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NLRB v. Noel Canning Exposes Judicial Incapacity: ?Junior Varsity Politicians? Foul the President?s Textual Appointment Discretion

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This Article is offered in tribute to civil rights legends Leon Higginbotham, Spottswood Robinson, and David Rabinovitz whose judicial recess appointments were invalidated by National Labor Relations Board v. Noel Canning. It also honors President Lyndon Johnson, who made the bold decision within just six weeks of inheriting the Oval Office, to force racial and religious integration of the federal judiciary by signing the recess commissions. The appointments, made in January 1964 during an eight day intercession recess of the 88th Senate, were President Johnson's initial salvo in a hard-fought battle that resulted in historic advances in both civil rights and economic justice. The recess appointments were the earliest manifestation of LBJ's political will and unparalleled political skill that would soon force the Civil Rights Act, the Voting Rights Act, the Economic Opportunity Act, Head Start, Medicare, and Medicaid. President Johnson's January 1964 integration of the three district courts signaled the coming appointment of Thurgood Marshall first as U.S. Solicitor General, and then as the first African-American on the U.S. Supreme Court.

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