



## A Judicial Watch Special Report

# **President Obama's Czars**



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## **Introduction**

This Judicial Watch Special Report analyzes the proliferation of so-called “czars” in the Obama administration. President Barack Obama has installed personal advisors in czar positions in the White House and has created new czar positions elsewhere in the Executive Branch. As of the date of this report, *the number of czars that have been appointed by the President, or by others in his administration, appears to total 45*. In addition, there are as many as 18 other unfilled or planned czar positions.

Many of these “czars” are unconfirmed by the Senate and are largely unaccountable to Congress. Further, their activities are often outside the reach of the Freedom of Information Act (FOIA), creating a veil of secrecy about their precise role in the administration. Considering President Obama’s efforts to skirt constitutionally mandated oversight of his administration, it is not surprising that there has been substantial outcry over his use of czars. In fact, even his Cabinet is disgruntled, to the point that the White House has added Tom Gavin to the President’s staff as Cabinet Communications Director, charged with the responsibility for improving relations between members of the Cabinet and the various czars.

The Cabinet, of course, is not alone in its frustration and concern. The American people, to the extent they understand what is going on, see the appointment of czars as an effort by the President to circumvent Congress. Recently, the House, including Republicans and thirteen Democrats, voiced its disapproval over the use of czars by passing a bill intended to eliminate funding for czars, nine of which were specifically identified in the bill. While the Democratic-controlled Senate is not likely to pass the bill – and it would certainly not survive the President’s veto – the message to the President is clear: *stop the use of czars to undermine accountable government*.

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This Special Report examines four areas of public concern regarding Obama’s use of czars: 1) the constitutionality of policy czars; 2) the degree to which the Senate has been circumvented in the appointment of policy czars; 3) the political controversy that has resulted from bypassing the Senate’s confirmation process; and 4) issues concerning the lack of transparency in an administration that operates through a system of czars.

Effective oversight of the Obama czars has fallen in no small measure to the independent Judicial Watch. Judicial Watch has investigated each of President Obama’s czars. In addition, Judicial Watch has sued in federal court to gain information about the specific activities of certain key czars.

Important to note is the fact that czar positions and people are fluid within the administration. People resign and change roles and others are appointed to fill the shoes of persons departing. As of the date of this report, a number of positions remain open,

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some of which have simply not yet been filled, while a number of others are due to resignations for which replacements have not been announced. (See page 13.)

This report, *which reflects the status in the administration as of September 15, 2011*, is an initial effort to better educate the American people about an important governance and constitutional issue.

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## **Executive Summary**

This Judicial Watch Special Report examines President Obama's unprecedented appointment and use of unconfirmed and unaccountable policy advisors or "czars" throughout his administration. Presidents typically have advisors with whom they can discuss and devise policy initiatives. In recent years, however, presidential advisors have taken on powerful new roles in the government without undergoing the process of Senate confirmation. Unaccountable czars, many working in the White House, are being given unprecedented authority over major aspects of government policy.

As is discussed herein, President Obama has appointed a number of controversial persons to czar posts, a few of whom have subsequently resigned. Others remain, despite controversy.

This Judicial Watch Special Report first discusses the types of czar positions in the administration and the approach taken by President Obama to circumvent vetting of candidates by the U.S. Senate. Czars currently in the administration, as well as planned and open czar positions, are described. This is followed by a detailed discussion of controversial czars, those remaining in the administration, and the more notable resignations.

The final section of the report reviews the status of Judicial Watch's FOIA efforts to investigate czars appointed by President Obama.

## **What are Czars?**

The term “czar” is not associated with any specific, legally-defined category of presidential appointments or advisors. Rather, the term is informally associated with presidential appointees who oversee certain government policies or areas. As the federal government continues to expand at a dramatic rate under the Obama administration, an increasing number of positions are being created as a political tool for ensuring direct White House influence and control over statutory government operations. These appointments may lead to a radical politicization of the routine functions of government.

The Appointments Clause of the U.S. Constitution (Article II, Section 2) states that “Officers” of the United States must be appointed by the President *with the advice and consent of the Senate*. Not all appointments by the President require the advice and consent of the Senate: “Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.”

A position is an office of the United States if it is: “1) invested by legal authority with a portion of the sovereign powers of the federal Government, and 2) it is ‘continuing.’ ”<sup>1</sup> Such sovereign powers generally involve “binding the Government or third parties for the benefit of the public, such as by administering, executing, or authoritatively interpreting laws” or the authority to “represent the United States to foreign nations or to command military force on behalf of the Government.”<sup>2</sup>

The U.S. Constitution requires that every presidential nominee for an officer position be confirmed by the United States Senate. Individuals confirmed as a federal “officer,” possess significant authority pursuant to the laws of the United States. Such officers range from commissioned military officers to secretaries of the various executive departments (such as the Secretary of State).

Some of Obama’s czars serve in fairly new offices that were created in recent decades. Constitutionally speaking, these individuals undergo the same confirmation process and have the same level of accountability before Congress as individuals in traditional cabinet positions, e.g., the Secretary of Defense and the Secretary of the Treasury. Therefore, these czars are not as shrouded in secrecy as are other “czars” that are not subject to Senate confirmation.

It should be noted that even czars subject to Senate confirmation can be controversial. Then, too, President Obama’s *new* offices raise another issue regarding the vast expansion of the federal government. This is especially true for those czars who helped administer the trillions in taxpayer dollars spent in the Troubled Asset Relief Program (TARP) and the American Recovery and Reinvestment Act (“stimulus”).

Certain czars that serve as special envoys in the State Department are exempt from Senate confirmation because their missions are allegedly “non-continuous” in nature. In

other words, the very position itself is intended to expire at some point, unlike that of an ambassador.

On October 6, 2009, then-Senator Russell Feingold (D-WI) held a hearing titled, "Examining the History and Legality of Executive Branch 'Czars.'" Testimony and questions at the hearing raised concerns over the State Department's special envoy positions. First, some asked whether the "czar" envoy missions will actually remain temporary -- and questioned them as a possible means of avoiding the responsibility and accountability placed on ambassadors. Second, despite historical precedent allowing unconfirmed envoys for temporary missions, the merits of speedily filling these envoy positions may be outweighed by the resulting lack of accountability and oversight.

The murky, politicized roles of many of the czars, who have not been subject to Senate confirmation, raise the possibility that these czars are effectively supplanting the responsibilities of constitutionally appointed and confirmed officers. Numerous members of Congress have voiced concerns about this. For instance, the late Senator Robert Byrd (D-WV) wrote a letter to President Obama expressing concern over the proliferation of czars. Senator Byrd stated:

*"The rapid and easy accumulation of power by White House staff can threaten the constitutional system of checks and balances.... At the worst, White House staff has taken direction and control of programmatic areas that are the statutory responsibility of Senate-confirmed officials."*<sup>3</sup>

As presidential White House advisors, many czars often claim to be exempt from Freedom of Information Act requests and effective congressional oversight.

### **Obama's Czars**

#### **U.S. Border Czar: Alan Bersin**

Commissioner of U.S. Customs and Border Protection in Department of Homeland Security

Reports to: Secretary of the Department of Homeland Security

Position is within the Department of Homeland Security

*Appointed March 27, 2010*<sup>4</sup>

#### **Medicare/Healthcare Czar: Dr. Donald Berwick**

Administrator of the Centers for Medicare and Medicaid Services

*Recess appointment announced by Secretary of Education Arne Duncan on May 18, 2010*

*Appointed July 7, 2010*<sup>5</sup>

**Manufacturing Czar: Ron Bloom**

Assistant to the President for Manufacturing Policy  
Car/Manufacturing Czar serving both Treasury and White House  
New position on White House staff  
*Appointed January 28, 2011*<sup>6</sup>  
*Resignation announced by White House on August 9, 2011*

**Electronic Health Records Czar: Dr. David Blumenthal**

National Coordinator for Health Information Technology  
*Appointed March 20, 2009*<sup>7</sup>  
Note: Dr. Blumenthal announced his departure in Spring 2011 to return to his position at Harvard. Health and Human Services will be conducting a national search for his successor.<sup>8</sup>

**Terrorism Czar: John Brennan**

Assistant to the President and Deputy National Security Advisor for Counterterrorism and Homeland Security  
*Executive Order 13228 and Presidential Directive, issued October 18, 2001*<sup>9</sup>  
Note: Reported to have resigned and been replaced by Daniel Benjamin, but Brennan still serves as Terrorism Czar, with no sign of actually leaving.

