

April 16, 2025

The Honorable Tina McKinnor
California State Assembly
1021 O Street, Suite 5220
Sacramento, CA 95814

**SUBJECT: AB 288 (MCKINNOR) EMPLOYMENT: LABOR ORGANIZATION
OPPOSE – AS AMENDED MARCH 24, 2025**

The California Chamber of Commerce is **OPPOSED** to your **AB 288 (McKinnor)**.

AB 288 attempts to create new authority for the Public Employment Relations Board (PERB) to assert jurisdiction over workers asserting rights under the National Labor Relations Act (NLRA). There are several events that would trigger a worker's rights to go to PERB, including that a worker no longer being covered by the NLRA, the NLRB not having a quorum, the NLRB not being able to adjudicate cases related to a worker due to legal challenges, or where the NLRB has not acted within six months regarding an unfair labor practice charge.

While we understand uncertainty that is occurring as a result of the current federal administration, **AB 288** is plainly preempted by federal law. Even if it were upheld, the consequence would be two different entities interpreting federal law with PERB having the explicit right to disregard NLRB precedent.

AB 288 is Preempted Under *Garmon* Because It Proposes to Regulate Union Relationships That Are Governed by Federal law

The NLRA provides for workers' rights to organize. The NLRA exclusively governs those rights. The NLRB is an independent federal agency established by the NLRA. Its primary role is to enforce labor laws related to union activities and collective bargaining by investigating and prosecuting unfair labor practices in the private sector. It also oversees representation elections seeking to certify or decertify unions as the representative of employees. The NLRB has regional offices located throughout the country.

Because the NLRA establishes and solely governs workers' rights to organize, courts have repeatedly held that states are prohibited from regulating this space under the longstanding doctrine of preemption. **AB 288's** attempt to give PERB the ability to adjudicate issues in lieu of the NLRB is a clear example of *Garmon* preemption. See *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 244 (1959).

The present lack of a quorum at the NLRB and hypothetical scenarios about what *may* happen does not allow **AB 288** to escape preemption. The NLRA is still law, and it continues to be enforced by the NLRB's regional offices. Those offices are continuing to process elections, certifications, petitions, and unfair labor practice charges. This is also not the first time the NLRB has operated without a quorum.

Further, **AB 288** contains a clause that appears to be broader than the NLRA. Proposed section 923.1(a)(3) provides that the state or local entities cannot "*deny, burden, or abridge the rights described in this subdivision except as necessary to serve a compelling state interest achieved by the least restrictive means.*" That is the standard for strict scrutiny, which is reserved for scenarios where a person's constitutional right is at stake or where a law is based on a suspect classification, such as race or religion. In other words, **AB 288** would create new, preempted substantive law (by creating a new substantive

section), and then attempt to require these new rights be treated as if they were written in the constitution. To be clear, **AB 288** is not a constitutional amendment - so we do not believe it is appropriate for **AB 288** to attempt to pretend its provisions are akin to constitutional text and inhibit the Legislature's ability to ever amend this section.

AB 288 Creates Inconsistent Enforcement of Labor Laws

Even if **AB 288** were upheld, we are concerned about creating inconsistent enforcement across PERB and the NLRB. For example, proposed section 923.1(d)(2) provides that PERB can decide cases based on NLRA precedent or its own precedent as it applies to public employees (who have the right to organize under separate, California-specific laws) in the manner that most expansively provides the rights provided for under **AB 288**. Not only does this bolster the argument that **AB 288** is preempted, but it also effectively encourages PERB to not follow NLRA precedent in certain circumstances.

AB 288's Six Month Delay Threshold is Arbitrary

AB 288 provides that workers can turn to PERB when the NLRB takes more than six months to respond. The bill implies that, at that point, workers have been deprived of an effective NLRB. However, the NLRA does not include statutory deadlines when it comes to the NLRB rendering case decisions. The timelines provided for in **AB 288** are arbitrary and again do not rescue **AB 288** from being barred by preemption. In other words, state law cannot compel the NLRB to act more quickly, and it can't "step in" when the NLRB is taking too long to act.

For these and other reasons, we **OPPOSE AB 288 (McKinnor)**.

Sincerely,



Ashley Hoffman
Senior Policy Advocate
California Chamber of Commerce

cc: Legislative Affairs, Office of the Governor

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