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CALIFORNIA POLICY CENTER, INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

CALIFORNIA POLICY CENTER, INC. Plaintiff, v. LILIA GARCIA-BROWER, *in her official capacity as the Labor Commissioner in the Division of Labor Standards Enforcement of the California Department of Industrial Relations*, Defendant.	Case No. 25-cv-00271 Honorable Michelle Williams Court **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION** **ACTION SEEKING STATEWIDE OR NATIONWIDE RELIEF** **[Filed concurrently with Declaration of Will Swaim and [Proposed] Order]** Date: April 18, 2025 Time: 1:30 p.m. Crtrm.: 6A

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INTRODUCTION

The First Amendment protects the free-speech rights of both employees and employers—including an employer's right to speak to employees on matters the employer considers important. But the State of California has nonetheless enacted a law—the so-called "California Worker Freedom from Employer Intimidation Act" ("the Act")—that forbids employers from speaking to their employees about "religious or political matters" in settings where the employee is required to be present—even when such matters are relevant to the employer's business.

The Act's ban on discussion of "political matters" is broad. It doesn't just prohibit speech about campaigns and elections; it also bans speech "relating to . . . political parties, legislation, regulation, and the decision to join or support any political party or political or labor organization." Cal. Lab. Code § 1137(b)(3).

Plaintiff California Policy Center, Inc. ("CPC") is a 501(c)(3) nonprofit organization that engages in research and communication related to public policy, primarily focused on the areas of education reform, workplace freedom, government transparency, and governance. Before the Act went into effect, CPC regularly conducted mandatory staff meetings at which the organization's views on issues of legislation and regulation, among other things, were discussed.

But now the Act has made those meetings illegal, prohibiting CPC from speaking to its employees about the very subject matter of the organization's mission if listening to those views is a condition of their employment. This violates CPC's First Amendment rights to free speech, and CPC therefore seeks a preliminary injunction to prevent Defendant from enforcing the Act.

FACTS

A. The California Worker Freedom from Employer Intimidation Act prohibits certain employer speech based on its content.

On September 27, 2024, California Governor Gavin Newsom signed Senate Bill 399, referred to herein as "the Act," into law, which became effective January 1, 2025, as California Labor Code section 1137. The Act broadly prohibits employers from speaking to their employees about what it deems to be "religious or political matters" in any mandatory setting. Specifically, the Act prohibits employers from "subject[ing], or threaten[ing] to subject, an employee to discharge, discrimination, retaliation, or any other adverse action" for refusing to attend meetings or receive communications from the employer where the purpose is to "communicate the employer's opinion about religious or political matters." Cal. Lab. Code § 1137(c). The Act defines "political matters" as "matters relating to elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or political or labor organization." Cal. Lab. Code § 1137(b)(3). And it defines "religious matters" as "matters relating to religious affiliation and practice and the decision to join or support any religious organization or association." Cal. Lab. Code § 1137(b)(4).

The Act provides several exceptions to this restriction. The Act allows employers to communicate to employees "information that is necessary for those employees to perform their job duties." Cal. Lab. Code § 1137(g)(2). But the Act does not define the term "necessary" or set forth who decides, or how to determine, whether such a communication is necessary for an employee to perform their job

duties. The Act exempts an employer from "communicating to its employees any information that the employer is required by law to communicate, but only to the extent of that legal requirement," Cal. Lab. Code § 1137(g)(1), and from "requiring employees to undergo training to comply with the employer's legal obligations, including obligations under civil rights laws and occupational safety and health laws," Cal. Lab. Code § 1137(h)(5). And the Act allows a "nonprofit, tax-exempt training program requiring a student or instructor to attend classroom instruction, complete fieldwork, or perform community service hours on political or religious matters as it relates to the mission of the training program or sponsor," Cal. Lab. Code § 1137(h)(4), an "educational institution requiring a student or instructor to attend lectures on political or religious matters that are part of the regular coursework at the institution," Cal. Lab. Code § 1137(h)(3), and communications by "an institution of higher education" to "its employees that are part of coursework, any symposia, or an academic program at that institution," Cal. Lab. Code § 1137(g)(3).

