

Biz Groups Win Early Block Of Calif. Forced Arbitration Ban

By **Braden Campbell**

Law360 (January 31, 2020, 8:20 PM EST) -- A California federal judge on Friday indefinitely blocked the state's attempt to cut back at mandatory arbitration by criminalizing employment agreements that make workers give up their court rights, extending a temporary block hours before it was set to lapse.

U.S. District Judge Kimberly J. Mueller issued a minute order Friday granting a motion by the U.S. Chamber of Commerce, the National Retail Federation and other business groups for a preliminary injunction blocking A.B. 51. She had temporarily blocked the law on Dec. 30, two days before it would have taken effect.

Judge Mueller did not explain her reasoning Friday, but she said she would issue "a detailed, written order" soon. She previously said the groups raised "serious questions" about whether A.B. 51 clashes with federal law.

A.B. 51 makes it a misdemeanor for businesses to condition jobs on workers agreeing to bring employment claims in arbitration. The business groups had argued that the law is barred by the Federal Arbitration Act, which the U.S. Supreme Court has repeatedly interpreted to preempt state laws that treat arbitration agreements less favorably than other contracts.

National Retail Federation vice president for government relations and workforce development Lizzy Simmons called the law "misguided" Friday.

"This measure clearly conflicts with federal law and would deprive California employers and workers from benefiting from the advantages of arbitration," she said.

Littler Mendelson PC attorney Michael Lotito, whose firm represents the National Retail Federation and other trade groups in the suit, said the team is "very pleased by the judge's decision as she properly balances state law against U.S. Supreme Court precedent and federal law."

A representative for the California Office of the Attorney General said Friday that the office is reviewing the decision.

California Gov. Gavin Newsom signed A.B. 51 in October. The law attempts to curb mandatory arbitration agreements, which plaintiffs' attorneys, labor unions and other critics say thwart justice by forcing workers into a venue that favors employers and in many cases blocking workers from pursuing

class-based claims. Businesses and others argue that arbitration helps all parties because it's often faster than litigation.

The law's crafters had attempted to avoid FAA preemption by punishing businesses that make workers sign arbitration agreements, without invalidating the underlying agreement. But that aspect of the law "does not lessen the conflict between A.B. 51 and the FAA," because it still "outlaws their formation by penalizing employers," the groups said in their Dec. 6 complaint.

Judge Mueller said the suit raises "serious questions" about FAA preemption in her Dec. 30 order, granting the groups a temporary restraining order despite having some qualms over the belated complaint. Judge Mueller set a Jan. 31 expiration date for the temporary restraining order after a Jan. 10 hearing, withholding judgment so the parties could make further arguments about the groups' standing to challenge the law.

California is represented by Xavier Becerra, Tamar Pachter and Chad Stegeman of the California Office of the Attorney General.

The Chamber is represented by Donald Falk, Andrew Pincus and Archis Parasharami of Mayer Brown LLP.

The National Retail Federation and other trade groups are represented by Bruce Sarchet and Maurice Baskin of Littler Mendelson PC.

The case is Chamber of Commerce of the United States of America et al. v. Becerra et al., case number 2:19-cv-02456 in the U.S. District Court for the Eastern District of California.

--Additional reporting by Kevin Stawicki, Ben James and Dorothy Atkins. Editing by Haylee Pearl.