

The State of California Submits Opening Brief in Appeal Over AB 51 Injunction, Arguing FAA Preemption Does Not Apply

Article By:

Scott P. Jang

Sierra Vierra

On January 31, 2020, [a U.S. District Court preliminarily enjoined the enforcement of Assembly Bill 51 \(AB 51\)](#) against arbitration agreements governed by the Federal Arbitration Act (FAA). As enacted, AB 51 would prohibit employers from conditioning employment (including continued employment) or employment-related benefits on an individual signing a mandatory arbitration agreement for disputes arising under the California Fair Employment and Housing Act or the California Labor Code. The State of California (“the State”) appealed the District Court’s decision to the Ninth Circuit Court of Appeals.

On May 18, 2020, the State filed a 66-page opening brief with the Ninth Circuit. The State raises four main arguments, with the thrust being that the District Court erred when it concluded that AB 51 was likely preempted by the FAA.

The State sets forth several arguments regarding why FAA preemption does not apply, with an emphasis on the argument that the AB 51 does not implicate the FAA because the FAA applies to arbitration *agreements* whereas [AB 51 applies to employer policies and practices](#), particularly practices relating to “forc[ing] workers into waivers as a condition of employment . . .” In other words, the State attempts to draw a distinction between regulating agreements and regulating conduct.

The U.S. Chamber of Commerce is slated to file its Answering Brief on June 17, 2020.

Jackson Lewis P.C. © 2025

National Law Review, Volume X, Number 143

Source URL: <https://natlawreview.com/article/state-california-submits-opening-brief-appeal-over-ab-51-injunction-arguing-faa>