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**Achieving Policy Goals Through the Use of the Recess Appointment**

The President of the United States possesses certain powers aligned to him in the Constitution. Many of these powers have been assessed over the past hundred years but some haven’t been researched fully. The recess appointment is one of these powers that has not been researched as a use in achieving the policy goals of the President. The recess appointment has recently become a part of the tool chest of unilateral powers to the President which brings up the point that the President uses the power of recess to achieve his policy goals. The research done for this paper assesses the political appointments of the President, unilateral powers of the President, and also the political costs and benefits of using the recess appointments to achieve the Presidents policy goals.

Article II Section 2 of the Constitution of the United States outlines the powers a president possesses when he swears into office. He takes on roles such as the Commander in Chief and also, with the advice and consent of the Senate, he is allowed to make treaties, nominate people to positions such as ambassadors, public ministers, judges and other officers of the United States. The President also has the power to fill any vacancies that may happen during the recess of the Senate. One example of a presidential power is the recess appointment. A recess appointment is an appointment made by the President when the Senate is in recess and cannot confirm anyone to the position. Tom Curry, a national affairs writer for MSNBC.com, tells a story about a recess appointment that was made by George W. Bush in 2005. Bush tried to nominate John Bolton to the position of Ambassador to the United Nations and it seemed that Bolton was the only candidate that Bush wanted in this position. However, the Senate did not want the same. Bolton needed sixty votes in order to head for a confirmation but he did not get it. This is when Bush decided he would not fill the position and waited for the Senate to take a recess. In August of 2005, Bolton was appointed to the position of Ambassador to the UN under the rights he has in Article II Section 2 of the Constitution. Bolton retired before the recess appointment lapsed because the Senate did not confirm him to stay on any longer.

This instance proves that the recess appointment can be of a great importance to the President and the power he possesses. In doing research about recess appointments as a unilateral power, it is seen that presidents over the years have used the appointment power to change their political agenda to the way that they want it. The main idea of my research is to look at the unilateral powers as a whole, assess these powers, and particularly to show how recess appointments do change policy just as Bush did in the recess appointment of John Bolton to the Ambassador of the UN. I also want to look at presidential appointments, recess appointments to assess their importance and also use the information below to show how these three ideas (unilateral powers, presidential appointments, and recess appointments) i have changed the way a president uses his powers to change their agenda to the way he wants it and also show how scholars have seen these ideas in the past.

When it comes to the powers of the resident, the recess appointment is a part of what has, in recent years, been referred to as the unilateral powers of the president. William Howell (2005) outlines a list of what the unilateral powers of the president consist of. Unilateral powers consist of the powers that presidents use to advance their political agenda or change it if they must. When it comes to changing their agenda, they have options; they can write proposals to Congress of issues they want taken care of or they might use their unilateral powers given to them if it something that needs to happen now. Unilateral powers consist of executive orders, executive agreements, proclamations, national security directives, or memoranda’s. Recently, the recess appointment, which has been around for years but was not a research focus in scholarly journals, has been added to this list. Howell talks about the changes in unilateral powers in the past ten years and how it has come about because of the past few presidential administrations. Presidents Clinton and Bush made quite a few decisions using their unilateral powers. Howell takes evidence of the unilateral powers being used since the beginning of our government and shows us how it has not become an important policy tool until recent years. Mostly they use this power to change issues that Congress has already addressed and the President does not agree with. Howell gives a good description and overview of what the unilateral powers really are and how they work as a whole.

Terry M. Moe and William G. Howell (1999) outline the theory of unilateral powers as well. They believe that the President’s powers of unilateral action are a force in American politics because they are not specified in the Constitution. This is because Article II Section 2 of the constitution leaves a lot of ambiguities. Because of this it gives the President the ability to expand his own powers. Moe and Howell explain to us how the President takes advantage of these ambiguities to help change his policy. They mostly focus on the idea of the President going against ideas and issues that Congress has already made, most of the time, into laws. The main point in this article is about knowing what unilateral powers are and also knowing how they work shows us how the recess appointment, and other presidential actions, constitutes a unilateral power.

