begun talking about specific goals. Because of your support of the Close Up program and continued Congressional funding similar discoveries will continue to be made. Thank you for your interest and efforts on behalf of all Close Up students.

Sincerely,

CAROLYN URSERY KUHN.

DEAR SENATOR BUMPERS: My name is Howard Bell, and I am a senior at Gurdon High School. I went to Washington, D.C. last February (Feb. 21-27), on the Close-Up program and I enjoyed it. I went with 20 other students. I was on the Fellowship program and I really appreciate the Congress for making it possible for me to do something that I never did before. My plane trip was wonderful, I really loved the take off, on one of our planes, I went into a cock-pit and the pilot explained everything to me and he said we was going 170 mph take off. My trip to Washington, D.C. made me aware that there is so much I can do, and that it is important that everyone can see how Congress and the government work. I even met President Clinton and Senator Gore in the oval office. I am the second child of four, and I have two sisters and one brother, and I have my real parents I live with. My teacher, Mrs. Kuhn, also enjoyed the trip, and she was happy, that I went on the trip with her. If it wasn't for you and the Congress, I would have not been able to go on the trip, because my financial situation was not possible, so I really do appreciate you for making me happy in my senior year of 1993.

Sincerely yours,

HOWARD BELL.●

UKRAINE AND NUCLEAR WEAPONS

● Mr. DECONCINI. Mr. President, quite recently, Secretary of Defense Aspin visited Kiev for talks with Ukrainian leaders concerning the status of nuclear weapons in Ukraine. This issue is rightly one of great concern to the United States and the rest of the international community.

It is also a critical issue for Ukraine itself—a newly independent country struggling to achieve the parallel tasks of building a society, a nation and a State while at the same time overcoming the crippling legacy of Soviet Rule. These efforts by Ukraine are complicated by a disconcerting tendency among some Russian officials to question Ukraine's territorial integrity, and even its right to exist as an independent State.

Painful reminders of Ukraine's lengthy domination by Russia have led to an understandable sense of insecurity in Kiev—an insecurity that manifests itself in a reluctance on the part of some to eliminate the nuclear arsenal on its territory. Of immediate concern to the Ukrainians is that nuclear tipped missiles on their territory, which are effectively controlled by Russia, not be launched without Ukraine's explicit permission. In the longer term, however, Ukrainian caution in ratifying the Start I and Nuclear Non-Proliferation [NPT] Treaties stems from its strong desire to safeguard its independence.

Mr. President, Defense Secretary Aspin traveled to Germany and Ukraine and met separately with both Russia's and Ukraine's Defense Ministers. Secretary Aspin offered United States assistance in mediating differences between Ukraine and Russia over nuclear, territorial, and other issues. I command Secretary Aspin for his constructive attempts to settle these disputes. Regrettably, Russian Defense Minister Pavel Grachev apparently rejected United States offers to mediate—specifically, expressing skepticism at the United States plan to place Ukraine's nuclear warheads under international control. Nevertheless, I hope that the Clinton Administration will continue to vigorously pursue these efforts.

President Kravchuk reiterated to Secretary Aspin Ukraine's commitment to rid itself of nuclear weapons. It is, in my view, in the interests of the international community to settle this issue and dismantle these weapons. I can't think of a more prudent way to do this than to place these weapons under international control.●

THE SENATE'S CONSTITUTIONAL AUTHORITY TO ADVISE AND CONSENT TO THE APPOINTMENT OF FEDERAL OFFICERS

Mr. MITCHELL. Mr. President, I had hoped today to offer a resolution to direct the Senate Legal Counsel to appear as amicus curiae in the name of the Senate in a case pending in the U.S. District Court for the District of Columbia on a matter of considerable importance to the responsibilities of the Senate under the Constitution. I had hoped that the resolution would receive bipartisan support because it concerns the Senate as an institution. Unfortunately, the resolution has been blocked by Republican opposition. I will briefly describe the matter involved.

The United States District Court for the District of Columbia is considering the constitutionality of a recess appointment to the Board of Governors of the U.S. Postal Service that President Bush made less than 2 weeks before leaving office. On January 8, 1993, while the Senate was recessed for 12 days between organizing and the inauguration of President Clinton, President Bush attempted to confer a recess appointment on Thomas Ludlow Ashley to replace Crocker Nevin, a Governor who had been appointed by President Reagan by and with the advice and consent of the Senate for a term ending on December 8, 1992. In accordance with the holdover provision of the postal law, Mr. Nevin's appointment by President Reagan would have enabled him to remain as a Governor until no later than December 8, 1993.

The Constitution provides, in Article II, section 2, clause 3, that "The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session." In 1901, Attorney General Knox advised President Roosevelt that it is the "period following the final adjournment for the session which is the recess during which the President has power to fill vacancies by granting commissions which shall expire at the end of the next session. Any intermediate temporary adjournment is not such recess, although it may be a recess in the general and ordinary use of that term." 23 Op. Att'y Gen. 599, 601 (1901).

Beginning in 1921, however, the Department of Justice has departed from Attorney General Knox's sound counsel, and has sought to justify recess appointments during intrasession adjournments. At first, the Department justified the exercise of the recess power during an intrasession adjournment that lasted nearly a month. Now the Department is supporting a recess appointment during an intrasession adjournment of less than 2 weeks. The Department's brief in the district court goes further, beyond any previous assertion of Presidential recess appointment authority, by arguing not only that the President may make intrasession recess appointments, but that the Constitution contains, to quote the Department's brief, "no lower time limit" on the length of a recess during which the President may make those appointments.

The logical consequence of the Department's argument is that a President may unilaterally appoint an officer, without Senate confirmation, any time that the Senate is in adjournment or recess, even for a 1-week break or over a long weekend. In a footnote, the Department says that it could be argued that the constitutional requirement that both Houses consent to adjournments of more than three days might place 1, 2, or 3 day intrasession adjournments off limits to the recess appointment power. Nevertheless, the Department cites in support of its argument that there is no lower time limit to the recess power an 1828 dictionary, which, in defining the word "recess," uses as one illustration the recess of a House of Congress for "half an hour." In his 1901 opinion, Attorney General Knox carefully distinguished between the several ordinary meanings of "a" recess, as one might find in a dictionary, and the meaning of "the" recess in the Constitution's limited exception to appointment through advice and consent.

Mr. President, the issue before us is not a personal dispute between the Senate and President Bush or President Clinton. Nor does it involve any reflection on the relative qualifications of Mr. Nevin or Mr. Ashley to be Postal Governors. It certainly should not be

an issue which divides Democrats and Republicans in the Senate. Rather, the question is the design of the Framers of our Constitution. The joint participation of the President and the Senate in the process of appointing high officials of the Government is fundamental to our system of checks and balances. To aid in preserving the balance struck by the Framers, which has served the Nation well for more than 200 years, the resolution which I had hoped to offer would have directed the Senate Legal Counsel to appear as amicus curiae in the name of the Senate to defend against an unjustified expansion of the recess appointment power.

The Senate Legal Counsel had been prepared to file a brief tomorrow. As the draft brief presents views which I believe merit the support of the Senate, I would now like to share that draft with the Senate by asking unanimous consent that it be printed in the RECORD.

There being no objection, the draft was ordered to be printed in the RECORD, as follows:

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BERT H. MACKIE, et al., Plaintiffs,
versus
WILLIAM J. CLINTON, et al., Defendants.

C.A. No. 93-0032-LFO

MEMORANDUM OF UNITED STATES SENATE AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS' MOTION, AND IN OPPOSITION TO DEFENDANTS' MOTIONS, FOR SUMMARY JUDGMENT ON COUNT TWO

INTEREST OF AMICUS

The recess appointment of Thomas Ludlow Ashley to be a Governor of the United States Postal Service, without obtaining the advice and consent of the Senate, raises fundamental questions about the roles of the President and the Senate under the constitutional separation of powers.[1]

The basic interest of the Senate in this matter is in protecting the Framers' determination, through the instrument of advice and consent, to divide between the President and the Senate the power to appoint the principal officers of the national government. This check and balance is especially critical in regard to the officials of boards and agencies who, once appointed, act independently of the political branches. Before vesting extraordinary authority in those officials, it is highly important, whenever possible, that their qualifications and probity be examined by both the President and the Senate.

As a competing interest the Executive advances the need to keep offices filled in order to avoid a hiatus in the administration of the government. That is not an interest of the Executive alone, however, but a mutual interest that the Senate shares with the Executive and with the House. The Congress, which has the power to make necessary and proper laws to carry into execution all powers vested in any department or officer, has provided for continuity in administration through vacancy legislation and through holdover provisions for boards and agencies, including for the Postal Service Board of Governors. Plaintiffs describe how that holdover provision furnishes a nonconstitutional ground for deciding this case. The holdover provision also demonstrates that this case offers no warrant for expanding unilateral Executive power beyond the Framers' intent.

Finally, the Senate has an interest in assuring that stability, including reasonable predictability, in executive and legislative relations is not jeopardized by the Executive's assertions in this case. For a substantial time, the Senate had sought to coexist with the Executive through an understanding that, if the recess power were ever to be used outside of intersession recesses, it would be utilized only, and rarely, during substantial intrasession breaks. The disruption of that understanding by the Executive's argument that there is no lower time limit to the recess power threatens to produce a high level of uncertainty, with regard to appointments, into the relationship between the branches. Unless the Executive's argument is rejected, no Senate will ever be able to know if it recesses for a weekend or a week, or perhaps even an evening, whether a President will use that break as an opportunity to place an individual into office, without the Senate's advice and consent, for the remainder of the year and the duration of its session the succeeding year. While watchfulness among the branches serves useful purposes, the Framers could not have intended to require that the Senate remain in perpetual meeting during a session in order to preserve the responsibilities vested in it by the Constitution.

STATEMENT OF FACTS

Only public record facts are relevant to the constitutional question posed by the President's appointment of defendant Thomas Ludlow Ashley as a Governor of the Postal Service without complying with the requirement of 39 U.S.C. §202(a) (1988) that Governors "shall be appointed by the President, by and with the advice and consent of the Senate." The term of the incumbent Governor, plaintiff Crocker Nevin, expired on December 8, 1992, after the final adjournment of the 102d Congress.[2] Upon the expiration of his statutory term, Nevin remained in office pursuant to 39 U.S.C. §202(b) (1988), which authorizes a Governor to "continue to serve after the expiration of his term until his successor has qualified, but not to exceed one year."

