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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.

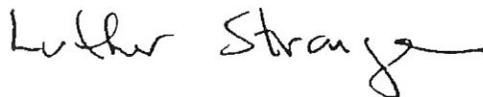
For more than 50 years, the Labor Management Reporting and Disclosure Act ("LMRDA") has preserved the confidentiality of attorney-client communications by exempting attorney advice relating to labor relations issues from disclosure generally, and specifically, by exempting confidential attorney-client 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



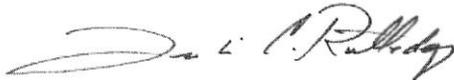
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Mark Brnovich
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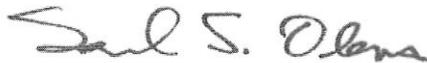
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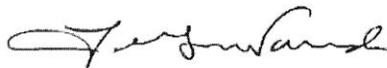
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