



## Obama's Contempt for Congress

The campaign against the obstructionist, do-nothing Congress started during the recent congressional "recess," when Obama decided to ignore the U.S. Constitution, recent Presidential tradition, and even his own vote when he was a U.S. Senator by making four "recess" appointments.

There was just one teeny tiny problem with the stratagem: Congress wasn't actually in recess.

In case you missed the story — which was easy to do, because most Americans neither cared about it nor understood it — let me give you a condensed version of what happened. This is no mere tempest in a teapot, by the way. As I'll explain below, this seemingly silly confrontation could have enormous legal implications for our country.



The stage for the brouhaha was set last month. Rather than adjourn for the Christmas holidays, Republicans in Congress decided to do the absolute minimum to keep Congress in session, holding "pro-forma" meetings every three days. Basically, all it took was one Senator showing up, declaring the session open and then gaveling it closed a few seconds later. Most times, the session lasted less than a minute.

The reason for doing this was to prevent the President from making "recess" appointments of some of his more controversial selections. Normally, the Constitution requires Senate confirmation of important nominations. But Presidents have been able to bypass the "advice and consent" requirements by making "temporary" appointments when Congress is in recess.

By the way, there is nothing new in this strategy. Democrats did it routinely during the last two years of George W. Bush's Presidency. In fact, Obama was one of the most outspoken supporters of the ploy when he was a lowly senator from Illinois. Now that he's our imperial President, the situation is different. Or so he says.

Clearly, what is perfectly OK for Democrats to do (stymieing a Republican President) becomes "obstructionist maneuvering" when the shoe is on the other foot. Early this month, Obama announced that he was making four "recess" appointments: Richard Cordray as head of the new Consumer Financial Protection Board and three other people to fill openings on the National Labor Relations Board.

The *Wall Street Journal* pointed out in the recent editorial "Contempt for Congress" what was wrong with the President's strategy:

The last clause Section 5 of Article 1 of the Constitution says that "Neither House" of Congress can adjourn for more than three days "without the Consent of the other" house. In this case, the



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House of Representatives had not formally consented to Senate adjournment. It's true the House did this to block the President from making recess appointments, *but it is following the Constitution in doing so.* [Emphasis added.]

Faced with this blatant disregard of both tradition and the Constitution, House Speaker John Boehner went ballistic. He denounced the White House power grab in no uncertain terms:

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. 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.

Mitch McConnell, the Republican leader in the Senate, joined the chorus of condemnation. He blasted Obama for "arrogantly circumventing" the confirmation process.

What's really going on here? Clearly, our national security wasn't threatened by these four positions remaining open for a few more weeks.

No, as William Shakespeare observed in a different context, "the game is afoot." In this case, the "game" is getting Obama re-elected. Since he can't run on his record, he has to find an opponent who is even more unpopular than he is.

How about picking a fight with a "do-nothing" Congress? After all, Americans have an even lower opinion of Congress than they do of the President. Recently, the approval rating for Congress fell to a basement-dwelling 9 percent.

Now you know why the White House engaged in "a deliberate, and politically motivated, provocation," as the *Journal* noted in its editorial on the subject. The *Journal* continued:

Recall the stories over the New Year's weekend, clearly planted by the White House, that Mr. Obama planned to make a campaign against Congress the core of his re-election drive. One way to do that is to run roughshod over the Senate's advice and consent power and dare the Members to stop him.

Obama deliberately threw down the gauntlet. Now let's see what leaders on the Hill do about it. Frankly, except for some heated rhetoric, I suspect they won't do much.

But the buck won't stop here, no matter what the President says. Already, the U.S. Chamber of Commerce is considering challenging the legality of the appointments. If it does — and the courts support their position — it could mean that every ruling the National Labor Relations Board makes and every new regulation the Consumer Financial Protection Bureau issues will be void.

It won't happen overnight. It could take years for lawsuits to be filed, hearings to be held, courts to rule and appeals to be heard. In the meantime, if you run a business that is affected by something the NLRB has decreed, what do you do? Do you spend (potentially) millions of dollars to obey a regulation you think will be overturned?

I suspect the President neither knows nor cares about the pandemonium his actions may create. Obama isn't worried about what might happen a few years from now; his total focus is on what happens 10 months from now.

So what if he has to tear the Constitution to shreds to stay in office? After all, he has shown nothing but disdain for its limitations on his power up until now. Why should today be any different?



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This fireworks show is far from over, folks. The eruptions will continue at least until the first Tuesday in November.

Until then, be sure to keep some powder dry.

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