



## Construction Industry Round Table

## Judicial News

*A force for positive change in the design/ construction industry*

### **1/28/13 – US Court Appeals Strikes Down NLRB “Recess” Appointments**

In a major development, the U.S. Court of Appeals for Washington, DC has declared in a unanimous opinion that the three supposedly “recess” appointments made by President Obama to the National Labor Relations Board (NLRB) last year were unconstitutional given the Senate was not in recess; and the President did not have the power or authority to determine on his own whether or not that was the case. Although the opinion in *Noel Canning v. NLRB* deals strictly with the NLRB, the decision has major implications for: (i) the recess appointment of Richard Cordray as Director of the Consumer Financial Protection Bureau (CFPB) on January 4, 2012; and (ii) the validity of certain CFPB actions taken after that date.

The White House indicated that it will likely appeal the ruling to the U.S. Supreme Court, which if upheld by the higher court would mean that potentially all of the decisions the NLRB made over the past year will be declared nullified and void, since without the three appointments the NLRB lacked a quorum to make any rulings. While the individual cases do not directly affect the design/construction community, the overall nature of the disputes affect the balance or separation of power between and among the different branches of the federal government – including the authority and reach of agency actions – which could have an immediate impact on our community.