Ryan Black, et al. defines what a unilateral power really is and also will be the main focus of describing unilateral powers throughout my research. Unilateral powers are defined on page two of this article saying that in order to be a unilateral power the power the president must try and manipulate the ambiguities in the Constitution; the president must also use the power to put the legislature and the courts in a position where they have to react to what the president has done; lastly the president must also use this power to affect policy (Black 2). These three attributes must be met in order for a power of the president to be an actual unilateral power. A recess appointment reaches all of these attributes in a few different ways. The President takes advantage of the constitutional ambiguities in the fact that there is a difference between an intrasession and an intersession of the Senate. The President also uses the recess appointment to rouse the legislature and the court. Most of the time they do not ever try to fight back because by the time the issue is solved the person is out of office anyways. The President also uses recess appointments to change policy. For example, in 2005, four out of the six seats on the Federal Elections Committee were open. At this time President Bush did not agree with the Bipartisan Campaign Finance Reform Act. This put President Bush in a good position for appointing people to the Federal Elections Committee. President Bush then waited until the Senate was in recess and appointed four new members to the Committee that had the same ideals about the Bipartisan Campaign Finance Reform Act as he had. It then turned out that this act was changed. This is an example of how a President has used a recess appointment to change policy, therefore fulfilling the third attribute to a unilateral power. I will look at how the Presidential appointments process works and turns into the recess appointments becoming even more important.

Presidential appointments are something that have been used by every president since the Constitution of the United States was written in 1789. The importance of presidential appointments is clear in the fact that the President picks the best and most qualified person for the position. There are many appointments made each year to many different positions ranging from judges to cabinet members.

In *Courts, Judges, and Politics,* we can find the answers to some of the questions that might be boggling some people about the process that takes place for presidential appointments. This book discusses the process in detail in which the President has to make in order to appoint someone to the federal bench, such as his assistants sit in a room and go through thousands of resumes and ideas of people to dwindle down the list to just a few until the President picks someone that he finds would perfectly fit the position. This book is not focused on just appointments in general but gives us a very good idea about how the appointments work in general. It will be a key point in helping with defining how a presidential appointment actually works. It shows us that the President’s office of clerks and assistants mull over many names of people. They then choose a list of people that would best be qualified for the President to choose from. Once they do this it is in the President’s hand to choose who he believes should join this position of the government. Only then after the president nominates who he wants, the Senate has to vote on it and then decide whether to confirm the nomination into an appointment.

That is where Lee Epstein and Jeffery A. Segal’s book, *Advice and Consent: The Politics of Judicial Appointment.* This book gives us a closer look at presidential appointments to the judiciary which will be important later on in my research. My research is not focusing on the judiciary as a whole but this book will be important later also when looking at controversies that these appointments make to the judiciary. For this portion of the research only portions of Epstein and Segal’s book will be used focusing on the first chapter at most which explains to us that Advice and Consent is important when making a decision for appointment. Advice and consent is when someone is nominated to the position. If they accept and go through the process that is necessary then they will have their nomination sent to the Senate and after the advice, many get the consent from the President to the position. The first chapter of Epstein and Segal’s book goes into depth about the process of the appointment power, what they believe is the framers intent in Article II of the Constitution for such power to be used as, but also explains to us a little bit of history at the same time. This book will help a great deal for the first portion of the paper but also later on for small parts during the second portion of research.

In a book written by, Professor Christine L. Nemacheck, called *Strategic Selection: Presidential Nomination of Supreme Court Justices from Herbert Hoover through George W. Bush,* Nemacheck focuses on one main question for her research being done: what causes presidents to pick the nominees that they do? Her book looks at this question through nominations to the Supreme Court. She looks at the patterns between who gets put on the “short list” as it is referred to of candidates, and who on the list actually gets nominated. The “short list” is made up of a list of people that the President himself would prefer to have in a position on the Supreme Court. In her findings it is said that presidents actually analyze each situation and depending on how the President is viewed by the Senate; he chooses whether the person will be someone the Senate wants or someone from his own personal short list of people that would be ideologically compatible with him. In her conclusion, she finds that presidents strategically choose who their nomination will be. Nemacheck’s research will be helpful to the explanation of presidential nominations as a whole to explain the selection process more thoroughly, but it will also help out in the later parts of my research in showing us that presidents choose nominations for ideological reasons and also to change a policy the way he might want it. These three items will help immensely in explaining the first dynamic of research on presidential nominations as a whole for my paper. The focus of my paper after the explanation of presidential appointments as a whole is the process of recess appointments. Since my paper is about how recess appointments change the President’s political agenda, it is necessary to focus also on how the recess appointment is important and how it works.

