



LEGISLATIVE POSITION:

Unfavorable

House Bill 802 - Labor and Employment - Mandatory Meetings on Religious or Political Matters - Employee Attendance and Participation (Protecting Workers From Captive Audience Meetings Act)

House Economic Matters Committee

Wednesday, February 28, 2024

Dear Chairman Wilson and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 6,800 members and federated partners working to develop and promote strong public policy that ensures sustained economic health and growth for Maryland businesses, employees, and families.

HB802 would, among other things, prohibit a Maryland employer from exercising its constitutional and statutory right to speak to its employees about “political issues,” which the bill defines to include “the decision to join or support any labor union.” As set forth in detail below, HB 802 presents significant constitutional, statutory, and economic concerns. We believe that this legislation provides unconstitutional restrictions on employers’ freedom of speech, its preemptive nature conflicting with federal labor laws, and its potential adverse effects on Maryland’s business climate and economy.

Constitutional Concerns

HB 802 directly violates the First and Fourteenth Amendments of the U.S. Constitution by impeding employers’ rights to express their viewpoints on political matters, including issues related to labor and unionization. By regulating the content of employers communications with their employees, this legislation unlawfully restricts freedom of speech and inhibits employers from sharing vital information on matters of public concern. Moreover, the bill’s broad and vague definitions of “political matters” introduce further constitutional concerns, as they fail to provide clear guidance to employers and may result in arbitrary enforcement. If enacted, this legislation would likely be subject to immediate legal challenges.

By its express terms, HB 802 would regulate speech on “matters relating to elections for political office, political parties, proposals to change legislation, proposals to change regulations, proposals to change public policy, and the decision to join or support any political party or political, civic, community, fraternal, or labor organization.” Because “the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue,” HB 802 violates Maryland employers’ rights. See *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 784-85 (1978).

Conflict with Federal Labor Laws

HB 802 is preempted by federal labor law, particularly Section 8(c) of the National Labor Relations Act (NLRA). This provision explicitly safeguards employers' rights to express their views on labor-related issues including politics and unionization, without fear of reprisal or penalty. The NLRA also safeguards the right to require employees to attend meetings or otherwise view communications about those issues. This legislation would create a new Article 3-718 under Maryland's Labor and Employment Code which would eviscerate these rights. HB 802's attempt to regulate employer speech directly contradicts the protections afforded by the NLRA and undermines the balance of labor relations established at the federal level.

The NLRA comprehensively regulates labor matters throughout the United States. See *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959) (forbidding states to regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits) ("*Garmon* preemption") & *Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 140 (1976) (forbidding both the National Labor Relations Board (NLRB) and states from regulating conduct that Congress intended be left to be controlled by the free play of economic forces) ("*Machinists* preemption").

Anti-Competitive Impact

HB 802 denies employers their Constitutional right to speak about a range of important issues. The legislation sends a negative message to the business community. At a time when Governor Moore is trying to declare that Maryland is "*Open for Business*," in a season when state and local budgetary challenges are becoming impossible to ignore, telling Maryland's business community that they must now litigate to protect their First Amendment rights sends a devastating message.

HB 802 poses a significant threat to Maryland's economic competitiveness and business climate. By depriving employers of their constitutional rights and introducing legal uncertainty, the bill creates a hostile environment for businesses, discouraging investment and hindering economic growth. Maryland's already sluggish economic performance will further decline if HB 802 is enacted, leading to business out-migration and diminished prospects for attracting new enterprises.

For these reasons, the Chamber respectfully requests an **unfavorable report** on **HB 802**.

