



South Carolina Attorney General Alan Wilson

Prepared Remarks for: House Committee on Oversight and Government Reform June 17, 2011 Field Hearing

Thank you Chairman Issa and members of the House Oversight Committee for inviting me here today. This hearing is about far more than Boeing or South Carolina. It is about an individual's right to allocate capital in the way they believe best serves their business.

As Attorney General, it is my duty as South Carolina's chief legal officer to defend our constitution, our State, and our citizens. Fifteen Attorneys General, representing both right-to-work and union states, have joined me in opposing the NLRB's complaint against Boeing. This complaint is without legal merit or precedent and threatens the company's \$6.1 Billion annual impact on South Carolina's economy.

The draconian remedy sought by the Acting General Counsel would allow the Board to choose where a private business may locate its capital. Neither the Board nor the federal government should make private business decisions. It is business that creates capital and capital that creates jobs.

Since its adoption in 1935, the National Labor Relations Act has never been so distorted that it would destroy a company's ability to make sound business decisions. The Act imposes few constraints upon the free flow of capital to a right-to-work state. Legal precedents clearly demonstrate that Boeing's decision to expand to South Carolina is lawful.

Boeing did not eliminate union jobs or remove work from Washington State, it merely created new work in Charleston. Under Board law, it must be shown that existing work was eliminated, subcontracted, or relocated. In fact, even legal experts who support the Board, concede this action is unprecedented.

The Board's audacity to file this complaint constitutes "the shot heard round the business world." Companies around the globe are thinking twice about locating or expanding operations in this country – especially expansion to union states. Based on its complaint and recent memos, the Board appears anxious to challenge any business expansion it deems detrimental to unions as an 'unfair labor practice.'

Capital investment as well as fundamental business decisions related to unionization are not anti-union animus under Section 8(a)(3.) While Boeing has not discouraged union membership, the Supreme Court has upheld legitimate business interests even though union membership may be discouraged.

How could a rational person legitimately disagree with Boeing's decision when looking at South Carolina's business climate, its labor stability, and its \$900 million incentive package?

The Acting General Counsel's legal theory under Section 8(a)(3) that Boeing's actions are "inherently destructive" of unionization is nothing but an attempt to thwart a company's fundamental business judgment. That theory is inapplicable to Boeing's decision to expand to South Carolina.

In the words of the Supreme Court, a business may "make a prediction as to the precise effects [it] believes unionization will have on [its] company." Such predictions, including those concerning work

stoppages, are protected by the First Amendment. Any claim by the Acting General Counsel that the statements made by Boeing officials were “coercive” and thus violate Section 8(a)(1) is patently incorrect.

The last work stoppage cost Boeing nearly \$2 Billion and caused customers to question whether or not to buy from Boeing ever again. Despite this fact, Boeing desired to keep production in Washington State, but the union refused to assure labor stability. Furthermore, Boeing’s collective bargaining agreement, with the union, dates back to 1965 and guarantees the company’s right to determine where work is to be performed.

The Supreme Court has recognized that management must have the flexibility to make business decisions without being second guessed as ‘an unfair labor practice.’ The Board is ignoring the rule of law in filing a complaint without precedent. The consequences of the Board’s actions would abolish a company’s discretion to make business decisions.

In 1788, Alexander Hamilton warned that the freedom of the states “can be subverted by the federal head” and such subversion “is repugnant to every political calculation.” Our founding fathers went to great lengths to prevent an out-of-control federal government from nullifying private business decisions. We too must go to great lengths to ensure the founders’ promise is honored.

The Board’s complaint is a first step towards radically rewriting the NLRA. The Board’s Chairman has testified to Congress that she seeks to restructure the Act as a “collective action to redress economic inequalities.” Unless deterred, this bureaucratic agency’s actions will further paralyze our nation’s economy. Action must be taken in the halls of Congress, I ask the Committee to join me and fellow Attorneys General in the effort to preserve economic freedom in America.

Thank you, and I would be happy to answer your questions.

Supplement

The State, Wednesday, Jun. 01, 2011

Wilson: Silence is consent

By ALAN WILSON - Guest Columnist

The National Labor Relations Board's recent actions against Boeing and state labor laws amount to politics as usual: The president promised administrative action "to make sure that it's easier for unions to operate," and he kept that promise by stocking the NLRB with people who will do just that.

