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Roger Wicker

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EXECUTIVE OVERREACH AND RECESS APPOINTMENTS

*Senator Roger Wicker**

I. INTRODUCTION

A fundamental principle of our system of government is adherence to the rule of law,[1] and one of the actions taken by those elected to the United States presidency is swearing to preserve, protect, and defend the Constitution of the United States.[2] Regrettably, on multiple occasions, our current President has circumvented the rule of law, undermining the checks and balances conceived by the Framers whenever they have impeded his agenda. He has aggressively pursued new and troubling expansions of executive branch power.

One of the more egregious examples of the President's overreach of executive branch authority occurred on January 4, 2012, when he unilaterally sought to install Richard Cordray as the new head of the Consumer Financial Protection Bureau and named three individuals to serve as members of the National Labor Relations Board (NLRB).[3] In making these four "appointments"—classifying them as "recess appointments" even though the Senate was not meeting regularly—the President ignored nearly a century of legal precedent.

Significantly, a three-member panel for the District of Columbia Circuit has agreed, concluding in *Noel Canning v. National Labor Relations Board* that the President may make recess appointments only during *intersession recesses* and only for *vacancies that come into being during such intersession recesses.*[4] In its decision, the *Noel Canning* court explained that the President's purported recess appointments of three NLRB members on January 4, 2012, did *not* take place during "the Recess of the Senate" because "the Recess," as used in the Constitution's Recess Appointments Clause, is limited to *intersession* recesses.[5] Allowing presidential appointments to be made without Senate consent during *intrasession* recesses,

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* The Honorable Roger F. Wicker is a United States Senator from Mississippi. Senator Wicker earned his law degree from the University of Mississippi in 1975.

1. As explained by Thomas Paine in his 1776 pamphlet, *Common Sense*: "In America THE LAW IS KING! For as in absolute governments the king is law, so in free countries the law ought to be king; and there ought to be no other." Christopher L. Tomlins, *In America The Law is King!*, *in* 19 THE CAMBRIDGE HISTORY OF LAW IN AMERICA 1 (2008) (citing Thomas Paine, *Common Sense* (1776), and noting that "[t]he power and position of law are apparent throughout American history, from its earliest moments").

2. U.S. CONST. art. VI, cl. 3.

3. Sharon Block, Terence Flynn, and Richard Griffin were appointed to the NLRB on this date.

4. Canning v. NLRB, No. 12–1115 (D.C. Cir. Jan. 25, 2013). The *Canning* opinion was decided immediately prior to this Article's publication. It remains to be seen whether the President's administration will appeal the adverse decision.

5. *See Id.* at 18.

rather than intersession recesses,[6] "would wholly defeat the purpose of the Framers in the careful separation of powers structure reflected in the Appointments Clause."[7] A sitting president could simply dispense with the Senate's advice and consent by waiting until the Senate took a break (however brief) to make his appointments, the court explained.[8] The *Noel Canning* court also found that the term "happen," as it is used in the Recess Appointments Clause, means that the President may make recess appointments only if a vacancy "arises" or "begins" or "comes into being" during "the Recess."[9] By unilaterally making these so-called "appointments" of preexisting vacancies after the second session of the 112th Congress had already convened on January 3, 2012, President Obama violated the Constitution.[10]

With these "appointments," President Obama pushed executive branch overreach to a new, more troubling level in violation of both the Constitution and past practices of prior presidents. The President could have relied upon the routine appointment process under Article II of the United States Constitution, which gives the President the authority to nominate[11] and the Senate the authority to reject or to confirm such appointees under Article II.[12] In this instance, however, he did not use the standard process[13] because he anticipated that the United States Senate would never confirm his choice to head the Consumer Financial Protection Bureau—an agency whose current structure was opposed by a significant number of Senators due to its lack of transparency and accountability.

Such opposition, however, is not a valid constitutional reason for the President to install several of his "appointees" to office in violation of the Article II Appointments Clause.[14] His is precisely the type of conduct that

6. An intersession recess refers specifically to the time period between one session of the Senate and the next; therefore, "'the [term] Recess' should be taken to mean only times when the Senate is not in one of those sessions, formally ending upon the ensuing session of the Senate." *Id.*

7. *Id.* at 23.

8. *Id.*

9. *Id.* at 30–31.

