

Three's A Crowd: Third United States Court Of Appeals Decision Strikes Down President Obama's January 2012 Recess Appointments

July 19, 2013 | [National Labor Relations Board, Labor Relations](#)

Three Individuals Standing In a Crowd

In another groundbreaking decision against the NLRB, the Fourth Circuit has followed the D.C. and Third Circuits' reasoning in *Noel Canning* and *New Vista Nursing and Rehabilitation* regarding presidential recess appointments and as a consequence, has found President Obama's January 2012 appointments invalid. In its consolidated opinion, the Court noted the following:

"[W]e agree with the *Noel Canning* and *New Vista Nursing* courts that the term 'the Recess,' as used in the Recess Appointments Clause, refers to the legislative break that the Senate takes between its 'Session[s]'. In other words, the term 'the Recess' means the intersession period of time between an adjournment *sine die* and the start of the Senate's next session."

Since the Senate was not truly in a "recess" when President Obama made the appointments at issue, the NLRB lacked a quorum to hand down decisions in *Enterprise Leasing Company Southeast LLC* and *Huntington Ingalls, Inc.*

As we previously reported, the Supreme Court of the United States is set to bring some finality to this controversy when it hears *NLRB v. Noel Canning*. The Court is expected to hear the case in the 2013-2014 term.

The Fourth Circuit's Opinion can be [found here](#).

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