
CalChamber
NFIB
SWCLC Southwest California Legislative Council
California Retailers Association
Consumers Economy Jobs
California Business Properties Association
ACHD
Association of California Healthcare Districts
BAYAREA COUNCIL
cga
California Grocers Association
California Food Producers
Housing Contractors of California
CELC
California Employment Law Council
Western Growers
Fresh produce from our families to yours
CMTA
California Manufacturers & Technology Association
California Restaurant Association
California Farm Bureau.
Standing up for all farmers and ranchers
Agricultural Council of California
California Bankers Association
California Credit Union League
California State Council of SHRM
California Hospital Association
Family Business Association of California
Greater San Fernando Valley Chamber of Commerce
Fontana Chamber of Commerce
California Trucking Association
We drive for a living. Safety is our priority.
California Business Roundtable
California Apartment Association
Greater High Desert Chamber of Commerce
Adelanto • Apple Valley • Hesperia • Victorville
Coalition of California Chambers Orange County
California CBBD Beer & Beverage Distributors
South County Chambers of Commerce
The Associated General Contractors San Diego Chapter
California Attractions and Parks Association
CAPA
LIA
AED
Associated Equipment Distributors
Santa Clarita Valley Chamber of Commerce
Flasher Barricade Assn.
Independent Lodging Industry Association
IWLA
The Resource for Warehouse Logistics
PHCC of California
PHCC
Plumbing-Heating-Cooling Contractors Association
Best People. Best Practices.
Western Electrical Contractors Association Inc.
WECA
A Chapter of Independent Electrical Contractors Inc.
CAL SMACNA
TORRANCE
Area Chamber of Commerce
Coalition of Small & Disabled Veteran Businesses
YORBA LINDA
Chamber of Commerce
Where Business Happens
Palos Verdes Peninsula Chamber of Commerce
Vista Chamber of Commerce
AIMS
Acclamation Insurance Management Services
CAHSAH
Shaping the Future of Home Care
BREA CHAMBER
Catalyst. Convener. Champion.
Tulare Chamber of Commerce
Roseville Area Chamber of Commerce
Allied Managed Care Incorporated
Los Angeles OPG
Official Garage Unit
California Hotel & Lodging Association
LCF
Construction Employers' Association
CEA
California Landscape Contractors Association
CHINO VALLEY
Chamber of Commerce
Fresno Chamber of Commerce
California Association of Winegrape Growers
Associated General Contractors California
Glendora Chamber of Commerce
Est. 1903
Pride of the Foothills
CARLSBAD
Chamber of Commerce
Oceanside
Chamber of Commerce
Advancing Oceanside
FOLSOM
Chamber
Connecting Business & Community
Corona Chamber of Commerce
HOLLYWOOD
Chamber of Commerce
San Juan Capistrano Chamber of Commerce
VACAVILLE
Chamber of Commerce
UCAN
united chamber advocacy network
Laguna Niguel Chamber of Commerce
We mean business
paso robles
Chamber of Commerce
Templeton
Est. 1990
Chamber of Commerce
GILROY
Chamber of Commerce
& Economic Development
Elk Grove Chamber of Commerce
LODI
100
Celebration Chamber
SVLG
CAC
California Association of Collectors, Inc.
Est. 1917
SRBX
Sacramento Regional Builders Exchange
Rancho Cordova
Chamber of Commerce
El Dorado Hills Chamber of Commerce
California Builders Alliance
Yuba-Sutter Chamber of Commerce
Simi Valley Chamber
The Heartbeat of Business
Family Winemakers of California
Lincoln
Area Chamber of Commerce
El Dorado County Chamber of Commerce
Shingle Springs Cameron Park
Chamber of Commerce
Connecting with the Community
Santee
Chamber of Commerce
Rocklin
Area Chamber of Commerce

JOB KILLER

August 31, 2024

The Honorable Gavin Newsom
Governor, State of California
1021 O Street, Suite 9000
Sacramento, CA 95814

