
A Judicial Watch Special Campaign Report



“Yes, Mr. President, You Will Wait:”

Judicial Watch Challenges Barack Obama’s Unconstitutional Power Grabs

*An Examination of the Obama Administration’s Unprecedented
and Radical Attempts to Expand Presidential Power*

Judicial Watch, Inc. • 425 Third Street, SW, Suite 800 • Washington, DC 20024
Tel: 202-646-5172 • Fax: 202-646-5199 • www.judicialwatch.org

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Executive Summary

“There was only one non-partisan mandate handed to Congress and the president on Election Day 2012 — to clean up corruption and restore the rule of law to Washington. President Obama has presided over the greatest expansion of government power in modern history and most of this activity has escaped congressional oversight. Judicial Watch is doing its part to fill in the oversight gap, but it is well past time for Congress to help pry loose information from the Obama administration, which has proven to be both highly secretive and corrupt.”

~Tom Fitton, President, Judicial Watch

Throughout his first term as President of the United States, Barack Obama took numerous extraordinary, illegal and unconstitutional executive actions to bypass Congress and sidestep courts to implement his leftist agenda. During the first year of his second term of office, Mr. Obama doubled down on this presidential power grab: From Obamacare to immigration to gun rights, environmental policy and beyond, President Obama made it painfully obvious that he plans to expand his efforts to circumvent the other two branches of government by unilaterally suspending, delaying, waiving, reinterpreting and ignoring provisions of federal law and busting through the limits on presidential power enshrined in the U.S. Constitution.

Even the left-leaning constitutional law professor Jonathan Turley writing in a March 9, 2014 commentary for the liberal *Los Angeles Times* recognizes the slippery slope Obama has placed the nation on and said the president’s contempt for Congress would have “shocked the framers of the Constitution”:

“Obama is not a dictator, but there is a danger in his aggregation of executive power... The United States is at a constitutional tipping point: The rise of an uber-presidency unchecked by the other two branches.”

President Obama has said repeatedly that he would take unilateral executive action whenever necessary to achieve his political ends if Congress and the courts did not acquiesce to his demands. He declared openly and repeatedly that America “cannot afford to wait” on Congress or the courts to act on his agenda, and he made good on his threat to bypass the Congress and ignore the courts numerous times in his first term, as we documented in this report. After he was re-elected to a second term, Mr. Obama became even more brazen. For example, when the launch of Obamacare was a catastrophic failure, the White House, the Department of Justice and the Internal Revenue Service all attempted to “fix” the problems — problems that are intrinsically unfixable because they are inherent in the very design of Obamacare — by simply ignoring or “rewriting” the plain language of the Obamacare law — the Affordable Care Act (ACA). The Obama administration went so far as to ignore the unambiguous meaning of statutory language. (See Addendum of *The Imperial Presidency* accessible at this Internet link — <http://majorityleader.gov/TheImperialPresidency/> — for a complete list of Obama’s violations of Obamacare.)

When the president said a few weeks before his 2014 State of the Union Address that he intends to take additional unilateral executive action throughout the remainder of his second

term to circumvent the Congress wherever necessary to advance his own political agenda — “I have a pen and a phone”— he signaled the extremes to which he intends to go in expanding his powers beyond the confines of the law and the U.S. Constitution. The tone, tenor and language of President Obama’s speeches and statements can mean only one thing: He fully intends, knowingly and willingly, both to violate his oath of office to “preserve, protect and defend the Constitution of the United States” and to ignore his primary responsibility as president to “take care that the laws be faithfully executed.”

Today, America is more at risk than ever of being governed by a rogue president who will use executive action to bypass the Congress, the courts and the Constitution whenever he believes it is necessary to implement his leftist agenda. Mr. Obama continues to proclaim defiantly that America “cannot afford to wait” on Congress or the courts to act on his agenda.

This updated special report on the Obama imperial presidency reviews and analyzes many of President Obama’s past and current actions taken to bypass Congress and the courts (the law and his oath of office notwithstanding), and it looks ahead to the kind of one-man rule Mr. Obama is trying to impose on America.

In addition to highlighting Judicial Watch’s investigations and litigation, the report draws upon many sources, studies and press accounts to document the vast expansion of the Obama administration’s unconstitutional and near-dictatorial actions. These actions include the IRS abuses that came to light in May 2013 and the flagrantly illegal, unilateral actions the administration has taken during the president’s second term in implementing the Patient Protection and Affordable Care Act of 2010 (Obamacare). Additionally, this report relies on numerous investigations and reports prepared by committees of the U.S. House of Representatives and exposes many examples of executive overreach that span the entire breadth of federal government activity.

Following this Executive Summary, the report is divided into six sections and an Appendix.

- **Section I** (“Background: Obama’s Attack on the Rule of Law”) provides an overview and general background to help the reader understand the historical context in which to place President Obama’s grab for executive power.
- **Section II** (“Living Under Obama’s Czars”) explains Mr. Obama’s “czar” strategy by reviewing how he not only has circumvented the U.S. Constitution’s appointment provisions but also how his czars enable unauthorized executive actions. This report also explores how, with the president’s recent creation of the Task Force on Climate Preparedness and Resilience, Obama’s “czar strategy” appears to be evolving into a broader strategy using so-called “advisory groups” to expand the executive’s reach to state and local governments.
- **Section III** (“Illegal Immigration — from Stealth Amnesty to Executive Action”) draws upon the wealth of Judicial Watch work to demonstrate how Obama moved beyond “stealth amnesty” — i.e., using selective deportation and prosecutorial discretion and *de facto* amnesty with presidential executive action granting legal status and work permits to hundreds of thousands of illegal immigrants — to outright, open executive amnesty for a large swath of the illegal population with the Department of Homeland Security’s memorandum formally implementing the Deferred Action for Childhood Arrivals (DACA) program.
- **Section IV** (“Rule by Executive Fiat”) explains how President Obama is expanding his **We Can’t Wait** plan, launched in 2011 to bypass Congress and rule America by

Executive Fiat, into an all-out assault on constitutional government laid out in his 2014 State of the Union Address.

- **Section V** (Obama’s Second-Term Agenda”) reviews Obama’s executive overreach in the first year of his second administration and looks at several specific fronts on which Obama is pushing his leftist agenda hardest. This section examines the administration’s actions with respect to Obamacare, global warming and gun control where the president has brazenly taken lawless executive actions to rewrite existing laws and manufacture new law by executive fiat, thus bypassing Congress, the courts and the Constitution.
- **Section VI** (“**Yes, Mr. President, You Will Wait**”) reviews Judicial Watch’s watchdog efforts to fight rule by executive fiat from the Obama White House.
- **Appendix** lists controversial executive actions compiled from a variety of sources taken by the Obama administration.

Judicial Watch is your non-partisan, conservative government watchdog in Washington — the largest and most effective in the country. Our commitments are to the U.S. Constitution and to the America people’s “right to know,” commitments that have put us squarely on a legal collision course with Barack Obama and his administration. Judicial Watch is also independent of both political parties.

This Special Report shows that the Obama administration has far surpassed efforts of past presidents to implement policy by executive fiat, paying little mind to constitutional limits and the rule of law. President Obama clearly would like to rule from his citadel through executive decree; to undermine the Second Amendment in the name of “gun safety”; to sit back and allow his army of czars to take the nation over a regulatory cliff; to open America’s borders to more illegal immigration and provide amnesty by going over the head of Congress; to interfere with state election integrity efforts to his partisan advantage; and to impose his leftist agenda in a host of other areas yet to be revealed.

Since Judicial Watch published this original report a year ago, public awareness of Obama’s vast executive overreach has grown. Representative Raúl Labrador’s (R-ID) observation captures the public’s unease about their president:

“This is what we hear about all the time when we’re back in our districts. They’re concerned that you have a president who has decided to violate the law, who has decided to not comply with certain laws, that he decides which laws he will execute and which laws he will not execute.”¹

I. Background: Obama’s Attack on the Rule of Law

“The executive power shall be vested in a President of the United States.”

“The President shall be Commander in Chief of the Army and Navy of the United States.”

“He shall take care that the laws be faithfully executed.”

~U.S. Constitution

The audacious acts President Barack Obama has taken during the first year of his second term confirm that he will take extraordinary executive action to achieve his political ends without regard for the other branches of government.

The Imperial Presidency of Barack Obama far exceeds past episodes of constitutional overreach by previous presidents. As U.S. Senator Ted Cruz (R-TX) put it in a January 28, 2014 *Wall Street Journal* commentary: “In the nation’s history, there is simply no precedent for an American president so wantonly ignoring federal law.”

President Obama has displayed an astounding lack of respect for the U.S. Constitution, the other branches of government and the American people. Barack Obama is undermining the U.S. Constitution and turning it into what the Founding Fathers feared most — a mere “parchment barrier” being ripped to shreds by a power-hungry chief executive — what they referred to as a “monarchist.” In the words of Thomas Jefferson: “To appoint a monarchist to conduct the affairs of a Republic is like appointing an atheist to the priesthood.”