In order to understand the recess appointment we need an explanation of what it is and how the process works. In the book, *Justice Takes a Recess: Judicial Appointments from George Washington to George W. Bush*, authors Scott E. Graves and Robert M. Howard explain an overview of the recess appointment explaining the process of how the President can wait until the Senate is in recess to make an appointment to any position that opens whether as a judge or a cabinet position. In this book they focus solely on judicial recess appointments as a whole. In chapter two, the authors give an overview of actual recess appointees of the court since its beginning. They explain what a recess appointment is and also explain what a recess appointment does to the Supreme Court as well. They find that over time there has been a change in the use of the recess appointment in the judiciary which shows a slight decline over the years. They also discuss how they have found that strong presidents are the most likely to take advantage of the recess appointment power because of the fact that they are strong in their presidency. Also in this book, chapter five explains to us in depth how in the modern era the recess appointment has changed and is not used in the judiciary as it used to be for previous presidents. This also leads into chapter six of the book which explains to us what the authors have come to conclude on the idea of recess appointments as a whole. They believe that the recess appointment clause is not necessary or desirable anymore at this point in time. They state in the book that they believe that the clause has passed its time and could be considered a “constitutional stupidity.” This is just one opinion on such a broad subject.

Recess appointments are believed to be what is called avoiding the advice and consent of the Senate. Pamela C. Corley of Vanderbilt University wrote an article called “Advice and Consent: Recess Appointments and Presidential Power,” which explains to us Recess Appointments as a whole and also looks at presidential appointments as a whole. This helps assess how many recess appointments are made in a year to show us that a lot of the time presidents wait until the Senate is in recess because they may not have partisan support in the Senate at the time that an appointment is needed to be made. This shows us that in Corley’s article she explains the consequences that can happen when making a recess appointment and also shows us how presidents like to use this power to get people that are ideologically compatible with them. She also discusses the effect that the recess appointment has on the balance of powers of the government. All of these issues together show us that the President can use this power to avoid important checks on his authority as president.

In recent years, many scholars seem to be writing about how the recess appointment is not as good of an idea as a president believes that it could be. An article, “Recess Appointments to the Supreme Court: Constitutional but Unwise?” gives a brief discussion of the recess appointment power and then goes on to discuss problems that are raised with this constitutional law. Although the problems have never been raised in the court at least not yet, many scholars believe that a recess appointment of an Article III judge might not be constitutional and also how can these appointments be made most consistent with the requirements of Article III. In this article it is believed that a recess appointment is constitutional but when it comes to appointing a judge to a court referred to in Article III (Supreme Court and others, including appellate and district courts; Article I courts are things like the military and tax courts) that it might not be all that constitutional in actuality. This whole article reflects on how the constitutionality of recess appointments has changed from the beginning of the constitution until the current time. It also proposes a few solutions from some different scholars that think could help recess appointments in their constitutionalities and also to help the “problems” referred to in the article.

Another article “The Law: Recess Appointments to Article III Courts,” written by Henry B. Hogue also shows us some of these same facts about recess appointments. He talks about the recess appointment power, constitutionality of the judicial recess appointments, and also how it affects Article III of the constitution. Hogue takes three people that have been through the process of being nominated and assesses their happenings to show whether or not it was worth the recess appointment. By assessing the few recess appointments in the past years made by Clinton and Bush, they come to the conclusion in this article that maybe the practice of using their appointments may become more common in the years to come.

