



***Noel Canning*, the NLRB, and Industry Campaign Contributions**

July 1, 2013

In January, the U.S. District Court for the District of Columbia threw American labor law into chaos in its *Noel Canning v. NLRB* decision that rejected President Barack Obama's recess appointments to the National Labor Relations Board (NLRB), a federal agency in charge of conducting elections for labor union representation as well as investigating and remedying unfair labor practices.

The recess appointments, a practice that has been employed for decades by presidents from both major parties, were made after Senate Republicans blocked the nominees from going through the normal appointment process. As the Senate prepares to once again take up the NLRB appointments and other stalled nominations after the July 4th recess, it's important to look at one factor that often looms large in voting decisions by certain senators—campaign cash.

Since the January ruling, many companies have used the *Noel Canning* decision to challenge NLRB rulings relating to their labor practices. According to analysis of campaign finance data, at least 38 of these have donated to Senate Republicans opposing an operable NLRB.

In fact, the 45 Senate Republicans who signed a “friend of the court” brief in the *Noel Canning* case¹ and the National Republican Senatorial Committee (NRSC) have received a combined \$6 million in campaign contributions over the years from the owners, executives and PACs of companies and trade groups that have used the ruling to dispute NLRB decisions and organizations that have been players in the litigation.²

¹ The senators' brief was submitted on May 28, 2013 to urge the Supreme Court to uphold the D.C. Circuit Court's *Noel Canning* decision in the NLRB's appeal of the case. .

² According to Public Campaign analysis of data from the Center for Responsive Politics and National Institute on Money in State Politics, accessed from Sunlight Foundation's Influence Explorer site between June 5 and June 27, 2013. A list of companies or litigants that had appealed cases against the NLRB under *Noel Canning* was assembled using a WestLaw case search, a review of the U.S. Chamber of Commerce's National Litigation Center and a case search on the National Labor Relations Board website for cases mentioning *Noel Canning* objections.

\$6 Million in Campaign Contributions

The owners, executives, and PACs of 38 companies that have invoked the *Noel Canning* decision to dispute NLRB decisions, along with the National Right to Work Committee, have donated a combined \$6 million to the 45 Republican senators who signed a brief supporting the case and the NRSC.³ Five senators have received more than \$250,000 each during their careers. (Full chart on page 5)

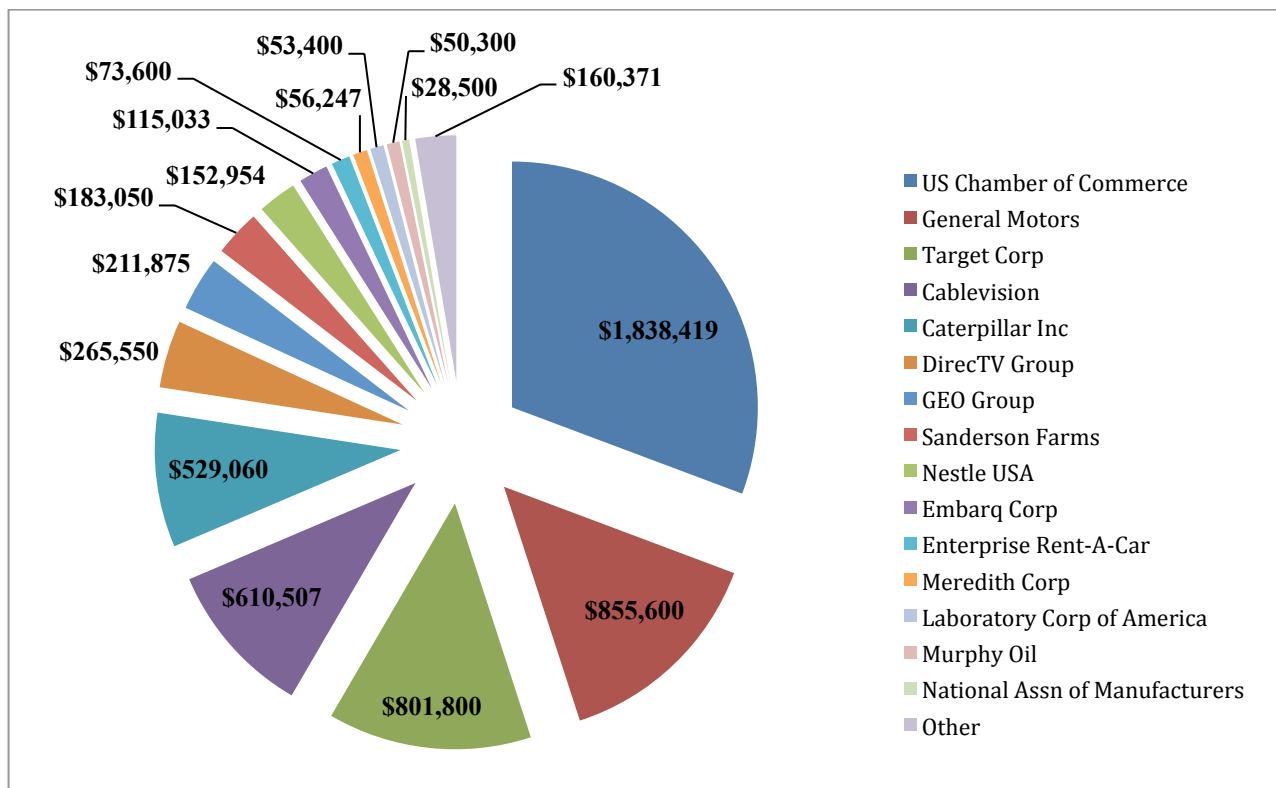
- **Senator Mitch McConnell:** \$606,339
- **Senator Dean Heller:** \$514,250
- **Senator Susan Collins:** \$407,605
- **Senator Roy Blunt:** \$318,447
- **Senator Saxby Chambliss:** \$276,818

