NLRB v. Noel Canning- Michelle and Uma

Table of Cited Authorities:

- The Constitution of the United States
- The Harlan Institute
- Letter from George Washington to William Drayton
- Speech of Archibald Maclaine
- Letter from Alexander Hamilton to James McHenry
- The Federalist No.67
- Letter of Cato IV
- US Senate website
- McCulloch v. Maryland

Statement of Argument:

In the question of the President recess-appointment power being able to be exercised during a recess that occurs within a session of the Senate, the answer of the respondent's side simply is no. This originalist position derives from the Recess Appointments Clause of the Constitution, which states that "The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session." The strictness of the verbiage of this excerpt from the Constitution demands the differentiation between inter-session recesses, which are recesses BETWEEN Congressional sessions, and intra-session recesses, which are recesses DURING Congressional sessions. The Recess Appointments Clause utilizes the grammatical article of "the" in reference to session, which indicates solely one recess of the Senate, which thereby is in reference to Presidential appointments being allowed to be made during a single inter-session recess and not the multiple intra-session recesses. Additionally, the clause vests Presidential power in filling vacancies only made during recesses, therefore excluding vacancies made during congressional sessions. These specified boundaries and guidelines were advocated for by the renowned Federalist party, comprised of our Founding Fathers, because of the security measures that this clause provides against executive overpower. Therefore, since extenuating circumstances demanding leniency or change in these guidelines have yet to arise in our history, the viewpoint of the original intent of the Constitution must be upheld as per the desire of our respected Founding Fathers of America.

Argument:

"This is rendered necessary by the Constitution of the United States, which authorizes the President of the United States to fill up such vacancies as may happen during the recess of the Senate—and appointments so made shall expire at the end of the ensuing Session unless confirmed by the Senate; however there cannot be the smallest doubt but the Senate will readily ratify and confirm this appointment, when your commission in the usual form shall be forwarded to you." In the respected words subjected to blunt acceptance rather than variance of interpretations of George Washington, the President's power of recess appointment only holds legal validity from the time an inter-session recess begins to the time it ends. The nominee appointed to a vacant position by a President can only fulfill that position's duties for a period of time past the end of the duration of an inter-session recess of the Senate if that nominee is then subsequently confirmed by the Senate. Presidential appointments will legally expire at the end of a recess if they are not confirmed for the position by the Senate by then. The law that the Senate must confirm an appointment the President presents to fill a temporary vacancy is to restrict the President's power of appointment and therefore his executive power as an entirety. It allows the doctrine of checks and balances to be preserved and enacted by not exclusively giving the President the power of appointing officials to vacant seats. If the law allowed Presidential recess appointments to be upheld without expiration or any confirmation or rejection given by the Senate, the Senate would hold little to no power over official appointments and would therefore skew the idea of separation of powers. Giving the President sole power of official appointments would ultimately result in regrettable decisions. From the words of Alexander Hamilton, "in a matter of this kind it could not be advisable to exercise a doubtful authority," and from the Letter of Cato IV, "…though the President, during the sitting of the legislature, is assisted by the Senate, yet he is without a constitutional council in their recess- he will therefore be unsupported by proper information and advice, and will generally be directed by minions and favorites, or a council of state will grow out of the principal officers of the great departments, the most dangerous council in a free country…" Without the advice of the Senate, the President's appointments could lack credibility and add unsuitable candidates for official positions, which is exactly what the Founding Fathers vowed to never let this great nation do. When power is invested in one person, human error arises. Unavoidably, the senate and its multitude of members ensure this from happening. This is supported in the Letter of Cato IV in which it states; "[The Senate] would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity." One sole person absolutely

should not and cannot contain all of the power of appointment. Giving the President sole power would combat and ultimately deface the very idea of a democracy.

