



Written by [Raven Clabough](#) on December 29, 2011

## Sen. GOP Won't Adjourn; Hope to Block Obama Recess Appointments to NLRB

Now that Congress has come to a compromise on the payroll tax cuts, Republicans are embarking on the next big battle with Democrats: blocking unconfirmed appointments to the National Labor Relations Board (NLRB). Republican lawmakers are refusing to adjourn for the year in the hopes that they can discourage President Obama from making unconfirmed appointments while Congress is on vacation.



Craig Becker

As President Obama's 2010 controversial recess appointee Craig Becker's (left) term is about to expire, the NLRB will be without the three board members necessary to operate. Fox News explains, Senate Republicans and the president can't agree on new National Labor Relations Board members, leaving only two chairs on the board filled going into the new year.

Without that third chair being filled, the board will be forced to shut down, unless President Obama makes recess appointments to keep the board running. And he has the constitutional authority to do so without congressional approval if the Senate is not in session. A President generally makes recess appointments when he is aware that his nomination does not have the necessary 60 votes to beat a filibuster.

Therefore, Senate Republicans hope their gaveling in gaveling out every few days, in order to not officially adjourn for the year, will block any such recess appointments.

Just before Christmas, Republicans warned President Obama in a letter not to make appointments to the NLRB without congressional approval:

Appointments to the NLRB have traditionally been made through prior agreement of both parties to ensure that any group of nominees placed on the board represents an appropriate political and philosophical balance. Indeed, the very statutory design of the Board is meant to ensure a basic level of bipartisanship in the appointment of Members. As you are undoubtedly aware, appointments to Board that depart from this tradition have resulted in some of the most contentious, divisive struggles we face in the Senate. Your controversial recess appointment of NLRB Member Craig Becker is an example of an NLRB nominee having been appointed over the objection of the Senate and the result of that decision has been unending controversy throughout Member Becker's entire term on the Board, which has undermined the credibility of the entire NLRB.

The letter went on to identify specific NLRB nominees whom President Obama recommended last week,



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and urged Obama not to use a recess appointment to name those nominees:

We urge you to avoid attempting to give your latest NLRB nominees Ms. [Sharon] Block and Mr. [Richard] Griffin recess appointments at any point, especially during the mandatory adjournment between sessions of the 112th Congress, which will undoubtedly be very brief. While some have publicly suggested doing so would be an appropriate course of action with regard to other [nominations](#), it would, at the very least, set a dangerous precedent that would most certainly be exploited in future cases to further marginalize the Senates role in confirming nominees and could needlessly provoke a constitutional conflict between the Senate and the White House.

According to [The Hill](#), 11 Republican Senators also sent a letter to Obama asking him to withdraw his nomination of Lafe Solomon, NLRBs acting general counsel and author of the now withdrawn Boeing complaint:

The NLRB has been under heavy scrutiny since it issued an April 20 complaint accusing Boeing of retaliating against union workers. That complaint, which has since been dropped, and other board actions this year, such as a proposed rule to speed up union elections, have been heavily lobbied against by business groups and targeted by GOP lawmakers.”

*Hot Air* [notes](#) that Obamas recommendations are controversial ones:

Block is a former aide to the late Sen. Edward Kennedy (D-Mass.) and a senior Labor Department official who used to work at the NLRB. Griffin is the general counsel for the International Union of Operating Engineers.

The Republican plan not to adjourn may complicate President Obamas appointments, but as noted by Fox News, that may not be the case: Obama could argue that two or three days can be defined as a recess, although recent history dictates that is not the case.

According to Political expert Stephen Hess of Brookings, the President would have to make a major stretch to justify such a short amount of time as a recess. “He’s got the option,” Hess said, “but he’s got to go back a long way in history to find an example that’s going to suit his convenience if he wants to go ahead with a recess appointment.”

Likewise, Democratic strategist Doug Schoen believes that an effort to do so on the part of the President would be too risky. I think he’s going to try to do what he can to avoid controversy and not try to be a lightning rod, Schoen said.

But without the appointments, the NLRB would be shut down, angering one of President Obamas biggest support bases the labor unions.

“I guess he could squeeze that in, but I think it is a bad idea. I think recess appointments, for the most part, are done to bypass the Senate, the advice and consent that is required under the Constitution,” observed Sen. Phil Gingrey (R-Ga.)

Gingrey is opposed to not only the recess appointments, but also the entire NLRB.

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 the aerospace and defense corporation 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.



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We would be better if they could not do anything for the next year because they are killing jobs. And we are desperate for those jobs, Gingrey contended.

Last December, President Obama grew frustrated waiting for Senate approval for his appointments, and chose instead to name 15 people to administration jobs, wielding for the first time the political tool of the recess appointment. Among those [15 nominees](#) was the contentious Craig Becker to the National Labor Relations Board, whom Republicans had asked Obama not to appoint because they feared he would bring a radical pro-union agenda to the position. Obama ignored their advice.

“Once again the administration showed that it had little respect for the time honored constitutional roles and procedures of Congress,” commented Sen. John McCain (R-Ariz.) of Obamas recess appointments. “This is clear payback by the administration to organized labor.”

When Republicans grew frustrated with Obamas decision to utilize the recess appointments, Obama defended his decision, insisting, “I simply cannot allow partisan politics to stand in the way of the basic functioning of government.”

Once again, President Obama finds himself in a tight spot. He can go ahead with the recess appointments drawing the ire from Republicans at a critical time, as 2012 is a presidential election year or he can acquiesce to Republican demands and face criticism from his own base.



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