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# Congress of the United States

## House of Representatives

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### Opening Statement Ranking Member Elijah E. Cummings

#### Hearing on "Uncharted Territory: What are the Consequences of President Obama's Unprecedented 'Recess' Appointments?"

February 1, 2012

Mr. Chairman, if the Committee really wants to conduct an even-handed examination of President Obama's recess appointments, we need to look at a much bigger issue first: the unprecedented obstruction by Senate Republicans of the Constitutional confirmation process.

Republicans have raised Constitutional concerns about the President's recess appointments. But the real issue here is the effort by 44 Republican Senators to sabotage the mission of the Consumer Financial Protection Bureau. In a letter the Republican Senators wrote last May, they declared their opposition to any nominee to head the Consumer Financial Protection Bureau.

These Republicans admitted that the President's nominee, Richard Cordray, was highly qualified for the position.

As the Attorney General of the State of Ohio, he recovered billions of dollars for retirees, investors, and business owners, and he was on the front lines of protecting consumers from fraudulent foreclosures and financial predators.

Senator Mike Lee conceded that Mr. Cordray was well qualified for the position. "[M]y decision to oppose his confirmation by the Senate has nothing to do with his qualifications," said Senator Lee. "Rather, I feel it is my duty to oppose his confirmation as part of my opposition to the creation of CFPB itself."<sup>1</sup>

This gang of 44 Republican Senators opposed the creation of the Consumer Bureau. According to existing law, once a permanent Director is put in place, the Bureau will have authority to issue regulations protecting consumers from unfair, deceptive or abusive consumer financial practices by mortgage servicers, payday lenders, debt collectors, private student

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<sup>1</sup> Sen. Mike Lee, *Senator Lee Opposes Cordray Nomination and Creation of Consumer Financial Protection Bureau* (Dec. 7, 2011) (online at [www.lee.senate.gov/public/index.cfm/blog?ContentRecord\\_id=00e86965-c6ed-4f97-9f5b-fa8e9a4d1727](http://www.lee.senate.gov/public/index.cfm/blog?ContentRecord_id=00e86965-c6ed-4f97-9f5b-fa8e9a4d1727)).

lenders, and credit reporting agencies. These are exactly the protections Republicans wanted to block.

Article II of the Constitution says the President shall nominate and appoint officers of the United States “with the Advice and Consent of the Senate.” Nowhere does the Constitution authorize Senators to block **all** nominees—regardless of their qualifications—because they object to the current law of the land and do not have the votes to change it.

Constitutional scholar Thomas Mann calls this Republican boycott “a modern-day form of nullification” and says “[t]here is nothing normal or routine about this.” As our Committee has heard repeatedly, there are millions of American families who are currently in foreclosure, many of whom were subjected to widespread and illegal abuses by mortgage servicers. Nearly 20 million consumers take out “payday” loans from an industry widely known for its unscrupulous behavior.

What is the Republican response? They want to cut the legs out from under the agency Congress created to protect American families from exactly these types of abuses by mortgage servicers, payday lenders, and credit reporting agencies.

Today’s new concern about litigation arising from the appointment is a red herring. The corporate interests that opposed the creation of the Bureau to begin with are the same interests that are now aggressively challenging these consumer protections in court.

As with the Consumer Bureau, Republicans also oppose the entire mission of the National Labor Relations Board and have blocked the President’s appointments in an effort to prevent the Board from functioning properly.

In short, Senate Republicans left the President with no choice. These recess appointments were the only way to comply with Congress’ intent in establishing and maintaining fully functioning agencies.

The fact is that President Obama has been extremely restrained in his use of recess appointments. During their full terms, President George W. Bush had made 171 recess appointments, President Clinton had made 139, and President Reagan had made 240. In contrast, President Obama has made just 32 at this point in his presidency.

I hope we can ask our witnesses today not only about the President’s recess appointments, but also about a much more significant issue: unprecedented obstructionism by Senate Republicans that is intended to cause irreparable harm to American consumers.

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