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January 12, 2012

The Honorable Barack Obama  
President of the United States  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

Dear President Obama:

We write to express our strong opposition to so-called recess appointments to the National Labor Relations Board (NLRB). While the U.S. Constitution empowers the president to fill vacancies to federal positions when the Senate is in recess, exercising that authority when the Senate is meeting in *pro forma* session to install nominees who have received no public scrutiny is an abuse of power that will harm the strength of our workforce and damage the integrity of the NLRB.

In June, 2011, you stated, "We can't afford to have labor and management fighting all the time, at a time when we're competing against Germany and China and other countries that want to sell goods all around the world."<sup>1</sup> We wholeheartedly agree. With 13 million workers unemployed, job creators and labor leaders must be partners in the effort to put Americans back to work.

Unfortunately, the policies advanced by your NLRB appointees have created uncertainty and unnecessary strife in America's workplaces. Over the last three years, the NLRB has weakened protections for workers, piled additional burdens on employers, and strengthened union leaders' ability to undermine the success of businesses nationwide.

For example, in late August, the board issued a series of decisions that imposed sweeping changes

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<sup>1</sup> President Barack Obama, Press Conference by the President, June 29, 2011. (Transcript available at <http://www.whitehouse.gov/the-press-office/2011/06/29/press-conference-president>).

to federal labor policies. In one afternoon, the board overturned decades of labor practice to make it easier for unions to gerrymander the workplace, restricted a worker's right to a secret ballot union election, and made it nearly impossible to challenge union representation when ownership of a business changes hands.

The NLRB has also used its authority to pick winners and losers in labor disputes. Perhaps most notoriously, the NLRB filed a complaint against The Boeing Company for its decision to establish an assembly line in Charleston, South Carolina, and tried to force this private employer to relocate work to Washington State. This action directly threatened thousands of jobs and continues to have a chilling effect on employers across the country.

Finally, the board has advanced dramatic changes to the rules governing union elections that will limit employer free speech and worker free choice, as well as finalized a new regulation that requires every employer under its jurisdiction – an estimated 6 million private employers – to post in the workplace a biased and vague notice of employee “rights,” despite the fact the board does not have the authority to require general notice postings.

Policymakers will continue to disagree with the merits of these draconian policy changes. We welcome that debate. However, there should be no disagreement that the board has gone above and beyond its principal functions, which are to determine, through secret-ballot elections, whether employees wish to be represented by a union and to prevent and remedy unfair labor practices by employers and unions.

As the NLRB moved forward with these dramatic policy changes, you remained largely silent. Instead, you declared opposition to commonsense legislative proposals that aim to protect workers and employers. Two such proposals are now waiting for consideration in the Senate, along with nearly 30 other legislative initiatives passed by the House that will spur job growth and remove economic uncertainty.

The rules and decisions of the NLRB govern virtually every private workplace and tens of millions of American workers. That is why the country deserves capable, objective, and fair minded individuals on the board.

Unfortunately, the manner in which you recently approved three recess appointments to the board prevents the American people from judging whether these nominees are qualified to serve. While Terrence Flynn was nominated more than a year ago, the Democrat-led Senate failed to hold a public hearing or vote on the nominee. We share your frustration with Senate inaction on the

nomination and believe it is unacceptable for the Democrat-controlled Senate to refuse to fulfill its constitutional responsibility.

More disturbing is the complete lack of transparency surrounding the appointments of Sharon Block and Richard Griffin. First nominated on December 15, 2011, the nominees have neither participated in a public hearing nor completed the standard Senate application or traditional background check. The Senate vetting process is critical to ensuring no existing legal issues or conflicts of interests may call into question an individual's ability to serve on the board.

Almost two years ago, you stated your administration put in place the "toughest transparency rules of any administration in history."<sup>2</sup> However, there has been almost no transparency surrounding the qualifications and nominations of these individuals. Indeed, as recently as this Monday, the names of two nominees did not appear on a list of Nominations and Appointments maintained on the White House website. As a result, Congress and the public will be denied an opportunity to review the backgrounds and experiences of the appointees and independently determine whether they are qualified to serve.

The lack of public disclosure surrounding these board nominees is shocking and unprecedented. Individuals from across the political divide have questioned the legality of these recess appointments, casting a shadow of suspicion over all future actions taken by the board. One former Democratic board member, Dennis Devaney, recently noted that "anything they do is going to be subject to being undone, because they didn't have the authority to act."<sup>3</sup>

In your most recent radio address, you stated you would do "whatever it takes to move this economy forward."<sup>4</sup> Toward that end, we respectfully ask for your commitment to work with Congress on responsible legislation that will rein in the powers of the NLRB. As noted earlier, the House of Representatives has already approved with bipartisan support two pieces of legislation that reverse the NLRB's job destroying agenda.

