

Statement of
The Honorable Richard J. Durbin

United States Senator
Illinois
October 6, 2009

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Senate Committee on the Judiciary, Subcommittee on the Constitution,
"Examining the History and Legality of Executive Branch 'Czars'"

Today this subcommittee is looking at the issue of the use and constitutionality of so-called presidential czars. It is a legitimate inquiry, and I hope the subcommittee will approach this issue openly and honestly. President Obama is hardly the first commander-in-chief to invest authority and responsibility in his White House advisors. But he is the first to be attacked for doing so in such a partisan, orchestrated manner.

We can all agree that transparency and accountability to Congress are important principles. Public officials, including those who work for the President, should be responsive to congressional inquiries. Members of Congress can expect to be fully and timely informed about the activities of executive branch officials who are designated by the president to coordinate policy agendas across executive agencies.

But I disagree with those who say the Obama Administration is acting differently than past administrations when it comes to the use of czars and presidential advisors. One of today's witnesses, Bradley Patterson, has submitted written testimony that makes a compelling case in this regard. Mr. Patterson, who served on the White House staffs of three different Republican presidents and is one of the nation's leading authorities on presidential staffing, indicates that every president since Calvin Coolidge has used czars.

According to Mr. Patterson, the word "czar" should be reserved for a specific type of White House advisor: a person who works on pressing issues requiring interagency coordination, who has not undergone Senate confirmation, and who reports directly to the president. By this definition, President Obama's critics have vastly overstated the number of czars who are in place today. There are certainly fewer than 32 czars, which is the number thrown around by conservative firebrand Glenn Beck. Many of the 32 listed by Mr. Beck have been subject to Senate confirmation. And there are fewer than 18 czars, which is the number used by Republican critics in the Senate. Several of the 18 do not report directly to President Obama.

Furthermore, there is ample opportunity for congressional oversight over these advisors. In a letter sent yesterday to Senator Feingold, White House Counsel Gregory Craig explained that 10 of the 18 advisors listed by Republican Senators have either testified before the Senate this year

or would be willing to do so upon request. The other advisors, as Mr. Patterson discusses in his testimony, are willing to meet with members of Congress and their staffs.

But regardless of how you define the word "czar," where was the Republican criticism during the last administration? According to a recent article in the Washington Post, there were 36 different czar positions under President Bush. The independent organization "Factcheck.org" lists 35 czars who served in the Bush Administration. I don't recall any Republican cries of runaway government or federal takeovers when they controlled the White House. I don't recall any Republican criticism of Karl Rove, an enormously powerful presidential advisor in the Bush Administration who wasn't subject to Senate confirmation. Today's czar controversy seems to be little more than an attempt by the political opposition to manufacture criticism and drive down the president's approval ratings.

As to the question of constitutionality, today's witness T.J. Halstead from the Congressional Research Service provides a thorough explanation of why President Obama's use of advisors is fully consistent with the Appointments Clause of the Constitution and with judicial decisions that have analyzed this issue. I commend Mr. Halstead's testimony to those who make the claim that President Obama's use of advisors represents an end run around the Constitution.

President Obama's advisors aren't doing anything more than the law and the Constitution allow. Today's hearing is a useful opportunity to set the record straight.