There are some scholars who believe that presidential recess appointments are something that should not be considered constitutional at all because of many issues that arise when recess appointments happen. A lot of presidents wait until there is a recess session of the Senate instead of actually making an appointment through advice in consent. In an article by Patrick Hein, “Defense of Broad Recess Appointment Power: The Effectiveness of Political Counterweights,” he talks about recent research, that has been done on whether or not this power is constitutional, and also talks about the idea of the broad recess appointment power. After reading through his article you can see that there are many controversial events when it comes to recess appointments and many political leaders do not agree with its use in some aspects. This article shows us how a president takes an appointment to help themselves and also what they believe will help the government with or without the help of the Senate or what other government leaders would want. In his research, Hein refers to two case studies on the appointments of Bill Lann Lee and also Charles Pickering. These two appointments are recent appointments made by President Clinton and also President Bush. These two appointments are made in two different branches. Lee was appointed to the position of Assistant Attorney General by President Clinton and Pickering was appointed to Fifth Circuit Federal Court of Appeals. In this article, Hein shows us how these two cases support the idea of broad recess appointments and how it is most of the time a better alternative to other appointments. Hein believes that recess appointments do not actually harm the idea of advice and consent and they actually better the way the government works as a whole (Hein 268). Even though recess appointments have brought upon controversies over the years, there have been many good things that have come from making such recess appointments and Hein’s article shows us this idea. This will be very important in my research as well.

Even though court cases have arisen over the years trying to tell us that the recess appointment should not be a power of the President and it is not constitutional, the courts seem to not detest the idea of the recess appointment. Many other issues have arisen and are also discussed in Hein’s article but William Ty Mayton’s article, “Recess Appointments and an Independent Judiciary,” is another article that gives a different perspective on the constitutionality of this power. It also goes into detail about whether or not the use of the clause exceeds the clause itself. This is where the issues of intersession and intrasession come into play again and will help us round out the idea of it. It is a big issue deciding on what is the right way to fill the seat during a recess. This article addresses the fact that sometimes presidents fill a vacancy that’s been open for a month or more a few days into a Senate Recess. This article gives us a bigger perspective of what the constitutionality really is and also what scholar Mayton’s ideas are about the power itself. Having all these different ideas of the recess appointment will better the knowledge for me when I am later in depth to this paper because I will get points from all different types of views on the subject of the recess appointment.

The article “Adding Recess Appointments to the President’s “Tool Chest” of Unilateral Powers,” will also be a help in explaining the recess appointment process and also gives good examples of recess appointments in recent times like President Bush’s recess appointment to Commissioner of the Federal Elections Commission. When Commissioner Bradley stepped down a piece of legislation was in the works in this group called the Bipartisan Campaign Finance Reform Act. Since President Bush did not agree with this he waited until the Senate was in session to appoint someone who he knew would help out in making sure that this legislation didn’t go through. This article will be a big part in helping assess whether Presidents use of the recess appointment changes their political agenda. With all of the above articles and many more that I now know I need, a research paper will come, slowly but surely. After looking through all of these ideas and the different ideas that have come about in recent writings, I hope to find the truth about recess appointments and the President’s agenda.

**Unilateral Powers of the President**

When a president is sworn into office, he or she is given a number of powers written for them in Article 2 Section II of the Constitution of the United States. Powers such as, Commander in Chief of the Army and Navy and to make treaties with other countries; are used through each President since George Washington became the first president. Some of these powers over the years have been referred to as the unilateral powers of the President. A unilateral power allows presidents to accomplish policy goals without having to go through the legislative branch for approval. This approval, which some presidents have learned does not always go through. Presidents seek to use the unilateral powers as often as possible to make a difference in a policy that they wish to change (Black 3). A unilateral power, by definition, consists of three criteria in order for a presidential power to be considered as unilateral. First, the president must be manipulating ambiguities in the Constitution. Second, the President must be using the power first and putting the legislature and courts in a position in which they have to react to the President’s action. And lastly, the President’s action must affect policy (Black 3-4). These items have to be used by the President in such a way that all three of these criteria need to be involved in order for a power to be considered a unilateral power.

