

# United States Senate

WASHINGTON, DC 20510

January 31, 2013

Board Member Sharon Block  
Board Member Richard F. Griffin Jr.  
National Labor Relations Board  
1099 14<sup>th</sup> St. NW  
Washington, DC 20570-0001

Dear Ms. Block and Mr. Griffin, Jr.:

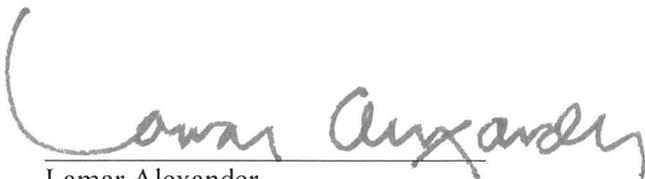
We write to insist that you immediately leave the National Labor Relations Board, withdraw from all Board activities and stop drawing salaries and other benefits associated with the positions you purport to hold, as your purported appointments have been found constitutionally invalid.

On January 25, 2013, in *Noel Canning v. NLRB*, a three judge panel of the District of Columbia's U.S. Circuit Court of Appeals unanimously ruled that your "recess appointments" on January 4, 2012 as members of the National Labor Relations Board violated Article II, Section 2 of the United States Constitution. The court therefore vacated the judgment in one case before it. But under the court's decision, all cases in which your participation was necessary, or will be necessary for a quorum, should be vacated, as the Board was not lawfully constituted in any of these matters.

The court's decision was clear. With regard to the President's argument about the constitutionality of your appointments, they wrote:

This will not do. Allowing the President to define the scope of his own appointments power would eviscerate the Constitution's separation of powers. The checks and balances that the Constitution places on each branch of government serve as "self-executing safeguard[s] against the encroachment or aggrandizement of one branch at the expense of the other." *Buckley v. Valeo*, 424 U.S. 1, 122 (1976). An interpretation of "the Recess" that permits the President to decide when the Senate is in recess would demolish the checks and balances inherent in the advice-and-consent requirement, giving the President free rein to appoint his desired nominees at any time he pleases, whether that time be a weekend, lunch, or even when the Senate is in session and he is merely displeased with its inaction. This cannot be the law.

The right course of action is for you to leave the Board immediately and cease acting in an official capacity that you legally lack, and for the President to nominate new individuals and allow the Senate to provide its advice and consent. We urge you to do so.



Lamar Alexander  
United States Senator



Mitch McConnell  
United States Senator

Raymond

James W. Clarke

L. Lee

Russell

W. S.

Sayby Chaublin

Mike Johnson

Joe Kinch

James

Kelly A. Ayotte

Jeff Flah

Michael B. Ezi

Ron Johnson

Jeff Lewis

Jerry Moran

Paul Beckman

John Hillen

Robert Winter

Richard Shelby

John Tins

Don Coats

Susan Collins

John H. Brown

John Barrasso

John McCain

Pat Romney

Pat Roberts

708

John Cornyn

Bob Fischer

Clark Kirk

Wainwright

John Boozman

Kevin S. Hatch

Jim J.

Mac R.

Chuck Grassley

Dir Vitter

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*Mike Johanns*

113TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To prohibit the use of Federal funds for certain activities of the National Labor Relation Board and the Consumer Financial Protection Bureau.

IN THE SENATE OF THE UNITED STATES

*Mr. Johanns (for himself, Mr. Alexander and Mr. Cornyn)*  
\_\_\_\_\_ introduced the following bill; which was read twice  
and referred to the Committee on \_\_\_\_\_

**A BILL**

To prohibit the use of Federal funds for certain activities of the National Labor Relation Board and the Consumer Financial Protection Bureau.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Restoring the Con-  
5 stitutional Balance of Power Act of 2013".

6 **SEC. 2. PROHIBITION ON FUNDING OF CERTAIN NLRB AC-**  
7 **TIVITIES.**

8 No Federal funds may be used by the National Labor  
9 Relations Board to undertake or enforce activities com-  
10 mencing on or after January *4*, 2012 that require author-

1 ization by not less than a quorum of the members of the  
2 Board.

3 **SEC. 3. PROHIBITION ON FUNDING OF CERTAIN CFPB AC-**  
4 **TIVITIES.**

5 No funds may be transferred from the Federal Re-  
6 serve to be used by the Bureau of Consumer Financial  
7 Protection to carry out activities that are authorized only  
8 upon the confirmation of a Director of the Bureau.

9 **SEC. 4. SUNSET.**

10 The provisions of this Act shall terminate on the date  
11 on which—

12 (1) with respect to section 2, the members of  
13 the National Labor Relations Board are confirmed  
14 in a number sufficient for a quorum consistent with  
15 the advice and consent requirements of the United  
16 States Constitution, as determined in accordance  
17 with the decision of the United States Court of Ap-  
18 peals for the District of Columbia Circuit in the case  
19 *Noel Canning v. National Labor Relations Board*  
20 (No. 12-1115); and

21 (2) with respect to section 3, a Director of the  
22 Bureau of Consumer Financial Protection is con-  
23 firmed consistent with the advice and consent re-  
24 quirements described in paragraph (1).