Congress of the United States
Washington, DC 20515

January 23, 2012

President Barack Obama
1600 Pennsylvania Avenue NW
Washington, DC 20500

VIA HAND DELIVERY

Dear President Obama:

We are writing regarding your January 4, 2012, appointments of Mr. Cordray as head of the Consumer Financial Protection Bureau and three new members to the National Labor Relations Board. Having read the justification for these appointments put forth by the Department of Justice's Office of Legal Counsel (OLC), we respectfully disagree with its analysis. We believe these appointments are unconstitutional and an egregious display of executive overreach. We ask that you refrain from attempting to circumvent the Constitution by making these appointments while the Senate remains in pro forma session.

In its memo, the OLC attempted to justify these appointments by saying the executive branch should essentially have the authority to determine when the Senate is unavailable to perform its constitutional obligations. We find this to be an extraordinary claim which has no basis in the Constitution or any other legal precedent. Nowhere is the executive branch vested with this power. Instead, both Houses are vested with the power to determine their own rules and proceedings. In this case, both Chambers have determined that pro forma sessions are legitimate sessions.

The OLC made a feeble attempt to distinguish pro forma sessions as merely a parliamentary ploy. We find this to be disingenuous, particularly in light of your reliance on a pro forma session to pass the two month extension of the payroll tax cut in December. Your administration cannot argue on the one hand that no business is conducted during pro forma sessions, while simultaneously using these sessions as a way for the Senate to perform its constitutional obligations in the process of passing bills. Either the Senate is unavailable during pro forma sessions to perform all its constitutional obligations, thus delegitimizing this recent two month extension, or the Senate is available to perform its duties - both cannot be the case.

The executive branch should not be deciding whether the Senate is unavailable to provide its advice and consent. Our Founding Fathers formed a new nation because they were tired of executive overreach. Many of them served in colonial legislatures that frequently had to contend with colonial governors attempting to decide the fitness of the legislatures to perform their duties. We believe that our Founding Fathers, who created such a robust government marked by separation of powers, would be shocked and dismayed by the utter disregard you have shown the

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Constitution and the United States Congress. As John Adams astutely noted, we must have a "government of laws and not of men."

We therefore respectfully ask that these appointments be rescinded immediately. Additionally, in the future, we ask that all nominees be confirmed by the Senate as defined by the Constitution.

Sincerely,

Todd Rokita
Member of Congress

Paul C Broun

Ron Paul

Doug Lamborn

Tim Walberg

Paul A. Gosar

Cynthia M. Lummis

Jeff Duncan SC-03

Larry Bucshon

Karly Hartzler

Peter Roskam

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TX-23

TX 27

NM-02