Until recent years, unilateral powers had not been looked at much. Only one book had ever been written about the unilateral powers as a whole but now, more and more writings are coming out and assessing the unilateral powers of the President. Change is coming in research for unilateral powers, though, because in the past few years a few more books as well as articles in political journals have arrived on the shelves and stands. This is because the past few presidential administrations have started using executive orders, department orders, reorganizations plans, recess appointments, etc. to unilaterally act for what they believe would be in the best interest of our country (Howell 418). President Bush created military tribunals to try suspected “enemy combatants” that were thought to be linked to Afghanistan and Iraq. He also froze financial assets in U.S. banks that had links to bin Laden and other terrorist networks. Bush also issued numerous rules that changed the environment and industry regulations having to do with diesel engine exhaust, the number of hours that truck drivers can remain on the road without resting; and the logging of federal forests (Howell 418). What Bush did was took the initiative to use his unilateral powers and acted boldly in a time when he believed he needed to act. Many people believe that Bush acted unconstitutionally or even irresponsibly, but in truth he took his unilateral powers and did what he thought was best. He could have waited for Congress’s approval, but instead he approved it himself (Howell 421). “When presidents act unilaterally, they move policy first and thereby place upon Congress and the courts the burden of revising a new political landscape. And when the President acts unilaterally, he acts alone” (Howell 421). That is exactly what President Bush did in his situation. He relied on his advisors to formulate the policy and make sure that there were ways to protect it so that no one could or would want to fight. In order for a President to ever order an issue on policy, make policy, or do anything with policy at all, he has to act alone (Howell 421).

President Bill Clinton used his unilateral powers as well. When his 1993 health care initiative fell through Congress, Clinton decided to issue directives establishing many things such as a patient’s bill of rights for federal employee’s, reformed health care programs’ appeals processes, and new penalties for companies that deny health coverage to the poor and people with pre-existing medical conditions. When his fight for gun control legislation through Congress failed as well, he issued executive orders that banned various assault weapons and required trigger safety locks on new guns bought for federal law enforcement officials. Also in Clinton’s final few months as president he extended federal protections to millions of acres of land in Nevada, California, Utah, Hawaii, and Arizona (Howell 418). It has not been just Clinton and Bush to use these powers, though. In the modern era, many presidents have used their powers of unilateral action to change policy in an effective way leading to their own policy goals.

Considering that the President is held responsible for everything, he does not actually control anything. He has no true power because of the checks and balances process which means that everything he has power over gets checked and when someone does not agree, the President’s policy or ideas get shot down. This affects the President’s policy agenda more than the voters think. Howell states on page 420 that: “the pursuit of his policy agenda is marked more by compromise than conviction; and his eventual success ultimately depends upon the willingness of others to do things that he cannot possibly accomplish on his own.” The President has to rely on the other branches of government in order to accomplish goals. The problem is that the public expects a president to achieve more than their formal powers actually permit them to do (Howell 420). That is why taking advantage of the ambiguities by using the unilateral powers that come from it in the Constitution is a major part in the president’s agenda. In order for the President to use these powers, he must have statutory or constitutional authority. If he does not then the courts and Congress can change the policy that he just made. The unilateral powers that are used by the President do exist in today’s society. A president does not have the formal power to make things happen in his position because of all the difficulties with the judiciary and Congress leaving him to look to using the unilateral powers. This is where the President searches for the ambiguities in the Constitution. By finding these ambiguities and using them, using these powers first so that the courts and Congress have to react to this, and also affecting policy in the process, the president gains powers to act unilaterally through the Constitution which actually helps him in many ways through his time as president.

**Recess Appointments: A Tool of Unilateral Powers**

The Constitution of the United States lines out that Article II Section 2 gives the executive the 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” (Black 4). The purpose of the recess appointment clause is clear. It allows the executive to keep the operations of government running even when the Senate is not in session and thus is unable to confirm presidential appointees. However, this clause also appears to upset pristine formulation of separated powers by allowing the President to bypass the Senate and appoint judges without any oversight, not to mention the lack of ‘advice and consent’ (Graves 11). The recess appointment has been used for years by many different presidents to appoint cabinet members, justices, and many other positions. The recess appointment is used when the Senate is in recess so that the President can still keep the government operating while the Senate is not there to do so. When someone is appointed through a recess appointment they are given all the constitutional powers that a confirmed nominee possesses. The only difference between a recess appointee and a confirmed appointee is the fact that a recess appointee must leave office at the end of the next Senate session unless the appointee gets confirmed. In recent years, the use of the recess appointment has increased greatly, more than doubling since the late 1980’s (Black 2). In an article by Pamela Corley, *Avoiding advice and consent: Recess Appointments and President Power,* she sought to explain the condition under which presidents made recess appointments to independent regulatory commissions. At this time in 2006, Corley recorded the only analysis of recess appointments. In her research she found that the president’s recess appointment power may tip the balance in his favor when it comes to control over the bureaucracy (Black 2-3). This was the breaching point of discovering that the recess appointment was a larger power than some people may think. Since presidents care deeply about what they accomplish while in office, it is important to see that who the president is able to appoint determines what the president is going to accomplish while in office. Evidence and research found in the past few years has shown us that the recess appointment should be considered as part of the President’s tool chest of unilateral powers.

