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## Lauren McFerran labor board nomination opens union door to franchise businesses

By Richard W. Rahn

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Whom do you work for? Such a simple question should not require a government agency to give an answer. However, the Obama administration, in its never-ending quest for power over individuals and businesses, has decided that it - rather than you or your employer - should determine whom you work for.

On Thursday, the Senate held a hearing for President Obama's nominee for the National Labor Relations Board, Lauren McFerran, after the administration abruptly withdrew the nomination of the tainted Sharon Block for the same post. The nomination is slated to go to the full Senate Committee on Health, Education, Labor and Pensions next week and be put to a vote by the Senate during this lame-duck session.

The reason this nomination is important is that the administration is trying to overturn decades of settled law about who is responsible for the wages, benefits and other working conditions for the employees of franchises. Millions of Americans work for companies that franchise their brand names, operating systems and expertise to hundreds of thousands of small-business people. When you go to your neighborhood McDonald's or a Hilton hotel, chances are it is not owned and operated by the McDonald's or Hilton corporations, but by independent entrepreneurs. More than 700,000 franchises are operating in the United States, and McDonald's alone has more than 3,000 franchisees.

Most restaurant, hotel, auto repair and other basic business chains use the franchise business model for the simple fact that it works best for customers, the company that licenses its name and operating system, the small-business person who owns and operates the stores, and the employees. Opening a small business is risky, and most fail within three years. A small-business entrepreneur can greatly reduce the risk by acquiring a licensed franchise from a major company that has the know-how, experience and brand name that most small-business people lack. Advantages to the franchisors are that they can reduce their capital outlays as they expand their businesses and have the operations run by people who know the local market, are connected to the community, and have enormous financial incentive to make the business succeed.

The National Labor Relations Board has the responsibility to be an unbiased referee in disputes between labor unions and management and to make sure that U.S. labor regulations are followed. As union membership has fallen from more than a third of the labor force in the 1950s to a 97-year low of 6.7 percent of the private labor force this year, the NLRB is not as relevant as it was in decades past. However, like most government bureaucracies, the people at the board are looking for ways to expand their mission - and their budget and power. The Obama administration, rather than seeking out people who would be impartial to serve on the board, has selected people with strong ties to unions.

The latest scheme from the general counsel of the National Labor Relations Board is to claim that workers in the local McDonald's restaurant - for instance, in Jacksonville, Florida - are not employed by the owner of the restaurant who hired and pays them, but in effect are joint employees of the store owner and the faraway McDonald's Corp. As Sen. Lamar Alexander, Tennessee Republican, stated: "Imagine being the owner of a franchise business and being told that all of the employees that you recruit, hire, train, pay, promote and work alongside day after day are actually another company's employees too. The NLRB general counsel's absurd determination ignores decades of precedent and plain old common sense in what can only be an effort to help labor unions add more members." The other group that hopes to benefit from the "absurd" ruling is trial lawyers, who would prefer to sue a big corporation with deep pockets for an alleged labor law violation rather than a small-business person who might have committed it.

This attempted overreach by the National Labor Relations Board is an indication that it has too much money and time. If I were a Republican senator, I would attempt to delay Ms. McFerran's nomination until the next Congress convenes so there is adequate time to fully investigate and determine her views. Her comments before the Senate labor committee were not reassuring. The next Senate should also cut the budget of the NLRB to bring a halt to its nonlegislated mission creep.

Mr. Obama claims to care about small business, but if this proposed ruling is adopted, there will be far fewer franchise operations as the franchisors seek to limit their liability - resulting in higher prices and fewer jobs. Finally, it is most ironic that the Obama administration is demanding that the chain of liability for potential labor violations be extended to separate businesses, while the president claims he can do little or nothing about the Internal Revenue Service and other agency employee misconduct, even though he has the ultimate legal responsibility. Imagine the Obama administration being hypocritical.

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