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Obama vs. Boeing: The War's Not Over

By [Mario Loyola](#)

December 1, 2011 2:02 P.M.

I wish I could be as happy [as James is](#) about the resolution of this Boeing fiasco, but I'm not — not by a long shot. It is infuriating to see the impunity with which the Obama administration persecutes private businesses even when it knows that its actions are probably illegal and stand a good chance of being tossed out of court. And the problem is systemic; in fact, we should thank the Obama administration for demonstrating just how little protection private businesses have from the abuses of the federal government under current law.

NLRB's move against Boeing was among the clearest [examples](#) yet — a demonstrably illegal action justified to the media with demonstrable falsehoods. Boeing was not transferring production of Dreamliners from pro-union Washington State to right-to-work South Carolina, as NLRB claimed: It was expanding production of Dreamliners in *both* locations because of soaring demand. And it was the administration, not Boeing, that gave the impression that Boeing was punishing its unions in Washington for previous strikes. The outrage is in the details: Please read Boeing's [letter of complaint to NLRB](#) from back in May. Boeing CEO Jim McNerney's subsequent [op-ed](#) in the *Wall Street Journal* was a classic of politeness and restraint, given the NLRB action.

Under the terms of the agreement Boeing reached with its union this week, the company will be *allowed* to build additional Dreamliners at its new South Carolina plant, so long as it builds future 737 MAX planes in Washington. I can understand why reasonable people are happy about that, but it's hard to believe that the federal government even had the power to prevent Boeing from opening its new plant there in the first place.

It's too bad that the NLRB action was never fully adjudicated in federal court because the Obama administration would almost certainly have lost. But the bigger picture is this: The administration doesn't care if most its actions are tossed out by federal courts. As long as some of them are upheld it can claim success. What businesspeople and lawyers call "litigation risk" — the risk that you will be sued for something — doesn't enter into the Obama administration's calculations, because it can always hire more lawyers to defend it at the Department of Justice, and sovereign immunity typically protects it from compensating people for the losses it causes.

In this sense, the ultimate problem is not the Obama administration. Sovereign immunity and limitless litigation resources create an incentive for unscrupulous officials to persecute individual companies and whole sectors of industry at no risk or cost to themselves or to the government. That is a structural problem and it needs a structural solution, one which should be a matter of priority for the next Congress. Regulatory excess has become perhaps an even greater danger to the

economy than taxes.

The EPA is facing hundreds of lawsuits for rules and enforcement actions of dubious legality; its persecution of [Range Resources Corp.](#) should have been a national scandal. The Dept. of Interior's moratorium on offshore drilling in the Gulf was thrown out of federal court multiple times, but the administration found a way to make the [drilling rigs](#) leave the Gulf anyway, by refusing to process permits. The administration has heartlessly eliminated tens of thousands of [jobs](#) along the Gulf Coast through its barely legal moves to constrain oil production in the Gulf. Now it's preventing the completion of a major pipeline from Canada.

Across the country you can see evidence of Obama's war on the American economy — a senseless ideological campaign that will hopefully serve America as an example of how not to do things for a long time to come.

— *Mario Loyola is [director](#) of the Center for Tenth Amendment Studies at the Texas Public Policy Foundation.*

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★ **The Power Pickle** : 12/01/11 16:23

I think this is a "glass half-full/half-empty" situation. It pretty clear that the Unions would would have had a hard time winning in the federal courts on appeal of an NLRB decision, one that likely would have been long-delayed given the impending lack of quorum once Craig Becker's recess appointment ends. This is definitely a face-saving maneuver on the part of the left and one that I think Boeing was happy to acquiesce on. Let's face it, Boeing is a corporation that needs to make profit for it's shareholders, thus it has to cut its losses anyway it can (ie, litigation risk) to ensure that.

However, as the article clearly and sagaciously points out, the systemic issue stays in place - namely, the government (and it's union interests) can abuse private citizens and private businesses with impunity and at no cost to them. There's always another slot at the DOJ ready-made for a lawyer to fill and paid for on the backs of the taxpayers.

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Machiavelli : 12/01/11 15:58

The Founders contemplated that the liberal exercise of the right guaranteed by the 2nd Amendment might be a remedy to the problem of otherwise unaccountable government.

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earlgrey133 : 12/01/11 15:46

Why didn't Hayes resign? Why can't republicans be as radical about preserving liberty as liberals are in taking it away?

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★ **madisonian** : 12/01/11 14:48

With the regulatory fourth branch of government, Mr. Loyola, it is the unfortunate double truth that the war is NEVER over.

For starters, Congress keeps increasing their power, by refusing to have the courage to regulate the American people themselves, so they delegate all of their authority in an empty piece of legislation to the regulatory state.

The people working in those agencies work toward progressive ends, no matter the political affiliation of the President. No president comes in and fires every single bureaucrat at every agency. And most of the career bureaucrats are liberal. Conservatives just don't find the motivation in their bellies to go to work in such numbers within the bureaucratic machinery.