**Energy and Climate Change Czar: Carol Browner**

Assistant to the President for Energy and Climate Change<sup>10</sup>  
*Executive Order 12859 issued August 16, 1993*  
Note: Browner departed from the White House in March 2011, reportedly taking a position at the Center for American Progress. There is no plan to fill her position; her office has been consolidated into the Domestic Policy Council.<sup>11</sup>

**Weapons Czar: Ashton Carter**

Under Secretary of Defense for Acquisition, Technology, and Logistics  
Position established under 10 U.S.C. §133– Armed Forces, January 2004<sup>12</sup>  
*Confirmed April 23, 2009*<sup>13</sup>

**Technology Czar: Aneesh Chopra**

Federal Chief Technology Officer  
Position announced by President Barack Obama April 18, 2009<sup>14</sup>  
*Confirmed May 21, 2009*<sup>15</sup>

**Intelligence Czar: James Clapper**

United States Director of National Intelligence  
Position created under President George W. Bush in the Intelligence Reform and Prevention Act of 2004<sup>16</sup>  
*Confirmed August 9, 2010*<sup>17</sup>

**AIDS Czar: Jeffrey Crowley**

Director of the Office of National AIDs Policy<sup>18</sup>

*Executive Order 12963 issued June 1995 and amended by Executive Order 13009, issued June 14, 1996*

**Great Lakes Czar: Cameron Davis**

Senior Advisor to the Administrator

Position is within the Environmental Protection Agency

*Appointed June 4, 2009<sup>19</sup>*

**Tobacco Czar: Lawrence Deyton**

Director of FDA's Center for Tobacco Products

Reports to: FDA Commissioner

Position is within the U.S. Food and Drug Administration's Center for Tobacco Products

Position created in the Family Smoking Prevention and Tobacco Control Act of 2009

*Appointed August 19, 2009<sup>20</sup>*

**Stimulus Czar: Earl Devaney**

Chairman of the Recovery Act Accountability Transparency Board

Position created in the American Recovery and Reinvestment Act of 2009

Confirmed as Inspector General in 1999<sup>21</sup>

*Appointed as Chairman in February 2009<sup>22</sup>*

**Mideast Policy/Central Region/Iran Czar: Philo Dibble**

Deputy Assistant Secretary of State (DAS) for Iran in Bureau of Near Eastern Affairs

*Appointed August 1, 2010<sup>23</sup>*

**Faith-based Czar: Joshua Dubois**

Director of the White House Office of Faith-Based and Neighborhood Partnerships<sup>24</sup>

*Executive Order 13199 issued July 29, 2001, and amended by Executive Order 13498, issued February 5, 2009*

**IP Enforcement Czar: Victoria Espinel**

Intellectual Property Enforcement Coordinator

*Appointed December 3, 2009<sup>25</sup>*

**Workplace Czar: Chai Feldblum**

Commissioner, Equal Employment Opportunity Commission (EEOC)

*Appointed March 27, 2010<sup>26</sup>*

**Guantanamo Closure Czar: Danny Fried**

Special Envoy to Oversee the Closure of the Detention Center at Guantanamo Bay (aka Special Envoy to Guantanamo Bay)

Position is within the U.S. Department of State

*Appointed March 12, 2009*

**Asian Carp Czar: John Goss**

Director of Asian Carp Regional Coordinating Committee  
*Appointed September 8, 2010*<sup>27</sup>

**Sudan Czar: J. Scott Gration**

Special Envoy to Sudan and Ambassador to Republic of Kenya  
Position is within U.S. Department of State<sup>28</sup>  
Special Envoy position created under President George W. Bush<sup>29</sup>  
*Appointed Special Envoy March 18, 2009; nominated Ambassador February 2011*

**Afghanistan Czar: Marc Grossman**

Special Representative for Afghanistan and Pakistan (AFPAK)  
*Appointed in February 2011 after death of Richard Holbrooke, former Afghanistan Czar*<sup>30</sup>

**California Water Czar: David J. Hayes**

Deputy Secretary of the Interior  
Position established by 43 U.S.C. §1452<sup>31</sup>  
*Confirmed May 20, 2009*<sup>32</sup>

**Science Czar: John Holdren**

Director of the White House's Office of Science and Technology Policy  
Position created under President Ford in 1976 by the National Science and Technology Policy, Organization, and Priorities Act of 1976<sup>33</sup>  
*Confirmed March 19, 2009*<sup>34</sup>

**Jobs Czar: Jeffrey Immelt**

Chair of the President's Council on Jobs and Competitiveness<sup>35</sup>  
*Executive Order 13501, issued February 6, 2009*  
Note: Council name changed from Economic Recovery Advisory Board when Immelt replaced Paul Volcker on January 21, 2011.

**Special Advisor Czar: Valerie Jarrett**

Senior Adviser and Assistant to the President for Intergovernmental Relations and Public Liaison and Chair of the White House Council on Women and Girls<sup>36</sup>  
*Executive Order 13506, issued February 11, 2009*

**Safe Schools Czar: Kevin Jennings**

Assistant Deputy Secretary for Safe and Drug-Free Schools  
Reports to: Deputy Secretary  
Created under President George W. Bush<sup>37</sup>  
Position is within the Department of Education<sup>38</sup>  
*Appointed May 19 2009*<sup>39</sup>

**Healthy Foods Czar: Sam Kass**

Senior Policy Officer for Healthy Food Initiatives  
*Appointed June 2010*<sup>40</sup>

**Drug Czar: Richard Gil Kerlikowske**

Director of the Office of National Drug Control Policy  
Position established under President Reagan in 1988 by Anti-Drug Abuse Act<sup>41</sup>  
*Confirmed May 7, 2009*<sup>42</sup>

**Information Technology Czar: Vivek Kundra**

Federal Chief Information Officer  
*Appointed March 5, 2009*<sup>43</sup>

**Diversity Czar: Mark Lloyd**

Associate General Counsel and Chief Diversity Officer  
Position is within the Federal Communications Commission  
*Appointed July 29, 2009*<sup>44</sup>

**War Czar: Lt. General Douglas Lute**

Assistant to the President and Deputy National Security Adviser for Iraq and Afghanistan  
Position established under President George W. Bush in 2007<sup>45</sup>  
*Confirmed June 28, 2007*<sup>46</sup>

**Oil Czar: Ray Mabus**

Oil Recovery Chief (also Secretary of Navy)  
*Appointed June 15, 2010*<sup>47</sup>

**TARP Czar: Timothy Massad**

Acting Assistant Secretary of the Treasury for Financial Stability and Chief TARP Counsel  
Interim position created under President George W. Bush in 2009<sup>48</sup>  
*Appointed Acting Head on September 22, 2010, after resignation of Herb Allison*<sup>49</sup>

**Middle-East Peace Czar: George J. Mitchell, Jr.**

Special Envoy to the Middle East  
Position is within the U.S. Department of State  
Position created under President George W. Bush  
*Appointed January 22, 2009*<sup>50</sup>  
*Resigned May 13, 2011 (Mitchell's deputy, David Hale, will serve as acting Mideast envoy.)*

**Domestic Violence Czar: Lynn Rosenthal**

White House Adviser on Violence Against Women<sup>51</sup>  
*Executive Order 12859, issued August 16, 1993, and Executive Order 13500, issued February 5, 2009*

**WMD Czar: Gary Samore**

Special Assistant to the President and White House Coordinator for Arms Control and Weapons of Mass Destruction, Proliferation, and Terrorism

Position is within National Security Council

*Appointed in January 2009*<sup>52</sup>

**Cybersecurity Czar: Howard Schmidt**

Director of White House Office of Cybersecurity

*Appointed December 22, 2009*<sup>53</sup>

**Economic Policy Czar: Gene Sperling**

Director of the National Economic Council and Assistant to the President for Economic Policy<sup>54</sup>

*Executive Order 12835, issued January 25, 1993, and amended by Executive Order 13499, issued February 5, 2009*

Note: Appointed by Obama on January 7, 2011 to replace Lawrence Summers.

