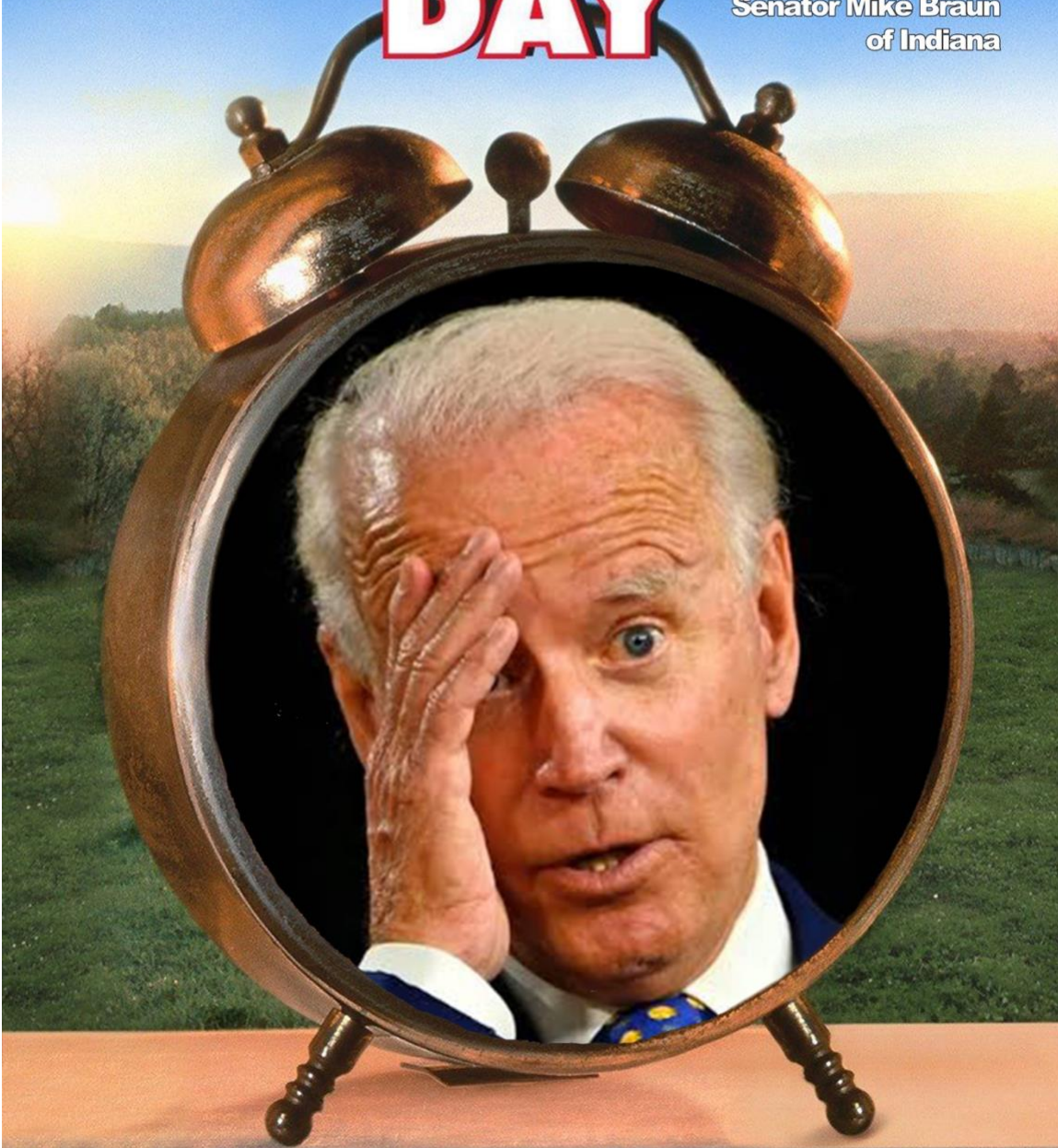


JOE BIDEN GROUNDHOG DAY

A Report by
Senator Mike Braun
of Indiana



How the Swamp Keeps Coming Back, Again and Again

Dear readers,

Before I ran for U.S. Senate, I ran a business for 38 years.

I know from experience: your operation is only as good as the people you hire.

That's why we shouldn't be surprised by the poor product we get out of Washington. They keep hiring the same people, and expecting different results.

If there's one thing we could do right now to fix D.C. more than anything, it would be term limits. Career politicians get nestled into the swamp and start making decisions for their best interests, not yours.

Representatives and Senators ought to have term limits, so they will finish their service and go back to work in the community that sent them here in the first place.

But it isn't just career politicians dragging D.C. deeper and deeper into the swamp. It's also a club of insiders that float from administration to administration, bringing their bad ideas and lobbyist connections with them through the revolving door.

This report is about them: the permanent political class who keep rearing their heads year after year. This cycle of incompetence in the federal government has made us all into Bill Murray in the movie Groundhog Day, forced to relive the same day over and over.

I've always said D.C. needed more people who have done something in the real world. We won't get them as long as our government continues to recycle the same failed policies and unqualified bureaucrats.

Your operation is only as good as the people you hire, and based on the results we've been getting out of the federal government, I think it's time we pass out some pink slips.

Sincerely,

A handwritten signature in blue ink that reads "Mike Braun". The signature is written in a cursive, flowing style.

Mike Braun
United States Senator
Indiana

EXECUTIVE SUMMARY

The size and reach of the federal government has increased dramatically since its founding. The federal government spent \$6.8 trillion in fiscal year 2021, providing for a workforce of over 4.25 million civilian employees and uniformed military that support a variety of federal programs and services.¹

During the First Session of the 117th Congress (2021), the Senate received 1,485 nominations made by President Joseph R. Biden, Jr. Of these, 716 were civilian nominations and 769 were military nominations.² As of January 13, 2022, 369 civilian nominations and 719 military nominations were confirmed by the Senate.³

This report highlights officials nominated or serving in the Biden Administration that the country will likely be all too familiar with—individuals that Americans have seen for years, and who are continuing to advocate for policies proven to fail the past. This report also highlights individuals placed in positions of influence and power by President Biden that many believe could not successfully navigate a Senate confirmation process but continue to find residency in Washington.

One year into President Biden’s Administration, however, it is prudent to pause and question whether the formula is working. Shortly after President Trump’s election in 2016, Rob Hoffman writing in *Politico Magazine* about what happened in the prior election, opined that “Conservative voters—including many former working-class Democrats who made the difference in key states such as Pennsylvania and Wisconsin—sent the message that they’d had enough not only of losing economically, but also of being sneered at.”⁴ It seems certain that at least one cause of President Trump’s popularity, and the political outsiders elected since 2016, can certainly be contributed to the failed policies of Washington elites in the years prior.

Which, one year into the Biden Administration, begs the question: Is re-cycling the same individuals from past Democratic Administrations working for the American people?

Results from a *CNBC/Change Research* suggest that it isn’t. In the survey, 60 percent of respondents disapprove of President Biden’s handling of the economy one year into office.⁵ The same polling shows a 55 percent majority also disapprove of his leadership during the pandemic.⁶ And on personal economic issues, voters are even more likely to criticize the president—some 72 percent disapproved of his handling of the price of everyday goods, while

¹ In 2020, the federal government employed 4.253 million employees (2.179 civilian, non-postal; 569,288 postal workers; 1.437 uniformed military; 33,673 legislative branch employees; and 32,242 judicial employees). See, Julie Jennings and Jared C. Nagel, *Federal Workforce Statistics Sources: OPM and OMB*, Congressional Research Service, June 24, 2021.

² Nomination data from Congress.gov.

³ In 2021, the Armed Services Committee received by the most nominations (766), followed by Foreign Relations (190), Judiciary (143), and the Homeland Security and Governmental Affairs (78).

⁴ Rob Hoffman, *How the Left Created Trump*. *Politico Magazine*. November 20, 2016. <https://www.politico.com/magazine/story/2016/11/how-the-left-created-donald-trump-214472/>.

⁵ Thomas Franck, *Biden disapproval hits new high as voters give him bad grades on economy, new CNBC/Change poll says*, CNBC, Jan. 4, 2022, <https://www.cnbc.com/2022/01/04/biden-disapproval-rating-high-voters-blame-him-on-economy-cnbc-poll.html>.

⁶ *Ibid.*

66 percent disapprove of his efforts to help their wallets.⁷ *CNBC/Change Research* has President Biden's approval rating at 44 percent, down from 46 percent in September 2021 and 51 percent in April 2021. *Real Clear Politics* has his approval rating at 40.9 percent.⁸

Who are the career staffers and political appointees producing these results? Highlighted in this report are the following:

- ❖ **Tony Blinken, Confirmed, Secretary of State:** President Biden tapped Anthony (“Tony”) Blinken to serve as his Secretary of State, with a charge to “restore America’s global leadership.”⁹ Blinken joins the Biden team after serving in two previous Democratic administrations and a consulting firm with unknown clients. Hopes for Blinken quickly dimmed following the disastrous military withdrawal from Afghanistan that resulted in several American casualties, left Americans behind, endangered and left behind many allies to America, and killed innocent Afghans with drone strikes.¹⁰ Even following the disastrous and deadly withdrawal, Blinken refused to rule out direct support for the Taliban.¹¹
- ❖ **Avril Haines, Confirmed as Director of National Intelligence:** President Biden tapped Avril Haines to serve in the intelligence community’s top spot. She is controversial for failing to hold Central Intelligence Agency (CIA) staff accountable for spying on U.S. Senate staff and her role in the Obama drone strike program, support of the Joint Comprehensive Plan of Action (JCPOA), and also for a tepid effort to unmask, definitively, the origins of COVID-19.
- ❖ **Jake Sullivan, Appointed as National Security Advisor:** President Biden selected Jake Sullivan to serve as his National Security Advisor. Sullivan has been described as “a product of Washington’s insular foreign policy establishment, a cohort whose traditional support for muscular U.S. foreign policy interventions has fallen out of favor across the political spectrum in the aftermath of the wars in Iraq and Afghanistan.”¹² Sullivan was a critical staffer in the development of the original JCPOA, even participating in secret meetings with the Iranians in order to avoid international criticism.
- ❖ **Alejandro Mayorkas, Confirmed, Secretary, Department of Homeland Security:** Mayorkas was a key decision maker in the Department of Homeland Security for the entirety

⁷ Ibid.

⁸ Real Clear Politics, *President Biden Job Approval*, <https://www.realclearpolitics.com/epolls/other/president-biden-job-approval-7320.html>, accessed January 20, 2022.

