

Business Groups Seek To Overturn NLRB Recess Appointments

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The National Right to Work Legal Defense and Education Foundation Inc. and other business groups are using their pending lawsuit seeking to block the new NLRB Employee Notice Rules as a vehicle to scuttle the President's recent recess appointments to the NLRB. The NRTW, the National Federation of Independent Business, the Coalition for a Democratic Workplace, and two small businesses have sued to block the employee notice rule. But Friday, the plaintiffs moved to amend their complaint to contend that the recess appointments were constitutionally impermissible because the Congress was not in recess when the president made the appointments. This failure, [the motion contends](#), will make it impossible for the NLRB to implement the employee notice rule because it lacks a quorum to act.

This action comes on the heels of a [Department of Justice opinion memo](#) that concluded to the contrary that the recess appointments were legal and constitutional. Opponents have said the President lacked the authority to act because the Senate was still in session and not in recess. The DOJ however has concluded that the "convening of periodic pro forma sessions in which no business is to be conducted does not have the legal effect of interrupting an intrasession recess otherwise long enough to qualify as a 'Recess of the Senate' under the Recess Appointments Clause." As a result, the memo concludes, "the President therefore has discretion to conclude that the Senate is unavailable to perform its advise-and-consent function and to exercise his power to make recess appointments."

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