**Climate Czar: Todd Stern**

Special Envoy for Climate Change

Position is within the U.S. Department of State

*Appointed January 26, 2009*<sup>55</sup>

**Regulatory Czar: Cass Sunstein**

Administrator of the Office of Information and Regulatory Affairs

Position established under President Carter by the Paperwork Reduction Act of 1980<sup>56</sup>

*Confirmed September 10, 2009*<sup>57</sup>

**Food Safety Czar: Michael Taylor**

Special Assistant to the FDA Commissioner for Food Safety, and also Deputy Commissioner for Foods

*Appointed Special Assistant on July 7, 2009; appointed Deputy Commissioner January 13, 2010*<sup>58</sup>

**Native American Affairs Czar: Kimberley Teehee**

Senior Policy Advisor for Native American Affairs

Position is within The White House Domestic Policy Council

*Appointed June 15, 2009*<sup>59</sup>

**Latin American Czar: Arturo Valenzuela**

Assistant Secretary of State for Western Hemisphere Affairs

*Appointed November 10, 2009*<sup>60</sup>

**Consumer Czar: Elizabeth Warren**

Assistant to the President and Special Advisor to the Secretary of the Treasury on the Consumer Financial Protection Bureau

*Appointed September 17, 2010*<sup>61</sup>

Note: Treasury reported that Elizabeth Warren would leave the Consumer Financial Protection Bureau on August 1, 2011, to return to her prior position at Harvard. Former Ohio Attorney General “Richard Cordray was tapped by President Obama to lead the CFPB,” but he faces stiff opposition from Republicans, who are calling for structural reforms before confirmation of any nominee.<sup>62</sup>

**Performance Czar: Jeffrey Zients**

Federal Chief Performance Officer and Deputy Director for Management Office of Management and Budget

Position announced by Barack Obama in January 2009<sup>63</sup>

*Confirmed June 19, 2009*<sup>64</sup>

**Open and Planned Appointments**

As previously indicated, President Obama currently has a number of open and planned positions for czars. Some are due to unfilled resignations, while others have been mentioned within the administration, but appear to be on a back-burner for now.

Following is a list of the unfilled positions as of September 15, 2011:

<b>Position</b>	<b>Remarks</b>
Autism czar	Planned, but no word on status
Behavioral czar	Planned, but no word on status
Car czar	Open due to resignation of Ron Bloom
Disinformation czar	Open due to resignation of Linda Douglass
Electronic health records czar	Open due to resignation of Dr. David Blumenthal; position to be filled
Ethics czar	Open due to resignation of Norm Eisen, but is not likely to be filled*
Green jobs czar	Open due to resignation of Anthony “Van” Jones
Health care czar	Open due to appointment of Nancy-Ann DeParle as Deputy White House Chief of Staff; position may not be filled

\*With the resignation of Norm Eisen as Ethics Czar and the announcement by the White House in August (2010) that the full time position of Ethics Czar would be eliminated, Steven P. Croley, Special Assistant to the President for Justice and Regulatory Policy, currently “oversees a team of White House staffers responsible for ethics issues.”

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Income redistribution czar	Planned, but no word on status
Internet czar	Open due to resignation of Susan Crawford
Land-use czar	Planned, but no word on status
Manufacturing czar	Open due to resignation of Ron Bloom
Radio-internet fairness czar	Planned, but no word on status
Student loan czar	Planned, but no word on status
TARP czar	Open due to resignation of Herbert Allison
Urban affairs/housing czar	Open due to resignation of Adolfo Carrion, Jr.
Voter list czar	Planned, but no word on status
Zoning czar	Planned, but no word on status

### **Controversial Czars in the Obama Administration**

Since numerous presidential czars avoid Senate confirmation, they also avoid the Senate's valuable vetting process. The procedure of confirming potential appointments is a necessary layer of protection and accountability, because it helps to ensure against controversial appointments and validates that the nominee is competent and qualified.<sup>†</sup>

#### **Special Advisor Czar: Valerie Jarrett**

Valerie Jarrett was an integral part of President Obama's 2008 campaign for President, and she remains Obama's closest advisor... so close that Obama has acknowledged he runs every decision by her.<sup>65</sup>

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<sup>†</sup>As a result, the process helps protect the government's integrity and public image, facilitates a more efficient government, and promotes public confidence in those actually governing.

The generally rigorous Senate vetting procedure has a recent history of eliminating appointees for irregularities that the White House either missed or ignored. The Clinton administration had six major nominees withdraw from contention, including Zoe Baird, who withdrew her bid for Attorney General, when it was uncovered that she employed illegal aliens. In 2004, George W. Bush's nomination of Bernard Kerik for Secretary of Homeland Security was also derailed because of the nominee's ethical and legal transgressions.

President Obama had numerous nominees run into trouble for owing various amounts in back taxes, including Tom Daschle (prospective Health and Human Services Secretary) and Ron Kirk (prospective U.S. Trade Representative), both of whom withdrew as nominees. Additionally, Obama nominee for Commerce Secretary, New Mexico Governor Bill Richardson, withdrew after being linked to an alleged pay-to-play scheme in his home state. The Obama administration's nominee for National Intelligence Director, Charles Freeman, withdrew after numerous controversial foreign policy statements and financial ties to China and Saudi Arabia were exposed. These failed nominations reflect the successes of the confirmation process in exposing potentially controversial issues and conflicts of interest with nominees before they assume a position of authority. Though the Senate confirmation process is certainly not foolproof, many of the recent controversies for Obama's czars could have been avoided, had they been subject to greater scrutiny before their appointment.

Officially, Jarrett is listed as the Senior Advisor and Assistant to the President for Intergovernmental Relations, and serves as the Chair of the White House Council on Women and Girls. However, her extensive influence on the President has been instrumental in crafting the White House agenda, including policy concerning lobbyists. Specifically, Jarrett successfully petitioned the President to lift a restriction barring lobbyists from meeting with government officials with regard to economic stimulus projects.<sup>66</sup>

Jarrett served as the administration's leading promoter in the failed attempt to bring the 2016 Olympics to Chicago.<sup>67</sup> Her work on the Olympics bid would have violated Obama's own policy against lobbyists, had fellow czar Norm Eisen (aka the former Ethics Czar) not granted her an "ethics waiver." The waiver exempted her from the restrictions of President Obama's ethics pledge, even though she personally led the bid before entering the White House and has numerous business ties to Chicago contacts, including slumlord, convicted felon and former Obama fundraiser Antoin "Tony" Rezko.<sup>68</sup>

Though Chicago failed to win its bid for the 2016 Olympics, the full extent of Valerie Jarrett and the administration's involvement in the bid is still largely unknown. In September of 2009, Judicial Watch launched an investigation into the administration's involvement, filing a Freedom of Information Act request with Chicago Mayor Richard Daley's Office. However, the Mayor's Office failed to provide a timely response to the request. Due to this non-compliance with the Freedom of Information Act, Judicial Watch was forced to file suit against Chicago Mayor Daley's Office to obtain the requested records.<sup>69</sup>

Aside from the Chicago Olympics scandal, Jarrett is also the former manager of Grove Park Plaza, a controversial low-income housing project located in Obama's former state Senate district. According to the *Boston Globe*, the housing complex was considered "uninhabitable by unfixed problems, such as collapsed roofs and fire damage.... In 2006, federal inspectors graded the condition of the complex an 11 on a 100-point scale - a score so bad the buildings now face demolition."

According to documents uncovered by Judicial Watch, Jarrett is also linked to a series of other shady real estate scandals involving Tony Rezko. Jarrett has also been caught up in the Blagojevich scandal as Obama's "Candidate #1" for his Senate seat. Most of Blagojevich's corrupt negotiations with the Obama team centered on the possible Jarrett appointment.

### **Diversity Czar: Mark Lloyd**

Named as the Federal Communication Commission's (FCC) Chief Diversity Officer in July 2009, Mark Lloyd has been labeled Obama's "Diversity Czar" by much of the media. According to FCC documents obtained by Judicial Watch, Lloyd's mission is "to open up opportunities for all Americans, in particular

women, minorities, and small business owners, to participate in and benefit from a robust communications marketplace."

