



Insight

When a Recess Appointment Is Not a Recess Appointment

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Today, the D.C. Circuit Court of Appeals dealt a major blow to the Administration's regulatory regime. In [Noel Canning v. NLRB](#), a unanimous three-judge court found that President Obama's purported "recess appointments" to the National Labor Relations Board were "constitutionally invalid."

While the substance of the case is relatively minor, the broader implications of this decision are profound. The Federal Register contains [22 entries](#) from NLRB since the President made these appointments, to say nothing of the countless [decisions](#) the Board reached and published itself. All of these are now theoretically invalid for want of a true quorum.

The NLRB isn't the only agency that should be worried, however. On January 4th, 2012, President Obama used the same process to appoint Richard Cordray as Administrator for the Consumer Financial Protection Bureau (CFPB). This is a particularly interesting development, considering Mr. Cordray now faces a full, "advise and consent" appointment process before the Senate.

Aggregate Burden of Invalidated Regulations:

- Cost: \$154 million
- Paperwork Burden Hours: 1,200,000

Assuming the court's reasoning holds true for CFPB as well, this casts a constitutionally dubious shadow over the legitimacy of the Bureau's actions during the past thirteen months. In order to promulgate its most expansive rules under Dodd-Frank, CFPB requires a legitimate Administrator.

If Cordray's appointment is also invalid, courts would also strike down major regulations on [remittance transfers](#) and new mortgage servicing [requirements](#). Those two rules alone account for more than 10 million hours of new paperwork. A [trio of rules](#) set for official publication next week is also now circumspect. This includes new "Qualified Mortgage" standards that could have broad implications for the housing market.