WLF Asks Court to Strike Down Dept. of Labor's 'Persuader Rule' as Violating First Amendment

(Labnet Inc. v. Department of Labor)

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> **—Mark Chenoweth, WLF General Counsel**

WASHINGTON, DC—Washington Legal Foundation today asked the U.S. District Court of Minnesota 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 *Labnet Inc. v. Department of Labor*, WLF argues the Court erred by holding at the preliminary injunction stage that the plaintiffs' facial challenge to the Persuader Rule can succeed only by showing that the rule would be invalid in all of its applications. As WLF's brief points out, facial challenges to laws that violate the First Amendment do not have to make such a showing.

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 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 agency's aggressive reinterpretation of this statutory provision runs afoul of the U.S. Constitution.

WLF's brief notes 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 new 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. In a separate challenge to the same rule, the U.S. District Court for the Northern District of Texas has applied strict scrutiny properly in evaluating the Persuader Rule's content-based restrictions and granted a nationwide preliminary injunction—handing a victory to WLF.

Upon 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. DOL'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 and against government attempts to mandate or ban speech.

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