SUBJECT: SB 399 (WAHAB) EMPLOYER COMMUNICATION: INTIMIDATION
REQUEST FOR VETO

Dear Governor Newsom:

The California Chamber of Commerce and the organizations listed respectfully urge you to **VETO SB 399 (Wahab)**, which has been labeled a **JOB KILLER**. **SB 399**'s overbroad provisions and narrow exemptions effectively prohibit *any* discussion or communications regarding political matters by an employer and expose companies of all sizes to liability for hosting or supporting political events. Its broad scope is why Democratic Governor Jared Polis of Colorado vetoed a nearly identical bill in May 2024, noting that the overbroad language of the law would put employers in the "impossible position" of determining whether any speech could be deemed "political," and the exemptions were so narrow that they were "unworkable."

California already has strong laws in is Labor Code that protect workers from coercion relating to political beliefs or activities and the National Labor Relations Act (NLRA) provides workers with strong protections surrounding their right to organize. **SB 399** is therefore unnecessary, and its unintended consequences outweigh any perceived benefit. **Because of the significant liability risk presented by SB 399**, **our members have expressed hesitancy to host fundraisers, invite elected officials or candidates to their locations, or support legislation if SB 399 is signed.**

Finally, the bill also runs afoul of the First Amendment and is preempted by the NLRA. Similar legislation is being challenged in other states and Wisconsin's Attorney General *agreed* in the Wisconsin lawsuit that provisions were preempted by the NLRA.

SB 399 Will Effectively Have a Chilling Effect on Any Speech Related to Political Matters

SB 399 effectively prohibits discussions regarding political matters in the workplace. Specifically, it prevents employers from requiring employees to attend "an employer-sponsored meeting" or "participate in, receive, or listen to any communications with the employer" where the purpose is to communicate the employer's opinion "about" political matters.

SB 399 will effectively chill any communications by an employer about political matters. There is no clarity in the bill about what qualifies as an "employer-sponsored" meeting or participating in, receiving, or listening to any communications with the employer, which will cause employers to overcorrect and likely not speak on these matters at all. If an employee drives up to work every day and passes a political sign that the employer has out front to support a local candidate, is this a communication? Can they request it to be taken down? If the employer does not do so or tries to assign the worker to a different facility so they do not pass the sign, would that be retaliation? What if the employer is hosting a political event and an employee refuses to work at the event? If the employer does not schedule them next time there is a similar event, can the employee try to claim an adverse action based on reduced hours? If an employer sends out communications saying they are supporting a legislative proposal and some

employees request to opt out of those communications because they dislike the legislation, how would the employer ensure that employee never again saw any communication on that issue? Recent amendments also *expanded* the bill by removing the exception for managerial or supervisory employees.

Further, **SB 399** will lead to significant consequences. Under **SB 399**, employers could not stop an employee from refusing to participate in meetings or communications regarding pending legislation or regulations or new laws that do not specifically contain a training requirement. As we saw during the COVID-19 pandemic, it is often crucial that employers be able to communicate with their workers on pending new rules and what it would mean for the workplace. Similarly, if there is legislation pending that would have either a positive impact or detrimental impact on the business or workers' job security, this is something workers would want to know about. This bill will chill that speech and is sure to make companies fearful of weighing in support of or opposition to legislation, candidates, ballot measures, and more.

SB 399 also puts employers in a difficult place regarding restricting individual employees' speech. Under the NLRA, for example, the employer cannot stop an employee from discussing the merits of unionization or from talking to coworkers about how they support a candidate that wants to increase minimum wage. How can an employer simultaneously allow that speech while also ensuring that they are not violating **SB 399**?

The exceptions in the bill are also vague. A "political organization" is undefined, meaning its applicability will be tested through litigation. Similarly, allowing the employer to communicate to employees information "necessary for those employees to perform their job duties" is also sure to be tested through litigation regarding what is "necessary".