The U.S. Chamber of Commerce, a trade association for some of the country's largest corporations and a lead litigant in the original *Noel Canning* case, is the biggest contributor to these senators, with \$1.8 million in donations. Four more companies that have invoked *Noel Canning* to challenge NLRB rulings have each contributed more than \$500,000 to Republican senators. (Full chart of company giving on page 7)

- **General Motors** (\$855,600 in contributions) challenged a ruling that portions of its social media policy violated the National Labor Relations Act.
- **Target Corp.** (\$801,800 in contributions) challenged an administrative law judge's decision to order a new union election at its Valley Stream, New York store.
- **Cablevision Systems Corp.** (\$610,507 in contributions) sought to prevent the NLRB from prosecuting unfair labor practice complaints against it and its affiliate, CSC Holdings, related to its efforts to discourage unaffiliated employees from unionizing, for firing employees who used the company's open-door policy to talk to management, and for refusing to engage in serious collective bargaining.
- **Caterpillar Inc.** (\$529,060 in contributions) challenged a decision finding that it violated the National Labor Relations Act by denying a union access to its facilities after a worker was crushed to death.

³ Donations to leadership PACs are included in these totals.

Top 15 Contributors Among Companies/Litigants



Privileged Lobbyist Access Through the Revolving Door

Three of the key senators leading the opposition to a functioning NLRB have connections to the *Noel Canning* litigants beyond the money flowing into their campaign coffers. Senators McConnell and Alexander collectively count six former staff members who have lobbied over the past few years for the U.S. Chamber of Commerce, National Association of Manufacturers (NAM), and Entergy Corporation, all litigants against the NLRB that have invoked *Noel Canning*.

Senator Graham, who declared, “I will continue to block all nominations to the NLRB” and “the NLRB as inoperable could be considered progress,” employed legislative director Jen Olson for eight years before she left in 2011 for Mercury/Clark & Weinstock, where she lobbied on labor relations for Hyundai, a company citing *Noel Canning* in an appeal of an NLRB decision.

After former McConnell aides Keith Smith at the National Association of Manufacturing and Steven Law at the U.S. Chamber spoke out strongly in 2010 against Craig Becker’s nomination to the NLRB, McConnell took to the floor of the Senate and torpedoed a deal to

bring approximately 80 different nominations to a vote, stating that his reason was Becker's recess appointment.

