

# Background Information on Recess Appointments

**FEDERALIST No. 67** by [Alexander Hamilton](#)

<http://www.foundingfathers.info/federalistpapers/fed67.htm>

“The ordinary power of appointment is confined to the President and Senate JOINTLY, and can therefore only be exercised during the session of the Senate; but as it would have been improper to oblige this body to be continually in session for the appointment of officers and as vacancies might happen IN THEIR RECESS, which it might be necessary for the public service to fill without delay, the succeeding clause is evidently intended to authorize the President, SINGLY, to make temporary appointments ‘during the recess of the Senate, by granting commissions which shall expire at the end of their next session.’”

(In our early history the Senate could be out of session for 6 to 9 months.)

## **Fed 76 Presidential appointments by Hamilton**

<http://www.foundingfathers.info/federalistpapers/fed76.htm>

“THE President is ‘to NOMINATE, and, by and with the advice and consent of the Senate, to appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise provided for in the Constitution. But the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, or in the courts of law, or in the heads of departments. The President shall have power to fill up ALL VACANCIES which may happen DURING THE RECESS OF THE SENATE, by granting commissions which shall EXPIRE at the end of their next session.’”

Please notice Hamilton’s emphasis on, “DURING THE RECESS OF THE SENATE.” “May happen” is a conditional statement which specifies that a vacancy that the president can fill without the advice and consent of the Senate must happen or occur: DURING THE RECESS OF THE SENATE. The definition of happen is: to take place or occur, it does not mean that already exists, in this case prior to the recess.

The founders did not create this secondary power of the president to fill vacancies, without the advice and consent of the Senate so that presidents

could place individuals into vacancies that happened prior to Senate recesses that they knew the Senate would not approve of and simply wait until a short recess and appoint them anyway. The purpose of recess appointments was to prevent dysfunction or paralysis of parts of the government due to the lack of proper officials in office, since in our early history the Senate could be in recess for as long as 6 to 9 months at a time.

Hamilton explained the reasoning of the founders and why they provided the Constitutional method of filling vacancies by authorizing the President to nominate candidates to fill executive vacancies, then to have the Senate approve them, and then to commission the President to fill them:

“It will readily be comprehended, that a man who had himself the sole disposition of offices, would be governed much more by his private inclinations and interests, than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body, and that body an entire [entire] branch of the legislature. The possibility of rejection would be a strong motive to care in proposing. The danger to his own reputation, and, in the case of an elective magistrate, to his political existence, from betraying a spirit of favoritism, or an unbecoming pursuit of popularity, to the observation of a body whose opinion would have great weight in forming that of the public, could not fail to operate as a barrier to the one and to the other. He would be both ashamed and afraid to bring forward, for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure.”

<sup>1</sup>“The Constitution has provided some important guards against the danger of executive influence upon the legislative body: it declares that ‘No senator or representative shall during the time FOR WHICH HE WAS ELECTED, be appointed to any civil office under the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person, holding any office under the United States, shall be a member of either house during his continuance in office.’”

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<sup>1</sup> Provided by Richard Gruetter, Founder of Preserve Our Constitution, Inc. 770-943-6643