

Insights, News & Events

RECESS APPOINTMENT RULING SPURS CONCERNS OF BOTTLENECK AT NLRB

News

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New England IN-HOUSE quoted Joe Ambash in the August 25, 2014 article "Recess Appointment Ruling Spurs Concerns of Bottleneck at NLRB."

Lawyers in New England say a recent decision by the U.S. Supreme Court that struck down President Obama's 2012 recess appointments to the National Labor Relations Board threatens to invalidate hundreds of rulings made over an 18-month period.

But the ruling in *NLRB v. Noel Canning* goes even further, they warn.

While establishing the president's authority to make recess appointments when Congress is not in session for a "sufficient length" of time, the decision also makes clear that Congress can block such appointments by gaveling in short pro forma sessions.

That gives Congress the power, if it chooses to use it, to effectively kill the president's recess appointment authority — something lawmakers have repeatedly done in recent history when rival political parties have controlled Congress and the White House.

"This is going to cause delay after delay after delay," said Joe, who successfully argued the 2010 case *New Process Steel v. NLRB*, which invalidated NLRB rulings issued by less than the statutorily required three-member quorum.

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