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White House Tees Up CFPB as Top Campaign Issue in 2012

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WASHINGTON - This week's showdown over the Consumer Financial Protection Bureau will likely be the first of many as Democrats prepare to make consumer protection a top campaign issue in the 2012 election.

The Senate is set to vote Thursday on a motion to consider the nomination of Richard Cordray to be the CFPB's first director, and the White House has launched a media blitz targeting states where several incumbent Republicans are up for reelection.

Although the pressure is unlikely to sway enough GOP lawmakers to advance the nomination, observers said the vote and the public campaign set the stage for a narrative that Democrats will reiterate throughout the campaign.

"A lot of this is electioneering," said Mark Calabria, the director of financial regulations studies at the Cato Institute, and a former senior staffer for Sen. Richard Shelby, the top Republican on the Senate Banking Committee. "I don't think they're going into this thinking they're going to somehow scramble their way to 60. I think they're thinking, 'We can paint Republicans as friends of Wall Street.'"

Democrats need 60 votes to advance the nomination, but 44 Republicans-more than enough to stop the nomination-have said they will not allow a vote on any nominee unless the administration makes a series of structural changes to the CFPB, including replacing its director with a commission and putting it on the Congressional appropriations process.

The administration began its push for a vote on the CFPB director last week, when Treasury Secretary Tim Geithner called on the Senate to move quickly on Cordray's confirmation.

On Sunday, the White House outlined a plan to appeal directly to voters in seven states - Maine, Tennessee, Alaska, Indiana, Nevada, Utah and Iowa - by using local media to drum up support for Cordray and emphasize the benefits for consumers once the bureau finally has a permanent director.

Until a director is confirmed, the bureau cannot write new rules curbing abusive acts or practices, nor can it supervise nonbanks. The White House's National Economic Council also released a report on Sunday on the regulatory gaps that exist between banks and nonbanks, and the effect on consumers. "While Congress, the president and the American public have made historic progress in establishing a single agency dedicated to protecting consumers, every day that (the) CFPB goes without a director is another day that American families remain at risk," the report said.

Although the Senate vote is expected to fail, it still has the benefit of forcing Republicans to go on record against the nomination. It's not unusual for Congress to hold votes that are all but certain to fall short (see: debt ceiling, payroll tax) and industry observers expect Democrats will take as many opportunities as they can to force the issue.

"There will be a series of votes throughout 2012," said Brian Gardner, a political analyst at KBW Inc.'s Keefe, Bruyette & Woods Inc. "This is not going away."

Although the vote this week would pave the way for a potential recess appointment, Gardner and others continue to view that strategy as a political minefield, and an unlikely scenario.

"There are some legal arguments for getting around the technical aspects of whether this is a recess or not," Gardner said. "My guess is there are Democrats who are urging the White House to proceed very cautiously on that. Once you set that precedent, it will be used against you."

During a conference call with reporters on Monday, Republican staffers on the Senate Banking Committee and in the Senate GOP leadership said they have not had any contact with the White House about Republican demands for changes to CFPB's structure.

In that light, they said the decision by Majority Leader Harry Reid to hold a procedural vote on whether to allow Cordray's nomination to move forward was premature.

The Senate Republicans staffers also downplayed the possibility that following Thursday's vote, the White House might be able to install Cordray using a recess appointment.

"We've had a general pattern of stopping recess appointments," said a GOP staffer who insisted on anonymity. "I expect that to continue."

Turning up the pressure on Republicans could help fire up a somewhat disenchanted base that has complained the White House hasn't been hard enough on Wall Street, some observers said.

Arthur Wilmarth, a professor at George Washington University Law School, said that polls have shown broad support for the idea of a consumer protection bureau among independents and even Republicans. But the White House waited a whole year before

nominating a director to lead the bureau - losing the opportunity to advance a nominee while Democrats had a more sizeable majority - and has seemingly done little to push for a confirmation vote, Wilmarth said.

"To me, it's been kind of remarkable that the administration largely has not done that," Wilmarth said. "Rather than their campaign strikes me as surprising, their silence up until now strikes me as surprising."

Cornelius Hurley, the director of the Graduate Program in Banking and Financial Law and its related Morin Center for Banking and Financial Law at Boston University, said the president may have learned that losing isn't always the worst thing. The administration managed to pass a health care bill, for example, but at the expense of alienating a base that thought it should have gone much further, he said.

Calling the Republicans' bluff and inviting them to sabotage the law while the whole country is watching is a smart strategy, he said.

"The Republicans seem to have painted themselves into a corner on this one, and I don't know how they get out of it gracefully," he said. "But they did the same thing on taxes and they've done the same thing on any number of issues. I think it's a shrewd move on Obama's part."

Edward Mills, an analyst with FBR Capital Markets, said that he is surprised the White House waited as long as it did to force a Senate vote.

"I think to claim that someone is blocking a nominee, you at least have to have a vote to give them the opportunity," he said. "I think they are also looking to see if there are any cracks in the Republican opposition."

Mills said that he'll be watching to see whether any Senate Republicans who did not vote for the Dodd-Frank Act - only three Republicans supported the bill: Sens. Olympia Snowe and Susan Collins of Maine, and Scott Brown of Massachusetts - break ranks with their party. He'll also look to see whether the Republicans can persuade any Democrats to join them in blocking Cordray's nomination.

"That would be the story, from my perspective," Mills said.

The media campaign, which will include interviews with the president on several local TV stations, will focus in part on states that are home to Republicans who are up for reelection, including Collins, Richard Lugar of Indiana and Dean Heller of Nevada. The media push will also include Tennessee, home to Bob Corker, the top Republican on the Senate Banking Committee, and Alaska, the home state of Lisa Murkowski, one of three Republicans that did not sign a letter opposing the confirmation of a director until the CFPB's governance structure is changed.

Still, the media blitz itself is unusual, observers said. Often the majority or minority is the

spokesman for this type of effort, not the president. And while candidates often raise and contribute money for the purpose of defeating a particular candidate, it's rare to see the president target a senator in his or her home state.

"It's generally considered bad form," Calabria said. "You don't make a lot of friends if you need votes on other things."

The administration has a short window, he added. By the summer, Republicans will have a perfectly legitimate excuse not to advance any White House nominees whose appointment would last well into the next administration. (If a Republican wins the White House, the GOP will want to appoint its own people.)

The White House also didn't have many targets, Calabria said. More than half of the senators that are up for reelection are Democrats, and most of the Republican incumbents are in fairly safe states.

Some observers said the White House may be overestimating the impact this issue will have on the campaign.

"The typical independent probably has no idea who Rich Cordray is, and probably has no idea what the consumer protection bureau is," Calabria said. "So I don't see this as a top-tier issue in anybody's mind."

Others disagreed, citing the bureau's increasing popularity amid lingering discontent with Wall Street and big banks.

"Everyone has had some experience, whether it's overdrafts, home mortgages, student loans, something where they have a beef against some financial provider," Wilmarth said. "I think this issue resonates very strongly, and I think the polls indicate that it does, and I think it's not that hard to understand."