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14 **UNITED STATES DISTRICT COURT**  
15 **EASTERN DISTRICT OF CALIFORNIA**

16 CALIFORNIA CHAMBER OF  
17 COMMERCE and CALIFORNIA  
RESTAURANT ASSOCIATION

18 Plaintiffs,

19 v.

20 ROBERT BONTA, in his official  
21 capacity as Attorney General of the  
State California; LILIA GARCIA-  
22 BROWER, in her official capacity  
as the Labor Commissioner in the  
23 Division of Labor Standards  
Enforcement of the California  
24 Department of Industrial Relations;  
and DIVISION OF LABOR  
25 STANDARDS ENFORCEMENT  
OF THE CALIFORNIA  
26 DEPARTMENT OF INDUSTRIAL  
RELATIONS,

27 Defendants.

Case No: [Case No.]

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

28

1 **COMPLAINT**

2 1. Plaintiff California Chamber of Commerce (“CalChamber”), a  
3 California non-profit corporation with its principal place of business in  
4 Sacramento, California, and Plaintiff California Restaurant Association (“CRA”)  
5 (CalChamber and CRA collectively hereinafter referred to as “Plaintiffs”), a  
6 California non-profit corporation with its principal place of business in  
7 Sacramento, California invoke their federal constitutional and statutory rights, the  
8 federal constitutional and statutory rights of their respective members to seek a  
9 judgment: (1) declaring the provisions of Senate Bill (“SB”) 399 (Wahab) subparts  
10 (b)(3), (c), (d), (e), and (f)(1)-(2), approved on September 27, 2024 to be added into  
11 Chapter 9 to Part 3 of Division 2 of the California Labor Code as California Labor  
12 Code section 1137<sup>1</sup> (hereinafter “SB 399”) as they are unconstitutional and  
13 preempted; and (2) enjoining Defendants’ enforcement of these new provisions  
14 against Plaintiffs and their respective members.

15 2. Governor Gavin Newsom of the State of California approved SB 399  
16 to add Chapter 9 to Part 3 of Division 2 of the California Labor Code, commencing  
17 with Section 1137. Because of SB 399, employers in California are now subject to  
18 liability, penalties, and other administrative action when they exercise their federal  
19 constitutional and statutory rights to talk to employees about political issues,  
20 including “the decision to join or support any ... labor organization” (hereinafter  
21 “labor issues”).

22 3. SB 399 violates the First and Fourteenth Amendments to the United  
23 States Constitution by discriminating against employers’ viewpoints on political  
24 matters, regulating the content of employers’ communications with their  
25

26 <sup>1</sup> Sen. Bill 399 (Wahab) 2023-2024 Reg. Sess. Ch. 670, Cal. Stat., found at  
27 [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=202320240SB399](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB399).

1 employees, and by chilling and prohibiting employer speech.

2 4. SB 399 is also preempted by the National Labor Relations Act, 29  
3 U.S.C. §§ 151, et seq. (“NLRA”). The NLRA comprehensively regulates labor  
4 relations. For decades, and consistent with the First Amendment, the NLRA has  
5 protected the right of employers and other parties to express their views on  
6 unionization to their employees. See NLRA Section 8(c), 29 U.S.C. § 158(c).  
7 Conversely, the NLRA prohibits statements and actions, including unlawful  
8 threats, which interfere with, restrain, or coerce employees in the exercise of their  
9 rights protected by the NLRA. See NLRA Sections 8(a)(1), 8(b)(1)(A), 29 U.S.C.  
10 §§ 158(a)(1), 158(b)(1)(A). SB 399 intrudes into this subject matter where  
11 California and other states have no power to regulate.

12 5. This Court can and should vindicate the federal constitutional rights  
13 of Plaintiffs and their respective members to engage in protected speech with their  
14 employees and, alternatively, end California’s intrusion into an area preempted and  
15 exclusively regulated by the NLRA.

16 **JURISDICTION, STANDING, RIPENESS, AND VENUE**

17 6. Plaintiffs incorporate all prior paragraphs as though fully set forth  
18 herein.

