9th Circ. Ruling Puts Other Captive Audience Bans At Risk

By **Alexander MacDonald and Joy Rosenquist** (November 17, 2026)



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On Oct. 29, in California Chamber of Commerce v. Bonta, a unanimous three-judge panel of the U.S. Court of Appeals for the Ninth Circuit held that California's ban on captive audience meetings likely violates the First Amendment.[1]

The court explained that the ban regulates speech based on the speech's content and, as a content-based regulation, the ban triggered the highest level of constitutional review — strict scrutiny.[2] The ban could not pass that test. It effectively inserted the state into a private debate to silence one side, the employer. And if the First Amendment forbids anything, it forbids that.

The decision also has broader significance. The Ninth Circuit sits over eight other states, four of which have similar bans on the books. These bans are functionally identical to California's, so the decision probably means that those bans cannot be enforced either.

The decision may also affect the National Labor Relations Board. Since its 2024 decision in Amazon.com Services LLC, the NLRB has treated captive audience meetings as unlawful.

However, that position effectively classifies meetings as lawful or unlawful based on their content. It therefore clashes with the Ninth Circuit's decision, and may fuel constitutional challenges to the NLRB's current policy. As a result, employers may soon have a better idea of whether these bans can be enforced at any level.

California's Ban

California's ban, passed in 2024, applied to a range of mandatory workplace meetings. Broadly, S.B. 399 forbade employers from requiring employees to attend meetings about religious or political subjects. It then defined political subjects to include labor organizing and labor unions. So, in effect, it forbade employers from holding mandatory meetings to talk about labor issues.

That ban was hardly unique at the time. At least 10 other states had already banned captive audience meetings, including other western states like Oregon and Hawaii, both of which are in the Ninth Circuit.[3] So when California passed its ban, it joined a growing, if controversial, nationwide trend.

But soon after it was passed, it was challenged in court. A coalition of local trade associations sued the state attorney general in the U.S. District Court for the Eastern District of California.

They argued that the ban was invalid for two reasons. First, they said, it was preempted by the National Labor Relations Act, which explicitly protects an employer's speech about labor issues.[4] Second, it violated the First Amendment, which almost always forbids the government from regulating speech based on its content.[5]

In September 2025, the district court accepted both arguments and enjoined the state from enforcing the law, finding that the ban was likely preempted by the NLRA and that it likely violated the First Amendment. The state then appealed, taking the fight to the Ninth Circuit.

The Ninth Circuit's Holding

The Ninth Circuit affirmed, but on narrower grounds. It did not reach the NLRA question. Instead, it rested its analysis on the First Amendment. But even so, the result was the same: The court found that the law likely violates the First Amendment, and so upheld the injunction.

To start, the court rejected the state's argument that the ban regulated only conduct, not speech, putting it outside the First Amendment's reach. Rather, the court reasoned that the ban did not simply regulate meetings at work, but applied only to meetings that included certain messages, such as labor messages. So the First Amendment applied because the ban regulated the messages, not the meetings.

The court then held that the ban regulated these messages based on their content, because it either did or didn't apply depending on what the employer said. This made the ban a content-based regulation and, as such, it had to satisfy strict scrutiny.

To pass strict scrutiny, a speech regulation must be narrowly tailored to a compelling government interest. California's ban couldn't meet that standard. The state pointed only to one possible compelling interest: protecting captive employees from unwelcome messages.

However, that argument was not supported by case law. While courts had sometimes allowed the government to protect captive audiences, they had always done so in governmental settings — for example, protecting kids from certain messages while they are in mandatory public school.[6]

By contrast, courts had never allowed the government to regulate purely private speech in a private setting simply because a private listener may not like a private message. If the government could do that, it could regulate almost any speech. The state's argument proved too much: If accepted, it would have hollowed out the rule against content-based regulation.

Why the Opinion Casts a Long Shadow

The court's decision has immediate effects. It means that California cannot enforce its ban on certain kinds of workplace meetings, including meetings about labor subjects. Until now, employers in the state couldn't be sure whether those meetings were lawful; now they know.

But the decision has broader significance too. To start, it likely means that bans in some other states cannot be enforced either. Today, bans are in place in four other states in the Ninth Circuit — Oregon, Hawaii, Alaska and Washington.[7] Those bans also single out certain meetings, in part based on what the employer says. Thus, the decision's logic suggests that these bans have the same First Amendment problem as California's and are probably unenforceable as well.

Federal officials have to pay attention too. The Amazon decision flipped the NLRB's long-standing position that captive audience meetings are allowed under the NLRA. It reasoned that the meetings are inherently coercive, and so amount to an unfair labor practice. But

that view, like California's ban, singles out workplace meetings based on what the employer says. It treats a meeting as an unfair labor practice only if the employer talks about unions or union organizing, so it seems to raise the same First Amendment concerns.

Now, this doesn't necessarily mean that the NLRB will change its stance nationwide. Often, when the board disagrees with a circuit court about labor law, it will continue to follow its own interpretation outside the court's jurisdiction, which is known as nonacquiescence.

This case may be different because it doesn't involve an interpretation of labor law; it involves an interpretation of the Constitution. But it is not yet clear whether the NLRB will make that distinction. It may still continue to follow its own view about captive audience meetings outside the Ninth Circuit.

There is doubtless more to come, so employers should keep an eye on similar developments in places where they do business. Many states outside the Ninth Circuit have also banned captive audience meetings, and several have been challenged already. Courts will have the final say, but this decision will give ammunition to the challengers.

In the meantime, we have a clear answer in the Ninth Circuit: California cannot ban workplace meetings just because the meetings include statements about political subjects, including labor unions.

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[1] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB399.

[2] https://www.law.cornell.edu/wex/strict_scrutiny.

[3] https://www.yahoo.com/news/business-groups-sue-over-californias-015238268.html.

[4] https://www.law.cornell.edu/uscode/text/29/158, https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=2208&context=jour_mlr.

[5] https://www.law.cornell.edu/constitution-conan/amendment-1/content-based-regulation.

[6] https://law.justia.com/cases/federal/appellate-courts/F3/196/958/601457/.

[7] https://www.oregonlegislature.gov/bills_laws/ors/ors659.html, https://data.capitol.hawaii.gov/sessions/session2024/bills/SB2715_CD1_.htm, https://www.elections.alaska.gov/do

c/oep/2024/Ballot%20Measure%201_Eng.pdf, https://lawfilesext.leg.wa.gov/biennium/2023-24/Htm/Bills/Session%20Laws/Senate/5778-S.SL.htm.