

MIKE JOHANNIS  
NEBRASKA

404 RUSSELL SENATE OFFICE BUILDING  
WASHINGTON, DC 20510  
(202) 224-4224  
(202) 228-0436 FAX  
(202) 228-4285 TTY

United States Senate  
WASHINGTON, DC 20510

COMMITTEES:  
AGRICULTURE, NUTRITION AND  
FORESTRY  
APPROPRIATIONS  
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January 25, 2013

Gene L. Dodaro  
Comptroller General of the United States  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Comptroller General Dodaro:

As you know, today the U.S. Court of Appeals for the D.C. Circuit ruled that the appointments made to the National Labor Relations Board (NLRB) last January were unconstitutional because the United States Senate was not in a "recess" and therefore the President could not lawfully use the Recess Appointments Clause of the Constitution. The Court also noted that the NLRB "...could not lawfully act, as it did not have a quorum." For this reason, the Court found that the order NLRB issued on February 8, 2012, against Noel Canning, petitioner in the case, is void.

Because President Obama appointed Mr. Richard Cordray under the same circumstances, his status as the Director of the Consumer Financial Protection Bureau (CFPB) is likewise unconstitutional. As certain rulemaking and enforcement powers did not statutorily vest in the CFPB until a director was in place, the orders and actions made pursuant to these powers are void or otherwise lack legal foundation.

I write today to ask that you investigate what additional actions taken by the NLRB are void for lack of a quorum. Please provide a list of these actions, and include an analysis of whether actions other than orders issued by the NLRB are affected by today's U.S. Circuit Court ruling. Further, I ask that you examine what actions taken by the CFPB would be implicated by today's ruling. For all affected orders and actions by either the CFPB or the NLRB, please include an estimate of the negative economic impacts associated with those actions.

For this analysis, please assume either that the Solicitor General does not ask the Supreme Court of the United States to review the decision, or that the Supreme Court affirms the decision.

Please respond to confirm you are undertaking such an investigation by Wednesday, February 13.

Thank you.

Sincerely,



Mike Johannis  
United States Senator

LINCOLN OFFICE  
287 FEDERAL BUILDING  
100 CENTENNIAL MALL NORTH  
LINCOLN, NE 68508  
(402) 476-1400  
FAX: (402) 476-0605

OMAHA OFFICE  
9900 NICHOLAS STREET  
SUITE 325  
OMAHA, NE 68114  
(402) 758-8981  
FAX: (402) 758-9185

KEARNEY OFFICE  
4111 FOURTH AVENUE  
SUITE 26  
KEARNEY, NE 68845  
(308) 236-7602  
FAX: (308) 236-7473

SCOTTSBLUFF OFFICE  
115 RAILWAY STREET  
SUITE C102  
SCOTTSBLUFF, NE 69381  
(308) 632-6032  
FAX: (308) 632-6295