19 7. Plaintiffs, on behalf of their respective members, bring this cause of  
20 action under Article VI, cl. 2 and the First and Fourteenth Amendments to the  
21 United States Constitution. It is brought under the Civil Rights Act of 1871, 42  
22 U.S.C. §§ 1983 and 1988, the Declaratory Judgments Act, 28 U.S.C. §§ 2201-02,  
23 and *Ex Parte Young*, 209 U.S. 123 (1908), to enforce the federal constitutional and  
24 statutory rights of plaintiffs and their members. This court has jurisdiction under  
25 28 U.S.C. § 1331.

26 8. Under 42 U.S.C. § 1983, “every person who, under color of any  
27 statute, ordinance, regulation, custom, or usage, of any state or territory or the

1 district of Columbia, subjects, or causes to be subjected, any citizen of the united  
2 states or other person within the jurisdiction thereof to the deprivation of any rights,  
3 privileges, or immunities secured by the constitution and laws, shall be liable to the  
4 party injured in an action at law, suit in equity, or other proper proceeding for  
5 redress ... .”

6 9. Under 28 U.S.C. § 2201, “in a case of actual controversy within its  
7 jurisdiction,” this court “may declare the rights and other legal relations of any  
8 interested party seeking such declaration, whether or not further relief is or could  
9 be sought.”

10 10. Plaintiffs, individually and collectively, have associational standing to  
11 bring this suit on behalf of their various employer members because (1) Plaintiffs’  
12 members would have individual standing to sue in their own right; and (2)  
13 Plaintiffs’ members’ individual participation is unnecessary in this purely legal  
14 challenge. *Hunt v. Washington State Apple Advertising Com’n*, 432 U.S. 333, 342  
15 (1977); *Warth v. Seldin*, 422 U.S. 490, 599 (1975); *Nat’l Motor Freight Traffic*  
16 *Ass’n v. United States*, 372 U.S. 246 (1963). Plaintiffs on behalf of their members  
17 are directly and adversely affected by SB 399 and accordingly have standing to sue  
18 in its own right. SB 399 is at odds with Plaintiffs’ members’ free speech rights,  
19 and challenging SB 399 is germane to Plaintiffs’ representative purpose. Neither  
20 the claims asserted, nor the relief requested requires individual members to  
21 participate in the suit.

22 11. Plaintiffs bring a ripe case or controversy related to the threatened  
23 enforcement of a law in the context of the First Amendment. *Cal. Pro-Life Council,*  
24 *Inc. v. Getman*, 328 F.3d 1088, 1094 (9th Cir.2003). Plaintiffs, on behalf of their  
25 members, brings a pre-enforcement claim against SB 399 under the First  
26 Amendment and federal preemption that meets the constitutional and prudential

1 components of ripeness. *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d  
2 1134, 1138 (9th Cir. 2000). SB 399's threatened enforcement is impending, as it is  
3 scheduled to go into effect on January 1, 2025, and there is a fitness of the issues  
4 for judicial decision and the hardship to Plaintiffs and their members of withholding  
5 this Court's consideration.

6 12. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b). The  
7 District Court in the Eastern District of California is where a substantial part of the  
8 events giving rise to Plaintiffs' claims have occurred, are now occurring, and will  
9 occur in the future if not curtailed. Many of Plaintiffs' employer members are  
10 situated in this district and are and will continue to be adversely affected by the  
11 irreparable harms sought to be remedied and prevented by this Court's action upon  
12 this complaint.

### 13 **NATURE OF THE ACTION**

14 13. Plaintiffs incorporate all prior paragraphs as though fully set forth  
15 herein.

16 14. Plaintiffs, on behalf of their members, seek declaratory relief that SB  
17 399, as approved on September 27, 2024 to be added into Chapter 9 to Part 3 of  
18 Division 2 of the California Labor Code as California Labor Code section 1137 is  
19 unconstitutional and preempted by the National Labor Relations Act, 29 U.S.C. §  
20 151, *et seq.* Plaintiffs and their members seek prospective injunctive relief  
21 enjoining Defendants' enactment and enforcement of SB 399 against employers  
22 who discharge or discipline employees for refusing to attend employer-sponsored  
23 meetings, or refusing to listen to employer speech or view employer  
24 communications, in which the employers intend to communicate their opinions on  
25 political matters, including union involvement.