⁹ Deirdre Shesgreen, *Antony Blinken’s Confirmation Hearing: 5 Things to Know About Biden’s Secretary of State nominee*, USA Today, Jan. 19, 2021, <https://www.usatoday.com/story/news/politics/elections/2021/01/19/antony-blinken-5-things-know-bidens-secretary-state-nominee/4174535001/>.

¹⁰ Peter Wade, *Jake Tapper Presses Sec. State Blinken: How Could Biden ‘Get this so wrong’ in Afghanistan?*, Rolling Stone, Aug. 15, 2021, <https://www.rollingstone.com/politics/politics-news/blinken-tapper-afghanistan-1212446/>. Rebecca Klapper, *RNC Calls for Antony Blinken to be Fired as Afghanistan Congressional Hearings Begin*, Newsweek, Sept. 13, 2021, <https://www.newsweek.com/rnc-calls-antony-blinken-fired-afghanistan-congressional-hearings-begin-1628599>. See also, Ronna McDaniel, *Fire Antony Blinken*, The Washington Times, <https://www.washingtontimes.com/news/2021/sep/20/fire-antony-blinken/>. Charlie Savage, *Newly Declassified Video Shows U.S. Killing of 10 Civilians in Drone Strike*, The New York Times, <https://www.nytimes.com/2022/01/19/us/politics/afghanistan-drone-strike-video.html>.

¹¹ Ronna McDaniel, *Fire Antony Blinken*, The Washington Times, <https://www.washingtontimes.com/news/2021/sep/20/fire-antony-blinken/>.

¹² Mark Leibovich, *Jake Sullivan, Biden’s Adviser, a Figure of Fascination and Schadenfreude*. November 30, 2021. <https://www.nytimes.com/2021/11/30/us/politics/jake-sullivan-biden.html>.

of the Obama Administration, serving as the Director of U.S. Citizenship and Immigration Services (USCIS) from 2009-2013 and Deputy Secretary of Homeland Security from 2013-2016, perpetuating President Obama's Deferred Action for Childhood Arrivals (DACA) program, and trying his best in the words of some, "to turn U.S. Citizenship and Immigration Services into an unethical favor factory for Democratic Party royalty."¹³ One of President Biden's first cabinet selections, DHS Secretary Mayorkas is now responsible for administering and enforcing immigration law, border security, the protection of critical infrastructure, and disaster response. In his first year, the Biden Administration has failed to deal with the unprecedented migrant crisis at our southern border, which has resulted in the illicit trafficking of people, drugs, weapons and contraband into the United States.

- ❖ **Susan Rice, Appointed, Director, Domestic Policy Council:** Susan Rice returns to the West Wing after serving not only for the entirety of the Obama Administration, but also for the majority of President Clinton's second term. Ambassador Rice joined the Clinton Administration after nearly two years as a consultant at McKinsey & Company. As U.N. Ambassador, she is most famous for serving as the principal spokesperson for the Obama Administration's politically-charged cover-up of the Benghazi terrorist attack. Her handling of that event has disqualified her from consideration of additional posts requiring Senate confirmation. For this reason, she has been appointed to lead President Biden's Domestic Policy Council, placing her in a quiet, but crucial role developing and driving the President's domestic agenda.
- ❖ **Ron Klain, Appointed, White House Chief of Staff:** Ron Klain has been a Washington insider for decades; so much so that *The New York Times* referred to him as having "A Beltway résumé."¹⁴ After a long career in Washington, Klain served as Chief of Staff to Vice President Al Gore during the Clinton Administration.¹⁵ As *The New York Times* describes, following the Clinton Administration, "Mr. Klain salved his wounds in classic Washington fashion: by making tons of cash."¹⁶ During the Obama Administration, he served as then-Vice President Biden's Chief of Staff from 2009 through 2011. President Biden again selected him as his Chief of Staff after the 2020 election. He has been viewed by many to be pulling the President towards the more liberal wing of the party.¹⁷
- ❖ **John Kerry, Appointed, Special Presidential Envoy for Climate:** President Biden turned to President Obama's Secretary of State, John Kerry, to lead the team's international climate talks. During the Obama Administration, Secretary Kerry negotiated the Paris Climate Agreement—an unenforceable international pact that lets China off the hook while subjecting Americans to significant emissions cuts—and devised a plan to eschew the

¹³ Remarks by Senator McConnell. February 2, 2021. Congressional Record Issue: Vol. 167, No. 19, <https://www.congress.gov/congressional-record/2021/2/2/senate-section/article/s216-2>. Accessed December 22, 2021.

¹⁴ Mark Leibovich. *The Ascension of Ron Klain*. The New York Times. July 18, 2021. <https://www.nytimes.com/2021/07/18/us/ron-klain-chief-of-staff.html>. Accessed Jan. 13, 2022.

¹⁵ The White House Archive. *Press Release: Ronald A. Klain Biography*. August 2, 1999. <https://clintonwhitehouse6.archives.gov/1999/08/1999-08-02-ronald-klain-biography.html>. Accessed Jan. 13, 2022.

¹⁶ Ibid.

¹⁷ Sean Sullivan and Tyler Pager, *Ron Klain had the perfect résumé. His first year showed the limits of that experience*. The Washington Post. January 25, 2022. https://www.washingtonpost.com/politics/klain-one-year-troubles/2022/01/25/1fc428d8-799f11ec9102d65488c31bb1_story.html?utm_campaign=wp_power_up&utm_medium=email&utm_source=newsletter&wpisrc=nl_powerup.

Senate’s constitutional authority to approve international treaties. Since starting his new role in the Biden Administration, Kerry supported Biden in rejoining the Paris Agreement and advocating for extralegal restrictions on American energy companies.

- ❖ **Gina McCarthy, Appointed, White House National Climate Advisor:** Upon taking office, President Biden appointed Gina McCarthy into an influential White House post that does not require Senate confirmation. McCarthy has long been criticized for pushing environmental policies that exceed the EPA’s authority granted through Congress. A significant number of the rules EPA promulgated under her watch at EPA were thrown out in court. A *Rolling Stone Magazine* profile highlighting her role in the Biden Administration describes her as someone who “knows a thing or two about how to wield executive power.”¹⁸
- ❖ **Brenda Mallory, Confirmed, Chair of the White House Council on Environmental Quality:** Brenda Mallory is a former Obama Administration official, spending the last four years as a policy director at the Southern Environmental Law Center (SELC), and as Executive Director and Senior Counsel at the Conservation Litigation Project—which frequently sued the Trump Administration over its deregulatory actions at Environmental Protection Agency (EPA) and Interior Department.¹⁹
- ❖ **Lael Brainard, Nominated, Vice Chair of the Board of Governors of the Federal Reserve:** President Biden nominated economist Lael Brainard, a veteran of the Clinton and Biden Administrations, to serve as Vice Chair of Federal Reserve Board of Governors. As this report demonstrates, Biden’s nomination of Brainard to serve as Vice Chair is questionable given her poor judgment downplaying inflationary risk, her track record of being weak on China, skepticism on cryptocurrencies, and her intention to divert the Federal Reserve’s energies away from core objectives and into the climate arena.
- ❖ **Sarah Bloom Raskin, Nominee, Vice Chair of Supervision, Board of Governors of the Federal Reserve:** President Biden recently nominated Raskin to serve as the Vice Chair of Supervision at the Federal Reserve. Raskin is the spouse of Congressman Jamie Raskin, a manager during the impeachment trial of President Donald Trump. If confirmed, Raskin will be the regulator in chief for the Fed, a position created by the 2010 Dodd-Frank financial reform law.²⁰ During the Obama Administration, Raskin served as a member of the Board of Governors of the Federal Reserve and also as Deputy Treasury Secretary. In her capacity at Treasury, Raskin submitted requests to the National Security Agency seeking to unmask intercepted conversations involving then-incoming National Security Adviser Michael Flynn under President Trump.

¹⁸ Andy Kroll. *Nothing’s Off the Table: Gina McCarthy Has Big Plans for the Climate Fight*. Rolling Stone Magazine. March 12, 2021. <https://www.rollingstone.com/politics/politics-features/gina-mccarthy-climate-biden-coal-clean-energy-1139692/>. Accessed January 20, 2022.

¹⁹ Joseph Morton. *Brenda Mallory to take environmental policy in a new direction*. Roll Call. April 22, 2021. <https://www.rollcall.com/2021/04/22/brenda-mallory-to-take-environmental-policy-in-a-new-direction/>. Accessed January 20, 2022.

²⁰ Sylvan Lane, *Biden Selects Sarah Bloom Raskin, Two Others for Fed Board*, The Hill, Jan. 14, 2022, <https://thehill.com/policy/finance/589744-biden-announces-picks-for-fed-board>.

- ❖ **Lisa Cook, Nominated, Member, Board of Governors of the Federal Reserve:** In January 2022, President Biden nominated Lisa Cook, a member of his transition team, to serve as a Member of the Board of Governors of the Federal Reserve. One outlet notes: “Cook is facing scrutiny as critics say she is not qualified for the job, and she also faces various allegations of deception, dishonesty and/or academic fraud.”²¹
- ❖ **Neera Tanden, Confirmation Failed; Appointed as Secretary to President:** President Biden nominated Neera Tanden to be his first Director of the Office of Management and Budget (OMB). Tanden has been a consistent figure in recent Democratic administrations, pushing partisan and big government policies.
- ❖ **Xavier Becerra, Confirmed, Secretary of Health and Human Services:** As Secretary of the Department of Health and Human Services (HHS), Xavier Becerra is not only is the primary advisor to the President on national health care matters but he also holds the power to impact the health and well-being of all citizens across the country. A lifelong politician with no prior experience in health care, many were surprised when President Biden nominated Xavier Becerra as Secretary of HHS.²²
- ❖ **Vivek Murthy, Confirmed, Surgeon General:** Dr. Vivek Murthy currently serves as President Biden’s Surgeon General, the same role he held under President Barack Obama. Press reports suggest that Murthy is taking on an outsized role in the Administration as HHS Secretary Becerra takes a “backseat” in setting federal health policy.²³ In 2020, Murthy was paid more than \$2 million for coronavirus-related consulting and speeches, including \$5,000 from Planned Parenthood.²⁴ As reported by *The Hill*, “Following his financial disclosures, public health actors and watchdogs pointed out that Murthy could face an obstacle by having the most financial entanglements of any surgeon general pick in recent history.”²⁵
- ❖ **Chaquita Brooks-LaSure, Confirmed, Director, Centers for Medicare and Medicaid Services:** Brooks-LaSure was nominated by President Biden on February 19, 2021 to serve as Administrator of the Centers for Medicare and Medicaid Services (CMS). Brooks-LaSure has pushed onerous COVID-19 vaccines mandates on healthcare workers that are currently being challenged in the courts, and in the midst of a health care worker shortage that such mandates worsen. As CMS Administrator, Brooks-LaSure has already rolled back and nullified numerous Trump-era innovations and policies, including the Medicaid work requirements of 16 states, including Indiana.²⁶

²¹ Chris Brunet, *Biden’s Fed Nominee Lisa Cook Criticized for Being Unqualified, Embellishing Resume*, Daily Caller, Jan. 20, 2022, <https://dailycaller.com/2022/01/20/bidens-fed-nominee-lisa-cook-criticized-for-being-unqualified-embellishing-resume/>.