President Obama’s monarchical proclivities are most apparent in his refusal to accept the process of working to build consensus to pass legislation in Congress. He blusters that if Congress won’t act as he sees fit, he will. As he told a Joint Session of Congress during his 2014 State of the Union Address: “I’m eager to work with all of you. But America does not stand still – and neither will I. So wherever and whenever I can take steps without legislation...that’s what I’m going to do.”

It is clear that Obama and his supporters are pushing the American people to accept an all-out assault on representative democracy and the rule of law. Obama’s allies in the liberal media have helped legitimize the president’s monarchical behavior, and some in the media have boldly ordained his extra-constitutional executive actions as “visionary leadership.” Illustrative of this is an inflammatory commentary on CBS News *Sunday Morning* by the Georgetown University law professor Michael Seidman. Host Charles Osgood set up the professor’s dismissal of the Constitution with this question: “Is the U.S. Constitution truly worthy of the reverence in which most Americans hold it?” Professor Seidman responded:

“I’ve got a simple idea: Let’s give up on the Constitution. Our greatest Presidents had doubts about the Constitution, and many of them disobeyed it when it got in their way.”

Using a variety of techniques and strategies, President Obama has effectively followed Professor Seidman’s advice and ignored the Constitution and “rewritten” the law. For example, Obama’s appointees to the National Mediation Board (NMB) changed union-election rules that had been in place for 75 years under the Railway Labor Act so that union certification would now require only a majority of a company’s employees who vote in a union-organizing election rather than the majority of all employees.

Obama’s appointees to the National Labor Relations Board (NLRB) also abused the rulemaking process by overturning decades of regulatory precedent and court decisions to create *de facto* laws. Acting without statutory authorization after Congress rejected the “card-check” bill supported by President Obama — which would have eliminated secret-ballot elections for union members — the NLRB took unprecedented bureaucratic action to change the rules determining which group or “unit” of employees can vote in a union election. Obama’s NLRB now allows unions to form cherry-picked bargaining units of their supporters, in effect creating micro unions within a company. If, for example, a majority of

the workers at a retail store oppose unionizing but the union has the support of a majority of, say, the shelf stockers, the subgroup of workers may now form a micro-union of just the shelf stockers.

Another instance of blatant executive overreach occurred when the Congress rejected the “DREAM Act,” which would have provided a path to citizenship for some aliens not in the United States legally. When Congress rejected the bill, Obama “passed” it unilaterally by executive action. Shortly after the DREAM Act amnesty failed in Congress, the Immigration and Customs Enforcement (ICE) section of the Department of Homeland Security unilaterally stopped deporting the very illegal aliens that would have been covered by the DREAM Act amnesty.

In February 2011, President Obama also directed the Justice Department to stop defending the Defense of Marriage Act in court against legal challenges. Mr. Obama had decided to oppose the Act and earlier had urged Congress to repeal it although he never challenged the congressional authority to enact the statute. He followed the same tactic recently when he instructed Attorney General Eric Holder to stop prosecuting certain drug offenses subject to mandatory prison sentences.² Not only, it seems, can’t President Obama wait for Congress to enact new laws to his liking, he also can’t wait for Congress to repeal or amend statutes he doesn’t like.

Mr. Obama has made use of a variety of other executive actions as well — including presidential signing statements, executive orders, executive memoranda, presidential letters, expansive and accelerated agency rule-making that circumvent federal law, granting powers to “advisory” groups that encroach upon congressional prerogatives, the aggressive use of recess appointments, and using election-style, government-funded propaganda blitzes. He also has used his “phone” and bully pulpit to wage a thinly veiled campaign of executive pressure and intimidation to coerce private firms and organizations into doing his bidding.

From the beginning of his presidency, Barack Obama has made a number of other decisions that show he has little regard for the U.S. Constitution or the rule of law. At the top of the list is Obama’s habit of installing radical leftists as “czars” in his administration (which number 45 according to the latest tally by Judicial Watch), many without the constitutionally-mandated vetting and approval by the U.S. Senate.

Parroting President George W. Bush’s practice, President Obama has taken to using presidential signing statements to declare which parts of the legislation he intends to follow and which parts he intends to ignore. The president’s statement on H.R. 1473 (The National Defense Appropriations Act of 2011), which sought to establish some limits on Obama’s “czars,” illustrated perfectly Obama’s refusal to be impeded by Congress or the courts. Obama turned separation of powers on its head when he declared:

“Legislative efforts that significantly impede the President’s ability to exercise his supervisory and coordinating authorities or to obtain the views of the appropriate senior advisers violate the separation of powers by undermining the President’s ability to exercise his constitutional responsibilities and take care that the laws be faithfully executed. Therefore, the executive branch will construe Section 2262 not to abrogate these Presidential prerogatives.”

President Obama’s imperial presidency has also included an attack on the integrity of

our elections. Throughout Obama's first term, he repeatedly used executive actions to mobilize federal agencies in his determination to resist and attack efforts to clean up election fraud.

The first major milestone in President Obama's campaign to end-run Congress, the courts and the Constitution came in October 2011 on the day he launched his **We Can't Wait** initiative with an array of executive actions to impose via presidential fiat programs and policies Congress had refused to enact.

The desire of a president to circumvent the Congress is not new, nor is the **We Can't Wait** campaign the first instance of a president trying to get around the Constitution's separation of powers. However, Mr. Obama's assault on the prerogatives of the other branches of government and the American people's right of self-government has far exceeded past executive overreach.

Ironically, where there is a real crisis demanding immediate presidential attention — such as illegal immigration — then President Obama takes unilateral action to make things worse. In August 2011, then-Department of Homeland Security Secretary Janet Napolitano instructed immigration officials to stop pursuing, prosecuting and deporting illegal immigrants age 16-30. Absolutely contrary to federal law, these illegal aliens are now invited to remain in the United States and are given a renewable two-year work permit. President Obama has now effectively decreed amnesty unilaterally.

Between October 2011 and the end of his first term, President Obama undertook approximately eleven "executive actions" as part of his **We Can't Wait** campaign. These executive actions included unilaterally expanding eligibility for homeowner loan subsidies; reducing student loan payments; increasing the FDA's authority to ration prescription drugs; imposing higher automobile fuel efficiency requirements; and directing federal subsidies to favored start-up companies. (See Appendix for a complete list.)

Whether using unilateral executive actions to thwart control of illegal immigration, enact a mortgage relief program, revamp the student-loan debt program, strengthen the FDA's power to ration prescription drugs or unilaterally amend the historic, bipartisan welfare reform law enacted under President Clinton and House Speaker Newt Gingrich, Mr. Obama has shown neither reticence nor reluctance in undermining the system of checks and balances that have served this country so well for so long.

An August 8, 2012 Heritage Foundation report described Obama's re-write of the 1996 Welfare Reform Act:

"Under the guise of providing states greater 'flexibility' in operating their welfare programs, the Obama Administration now claims the authority to weaken or waive the work requirements that are at the heart of welfare reform. But Congress intended that those requirements be absolutely mandatory in all instances and specifically withheld any authority to weaken or waive them. Waiving the work requirements that are at the center of the 1996 welfare reform is not only terrible policy, but also a violation of the President's constitutional obligation to 'take care that the laws be faithfully executed.'"

Even as the economy continues to struggle, the White House is taking more executive

actions, usually disguised as health, safety and environmental requirements, to push the country over a regulatory cliff. Once Obama won reelection, the regulation mill began churning out new edicts ranging from updating water-quality guidelines for beaches and other recreational waters to regulating runoff from logging roads to issuing global-warming emission dictates that threaten to decimate the coal industry and drive electricity prices through the roof for consumers. The National Highway Traffic Safety Administration, meanwhile, has circumvented the ordinary rule-making process and accelerated implementation of regulations requiring automakers to include event data recorders — so-called “black boxes” — in all new cars and light trucks beginning in 2014.

When this report was first issued in April 2013, it concluded that, “One can expect more such regulatory actions to come as the Obama administration seeks to enact its agenda via executive fiat.” That prediction came true with breathtaking speed.

II. Living Under Obama’s Czars

Rule by “czar” became the template for Obama’s first-term presidency. Now secure in his second term, President Obama has embarked upon another vast expansion of federal executive power going beyond the mere use of czars to give certain “advisory groups” unprecedented power. These panels are not the typical public-relations devices presidents have used frequently in the past to give the appearance of activity when the president did not want to act. To the contrary, Obama’s new panels are designed for action, they have teeth, and they employ sophisticated manipulation of the media and political constituencies and even spy on citizens to prepare the way for more extraordinary Obama executive actions.

From the beginning of his presidency, President Obama vastly expanded the practice of recent past presidents of investing extraordinary powers in top-level presidential appointees that have not been confirmed by the U.S. Senate as required by the U.S. Constitution and who sit outside the normal chain of command in the administrative structure of the federal bureaucracy. In 2011, Judicial Watch released a first-of-its-kind comprehensive report on the Obama czar scandal, entitled “President Obama’s Czars” in which we identified 45 presidential appointments that could be considered “czars” (<http://www.judicialwatch.org/press-room/press-releases/judicial-watch-releases-comprehensive-special-report-on-president-obama-s-45-czars/>). That Report came to several important 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.”

