WHEN CONGRESS IS AWAY:
THE CONSTITUTIONAL POLITICS OF PRESIDENTIAL RECESS APPOINTMENTS

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Chapter 1: Separation of Powers

There are many times when a President vetoes a bill that he does not agree with, despite the months of effort Congress put into the bill to perfect it. In contrast to this, Congress is equally destructive when Congress is being reluctant to pass a bill that the President supported whole-heartedly and waited months on. Sometimes this conflict among powers looks unhealthy and presents government in a negative light to the public. It can also seem like government is being unproductive with its conflicts across branches. When events like this occur, separation of powers is at work.

When the Constitution of the United States was written, the Framers made sure to include a checks and balance system for the branches of government. This is a fundamental constitutional principle, but the public does not always see it at work. Each branch of government is granted its own tools that allow it to work against the other branches. Each branch of government (legislative, executive, and judicial) is equal in power, even if it does not always seem this way. Each branch also has a specific job to do. The legislative branch was meant to make and pass laws. The executive branch was meant to enforce the laws made by Congress while the judiciary branch interprets the Constitution and makes sure the laws being passed and enforced are constitutional. In an ideal world, all the branches of government would work together cohesively at all times, but this is rarely the case. This is why it is necessary for each branch to have a tool box full of strategies, techniques, and Constitutional powers to use against the other branches. More often than not, the clash between branches of government occurs between Congress and the President. It is not unheard
of for the Supreme Court to receive backlash from Congress or the President, but it is typically a moot point when there is backlash because the Supreme Court has already made the decision enact or withdraw a law.

A time when Congress and the President have had a great amount of disagreement is when there is talk of the United States going to war. In the Constitution, Congress is given the power to declare war. The Constitution also puts the President in charge of the military; therefore, this contrast causes tension when the federal government is discussing what to do about international conflict. In the history of the United States, there have been instances when the President has told the military to invade a country without having the approval of Congress. This blurs the line of whether the United States has been in war with particular nations, despite it seeming like they were.

The instance of war power shows how the President can take a power the Constitution gives him and use it in a way that he wants, in spite of backlash he may receive from Congress. Congress can use their power in the same way. Sticking with the example of war power, the President can order troops to invade and he can suggest that Congress declare war on a certain nation, but there is no written rule that says that Congress has to do so. Conflicts between the President and Congress can also be seen when a President is trying to fill vacant positions within certain government offices, as well as within their cabinet. In most cases, when a President nominates a certain individual to fill a vacant position, the nominee has to be confirmed by the Senate.
This means that just because a President wants a certain person in a specific position, there is no guarantee that it will happen.

There are many factors that prevent the branches of government from constantly agreeing with one another. The most notable reason for why the President and Congress will clash is because of opposing political parties. Although Congress is made up of hundreds of people, the party that has the majority is ultimately in charge. This makes it hard for a President to get the things on his agenda done when Congress’s majority is made up of the opposing party to the President. Another factor that contributes to disagreements between the President and Congress is approval ratings and public approval. If Congress and the President’s approval rating are high, and the public has not been giving the federal government much backlash for the actions they have been taking, then it is likely that each branch will go along with what each other has proposed. In contrast to this, if a President has low approval ratings and the public has not been pleased with what he has been doing, then Congress is more likely to deny a request from the executive in attempt to keep the public on Congress’s side. This can work in the opposite way causing a President to veto a proposition given to him by Congress when Congress does not appear to be doing its job well.

Mark Tushnet (2004) has coined the term, “constitutional hardball” (p.523). Tushnet (2004) discusses what he sees as constitutional hardball and the various ways the federal government use this tactic against one another. Constitutional hardball is defined as “it consists of political claims and practices—legislative and executive
initiatives—that are without much question within the bounds of existing
that it is hardball because “its practitioners see themselves as playing for keeps in a
special kind of way; they believe the stakes of the political controversy their actions
provoke are quite high, and that their defeat and their opponents’ victory would be a
serious, perhaps permanent setback to the political positions they hold” (p. 523).

Constitutional hardball, as described by Tushnet (2004), comes in offensive
and defensive forms depending on whether the minority party is using it or the
majority party. The minority party would use it offensively as an open opportunity
“for a (possible) permanent transformation of their status” while the majority party can
use constitutional hardball defensively when they “see the possibility that they may be
permanently displaced from power” (Tushnet, 2004, p. 528-529). Throughout
Tushnet’s (2004) article about constitutional hardball, he never mentions recess
appointments as a means for how the President plays constitutional hardball with the
Senate, Recess appointments fit perfectly into this category of tactics. The
requirements that must be met for constitutional hardball is that the tool being used by
the President or Congress must be a tool granted to them by the Constitution, and that
it is important for which ever branch of government that is using the tool to win. When
a recess appointment is used by a President, he is using a tool granted to him by the
Constitution in order to put a person of his choosing into a position that would
normally take Senate approval.
Kenneth R. Mayer (2000) discusses executive orders and how presidents have used too much unilateral power in the past, despite the constraints on the executive branch put in place by separation of powers. According to Mayer (2000), “An executive order is a presidential directive that requires or authorizes some action within the executive branch. Presidents have used executive orders to establish policy, reorganize executive branch agencies, alter administrative and regulatory processes, affect how legislation is interpreted and implemented, and take whatever action is permitted within the boundaries of their constitutional or statutory authority” (p. 445). Executive orders provide the President with a great deal of authority to act alone in changing governmental orders without any approval from other branches of government. Although the recess appointments clause does not allow the President any more power than bypassing the Senate’s approval of nominations into vacant positions when the Senate is in a recess, it is another tool that can be observed as the President using unilateral power to make decisions without the other branches of government.

Louis Fisher argues for the necessity of separation of powers among the branches of government in the United States. Fisher (2007) explains why separation of powers is so important. The first argument is that this is how the framers wanted it because they were so fearful of the executive branch (Fisher, 2007, p. 6). Being fearful of the executive branch was the purpose in giving each branch its own powers so that each branch could use its own powers against its fellow branches (Fisher, 2007). Without powers being separated it is likely that the United States would not have
stayed a free nation because tyranny and absolute control is easier to achieve. When the founders were drafting the Constitution, they were familiar with the trouble that can happen when one person is able to control everything, which is why they took extraordinary steps to prevent the past from reoccurring. There is another argument made that separating the powers among different branches of government is better to “preserve liberties” (Fisher, 2007, p. 7). When government is disagreeing in a way that is productive, then liberties can be preserved. It is important to note that separation of powers can also “destroy liberties”, such as when the branches of government are unwilling to work together (Fisher, 2007, p. 7). Disagreement and controversy can be meaningful and beneficial to the citizens that are effected by the outcomes as long as the government officials are keeping the people in mind.

Separation of powers can cause stalemates within the government, but the intentions behind it are valid and valuable to keep the United States a free democratic nation.

