

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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April 26, 2016

The Honorable Bradley Byrne
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Byrne:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, supports H.J. Res. 87, a resolution of disapproval that would repeal the Department of Labor's (DOL) recently finalized "persuader" regulation.

The "persuader" regulation upends a clear, brightline interpretation of "advice" under the Labor Management and Reporting Disclosure Act (LMRDA) that had been in place for over 50 years. This previous interpretation required employers and their attorneys or consultants to publicly disclose to DOL their relationships only when the attorney or consultant communicated *directly* with employees about unionization. DOL's new interpretation dramatically narrows the meaning of "advice" in order to expand reporting, which now includes a wide array of innocuous activities, such as retaining an attorney to draft certain workplace policies.

DOL's new "persuader" regulation is incredibly vague and arbitrary, forcing employers and their attorneys and consultants to guess as to what activities must be reported. This ambiguity is particularly perilous given that there are criminal penalties attached to this reporting process. Moreover, public disclosure of the attorney-client relationship raises serious legal and ethical issues for attorneys, which will discourage attorneys from offering legal advice on labor matters. All of these issues are features, rather than bugs, of the "persuader" regulation: reporting uncertainty, a complicated disclosure process, attorney-client confidentiality issues and the specter of criminal penalties will all combine to make it harder for employers to communicate with employees about the pros and cons of unionization. Limiting employer free speech was precisely the goal of the deceptively named "Employee Free Choice Act" (EFCA) as well as the National Labor Relations Board's 2014 "ambush" election regulation. Congress rejected EFCA and voted to rescind the ambush election rule (S.J. Res 8). For the same reasons, Congress should likewise reject the DOL's new "persuader" regulation.

Thank you for your leadership on this issue, and for sponsoring H.J. Res. 87. We look forward to working with you and Congress to advance this important legislation.

Sincerely,



R. Bruce Josten