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AGRICULTURE, NUTRITION AND FORESTRY
APPROPRIATIONS
BANKING, HOUSING AND URBAN AFFAIRS
VETERANS' AFFAIRS

January 25, 2013

The Honorable Sharon Block
Board Member
National Labor Relations Board
1099 14th Street, NW Room 11600
Washington, DC 20570

Dear Member Block:

In light of today's opinion by the U.S. Court of Appeals for the D.C. Circuit, which affirmed that the President violated the Constitution when he appointed you to the National Labor Relations Board (NLRB), it is appropriate that you resign effective immediately.

The Court found that the appointments made to the NLRB last January were unconstitutional because the United States Senate was not in "recess," and therefore the President could not lawfully use the Recess Appointments Clause of the Constitution. The opinion establishes that, "allowing the President to define the scope of his own appointments power would eviscerate the Constitution's separation of powers" and allowing these nominations to stand, "would wholly defeat the purpose of the Framers in the careful separation of powers." In view of that, your appointment by the President disregards the Constitution, and is thus invalid.

Additionally, because these appointments were unconstitutional, the Board lacked the quorum necessary to act, meaning any action the NLRB took over the past year should be invalidated. Furthermore, absent future valid appointments, the Board should suspend all action.

As someone who has taken an oath to uphold the Constitution, I ask that you resign immediately. While I do not take this request lightly, I see no other solution considering the President's unconstitutional actions and the court's ruling.

Sincerely,

Mike Johanns

Mike Johanns
United States Senator

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January 25, 2013

The Honorable Richard Griffin
Board Member
National Labor Relations Board
1099 14th Street, NW Room 11600
Washington, DC 20570

Dear Member Griffin:

In light of today's opinion by the U.S. Court of Appeals for the D.C. Circuit, which affirmed that the President violated the Constitution when he appointed you to the National Labor Relations Board (NLRB), it is appropriate that you resign effective immediately.

The Court found that the appointments made to the NLRB last January were unconstitutional because the United States Senate was not in "recess," and therefore the President could not lawfully use the Recess Appointments Clause of the Constitution. The opinion establishes that, "allowing the President to define the scope of his own appointments power would eviscerate the Constitution's separation of powers" and allowing these nominations to stand, "would wholly defeat the purpose of the Framers in the careful separation of powers." In view of that, your appointment by the President disregards the Constitution, and is thus invalid.

Additionally, because these appointments were unconstitutional, the Board lacked the quorum necessary to act, meaning any action the NLRB took over the past year should be invalidated. Furthermore, absent future valid appointments, the Board should suspend all action.

As someone who has taken an oath to uphold the Constitution, I ask that you resign immediately. While I do not take this request lightly, I see no other solution considering the President's unconstitutional actions and the court's ruling.

Sincerely,

Mike Johanns

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United States Senator

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January 25, 2013

Honorable Richard Cordray
Consumer Financial Protection Bureau
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Mr. Cordray:

I write today to address the opinion of the U.S. Court of Appeals for the D.C. Circuit that the "recess" appointments to the National Labor Relations Board—made under the same circumstances as your appointment—are unconstitutional. This opinion raises grave doubts as to whether your appointment and tenure as Director of the Consumer Financial Protection Bureau are valid. The Court found that the President's actions, if allowed to stand, would "wholly defeat the purpose of the Framers in the careful separation of powers," and I agree. In light of these doubts and in respect of the Constitution, I believe it appropriate that you resign your position, effectively immediately.

In February 2012, I submitted written questions to your office, following up on your appearance before the Senate Banking Committee on February 1, 2012. In my questions, I expressed worry about the costs to our economy and to our financial institutions of complying with rules and supervisions undertaken by the Bureau, only for those rules and enforcement actions to later be set aside by a court that finds your authority invalid. I asked whether your Research, Markets and Regulations Division was weighing the possibility that rules would be vacated by a court in precisely this scenario, when performing a cost-benefit analysis. Unfortunately, you responded that such an analysis was not being conducted. Therefore, today I requested the Comptroller General to identify potentially invalid rules and enforcement actions and quantify the negative economic impact that resulted.

I do not take lightly the request that you resign, but as someone who has taken an oath to uphold the Constitution, I believe it is the only option.

Sincerely,

Senator Mike Johanns

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