The constitutional objection to many czars is that the activities of these “policy advisors” run afoul of the Appointments Clause of the U.S. Constitution, which requires that the U.S. Senate must confirm an appointee who exercises certain executive authority. Some czars effectively act with the authority of Officers of the United States despite having never being confirmed by the U.S. Senate.

Presidential czar appointments have increased dramatically under the Obama administration. In fact, President Barack Obama has essentially doubled the number of czar positions as compared to past presidents. Staffing up the federal executive branch with czars has been vitally important to Obama's centralized approach to governance. Many of the czars in departmental positions appear to report directly to the White House and undermine the authority of Senate-confirmed Cabinet secretaries.

Congressional legislative efforts to end funding for Obama's political operatives met with presidential disdain. A rider placed in the 2011 spending bill cutting non-defense appropriations and ending funding for certain highly controversial presidential-advisor "czar" 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." According to House Speaker John Boehner's spokesman, it was "not surprising that the White House, having bypassed Congress to empower these 'Czars,' is objecting to eliminating them."³

Judicial Watch conducted a major investigative program to gain basic administrative information about 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 the responses provided documents responsive to the initial request. Even executive agencies subject to the Freedom of Information Act (FOIA), such as the Department of State and the Department of the Treasury, ignored our requests.

The Judicial Watch investigation of President Obama's czars reveals the Obama administration's fundamental hostility to transparency. The general unwillingness to respond to very basic questions about a czar's mission, budget, and staffing gives lie to the administration's promise of a new era of transparency.

The president has also abused his recess-appointments power to bypass the "advice-and-consent" authority of the U.S. Senate and appoint other unaccountable czars to control major aspects of government policy and programs outside the reach of FOIA. On January 4, 2012, Obama misused the president's recess-appointment power when he appointed radical leftist Richard Cordray at the head of the Consumer Financial Protection Bureau (CFPB) after the Senate had blocked his nomination. "I refuse to take 'no' for an answer," the president thundered when he announced the appointment.

A few hours after the Cordray appointment, Obama again abused the presidential recess-appointment power when he tried to appoint three members of the National Labor Relations under Board (NLRB) under his recess-appointment power, an action that a federal appeals court eventually held exceeded Obama's constitutional authority. Although the NLRB court case did not involve CFPB, Cordray's appointment, coming as it did on the same day and in the same manner, is similarly tainted.

The U.S. Court of Appeals held the NLRB appointments to be unconstitutional but the president kept his unsanctioned appointees ensconced in office while the Obama administration challenged the court's decision. On November 25, 2013 Judicial Watch filed an amicus curiae brief with the United States Supreme Court in support of the appellate ruling.

While the legal process drags on, the NLRB has resurrected a proposed union rule that mirrors the proposal the Appeals Court struck down in 2012. Sen. Lamar Alexander, ranking member of the Senate Labor Committee characterizes the NLRB as acting more like a “union advocate than an umpire.”

Other NLRB decisions remain under a legal cloud as well. The illegally appointed Obama appointees served for more than one-and-a-half years, during which time many important policy decisions were made at the respective agencies. Even though the Congress has now confirmed Cordray as head of the CFPB — and the other two unconfirmed NLRB appointees are no longer serving — policy decisions undertaken during their tenure as unconfirmed appointees are constitutionally suspect.

The president’s abusive use of policy czars has destabilized the rule of law and undermined sound constitutional government. Yet, the president’s quest for new executive power seems unending. The example of how Obama has built on the Energy Czar’s Climate Action Plan announced last June is a case in point.⁴ That plan included unprecedented and unauthorized federal limits on so-called “climate pollution” (aka carbon dioxide) that require 17-percent reductions of CO² by 2020 from baseline emission levels of 2005. President Obama issued an executive order creating an intergovernmental Task Force on Climate Preparedness and Resilience (CPR). This so-called “advisory” task force is certain to go beyond mere advice and reach new regulatory tentacles down into the depths of virtually everything state and local governments do.

With the CPR task force, Obama has roped in a hand-picked, elite group of state and local officials sympathetic to the radical Obama agenda to work along side Obama’s czars and other federal officials to make “climate change” the lens through which much state and local government policy must be scrutinized. The executive order charges the CPR task force with “preparing the country for the impacts of climate change.” In the process, the CPR task force also provides the White House a lever and fulcrum with which to leverage local infrastructure, transportation policy, land and natural-resource usage and economic policy generally to bend states and their local jurisdictions to the national executive’s caprice, in the process bypassing local, state and federal legislative oversight and potentially imposing federal executive control over state governments in an unprecedented manner.

While touted as purely an “advisory” panel, careful reading of the executive order establishing the CPR task force reveals it to be much more powerful than its name implies in much the same way Obamacare’s Independent Payment Advisory Board (IPAB) — which has been dubbed the “Obama Death Panel”—has far more power and reach on healthcare pricing, utilization and rationing than its name implies. Two potential CPR task force powers are extremely worrisome. First, the CPR task force may exert the power to withhold federal funding to local communities that do not comply with various new federal standards and mandates that arise out of the “climate-change preparedness” activities of the task force. Second, the panel may be able to leverage sweeping changes to local land-use and resource practices with neither state legislative review nor congressional authorization.⁵

Obama’s sneaky advisory-panel strategy is also exemplified in his expansion of the authority of another long-standing advisory panel, the federal Dietary Guidelines Advisory Committee (DGAC). The role of the DGAC, which has met every five years for more than two decades, is to come up with recommendations that can be used “to help people choose an overall healthy diet that works for them.” Baylen

Linnekin, the executive director of the non-profit Keep Food Legal explains how the “recommendations” of the newly empowered DGAC have teeth and how the committee has gone from advisory panel to a cell-phone, text-spamming spying food nanny:

“The federal government wants to use your technology to change what you eat. In the meantime, they’re surreptitiously posting your data online...The DGAC is actively dreaming up ways for the government to meddle in your diet. A look through the transcript of last week’s [DGAC] hearing reveals the word “policy” (or “policies”) appears 42 times. The word “tax” appears three times. And the word “regulation” appears 13 times. The words “meat,” “salt,” “soda,” “sugar,” and “trans fats” came up countless times in the context of things you really should be eating less frequently. One of the most nefarious things I’ve seen about the DGAC recommendations so far is the suggestion that the government involve itself in the lives of obese people by sending them regular text messages. This texting — and the data collection necessary to facilitate it — could be an unprecedented intrusion of government into the daily lives of Americans. It flies in the face of food freedom.”⁶

In his February 1, 2014 Saturday Radio Address, President Obama made it clear he intends to expand his use of “advisory” councils beyond Washington insiders: “I’m going to ask business leaders, education leaders and philanthropic leaders to partner with us to advance these goals.”

III. Illegal Immigration — Beyond Stealth Amnesty to Open Backdoor Amnesty by Executive Action

Today, between eight and fourteen million illegal aliens reside in the United States, draining our nation’s economy while presenting a security and public-safety threat to the American people. Public officials not only have failed repeatedly to protect our borders from this illegal alien invasion; they have also been complicit in undermining immigration laws.

From the beginning of President Obama’s “We Can’t Wait” program (December 2011), the Obama administration had been quietly imposing a stealth-amnesty scheme for illegal aliens in defiance of Congress through executive fiat and organized prosecutorial discretion. Then, on June 15, 2012, that stealth effort was institutionalized in the open when then-Homeland Security Secretary Janet Napolitano issued a memorandum formally establishing the Deferred Action for Childhood Arrivals (DACA) program without any statutory basis and in direct defiance of Congress’s earlier refusal to enact the so-called DREAM Act into law. (This law would have permitted certain illegal immigrant students who grew up in the U.S. to apply for temporary legal status and to eventually obtain permanent legal status and become eligible for U.S. citizenship if they go to college or serve in the U.S. military, and it would have eliminated a federal law that penalizes states that provide in-state tuition without regard to immigration status.)

DACA directs U.S. Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), and U.S. Immigration and Customs Enforcement (ICE) to practice “prosecutorial discretion” toward some individuals who immigrated illegally to the United States as children — in other words to decide unilaterally which part

of the law the Obama administration will enforce. On June 6, 2013, the U.S. House of Representatives voted to defund the illicit DACA program but the U.S. Senate did not follow suit. This episode illustrates poignantly the “new normal” under President Obama. Rather than the Congress passing legislation and the president signing or vetoing it, as the Constitution provides for, in Obamaland, first the president establishes programs and then the Congress is forced to repeal them if it doesn’t like what the president has done. Executive action first, legislative action afterward. The president is ignoring the law, failing to enforce the law and otherwise “rewriting” the law at whim and then saying to Congress: “Catch me if you can.”

Since DACA’s inception, the program has accepted more than 520,000 applications from illegal aliens requesting temporary legal status under the program, of which almost 400,000 have been approved under Homeland Security’s dodgy “work around.”

