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GUEST COLUMN

# CalChamber's federal challenge to SB 399 'captive audience' meetings law

## California's new "Worker Freedom and Employer Intimidation Act," SB 399, banning mandatory workplace meetings on political, relgious, or union matters, faces a constitutional challenge from business groups, sparking a legal battle that could redefine workplace speech and labor law boundaries.

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On Dec. 31, 2024, the California Chamber of Commerce and California Restaurant Association filed a lawsuit challenging Senate Bill 399, California's new law banning employer "captive audience" meetings on political, religious, or union matters. The law, which took effect on Jan. 1, 2025, has drawn both praise and criticism. Supporters argue that it protects workers from coercion, while California business groups contend it infringes on First Amendment rights and conflicts with federal labor laws.

The lawsuit marks the start of a high-stakes legal battle that could reshape workplace speech and regulation in California.

SB 399, known as the "California Worker Freedom from Employer Intimidation Act" and codified as Chapter 9 (starting with Section 1137) of Part 3, Division 2 of the California Labor Code, prohibits employers from taking action against employees who decline to attend meetings where the company shares its opinions on political or religious matters. Employers must also pay employees who opt out of these meetings as if they had attended, with violations carrying penalties of $500 per infraction.

For additional context on SB 399's enactment, see this earlier Daily Journal column: "*SB 399: New ban on employer captive audience meetings*," by Cameron Stewart, Jan. 2, 2025.

The federal lawsuit, filed in the Eastern District of California, names several state officials and agencies as defendants, namely Attorney General Robert Bonta, Labor Commissioner Lilia Garcia-Brower, and the Division of Labor Standards Enforcement.

The California Chamber of Commerce and the California Restaurant Association argue that SB 399 is unconstitutional and preempted by the National Labor Relations Act (NLRA), which comprehensively regulates labor relations and protects employers' rights to express views on unionization.

The plaintiffs argue that the law restricts employers' ability to hold mandatory meetings to communicate with employees on key topics, including unionization. They claim SB 399 imposes content-based and viewpoint-based restrictions on employer speech, penalizing them for expressing opinions on public matters–speech they argue is protected under the First and Fourteenth Amendments.

They further contend that the law deprives employees of access to critical information necessary to make informed decisions about unionization and other workplace issues.

The plaintiffs also allege that SB 399 is overbroad, vague, and discriminatory, making it impossible to pass the strict scrutiny standard required for laws affecting constitutional rights. They assert that the law conflicts with Section 8(c) of the NLRA, which explicitly protects employers' rights to express opinions on labor issues without fear of reprisal.

The plaintiffs seek declaratory and injunctive relief, asking the courts to block SB 399's enforcement, as well as attorney fees.

Supporters of SB 399, however, argue that the law is entirely lawful. Above all, they emphasize that SB 399 does not restrict employer speech. Instead, they say employ-

ers remain free to voice opinions on political or union matters so long as employees have the choice to opt out without penalty.

They contend that the bill regulates conduct, not speech, by prohibiting employers from penalizing employees who decline to listen to an employer's opinion on religious or political matters unrelated to the employees' job duties. Advocates say this type of regulation is permissible under the First Amendment.

Proponents also note that California is now the 10th state to enact such protections, joining a broader national movement to address workplace speech and organizing rights.

Still, similar laws have faced legal challenges in other states. Wisconsin enacted one of the first bans on captive audience meetings in 2009, but businesses sued the following year, arguing the law conflicted with federal labor regulations. Wisconsin ultimately agreed not to enforce the law.

In contrast, a legal challenge to a similar law in Oregon was dismissed.

California, in defending SB 399, is expected to argue that the law is a legitimate exercise of its authority to protect workers from coercion. The state is likely to emphasize that the law is narrowly tailored to ensure participation in politically or religiously charged discussions remains voluntary, avoiding any infringement on employers' First Amendment rights.

Additionally, the state may contend that the law complements, rather than conflicts with, federal labor laws and is not preempted by the NLRA. The state will likely contend that federal labor law does not prevent states from enacting laws that protect workers' right to opt out of employer communications on religious or political matters.

The outcome of the lawsuit may turn on whether the law strikes a permissible balance between protecting workers' rights to opt out of employer communications and preserving employers' ability to express their opinions freely.

While still in its early stages, the case could significantly impact employer-employee relations in California and beyond. If SB 399 is upheld, it will reshape how employers communicate with employees on sensitive topics, reducing the use of mandatory meetings as a communication tool. At the same time, this shift may also create gaps in workplace communication, particularly for organizations that rely on such forums to share critical updates. Conversely, if the law is struck down, it would reaffirm employers' speech rights and potentially deter the adoption of similar legislation in other states.

For now, while litigation is pending, employers subject to the "California Worker Freedom from Employer Intimidation Act" should carefully evaluate whether requiring attendance at workplace meetings aligns with their best interests.

To reduce legal risks, employers may consider making participation in meetings on political, religious, or union-related topics strictly voluntary. Additionally, employers should review and, if needed, update their workplace communication policies to ensure compliance with the new law and avoid potential penalties.

Seeking legal counsel to navigate these requirements and minimize liability is strongly advised.

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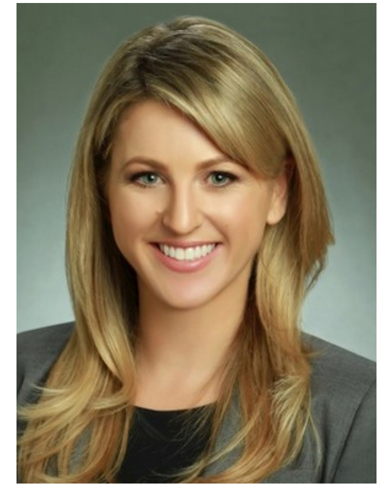

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