Governmental efficiency is also considered when examining separation of powers. Louis Fisher (1971) mentions a quote from Supreme Court Chief Justice Warren in the United States v. Brown (1965) case discussing the problem with separation of powers when it comes to efficiency. According to Fisher (1971), “Chief Justice Warren declared that a separation of powers was ‘obviously not instituted with the idea that it would promote governmental efficiency’” (p. 113-114). Fisher (1971) goes on to quote another Supreme Court justice from the 1926 Myers case where Justice Brandeis states, “‘The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary
power”” (p. 114). Despite Fisher (1971) including these quotes that claim that separation of power is inefficient, he actually disagrees with this and believes that “efficiency was a fundamental goal” for the Framers (p. 115). Louis Fisher (1971) goes onto explain how the Framers looked at the government in the early years prior to the Constitution and tried to come up with as many solutions as possible to make it run smoothly without fear of someone getting too much control. Ultimately, Fisher believes that separation of powers is not only necessary, but also as efficient as it can be.

Some of the conflict that arises amongst the branches of government is due to how they interpret the Constitution. Interpreting the Constitution happens individually by the people that make up the sectors of the government, but when these individuals are put together with similar thoughts an outcome happens. Some individuals interpret the Constitution very conservatively and try to think about it in the way that the framers wrote it, with the meaning that the framers might have meant. Others read what the Constitution says more liberally. The more liberal view of the Constitution allows it to be interpreted based on what is going on in the world today. The conservative interpretation of the Constitution is very black and white compared to the liberal interpretation. Despite there being a particularly branch made for interpreting the Constitution, everyone within the government has their own views and opinions on what the sacred document means and stands for. There is no right or wrong interpretation, but the different interpretations are the stem of some conflicts among the branches of government.
Although separation of powers is meant to be effective and efficient, it does not always run this way. As mentioned before, there can be a lot of disagreement among the people within a particular branch, as well as disagreement among branches. When disagreements happen, the American people expect the government to resolve their issues quickly, so that the American people do not have to suffer. This is not always the case. There can be disagreements that occur throughout entire terms of certain government officials. When these disagreements continue to go on, the tools that the Constitution gives each branch of government individually are used. These tools allow that particular government to win whatever battle they are taking on against the other branches. When these disagreements are happening and the tools are being used, it could be argued that government is working its best. Disagreements show that government is trying to find the best possible solution to a hole that they need filled, and that they are not simply settling for whatever or whomever is offered to them first.

Separation of powers is important to this research because I look at recess appointments given by the President. When recess appointments are used, separation of powers can be disrupted. Because the President is the only person in power that can use recess appointments, it is a tool of unilateral action. Separation of powers was meant to prevent one person of government using their power without consent from the other branches of government; therefore, recess appointments work against one of the main goals in the Constitution, which is separation of powers. Also, when a President uses a recess appointment to place a nominee into a vacant position without
the Senate’s consent, it may seem like the President is being too powerful. Although the recess appointment clause was written with good intentions for when Congress was on longer breaks, recent presidents have been able to twist this clause in a way that gives them more power than they should have in times when they should not have it. There appears to be many negative consequences for separation of powers when recess appointments are used, but a positive impact of recess appointments is that it gets someone into a vacant position when it seems like there has been a great deal of stalling done by the Senate. This tool used by the President is not always used as a maneuver to bypass a Senate that has been known to put up roadblocks, but it can be.

My research question is: **Do presidential recess appointments interfere with separation of powers in the federal government?** When a President uses a recess appointment to get around the Senate’s approval, a President can receive a backlash and disapproval. This backlash and disapproval usually comes directly from the members of the Senate that the President boycotted, but it can also come from the media and the public. In the next chapter, I will further explain what a recess appointment is, when it is used, and some of the reasons why a President would use a recess appointment.

To answer my research question, I first introduce recess appointments. I explain what recess appointments are, and why a President uses them. After introducing recess appointments, I look at the use of recess appointments that were discussed in the news from President Ronald Reagan to President Barack Obama. Next, I look specifically at President Barack Obama and the time it took for the
Senate’s Health, Education, Labor and Pensions Committee to move forward on nominations offered by President Obama. Then, I introduce the Legal Services Corporation (LSC), and the controversy that has continued to surround this organization. The next chapter will be a further discussion about President Obama’s use of recess appointments. Finally, there will be a conclusion about what the data and this research means.
Chapter 2: Recess Appointments

A recess appointment is a tool used by a President when the Senate is in recess to appoint someone into a vacant position without needing the Senate’s confirmation. The person whom is appointed to fill a vacancy is in that position until the next Congress is put into office. There has been a great amount of debate surrounding the use of the recess appointments. Some of this debate is about how long the Senate needs to be in recess before the President can use a recess appointment. Another issue brought up by the Senate about recess appointments is that the President is doing the Senate’s job by placing someone in a position without the Senate’s approval, and the Senate is not fond of this. Although there is quite a bit of tension between government officials about recess appointments, they are still a tool being used by the President today.

An important note about recess appointments is that there are two possible types of recess appointments that can be used by a president. The first type is an intrasession recess appointment, which tend to be longer than the other type of recess appointment possible (Rappaport, 2005). According to Rappaport (2005), “when a recess appointment is made during an intrasession recess, the appointment extends through the remainder of the existing session, through the intersession recess, and then through the next full session of Congress” (p. 1567-1568). The second type of recess appointment available is an intersession appointment, which “extends through the remainder of that recess and then through the next session of Congress” (Rappaport, 2005, p. 1567). The reason that there are two different types of recess appointments is
because there are two ways that the Senate may take a recess. An intrasession recess happens when the Senate takes a recess in the middle of its term while an intersession recess is the recess between an old Senate going out of office and a new Senate coming into office. This means that when an intrasession recess appointment is made the person that was put into the vacant office is not only there for the remaining time of the current Congress, but also the Congress that is elected for the next term (Rappaport, 2005). This is why an intrasession recess can be significantly longer than an intersession recess appointment. Because there are two different types of recess appointments that can be used, the messiness of recess appointments is stretched further and continues to be about the person interpreting the Constitution at a particular time.

In the past, there have been many times when a President has used a recess appointment to fill a vacant position in a government institution. This tactic used by the President has been on the rise in more recent years. President Reagan made 240 recess appointments, President George H. W. Bush made 77 recess appointments, President Bill Clinton made 140 recess appointments, and President George W. Bush made 110 recess appointments (Corley, 2006). (George H. W. Bush was only in office for one term, which is why his number of recess appointments is lower than the other presidents surrounding his time in office.) There has been some debate about whether or not this move was constitutional, but once the Constitution is looked at for guidance, it is apparent that recess appointments are a power of the President. In Article II, Section 2, Clause 3 of the Constitution, the recess appointment clause reads,
“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 this clause, it is clear that the President has the power to fill a void in the offices that he oversees, but there is a great amount of vagueness in the clause, as well.