Religious corporations, entities, associations, educational institutions, and societies exempt from the requirements of Title VII of the Civil Rights Act of 1964 or employment discrimination protections of state law are exempt from the Act's ban on mandatory meetings or communications with respect to speech on religious matters to employees who perform work connected with the activities undertaken by that organization. Cal. Lab. Code § 1137(h)(1). The Act also exempts political organizations or parties from the ban on mandatory meetings or communications about political matters where the purpose is to communicate the employer's

political tenets or purposes. Cal. Lab. Code § 1137(h)(2). And the Act allows a public employer to communicate to its employees "any information related to a policy of the public entity or any law or regulation that the public entity is responsible for administering," Cal. Lab. Code § 1137(g)(4), and to hold a new employee orientation, Cal. Lab. Code § 1137(h)(6).

The Act provides for enforcement by aggrieved employees, or their exclusive representatives, and by the Labor Commissioner. Cal. Lab. Code § 1137(e), (f). Section 1137(f) of the Act allows "any employee who has suffered a violation" of the Act to bring a "civil action in a court of competent jurisdiction for damages caused by that adverse action, including punitive damages." And "an employee or their exclusive representative may petition the superior court in any county wherein the violation in question is alleged to have occurred, or wherein the person resides or transacts business, for appropriate temporary or preliminary injunctive relief." Even if an aggrieved employee does not bring an action, the Act further empowers the Labor Commissioner to enforce the Act, "including investigating an alleged violation, and ordering appropriate temporary relief to mitigate a violation or maintain the status quo pending the completion of a full investigation or hearing . . . , including issuing a citation against an employer who violates this section and filing a civil action." Cal. Lab. Code § 1137(e).

The Act provides that "[i]n addition to any other remedy, an employer who violates this section shall be subject to a civil penalty of five hundred dollars ($500) per employee for each violation." Cal. Lab. Code § 1137(d).

B. The California Policy Center is harmed by the implementation of the Act.

California Policy Center ("CPC") is a 501(c)(3) nonprofit organization incorporated in California, with its office in Tustin, California and is subject to the Act. CPC is a research organization that publishes policy research on a variety of political topics, including education reform, workplace freedom, government transparency, and constitutional governance. Declaration of Will Swaim ("Swaim Decl.") ¶¶ 3, 8.

Until the Act went into effect, CPC held mandatory staff meetings every week, except holidays, for all staff, with no exceptions made for job title or position. Swaim Decl. ¶ 4. CPC also had regularly scheduled team meetings and holds strategy meetings scheduled as needed that are mandatory for certain staff. Swaim Decl. ¶ 5. Before the Act went into effect, CPC held all-staff retreats, and all staff, regardless of position, were required to attend. Swaim Decl. ¶ 6. The purpose of these meetings was to provide information on substantive policy issues as well as administrative matters to everyone, so that all staffers feel connected to the mission and daily work of the organization and do not perceive that they work in isolated silos. Swaim Decl. ¶ 7.

At the mandatory meetings and mandatory retreats, CPC has discussed, among other things, topics such as government financing at the state and local level, legislation that has been proposed or enacted at the state and local level, activities of labor unions in California to restrict worker rights, the rights of public sector workers to opt out of paying union dues, political choices involving infrastructure

for water and power, compensation and pensions paid to public employees, legislation relating to free speech, policy failures by California political leadership, and policy solutions that would lead to individual liberty and prosperity in California. Swaim Decl. ¶¶ 8, 9. The topics discussed during these meetings often included "political matters" as defined by the Act because they related to "legislation, regulation, and the decision to join or support" a public-sector labor union. Cal. Lab. Code § 1137(b)(3).

It is important for the functioning of CPC to communicate about political matters—including discussions of any legislation that has been or may be crafted by the State Legislature—with its employees and ensure that their employees listen to such communications. Swaim Decl. ¶ 10. Often the most efficient way of doing so is by holding mandatory meetings. *Id*. CPC believes that staff morale and team cohesion depend on every staff member knowing what CPC's various teams and experts are working on. Swaim Decl. ¶ 11. And CPC believes these meetings ensure staff who are not working on these matters have a chance to ask questions about the issues so they can understand clearly what their colleagues are working on and what positions CPC takes on specific policy matters. *Id*. In addition, mandatory meetings about political matters are important to CPC because staffers who are not working on a specific policy-related matter will often have an interesting idea or a new perspective on how to approach an issue. Swaim Decl. ¶ 12. With mandatory meetings that address political matters, team morale and connection to the organization, as well as idea generation, would all suffer. Swaim Decl. ¶ 13.

