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The Politics Behind the Senate's Vote on Cordray: FAQ

By: Victoria Finkle – May 17, 2013

Senate Majority Leader Harry Reid is bringing the battle over the Consumer Financial Protection Bureau back to the forefront next week with a long-awaited confirmation vote on Richard Cordray, the agency's director.

Democrats and Republicans have been at a stand-off over Cordray's nomination two years ago as the GOP fights for structural changes at the agency that Democrats staunchly oppose. While President Obama recessed appointed Cordray to the position last year, that too is under attack. Two federal appeals court have overturned recess appointments made on the same day as Cordray's, with critics arguing it's only a matter of time before Cordray is embroiled in a similar legal fight.

Still, a vote on the Senate floor for the CFPB director, who is not expected to be confirmed due to Republican opposition, could prove a political opportunity for Reid, Senate Democrats and the White House. Cordray is widely considered qualified for the position, even winning the grudging respect of several Republicans and many industry officials over the past year as the leader of the politically popular bureau.

Below is a rundown of the politics behind Reid's decision to call the vote now and what to expect in its aftermath.

Why is Reid doing this?

Part of Reid's decision may be simply pragmatic, observers said. Cordray was nominated by the president, passed out of the Senate Banking Committee and the next step is a floor vote, albeit one he is likely to lose.

The vote also provides the White House and Senate Democrats with more ammunition in their calls against Republican obstructionism.

"You can't claim that something has been blocked until there is an actual vote against the nominee," said Edward Mills, a financial policy analyst at FBR Capital Markets.

Any cause for attack on the opposing party is likely welcome this week at the White House. The Obama administration has been pummeled by several high-level scandals lately, including reports of inappropriate political targeting at the IRS and the Justice Department's secret collection of Associated Press phone records.

"In picking a fight on this it helps to deflect some of the momentum of 'all bad news, all the time' for the president," said Brandon Barford, a vice president at ACG Analytics.

Beyond the politics of the hour, Reid is also likely interested in getting the issue off his plate ahead of what's expected to be a busy congressional session, several analysts said.

"He wants to either have the nomination killed or passed as soon as possible, because after Memorial Day, the Senate is probably going to have floor consideration of immigration reform and that will suck all the oxygen out of the room," Barford added. "Then in the fall when they are back from break they will potentially have to worry about the debt limit and the CR quite quickly again in September. There's not a lot of time to do controversial things that require a full cloture vote."

Will Reid use the 'nuclear' option?

The majority leader has signaled a cautious interest in pursuing a change to filibuster rules so that confirmation votes require a simple majority instead of 60 votes, but analysts were largely in agreement that this is more showmanship than a tangible threat.

If Reid does have his eye on immigration reform or any other major objectives this time, pursuing the nuclear option could poison the waters between the political parties, putting an end to any hope of getting substantive legislation passed on any issue.

"I'm skeptical that Reid uses the vote as a test case on filibusters. This may be a bluff," said Brian Gardner, an analyst at Keefe, Bruyette & Woods. "Relations between the two parties are not great and the use of the nuclear option might make relations irreparable and complicate the ability to act on policy matters like immigration and the debt ceiling."

Doing so could also come back to haunt Democrats, should they lose their majority in the chamber at some point down the line.

"The Senate is a body that is very cautious about making rules changes that lessen the power of the minority, because a lot of them are institutionalists, and many are not looking at today's legislative fights but tomorrow's fights where they could easily find themselves in the minority," said Mills.

How does the ongoing legal battle factor in?

The District of Columbia Circuit court shocked the industry when it invalidated the NLRB appointments in January, and it is now joined by a second decision by the Third Circuit court that reaches the same conclusion.

Analysts said the court decision, issued Thursday, is bad timing for Cordray and Democrats ahead of the vote, though it's unlikely to have a major impact.

"This just buttresses Republicans' arguments, so the timing of this plays to Republicans' favor. But does it change the vote? No," said Mark Calabria, director of financial regulation studies at the Cato Institute

Still, those watching the CFPB fight play out argued that the front line of the battle is now being played out in the courts. The next big decision will be whether the Supreme Court decides to hear a White House appeal of the DC Circuit case. The administration petitioned the high court on the issue last month.

"I think the reason they're doing this now is they want to get a vote in before the Supreme Court says anything," said Calabria.

The high court's decision is likely to be critical for determining how and when Democrats continue to push the issue in Congress.

"This entire episode is nothing more than political theater and we are still in the situation we were before learning this vote would be pushed. And that's waiting for the Supreme Court," said Isaac Boltansky, a policy analyst for Compass Point Research & Trading. "The next venue for action is at the Supreme Court level, because that will dictate the political landscape for Senators debating this issue."