

JOHN YOO DEFENDS SENATE'S AUTHORITY TO SIT AROUND AND DO NOTHING

Yes, it is hysterical, in general, that John Yoo has finally discerned some limits to the President's authority under Article II now that Obama used a recess appointment to get around Senate obstruction.

The president's power over what are known as "recess appointments" stems from Article II of the Constitution, which grants him the authority "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." The Constitution does not define what a "recess" is – the Senate adjourns for short periods of time, and the question becomes when an "adjournment" becomes long enough to turn into a "recess." In the past, attorneys general and presidents have thought that an adjournment would have to be longer than at least ten days to become a "recess."

Particularly given that Yoo has embraced a rather expansive notion of what Youngstown says about Presidential authority regarding activities that aren't defined under existing statute.

I'm amused, too, by the way Yoo trolls for clients at the end of his column.

Most importantly, private parties outside government can refuse to obey any regulation issued by the new agency. They will be able to defend themselves in court by claiming that the head of the agency is an unconstitutional

officer, and they will have the grounds for a good test case. They can call Richard first, me second, for advice!

I hope, for NRO's sake, they get a cut if Yoo does go on to consult with the Chamber of Commerce, which has threatened to sue.

But I'm most amused by what Yoo has to defend to make his case. John Yoo, arch conservative, defends the right of Senators to sit around doing nothing but reading the paper on the taxpayer's dime.

It is up to the Senate to decide when it is in session or not, and whether it feels like conducting any real business or just having senators sitting around on the floor reading the papers.

I'll grant you, the Senate is pretty ineffective and it usually feels like they are, in fact, not doing anything. I'm sure they do have the legal authority to just sit around scratching their collective arse. But I do find it rather cute that John Yoo has come out of his hole to make an inspired defense of Article I authority based on Senators' rights to do absolutely nothing.

This constitutional lawyer business really is a noble profession.