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WLF Asks Arkansas Federal Court to Strike Down DOL Persuader Rule as Violating First Amendment

(Associated Builders and Contractors of Arkansas v. Perez)

“The federal rules governing who must file disclosure reports and what they must disclose have been in force for over half a century. DOL’s gambit ... to create leverage against law firms and others who counsel the management side of labor disputes runs headlong into First Amendment limits on compelled speech.”

—Mark Chenoweth, WLF General Counsel

WASHINGTON, DC—Washington Legal Foundation today asked the U.S. District Court for the Eastern District of Arkansas to decide that the Department of Labor’s new so-called Persuader Rule violates First Amendment protections against compelled speech. In a brief filed in *Associated Builders and Contractors of Arkansas v. Perez*, WLF argues that because the new rule facially discriminates based on union-related content of speech, strict scrutiny must apply.

The Department of Labor (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—across multiple administrations of both political parties—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 what entities count as “persuaders,” the Department’s aggressive reinterpretation of this statutory provision runs afoul of the U.S. Constitution.

WLF’s brief points out that DOL’s brand-new views receive no deference when it comes to whether or not the statute as reinterpreted violates the First Amendment. The Persuader Rule cannot possibly survive strict scrutiny, because it fails to directly advance any compelling government interest and its mandates are not the least restrictive means of advancing the rule’s supposed objective. WLF’s brief was prepared with substantial *pro bono* assistance from Thomas Julin of the Gunster Yoakley & Stewart law firm in Miami, FL and Kevin Crass of the Friday, Eldredge & Clark law firm in Little Rock, AR.

After filing its brief, WLF issued the following statement by General Counsel Mark Chenoweth: “The federal rules governing who must file disclosure reports and what they must disclose have been in force for over half a century. The Department of Labor’s latter-day gambit would overturn longstanding bipartisan consensus and dramatically expand reporting requirements. The agency’s effort to create leverage against law firms and others who counsel the management side of labor disputes runs headlong into First Amendment limits on compelled speech.”

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.