The vagueness found in the recent appointment clause of the Constitution is where most of the debate surrounding the use of recess appointments stem from. In the clause, the amount of time the Senate must be in recess before a President can fill a vacancy without Senate’s approval is not specified. The recess appointment clause also fails to determine if the vacancy must occur while the Senate is in recess, or if the President is able to fill a vacancy that has been open for a long period of time while the Senate is in recess. Michael B. Rappaport (2005) claims, “Most readers of the Clause assume that the recess appointment must be made during the recess when the vacancy arose, but careful examination of the Clause reveals that its language does not say specifically when the appointment must be made” (p. 1538). Because of the open-endedness of the clause, it is dependent upon how the reader at that time interprets what it says and how it can be used. The reason the President may fill a spot that has been opened for an extended period of time while the Senate is at recess is because the President may not feel like the Senate is working fast enough to fill open positions or because the Senate has rejected a person that the President has sent forward to fill a vacancy. When this happens, separation of powers is at work and each side of the government can be looked at as using its own tools to get what they want.
There have been a great amount of controversy surrounding the time needed in a recess for the President to use a recess appointment. After years of debate, an answer has recently been given by the Supreme Court and a precedent has been set. In a recent Supreme Court case, National Labor Relations Board v. Noel Canning, the Supreme Court looked at President Obama’s use of a recess appointment to the National Labor Relations Board in January of 2012 (Supreme Court of the United States, 2013). This case allowed the Court to rule on the amount of time a recess must be before a President can use a recess appointment because President Obama had tried to fill the vacancies on the National Labor Relations Board after a three day recess (Supreme Court of the United States, 2013). The Supreme Court found this unconstitutional and decided that a Senate recess must be ten days or longer before a President can try to use a recess appointment to fill a vacant position. This ruling finally gave some clarity to the length of time a recess must take place before a President can use a tool granted to him by the Constitution. This is just one piece of the puzzle that has been figured out regarding recess appointments.

Recess appointments look like a tool of unilateral power used by the President. Because recess appointments are approved by only the President, it can look like separation of powers is being disrupted and the President is using too much of his power given to him by the Constitution. Authors; Black, Lynch, Madonna, and Owens (2011), claim that this is not necessarily the case. These authors believe that two conditions must exist before Congress should intervene with the President’s unilateral actions (Black et al., 2011). The first condition is “the president’s use of a unilateral
power must create high political costs for members of Congress” (Black et al., 2011, p. 572). The second condition is “these costs must be felt by a sufficiently large number of members to reach a threshold necessary to attain collective action” (Black et al., 2011, p. 572). These authors believe that there have been many instances, in recent years, where these two conditions have existed when the President has used a recess appointment to fill a vacant position without the Senate’s approval (Black et al., 2011). The case that Black et al. (2011) focused on specifically was in 2007 when “President George W. Bush indicated that he planned to fill vacancies on several key independent boards and commissions by using his presidential recess appointment power” (p. 571). After President George W. Bush filled a variety of positions by using recess appointments, Senate Democrats decided to stop this from continuing by keeping the Senate “in perpetual recess” (Black et al., 2011, p. 571). This shows that although when a President uses recess appointments to get what they want, as far as having hand-picked people in governmental offices, Congress, specifically the Senate, is able to use its own tactics to stop the President from bypassing separation of powers.

A part of the use of recess appointments that has not caused as much controversy is the use of the clause by presidents from both parties. According to Patrick Hein (2008), “In fact, Members of Congress from both parties have accused the President of abusing his power by using the Recess Appointments Clause, despite its considerable use by both Democratic and Republican Presidents” (p. 237). Hein (2008) gives the example of President George Washington receiving backlash from Congress for using a recess appointment for a Supreme Court judge in 1795 while
more recently President Clinton received criticism from the Senate for a recess appointment used to appoint an ambassador. Hein (2008) also states “interpretation of the Clause does not divide along party line. It has been used extensively by both Democratic and Republican Presidents and been the basis of extensive criticism by both Democratic and Republican Members of Congress” (p. 238). The consistency of use by presidents from both political parties show that it is a tool that all presidents want to utilize to accomplish their goals in office.

There has been some information gaps filled regarding recess appointments in recent years, but there are still some holes left surrounding the usage of them. One of the missing pieces surrounding the use of recess appointments is dealing with vacancies that happened before the Senate went into recess. There has been a great amount of research and argument done dealing with this, but there has yet to be a clear cut answer given. As with most governmental conflicts pertaining to the Constitution, the recess appointment clause has gained some clarity in today’s world because of the Supreme Court ruling, but there is still some ambiguity that needs clarified about recess appointments before the debate surrounding them among the branches of government ends. It is also not known for sure why presidents use recess appointments in the various ways that they do, but I have a supposed hypothesis for this, which will be discussed next.

My thoughts on the use of recess appointments is that they are a president’s way of using a tool granted to him by the Constitution to get what he wants done, especially when the Senate is being difficult and slow to get vacancies filled. I believe
that the use of recess appointments is simply a way for the President to maneuver around qualities of separation of powers. As I will explain later, the Senate seems to work at its own pace to approve appointees nominated to fill vacant positions by the President. This leaves time for an enormous amount of work to pile up, as well as things not getting done in governmental organizations that need to get done. When this happens, it seems like the President is using his own right to fill these positions when he can because it is delaying governmental processes. The President can also use his recess appointment power to put a nominee in a position that he feels fit when the Senate does not agree. This is not an ideal usage of power, but in some cases it is a must because the position has been empty for some long due to Senate’s unwillingness to confirm a nominee. I argue that the President is using a tool at his disposal when using recess appointments to fill positions because the Senate is not doing their job at an efficient pace.

Next, I will look at the use of recess appointments from President Ronald Reagan to President Barack Obama. For each President I have made a graph to represent which Senate Committee was bypassed the most with the use of recess appointments. After looking at the use of recess appointments by each President from Reagan to Obama, I look more closely into Obama’s Administration.
Chapter 3: Historical Analysis of Recess Appointments

Recess appointments have been used by several presidents throughout the history of the United States. For this analysis, I look specifically at presidents, starting with Ronald Reagan to Barack Obama, and their use of recess appointments throughout their years in the presidential office. To find out which Senate Committee was bypassed the most, I did a LexisNexis search using the term “recess appointments” and limited the time frame for each President’s time in office. From the results, I took note of the name(s), and the position(s) when applicable, of the individual(s) that each President put into office via a recess appointment. Because recess appointments are often left out of the news, the results varied by President. Once I knew the name(s) of individual(s) I was able to find out which position(s) they were appointed to. Next, I found out which Senate Committee each position fell into and grouped all of the positions that were in the same Senate Committee together. At this point, I was able to make a graph that represented the Senate Committees bypassed by each President. Each graph varies slightly based on the number of Senate Committees the President bypassed. Despite there being differences among the Senate Committees represented, the Health, Education, Labor and Pensions Committee is color-coded as gold because it is the one that is observed the most frequently. Also, some of the graphs have an “unspecified” category because the newspaper articles were not explicit in saying the names or positions of the individuals being put into office by a recess appointment.
For President Ronald Reagan, only sixty-three (63) of his two hundred and thirty-two (632) recess appointments were referenced in newspaper articles throughout his time as President from January 20, 1981 to January 20, 1989. Of these sixty-three (63) recess appointments made by President Reagan, many of them were mentioned without names of the appointees or the positions in which the appointee was being placed in (Figure 1). Of the nominations that were mentioned with names or positions, the Health, Education, Labor and Pensions Senate Committee was bypassed the most President Reagan (Figure 1). There were other Senate Committees that were bypassed, but not with the same frequency as the Health, Education, Labor and Pensions Committee (Figure 1).