²² McFall, Caitlin. “Xavier Becerra: What to know about Biden’s HHS secretary pick.” *Fox News*, 22 Jan. 2020, <https://www.foxnews.com/politics/xavier-becerra-what-to-know-about-bidens-hhs-secretary-pick>.

²³ Adam Cancryn, *Becerra Takes a Backseat while others steer Covid response*, Politico, Sept. 21, 2021, <https://www.politico.com/news/2021/09/21/becerra-covid-response-hhs-513270>.

²⁴ Celine Castronuovo, *Biden pick for surgeon general made over \$2M on COVID-19 consultation and speaking events: report*, *The Hill*, Feb. 2, 2021, <https://thehill.com/homenews/administration/539738-biden-pick-for-surgeon-general-made-over-2m-on-covid-19-consultations>.

²⁵ Celine Castronuovo, *Biden pick for surgeon general made over \$2M on COVID-19 consultation and speaking events: report*, *The Hill*, Feb. 2, 2021, <https://thehill.com/homenews/administration/539738-biden-pick-for-surgeon-general-made-over-2m-on-covid-19-consultations>.

²⁶ Letter from Senator Mike Braun, Indiana, to Sec. Becerra, July 1, 2021 (on file with office; available upon request).

- ❖ **Robert Califf, Nominated, Food and Drug Administration:** President Biden nominated Dr. Robert Califf to serve as the Administrator of the Food and Drug Administration (FDA), a key federal agency tasked with promoting the public health.²⁷ Califf served in the Obama FDA from January 2015 to January 2017. Bipartisan opposition to Califf’s second nomination has presented itself on numerous levels: deep ties to drug companies and income from the health industry that has “skyrocketed: between stints at the FDA; a poor track record combatting opioid addiction; and a failure to help drive down drug prices.²⁸ This deliberate dereliction of FDA responsibility, coupled with the FDA’s decision in December 2021 to allow the distribution of abortion pills by mail without ever seeing a doctor in person, has not only resulted in deaths of unborn children, but has put so many women at risk of severe complications or death.²⁹

- ❖ **David Weil, Nominated, Department of Labor Wage and Hour:** The Wage and Hour Division (WHD) at the U.S. Department of Labor plays an essential role in the everyday life of Americans, enforcing federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act (FLSA). Regrettably, President Biden recycled the controversial WHD Administrator from the Obama Administration whose guidance and rules was hostile toward many small business entrepreneurs and job creators.

- ❖ **Catherine Lhamon, Confirmed, Assistant Secretary, Department of Education, Office of Civil Rights:** A polarizing figure in the Obama Administration for trampling due process rights of postsecondary students throughout the country, President Biden was quick to nominate Catherine Lhamon for a second tour of duty.

²⁷ White House press release, *Statement from President Joe Biden Announcing His Intention to Nominated Dr. Robert M. Califf for Commissioner of Food and Drugs*, Nov. 12, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/12/statement-from-president-joe-biden-announcing-his-intention-to-nominate-dr-robert-califf-for-commissioner-of-food-and-drugs/>.

²⁸ On January 13, 2022, the Senate Committee approved Califf’s nomination with bipartisan opposition (voting “nay” were Senators Sanders, Hassan, Cassidy, Braun, Marshall, Scott, Tuberville, Moran). *See also*, Press Release, Senator Maggie Hassan (D-NH), Senator Hassan Statement on Decision to Vote No on FDA Commissioner Nominee, Robert Califf, Jan. 11, 2022, <https://www.hassan.senate.gov/news/press-releases/senator-hassan-statement-on-decision-to-vote-no-on-fda-commissioner-nominee-robert-califf>. *See also*, Press Release, Senator Joe Manchin, *Manchin Opposes Nomination of Dr. Robert Califf for FDA Commissioner*, Nov. 12, 2021, <https://www.manchin.senate.gov/newsroom/press-releases/manchin-opposes-nomination-of-dr-robert-califf-for-fda-commissioner> <https://www.manchin.senate.gov/newsroom/press-releases/manchin-opposes-nomination-of-dr-robert-califf-for-fda-commissioner> <https://www.manchin.senate.gov/newsroom/press-releases/manchin-opposes-nomination-of-dr-robert-califf-for-fda-commissioner>. *See also*, Press Release, Senator Bernie Sanders, *Sanders Opposes Califf for FDA Commissioner*, Dec. 14, 2021, <https://www.sanders.senate.gov/press-releases/news-sanders-opposes-califf-for-fda-commissioner/>. *See also*, Press Release, Senator Ed Markey, *Senator Markey Outlines Opposition to FDA Commissioner Nominee Dr. Robert Califf, Calls for Reforms at FDA to Address Failures that Lead to, Worsened, the Opioid Epidemic*, Jan. 13, 2022, <https://www.markey.senate.gov/news/press-releases/senator-markey-outlines-opposition-to-fda-commissioner-nominee-dr-robert-califf-calls-for-reforms-at-fda-to-address-failures-that-lead-to-worsened-opioid-epidemic>.

²⁹ Charlotte Lozier Institute, *Analysis: FDA Decision Ignores Data on Complications, Puts Women at Risk*, Dec. 16, 2021, <https://lozierinstitute.org/analysis-fda-decision-ignores-data-on-complications-puts-women-at-risk/>. *See also*, Approval Letter MIFEPREX™ (mifepristone) Tablets (loc.gov), (NDA 20-687) Sept. 28, 2000, <http://webarchive.loc.gov/all/20011116012552/http%3A/www.fda.gov/cder/foi/appltr/2000/20687appltr.htm>.

TONY BLINKEN

BACKGROUND

- ❖ President Biden tapped Anthony (“Tony”) Blinken to serve as his Secretary of State, with a charge to “restore America’s global leadership.”³⁰ He was confirmed by the Senate on January 26, 2021 by a 78-22 margin.³¹
- ❖ During his confirmation process, it was reported that, “Biden called Blinken a ‘superstar’ who could do ‘any job.’ By choosing Blinken for one of the most coveted jobs in the Cabinet, Biden aims to install an alter-ego at the helm of the State Department, signaling he will make foreign policy a priority of his presidency.”³²
- ❖ Blinken joins the Biden team after serving in two previous Democratic administrations. He previously served as President Obama’s Deputy Secretary of State and as President Obama’s Deputy National Security Advisor.
- ❖ Blinken also served in a number of roles in the Clinton Administration: Special Assistant to the President and Senior Director for Strategic Planning; NSC Senior Director for Speechwriting; and Special Assistant to the President.
- ❖ After leaving the Obama Administration, Blinken started a profitable outfit called WestExec Advisors, a consulting firm that includes high-tech start-ups seeking Pentagon contracts and clients that are unknown because the firm is not considered a lobbying shop and therefore evades lobbying disclosure rules.³³ It has been reported that, “WestExec is loaded with other former top Democratic national security and foreign policy officials who raised money for the Biden campaign, have joined his transition team, or have served as unofficial advisers.”³⁴ *Politico* reports that Jen Psaki, a former White House communications director under President Barack Obama also went on to work for WestExec, and that at least 21 of the 38 WestExec employees listed on the firm’s website donated to the Biden campaign.³⁵



³⁰ Deirdre Shesgreen, *Antony Blinken’s Confirmation Hearing: 5 Things to Know About Biden’s Secretary of State nominee*, USA Today, Jan. 19, 2021, <https://www.usatoday.com/story/news/politics/elections/2021/01/19/antony-blinken-5-things-know-bidens-secretary-state-nominee/4174535001/>.

³¹ U.S. Senate website, Roll Call Vote 117th Congress, 1st Session, Jan. 26, 2021, Vote No. 7, https://www.senate.gov/legislative/LIS/roll_call_votes/vote1171/vote_117_1_00007.htm.

³² Deirdre Shesgreen, *Antony Blinken’s Confirmation Hearing: 5 Things to Know About Biden’s Secretary of State nominee*, USA Today, Jan. 19, 2021, <https://www.usatoday.com/story/news/politics/elections/2021/01/19/antony-blinken-5-things-know-bidens-secretary-state-nominee/4174535001/>.

³³ Bryan Bender and Theodoricy Meyer, *The Secretive Consulting Firm that’s become Biden’s Cabinet in Waiting*, Politico, Nov. 23, 2020, <https://www.politico.com/news/2020/11/23/westexec-advisors-biden-cabinet-440072>.

³⁴ Ibid.

³⁵ Ibid.

PAST EXECUTIVE BRANCH RECORD

- ❖ Blinken holds an unwavering belief that America should be the world’s policeman. As summarized by outside commentators: “Blinken’s support for military restraint has been quite poor. Blinken maintains that the failure of U.S. policy in Syria was that our government did not employ enough force. He stands by the false argument that Biden’s vote to authorize the invasion of Iraq was a ‘vote for tough diplomacy.’ He was reportedly in favor of the Libyan intervention, which Biden opposed, and he was initially a defender and advocate for U.S. support for the Saudi coalition war on Yemen. In short, Blinken has supported many of the most significant foreign policy mistakes over the last two decades, and he has tended to be more of an interventionist than recent Democrat presidents.”³⁶



Source: Fred Kaplan, *Slate*, Nov. 23, 2020, <https://slate.com/news-and-politics/2020/11/biden-blinken-sullivan-flournoy-haines.html>

- ❖ Blinken was a strong supporter of the failed 2015 Joint Comprehensive Plan of Action (JCPOA), the Iran nuclear deal crafted by the Obama administration, as he was closely involved in brokering the deal.³⁷ The JCPOA was never submitted to the United States Senate and ratified as a legally binding treaty. Underpinning JCPOA is a preference for diplomatic relations with the world’s leading state sponsor of terror versus a maximum pressure approach that includes tough sanctions.