As elected policymakers – directly accountable to the American public – we should not surrender our responsibility to enact fundamental changes to federal labor law to a board of unelected bureaucrats. The American people deserve public officials who act responsibly and in the best

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<sup>2</sup> President Barack Obama, Remarks by the President during Town Hall Meeting in Elyria, Ohio, January 22, 2010. (Transcript available at <http://m.whitehouse.gov/the-press-office/remarks-president-during-town-hall-meeting-elyria-ohio>).

<sup>3</sup> Tim Devaney, *Business groups fear revitalized NLRB*, The Washington Times, January 5, 2012. (Available at <http://www.washingtontimes.com/news/2012/jan/5/business-groups-fear-revitalized-nlrbs/>).

<sup>4</sup> President Barack Obama, Weekly Address, January 7, 2012. (Transcript available at <http://www.whitehouse.gov/the-press-office/2012/01/06/weekly-address-continuing-grow-economy-new-year>).

interests of the country. On behalf of the nation's workers and employers, we hope you will work with us on reforms that will restore balance and fairness to the NLRB and help put Americans back to work.

Sincerely,



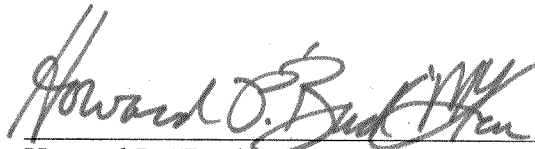
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Chairman  
Committee on Education and the Workforce



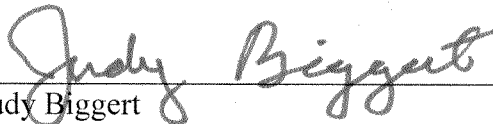
David "Phil" Roe  
Chairman  
Subcommittee on Health, Employment,  
Labor, and Pensions



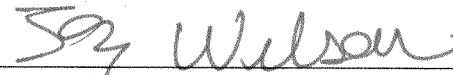
Thomas E. Petri  
Member of Congress



Howard P. "Buck" McKeon  
Member of Congress



Judy Biggert  
Member of Congress



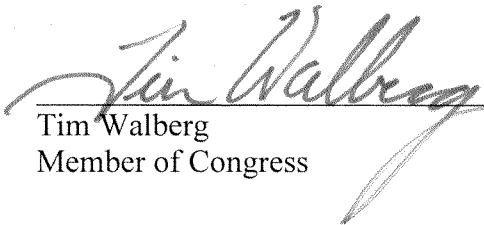
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Member of Congress



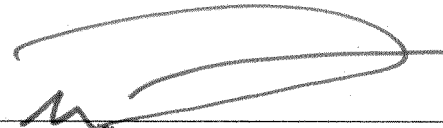
Bob Goodlatte  
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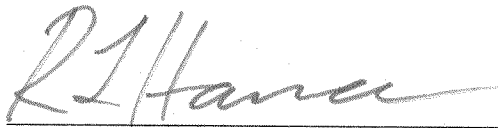
Glenn Thompson  
Member of Congress



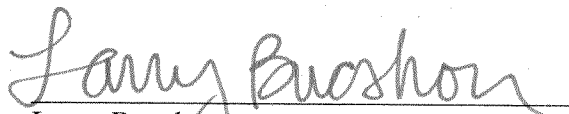
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Member of Congress



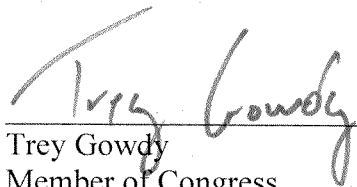
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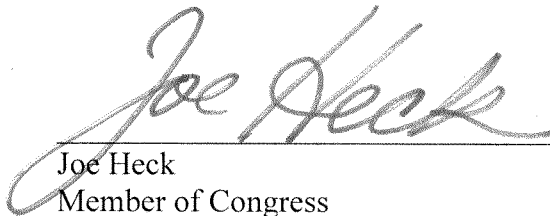
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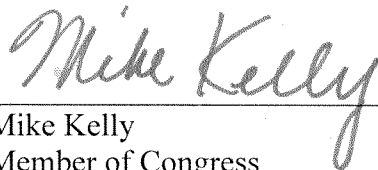
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