“We define a presidential power as ‘unilateral’ if it has the following three attributes: first, the President manipulates ambiguities in the Constitution; second, the President must use the power first and alone, putting legislature and courts in a position such that they must react to the President’s action’ and third the President’s action must affect policy” (Black 2-3). By breaking down the three attributes and assessing the recess appointment power with these three attributes, a bigger picture shows us how the recess appointment is a part of this tool chest of unilateral powers used by the President. When using the recess appointment, does the President use it by manipulating ambiguities in the Constitution? Because of ambiguities in the Constitution, the president can expand his presidential policy-making powers. Since the President controls the operation of the government, he has the resources to find these ambiguities in the Constitution and use them to the fullest abilities, the recess appointment being one of these powers. The Constitution clearly 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” (Black 4.) It is believed that when actually looking at this statement, it doesn’t tell us much about how the recess appointment power should work in practice (Black 4).

There is a lot of talk about when a vacancy actually takes place in the court because when this vacancy happens it actually brings a lot of ambiguities to what the Constitution actually means. One interpretation of this is the fact that a vacancy must happen during the actual recess of the Senate; meaning that when the Senate recesses and the vacancy happens to happen then the President can make a recess appointment. Another interpretation of this clause of the Constitution is the way Presidents actually use this power. That is that a vacancy does not actually have to happen during the recess, but it can be filled during the recess of the Senate if the position is still vacant during the senate recess (Black 4). This clause is also thought to be unclear about whether the senate must be in “intersession” or “intrasession” recess for the President to make a recess appointment at the time. An intersession recess occurs between sessions and intrasession recess occurs within a session. Many people and scholars believe that an intrasession recess is unconstitutional because of the fact that an intrasession recess could last only a few days.

In February 2004, George W. Bush recess appointed William H. Pryor to the U.S. Court of Appeals for the Eleventh Circuit during an intrasession recess. Months later, three lawsuits were filed in federal court by defendants who appeared before Pryor. They argued that his intrasession recess appointment was unconstitutional, that Pryor should have been disqualified from presiding over their cases, and that they should receive a new hearing. At issue was the constitutionality of intrasession recess appointments. The Eleventh Circuit upheld Pryor’s appointment in these cases, stating that intrasession recess appointments, while constitutionally ambiguous, were within the legitimate purview of the president. (Black 4)

This example of President Bush using this power is among many examples where the President takes advantage of the ambiguities in the Constitution which in turn helps make the unilateral powers of the President. Concentrating on the ambiguities is only a third of the reason why the recess appointment is considered to be a unilateral power.

The second attribute to consider a power being used for unilateral action is when the president uses a power first; meaning they take action without notice and do it forcefully. They do this by not consulting any other branch of government when making a decision. They, first and foremost, make a decision to use a power in a situation that they believe is the correct way for our country to be run. If Congress or the courts do not react to this then the president’s policy or in this case appointment will stand as it has been written or placed. In order for Congress to fight the president on the use of these powers, they have to convince people to join their majority. To get the fight brought up before Congress for a vote it takes time. When it comes to the courts getting the issue brought to them, it takes even more time; time that could be used for something more important (Black 5). With recess appointments, the President has the opportunity to act first. “The president need only wait for the Senate to recess, when he can appoint a candidate of his choosing to a vacant position. It is then up to the legislative and judicial branches to react to this appointment” (Black 5). Most presidents choose not to use this power because of negative reaction from the people but more and more today the recess appointment is being used by presidents. The President being the first user on certain policies affects the way our government works, making it possible for them to change policy as a single soul. The recess appointment is a power that the president uses alone and first before anyone else.