ISSUES TO WATCH

- ❖ Blinken was confirmed in January 2021 as Secretary of State, but hopes for his ability to lead the country on the global stage quickly dimmed following the disastrous military withdrawal from Afghanistan that endangered American troops, left Americans, and American allies behind, and killed innocent Afghans with a drone strike.³⁸ Even following the disastrous and deadly withdrawal, Blinken refused to rule out direct support for the Taliban.³⁹ Watch to see

³⁶ Daniel Larison, *Tony Blinken: The Good, the Bad, and the Potentially Ugly*, Responsible Statecraft, Nov. 23, 2021, <https://responsiblestatecraft.org/2020/11/23/tony-blinken-the-good-the-bad-and-potentially-ugly/>.

³⁷ Ailsa Chang, *Former Deputy Secretary of State Talks about the Future of Iran Nuclear Deal*, NPR, Sept. 21, 2017, <https://www.npr.org/2017/09/21/552708153/former-deputy-secretary-of-state-talks-about-future-of-iran-nuclear-deal>.

³⁸ Peter Wade, *Jake Tapper Presses Sec. State Blinken: How Could Biden ‘Get this so wrong’ in Afghanistan?*, Rolling Stone, Aug. 15, 2021, <https://www.rollingstone.com/politics/politics-news/blinken-tapper-afghanistan-1212446/>. Rebecca Klapper, *RNC Calls for Antony Blinken to be Fired as Afghanistan Congressional Hearings Begin*, Newsweek, Sept. 13, 2021, <https://www.newsweek.com/rnc-calls-antony-blinken-fired-afghanistan-congressional-hearings-begin-1628599>. See also, Ronna McDaniel, *Fire Antony Blinken*, The Washington Times, <https://www.washingtontimes.com/news/2021/sep/20/fire-antony-blinken/>. Charlie Savage, *Newly Declassified Video Shows U.S. Killing of 10 Civilians in Drone Strike*, The New York Times, <https://www.nytimes.com/2022/01/19/us/politics/afghanistan-drone-strike-video.html>.

³⁹ Ronna McDaniel, *Fire Antony Blinken*, The Washington Times, <https://www.washingtontimes.com/news/2021/sep/20/fire-antony-blinken/>.

how Blinken continues to manage the aftermath in Afghanistan.

- ❖ While the Trump Administration took a consistently clear and hard stance on China, the current State Department under Blinken's leadership has demonstrated weakness from the start. Consider the Biden Administration's first meeting with China in March 2021. As surmised by Robert Wilke, Secretary of Veteran Affairs under President Trump, "When the Chinese foreign minister at a March conference condemned the United States with Biden's own woke criticisms, Secretary of State Antony Blinken had only pieties about America's 'imperfections' to offer in response."⁴⁰ Or as captured by *The Wall Street Journal* editorial board, "This is only one meeting, but it was a tone setter for the world's most important bilateral relationship. Word is leaking that the private exchanges from the Chinese side were as tough as the public remarks. The Chinese are making clear that, after the Trump years, Beijing wants a return to the policy of Obama accommodation to China's global advances. This means feeble objections to China's cyber and intellectual property theft. It means ending the U.S. policy of building an alliance of democracies in Asia that counters Chinese aggression. And above all, it means ending criticism or sanctions against China for violating its treaty with Britain over Hong Kong, threatening an invasion of Taiwan, or imprisoning Uighers in Xinjiang reeducation camps."⁴¹

- ❖ As an outspoken supporter of the JCPOA, the world will be watching closely to see if Blinken works alongside the Biden national security team to support the failed policies of the JCPOA, or moves toward tighter economic sanctions on Iran and more significant constraints on Iran's nuclear program. In October 2021, Blinken said the U.S. is "absolutely in lockstep together" with Germany, France, and the United Kingdom on coordinating a plan to get Iran back into a nuclear agreement, and that "We continue to believe that diplomacy is the best way to deal with the challenges, the threat posed by Iran's nuclear program."⁴² In January 2022, Blinken continued to work on the JCPOA, stating there are only "a few weeks left" to save the 2015 Iran nuclear deal.⁴³ As noted by James Phillips of the Heritage Foundation, reentering the JCPOA "would reward a hostile dictatorship that has repeatedly reneged on its nonproliferation obligations and pocketed past concessions without moderating its aggressive foreign policy."⁴⁴

⁴⁰ Robert Wilke, *Failing to Take China at its Word Will Mean More Global Catastrophes the United States Can't Afford*, *The Federalist*, Aug. 24, 2021, <https://thefederalist.com/2021/08/24/failing-to-take-china-at-its-word-will-mean-more-global-catastrophes-the-united-states-cant-afford/>.

⁴¹ The Wall Street Journal Editorial Board, *China's Warning to Biden*, March 21, 2021, <https://www.wsj.com/articles/chinas-warning-to-biden-11616360915>.

⁴² Kelly Hooper, *Blinken on Iran Nuclear Deal: 'We still believe Diplomacy is the best path forward'*, *Politico*, Oct. 31, 2021, <https://www.politico.com/news/2021/10/31/blinken-iran-nuclear-deal-diplomacy-517992>.

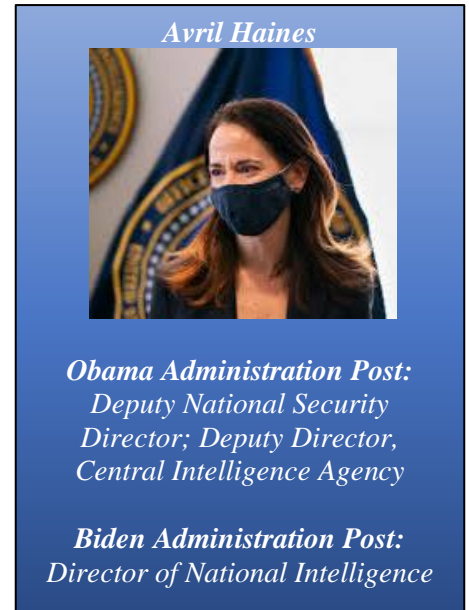
⁴³ Aljazeera, *Antony Blinken Says a 'few weeks left' to Save Iran Nuclear Deal*, Jan. 14, 2022, <https://www.aljazeera.com/news/2022/1/14/us-blinken-says-only-few-weeks-left-to-save-iran-nuclear-deal>.

⁴⁴ James Phillips, *Don't Rush to Failure on Iran Nuclear Negotiations*, Jan. 22, 2021, *The Heritage Foundation*, <https://www.heritage.org/middle-east/commentary/dont-rush-failure-iran-nuclear-negotiations>.

AVRIL HAINES

BACKGROUND

- ❖ President Biden announced his intent to nominate Avril Haines in November 2020. She was confirmed by the U.S. Senate on inauguration day—January 20, 2021.⁴⁵
- ❖ Haines is a former Obama administration official, serving as principal deputy national security adviser from 2015-2017; deputy director of the Central Intelligence Agency from 2013-2015; and National Security Council legal adviser from 2010-2013. Haines also worked for the State Department as the assistant legal adviser for treaty affairs from 2008 to 2010.
- ❖ Prior to joining the Obama Administration, Haines was deputy chief counsel on the Senate Foreign Relations Committee, which at the time was led by Chairman Joe Biden.
- ❖ After leaving the Obama Administration, Haines took on several roles, including as an employee of WestExec Advisors, a consulting firm that includes high-tech start-ups seeking Pentagon contracts. The firm’s clients are unknown because WestExec is not considered a lobbying shop and therefore evades lobbying disclosure rules.⁴⁶ The firm was founded by Tony Blinken, Biden’s current Secretary of State who also served key roles in the Clinton and Obama Administration.
- ❖ Haines has come under criticism for failing to hold CIA staff accountable for spying on U.S. Senate staffers; for her support of the controversial Joint Comprehensive Plan of Action (JCPOA); for her role in the Obama Administration in overseeing a controversial drone strike program; and for a tepid effort to unmask, definitively, the origins of COVID-19.



PREVIOUS EXECUTIVE BRANCH RECORD

- ❖ Haines is an outspoken supporter of the JCPOA, the Iran nuclear deal crafted by the Obama administration. In testimony before the House Foreign Affairs Committee in 2020, Haines expressed support for the JCPOA, its verification regime, and its objective of blocking Iran’s pathway toward a nuclear weapon.⁴⁷ At the same hearing, she was critical of the Trump

⁴⁵ Shane Harris and Ellen Nakashima, *Biden to Nominate Avril Haines as Next Director of National Intelligence; She would be the first woman to hold the position*, The Washington Post, Nov. 23, 2020, https://www.washingtonpost.com/national-security/avril-haines-to-head-intelligence-community/2020/11/23/e9dce3f4-2daf-11eb-96c2-aac3f162215d_story.html. See also, Barbara Sprunt, *Senate Confirms Avril Haines as Director of National Intelligence*, NPR, Jan. 20, 2021, <https://www.npr.org/sections/inauguration-day-live-updates/2021/01/20/958995331/senate-confirms-avril-haines-as-director-of-national-intelligence>.

⁴⁶ Bryan Bender and Theodoric Meyer, *The Secretive Consulting Firm that’s become Biden’s Cabinet in Waiting*, Politico, Nov. 23, 2020, <https://www.politico.com/news/2020/11/23/westexec-advisors-biden-cabinet-440072>.

⁴⁷ Testimony of Avril Haines before the Committee on Foreign Affairs, U.S. House of Representatives, Jan. 14, 2020, <https://docs.house.gov/meetings/FA/FA00/20200114/110387/HHRG-116-FA00-Wstate-HainesA-20200114.pdf>.

administration's "maximum pressure" campaign.⁴⁸

- ❖ In her role as deputy director of the CIA, she was involved in determining disciplinary actions for the agency's improper access of Senate computers during SSCI's investigation of CIA detention and interrogation programs. No CIA personnel were reprimanded over this episode.⁴⁹
- ❖ Human rights groups expressed concern about Haines as the president's choice for director of national intelligence, as she "played a central role in crafting the legal framework surrounding the Obama administration's controversial, secretive drone war."⁵⁰ Upon her nomination, Andrea J. Prasow, the deputy Washington director of Human Rights Watch, told *The New York Times*, "My concerns about her are more my concerns about the Obama administration. With these cabinet picks, we are returning to the previous administration instead of making bold and forward-leaning picks."⁵¹ There have been reported to be a total of 563 strikes, primarily by drones, during Obama's two terms; 10 times more covert air strikes as part of the war on terror under Obama than Bush.⁵²

ISSUES TO WATCH

- ❖ It is imperative that our Director of National Intelligence is tough on any state sponsoring terrorism and committed to stopping Iran from getting a nuclear bomb. Biden cited restoring the Iran nuclear pact as one of his top foreign-policy priorities, and the Biden Administration resumed talks with Iran on December 27, 2021.⁵³ As an outspoken supporter of the JCPOA, the world will be watching closely to see if Haines moves back to the failed policies of the JCPOA, or moves toward tighter economic sanctions on Iran and more significant constraints on Iran's nuclear program.
- ❖ As the Director of National Intelligence, Haines serves in a position with the resources and access necessary to determine the origins of COVID-19, and to present this information to the public. In April 2021, Haines admitted in congressional testimony that the Administration



[Afghanistan disaster puts intelligence under scrutiny | TheHill](#)

⁴⁸ Ibid.

