community group or activity or any labor organization."

Although I cannot provide you with a formal legal opinion, as Conn. Gen. Stat. § 3-125 limits formal opinions to legislative leadership, I have reviewed the case law regarding preemption of state laws by the National Labor Relations Act (NLRA). Since State laws are presumed to be constitutional, and no cases specifically preempt captive audience state laws, the General Assembly should not withhold approval of this proposed legislation because of preemption concerns.

As a starting point, the court will presume that a state law is constitutional. The Connecticut Supreme Court has stated that "in any constitutional challenge to the validity of a statutory scheme, the [statutory scheme] is presumed constitutional ... and [t]he burden is on the [party] attacking the legislative arrangement to negative every conceivable basis which might support it..." *Batte-Holmgren et al., v. Commissioner of Public Health, et al.*, 281 A.2d 277, 914 A.2d 996 (2007), quoting *State v. Long*, 268 Conn. 508, 534, 847 A.2d 862, cert. denied, 543 U.S. 969, 125 S.Ct. 424, 160 L.Ed.2d 340 (2004).

The scope of NLRA preemption is unclear because there is no express preemption language in the NLRA. Moreover, there is a general presumption that Congress did not intend to displace state law. *Building & Construction Trades Council v. Associated Builders and*

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*Contractors of Massachusetts/Rhode Island*, 507 U.S. 218 (1993). As a result, case law has evolved over time to set forth two bases for NLRA preemption of state law.

The first line of preemption was first articulated by the United States Supreme Court in the case of *Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976). Under this case law, known as the *Machinists* line of case law, states are barred from prohibiting or encouraging the use of economic weapons regarding labor relations. In the *Machinists* case, for example, the state was precluded from interfering with a union's refusal to work overtime which was intended to put economic pressure on the employer during labor negotiations.

The second basis for NLRA preemption of state law begins with the United States Supreme Court decision in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959). Under this case law, the *Garmon* line of case law, states are prohibited from regulating activity that the NLRA protects under section 7 of the NLRA or prohibits as an unfair labor practice under section 8 of the NLRA. In the *Garmon* case, the United States Supreme Court ruled that the California state court could not hold the union civilly liable for peacefully picketing in front of the employer's place of business for purposes of exerting economic pressure on the employer.

In reviewing the cases that cite NLRA preemption under the *Garmon* or *Machinists* analysis, there is no ruling by the United States Supreme Court nor Second Circuit Court of Appeals -- which is the federal appellate court for Connecticut -- on any state regulation of mandatory employer meetings. For example, among the Second Circuit Court of Appeals cases involving NLRA preemption, the court has remanded a challenge to restrictions on employer use of state funds to influence union organizing, *Healthcare Association of New York State et al. v. Pataki, et al.*, 471 F.3d 87 (2<sup>nd</sup> Cir. 2006); found a state law concerning the imposition of prevailing wages was not preempted, *Rondout Electric v. NYS Department of Labor*, 335 F.3d 162 (2<sup>nd</sup> Cir. 2003); found that employer registration of an apprentice program was preempted, *Building Trades Employer's Educational Association v. McGowan*, 311 F.3d 501 (2<sup>nd</sup> Cir. 2002); and found union refusal to register seamen convicted of narcotics violations was not preempted, *Figuroa v. National Maritime Union of America, AFL-CIO*, 342 F.2d 400 (2<sup>nd</sup> Cir. 1965).

Although this legislation pertains generally to employer meetings involving religious and political discussions, it may have some impact on the employer-employee relationship regarding labor negotiations or union organizing, because the language prohibits an employer from requiring an employee to attend a meeting on issues concerning union organizing.

The mere fact that state regulation may affect labor negotiations or union organizing does not mean it is necessarily preempted by the NLRA. Rather, a court reviewing a preemption challenge to this legislation would need to engage in an analysis under *Garmon* or *Machinists*. The statute would have to be reviewed in light of how it is applied in particular circumstances.

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As a result, this legislation is presumed to be constitutional and, if passed by the General Assembly, I will vigorously defend the law against any challenge based on federal preemption.

Very truly yours,

  
RICHARD BLUMENTHAL

RB/pas