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STATE OF CONNECTICUT

Testimony in Support of Senate Bill 163,
An Act Protecting Employee Freedom of Speech and Conscience

Judiciary Committee
March 4th, 2022

Thank you for the opportunity to submit testimony in support of **SB 163*, An Act Protecting Employee Freedom of Speech and Conscience***, which would amend and clarify the scope of Conn. Gen. Stat. § 31-51q to prohibit employers from forcing employees to attend meetings related to religious and political issues. The bill specifies that employers are free to compel attendance on other work-related subjects, such as safety policies.

This bill is substantively identical to Senate Bill 440, considered by the legislature in 2019, which was the subject of Attorney General Opinion 2019-3.

Presently, § 31-51q imposes liability for damages on an employer, including the State and its political subdivisions, who subjects an employee to discipline or discharge for the employee's exercise of rights protected under the First Amendment of the U.S. Const. and §§ 3, 4 and 14 of Article I of the Conn. Const. Section 31-51q carves out from such liability employee activity that substantially or materially interferes with the employee's *bona fide* job performance or the working relationship between the employee and the employer. Conn. Gen Stat. § 31-51q; *see generally* *Trusz v. UBS Realty Investors, LLC, 319 Conn. 175 (2015)*.

Senate Bill 163 would do several things:

First, it would expressly define the scope of the constitutional rights protected under the statute to include "the right of freedom of speech, freedom of religion and freedom of association, and shall include the right not to be required to listen to speech." SB 163, § 1(a)(3).

Second, it would impose liability on an employer for damages arising from discipline or discharge in derogation of such constitutional rights, including discipline or discharge related to the employee's exercise of such rights by refusing to attend an employer-sponsored meeting or to listen to speech or view communications, the primary purpose of which is to communicate the employer's opinion on religious or political matters. *Id.*, § 1(b).

Third and importantly, SB 163 would make clear that certain employer activities are not prohibited, including communications required by law, communications necessary for employees to perform their duties, certain communications at institutions of higher education, casual conversations, and

communications limited to managerial and supervisory employees. *Id.*, § 1(c).

The evident purpose of § 31-51q, as well as SB 163's proposed amendments, is to provide a cause of action for employees who have suffered adverse employment actions because of the exercise of their constitutional rights to free speech and conscience. SB 163 would advance this purpose by amending and clarifying an existing statute and expressly defining the rights protected to include "the right to freedom of speech, freedom of religion and freedom of association, and shall include the right not to be required to listen to speech." SB 163, § 1(a)(3). The U.S. Supreme Court has expressly recognized that the First Amendment permits government to protect the interest of the unwilling listener who cannot avoid speech. *Hill v. Colorado, 530 U.S. 703, 716-17 (2000)*; *Frisby v. Schultz, 487 U.S. 474, 487 (1988)*.

Some so-called "captive audience" bills debated by the legislature in prior sessions may have been preempted by the National Labor Relations Act. *See,* Attorney General Opinion 2018-2. However, the present proposal is materially different.

The amendments to § 31-51q before you today would comprise a generally applicable state law aimed at protecting the constitutional rights of all Connecticut employees, situating this proposal beyond the reach of NLRA preemption. These worker protections are more fairly characterized as akin to the kind of generally applicable, minimum standards legislation that the Supreme Court has concluded states retain the power to enact. For this reason, the Supreme Court has repeatedly stated that 'States possess broad authority under their police powers to regulate the employment relationship to protect workers within the State. Child labor laws, minimum and other wage laws, laws affecting occupational health and safety . . . are only a few examples.' *Metropolitan Life, 471 U.S. at 754* (quoting *DeCanas v. Bica, 424 U.S. 351, 356 (1976)*).

Similarly, the Court has rejected preemption claims for state laws of general applicability that protect employees from a range of employer conduct. *See, e.g., Linn v. United Plant Guard Workers of America, 383 U.S. 53, 62 (1966)* (defamation); *Farmer v. United Bhd. of Carpenters and Joiners of America, Local 25, 430 U.S. 290, 302-03 (1977)* (infliction of emotional distress); *International Union, United Auto., Aircraft and Agr. Implement Workers of America (UAWCIO) v. Russell, 356 U.S. 634 (1958)* (malicious interference with lawful occupation).

For a full legal analysis of this question, please see Attorney General Opinion 2019-3.

Thank you for the opportunity to express my strong support of this proposal. I urge you to pass this legislation this year.

For additional information, please contact Cara Passaro, Chief Counsel to the Attorney General and Director of Legislative Affairs at cara.passaro@ct.gov.