In April, the labor board filed a complaint to stop Boeing from expanding 787 Dreamliner production to South Carolina. The board has since issued a memo seeking to force companies to receive NLRB and union approval before moving a business unit. It also wants to sign off on state constitutional amendments. In May, it filed suit against South Dakota and Arizona challenging amendments guaranteeing the right to a secret ballot in union elections; it has signaled future litigation challenging similar amendments in South Carolina and Utah.

These actions jeopardize jobs and thwart economic development not just in right-to-work states such as ours but in union-friendly states as well. Why would a company want to locate to a union state knowing the federal government will block its ability to expand? The labor board's shortsightedness will not lead to an expansion in union membership, but instead cause an exodus of American jobs.

Bill Gould and Peter Schaumber, the NLRB chairmen under Presidents Clinton and Bush, respectively, have called the board's actions against Boeing "unprecedented." The National Labor Relations Act is being grossly misapplied. It does not allow the federal government to subvert private business decisions through bureaucratic overstep. The board's ill-conceived actions are frivolous and violate the rights of Boeing's stockholders and its employees.

The NLRB's leadership must remember that the agency was created to protect the rights of workers, not to wreak havoc upon prosperity and stifle job creation. When Boeing acquired Vought Aircraft in 2009, employees in Charleston exercised their rights under the law to "decertify," voting 199-68 to end their union representation. The board's actions would have the effect of nullifying that vote and subverting the will of the workers the agency was meant to protect.

The White House is dodging its responsibility in this matter by saying it does not "get involved in particular enforcement matters of independent agencies." But the labor board isn't really an independent agency. The president placed union representatives in NLRB leadership positions through recess appointments designed to circumvent the Senate's confirmation process.

These appointees have enforced their bias of labor-union longevity over private-sector prosperity. The president's silence is consent, akin to a parent in a grocery store refusing to control an unruly child. As a result, the labor board has been given the green light to wage war on commerce and industry.

Businesses understand how to create jobs. The government does not. In 1788, Alexander Hamilton warned the New York Ratifying Convention that the freedom of the states "can be subverted by the

federal head” and such subversion “is repugnant to every political calculation.” Our founding fathers went to great lengths to prevent an out-of-control federal government from meddling in private business decisions or circumventing constitutional amendments approved by overwhelming majorities of a state’s voters.

Thankfully, the Constitution, specifically the 10th Amendment, prohibits such overreaches by federal authorities. Our founding fathers believed in a series of checks and balances to limit the federal government. If the president will not act when his appointees defy the Constitution, the states must.

As attorney general, I took an oath to defend the Constitution to ensure freedom and liberty are not eroded. Sometimes, that oath requires challenging the federal government. Unless deterred, bureaucratic agencies bent upon the destruction of capitalism will reduce America from greatness to mediocrity. That cannot stand. We must remember that America was made great by hard work and free enterprise.

Mr. Wilson is the attorney general of South Carolina.

<http://www.thestate.com/2011/06/01/1841050/wilson-silence-is-consent.html#ixzz1PTKLmgfR>



South Carolina Attorney General Alan Wilson

Alan Wilson was elected South Carolina's Fifty-First Attorney General on November 2, 2010 and took office on January 12, 2011.

Prior to his election, Wilson spent his legal career as an Assistant Solicitor, an Assistant Attorney General, and as a civil litigator in private practice with Willoughby & Hoefler, P.A., in Columbia, SC

Growing up, Wilson's parents, Joe and Roxanne, stressed the importance of service to all four of their sons. Each has achieved the rank of Eagle Scout and each presently serves our nation in uniform. Immediately following his graduation from Francis Marion University in 1996, Alan joined the South Carolina National Guard. And over the past fourteen years, Alan has been promoted to the rank of Major and received the Combat Action Badge for leading troops through enemy fire in Iraq.

A 2002 graduate of the University of South Carolina School of Law, Wilson began his legal career working for the late Judge Marc H. Westbrook before prosecuting crimes across South Carolina including violent crimes, white collar crime, public corruption, DUI, domestic violence and child abuse as both an Assistant Solicitor and as an Assistant Attorney General.

In 2009, Wilson left the Attorney General's office and entered private practice as a civil litigator with the firm of Willoughby & Hoefler in Columbia, SC.

In addition to serving as Attorney General, Wilson serves as a Judge Advocate General in the National Guard where he provides legal support for soldiers and assists in the prosecution military crimes.

Wilson and his wife, Jennifer, have two young children, Michael and Anna Grace.

This is Wilson's third stint in the Attorney General's Office. Previously, he served the office as a prosecution division intern under Charlie Condon and as an Assistant Attorney General under Henry McMaster.