Law continues to have a large influence now as the president and CEO of American Crossroads and Crossroads GPS, collectively the largest outside spending outfit in the 2012 elections. The \$176 million that Crossroads poured into boosting conservative candidates and attacking their opponents is likely to cross the minds of Republican senators as they consider their re-election campaigns.

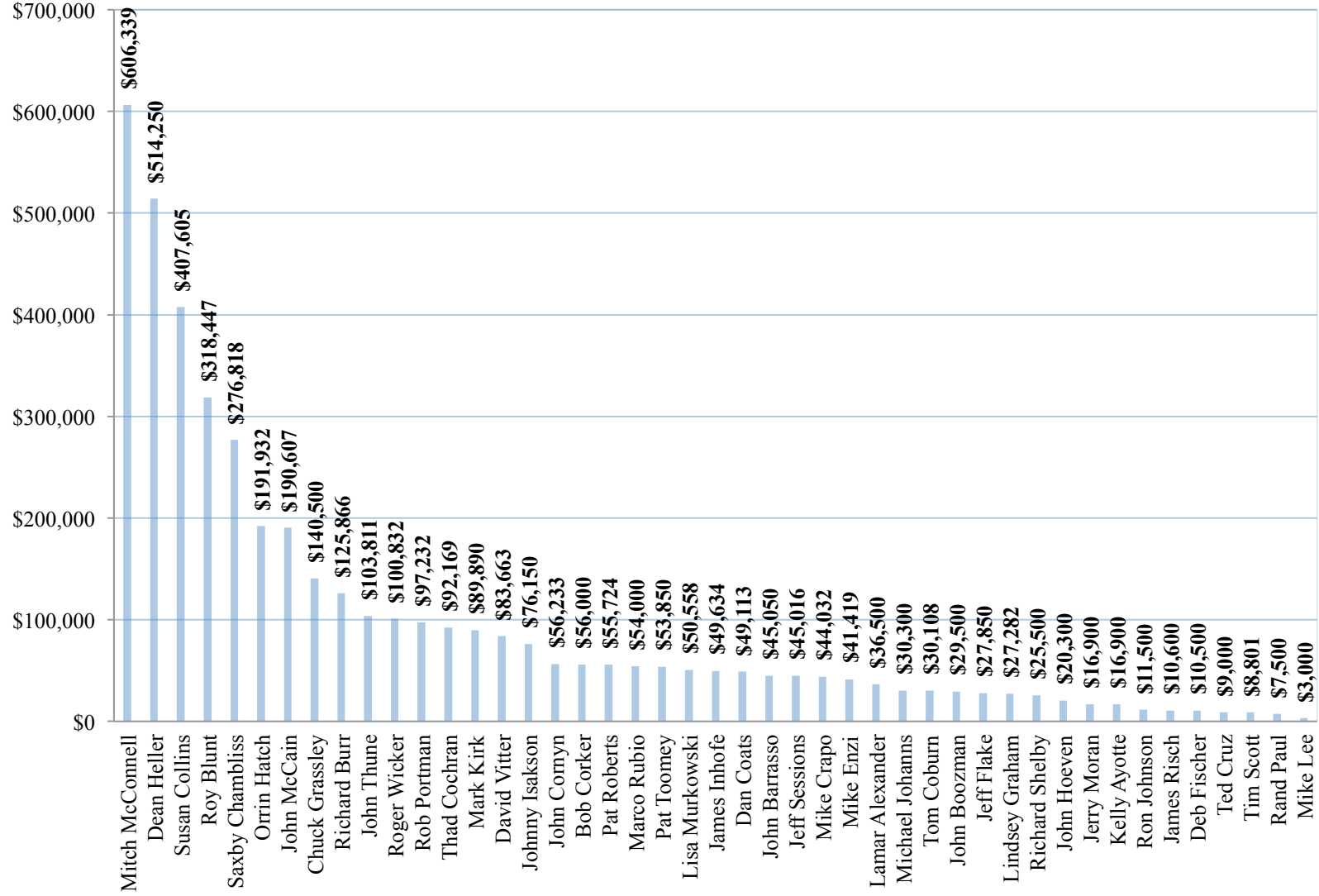
Conclusion

The D.C. Circuit Court upended decades of precedent by ruling that presidents effectively cannot make recess appointments, a practice that was employed 240 times by President Ronald Reagan and 140 times by President Bill Clinton.