See Figure 1

Next, I looked at President George H. W. Bush’s use of recess appointments during his term from January 20, 1989 to January 20, 1993. Forty-nine (49) of President George H. W. Bush’s seventy-eight (78) recess appointments were discussed throughout newspaper articles yielded by a LexisNexis search. There were only five Senate Committees bypassed by President George Bush Sr., but again, the most frequently Senate Committee bypassed by the Health, Education, Labor and Pensions Committee (Figure 2). Unlike President Reagan, all of the recess appointments made by President Bush Sr. in the press had names or positions mentioned as well. Because of this, the “unspecified” category was gotten rid in the graph representing President George H. W. Bush’s known recess appointments (Figure 2).

See Figure 2
President Bill Clinton’s recess appointments made during January 20, 1993 to January 20, 2001 were examined next. Most of President Clinton’s recess appointments were not mentioned by the news. Only twenty-three (23) of President Clinton’s one hundred and thirty-nine (139) recess appointments were mentioned by the press. Of these twenty-three (23) mentioned, six of them were to the Health, Education, Labor and Pensions Committee, which was tied for the most bypassed Committee with the Foreign Relations Committee (Figure 3). There were five other Senate Committees that were bypassed by President Clinton, according to the news (Figure 3). Like President George H. W. Bush, when President Clinton’s recess appointments were acknowledged in the news, there was at least a name or position to go along with the recognition of the appointment; therefore, there an “unspecified” category was not needed (Figure 3).

See Figure 3

For President George W. Bush’s time in office, January 20, 2001 to January 20, 2009, he made one hundred and seventy-one (171) recess appointments. Of these 171 recess appointments, sixty-four (64) of them were written about in news articles. President George W. Bush’s recess appointments were more spread out across Senate Committees than previous presidents (Figure 4). There was a need for an “unspecified” category for President Bush Jr. because there were many articles that mentioned the use of recess appointments without being specific as to who was being appointed and to which position (Figure 4). The Health, Education, Labor and Pensions Committee was the second most bypassed committee by the President
George W. Bush (Figure 4). The Senate’s Foreign Relations Committee was the most bypassed Senate Committee for President Bush Jr. by one recess appointment (Figure 4).

**See Figure 4**

President Barack Obama’s recess appointment data was more difficult to find because he was still in office as this project was taking place, and due to the silence that seems to occur about recess appointments. As of May 2015 (Hogue, 2015), President Obama had made thirty-two (32) recess appointments. These thirty-two (32) recess appointments are represented in Figure 5. President Obama had bypassed nine Senate Committees, with the Health, Education, Labor and Pensions Committee once again being in the lead for bypassing by the President (Figure 5). The Health, Education, Labor and Pensions Committee was the clear winner with eleven recess appointments being made to positions within this committee (Figure 5). The two closest committees were the Finance Committee and the Foreign Relations Committee, with five recess appointments to each of these committees being made to bypass the committees (Figure 5).

**See Figure 5**

By looking at these graphs, it is clear that each President used recess appointments in their own way. Presidents from both political parties are guilty of using recess appointments to insert individuals into specific positions. Although all presidents use them, none have used them to the extreme. Another observation that can be made by looking at these graphs is that almost all of the Presidents, from
Reagan to Obama, had conflicts with the Health, Education, Labor and Pensions Committee. The Health, Education, Labor and Pensions Committee was not the most bypassed committee for all Presidents, but when it was not bypassed the most, it was bypassed the second most. Although the sample size of recess appointments looked at in these graphs are small, they still show a depiction of what Senate Committees are giving the President problems when it comes to approving individual’s nominations into government offices. In the next chapter, I will look specifically at the Obama administration, and the nominations offered to the Health, Education, Labor and Pensions Committee by President Obama because this is the Senate Committee that continued to stand out across presidents from Reagan to Obama. In the Obama administration chapter, I will look at timelines to analyze the length of time nominations had to wait to go further in the nomination process after they entered the Health, Education, Labor and Pensions Committee.
Chapter 4: Obama Administration

For my analysis on the use of recess appointments by presidents, I chose to look at President Obama’s use of recess appointments during his time in office. After looking at recess appointments made from President Ronald Reagan to President Obama, there was a clear pattern showing the Health, Education, Labor and Pensions (HELP) Senate Committee being avoided. To get a better understanding of why this particular committee was being bypassed by recess appointments, I looked at all of the nominations to fill vacant positions offered to the Health, Education, Labor and Pensions (HELP) Committee by President Obama. When President Obama first got into office, the HELP Senate Committee approved nominations almost immediately. This is not surprising because Democrats had control of the Senate at this time with 57 senators being of the Democratic Party, 41 being from the Republican Party, and two senators registered as Independents. The quickness of the Health, Education, Labor and Pensions Committee came to an end in December of 2010. At this point, the HELP Senate Committee started returning nominations back to President Obama. The Senate Committee did this by citing “Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate” (U.S. Senate Committee on Health, Education, Labor & Pensions, 2017). According to the Rules of the Senate (2017) on Executive Session – Proceedings on Nominations, Senate Rule XXXI (31), paragraph 6 reads:

“Nominations neither confirmed nor rejected during the session at which they are made shall not be acted upon at any succeeding session without being again made to the Senate by the President; and if the Senate shall adjourn or take a
recess for more than thirty days, all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall be returned by the Secretary to the President, and shall not again be considered unless they shall again be made to the Senate by the President.”

This is the only Senate Rule used by the Senate to stall a nomination from moving forward in the confirmation process.

During President Obama’s eight year (2009-2017) run as President of the United States, there were three hundred and fourteen (314) nominations made to the Health, Education, Labor and Pensions Committee by the President. Of these three hundred and fourteen nominations, one hundred and sixty-eight (168) of these nominations were confirmed to full-time and part-time positions that the HELP Committee oversees. One hundred and sixteen (116) of the positions confirmed were full-time positions, and fifty-two (52) positions confirmed were part-time positions. There were sixty (60) full-time position nominations that were returned to the President by the committee citing “Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate” (U.S. Senate Committee on Health, Education, Labor & Pensions, 2017). There were only seven (7) part-time position nominations that were returned by the Senate to the President citing “Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate” (U.S. Senate Committee on Health, Education, Labor & Pensions, 2017). There were eleven (11) full-time position nominations that were withdrawn from Senate consideration by President Obama. There was only one (1) part-time position withdrawn by President Obama. Full-time and part-time positions
that are filled by presidential nominees and confirmed by the Senate are treated the same in the Senate confirmation process.

