



Executive privilege claim ahead on Solyndra

By: [Gene Healy](#) | 11/08/11

On Friday, citing "longstanding and important Executive Branch confidentiality interests," White House counsel Kathryn Ruemmler refused a House panel's demand for "all communications among White House staff and officials" relating to Solyndra.

Solyndra is one of the administration's pet "green energy" firms. It received a \$535 million loan guarantee from the Department of Energy before its top executives took the Fifth before Congress.

What's been unearthed so far is embarrassing enough. The Obama administration seems to have rushed the deal through despite multiple warning flags and a lack of due diligence. The now-bankrupt firm, whose largest shareholder is a major Obama fundraiser, spent some \$1.8 million on lobbying while waiting for the guarantee.

"If we want to compete with China," the president said recently, "we've got to make sure that our guys here in the United States of America at least have a shot." "Our guys," indeed.

Obama's legal team hasn't yet made an explicit claim of executive privilege, but that seems to be where this is heading.

Executive privilege is a judge-made doctrine, born of "penumbras and emanations" said to flow from the president's constitutional role. A privilege claim is stronger in national security matters and areas over which the Constitution gives the president sole discretion, like the pardon power.

A privilege claim is weaker where, as here, the president's alleged "confidentiality interests" involve shielding potential malfeasance from the taxpayers on the hook for Solyndra's bankruptcy.

But since the courts are reluctant to wade into inter-branch disputes, the struggle for executive-branch transparency is often resolved in a tug-of-war between the White House and Congress.

In 1996, for example, President Clinton claimed executive privilege over documents related to the Travelgate scandal, but a threat to cite the White House Counsel for contempt of Congress forced a climb-down.

A partial climb-down is possible here too, as pressure builds and the "most transparent administration in history" risks looking like it's engaged in a crony capitalist cover-up.

Meanwhile, as is so often the case in politics, the real scandal is what's gone on in broad daylight. Solyndra is a perfect illustration of the dangers of government/business "partnership."

"We're all in this together," has been Obama's continual refrain this fall while pushing his \$449 billion jobs bill. Sure, it's a collectivist notion that's hard to reconcile with a country dedicated to the individual pursuit of happiness. But he doesn't really mean it.

In this half-socialized, corporatist sector of privatized profit and socialized loss, we're only "all in it together" if a federally favored company goes belly up -- as Solyndra did, sticking the taxpayer with tab. "One has to take risks in order to promote innovative manufacturing," as Energy Secretary Steven Chu put it last week.

In the days after Obama's inauguration, Jeffrey Immelt -- the General Electric CEO who'd go on to head up the president's Council on Jobs and (er,) Competitiveness -- celebrated the emerging new order.

"The global economy and capitalism will be 'reset' in several important ways -- the interaction between government and business will change forever," Immelt said.

With the federal government serving as "a regulator; an industry policy champion, a financier and a key partner," Immelt wrote, this environment would present "an opportunity of a lifetime."

That forecast was spot-on. As I noted in a recent column, the latest census figures show that in 2011, Washington, D.C. overtook Silicon Valley as the wealthiest metropolitan area in the United States. It may be hard times out there in flyover country, but it's boom times for federal power brokers here in D.C.

Today, with unprecedented levels of money and power flowing to Washington, more and more Americans fear that the game is rigged. Can you blame them?