⁴⁹ *CIA Director Apologizes for search of Senate computers*, CBS/AP, July 31, 2014, <https://www.cbsnews.com/news/cia-director-apologizes-for-search-of-senate-computers/>. See also, Murtaza Hussain, *Seven Months in, Avril Haines Shows No Appetite for Investigating CIA War Crimes*, *The Intercept*, Aug. 26, 2021, <https://theintercept.com/2021/08/26/afghanistan-cia-war-crimes/>.

⁵⁰ John Haltiwanger, *Biden's Pick for US Spy Chief Played a Central Role in Obama's Secretive Drone War that Resulted in Hundreds of Civilians Deaths*, *Business Insider*, <https://www.businessinsider.com/biden-pick-spy-chief-played-key-role-obama-drone-war-2020-11>. See also, Julian E. Barnes, *Biden Pick to Lead Spy Agencies Played Key Role in Drone Strike Program under Obama*, *The New York Times*, Nov. 23, 2020, <https://www.nytimes.com/2020/11/23/us/politics/biden-haines-national-intelligence.html>.

⁵¹ See Haltiwanger.

⁵² Ibid.

⁵³ Colum Lynch, *A Last Ditch Effort to Save the Iran Deal*, *Foreign Policy*, Dec. 28, 2021, <https://foreignpolicy.com/2021/12/28/iran-nuclear-deal-jcpoa-vienna-capabilities-biden/>.

had not identified the origins of the outbreak, and continued to posture that the virus was not man-made or genetically modified.⁵⁴ In October 2021, the ODNI released a paper elaborating on findings released in President Biden’s 90-day review of the origins of COVID-19—a review that said the intelligence community was divided on the origins of the virus but did not believe the virus as developed as a bioweapon and was not genetically engineered.⁵⁵ Haines’ reluctance or inability to disclose the intelligence community’s true assessment of the origins of COVID-19 comes as the Senate unanimously passed legislation requiring ODNI to declassify “any and all information relating to potential links between the Wuhan Institute of Virology and the origin of the coronavirus disease.”⁵⁶ The public has a right to fully understand the origins of the deathly and costly pandemic, and the nation’s intelligence apparatus should continue to investigate and make public all details.



⁵⁴ Zachery Cohen, Katie Bo Williams, Alex Marquardt, *US Intel Chief says spy agencies still don’t know ‘where, when, or how’ COVID-19 was initially transmitted*, CNN, April 14, 2021, <https://www.cnn.com/2021/04/14/politics/world-wide-threats-hearing-senate-intelligence-committee/index.html>.

⁵⁵ Nomaan Merchant, *US Intel Doesn’t Expect to Determine the Origins of COVID 19*, Associated Press, Oct. 29, 2021, <https://www.usnews.com/news/health-news/articles/2021-10-29/us-intel-doesnt-expect-to-determine-origins-of-covid-19>.

⁵⁶ On May 26, 2021, the Senate passed S.1867, the COVID–19 Origin Act of 2021 by unanimous consent. The bill is sponsored by Senators Josh Hawley and Mike Braun.

JAKE SULLIVAN

BACKGROUND

- ❖ Jake Sullivan is the President’s National Security Advisor. He graduated from Yale and Oxford University as Rhodes Scholar. Sullivan has served in several roles inside the federal government, including as a clerk for Supreme Court Justice Stephen Breyer and as chief counsel to Senator Amy Klobuchar. Notably, under Secretary of State Hillary Clinton, he served as Deputy Chief of Staff, and later the Director of Policy Planning at the State Department.⁵⁷ In 2015, he married a current counsel to Attorney General Merrick Garland.⁵⁸ In 2016, he would go on to serve as a Senior Policy Advisor to the presidential campaign of Hillary Clinton.
- ❖ Sullivan has been described as “a product of Washington’s insular foreign policy establishment, a cohort whose traditional support for muscular U.S. foreign policy interventions has fallen out of favor across the political spectrum in the aftermath of the wars in Iraq and Afghanistan.”⁵⁹ Thus, his appointment can be viewed as the President’s implicit endorsement of decades of failed foreign policy direction in Washington.
- ❖ It has also been noted that Sullivan is part of a closely knit national security team under President Biden that will be more unified than ever. As summarized in *Slate*, “In some ways, Biden’s national security team will resemble that of the Obama administration—where many of them started working in government—but with one crucial difference. At one point of his new memoir, Obama writes about the occasional ‘friction between the new and old guard inside my foreign policy team’—the old guard being the more traditional Cabinet secretaries, the new guard being the young staff, far from firebrands but more idealistic, ‘wanting to break from some of the constraints of the past in pursuit of something better.’ Blinken, Sullivan, and Haines were leading figures in Obama’s new guard. Now they’re about to be in Biden’s old guard, and this is likely to tilt policy at least a little bit—especially since, in several of these internal conflicts back then, Biden sided with the young staff.”⁶⁰



⁵⁷ Josh Rogin. *Jake Sullivan to become State Department director of policy planning*. Foreign Policy Magazine. January 25, 2011. <https://foreignpolicy.com/2011/01/25/jake-sullivan-to-become-state-department-director-of-policy-planning/>. Accessed January 17, 2022.

⁵⁸ Mark Leibovich. *Jake Sullivan, Biden’s Adviser, a Figure of Fascination and Schadenfreude*. November 30, 2021. <https://www.nytimes.com/2021/11/30/us/politics/jake-sullivan-biden.html>.

⁵⁹ Ibid.

⁶⁰ Fred Kaplan, *Biden’s Team of Allies*, *Slate*, Nov. 23, 2020 <https://slate.com/news-and-politics/2020/11/biden-blinken-sullivan-flournoy-haines.html>.

PAST EXECUTIVE BRANCH RECORD

- ❖ Sullivan has long been a close ally of Former Secretary of State Hillary Clinton. In her book, *Hard Choices*, Clinton describes Sullivan as being “at my side nearly everywhere I went...”⁶¹
- ❖ During the 2016 Presidential Election, Sullivan was briefed on opposition-research materials pushed by Fusion GPS, which suggested the Trump Organization’s computer servers were “communicating with Russia’s Alfa Bank. The conspiracy theory, pushed by opposition firm Fusion GPS, was later dismissed, as the “communication” was likely marketing emails.”⁶² That same information was shared with the FBI in September 2016, resulting in the indictment of Michael Sussmann. The indictment references communications with Sullivan.⁶³ Sullivan later insisted to Congress that he wasn’t aware of the link between Sussmann and Fusion GPS, and that he was not aware that Sussmann’s firm was providing opposition research in an official capacity.⁶⁴ However, less than two weeks before the election, Sullivan, commenting on press reports detailing the information provided by Sussmann, noted that “This could be the most direct link yet between Donald Trump and Moscow.”⁶⁵
- ❖ As President Biden’s National Security Advisor, Sullivan played a key role in President Biden’s disastrous withdrawal of U.S. forces from Afghanistan. Notably, Sullivan promised that the U.S. would retain the ability to extract American citizens after the withdrawal of U.S. forces.⁶⁶ However, the Administration has not been able to maintain that promise.⁶⁷

USA Today

Ex-Obama adviser: Why Biden must fire his national security adviser for Afghanistan failure

ISSUES TO WATCH

- ❖ Watch Sullivan’s activities in relation to the Biden Administration’s reengagement in the Iran Joint Comprehensive Plan of Action (JCPOA). Sullivan was a critical staffer in the development of the original JCPOA, even participating in secret meetings with the Iranians in order to avoid international criticism.⁶⁸ Upon the completion of the agreement, Congress presented bipartisan opposition. However, a disapproval resolution was filibustered by

⁶¹ Clinton, Hillary Rodham. *Hard Choices*. India: Simon & Schuster, 2014. Page 28.

⁶² Sperry, Paul. *Did Jake Sullivan commit perjury? Emails reveal ‘lie’ on Trump*. The New York Post. September 23, 2021. <https://nypost.com/2021/09/23/did-jake-sullivan-commit-perjury-e-mails-reveal-lie-on-trump/>. Accessed January 18, 2022.

⁶³ United States v. Michael A. Sussman. U.S. District Court for the District of Columbia. Case 1:21-cr-00582-CRC. September 16, 2021.

⁶⁴ See Sperry.

⁶⁵ The American Presidency Project. *Hillary Clinton, Statement from Jake Sullivan on New Report Exposing Trump's Secret Line of Communication to Russia*. October 31, 2016. <https://www.presidency.ucsb.edu/documents/statement-from-jake-sullivan-new-report-exposing-trumps-secret-line-communication-russia>. Accessed: January 18, 2022.

⁶⁶ Chandelis Duster. *Biden administration pledges 'safe passage' for Americans in Afghanistan after withdrawal deadline*. CNN. August 29, 2021. <https://www.cnn.com/2021/08/29/politics/jake-sullivan-afghanistan-withdrawal-cnntv/index.html>. Accessed January 18, 2022.

⁶⁷ Jack Detsch, Kelly Kimball, and Robbie Gramer. *State Department: Thousands of U.S. Residents Still Stuck in Afghanistan*. Foreign Policy Magazine. November 3, 2021. <https://foreignpolicy.com/2021/11/03/state-department-afghanistan-us-residents/>. Accessed: January 18, 2022.

⁶⁸ Michael Crowley. *Hillary Clinton's secret Iran man*. April 3, 2015. <https://www.politico.com/story/2015/04/hillary-clintons-secret-iran-man-116647>. Accessed January 17, 2022.

