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WLF Applauds Nationwide Permanent Injunction Against Department of Labor's Persuader Rule

(National Federation of Independent Business v. Perez)

“Today’s nationwide permanent injunction is great news for workers, small businesses, and the First Amendment. Here’s hoping it spells the end for DOL’s unconstitutional gambit to overturn longstanding bipartisan consensus and dramatically expand reporting requirements that stifle free enterprise.”

—Mark Chenoweth, WLF General Counsel

WASHINGTON, DC—The U.S. District Court for the Northern District of Texas today issued a nationwide permanent injunction against the U.S. Department of Labor (DOL) to prevent implementation of the agency’s so-called Persuader Rule. The rule, pursuant to § 203 of the Labor Management Reporting and Disclosure Act of 1959, would require employers to disclose to DOL, for the first time ever, certain union-related communication with their attorneys.

WLF’s June brief in *National Federation of Independent Business v. Perez*, argued that because the rule facially discriminates on the basis of the content of speech, strict scrutiny applies. By simultaneously shrinking the definition of exempt “advice” and expanding the definition of which entities count as “persuaders,” WLF contended that DOL’s aggressive reinterpretation of this statutory provision is unconstitutional.

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 issued a preliminary injunction and 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. Finally, the court held that the rule was likely overbroad, as it would impermissibly chill speech between employers and their lawyers. Today’s injunction converted the original preliminary injunction into a permanent one, in part for the reasons stated in the court’s preliminary injunction order.

After the decision, WLF issued the following statement by General Counsel Mark Chenoweth: “Today’s nationwide permanent injunction is great news for workers, small businesses, and the First Amendment. Here’s hoping it spells the end for DOL’s unconstitutional gambit to overturn longstanding bipartisan consensus and dramatically expand reporting requirements that stifle free enterprise. DOL never should 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.”

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.