

## Sec. 2—Powers, Duties of the President

## Cl. 3—Vacancies During Recess of Senate

mittee adopted as one of its Articles of Impeachment the refusal of the President to honor its subpoenas.<sup>612</sup> Congress has considered bills by which Congress would authorize congressional committees to go to court to enforce their subpoenas; the bills did not purport to define executive privilege, although some indicate a standard by which the federal court is to determine whether the material sought is lawfully being withheld from Congress.<sup>613</sup> The controversy gives little indication at the present time of abating, and it may be assumed that whenever the Executive and Congress are controlled by different political parties there will be persistent conflicts. One may similarly assume that the alteration of this situation would only reduce but not remove the disagreements.

Clause 3. 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.

## RECESS APPOINTMENTS

The Recess Appointments Clause was adopted by the Constitutional Convention without dissent and without debate regarding the intent and scope of its terms. In Federalist No. 67, Alexander Hamilton refers to the recess appointment power as “nothing more than a supplement . . . for the purpose of establishing an auxiliary method of appointment, in cases to which the general method was inadequate.” It is generally accepted that the clause was designed to enable the President to ensure the unfettered operation of the government during periods when the Senate was not in session and therefore unable to perform its advice and consent function. In addition to fostering administrative continuity, Presidents have exercised authority under the Recess Appointments Clause for political purposes, appointing officials who might have difficulty securing Senate confirmation.

<sup>612</sup> President Nixon’s position was set out in a June 9, 1974, letter to the Chairman of the House Judiciary Committee. 10 Wkly. Comp. Pres. Docs. 592 (1974). The impeachment article and supporting material are set out in H. REP. NO. 93–1305, 93d Cong., 2d Sess. (1974).

<sup>613</sup> For consideration of various proposals by which Congress might proceed, see Hamilton & Grabow, *A Legislative Proposal for Resolving Executive Privilege Disputes Precipitated by Congressional Subpoenas*, 21 HARV. J. LEGIS. 145 (1984); Brand & Connelly, *Constitutional Confrontations: Preserving a Prompt and Orderly Means by Which Congress May Enforce Investigative Demands Against Executive Branch Officials*, 36 CATH. U. L. REV. 71 (1986); Note, *The Conflict Between Executive Privilege and Congressional Oversight: The Gorsuch Controversy*, 1983 DUKE L. J. 1333.