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State Anti-Boycott Legislation

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STATE ANTI-BOYCOTT LEGISLATION: N. C. GEN. STAT. ch. 75B §§ 1-7 (Supp. 1977).

Section 205 of the Export Administration Amendments of 1977 purports to preempt "any law . . . of the several States . . . which law . . . pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts imposed by foreign countries against other countries."¹ At least seven states, including North Carolina, have passed what amount to anti-boycott statutes. A question is therefore raised whether North Carolina's statute is preempted by the federal statute.

Entitled "An Act Prohibiting Discrimination in Business Based Upon Foreign Trade Relationships and Certain Other Factors", the North Carolina law prohibits refusing to do business with, ceasing to do business with, or refusing to hire any person because of that person's "race, color, creed, religion, sex, national origin or foreign trade relationship" when the refusal or cessation is pursuant to an "agreement, contract, arrangement, combination or understanding (with) any foreign government, foreign person or international organization."² It is unquestionably an anti-boycott measure.³ Preemption, however, is not automatic.

The federal law prohibits compliance with boycotts fostered or imposed by a "foreign country" and preempts state laws dealing with boycotts fostered or imposed by "foreign countries." An argument can be made on the basis of this language that the federal law is concerned exclusively with boycotts imposed by a government and in no way prohibits compliance with boycotts imposed by private individuals. Such an interpretation finds support elsewhere in the statute. Section 201 4A(a)(2)(C), allowing for unilateral selection, refers to a "specific selection by a boycotting country, or national or resident thereof." In no other part of the law does the language "national or resident" appear when used with respect to the boycotting country. This could lead to the conclusion that Congress divided the Arab boycott into

¹Pub. L. No. 95-52, § 205 (1977) (to be codified in 50 U.S.C. § 2403).

²N.C. GEN. STAT. ch. 75B §§ 1-7 (Supp. 1977).

³Interview with Howard Kramer, Assistant Attorney General of North Carolina, November 28, 1977.

public (government) and private boycotts and designed Title II to cover only public boycotts.⁴

The legislative history, however, leads to the opposite conclusion. The House Committee reporting on the bill said the law would prohibit certain actions when taken "pursuant to an agreement with the boycotting country (including any company, national, or resident thereof)."⁵ In regard to preemption, the House Committee said the law "preempts all State laws to the extent they relate to foreign boycotts."⁶

If Title II is limited to public boycotts, then the North Carolina law is not preempted except for those aspects that prohibit agreements with foreign governments or international organizations. If Title II covers private as well as public boycotts, then North Carolina's law is preempted to the extent that it relates to foreign boycotts. Which possibility is correct must await judicial decision.

Even without an express preemption clause, the North Carolina law could be preempted as an unwarranted intrusion by the state into the nation's foreign policy, as violative of the interstate commerce clause, or as contrary to the declared Congressional intent to occupy the field of anti-boycott legislation. Some commentators have concluded on the basis of the Export Administration Amendments of 1969 alone that state laws are preempted.⁷

D. M.

⁴The language could also indicate the opposite. If Congress intended Title II to deal solely with government imposed boycotts, then complying with privately imposed boycotts would be legal. Therefore, there would be no need to except compliance with a specific selection by a national or resident, as opposed to the government itself, because such compliance would already be legal. From this, one could conclude that Congress intended Title II to cover private boycotts but that this is the only exception allowing any compliance with privately imposed boycott requirements.

⁵H. R. REP. NO. 95-190, 95th Cong., 1st Sess. 24 (1977). The Senate Committee report contains no such language.

⁶*Id.* at 22.

⁷See e.g., Note, *The Arab Boycott and State Law: The New York Anti-Boycott Statute*, 18 HARV. INT'L L.J. 343 (1977) (concluding that the New York law would be preempted); Note, *State Reaction to the Arab Boycott of Israel: Legislative and Constitutional Preemption*, 57 BOSTON U.L. REV. 335 (1977) (concluding that state laws are preempted except for those aspects which deal with religious discrimination).

Contra, Note, *State Legislative Responses to the Arab Boycott of Israel*, 10 MICH. J.L. REV. 592 (1977) (concluding that state anti-boycott statutes "will not be hampered by the supremacy clause, federal preemption or Congress' authority to regulate interstate and foreign commerce...") *Id.* at 618.