AMENDMENT TO H.J. RES. 87

OFFERED BY MR. POCAN

Insert before the resolved clause the following:

Whereas, in 1959, Congress enacted the Labor-Management Reporting and Disclosure Act (LMRDA) (29 U.S.C. 401 et seq.), which, since its inception has required under section 203 disclosure of both direct and indirect persuader activity;

Whereas the 1959 Senate Committee Report (S. Rep. No. 86-187) accompanying the legislation stated that persuader activities described in section 203 ''are disruptive of harmonious labor relations and fall into a gray area'' between proper and improper conduct, and it was thought that mandatory disclosure of employer-consultant persuader arrangements would deter abuses and foster compliance with the law;

Whereas, in 1962, Solicitor of Labor Charles Donahue, without notice and comment, issued a two-page interpretation of section 203 of the LMRDA that effectively wrote the word ''indirectly'' out of the statute by classifying indirect persuader activity as ''advice'', which is exempt by statute from disclosure, which resulted in the Department of Labor only requiring disclosure when there was direct contact between the consultants and the employees and all behind-the-scenes persuader services were exempt as non-disclosable ''advice'';

Whereas the effect of this interpretation, which lasted 54 years, exempted from reporting under section 203 all in-

direct persuader activity and the Department receives no indirect persuader reports;

Whereas, in 1979 and 1980, the Committee on Education and Labor of the House of Representatives conducted 9 days of hearings entitled ''Pressures in Today's Workplace'' and issued a report in 1980 on the evidence it gathered, in part stating that ''the current interpretation of [section 203 of the LMRDA] law has enabled employers and consultants to shield their [union avoidance] arrangements and activities'' and that the section 203's reporting requirements were rendered a ''dead letter'';

Whereas, on January 9, 2001, the Department published a revised interpretation of the LMRDA, which brought indirect persuader activities back into the LMRDA's reporting requirements, though in April 2001, the Administration of President George W. Bush rescinded this reform;

Whereas, in 2011, the Administration of President Barack Obama issued a notice of proposed rulemaking to update the persuader reporting requirements and seeking to reinstate the statutory requirement for employers and consultants to report their indirect persuader activities, in addition their existing obligation to report direct persuader activity;

Whereas, after receiving comments, the Department published a final rule on March 24, 2016, (81 Fed. Reg. 15924) closing the loophole created by the 1962 interpretation by aligning the reporting requirements with the statute;

Whereas, in conjunction with testimony before a subcommittee of the Committee on Education and Workforce

of the House of Representatives on April 27, 2016, regarding the rule that is the subject of this resolution, law professors from law schools across the country submitted a letter to the Committee which affirmed that the LMRDA's reporting requirements, and the Departments's final rule, are consistent with an attorney's responsibility to maintain confidentiality under the American Bar Association's Model Rules of Professional Conduct;

Whereas the professors explained in their letter, ''Model Rule 1.6(b)(6) . . . protects attorneys from discipline if they disclose certain client information to comply 'with other law or court order' ''and therefore, ''the Model Rule clearly contemplates the disclosure of confidential information to comply with a law such as the LMRDA'';

Whereas, consistent with the LMRDA, the final rule expressly precludes the disclosure of information protected by the attorney client privilege;

Whereas, according to the Department in the preamble to the final rule that is the subject of this resolution, more than 100,000 workers had the opportunity to decide whether a union should represent them in fiscal year 2015 and studies have found that 71 to 87 percent of employers retain union avoidance consultants in representation campaigns to help them defeat the worker's effort to organize a union;

Whereas, under the rule that is the subject of this resolution, transparency would be enhanced because tens of thousands of workers would have the ability to be more fully informed when making a decision on representation, as Congress intended, and when employers retain union avoidance consultants who engage in indirect persuader

activity to influence employees in collective bargaining situations, thousands of additional workers will also have access to that information when making decisions affecting their livelihoods; and

Whereas this resolution of disapproval is inconsistent with the facts and section 203 of the Labor-Management Reporting and Disclosure Act: Now, therefore, be it