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## The “Above the Law” President

On one issue after another, President Obama says he [can't wait](#) for Congress to act. This is the justification Presidents have always used when they find the checks and balances required by democracy to be inconvenient. But President Obama has repeatedly demonstrated a preference for [ignoring laws](#) not to his liking and expanding executive power. As liberal legal scholar Jonathan Turley noted, “In many ways, President Obama has fulfilled the dream of an imperial presidency.” This “[disturbing pattern](#)” of ruling as an unaccountable monarch is precisely what our founders [feared](#).

The most recent example occurred last week when President Obama announced that the Department of Homeland Security would [stop deporting](#) young illegal immigrants – despite the President having disclaimed the authority to do so [a year earlier](#). The decision conveniently came less than five months before the election. This is the latest in a long list of examples of how the President insists on acting above the law.

### Evasion of Constitutional Checks

President Obama has [said](#) he would prefer to rule without interference from the elected representatives of the American people. His record shows a disturbing willingness to do just that.

- The President’s arrogant approach to governing disregards important constitutional structures -- such as the Appointments Clause of the Constitution -- and displaces Congress in favor of unelected **bureaucrats and czars**.
- Bipartisan legislating has been replaced by unilateral executive rule-making. Oversight has given way to unaccountability.
- Unfortunately for the American people, President Obama’s **regulatory over-reach** ignores their views and circumvents their elected representatives.

### Scrapping of Advice and Consent and Accountability

#### Consumer Financial Protection Bureau

- President Obama violated the Constitution when he appointed Richard Cordray to head the Consumer Financial Protection Bureau during a pro forma session of the Senate.
  - This agency exercises unprecedented investigative and rulemaking authority.
  - Unlike other federal agencies, which are subject to oversight by elected officials,

the CFPB is free to meddle with whole sectors of the nation's economy **without constraint**, just as President Obama intended.

- The Senate had already rejected the Cordray nomination. Unhappy with that decision, the President decided to make his own rules for the Senate and violate the Recess Appointments Clause in an unprecedented manner to get his way.
- This heavy-handed decision violated the Senate's Constitutional right to determine its proceedings and duty to provide or withhold advice and consent on important presidential positions. The result undermined constitutional checks and balances and deprived citizens of their **only opportunity** to influence the CFPB.

### National Labor Relations Board

- President Obama again violated the Constitution when he assigned three members -- Sharon Block, Terence Flynn, and Richard Griffin -- to the NLRB during a pro forma session of the Senate. Flynn has since resigned.
- With little patience for Constitutional processes, the President [couldn't wait](#) for the regular order of the Senate.
- The Block and Griffin nominations were sent to the Senate a few days before the pro forma sessions began, so there was no chance to [debate the nominations](#).

### Centers for Medicare and Medicaid Services

- In July 2010, the President recess-appointed Donald Berwick to head the Centers for Medicare and Medicaid Services [before](#) the Senate had **even held a hearing** on the nomination. This deprived the American people, through their elected representatives, of having a say in who heads this agency that affects nearly all Americans' health care.
  - Senate Democrats [refused](#) to bring up Berwick's nomination for a confirmation hearing, due to his controversial views about health care [rationing](#) and the unpopularity of the President's health care law Berwick was chosen to implement.
  - For nearly 18 months Berwick ran an agency that directly or indirectly **controls the health care** and health insurance provided to virtually all Americans.
  - Unwilling to [defend](#) either Berwick or the health care law publicly, the President left an unaccountable bureaucrat to implement his massive health care takeover.

### Czars

- This pattern of appointing unaccountable agency heads has been most egregious in President Obama's use of **czars** to [carry out](#) controversial policies.
  - Concerned of a massive shift in power to the White House, Senator Robert Byrd [warned](#) in February 2009 of the "rapid and easy accumulation of power by White House staff," which threatened the constitutional system of checks and balances.
  - Senator Byrd correctly observed that, "at the worst, White House staff have taken **direction and control** of programmatic areas that are the statutory responsibility of Senate-confirmed officials."
  - The President's Climate Czar, Carol Browner, confirmed Senator Byrd's fears when she [manipulated](#) a Department of Interior report to [suggest inaccurately](#) that independent scientists supported a six-month moratorium on offshore oil drilling.
  - Ms. Browner's skewed sense of environmental justice led to a ban on offshore drilling, despite [great economic harm](#) to Gulf Coast residents.

