



ALAN WILSON
ATTORNEY GENERAL

March 4, 2011

Lafe E. Solomon, Esquire
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United States Government National Labor Relations Board
1099 14th Street, NW
Suite 8600
Washington, DC 20570
(By U.S. Mail and Email)

Re: Conference Calls Regarding State Constitutional Right to Secret Ballot in Elections for Determination of Employee Representation

Dear Mr. Solomon:

We are writing regarding the communications between our legal staffs and your legal staff, including Eric Moskowitz, Assistant General Counsel for the NLRB, that followed your February 2, 2011 letter concerning NLRB's threatened litigation against our States. As we made clear in our January 27, 2011 letter, we will vigorously defend the constitutionality of our state constitutional amendments protecting the right to vote by a secret ballot, and we do not believe that the NLRB should use its resources to sue our States for constitutionally protecting those rights.

Lawyers from our respective offices had conference calls on February 8 and February 24 to discuss the secret ballot amendments. These calls resulted in no substantive agreement between our offices for two reasons. First, Mr. Moskowitz declined to discuss his proposal to resolve matters absent a confidentiality agreement, and the States declined to enter into such an agreement. Second, our understanding is that the proposal Mr. Moskowitz said he would discuss if we agreed to confidentiality would apparently involve some kind of agreement between the States and the NLRB that would give the analysis set forth in our January 27 letter the "force of law." As we explained in our February 24 conference call, our offices do not intend to bind corporations and other third parties through a "force of law" agreement with the NLRB. Therefore, we will not agree to a confidentiality agreement to learn more about a "force of law" agreement that we will not execute. Further, the people of our States have spoken via these amendments, and we do not want a confidentiality agreement to limit our ability to explain to them our course of action in this matter.

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We stand by the analysis in our January 27 letter, and, as your February 2, 2011 letter acknowledges, that analysis construes our constitutional amendments in a manner consistent with federal law. Although our offices reached no formal agreement, no reason exists for the NLRB to bring an action against our States concerning this issue.

We appreciate the opportunity for our legal staffs to discuss this important issue and hope that you concur that litigation challenging our secret ballot amendments is unwarranted.

Sincerely,



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