

Judiciary Committee JOINT FAVORABLE REPORT

Bill No.: SB-440

AN ACT PROTECTING EMPLOYEE FREEDOM OF SPEECH AND

Title: CONSCIENCE.

Vote Date: 4/10/2019

Vote Action: Joint Favorable Substitute

PH Date: 3/18/2019

File No.:

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SPONSORS OF BILL:

Judiciary Committee

REASONS FOR BILL:

This bill was introduced by a cohort of 16 Democrat Senators. This bill didn't make it out of committee last year and was brought back this year. The bill serves to prohibit an employer from forcing employees to participate in meetings concerning the employers view on political or religious matters.

SUBSTITUTE LANGUAGE:

Substitute Language for this bill further defines "political matters" and "religious matters". The language also goes deeper into damages for an employee who is wrongfully discharged based on non-participation in captive audience meetings.

RESPONSE FROM ADMINISTRATION/AGENCY:

None Received.

NATURE AND SOURCES OF SUPPORT:

Senate Democrats State Senators: Martin Looney, Matt Lesser, Will Haskell, Mary Daugherty Abrams, John Fonfara, Dennis Bradley, and Marilyn Moore offered testimony on the importance of having protections in place for employees from being forced to attend employer mandated meetings regarding political views, religious views, or anti-union views. The testimony notes that it is problematic that under our current law an employer can threaten to fire employees for not attending these types of meetings. The testimony supports

exemptions for certain types of organizations, including organizations devoted to religion or political action. Senate Democrats also believe the assertion that this type of legislation would be preempted by the NLRA are wrong, the testimony offers explanation to support that position. Senate Democrats note that legislation needs to include protections for anti-union meetings.

State Senator Julie Kushner offers support of this bill and its protections for employees who are trying to unionize their workplace. Senator Kushner notes that captive audience meetings are a tool that management uses to intimidate and sometimes punish employees who are in support of unionization. Kushner states that these meetings are often billed as “informational sessions” but these meetings are fully scripted by union-busting consulting firms.

Connecticut AFL-CIO President Sal Luciano provided examples of organizations that have recently used Captive Audience meetings to discourage workers from voting for a union. Mr. Luciano also offers support of protections for workers from forced political speech. Mr. Luciano cites a study from Harvard that found that 25% of those polled had experienced some kind of political messaging from their employers. This testimony also notes that bill 440 does not impede employers from talking to their employees or calling meetings, it only prohibits employers from firing or disciplining employees who do not attend or leave the meeting.

AFL-CIO General Counsel Craig Becker provides testimony that addresses two of the objections to bill 440. The testimony addresses the First Amendment concern of this bill. Mr. Becker notes that there are no valid First Amendment concerns because of the scope of the bill. The bill does not prevent an employer from discussion about religion, politics, or union activity – it only prohibits the employer from disciplining or firing an employee for not participating. The second potential point of opposition addressed by this testimony is this bill being preempted by federal law. According to the opinion of Becker, this bill falls into several well-recognized exception to the federal law preemption. In his testimony Mr. Becker outlines case law that supports his position.

Connecticut State Council of Machinists President Tony Walter supports the protections for employees attempting to unionize a workplace offered in bill 440. The testimony provides a link to a YouTube video of a union buster talking how fear is an important aspect of a captive audience meeting.

Working Families Organization of CT, State Director Carlos Moreno notes that in 2016 the Connecticut Business and Industry Association, which made over \$550,000 in expenditures to support predominately Republican candidates, urged business owners to talk to their employees about upcoming elections. The CBIA president said “we’re not suggesting that employers tell their employees how to vote but that they inform them about what kinds of policy decisions can help their companies thrive and keep jobs in Connecticut, and which ones would have the opposite effect.” Moreno notes that this practice puts unfair pressure on employees and they need to have protections in place.

International Brotherhood of Electrical Workers Local 1228 provides testimony on captive audience meetings where employees felt uncomfortable, pressured, coerced and scared that their jobs were in jeopardy if they refused to participate. The testimony also notes that Oregon has had a captive audience law since 2009, and that their economy is booming

and their employment rate is at an all-time low. Their law has not impeded economic growth or job creation/retention.

UAW Local 2121/Foxwoods President Andrea Goodrich outlined in her testimony the Foxwood Dealers campaign to unionize and the subsequent union busting captive audience meetings that employees were subjected to.

32BJ SEIU Vice President Juan Hernandez testified that passing SB 440 will provide important protection for workers to ensure they are able to organize without fear of coercion and intimidation by their employers. Mr. Hernandez notes that there can be little argument that aggressive anti-union tactics like captive audience meetings have contributed to the decline of union membership in our country.

International Brotherhood of Electrical Workers, Daniel McInerney provided testimony that the IBEW feels that captive audience meetings are an unfair labor practice. The testimony states that the IBEW believes that employees should be allowed freedom of speech and conscience especially when it comes to trying to unionize.

New England Joint Board UNITE HERE Chief of Staff and Political Director Ethan Snow notes the particular issues of the lack of protections under current law for immigrant workers. These workers already face barriers of language and understanding of the rights of law and that stronger laws will further serve to protect our most exploited workers.

Connecticut Education Association, Director of Policy, Research, and Government Relations Ray Rossomando testified that SB 440 would prevent employers from holding mandatory meetings that include discussion about politics, religion, or unions and forcing employee participation under threat of discipline. Mr. Rossomando notes that given the more charged political climate it is important to protect employees in their workplaces.

Council 4 AFSCME Legislative Advocate Zak Leavy notes that SB 440 is a “pro middle class” bill. This bill offers protections to workers that allow them to organize for better benefits.