After looking at all of the nominations offered by President Obama to the Senate to fill vacant positions within government organizations or to put individuals within these organizations that he selected himself once he became president, I looked at the length of time it took for the Senate to make a move on these nominations (Figure 6). As I stated earlier, the time that it took for the Senate Health, Education, Labor and Pensions Committee within the first six months of President Obama’s presidency was much shorter than later in Obama’s presidency. The time it was taking for the HELP Committee to confirm President Obama’s first nominations was between two and four months. I chose to look at this period of time because it showed the quickness the Health, Education, Labor and Pensions Committee had the potential to have for the time President Obama was in office. In the middle of 2009, the time spent on some nominations began to slow down. The time it was taking for nominations to be confirmed by the Senate committee in the middle of 2009 was quickest at four months and slowest at approximately fourteen months. Two of the presidential nominations that were slowly confirmed by the Senate HELP Committee were nominations to the Legal Services Corporation. Julie A. Reskin and Gloria Valencia-Weber were nominated for the Legal Services Corporation in July of 2009, but they were not confirmed by the Senate until September of 2010. There was a prior Legal Services Corporation nomination that was nominated by President Obama in April of 2009 that was not confirmed until February of 2010. This nomination was an outlier in
the length of time it had to wait to be confirmed by the Health, Education, Labor and Pensions Committee in this time frame because the rest of the nominations did not slowdown or halt in progress until July of 2009. Not only was the confirmation of nominees slowing down, but nominations also began to start being returned to the President from the Senate committee at this time. From February 2010 to December 2010 only five of nineteen presidential nominations were confirmed by the Health, Education, Labor and Pensions Committee. I chose to look at the nominations in the Health, Education, Labor and Pensions Committee during this time period because this is the time when the confirmation process first began to slow in President Obama’s time in office. This time period also showed when the Health, Education, Labor and Pensions Committee first started returning nominations back to President Obama.

**See Figure 6**

The next set of presidential nomination delays by the Senate Health, Education, Labor and Pensions Committee started in January of 2011 (Figure 7). There were three nominations given to the Senate by the President that sat in the Senate waiting for confirmation anywhere from twelve months to 14 months before President Obama withdrew the nominations. These nominations sat in the Senate for the whole year of 2011 before anything further was done with them. Each of these nominations was to a different governmental organization. One was to the National Labor Relations Board, another was to the Corporation for National and Community Service, and the third nomination was to the National Mediation Board. Not only did the President withdraw three nominations after the nominations offered in 2011, but
nominations also sat longer before being sent back to the President or before being confirmed. The quickest nomination that went through the Health, Education, Labor and Pensions starting in 2011 was five months, and this nomination was offered to the Senate in October of 2011 and confirmed in March of 2012. Four nominations sat in the HELP Committee for fourteen months from January 2011 to March 2012 before being confirmed by the Senate into their positions. All four of these nominations were to the Corporation for National and Community Service. There was also a nomination to the Arts and Humanities organization that sat in the HELP Committee from March of 2011 to March of 2012. During this time there was one nomination to the Arts and Humanities organization that sat in the Health, Education, Labor and Pensions Committee from January 2011 to January 2013 before being sent back to the President citing Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate. In January of 2013, the Health, Education, Labor and Pensions Committee sent back four nominations offered by President Obama in December 2011, January 2012, March 2012 and April 2012. Two of these nominations were for the Arts and Humanities organization, and the other two nominations were to the National Labor Relations Board. The reasons that I looked at this time period of nominations offered to the Health, Education, Labor and Pensions Senate Committee by President Obama was because there were few nominations that were confirmed by the Senate. Also, the nominations were in the HELP Committee without progress for several months, despite the Committee’s ability to confirm or move forward on nominations within a couple months.
See Figure 7

An interesting aspect of presidential recess appointments is that they were rarely discussed by the press until recently. After doing several searches using the database LexisNexis, I was able to see just how hidden the use of presidential recess appointments used to be, and how much more they appear in the news today. Starting with the January 20, 1981, when President Ronald Reagan took office, to January 20, 1989 when President Reagan left office, the term “recess appointments” was only used in newspapers two hundred and forty-nine (249) times. During President George H. W. Bush’s years in office, January 20, 1989 to January 20, 1993, the term “recess appointments” only came back with one hundred and thirty-seven (137) hits in the LexisNexis database. When using the term “recess appointments” for searching LexisNexis for President Bill Clinton’s terms in office from January 20, 1993 to January 20, 2001, three hundred and eighty-seven (387) results came back. For President George W. Bush and President Barack Obama, there were much higher results than the previous three presidents. For President George W. Bush, the results in LexisNexis when searching the terms “recess appointments” during the time of January 20, 2001 to January 20, 2009 was 1,379 hits. President Barack Obama’s results were almost twice as much as President George W. Bush. When searching LexisNexis for the term “recess appointments” within the time frame of January 20, 2009 to January 20, 2017, there were 2,561 hits. Although the results grew with the search of each president, the articles found using the term “recess appointments” did not elaborate on the usage of presidential appointments.
After reviewing the thousands of newspaper articles that came back having the term “recess appointments” in them, there were not many articles that went into detail about the presidential recess appointment being used. Some of the discussion being had was about the possibility of a recess appointment being used by a President to fill a specific position. If the discussion was not about the possibility of a recess appointment being used, the conversation taking place was that a recess appointment had been made. The discussion being had about the recess appointment being made was typically brief. The newspaper article would sometimes mention the names of the individual(s) that got placed into a position by recess appointment, or it just stated that the President filled a vacant position via a recess appointment. Some of the comments were more controversial than others because either the Senate or the President are making comments at one another. When the President comments at the Senate through the press, he is stating that the Senate has slowed the nomination process too much, and now he feels that he needs to take matters into his own hand. In contrast to the President’s statements, the Senate’s comments typically mention how the President has no business using the recess appointment clause as a way of using unilateral power to bypass the Senate, despite how much time has passed since the nomination was given to the Senate. Earlier newspaper articles in the results were more likely to quote the Presidents and Senates when they were disagreeing with one another about a nomination.

There was not much consistency in regard to when newspaper articles would mention recess appointments, and the conflict happening with the President and the
Senate surrounding certain nominations. Most of the results from LexisNexis were about the same recess appointments, it was just found in a different newspaper. The two most common newspapers that were found in the results were: The New York Times and The Washington Post. Most of the results that came back were from these two news outlets. There were also smaller newspapers and magazines that were found in the results, such as, the St. Louis Post-Dispatch, the American Banker, the Atlanta Journal and Constitution, and the International Herald Tribune. There were far less results that came from these other news sources that were just mentioned, but it is interesting that they were even talking about recess appointments to begin with. It is interesting because the big and famous news sources were not always covering recess appointments, so it seems particularly interesting that a small news outlet would pick up an article about recess appointments at all.

By looking at President Obama’s nominations to the Health, Education, Labor and Pensions Committee, I was able to make timelines for how long certain nominations sat in the Senate Committee before a second step was taken (Figure 6 and Figure 7). I was also able to see how many nominations offered by President Obama were confirmed, withdrawn or sent back to the President by the Senate. When doing a LexisNexis search of articles that have the term “recess appointments” in them, I looked at articles throughout the presidencies of Ronald Reagan to Barack Obama. Although the term “recess appointments” was found in many more recent articles from the last two presidencies of George W. Bush and Barack Obama, there was not a great deal of discussion about recess appointments other than the term itself. Next, I will
discuss what President Barack Obama’s nominations in the Health, Education, Labor and Pensions Committee shows us about the use of recess appointments, and I will discuss potential reasons for why recess appointments are not further examined by the press.

