Senate Bill Proposed to Stop All CFPB and NLRB Regulatory Actions

February 6, 2013 - Saying, "it is time to stop this regulatory train wreck from getting any worse," Senator John Borrasso (R-WY) has introduced a bill to halt all further regulatory action by the National Labor Relations Board (NLRB). The bill is one of several similar bills that would stop both the NLRB and the Consumer Financial Protection Bureau (CFPB) from issuing or enforcing regulations in the wake of a DC Circuit Court of Appeals ruling that declared certain presidential recess appointments unconstitutional.

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As we have previously reported, the court found that three NLRB recess appointments made last year by President Obama were unconstitutional since the Senate had not actually gone into recess. Although the ruling doesn't directly impact the CPFB, the agencies director came into power through another recess appointment that was made on the very same day as the NLRB appointments, and there are several court cases currently moving through the system challenging this particular appointment. If the Supreme Court upholds the decision by the lower court, or if they refuse to hear the case, then all of the recess appointments would be unconstitutional.

In the case of the NLRB, the Supreme Court has already found that when the agency doesn't have enough members to reach a quorum, it has no authority to issue or enforce regulations. Without the recess appointments, the NLRB didn't have enough members for a quorum.

In the case of the CPFB, when Congress formed the bureau it required that it have a director in order for it to have any regulatory authority. It stands to reason that if the recess appointment of its current director was unconstitutional that the agency has never had any regulatory authority. At the very least, every single regulatory action taken by the agency so far is now challengeable in court. And since anyone suing the CPFB has the right to file its suit in the DC Circuit, it is now

only a matter of time before the same court that found the recess appointments unconstitutional will also take a close look at the law that formed the agency in the first place.

As previously mentioned, there are several bills currently being considered. One of them would stop any salary from being paid to the member of both agencies who were put in place through these appointments. Others would strip both agencies of their regulatory power in various ways.

Because Congress is divided right now, none of these bills is likely to become law soon. The courts could actually decide the matter faster as various cases move forward.

byJim Malmberg
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