In terms of the juncture during which the President is allowed to appoint positions, between sessions of the Senate is the allotted time period the President has power of appointment. During this time, there is no one to make appointment decisions besides the President, rendering his appointment power necessary. The importance of this power is expressed in the words of Archibald Maclaine when he says (in regards to the President) , "the Senate is to advise him in the appointment of officers, yet, during the recess, the President must do his business, or else it will be neglected; and such neglect may occasion public inconveniences." The Presidential appointment clause in the constitution is to ensure the public's interest is always in mind and in favor, even when the Senate is in recess. During times the Senate cannot provide advice or confirmation on an official position, the executive power of the President insures the stability and continuity of the government and its many aspects of power. But, the President's appointment power only applies to vacancies made during a recess. Vacancies that occur during a session of the Senate are solely under the jurisdiction of power of the Senate, even if those positions are still vacant during a recess. The limitation of the President's power to only vacancies made during a recess ensures that no abuse or misinterpretation of power in carried out. It is clear in the constitution, with very little room for varied interpretation, that the President has no power to appoint to a vacancy made during a session of the Senate when it states "the President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session." The President's only power of appointment lies within the boundaries of two sessions of the Senate. In general, in accordance to Alexander Hamilton, "vacancies might happen in their recess, which it might be necessary for the public service to fill without delay, the succeeding clause is evidently intended to authorise the President singly to make temporary appointments 'during the recess of the Senate, by granting commissions which should expire at the end of their next session.'" All appointments, in agreement with the Constitution of the United States of America, made by the President are temporary and only valid during the time period between two sessions of the Senate. The appointments will expire if the Senate does not confirm said appointments. The constitution gives joint power to the Senate and the President of appointment to ensure that the democratic idea of checks and balances is maintained and that the citizens of the United States and the basic Governmental principles the country was founded upon are not interfered with or abused by the use of sole, executive power.

Due to the accumulated evidence of the limits of Presidential power in terms of appointments, it is definitely conclusive that the President's recess-appointment power may

not be exercised when the Senate is convening every three days in pro forma sessions. According to George Washington's claims in a letter to William, "You will observe that the commission which is now transmitted to you is limited to the end of the next Session of the Senate of the United States. This is rendered necessary by the Constitution of the United States, which authorizes the President of the United States to fill up such vacances as may happen during the recess of the Senate—and appointments so made shall expire at the end of the ensuing Session unless confirmed by the Senate; " This claim from one of our Founding Fathers establishes the fact that vacancies can ONLY be filled by the President himself while the Senate is in an inter-session recess, and therefore absolutely cannot be filled while the Senate is IN session. Pro-forma sessions, as per their definition by the US Senate, are "brief meeting[s] of the Senate, often only a few minutes in duration." While they seem short and insignificant, according to the precedent set by the Democratic party during President George W. Bush's presidency, pro-forma sessions occur once in every three days while Congress is seemingly on an intra-session or inter-session recess. By the very definition of a congressional intra-session recess, however, the recess must be at the absolute minimum of four days long. This strategic logic limits the ability of Congress to officially be on an intra-session recess when pro-forma sessions are in place. Therefore, since Congress cannot be on intra-session recesses officially when pro-forma sessions are going on, Presidential appointments to fill vacancies cannot be made! However, even if this weren't the case and appointments were allowed to be made during pro-forma sessions, let us not forget that we have constitutionally established by the verbiage of the Recess Appointments Clause that the only time a presidential appointment can be made at all is during an INTER-session recess and not an intra-session recess. Therefore, the President cannot possibly appoint any person to any vacant position at all during pro-forma sessions, regardless of whether or not the Senate is deemed to be in an intra-session recess anyways, because intra-session recesses do not constitutionally or legally count towards an actual congressional recess in the first place, as per the hard-set verbiage of the Recess Appointments Clause in the Article 2, section 2, clause 3 of the constitution of the United States.

Conclusion:

The Presidential appointment clause in the Constitution of the United States of America is in place to ensure that there is always the ability to appoint officials to important positions and ensure the continuity, stability, and structure of the United States government while, in addition ensuring the convenience of the public. This power is granted while also maintain the principle of checks and balances to protect our governmental power and ensure that it does not fall into the hands of one sole person of the executive branch, which therefore

protects our right to separation of powers and insulates our process of checks and balances. The president only has the power to appoint to vacancies that occurred during the one inter-session recess between two sessions of congress. This appointments are only temporary and will expires at the end of the next session. In order to be maintained and not expires, the senate must confirm these positions. The power of appointment is jointly in the hands of the senate and the president to avoid the interference and the misuse of the constitution. In terms of the validity of the Constitution above all other documents or provisions in this great nation, we must follow the precedent of upholding the Constitution above all other words in the nation as the Supreme Court has done countless other times. As McCulloch v. Maryland has claimed in the past in regards to the Constitution's validity, "This provision is made in a Constitution intended to endure for ages to come, and consequently to be adapted to the various crises of human affairs." Therefore, since the Constitution is held above everything else that we know and accept, the words of the Recess Appointments clause that explicitly claim and prove that the President can only make appointments to fill vacancies made during recesses, that the only recess that can appointments can be made in is the one inter-session recess per year, and that the President cannot fill vacancies during pro-forma sessions, is absolutely and wholly true. We must, without a doubt, as an obligation to serve this country to the fullest and best of our ability, agree with precedent and accept the words of our wisest Founding Fathers, and therefore respond to this case as the Respondents of the United States of America.

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