The Supreme Court will hear the case in its next term, but this summer, the U.S. Senate will again have the chance to confirm the full slate of five bipartisan nominees to the NLRB. Failure to confirm a quorum of nominees by the end of August will make the NLRB fully inoperable, gutting basic worker protections and destroying a pillar of American labor law in the process.

While money isn't the only influence on votes in the Senate, making the NLRB inoperable will please many of the same donors these senators rely on for campaign cash. And they can use it as an example the next time these Senators or their staff are soliciting donations

Career Campaign Cash from Noel Canning Beneficiaries and Advocates by Senator



Recipient (including Leadership PACs)	Total
National Republican Senatorial Committee	\$1,647,485
Mitch McConnell (includes "Bluegrass Committee")	\$606,339
Dean Heller	\$514,250
Susan Collins (includes "Dirigo PAC")	\$407,605
Roy Blunt (includes "Rely on Your Beliefs")	\$318,447
Saxby Chambliss (includes "Republican Majority Fund")	\$276,818
Orrin Hatch (includes "OrrinPAC")	\$191,932
John McCain (includes "County First PAC" and "Straight Talk America")	\$190,607
Chuck Grassley (includes "Hawkeye PAC")	\$140,500
Richard Burr (includes "Next Century Fund")	\$125,866
John Thune (includes "Heartland Values PAC")	\$103,811
Roger Wicker (includes "Responsibility & Freedom Work PAC")	\$100,832
Rob Portman (includes "America's Majority Trust," "Promoting Our Republican Team PAC")	\$97,232
Thad Cochran (includes "Senate Victory Fund")	\$92,169
Mark Kirk (includes "Lincoln PAC")	\$89,890
David Vitter (includes "Louisiana Reform PAC")	\$83,663
Johnny Isakson (includes "21st Century Majority Fund")	\$76,150
John Cornyn (includes "Alamo PAC")	\$56,233
Bob Corker (includes "Rock City PAC")	\$56,000
Pat Roberts (includes "Preserving America's Traditions")	\$55,724
Marco Rubio (includes "Reclaim America PAC")	\$54,000
Pat Toomey (includes "Citizens for Prosperity in America Today")	\$53,850
Lisa Murkowski (includes "Denali Leadership PAC")	\$50,558
James Inhofe (includes "Fund for a Conservative Future")	\$49,634
Dan Coats (includes "Conservatives Organized to Advance Tomorrow")	\$49,113
John Barrasso	\$45,050
Jeff Sessions (includes "Tallatchee Creek Inc.")	\$45,016
Mike Crapo (includes "Freedom Fund")	\$44,032
Mike Enzi (includes "Making Business Excel PAC")	\$41,419
Lamar Alexander (includes "Tenn PAC")	\$36,500
Michael Johanns	\$30,300
Tom Coburn	\$30,108
John Boozman (includes "Arkansas for Leadership")	\$29,500
Jeff Flake	\$27,850
Lindsey Graham (includes "Fund for America's Future")	\$27,282
Richard Shelby (includes "Defend America PAC")	\$25,500
John Hoeven	\$20,300
Kelly Ayotte (includes "Kelly PAC")	\$16,900
Jerry Moran	\$16,900
Ron Johnson	\$11,500
James Risch	\$10,600
Deb Fischer	\$10,500
Ted Cruz	\$9,000
Tim Scott	\$8,801
Rand Paul	\$7,500
Mike Lee	\$3,000

Total Contributions from Noel Canning Beneficiaries & Advocates to 45 Key Senators