Senate Democrats on September 10, 2015.⁶⁹ President Trump later withdrew from the JCPOA criticizing it, noting, JCPOA “lifted crippling economic sanctions on Iran in exchange for very weak limits on the regime’s nuclear activity—and no limits at all on its other malign behavior, including its sinister activities in Syria, Yemen, and other places all around the world.”⁷⁰ When Sullivan returned to the White House in 2021, the Biden foreign policy establishment immediately prioritized Iranian negotiations to restart the agreement. However, as of the end of 2021, negotiations have “stalled while Iran has continued to ramp up nuclear enrichment activities that leave it ever closer to having weapons-grade uranium.”⁷¹ Given Sullivan’s personal involvement with the JCPOA, it is critical to ensure that he is not able to negotiate another bad agreement with a hostile Iranian regime.

⁶⁹ U.S. Senate. *Roll Call Vote No. 264: On the Cloture Motion (Motion to Invoke Cloture on McConnell Amdt. No. 2640)*. United States Senate. September 10, 2015.

https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=114&session=1&vote=00264. Accessed January 17, 2022.

⁷⁰ The New York Times. *Read the Full Transcript of Trump’s Speech on the Iran Nuclear Deal*. The New York Times. May 8, 2018. <https://www.nytimes.com/2018/05/08/us/politics/trump-speech-iran-deal.html?action=click&module=Intentional&pgtype=Article>. Accessed January 17, 2022.

⁷¹ David Wainer and Nick Wadhams. *U.S. Still Sees No Pathway Back to Iran Nuclear Deal After Talks*. December 17, 2021. <https://www.bloomberg.com/news/articles/2021-12-17/u-s-says-iran-is-facing-united-front-in-vienna-nuclear-talks>. Accessed January 17, 2022.

ALEJANDRO MAYORKAS

BACKGROUND

- ❖ Alejandro Mayorkas was a key decision maker in the Department of Homeland Security for the entirety of the Obama Administration, serving as the Director of U.S. Citizenship and Immigration Services (USCIS) from 2009-2013 and Deputy Secretary of Homeland Security from 2013-2016. In this capacity, he is perhaps most well-known for his work implementing President Obama's Deferred Action for Childhood Arrivals, or DACA, program.
- ❖ President Biden announced his choice of Mayorkas to lead the Department of Homeland Security (DHS) on November 23, 2020. On February 2, 2021, the Senate confirmed Mayorkas to be DHS Secretary by a vote of 56-43. In this role he is responsible for administering and enforcing immigration law, border security, the protection of critical infrastructure, and disaster response.
- ❖ Describing his opposition to Mayorkas, Senate Minority Leader McConnell stated that during his time at DHS in the Obama Administration, "Mr. Mayorkas did his best to turn U.S. Citizenship and Immigration Services into an unethical favor factory for Democratic Party royalty."⁷²
- ❖ Mayorkas was also a figure in an earlier, prominent scandal involving Democratic donors and politicians. In 2001, Mayorkas became enmeshed in a clemency scandal when President Bill Clinton granted the early release of a convicted cocaine trafficker. Mayorkas, as well as current HHS Secretary Xavier Becerra, reached out to President Clinton about the sentence of Carlos Vignali Jr., whose father, Horacio, was a major Democratic donor in California. Carlos Vignali was convicted in 1994 of involvement in a drug ring that shipped hundreds of pounds of cocaine from Los Angeles to Minnesota, where it was converted to crack and sold on the streets. President Clinton commuted Vignali's sentence on his last day in office.⁷³

Alejandro Mayorkas



*Clinton Administration Post:
U.S. Attorney, Central District of
California*

*Obama Administration Post:
Deputy Secretary of the Department
of Homeland Security*

*Biden Administration Post:
Secretary, Department of Homeland
Security*

PAST EXECUTIVE RECORD

- ❖ In 2015, the DHS Office of Inspector General released a report highlighting Mayorkas "appearance of favoritism and special access" in the adjudication of the EB-5 visa program

⁷² Remarks by Senator McConnell. Feb. 2, 2021. Congressional Record Issue: Vol. 167, No. 19, <https://www.congress.gov/congressional-record/2021/2/2/senate-section/article/s216-2>. Accessed Dec. 22, 2021.

⁷³ Rosalind S. Helderman and Tom Hamburger, *Two Biden Cabinet picks played role in Clinton-era commutation that drew complaints of political favoritism*, The Washington Post, Dec. 8, 2020, https://www.washingtonpost.com/politics/biden-cabinet-clemency/2020/12/08/7abe4a0c-38b4-11eb-bc68-96af0daae728_story.html.

during the Obama Administration.⁷⁴ Prompted by DHS whistleblowers, this report focused on claims of special preferences to entities supporting Democrat politicians such as the former governor of Virginia, Terry McAuliffe, Hillary Clinton’s brother Anthony Rodham, and former Senator Harry Reid. Furthermore, these DHS whistleblowers testified that Mayorkas’ bullied non-partisan permanent staff into satisfying his political interests. One DHS staff member described interactions with Mayorkas as being “uncomfortable, aggressive, unusual, and unsettling.” The Inspector General’s report stated that issues were not limited to a few individuals but were concerns raised throughout the organization.⁷⁵

- ❖ Mayorkas was one of the architects of the Deferred Action for Childhood Arrivals (DACA) policy of delayed enforcement of immigration law to grant amnesty to hundreds of thousands of illegal immigrants.⁷⁶ This measure has met significant opposition in the courts as the judiciary considers the responsibilities and jurisdictions of Article I and Article II authorities. Most recently, on July 16, 2021, the U.S. District Court for the Southern District of Texas released a decision stating DHS may not issue new DACA deferments.⁷⁷
- ❖ In October 2010, Mayorkas pressured USCIS staff to approve certain visa applications in spite of the nonpartisan USCIS staff’s concerns of fraud or ineligibility on behalf of the applicant. Responding to what Mayorkas perceived to be a lack of appropriate haste in approving visa applications, Mayorkas retaliated against USCIS employees with involuntary transfers and frivolous internal investigations.⁷⁸

ISSUES TO WATCH

- ❖ Watch how Mayorkas protects the interests of American citizens as he enforces our Nation’s immigration laws and addresses unsustainable mass migration at our southern border.
- ❖ In its first year, the Biden Administration failed to manage the unprecedented migrant crisis at our southern border, resulting in illicit trafficking of people, drugs, weapons, and contraband into the country.



Washington, D.C. (Aug. 11, 2021) Homeland Security Secretary Mayorkas boards his Coast Guard jet. (DHS Photo by Benjamin Applebaum/Released)

⁷⁴ The Department of Homeland Security Office of Inspector General, *Investigation into Employee Complaints about Management of U.S. Citizenship and Immigration Services’ EB-5 Program*, March 24, 2015, https://www.oig.dhs.gov/assets/Mga/OIG_mga-032415.pdf. Accessed Jan. 6, 2022.

⁷⁵ Ibid, pgs. 2 and 49.

⁷⁶ Department of Homeland Security. Archive. “Deferred Action for Childhood Arrivals: Who Can Be Considered?” August 15, 2012. <https://www.dhs.gov/blog/2012/08/15/deferred-action-childhood-arrivals-who-can-be-considered>. Accessed Jan. 6, 2022.

⁷⁷ U.S. Department of Homeland Security. “Additional Information: DACA Decision in State of Texas, et al., v. United States of America, et al., 1:18-CV-00068, (S.D. Texas July 16, 2021)(“Texas II”). Aug. 31, 2021. <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/additional-information-daca-decision-in-state-of-texas-et-al-v-united-states-of-america-et-al-118-cv> Accessed Dec. 22, 2021.

⁷⁸ Letter from Senator Charles E. Grassley to Secretary Janet Napolitano. Oct. 14, 2010. <https://cis.org/sites/cis.org/files/articles/2010/sen-grassley-letter-oct-14.pdf>. Accessed Dec. 22, 2021.

- ❖ CBP data reports over 2,035,000 immigrant encounters at the southwestern border since January 2021, the highest number of

CNN

Mayorkas is a historic pick who may first have to confront his past at DHS

encounters on record.⁷⁹ Also, CBP seized over 864,968 pounds of illegal drugs in 2021.⁸⁰ Mayorkas repeatedly shared his disdain for the congressionally appropriated border barrier. On December 20, 2021, Mayorkas' DHS called upon Congress to cancel border barrier funding and shared DHS' plan to repurpose border barrier funding to address the current administration's priorities.⁸¹ Mayorkas believes these immigration policies are successful and he would "give himself an 'A'" for the administration's effort.⁸²

- ❖ Mayorkas expressed disappointment in the U.S. Southern District of Texas' decision to block new DACA deferments and has called on the Senate to use the partisan budget reconciliation process to bypass standard Senate rules and impose radical and unaffordable amnesty legislation on the American people.⁸³ The Senate parliamentarian has since determined that those efforts are inappropriate for consideration through the reconciliation process.⁸⁴
- ❖ In September 2021, Mayorkas announced the Administration's abdication of responsibility to enforce immigration law and secure the border by releasing updated guidelines for the enforcement of civil immigration law.⁸⁵ His approach has been widely criticized, including by Andrew Arthur at the Center for Immigration Studies who writes that, "DHS wants to grant itself by regulation the broad parole authority Congress explicitly denied it by statute."⁸⁶ Mayorkas' guidance shares that lawbreaking is not sufficient reason to enforce the law, stating the crime of illegal entry "should not alone be the basis of an enforcement action against them."⁸⁷

⁷⁹ U.S. Customs and Border Protection. "FY Southwest Land Border Encounters by Month". January 24, 2022. <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>, accessed January 26, 2022.

⁸⁰ U.S. Customs and Border Protection. "FY Drug Seizure Weight (lbs.) by Month". January 24, 2022. <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>, accessed January 26, 2022. <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>. Accessed Dec. 22, 2021.

⁸¹ U.S. Department of Homeland Security. "DHS to Address Life, Safety, Environmental, and Remediation Requirements for Border Barrier Projects Previously Undertaken by DoD." Dec. 20, 2021. <https://www.dhs.gov/news/2021/12/20/dhs-address-life-safety-environmental-and-remediation-requirements-border-barrier>. Accessed December 22, 2021.

⁸² U.S. Senate Committee on the Judiciary, Full Committee Hearing, entitled, "Oversight of the Department of Homeland Security," Nov. 16, 2021, <https://www.judiciary.senate.gov/meetings/10/20/2021/oversight-of-the-department-of-homeland-security>.

⁸³ Press release, U.S. Department of Homeland Security, *Statement by Secretary Mayorkas on DACA Ruling*, July 17, 2021, <https://www.dhs.gov/news/2021/07/17/statement-secretary-mayorkas-daca-ruling>.

