Eighth Circuit Dismisses Challenge to Minnesota's Captive Audience Ban

Labor & Employment Law Update

By Kevin Kleine and Timm Schowalter on September 9, 2025

On September 3, 2025, in *Minnesota Chapter of Associated Builders and Contractors v. Ellison, et al.,* the U.S. Court of Appeals for the Eighth Circuit, in a 2-1 ruling, dismissed a lawsuit challenging Minnesota's captive audience speech law (aka the "Employer-Sponsored Meetings or Communication Act" or the "Act"). In short, the Eighth Circuit's decision means that the Act remains in effect and is enforceable against Minnesota employers.

Overview of the Minnesota Employer-Sponsored Meetings or Communication Act

Minnesota, like many other states (Alaska, Connecticut, Hawaii, Illinois, Maine, New Jersey, New York, Oregon, Vermont, Washington, and California), passed the Act in 2023 to prohibit employers from requiring employee attendance at on-the-clock meetings where an employer expresses its views about religious or political matters or educates employees on unionization or membership in a specific labor organization (aka "captive audience meeting"). Specifically, the Act prohibits employers from "tak[ing] any adverse employment action against an employee" for "declin[ing]" to attend captive audience meetings or receive communications where an employer disseminates its opinion "about religious or political matters." *The Act further provides for a private cause of action for any aggrieved person.*

In November 2024, the National Labor Relations Board (NLRB) under the Biden Administration outright banned private employers from conducting mandatory captive audience meetings. However, the NLRB's acting general counsel under the Trump administration quickly took action in February 2025 and rescinded prior NLRB memorandums issued during the Biden administration, including those that covered the Board's attack on captive audience meetings.

The Eighth Circuit's Decision in Ellison

In *Ellison,* the Minnesota Chapter of Associated Builders and Contractors sued Attorney General Keith Ellison, Department of Labor and Industry Commissioner Nicole Blissenbach, and Governor Timothy Walz, challenging the enforcement of the Act because it is contrary to federal law. Specifically, the plaintiffs claimed the Act regulates employer speech in violation of the First Amendment and is also

preempted by the federal National Labor Relations Act (NLRA). The defendants brought an interlocutory appeal from the underlying district court decision that denied the state defendants motion to dismiss the lawsuit. Minnesota state executive officials responded that they are entitled to sovereign immunity under the Eleventh Amendment to the U.S. Constitution.

The divided Eighth Circuit Appeals Court agreed with the state officials' argument and decided the case under the sovereign immunity rubric of the United States Supreme Court's *Ex parte Young* opinion of "whether each official has "some connection with the enforcement" of the Act and has threatened or is about to commence enforcement proceedings. The Eighth Circuit Appeals Court reasoned that under the Act, Minnesota state executive officials were not taking any "enforcement" actions but were rather engaged in ministerial acts. **Accordingly, the Eighth Circuit held that the lawsuit could not go forward because, absent any enforcement actions, the plaintiffs were asking the court to decide a hypothetical dispute.**

The decision has been praised in a press release by Minnesota Attorney General Keith Ellison as "a win for working people across Minnesota" and reminded the residents of Minnesota that "[i]f you face retaliation in the workplace for refusing to attend a meeting intended to push your employer's political agenda or thwart efforts to form a union, you can actually file a lawsuit and hold your employer accountable for violating your rights."

Tips for All Private Employers

Given concerns with federal labor law and the NLRB, we recommend consulting with labor counsel about the legal parameters of captive audience meetings. **Before taking any disciplinary action against an employee for refusing to attend a captive audience meeting, or incentivizing employees to attend such meetings, employers should discuss the legal nuances in light of new legal developments.**

To be clear… whether or not these sorts of state laws are constitutional and enforceable remains to be seen. The Eighth Circuit's decision was decided on what can be construed as a technicality. **The decision did not weigh in on the constitutionality and legality of the underlying statute— one that unquestionably impacts employer free speech under the NLRA and First Amendment.**

Of course, no law prohibits private employers from conducting employee meetings to express or share its views on unionization and labor organizations where employee participation is voluntary at such meetings. Employers can lawfully conduct on-the-clock captive audience meetings by giving employees the choice to voluntarily attend—or refuse to attend—such meetings without repercussions to the employees who refuse.