



Legal Alert: California Court of Appeals Declares State Labor Picketing Laws Unconstitutional

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In a case that will significantly impact unions' ability to picket in California, the California Court of Appeals has struck down as unconstitutional two state laws that restricted the ability of employers to enjoin conduct on their property if the conduct relates to a labor dispute. Specifically, the Court found that the Moscone Act and California Labor Code section 1138.1 unconstitutionally favor speech related to a labor dispute over other speech and therefore violate the First and Fourteenth Amendments of the United States Constitution. *See Ralphs Grocery Co. v. United Food and Commercial Workers Union Local 8*, Case No. 34-2008-8682 (July 19, 2010).

Background California has two separate statutes that provide preferential treatment to speech and picketing related to labor disputes. The Moscone Act, Code of Civil Procedure section 527.3, states that conduct relating to a labor dispute, such as peaceful picketing, is legal. The Act further prohibits courts from issuing any restraining order or preliminary or permanent injunction against such conduct. As a result of the Moscone Act, unions are able to picket on private property when such conduct otherwise would amount to trespassing. The Court of Appeals summarized the Moscone Act to "declare[] that labor protests on private property are legal, even though a similar protest concerning a different issue would constitute trespassing. And it denies the property owner involved in a protest over a labor dispute access to the equity jurisdiction of the courts even though it does not deny such access if the protest does not involve a labor dispute." The second statute, California Labor Code section 1138.1, establishes prerequisites for obtaining an injunction against labor protesters that do not apply when the protest concerns another topic. Those prerequisites include requiring the court to hold an evidentiary hearing with live witnesses and proof of an unlawful act other than trespass by the protesters, irreparable harm to the property itself, and the inability or unwillingness of police to provide protection. These additional requirements, the Court concluded, make "it virtually impossible for a property owner to obtain injunctive relief." **The Court's Decision** The Court concluded that the two state statutes violate the First and Fourteenth Amendments of the United States Constitution because they discriminate by providing protections to speech related to labor disputes that are not provided to speech on other topics. In reaching this conclusion, the Court relied upon United States Supreme Court precedent interpreting the First and Fourteenth Amendments as prohibiting government from favoring or disfavoring speech based on its content. The California Court of Appeals found that the Moscone Act clearly runs afoul of this constitutional restriction

on content-based discrimination because it grants "preferential treatment to speech concerning labor disputes over speech about other issues." Similarly, California Labor Code section 1138.1 also impermissibly discriminates because "[i]t adds requirements for obtaining an injunction against labor protesters that do not exist when the protest, or other form of speech, is not labor related." Since there is no compelling state interest justifying this preferential treatment of speech concerning labor disputes, the Court held the two statutes are unconstitutional. ***What the Court's Decision Means*** It is likely the defendant union will seek review before the California Supreme Court. If the decision survives review, union protesters will be subject to the same trespassing laws that apply to all other protesters. Additionally, California employers seeking to enjoin labor protests on their property will stand on equal footing with other property owners and will not be saddled with requirements that make it "virtually impossible ... to obtain injunctive relief." It is important to note that the Court of Appeals' decision does not change the *Pruneyard* line of cases, which hold that the right of free speech in the California Constitution applies to privately owned shopping centers that are designed as public meeting places. The Court specifically found that the property at issue in this case was not a public forum and, therefore, the *Pruneyard* line of cases did not apply. If you have any questions regarding this Alert, please contact Stephen Lueke, slueke@fordharrison.com, or the Ford & Harrison attorney with whom you usually work.