

U.S. Senator Lamar Alexander

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Alexander: U.S. Senate is Telling Any President “You May Not Abuse the Constitutional Right of Recess Appointments”

July 30 2013 -

Says he will oppose confirmation of president's new NLRB nominees, but will support their right to up-or-down vote

"If the president could make recess appointments while the Senate's not in recess, the Senate could adjourn for lunch and come back and find we have a new Supreme Court Justice. So, what's happening this week has a special significance in our constitutional history....The president, after much discussion, has withdrawn his two illegally appointed nominees. I suggested that he do this in May." – Lamar Alexander

WASHINGTON, July 30—The senior Republican on the U.S. Senate labor committee said today that the president's withdrawal of two National Labor Relations Board nominees whose appointments have been ruled unconstitutional by multiple federal courts was “an important moment in the history of our ability as a country to maintain checks and balances and a certain separation of power among the various branches of government, and especially to restrain the executive.”

Sen. Lamar Alexander (R. Tenn.) said, in a speech on the Senate floor ([VIDEO HERE](#)): “The United States Senate is saying to not just this president but to any president, Republican or Democrat, that you may not abuse your constitutional right of recess appointments by making appointments when the Senate itself determines that it is not in recess. To do so is an affront to the separation of powers, and it undermines the checks and balances that were placed upon the executive at the beginning of our country as a way of preserving our liberties. That's an important step in the history of constitutional law in this country, and I'm glad to see that it has been done in this way.”

On January 4, 2012, President Obama appointed Sharon Block and Richard Griffin to seats on the NLRB while the Senate was in session, even though he had just nominated them 20 days prior and they had not submitted paperwork required by the Senate. Republican senators filed a brief arguing that the appointments were unconstitutional. Three federal courts have ruled that the president had used his power to make recess appointments to the NLRB when the senate was not in recess.

At a hearing of the Senate Health, Education, Labor and Pensions (HELP) Committee in May, Alexander opposed the nominations of Block and Griffin to the National Labor Relations Board because “they continued to decide cases after the federal appellate court unanimously decided they were unconstitutionally appointed.”

The president withdrew those nominations on July 16 and appointed Kent Hirozawa and Nancy Schiffer. The HELP committee voted 13-9 on July 24 to send them to the floor for consideration by the full Senate. Alexander voted against sending them to the floor.

Today, Alexander said: "In May, I suggested that what the president should do is withdraw those two nominees and send us two new ones in the normal process, people who had not stayed on after the federal court had decided they were unconstitutionally there. These two unconstitutionally appointed nominees have decided more than 1,000 cases. Those cases are all subject to being vacated because there was no constitutional quorum. It leaves quite a mess in our labor laws. But the president withdrew those two and now we are this week doing what the Senate normally does—we are considering his new nominees through the normal process."

Alexander added: "I am voting against two of the nominees when the up-or-down vote comes, and I want to explain why. One is Mr. Hirozawa and one is Miss Schiffer. Both of them have excellent legal backgrounds, but the problem is that I'm not persuaded--and I hope I will be proven wrong--that they're able to transfer their positions of advocacy to positions of judge, that they can be impartial when employers come before them."

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