## Explosion of the Administrative State

### Education Bureaucracy

- On September 23, 2011, President Obama announced he would [unilaterally reform](#) No Child Left Behind by issuing waivers to let states bypass the law's requirements.
  - By the middle of 2012, 26 states and the District of Columbia had applied for waivers, and 19 waivers had been granted.
  - States had to adopt reforms formulated and mandated by the Department of Education, not Congress, in order to receive a waiver.
  - President Obama effectively **changed education law** without Congress.
- In October 2011, President Obama circumvented Congress and made changes to the federal student loan program. At the time, the Administration indicated that it circumvented the legislative process because President Obama was frustrated Congress had not acted on his proposal. He [declared](#), "We're **just going to do this by ourselves**. We can't wait for Congress; we're just going to act."
  - The change allowed student loan borrowers to reduce payments from 15% of their discretionary income to 10%. It also permitted a new form of loan consolidation.

### Environmental Restrictions

- President Obama's [EPA](#) is unilaterally expanding its Clean Water Act powers to include jurisdiction over all "waters of the U.S.," not just "navigable waters" covered by the law.
  - This **power grab** came despite Congress specifically rejecting legislation intended to do the same thing.
- Similarly, the EPA is [forging ahead](#) with rules to regulate carbon dioxide and other greenhouse gas emissions under the Clean Air Act, despite Congress blocking "cap-and-trade" legislation to limit these emissions.
  - Last November, the EPA again demonstrated its preference for **implementing laws without congressional input**. The agency, in collaboration with the Department of Transportation, [claimed](#) that "we can't wait" for Congress to create new fuel economy and pollution controls for automobiles even though Congress did on a bipartisan basis just a few years earlier.

### Health Care

- One of the many regulatory bodies created by President Obama's health care law was the Independent Payment Advisory Board, a **new, unaccountable bureaucracy** tasked with issuing rules to reduce Medicare spending.
  - Board members, their salaries paid by taxpayers, could serve for over a decade.
  - The law mandates that a majority of board members must consist of **economists and similar "experts,"** not practicing doctors, nurses, or other medical providers.
  - IPAB is not simply an advisory board. Its members will make rules to reduce Medicare spending, which will be binding unless overturned by a supermajority of both houses of Congress. Medicare beneficiaries who are harmed by this unaccountable board will have no recourse to appeal its decisions, as the law prohibits both judicial and administrative review of IPAB's edicts.
  - The power given to the unelected and unaccountable bureaucrats has resulted in a [constitutional challenge](#) to the board.

- Other portions of the President's health care law **increase government control** over people's personal health care choices – and [religious liberty](#).
  - Recently the Administration finalized its plan to require all employers, including those with religious objections, to offer contraceptive coverage.
  - Although President Obama announced an “accommodation” allowing religious-affiliated employers to avoid *directly* funding contraceptive coverage, they will still be required *indirectly* to pay for treatments that conflict with their faith.
  - Even supporters of the new policy have [called](#) it a “**huge regulatory fig leaf**.”

### Justice and Law Enforcement

- Rather than work with Congress for legislative change of a law the President did not like -- the Defense of Marriage Act -- he **abandoned the defense of a law** that seeks to preserve the traditional marriages he [claimed on the campaign trail to support](#).
- The law the President so casually abandoned had passed the House by a [vote of 342 to 67](#), passed the Senate by a [vote of 85 to 14](#), and was signed into law by President Clinton.
  - In a sharp departure from previous positions of the Justice Department, President Obama [instructed](#) his Attorney General to [stop enforcement](#) of part of the law.

### National Security

- President Obama [rejected](#) an interpretation of the War Powers Act by his own Departments of Justice and Defense, because **he wanted to ignore the law**.
  - The War Powers Act imposes a variety of reporting requirements and restrictions on the President's ability to deploy troops abroad in “hostilities.”
  - The President [asserted](#) last year that U.S. military operations in Libya did not amount to hostilities because they “do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve the presence of U.S. ground troops, U.S. casualties or a serious threat thereof.”
- In late 2011, President Obama [stated](#) that he would treat one section of the FY 2012 Defense Authorization Act as “**non-binding**.”
  - [Congress had included](#) the section to protect the nation's security by requiring the President to give Congress 60-days notice before providing Russia with classified information concerning U.S. missile defense systems.
  - The President made his statement despite his [prior renunciation](#) of presidential signing statements.

### Regulating the Internet

- President Obama's Federal Communications Commission [expanded regulation](#) of the internet, despite a prior [federal court ruling](#) that it had no authority to do so.
- President Obama [praised](#) this controversial extension of the regulatory state, without regard for the harm the regulations would do to the tech industry.

President Obama has failed to make good on his campaign promise to have the [most transparent](#) Administration in history. He has put himself **above the law** and governed by edict without respect for the elected representatives of the American people. By displacing Congress, the President has shut the American people out of the running of their government.