The 103d Congress convened on January 5, 1993 at noon, in accordance with Pub. L. No. 102-475, 106 Stat. 2296 (1992). In the Senate, credentials were presented and the oath was administered to newly elected Members. 139 Cong. Rec. S1-7 (daily ed. Jan. 5, 1993). The Senate appointed a committee composed of its Leaders to join a like committee of the House of Representatives, "to wait upon the President of the United States and inform him that a quorum of each House is assembled and that the Congress is ready to receive any communication he may be pleased to make." S. Res. 1, 103d Cong. (1993), 139 Cong. Rec. S8 (daily ed. Jan. 5, 1993). The Senate also authorized the Secretary of the Senate, at any time during the 103d Congress when the Senate is in recess or adjournment, to receive messages from the President and to refer them to the appropriate committees. *Id.* at S9.

On the same day, January 5, the Senate addressed an appointment issue when it approved legislation reducing the salary of the Secretary of the Treasury, to establish eligibility, consistently with Article I, section 6, clause 2 of the Constitution, for then-Senator Lloyd Bentsen, whom President-elect Clinton had expressed his intention to nominate, to serve in that office.[3]

That day, President Bush sent to the Senate for confirmation scores of nominations to civilian and military offices, including members of the Defense Base Closure and Realignment Commission and the Copyright Royalty Tribunal, members of the Boards of Directors of the Corporation for Public Broadcasting and the Legal Services Corporation, and an Assistant Secretary of Transportation.[4] The President sent no nomination to succeed Postal Governor Nevin.

On January 6, 1993, the Senate met in joint session with the House of Representatives to count the electoral ballots for the election of the President and Vice President. 139 Cong. Rec. S43 (daily ed. Jan. 6, 1993). President Bush sent further nominations to the Senate for confirmation on January 6. 139 Cong. Res. S49, S53 (daily ed. Jan. 7, 1993).[5]

The Senate met on January 7 to continue organizing for the new Congress. The Majority Leader explained that there would be no roll call votes that day on the Senate floor because the Senate was primarily engaged in its constitutional duty to consider presidential nominations:

"Senate committees are meeting in hearings to consider nominees by the President-elect, and I am grateful to the Senate chairmen and ranking Republican Members for their cooperation in organizing these hearings in the period between the swearing in of the new Senate and the inauguration of the next President."

139 Cong. Rec. S45. Indeed, the Senate Commerce Committee had held a hearing on the nomination of the Secretary-designate of Commerce on January 6, see 139 Cong. Rec. D38 (daily ed. Jan. 6, 1993), and, on January 7, Senate committees conducted hearings on the nominations of the Secretary-designates of Defense, Transportation, Labor, and Veterans' Affairs. 139 Cong. Rec. D42 (daily ed. Jan. 7, 1993).

President Bush sent additional nominations to the Senate on January 7, but not including a successor to Governor Nevin. Id. at S49, S53-54.

On Thursday, January 7, at 8:10 p.m., pursuant to concurrent resolution, the Senate recessed until Wednesday, January 20, at 3 p.m., following the inauguration of President Clinton. Id. at S53; S. Con. Res. 3, 103d Cong. (1993); 139 Cong. Rec. S11 (daily ed. Jan. 5, 1993).

During the recess, Senate committees continued to conduct executive appointment business. On Monday, January 11, the Governmental Affairs Committee and the Environment Committee held hearings on the prospective nominations of the Director of the Office of Management and Budget and Administrator of the Environmental Protection Agency, respectively. 139 Cong. Rec. D47 (daily ed. Jan. 20, 1993). Throughout the balance of that week, those committees were joined by the Committees on Agriculture, Banking, Energy, Finance, Foreign Relations, and Labor, all of which held hearings on prospective presidential nominees. Id. at D46-48.

On Tuesday, January 19, seven committees met to report for confirmation by the Senate prospective nominees of President Clinton, and three committees held confirmation hearings. Id. On that same day, the Labor Committee favorably reported to the full Senate the nominations for promotion in the Public Health Service that the Senate had received from President Bush on January 5. Id. at D48. The Senate confirmed these nominations, along with other nominations that President Bush had sent to the Senate on January 5 and 6, on January 28, 1993. 139 Cong. Rec. S887.

Footnotes at end of article.

Thus, through its committees, the Senate conducted executive appointment business on six of the seven work days during the 12-day January recess. (January 9 and 10 and January 16 and 17 were weekends, and January 18 was a federal holiday.) The only weekday on which no formal appointment business was conducted was the first day of the recess, Friday, January 8.

President Bush nominated additional officials for appointment during the January recess, sending scores of military nominations to the Senate on January 19. 139 Cong. Rec. S79–80 (daily ed. Jan. 20, 1993).

President Bush did not, however, send to the Senate for confirmation a nomination to succeed Governor Nevin. Rather, on January 8, 1993, the President acted to replace Governor Nevin, by conferring on Thomas Ludlow Ashley, without the advice and consent of the Senate, a recess appointment, lasting through the end of the second session of the 103d Congress in late 1994.

ARGUMENT

THE RECESS APPOINTMENTS CLAUSE DID NOT EMPOWER THE PRESIDENT TO MAKE APPOINTMENTS DURING THE BRIEF JANUARY 1993 ADJOURNMENT

Plaintiffs have made two constitutionally based arguments challenging the President's use of the recess appointment power during Congress' brief adjournment in January 1993. They argue that the Recess Appointments Clause applies only during the recess between the annual sessions of Congress and, alternatively, that if the recess power may be used in some intrasession adjournments, it was not available under circumstances prevailing during the brief adjournment in January 1993.

Although we join their alternative argument, this memorandum focuses on plaintiffs' principal constitutional challenge. As we describe, the text and purpose of the Recess Appointments Clause both demonstrate that the recess power is limited to Congress' annual recess between sessions. This understanding is supported by the subsequent interpretation of, and historical practice under, the Recess Appointments Clause.

A. The Text of the Recess Appointments Clause Manifests That It Applies Only to Congress' Annual Break Between Sessions

The starting point for constitutional interpretation is the text of the Constitution. The Recess Appointments Clause states, "The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session." U.S. Const. art. II, §2, cl. 3. The text of the Clause manifests in three ways that the recess power exists only during the break between Congress' annual sessions, which is referred to as the "intersession" recess or adjournment, not to the more numerous, and typically more abbreviated, "intrasession" recesses or adjournments that occur over the course of each congressional session.[6]

The first manifestation that the Recess Appointments Clause applies only to the break between Congress' annual sessions is that in the phrase "the Recess of the Senate," the word "recess" is worded in the singular, not the plural. Although they expressly anticipated Congress' taking additional shorter breaks within an annual session,[7] the Framers chose not to draft the Recess Appointments Clause to permit the President to make appointments to fill Vacancies "during the Recesses and Adjournments of the Senate," as they easily could have, and logically would have, if that were their intent. Instead, the Framers drafted the Clause in the singular to refer to "the Recess of the Senate," which strongly suggests that they were referring only to the single break between Congress annual sessions.[8]

Further, it is telling that, although in the immediately preceding grammatical clause of the Recess Appointments Clause the Framers specified that the Clause applies to "all Vacancies," the Framers chose not to state similarly that the Clause applies "during all Recesses." The logical inference from their conspicuous avoidance of the word "all" is that the Framers did not intend the recess appointment power to apply during each and every possible adjournment of the Senate, but only during the anticipated major break between annual sessions.[9]

Third, this construction of the word "recess" is compelled by the Clause's provision that recess appointments "shall expire at the End of their next Session." Ever since President Washington's initial use of the recess power during the adjournment between sessions of the First Congress, it has been consistently understood that the word "session" in the Clause refers to Congress' annual meetings.[10] Thus, a recess appointment made in the interval between the first and second sessions of a Congress expires at the conclusion of the second session, and an appointment after the final adjournment of a Congress lasts until the end of the first session of the succeeding Congress.

Consistent interpretation of the Clause, which is a single sentence that must be read as an integrated whole, requires that the words "recess" and "session" be given parallel and equivalent constructions. *Cf. Virginia* v. *Tennessee*, 148 U.S. 503, 519 (1893) (words in Constitution should be interpreted "by reference to associated words). If "session" refers to the entire period of a Congress' annual meeting, as all (including defendants) agree, then logic dictates that "recess" similarly means the interval between those two annual meetings. If, on the other hand, "recess" were construed to encompass every 10- or 12-day break, then "session" would need to be interpreted consistently as referring to only the reciprocal period, when the Senate is continuously sitting, before taking its next brief "recess."[11]

In this case, for example, if the President could unilaterally appoint Mr. Ashley to office during the "recess" between January 7 and January 20, 1993, then Mr. Ashley's recess commission necessarily "expire[d] at the End of the [Senate's] next Session," namely, on February 4, 1993, when the Senate adjourned until February 16, for Presidents' Day,[12] or, depending upon how brief a "recess" defendants believe to be constitutionally cognizable, on January 22, 1993, when the Senate adjourned until January 26,[13] or, if defendants truly believe that the Clause contemplates recesses of "half an hour,"[14] then on January 21, 1993, when the Senate recessed for 85 minutes for Members to attend party conference luncheons.[15]

The use of the recess power during brief adjournments within a session, each appointment lasting only through the period while the Senate meets before taking its next break, has never been understood to be contemplated by the Constitution and should not be indulged now. Adherence to the sensible historical understanding that recess appointments last until the end of Congress' next annual meeting requires a parallel construction of the word "recess" as referring to the break between those annual meetings.[16]

B. The Purpose of the Clause Requires That the Recess Appointment Power Be Returned to Its Original Intended Use During Congress' Annual Break

The President's claimed power to make unilateral appointments, of almost two years' duration, during brief, interim adjournments like the mid-January recess, is irreconcilable with the purpose of the Recess Appointments Clause. The assertion of the recess power in this instance slights the Framers' deliberate and considered decision to share the appointing power between the Executive and the President, which they recorded in the Appointments Clause, immediately preceding the Recess Appointments Clause.

1. The Framers Determined To Divide the Appointment Power Between the President and the Senate

The Appointments Clause[17] is central among "the checks and balances" that the Framers "built into the tripartite Federal Government as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Buckley* v. *Valeo*, 424 U.S. 1, 122 (1976) (per curiam). Designed to "ensure that those who wielded [the appointment power] were accountable to political force and the will of the people, . . . the Clause bespeaks a principle of limitation by dividing the power to appoint the principal federal officers . . . between the Executive and Legislative Branches." *Freytag* v. *Commissioner*, 111 S.Ct. 2631, 2641–42 (1991).

The development of the Appointments Clause at the Convention reflects this principle. "An interim version of the draft Constitution had vested in the Senate the authority to appoint Ambassadors, public Ministers, and Judges of the Supreme Court," while empowering the President to "'appoint officers in all cases not otherwise provided for by the Constitution.'"[18] However, this proposal did not meet with the Convention's approval. "Roger Sherman objected to the draft language of §2 because it conferred too much power on the President," *Buckley*, 424 U.S. at 130, and could enable him to "set up an absolute government." 2 Farrand at 405.

