



Testimony of Nate Cloutier

Before the Joint Standing Committee on Labor and Housing  
May 9, 2023

**In Opposition to LD 1756, *"An Act to Protect Employee Freedom of Speech"***

Senator Tipping, Representative Roeder, and distinguished members of Committee on Labor and Housing: My name is Nate Cloutier, and I am submitting comment on behalf of HospitalityMaine representing more than 1,200 restaurant and lodging establishments of all sizes across the state. HospitalityMaine opposes LD 1756, *"An Act to Protect Employee Freedom of Speech."*

LD 1756 would prohibit an employer from discharging, disciplining, or otherwise penalizing or threatening to discharge, discipline, or otherwise penalize or taking any adverse employment action against an employee because the employee declines to attend or participate in an employer-sponsored meeting or declines to receive or listen to a communication from the employer if the meeting or communication is to communicate the opinion of the employer about religious or political matters. Essentially, this is a lengthy way to describe prohibiting the practice of discussing labor union organizations at the workplace. While the bill title contends that this would protect employee freedom of speech, this actually limits the rights of both employees and employers in a few ways.

**CONSTITUTIONALITY ISSUES:**

This proposal is also known as "captive audience" legislation, which only exists in three states. Each state that has passed similar legislation into law has been challenged on First Amendment grounds. Most recently, Connecticut passed its version in 2022, and is currently being challenged in Federal Court. The question of Constitutionality of this legislation would be no different here, as this likely violates free speech and equal protections under the Constitution and is preempted by federal law. Connecticut is having to spend its time and resources to defend the law which legal experts say has a high chance of being overturned.

**UNINTENDED CONSEQUENCES:**

This would have the unintended consequence of discouraging businesses from calling meetings regarding corporate values on various issues such as diversity, equity, and inclusion, which could be viewed as "political." It serves neither Maine employees nor businesses to ban such a conversation. A company should not be forced into a position where employees avoid meetings and important workplace discussions because they deem a matter to be "political." Under this, Additionally, would employers be allowed to discuss COVID-19 vaccine mandates if this were to become law?

**VIOLATION & PENALTIES:**

In addition to civil fines, employers who violate a captive audience law may be liable to affected employees for damages and other appropriate remedies. This may include compensation for harm or losses suffered by employees as a result of the violation, including lost wages, as well as other "appropriate" relief to

prevent further violations. This bill sets forth that in the event of a successful claim by an employee, a Court may grant the employee all pertinent remedies, such as injunctive relief, reinstatement to their previous job or a comparable position, back pay, restoration of benefits (including seniority), that they would have been entitled to had the violation not occurred, and any additional relief that the Court deems appropriate. Furthermore, if enacted, the Maine bill would mandate that Courts award prevailing employees their legal fees and costs. As the bill is written, it is broad which we believes invites litigation in circumstances where it isn't appropriate.

We have not heard where this is a rampant problem in Maine. This proposal invites the government to dictate place of employment discussions—which are otherwise wholly lawful—and would be a disruption to valuable workplace initiatives and culture building. Employers should have the right to discuss issues with their own employees that they deem important to the workplace. Lastly, this would almost certainly be challenged in Maine Court, using the state's time and resources to defend a law that protects an issue we do not see exists.

We urge you to please vote ought not to pass on LD 1756. Thank you, and I would be pleased to answer any questions you may have.