



January 31, 2012

The Honorable
United States Senate
Washington, DC 20510

Re: Urging Senate Action Against President Obama's Unconstitutional Appointments

Dear Senator:

The American Center for Law and Justice (ACLJ) is an organization dedicated to defending constitutional liberties secured by law. ACLJ attorneys have argued numerous cases regarding constitutional law before the Supreme Court of the United States.¹

On behalf of our organization and the more than 84,000 Americans who have signed our Petition to Retract Unconstitutional Appointments, we urge the Senate to take decisive action in opposition to President Obama's unconstitutional non-recess appointments. We urge you to use your power under the Senate rules to prevent the confirmation of any Executive Branch nominees unless and until President Obama secures the resignation of each of his unconstitutional appointees.

On January 4, 2012, President Obama made four, what he termed, "recess appointments" to key executive positions while the Senate was still in session. His appointment of Sharon Block, Terence Flynn, and Richard Griffin to the National

¹ See, e.g., *Pleasant Grove v. Summum*, 129 S. Ct. 1125 (2009) (unanimously holding that the Free Speech Clause does not require the government to accept counter-monuments when it has a war memorial or Ten Commandments monument on its property); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously upholding the First Amendment rights of minors); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding by an 8-1 vote that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987) (unanimously striking down a public airport's ban on First Amendment activities).

Labor Relations Board and Richard Cordray to the Consumer Financial Protection Bureau bypassed the authority of the U.S. Senate and directly violated the Constitution.

Article II, Section 2 of the Constitution clearly provides a mechanism for the appointment of officers without the advice and consent of the Senate while the Senate is in recess. However, at the time President Obama made these appointments, the Senate was still in session.

During the Bush Administration, Senate Majority Leader Harry Reid used similar *pro forma* sessions to keep the Senate in session, preventing President Bush from making recess appointments.

President Obama's actions were not an act of ignorance, but rather a carefully calculated power grab for political gain. This direct violation of the Constitution and nearly a century of Senate precedent must not be ignored.

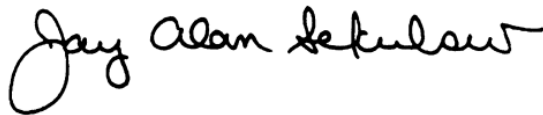
If the President has the power to determine when the Senate is and is not in session, he would have nearly limitless power to appoint whomever he wishes without the constitutionally mandated advice and consent of the Senate. If the Senate does not take direct, decisive action to prevent further abuses of the President's recess appointment power, it sets a dangerous precedent.

The American people deserve and demand that the Constitution be followed. It is wholly appropriate that the Senate refuse to confirm any Executive Branch appointee as long as President Obama refuses to retract his unconstitutional appointments and secure their resignation.

As Senator Mike Lee so eloquently noted, "Given this President's blatant and egregious disregard both for proper constitutional procedures and the Senate's unquestioned role in such appointments, I find myself duty-bound to resist the consideration and approval of additional nominations until the President takes steps to remedy the situation."

We urge you to join Senator Lee, Senator Roger Wicker, Senator Chuck Grassley, and others in taking action to restore the separation of powers and the constitutionally mandated advice and consent of the Senate in the presidential appointment process.

Sincerely,

A handwritten signature in black ink that reads "Jay Alan Sekulow". The signature is written in a cursive, flowing style.

Jay Alan Sekulow
Chief Counsel