When the Committee of Eleven reported back to the Convention the language that became the Appointments Clause, "[i]t would seem a fair surmise that a compromise had been made." *Buckley*, 424 U.S. at 131. One change, to be sure, was that "the Senate is shorn of its power to appoint Ambassadors and Judges of the Supreme Court." Id. In return, however, "[t]he President is given, not the power to *appoint* public officers of the United States, but only the right to *nominate* them, and a provision is inserted by virtue of which Congress may require Senate confirmation of his nominees." Id. (emphasis in original).

Responding to objections against this blending of the appointing power, Gouverneur Morris explained that the benefit of the shared authority was "that as the President was to nominate, there would be responsibility, and as the Senate was to concur, there would be security." 2 Farrand at 539. The delegates approved the proposed compromise. Id. at 539–40. The Convention then agreed, without discussion or opposition, to add the Recess Appointments Clause following the Appointments Clause. Id. at 540.

Alexander Hamilton described in the Federalist Papers why the Convention had withdrawn from the President "the absolute power of appointment."[19] Under the constitutional plan,

"the necessity of [the Senate's] concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. In addition to this, it would be an efficacious source of stability in the administration."

The Federalist No. 76, at 483. "The possibility of rejection would be a strong motive to care in proposing" and would deter the President from naming "candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure." Id.

2. The Limited Supplemental Purpose of the Recess Appointments Clause Is Served by Limiting Its Use to Intersession Adjournments

Describing the Recess Appointments Clause, Hamilton stated that "[t]he relation in which that clause stands to the other [the Appointments Clause], which declares the general mode of appointing officers of the United States, denotes it to be nothing more than a supplement to the other, for the purpose of establishing an auxiliary method of appointment, in cases to which the general method was inadequate."[20] As Justice Story described, the recess power was intended to achieve "convenience, promptitude of action, and general security" and to avoid the burden and expense of requiring "that the senate should be perpetually in session." 2 Joseph Story, Commentaries on the Constitution §1557, at 380 (5th ed. 1905). Story termed "[t]he propriety of this grant . . . so obvious that it can require no elucidation." Id.

The limited "supplement[al]" purpose of the Recess Appointments Clause is best achieved if its scope is confined to the Framers' original intent, during the often prolonged recess following completion of the Senate's annual session. Congress did not even take intrasession adjournments until 1800 and, for many years after, Congress adjourned only occasionally over the Christmas holidays.[21] As the D.C. Circuit has noted, historical "evidence indicat[es] that the Framers envisioned that Congress would convene its annual session, complete its business within several months, and adjourn for the remaining three-fourths of the year."[22]

The need for an "auxiliary" appointing method arose from the Framers' expectation that, because Congress would be away for an extended period between its annual sessions, during that period the "general method" would be "inadequate." The Federalist No. 67, at 438. The Clause was not drafted with short holiday breaks in mind, but the extended recess, when a "vacancy may paralyze a whole line of action" causing "ruinous . . . consequences . . . to the public." 1 Op. Att'y Gen. 631, 632 (1823). There is no historical evidence that the Framers believed that it was necessary or advisable to empower the President to make unilateral appointments while the Senate was adjourned, within its session, for a matter of only hours, days, or weeks.

Moreover, the development of statutory means of ensuring continuity in government offices eliminates any potential need to expand the Recess Appointments Clause beyond its originally intended scope to match the contemporary congressional calendar. As this case reflects, Congress has legislated to minimize disruption of government business as a result of interim vacancies in offices. For the Postal Governors, as for many other multi-member boards and commissions, Congress has authorized incumbent officers, who were appointed by the President with Senate confirmation, to continue in office for a specified period (in this case up to one year) past the expiration of their statutory terms, until their successors have qualified. 39 U.S.C. §202(b) (1988).[23]

For individual heads of executive agencies and bureaus, Congress has provided through the Vacancies Act for the President to fill vacancies caused by death, illness, or resignation by detailing another confirmed executive officer to perform the duties on a temporary basis, usually up to 120 days. 5 U.S.C. §§3347–3348 (1988). There is no need to stretch the scope of the Recess Appointments Clause beyond its intended operation to encompass intrasession adjournments, as Congress has provided the President with the statutory tools necessary to ensure the continuity of governmental functions during any such breaks.

The Vacancies Act is itself an outgrowth of the Appointments Clause's careful restriction of the President's power to appoint officers unilaterally. Other than during the Senate's annual recess, the Appointments Clause requires statutory authority for each appointment by the President alone and limits the exercise of that power to the appointment of "inferior officers."[24] The Supreme Court has stressed the importance of these efforts by the Framers "to limit the distribution of the power of appointment." *Freytag* v. *Commissioner*, 111 S. Ct. at 2641. A broad reading of the Recess Appointments Clause would permit the President to do unilaterally what the Framers stipulated could be done only with authorization from Congress (and what, in the case of principal officers, they prohibited Congress and the President from doing even jointly), namely, transferring appointment authority from the President and the Senate to the President alone.

3. Expanding the Recess Appointment Power to Intra-session Adjournments Would Negate the Framers' Considered Division of the Appointing Power

The Supreme Court has repeatedly stressed the need for "vigilance against the 'hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power.'" *Mistretta* v. *United States*, 488 U.S. 361, 382 (1989) (quoting *INS* v. *Chadha*, 462 U.S. 919, 951 (1983)). The Court has "not hesitated" to invalidate assertions of power that seek to "accrete to a single Branch powers more appropriately diffused among separate Branches." *Id.* Use of the recess appointment power during the January recess is just such an action. By invoking the recess power, which is intended as "nothing more than a supplement, . . . an auxiliary method of appointment, in cases to which the general method was inadequate," *The Federalist* No. 67, at 438, during this 12-day break, the President avoided the Senate's constitutional function to advise and consent on presidential appointments. The appointments provisions of the Constitution, no less than the lawmaking provisions, "represent[ ] the Framers' decision that the . . . power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered, procedure." *Chadha*, 462 U.S. at 951. Preservation of the Constitution's delicate sharing of appointment authority between the branches requires rejection of the President's attempt to "accrete" those powers "to a single Branch." *Mistretta*, 488 U.S. at 382.

The extent to which validating the recess appointment of Mr. Ashley would distort the Framers' considered constitutional plan is evident from the defendants' submissions. The Executive has explicitly taken the position here that "the Recess Appointments Clause does not require that the Recess of the Senate last for any minimum length of time" and that "[t]he length of a recess is not a ground upon which the Court may distinguish between and among recesses." DOJ Memo. at 14, 16. Mr. Ashley likewise states that "there is no [constitutional] provision which defines a 'Recess' as being a certain minimum number of days." Ashley Memo. at 10.[25]

Thus, defendants ask this Court to sustain Mr. Ashley's appointment on the ground that *no* recess of the Senate could ever possibly be too abbreviated to support use of the President's recess appointment power. If defendants' construction of the Clause were credited, then any weekend when the Senate is in recess, or the wee hours of any morning when the Senate is adjourned "from day to day," indeed any thirty minutes during which the Senate has called a recess, would be sufficient to trigger the President's unilateral appointment power.[26] This is not a fanciful extrapolation, or *reductio ad absurdum*, of the defendants' argument: *it is their argument*. Relying upon an 1828 dictionary, the Executive implies quite plainly that a legislative recess of "half an hour" is a constitutionally significant recess for purposes of triggering the Recess Appointments Clause.[27]

Acceptance of defendants' position would utterly undo the compromise forged by the Framers at the Constitutional Convention. For example, under defendants' unbounded construction of the Recess Appointments Clause, a new President need never seek Senate confirmation of his Cabinet. He could simply wait for an early Senate recess and give recess appointments to his entire Cabinet, if he wished to do so. Then, once those commissions had expired almost two years later with the end of that Congress, the President could, through a second round of recess appointments, maintain his entire Cabinet in office for virtually his entire Presidency, without once submitting a name for Senate confirmation. It is insufficient to respond that no President is likely to use the recess appointment power in such a way: before Mr. Ashley's appointment, no President had ever made a recess appointment during a 12-day intrasession adjournment. The Court should resist the Executive's "hydraulic pressure . . . to exceed the outer limits of its power," *INS* v. *Chadha*, 462 U.S. at 951, before that pressure leads to even greater excesses.

The need to limit the recess appointment power to its original intended application, during intersession adjournments only, is evinced by the practical effect that would result from use of the power during adjournments such as the January recess. The statutory term of the incumbent Governor, Mr. Nevin, expired on December 8, 1992, after the final adjournment of the 102d Congress in October 1992. Assuming that Mr. Nevin's office was vacant for constitutional purposes after the expiration of his statutory term,[28] the President indisputably could have given Mr. Ashley a recess appointment at any point during the sine die adjournment, from December 8, 1992 until the new Congress convened at noon on January 5, 1993.[29]

Had the President made such an appointment during that period, Mr. Ashley's recess commission would have expired at the end of the first session of the 103d Congress, later this year. However, by eschewing use of the recess appointment power during the final adjournment, when the Framers contemplated that recess appointments would be made, and waiting until the January break following the meeting of the 103d Congress, the President gave Mr. Ashley a commission lasting through the second session of the Congress, until late 1994.

Thus, deferral of the recess appointment by one month, from the intersession to the intrasession adjournment, resulted in prolonging Mr. Ashley's commission by an entire year and lengthening his appointment to a total period of almost two years.[30] Condoning such use of the recess appointment power during intrasession adjournments may encourage a President to invoke the recess power strategically and to time recess appointments to minimize the Senate's opportunity to advise and consent to presidential appointments. Such potential manipulation of the recess power operates in derogation of fundamental constitutional principles and does not merit the Court's approval.

C. Use of the Recess Appointment Power During Intrasession Adjournments Is Not Justified by Historical Practice

In adjudicating issues about the scope of the recess appointment power, as for other constitutional questions about the structure of the government, courts give "considerable weight . . . to an unbroken practice, which has prevailed since the inception of our nation and was acquiesced in by the Framers of the Constitution when they were participating in public affairs." *United States* v. *Woodley*, 751 F.2d at 1012 (citing Supreme Court cases). Use of the recess appointment power during short intrasession adjournments has no such venerable historical pedigree or record of acceptance.

1. Use of the Recess Appointment Power During Intrasession Adjournments Is a Recent Practice That Has Not Been Accepted

The limited historical precedent for intrasession recess appointments is like that of "the relatively young legislative veto," *id.* at 1012, whose "use does not reach back to the days of the Framers," but represents "a recent practice, barely 50 years old." *Id.* at 1011. Like the legislative veto, the intrasession recess appointment constitutes no "unbroken practice, which has prevailed since the inception of our nation," but merely "'the most recent episode in a long tug of war between the Executive and Legislative Branches.'" *Id.* at 1012 (quoting *Buckley* v. *Valeo*, 424 U.S. at 140 n.176).