⁸⁴ Rebecca Morin & Mabinty Quarshie, *Senate parliamentarian rejects latest immigration proposal in reconciliation bill*, USA Today, Dec. 16, 2021, <https://www.usatoday.com/story/news/politics/2021/12/16/senate-parliamentarian-rejects-immigration-reform-reconciliation-bill/8800085002/>.

⁸⁵ Memorandum from Secretary Alejandro N. Mayorkas to Acting Director Tae Johnson, Acting Commissioner Troy Miller, Director Ur Jaddou, Under Secretary Robert Silvers, Officer for Civil Rights and Civil Liberties Katherine Culliton-Gonzalez, and Chief Privacy Officer Lynn Parker Dupree, Sept. 30, 2021, <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>. Accessed Dec. 22, 2021.

⁸⁶ Andrew Arthur. "Biden Administration Seeks to Illegally Hide Its Incompetence at the Border." Aug. 20, 2021. <https://cis.org/Arthur/Biden-Administration-Seeks-Illegally-Hide-Its-Incompetence-Border>. Accessed Jan. 6, 2022.

⁸⁷ Mayorkas, Alejandro. *Memorandum To: Tae D. Johnson: Guidelines for the Enforcement of Civil Immigration Law*. Department of Homeland Security. Sept. 30, 2021, Accessed at: <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>, Page 2.

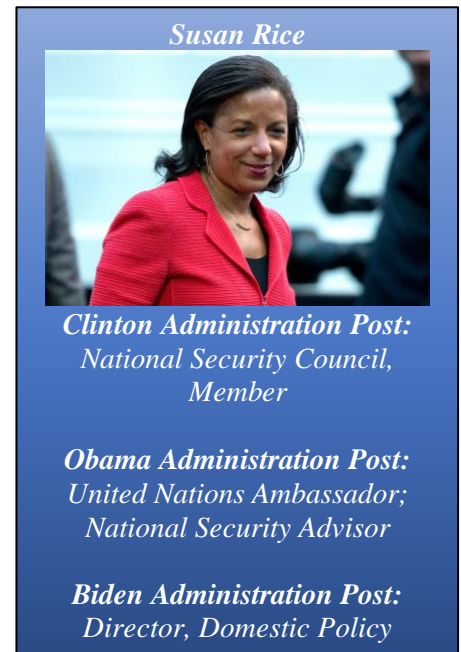
- ❖ Some Democrats have expressed concern with the administration’s handling of border security. Rep. Vicente Gonzalez (D-TX) described the situation stating that “when you create a system that incentivizes people to come across, and they are released, that immediately sends a message to Central America that if you come across you can stay. It incentivizes droves of people to come, and the only way to slow it down is by changing policy at our doorstep. If they don’t change the policy, the flow of continued migration traffic isn’t going to stop or slow down.”⁸⁸

⁸⁸ Ashley Parker, Nick Miorff, Sean Sullivan and Tyler Pager, ‘*No end in sight*’: Inside the Biden administration’s failure to contain the border surge, The Washington Post. March 20, 2021. https://www.washingtonpost.com/politics/biden-border-surge/2021/03/20/21824e94-8818-11eb-8a8b-5cf82c3dffe4_story.html. Accessed Dec. 22, 2021.

SUSAN RICE

BACKGROUND

- ❖ In December 2020, President Biden appointed Ambassador Susan Rice to serve as his Director of the Domestic Policy Council (DPC).⁸⁹ Rice returns to the West Wing after serving in the entirety of the Obama Administration, but also for the majority of President Clinton’s second term.
- ❖ Rice joined the Clinton Administration after nearly two years as a consultant at McKinsey & Company. One of her first posts in the Clinton White House was as a staffer at the National Security Council, where she was quoted as questioning how the Administration’s recognition of the Rwandan Genocide would affect the Democrat Party’s chances in the upcoming midterm elections: “If we use the word ‘genocide’ and are seen as doing nothing, what will be the effect on the November [congressional] election?”⁹⁰
- ❖ During the Obama Administration, Rice first served as the U.N. Ambassador, a post to which she was confirmed by voice vote in the Senate. As U.N. Ambassador, she best known for serving as the principal spokesperson for the Obama Administration’s politically-charged cover-up of the Benghazi terrorist attack. Rice’s mishandling of that event has, by her own admission, disqualified her from consideration of additional posts requiring Senate confirmation.⁹¹
- ❖ Despite a record of controversy, Rice has been appointed to lead President Biden’s DPC. The appointment places her in a quiet, but crucial role driving Biden’s domestic agenda.



PAST EXECUTIVE BRANCH RECORD

- ❖ Rice was the Obama Administration’s key spokesperson following the 2012 Benghazi Terrorist Attack which killed U.S. Ambassador Chris Stevens and three other Americans. During the period following the attack, Rice appeared on five Sunday morning talk shows to downplay the terrorist attack in an effort to maintain President Obama’s credibility on the war on terror in the weeks leading up to the 2012 Presidential Elections. Her actions in the weeks following the Bengahazi attacks seemingly disqualified her from further Senate confirmed service as she both withdrew from consideration as Obama’s Secretary of State in

⁸⁹ Tyler Pager, *Biden Taps Susan Rice for Top White House Domestic Policy Job*, Politico, Dec. 10, 2020, <https://www.politico.com/news/2020/12/10/biden-taps-susan-rice-for-top-white-house-domestic-policy-job-444231>.

⁹⁰ Samantha Power, *Bystanders to Genocide*, The Atlantic, Sept. 2001, <https://www.theatlantic.com/magazine/archive/2001/09/bystanders-to-genocide/304571/>.

⁹¹ Will Bunch, *This Top Biden Aid Might Blow the '22 Midterms*, The Philadelphia Inquirer, Jan. 11, 2022, <https://www.inquirer.com/columnists/attytood/susan-rice-biden-student-loan-debt-immigration-20220111.html>.

2012, and has selected a non-senate confirmed post for the Biden Administration.⁹²

- ❖ She brought an aggressive approach to the West Wing. In one occasion urging President Obama to use military force in Syria without prior congressional approval. As she noted in her book, she was the “lone dissenter” arguing for military intervention, knowing that “Congress won’t grant...the authority.”⁹³

Today's WorldView • Analysis

Biden brings back the establishment

ISSUES TO WATCH

- ❖ As DPC Director, Rice will advocate for an enlargement of the bureaucratic state. Upon taking the job, Rice reportedly requested resources and staffing comparable to the National Security Council. In March 2021, White House Chief of Staff Ron Klain was quoted saying, “We weren’t quite able to match the N.S.C., but we did significantly plus up the number of staff she has.”⁹⁴ An expanded DPC would further expand Presidential power by allowing the President to develop domestic policy outside of the traditional agency process, and outside of the public view.
- ❖ Rice is also pushing a new and unconstitutional focus on “equity.” In January 2021, Rice said, “In every department and in all aspects of what we do, we need to be intentional about infusing equity and racial justice.”⁹⁵ Since that interview, the White House has supported significant domestic policies promoting the same end. For example, in the American Rescue Plan Act, Section 1005 provided loan forgiveness of up to 120 percent for socially disadvantaged farmers and ranchers. The program allows the U.S. Department of Agriculture to pay off direct farm loans either issued or guaranteed by USDA. The program is limited to socially disadvantaged farmers who are members of a group “subjected to racial or ethnic prejudice because of their identity ... without regard to their individual qualities.”⁹⁶ In response, the program was enjoined by several district courts who determined that the program “is significantly likely to violate the constitutional guarantee of equal protection under the law.”⁹⁷



President Obama with Susan Rice, Avril Haines and Lisa Monaco (2015)

⁹² Karen DeYoung & Anne Gearan, *Susan Rice withdraws as candidate for secretary of state*, WASH. POST, Dec. 13, 2012), https://www.washingtonpost.com/world/national-security/susan-ricewithdraws-as-candidate-for-secretary-of-state/2012/12/13/17ad344e-4567-11e2-8e70-e1993528222d_story.html.

⁹³ Susan Rice, *In Syria, American Had No Good Options*, The Atlantic, Oct. 7, 2019, <https://www.theatlantic.com/ideas/archive/2019/10/susan-rice-how-obama-found-least-bad-syria-policy/599296/>.

⁹⁴ Annie Karni, *Taking on a New Role, Susan Rice is Asserting Herself*, The New York Times, March 5, 2021, <https://www.nytimes.com/2021/03/05/us/politics/susan-rice-domestic-policy-council.html>.

⁹⁵ Joe Davidson, *Susan Rice wants every agency to focus on racial equity*, The Washington Post, Jan. 29, 2021, https://www.washingtonpost.com/politics/rice-biden-federal-racial-equity/2021/01/28/a9c0a3be-61b2-11eb-ac8f-4ae05557196e_story.html.

⁹⁶ Section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)).

⁹⁷ Case 3:21-cv-00514-MMH-JRK Document 41 Filed 06/23/21 Page 1 of 49 PageID 395, <https://cases.justia.com/federal/district-courts/florida/flmdce/3:2021cv00514/390177/41/0.pdf?ts=1624522367>.

RON KLAIN

BACKGROUND

- ❖ Ron Klain has been a Washington insider for decades; so much so that *The New York Times* referred to him as having “A Beltway résumé.”⁹⁸ After graduating from Harvard Law School in 1987, he clerked for Supreme Court Justice Byron R. White during the Court’s 1987 and 1988 terms. He also served in numerous staff positions in the U.S. Congress, including for Senators Edward Kennedy, Birch Bayh, and then-Senator, Joe Biden. In 1995, he served as Staff Director for the Senate Democratic Leadership Committees. During the Clinton Administration, Klain served as Chief of Staff to Vice President Al Gore.⁹⁹ As *The New York Times* describes, following the Clinton Administration, “Mr. Klain salved his wounds in classic Washington fashion: by making tons of cash.”¹⁰⁰
- ❖ During the Obama Administration, he served as then-Vice President Biden’s Chief of Staff from 2009 through 2011. President Biden again selected him as his Chief of Staff after the 2020 election.
- ❖ As White House Chief of Staff, Klain serves in a position that does not require Senate confirmation, but that is nevertheless one of the most influential White House staffers. He is viewed by some to be pulling the President towards the more liberal wing of the party.¹⁰¹



PREVIOUS EXECUTIVE BRANCH RECORD

- ❖ Klain has deep ties to K Street, having represented dozens of corporate clients since the early 2000’s. For example, after leaving the Clinton Administration, Klain lobbied for “an asbestos industry bailout package, an airline merger, mortgage regulations to help Fannie Mae and a drug-maker under congressional scrutiny for withholding life-saving drugs from dying patients, among other clients.”¹⁰²

⁹⁸ Mark Leibovich. *The Ascension of Ron Klain*. The New York Times. July 18, 2021. <https://www.nytimes.com/2021/07/18/us/ron-klain-chief-of-staff.html>. Accessed Jan. 13, 2022.

