

The Work Week

Bassford Remele Employment Practice Group



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Eighth Circuit Rules on the Minnesota Employer-Sponsored Meetings or Communications Act

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The Eighth Circuit Court of Appeals recently ruled on a challenge to Minnesota's new "Employer-Sponsored Meetings or Communications Act," which restricts so-called "captive audience" meetings in the workplace.

The underlying case arose after Minnesota enacted the "Employer-Sponsored Meetings or Communications Act," a law prohibiting employers from disciplining workers who decline to attend meetings or communications about political or religious matters, often referred to as "captive-audience" meetings. The statute created a private right of action for employees, required employers to post a workplace notice of rights, and tasked the Labor Commissioner with developing an educational poster.

Almost immediately, several business groups, including the Minnesota Chapter of Associated Builders and Contractors, argued that the law violates the First Amendment and is preempted by federal labor law. They sued to block enforcement of the statute against three state officials: Governor Tim Walz, Attorney General Keith Ellison, and Labor Commissioner Nicole Blissenbach. The government officials responded by claiming "sovereign immunity" under the Eleventh Amendment, a constitutional doctrine that usually shields states and their officials from being sued in federal court. The business groups countered that an *Ex parte Young* exception applied, which allows lawsuits against state officials who are directly involved in enforcing unconstitutional laws.

The district court initially allowed the case to move forward, but the Eighth Circuit reversed. In their reversal, the Eighth Circuit examined each official's role. First, the court held that Governor Walz could not be sued under *Ex parte Young*. The Eighth Circuit opined that his speeches praising the law and even incorrectly saying violators could "go to jail" did not create legal enforcement

power. Rather, the appeals court found that his authority to appoint or remove the Labor Commissioner was deemed “administrative” and not a form of enforcement. Similarly, the possibility that he might appoint outside counsel to enforce the law at some future point was too speculative.

Next, the Eighth Circuit looked at Commissioner Blissenbach. Under the statute, her only role is to develop the poster explaining employee rights. The Eighth Circuit concluded this was informational, not enforcement. Unlike statutes where the Commissioner has explicit power to investigate and punish violations, here she cannot bring lawsuits or order compliance. Investigating workplaces generally does not rise to the level of “enforcement” without the power to compel compliance. Therefore, the Eighth Circuit ruled she was also immune.

Finally, the panel considered Attorney General Ellison. Unlike the Governor or Commissioner, the Attorney General does have statutory power to enforce the Act. However, the Attorney General filed sworn declarations saying he had never enforced the law, never threatened to enforce it, and had no current intent to do so. The Eighth Circuit treated these declarations as sufficient to defeat the plaintiffs’ claim of imminent enforcement. Without a real threat of action, the business groups lacked standing to sue him in federal court. As a result, the Eighth Circuit dismissed the lawsuits against the Governor and Commissioner “with prejudice” and dismissed the claim against the Attorney General “without prejudice.”

The Eighth Circuit’s ruling means that, for now, Minnesota’s Employer-Sponsored Meetings or Communications Act cannot be challenged in federal court against the state officials who were sued, because none of them fall within the narrow *Ex parte Young* exception to sovereign immunity. In practice, this leaves the law on the books, but largely enforceable only through private lawsuits brought by employees, not by the state officials originally targeted in the case. Employers therefore remain exposed to private civil actions under the statute until and unless a new case is brought against an official who affirmatively threatens enforcement, or the issue is raised in a different posture.

At Bassford Remele, we actively track emerging and upcoming legislative developments in employment law, with particular attention to workplace policy shifts influenced by recent state and federal regulatory changes. Feel free to reach out if you need assistance in this continually evolving landscape!

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