10. The court considered whether "happen" means "arise" or "begin" or "come into being" during "the Recess," or, conversely, whether the President may fill up any vacancies that "happen to exist" during "the Recess." *Id.* The court settled on the former interpretation of "happen," reasoning that similar wording elsewhere in the Constitution supports such an interpretation, and that a contrary interpretation would eviscerate the primary Article II method of appointments. *Id.* at 32. As stated in the decision: "vacancy happens, or 'come[s] to pass,' only when it first arises, demonstrating that the Recess Appointments Clause requires that the relevant vacancy arise during the recess. The term 'happen' connotes an event taking place — an action — and it would be plainly incorrect to say that an event happened during some period of time when in fact it happened before that time." *Id.* at 31.

11. U.S. CONST. art. II, § 2, cl. 2.

12. *Id.*; *see also* HENRY B. HOGUE, CONG. RESEARCH SERV., RS21308, RECESS APPOINTMENTS: FREQUENTLY ASKED QUESTIONS (2012) (Summary).

13. Michael A. Carrier, *When Is the Senate in Recess for Purposes of the Recess Appointments Clause?* 92 MICH. L. REV. 2204, 2208 (1994) ("There is a less urgent need to fill vacancies that exist during brief recesses because the President can rely on the standard appointment process, which occurs when the Senate promptly reconvenes."). President Obama did not give the Senate any meaningful opportunity to confirm his NLRB nominees: he left these NLRB positions vacant for several months before making the "appointments" on January 4, 2012.

14. *Id.* at 2205 n.9.

would have troubled the Framers, who were candid about the crucial link between the separation of powers and freedom itself, warning in the *Federalist Papers* of the encroaching nature of power:

> It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident, that none of them ought to possess, directly or indirectly, an overruling influence over the others, in the administration of their respective powers. It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it.[15]

The Framers carved out one constitutional exception, known as the Recess Appointments Clause, to the standard requirement of eliciting Senate advice and consent to presidential appointments. White House lawyers have relied upon this exception, which is found in clause 3 of Article II, section 2,[16] as the supposed justification for the President's action in unilaterally appointing executive branch officers.[17] The clause grants to the President the "[p]ower 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."[18] The President's lawyers have argued (and likely will assert on appeal) that the President's January 4, 2012, "appointments" effectively occurred during a "Recess of the Senate," and therefore the Recess Appointments Clause applies.[19] However, the conditions for a Senate "Recess," which would trigger this exception to the Appointments Clause, did not exist on January 4, 2012, and thus the President's action of unilaterally trying to install senior appointees to office was illegitimate.

II. THE UNCONSTITUTIONALITY OF THE PRESIDENT'S APPOINTMENTS

A. Congress Was Not In An Intersession Recess on January 4, 2012.

For the purposes of the Recess Appointments Clause, the term "Recess" of the Senate refers to a break in Senate proceedings that occurs

15. THE FEDERALIST NO. 48 (James Madison); *see also* THE FEDERALIST NO. 51, at 323–24 (James Madison).

16. U.S. CONST. art. II, § 2, cl. 3; Williams v. Phillips, 360 F. Supp. 1363, 1367–68 (D.D.C. 1973) ("The constitutional provision governing the appointment of federal officials is clear in its mandate. Unless Congress has vested the power of appointment of an officer in the President, the Courts, or a Department head, he may be appointed only with the advice and consent of the Senate, unless that body is in recess.").

17. Carrier, *supra* note 13, at 2206 n.17 (citing Williams v. Phillips, 360 F. Supp. 1363 (D.D.C. 1973)).

18. U.S. CONST. art. II, § 2, cl. 3.

19. Virginia A. Seitz, Asst. Att'y. Gen. for the Office of Legal Counsel, U.S. Dep't of Justice, *Lawfulness of Recess Appointments During a Recess of the Senate Notwithstanding Periodic Pro Forma Sessions*, JUSTICE.GOV (Jan. 6, 2012), http://www.justice.gov/olc/2012/pro-forma-sessions-opinion.pdf (Memorandum Opinion for the Counsel to the President).

following a "session" of the Senate.[20] When President Obama made these "appointments" on January 4, 2012, Congress had already begun a new session.