Specifically, there is no record of any President's having made a recess appointment during an intrasession adjournment until July 1867, when President Andrew Johnson recess-appointed a district judge during a three-month congressional adjournment.[31] Defendants have identified only one other intrasession recess appointment prior to the end of World War II, President Coolidge's appointment of an ICC commissioner during a 13-day intrasession adjournment in 1928.[32]

The only intrasession recess appointment practice of any appreciable magnitude has developed solely within the past fifty years.[33] Defendants' statistics reflect that Presidents Truman, Eisenhower, and Nixon each made recess appointments during intrasession adjournments, while there is no record of any such appointments by Presidents Kennedy, Lyndon Johnson, or Ford.[34]

Only in the past fifteen years have recess appointments during intrasession adjournments become an aspect of each President's appointments, rather than a sporadic and extraordinary practice. Thus, President Carter made 17 recess appointments during intrasession adjournments, President Reagan made 75, and President Bush made 37 intrasession recess appointments.[35] The Supreme Court's observation in *Chadha* that its "inquiry is sharpened rather than blunted by the fact that congressional veto provisions are appearing with increasing frequency," 462 U.S. at 944, applies forcefully in the context of intrasession recess appointments.

Not only has the frequency of the Executive's use of intrasession recess appointments mushroomed in recent years, but the circumstances in which recent Presidents have resorted to the recess power have also expanded correspondingly. During the first 190 years under the Constitution, only two recess appointments appear to have been made during an intrasession adjournment lasting less than one month.[36]

In the past decade, however, at least 64 such appointments have been made. President Reagan made 1 recess appointment during an 18-day intrasession adjournment, 4 appointments during a 21-day adjournment, 2 during a 13-day adjournment, 17 during a 23-day adjournment, and 3 during a 26-day adjournment.[37] President Bush made 4 recess appointments during a 26-day adjournment, 15 during a 17-day adjournment, 4 during a 26-day adjournment, 10 during the 12-day adjournment at issue in this case, and apparently 4 on a day when the Senate was in session.[38]

Nor has the Senate acquiesced in this steady expansion of presidential power. Recent Presidents' assertions of power to make recess appointments during interim adjournments within a session of Congress have prompted strong constitutional objections from Members of the Senate as intruding into the Senate's constitutional role in advising and consenting on appointments.[39] Mr. Ashley's appointment prompted a letter from the Senate President pro tempore, the Majority Leader, and the Chairmen of the Committees on Rules and Administration and Governmental Affairs and the Subcommittee on Federal Service, Post Office, and Civil Service, requesting the President to withdraw the appointment. *See* Attachment A to Plaintiffs' Memo.

2. The Opinions of the Attorney General Do Not Support Use of the Recess Appointment Power During Intrasession Adjournments

The reason that recess appointments during intrasession adjournments are virtually a 20th-century invention is evident from the historical analyses of the recess power by Attorneys General. Before 1921, there is no record of any Attorney General's ever having concluded that the President had power to make recess appointments during any intrasession adjournments.

In 1901, the Attorney General formally opined that the President has no such power. Attorney General Knox responded to an inquiry from President Theodore Roosevelt whether the Constitution authorized him to make appointments during the 17-day Christmas holiday recess during the first session of the 57th Congress, which would "have the effect of an appointment made in the recess occurring between two sessions of the Senate." 23 Op. Att'y Gen. 599, 599 (1901). The Attorney General advised that the recess appointment power applies only during "the period after the final adjournment of Congress for the session, and before the next session begins." *Id.* at 601. He explained,

"It is this period following the final adjournment for the session which is the recess during which the President has power to fill vacancies by granting commissions which shall expire at the end of the next session. Any intermediate temporary adjournment is not such recess, although it may be a recess in the general and ordinary use of that term."

Id. (emphasis in original). Knox found his conclusion supported by "the clear implications . . . from the uniform practice of the Executive and the various opinions of my predecessors," which "relate only to appointment during the recess of the Senate between two sessions of Congress." *Id.* at 603, 602.

Attorney General Knox reasoned that "[i]f a temporary appointment could in this case be legally made during the current adjournment as a recess appointment, I see no reason why such an appointment should not be made during any adjournment, as from Thursday or Friday until the following Monday." *Id.* at 603. Rejecting out-of-hand this possibility (which apparently now commends itself to the Executive as the correct construction of the Clause), the Attorney General concluded that "[t]here have always been two sittings, sessions or assemblings of each Congress," that the Constitution "contemplates the continuance of the session notwithstanding the adjournment" for interim breaks such as holidays, and, hence, that recess appointments may not be made during such adjournments. *Id.*[40]

Twenty years later, President Harding reiterated President Roosevelt's inquiry during a four-week summer adjournment during the first session of the 67th Congress. Departing from his predecessor's opinion, Attorney General Daugherty stated that "the real question, as I view it, is whether in a *practical* sense the Senate is in session so that its advice and consent can be obtained." 33 Op. Att'y Gen. 20, 21–22 (1921) (emphasis in original). Drawing upon concepts of inherent Executive authority and the need to avert potential "catastrophe" should an unfilled vacancy "prevent the exercise of governmental functions," Daugherty inferred power to make recess appointments "when there is a real and genuine recess making it impossible for [the President] to receive the advice and consent of the Senate." *Id.* at 23, 25.

However, Attorney General Daugherty concurred with his predecessor that the President does not have power to make a recess appointment any time that the Senate is out of session:

"[D]oes it not necessarily follow that the power exists if an adjournment for only 2 instead of 28 days is taken? I unhesitatingly answer this by saying no. . . . [N]o one, I venture to say, would for a moment contend that the Senate is not in session when an adjournment of the duration just mentioned is taken. *Nor do I think an adjournment for 5 or even 10 days can be said to constitute the recess intended by the Constitution.*"

Id. at 24–25 (emphasis added). Finding that "the line of demarcation can not be accurately drawn," Daugherty opined that "the President is necessarily vested with a large, although not unlimited, discretion." *Id.* at 25. "But there is a point, necessarily hard of definition, where palpable abuse of discretion might subject his appointment to review." *Id.*[41]

Freed from the restraint of constitutional text, the views of the Justice Department—

that recess appointments could be made during lengthy, but not short, intrasession adjournments—remained about the same for sixty years.[42] By the mid-1980s, however, the difficulties anticipated by Attorneys General Knox and Daugherty in drawing that "line of demarcation" began to manifest themselves. In 1984 the Office of Legal Counsel "advised that recess appointments could be made during a 24-day intrasession summer recess," but six months later the same office "cautioned against a recess appointment during an 18-day intrasession recess." 13 Op. Off. Legal Counsel 325, 327 & n.2 (1989). Then, in 1992, the office approved use of the recess appointment power during an 18-day intrasession adjournment. 16 Op. Off. Legal Counsel 15, 16 (1992).

Notwithstanding the Department's earlier "caution[ing]" and Attorney General Daugherty's assurance that 10 days was clearly insufficient to justify use of the recess power, since 1985 Presidents Reagan and Bush made 27 recess appointments during intrasesion adjournments of 13, 16, and now 12 days. Whatever deference may normally be given to consistent and well-reasoned opinions of the Attorney General, the "checkered background" of the Executive's views on this issue, 3 Op. Off. Legal Counsel 315, which leave the Court searching for constitutional principle somewhere between the 10th and 12th day of a congressional adjournment, eliminates any entitlement to judicial deference on this important constitutional question.

The reversals and inconsistencies manifest in the Executive's historical consideration of the recess appointment power vividly demonstrate the risk of constitutional interpretation guided more by institutional self-interest than by text and purpose. As the unworkability of its earlier attempts to distinguish between intrasession adjournments of different lengths became apparent in the context of Congress' contemporary scheduling patterns, the Executive ultimately has come in this case to advance an interpretation of the Recess Appointments Clause that would eviscerate the central decision that the Framers made about the appointment of federal officers: that the appointing power should not be conferred upon the President alone, but should be checked by the Senate. A return to guiding constitutional principle compels confining the President's recess appointment power to the limited role for which it was designed: when the Senate's annual recess, following its conclusion of business for the session, creates a need in the President's view for the immediate filling of a vacancy so that the public business may continue uninterrupted until an officer can be appointed with Senate confirmation at the Senate's next session.[43]

CONCLUSION

For the above reasons, the Court should grant plaintiffs' motion for partial summary judgment, and deny defendants' summary judgment motions, on count two of the amended complaint.

FOOTNOTES

[1] The appearance of the Senate in litigation is authorized by 2 U.S.C. §288e(a) (1988), which provides that the Senate may direct its Legal Counsel to appear as amicus curiae in its name "in any court of the United States * * * in which the powers and responsibilities of Congress under the Constitution of the United States are placed in issue."

[2] The Senate and House had adjourned on October 8 and October 9, 1992, respectively. 138 Cong. Rec. S18258 (daily ed. Oct. 8, 1992); 138 Cong. Rec. H12606 (daily ed. Oct. 9, 1992).

[3] 139 Cong. Rec. S8–10; Pub. L. No. 103–2, 107 Stat. 4 (1993). Defendant's suggestion that the Senate "conducted only routine organizational business" in early January, Statement of Points and Authorities in Support of Defendant Thomas Ludlow Ashley's Motion for Summary Judgment on Count Two of the First Amended Complaint ("Ashley Memo.") at 6 n.*, is simply incorrect. The Treasury salary statute was one of two laws that Congress enacted in this period. See also Pub. L. No. 103–1, 107 Stat. 1 (1993).

[4] 139 Cong. Rec. S27–42. The President gave recess appointments to the Base Closure commissioners on January 8, 1993, the same day as the Ashley appointment at issue in this case. 29 Weekly Comp. Pres. Doc. 29 (Jan. 11, 1993). No constitutional issue presently arises with regard to these recess appointments, because the Senate subsequently confirmed the nominations of the recess-appointed commissioners to full terms. 139 Cong. Rec. S2415 (daily ed. Mar. 4, 1993).

[5] The official record of presidential action indicates that President Bush also made four recess appointments to the National Security Education Board on January 6, 1993. 29 Weekly Comp. Pres. Doc. 28 (Jan. 11, 1993). The asserted constitutional basis for these recess appointments is mystifying, as the Senate was in session on January 6, the day the appointments were reportedly made, as well as the day before and the day after.

