

COALITION FOR A DEMOCRATIC WORKPLACE

September 8, 2014

Dear Chairman Harkin and Ranking Member Alexander:

The Senate Committee on Health, Education, Labor and Pensions is scheduled to consider the nomination of Sharon Block to be a member of the National Labor Relations Board (NLRB or Board). I write to inform you that the Coalition for a Democratic Workplace (CDW) opposes Ms. Block's nomination.

CDW is a broad-based coalition of more than 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 that threaten jobs and our economy 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. Ms. Block accepted one of these unconstitutional recess appointments. Several legal challenges were filed against the appointments, including *Noel Canning v. NLRB*. On June 26, 2014, the Supreme Court ruled in the *Canning* case that the president's 2012 recess appointments to the Board, including Ms. Block's, were unconstitutional.

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 and decisions or promulgate rules. During the entire time Ms. Block was at the NLRB, the agency relied on her and the other Jan. 4 recess appointees to meet its quorum requirement. Thus, it was questionable as to whether any of the Board's actions during Ms. Block's tenure were valid. The uncertainty regarding the Board's authority intensified following several U.S. court of appeals decisions finding the appointees unlawful.

Yet in the wake of this ambiguity, neither the administration nor the NLRB itself (including Ms. Block) 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, as well as negatively impact the economy and the creation of jobs.

Ms. Block was an active participant in creating this uncertainty. She both accepted the questionable appointment and failed to show restraint in the wake of federal appellate court decisions finding her appointment unlawful. For these reasons, we oppose her nomination to be member of the NLRB.

Sincerely,



Geoffrey Burr

Chair, the Coalition for a Democratic Workplace