TESTIMONY OF
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CONNECTICUT HOSPITAL ASSOCIATION
BEFORE THE LABOR AND PUBLIC EMPLOYEES COMMITTEE
Thursday, March 4, 2004

HB 5447, An Act Concerning Distribution of Literature To Employees On Employer Premises

HB 5490, An Act Prohibiting Captive Audience Meetings

Good afternoon Senator Prague, Representative Ryan, and members of the Committee. I am Kim Hostetler, Vice President and Chief of Staff of the Connecticut Hospital Association and I appreciate the opportunity to testify on **HB 5447 and HB 5490, An Act Concerning Distribution of Literature To Employees On Employer Premises and An Act Prohibiting Captive Audience Meetings**.

HB 5447 would require employers to allow access to their private property by individuals and groups to distribute literature, even if the employers have no-solicitation, no-distribution rules in place. HB 5490 would ban employer-sponsored meetings when those meetings are held for the purpose of communicating the employers' opinions on political or religious issues. CHA opposes both of these bills.

Both bills propose to regulate an area of law the United States Congress intended federal law to cover and therefore would be preempted by federal law. Under the federal preemption doctrine, state law that either frustrates the purpose of national legislation or impairs the efficiency of the agencies of the Federal government created to discharge specific duties are invalidated. The National Labor Relations Act (NLRA) governs regulation of industrial relations and preempts state regulation of activities that the NLRA protects or prohibits. The purpose of the NLRA is to define and protect the rights of employees to organize, to encourage collective bargaining, and to eliminate certain practices on the part of labor and management that interfere with those rights. The National Labor Relations Board (NLRB) is the independent federal agency responsible for administering the NLRA. Federal preemption principles also work to protect the jurisdiction of the NLRB from interference by individual states. In the case of both subjects, distribution of literature and captive audience meetings, federal law is clear.

Regarding the distribution of literature to employees on employer premises, NLRA law on union access to private property has been settled since 1956 when the Supreme Court ruled that an employer can lawfully prohibit non-employee union organizers from distributing literature on employer property if there are other available means of communicating with the employees. The NLRB regulates employers' no-access and no-distribution rules under Section 8 of the NLRA. If an employer unlawfully prohibits access to its premises or unlawfully prohibits distribution of

literature on its property, the NLRB has the authority and jurisdiction to find the employer has committed an unfair labor practice and to enforce the appropriate remedies. HB 5447 interferes with the NLRB's jurisdiction and with activities protected by the NLRA.

The same preemption applies in the case of captive audience meetings. Employees are entitled to balanced information from all perspectives in order that they can make informed decisions regarding union representation. Section 8 of the NLRA guarantees an employer's right to free speech, and the NLRB has determined that employers have the right to hold captive audience meetings to address issues related to union organizing campaigns. The NLRB regulates the timing of captive audience meetings, which employers are prohibited from holding within twenty-four hours of a union election. This bill would prevent employers from discussing union representation in a forum that the NLRB has determined employers have a right to use under the NLRA.

If these bills were enacted in Connecticut, not only would they be preempted by federal law, they would discourage employers who have the option to relocate from moving to or staying in Connecticut. Enacting either of these bills would also interfere with employees' rights by creating impediments to the union organization process since the inevitable outcome would be an increase in unfair labor practice charges and lawsuits until the laws are set aside as preempted by federal law.

There is benefit in having a national labor relations policy. Federal law encourages collective bargaining and establishes a framework that is fair, impartial, and carefully regulated to protect the rights of employees. The federal body of law has been thoughtfully crafted and refined over decades of case law to guarantee and protect employee rights while maintaining a careful balance in the critical areas of free speech, property rights, and employee access to information.

Thank you for your consideration of our position.