Not only does this usurpation of congressional authority undermine the Constitution; it also weakens security on the nation’s border with Mexico. Moreover, the Obama administration’s unwillingness to enforce federal immigration laws and its relentless attacks on state efforts to confront the illegal immigration crisis are both constitutionally suspect and practically counterproductive.

Judicial Watch has several active investigations into the Obama administration’s policies and actions on immigration. As part of that these efforts, we looked into the extraordinary measures the Obama administration took to derail states’ efforts to protect their citizens and get illegal immigration under control. Judicial Watch uncovered documents showing extensive collusion between the Department of Justice and the American Civil Liberties Union with respect to legal challenges to Arizona’s S.B. 1070, a bill to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.

When Obama’s Justice Department attacked Arizona’s law in federal court, Judicial Watch filed an *amicus curiae* (friend of the court) brief with the U.S. Supreme Court on behalf of the Arizona State Legislature. Agreeing with Judicial Watch, the Supreme Court upheld the Arizona law’s centerpiece provision that requires state law-enforcement officials to determine the immigration status of anyone they stop or arrest if they have reason to suspect that the individual might be in the country illegally.

Little wonder the situation at the border continues to deteriorate: President Obama is unwilling to faithfully enforce federal immigration laws while he attacks states that are taking action to ameliorate the pernicious effects produced by the president’s failure to enforce the law.

Obama even used the pretext of automatic spending cuts required by the Taxpayer Relief Act of 2012 (the “sequester”) to release more than 2,000 illegal-alien inmates in Arizona, California, Georgia and Texas. According to a leaked Department of Homeland Security (DHS) document, the detainees released from ICE facilities beginning at the end of February 2013 were part of a larger plan to release thousands more prisoners, with the result that ICE facilities would be operating at only about 70 percent of their full 34,000-bed capacity.

Even before these latest sequester shenanigans, Judicial Watch had succeeded in prying loose documents about Obama’s ongoing backdoor amnesty efforts. The United States District Court for the District of Columbia ruled in March 2013 that the Obama

Department of Homeland Security had failed to comply with the Freedom of Information Act in a Judicial Watch lawsuit seeking records related to the agency's policy of suspending some illegal alien deportations under DACA.

The Judicial Watch FOIA lawsuit concerned a DHS policy implemented by Immigration and Customs Enforcement (ICE) that had led to a significant reduction in the Houston, Texas deportation docket — dismissal of pending enforcement proceedings against illegal immigrants that DHS claimed did not have serious criminal records. Judicial Watch subsequently uncovered records showing that multiple deportation cases were dismissed against illegal immigrants who had committed serious felonies.

These documents revealed that administration officials misled Congress regarding the scope of deportation dismissals in Houston. The documents detailed a behind-the-scenes effort by the Obama administration to suspend deportation proceedings against so-called “DREAM-Act aliens” and other illegal immigrants. Judicial Watch president Tom Fitton explained the importance of the court's ruling requiring the Department of Homeland Security to turn over the documents:

“This ruling shows the Obama administration is willing to go to any extent — including gaming the courts — to continue stonewalling the full story of its lawless release of illegal aliens. Now, with the prison floodgates being thrown open to illegal aliens under the phony pretense of abiding by sequester cuts, it is more important than ever that Obama's hand be revealed.”

Another recent executive action further illustrates the point. On November 15, 2013, the U.S. Citizenship and Immigration Services unilaterally rewrote sections of current immigration law by granting certain illegal aliens so-called “parole-in-place” status, which will circumvent current law requiring their immediate deportation.

Recent research by the Center for Immigration Studies begins to quantify the effects of these unilateral executive actions. During 2013, for example, hundreds of thousands of deportable aliens were released instead of removed under the administration's sweeping “prosecutorial discretion” guidelines. In 2013, ICE reported 722,000 encounters with potentially deportable aliens, most of which were identified after a local arrest. Yet, ICE officials followed through with immigration charges against only 195,000 of these aliens, about one-fourth. In addition, many of the aliens ignored by ICE were convicted criminals. In 2013, ICE agents released 68,000, or about 35 percent of the aliens who already had been convicted on criminal charges.⁷

IV. Rule by Executive Fiat

“When I can act, without Congress, I'm gonna do so.”

~Barack Obama, January 15, 2014

Thwarted by a Republican-controlled U.S. House of Representatives and seeking policy accomplishments to help bolster his reelection campaign, Obama launched his **We Can't Wait** effort in 2011. When he announced the campaign in Las Vegas on October 24, 2011, Obama said he would take unilateral executive action to “heal the

economy” without waiting on a “dysfunctional” Congress:

“I’m here to say to all of you and to say to the people of Nevada and the people of Las Vegas, we can’t wait for an increasingly dysfunctional Congress to do its job. Where they won’t act, I will. I’ve told my administration to keep looking every single day for actions we can take without Congress...And, we’re going to be announcing these executive actions on a regular basis...”

The Obama administration then proceeded unilaterally on all fronts. The Obama Environmental Protection Agency (EPA) began efforts to restrict carbon emissions, restrictions that Congress had expressly rejected. The Secretary of Education granted states waivers from federal mandates if states agreed to adopt “Common Core” school curricula created in secret by the Obama administration. As discussed in the previous section, administration expanded its illicit amnesty activities by ignoring the law to grant amnesty to illegal aliens.

Obama’s “Race to the Top” education program is another illustration of his disregard for congressional authority. Congress gave the president wide latitude in the 2009 economic stimulus bill to spend five billion dollars through the Department of Education for incentive grants to the states, with minimal congressional guidelines attached. Chafing at even these minimal guidelines, the Obama administration implemented an unprecedented federal intervention into state education policy. The result was a presidentially-designed program that dangled large grants to cash-strapped states, provided states first changed state laws to implement specific policies favored by Obama’s Secretary of Education, namely elements of the “Common Core.”

In yet another education gambit related to Common Core, President Obama announced his intent to grant waivers to states for relief from the requirements of the No Child Left Behind Act in exchange for states’ adopting key components of Common Core as a precondition of receiving a waiver. This impatient, “can’t-wait” preemptive intervention by the Obama White House occurred despite the fact that Congress was then in the process of considering legislation to update federal education policy, which however, would not likely have incorporated all of Obama’s agenda.

The *California Catholic Daily* called Common Core “a stealthy appropriation by the federal government to take control of the curriculum in the local public schools — and now, in some private schools also.” No wonder. Obama’s Common Core scheme is a centralized, one-size-fits all attempt to anoint out-of-touch federal bureaucrats with the power to determine what educational material children in every state must learn. It makes little sense educationally and goes against America’s cherished tradition of local control of education. But it is precisely this long tradition that Common Core is designed to destroy. Paul Reville, the former secretary of education for Massachusetts and a Common Core supporter stated it boldly when he appeared as a panelist at an event hosted by the Center for American Progress on March 31, 2014. Trying to rebut criticisms of the Common Core national education standards, he called critics a “tiny minority...fringe voices about federalism and states rights who opposed standards altogether.” It is “unfair,” he said in a throwback to Hillary Clinton’s it-takes-a-village mentality: “The children belong to all of us.”

The president’s monarchical inclinations have directly affected the private sector as well.

As Kimberley Strassel wrote on July 5, 2012 in the *Wall Street Journal*:

“The president’s imperial pretensions extend into the brute force the executive branch has exercised over the private sector. The auto bailouts turned contract law on its head, as the White House subordinated bondholders’ rights to those of its union allies. After the 2010 Deepwater Horizon oil spill, the Justice Department leaked that it had opened a criminal probe at exactly the time the Obama White House was demanding BP suspend its dividend and cough up billions for an extralegal claims fund. BP paid. Who wouldn’t?”

In recent months, President Obama has even taken it upon himself to create out of whole cloth new federal spending programs not authorized by the Congress. For example, without waiting on congressional authorization, Obama created a billion-dollar National Network for Manufacturing Innovation (NNMI) designed to bridge the gap he claims exists between public and private research and development efforts. Before Obama acted, he clearly recognized that congressional authorization was required to fund the initiative; the Department of Commerce promised that the administration would propose legislation creating an account making available \$1 billion for the initiative. No such legislative proposal ever materialized. Nevertheless, President Obama could not wait even on his own administration and on March 9, 2012 proclaimed, “We’re not going to wait — we’re going to go ahead on our own,” and he proceeded to fund a pilot program unilaterally, without congressional authorization and with funds that clearly were appropriated for other activities. Again, Obama circumvented the legislative process and created a new spending program at his whim.

The limits of executive power have been the object of a continuous struggle between legislative and executive since the beginning of the Republic, which is precisely what the Founders intended when they designed the Constitution. James Madison, who is considered the Father of the United States Constitution, explained in Federalist Paper # 51 the practicalities of maintaining a balance in the “necessary partition of power among the several departments” [i.e., branches of government]...by so contriving the interior structure of the government, as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places.” Madison’s explanation of the essential role of separation of powers is worth quoting at length:

“The great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others. The provision for defence must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place...where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other...**But it is not possible to give to each department an equal power of self-defense. In republican government the legislative authority, necessarily predominates.**”⁸

“The legislative authority necessarily predominates.” All presidents must come to grips with this fundamental principle of American democracy. President Obama, however, seems unable to do so. Mr. Obama’s aggressive executive directives and unrestrained

agency rulemaking are overshadowing Congress's constitutional role in shaping policy. And to its great shame, the Congress is making this presidential usurpation of congressional powers easier by largely ignoring its constitutional obligation to defend congressional prerogatives and check an over-reaching president acting in clear violation of his oath of office.