Almost immediately following his appointment, Lloyd was under fire from blogs, media outlets, and some members of Congress for several controversial statements that he made while working as a senior fellow at the left-wing think tank Center for American Progress. These comments included remarks on the need to remove white people from powerful positions in the media to benefit minorities. Additionally, in a 2007 report for the Center for American Progress, Lloyd suggested that new licensing rules could be used to bring a more liberal voice into talk radio, striking fears in some of a possible return of the so-called "Fairness Doctrine."<sup>70</sup>

Equally explosive however, was the emergence of a video from June 2008 in which Lloyd seems to praise "the incredible revolution" of militant Venezuelan Socialist Hugo Chavez. In the video, Lloyd remarks:

*"The property owners and the folks who then controlled the media in Venezuela rebelled – worked, frankly, with folks here in the U.S. government – worked to oust him... But he came back with another revolution, and then Chavez began to take very seriously the media in his country."*

*The Washington Times* reported that he has appeared at meetings held by the FCC's advisory committee that discuss licensing to minority-owned media outlets.<sup>71</sup> This helps to stoke fears that Lloyd is exerting his influence to bring about changes in FCC policy -- while still remaining unconfirmed and unaccountable. In keeping with President Obama's intent to mask the duties and budgets of his czars, as opposed to his earlier commitments to "transparency," Lloyd reportedly shares staff with the Office of General Counsel; supposedly, no one was hired or assigned specifically to support him in his work. His position is funded out of the agency's fiscal year budget, and as such, he has no separate identifiable budget for operation and administration.

### **Health Reform Czar: Nancy-Ann DeParle**

Though former Kansas Democratic governor Kathleen Sebelius won Senate confirmation as Secretary of Health and Human Services, the power in the department has been with czar Nancy-Ann DeParle, who President Obama appointed to be Director of the White House Office of Health Reform.

DeParle ran the Medicare and Medicaid programs under President Clinton and parlayed her government experience into a lucrative income during a stint in the private sector. Over the past three years, she reportedly made nearly \$6 million from her work in the health care industry. She served as an investment advisor

at JP Morgan Partners LLC, sat on the board of directors at Boston Scientific Corporation, and held directorships at Accredo Health Group, Inc., Triad Hospitals, and DaVita Corporation ... in all, some ten boards, while advising JP Morgan.

From 2002 to 2008, DeParle served as a member of the government-chartered Medicare Payment Advisory Committee (MedPAC), a panel that advises Congress on what Medicare should cover and at what price.

In June 2009, Obama signed an executive order requiring appointees to pledge not to participate “in any particular matter involving specific parties ... directly and substantially related to any former employer or former clients” for a period of two years from the date of his or her appointment. In the case of DeParle, it is difficult to imagine any health care reform issue not involving one of her former employers, clients, and/or corporate boards in the health care industry.<sup>72</sup> For instance, she earned at least \$376,000 from Cerner Corporation, which specializes in health information technology. Yet, as health czar, DeParle has unmeasured clout in directing some \$19 billion of federal stimulus money earmarked for health information technology.

Despite Obama's lip service with regard to transparency, he and DeParle are reluctant to reveal assets divested by her and how many times, if any, DeParle has recused herself from policy matters and meetings.

As has been noted, the position of Health Care Czar is now vacant, with DeParle's appointment in January 2011 as Deputy White House Chief of Staff for Policy.

### **Medicare/Healthcare Czar: Dr. Donald Berwick**

On July 7, 2010, the White House announced that President Obama was bypassing the Senate by using a recess appointment to install Dr. Donald Berwick as Administrator of the Center for Medicare and Medicaid Services (CMS). The recess appointment was a somewhat unusual move by the Obama administration to circumvent what it claimed would be an effort by Senate Republicans to stall the nomination process -- unusual because the Senate was in recess for less than two weeks and Senators were waiting for Dr. Berwick to submit responses to some of their requests for information.

Prior to accepting the appointment by the President, Dr. Berwick was President and CEO of the Institute for Healthcare Improvement and is a professor at Harvard Medical School and the Harvard School of Public Health. He is also a pediatrician, adjunct staff member in the Department of Medicine at Boston Children's Hospital and a consultant in pediatrics at Massachusetts General Hospital. He has served as chair of the National Advisory Council of the Agency for Healthcare Research and Quality and as an elected member of the Institute of Medicine (IOM).

Undoubtedly his experience and dedication to medical treatment of children would have been seen as impressive qualifications, but what was lost by the action of Obama was the ability of the Senators to ask about extremely controversial statements made by the doctor and what appears to be unorthodox – and perhaps dangerous – policy views that will ultimately impact the lives and health care of Americans.

Perhaps Dr. Berwick's most notorious statement was:

*“Any health care funding plan that is just, equitable, civilized, and humane must, must redistribute wealth from the richer among us to the poorer and the less fortunate. Excellent health care is, by definition, redistributive.”<sup>73</sup>*

Such a statement and others equally extreme, along with his support for a Great Britain-type health care system, suggests Berwick is a socialist – and now able to run amuck in shaping the future of Medicare and Medicaid in the U.S.

With his appointment set to expire at the end of this year, Berwick has been nominated for permanent head of the CMS, but he is not likely to receive a hearing. Already, 42 Republican Senators have urged that his nomination be withdrawn, and 42 votes are enough to block his approval. Another recess appointment is a possibility, but it is also unlikely.

### **Science Czar: John Holdren**

Despite the relative success of the Senate vetting process in catching controversy before an appointment is confirmed (Tom Daschle, Ron Kirk, Bill Richardson, Charles Freeman, etc.), there are controversial Obama czars who were appointed consistent with the “advice and consent” provisions of the U.S. Constitution. When a particular party controls both the executive and legislative branches, controversial appointments may pass through more easily. One such case is Obama's science czar, John Holdren, who was confirmed on March 19, 2009, as Director of the White House Office of Science and Technology Policy.

Four months following Holdren's confirmation, reports began circulating of the alarming ideas considered in a 1977 text book which he co-authored. Titled *Ecoscience: Population, Resources, Environment*, the book espouses that “to provide a high quality of life for all, there must be fewer people.”

Concerned with rising world population, the book considers possible plans to implement population control, including forced abortions, involuntary sterilizations, and other “coercive proposals [that] deserve discussion.” It also formulates the world government, called the “Planetary Regime,” necessary to implement such policies. Unfortunately, the book and its disturbing viewpoints

were never brought up during the confirmation process, when Senators could have sought answers.<sup>74</sup>

Holdren also has a reputation for snubbing public discourse on science and is far from the image of transparency that Obama touted during the campaign.<sup>75</sup>

### **Safe and Drug-Free Schools Czar: Kevin Jennings**

Kevin Jennings is another controversial Obama czar appointed by the President through regular constitutional procedures. As the "Safe Schools Czar," Jennings serves as Assistant Deputy Secretary for the Office of Safe and Drug Free Schools, an Inferior Officer position in the Department of Education that was created through statute. As an Inferior Officer, the significant authority of Jennings' position is legally granted with the advice and consent of the Senate without his having to undergo Senate vetting and approval.

Because Jennings was appointed without Senate vetting, it was only after he was already in a position of authority that controversy surfaced. Many were taken aback to learn of Jennings past efforts to overtly promote homosexuality in public schools. During the 1990's, Jennings established the Gay Straight Alliance (GSA), along with the Gay Lesbian Straight Education Network (GLSEN). The GLSEN caused a controversy in 2000 for holding an educational seminar that described to children various unorthodox sexual practices.<sup>76</sup> Further, Jennings has publically praised Harry Hay, who is associated with the North American Man-Boy Love Association (NAMBLA). Jennings also wrote the forward to a book entitled *Queering Elementary Education*.<sup>77</sup>

The public was most shocked, however, to hear his own account of the advice he, the "Safe Schools Czar," had given as a teacher to a 16 year-old gay student in 1988 at a 2000 GLSEN rally in Iowa. Jennings recounted an incident in which a male student he believed to be 15 (later revealed to have been 16 at the time) told him that he was meeting older men for sex in Boston bus stops. A teacher back then, Jennings reported that his response to the boy was "You know, I hope you knew to use a condom."