The Legal Services Corporation (LSC) will be introduced in the next chapter. This organization has suffered numerous heartaches and a great deal of turmoil from the federal government during its short existence. This organization receives its board members from presidential nominations that are then confirmed by the Health, Education, Labor and Pensions Committee. The Legal Services Corporation did not suffer much during President Obama’s time in office, but the LSC has had a history of having its nominations wait for long periods of time in the Senate Committee before their nominations progressed. This has resulted in numerous recess appointments to the Legal Services Corporation made by Presidents.
Chapter 5: Legal Services Corporation

The Legal Services Corporation (LSC) has a long history of being a controversial organization ran by the United States government. The Legal Services Corporation’s purpose is “to promote equal access to justice in our Nation and to provide high quality civil legal assistance to low-income persons” (Legal Services Corporation, 2017). The LSC is ran by an eleven-member board, where board members are appointed by the President and confirmed by a Senate vote (Legal Services Corporation, 2017). The board is meant to be bipartisan; therefore, there cannot be more than six board members from the same political party on the board at a time (Legal Services Corporation, 2017). The stance taken by the Legal Services Corporation is that everyone deserves a fair chance in the judicial system. Some people feel that money has an effect on how well an individual is defended in court because money can buy the best attorneys around. The Legal Services Corporation feels that every individual should be given a fair chance in a trial, even if they cannot afford the most notable attorneys.

The Legal Services Corporation is a fairly new governmental organization. The LSC was established in 1974, and it quickly started getting criticism from the conservative side of government (Legal Services Corporation, 2017). Although the Legal Services Corporation is a new organization, the need and plans for “civil legal services to the poor” is not a new concept (Givel, 1998, p. 369). The need for legal services has continued to grow since 1876 when “the first legal aid program” began (Givel, 1998, p. 369). The growth of legal services aid was slow at first, but then there
was a sudden change in the climate around the United States. When the War on Drugs first started, “legal services for the poor grew rapidly” (Quigley, 1998, p. 245). To get the Legal Services Corporation started was quite a battle, and the proposal went through numerous phases before it was finally agreed upon by President Richard Nixon and Congress (George, 1976). The Legal Services Corporation Act that was finally passed by the government in 1974 focused on “access, professionalism, and freedom from political interference” (George, 1976, p. 700). The access aspect of the act was meant to give everyone in the United States the opportunity to have legal aid, if they were ever to need it, despite their income. The definition provided by the Act of an eligible client is “any person financially unable to afford legal assistance” (George, 1976, p. 700). Not only did the persons responsible for the Legal Services Corporation Act want everyone in the country to have access to legal services, they also wanted the quality of the attorneys giving the individuals legal aid to be professional and worthwhile. To ensure that the quality of the attorneys being employed by the Legal Services Corporation are effective, the Act “states that legal services attorneys are to provide the most effective representation for their clients, consistent with the Code of Professional Responsibility” (George, 1976, p. 701). The Act goes on to say that the professionals working for the corporation must provide “the highest quality of service and professional standards, the preservation of attorney-client relationships, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to [such] clients…” (George, 1976, p. 702). The third purpose of the Legal Services Corporation Act was to ensure “freedom
from political interference” in terms of legal aid and legal services (George, 1976, p. 700 & 703). The Act that made the Legal Services Corporation meant for the corporation to be as bipartisan and unaccompanied by the government as possible. The Act specifically states, “The Corporation may not lobby for or against any federal, state, or local legislation it has been formally requested to do so or unless its own activities are involved” (George, 1976, p. 706). Despite the efforts of the Act to keep the Legal Services Corporation fair and equal for the people that it was meant to help, the Act did not keep the LSC from receiving a great deal of backlash and criticism.

One of the Legal Services Corporation biggest critics in its early years was President Ronald Reagan. When Ronald Reagan was President, he attempted to get rid of the Legal Services Corporation. Ronald Reagan had despised the thought of government funded legal services prior to his time as President. When Reagan was governor of California, he “unsuccessfully attempted to prohibit legal services lawyers from bringing suits against federal, state, or local governments” (Quigley, 1998, p. 249). Governor Reagan continued to fight to end the legal services aid in California throughout his entire time as governor. To further his efforts to end legal services for those that need it, “In 1970, Governor Reagan vetoed the California OEO grant on the stated grounds that legal services funds had been diverted to an activist political agenda far-distant from the original legislative intent” (Quigley, 1998, p. 249). The OEO (Office of Economic Opportunity) was created by Congress in 1964 once President Lyndon B. Johnson launched a War on Poverty (Quigley, 1998). This program “allocated over twenty-five million dollars to over 150 legal services
programs under the general authority for community action programs” (Quigley, 1998, p. 245). The Office of Economic Opportunity was the organization that helped to start the conversation about the start of the Legal Services Corporation.

Despite President Reagan’s efforts to end the Legal Services Corporation shortly after it started, the LSC is still operating today. Although President Reagan was unable to destroy the Legal Services Corporation during his time as president, he was able to cut their budget tremendously. Cramton (1981) states, “President Reagan’s budget submission for 1982 alerted the nation that his Administration planned to abolish the national legal services program” (p. 521). President Reagan wanted to take the money that was used to fund the Legal Services Corporation and give it to states in order for states to give legal services to its people. “On March 10, 1981, President Reagan recommended to Congress that the LSC not be reauthorized nor funded for fiscal year 1982. He proposed that legal services funding come from block grants made to the states, the rationale being that such grants would allow the states to set their own priorities for the use of revenue, control resources, decrease overhead, and improve coordination among different social services programs” (Turner, 1981, p. 725). Although the Legal Services Corporation was able to stay intact, it has still suffered issues surrounding approval of its board members, even prior to Reagan. Quigley (1998) notes that board members of the Legal Services Corporation suffered backlash as early as President Carter’s time in office when “there was controversy over the composition of the board and the Senate blocked confirmation of President Carter’s appointees in the late 1970’s” (p. 255). Issues surrounding the appointments
of board members to the Legal Services Corporation has continued since President Carter’s time in office and could still be seen as recently as President Obama’s nominations to the board.

After the Legal Services Corporation survived the Reagan era, it again suffered in 1996. According to William P. Quigley (1998), “In 1996 Congress gave in to long-time critics of the Legal Services Corporation and all but eliminated the ability of lawyers for poor people to use the law as an instrument for reform” (p. 241). Not only did Congress suppress the way in which people were able to use the legal aid offered by the government, but Congress also diminished the number of lawyers that were available (Quigley, 1998). These changes were in the works since the Legal Services Corporation began, and then finally, “In 1996, Congress chose to fund only legal aid, refusing to also fund law reform” (Quigley, 1998, p. 242). Although lawyers were still able to support people who needed them in the cases being brought against them, they were no longer able to try to cause legislative change to help the less fortunate individuals in the United States.