AFT Executive Vice President John Brady shared his first experience with captive audience meetings when his hospital was trying to unionize. Mr. Brady, a registered nurse, describes the captive audience meetings and one on one meetings during their organizing drive. Mr. Brady notes that after each of these meetings he had to debrief with his union organizer much like he would after a traumatic case in the ER and that the emotional strain was much the same.

Attorney Daniel E. Livingston of Livingston, Adler, Pulda, Meiklejohn & Kelly, PC provided testimony noting that the Supreme Court recognized “The NLRA contains no express preemption provision” Attny Livingston provides substantial legal support for this opinion and other legal opinions he offers stating that SB 440 is not in opposition to the First Amendment or NLRA. Attny Livingston opines that this type of law is exactly the responsibility of state government in our federal system and is in no way precluded by federal labor law.

Connecticut Health Care Associates Oncology Unit Coordinator Jessica Ellul shared her story of trying to form a union with coworkers in 2014 to gain a voice to have a say in their

working conditions and to improve patient care. Ms. Ellul testifies that what she assumed would be an empowering, uplifting, and collaborative experience quickly spiraled into aggressive attacks from management and a union busting firm that they hired. Ms. Ellul outlined the actions of management and the union busting consultants.

Columbia University Assistant Professor of International and Public Affairs Alexander Hertel-Fernandez testified to her research over the last five years in political engagement in the workplace. Mr. Hertel-Fernandez notes that current laws offer weak protections. The testimony also shares that the United States stands largely alone amongst advanced democracies in the lack of protections based on political views and that our current laws leave Americans vulnerable to political pressure at work.

Manchester Memorial Hospital Local 5121 Chief Steward Glen Maloney testified that he believes in free speech, but feels strongly that employees shouldn't have to fear retribution from employers from not participating in meetings about politics, religion, or workplace organizing.

United Food and Commercial Workers Union Local 371 Union Representative Kerri Hoehne testified to her experience with trying to organize in her workplace and the difficulty caused by captive audience meetings.

Local 217 Unite Here Sheraton Stamford Joe Hutchinson testified to his personal story of trying to organize in his work place and being subjected to four weeks of captive audience meetings with the union busting firm Lupe Cruz and Assoc. Mr. Hutchinson refers to the meetings as "dehumanizing". He outlines some of the tactics used to divide employees and bust the union efforts.

United Food and Commercial Workers Union Local 371 Executive Assistant to the President Keri Hoehne notes that according to a poll conducted in 2017 by MIT 48% of workers would vote to join a union if given the opportunity. Ms. Hoehne also shares several stories of CT businesses whose employees have been affected by captive audience intimidation.

Apple Rehab Extended Care Certified Nurses Aide Kelly Kraft shares her experience trying to help the nurses join the union at work. Ms. Kraft outlines the intimidation and harassment in captive audience meetings. Ms. Kraft notes that the ability to hold captive audience meetings makes for an uneven playing field.

Mary Cansoli, RN, BSN - Danbury CT notes in her testimony that prior to her retirement she was President of the Danbury Nurses Union Unit #47 Local 5047 for 17 years. During Ms. Cansoli's tenure she helped in an organizing drive where she saw employees forced to attend captive audience meetings. Ms. Cansoli notes that SB 440 would allow employees the right to not participate in meetings that are anti-union, political, or religious.

NATURE AND SOURCES OF OPPOSITION:

Connecticut Airport Authority Executive Director Kevin A. Dillon testified that the CAA opposes the bill because it infringes on management rights. Mr. Dillon notes that CAA has no interest in making employees attend these types of meetings, but they do not believe legislation should dictate how employers interact with employees.

Connecticut Hospital Association testifies that their position is that SB 440 is in opposition to the National Labor Relations Act. The CHA also posits that SB 440 would actually impede employees from being able to unionize by identifying themselves when choosing to participate or not in meetings.

National Federation of Independent Business forwards that the bill, as currently written, would restrict free speech for small employers and would inhibit their ability to discuss politics with their employees. NFIB also believes that this measure is preempted by the National Labor Relations Act. NFIB also expresses that the proposed legislation might adversely affect small business that discuss politics or religion with vendors.

Connecticut Catholic Public Affairs Conference testifies that SB 440 would adversely affect employers with religious missions. The CCPAC urges the committee to revise the bill to include religious employer exemptions.

Yankee Institute for Public Policy, Policy and Research Director Scott Shepard testified that it is the YIPP position that SB 440 likely violates the first amendment and is preempted by the National Labor Relations Act. Shepard states that employer speech that does not threaten employees is protected by the First Amendment.

Independent Electrical Contractors of New England Executive Director Cheryl Dudas offered that under SB 440 needless restrictions would be placed on employee/employer discussions. IEC-NE members are concerned that this would impair their ability to have discussions that pertain to job training with those in the Apprentice Job Training Program.

Connecticut Business and Industry Association Counsel Louise Dicocco noted that it has been CBIA's position on each version of the Captive Audience bills that have come through the Judiciary and Labor Committees that the bills are preempted by the NLRA. It is the position of CBIA that the bill is further problematic because it interferes with the employer/employee relationship.

Connecticut Heating and Cooling Contractors Association Executive Director Jennifer Jennings and President Joe DeFusco opines that SB 440 is unnecessary, overly broad, and would unreasonably restrict employers' ability to disseminate important information to its employees. The CHCCA recommends that the legislature focus on measures that would help reduce cost and allow for CT to be more competitive and provide job opportunities and learning experiences.