Surfacing of this incident created a big enough stir to have 53 House Republicans call for Jennings' removal from his position at the Department of Education.<sup>78</sup> Despite the demand, the Obama administration has thus far stood by Jennings.

### **Regulatory Czar: Cass Sunstein**

Cass Sunstein was nominated to the post of Administrator of the Office of Information and Regulatory Affairs by President Obama on April 20, 2009, and he was confirmed by the Senate on September 10, 2009. Sunstein is President Obama's friend from their days at the University of Chicago Law School. Sunstein has been embroiled in controversial statements and unconventional

thinking since well before his nomination, including back in 2002 when he wrote a book entitled *Republic.com*.

In the book, Sunstein discussed the drawbacks of limitless choices on the Internet that allow people to seek out only like-minded people and opinions that merely fortify their views. He presented the idea of the government requiring sites to link to opposing views, before he came to realize it was a bad idea and almost certainly unconstitutional.<sup>79</sup>

He also proposed in 2004 in his book, *Nudge*, that emails should be prevented by technology from being sent until after a 24-hour cooling-off period has expired. He suggested that email software have a built-in “civility check” that can accurately tell whether the email being sent is “angry,” and if so, cautions the sender with this warning: “This email appears to be uncivil. Do you really want to send it?”<sup>80</sup>

In his 2004 book, *Animal Rights*, Sunstein suggested that animals ought to be able to bring suit, with private citizens acting as their representatives, to ensure that animals are not treated in a way that violates current law.<sup>81</sup> In 2007, in a speech that must have raised the hackles of the National Rifle Association and millions of gun-owning Americans, Sunstein proposed in a speech at Harvard that the government ban hunting in the U.S.

This is the person charged with reviewing federal regulations, reducing paperwork, and overseeing policies relating to privacy, information quality, and statistical programs in the Obama White House.

The Holdren, Jennings and Sunstein controversies demonstrate that even legally appointed czars can prove to be scandalous. Despite the political controversies, though, statutorily approved czars are somewhat more accountable, since they can be called to testify before Congress. Further, because their positions are established by statute, there is at least a degree of clarity in their roles, and therefore a greater degree of transparency (at least in theory) in comparison to the more shadowy administration figures.

### **Controversial Czars Who Resigned**

As has been reported, a number of czars have resigned from their positions in the Obama administration. While those resigning have, in most instances, stated a personal reason for leaving, for some, the true reason is likely due to the mounting controversy impacting their positions and actions. The following individuals stand out for unethical – and in some instances, perhaps illegal – behavior.

### **Manufacturing Czar: Ron Bloom**

Upon Steve Rattner's resignation in July 2009, the Treasury Department announced Ron Bloom as the new Car Czar. Officially, a "Senior Advisor to the Secretary of the Treasury," Bloom served as the leader of the task force overseeing the auto bailouts. A longtime lawyer for labor unions, including the Service Employees International Union (SEIU) and the United Steel Workers, Ron Bloom is yet another administration czar that lit up the blogosphere after the revelation of a past quote with socialist overtones.

In late October 2009, on the heels of a controversy involving Obama's then communications director Anita Dunn (who claimed the ruthless Chinese communist-dictator Mao Tse-Tung as one of her favorite political philosophers), a video emerged of Ron Bloom speaking at the Union League Club in February 2008.<sup>82</sup> In his speech, Bloom attested that the free market is "nonsense," and made his own reference to Mao. Bloom stated:

*"Generally speaking, we get the joke. We know that the free market is nonsense. We know that the whole point is to game the system, to beat the market or at least find someone who will pay you a lot of money, 'cause they're convinced that there is a free lunch. We know this is largely about power, that it's an adults only no limit game. We kind of agree with Mao that political power comes largely from the barrel of a gun."*<sup>83</sup>

On January 28, 2011, Bloom was given a new role in the administration by President Obama and was elevated to White House staff to provide him with more clout. His new title was Assistant to the President for Manufacturing Policy. In August of 2011, Bloom's resignation was announced by the White House, absent any plans to fill his vacancy.<sup>84</sup>

### **Energy and Environment Czar: Carol Browner**

Former Administrator of the Environmental Protection Agency (EPA) under President Clinton, Carol Browner was tapped to be Obama's Global Warming Czar during the President's transition to power. In January of 2009, various blogs and news sources revealed that Browner was one of 14 listed leaders of Socialist International's "Commission for a Sustainable World Society." Socialist International is a worldwide organization of socialist and left-leaning political parties.<sup>85</sup>

Among other marks in its radical leftist agenda, the organization has stressed global governance as the solution to the financial crisis, war, and climate change. At a June 30, 2008, conference in Greece, Browner spoke on the Commission's panel, "How Do We Strengthen the Multilateral Architecture for a Sustainable Future?" Her fellow panelists included a Russian legislator, a vice minister of the

International Department of Chinese Communist Party's Central Committee, and a former minister of the Spanish Socialist Workers' Party.<sup>86</sup>

Also of concern and under investigation by Judicial Watch was Browner's role as a point person for the Obama administration in terms of secret negotiations to establish automobile emission standards, as well as her participation in negotiations involving "cap and trade" legislation (American Clean Energy and Security Act of 2009).

As indicated, Browner announced she was leaving her position, reportedly because the "cap and trade" bill failed to gather enough votes in the Senate. Another reason, however, could be the fact that Fred Upton, the new chairman of the House Energy and Commerce Committee, had indicated an intention to investigate Browner's authority.

Browner's departure was announced by the White House on January 27, 2011. There is no word on a replacement for Browner, only that "much reorganization is occurring in the administration."<sup>87</sup>

### **Urban Affairs/ Housing Czar: Adolfo Carrion**

Adolfo Carrion was the director of the White House "Office of Urban Affairs," an office created by the Obama administration in February 2009 by Executive Order. According to the executive order, Carrion's responsibilities were "to provide leadership for and coordinate the development of the policy agenda for urban America across executive departments and agencies" and "to coordinate all aspects of urban policy."<sup>88</sup>

Carrion's qualification for the role stemmed from his work in urban development as the Bronx Borough president. However, in March 2009, the *New York Daily News* ran several stories revealing numerous conflicts of interests concerning donors to Carrion's campaign. These were contributions from New York developers who were receiving, or subsequently received, approval and taxpayer funding for major development projects under Carrion's jurisdiction.

One questionable donor was the Jackson Development Group. In 2007, the group was sitting on a stalled project for the development of affordable housing. In 2007, employees from Jackson Development Group donated \$35,650 to Carrion's campaign, and a year later in 2008, Carrion announced \$3 million in taxpayer funds for the project. Another questionable Carrion donor was Jose Velazquez, owner of Tri-Line Contracting. As a fundraiser, Velazquez raised \$83,700 for Carrion's campaign. During this period, Tri-Line was one of the contractors

working on the Bronx's new Yankee Stadium, on which Carrion signed off.<sup>89</sup>

Among Carrion's questionable donors, the most suspicious are those involved in the Bronx's Boricua Village project – which included 679 housing units and a 14 story tower – and provided \$7.5 million in taxpayer funding by Carrion.<sup>90</sup> The project's developer was the Atlantic Development Group, whose owner (Peter Fine) and employees donated \$52,400 to Carrion's campaign. This was Carrion's largest single source of donations. Further, the project's architect, Hugo Subotovsky, was hired by Carrion to design a new front porch for his Victorian house. The porch was originally estimated at \$50,000, but according to the *New York Daily News*, the final price for the project ended up being only \$24,000.

These numerous conflicts of interest would have surely come up in any Senate confirmation hearing for an officer in charge of “coordinating” America's urban policy.

Carrion's official date of resignation is unreported.

### **Information Technology Czar: Vivek Kundra**

President Obama appointed Vivek Kundra Federal Chief Information Officer in the White House Office of Management and Budget, despite a criminal background. As a 21-year old in 1996, Kundra was convicted of misdemeanor theft, having stolen a handful of men's shirts from a J.C. Penney department store (plus running away in a failed attempt to avoid arrest).<sup>91</sup>

The White House has downplayed the incident as “youthful indiscretion,” and Obama has enthusiastically promoted Kundra as playing “a key role in making sure our government is running in the most secure, open, and efficient way possible.”

