

## NLRB v. Noel Canning Maccaull-Turner

### Table of Cited Authorities

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Statement of Argument: The president should not be able to use his recess-appointment power during a recess within a session of the senate. While the constitution states that the president may freely use this power, he must also have the advice and the consent of the Senate before any further action can be advanced into the next stages. Next, the system of Checks and Balances between the executive branch and the legislature could crumble because of this recess-appointment power used only by the president. With vague wording of the rights and powers set in the Constitution, the president could easily create a gap between the judgement of the legislature and his own political schedule, completely setting the basis of what is constitutional or not, in which case is unconstitutional.

Argument: The President's ability to appoint new "Inferior Officers" to power during a congressional recess gives him a great deal of leeway in the election process for those positions. With that ability, he can effectively exert his influence and views throughout his administration, and possibly years after they leave office. What counts for a recess, can be incredibly temporary, meaning that if something happens during a five minute recess he can easily have that person replaced within a span of 1, with no congressional approval.

Meaning that hypothetically speaking, if all judges dropped dead somehow, he could approve that many judges in the middle of a recess and not have any sort of approval. The system was put in place in a time when it could take days to travel between states and now with new technology at our hands we can send letters overnight, and emails in the blink of an eye. The system is old, and outdated.

George Washington believed in congressional approval when he gave judges their right to preside on cases, and in good faith awarded them with their power and still sought approval. By allowing judges, ambassadors, and other positions that hold power to be called forth whenever to serve without any sort of approval can bring in some very biased people into office. With that in mind, it allows the checks and balances system to be shattered by the executive branch and judicial branch with the legislative now having less power. Attorney General William Wirt in 1823 concluded that if news of a recess had reached the senate a day before they left that obviously it would lead to the president getting to choose the seat freely, since a seat couldn't just be left vacant during what could be a long period of vacancy while waiting for the senate to convene. To combat the president, the senate started holding pro forma sessions so as to deny him from using his power of recess appointment. This in turn forced the president to reinterpret the clause to use his short timeframe recesses to put his people into office. Now several courts have declared his actions as unconstitutional and some government officials are attempting to remove from power the people that the president has placed into it.

The National Labor Relations Board had several members put into power via Presidential recess appointments, two democrats and one republican, and during a dispute with the Noel Canning Corporation, the canners believed the board to be inherently biased in favor of unions. With that in mind, the government has a lot of boards, and bodies that compose it. By allowing the president to replace enough members in a board it would allow him to exert great influence throughout the political processes. Presidential influence would have a huge degree of unchecked influence over political processes.

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