



March 20, 2013

The Honorable John Kline
Chairman
Committee on Education and the Workforce
2181 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

The Honorable George Miller
Ranking Member
Committee on Education and the Workforce
2181 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Kline and Ranking Member Miller:

On behalf of Associated Builders and Contractors (ABC), a national association of 72 chapters representing nearly 22,000 merit shop construction and construction-related firms, I am writing in support of the Preventing Greater Uncertainty in Labor-Management Relations Act (H.R. 1120), introduced by Workforce Protections Subcommittee Chairman Phil Roe (R-TN). This legislation will provide greater certainty to employers and employees in the construction industry as they await a definitive U.S. Supreme Court ruling regarding President Obama's "recess" appointments to the National Labor Relations Board (NLRB).

On Jan. 4, 2012, the president ignored constitutionally established separation of powers and the rules of the U.S. Senate by appointing three individuals to the NLRB during a pro forma session. Several legal challenges were filed against the appointments, including *Noel Canning v. NLRB*, in which the ABC-led Coalition for a Democratic Workplace (CDW) was involved. On Jan. 25, 2013, a three member panel of the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) unanimously ruled that the president's recess appointments were, in fact, unconstitutional. ABC strongly supports the D.C. Circuit's decision, which affirms the Senate's role in providing advice and consent on presidential appointments.

Uncertainty surrounding the president's unlawful intrasession appointments continues to raise questions regarding the NLRB's authority as it applies to recently decided cases, as well as pending and future enforcement actions and adjudications. This uncertainty imposes real costs on employers and other parties involved in pending NLRB actions.

Neither the administration nor the NLRB has responsibly addressed this uncertainty in the wake of the *Noel Canning* decision. In fact, both have doubled down on their respective positions. On Feb. 13, the White House re-nominated two of the controversial recess appointees for consideration by the Senate. And on the same day the D.C. Circuit issued its ruling in *Noel Canning*, NLRB Chairman Mark Pearce defiantly stated that the Board "will continue to perform [its] statutory duties and issue decisions," even as it formally seeks Supreme Court review.

It is clear that the NLRB is unwilling to impose any kind of restraint on itself; therefore, it is up to Congress to intervene to ensure that the Board does not make an already bad situation even worse. H.R.

H.R. 1120 would immediately prevent the NLRB's invalid quorum from issuing more decisions, cease any enforcement of existing decisions issued since Jan. 4, 2012, and ensure that any such decisions are reviewed and approved by a constitutionally valid Board panel as soon as one is seated. The bill preserves workers' ability to petition for union elections, and NLRB regional offices are allowed to continue accepting and processing unfair labor practice charges. Most importantly, the restrictions H.R. 1120 places on the Board would be removed as soon as the Supreme Court rules in the *Noel Canning* case, or a quorum is confirmed by the Senate.

ABC commends the Committee for its attention to this important issue, applauds the reasonable manner in which H.R. 1120 was crafted, and urges its immediate passage.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Burr", with a long horizontal flourish extending to the right.

Geoffrey Burr
Vice President, Federal Affairs