The biggest controversy surrounding the Legal Services Corporation is who benefits from a program like this one, and how it does not appear to be an organization that is actually bipartisan. This is pointed out by Cramton (1981) when he claims, “Two recent reports, one prepared by the Heritage Foundation and another by one of Mr. Reagan’s transition teams, apparently persuaded the new Administration that this national program (the Legal Services Corporation) is one of the ‘principal federal instrumentalities by which the personnel and institutions of the ideological ‘left’ in
American life have been financed” (p. 522). The conservatives that feel like the Legal Services Corporation needs to be ended feel that the organization supports more liberal values than conservative values. It could be argued that only someone from the political left would support an organization such as the legal services corporation. Not only would the political left be the only ones that support such an organization, but they may also be the individuals that fund a large part of the organization. The fact that some of the cases that are taken on by the Legal Services Corporation are free or at as low of cost as possible, says a lot about the kinds of individuals that are taking them on. Conservative values are against hand-outs, especially when it comes to using the justice system, nor do conservatives want to create a welfare state, which some can look at the Legal Services Corporation as an organization that creates these issues.

The Legal Services Corporation has overcome a great deal of controversy and has been able to stay intact despite numerous efforts from the federal government to eliminate it. This struggle has not ended yet, especially with a recently conservative President recently being elected. As recently as March 16, 2017, there has been discussion surrounding the recent budget that President Donald Trump has proposed for 2018 (Weiss, 2017). The recent budget proposal “eliminates funding for the Legal Services Corp.” (Weiss, 2017, para. 1). This shows that the battle to keep the Legal Services Corporation is not over, and that its fate is still undecided. From the Legal Services Corporation’s beginning, the approval process of its board members has been slow and stalled. This has caused presidents from Ronald Reagan to Barack Obama to have to use their recess appointment power to appoint members to the Legal
Services board when the Senate has failed to approve the nominations given by the President or simply because a vacancy was present. The Senate committee that is responsible for approving nominations by the President to the Legal Services Corporation is the Health, Education, Labor and Pensions (HELP) Committee (U.S. Senate Committee on Health, Education, Labor & Pensions, 2017).

Next, I will look further at President Obama’s Administration by presenting graphs that represent the results of the nominations President Obama made to the Health, Education, Labor and Pensions Committee. There are two types of positions that President Obama nominated individuals to, full-time positions and part-time positions. Each of these nominations could have been confirmed, returned back to the President, or withdrawn by the President. I will look specifically at what happened in the Health, Education, Labor and Pensions Senate Committee to President Obama’s nominations during his time in office.
Chapter 6: Discussion

After thoroughly examining President Obama’s time in office and the trouble he had getting nominations past the Health, Education, Labor and Pensions (HELP) Committee, it was clear that separation of powers was at work between these two branches of government. As I mentioned in the last chapter, during President Obama’s time in office, there were three hundred and fourteen (314) nominations offered to the HELP Committee. These nominations were to a variety of positions that the Health, Education, Labor and Pensions Committee has control over. Most of the positions were to full-time positions, but there were numerous part-time nominations made, as well. The difference between full-time and part-time positions is part-time positions are board positions that oversee certain organizations. Full-time positions are positions within the government that require the same amount of time and dedication that a full-time job would. In this section, I will look specifically at President Obama’s nominations and what the end result was for these nominations.

First, I will look at President Obama’s full-time positions that were confirmed by the Health, Education, Labor and Pensions Committee (Figure 8). During President Obama’s time in office, there were one hundred and sixteen (116) full-time positions confirmed by the HELP Committee (Figure 8). These confirmed nominations were into several different organizations that the HELP Committee oversees. There were fifty-two (52) part-time nominations offered by President Obama that were confirmed by the Health, Education, Labor and Pensions Committee (Figure 9). These confirmed nominations went to seven different organizations that have part-time board members
(Figure 9). There were many organizations that did not have confirmed nominations
go to them to fill positions (Figure 9). These graphs show that out of 314 nominations
offered to the HELP Committee, one hundred and sixty-eight (168) of these
nominations were confirmed, either to a full-time positions or a part-time position
(Figure 8 and Figure 9).

**See Figure 8 and Figure 9**

Next, I will look at the nominations that the Health, Education, Labor and
Pensions Committee returned back to President Obama (Figure 10). There were sixty
(60) full- time positons returned to President Obama by the HELP Committee during
President Obama’s time in office (Figure 10). The returned nominations were also
from a variety of organizations (Figure 10). The organization that had the most
returned nominations was the National Foundation on the Arts and the Humanities
(Figure 10). For returned part-time positions, there were only seven (7) (Figure 11).
Out of all the part-time organizations that the Health, Education, Labor and Pensions
Committee oversees, only three organizations were affected by these returned
positions (Figure 11). The National Council on Disability had four (4) nominations
returned back to President Obama (Figure 11). The United States Institute of Peace
had two (2) nominations returned while the National Council on the Arts had one (1)
nomination sent back to President Obama (Figure 11). The Health, Education, Labor
and Pensions Committee returned each of these positions back to President Obama
citing Senate Rule XXXI (31), paragraph 6. Out of 314 full-time and part-time
nominations offered to the HELP Committee by President Obama, sixty-seven (67) of the nominations were returned to the President (Figure 10 and Figure 11).

See Figure 10 and Figure 11

The third option that can happen to a nomination offered to a Senate Committee by the President is that the President can withdraw the nomination from the Senate Committee. President Obama withdrew eleven (11) nominations from full-time positions during his time as President (Figure 12). There were only five organizations affected by the withdrawal of nominations by President Obama (Figure 12). The most affected organization was the National Labor Relations Board because President Obama withdrew six (6) nominations from this organization (Figure 12). There is not a graph representing part-time nominations that were withdrawn because there was only one (1). This part-time nomination was withdrawn by President Obama from the Corporation for National and Community Service. Out of the 314 nominations offered by President Obama to the HELP Committee only seven (7) of the nominations were withdrawn by President Obama.

See Figure 12

There can be a variety of reasons for why a President would withdraw one of his own nominations from a Senate Committee. The Senate Committee could be taking too long to confirm or return the nominations; therefore, the President takes it into his own hands to withdraw the nomination. The President may have also found someone more qualified for the positions, so he decided to withdraw the previous person he nominated since this individual has yet to be confirmed. It is hard to
pinpoint exactly why a President would remove a person that they nominated from being confirmed by the Senate Committee. These are just two reasons that seemed to be the most probable.

Although most of the nominations President Obama sent to Health, Education, Labor and Pensions Committee were confirmed, there were still numerous nominations that were returned back to the President from the HELP Committee. It is important to note that just because a nomination was confirmed, it does not mean those confirmations happened in a timely fashion. This could be why President Obama felt it necessary to use recess appointments to fill some of the vacancies that occurred during his time as President. President Obama could have easily been getting frustrated with the Senate Health, Education, Labor and Pensions Committee for taking their time confirming his nominations. He could have also been getting frustrated because the HELP Committee was returning so many of the nominations he had offered. As President, President Obama, like presidents before him, was committed to getting things done while he was in office. If the Senate was not willing to comply with President Obama’s wishes of getting work done, then he might have felt it necessary to use tools that presidents before him used to get what he wanted done. This is why President Obama’s use of recess appointments could have been justified, similar to president before him.