The third attribute of being a unilateral power is whether or not the power the President is using has effect on policy. Since presidents have such a short time in office they use unilateral action to effect policy the way that they want it to be made. Presidents in the past have used their unilateral powers to effectively produce such policy changes as “the acquisition of the Louisiana Purchase; the freeing of slave through the Emancipation Proclamation; the desegregation of military; and the creation of agencies such as the EPA, the FDA, and the Peace Corps” (Black 5). The President can affect policy just the same when using the recess appointment as well. They do this by appointing candidates who share their ideological views. They choose these candidates because most of the time they are someone who would not be chosen and approved by the senate. Most importantly, presidents can affect broad policy through recess appointments to independent boards (Black 5). “Independent boards rule on the interpretation of laws, giving them independent rule-making power over specific areas of policy. Most boards operate according to simple majority rule, and thus, the median board member dictates board policy” (Black 6). Since this is the case, the President has a lot of opportunity to change policy in the way that he wants it to be changed.

For example, during the George W. Bush administration the National Labor Relations Board (NLRB) issued several major rulings. In November of 2004, by a vote of 3-2, the NLRB barred temporary workers from bargaining alongside permanent workers. That same month, by another vote of 3-2, the board overruled existing precedent and found that employees—rather than employers—carried the burden of proving that employers spread threats of reprisal for unionizing. In June 2004, again by a 3-2 vote, the NLRB found that nonunionized workers had no right to be accompanied by colleagues in disciplinary hearings. Collectively, these votes represented a major probusiness shift in labor policy. The swing vote in all of these cases came from the Bush recess appointees. Recess appointees, then, can exercise strong influence on policy on behalf of their appointing presidents. (Black 6)

In the above example, we can see that by using the recess appointment, President George W. Bush guaranteed that the swing vote in each vote would go his way. The recess appointment has been used for years but until now has not been looked at as thoroughly and in the research that is being done we can see that presidents have a struggle when it comes to controlling policy because they do not have as much power as citizens would believe. Presidents use the recess appointment allows presidents to install favored candidates in key policy-making positions. These positions that they are appointed by the recess appointment are positions that they might not be confirmed to through the advice and consent of the senate (Black 8).

When assessing all three of these attributes and their affects on the recess appointment power that the president uses, we can see that with examples of how presidents have used this power. They do use the ambiguities of when a vacancy happens and also whether or not it is an intrasession or intersession recess. Presidents also use the recess appointment power first and Congress and the courts, most of the time, do not seem to bother with the President’s decision. Lastly, the president does use the recess appointment to effect policy by changing it in the direction he wants it to go. When looking at all three of these examples, we can see that the recess appointment, as a whole, is a unilateral power of the President and presidents using this power more and more to act unilaterally today in the modern presidency. The recess appointment power is an important tool presidents can use to gain leverage over the federal bureaucracy (Black 8). Presidents make recess appointments in hope that they will impact public policy (Black 9).

**Obama’s Use of the Recess Appointment**

As recently as early February of 2010, President Obama announced that because the Senate has put a hold on 200 nominations to different government positions, that over the next senatorial recess he was going to have to make recess appointments in order to keep our government moving. In the past, presidents have made many recess appointments during their terms as president but Obama has made quite a few so soon in his first term. President Ronald Reagan made 240, President George H.W. Bush made 77 during his one term, President Bill Clinton made 139 in two terms and President George W. Bush made 171 in his two terms (February 10, 2010). Obama has presented 569 nominations to the Senate for confirmation and had 353 of those nominations confirmed (February 10, 2010). President Obama is currently blaming the Republicans for delay and obstructing his nominees to get appointed through the Senate. He claims that by the Senate not confirming these individuals it is putting on a strain on functionally running the U.S. Government. President Obama stated in February, “I respect the Senate’s role to advise and consent, but for months, qualified, non-controversial nominees for critical positions in government—often positions related to our national security—have been help up despite having overwhelming support.” (February 10, 2010)

Many of President Obama’s administration positions that are still waiting for people run them are important cabinet departments such as the departments of Homeland Security, Defense, Education, Energy, Justice, Labor and Treasury. One appointee that Obama has been pushing to have approved by the Senate is a union lawyer named Craig Becker who is in line for the National Labor Relations Board whose nomination failed to advance in February. This nomination hasn’t advanced because the Senate Republicans believe that Becker would make pro0unition changes on the NLRB without congressional approval (February 10, 2010). At a press conference on February 9th of this year, Obama made an announcement to the White House press corps stating,

“If the Senate does not act, and I made this very clear, I will consider making several recess appointments during the upcoming recess because we can’t afford to let politics stand in the way of a well functioning government. In our meeting I asked the congressional leadership to put a stop to these holds in which nominees for a critical job are denied a vote for months (February 9, 2010.)

