

Testimony of Leon R. Sequeira
before the Pennsylvania House of Representatives
Committee on Judiciary
Hearing on the HB 1154
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Good morning Mr. Chairman and members of the Committee. My name is Leon Sequeira and I appreciate the opportunity to be here today to testify on behalf of my client, the U.S. Chamber of Commerce, regarding HB 1154. I am Senior Counsel in the law firm Seyfarth Shaw LLP, in Washington, D.C. and formerly served as an Assistant Secretary of Labor in the George W. Bush administration.

Last year, I assisted the U.S. Chamber of Commerce in an examination of various state laws and regulations relating to labor policy, and particularly those provisions that provide special treatment of, or special exemptions for, labor unions and labor organizing activity. That research became the basis of a report that was released in August of 2012 by the U.S. Chamber of Commerce entitled, "Sabotage, Stalking & Stealth Exemptions: Special State Laws for Labor Unions."

Labor union membership in the United States has been steadily declining for decades. The federal Bureau of Labor Statistics reports that in 2012, just 11.3 percent of wage and salary workers in the U.S. were members of a labor union. Thirty years ago, more than 20 percent of workers were union members. Today, in the public sector, about 35 percent of workers are unionized, while just 6.6 percent of private sector workers belong to a union.

Union membership is disproportionally concentrated in a handful of states. In 2012, 31 states had union membership below the national average and about one-half of all the union members in the country lived in one of seven states: California, New York, Illinois, Pennsylvania, Michigan, New Jersey, and Ohio. Although those seven states account for nearly half of all union members, they account for just about one-third of all wage and salary workers in the country.

In 2012, Pennsylvania had 734,000 union members out of 5.4 million employees in the Commonwealth, giving it the fourth highest number of union members, but just the 16th highest percentage of union members to non-union employees in the U.S.

The Chamber's 2012 report highlights several examples of state laws around the country that provide special consideration for labor unions, their members, and activities relating to labor organizing. As one of the states with relatively high union membership, Pennsylvania's laws were included in the analysis and specifically, the state's stalking law was cited in the Chamber's report as an unusual example of union members being exempted from a criminal statute of general application.

Every state in America has declared stalking to be a crime and in many cases it is a felony. Pennsylvania includes stalking in its list of crimes and offenses in Title 18. The Commonwealth has determined in Section 2709.1 that the crime of stalking occurs when the person either:

- engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, under circumstances which demonstrate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person; or
- engages in a course of conduct or repeatedly communicates to another person under circumstances which demonstrate or communicate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person.

As the Chamber of Commerce notes in its report, declaring stalking to be a crime is unsurprising given that “few things are more unsettling than being followed or maliciously harassed, threatened or intimidated.” Despite being considered a crime in every state, only a few states have gone so far as to exempt from the definition of stalking any acts perpetrated by an individual in the course of a labor dispute. Pennsylvania is one of the few states to do just that. In the same provision describing the crime of stalking, paragraph (e) specifies:

This section shall not apply to conduct by a party to a labor dispute as defined in the act of June 2, 1937 (P.L.1198, No.308), known as the Labor Anti- Injunction Act, or to any constitutionally protected activity.

The Chamber report mentions the exemption to the state’s stalking law as a notable provision providing protection for actions that would otherwise be considered criminal if they were not committed by a party to a labor dispute. Pennsylvania also provides the same exemption in two other criminal provisions: harassment, as defined in section 2709, and the threat to use a weapon of mass destruction, as defined in section 2715.

The Commonwealth has determined in Section 2709 that a person commits the crime of harassment when with intent to harass, annoy or alarm another, the person:

- strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same;
- follows the other person in or about a public place or places;
- engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose;
- communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures;
- communicates repeatedly in an anonymous manner;
- communicates repeatedly at extremely inconvenient hours; or

- communicates repeatedly in a manner other than specified in paragraphs (4), (5) and (6).

The Commonwealth has determined in Section 2715 that the crime of threatening use of a weapon of mass destruction occurs when a person:

- reports without factual basis of knowledge the existence or potential existence of a weapon of mass destruction; or
- threatens by any means the placement or setting of a weapon of mass destruction.

State (and federal) legislatures declare certain activities to be crimes because society has determined that such activities are harmful to the victims and to the community at large. When someone engages in a course of conduct designed to cause substantial emotional distress to another (stalking); or threatens to subject another to physical contact with the intent to annoy (harassment); or falsely claims the existence of a bomb (threat of a weapon of mass destruction), the perpetrator of such conduct intends to cause physical or psychological discomfort to his victim.

The victim of such conduct is injured regardless of the reason for the crime. Someone who is concerned for her safety as a result of being continually threatened, followed and harassed by strangers takes no comfort in her situation simply because there happens to be a labor dispute at her place of work. Likewise, a retail business full of employees and customers who are forced to evacuate a building because of a bomb threat are not any less frightened or inconvenienced simply because a business and union are in the middle of collective bargaining negotiations.

It is not clear why parties to a labor dispute in Pennsylvania need such broad special exemptions from the commonsense criminal laws that apply to everyone else in the Commonwealth. Federal law already guarantees ample protections for workers to engage in lawful activities relating to labor organizing and collective bargaining. While leaving to others to discuss what action the legislature should take on HB 1154, it appears that the bill simply removes the special criminal exemptions for parties to a labor dispute that currently exist in the state code, which would make Pennsylvania's treatment of these crimes similar to the way virtually all other states treat these crimes.

Thank you again for the opportunity to testify today and I would be pleased to answer your questions.