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DOL's Persuader Advice Exemption Rule Blocked

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Yesterday, Texas federal judge Sam R. Cummings granted Summary Judgment to several business groups, joined by Texas and nine other states, seeking to block enforcement of the U. S. Department of Labor's (DOL) new "Persuader Activity" rule. In effect, the challenged rule, which became final in March 2016 and was to be enforced as of July 1, 2016, required expanded public disclosure of employers' use of consultants, including attorneys, in matters relating to union organizing or collective bargaining. In addition, such consultants would have been required to disclose all payments received from those and other employers, including payments unrelated to any union organizing campaign or collective bargaining.

In his decision, Judge Cummings incorporated the findings he issued in granting a preliminary injunction in June 2016 blocking DOL enforcement of the rule. In permanently enjoining enforcement of the rule, he noted that "the Court is of the opinion that the Department of Labor's Persuader Advice Exemption Rule should be unlawful and set aside … and the Court's preliminary injunction preventing the implementation of the Rule should be converted into a permanent injunction with nationwide effect."

Although DOL challenged the court's preliminary injunction in an interlocutory appeal now pending at the Fifth Circuit, today's decision likely sounds the death knell for this controversial move by the Obama Administration to make it more difficult for employers to secure meaningful assistance from outside consultants and law firms in union organizing drives and collective bargaining. It seems doubtful the Trump Administration will have much appetite for further government challenges to the court's decision.

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