A nearly identical Colorado bill was vetoed this May because of many of these same concerns regarding unintended consequences and putting employers "in the impossible position of determining when any form of speech or communication is legally protected political or religious speech."[1]

Because **SB 399** creates a new section of the Labor Code, any good faith error in interpreting the bill or its exceptions creates liability under a private right of action that includes penalties, punitive damages, and attorney's fees, as well as under the Private Attorneys General Act (PAGA). **SB 399** creates an enticing new cause of action for lawyers to manipulate for financial gain.

Existing California and Federal Laws Already Provide Employee Protections

Proponents' examples of the need for **SB 399** include scenarios that are already illegal under current law. California and federal law already protect against employer coercion related to political matters. For example, the NLRA prohibits employers from making any threats to employees, interfering with or restraining exercise of their rights, coercing employees, or promising benefits to employees for voting a certain way in a union election. *See, e.g.*, NLRA Sections 8(a)(1); 29 U.S.C. §§ 158(a)(1), (c). An employer who is making their workers sit in meetings for days on end to intimidate them against unionizing is already acting illegally.

Regarding political matters, Labor Code Sections 1101 and 1102 protect employees who engage in political activities and prohibit employers from attempting to coerce or influence employees' political activities. Those sections also prohibit an employer from establishing or enforcing rules that prevent employees from participating in politics or that control or tend to control employees' political affiliations. Further, pursuant to Labor Code Section 96(k), an employer also cannot discipline or terminate an

[1] *See* Veto message of House Bill 24-1260, which is attached.

employee for participating in lawful conduct outside of the workplace. **Therefore, any employer who is coercing an employee to vote a certain way, attend a political rally, support or oppose certain legislation, or to vote for or against a union is already breaking the law**.

SB 399 Violates the First Amendment

SB 399 violates the First Amendment. **SB 399** is a content-based restriction on speech. For example, an employer could require its employees to listen to communications about its opinion on a local sports team but not about pending legislation. Content-based restrictions on speech are presumptively unconstitutional. The government must show 1) a compelling interest and 2) that the proposal is the least restrictive means of accomplishing that interest. This is a difficult test to meet. *See Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

Even if California could show a compelling interest, **SB 399** is not the most restrictive means of effectuating that interest, as shown by existing laws that already protect employee political activity as described above. **SB 399's** broad sweep is also problematic here. By covering anything "about" politics or religion, it would prohibit entirely innocuous speech. *ACLU of Nevada v. Heller*, 378 F.3d 979, 981 (9th Cir. 2004). The definition of political matters is also extremely broad. In *Minnesota Voters Alliance v. Mansky*, 138 S. Ct. 1876 (2018), the U.S. Supreme Court ruled a Minnesota law prohibiting people from wearing "political insignia" at polling places was unconstitutional because the definition of political was "unmoored." The Court was particularly troubled that insignia reading only the word "Vote!" would violate the law. The same ambiguity exists here.

SB 399 also effectively prohibits employers from providing a forum for discussion, debate and expressing their opinions regarding matters of public concern, which is protected under the First Amendment. That holds true whether the speaker is an individual or a corporation. *First Nat. Bank of Boston v. Belloti*, 435 U.S. 765 (1978).

Further, it is clear that the motive behind **SB 399**'s prohibition on employers discussing their opinions about unionization or pending bills is the assumption that employers will talk to their employees about the downsides of unionization and union-sponsored efforts, which the proponents of this bill disagree with. That is clear viewpoint-based discrimination, which also runs afoul of the First Amendment.

Finally, proponents claim there is a First Amendment right not to listen to speech. Some limitations may apply to unique circumstances, but there is no general First Amendment right not to listen to speech one doesn't like. *See Berger v. City of Seattle*, 569 F.3d 1029, 1053-55 (9th Cir. 2009) (discussing cases). Employees are already protected by law against coercion, discrimination, retaliation, and hostile environment harassment. Within those boundaries, employers have the same First Amendment right as any person, natural or corporate, to state their views.

