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**Testimony of
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On behalf of the
Maine State Chamber of Commerce
Before the Joint Standing Committee on Labor and Housing
in opposition to
L.D. 1756, An Act to Protect Employees Freedom of Speech**

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Sen. Tipping, Rep. Roeder and members of the Joint Standing Committee on Labor and Housing, my name is Peter Gore, and I am a Government Affairs Consultant with Maine Street Solutions, and I am here on behalf of my client, the Maine State Chamber of Commerce, a statewide business association representing both large and small businesses speaking to you today in opposition to **L.D. 1756, An Act Protect Employees Freedom of Speech**.

As drafted, L.D. 1756 would prohibit an employer from taking any adverse action against an employee for refusing to attend or participate in an employer sponsored meeting, or to receive communications from the employer, regarding religious or political matters. "Political matters" is defined to include the joining of a labor organization.

Referred to as "captive audience" legislation, similar laws have passed in only 2 other states, Connecticut and Oregon. In the case of Connecticut, the law has been challenged as unconstitutional by the business community as in violation of free speech, the Supremacy Clause, and the equal protections given under the National Labor Relations Act. Since L.D. 1756 is nearly identical to the Connecticut statute, it would almost certainly be challenged here should it be enacted.

L.D. 1756 may at its heart, seek to limit an employer's ability to engage employees during an organizing effort. To be clear, those rights for both parties are already granted and governed by the NLRA and the National Labor Relations Board. The NLRA grants both the employees seeking to organize, and the employer, who may want to resist such an effort, certain rights regarding speech and protected actions and speech. L.D. 1756 would put the thumb on the scale of the employees by prohibiting employer sponsored meetings regarding unionization. Specifically, Section 8(c) of the NLRA—the "free speech" provision—governs an employer's right to communicate with its employees about unions. That section of federal law states, *"The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this act, if such expression contains no threat of reprisal or force or promise of benefit."*

There is multiple, and long-standing judicial precedence protecting these words, and attempts to impede this free speech have been repeatedly struck down in the past. But even beyond the basic unconstitutionality of the proposal, L.D. 1756 could have unintended consequences. Passage of L.D. 1756 may well discourage companies from calling meetings over corporate values on various issues such as diversity, equity and inclusions policies which could be viewed as pushing a “political” world view. This is especially true given the private right of action contained in the bill. We do not think this serves either Maine employees nor businesses to ban such conversation. But at the same time, a company should not be forced into a position where employees attempt to, and in fact successfully avoid, meetings and important workplace discussions because they deem a matter to be “political”.

The proposed legislation puts many human resource efforts at risk and could have the unintended consequence of inhibiting employers from addressing language and conduct that is damaging in the work force. For example, an employer would be at risk for having a meeting counselling an employee who is abusive to LGBTQ co-workers. At the other end of the spectrum, an employer could have problems counselling employees hassling a Trump supporter. A good employer might try to have meetings with just the employee to address the questionable conduct and the employee could now refuse to attend, knowing that the employer is legally barred from taking any action because of the employee’s refusal to attend.

Bad behavior knows no party and an employer’s effort simply to have people behave civilly, with mutual respect is undercut with this legislation. Given the breadth of what is now “political” or “religious,” efforts of the employer to keep such issues out of the work-place environment are placed at risk, making the situation worse. Thus, the employee espousing Aryan/Nazi white supremacy cannot be counselled for spreading their venom in the work environment.

Additionally, this legislation opens the door to employees claiming they were pressured into attending meetings—such as when a political candidate shows up for a coffee, gate greeting or lunch.

The outcome may well be companies choosing to eliminate the risk of getting sued by not hosting any political candidates. Lastly, what about shared information regarding legislation that impacts both the employer and employees? Chambers of commerce often share information on bills of interest with their members, who then intern, share it with their workers. Would the sharing of legislative information fall under “political” communications? For that matter, what exactly constitutes a “political” communication and how are small businesses to know?

As I have testified previously, passage of legislation like L.D. 1756 only adds to the perception that Maine is an unwelcoming place to do business, not to mention the added costs associated with litigation and settlements. As I indicated, only two states have passed legislation like this, and for good reason – it is likely blatantly unconstitutional by limiting one groups right to free speech. The Maine State Chamber believes that the constitutional, workplace management issues and additional cost of doing business LD 1756 would impose on Maine business of all sizes would be both significant and disruptive. Many of the protections LD 1756 purports to provide are already part of federal law, and the remainder of the bill invites significant unintended consequences for the workplace and workers. It is for these reasons we urge you to give LD 1756 an ought not to pass report. Thank you.