Company Name	Affiliated Companies Included	Case Impacted By Noel Canning (If Applicable)	Total Contributions
U.S. Chamber of Commerce		Chamber, et al v. NLRB	\$1,838,419
General Motors	EDS Corp. (subsidiary), Segway Inc. (subsidiary)	NLRB Case No. 07-CA-053570	\$855,600
Target Corp.		Target Corp. and Food Commercial Workers Local 1500	\$801,800
Cablevision Systems Corp.	Rainbow Media (subsidiary), CSC Holdings (affiliate)	CSC Holdings and Cablevision Systems	\$610,507
Caterpillar Inc.	Caterpillar Financial Services (subsidiary), Progress Rail Services (subsidiary), McCallister Caterpillar (subsidiary)	NLRB Case No. 30-CA-064314	\$529,060
DirecTV Group		DirecTV v. NLRB	\$265,550
The GEO Group, Inc.		NLRB Case No. 28-CA-076869	\$211,875
Sanderson Farms, Inc.		NLRB Case No. 15-CA-089244	\$183,050
Nestle Dreyer's Ice Cream Co.	Nestle SA (parent), Nestle USA (parent company's subsidiary), Alcon Laboratories (parent company's subsidiary), Nestle Purina PetCare (parent company's subsidiary), Nestle Waters North America (parent company's subsidiary), Nestle Enterprises (parent company's subsidiary), Nestle Nutrition (parent company's subsidiary)	Nestle Dreyer's Ice Cream Co. v. NLRB	\$152,954
Embarq Corp.		Embarq Corp. v. NLRB	\$115,033
National Right to Work Foundation	National Right to Work Cmte		\$79,687
Enterprise Leasing Co. SE	Enterprise Rent-A-Car (parent), Enterprise Leasing Co. of KS (affiliate)	Enterprise Leasing Co. SE v. NLRB	\$73,600
Meredith Corp.		Meredith Corp. v. NLRB	\$56,247
Laboratory Corp. of America Holdings	Laboratory Corp. of America (parent)	Laboratory Corp. of America Holdings v. NLRB	\$53,400
Murphy Oil USA, Inc.	Murphy Oil (parent)	NLRB Case No. 10-CA-038804	\$50,300
National Association of Manufacturers		National Assoc. of Manufacturers v. NLRB	\$28,500

Securitas Security Services USA, Inc.		NLRB Case No. 31-CA-072179	\$19,891
Entergy Mississippi		Entergy Mississippi Inc. v. NLRB	\$10,500
DR Horton Inc.		DR Horton v. NLRB	\$7,050
University of Pittsburgh Medical Center		UPMC and SEIU Healthcare Pennsylvania, CTW, CLC	\$5,000
National Federation of Independent Business		National Assoc. of Manufacturers v. NLRB	\$4,293
American Standard Companies		NLRB Case No. 08-CA-033352	\$4,100
Gaylord Chemical Co.		NLRB v. Gaylord Chemical Co.	\$3,650
Greater Omaha Packing Co.		NLRB Case No. 17-CA-085735	\$3,500
Sodexo Inc.		Sodexo America, LLC	\$3,000
Central Maine Power Company		NLRB Case No. 01-RC-099430	\$3,000
The Neiman Marcus Group, Inc.		NLRB Case No. 31-CA-074295	\$2,550
Mission Produce Inc.		Mission Produce Inc. and Retail Wholesale and Department Store Union Southeast Council	\$2,300
Southeast Sealing Inc.		National Assoc. of Manufacturers v. NLRB	\$2,000
Hyundai America Shipping Agency	Hyundai Motor America (parent)	Hyundai America Shipping Agency v. NLRB	\$2,000
Milum Textile Services Co.		Milum Textile Services Co. v. NLRB	\$1,150
C.R. England Inc.		NLRB Case No. 13-RC-095967	\$1,000
G4S Secure Solutions		NLRB Case No. 12-CA-026644	\$1,000
CNN		NLRB Case No. 05-CA-031828	\$1,000
Dresser-Rand Co.		Dresser-Rand Co. v. NLRB	\$1,000
RELCO Locomotives, Inc.		NLRB v. RELCO Locomotives, Inc.	\$1,000
Banner Health Systems		Banner Health Systems v. NLRB	\$900
Costco		Costco Wholesale Corp. v. NLRB	\$500
NOVA Southeastern University		NOVA Southeastern University v. NLRB	\$300