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February 4, 2016

VIA FEDERAL EXPRESS & E-MAIL

The Honorable Howard Shelanski
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503
OIRA_submission@omb.eop.gov

Re: The Proposed Persuader Advice Exemption Rule (RIN: 1245-AA03)

As the chief legal officers of our states, we are writing to express our concerns about the proposed final rule referenced above and currently under consideration. As proposed, we believe this new rule would undermine long-standing protections for confidential attorney-client communications and would place undue burdens on small businesses within our states.

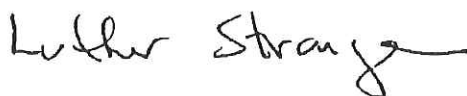
For more than 50 years, the Labor Management Reporting and Disclosure Act ("LMRDA") has preserved the confidentiality of attorney-client communications by exempting attorney advice relating to labor relations issues from disclosure generally, and specifically, by exempting confidential attorney-client interactions. This new rule, however, would undermine these protections by requiring the reporting of advice related to persuasion of employees, regardless of whether the lawyers who provide the advice communicate with anyone other than their clients. These new reporting requirements would put lawyers in our states in an ethical dilemma: An attorney must either risk professional disciplinary action by disclosing employer confidences or risk liability under the LMRDA by refusing to disclose employer confidences.

The new rule will cause particular harm to small businesses in our states. The reporting requirement applies specifically to outside consultants. Because many large corporations employ in-house counsels, they will have access to legal advice on labor matters, free of the disclosure concerns raised by the new rule. Small businesses, by their very nature, are less likely to employ an in-house counsel. The burden of this new rule will fall chiefly on them, with heavy penalties if they fail to comply.

Ultimately, this proposed rule will have a chilling effect on attorney-client confidentiality and employers' fundamental right to counsel. The rule may well discourage employers from seeking legal representation, a consequence contrary to the overall intent of the Act. It will also dissuade attorneys from taking labor cases in order to avoid the ethical dilemma the new rule creates. For these reasons, the Bar Associations of many of our states, as well as the American Bar Association, also have expressed their concern with the dramatic, negative impact the rule would have on the practice of law and the right to associate with counsel.

The Department of Labor claims that the new rule is “firmly rooted in the plain meaning of the statutory text.” But the rule contradicts more than five decades of practice founded on the Department’s interpretation following enactment of the LMRDA. The Department points to no change in the statute to justify its reinterpretation, and the new rule is without foundation in the law.

On behalf of the undersigned states, we urge the OMB office to reject the proposed rule as drafted and reaffirm the longstanding interpretation of the advice exemption to the reporting requirements of the LMRDA.



Luther Strange
Alabama Attorney General



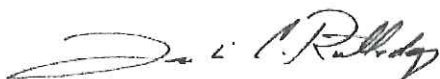
Bill Schuette
Michigan Attorney General



Mark Brnovich
Arizona Attorney General



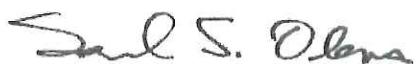
Adam Paul Laxalt
Nevada Attorney General



Leslie Rutledge
Arkansas Attorney General



Scott Pruitt
Oklahoma Attorney General



Sam Olens
Georgia Attorney General



Alan Wilson
South Carolina Attorney General



Lawrence G. Wasden
Idaho Attorney General



Marty Jackley
South Dakota Attorney General



Derek Schmidt
Kansas Attorney General



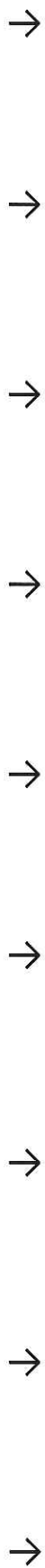
Patrick Morrisey
West Virginia Attorney General



Jeff Landry
Louisiana Attorney General

Example of the continuum from “probably unrelated” to “could be related” to “persuader activity”:
**Confusion, Over-Reporting, Under-Reporting and Potential Criminal Exposure Created
 for Small, Non-Union Employers and their Providers**

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|--------------------------------------------------------------------------|---------------------------------------------|----------------------------------------------|-------------------------------------------|-------------------------------------------|------------------------------------------------------------------|---------------------------------------------|-------------------------------|----------------------------------------------------------------|
| 1. General Soft Skills Training or Coaching for Supervisors and Managers | 2. Reviewing or Drafting Employee Handbooks | 3. “Total Rewards Strategies” and Consulting | 4. Employee Opinion or Engagement Surveys | 5. “Positive Employee Relations” Training | 6. “How to Remain Union-Free” Program or Related Preventive Work | 7. Pre-Campaign Training in Do’s and Don’ts | 8. Active campaign consulting | 9. Traditional Persuader Activity delivered directly to voters |
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| Usually unrelated to Sec. 7 Context; might have a dual objective; could be in the midst of a campaign | Usually unrelated to campaign context; Will always involve “protected concerted activity” issues per NLRB | Compensation and Benefit planning may be unrelated, have mixed objectives or be a key part of campaign prevention | Can be a regular temperature check, can have mixed objectives or could be a key part of campaign prevention | Blending soft skills and total rewards issues to strengthen the relationship with employees. Can be part of a Union-Free objective. | Explicit connection to a Union-Free objective but the content is mostly Positive Employee Relations plus Do’s and Don’ts | Usually in the context of some level of union activity reported to the employer by employees or a union itself | Drafting, coaching, and teaching effective and lawful behaviors (not directly to voters) | Rarely provided by attorneys, by most consultants or by trade associations; usually from niche providers |
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