This president has engaged in unrelenting actions aimed right at the heart of the congressional prerogative to make law and control the federal government's purse strings. Yet, Congress, to date, has let this expansion of the imperial presidency proceed pretty much unimpeded. James Madison would marvel and despair at this surrender of congressional authority to the executive.

We Can't Wait Phase Two: Presidential "Tweaking"

Six months into his second term as president, Barack Obama launched "Phase Two" of his We-Can't-Wait campaign of ignoring, circumventing and overriding the U.S. Congress to advance his radical liberal agenda. Obama increasingly refuses to seek statutory amendments through the ordinary lawmaking process. He also frequently refuses to even give his executive overreach the patina of legitimacy by going through the ordinary administrative rule-making process. The president instead simply announces what he calls "tweaks" to the law whenever the fancy strikes him.

Implementing Obama Care: The Patient Protection and Affordable Care Act (Affordable Care Act) created three key new mandates and penalties for not complying with the mandates —

- **The Individual Mandate:** A mandate on virtually every individual in the country to obtain health insurance or face a hefty fine, which the Supreme Court held to be a "tax;"⁹
- **The Employer Mandate:** A mandate on large employers (at least 50 full-time employees) to provide their employees Obamacare-compliant health coverage or face a fine of up to \$3,000 per employee; and
- **The Insurance Company Mandate:** A mandate on insurance companies requiring them to issue only health policies that meet the detailed standards, terms and conditions with respect to "essential health benefits," which were laid down in the Affordable Care Act.

The law also encouraged states to establish state insurance exchanges through which individuals could purchase health insurance, and the law provided subsidies to help those under a certain income level to afford the now-mandatory health insurance.

However, under the Act, the tax credits were to be available only to those individuals who live in states with state health insurance exchanges. The law does not provide for tax subsidies to individuals who live in states without a state exchange. (Thirty-four states declined or were unable to establish state exchanges.) Likewise, the law arguably does not provide for imposing fines on employers doing business in states without state exchanges if they do not comply with the employer mandate.

When the rollout of Obamacare foundered badly and people were having difficulty enrolling in health insurance through state exchanges and the Obamacare website — thus making it difficult to impossible for people to comply with the individual mandate — Obama took unilateral action, contrary to law, to delay both the individual and employer mandates.

When far fewer states than expected set up state health insurance exchanges through which individuals could purchase health insurance, Obama took unilateral executive action not authorized in the law to extend federal tax credits (subsidies) to individuals in states without state exchanges. The Obama administration is also ignoring the law by preparing to levy fines on all employers who do not comply with the employer mandate, even if those employers are not doing business in states without state exchanges.

When parts of the Affordable Care Act became effective last year, it resulted in many existing health insurance policies suddenly being out of compliance with the law because they did not satisfy the many new Obamacare rules and regulations. As a result, insurance companies cancelled more than six million health policies. With insurance cancellations mounting and people unable to find affordable, Obamacare-compliant replacements for their cancelled policies, President Obama told insurance companies they did not have to fear being penalized if they reinstated the cancelled policies — in effect, he told the companies to go ahead and violate the law with impunity.

The president has no statutory authority to take any of the aforementioned actions.

The president even took it upon himself to change the Obamacare law as it applies to Members of Congress and their staffs. When Congress passed Obamacare, it required Members and their staffs to purchase health insurance through the Obamacare exchanges. This meant that Members and staffs would lose the health-insurance benefits they had received previously, which conferred lucrative subsidies amounting to \$5,000 for individual coverage and \$11,000 for family coverage. The plain language of the law notwithstanding, the Obama administration said it would allow Congress to keep its health-care subsidies and use them in the new Obamacare health exchanges.

When Attorney General Eric Holder was asked by Senator Mike Lee in a January 29, 2014 Senate committee hearing to square the administration's extraordinary executive actions on Obamacare with Supreme Court decisions regarding executive action, Holder could not respond because, he said, "I'll be honest with you, I have not seen... I don't remember looking at or having seen the [Court opinions and legal] analysis in some time."

On February 10, 2014, while giving French President Francois Hollande a tour of Thomas Jefferson's home at Monticello, President Obama quipped, "The nice thing about being president is I can do whatever I want." Meanwhile, back in Washington DC, the Obama Treasury Department was announcing for the second time in a year that the Obama administration would violate the law and further delay the employer mandate for employers with 50 to 99 workers until 2016.

What Fox News analyst Judge Andrew Napolitano said about President Obama's lawless actions on deportation holds equally true for Obamacare and all the other federal laws he has violated:

"When he [Obama] lays down a list of conditions that permit persons in America to avoid complying with federal law, he is not enforcing the law; he is rewriting it. The Framers intended American presidents to enforce all of the laws that Congress has written, even those they dislike, even those they condemn, even those that may frustrate their friends, even those that may harm their political interests."

Gun Control: The president’s obsession with gun control also illustrates his willingness to flout the Constitution. In the aftermath of the Sandy Hook Elementary School shootings, the president declared his intention to effect gun control via executive fiat and proceeded to lay out 23 executive actions as a first step toward nullifying certain Second-Amendment protections. Mr. Obama issued three presidential memoranda, which are executive orders in all but name, two presidential letters, several presidential statements and various other executive actions — all designed to limit Second Amendment rights, including an effort to dragoon doctors and healthcare providers into a federal gun-control-enforcement network.

V. Obama’s Second-Term Agenda

The danger of an all-out, second-term assault on representative democracy and the rule of law was telegraphed by Obama as early as November 7, 2012 in a *Washington Post* article:

“[Obama] also plans to be more aggressive in taking actions that do not require congressional approval, as he did during the past year with an initiative the White House branded ‘We Can’t Wait.’ Another White House aide added, **he does think that’s going to be the “new normal.”** (Emphasis added)

Obama confirmed this “new normal” in a speech at Knox College on July 24, 2013 where he promised more executive actions on the economy: “I will not allow gridlock, inaction or willful indifference to get in our way. That means whatever executive authority I have to help the middle class, I’ll use it.” And then, in his February 2014 State of the Union Address he threw down the gauntlet: “Wherever and whenever I can take steps without legislation...that’s what I’m going to do.”

With his kitchen cabinet of czars in place a broader strategy to expand presidential power by executive fiat is unfolding. Obama’s “new normal” promises rule by executive fiat, plain and simple. On the issues of gun control, illegal immigration and fiscal policy, Obama has sneered at Congress and the judiciary. We can expect to see more of the same elevated to new heights now that the president doesn’t have to worry about reelection.

ConnectEd: Last year, the *Washington Post* uncovered a new Obama effort to bypass Congress to create an obscure program called ConnectEd, which would expand high-speed Internet access in schools and allow students to use digital notebooks and teachers to customize lessons. The idea was so potentially controversial that it had been put on the shelf during the 2012 presidential campaign to avoid stirring up voter resentment. But now, President Barack Obama is forging ahead with this effort (including \$2 billion for it in his 2015 budget), both to intimidate private telecommunications companies into “contributing” to the program and to go around Congress to raise tax dollars to pay for it. According to the president’s aides, Obama considers ConnectEd one of the biggest potential achievements of Obama’s second term. The program would cost upwards of \$6 billion. In addition to the \$750 in “contributions” to the program from high-tech and telecommunications firms, Obama intends to pay for the rest by tacking onto cell-phone bills an additional \$5-per-year tax on top of a myriad of other existing federal, state and local charges and sales taxes. These charges would be buried in people’s phone bill under the “Universal Service” charge. (Every phone customer in the country pays into the Universal Service Fund — indirectly, through their carriers — to help subsidize

telecommunication services for poor people.) The Federal Communications Commission (FCC), an independent federal agency headed by five Obama political appointees (three of which are Democrats), would collect the charge.

Obama claims that the Federal Communications Commission, as an independent agency, has the power to approve or reject the plan without congressional enactment, and according to one White House aide, he told his staff: “We are here to do big things — and we can do this without Congress.” In a White House press briefing, Obama’s deputy press secretary John Earnest denied the president was attempting an “end run” around Congress but he said that Congress’s “dysfunctional” state could justify an executive override: “Unfortunately, we haven’t seen a lot of action in Congress, so the president has advocated an administrative, unilateral action to get this done.”