[6] In current Senate practice, a "recess" and an "adjournment" have different parliamentary consequences. For example, particular legislative business that is mandated upon convening after an adjournment does not occur following a recess. See Riddick's Senate Procedure, S. Doc. No. 28, 101st Cong., 2d Sess. 1, 1080 (Alan S. Frumin ed., rev. ed. 1992). There is no reason to believe that this distinction is constitutionally significant.

[7] See U.S. Const. art. I, §5, cl. 4 ("Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days.").

[8] When Congress held a third session, in addition to the two annual constitutionally mandated meetings, there could be a second intersection recess of the Senate. Under its modern calendar, each Congress holds only two sessions. See 1991–1992 Official Congressional Directory, S. Pub. No. 102–4, at 590–94 (1991), reprinted as Attachment B to Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Partial Summary Judgment ("Plaintiffs' Memo.").

[9] The Clause's textual reference to "the Recess" differentiates the scope of the recess appointment power from the President's pocket veto power. The D.C. Circuit has agreed with Congress's view that, for purposes of interpreting the pocket veto provision, intersession "adjournments do not differ in any practical respect from the intrasession adjournments." *Barnes* v. *Kline*, 759 F.2d 21, 36 (D.C. Cir. 1985), vacated as moot sub nom. *Burke* v. *Barnes*, 479 U.S. 361 (1987). The pocket veto provision does not, however, refer to "the Recess of the Senate," as does the Recess Appointments Clause, but rather expressly incorporates a condition, "unless the Congress by their Adjournment prevent its Return," U.S. Const. art. I, §7, cl. 2, which could apply to either intersession or intrasession adjournments—or to neither—depending upon prevailing conditions, such as the contemporary practice of granting authority to congressional officers to receive presidential messages during adjournments. The Recess Appointments Clause has no such conditional language.

Also, the intersession adjournment differs from intrasession breaks in that Congress traditionally does not adjourn its annual session until "notify[ing] the President * * * that the two Houses have completed their business of the session and are ready to adjourn unless he has some further communication to make to them." S. Res. 227, 101st Cong. (1989), 135 Cong. Rec. 31716 (1989). No such action is taken for interim intrasession breaks.

[10] See U.S. Const. art. I, §4, cl. 2 (amended by amend. XX) ("The Congress shall assemble at least once in every Year, and such Meeting * * * a"); id. art. I, §5, cl. 4 ("Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.") (emphasis added); 2 Op. Att'y Gen. 336 (1830).

[11] "Typically, there are several recesses of approximately five days for various holidays and a summer recess (or recesses) lasting about one month." *Kennedy* v. *Sampson*, 511 F.2d 430, 441 (D.C. Cir. 1974). Since the 1970s, holiday recesses often last ten or twelve days, but the pattern is otherwise similar.

[12] See 139 Cong. Rec. S1512 (daily ed. Feb. 4, 1993).

[13] See 139 Cong. Rec. S641 (daily ed. Jan. 22, 1993).

[14] See Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment on Count II ("DOJ Memo.") at 7–8.

[15] See 139 Cong. Rec. S139 (daily ed. Jan. 21, 1993).

[16] The practice of the Continental Congress, which served under the Articles of Confederation and many of whose members were delegates to the Constitutional Convention, supports this construction of the Recess Appointments Clause. The Articles, which authorized Congress to appoint officers of the government, provided for establishment of a committee of delegates from each state to appoint officers and to execute other assigned powers "in the recess of Congress." Articles of Confederation art. IX–X. Congressional practice shortly before the Constitution's drafting reflects the understanding that "the recess of Congress" referred to the lengthy intervals between Congress's sessions, not to short, interim adjournments within a session. Thus, the Continental Congress appointed a committee, which exercised the power of appointment, to sit during its five-month recess between sessions in 1784. See 26 Journals of the Continental Congress 1774–1789, at 295–96 (Gaillard Hunt ed. 1928). In contrast, there is no record of such a committee's being named to sit or make appointments during the Congress's intrasession adjournments of several days or weeks. See, e.g., 24 id. at 410 (4-day adjournment in 1783); 25 id. at 807, 809 (21-day adjournment in 1783); 27 id. at 710 (17-day adjournment in 1784–85).

The text of the statute enacted by the First Congress under the Constitution to compensate its Members and officers reflects a like understanding of the words "session" and "recess." Congress provided, for example, for payment to the Senate engrossing clerk of "two dollars per day during the session, with the like compensation to such clerk while he shall be necessarily employed in the recess." Act of Sept. 22, 1789, ch. 17, §4, 1 Stat. 70, 71 (emphasis added). The phrase "in the recess" evidently referred to the interval between the Senate's annual sessions, not to each day during a session when the Senate was adjourned. "Session" similarly referred to the entire period of the Senate's annual meeting, not to each particular day when the Senate sat. See id. §1, 1 Stat. 70 (Senators allowed travel expenses "at the commencement and end of every such session and meeting").

[17] The Appointments Clause (art. II, §2, cl. 2) reads: "[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

[18] *Buckley*, 424 U.S. at 129, 130 (quoting report of Committee of Detail, art. X, §2, reprinted in 2 The Records of the Federal Convention of 1787, at 185 (Max Farrand ed., rev. ed. 1966) [hereinafter Farrand]).

[19] The Federalist No. 76, at 482 (Benjamin F. Wright ed. 1961). The Federalist "'has always be[en] considered as of great authority'" on constitutional issues, including recess appointment questions. *United States* v. *Woodley*, 751 F.2d 1008, 1010 n.3 (9th Cir. 1985) (en banc) (quoting *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 120, 187 (1821)), cert. denied, 475 U.S. U.S. 1048 (1986).

[20] The Federalist No. 67, at 438 (emphasis added). One historian has termed the recess appointment provision one of the "loose ends [that] remained to be tied up" near the end of the Convention. Clinton Rossiter, The Grand Convention 224 (1966). "[O]n the few occasions when the [Recess Appointments] clause was mentioned in the state ratifying conventions, the delegates clearly seemed to understand its function as an interim, extraordinary method of appointment." Thomas A. Curtis, Note, Recess Appointments to Article III Courts: The Use of Historical Practice in Constitutional Interpretation, 84 Col. L. Rev. 1758, 1768 (1984).

One need not dispute Judge Greene's statement that it is "not appropriate to assume that this Clause has a species of subordinate standing in the constitutional scheme," *Stuebler* v. *Carter*, 464 F. Supp. 585, 597 (D.D.C. 1979), to believe that the Clause must be construed in accord with the Framers' intent and the overall system of separated powers that they designed. *Cf. Reid* v. *Covert*, 354 U.S. 1, 44 (1957) (Frankfurter, J., concurring) ("The Constitution is an organic scheme of government to be

dealt with as an entirety. A particular provision cannot be dissevered from the rest of the Constitution."); *Barnes* v. *Kline*, 759 F.2d at 32 ("The manifest purpose of the pocket veto clause has guided application of the clause by the Supreme Court, as well as this circuit.").

[21] "[O]nly four intrasession adjournments in the history of the Congress have exceeded sixty days in duration. . . . Until 1932, practically every one of these [intrasession] adjournments was a Christmas holiday recess." *Kennedy* v. *Sampson*, 511 F.2d at 441; *see 1991–1992 Official Congressional Directory*, Attachment B to Plaintiffs' Memo., at 586–88.

[22] *Barnes* v. *Kline*, 759 F.2d at 38–39. Through the early part of this century, "intersession adjournments of five or six months were still common." *Kennedy* v. *Sampson*, 511 F.2d at 441.

[23] The Postal Service notes that, since the holdover provision was added to Postal Governors' tenure in 1963, no haituses have resulted from the expiration of Governors' terms. *See* Initial Memorandum of United States Postal Service as Amicus Curiae at 13. Such provisions thereby eliminate quorum difficulties, which are the principal problem that can result from turnover on multi-member commissions.

[24] "[T]he Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." U.S. Const. art. II, §2, cl. 2.

[25] The Executive notes the three-day limit for adjournments for which concurrent congressional approval is not required, U.S. Const. art, I, §5, cl. 4, but states that "the Court need not reach" the question whether that provision has any bearing on the Recess Appointments Clause. DOJ Memo. at 19 n. 18. We see no relationship between the two provisions. The purpose of the three-day limitation was, in Madison's words, "{t}hat it would be very exceptionable to allow the senators, or even the representatives, to adjourn, without the consent of the other house, at any season whatsoever, without any regard to the situation of public exigencies." 3 *Debates on the Adoption of the Federal Constitution* 368 (Jonathan Elliot ed., photo. reprint 1974) (2d ed. 1836). Thus, the three-day provision serves bicameralism by enabling either House to insist on the presence of the other House to perform duties requiring bicameral action. This provision has no bearing on recess appointments, as the House of Representatives' lack of any role in confirming presidential appointments renders its presence or absence irrelevant for appointments. *Cf. Barnes v. Kline*, 759 F. 2d at 40 (for purposes of pocket veto provision, "choice of three days as a bright line thus appears to have no textual grounding at all," because "we cannot agree that any special connection exists between the pocket veto clause and the clause governing adjournments by one house").

[26] The word "adjournment" derives from the French and Latin words for "daily," as in the French word "jour." The Senate has adjourned for periods as brief as ten seconds and two seconds. *See Riddick's Senate Procedure*, *supra* note 6, at 16.

[27] DOJ Memo. at 7–8. It should be noted that this extreme position is inconsistent with every prior opinion of the Attorney General on the scope of the recess appointment power. *See infra* pp. 31–35. The Executive has never before taken this position, and, as recently as 1985, the Office of Legal Counsel "cautioned against" use of the recess appointment power during brief recesses. 13 Op. Off. Legal Counsel 325, 327 n.2 (1989).

Attorney General Knox noted in 1901 that, while dictionaries give to the word "'recess,' when used in reference to deliberative assemblies, the meaning of the remission or suspension of business or procedure," in the Recess Appointments Clause the phrase "*the recess*" has a narrower meaning than "the general and ordinary use of that term" 23 Op. Att'y Gen. 599, 601 (1901) (emphasis in original).

In fact, the dictionary cited by defendants, which postdated the Framing of the Constitution by forty years, as well as others more contemporaneous with the Framing, reflect that "session" had dual meanings of both the actual period when a legislature was conducting business and the entire period from convening to disbanding, and that "recess" similarly referred to the period of a legislature's suspension of business, without distinguishing between interim breaks and more substantial breaks between legislative sessions. *See* 2 Noah Webster, *An American Dictionary of the English Language* (1828) (pages headed REC-REC, SES-SET); 2 Samuel Johnson, *Dictionary of the English Language* (7th ed. 1785) (pages headed REC-REC, SES-SET); John Marchant, *A New Complete English Dictionary* (1760) (pages headed REC-REC, SER-SET). Further, the dictionary closest to the Framing, which the Supreme Court uses in constitutional adjudication, *see, e.g., Nixon v. United States*, 113 S. Ct. 732, 736 (1993); *Morrison v. Olson*, 487 U.S. 654, 719 (1988) (Scalia, J., dissenting), defines "session" as "the space for which an assembly sits, *without intermission or recess*." Samuel Johnson, *supra* (page headed SER-SET) (emphasis added). Thus, to the extent that 18th-century dictionary definitions provide any guidance, they show that it is unlikely that the word "recess" was intended in the Constitution to refer to the breaks *within* a session of Congress.