SB 399's Prohibition Against Employers Speaking About Unionization is Preempted by the NLRA

SB 399 forbids employers from requiring employees to attend "an employer-sponsored meeting" or "participate in any communications with the employer" where the purpose is to communicate the employer's opinion about the decision to join or support a labor organization.

That provision is preempted by the NLRA. The NLRA comprehensively regulates labor matters in the United States. *See, e.g.*, *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 241 (1959); *Lodge 76, Int'l Ass'n of Machinists v. Wis. Emp. Rels. Comm'n* ("Machinists"), 427 U.S. 132, 144 (1976). State law is preempted by the NLRA where it interferes with the NLRB's interpretation and enforcement of the NLRA,

regulates activity that the NLRA protects, prohibits, or arguably protects or prohibits, or regulates conduct that Congress intended to be left to the "free play of economic forces". *Id*.

Employers have the right to express their views and opinions regarding labor organizations. NLRA Section 8(c) following the enactment of that section, the NLRB stated that Congress had intended for both employers and unions to be free to influence employees as long as the speech is noncoercive. The United States Supreme Court also held that Section 8(c) of the NLRA has been interpreted as implementing the First Amendment for employers and as congressional intent to encourage free debate on issues between labor and management, rebuking the position that employer meetings on this topic should be banned as inherently coercive. *Chamber of Commerce v. Brown*, 554 U.S. 60 (2008); *See also Healthcare Ass'n of New York State, Inc. v. Pataki*, 471 F.3d 87, 98 (2d Cir. 2006). (Section 8(c) "not only protects constitutional speech rights, but also serves a labor law function of allowing employers to present an alternative view and information that a union would not present.") The Court also interpreted Section 8(c) as precluding the regulation of speech about organizing as long as the speech does not violate other provisions of the NLRA, such as containing threats or promising benefits for voting or not voting for the union. *Brown*, 554 U.S. at 68. It characterized the NLRA as a whole as favoring robust, uninhibited debate in labor disputes. *Id*.

Based on the above, it is evident that the NLRA protects the employer's right to require employee attendance in meetings or participation in communications regarding its opinion on union organizing. Further, Section 8(c) was intended to create the "free play of economic forces" by encouraging debate on the issue of unionization. **SB 399**'s prohibition on employers' rights and interference with free debate over the issue of labor organizing means it is clearly preempted by the NLRA.

Similar laws have been enacted four times in other states. One was struck down, one was repealed because the state *agreed* that the provision was preempted by the NLRA, one lawsuit was dismissed solely based on a ripeness issue, and the fourth is presently in litigation.

In striking down a Milwaukee ordinance containing a similar provision, the Seventh Circuit stated:

> [T]he ordinance [requires] that "no employee, individually or in a group, shall be required to attend a meeting or event that is intended to influence his or her decision in selecting or not selecting a bargaining representative." § 31.02(f)(7). **Federal labor law allows employers to require their employees to attend meetings, on the employer's premises and during working time, in which the employer expresses his opposition to unionization**. *Beverly California Corp. v. NLRB*, 227 F.3d 817, 846 (7th Cir. 2000); *Livingston Shirt Corp.*, 107 N.L.R.B. 400, 406 (1953) . . . . the employer could never require any of its employees to attend a meeting at which it expressed opposition to unionization. This would give the union a leg up to organize the company's entire workforce even if the vast majority of the employees' time was devoted to the employer's private contracts. That is the kind of favoritism that the National Labor Relations Act anathematizes.

Metropolitan Milwaukee Ass'n of Commerce v. Milwaukee County, 431 F.3d 277, 280 (7th Cir. 2005) (emphasis added).

When Wisconsin passed a similar statute in 2009, it was also challenged on preemption grounds. Notably, **the state agreed that the law was preempted by the NLRA** and signed a joint stipulation with the plaintiff requesting the court to enter a judgment to that effect. *See* Stipulation, *Metropolitan Milwaukee Ass'n of Commerce et al. v. Doyle et al.*, No. 2:10-cv-00760 (E.D. Wi. Nov. 4, 2010).