In the next chapter, I will conclude my paper. I will look at all of the elements I have examined so far to answer my initial research question. I also discuss how all of
the elements I have discussed so far link back to one another to answer my research question.
Conclusion

In this thesis, I have discussed the importance of separation of powers within the branches of the United States government. I have used separation of powers as an introduction to the use of recess appointments by Presidents throughout the United States’ history. I have also look at the use of recess appointments from President Ronald Reagan to President Barack Obama. By looking at the each of these presidents and their use of recess appointments, I was able to identify the Health, Education, Labor and Pensions (HELP) Senate Committee as a committee that is bypassed by recess appointments more frequently than other committees. This was true from president to president. After looking at this group of presidents together, I looked more closely at President Obama and the Health, Education, Labor and Pensions (HELP) Committee during his time in office to see what was going on between these two powers. I spent time discussing the how when President Obama first got into office, the nominations that he offered to the Senate HELP Committee were confirmed very quickly, but as President Obama’s time in office got longer, nominations were taking much longer to get confirmed. Not only was it taking longer for the HELP Committee to confirm nominations, they also began to disagree with President Obama’s choices. This resulted in the HELP Committee returning many of the nominations President Obama offered. After discussing the many aspects of President Obama’s time in office and dealing with the troubled Health, Education, Labor and Pensions Committee, I brought up the Legal Services Corporation (LSC), and how this particular organization has had a great deal of controversy surrounding it since it began. The controversy that
has continued to surround the Legal Services Corporation has led to many Presidents using recess appointments to bypass the Health, Education, Labor and Pensions Committee to get individuals they want into onto the LSC Board.

I have used all of these sections to answer my research question: **Do presidential recess appointments interfere with separation of powers in the federal government?** The case study of the Senate Health, Education, Labor and Pensions Committee and President Obama shows separation of powers being at work. In this case, the conflicts that occur about nominations from the President to the Committee shows a healthy relationship happening. It is essential to note that some conflict, especially between branches of government, can be beneficial. It allows each side to try to find a better answer than what they were offered before, and it shows that each branch cares about the organizations they are appointing and confirming individuals to.

Throughout history, when a President chose to use a recess appointment, he was not using a unilateral power without reason. The President was using the recess appointment to respond Congress’s push back. There were times when a recess appointment was used on a returned nomination. There were also times when a recess appointment was used because the President was tired of waiting on the Congress to confirm a nomination. Each time the President used a recess appointment, he was using a tool that was offered to him in the Constitution. When Congress returns a nomination or chooses to move slowly in moving the nomination forward, Congress is using its own tools to provide push back to the President. When a President uses a
recess appointment to put a nomination into an office without the Senate’s consent, the appointee is in office for a shorter amount of time than they would have been had the Senate confirmed them. Each recess appointment ends when a new Congress is put into office, which happens every two years. At the end of a recess appointment appointee’s time in office, if the President is the same, the President can choose to re-nominate this individual to be confirmed by the Senate. This is, again, a President’s way of standing firm and trying to push back against Congress’s initial push back. If the Congress is the same, or close to the same, at the time the recess appointment appointee is nominated to a position again, they can either choose to use the tactics they did before, or they can confirm the nomination. Despite the path chosen by either branch of government, they are using their tools offered to them in the Constitution to stand their ground against one another. This is a clear representation of separation of powers at work.

To answer my research question, I have discovered that recess appointments do not interfere with separation of powers. I have also found that they are a sign of healthy conflict happening between the President and Congress. There have been arguments made that when a recess appointment is made by the President, it seems like the executive branch is getting too strong and the President is taking a unilateral action that is not necessary. After doing my own research on the use of recess appointments, I have found that this is not true. As I have stated before, when a recess appointment is made by a President it is because the Senate has given him reason to do so. The reason could be because of the Senate’s slow confirmation timeframe or
because the Senate returned a qualified nomination back to the President, and the
President disagrees with the Senate’s choice.

The reason the public may not understand what a recess appointment is, or
why it is used is because they are rarely covered by the news. This means that when
recess appointments are covered, it is unlikely clear as to why the President is doing it.
In the news articles that I was able to find regarding recess appointments, they were
very brief. They did not elaborate on the minor conflicts happening between the
Senate and the President. There was not a great deal of context given; therefore, when
the public reads such an article, it may lead them to be dissatisfied with the choices
made by the President. Ultimately, the decision made by the President to make a
recess appointment is an informed decision that does not interfere with the separation
of powers that is meant to be found in the United States government.
Appendix

Figure 1

President Ronald Reagan's Recess Appointments
January 20, 1981 - January 20, 1989

Source: LexisNexis, retrieved September 2016, from
http://www.lexisnexis.com.proxy.library.ohiou.edu/hottopics/lnacademic/
President George H. W. Bush's Recess Appointments
January 20, 1989 - January 20, 1993

Source: LexisNexis, retrieved September 2016, from
http://www.lexisnexis.com.proxy.library.ohiou.edu/hottopics/lnacademic/
Figure 3

President Bill Clinton's Recess Appointments
January 20, 1993 - January 20, 2001

Source: LexisNexis, retrieved September 2016, from
http://www.lexisnexis.com.proxy.library.ohiou.edu/hottopics/lnacademic/
Figure 4

President George W. Bush Recess Appointments
January 20, 2001 - January 20, 2009

Figure 5

President Barack Obama's Recess Appointments
January 20, 2009 - January 20, 2017

Source: LexisNexis, retrieved September 2016, from
http://www.lexisnexis.com.proxy.library.ohiou.edu/hottopics/lnacademic/
Figure 7

Key:
- Confirmed Nominations
- Nominations Withdrawn by President Obama
- Nominations Returned to President Obama

Source: LexisNexis, retrieved September 2016,
www.lexisnexis.com.proxy.library.ohiou.edu/hottopics/lnacademics
Confirmed Full-Time Positions for the HELP Committee
President Barack Obama
January 20, 2009 - January 20, 2017

- Department of Education
- Department of Health and Human Services
- Department of Labor
- Corporation for National and Community Service
- Equal Employment Opportunity Commission
- Federal Mediation and Conciliation Service
- Federal Mine Safety and Health Review Commission
- National Foundation on the Arts and the Humanities
- National Labor Relations Board
- National Mediation Board

Figure 9

Confirmed Part-Time Positions for the HELP Committee
President Barack Obama
January 20, 2009 - January 20, 2017

Barry Goldwater Scholarship and Excellence in Education Foundation
Corporation for National and Community Service
Harry S. Truman Scholarship Foundation
James Madison Memorial Fellowship Foundation
Legal Services Corporation
National Council on Disability
National Council on the Arts
National Council on the Humanities
National Museum Services Board
National Institute for Literacy Advisory Board
National Science Board
United States Institute of Peace

Figure 11

Returned Part-Time Positions by the HELP Committee
President Barack Obama
January 20, 2009 - January 20, 2017

- Barry Goldwater Scholarship and Excellence in Education Foundation
- Corporation for National and Community Service
- Harry S. Truman Scholarship Foundation
- James Madison Memorial Fellowship Foundation
- Legal Services Corporation
- National Council on Disability
- National Council on the Arts
- National Council on the Humanities
- National Museum Services Board
- National Institute for Literacy Advisory Board
- National Science Board
- United States Institute of Peace

Figure 12

Withdrawn Full-Time Positions of the HELP Committee
President Barack Obama
January 20, 2009 - January 20, 2017

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