[28] The question whether, in light of Mr. Nevin's statutory holdover status, his office was vacant and, therefore, amenable to filling by recess appointment is also an issue in this case. We rely on plaintiffs' demonstration that Mr. Nevin's holdover status renders it unnecessary for the Court to reach the constitutional question. *See* Plaintiffs' Memo. at 15–22.

[29] Defendants point to prior recess appointments that were made shortly before the Senate convened, but during an intersession adjournment (including the morning of Congress's return), as support for what they call the "functionally equivalent" use of the recess power during brief intrasession adjournments. *See* DOJ Memo. at 15, 16–17; Ashley Memo. at 34–37. As the Justice Department has recognized, the President's use of the recess power hours before Congress's return from an intersession adjournment raises important "policy" issues. 16 Op. Off. Legal Counsel 15, 17 (1992). However, as long as the appointment power is exercised during "the recess" between the Senate's annual sessions, constitutional requirements are satisfied. The fact that Presidents have used their constitutional power in cases where "pruden[ce]," 13 Op. Off. Legal Counsel 325, 327 (1989), would counsel against its use does not provide any justification for expanding the power beyond constitutional limits.

[30] Thus, contrary to defendants' suggestion, *see supra* note 29, appointments near the end of intersession adjournments and appointments during brief intrasession adjournments are not "functional equivalents."

[31] *See* Exhibit 3 to DOJ Memo. at 1. The lack of a published comprehensive record of early presidential actions makes it difficult to identify recess appointments with precision, but President Andrew Johnson may have made additional intrassession recess appointments. President Andrew Johnson's presidency was, of course, the period in American history of greatest discord between the President and the Congress, focusing principally on appointments and removals. Congress's disagreement with President Johnson's appointment decisions is manifest in its enactment, over his veto, of the Tenure of Office Act, ch. 154, 14 Stat. 430 (1867). This law, the disobedience of a provision of which led to the only presidential impeachment in American history, also sought to regulate the President's use of the recess appointment power. *Id.* §3, 14 Stat. 430–31. Whether President Johnson made one or more intrasession recess appointments, his actions can hardly be offered as a model of historical "acceptance of the President's use of the recess power . . . by the three branches of government," *Woodley*, 751 F.2d at 1011, warranting deference.

[32] *See* Exhibit 3 to DOJ Memo. at 6. In computing lengths of adjournments, we count each day the Senate did not meet. Defendants also count the day the Senate reconvened, which adds one day to the length of the adjournments.

[33] *Cf. Kennedy* v. *Sampson*, 511 F.2d at 441–42 ("[T]he precedents cited by appellants [for intrasession pocket vetoes] are not strong. Of only thirty-eight intrasession pocket vetoes in the nation's history, thirty (or 78%) have occurred since the inauguration of President Franklin Roosevelt. None occurred prior to 1867. The intrasession pocket veto is, therefore, a relatively modern phenomenon.") (footnote omitted).

[34] *See* Exhibit 3 to DOJ Memo. at 1, 2, 6.

[35] *See* Appendix *infra*, Intrasession Recess Appointments, 1970–1993, at A1–A9.

[36] In addition to the Coolidge appointment described above, President Nixon made one recess appointment during a 16-day intrasession adjournment. *See id.* at A1. The shortest intrasession adjournments during which Presidents Truman and Eisenhower made recess appointments appear to have lasted 35 days each. *See* Exhibit 3 to DOJ Memo. at 1, 6. The shortest intrasession adjournment for President Carter's recess appointments was 32 days. *See* Appendix *infra*, Intrasession Recess Appointments, 1970–1993, at A1–A2. When the Executive cites other brief adjournments as having occasioned recess appointments, *see* DOJ Memo. at 14–15, it is referring to *intersession* adjournments, which the Department intermingles with *intrasession* adjournments, but which raise no constitutional issue under the Recess Appointments Clause.

[37] *See* Appendix *infra*, Intrasession Recess Appointments, 1970–1993, at A3–A6.

[38] *See id.* at A6–A9. The January 1993 recess appears to be the shortest intrasession adjournment in the nation's history during which a President has made a recess appointment. *Cf. Kennedy v. Sampson*, 511 F.2d at 442 ("The present case arises from the shortest intrasession recess ever relied upon by any President as having prevented the return of a disapproved bill.").

[39] *E.g.*, S. Exec. Rep. No. 1, 99th Cong., 1st Sess. 11–17 (1984) (views of Senators objecting to President's recess appointment of Federal Reserve Board governor during 23-day intrasession adjournment), *reprinted with revisions in* 130 Cong. Rec. 22778–80 (1984); *id.* at 22767, 22782 (amendment, which was tabled by 53–43 vote, expressing sense of Congress that President should withdraw intrasession recess appointment); *id.* at 23234–36 (remarks of Sen. Byrd, Sen. Sarbanes, and Sen. Mitchell on introduction of S. Res. 430, 98th Cong. (1984) to express sense of Senate that no recess appointment should be made during intrasession adjournment shorter than 30 days). Although Senate Resolution 430 sought as an accommodation to implement the prior understanding that a 30-day line reasonably distinguished brief from more substantial intrasession adjournments for purposes of the recess power, the Executive's subsequent, steady chipping away at the length of recess sufficient for making recess appointments has demonstrated the need to return to the Framers' original intent and limit the power to intersession adjournments.

[40] Knox rejected a contrary conclusion of the Court of Claims, *Gould* v. *United States*, 19 Ct. Cl. 593 (1884), noting that the decision focused on "the officer's right to receive pay rather than the power of the President, the function of the Senate, or the nature of the adjournment." 23 Op. Att'y Gen. 603.

[41] We have found no record of President Harding's having, in fact, made a recess appointment during the 1921 intrasession adjournment.

Daugherty relied, as defendants do, *see* DOJ Memo. at 8; Ashley Memo. at 10–13, on a 1905 Senate Judiciary Committee report responding to President Roosevelt's assertion of the recess appointment power, despite the lack of *any* recess between the first and second sessions of the 58th Congress. Rejecting the suggestion that, in the single instant when the first session ended and the second session began, a "constructive recess" had occurred, the Judiciary Committee stated that the word "recess" meant "something real, not something imaginary; something actual, not something fictitious." S. Rep. No. 4389, 58th Cong., 3d Sess. 2 (1905), *reprinted* in 39 Cong. Rec. 3823 (1905).

The Committee's explanation why the President may not make a recess appointment if there is no recess between the first and second sessions of Congress is not relevant, and should not be applied, to the wholly different issue of whether the President may make a recess appointment during an intrasession adjournment. *Cf. Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) at 399 ("It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used."). No controversy about intrasession recess appointments existed at the time when the Judiciary Committee was writing, as the Executive had expressly recognized only four years earlier that the recess power applies only during intersession adjournments. 23 Op. Att'y Gen. 599.

Nor is the opinion of the Comptroller General, 28 Comp. Gen. 30 (1948), also cited by defendants, of independent significance. The Comptroller General was primarily addressing a statutory, not the constitutional, question, and, for his analysis of the constitutional issue, the Comptroller General relied almost exclusively on Attorney General Daugherty's opinion.

[42] In 1960, Acting Attorney General Walsh advised President Eisenhower that it had become "the accepted view" since Daugherty's 1921 opinion that the President could make recess appointments during intrasession adjournments. 41 Op. Att'y Gen. 463, 468 (1960). In 1979 the Office of Legal Counsel stated that, although "Presidents have been reluctant to make recess appointments during an intrasession adjournment of the Senate, * * * it is our opinion

that the President is constitutionally authorized to make recess appointments during the forthcoming [month-long summer] recess." 3 Op. Off. Legal Counsel 311, 313 (1979). Three days later, the same office stated that, although the Department's opinion about intrasession recess appointments "has a checkered background," it had "concluded that we should follow the opinions of Attorney General Daugherty and Acting Attorney General Walsh, which hold that the President is authorized to make recess appointments during a summer recess of the Senate of a month's duration." 3 Op. Off. Legal Counsel 314, 315, 316 (1979). The Office of Legal Counsel reaffirmed its view in 1982. 6 Op. Off. Legal Counsel 585 (1982).

[43] Mr. Ashley argues that, if recess appointments may be made during some, but not all, intrasession adjournments, then this 12-day recess sufficed for use of the recess power. *See* Ashley Memo. at 31–33. To the extent that the Court credits Mr. Ashley's alternative argument, we rely upon plaintiffs' demonstration why the January 1993 recess was too abbreviated to permit use of the recess power. *See* Plaintiffs' Memo. at 29–34.

This table compiles all recess appointments made during intrasession adjournments of the Senate since 1970 that have been cited by any party or that we are otherwise aware of. Defendants rely in their memoranda upon a number of recess appointments that were made during intersession, rather than intrasession, adjournments. No constitutional issue exists with regard to recess appointments during intersession adjournments. Therefore, intersession recess appointments are not included in this compilation.