Kundra is also under an umbrella of suspicion for other concerns and relationships. For instance, before moving over to the White House, he was serving as the chief technology officer for the District of Columbia. During the transition, two of his underlings, Yusuf Acar (who had received several promotions from Kundra) and Sushil Bansal, were charged in an alleged scheme of bribery, kickbacks, ghost employees, and forged timesheets.<sup>92, 93</sup>

Kundra was put on leave for five days and reinstated after the government informed him that he was neither a subject nor a target of the investigation. The Obama White House then defended Kundra by publically stating he was ignorant of the goings on in his workplace of some 300 employees.

While that may have seemed like a plausible defense—what does it suggest about Kundra's ability to police government technology operations across the entire federal government?

### **Car Czar: Steve Rattner**

Steve Rattner was the head of the Obama administration's auto task force, until he suddenly announced his resignation in July of 2009. The auto task force oversees the restructuring and investment of billions of taxpayer dollars into General Motors and Chrysler. In April 2009, details emerged concerning Quadrangle Group, the private equity firm that Rattner founded and ran until February 2009. Quadrangle was in the middle of a joint Securities and Exchange Commission/New York State Attorney's Office investigation into pay-for-play schemes (kickbacks).

According to the *Washington Post*, sources identified Rattner as being directly involved in paying over \$1 million to middlemen in order to win investments from the New York state pension funds. As a result, he was accused by the Security and Exchange Commission (SEC) and the state attorney general of improper payments. While the SEC charges were settled (a two-year ban from certain Wall Street businesses and a \$6.2 million fine), further action against Rattner was pursued by the state attorney general.<sup>94</sup>

*Note:* On Thursday, November 18, 2010, Steven Rattner was formally accused by Andrew Cuomo, New York's attorney general at that time, of engaging in a kickback scheme involving the state's pension system (Cuomo subsequently won the race for New York Governor in the November election and assumed office on January 2, 2011.) Despite being a Democrat, Cuomo was seeking a \$26 million fine and to ban Rattner for life from the securities business in New York. A settlement was announced on December 30, 2010. Rattner "agreed to pay \$10 million to settle influence-peddling allegations in New York," but as part of the deal, "he admitted no wrongdoing."<sup>95</sup>

Another worrisome matter of Rattner's term as auto czar is his personal connections to a firm directly involved in the bailout that he oversaw. Rattner's brother-in-law is a partner at Cadwalader, Wickersham & Taft, the law firm hired by the government to develop the bankruptcy framework eventually used for General Motors (GM) and Chrysler.<sup>96</sup> The plans for bankruptcy that Cadwalader helped develop (involving the sale of Chrysler to Fiat and the reemergence of GM) were only approved upon Rattner's denial of the restructuring plans submitted by GM and Chrysler on February 17, 2009. Though there is no evidence as of yet that Rattner was directly influenced by his family ties, the mere appearance of a possible conflict of interest is, nevertheless, unsettling.<sup>97</sup>

### **Green Jobs Czar: Anthony “Van” Jones**

Van Jones was appointed in March 2009 to be President Obama's “Special Advisor for Green Jobs and Innovation” for the White House Council on Environmental Quality. Jones' radical ties quickly became the biggest czar controversy of the Obama administration to date. A few months after Jones' appointment, a blogger from New Zealand reported on his radical past.<sup>98</sup> Almost immediately, American internet blogs and talk show host Glenn Beck were in an uproar over Jones' self-admitted anarchist/communist past.

During the 1990's Jones was involved with San Francisco's radical Marxist revolutionary group, Standing Together to Organize a Revolutionary Movement (STORM). Further, Jones publicly avowed support for cop-killer Mumia Abu-Jamal, a death row inmate who was convicted of murdering a Philadelphia police officer in 1981. Most shockingly, among numerous other controversies, Jones signed a petition in 2004 calling for investigations into the claim that the Bush administration intentionally caused the events of September 11, 2001.

After attempting to deflect criticism, Jones resigned on September 5, 2009.<sup>99</sup>

### **Consumer Czar: Elizabeth Warren**

No other appointment raised as much ire among Republicans and some Democrats in Congress, the financial sector, and a significant portion of the American public as the appointment by President Obama of Elizabeth Warren to head the newly formed Consumer Financial Protection Bureau (CFPB).<sup>100</sup> Her formal title was Assistant to the President and Special Advisor to the Secretary of the Treasury on the Consumer Financial Protection Bureau. Officially located under the umbrella of the Federal Reserve Bank, Warren was supposedly accountable to President Obama and Treasury Secretary Timothy Geithner.

One reason for the uproar was the flagrant action taken by Obama to circumvent the role of the Senate in examining and evaluating her qualifications, viewpoints, and ability to run the bureau. Given the extraordinary amount of power and extremely large budget (\$400 million), this particular position should come under the “advice and consent” rules of the Constitution.

Instead, Obama ignored the Constitution and named Warren in an “interim appointment.” The President's strategy was to sneak Warren through the backdoor allowing her to put her leftist stamp on this powerful new agency.

And why did Obama ignore the constitutional vetting process? Because he knew Warren did not stand a chance of confirmation due to her radical views and alleged ethical transgressions.

Known as the left-wing patron saint of so-called consumer protection, Warren has demonstrated a penchant for provocative and anti-business statements. For example, in a blog she crafted for TPMCafe.com in 2005, Warren said:

*"...big corporate interests, led by the consumer finance industry, are devouring families and spitting out the bones."*<sup>101</sup>

Regarding Warren's ethics, she has been accused of manipulating data to support her opinion. One example involves Megan McArdle, the economics and business editor at *Atlantic* magazine, who has challenged the academic work Warren has been so highly praised for throughout her career. McArdle has taken issue with a report published by Warren and two colleagues that argued high medical costs had become the biggest reason for bankruptcy filings. McArdle responded by saying:

*"Yet, upon closer examination, it turns out that it is not just wrong, but actively, aggressively wrong. Warren and her co-authors have obscured important and obvious facts that call the integrity of the work into serious question."*

According to McArdle, what Warren purposely obscured is that between 2001 and 2007, bankruptcy filings decreased dramatically, a fact that essentially invalidates the report. McArdle has subsequently accused Warren of skewing her studies to reinforce already held beliefs by the left.

Judicial Watch initiated an investigation into the controversies surrounding Ms. Warren and the CFPB on March 22, 2011. Documents uncovered by Judicial Watch in June of 2011 indicate that the CFPB had been intensely involved in a 50-state settlement underway with the nation's largest mortgage lenders related to alleged improper foreclosure procedures. The documents, obtained in response to open records requests with CFPB and the offices of attorneys general from all 50 states, seemed to contradict Warren's statements before Congress suggesting her office responded to requests for advice, but did not seek to push its views. During a March 16, 2011, hearing of the House Financial Services Subcommittee on Financial Institutions and Consumer Credit, Ms. Warren characterized her agency's involvement in the state settlement negotiations: "We have been asked for advice by the Department of Justice, by the Secretary of the Treasury, and by other federal agencies. And when asked for advice, we have given our advice."

However, emails obtained by Judicial Watch from several states suggest her agency's participation was far more intense and aggressive. Warren called emergency meetings by phone and in person with attorneys general nationwide to contribute unsolicited input on the matter. The documents also indicate that Warren's office insisted on keeping its contact with the state attorneys general secret.

For example, in a February 25, 2011, email to the Executive Committee of the National Association of Attorneys General (NAAG), Iowa Assistant Attorney General Patrick Madigan wrote: "Elizabeth Warren would like to present the CFPB's view on loan modifications." And two weeks earlier, a similar email was distributed to NAAG's Loss Mitigation Subgroup on Warren's behalf. In an email on February 15 regarding that meeting, Madigan points out that "The CFPB wanted me to stress the confidential nature of this briefing."

The March 22, 2011, FOIA request to the CFPB for all records of Warren's communications with each state's attorney general produced a single heavily-redacted document regarding a February 24 meeting with Illinois Attorney General Lisa Madigan.

But state attorneys general nationwide supplied dozens of documents to Judicial Watch showing contact between their offices and Warren's, including emails establishing closed-door meetings between Warren and New York Attorney General Eric Schneiderman on February 14 and March 7.

