

Republican Members Of Congress File Amicus Briefs To Challenge NLRB Recess Appointments

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The debate over President Obama's recess appointments to the NLRB continued last week as Speaker of the House John Boehner and 42 of the Republican members of the Senate filed amicus briefs in the case of *Noel Canning v. NLRB*, No. 12-1115, currently pending before the D.C. Circuit Court of Appeals. Boehner and the Republican Senate members argued that President Obama's recess appointments were not valid because the Senate was in a "pro forma" session and therefore not in recess at the time the appointments were made. The Senators argued that as members of Congress they have a unique interest in ensuring that the Senate's appointment power and the rules governing recess appointments are properly preserved.

If this argument is successful, the NLRB decision in *Noel Canning* and dozens of other cases in which the recess appointees participated would be invalidated under the U.S. Supreme Court's ruling in *New Process Steel*. A decision is likely months away, however, as the case has not yet been set for oral argument in front of the D.C. Circuit panel.

The Republican Senators' brief can be [found here](#).

Speaker Boehner's brief can be [found here](#).

See our previous coverage of this issue [here](#).

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