The judiciary, for its part, decided long ago to forswear looking over the shoulder of the regulatory agencies. In most cases, litigation against a regulatory agency must commence before a hearing officer who is an executive employee of the agency being challenged.



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So, in the regulatory agencies of our government, all three functions of government are housed within one branch -- legislative, executive and judicial.

It is the most unconstitutional facet of everything our government does, since it breaks down the structural organization that Articles I-III painstakingly created.

And elections hardly make a difference at all in the composition of our federal agencies.

The answer, as usual, lies with Congress, but this is precisely the type of issue -- reigning in executive departments -- that Paul Ryan and the other supposed conservative bulwarks in Congress would never think of touching, 60 year balanced budget plans notwithstanding.

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★ **DorsaiGuy** : 12/01/11 14:17

I always get a kick out of Obama always claiming he "chose" not to go work on Wall Street when in fact his first job was working at a small Wall Street newsletter publisher. He didn't reject Wall Street, Wall Street rejected him.

It also makes me smile everytime I hear Michelle Obama talk about public service when in fact she has never been on a public payroll in her life. Her last private "job" didn't exist before her husband became a Senator and didn't exist one minute after she quit.

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★ **NK** : 12/01/11 14:07

Bravo-- every word is true. This should be the Tea Party's 2012 election manifesto.

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TruthTower : 12/01/11 14:07

What else do you expect from people who are either too stupid, too untalented, or too lazy to make it in the private sector.

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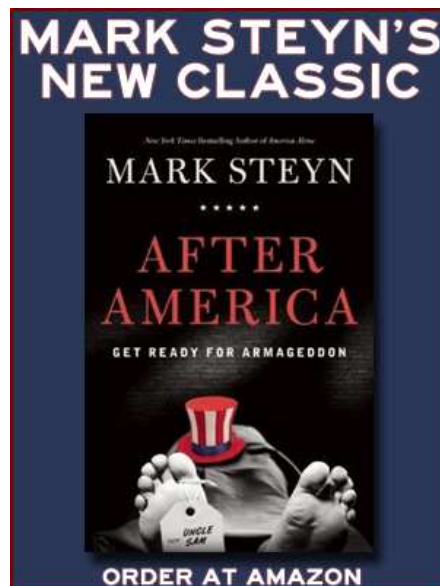
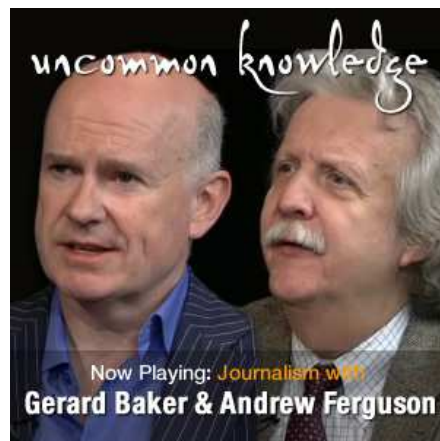
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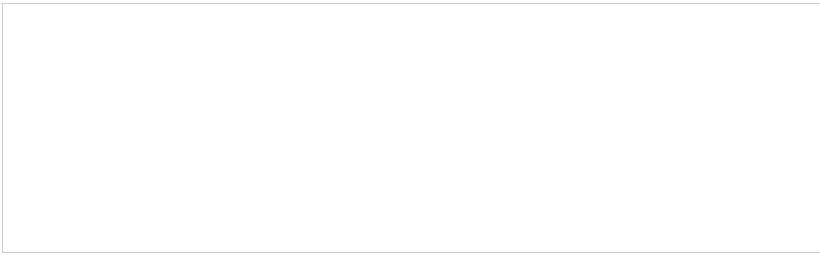
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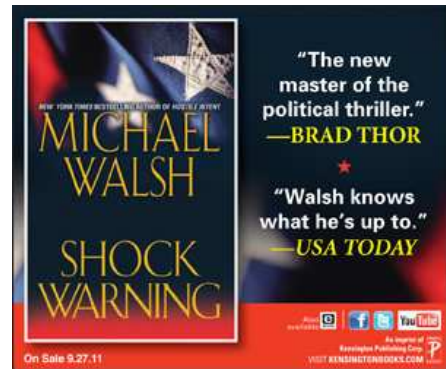




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Next Tuesday at noon, the Senate will have a cloture vote on President Obama's nomination of Caitlin Halligan to a . . . [Go](#)

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This is not an endorsement. But I cannot stand the injustice with which the idea that Romney is somehow responsible . . . [Go](#)

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New 'Diversity' Guidelines

In good D.C. fashion, the Obama administration has chosen a Friday afternoon for an important release: "The U.S. Department of Education . . . **Go**

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Ten years ago today, on December 2, 2001, Enron declared bankruptcy. The company is now liquidated, but Enron's intellectually insolvent . . . **Go**

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