During this time, though ultimately unsuccessful, Warren went on a campaign – especially with Republicans in Congress – to soften the animosity toward her. Beginning with members on the House Financial Services Committee, she was methodically working her way through the GOP's 87 new members, many of whom are her harshest critics. The Senate, however, may have been another story, as she reportedly was having difficulty getting appointments with key Senators whose support she needed. It was feared that if Warren's efforts failed to garner such support, she could become a recess appointment by President Obama. Instead, on July 18, 2011, Obama, in an apparent acknowledgment of Warren's inability to win Senate confirmation, "nominated former Ohio Attorney General Richard Cordray to be director" of the CFPB following Warren's departure in August.<sup>102, 103</sup>

Warren is now a candidate for the U.S. Senate in Massachusetts.

The CFPB arose out of the Dodd-Frank Wall Street Reform Act and this new federal agency officially gained its authority under the law on July 21, 2011.

### **Examples of How Obama Circumvents the Constitutionally Required Confirmation Process by the Senate**

In March 2008, President Obama made the following claim:

*"The biggest problems that we're facing right now have to do with George Bush trying to bring more and more power into the executive branch and not go through Congress at all. And that's what I intend to reverse when I'm president of the United States."*<sup>104</sup>

Apparently, he changed his mind, and instead, created more czars than any President before him.

The problem of unconfirmed policy czars revolves around the balance between executive privilege and congressional oversight. Certainly, Presidents require a level of confidentiality with their White House policy advisors in order to foster a frank give-and-take of advice and ideas. However, such constitutional officers can still be compelled to testify and remain subject to congressional oversight.

In some cases, constitutional officers have delegated authority to czars who act as Inferior Officers of the Constitution, notwithstanding that Congress has not authorized the inferior office. Such actions appear to be outside of the law.

On June 10, 2009, Treasury Secretary Timothy Geithner appointed Kenneth Feinberg to serve as the Special Master for Compensation.<sup>105</sup> In this role, Feinberg possessed significant authority to set compensation regulations for companies receiving money from the Troubled Asset Relief Program (TARP). Following Feinberg's departure to become administrator of the \$20 billion dollar BP Oil Spill Claims Fund, Patricia Goeghegan, a Treasury department official, took over his position as Pay Czar.<sup>106</sup>

Though the Pay Czar can be removed by the Treasury Secretary, if he so wishes, Feinberg and Goeghegan were invested with significant authority regarding executive compensation for major private corporations, giving them the status of either an Officer or Inferior Officer of the United States.<sup>107</sup> The TARP legislation, however, established the authority to set compensation only in the Treasury Secretary; Geithner's sub-delegation of statutory authority received no advice and consent from the Senate and likely violates the Appointments Clause of the Constitution.

Michael McConnell, Director of Stanford University's Constitutional Law Center, argued that the Pay Czar was unconstitutional, writing that Congress:

*“ . . . vested the authority to implement TARP's compensation provision in the Secretary of the Treasury. The secretary may sub-delegate that power to someone else, but that someone must be an 'officer' properly appointed by and with the advice and consent of the Senate.”*<sup>108</sup>

Thus, the Pay Czar is exercising significant authority pursuant to the laws of the United States, without having undergone Senate confirmation.

The Obama administration deliberately circumvents congressional oversight by routinely investing czars with broad and vague responsibilities. These responsibilities often overlap with, and may even replace, the duties previously assigned to Senate confirmed statutory Officers.

The problem of vague, yet powerful, policy czars usurping the power of statutory Officers has not gone unnoticed by the Senate. On September 14, 2009, six members of

the Senate Committee on Oversight and Governmental Affairs sent a letter to President Obama expressing concern that at least 18 czars “either duplicate or dilute the statutory authority and responsibilities the Congress has conferred upon Cabinet-level officers and other senior Executive branch officials.”

For many czars, the title of their position alone seems to overlap with established administration and agency heads. For instance, the Obama administration created a “Health Reform Czar” (Nancy-Ann DeParle) to serve as the Director of the White House Office of Health Reform. In this role, one of DeParle’s stated duties was to “develop and implement strategic initiatives under the President’s agenda to strengthen the public agencies and private organizations that can improve the performance of the health care system.” Sure enough, in the run up to the passage of Obamacare, DeParle was the administration point person, not Secretary of Health and Human Services, Kathleen Sebelius.”<sup>109</sup>

Former Energy and Environment Czar Carol Browner is another example of a “policy advisor” with far too broad a range of responsibilities. Specifically, when Browner participated in secret negotiations of emission standards with auto industry executives – meetings in which Browner instructed the industry executives to “put nothing in writing, ever” – she seems to have taken on the responsibilities of existing officers.<sup>110</sup>

The regulation of emissions from automobiles clearly falls under the purview of the Environmental Protection Agency (EPA) and/or the Department of Transportation (DOT), both of which are currently collaborating to implement the new federal standards. Why was it not the Secretary of the EPA or the DOT that conducted negotiations over prospective auto emission standards? Both of these Secretaries receive their authority through the advice and consent of the Senate and can be compelled to testify before Congress.

Compelling Carol Browner to testify, however, would have been difficult, and – according to Senator Susan Collins – the administration instructed czars not to testify to Congress.<sup>111</sup> The secrecy with which Browner conducted the negotiations emphasizes the worrisome aspects of her former functions as an unaccountable czar.

One additional instance of “policy advisors” circumventing congressional oversight is the appointment of a Weapons of Mass Destruction (WMD) Czar by President Obama, a position that is virtually identical to an existing statutory position. In 2007, Congress followed through on the recommendations of the 9/11 Commission and created a “United States Coordinator for the Prevention of Weapons of Mass Destruction, Proliferation and Terrorism,” who was to be subject to Senate confirmation and congressional oversight.<sup>112</sup> In response, George W. Bush simply declined to fill the position, and reports circulated that members of the administration were uncomfortable with the prospect that the director of a White House office would be required to report regularly to Congress.<sup>113, 114</sup>

Upon taking power, the Obama administration also declined to fill the position and instead, appointed its own WMD Czar, Gary Samore, to be the Special Assistant to the

President and White House Coordinator for Arms Control and Weapons of Mass Destruction, Proliferation, and Terrorism. Samore was not confirmed and is not subject to oversight, as would be the statutory WMD Czar. Like many other czars, Samore's job description vaguely defines him as a "coordinator," which allows for a broad range of potential responsibilities.

As the Obama administration displays a propensity to rely on a murky system of czars to run the government, roles of responsibility and lines of accountability are increasingly blurred. Such a system of governing works against goals for greater transparency, creating instead a wider gap between the American people and the individuals governing our nation.

Additionally, there are practical consequences to a President's misuse of, and overreliance on, unaccountable policy advisors. A government that functions based on a complex system of czars risks creating an even more inefficient bureaucracy that is hindered by no clear demarcation of roles. As former Homeland Security Czar Tom Ridge stated in his October 22 testimony before Congress:

*"[W]ithout a clear delineation of responsibilities and reporting authority, this creates both a potential management problem and the appearance of potential conflict. This also would diminish the capacity of both advisor and Secretary to operate effectively in accordance with the Departmental missions, and cause confusion for those under the chain of command as well as outside the departmental purview."*<sup>115</sup>

As so called "policy advisors" increasingly act with significant authority; they subvert the accountability envisioned by the Founding Fathers and a crucial constitutional check on the executive branch.

### **Judicial Watch's FOIA Investigation of Obama Czars Marked by Selective Transparency**

A significant problem with Obama's policy czars is the clear lack of government oversight and accountability. As many of the positions are designated simply as advisors or coordinators, the individuals are not readily subject to the Freedom of Information Act (FOIA), even if they serve within agencies legally obliged by FOIA; and because they have reportedly been instructed by the White House not to testify before Congress, their actions remain shrouded in secrecy. Any information as to their roles and influence is revealed when, and to the extent, the administration sees fit.

In an attempt to obtain basic information on the role of each of the czars in the Obama administration, Judicial Watch conducted an investigation into the mission, budget, and staffing of Obama administration czars. Considering President Obama's instruction to the heads of executive departments and agencies that "the presumption of disclosure should be applied to all decisions involving FOIA," one would expect timely, substantive

and complete responses to requests for basic information.<sup>116</sup> However, rather than fulfilling campaign promises of transparency, the Obama administration has largely disregarded Judicial Watch's requests.