Article I also specifies that neither chamber may take a break, or a recess, of more than three days without the consent of the other.[21] Consistent with this requirement, U.S. House Rules stipulate that adjournments of *less* than three days shall occur by means of a motion, adjournments of *more* than three days require the consent of the Senate,[22] and adjournments *sine die* (ending each session of Congress) require the consent of both chambers.[23] However, neither chamber of Congress had consented to the other's adjournment on the date the President sought to make these "appointments."

For both of these reasons, Congress was not in "the Recess" period envisioned by the Constitution.

B. The Senate on January 4, 2012, Was Capable of Providing Its Advice and Consent.

In recent decades, the overwhelming consensus among past U.S. Attorneys General has been that recess appointments should be limited to circumstances in which the Senate is unable, by virtue of a lengthy recess, to provide the advice and consent necessary to confirm or reject a senior government official.[24] While some Attorneys General have disagreed on precisely what criteria must be met to render the Senate incapable of providing such advice and consent, the consensus view in recent decades is that

20. HENRY B. HOGUE, CONG. RESEARCH SERV., RS21308, RECESS APPOINTMENTS: FREQUENTLY ASKED QUESTIONS 2 (2012).

21. U.S. CONST. art. I, § 5, cl. 4 ("Neither House, during the Session of Congress, shall, without Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting").

22. HENRY B. HOGUE, CONG. RESEARCH SERV., RS21308, RECESS APPOINTMENTS: FREQUENTLY ASKED QUESTIONS 2 (2012). Hogue notes that the required consent of one chamber to another chamber's recess typically is granted to the other chamber by passing a concurrent resolution: "Congress adjourns sine die by adopting a concurrent resolution through which each house grants permission to the other to adjourn sine die. These adjournment resolutions today usually authorize leaders of each chamber to call it back into session after the sine die adjournment. If this power is exercised, the previous session resumes and continues until the actual sine die adjournment is determined, usually pursuant to another concurrent resolution . . . ." *Id.*

23. William H. Brown, Charles W. Johnson & John V. Sullivan, U.S. House of Representatives, 112th Cong., *House Practice: A Guide to the Rules, Precedents, and Procedures of the House*, GPO.Gov 2 (2011), http://www.gpo.gov/fdsys/pkg/GPO-HPRACTICE-112/pdf/GPO-HPRACTICE-112.pdf.

24. The U.S. Department of Justice's Office of the Solicitor General stated, in a 2004 brief to the United States Supreme Court, "[t]o this day, official congressional documents define a 'recess' as 'any period of three or more complete days—excluding Sundays—when either the House of Representatives or the Senate is not in session." Brief for the United States in Opposition, Miller v. United States, No. 04–38 (11th Cir. 2004), 2004 WL 1206955, *available at* http://www.justice.gov/osg/briefs/2004/0responses/2004-0038.resp.pdf. The Deputy Solicitor General, Neil Katyal, also stated: "The recess appointment power can work in – in a recess. I think our office has opined the recess has to be longer than 3 days." Transcript of Oral Argument at 50, New Process Steel v. Nat'l Labor Relations Bd., 130 S. Ct. 2635 (2010) (No. 08-1457), *available at* http://www.supremecourt.gov/oral_arguments/_transcripts/08-1457.pdf. *See* Recess Appointments, 41 Op. Att'y. Gen. 463, 468 (1960); *see also* Recess Appointments During an Intrasession Recess, 16 U.S. Op. O.L.C. 15 (1992) (noting that the President could make a recess appointment during an intrasession recess from January 3, 1992, to January 21, 1992).

adjournment for a period of less than three days cannot be construed as a recess of the Senate for purposes of the Appointments Clause.[25]

As far back as 1921, even U.S. Attorney General Harry M. Daugherty, in opining that the term "Recess" must be given its practical meaning, clarified:

> No one, I venture to say, would for a moment contend that the Senate is not in session when an adjournment [of under three days] is taken. Nor do I think an adjournment for 5 or even 10 days can be said to constitute the recess intended by the Constitution.[26]

The notion that the Senate may convene pro forma sessions in which it has the capacity to act to prevent the occurrence of recess appointments is also not new. Senate Majority Leader Harry Reid, D–Nevada, publicly articulated this view during a November 2007 speech on the floor of the U.S. Senate, stating that "[t]he Senate will be coming in for pro forma sessions . . . to prevent recess appointments."[27] As recently as two years ago, the President's own Solicitor General confirmed the legitimacy of Senator Reid's view that the "Senate may act to foreclose the ability of the President to make recess appointments" by not recessing for several consecutive days at a time over a lengthy period.[28]

