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Obama Sidesteps Congress on Consumer Pick and GOP Cries Foul

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Jan. 4, 2012, 10:27 a.m.

Updated: 11:55 a.m.

President Barack Obama will defy a Republican filibuster and appoint Richard Cordray to head the Consumer Financial Protection Bureau today, the White House announced.

"Because of the president's leadership and decisive action, the American people will have a consumer watchdog fighting tooth and nail on their behalf," said White House Communications Director Dan Pfeiffer in a blog post.

Republicans have blocked Cordray not because he isn't qualified, but because "they simply believe that the American public doesn't need a watchdog at all," Pfeiffer said. "Well, we disagree."

Obama plans to make a recess appointment, although Republicans have argued doing so would break precedent because the president would take action just one day after the Senate gavelled in the second session of the 112th Congress.

The Constitution stipulates that the House and Senate cannot adjourn for longer than three days without the consent of the other body, agreed to by a concurrent adjournment resolution. Neither chamber has passed an adjournment resolution; instead both have been holding pro forma sessions every three days.

"The House and Democratic-controlled Senate were in session yesterday, and will be again on Friday," House Republicans said in a release calling into question the legality of the appointment. "In line with decades of congressional practices, the Department of Justice has found that Congress must be in recess more than three days before a president can make an intra-session recess appointment."

But Obama is expected to argue that GOP attempts to prevent Congress from officially recessing do not actually bar him from filling administration posts when Congress is not meeting for legislative session. The House is due back Jan. 17 and the Senate is expected to resume normal operations Jan. 23, despite the official beginning of a new session Tuesday.

Obama is scheduled to speak this afternoon in Ohio, Cordray's home state. His nomination has been pushed strongly by Obama's base, with many on the left urging the president for the past six months to make a recess appointment in the face of a determined Senate GOP blockade. Republicans led by Senate Minority Leader [Mitch McConnell](#) (Ky.) have taken the unusual step of filibustering the nomination not because of the nominee but because they object to the position he would hold. They have been demanding changes in the financial reform law that would alter the structure of the agency before they will allow any nominee to be confirmed.

McConnell already has signaled that Obama will pay a price for the move. He held up a slew of Obama's nominees at the end of last year after the White House refused to agree to follow precedent in making recess appointments.

McConnell ripped Obama's move as having "arrogantly circumvented the American people by 'recess' appointing Richard Cordray," and contended that the Senate was not in recess. Explaining that presidents have traditionally waited until the Senate has been in recess for 10 days or longer before using their recess appointment powers, McConnell said breaking from that precedent "lands this appointee in uncertain legal territory, threatens the confirmation process and fundamentally endangers the Congress' role in providing a check on the excesses of the executive branch."

Speaker [John Boehner](#) (R-Ohio) went further, predicting the courts would "find the appointment to be illegitimate."

"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," Boehner said in a statement. "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."

Pfeiffer, however, said Obama has the authority to make recess appointments. He called the Senate's pro forma sessions a "gimmick" and cited President George W. Bush's legal advisers contending that those "sham" sessions cannot be used to prevent a recess appointment.

Cordray's nomination was defeated last month when the Senate failed to beat back a Republican-led filibuster. At the time, the GOP cited three things it required to confirm any CFPB director. The criteria included replacing the single director with a board because Republicans believe the director has too much power under the agency's current design. They prefer a board to run the CFPB like the five-member board that runs the Securities and Exchange Commission.

Republicans also cite their concern that the CFPB should be funded through the appropriations process, which would give Congress more input over the agency. Currently, the CFPB is funded through the Federal Reserve System. Finally, they want to allow other financial regulators to provide a check on CFPB rules so they don't imperil the health of financial institutions and lead to unnecessary bank failures.

Those demands were outlined earlier this year when a group of 44 Senate Republicans wrote a letter stating their intent to oppose any CFPB nominee until the changes to the law were made.

Senate Finance Committee ranking member [Orrin Hatch](#) (R-Utah), one of the signatories, warned that the move could come back to haunt the White House.



Manuel Balce Ceneta/Associated Press

President Barack Obama announces the nomination of former Ohio Attorney General Richard Cordray to serve as the first director of the Consumer Financial Protection Bureau in July.

"This is a very grave decision by this heavy-handed, autocratic White House," Hatch said. "Circumventing the Senate and tossing out decades of precedent to appoint an unaccountable czar to appease its liberal base is beneath the Office of the President. The legislative branch exists as a check and a balance on the Executive. By opening this door, the White House is saying it can appoint any person at any time to any position it chooses without the advice and consent of the Senate. This is not how our Republic was designed to function. The American people deserve to be treated with more respect than this White House is affording them with this blatant power grab. Senators of both parties should be deeply troubled [by] the president's actions today — actions which will come back to haunt them."

Democrats argued that the agency cannot complete its consumer protection mission without a head and that opposition to Cordray's confirmation shows that Republicans favor banks and financial institutions over consumers and the middle class.

Sen. [Tim Johnson](#) (D-S.D.), chairman of the Banking Committee, applauded the move in a statement.

"With Richard Cordray leading the Consumer Financial Protection Bureau, Americans will finally get the consumer protections they deserve. Mr. Cordray is eminently qualified for the job, as even my Senate Republican colleagues have acknowledged. ... It's disappointing that Senate Republicans denied him an up-or-down vote, especially when it's clear he had the support of a majority of the Senate."

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