Despite submitting document requests for 41 czars – covering missions, budget, and staffing – Judicial Watch has only received a limited number of total responses. Of these responses, only a few provided the information requested within the statutory time frame, and even fewer submitted documents that could even remotely be considered substantively responsive.

Many of the requests pertain to agencies that are required by law to respond to FOIA requests; yet, a number of those agencies have yet to acknowledge the requests. For example, the Department of State failed to respond and only acknowledged the requests after more than two months (FOIA requires a response within 20 days). The Department of Treasury has acknowledged requests, but has undeniably failed to respond to the questions about the mission, budget, and staffing of controversial appointments Kenneth Feinberg and Earl Devaney.

Judicial Watch has received some responses to czar FOIA requests, in what can best be described as “selective transparency.” For instance, the FCC provided a partial response to Judicial Watch's request for information regarding Diversity Czar Mark Lloyd's mission, budget, and staffing.

According to the documents, Lloyd's mission is "to open up opportunities for all Americans, in particular women, minorities, small business owners, to participate in and benefit from a robust communications marketplace." Among Lloyd's duties and responsibilities: "To work with the Consumer Bureau (and other bureaus as appropriate) to collect relevant data and assess the interaction between communications service providers and consumers in minority communities..." and "to consult with other federal agencies to determine best practices for advancing the goal of greater inclusion and diversity in government programs."

However, in response to Judicial Watch's request for information pertaining to Chief Diversity Officer Mark Lloyd's office staffing and budget for operation and administration, FCC Associate General Counsel Joel Kaufman responded, "We could locate no records responsive to ... parts of your request. While Mr. Lloyd shares support staff with others in the OGC (Office of General Counsel), no one was hired or assigned specifically to support him in his work. His position is funded out of the agency's fiscal year budget ... but he has no separate budget for operation and administration."

A similar response was received for Anthony “Van” Jones, with his agency only disclosing that he was supported by a staff of seven.

In general, responses to Judicial Watch's FOIA requests include a statement that the individual is not a czar, refusal to process the request due to minor procedural technicalities, and printouts of agency website information. The Office of Management

and Budget did provide a “response” containing the statutes designating the positions for the three individuals housed in their office, but could not provide a budget for any of the individuals because the czar’s budgets are “out of their scope.”

Following a delay of several months, the Office of Management and Budget concluded that it was unable to respond substantively to Judicial Watch requests concerning the individual (czar) offices or the overall budget for President Obama’s czars. The inability or unwillingness to provide this simple information is just one signal of how far the Obama administration is straying from transparency and accountability.

In addition to ignoring FOIA requests for basic information on czars, the Obama administration has deemed it necessary to implement ethics waivers to certain administration officials. President Obama campaigned that he would reform government and eliminate the influence of lobbyists on administration officials. He has, however, had to make exceptions to his ethics pledge by providing waivers for certain individuals so they can participate in his administration. In total, 34 such waivers have been granted, three of which have gone to czars: Valerie Jarrett, Ashton Carter, and Herb Allison (who resigned on September 22, 2010).<sup>117</sup> These ethics waivers further raise concerns about the actual intent of President Obama to provide a transparent and ethical government.

Judicial Watch has taken significant legal action to force the Obama administration to be transparent regarding the activities of its czars:

1. Judicial Watch filed a FOIA lawsuit on November 10, 2009, against the office of Chicago Mayor Richard Daley to obtain records related to the Obama administration’s failed bid to bring the Olympics to Chicago. President Obama tapped White House Senior Advisor Valerie Jarrett to lead the Olympics effort, despite her personal and business ties to Chicago. The investigation by Judicial Watch centered on Jarrett’s role, possible conflict of interest, and the ethics waiver granted by the White House.
2. Judicial Watch filed a FOIA lawsuit on December 28, 2009, against the Department of Energy (DOE) and the Environmental Protection Agency (EPA) to obtain documents related to President Obama’s Assistant to the President for Energy and Climate Change, Carol Browner, and her role in crafting official U.S. climate policy. Information was also requested on Browner’s role in a) auto industry discussions and negotiations concerning fuel standards and auto emissions and b) discussions and negotiations with respect to cap and trade legislation.
3. Judicial Watch filed a FOIA lawsuit on February 25, 2010, against the U.S. Treasury Department to obtain documents regarding meetings involving Kenneth Feinberg, appointed Special Master for Compensation, American International Group (AIG) Chairman Robert Benmosche, and New York Federal Reserve Bank President William Dudley. Judicial Watch has uncovered documents through a FOIA request that indicated Feinberg received an annual salary of \$120,830 to

establish executive compensation levels at companies bailed out by the federal government. This information is contrary to claims by the government that Feinberg would not be compensated for his work for the Treasury Department.

4. Judicial Watch obtained documents based on a FOIA lawsuit filed on March 17, 2010. The documents reported on closed-door health care meetings attended by Vice President Joe Biden, U.S. Health and Human Services Secretary Kathleen Sebelius, House Speaker Nancy Pelosi, Senate Majority Leader Harry Reid, and President Obama's Health Reform Czar Nancy-Ann DeParle. Such secret meetings clearly violated one of Obama's key campaign promises: to televise all health care discussions on C-SPAN. "I'm going to have all the negotiations around a big table," the President said during a town hall meeting in August 2008.

Importantly, the documents uncovered by Judicial Watch include an agenda for a January 13 meeting between Big Labor and White House staff, including Vice President Biden. (This agenda was redacted in the original batch of documents released to Judicial Watch and was sent later under separate cover.) The agenda shows that the meeting was not about the public interest in health care, but about the concerns of Big Labor.

## **Conclusions**

The issue of presidential czars raises questions in four fundamental areas of governance: (1) the constitutionality of policy czars; (2) the degree to which the U.S. Senate is circumvented in the appointment of policy czars; (3) the political controversy that results from avoiding the Senate's vetting process; and (4) issues concerning the overall transparency of a government that operates through a system of czars.

Objections to presidential czars can be leveled on a number of grounds, depending on the role of the particular czar. The most basic constitutional objection is that the activities of these "policy advisors" ran afoul of the Appointments Clause of the U.S. Constitution. Some czars, such as former pay czar Kenneth Feinberg, effectively act with the authority of Officers of the United States, despite having never been confirmed.

In addition, presidential czar appointments to departmental positions have increased dramatically under the Obama administration. Many of the czars in departmental positions appear to report directly to the President and undermine the authority of Cabinet secretaries.

President Barack Obama has essentially doubled the number of czar positions created by executive order. While Article II Section I of the U.S. Constitution authorizes the executive order as a means of ensuring effective operation of the government, the vague responsibilities bestowed upon many of these czars are confusing lines of authority in government. Furthermore, many of Obama's political operatives are usurping power from statutory officers. Such instances constitute a circumvention of constitutional oversight.

And to date, congressional efforts to end funding for Obama's political operatives have been unsuccessful. A rider placed in the 2011 spending bill cutting non-defense appropriations and ending funding for certain highly controversial presidential advisor positions (climate change, the auto industry, health care, and urban affairs) was passed by both the House and Senate and signed by President Obama in April 2011. But, according to press reports, "Obama pulled the rug out from under that provision" by issuing a signing statement essentially stating "he will continue to employ advisers as he sees fit." This, according to Speaker Boehner's spokesman, Michael Steel, was "not surprising that the White House, having bypassed Congress to empower these 'Czars' is objecting to eliminating them."<sup>118</sup>

Judicial Watch has a major investigative program that seeks basic administrative information for each czar appointed by the Obama administration. After initially sending out 41 requests for the mission, budget, and staffing of individuals labeled "czars" by the media, Judicial Watch received responses for less than half of these czars. Only a few of these responses provided documents responsive to the initial request. Even executive agencies subject to the Freedom of Information Act, such as the Department of State and the Department of the Treasury, have ignored our requests.

Judicial Watch's investigation reveals a fundamental hostility to transparency from the Obama administration. The general unwillingness to respond to very basic questions pertaining to a czar's mission, budget, and staffing gives lie to the administration's promise of a new era of transparency. Further, Obama's circumvention of the law and the will of Congress through executive fiat is destabilizing to the rule of law and sound constitutional government.

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