As further clarified by a member of the President's own political party, former U.S. Senator Robert Byrd, D–West Virginia:

> Recess appointments should be limited to circumstances when the Senate, by reason of a protracted recess, is incapable of confirming a vitally needed public officer. Any other interpretation of the Recess Appointments clause could be seen as a deliberate effort to circumvent the Constitutional

25. As noted by the Congressional Research Service (the research arm of the Library of Congress), until President Obama made these appointments, no other U.S. President at any time in the past three decades had made a recess appointment in a shorter recess than 11 days for an intersession recess (10 days for an intra-session appointment). HENRY B. HOGUE, CONG. RESEARCH SERV., RS21308, RECESS APPOINTMENTS: FREQUENTLY ASKED QUESTIONS 3 (2012) (also cited in a letter dated Jan. 6, 2012, to Eric H. Holder, U.S. Att'y. Gen., from Republican members of the U.S. Sen. Judiciary Comm.). *See also* George Will, Editorial, *Obama's Selective Defense of the Constitution,* WASH. POST , Oct. 11, 2012 ("In 1993, during a federal court case, the United States Department of Justice argued that "[i]f the recess here at issue were of three days or less, a closer question would be presented. The Constitution restricts the Senate's ability to adjourn its session for more than three days without obtaining the consent of the House of Representatives."). *Id.*

26. Executive Power—Recess Appointments, 33 Op. Att'y. Gen. 20, 25 (1921).

27. 153 CONG. REC. S14,069 (daily ed. Nov. 16, 2007) (statement of Sen. Harry Reid, D–Nevada). *See also* Republican Policy Comm., *Reid Doubles Down on Senate Dysfunction*, SEN. REPUBLICAN POLICY COMM. (July 24, 2011), http://www.rpc.senate.gov/policy-papers/reid-doubles-down-on-senate-dysfunction ("In 2007, the Majority Leader pioneered the practice of keeping the Senate in session on a pro forma basis to prevent President Bush from making recess appointments.").

28. Letter from Elena Kagan, Solicitor Gen., to The Hon. William K. Suter, Clerk, U.S. Supreme Court (Apr. 26, 2010).

> responsibility of the Senate to advise and consent to such appointments.[29]

Senator Byrd's view is also consistent with that of leading legal scholars, who have explained how practical constraints dictated the inclusion of the Recess Appointments Clause in Article II of the Constitution.[30] Scholars have noted that the Framers regarded this method of recess appointment as merely a supplement to, and not typically a substitute for, the usual appointments process.[31] Alexander Hamilton, in *Federalist 67*, confirms that this clause was designed to be invoked only when the general method of appointments was inadequate,[32] arguing that "it would have been improper" to expect the Senate to be in session continually.[33] In reaching its decision, the *Canning* court relied on this same historical interpretation.[34]

In this case, the U.S. Senate on December 17, 2011, agreed by unanimous consent to hold pro forma sessions every three days for the next several weeks (i.e., each Tuesday and Friday between December 17, 2011, and January 23, 2012) rather than to adjourn.[35] During the pro forma sessions that followed, members of Congress introduced bills, convened committee meetings, and filed committee reports.[36] On December 23, 2011, the Senate passed payroll tax extension legislation, agreed to go to conference with

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29. Letter from Robert Byrd, U.S. Senator, D-W. Va., to Ronald Reagan, Pres. of the United States (July 30, 1985), *available at* http://www.reagan.utexas.edu/roberts/Box47JGRRecessAppointments4.pdf.

30. *See, e.g.*, VIVIAN CHU, CONG. RESEARCH SERV., RL33009, RECESS APPOINTMENTS: A LEGAL OVERVIEW 1, 2 (2012) ("[I]t is generally accepted that the [Recess Appointments] Clause was designed to enable the President to ensure the unfettered operation of the government during periods when the Senate was not in session and therefore unable to perform its advice and consent function . . . .") (footnotes omitted); Michael Herz, *Abandoning Recess Appointments? A Comment on Hartnett (And Others)*, 26 CARDOZO L. REV. 443, 444 (2005) ("The clause represents a minor and pragmatic adjustment to the basic appointments procedure, added to account for a particular set of circumstances.").

