

December 4, 2024

United States Senate
Washington, DC 20005

Dear Senator:

The 70 undersigned organizations urge the Senate to defend its institutional role under the Constitution in the staffing of a new administration. We strongly oppose the use of recess appointments to preemptively bypass the need for Senate confirmation of those whom President-elect Trump selects to carry out his agenda.

The framers of the Constitution included the requirement of Senate “Advice and Consent” for high-ranking officers for a reason: The requirement can protect our freedom, just as the Bill of Rights does, by providing an indispensable check on presidential power. Specifically, it impedes the ability of a president to place dangerously unqualified or unsuitable individuals in positions of power.

Donald Trump will not be the first president in history to want to get his nominees confirmed quickly at the start of his administration. Indeed, every president wants that. Yet every other president has accepted that he is not a king. Every other president has abided by the constitutional role of the Senate. And no other Senate has accepted, or would have accepted, a demand that they give their power away.

The confirmation process can be time-consuming. Senators need time to effectively vet those to whom we entrust great power.

Whether it’s the attorney general, a national security official, or a federal judge, the American people should know about the people who are nominated to fill these positions. Nominees submit detailed questionnaires to the Senate, which are made public. They are subject to background investigations, and the findings are shared with senators on the relevant committees. The nominees appear under oath before a Senate committee and answer questions about their records, their qualifications, and their plans once they take office. This process provides crucial data that helps the Senate and the American people evaluate nominees’ fitness for the important positions to which they are nominated.

None of that would happen with recess appointments. The American people would be kept in the dark.

And it is the American people that this is ultimately about. As Justice Scalia wrote in his concurrence in the 2014 *Noel Canning* case, in which all nine justices agreed that the president had exceeded his recess appointment power:

[T]he limitation upon the President’s appointment power is there not for the benefit of the Senate, but for the protection of the people.¹

Ten years later, Justice Scalia’s admirers are among those speaking out against President-elect Trump’s demand that the Senate allow him to make recess appointments. For instance, longtime conservative judicial activist Ed Whelan has condemned Trump for “threatening to turn the Constitution’s appointment process for Cabinet officers on its head.”ⁱⁱ

Giving in to the president-elect’s demand for recess appointments under the current circumstances would dramatically depart from how important positions have always been filled at the start of an administration. The confirmation process gathers important information that helps ensure that nominees who will be dangerous or ineffective for the American people are not confirmed and given great power, and that those who are confirmed meet at least a minimum standard of acceptability.

Senators are elected to do a job. Every senator should have the dignity and fortitude to demand that the Senate exercise its constitutional responsibility to rigorously and impartially vet, and then vote on whether to confirm, the nominees of the incoming president.

Sincerely,

People For the American Way
Public Citizen
Constitutional Accountability Center
Citizens for Responsibility and Ethics in Washington
Accountable.US
AFT
Alliance for Justice
American Constitution Society
American Federation of State, County and Municipal Employees (AFSCME)
Americans United for Separation of Church and State
Auntie’s Coalition
Autistic Self Advocacy Network
Bend the Arc: Jewish Action
Campaign Legal Center
Clearinghouse on Women's Issues
Climate Hawks Vote
Coalition on Human Needs
Common Cause
Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces
Courage for America
Court Accountability Action
Defend The Vote Action Fund
DemCast USA
Democracy 21
Democracy Matters
Democracy SENTRY
Drug Policy Alliance
Earthjustice Action

Equal Justice Society
Feminist Majority Foundation
FFRF Action Fund
Free Speech For People
Friends of the Earth
Greenpeace USA
Human Rights Campaign
Indivisible
International Campaign for Responsible Technology
Just Solutions
Lambda Legal
Lawyers for Good Government
League of Conservation Voters
MomsRising
MoveOn
NAACP
National Advocacy Center of the Sisters of the Good Shepherd
National Council of Jewish Women
National Education Association
National Employment Law Project
National Health Law Program
National Women's Law Center
Natural Resources Defense Council (NRDC)
NBJC
NextGen America
Peace Action
People Power United
People's Parity Project
Project On Government Oversight
Reproductive Freedom for All
Service Employees International Union (SEIU)
Sojourners
Stand Up America
State Democracy Defenders Action
Take Back the Court Action Fund
The National Vote
The Restaurant Opportunities Centers United (ROC United)
The Workers Circle
Unitarian Universalists for Social Justice
United Church of Christ
Voices for Progress
Voters of Tomorrow

ⁱ *NLRB v. Noel Canning*, 573 U.S. 513, 614 (2014) (Justice Scalia concurring).

ii “Mike Johnson must block Trump’s scheme on recess appointments,” Ed Whelan, The Washington Post, Nov. 14, 2024, <https://www.washingtonpost.com/opinions/2024/11/14/trump-gaetz-cabinet-appointment-johnson>.