CPC's speech does not qualify for one of the several exemptions set forth in the Act. *See* Cal. Lab. Code § 1137(g), (h). While the Act allows employers to communicate to employees "information that is necessary for those employees to perform their job duties," Cal. Lab. Code § 1137(g)(2), not all political matters that CPC communicates at meetings and staff retreats mandatory for all employees are necessary information for each employee to perform their specific job duties. Not every employee works directly on each policy or political matter important to CPC. See Swaim Decl. ¶¶ 11, 12. While CPC believes that such communications are important to the organization's efficient operation and success, it is simply not the case that each and every employee could not do his or her job without knowing each and every one of CPC's positions on political matters communicated at mandatory meetings or staff retreats.

Further, CPC's communication of political matters is not limited to "information that the employer is required by law to communicate," Cal. Lab. Code § 1137(g)(1), or "training to comply with the employer's legal obligations," Cal. Lab. Code § 1137(h)(5). CPC is not a "nonprofit, tax-exempt training program," Cal. Lab. Code § 1137(h)(4), an "educational institution," Cal. Lab. Code § 1137(h)(3), or "an institution of higher education," Cal. Lab. Code § 1137(g)(3), and therefore CPC's speech does not qualify for the exemptions under those sections of the Act. And CPC is not a "public entity" and does not qualify for the exemptions in Cal. Lab. Code §§ 1137(g)(4), 1137(h)(6). CPC is not exempt under Cal. Lab. Code § 1137(h)(1) because it is not a religious corporation, entity, association, educational institution, or society exempt from the requirements

of Title VII of the Civil Rights Act of 1964 or employment discrimination protections of state law. Finally, CPC is not a political organization or party exempt from the ban on mandatory meetings or communications about political matters where the purpose is to communicate the employer's political tenets or purposes. Cal. Lab. Code § 1137(h)(2). Thus, CPC's political speech is not exempt from the Act under any of its provisions.

CPC would continue holding mandatory meetings and retreats during which "political matters" as defined by the Act—including legislation and regulations—are discussed but for the prohibitions set forth in the Act because it fears enforcement of the Act against it. Swaim Decl. ¶ 16. The Act chills CPC's political speech by imposing the threat of legal penalties on CPC for speech which it has engaged in regularly and wishes to continue to engage in the future.

STANDARD OF REVIEW

To obtain preliminary injunctive relief, the plaintiff must first show that (1) it is likely to succeed on the merits, (2) it is likely to suffer irreparable harm if the preliminary relief is not granted, (3) the balance of equities favors the plaintiff, and (4) the injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 5, 20 (2008). The Ninth Circuit evaluates these factors on a sliding scale: "serious questions going to the merits, and a balance of hardships that tips sharply toward the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011). A plaintiff may meet this burden if it

"demonstrates *either* a combination of probable success on the merits and the possibility of irreparable injury *or* that serious questions are raised and the balance of hardships tips sharply in his favor." *Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427, 1429 (9th Cir. 1995) (internal quotations and citation omitted) (emphasis in original). "To reach this sliding scale analysis, however, a moving party must, at an 'irreducible minimum,' demonstrate some chance of success on the merits." *Global Horizons, Inc. v. U.S. Dep't of Labor*, 510 F.3d 1054, 1058 (9th Cir. 2007) (citing *Arcamuzi v. Cont'l Air Lines, Inc.*, 819 F.2d 935, 937 (9th Cir. 1987)). In First Amendment cases where preliminary injunctive relief is sought, the plaintiff bears the initial burden of making a colorable claim that its First Amendment rights have been infringed, or are threatened with infringement, at which point the burden shifts to the government to justify the restriction. *Doe v. Harris*, 772 F.3d 563, 570 (9th Cir. 2014).

ARGUMENT

I. CPC is likely to succeed on the merits of its First Amendment claim.

CPC is likely to succeed on the merits of its First Amendment challenge to the Act because the Act prohibits political speech at the core of the First Amendment's protection and is not narrowly tailored to serve a compelling governmental interest—or any legitimate interest.

A. The Act is a content-based restriction on speech and therefore subject to strict scrutiny.

The Act prohibits speech based on its content and is therefore "presumptively invalid." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992). Content-based

restrictions on speech warrant strict scrutiny because they "are especially likely to be improper attempts to value some forms of speech over others, [and] are particularly susceptible to being used by the government to distort public debate." *City of Ladue v. Gilleo*, 512 U.S. 43, 60 (1994) (O'Connor, J., concurring). A law is content based if it "'on its face' draws distinctions based on the message a speaker conveys"—that is, if it "applies to particular speech because of the topic discussed or the idea or message conveyed." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

The Act is a content-based restriction on speech because it prohibits employers from engaging in particular speech based on its topic: it prohibits communications of political or religious speech—and no other speech—at mandatory meetings. The Act thus draws distinctions based on the message an employer conveys, allowing mandatory meetings on some topics but not on others.

