



LEGISLATIVE ALERT

June 19, 2014

Honorable Elijah Cummings
Ranking Member
House Committee on Oversight and Government Reform
Washington, DC 20515

Dear Ranking Member Cummings,

I write to express my concern about possible legislation that would curtail currently permissible union activity by Administrative Law Judges (“ALJs”). Of the eighteen hundred federal ALJs, fifteen hundred are at the Social Security Administration and represented by the Association of Administrative Law Judges, part of our affiliate union, the International Federation of Professional & Technical Engineers.

Our understanding is that this legislation would codify the Code of Conduct for United States Judges (the “Judicial Code”) and apply it to federal ALJs, Executive Branch employees. While there can be no objection to requiring the highest ethical conduct for ALJs and all other Executive Branch employees, this approach is misguided, likely to result in unintended consequences not the least of which is costly and time-consuming litigation to sort out which body of ethics law prevails in any situation.

The Judicial Code consists of principles and guidelines without the force of law. It expressly states that it “is not designed or intended as a basis for civil liability or criminal prosecution.” That is, it is an aspirational document adopted by the Judicial Conference of the United States, the principal policy making body concerned with the administration of the U.S. federal courts.

Executive Branch employees are already bound by federal ethics laws. The Hatch Act subjects ALJs to a wider range of restrictions on partisan political activity than other federal employees. Layering the Judicial Code, in particular Canon 5, on top of the Hatch Act will add unnecessary restrictions on ALJs’ political activity on their own time. The Employee Standards of Conduct, promulgated by the Office of Government Ethics, has a wide scope, establishing general principles of ethical conduct; regulating gifts from outside sources and between employees, financial conflicts of interests, impartiality in performing official duties, misuse of position, and outside activities. How these detailed standards will interact with the Judicial Code cannot be assessed without full hearings and input from legal experts.

Most importantly, the Congressional Research Service has cautioned that the imposition of Judicial Code, in particular Canon 5, on ALJs “might call into question certain activities conducted by government employee unions” (#7-6350, 5/19/2014). Accordingly, such legislation should only move forward if it includes explicit language that it does not eliminate, diminish or otherwise erode current ALJ collective bargaining protections.

Thank you for your consideration of our views.

Sincerely,

Bill Samuel
Director of Government Affairs