

Did The White House Just Accidentally Torpedo The Quickie Election Rules?

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On Jan. 4, 2012 President Obama announced the recess appointment of three members to the NLRB and set-off a small firestorm over executive authority. The president's position is that the Senate was not still in session because the "pro forma" sessions it had been holding since Dec. 20, 2011 (during which the Senate is gavelled into order for a few seconds before recessing again) were nothing more than a sham. The White House [issued a statement](#) declaring "gimmicks do not override the president's constitutional authority to make appointments to keep the government running."

If the position of the Obama Administration is that the Senate's pro forma sessions were a sham and do not count as the Senate being in session, then the law of unintended consequences may have caught up with it. The Constitutional provision that permits recess appointments also provides that such recess appointments end when the Senate adjourns its session sine die or without a future day. If the Senate sessions from Dec. 20, 2011 on were a sham and the Senate actually had adjourned, then all of the President's prior recess appointments had their terms end on that date as well. This would include NLRB Member Craig Becker who was part of the two member majority that adopted the quickie election rules that were pushed through at the end of the year. Those new union-friendly rules were adopted on Dec. 21, 2011 and published in the Congressional Record on Dec. 22, 2011 - all after the Senate sessions proclaimed by the White House to be a sham began.

Attempting to reconcile defense of the new recess appointments and the quickie election regulations could require some legal gymnastics.

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