Worse yet, the Act discriminates against speech on a topic—political matters—that is at the core of the First Amendment's protection. *See Citizens United v. FEC*, 558 U.S. 310, 329 (2010) ("political speech . . . is central to the meaning and purpose of the First Amendment"); *Mills v. Alabama*, 384 U.S. 214, 218–19 (1966) (the First Amendment protects "discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes"); *Nat'l Ass'n for Gun Rights, Inc. v. Mangan*, 933 F.3d 1102, 1111 (9th Cir. 2019) ("Political speech lies at the core of speech protected by the First Amendment, as it is the means by which citizens disseminate information, debate issues of public importance, and hold

officials to account for their decisions in our democracy"); *Anonymous Online Speakers v. United States Dist. Court (In re Anonymous Online Speakers)*, 661 F.3d 1168, 1173 (9th Cir. 2011) ("Given the importance of political speech in the history of this country, it is not surprising that courts afford political speech the highest level of protection").

Further, through its numerous exemptions, the Act discriminates against certain speakers and in favor of others. The First Amendment prohibits "restrictions distinguishing among different speakers, allowing speech by some but not others." *Citizens United*, 558 U.S. at 340. "Speech restrictions based on the identity of the speaker are all too often simply a means to control content." *Id*.

The Act's content-based and speaker-based restrictions on speech are subject to strict scrutiny, which means that it can survive only if "the Government [can] prove that [it] furthers a compelling interest and is narrowly tailored to achieve that interest." *Reed*, 576 U.S. at 171 (quotation omitted). "That is a demanding standard," *Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 799 (2011), and Defendant cannot meet it here.

B. The Act cannot survive strict scrutiny.

1. The Act does not serve a compelling government interest.

The only interest the Act identifies is protecting employees from attending mandatory meetings at which their employer communicates its positions on religious or political matters. But that is not a compelling government interest, even if some employees might find an employer's speech offensive. Protecting people from hearing things that they don't like has never been held to be a

legitimate, let alone compelling, government interest. *See, e.g., Street v. New York*, 394 U.S. 576, 592 (1969) ("It is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas themselves are offensive to some of their hearers."); *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 584 U.S. 617, 638 (2018) ("[I]t is not, as the Court has repeatedly held, the role of the State or its officials to prescribe what shall be offensive."); *303 Creative LLC v. Elenis*, 600 U.S. 570, 602-03 ("If liberty means anything at all, it means the right to tell people what they do not want to hear," and "abiding the Constitution's commitment to the freedom of speech means all of us will encounter ideas we consider unattractive, misguided, or even hurtful[.]") (quotes and citations omitted).

For this reason alone, the Act cannot survive strict scrutiny review.

2. The Act is not narrowly tailored to serve a government interest.

Even if Defendant could articulate a compelling interest—which it cannot—the Act would still fail strict scrutiny because it is not narrowly tailored to serve the government's supposed interest.

The Act cannot be narrowly tailored to prevent employees from having to hear their employer's religious or political views because the Act contains arbitrary exceptions that subvert that interest. The Act does not prohibit certain employers—political organizations or parties and public employers—from mandating that employees listen to their views on politics. Cal. Lab. Code § 1137(g)(4), (h)(2), (h)(6). And the Act exempts certain kinds of political or religious speech. Section 1137(h)(1) exempts speech about religious matters to employees by religious

corporations, entities, associations, educational institutions, or societies. Section 1137(h)(4) exempts speech about political or religious matters by a nonprofit, tax-exempt training program requiring a student or instructor to attend classroom instruction, complete fieldwork, or perform community service hours. And Section 1137(h)(3) exempts educational institution requiring a student or instructor to attend lectures on political or religious matters that are part of the regular coursework at the institution. Section 1137(g)(3) exempts communications by an institution of higher education to its employees that are part of coursework, any symposia, or an academic program at that institution.

The Act offers no justification for this unequal treatment. And it's hard to see how these exemptions are consistent with the government's interest in preventing employees from being required to listen to their employers' speech about political or religious matters. Thus, instead of being narrowly tailored to address a government interest, the Act appears to it simply pick winners and losers with respect to protected employer speech—"protecting" employees only from speech from sources of which the government has selected for disapproval. *See City of Ladue*, 512 U.S. at 60 (O'Connor, J., concurring) (explaining that content-based laws "are especially likely to be improper attempts to value some forms of speech over others, [and] are particularly susceptible to being used by the government to distort public debate").

