

Remarks of Congressman Jared Polis
APRIL 27, 2016 HELP SUBCOMMITTEE HEARING ENTITLED
“THE PERSUADER RULE: THE ADMINISTRATION’S LATEST ATTACK ON EMPLOYER
FREE SPEECH AND WORKER FREE CHOICE”

Wednesday, April 27, 2016 at 10:00 a.m. in 2175 Rayburn.

Opening Remarks:

Today, we’re holding yet another hearing that shows the backwards priorities of the Majority. Instead of supporting rules and legislation that lift up workers, like raising the minimum wage or giving workers the overtime pay they deserve, Republicans are spending time attacking the Obama Administration’s persuader rule.

When workers seek to organize and bargain collectively, employers often enlist the assistance of outside labor relations consultants – known as “persuaders” or “union avoidance” consultants – to orchestrate and roll out professionally managed anti-union campaigns. Studies show that employers hire union-avoidance persuaders in as many as 87% of union organizing campaigns.

Since its inception in 1959, the Labor-Management Reporting and Disclosure Act (LMRDA) has required disclosure of both *direct and indirect* persuader activity. Yet, starting in 1962, a loophole was carved into DOL's interpretation of the law, resulting in employers and their hired consultants only reporting direct persuader activity – such as when a persuader communicates directly with employees. Since most persuaders operate behind the scenes – such as by scripting the employer's talking points, preparing videos and organizing the anti-union campaign plan – the lion's share of indirect persuader activity has gone unreported.

For too long, union-avoidance consultants have been able to operate in the shadows due to this large loophole in the reporting requirements. Workers have been kept in the dark about the activities of anti-union consultants, whose words and tactics are being used to influence their decisions about union representation. Working men and women deserve to know who their employer is hiring and exactly how much the employer is spending to discourage them from forming a union.

Under the DOL's persuader rule, consultants and attorneys who engage in these persuader activities, the indirect activities – and the employers who hire them – must disclose their persuader agreements and a description of the services to be performed, including the amount employers paid for these services.

Basic fairness dictates that workers should be able to know who is responsible for the information that is being shared with them during union organizing efforts. The DOL's revised disclosure requirement means that working people will know who has crafted the message when there is a counter-union organizing effort in their workplace. Workers who are told that the company has no money to raise wages may be interested in knowing how much money their employer is spending on these outside union-avoidance consultants.

Moreover, the Persuader Rule evens the playing field. As a general matter, most unions already must disclose far more information than is

being required of employers and consultants under this Rule. Union reports filed with the Department of Labor can be hundreds of pages long. For example, this report, filed by AFL-CIO, is 187 pages long (point to report), compared to two pages that are required under the new persuader rule.

Disclosures required under DOL's final rule do not breach an attorney's responsibility to maintain confidentiality regarding a client relationship. Under the ABA's Model Rule of Professional Conduct, the Model Rules contain an exception that allows disclosures that are required by statute (e.g., LMRDA).

There are hardworking American families in my district – and every one of our districts – that continue to work harder and harder, but are struggling to make ends meet. Workers no longer share in the growth of our economy, and income and wealth inequality is one of the greatest problems facing our nation.

I applaud the Department's final rule, and I will continue to call on my colleagues in Congress to once again make it possible for more workers to come together to organize and form a union – because we know, when working people do better, families do better, our economy does better, and our nation does better.