#### Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

### SUPREME COURT OF THE UNITED STATES

#### Syllabus

## CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA ET AL. v. BROWN, ATTORNEY GENERAL OF CALIFORNIA, ET AL.

# CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 06-939. Argued March 19, 2008—Decided June 19, 2008

Organizations whose members do business with California sued to enjoin enforcement of "Assembly Bill 1889" (AB 1889), which, among other things, prohibits employers that receive state grants or more than \$10,000 in state program funds per year from using the funds "to assist, promote, or deter union organizing." Cal. Govt. Code Ann. §\$16645.2(a), 16645.7(a). The District Court granted the plaintiffs partial summary judgment, holding that the National Labor Relations Act (NLRA) pre-empts §\$16645.2 and 16645.7 because they regulate employer speech about union organizing under circumstances in which Congress intended free debate. The Ninth Circuit reversed, concluding that Congress did not intend to preclude States from imposing such restrictions on the use of their own funds.

Held: Sections 16645.2 and 16645.7 are pre-empted by the NLRA. Pp. 4–16.

- (a) The NLRA contains no express pre-emption provision, but this Court has held pre-emption necessary to implement federal labor policy where, *inter alia*, Congress intended particular conduct to "be unregulated because left 'to be controlled by the free play of economic forces." *Machinists* v. *Wisconsin Employment Relations Comm'n*, 427 U. S. 132, 140. Pp. 4–5.
- (b) Sections 16645.2 and 16645.7 are pre-empted under *Machinists* because they regulate within "a zone protected and reserved for market freedom." *Building & Constr. Trades Council* v. *Associated Builders & Contractors of Mass./R. I., Inc.*, 507 U. S. 218, 227. In 1947, the Taft-Hartley Act amended the NLRA by, among other

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things, adding §8(c), which protects from National Labor Relations Board (NLRB) regulation noncoercive speech by both unions and employers about labor organizing. The section both responded to prior NLRB rulings that employers' attempts to persuade employees not to organize amounted to coercion prohibited as an unfair labor practice by the previous version of §8 and manifested a "congressional intent to encourage free debate on issues dividing labor and management." Linn v. Plant Guard Workers, 383 U.S. 53, 62. Congress' express protection of free debate forcefully buttresses the pre-emption analysis in this case. California's policy judgment that partisan employer speech necessarily interferes with an employee's choice about union representation is the same policy judgment that Congress renounced when it amended the NLRA to preclude regulation of noncoercive speech as an unfair labor practice. To the extent §§16645.2 and 16645.7 actually further AB 1889's express goal, they are unequivocally pre-empted. Pp. 5-8.

(c) The Ninth Circuit's reasons for concluding that *Machinists* did not pre-empt §§16645.2 and 16645.7—(1) that AB 1889's spending restrictions apply only to the *use* of state funds, not to their *receipt;* (2) that Congress did not leave the zone of activity free from *all* regulation, in that the NLRB still regulates employer speech on the eve of union elections; and (3) that California modeled AB 1889 on federal statutes, *e.g.*, the Workforce Investment Act—are not persuasive. Pp. 8–16.

463 F. 3d 1076, reversed and remanded.

STEVENS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, SOUTER, THOMAS, and ALITO, JJ., joined. BREYER, J., filed a dissenting opinion, in which GINSBURG, J., joined.