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This is Phil Arnot for Community Comment on KINS Radio.

In a great article by David Rivkin, Jr. and Lee Casey in the Wall Street Journal, they talked about President Obama's "recess" appointments.

Their article starts out by stating "President Obama's appointment of Richard Cordray as head of the new Consumer Financial Protection Bureau and of three new members of the National Labor Relations Board, are all unconstitutional".

They based this statement upon the fact that each of these jobs require Senate confirmation. The President's ability to fill them without that confirmation, using his constitutional power to fill a vacancy that may happen during the recess of the Senate depends upon there actually being a recess. They go on to say that because both the House of Representatives and the Senate are open for business, there was no recess.

While these authors say that the new appointees can pocket their government paychecks, all of their official acts will be void as a matter of law and will likely be struck down by the Courts in legal challenges that are certain to come.

The background is that the Constitutions framers assume that Congress would convene only part of each year and that there would be long stretches during which the Senate would be unavailable to play its critical advice and consent role in the appointment of Federal officials. They then said that to solve the problem would be to allow the President to make temporary recess appointments permitting the individuals chosen to serve up to two years until the end of Congresses next session. During this "recess", the Senate passed President Obama's current highest legislative priority, a two month payroll tax holiday which the President promptly signed.

These authors cited a case titled *New Process Steel v NLRB* where the Supreme Court undercut hundreds of NLRB decisions by ruling that the Board had not lawfully organized itself after the terms of two recess appointee members expired leaving it without a quorum. *Again, failure to historically study this matter.*

I leave you with a point to ponder. Are you not as astonished as I am that our President is claiming open ended authority to determine that the Senate is in recess despite that body's own judgment and the factual realities.

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