APPENDIX: INTRASESSION RECESS APPOINTMENTS, 1970–1993

Name	Office	Appointment date	Dates of recess	Length of recess	Citation
		PRESIDENT NIXON (8)			
Andrew E. Gibson	Commerce	10/21/70	10/15/70–11/16/70	32 days	1970 Pub. Pap. A. 94
C. Langhorne Washburn	Commerce	10/21/70	10/15/70–11/16/70	32 days	1970 Pub. Pap. A. 94
Hubert B. Pair	Judge	10/24/70	10/15/70–11/16/70	32 days	1970 Pub. Pap. 939
Gerard D. Reilly	Judge	10/24/70	10/15/70–11/16/70	32 days	1970 Pub. Pap. 939
J. Walter Yeagley	Judge	10/24/70	10/15/70–11/16/70	32 days	1970 Pub. Pap. 939
Robert C. Mardian	Asst. Att'y Gen.	11/11/70	10/15/70–11/16/70	32 days	Sen. Exec. Journal 612
Philip A. Loomis	SEC	8/13/71	8/6/71–9/8/71	32 days	Sen. Exec. Journal 431
Thomas B. Curtis	Corp. for Pub. Broadcasting	7/14/72	6/30/71–7/17/72	16 days	1972 Pub. Pap. A. 16
		PRESIDENT FORD (0)			
		PRESIDENT CARTER (17)			
Neil Goldschmidt	Sec'y of Transportation	8/10/79	8/4/79–9/5/79	32 days	1979 Pub. Pap. 1423
Hannah D. Atkins	Rep. to U.N.	10/3/80	10/2/80–11/12/80	41 days	1980–81 Pub. Pap. 2070
Nathan Landow	Alt. Rep. to U.N.	10/3/80	10/2/80–11/12/80	41 days	1980–81 Pub. Pap. 2070
H. Carl McCall	Alt. Rep. to U.N.	10/3/80	10/2/80–11/12/80	41 days	1980–81 Pub. Pap. 2070
Donald F. McHenry	Rep. to U.N.	10/3/80	10/2/80–11/12/80	41 days	1980–81 Pub. Pap. 2070
Barbara Newsom	Alt. Rep. to U.N.	10/3/80	10/2/80–11/12/80	41 days	1980–81 Pub. Pap. 2070
Richard W. Petree	Alt. Rep. to U.N.	10/3/80	10/2/80–11/12/80	41 days	1980–81 Pub. Pap. 2070
William H. vanden Heuvel	Rep. to U.N.	10/3/80	10/2/80–11/12/80	41 days	1980–81 Pub. Pap. 2070
Catherine Blanchard Cleary	Synthetic Fuels Corp.	10/4/80	10/2/80–11/12/80	41 days	1980–81 Pub. Pap. 2074
John D. DeButts	Synthetic Fuels Corp.	10/4/80	10/2/80–11/12/80	41 days	1980–81 Pub. Pap. 2074
Joseph Lane Kirkland	Synthetic Fuels Corp.	10/4/80	10/2/80–11/12/80	41 days	1980–81 Pub. Pap. 2074
Frank Savage	Synthetic Fuels Corp.	10/4/80	10/2/80–11/12/80	41 days	1980–81 Pub. Pap. 2074
John C. Sawhill	Synthetic Fuels Corp.	10/4/80	10/2/80–11/12/80	41 days	1980–81 Pub. Pap. 2074
Laird F. Harris	Community Services Administration	10/17/80	10/2/80–11/12/80	41 days	1980–81 Pub. Pap. 2332
Harold Lafayette Thomas	Community Services Administration	10/17/80	10/2/80–11/12/80	41 days	1980–81 Pub. Pap. 2332
Alex P. Mercure	Under Sec'y of Administration	10/23/80	10/2/80–11/12/80	41 days	1980–81 Pub. Pap. 2453
John C. Truesdale	NLRB	10/23/80	10/2/80–11/12/80	41 days	1980–81 Pub. Pap. 2453
		PRESIDENT REAGAN (75)			
Joseph Robert Wright, Jr.	Federal Cochairman of regional commissions	8/5/81	8/4/81–9/9/81	36 days	Ex. 2 to DOJ Opening Memo at 17
Terry Chambers	Alt. Fed. Cochairman of regional commissions	8/7/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 1249
Robert P. Hunter	NLRB	8/13/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 1249
John R. Van de Water	NLRB	8/13/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 1249
Richard M. Murphy	Amb. to Saudi Arabia	8/19/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 1250
Kenneth L. Adelman	Rep. to U.N.	9/8/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 765
Bruce F. Capute	Alt. Rep. to U.N.	9/8/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 765
George Christopher	Alt. Rep. to U.N.	9/8/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 765
John Sherman Cooper	Rep. to U.N.	9/8/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 765
John M. Fowler	Nat'l RR Passenger Corp.	9/8/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 765
Benjamin A. Gilman	Rep. to U.N.	9/8/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 765
Andy Ireland	Rep. to U.N.	9/8/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 765
Jeanne J. Kirkpatrick	Rep. to U.N.	9/8/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 765
Mark S. Knouse	Exec. Asst. to Sec'y of Transportation	9/8/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 765
Charles M. Lichenstein	Alt. Rep. to U.N.	9/8/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 765
William Courtney Sherman	Alt. Rep. to U.N.	9/8/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 765
Jose S. Sorzano	Alt. Rep. to U.N.	9/8/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 765
Charles Swinburn	Dep. Asst. Sec'y of Transportation	9/8/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 765
Arthur E. Teele	Urban Mass Transp. Admin.	9/8/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 765
Darrell Trent	Nat'l RR Passenger Corp	9/8/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 765
Lee L. Verstandig	Nat'l RR Passenger Corp	9/8/81	8/4/81–9/9/81	36 days	1981 Pub. Pap. 765
Richard V. Backley	Federal Mine Safety and Health Review Commission.	9/7/82	8/20/82–9/8/82	18 days	18 Weekly Comp. Pres. Doc. 1093 (Sept. 13, 1982)
L. Clair Nelson	Fed. Mine Safety and Health Review Comm.	10/6/82	10/2/82–11/29/82	58 days	18 Weekly Comp. Pres. Doc. 1279 (Oct. 11, 1982)
Orville G. Bentley	Ass't Sec'y of Agriculture	10/14/82	10/2/82–11/29/82	58 days	18 Weekly Comp. Pres. Doc. 1322 (Oct. 18, 1982)
Martin S. Feldstein	Council of Econ. Advisers	10/14/82	10/2/82–11/29/82	58 days	18 Weekly Comp. Pres. Doc. 1322 (Oct. 18, 1982)
Caroline H. Hume	National Museum Services Board	10/22/82	10/2/82–11/29/82	58 days	18 Weekly Comp. Pres. Doc. 1378 (Oct. 25, 1982)
William G. Lesher	Nat'l Consumer Coop Bank	10/22/82	10/2/82–11/29/82	58 days	18 Weekly Comp. Pres. Doc. 1378 (Oct. 25, 1982)
Frank J. Donatelli	Legal Services Corp	10/23/82	10/2/82–11/29/82	58 days	18 Weekly Comp. Pres. Doc. 1406 (Nov. 1, 1982)
Daniel M. Rathbun	Legal Services Corp	10/23/82	10/2/82–11/29/82	58 days	18 Weekly Comp. Pres. Doc. 1406 (Nov. 1, 1982)
Manuel H. Johnson, Jr.	Ass't Sec'y of Treasury	11/2/82	10/2/82–11/29/82	58 days	18 Weekly Comp. Pres. Doc. 1441 (Nov. 8, 1982)
Edward A. Knapp	Nat'l Science Found.	11/2/82	10/2/82–11/29/82	58 days	18 Weekly Comp. Pres. Doc. 1441 (Nov. 8, 1982)
Donald P. Hodel	Sec'y of Energy	11/5/82	10/2/82–11/29/82	58 days	18 Weekly Comp. Pres. Doc. 1438 (Nov. 8, 1982)
Martha O. Hesse	Ass't Sec'y of Energy	11/10/82	10/2/82–11/29/82	58 days	18 Weekly Comp. Pres. Doc. 1451 (Nov. 15, 1982)
Mastin Gentry White	Judge	11/10/82	10/2/82–11/29/82	58 days	18 Weekly Comp. Pres. Doc. 1473 (Nov. 15, 1982)
Jean B.S. Gerard	Rep. to UNESCO	11/19/82	10/2/82–11/29/82	58 days	18 Weekly Comp. Pres. Doc. 1506 (Nov. 22, 1982)
James D. Phillips	Alt. Rep. to UNESCO	11/19/82	10/2/82–11/29/82	58 days	18 Weekly Comp. Pres. Doc. 1506 (Nov. 22, 1982)
Milton M. Masson	Legal Services Corp.	1/21/83	1/4/83–1/25/83	21 days	19 Weekly Comp. Pres. Doc. 94 (Jan. 24, 1983)
Robert E. McCarthy	Legal Services Corp.	1/21/83	1/4/83–1/25/83	21 days	19 Weekly Comp. Pres. Doc. 94 (Jan. 24, 1983)
Donald Eugene Santarelli	Legal Services Corp.	1/21/83	1/4/83–1/25/83	21 days	19 Weekly Comp. Pres. Doc. 94 (Jan. 24, 1983)
E. Donald Shapiro	Legal Services Corp.	1/21/83	1/4/83–1/25/83	21 days	19 Weekly Comp. Pres. Doc. 94 (Jan. 24, 1983)
Linda Chavez Gorsten	Civil Rights Commission	8/16/83	8/5/83–9/12/83	38 days	19 Weekly Comp. Pres. Doc. 1150 (Aug. 22, 1983)
J. William Middendorf	Inter-American Foundation	9/6/83	8/5/83–9/12/83	38 days	19 Weekly Comp. Pres. Doc. 1207 (Sept. 12, 1983)
Langhorne A. Motley	Inter-American Foundation	9/6/83	8/5/83–9/12/83	38 days	19 Weekly Comp. Pres. Doc. 1207 (Sept. 12, 1983)
William L. Hanley, Jr.	Corp. for Pub. Broadcasting	9/12/83	8/5/83–9/12/83	38 days	19 Weekly Comp. Pres. Doc. 1233 (Sept. 19, 1983)
Erich Bloch	Nat'l Science Found.	7/2/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 995 (July 9, 1984)
William Barclay Allen	National Council on Humanities	7/2/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 995 (July 9, 1984)
Robert N. Broadbent	Ass't Sec'y of Interior	7/2/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 995 (July 9, 1984)
Mary J.C. Cresimore	National Council on Humanities	7/2/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 995 (July 9, 1984)