### 26 **PARTIES**

27 15. Plaintiffs incorporate all prior paragraphs as though fully set forth

1 herein.

2 16. Plaintiff CalChamber is a nonprofit business association with  
3 approximately 13,000 members, both individual and corporate, representing  
4 virtually every economic interest in the State of California, including among others  
5 food producers, suppliers, and retailers. CalChamber's members include several of  
6 the largest businesses in California, but seventy-five percent of its members are  
7 small businesses with 100 or fewer employees. CalChamber acts on behalf of the  
8 business community to improve the state's economic and employment climate by  
9 representing business on a broad range of legislative, regulatory, and legal issues.  
10 CalChamber's members employ millions of Californians. Because so many of its  
11 members are directly impacted by SB 399, CalChamber has coordinated and  
12 spearheaded policy discussions on SB 399 issues involving business leaders, policy  
13 makers, and advocacy groups in the legislative forum. CalChamber has been  
14 intimately involved in SB 399-related efforts, including, coordinating and  
15 participating in numerous policy discussions, providing extensive comments on  
16 behalf of its members, presenting detailed proposals, monitoring developments,  
17 and advising members on developments.

18 17. Plaintiff CRA is the uniting voice of the restaurant industry and a non-  
19 profit organization that promotes and protects industry interests and practices  
20 through lobbying, monitoring the legislative process, initiating grassroots  
21 campaigns and creating a network for its members through various chapters across  
22 the state. CRA has been involved in SB 399 reform initiatives by participating in  
23 numerous policy discussions, providing input on the legislation on behalf of its  
24 members and advising members of the status of the legislation.

25 18. SB 399 will injure Plaintiffs' members in California. Some of  
26 Plaintiffs' employer members have conducted or engaged in, and plan to conduct  
27

1 or engage in, employer sponsored meetings, speech, or other communications  
2 having the primary purpose of communicating the employer’s opinion concerning  
3 political matters as defined in the law, which include (among other things) the  
4 decision to join or support a labor organization. Plaintiffs’ member employers  
5 conduct meetings, engage in speech, and issue communications addressing many  
6 topics in the normal course of business. These topics include important  
7 employment matters and other critical issues relating to their companies that SB  
8 399(b)(3) defines as “political matters,” such as, but not limited to, proposals to  
9 change legislation, proposals to change regulations, proposals to change public  
10 policy, and whether to join a political, civic, community, fraternal or labor  
11 organization. For this reason, employers are entitled to communicate with  
12 employees about unionization in the workplace.

13 19. Defendant Rob Bonta is the Attorney General for the State of  
14 California and the highest-ranking officer in the California Department of Justice.  
15 Attorney General Bonta is sued in his official capacity. He performs his official  
16 duties in Sacramento and throughout the State of California. As Attorney General,  
17 he is empowered to enforce the provisions of SB 399 because any good faith error  
18 in interpreting SB 399 or its exceptions creates liability under the Private Attorneys  
19 General Act, which carries significant penalties of up to \$100 or \$200 per employee  
20 per pay period. *See* Cal. Lab. Code §§ 2698, *et seq.*

21 20. Defendant Lilia Garcia-Brower is the Labor Commissioner in the  
22 Division of Labor Standards Enforcement of the California Department of  
23 Industrial Relations. The Labor Commissioner Garcia-Brower is sued in her  
24 official capacity. She performs her official duties in Sacramento and throughout the  
25 State of California. The Labor Commissioner is charged with, *inter alia*, overseeing  
26 the Division of Labor Standards Enforcement of the California Department of  
27

1 Industrial Relations and enforcing provisions and requirements of California’s  
2 labor laws, including SB 399. As the Labor Commissioner, she has been  
3 specifically empowered to enforce the provisions of SB 399. *See* Sen. Bill 399  
4 (Wahab) 2023-2024 Reg. Sess. Ch. 670, Cal. Stat. Under subdivision (e) or SB 399,  
5 the Labor Commissioner can investigate alleged violations of SB 399 and seek  
6 citations or civil penalties. *See* Cal. Lab. Code §§ 98.7 and 1197.1.

