

The NLRB Continues To Ignore Noel Canning

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The issue of whether the NLRB has the authority to continue to do business was front and center this week while the Board adamantly insists that the D.C. Circuit's decision in *Noel Canning* does not strip it of its authority to act.

Cablevision Systems, Inc.:

Cablevision Systems Inc. petitioned the U.S. Supreme Court to enter an emergency stay blocking the NLRB from proceeding with an administrative hearing against it on a complaint filed by an NLRB Regional Director charging the company with three unfair labor practices. The Company sought the stay from the Supreme Court after that court granted the petition of the Board to review the *Noel Canning* decision in its next term starting in October. [See our prior coverage of *Noel Canning* [here](#)] However, Chief Justice Roberts denied the request for stay without comment.

For more coverage of the case, see:

[Newsday - Supreme Court Denies Cablevision's NLRB Stay Request](#)

[Reuters - Supreme Court declines Cablevision stay application](#)

Acting General Counsel Lafe Solomon's defense of the Board's continued activity in light of *Noel Canning* was set forth in a letter filed with the highest court as part of the petition to stay. In that letter, Solomon defended the Board's decision to ignore *Noel Canning* on the basis that, among other things, there is a split in the Circuits on whether the recess appointments were in fact unconstitutional.. Solomon's explanation drew a fierce rebuke in the editorial pages of the *Wall Street Journal* by Journal columnist Kimberley Strassel. [It's worth a read.](#)

In Re Jeanette Geary:

The DC Circuit is confronting multiple petitions from parties challenging the right of the NLRB to act in light of that Circuit's decision in *Noel Canning*. The Court in the *Geary* case has set oral argument for September 16 on whether it should enjoin further action by the Board in several pending unfair labor practice cases. [The argument will be heard](#) by Judges Judith W. Rogers, David S. Tatel, and David B. Sentelle.

A copy of Geary's Petition for Writ of Mandamus or Writ of Prohibition to Compel the National Labor Relations Board to Cease Adjudicating or deciding Petitioner's Case can be [accessed here](#). For a good look at the

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impact of the *Noel Canning* decision, take a look at summaries maintained by former Board member and Ave Maria Law School professor John Raudabaugh at the [National Right to Work website](#) as well as the [U.S. Chamber of Commerce's Recess Appointments Litigation Resource Page](#).