

Cary Quoted in *National Law Journal* Story Entitled “Court Finds Appointments Unconstitutional”

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Nelson D. Cary, a partner in the labor and employment group in the Vorys Columbus office, was quoted in a *National Law Journal* story about a ruling from a federal appeals court in Washington that declared President Obama’s recesses appointments of National Labor Relations Board (NLRB) members unconstitutional. According to the story, “the central question the D.C. Circuit confronted is whether the U.S. Senate was in recess in January 2012, when Obama appointed three people to the labor board — personnel moves that enabled the board to continue to function with a quorum.” In the ruling, the court determined that the Senate had not in fact recessed, rendering the appointments unconstitutional.

The story states:

“The D.C. Circuit’s ruling carries the potential to have sweeping effect. For the NLRB, the decision ‘throws into doubt the validity of many significant NLRB decisions in the last year,’ said Nelson Cary, a labor and employment partner at Vorys, Sater, Seymour and Pease.

Among them, Cary said, is the NLRB’s first decision on whether Facebook rants against co-workers are protected, concerted activity; whether an employer must continue to deduct union dues after a labor contract expires; numerous decisions holding various employee handbook provisions unlawful; and decisions impacting the confidentiality of workplace investigations.

Still, Cary noted that the reach — at least for now — of the D.C. Circuit ruling is limited. ‘NLRB decisions that go before different courts of appeals may be upheld if those courts disagree with the D.C. Circuit’s reasoning,’ he said. In a way, it’s familiar ground for the NLRB, which from 2007 to 2009 had only two members out of five. The board’s actions were challenged for lack of a quorum, and in 2010, the U.S. Supreme Court invalidated more than 600 NLRB decisions.”

To read the entire story, visit the *National Law Journal* [website](#).