One former FCC commissioner, Harold Furchtgott-Roth is appalled by the president’s attempted end-run around Congress: “Using the FCC as a way to get around Congress to spend money that Congress doesn’t have the political will to spend — I think that’s very scary. Constitutionally, it’s Congress that decides how federal funds should be spent.”¹⁰

Mandatory Sentencing: The president is in so much of a hurry that he is even willing to bypass Congress when it is actively in the process of crafting bipartisan legislation, such as legislation to reduce or eliminate mandatory sentences for drug offenders. Conservative Republican Senator Rand Paul and the liberal Democratic chairman of the Senate Judiciary Committee, Patrick Leahy, had introduced legislation to grant federal judges greater flexibility in sentencing, and Leahy scheduled committee hearings on the bill in September 2013. But Obama and Attorney General Holder couldn’t wait. On August 12, 2013, before hearings commenced, Attorney General Eric Holder unilaterally ordered all U.S. attorneys to simply stop charging nonviolent, non-gang-related drug defendants with crimes that carry certain mandatory sentences. According to news reports, the Attorney General went so far as to direct federal prosecutors to conceal the amount of drugs seized during an arrest to circumvent mandatory minimum sentences set by Congress in 1986.

Here are a few other examples of what we can expect to see throughout the remainder of Obama’s second term.

Environmental Regulation and Fuel Efficiency Standards: As the old adage goes, “personnel is policy” — so it is not surprising the President Obama moved quickly after the November 2012 election to staff up his second administration with new personnel adept at taking unilateral executive actions to advance his far-left agenda. Such is the case, for example, with Gina McCarthy, whom the president chose to run the U.S. Environmental Protection Agency (EPA). In the position of Deputy Administrator for the EPA’s Office of Air and Radiation, which she held since 2009, Ms. McCarthy was responsible for limiting airborne pollutants and radiation exposure. In this position, she was intimately involved in a number of controversial decisions, including the Obama administration’s “war on coal,” the regulation of so-called greenhouse gases, and the illicit effort to increase fuel economy standards for automobiles. Although the U.S. Senate confirmed McCarthy in July 2013 on a party-line vote, there is good reason to be suspect of her future behavior in this critical position.

The Clean Air Act does not provide the EPA authority to regulate the fuel efficiency of motor vehicles. Yet, in May 2010, the EPA issued a rule setting standards for motor

vehicle greenhouse gas emissions that were, in effect, backhanded fuel-efficiency regulations because the emissions' standards could only be achieved if fuel efficiency were greatly increased. In other words, the EPA new emissions standards were simply a ruse to allow the agency to begin implicitly regulating fuel economy, a ploy that even the media acknowledged. *Roll Call* reported that McCarthy "oversaw... stricter fuel economy standards for cars and trucks." *National Public Radio* said, "She played a key role in doubling automotive fuel-economy standards" — actions arguably outside her authority as an EPA official.

The tipoff to EPA's subterfuge was revealed when the agency's collusion with the leftist-controlled State of California was exposed. In a pure act of extortion, the EPA under McCarthy granted a waiver to California to set its own fuel economy standards and then used the waiver as a club to, in effect, blackmail auto makers into following EPA's new fuel-efficiency demands nationwide — this despite the fact that both the EPA and the states are precluded by law from setting fuel economy standards.¹¹ Then the EPA met with automakers and told them if they didn't submit to the EPA's new fuel-efficiency demands, California's more-stringent standards would govern, which would cripple the auto industry in one of its most lucrative markets.

On February 18, 2014, President Obama raised the stakes in his executive campaign to bypass Congress and the Clean Air Act and unilaterally regulate fuel efficiency of all vehicles when he announced he is "directing the Director of Transportation. . .and the administrator of EPA. . .to develop fuel economy standards for heavy duty trucks." This latest executive dictate, also extends Obama's strategy of bribing and intimidating the private sector, in this case with a "public-private partnership." As Obama described his offer the private sector can't refuse: "Companies that want to join an existing public-private partnership focused on energy-efficient vehicles will get specialized resources and the technical expertise from the Department of Energy."

Moreover, the EPA now claims the authority under the Environmental Protection Act to regulate greenhouse gas emissions from stationary sources (factories, buildings and so forth), which means the agency has usurped from Congress the authority to set U.S. policy on so-called "global warming." In June 2013, just before McCarthy's confirmation, President Obama took another audacious and unprecedented action on global warming regulation. In a speech at Georgetown University, Obama announced that he would sidestep Congress to implement a national plan to combat climate change. The plan includes the first-ever federal regulations on carbon dioxide emitted by existing power plants, buttressing an EPA proposed rule issued in 2012 for new power plants. Experts believe these executive actions will essentially ban coal's use for power generation in the future.

The EPA contends it is simply implementing the Clean Air Act. However, the Clean Air Act was enacted in 1970, almost twenty years before environmentalists became obsessed with so-called "global warming" and five years before Congress enacted the first fuel-efficiency law. This law was neither designed nor intended — and most importantly did not delegate to EPA the power — to regulate greenhouse gases or to manipulate fuel economy indirectly through its environmental standards, especially standards EPA has no authority under law to establish.

While the Republicans in Congress carp about the EPA's actions, they continue to sit on their hands and refuse to wield the power of the purse to halt EPA's power-grab.

Attorneys General in 17 states, however, are challenging EPA's over-reach. In a white paper released on September 11, 2013 (<http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/20130911StateAGWhitePaper.pdf>) they contend:

“EPA, if unchecked, will continue to implement regulations which far exceed its statutory authority to the detriment of the States, in whom Congress has vested authority under the Clean Air Act, and whose citizenry and industries will ultimately pay the price of these costly and ineffective regulations.”

More Threats to Second Amendment Protections: The White House mindset that fuels the Obama imperial presidency was revealed in a February 26, 2012 statement by the First Lady on ABC's *Good Morning America* when she said, “Our rights and our privileges take a back seat when it comes to the safety of our children in this country.” Energized by this kind of hubris, the Obama administration is colluding behind closed doors with various lobbying groups, including representatives of many big-city mayors and anti-gun activists, to undermine the Second Amendment.

After the racially charged trial of George Zimmerman for the shooting death of Trayvon Martin, Attorney General Eric Holder tried to exploit the controversy to leverage forward the president's gun-control agenda. In a July 16, 2013 speech before the annual convention of the NAACP, in which Holder called for a national review of state “stand-your-ground” statutes he said, “It's time to question laws that senselessly expand the concept of self-defense and sow dangerous conflict in our neighborhoods.” This statement reveals how little respect the Obama administration has for the U.S. Constitution the president swore to uphold. In one short sentence, the Attorney General of the United States demoted the inalienable right of self-defense to a mere “concept,” which he suggests is subject to review and restriction by the federal government.

In the aftermath of the Sandy Hook Elementary School shootings, Obama announced he was taking 23 executive actions on guns to further advance his gun-control agenda. (See the Appendix for full list.)

A leaked Department of Justice memorandum dated January 4, 2013 by Greg Ridgeway, deputy director of the DOJ's National Institute of Justice, admits the cynical deception behind Obama's gun strategy. The memo concedes that gun control will not work to reduce gun violence — the ostensible purpose of Obama's executive actions — and indeed probably will just make matters worse. The memo, however, goes on to look ahead to a comprehensive, multi-step strategy for disarming many Americans. The administration already has set this strategy in motion at the federal level with the president's 23 executive actions after Sandy Hook and is working in close cooperation with state and local gun-control lobbying groups such as Mayors Against Illegal Guns.

Meanwhile, the Obama administration is moving ahead quickly to expand the list of people who are ineligible to own a gun. For example, in April 2013 the Department of Veterans Affairs sent out letters to veterans as a follow-up to the president's expressed desire to expand psychiatric screening to filter out people he believes should be ineligible to own a firearm.¹² That letter said, in part:

“A determination of incompetency will prohibit you from purchasing, possessing, receiving, or transporting a firearm or ammunition. If you knowingly violate any of these prohibitions, you may be fined, imprisoned, or both pursuant to the Brady Handgun Violence Prevention Act, Pub.L.No. 103-159, as implemented at 18, United States Code 924(a)(2).”

The infrastructure for trolling everyone’s mental-health medical records for purposes of gun control and weapons confiscation is being put in place rapidly. The IRS, which has been given wide new powers to implement parts of Obamacare, could gain access to the mammoth database that could contain many Americans’ personal information, including mental-health histories.¹³ The IRS already has demonstrated how this power can be misused. Before Obamacare is even fully implemented, the IRS faces a class-action lawsuit over allegations that it improperly accessed and stole the health records of some 10 million Americans, including medical records of all California state judges.

Amnesty By Decree: President Obama’s policy on immigration, for all intents and purposes, is one of amnesty. The means of implementing amnesty by decree began during Obama’s first term with a joint Department of Homeland Security and Department of Justice “working group” that sought to identify “low-priority removal cases” that should be considered for “prosecutorial discretion.” According to a memo by then ICE Director John Morton, these criteria would be based on “positive factors” that include: Individuals present in the U.S. since childhood (such as “DREAM-Act” students), minors, the elderly, pregnant and nursing women, victims of serious crimes, veterans and members of the armed services as well as individuals with serious disabilities or health problems.¹⁴ As a group, minors, elderly, pregnant and nursing women could entail more than half of all childbearing-age, illegal alien women.