7 21. Defendant Division of Labor Standards Enforcement of the California  
8 Department of Industrial Relations includes all employees who are overseen by the  
9 Defendant Labor Commissioner in the Division of Labor Standards Enforcement  
10 of the California Department of Industrial Relations and who are involved in the  
11 Commissioner’s various efforts to enforce the provisions of SB 399.

12 **FACTS**

13 22. Plaintiffs incorporate all prior paragraphs as though fully set forth  
14 herein.

15 23. In accordance with the NLRA and the First and Fourteenth  
16 Amendments to the United States Constitution, employers have the right to  
17 communicate with their employees about the employers’ viewpoints on politics,  
18 unionization, and other labor issues.

19 24. On August 30 and 31, 2024, the California State Assembly and Senate,  
20 respectively passed SB 399, an act to add Chapter 9 to Part 3 of Division 2 of the  
21 California Labor Code, commencing with California Labor Code section 1137.  
22 Gavin Newsom, Governor of the State of California, signed SB 399 into law on  
23 September 27, 2024 to take effect on January 1, 2025.

24 25. SB 399, subdivision (c) provides that: “An employer ... shall not  
25 subject, or threaten to subject, an employee to discharge, discrimination, retaliation,  
26 or any other adverse action because the employee declines to attend an employer-  
27 sponsored meeting or affirmatively declines to participate in, receive, or listen to



1 any communications with the employer or its agents or representatives, the purpose  
2 of which is to communicate the employer’s opinion about religious or political  
3 matters. An employee who is working at the time of the meeting and elects not to  
4 attend a meeting described in this subdivision shall continue to be paid while the  
5 meeting is held.”

6 26. SB 399, subdivision (b)(3) defines “political matters” as: “matters  
7 relating to elections for political office, political parties, legislation, regulation, and  
8 the decision to join or support any political party or political or labor organization.”

9 27. On November 13, 2024, the National Labor Relations Board  
10 (“NLRB” or “Board”) issued its Decision and Order in *Amazon.com Services LLC*,  
11 373 NLRB No. 136 (2024) wherein it prohibited employers from holding  
12 mandatory employee meetings to express the employer’s views concerning  
13 unionization in the workplace.

14 28. SB 399, subdivision (d) states that, in addition to any other remedy,  
15 “an employer who violates this section shall be subject to a civil penalty of five  
16 hundred dollars (\$500) per employee for each violation.”

17 29. SB 399, subdivision (e) grants Defendants Lilia Garcia-Brower, in her  
18 official capacity as the Labor Commissioner and the Division of Labor Standards  
19 Enforcement of the California Department of Industrial Relations with the  
20 authority to enforce SB 399.

21 30. In addition to SB 399, subdivision (e), subdivision (f)(1) allows  
22 aggrieved employees that have “suffered a violation of subdivision (c)” to “bring a  
23 civil action in a court of competent jurisdiction for damages caused by that adverse  
24 action, including punitive damages.” Similarly, SB 399, subdivision (f)(2) allows  
25 aggrieved employees to petition a state superior court for “appropriate temporary  
26 or preliminary injunctive relief.”



1 Amendment’s protection.” *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 776  
2 (1978). The First Amendment, applied via the Fourteenth Amendment, “prohibits  
3 state and local governments from enacting laws ‘abridging the freedom of speech.’”  
4 *Lone Star Sec. & Video, Inc. v. City of Los Angeles*, 827 F.3d 1192, 1197 (9th Cir.  
5 2016) (quoting U.S. CONST. amend. I).

6 37. The First and Fourteenth Amendments protect the speech rights of  
7 employers. *See 303 Creative LLC v. Elenis*, 600 U.S. 570, 600 (2023) (“the First  
8 Amendment extends to all persons engaged in expressive conduct, including those  
9 who seek profit”); *Bellotti*, 435 U.S. at 765 (recognizing that First Amendment  
10 protection extends to corporations).

11 38. By its express terms, SB 399 regulates speech on “matters relating to  
12 elections for political office, political parties, legislation, regulation, and the  
13 decision to join or support any political party or political or labor organization.”  
14 Sen. Bill 399 (Wahab), subp. (b)(3), 2023-2024 Reg. Sess. Ch. 670, Cal. Stat.  
15 Because “the legislature is constitutionally disqualified from dictating the subjects  
16 about which persons may speak and the speakers who may address a public issue,”  
17 SB 399 violates Plaintiffs’ First Amendment rights. *Bellotti*, 435 U.S. at 784–85.