31. Herz, *supra* note 30, at 444.

32. THE FEDERALIST NO. 67, at 409–10 (Alexander Hamilton); *see also* Herz, *supra* note 30, at 444–45 ("[t]he many Attorney General opinions concerning the clause operate from the premise that its purpose is to prevent disruptive delays in filling vacancies"); Carrier, *supra* note 13, at 2221 n. 93 ("[u]nlike today's Senate, the Senate of the late eighteenth century was not able to receive messages from the President during recesses.").

33. THE FEDERALIST NO. 67, at 409–10.; *see also* Carrier, *supra* note 13, at 2206 ("[t]he Framers adopted the clause apparently to keep the government functioning during the six-to-nine month recesses in which Senators were dispersed throughout the country and were unable to convene to provide their advice and consent"). *See also* VIVIAN CHU, CONG. RESEARCH SERV., RL33009, RECESS APPOINTMENTS: A LEGAL OVERVIEW 2 (2012) ("[T]he idea of the recess appointment power as a practical accommodation is supported by the fact that until the Civil War, Congress consistently met for relatively short sessions followed by long recesses of six to nine months."); HENRY B. HOGUE & MAUREEN BEARDEN, CONG. RESEARCH SERV., R42329, RECESS APPOINTMENTS MADE BY PRESIDENT BARACK OBAMA (2012).

34. Canning v. NLRB, No. 12–1115, slip op. 22 (D.C. Cir. Jan. 25, 2013)

35. *See* 157 CONG. REC. S8,783–84 (daily ed. Dec. 17, 2011) (statement of Sen. Ron Wyden, D-Oregon).

36. *See, e.g.*, Open Executive Session to Consider Executive Branch Nominations of U.S. Senate Committee on Finance (Dec. 17, 2011); Conference Report to accompany H.R. 2055, Military Construction and Veterans Affairs, and Related Agencies Appropriations Act of 2012, as agreed to in Senate (Record Vote No. 235 on Dec. 17, 2011); H.R. 3765, Temporary Payroll Tax Cut Continuation Act of 2011, as introduced by U.S. Rep. David Camp, R-Mich. (Dec. 23, 2011).

the House, agreed on the ratio of House and Senate conferees, and approved conferees. The President then signed into law the payroll tax extension that the Senate had passed during just such a pro forma session.[37] By signing this tax measure, the President implicitly acknowledged that the Senate had capacity to fulfill its role in the appointments process during a pro forma session.

In summary, when President Obama made his four "appointments" on January 4, 2012—scarcely two weeks after the Senate passed a payroll tax extension measure—he violated Article I of the Constitution, ignored the procedural rules adopted by each chamber of Congress, and swept aside longstanding precedent established by numerous former Attorneys General. It is particularly illustrative that the Obama administration has only recently called into question the legitimacy of pro forma sessions, even though the President has previously urged the adoption of legislation during just such sessions. The business conducted during the pro forma session on December 23, 2011, was substantively no different than that of the pro forma sessions that followed. Under this administration's interpretation, it seems that the validity of a Senate session is subject to the discretion of the President.

C. The Senate Has Constitutional Authority to Control Its Own Proceedings.

In advancing a different, flawed justification for the President's January 4, 2012, "appointments," Assistant Attorney General Virginia Seitz wrongly advises in a memorandum that despite the Senate's convening of pro forma sessions to prevent recess appointments, the President "has discretion to conclude that the Senate is unavailable to perform its advise-and-consent function" during a pro forma session.[38] On this mistaken basis, Seitz then concludes that the President's January 4, 2012, "appointments" during a pro forma session of the Senate did not require the Senate's advice or consent.[39]

Such an interpretation—that the President rather than the Senate has the discretion to determine when the Senate is unable to fulfill its advise-and-consent function—is inconsistent with Article I of the Constitution. Article I empowers the Senate to adopt rules for its own proceedings;[40] in this case, the Senate had already decided to conduct pro forma sessions.[41] No constitutional provision confers any authority on the Chief Executive to override Senate decisions governing Senate proceedings in the event of a conflict or to decide, contrary to the decision of the Senate, that the Senate

37. After both chambers passed H.R. 3765, or the Temporary Payroll Tax Cut Continuation Act of 2011, Pub. L. No. 112-78, by voice vote on December 23, 2011, President Obama signed the measure that same day.

