

Obama's New NLRB Nominees And *Noel Canning*

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As we previously reported, a deal has been struck to avoid the so-called "nuclear option" of changing the body's filibuster rules in exchange for President Obama withdrawing the re-nomination of two current members who originally were installed through controversial recess appointments. As we [reported here](#), the United States Supreme Court recently agreed to hear the controversy over these recess appointments. The case the Court agreed to hear is *NLRB v. Noel Canning*.

The President's new nominations will be Nancy Schiffer, former associate general counsel at the AFL-CIO, and Kent Hirozawa, who has served as Chief Counsel to NLRB Chairman Mark Pearce since 2010. What effect, if any, could this development have on the Supreme Court's ability to hear the *Noel Canning* decision? For example, several commentators have speculated that these appointments could simply confirm retroactively all the decisions made by the controversial recess appointments (including *Noel Canning*). If so, would that "moot" the *Noel Canning* case?

Probably not. On appeal, the Board no longer has the ability to take action where jurisdiction has been transferred to the relevant court of appeals or the Supreme Court. In any event, it will be interesting to see how this plays out.

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