

Statement of Senator John Cornyn
Hearing: “Examining the History and Legality of Executive Branch ‘Czars’”
October 6, 2009

Chairman Feingold, I thank you for calling this hearing and applaud your efforts to ensure government transparency and accountability.

President Obama has committed his administration “to creating an unprecedented level of openness in Government.” He has remarked that “a democracy requires accountability, and accountability requires transparency.” But his unprecedented expansion of the number and power of policy czars undermines the openness and transparency he has promised.

It is true that every president since Franklin D. Roosevelt has used “czars” to manage certain policy initiatives. And there is little doubt that the President has the constitutional and statutory authority to name advisers. But President Obama has named more czars than any previous president. He has created 18 new czar positions that are neither well-defined nor subject to Senate confirmation. These czars present serious accountability concerns.

First, it seems that some of President Obama’s czars may wield a measure of authority usually reserved to principal officers of the United States. In particular, some appear to exercise significant authority and have broad terms of duty, jurisdiction, and tenure. *See Morrison v. Olson*, 487 U.S. 654, 671-72 (1988). If these czars are principal officers, they must be subject to Senate confirmation as required by the Constitution.

Second, even if none of the czars are principal officers, their ability to exercise decision-making authority absent congressional oversight is troubling. Controlling access to the President and possessing great responsibilities, czars can act unchecked in ways that significantly influence or duplicate the duties of Senate-confirmed officials. Senator Byrd highlighted these concerns when he wrote to the President in February 2009:

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 have taken direction and self control of programmatic areas that are the statutory responsibility of Senate-confirmed officials. They have even limited access to the president by his own cabinet

members. As presidential assistants and advisers, these White House staffers are not accountable for their actions to the Congress, to cabinet officials, and to virtually anyone but the president. They rarely testify before congressional committees, and often shield the information and decision-making process behind the assertion of executive privilege. In too many instances, White House staff have been allowed to inhibit openness and transparency, and reduce accountability.

Like Senator Byrd, I am particularly worried about the consolidation of great power in a few isolated individuals. For instance, Carol Browner, the President's "Energy and Environment Czar," is tasked with "creat[ing] jobs, achiev[ing] energy security and combat[ing] climate change," but does not work within a congressionally sanctioned department and has not faced the scrutiny of a confirmation process. *Remarks of President-Elect Obama, Announcement of Energy and Environment Team* (Dec. 15, 2008). The "Health Czar," Nancy-Ann DeParle, is broadly charged with "integrat[ing] the President's policy agenda concerning health reform across the Federal Government . . . ; work[ing] with State, local, and community policymakers and public officials to expand coverage . . . ; [and] develop[ing] and implement[ing] strategic initiatives under the President's agenda to strengthen the public agencies" *Executive Order 13507* (Apr. 8, 2009). Ms. DeParle, however, has not testified before Congress or discussed her many ties to health care companies. These and other czars deserve our close review.

Third, any distribution of taxpayer funds by unaccountable czars is unacceptable. Because we do not know exactly what the czars do, it is difficult to determine how much influence they have over the granting of federal money. But some facts are clear. Cameron Davis, the President's "Great Lakes Czar," works primarily to coordinate the distribution of \$475 million in funding. Aldolfo Carrion, the "Urban Affairs Czar," functions "to ensure that Federal Government dollars targeted to urban areas are effectively spent on the highest impact programs." *Executive Order 13503* (Feb. 19, 2009). The goals of these individuals are mostly positive, but it is inappropriate for them to steer the distribution of taxpayer funds without congressional oversight.

Recently, through the resignation of Van Jones, the “Green Jobs Czar,” we saw that significant details can elude detection when the Senate is not permitted to vet high-ranking officials. Because the President’s many czars are not subject to such vetting, I believe they pose a threat to government accountability.

I expect that we will learn much through this hearing. With this knowledge, I hope that we can work with the President to limit and oversee his many czars.