United States Senate

WASHINGTON, DC 20510

January 31, 2013

Board Member Sharon Block
Board Member Richard F. Griffin Jr.
National Labor Relations Board
1099 14th 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

Roy Blunt

James M. Inhofe

Lisa Murkowski

Rand Paul

Saxby Chambliss

Mike Johanns

James E. Risch

Kelly A. Ayotte

Jeff Flake

Michael B. Enzi

Ron Johnson

Jeff Sessions

Jerry Moran

Richard Shelby

Susan Collins

John Boozman

Pat Toomey

John Cornyn

Deb Fischer

Mark Kirk

Orrin G. Hatch

John Boozman

Jim S.

Mike Rounds

Chuck Grassley

David Vitter