

# U.S. SUPREME COURT HEARS NOEL CANNING CASE REGARDING RECESS APPOINTMENTS TO THE NLRB

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**Attorneys**

Elizabeth McPhail

On Monday, January 13, 2014, the United States Supreme Court heard oral arguments in the *Noel Canning* case. The court will rule on the validity of the controversial recess appointments to the NLRB made by President Obama on January 12, 2012. The court's decision regarding *Noel Canning* will determine the validity of hundreds of NLRB decisions and will set precedent on the limits of presidential power. The justices will consider the NLRB's appeal of the D.C. Circuit's January 2013 decision in favor of the company that President Obama's appointments to the NLRB were unconstitutional. The court will consider three questions:

1. Whether the president's authority to make recess appointments was limited to the recess between the Senate's annual sessions, or whether it extended to intra-session breaks
2. Whether the president could fill posts that had become vacant prior to the recess or only those that became vacant during a recess
3. Whether the Senate was in recess despite holding pro forma sessions

The NLRB is currently at a full complement of five members, including its chairman, Democrat Mark Gaston Pearce; Democrat Kent Hirozawa, Chairman Pearce's chief counsel; Democrat Nancy Schiffer, a retired associate general counsel at the AFL-CIO; Republican Philip A. Miscimarra, a management-side labor and employment attorney from Morgan Lewis & Bockius LLP; and Republican Harry I. Johnson III, a management-side labor and employment attorney from Arent Fox LLP. Whether the Supreme Court ultimately upholds or invalidates the recess appointments will determine the validity of hundreds of decisions that were issued when the recess appointees were on the NLRB, many of which have been particularly unfriendly toward employers. Depending on the court's ruling, it is yet to be seen how the current pro-union NLRB will evaluate and eventually reissue all or some of these decisions. Nonetheless, employer's should continue to abide by those rulings pending the decision by the Supreme Court and action from the NLRB.