WORKER FREEDOM (ANTI-CAPTIVE AUDIENCE) LEGISLATION

Two states, Oregon and Connecticut, have enacted laws that prevent employers from forcing their employees to attend meetings or otherwise listen to speech about politics and religion. These laws define political speech to include speech about joining a union or voting for union representation.

The Oregon statute provides:

> An employer . . . may not discharge, discipline or otherwise penalize or threaten to discharge, discipline or otherwise penalize or take any adverse employment action against an employee: (a) Because the employee declines to attend or participate in an employer-sponsored meeting or communication with the employer . . . if the primary purpose of the meeting or communication is to communicate the opinion of the employer about religious or political matters; (b) As a means of requiring an employee to attend a meeting or participate in communications described in paragraph (a) . . . ; or (c) Because the employee ... makes a good faith report, orally or in writing, of a violation or suspected violation of this section. ORS 659.785(1).

The law defines "political matters" to include " activity related to political party affiliation, campaigns for measures, . . . or candidates for political office and the decision to join, not join, support or not support any lawful political or constituent group. "the decision to join, not join, support or not support any lawful political or constituent group," and defines "constituent group" to include, but not be limited to, "civic associations, community groups, social clubs and mutual benefit alliances, including labor organizations," ORS 659.780(1).

The Connecticut statute provides:

> Any employer . . . who subjects any employee to discipline or discharge on account of . . . (2) such employee's refusal to (A) attend an employer-sponsored meeting with the employer or its agent, representative or designee, the primary purpose of which is to communicate the employer's opinion concerning religious or political matters, or (B) listen to speech or view communications, the primary purpose of which is to communicate the employer's opinion concerning religious or political matters, shall be liable to such employee for damages caused by such discipline or discharge,

including punitive damages, and for reasonable attorney's fees. Conn. Gen. Stat. § 31-51q(b)(2).

The law defines "political matters" as "matters relating to elections for political office, political parties, proposals to change legislation, proposals to change regulation and the decision to join or support any political party or political, civic, community, fraternal or labor organization." Conn. Gen. Stat. § 31-51q(a)(1).

Importantly, the laws in no way restrict employer speech. The laws simply give employees a right not to listen to the speech. Employers can continue to speak on any subject so long as they do not compel employees to listen. The laws regulate captive audiences, not speech.

Of equal importance, the laws broadly protect the freedom of conscience of employees. The laws do not attempt to regulate labor relations by barring captive audience meetings before union elections. Rather, the laws prevent employees from coercing employees to listen to speech about core matters of individual conscience – politics and religion. A legislative record demonstrating the broad intent of the bills and identifying instances where employers have forced employees to listen to speech about candidates for office or religion will be helpful in defending the laws.

Both the existing laws have been challenged in federal courts on the grounds that they infringe on employers' first amendment rights and are preempted by federal labor law. The challenge to the recently adopted Connecticut law remains pending[1] while courts dismissed two challenges to the Oregon law without reaching the merits.[2]

Any such legislation is likely to be challenged in court, but strong argument exist that the laws do not infringe on first amendment rights because they only protect captive audiences and that the laws are not preempted by federal labor law because they establish minimum conditions of employment no differently, for example, than laws limiting the number of hours employees can be required to work.

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[1] *Chamber of Commerce of the United States of America v. Bartolomeo*, No. 3:22-cv-1373 (D.Conn.).

[2] *Associated Oregon Industries v. Avakian*, 2010 WL 1838661 (D.Or. 2010); *NLRB v. Oregon*, No. 6:20-cv-00203 (D.Or.). The latter case was dismissed on standing grounds and appealed to the Ninth Circuit but appeal was withdrawn after President Biden appointed a new General Counsel for the NLRB .