The Obama suspension of most deportations based on the recommendations of the working group amounted to *de facto* stealth amnesty-by-decree for millions of illegal aliens — all without congressional authorization of any kind. Today, this stealth policy has been formalized and institutionalized in the open by executive action. In a 2012 memorandum, the Secretary of Homeland Security established the Deferred Action for Childhood Arrivals (DACA) program — an act of prosecutorial discretion by the Justice Department — to defer deportation action against certain illegal immigrants who arrived in the United States as children with their parents. DACA will continue to operate in the open as a *de facto* amnesty program throughout Obama’s second term unless Congress takes action to curtail it.

A White Paper released last month by U.S. Senator Jeff Sessions (R-AL), reported that a review of Immigration and Customs Enforcement’s (ICE) published enforcement statistics for 2013 reveals a shocking truth: DHS has blocked the enforcement of immigration law for the overwhelming majority of violations — and is planning to widen that amnesty even further.”¹⁵

Additionally, the Obama administration has taken aggressive action to thwart existing U.S. immigration law that prohibits admission of asylum seekers and refugees who provided even “limited material support” to terrorists. Just before this Update went to press, the administration unilaterally rewrote this part of the law by issuing new exemptions to allow some immigrants with “only limited” terrorist contact into the country.

Former State Department official and current director of policy studies for the Center for Immigration Studies, Jessica Vaughan, believes Obama once again has over stepped the bounds of his authority by rewriting the law to his own ends. In a February 5, 2014 email to the *Daily Caller*, Vaughan wrote:

“It seems to me that they are announcing that they will be disregarding yet another law written by Congress that they don’t like and are replacing it with their own guidelines, which in this case appear to be extremely broad and vague, and which are sure to be exploited by those seeking to game our generous refugee admissions program.”

At a time when 70 percent of applications for asylum contain warning signs for fraud, according to a previously released secret 2009 internal government audit, the administration should be heightening scrutiny of asylum and refugee applications, not unilaterally rewriting the law to loosen them. The aforementioned audit found that many of those cases with red flags had been approved anyway.

Undermining Election Integrity: The Obama administration has a history of misusing the federal courts to overturn state efforts to strengthen election integrity. For example, the Department of Justice continues to resist state voter ID statutes that are similar to those already approved by the Supreme Court of the United States. The Justice Department refuses to enforce Section 8 of the National Voter Registration Act, which calls for protections against voter fraud.

Meanwhile, the Obama administration continued to ignore existing provisions of the law that are intended to strengthen the integrity of our elections.

VI. Yes, Mr. President, You Will Wait

Even as the president redoubles his efforts to bypass Congress and the courts early in his second term, there is at least one recent ruling by the Court of Appeals for the District of Columbia Circuit that pushes back. This ruling may form the legal basis of future resistance against Obama’s persistent overreach. On August 13, 2013, the D.C. Circuit Court of Appeals rebuked the administration for ignoring the law and the court’s earlier ruling *In re: Aiken County*. The Court of Appeals issued a rare *writ of mandamus* — a direct judicial order — compelling the Obama administration to fulfill a legal obligation it has blatantly refused to carry out under The Nuclear Waste Policy Act of 1983.¹⁶ The court considered its writ an “extraordinary remedy,” which on the surface applied narrowly to a dispute over the disposal of spent nuclear fuel at Nevada’s Yucca Mountain. In his concurring opinion, Circuit Court Judge A. Raymond Randolph indicated why such an extraordinary remedy was necessary, noting that former NRC Chairman Gregory Jaczko, who has since resigned, had “orchestrated a systematic campaign of noncompliance.”

Writing the opinion for the court, Judge Brett Kavanaugh noted that the court’s decision had ramifications far beyond merely the specific issues raised by this particular case. In Kavanaugh’s words, the case “raises significant questions about the scope of the

Executive’s authority to disregard federal statutes.” Judge Kavanaugh wrote further: “By its own admission, the [Nuclear Regulatory] Commission has no current intention of complying with the law...As things stand, therefore, the Commission is simply flouting the law...The President may not decline to follow a statutory mandate or prohibition simply because of policy objections...In light of the constitutional respect owed to Congress, and having fully exhausted the alternatives available to us,” Kavanaugh concluded the court had no option other than to issue the *writ of mandamus* compelling the Obama administration to comply with the law.

Obama’s executive overreach is under judicial scrutiny in numerous courts, including the Supreme Court. The Supreme Court, for example is considering whether Obama has abused his use of recess appointments and exceeded the limits of his authority in the way his administration has implemented the birth-control mandate imposed under Obamacare. A U.S. District Court in Texas held that Obama’s deferred-deportation initiative (the DACA program) is probably illegal.

Judicial Watch investigative Priorities

Judicial Watch has undertaken an ambitious investigative agenda focusing broadly on the Obama administration’s plan for ruling by executive fiat. Obama’s plan includes bypassing Congress, often contrary to the U.S. Constitution, and implementing his agenda via executive fiat on a wide range of issues, ranging from rewriting immigration law to undermining the Second Amendment to controlling free speech on the Internet.

One JW investigation involving Obamacare confronts the administration’s flagrant disregard of the Federal Antideficiency Act, which prohibits federal employees from spending money in excess of the amount made available by Congress in specific appropriation acts or accepting voluntary services for the United States, or employing personal services not authorized by law.¹⁷ Judicial Watch and the Heritage Foundation joined forces to investigate this Obamacare scandal in the Department of Health & Human Services (HHS).

The joint investigation was prompted by reports that HHS Secretary Kathleen Sebelius had “gone, hat in hand, to health industry officials, asking them to make large financial donations to help with the effort to implement President Obama’s landmark health-care law.” In response, U.S. Senator Lamar Alexander launched a congressional inquiry into whether the Secretary’s fundraising appeals, conducted by phone and in person, primarily made on behalf of the organization Enroll America, violated the Antideficiency Act. Contrary to HHS’s claims that a shoestring budget to launch Obamacare has forced it to go begging for private monies, records published at www.usaspending.gov show the agency has distributed more than \$5 million in grants and paid more than \$15 million in contracts to implement the Affordable Care Act since its enactment on March 23, 2010. Moreover, documents obtained by Judicial Watch through the Freedom of Information Act (FOIA), show that, despite a government-wide pay freeze in place at the time, the administration cast aside normal hiring practices in order to expedite the implementation of Obamacare.

Specific Judicial Watch investigative priorities include:

- **Obamacare:** The Obama Administration’s numerous violations of the law implementing Obamacare require careful scrutiny. Obamacare’s mandate to evaluate

medical treatments based solely on cost; the Obama administration's secrecy regarding the distribution of Obamacare waivers; the Obama administration's use of taxpayer dollars to produce and distribute Obamacare propaganda; and the regulation and funding of Obamacare in general also demand attention.

- **IRS Targeting of Conservative Groups:** The politically-driven targeting of conservative groups seeking tax-exempt status in an effort to cripple their effectiveness in advance of the 2012 elections; the failure of the IRS to hold any individuals accountable for this program; the role that the Obama White House played in the creation of the targeting program.
- **Benghazi-gate:** The Obama administration's attempts to deceive the American people regarding the terrorist connection to the murder of four Americans, including a U.S. Ambassador at the U.S. Consulate in Benghazi; the decision by State Department to deny support for U.S. forces during the attack and the Obama administration's refusal to bolster security at the consulate in the lead-up to the anniversary of 9/11.
- **Election Integrity Project:** The integrity of America's elections remains one of Judicial Watch's top priorities, and we are taking aggressive action by, for example, sending notice letters to top election officials in Iowa, Colorado, and the District of Columbia calling on them to follow Ohio's lead and comply with the National Voter Registration Act (NVRA) or face a Judicial Watch lawsuit within 90 days. JW also sent inquiries on March 6, 2014, to officials in California, New Mexico, Kentucky, West Virginia, North Carolina, Alabama, Mississippi, Missouri, and Illinois notifying them of potential "apparent problems" and asking these states to provide records of steps taken to assure the accuracy of voter lists.
- **Illegal Immigration:** The President's backdoor amnesty scheme for illegal aliens imposed via executive fiat; deteriorating security on the nation's border with Mexico; the Obama administration's unwillingness to enforce federal immigration laws and attacks against states attempting to confront the illegal immigration crisis with commonsense voter-ID laws.
- **Threats to Second Amendment Protections:** The Obama administration's closed-door discussions with anti-gun activists designed to craft policies that restrict gun ownership and undermine the Second Amendment, including new policies that would seek to pressure businesses to back the administration's gun agenda; policy recommendations that "suggest" doctors ask patients about gun ownership; efforts to compile federal registries on gun ownership; and efforts to use EPA regulations to restrict gun ownership.
- **Fast and Furious:** Barack Obama's highly controversial June 20, 2012, assertion of "executive privilege" to protect Attorney General Eric Holder from being prosecuted for failing to provide Congress with documents pertaining to the Obama administration's deadly gunrunning operation known as Operation Fast and Furious; Obama's invocation of executive privilege moves the legal and political questions surrounding the deaths of more than 300 Mexicans directly into the Oval Office; efforts by Attorney General Eric Holder and top Justice Department officials to conceal their knowledge and participation in the Fast and Furious scandal and to escape accountability while blaming the scandal on low-level officials.
- **Green Energy Boondoggles:** The Obama Department of Energy's decision to funnel \$16.4 billion to "green energy" companies either run by or primarily owned by Obama financial backers; the half-a-billion taxpayer dollars given to the now-bankrupt Solyndra, a green energy boondoggle financially backed by Tulsa billionaire Georg Kaiser, an Obama campaign fundraiser; the decision by the Obama White

House to fast-track the Solyndra loan through the approval process; bailouts given to other failing “green pork” companies, such as Fisker Automotive, Ener1, Abound Solar, and Beacon Power.

