

Court Issues Written Order Preliminarily Enjoining Enforcement of California's AB 51, Hints at Future Success

By Scott P. Jang

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On January 31, 2020, the district court in *Chamber of Commerce of the United States, et al. v. Becerra, et al.*, E.D. Cal. Case No. 2:19-cv-2456, [granted the request for a preliminary injunction](#) enjoining the State of California (the State) from enforcing Assembly Bill 51 (AB 51) against arbitration agreements governed by the Federal Arbitration Act (FAA). A week later, on February 7, 2020, the court issued its written order detailing the court's reasoning for granting the preliminary injunction.

The two threshold questions the court had to address was whether the federal court had subject matter jurisdiction over the dispute and whether the plaintiffs had standing to bring their lawsuit. The court answered in the affirmative to both. With respect to subject matter jurisdiction, the court concluded that 28 U.S.C. § 1331 gives it subject matter jurisdiction over federal preemption claims seeking injunctive and declaratory relief. As for standing, the court concluded that the plaintiffs, who are organizations representing various trade groups, sufficiently established organizational standing by alleging and presenting declarations that at least some of their members enter mandatory arbitration agreements and thus face harm if AB 51 is allowed to go into effect.

Next, the court tackled the requirements for a preliminary injunction, including: (1) the likelihood of the plaintiffs succeeding on the merits of the case; (2) the likelihood of irreparable harm to the plaintiffs absent a preliminary injunction; (3) the balance of the equities; and (4) whether an injunction is in the public interest:

Likelihood of Success: The court held that the plaintiffs showed they were likely to succeed on the merits because AB 51 (1) puts arbitration agreements on an unequal footing with other contracts in violation of the FAA by targeting arbitration agreements and imposing a higher consent requirement on them; and (2) interferes with the FAA's goal of promoting arbitration by threatening civil and criminal penalties against employers who seek to enter into arbitration agreements.

Irreparable Harm: The court agreed that employers are harmed if they do, harmed if they don't absent a preliminary injunction: if an employer complies with AB 51, it is deprived of its federal rights to enter arbitration agreements under the FAA; if an employer does not comply with AB 51, it may be subject to civil and criminal penalties.

Balance of the Equities and Public Interest: The court concluded that the balance of the equities and the public interest favored a preliminary injunction because ensuring the supremacy of federal laws is of "paramount" importance.

Finally, the court addressed the scope of the preliminary injunction. The preliminary injunction enjoins the State from enforcing all key provisions of AB 51 as it relates to arbitration agreements governed by the FAA. This includes a halt to any enforcement of Labor Code section 432.6(a)-(c) and California Government Code section 12953. The preliminary injunction will remain in place until the court decides the case on the full merits.

While the court's early emphasis that the FAA preempts state laws that frustrate the execution and formation of arbitration agreements should be welcomed by employers seeking to use mandatory arbitration agreements, the ultimate outcome is still to be decided. Jackson Lewis attorneys will continue to monitor developments pertaining to AB 51. In the meantime, employers should contact a Jackson Lewis attorney if they would like to discuss the implications of the latest ruling or for assistance in drafting California-compliant employment arbitration agreements.

For more on the *Chamber of Commerce* case and Assembly Bill 51 see Jackson Lewis' prior articles:

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- Court Hears Oral Argument on Challenges to AB 51, Orders Further Briefing, and Maintains Temporary Restraining Order
- U.S. Chamber of Commerce Files Suit to Halt AB 51
- California Bar on Mandatory Arbitration Agreements in Employment Temporarily Enjoined
- New California Law Attacks Mandatory Arbitration Again ... But Is It More Bark Than Bite?

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