Oregon's law was also challenged, but the court never reached the merits of the case because it was dismissed on ripeness grounds. Connecticut and Minnesota's laws are currently in litigation. **A prior version of the Connecticut law failed because Connecticut's then Attorney General issued an opinion that the bill was likely preempted by the NLRA.** *See* Preemption of House Bill 5473, 2018 WL 2215260 (Conn. A.G. Apr. 26, 2018).

For these and other reasons, we respectfully **REQUEST** your **VETO** of **SB 399** as a **JOB KILLER**.

Sincerely,

Ashley Hoffman
Senior Policy Advocate
California Chamber of Commerce

Acclamation Insurance Management Services (AIMS)
Agricultural Council of California
Allied Managed Care (AMC)
Associated Equipment Distributors
Associated General Contractors of California
Associated General Contractors San Diego
Association of California Healthcare Districts (ACHD)
Bay Area Council
Brea Chamber of Commerce
California Apartment Association
California Association for Health Services at Home
California Association of Collectors CAC
California Association of Sheet Metal and Air Conditioning Contractors National Association
California Association of Winegrape Growers
California Attractions and Parks Association
California Bankers Association
California Beer and Beverage Distributor
California Business Properties Association (CBPA)
California Business Roundtable
California Chamber of Commerce
California Credit Union League
California Employment Law Council
California Farm Bureau
California Fuels and Convenience Alliance
California Grocers Association
California Hospital Association
California Hotel & Lodging Association
California Landscape Contractors Association
California League of Food Producers
California Lodging Industry Association
California Manufactures & Technology Association (CMTA)
California Restaurant Association
California Retailers Association
California State Council of the Society for Human Resource Management

California Trucking Association
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Coalition of California Chambers – Orange County
Coalition of Small and Disabled Veteran Businesses
Construction Employers' Association
Corona Chamber of Commerce
Danville Area Chamber of Commerce
El Dorado County Chamber of Commerce, Laurel Brent-Bumb
El Dorado Hills Chamber of Commerce
El Dorado County Chamber of Commerce, Laurel Brent-Bumb
El Dorado Hills Chamber of Commerce
Family Business Association of California
Family Winemakers of California
Flasher Barricade Association (FBA)
Folsom Chamber of Commerce
Fontana Chamber of Commerce
Fresno Chamber of Commerce
Gilroy Chamber of Commerce
Glendora Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Hollywood Chamber of Commerce
Housing Contractors of California
Independent Lodging Industry Association
Inland Empire Chamber Alliance
International Warehouse Logistics Association (IWLA)
La Cañada Flintridge Chamber of Commerce
Laguna Niguel Chamber of Commerce
Lincoln Area Chamber of Commerce
Lodi District Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
National Federation for Independent Business (NFIB)
Oceanside Chamber of Commerce
Official Police Garages Association of Los Angeles
Pacific Association of Building Service Contractors (PABSCO)
Palos Verdes Peninsula Chamber of Commerce
Paso Robles Chamber of Commerce
Plumbing-Heating-Cooling Contractors Association of California (CAPHCC)
Rancho Cordova Chamber of Commerce
Rocklin Chamber of Commerce
Roseville Area Chamber of Commerce
San Juan Capistrano Chamber of Commerce
San Ramon Chamber of Commerce
Santa Ana Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santee Chamber of Commerce
Shingle Springs/Cameron Park Chamber of Commerce
Silicon Valley Leadership Group
Simi Valley Chamber of Commerce

South County Chambers of Commerce
Southwest California Legislative Council
Templeton Chamber of Commerce
Torrance Area Chamber of Commerce
Tri County Chamber Alliance
Tulare Chamber of Commerce
United Chamber Advocacy Network
Vacaville Chamber of Commerce
Vista Chamber of Commerce
Western Electrical Contractors Association (WECA)
Western Growers Association
Yorba Linda Chamber of Commerce
Yuba-Sutter Chamber of Commerce