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April 23, 2026

The Honorable Wes Moore
Governor of Maryland
State House, 100 State Circle
Annapolis, Maryland 21401

***RE: Senate Bill 417, "Labor and Employment – Mandatory Meetings on Religious or Political Matters – Employee Attendance and Participation (Maryland Worker Freedom Act)"***

Dear Governor Moore,

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 417, entitled "Labor and Employment – Mandatory Meetings on Religious or Political Matters – Employee Attendance and Participation (Maryland Worker Freedom Act)." Although it is our view that this bill is not clearly unconstitutional, we write to discuss potential constitutional issues under the First Amendment and the federal National Labor Relations Act ("NLRA").[1]

Senate Bill 417 prohibits employers and their agents from discharging, disciplining, or otherwise penalizing an employee or refusing to hire an applicant for employment because the employee or applicant declines to attend, participate in, or listen to communications in an employer-sponsored meeting regarding the employer's opinion on religious or political matters, as defined by the bill, and subject to certain exceptions. The bill expressly does not prohibit an employer from conducting a meeting that involves religious or political matters if employee attendance and participation are voluntary. The Commissioner of Labor and Industry is authorized to enforce the bill.

[1] We apply a "not clearly unconstitutional" standard of review for the bill review process. 71 *Opinions of the Attorney General* 266, 272 n.11 (1986).

***First Amendment***

It is possible that a court might find that Senate Bill 417 violates the free speech clause of the First Amendment to the U.S. Constitution as applied through the Fourteenth Amendment, and similar protections under Article 40 of the Maryland Declaration of Rights. The main First Amendment question is whether Senate Bill 417 regulates employer *conduct* or employer *speech*. The First Amendment does not prevent restrictions of nonexpressive conduct, even if the restriction incidentally burdens expressive activity. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011).

To determine whether the First Amendment applies to a conduct regulation, a court will ask whether the challenged conduct contains a "significant expressive element" that triggered the legal consequence, or if the challenged law has the effect of "singling out those engaged in expressive activity." *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 685 (9th Cir. 2019) (internal citations omitted). If not, the law regulates conduct, not speech, and is not subject to heightened scrutiny. Senate Bill 417 is arguably a permissible conduct, not speech, regulation, since the bill allows employers to engage in whatever political or religious speech they want, limiting only the separate aspect of when employers may take certain disciplinary actions. Furthermore, the United States Supreme Court has recognized that the government may protect an unwilling listener's privacy interest. *See Hill v. Colorado*, 530 U.S. 703, 716-18 (2000). But, so far, courts have not extended this "captive audience" doctrine to mandatory employer meetings.[2] If a court views the bill as regulating only conduct, it is likely to survive a First Amendment challenge.

A reviewing court might, however, focus on the bill's connection to employers' expressive activity on certain subjects, and decide First Amendment scrutiny applies. If a court determines that Senate Bill 417 regulates speech, then the bill presents a more serious risk of being found to violate the First Amendment. Last year, a federal district court in California held that a similar employer meeting law regulated speech because the law had "the inevitable effect of being directed toward employers who chose to engage in core expressive activity — sharing their opinions on religious and political matters." *California Chamber of Com. v. Bonta*, 802 F. Supp. 3d 1227, 1242, 1256 (E.D. Cal. 2025). The court then determined that the law was content based, meaning the restriction applied based on the content of what is discussed, and that it failed strict scrutiny. Although other states have also passed similar laws that have been challenged in court, the California district court is the only court so far to address the merits of the First Amendment challenge to such a law.[3] Ultimately, the California district court's opinion is at most persuasive authority and is itself pending appeal in the Ninth Circuit.

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[2] *See, e.g.*, *Honeyfund.com Inc. v. Governor*, 94 F.4th 1272, 1282 n.5 (11th Cir. 2024) (rejecting the argument that a state law that prohibited mandatory employee training endorsing certain viewpoints was justified under a captive audience theory).

[3] *See Chamber of Com. of the United States of Am. v. Bartolomeo*, No. 3:22-CV-1373 (KAD), 2026 WL 412515, at *8 n.12 (D. Conn. Feb. 13, 2026) (referring to the district court's opinion in *California Chamber of Commerce* as "thorough and well-reasoned").

Still, if a reviewing court concludes that SB 417 regulates speech, not conduct, it is likely that it would similarly conclude the bill is content based since it does not allow employers engaging in political or religious speech to take certain personnel actions that they are otherwise permitted to do if speaking on different matters. Content-based laws are presumptively unconstitutional unless narrowly tailored to serve a compelling state interest. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). "[A] speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter." *Id.* at 169. A court would closely examine the legislative record under strict scrutiny. To justify burdens on core protected speech, a state must demonstrate the scope of the intrusion is justified by "the facts on the ground," or direct evidence. *Washington Post v. McManus*, 944 F.3d 506, 521 (4th Cir. 2019).

Accordingly, although the bill presents a risk of being found to violate the First Amendment, there is no binding case law on this exact issue, and it is not clear that a court would determine that the bill regulates speech.

***National Labor Relations Act***

There is also a strong risk that a reviewing court would find that the NLRA preempts SB 417 as applied to employer meetings discussing matters relating to the decision to join or support a labor organization, which is covered by the bill's definition of "political matters." Under Supreme Court precedent, if conduct is protected by § 7 of the NLRA or prohibited by § 8 of the NLRA, then states cannot regulate the conduct, and the National Labor Relations Board ("NLRB") has exclusive jurisdiction. *See San Diego Bldg. Trades Council, Millmen's Union, Loc. 2020 v. Garmon*, 359 U.S. 236, 245-46 (1959). "This form of preemption, referred to as *Garmon* preemption, may exist even where state law and the NLRA 'only *arguably* conflict.'" *California Chamber of Com.*, 802 F. Supp. at 1246 (quoting *Glacier Northwest, Inc. v. Int'l Bhd. of Teamsters Loc. Union No. 174*, 598 U.S. 771, 776 (2023)). In 2024, the NLRB held that § 8(a)(1) of the NLRA prohibits employers from requiring employees under threat of discipline to attend meetings in which the employer expresses its views on unionization. *See Amazon.com Servs. LLC*, 373 NLRB No. 136, 2024 WL 4774441 (Nov. 13, 2024).

Because the NLRB has decided the legality of the employer action covered by SB 417, a court would likely find *Garmon* preemption applies to certain applications of the bill. *See California Chamber of Com.*, 802 F. Supp. 3d at 1242 (holding that the NLRA preempted California's similar employer meeting law "to the extent it purports to prohibit employers from requiring the presence of employees to communicate the employer's message on unionization"). Nevertheless, we do not conclude that SB 417 is completely preempted on its face. Any potentially preempted portions of the bill could be severed, Md. Code Ann., Gen. Prov. Art. § 1-210, and the bill could be enforced as to employer speech on topics unrelated to unionization or labor practices without implicating the NLRA.

***Conclusion***

In conclusion, the bill is not clearly unconstitutional and can be signed into law. But there is a strong risk that a court would conclude that SB 417 is partially preempted by the NLRA if it were applied to employer meetings related to unionization. It is also possible a court could find that the bill is unconstitutional on its face under the First Amendment.

Sincerely,

Anthony G. Brown

cc: The Honorable Susan C. Lee, Secretary of State
Jeremy Baker, Chief Legislative Officer
Victoria L. Gruber, Exec. Director of DLS