APPENDIX: INTRASESSION RECESS APPOINTMENTS, 1970–1993—Continued

Name	Office	Appointment date	Dates of recess	Length of recess	Citation
Melvin A Ensley	Federal Farm Credit Board	7/2/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 995 (July 9, 1984)
Marianne M. Hall	Copyright Royalty Tribunal	7/2/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 995 (July 9, 1984)
Leon R. Kass	National Council on Humanities	7/2/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 995 (July 9, 1984)
Kathleen S. Kilpatrick	National Council on Humanities	7/2/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 995 (July 9, 1984)
Robert Laxalt	National Council on Humanities	7/2/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 995 (July 9, 1984)
Dodie T. Livingston	Chief of Children's Bureau, HHS	7/2/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 995 (July 9, 1984)
James V. Schall	National Council on Humanities	7/2/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 995 (July 9, 1984)
Martha R. Seger	Federal Reserve Board	7/2/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 995 (July 9, 1984)
Helen M. Taylor	National Council on Humanities	7/2/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 995 (July 9, 1984)
Donald I. MacDonald	Admin. of Alcohol, Drug Abuse, & Mental Health Admin.	7/3/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 996 (July 9, 1984)
Lando W. Zech, Jr.	NRC	7/3/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 995 (July 9, 1984)
Carol G. Dawson	CPSC	7/5/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 996 (July 9, 1984)
Robert A. Rowland	Ass't Sec'y of Labor	7/20/84	6/30/84–7/23/84	23 days	20 Weekly Comp. Pres. Doc. 1053 (July 23, 1984)
John A. Behn, Jr	Ex-Im Bank	1/21/85	1/8/85–1/21/85	13 days	21 Weekly Comp. Pres. Doc. 85 (Feb. 4, 1985)
Richard H. Hughes	Ex-Im Bank	1/21/85	1/8/85–1/21/85	13 days	21 Weekly Comp. Pres. Doc. 85 (Feb. 4, 1985)
Vance L. Clark	Farmers Home Administration	8/9/85	8/1/85–9/9/85	38 days	21 Weekly Comp. Pres. Doc. 975 (Aug. 12, 1985)
Thomas J. Josefiak	FEC	8/9/85	8/1/85–9/9/85	38 days	21 Weekly Comp. Pres. Doc. 975 (Aug. 12, 1985)
Raymond D. Lett	Ass't Sec'y of Agriculture	8/9/85	8/1/85–9/5/85	38 days	21 Weekly Comp. Pres. Doc. 976 (Aug. 12, 1985)
Hugh Montgomery	Alt. Rep. to UN	8/9/85	8/1/85–9/9/85	38 days	21 Weekly Comp. Pres. Doc. 976 (Aug. 12, 1985)
Herbert S. Okun	Dep. Rep. to UN	8/9/85	8/1/85–9/9/85	38 days	21 Weekly Comp. Pres. Doc. 976 (Aug. 12, 1985)
Robert E. Rader, Jr.	OSHA Review Comm	8/9/85	8/1/85–9/9/85	38 Days	21 Weekly Comp. Pres. Doc. 976 (Aug. 12, 1985)
John R. Wall	OSHA Review Comm	8/9/85	8/1/85–9/9/85	38 days	21 Weekly Comp. Pres. Doc. 976 (Aug. 12, 1985)
Robert B. Oakley	Amb. to Pakistan	8/26/88	8/11/88–9/7/88	26 days	24 Weekly Comp. Pres. Doc. 1090 (Aug. 29, 1988)
John E. Higgins, Jr.	NLRB	8/29/88	8 /11/88–9/7/88	26 days	24 Weekly Comp. Pres. Doc. 1100 (Aug. 29, 1988)
Wilford W. Johansen	NLRB	8/29/88	8/11/88–9/7/88	26 days	24 Weekly Comp. Pres. Doc. 1100 (Aug. 29, 1988)
	PRESIDENT BUSH (37)				
Alan Greenspan	Federal Reserve Board	8/10/91	8/3/91–9/10/91	38 days	27 Weekly Comp. Pres. Doc. 1126 (Aug. 12, 1991)
Mary F. Wiseman	Special Counsel, Office of Special Counsel	8/21/91	8/3/91–9/10/91	38 days	27 Weekly Comp. Pres. Doc. 1185 (Aug. 26, 1991)
Ford Barney Ford	Fed. Mine Safety and Health Review Comm.	9/4/91	8/3/91–9/10/91	38 days	27 Weekly Comp. Pres. Doc. 1232 (Sept. 9, 1991)
Norman D. Shumway	Legal Services Corp.	9/5/91	8/3/91–9/10/91	38 days	27 Weekly Comp. Pres. Doc. 1232 (Sept. 9, 1991)
Howard H. Dana, Jr.	Legal Services Corp.	1/10/92	1/4/92–1/21/92	17 days	28 Weekly Comp. Pres. Doc. 78 (Jan. 13, 1992)
J. Blakeley Hall	Legal Services Corp.	1/10/92	1/4/92–1/21/92	17 days	28 Weekly Comp. Pres. Doc. 78 (Jan. 13, 1992)
William Lee Kirk, Jr.	Legal Services Corp.	1/10/92	1/4/92–1/21/92	17 days	28 Weekly Comp. Pres. Doc. 78 (Jan. 13, 1992)
Jo Betts Love	Legal Services Corp.	1/10/92	1/4/92–1/21/92	17 days	28 Weekly Comp. Pres. Doc. 78 (Jan. 13, 1992)
Guy Vincent Molinari	Legal Services Corp.	1/10/92	1/4/92–1/21/92	17 days	28 Weekly Comp. Pres. Doc. 78 (Jan. 13, 1992)
Penny L. Pullen	Legal Services Corp.	1/10/92	1/4/92–1/21/92	17 days	28 Weekly Comp. Pres. Doc. 78 (Jan. 13, 1992)
Thomas D. Rath	Legal Services Corp.	1/10/92	1/4/92–1/21/92	17 days	28 Weekly Comp. Pres. Doc. 78 (Jan. 13, 1992)
Basile J. Uddo	Legal Services Corp.	1/10/92	1/4/92–1/21/92	17 days	28 Weekly Comp. Pres. Doc. 78 (Jan. 13, 1992)
George M. Wittgraf	Legal Services Corp.	1/10/92	1/4/92–1/21/92	17 days	28 Weekly Comp. Pres. Doc. 78 (Jan. 13, 1992)
Jeanine E. Wallbeck	Legal Services Corp.	1/10/92	1/4/92–1/21/92	17 days	28 Weekly Comp. Pres. Doc. 78 (Jan. 13, 1992)
Albert V. Casey	Resolution Trust Corp.	1/15/92	1/4/92–1/21/92	17 days	28 Weekly Comp. Pres. Doc. 129 (Jan. 20, 1992)
Lawrence U. Costiglio	Federal Housing Finance Board	1/15/92	1/4/92–1/21/92	17 days	28 Weekly Comp. Pres. Doc. 130 (Jan. 20, 1992)
Daniel F. Evans, Jr.	Federal Housing Finance Board	1/15/92	1/4/92–1/21/92	17 days	28 Weekly Comp. Pres. Doc. 129 (Jan. 20, 1992)
William C. Perkins	Federal Housing Finance Board	1/15/92	1/4/92–1/21/92	17 days	28 Weekly Comp. Pres. Doc. 130 (Jan. 20, 1992)
Marilyn R. Seymann	Federal Housing Finance Board	1/15/92	1/4/92–1/21/92	17 days	28 Weekly Comp. Pres. Doc. 129 (Jan. 20, 1992)
Edward H. Damich	Copyright Royalty Tribunal	9/3/92	8/12/92–9/8/92	26 days	28 Weekly Comp. Pres. Doc. 1569 (Sept. 7, 1992)
Bruce D. Goodman	Copyright Royalty Tribunal	9/3/92	8/12/92–9/8/92	26 days	28 Weekly Comp. Pres. Doc. 1569 (Sept. 7, 1992)
James H. Grossman	Foreign Claims Settlement Commission	9/3/92	8/12/92–9/8/92	26 days	28 Weekly Comp. Pres. Doc. 1569 (Sept. 7, 1992)
David J. Ryder	Director of the Mint	9/3/92	8/12/92–9/8/92	26 days	28 Weekly Comp. Pres. Doc. 1569 (Sept. 7, 1992)
Steven Muller	National Security Education Board	1/6/93	IN SESSION		29 Weekly Comp. Pres. Doc. 28 (Jan. 11, 1993)
S. William Pattis	National Security Education Board	1/6/93	IN SESSION		29 Weekly Comp. Pres. Doc. 28 (Jan. 11, 1993)
John P. Roche	National Security Education Board	1/6/93	IN SESSION		29 Weekly Comp. Pres. Doc. 28 (Jan. 11, 1993)
Richard F. Stolz	National Security Education Board	1/6/93	IN SESSION		29 Weekly Comp. Pres. Doc. 28 (Jan. 11, 1993)
Thomas Ludlow Ashley	U.S. Postal Service Governor	1/8/93	1/8/93–1/20/93	12 days	29 Weekly Comp. Pres. Doc. 29 (Jan. 11, 1993)
Peter B. Bowman	Defense Base Closure and Realignment Commission.	1/8/93	1/8/93–1/20/93	12 days	29 Weekly Comp. Pres. Doc. 29 (Jan. 11, 1993)
Beverly Butcher Byron	Defense Base Closure and Realignment Commission.	1/8/93	1/8/93–1/20/93	12 days	29 Weekly Comp. Pres. Doc. 29 (Jan. 11, 1993)
Marion G. Chambers	Institute of American Indian and Alaska Native Culture and Arts Development.	1/8/93	1/8/93–1/20/93	12 days	29 Weekly Comp. Pres. Doc. 29 (Jan. 11, 1993)
James A. Courter	Defense Base Closure and Realignment Commission.	1/8/93	1/8/93–1/20/93	12 days	29 Weekly Comp. Pres. Doc. 29 (Jan. 11, 1993)
Rebecca Gernhardt Cox	Defense Base Closure and Realignment Commission.	1/8/93	1/8/93–1/20/93	12 days	29 Weekly Comp. Pres. Doc. 29 (Jan. 11, 1993)
Hansford T. Johnson	Defense Base Closure and Realignment Commission.	1/8/93	1/8/93–1/20/93	12 days	29 Weekly Comp. Pres. Doc. 29 (Jan. 11, 1993)
Arthur Levitt, Jr.	Defense Base Closure and Realignment Commission.	1/8/93	1/8/93–1/20/93	12 days	29 Weekly Comp. Pres. Doc. 29 (Jan. 11, 1993)
Harry C. McPherson, Jr.	Defense Base Closure and Realignment Commission.	1/8/93	1/8/93–1/20/93	12 days	29 Weekly Comp. Pres. Doc. 29 (Jan. 11, 1993)
Robert D. Stuart, Jr.	Defense Base Closure and Realignment Commission.	1/8/93	1/8/93–1/20/93	12 days	29 Weekly Comp. Pres. Doc. 29 (Jan. 11, 1993)

FINANCE COMMITTEE CONFEREES TO H.R. 2264

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senators PRYOR and DURENBERGER be added to the list of Finance Committee conferees for H.R. 2264, the reconciliation bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENTS IN TRIBUTE TO THE LATE PATRICIA NIXON

Mr. MITCHELL. Mr. President, I ask unanimous consent that all Senators have until the close of business on Thursday, July 22, 1993, to submit statements in tribute to the late Mrs. Patricia Nixon.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROSS BASS POST OFFICE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 123, S. 464, a bill to designate the Ross Bass Post Office in Pulaski, TN; that the bill be deemed read a third time and passed; that the motion to reconsider be laid upon the table; and that any statements, thereon, appear in the RECORD at the appropriate place, as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 464) was deemed read the third time and passed, as follows:

S. 164

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REDESIGNATION OF PULASKI POST OFFICE AS ROSS BASS POST OFFICE.

The building in Pulaski, Tennessee that houses the primary operations of the United States Postal Service (as determined by the