38. Seitz, *supra* note 19, at 1.

39. *Id.* at 23.

40. U.S. CONST. art. I, § 5 ("Each House may determine the rules of its proceedings . . . .").

41. *See* 153 CONG. REC. S14,069 (daily ed. Nov. 16, 2007) (statement of Sen. Harry Reid, D-Nevada).

lacks the ability to fulfill its advise-and-consent function for purposes of the Recess Appointments Clause.

This President's approach essentially employs the Recess Appointments Clause as a loophole to evade the Article II appointments process. Followed to its logical conclusion, such an approach could lead this President, or a future one, to make unilateral "Recess" appointments of controversial nominees at any time (e.g., during lunch or in the middle of the night) when it suits the Chief Executive's interests.[42] The Framers certainly never intended that the Recess Appointments Clause of Article II become a loophole to be exploited by the President or his lawyers.[43]

II. CONCLUSION

Many federal lawmakers expressed outrage over the President's action of unilaterally attempting to install several senior nominees to office on January 4, 2012. While Republicans were the most vocal in voicing their objections to these illegitimate "appointments,"[44] Democrats have also previously voiced concerns about presidential attempts to evade the constitutional requirement of advice and consent to nominations.[45] A day after the appointments were made, former Attorney General Edwin Meese III and former Office of Legal Counsel lawyer Todd Gaziano wrote in *The Washington Post* that President Obama's move is "a constitutional abuse of a high order."[46]

The controversy surrounding the President's non-recess appointments has nothing to do with the personal character of Mr. Cordray or those named to the National Labor Relations Board. Nor is the debate over whether the President has the power to make recess appointments when the Senate legitimately is in recess. What the President has done transcends party issues and ideological divides. President Obama ignored inconvenient provisions of the Constitution and overstepped his authority through his actions on January 4, 2012. The President put his own interests

42. Timothy Noah, *Cordray's Recess Appointment Sure Doesn't Look Constitutional To Me,* THE NEW REPUBLIC (Jan. 4, 2012), http://www.tnr.com/blog/timothy-noah/99229/cordrays-recess-appointment-sure-doesnt-look-constitutional-me# ("The trouble with this definition is that it would define as a Senate recess just about every weekend of the year.").

43. 131 CONG. REC. S11,018 (daily ed. Aug. 1, 1985) (statement of Sen. Robert C. Byrd, D–West Virginia) ("The President's lawyers know full well that the recess appointment clause which appears in the U.S. Constitution was not created as a political loophole to thwart the will of the Senate.").

44. *See, e.g.*, Letter to Eric H. Holder, U.S. Att'y. Gen., from Republican members of the U.S. Sen. Judiciary Comm. (Jan. 6, 2012) (on file with the author).

45. *See, e.g.*, Press Release, U.S. Representative Nancy Pelosi, D–Cal., *President's Recess Appointment Of John Bolton Is A "Mistake"* (Aug. 1, 2005) (on file with the author); U.S. Senator Dick Durbin, D–Ill., 151 CONG. REC. S6,253 (daily ed. June 9, 2005) (statement of Sen. Dick Durbain, D–Illinois) ("I agree with Senator Kennedy that Mr. Pryor's recess appointment, which occurred during a brief recess of Congress, could easily be unconstitutional . . . . Recess appointments lack the permanence and independence contemplated by the Framers of the Constitution.").

46. Edwin Meese III & Todd Gaziano, *Obama's recess appointments are unconstitutional,* WASH. POST (Jan. 5, 2012), http://articles.washingtonpost.com/2012-01-05/opinions/35438016_1_senate-recess-senate-session-richard-cordray.

above the law, denying America's elected representatives the opportunity to legislate on behalf of their constituencies.

A number priorities demand Congress's undivided attention right now, not least of which are fixing the economy and putting Americans back to work. Whether or not President Obama's administration chooses to appeal the *Noel Canning* decision, we need a successful working relationship between the legislative and executive branches. Ultimately, the President's recent power grab undermines the very constitutional foundation of this relationship. Our government's separation of powers is not an antiquated idea but is instead a timeless safeguard to liberty.