



Written by [Raven Clabough](#) on January 5, 2012

## Obama Circumvents Congress to Make Recess Appts.

President Obama has once again bypassed the U.S. Congress and used the process of recess appointment to name members to the National Labor Relations Board (NLRB) without congressional approval. He took advantage of the same ploy at the start of the year to name former Ohio Attorney General Richard Cordray as the nation's chief consumer watchdog. Obama's latest actions have prompted some to question his understanding of the U.S. Constitution.



A President has the constitutional authority to make appointments without congressional approval if the Senate is not in session.

Recess appointments are typically the route taken by a President when he knows his nomination will not garner the necessary 60 votes needed to beat a filibuster. President Obama has already made 28 recess appointments, and his predecessor, George W. Bush, had made 62 at this point in his second term.

Republicans intended to [prevent](#) the President from making recess appointments by not officially adjourning for the holiday. Instead, they "gaveled in, gaveled out" every few days, reasonably believing that the President would not be able to use recess appointments.

But he did. Obama [appointed](#) Sharon Block, Terence F. Flynn, and Richard Griffin to the NLRB. Block once worked for the NLRB and is a former aide to the late Senator Edward Kennedy. Griffin is the general counsel for the International Union of Operating Engineers.

Senate Majority Leader Harry Reid resorted to similar tactics under President Bush, holding a series of pro forma sessions periodically rather than adjourning for the holiday in order to prevent Bush from making recess appointments. But the difference is that Bush recognized that he could not make recess appointments when the Senate was in session, and did not.

But President Obama is attempting to justify his actions. Prior to Obama's appointments, there were just two members sitting on the board, less than the minimum required to conduct regular business.

Obama said when announcing his appointments, "The American people deserve to have qualified public servants fight for them every day — whether it is to enforce new consumer protections or uphold the rights of working Americans. We can't wait to act to strengthen the economy and restore security for our middle class and those trying to get in it, and that's why I am proud to appoint these fine individuals to get to work for the American people."

Likewise, Press Secretary Jay Carney contends that the President's counsel made the determination



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that the Senate is in fact in recess, regardless of the pro-forma sessions. "The constitutional authority the President has is very clear," Carney argued. "The fact of the matter is the Senate has been in recess and will continue to be in recess."

Republicans are now threatening to take legal action, asserting that President Obama has set a dangerous precedent by circumventing Congress and adhering to his own will.

House Speaker John Boehner (R-Ohio) reacted by declaring, "This is an extraordinary and entirely unprecedented power grab by President Obama that defies centuries of practice and the legal advice of his own Justice Department."

According to the Justice Department, Congress should not be deemed in recess if they are adjourned for "5 or even 10 days," and it is not a sufficient amount of time for the President to feel compelled to use a recess appointment.

"The precedent that would be set by this cavalier action would have a devastating effect on the checks and balances that are enshrined in our constitution," Boehner added.

Darrell Issa (R-Calif.), chairman of the House Oversight and Government Reform Committee, stated that the appointments are "highly controversial" and "put the interests of union bosses ahead of job creators and workers."

Similarly, Senator Lindsey Graham (R-S.C.) said that Obama's appointments "may impress the union bosses but will deliver yet another blow to job creation."

Graham also used the opportunity to target the National Labor Relations Board, asserting it "has become an out of control rogue bureaucracy." He urged committees in both the House and the Senate to "investigate the contacts between the NLRB and [the] machinists union in their complaint against the Boeing Company."

The NLRB provoked the ire of a number of conservative lawmakers when it tried to prevent Boeing from opening a plant in South Carolina — a right-to-work state, claiming that Boeing was attempting to bypass union rules on its plant in Washington. The NLRB ultimately dropped the complaint after Boeing extended its contract with labor groups in Washington to 2016 and agreed to allow its 737 Max airplane to be built on the West Coast.

"A congressional investigation to answer questions about NLRB's role, attitude and relationship with the parties is definitely warranted," said Graham. "I'm glad the ridiculous complaint against Boeing has gone away, but there are disturbing questions about possible collaboration between the machinists union and the NLRB against Boeing. These questions must be answered."

According to Robert Dove, a former Senate parliamentarian, the President's move has major implications because there is no precedent for recess appointments of this kind, because the Senate is still technically in session, and that if challenged in court, the appointments would most likely not be upheld.

It does not end there, however. Politico indicates that the President may be setting himself up for some fierce retaliation in 2012:

Obama risks seeing other nominees bottled up by Senate Republicans who are privately vowing to retaliate against what they believe is a brazen power grab by the Obama administration. And if Republicans regain control of the Senate in the 2012 elections, it may be even harder for the president to win confirmation of controversial nominees if Obama wins a second term.



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The President has already had difficulty getting much of his agenda through the Senate, but his latest actions could make it nearly impossible.

"It certainly will exacerbate the already bad relations between Republicans in Congress and President Obama, and I think this is a mistake," former Senate Majority Leader Trent Lott (R-Miss.) said in an interview. "I do think this will wind up creating ill will and end up in legal actions."

President Obama seems adamant on brawling with the U.S. Congress, as he not only nominated controversial members to the NLRB, but [appointed](#) Richard Cordray, Ohio's former Attorney General, to head the Consumer Financial Protection Bureau, which was created by the equally controversial Dodd-Frank Wall Street reform law. Cordray has been blocked by a Republican filibuster in the Senate since last summer, but Obama contends that by filibustering his nominee, Republicans were standing against middle-class families.

"Every day that we waited was another day when millions of Americans were left unprotected," he said. "Without a director in place, the consumer watchdog agency that we've set up doesn't have all the tools it needs to protect consumers against dishonest mortgage brokers or payday lenders and debt collectors who are taking advantage of consumers."

That appointment provoked an angry response from Republicans in both the House and the Senate, but Obama claims that Republicans were blocking Cordray only because they were opposed to the inception of the Consumer Financial Protection Bureau. He asserts that the Republicans remain beholden to banks and mortgage companies, despite his own affiliations with a number of Wall Street firms.

Analysts believe President Obama intends to provoke a number of clashes with Congress in this presidential election year because he hopes that the dichotomy will depict him as a hero of the middle class and Congress as a puppet for big corporations. Though Obama's job approval rating is low, that of Congress is lower, and his tactic could place Republicans in a difficult position as they seek a presidential nominee for 2012.

Related article:

[Obama Appoints Richard Cordray Consumer Watchdog Chief](#)

*Photo: President Obama speaks on appointing Richard Cordray, January 4: White House photo*



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