



## Obama's Overreaches

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The last couple of weeks have seen a major dust-up over President Obama's proposal to waive some of welfare reform's work requirements. It might be a bit of a stretch to say that the president has "gutted" welfare reform, since we don't yet actually know what those waivers will be. Right now, we are more or less left to trust the president when he says that he won't use the waivers to weaken welfare-to-work, a dubious prospect given the president's long record of hostility to welfare reform.

However, an even bigger concern is the president's assertion that he has the power to waive those requirements in the first place, especially since the law clearly appears to prohibit such waivers. The authors of welfare reform, both legislators and staffers, are on record as saying that they intended to prohibit any waiver of work requirements. Representative David Camp, who helped write the law as a member of the Ways and Means Committee, says "it contained specific language prohibiting any administration from granting states waivers from the work requirement."

The administration, on the other hand, contends that they have found a loophole because the work requirements are mentioned, tangentially, in another section of the law over which the administration does have waiver power. That may or may not stand up in court, but it certainly seems to violate the spirit of the welfare-reform law.

While much of this might seem like an arcane legal dispute, it is part of a disturbing trend. The Obama administration has developed a penchant for unilateral action that would make even the most ardent advocate of an imperial presidency blush. On issue after issue, the president insists that "we can't wait." He won't wait for a Congress that may not agree with his ideas for remaking America; he will simply act all by himself.

For example, the Obama administration has taken upon itself the authority to waive many of the provisions of the No Child Left Behind Act. Twenty-six states have now received waivers from NCLB, allowing them to work around the law's toughest provisions: that all students test proficient in math and science by 2014, and that schools make "adequate yearly progress" in getting students to pass standardized tests to avoid being labeled "failing." Another dozen or so states' waiver requests are pending.

Again, the issue is not the material effects of the waivers. NCLB is, after all, a significantly flawed piece of legislation that imposed federal control over the traditionally state-level responsibility for education. But the Obama administration used the waivers to effectively rewrite the law, establishing a whole new set of rules for those states receiving a waiver. The Obama administration simply dispensed with the messy legislative process and imposed its own federal education law.

Of course, there is no better example of the Obama administration's penchant for unilaterally rewriting laws than Obamacare. It is well known that the Obama administration has already issued more than 1,200 waivers of various provisions to companies and even entire states. It has also postponed the implementation of provisions that have proved inconvenient. For example, it simply dropped implementation of the CLASS Act, an actuarially unstable long-term-care-insurance program, after it had opposed congressional attempts to officially repeal the provision.

The administration's authority to take these actions is debatable at best. But far more troubling are its efforts to unilaterally rewrite another provision of the law. At the heart of Obamacare's attempt to expand the number of people with health insurance are two complementary provisions: the establishment of insurance exchanges in every state and the provision of subsidies for individuals and families earning as much as 400 percent of the poverty level (\$92,200 for a family of four). These subsidies will cost the federal government over \$1 trillion through 2022.

However, Obamacare makes federal subsidies for insurance available only through exchanges that the states set up themselves. The federal government has the power to create exchanges in states that refuse to do so, but it cannot offer subsidies through those federally run exchanges. That means that states could effectively block the subsidies by refusing to establish an exchange.

But the president says, never mind the clear language of the statute or the unambiguous statements of intent by the bill's drafters, including Senate Finance Committee chairman Max Baucus (D., Mont.). Obama simply had the IRS write a rule allowing the government to offer subsidies on federal exchanges.

This is particularly scary because it is those subsidies that trigger the penalty — or tax — on employers that do not provide their workers with health insurance. That is, an employer is hit with the tax only if one of its employees receives a subsidy through the exchange. Therefore, the Obama administration is effectively giving itself the authority to impose a tax without congressional approval. That is a truly frightening precedent.

The president's unilateralism has extended to foreign policy as well. For instance, President Obama blatantly violated the War Powers Act with his intervention in Libya, failing to receive congressional authorization after 60 days of operations.

In fact, the president claimed that he didn't need congressional approval because he had received authorization from the United Nations. One would think that critics of President Bush's assertion of presidential war powers would be equally concerned about President Obama's actions. After all, President Bush did seek, and receive, congressional resolutions backing his uses of military force, if not declarations of war.

On issue after issue, from immigration to housing to presidential appointments, the president has claimed the power to make law unilaterally without congressional action or approval. This is not a question of policy — I actually agree with the president on some of these issues — but of the usurpation of legislative authority. President Obama is dangerously weakening the separation of powers that is at the core of our system of government.

We are, after all, a government of laws and not of men. That should be true even when the president can't wait.

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