18 39. SB 399 subpart (c)’s regulation of employer speech is a form of  
19 prohibited content-based discrimination. *Boyer v. City of Simi Valley*, 978 F.3d  
20 618, 621 (9th. Cir. 2020). SB 399 regulates speech on political matters—a subject  
21 matter that is entitled to the highest form of protection. Although some content-  
22 based restrictions pass constitutional muster, political speech is at the core of what  
23 the First Amendment was enacted to protect. *Virginia v. Black*, 538 U.S. 343, 365  
24 (2003).

25 40. SB 399’s regulation of employer speech on labor issues, like its  
26 restriction of speech on political matters in general, is a form of prohibited content-

1 based discrimination. Sen. Bill 399 (Wahab), subps. (b)(3), (c)-(f), 2023-2024 Reg.  
2 Sess. Ch. 670, Cal. Stat.

3 41. SB 399 subpart (b)(3)'s regulation of employer speech about "political  
4 matters," including "the decision to join or support any ... labor organization," is  
5 also a form of prohibited viewpoint-based discrimination. *See Nat'l Inst. of Fam.*  
6 *& Life Advocs. v. Becerra*, 585 U.S. 755, 777 (2018); *RAV v. City of St. Paul*, 505  
7 U.S. 377, 391 (1992). SB 399 singles out and targets employers and prevents them  
8 from effectively sharing their opinions on political matters of public concern,  
9 including opinions against unionization, and from explaining the effects  
10 unionization could have on the employers' business.

11 42. SB 399 prevents employers from sharing true facts with employees  
12 about unionization, such as employees' need to pay dues for representation, unions'  
13 interference with employer-employee relationships, unions' prioritization of the  
14 collective over the individual employees, and the financial impacts on employers.  
15 As a result, employees will be deprived of complete information and be unable to  
16 make informed choices about whether to unionize.

17 43. The State of California has no compelling interest in protecting  
18 employees from hearing their employers' opinions on any issues, let alone political  
19 and labor issues. The State of California also has no compelling interest in  
20 depriving employees of factual information related to political and labor issues.

21 44. SB 399 is overbroad and discriminatory and chill employers' speech  
22 and assembly rights guaranteed by the First and Fourteenth Amendments. These  
23 unconstitutional flaws are magnified by the statute's vagueness and extreme  
24 breadth. *See Minn. Voters All. v. Mansky*, 585 U.S. 1, 16 (2018). SB 399's subpart  
25 (c) prohibits employers from disciplining or threatening to discipline employees  
26 who refuse to attend employer-sponsored meetings or to listen or view employer  
27

1 communications when the “purpose” of the meetings or communications “is to  
2 communicate the employer’s opinion about religious or political matters.” SB  
3 399(b)(3)’s definition of “political matters” only vaguely and imprecisely includes  
4 “matters relating to” a range of topics. As such, employers cannot reasonably know  
5 whether a particular matter is sufficiently related to a topic so as to expose them to  
6 liability. And the statute does not define “purpose” at all—leaving employers to  
7 speculate about the term’s open-ended meaning. Employers cannot reasonably  
8 know whether a company matter the employer intends to discuss at a mandatory  
9 meeting is related to one of these “political matters” and whether doing so would  
10 expose them to liability. SB 399 is not narrowly tailored toward any legitimate end.

11 45. Because SB 399 is a content-based regulation that is not narrowly  
12 tailored to achieve any compelling governmental interest, SB 399 cannot survive  
13 strict scrutiny. *Boyer v. City of Simi Valley*, 978 F.3d 618, 621 (9th. Cir. 2020).

14 46. Plaintiffs, on behalf of their members, also seeks attorney fees under  
15 this claim pursuant to 42 U.S.C. § 1988.

16 **SECOND CAUSE OF ACTION**  
17 **(SB 399 IS PREEMPTED BY THE NLRA)**

18 47. Plaintiffs incorporate all prior paragraphs as though fully set forth  
19 herein.

