

# COALITION FOR A DEMOCRATIC WORKPLACE

October 28, 2013

Dear Senator:

The Senate may consider the nomination of Richard F. Griffin, Jr. to be General Counsel of the National Labor Relations Board (NLRB or Board) as early as this week. I write to inform you that the Coalition for a Democratic Workplace (CDW) opposes Mr. Griffin's confirmation.

CDW is a broad-based coalition of over 600 organizations united in opposition to the tenets of the so-called "Employee Free Choice Act" (EFCA) and alternatives that pose a similar threat to workers, businesses, and the American economy. In recent years, the NLRB has attempted to enact many EFCA-like policies through administrative rulings and regulations. In response, much of CDW's focus has been directed toward the NLRB.

On Jan. 4, 2012, President Obama recess appointed three members to the NLRB when the Senate was in session. Mr. Griffin accepted one of these recess appointments. Several legal challenges were filed against the appointments, including *Noel Canning v. NLRB*. On Jan. 25, 2013, the U.S. Court of Appeals for the D.C. Circuit ruled in the *Canning* case that the president's 2012 "intrasession" recess appointments to the Board were unconstitutional. Subsequent decisions by U.S. Courts of Appeals for the 3<sup>rd</sup> and 4<sup>th</sup> Circuits also found the recess appointments unconstitutional. See *NLRB v. New Vista Nursing and Rehabilitation* (3<sup>rd</sup> Circuit, May 16, 2013) and *NLRB v. Enterprise Leasing* (4<sup>th</sup> Circuit, July 17, 2013). The Supreme Court is expected to rule in *Canning* sometime next year.

The Supreme Court previously ruled in a separate case that a quorum of no less than three is required for the NLRB to issue orders, decisions, or promulgate rules. During the entire time Mr. Griffin was at NLRB, the agency relied on his and the other Jan. 4 recess appointments to meet its quorum requirement. Thus, it was questionable as to whether any of the Board's actions during Mr. Griffin's tenure were valid. The legal uncertainty regarding the Board's authority intensified following *Canning* and the other decisions finding the appointees unlawful.

Yet in the wake of this ambiguity, neither the administration nor the NLRB itself (including Mr. Griffin) took any meaningful steps toward restraint and the recess appointees continued to issue decisions and take other administrative actions, many of which radically departed from decades of established law. This uncertainty imposed and continues to impose real costs and additional layers of litigation on employers and other parties involved in NLRB actions.

Mr. Griffin was an active participant in creating this uncertainty. He both accepted the questionable appointment and failed to show restraint in the wake of the *Canning* decision. For these reasons, we oppose his confirmation to be General Counsel of the NLRB.

Sincerely,



Geoffrey Burr

Chair, the Coalition for a Democratic Workplace