Further, if Defendant's position is that shielding "unwilling" employees from employer speech about political or religious matters is a compelling government interest—which it is not—the Act is not narrowly tailored to serve that interest

because it is not limited to mandatory meetings at which unwilling employees hear discussion of political or religious matters; it bans speech at such meetings even if employees would listen to it voluntarily. And since Defendant has enforcement authority, an employer will be subject to the prohibition on mandatory meetings about politics and religion regardless of whether the employees in attendance were willing listeners.

Any argument that the Act is narrowly tailored because it only covers mandatory meetings in which politics or religion is discussed, while allowing voluntary meetings on those topics, is unavailing. "[A]nother way of putting it would be that the Act's prohibitions apply only when an employer wants to communicate a message badly enough to make meeting attendance mandatory." *Honeyfund.com, Inc, v. Governor*, 94 F.4th 1272, 1281–82 (11th Cir. 2024). And that argument "ignore[s] that the law bans speech even when no one listening finds it offensive." *Id*. at 1282. For that reason, the Eleventh Circuit rejected such an argument in striking down a Florida law that prohibited employers from subjecting their employees "to training, instruction, or any other required activity that promotes [or] advances" certain beliefs about race, color, sex, or national origin. *Id*. at 1275 (quote and citation omitted).

Thus, the Act is not narrowly tailored to address even the government's purported interest, let alone a compelling interest, which means that CPC is likely to prevail on its First Amendment claim.

II. Without an injunction, CPC will suffer irreparable harm.

CPC will suffer irreparable harm without a preliminary injunction because if it engages in speech about political matters to employees in mandatory meetings and retreats, as it has historically done and wishes to continue to do, it will be subjected to the possibility of complaints being filed against it, the cost of potential litigation, and the risk of civil penalties. The "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury" for purposes of the issuance of a preliminary injunction. *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009). In the Ninth Circuit, a "colorable First Amendment claim" is an "irreparable injury sufficient to merit the grant of relief." *Warsoldier v. Woodford*, 418 F.3d 989, 1001 (9th Cir. 2005). CPC will suffer irreparable harm without a preliminary injunction.

III. The balance of the equities favors CPC, and the injunction is in the public interest.

Because the Act prevents CPC from engaging in political speech to employees in mandatory meetings, as it historically has done and wishes to continue to do, CPC will suffer irreparable harm if an injunction is not issued. *See Elrod*, 427 U.S. at 373. On the other hand, Defendant will not be harmed by being prevented from enforcing an unconstitutional statute. The balance of the equities favors a plaintiff whose First Amendment rights are being chilled. *See Harris*, 772 F.3d at 583.

And to the extent that the government has an interest in preventing employees from being paid to listen to their employer's speech regarding political or religious

matters—which is not a compelling or legitimate government interest—that interest is far outweighed by the harm to CPC's First Amendment right to speak about political matters. Employees do not have a right to be shielded from their employer's speech, even if they vehemently disagree with it. *Cf. Snyder v. Phelps*, 562 U.S. 443, 458 (2011) ("speech cannot be restricted simply because it is upsetting or arouses contempt"). And, in any event, employees who dislike their employer's views on political or religious matters do not have to continue working for those employers.

Further, granting Plaintiff's preliminary injunction is in the public interest. In addition to Plaintiff, the Act limits the free speech rights of thousands of employers across the State of California. Courts considering requests for preliminary injunctions have consistently recognized the significant public interest in upholding First Amendment principles. *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002) (listing cases). The First Amendment rights of thousands of employers across the state outweighs the chance that an employee will have to listen to political or religious speech from their employer that they disagree with while being paid to do so—which is not a protected constitutional right.

Thus, the balance of the equities between CPC and Defendant and the public interest favor granting the preliminary injunction.

CONCLUSION

The First Amendment protects speech on "political matters" as strongly as it protects anything, and the First Amendment prohibits content-based restrictions on

speech as strongly as it prohibits anything. California cannot justify prohibiting employers from speaking about "political matters," at mandatory meetings or anywhere else. CPC and countless other California employers will continue to be irreparably harmed by the Act unless this Court intervenes. Plaintiff therefore respectfully requests that the Court enter a preliminarily injunction to prevent Defendant from enforcing the Act's restriction on employer speech.

Dated: February 21, 2025

Respectfully submitted,

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