20 48. The National Labor Relations Act comprehensively regulates labor  
21 matters throughout the United States. *See, e.g., San Diego Bldg. Trades Council v.*  
22 *Garmon*, 359 U.S. 236, 241 (1959); *Lodge 76, Int’l Ass’n of Machinists v. Wis.*  
23 *Emp. Rel. Comm’n (“Machinists”)*, 427 U.S. 132, 144 (1976).

24 49. SB 399 is preempted by Section 8(c) of the NLRA pursuant to  
25 *Garmon* preemption because SB 399 purport to prohibit conduct the NLRA permits  
26 and to frustrate rights the NLRA guarantees to employers. *San Diego Bldg. Trades*  
27 *Council v. Garmon*, 359 U.S. 236, 241 (1959). SB 399 is also preempted by the

1 NLRA pursuant to *Machinists* preemption because SB 399 purports to regulate  
2 areas Congress intentionally left to be controlled by the free play of economic  
3 forces. *Lodge 76, Int’l Ass’n of Machinists v. Wis. Emp. Rels. Comm’n*  
4 (*“Machinists”*), 427 U.S. 132, 144 (1976).

5 50. Under the NLRA, employees have the right “to form, join, or assist  
6 labor organizations” and the right “to refrain from any or all of such activities.” 29  
7 U.S.C. § 157.

8 51. Under the NLRA, employers have the right to “express[ ] any views,  
9 argument, or opinion, or the dissemination thereof, whether in written, printed,  
10 graphic, or visual form ... if such expression contains no threat of reprisal or force  
11 or promise of benefit.” 29 U.S.C. § 158(c).

12 52. In *Chamber of Commerce v. Brown*, 554 U.S. 60 (2008), the U.S.  
13 Supreme Court interpreted Section 8(c) and observed that, in addition to  
14 “implement[ing] the First Amendment” for employers, Section 8(c) “manifested a  
15 ‘congressional intent to encourage free debate on issues dividing labor and  
16 management’” and reflected a “policy judgment” that “favor[ed] uninhibited,  
17 robust, and wide-open debate in labor disputes, stressing that freewheeling use of  
18 the written and spoken word ... has been expressly fostered by Congress and  
19 approved by the NLRB.” *Id.* at 67–68 (quoting *NLRB v. Gissel Packing Co.*, 395  
20 U.S. at 617 and *Linn v. Plant Guard Workers*, 383 U.S. 53, 62 (1966)).

21 53. SB 399, subparts (c) through (f)(1)-(2) threatens employers with civil  
22 liability, penalties, and other regulatory repercussions for speaking with their  
23 employees about unionization and supporting labor unions.

24 54. SB 399 is preempted pursuant to *Garmon* preemption even if  
25 mandatory meetings to discuss unionization in the workplace is prohibited *See, e.g.*,  
26 *Garmon*, 359 U.S. at 245 (the States are “ousted of all jurisdiction” if the NLRB  
27

1 decides conduct is either “protected” or “prohibited” by the NLRA). Indeed, the  
2 fact that the NLRB issued its decision in *Amazon.com Services, LLC*, 373 NLRB  
3 No. 136 (2024) clearly illustrates that the agency responsible for labor relations in  
4 this country has acted and state action, such as SB 399, interferes with and is  
5 contrary to federal law. Specifically, the NLRB outlined the conditions under  
6 which employers may communicate with employees about unionization in the  
7 workplace.

8 55. Under the Supremacy Clause of the United States Constitution, federal  
9 law trumps any conflicting state law. Therefore, SB 399 is preempted by the  
10 NLRA.

11 56. Plaintiffs, on behalf of their members, also seeks attorney fees under  
12 this claim pursuant to 42 U.S.C. § 1988.

13 **THIRD CAUSE OF ACTION**

14 **(DECLARATORY RELIEF; 42 U.S.C. §§ 1983 AND 2201)**

15 57. Plaintiff incorporate all prior paragraphs as though fully set forth  
16 herein.

17 58. SB 399 violates the First Amendment and Due Process Clause of the  
18 Fourteenth Amendment to the U.S. Constitution and thereby deprives Plaintiffs and  
19 their members of enforceable rights. SB 399 is unlawful and unenforceable because  
20 it relies on an unconstitutional vague regulation of employer speech about “political  
21 matters,” including “the decision to join or support any ... labor organization.” is  
22 also a form of prohibited viewpoint-based discrimination. Sen. Bill 399 (Wahab),  
23 subd. (d)(3), 2023-2024 Reg. Sess. Ch. 670, Cal. Stat.

