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Supreme Court Strikes Down California "Forced Neutrality" Law

By Mark Stewart Hayes

In a 7-2 decision, the United States Supreme Court ruled this week that California's "forced neutrality" labor law violates the free speech rights of employers and is preempted by the National Labor Relations Act. See *Chamber of Commerce v. Brown*, No. 06-939 (June 19, 2008) ("Brown"). The Court agreed with arguments made by Venable attorney Maurice Baskin on behalf of a coalition of business groups in a "friend of the court" brief that the California law improperly interferes with and regulates a "zone protected and reserved for market freedom."

The law at issue, Assembly Bill (AB) 1889, prohibited employers who receive state grants, contracts, or program funds from using such funds "to deter union organizing," including efforts to educate workers about union issues. The law imposed draconian accounting procedures and penalties on employers who spoke out in opposition to unionization of their employees. The law also allowed unions to sue such employers to enforce the law's forced neutrality provisions.

Reversing the Ninth Circuit Court of Appeals, the Supreme Court found that the California law violated the "free speech" provision of Section 8(c) of the National Labor Relations Act. The Court reaffirmed that Congress "intended to encourage free debate on issues dividing labor and management" and that states are preempted from interfering with employers' protected rights to speak to their own employees on the subject of unionization.

The Court also reaffirmed that a previously recognized exemption from preemption for state "market participation," set forth in the so-called "Boston Harbor" decision, should be narrowly construed. According to the Court's opinion in *Brown*, the market participation exemption applies only in cases where state action is "specifically tailored to one particular job" and is limited to the goal of "increasing efficiency in response to legitimate state procurement needs."

The ruling in *Brown* thus sets important limits on the ability of unions to manipulate state governments into interfering with the rights of private employers and their employees.

The full text of the decision in *Brown* can be found at <http://www.supremecourtus.gov/opinions/07pdf/06-939.pdf>.

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