By the end of March, things didn’t change in the Senate which forced President Obama to recently make fifteen recess appointments while the Senate was in recess.

In an article written by CNN.com on March 28th, Obama is quoted saying:

“The United States Senate has the responsibility to approve or disapprove of my nominees. But if, in the interest of scoring political points, Republicans in the Senate refuse to exercise that responsibility, I must act in the interest of the American people and exercise my authority to fill these positions on an interim basis. Most of the men and women whose appointments I am announcing today were approved by Senate committees months ago, yet still await a vote of the Senate. At a time of economic emergency, two top appointees to the Department of Treasury have been help up for nearly six months. I simply cannot allow partisan politics to stand in the way of the basic functioning of government.” (CNN Wire Staff)

This is what the people want to hear at this point. The President has taken a stand against the other branches of governments and doing what he believes is right for his country. When Obama wrote this statement at the end of March, he made fifteen recess appointments to different positions in our government that were not functioning in a way that the president believed they should. Obama’s senior advisor David Axelrod also stated, “The Republican Party has taken a position where they’re going to try and slow and block progress on all fronts whether it’s legislation or appointments” (CNN Wire Staff). This is because President Obama wants to appoint people that they know will change policy and most likely not in the direction that is best for their constituents and maybe not even for the country. As it was recalled in February, President Obama had a controversial appointment of a man named Craig Becker whom he wanted appointed to the National Labor Relations Board. Many Republicans did not want to see his appointment made but Mr. Craig Becker was the first recess appointee on President Obama’s list.

**Conclusion**

When a president uses a power that is given to him in the Constitution, but also involves ambiguities in the Constitution, it calls for the first criteria involved in being a unilateral power. To be considered a unilateral power, the President must manipulate these ambiguities, he must use the power first and alone but also causes the legislature and judiciary to react, and also the President’s action must affect policy. Unilateral powers are the only powers that a president has to act for what he believes is best for this country. These powers are important especially in time of war or economic despair. Unilateral powers do not have the issue of being checked by the other branches of government and therefore gives the President the ability to actually act as a president.

These powers are important because recently the recess appointment power has come into play and given the President a new ability through ambiguities in the Constitution to use the recess appointment in a way to affect policy and change the way the President sometimes handles business. After looking at the qualifications to be a unilateral power, it is now known that the President has looked for ambiguities in the Constitution when it comes to using the recess appointment; the President also uses the recess appointment solely on his own to let the Senate and Judiciary react to his decisions; and also he uses this to affect policy. All of these combined brings the recess appointment to be a tool of the already used unilateral powers.

When discussing what has happened with President Obama just this year it is making history for the recess appointment. We can’t quite see what’s going to happen to with his recess appointments yet, but most likely besides a lot of the political issues involved with these appointments he chose each of these people in hope that they would somehow affect policy the way that he wants something to go. That is why Craig Becker’s nomination to the NLRB is so controversial because Republicans know that with him in the position on the board, that they should fear which way Becker decides to vote on issues. It will be interesting for the future to see which way Becker does decide to vote on issues and see what he brings to the table.

By looking at all of these components together it can be seen that the recess appointment is used in a different way by the President then some other powers are. This power gives the President the ability to put people into offices and influence the way a bill is written, a case is decided, etc. to be able to change policy the way he wants it to be. This is a powerful tool that president’s are now realizing really can be used for such ideas and that is why we are seeing it more and more. After looking closely at unilateral powers, recess appointments as a unilateral power, and also looking at example from the Clinton administration, Bush administration, and also President Obama’s recent use of the recess appointment, it can be concluded that the president uses the recess appointment as a unilateral power to achieve his policy goals while in office.

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