24 59. SB 399 subparts (b)(3), (c), (d), (e), and (f)(1)-(2) are unlawful and  
25 unenforceable, together and separately, because they violate the First Amendment  
26 of the Constitution and thereby deprive Plaintiffs and their members of enforceable  
27

1 rights.

2 60. SB 399 subparts (b)(3), (c), (d), (e), and (f)(1)-(2) are unlawful and  
3 unenforceable because they are unconstitutionally vague in violation the First  
4 Amendment and Due Process Clause of the Fourteenth Amendment to the  
5 Constitution and thereby deprive Plaintiffs and their members of enforceable rights.

6 61. SB 399's unlawful portions are not severable from the rest of the Bill.  
7 The entirety of SB 399 is therefore unlawful and unenforceable.

8 62. SB 399 is preempted by Section 8(c) of the NLRA pursuant to  
9 *Garmon* preemption because SB 399 purport to prohibit conduct the NLRA permits  
10 and to frustrate rights the NLRA guarantees to employers. *San Diego Bldg. Trades*  
11 *Council v. Garmon*, 359 U.S. 236, 241 (1959). SB 399 is also preempted by the  
12 NLRA pursuant to *Machinists* preemption because SB 399 purports to regulate  
13 areas Congress intentionally left to be controlled by the free play of economic  
14 forces. *Lodge 76, Int'l Ass'n of Machinists v. Wis. Emp. Rels. Comm'n*  
15 (*"Machinists"*), 427 U.S. 132, 144 (1976).

16 63. SB 399 subparts (b)(3), (c), (d), (e), and (f)(1)-(2) are unlawful and  
17 unenforceable, together and separately, because they are preempted by Section 8(c)  
18 of the NLRA. 29 U.S.C. § 158(c).

19 64. With exceptions not relevant here, in any "case of actual controversy  
20 within [their] jurisdiction," federal courts have the power to "declare the rights and  
21 other legal relations of any interested party seeking such declaration." 28 U.S.C. §  
22 2201(a).

23 65. This Court can and should exercise its equitable power to enter a  
24 declaration that Sb 399 is unconstitutional and otherwise unlawful.

25 66. This Court can and should exercise its equitable power to enter a  
26 declaration that each of SB 399's challenged provisions is unconstitutional and  
27



1 otherwise unlawful.

2 **PRAYER FOR RELIEF**

3 **WHEREFORE**, Plaintiffs hereby request that the Court enter a judgment:

4 1. Declaring that:

5 (a) SB 399 is unlawful;

6 (b) SB 399 is unconstitutional as it violates the First Amendment  
7 to the Constitution, as incorporated by the Fourteenth Amendment;

8 (c) SB 399 is void for vagueness and overbreadth under the First  
9 Amendment and the Due Process Clause of the Fourteenth Amendment to the  
10 Constitution;

11 (d) SB 399, subparts (b)(3), (c), (d), (e), and (f)(1)-(2) violate the  
12 First Amendment to the Constitution, as incorporated by the Fourteenth  
13 Amendment;

14 (e) SB 399, subparts (b)(3), (c), (d), (e), and (f)(1)-(2) are void for  
15 vagueness and overbreadth in violation the First Amendment and Due Process  
16 Clause of the Fourteenth Amendment to the Constitution;

17 (f) SB 399 is preempted by the NLRA.

18 2. Enjoining Defendants from enforcing SB 399 against Plaintiffs and  
19 their members, and from taking other official actions against Plaintiffs and their  
20 members, based upon violations of SB 399;

21 3. Awarding Plaintiffs the costs and attorneys' fees expended on this  
22 action, in accordance with 42 U.S.C. § 1988(b) for successful 42 U.S.C. § 1983  
23 claims against state officials and other applicable law; and

24 4. Awarding such other and further relief, whether at law or in equity, as  
25 the Court deems just and proper.

26 Dated: January 6, 2025

Respectfully submitted,

27 **FISHER & PHILLIPS LLP**

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28 COMPLAINT

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By: \_\_\_\_\_  
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