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Financial Reform Newsletter: June 15, 2017

BIG WIN for America's Retirement Savers: Best Interest Rule in Effect!
Endangering Americans' Jobs, Homes, Retirements and Savings as well as Our Financial System, House Republicans Eviscerate Financial Protection Rules with Passage of CHOICE Act.
Protecting Americans' Economic Security, Opportunity and Prosperity Requires Us to Have an Active Legal Practice

BIG WIN for America's Retirement Savers: Best Interest Rule in Effect!

Last Friday, after a five-year fight, a major milestone was reached when the core provisions of the Department of Labor's "best interest" fiduciary rule went into effect. As a result, tens of millions of American workers and retirees will now save tens of billions of dollars every year because financial advisers are now required to act in their clients' best interest, not their own. This is a huge victory against great odds and the most determined opposition.

This was also a victory for the rule of law. In the early days of his Administration, President Trump sided with the financial industry and against tens of millions of hardworking Americans when he directed the Department of Labor to make it a priority to delay and then kill the fiduciary rule. The Trump administration, his DOL and Office of Management and Budget (OMB), as well as too many allies in the industry, worked tirelessly to do just that. However, we and our many allies -- virtually all the consumer and investor protection organizations in the US -- worked just as tirelessly to oppose and stop them.

Better Markets, in numerous written submissions, meetings and in the media, argued that the rule was a critically important protection for workers and retirees, that the rulemaking process was thorough and thoughtful, and that any attempt to delay, weaken, or gut the rule would have to satisfy the same high legal standard that governs all rulemaking. Just as there is a carefully designed and legally mandated process to enact a rule (which includes extensive public input, thorough deliberation and reasoned decision-making), delaying, changing or repealing a rule requires the same. Frankly, we hammered these points and the rule of law repeatedly in our advocacy. We are a country of laws and even the President and his administration must follow them. To his credit, President Trump's Secretary of Labor, Alexander Acosta, stood up to enormous political pressure and admitted the undeniable: there was simply no "principled legal basis" to further delay the core provisions of the rule.

In addition to the huge benefits to American workers and retirees from the rule, the rule of law must continue to guide DOL's future actions. Unfortunately, there is no doubt the battle over the rule will continue because too many in the industry want the law right to put their profits over the best interests of their clients. With the final set of protections in the rule scheduled to go into effect on January 1, 2018, the rule remain under grave threat. The administration and too many Congressional Republicans and too many in industry remain dedicated to killing the rule. While there is no legitimate factual or legal basis for such action given the ample record supporting the rule, which resulted from years of inclusive deliberation and thorough, data-driven analysis, that apparently will not stop President Trump and his industry allies from trying.

Rest assured, Better Markets will be watching and fighting back just as hard.

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Endangering Americans' Jobs, Homes, Retirements and Savings as Well as Our Financial System, House Republicans Eviscerate Financial Protection Rules with Passage of CHOICE Act.
By deregulating finance, including Wall Street's biggest banks, the CHOICE Act, passed on a party-line vote by Republicans in the House last week. This deregulation bill will once again allow financial firms to take huge risks and prey upon unsuspecting consumers. It will also almost certainly lead to another financial crash, economic crisis and more taxpayer-funded bailouts.

It is simply astonishing, [or insane as we said last week], that just nine years after [an economic catastrophe that cost more than $20 trillion] in bailouts, lost jobs, homes, retirement savings and more, and while millions of American families are still suffering from the devastation, finance in general and Wall Street in particular would be allowed to once again basically run wild.

The CHOICE Act, or the "Wrong CHOICE Act" as it has been referred to, would eliminate essential financial protection rules for consumers and investors that have created financial stability while enabling finance to continue to support the real economy. It is indisputable that [financial reform is working] and it is [not harming lending, bank profitability or economic growth]. The Republicans' deregulation bill would allow the biggest Wall Street banks to evade vital financial protection rules and reduce key protections such as living wills and stress tests to pro forma exercises with little real value or effectiveness. It would also gut both the Financial Stability Oversight Council (FSOC) and the Consumer Financial Protection Bureau (CFPB).

You don't have to take our word for all this. Headlines from across the media spectrum say the same thing:

["House passes sweeping legislation to roll back banking rules,"]
The Washington Post
["How the Financial Choice Act Hurts Americans,"]
Fortune
["Away from the national spotlight, GOP guts Wall Street safeguards,"] MSNBC
["The House quietly voted to destroy post-financial-crisis Wall Street regulations,"] *Business Insider*
["Republicans take knife to post-crisis Wall Street reforms,"] *Reuters*

Protecting Americans' Economic Security, Opportunity and Prosperity Requires Us to Have an Active Legal Practice
Unfortunately, litigation, like rule making, can seem complicated and remote to the concerns of everyday people. However, the lives and livelihoods of all hardworking Americans are directly impacted by what happens in the courts, although not usually in the cases that make headlines. A recent example is our legal work in the MetLife/FSOC case where we have worked to prevent [FSOC from being gutted] and [the administration from helping MetLife avoid a losing case]. [Our work in court to protect the DOL best interest fiduciary duty rule] is another example.

While our legal practice before the Supreme Court has been more limited, we're going to have to ramp up there as well because Americans' interests are being undermined more and more. A recent clear and direct example is the Court's decision [limiting the ability of the SEC] to require crooks to give back the money they stole. A recent less clear and less direct [decision was written by the newest Supreme Court Justice, Neil this is about Gorsuch]. In that case, the Court limited the reach of a Congressional statute (the Fair Debt Collection Practices Act) that was supposed to limit the egregious conduct debt collectors can engage in to collect a debt. This will create a massive loophole in the law and revive grossly inappropriate debt collection practices that were outlawed a long time ago.

More troubling was the following thinking expressed in the opinion:

"Constant competition between constable and quarry, regulator and regulated, can come as no surprise in our changing world. But neither should the proper role of the judiciary in that process - to apply, not amend, the work of the People's representatives."

This suggests a wooden, time-frozen reading of Congress's actions that might well be the tip of the spear for killing the so-called administrative state: the "changing world" is irrelevant because only what "the People's representatives" literally said at some point in the past is important and that will control the present. Thus, Justice Gorsuch found that the Fair Debt Collection Practices Act only prohibited actions when collecting a debt "for another," but didn't apply when a credit card company, bank or other business was collecting a debt for itself.

As the court acknowledged, "disruptive dinnertime calls, downright deceit and more besides drew Congress's eye to the debt collection industry." Can anyone really think that Congress intended to only prohibit those annoying, abusive and illegal debt collection practices if the debt was being collected on behalf of someone else? Of course, not. "For another" did not express the intent of Congress. The prohibition did. Would Congress really have passed a statute with such a glaring, gaping, easy loophole, i.e., just collect it yourself rather than having someone else do it and you can engage in all the abuses you want!

That's absurd, unless you intend to dramatically limit the scope of Congressional actions and the administrative state more broadly. The court's reference to "regulator and regulated" was particularly noteworthy and requires careful monitoring regarding the financial regulatory agencies and their ability to protect consumers, investors and financial stability. Only time will tell, but the indications aren't good.