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In WLF Victory, TX Federal Court Issues Nationwide Preliminary Injunction Against DOL Persuader Rule

(National Federation of Independent Business v. Perez)

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—Mark Chenoweth, WLF General Counsel

WASHINGTON, DC—The U.S. District Court for the Northern District of Texas today issued a nationwide preliminary injunction against the U.S. Department of Labor’s so-called Persuader Rule. The rule would require employers to disclose to DOL all union-related communication with their attorneys. Among other defects the court identified, it agreed with Washington Legal Foundation that the plaintiffs are likely to show that the new rule violates the First Amendment.

In a brief filed earlier this month in *National Federation of Independent Business v. Perez*, WLF argued that because the rule facially discriminates on the basis of the content of speech, strict scrutiny applies. The district court fully agreed and applied strict scrutiny in evaluating the rule’s content-based restrictions. Since DOL could not demonstrate a compelling interest to justify such a restriction (or show that the rule was the least-restrictive means to advance the government’s purported interest), the court held that the rule likely violates the First Amendment. The court went further and held that the government had failed to satisfy even the lower standard of “exacting scrutiny” review, for which DOL advocated. Finally, the court held that the rule was likely overbroad, as it would impermissibly chill speech between employers and their lawyers.

DOL has read the disclosure requirements in Section 203 of the Labor Management Reporting and Disclosure Act of 1959 narrowly for more than five decades as not applying to entities that have no direct contact with employees and who merely provide advice on labor relations to employers. By simultaneously shrinking the definition of exempt “advice” and expanding the definition of which entities count as “persuaders,” DOL’s aggressive reinterpretation of this statutory provision is unconstitutional. WLF’s brief was prepared with substantial *pro bono* assistance from Thomas Julin, Gregory Robertson, and Alan Marcuis of Hunton & Williams.

After the decision, WLF issued the following statement by General Counsel Mark Chenoweth: “Today’s nationwide preliminary injunction provides welcome relief. Here’s hoping it spells the end for DOL’s unconstitutional gambit to overturn longstanding bipartisan consensus and dramatically expand reporting requirements. DOL should never have cast aside First Amendment limits on compelled speech in its effort to create leverage against law firms and others who counsel the management side of labor disputes, and it should withdraw the rule immediately.”

WLF is a national, public-interest law firm and policy center that regularly advocates in support of free speech rights, including where governments attempt to mandate or ban speech.