

An Extension Of *Noel Canning*? Becker Appointment In Jeopardy Too

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Yesterday in its [NAM v. NLRB](#) decision which struck down the NLRB posting rule, the D.C. Circuit observed a further possible extension of its earlier *Noel Canning* decision, noting that under the reasoning of *Noel Canning*, Member Craig Becker's recess appointment to the NLRB would also be considered invalid. In the course of its opinion, the D.C. Circuit stated "To the extent that *Noel Canning* applies—we assume, without deciding, that it does—Becker's appointment was constitutionally invalid."

If the reasoning of *Noel Canning* is upheld, this puts into jeopardy all decisions made while Member Becker was one of three members of the NLRB, going back to August 2011 when Member Wilma Leibman's term expired.

The [Noel Canning](#) cert petition remains pending at the U.S. Supreme Court.

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