- **National Security:** Unanswered questions concerning the relationship of the FBI and CIA to American-born militant Imam Anwar al-Aulaqi and his assassination per the order of Barack Obama in 2011; the Obama administration’s determined efforts to censor speech about the threat of radical Islam.
- **Obama Czars:** Barack Obama’s continued attempts to bypass the “advice and consent” authority of the U.S. Senate and appoint unaccountable and corrupt czars to control major aspects of government policy and programs outside of the reach of the Freedom of Information Act (FOIA); the decision by Obama to improperly employ a controversial recess appointment to install radical leftist Richard Cordray at the head of the Consumer Financial Protection Bureau (CFPB) after the Senate had blocked his nomination; Obama’s decision to use recess appointments to appoint three members of the National Labor Relations Board (NLRB), a move which exceeded his constitutional authority per a recent appeals court ruling.
- **Unprecedented Secrecy:** The Obama administration’s withholding of records pertaining to Obamacare to the continued funding of the criminal ACORN network; from tracking Wall Street bailout money to the unconstitutional use of czars; to withholding the Secret Service’s White House visitor logs; to the attacks on the integrity of our nation’s elections. (Judicial Watch has had to file more than 2,500 FOIA requests and over 150 FOIA lawsuits against the Obama administration.)

VII. Appendix

Major Executive Actions by the Obama Administration Under the President’s We Can’t Wait Initiative

- Unilaterally expanded eligibility for the Home Affordable Refinance Program (HARP) (October 24, 2011);
- Unilaterally gave veterans preferential treatment in obtaining grant awards to universities and colleges that help train veterans for careers as physician assistants (October 25, 2011);
- Unilaterally instituted policies to reduce student loan payments (October 26, 2011);
- Unilaterally directed the FDA to take steps to ration prescription drug in the name of preventing shortages (October 31, 2011);
- Unilaterally used the EPA to imposed higher automobile fuel efficiency (CAFE) requirements (November 16, 2011);
- Unilaterally allocated \$2 billion to support favored startup companies (December 8, 2011);
- Unilaterally mandated minimum wage and overtime protections for home care workers (December 15, 2011);
- Abused the president’s recess-appointment power to appoint Richard Cordray as the director of the Consumer Financial Protection Bureau (CFPB) (January 4, 2012);
- Abused the president’s recess-appointment power to appoint three members to the National Labor Relations Board (NLRB) (January 4, 2012);
- Unilaterally initiated programs to help youths find summer jobs (January 5, 2012);
- Unilaterally expedited seven solar and wind energy projects (August 7, 2012) in Arizona, California, Nevada, and Wyoming;

- Unilaterally established an intergovernmental task force to eventually control state and local infrastructure policy, land and resource usage and other general economic activities under the guise of “preparing for the impacts of climate change (November 1, 2013);

The Imperial Presidency, a report by the U.S. House Majority Leader

On March 11, 2014, House Majority Eric Cantor released an addendum to the Majority Leader’s October 2012 report *The Imperial Presidency*. *The Imperial Presidency: An Update* compiles more than 40 separate examples of gross executive over reach during 2013 and 2014 gathered by numerous congressional committees, which “span the breadth of government,” including instances where the Administration has attempted to:

- Tell a private business in what state it can locate;
- Tell a religious institution which employees are “religious” under certain federal laws;
- Regulate the internet;
- Rewrite Federal education law; and
- Created new “Super” regulatory agencies.

There follows a list of specific examples taken from these reports, by no means exhaustive, of Obama’s flagrant disdain for the U.S. Constitution and the rule of law, especially the separation of powers:

- Using the Federal Communications Commission (FCC) to monitor and chill the speech of administration critics on radio and television, while using national-security pretexts to tighten down restrictions on the Internet;
- Using the Consumer Financial Protection Bureau to attack free enterprise and mire businesses in red tape;
- Using the NLRB to file a complaint against The Boeing Company for building an assembly line in South Carolina — despite the fact the NLRB could not demonstrate that Boeing was breaking any law — in an effort to force Boeing to move the work to Washington State from the non-union facility in South Carolina.
- Using the NLRB to require nearly every private employer to post in the workplace a vague and biased notice of employee “rights,” which actually represents a marketing campaign by Big Labor mandated by its allies at the NLRB to impose a new, unfunded mandate on business, an issue currently the subject of litigation.
- Using an executive order without statutory basis to limit employer flexibility and increase costs by forcing federal contractors that perform services previously performed by another contractor to offer jobs to the predecessor’s employees.
- Using a Department of the Interior Secretarial Order on “Wild Lands” to unilaterally inaugurate a policy that would effectively allow the executive branch to circumvent the strictly congressional authority of designating wilderness areas.
- Continuing to use the Justice Department to fight election integrity by failing to enforce our election laws and abusing the judicial process by trying to block states from implementing election-security measures such as voter ID laws;
- Continuing to use unauthorized EPA actions to significantly restrict America’s energy resources; and
- Continuing to misuse the National Labor Relations Board to abuse its power to help bolster Big Labor.

Obama's Executive Actions Designed to Circumvent Second Amendment Rights

In the aftermath of the Sandy Hook Elementary School shootings, President Obama took 23 extraordinary executive actions on guns:

1. Issued a Presidential Memorandum requiring federal agencies to make relevant data available to the federal background-check system.
2. Initiated efforts to remove legal barriers, particularly relating to the Health Insurance Portability and Accountability Act, that may prevent states from making information available to the background check system.
3. Improved incentives for states to share information with the background check system.
4. Directed the Attorney General to review categories of individuals prohibited from having a gun to make sure dangerous people are not slipping through the cracks.
5. Proposed rulemaking to give law enforcement the ability to run a full background check on an individual before returning a seized gun.
6. Published a letter from ATF to federally licensed gun dealers providing guidance on how to run background checks for private sellers.
7. Launched a national safe and responsible gun ownership campaign.
8. Reviewed safety standards for gun locks and gun safes (Consumer Product Safety Commission).
9. Issued a Presidential Memorandum requiring federal law enforcement to trace guns recovered in criminal investigations.
10. Released a DOJ report analyzing information on lost and stolen guns and make it widely available to law enforcement.
11. Nominated an ATF director.
12. Provided law enforcement, first responders, and school officials with proper training for active shooter situations.
13. Maximized enforcement efforts to prevent gun violence and prosecute gun crime.
14. Issued a Presidential Memorandum directing the Centers for Disease Control to research the causes and prevention of gun violence.
15. Directed the Attorney General to issue a report on the availability and most effective use of new gun safety technologies and challenge the private sector to develop innovative technologies.
16. Clarified that the Affordable Care Act does not prohibit doctors asking their patients about guns in their homes.
17. Released a letter to health care providers clarifying that no federal law prohibits them from reporting threats of violence to law enforcement authorities.
18. Provided incentives for schools to hire school resource officers.
19. Developed model emergency response plans for schools, houses of worship and institutions of higher education.
20. Released a letter to state health officials clarifying the scope of mental health services that Medicaid plans must cover.
21. Finalized regulations clarifying essential health benefits and parity requirements within ACA exchanges.
22. Committed to finalizing mental health parity regulations.
23. Launched a national dialogue led by Secretaries Sebelius and Duncan on mental health.

VIII. Notes

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- ⁸ Madison, James, “Federalist #51,” *The Federalist*, 1788.
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- ⁹ The fine for an individual not complying with the individual mandate in 2014 equals the greater of \$95 or one percent of a person’s 2014 income. Additionally, there will be a fine of \$47.50 for each uninsured child in the family up to a maximum total of \$285. For 2015, the fine for failing to comply with the individual mandate is set to equal \$325 per uninsured person or 2 percent of household income over the filing threshold, and for 2016 and beyond, \$695 per uninsured person or 2.5 percent of household income over the filing threshold.
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- ¹¹ “When an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards.” 49 U.S.C. § 32919.

- ¹² Knepper, Alex, “It’s Time To Stop Scapegoating the Mentally Ill for Gun Violence,” April 9, 2013. http://www.huffingtonpost.com/alex-knepper/its-time-to-stop-scapegoa_b_3048206.html
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425 Third Street, SW, Suite 800
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Email: info@JudicialWatch.org
www.JudicialWatch.org
