

Harlan Institute- Ryan and Robert

Petitioner Brief Smithtown High School West
Ryan Raeburn and Robert Hynes

Table of Cited Authorities

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Statement of Argument

In the Supreme Court case *National Labor Relations Board v. Noel Canning*, the petitioner will argue that the appointment of the head of the government agency, NLRB, was unconstitutional because the appointment was made under false pretenses of the constitutional power of the President; however, that is not the case. The President's appointment of the head of the NLRB was constitutional as it was properly derived from his powers under Article II of the Constitution.

In the recently argued Supreme Court case *National Labor Relations Board v. Noel Canning* calls on the issue of whether the President's recess-appointment power is being executed in a constitutional manner. The United States Constitution gives the President the 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." (Article II, Section 2). The President may appoint ambassadors, other public Ministers and Consuls, Supreme Court Justices, and all other heads of Executive branch agencies. Although the President can appoint whoever he wants to fill a position, the Senate must provide their "advice and consent." In the appointment for the position on the National Labor Relations Board, Congress claims that they were in session during the time at which the nomination was made. They describe Congress to be in a "pro-forma" session, in which one Senator is present and hits the gavel declaring the Senate to be in session—when technically they are not. By calling order in the Senate chamber even when only one member is present, the Senate is declared to be "in session" when truthfully they are not. The use of this session of the Senate is merely a political tactic in which Senators of the opposing party of the President have the ability to delay a vote on essential heads of governmental agencies preventing them from operating and carrying out the duties of the executive branch.

Critics of the President—which are also the same people who abuse this pro-forma session of Congress—believe that the National Labor Relations Board is a huge waste of government funds and that it should be dismantled; however, there is virtually no way of eliminating such an agencies. Although such agencies cannot be easily abolished, ways to limit them or prevent them from operating can be through delaying a vote in Congress through the pro-forma session of the Senate. Senators claim to be present at the time of which the President makes such nominations, which allows for no recess-appointments to be made. When Congress is “in session” no appointments can be made until the Senate takes a vote on the matter, and in a pro-forma session, there is no such thing as a quick vote. This is exactly what the President fears as it will prevent government from doing its job—serving the people—and elongate many processes, essentially decreasing government efficiency. This is just another example of divided government in which Republicans and Democrats cannot put aside their ideological differences for the best interest of the country. They are hurting not helping the country by doing this.

In the court papers, Republicans stated: “Who determines—the Senate or the President—whether the senate is in session? The constitution’s text and structure point to only one answer: the Senate.” However, when the President makes appointments it must be confirmed at the end of the next session held by Congress. In the case with Noel Canning the President’s recess appointments did not comply with the requirements of the Constitution. Although in this case it was wrong to do so, there still needs to be clarification of the President’s power for making recess appointments.

According to the language of the Constitution, the President of the United States can make recess appointments when the Senate is not in session to cast a vote. Although the Senate declares itself to be in a pro-forma session, they are not entirely in session to cast a vote on such matters. A quorum, at the least, is needed in order to successfully fulfill a President’s appointment; if there is no vote casted in a time period in which the President has appointed someone to fill a position, the President should be allowed to use his recess-appointment power as derived by the Constitution. The Senate is not abiding by their Constitutional obligations of voting on such nominations by being in a pro-forma session. The only outcome to this case should be a Supreme Court’s ruling of maintain the constitutionality of the recess-appointment process and declaring a pro-forma session of the Senate to be unconstitutional or have such session be clarified for future occurrences. Allowing for more clarification on the language of the law will ensure the President’s power, derived from the Constitution, to make recess appointments.

Some may argue that recess-appointments are a thing of the past and that travel has advanced from horse and buggies to planes, trains and automobiles; however, it is still necessary for the President to make such appointments. The Senate may take recesses during the summer months or holiday breaks not being back in Washington for days on end while government agencies never stop running and are essential to every day American life.

During election years 1/3 of all Senators are up for reelection which means that many of them will be out-of-town for extended periods of time in which they are not present for Senate votes. Though means of travel have been enhanced since the beginnings of this nation, there are still times of absences of Senators during what some would say to be “crunch-time”.

At the end of the day, it is the duty and responsibility of the Constitution to uphold the rights and the liberties of the American people. With clarification still needed the President still has the ability to appoint at his discretion whether the Senate is either in or not in session because at some point approval will be needed by the Senate. The President carries out these appointments because they are necessary and vital to the daily functions of the government; he was given this power to appoint individuals during Congressional recess because the framers of the Constitution very well knew that it is imperative to never waste time when carrying out governmental duties. Those in the Senate must come to the realization that the pro-forma political tactic is detrimental to the health of the nation and its important services that help everyday Americans. There needs to be some clarification on this issue because we cannot have a government that is constantly debating the Constitution’s language—this is why we have a Supreme Court. The Supreme Court must look into the best interest of the country in this case and rightfully give their opinion that it is constitutional in the process by which appointment is being handled. The Justices need to also lay the groundwork for more interpretation of the law and less ambiguity in regards to the appointment process so that this issue will not arise again. An issue much like this one drives the government apart when we need a unified one now more than ever, so it is imperative that the Supreme Court rules in favor of the national Relations Board in order to preserve the sanctity of the role of the President in essential governmental affairs.