⁹⁹ The White House Archive. *Press Release: Ronald A. Klain Biography*. August 2, 1999. <https://clintonwhitehouse6.archives.gov/1999/08/1999-08-02-ronald-klain-biography.html>. Accessed Jan. 13, 2022.

¹⁰⁰ Mark Leibovich. *The Ascension of Ron Klain*. The New York Times. July 18, 2021. <https://www.nytimes.com/2021/07/18/us/ron-klain-chief-of-staff.html>. Accessed Jan. 13, 2022.

¹⁰¹ Sean Sullivan and Tyler Pager, *Ron Klain had the perfect résumé. His first year showed the limits of that experience*. The Washington Post. January 25, 2022.

¹⁰² Kenneth P. Vogel. *Klain arrives with K Street roots*. POLITICO. November 14, 2008. <https://www.politico.com/story/2008/11/klain-arrives-with-k-street-roots-015632>. Accessed: January 16, 2022.

- ❖ Klain was a critical advocate inside the administration for the Department of Energy’s taxpayer-financed financial support to Solyndra, a solar-cell manufacturer that filed for bankruptcy two years after receiving a \$535 million loan from the administration. When other officials in the administration expressed concern about the President and Vice President’s involvement, Klain reportedly wrote that it “sounds like there are some risk factors here—but that’s true of any innovative company that POTUS would visit. It looks OK to me, but if you feel otherwise, let me know.”¹⁰³
- ❖ Following the Obama Administration, according to *The New York Times*, “Mr. Klain spent the Trump years critiquing the White House on television, writing columns for *The Washington Post* and doing more work for Mr. Case at Revolution, where he received a \$2 million salary in 2020, according to financial disclosure forms.”¹⁰⁴
- ❖ Klain is a frequent columnist and an active user of social media, particularly Twitter. His comments on the platform often create messaging headaches for the White House, as his significant time in Washington has put him on opposite sides of dozens of key issues. Notably, In December 2021, Klain tweeted that “Stronger COVID measures produce STRONGER ECONOMIC outcomes. That’s why jobs, growth, and economic activity are UP this year, significantly over last year.”¹⁰⁵ Klain tweeted in 2014 claiming that American elections are rigged.¹⁰⁶



¹⁰³ McCarthy, A.C. *Ron Klain and Solyndra*. National Review. <https://www.nationalreview.com/2014/10/ron-klain-and-solyndra-andrew-c-mccarthy/>. 20 October 2014.

¹⁰⁴ Mark Leibovich. *The Ascension of Ron Klain*. The New York Times. July 18, 2021. <https://www.nytimes.com/2021/07/18/us/ron-klain-chief-of-staff.html>. Accessed Jan. 13, 2022.

¹⁰⁵ Ron Klain. Twitter. December 1, 2021. <https://twitter.com/WHCOS/status/1466071640433954820?s=20>. Accessed: January 16, 2022.

¹⁰⁶ Joseph A. Wulfsohn, *Ronald Klain, Biden's New Chief of Staff, raises eyebrows with 2014 tweet saying elections are 'rigged,'* Fox News, Nov. 12, 2020, <https://www.foxnews.com/politics/ronald-klain-bidens-wh-chief-of-staff-raises-eyebrows-with-2014-tweet-saying-elections-are-rigged>.

ISSUES TO WATCH

- ❖ “A September 9, 2021 retweet from Klain was cited as a key piece of evidence in the ruling issued by the 5th US Circuit Court of Appeals in New Orleans, which paused President Biden’s “staggering overbroad” rule forcing COVID-19 vaccines of millions of American workers.”¹⁰⁷ Circuit Judge Kurt Engelhardt characterized the retweet as a White House “endorsement of the term ‘work-around’”—leading the panel to block the mandate on just those legal grounds.¹⁰⁸ The Supreme Court later overturned the President’s vaccine mandate on private businesses.



- ❖ In October 2021, Klain received backlash for calling the supply chain crisis a “high class [problem].”¹⁰⁹ In fact, inflation most frequently impacts the wealthy the least as they have more disposable income to offset price increases. Contrary to Klain, inflation has a disproportionately negative impact on the American middle class and the poor.¹¹⁰
- ❖ Klain adherence to the political objectives of the American left and his prior stint in the Clinton White House Counsel’s office places him in a key position to focus on securing liberal nominees to the federal bench. In recent months, Klain has told unnamed sources that he intends to “undo as much of Trump’s judicial legacy as he can...”¹¹¹ Thus far, Klain has been successful at reshaping the federal bench. According to a paper published in the SMU Law Review Forum, President Biden “has moved quickly, and appointed in his first few months more circuit judges than Barack Obama appointed in his entire first year. His judges are also younger and more diverse than past administrations (particularly when it comes to professional experience).¹¹²

¹⁰⁷ Linge, M.K. *Ron Klain retweet spurs court to slam brakes on Biden Vaccine Mandate*, The New York Post, Nov. 13, 2021, [Ron Klain retweet spurs court to halt Joe Biden vaccine mandate \(nypost.com\)](https://nypost.com).

¹⁰⁸ Ibid.

¹⁰⁹ New York Post. Patteson, C. *WH chief of staff slammed over post calling supply chain crisis ‘high class problems.’* [Ronald Klain retweets post calling supply chain crisis ‘high class’ issue \(nypost.com\)](https://nypost.com). 14 October 2021.

¹¹⁰ Todd L. Pittinsky. *Inflation Disproportionately Hurts the Poor*. The Wall Street Journal. June 20, 2021. <https://www.wsj.com/articles/inflation-disproportionately-hurts-the-poor-11624207206>. Accessed: January 16, 2022.

¹¹¹ Yahoo! News. Swan, J. *Biden installing federal judges at blistering pace*. [Biden installing federal judges at blistering pace \(yahoo.com\)](https://yahoo.com). 22 July 2021.

¹¹² Collins, Jr., John P., *Judging Biden* (January 29, 2021). GWU Legal Studies Research Paper No. 2021-39, GWU Law School Public Law Research Paper No. 2021-39, SMU Law Review Forum, Vol. 75, 2022. <https://ssrn.com/abstract=3775648>.

JOHN KERRY

BACKGROUND

- ❖ Leading President Biden’s policy platform on the global stage is former Secretary of State John Kerry. To make room, the President created a new position, one that does not require Senate confirmation, announcing Kerry’s post as Special Presidential Envoy for Climate in November 2020.
- ❖ During the Obama Administration, Kerry served as Secretary of State (February 2013–January 2017). At the time, then-Deputy National Security Adviser Benjamin J. Rhodes said that “[o]ne of the reasons [President Obama] was attracted to Kerry was that [the Obama White House was] going to make climate change a legacy issue in the second term.”¹¹³ President Biden is bringing the Secretary back to finish what he started.
- ❖ Prior to his confirmation as Secretary of State, Kerry served in the Senate for 28 years, ultimately replacing now-President Biden as Chair of the Senate Foreign Relations Committee in 2009. Receiving the Democratic presidential nomination in 2004 and securing a place on 2000 Democratic nominee Al Gore’s vice-presidential shortlist.
- ❖ In his acceptance speech after being nominated, Kerry praised President Biden for his “bold transformative climate plan,” for his eagerness to rejoin the Paris Climate Accord, and for his recognition “that Paris alone is not enough.”¹¹⁴



PAST EXECUTIVE BRANCH RECORD

- ❖ During the Obama Administration, Kerry concentrated power in the State Department’s front office, isolating many career State Department officials outside of his inner circle.¹¹⁵ However, one priority was made clear: climate change. According to *The New York Times*, Kerry “issued a directive” to State Department officials mandating that all meetings with foreign officials include the topic of climate change.¹¹⁶
- ❖ In 2015, Kerry completed his negotiation of the Paris Climate Agreement (PCA), an unenforceable international pact that required western countries to make significant emissions cuts while letting the world’s largest emitters like China, Russia, and India off of

¹¹³ Coral Davenport, *Kerry Quietly Makes Priority of Climate Pact*, *The New York Times*, Jan. 2, 2014, <https://www.nytimes.com/2014/01/03/world/asia/kerry-shifts-state-department-focus-to-environment.html?action=click&module=RelatedLinks&pgtype=Article>.

¹¹⁴ Kate Sullivan, *Biden prioritizes climate crisis by naming John Kerry special envoy*, CNN, Nov. 24, 2020, <https://www.cnn.com/2020/11/23/politics/john-kerry-biden-climate-envoy/index.html>

¹¹⁵ David Rohde, *How John Kerry Could End Up Outdoing Hillary Clinton*, *The Atlantic*, Dec. 2013, <https://www.theatlantic.com/magazine/archive/2013/12/john-kerry-will-not-be-denied/354688/>.

¹¹⁶ See Davenport.

the hook. The PCA also required the U.S. to contribute billions of dollars to international climate financing for developing countries.

- ❖ During negotiations of the PCA, Kerry was clear to his international counterparts that the

Today's WorldView - Analysis

Joe who? Obama's star power still dominates the world stage

Obama Administration would do what it took to eschew the Senate's constitutional authority to approve international treaties. In February 2015, French Foreign Affairs Minister Laurent Fabius confirmed as much, saying, "We know the politics in the US. Whether we like it or not, if it comes to the Congress, they will refuse... We must find a formula which is valuable for everybody and valuable for the US without going to the Congress."¹¹⁷

- ❖ Under Kerry's direction, the U.S. entered the PCA during the Obama Administration without the advice and consent of the Senate. While President Obama claimed his Administration's executive orders on climate, like the later-vacated Clean Power Plan, would be enough to meet the nationally determined contribution negotiated by Kerry, experts have suggested that even these policies would have only accounted for half the emissions reductions required.¹¹⁸

ISSUES TO WATCH

- ❖ In his first month on the job, President Biden unilaterally rejoined the Paris Agreement—again leaning on Kerry's earlier work to allow the Administration to eschew the Senate in ratifying this treaty.¹¹⁹ In a contemporaneous interview with former Vice President Al Gore, Kerry claimed that President Trump had no "scientific basis" or "legitimate economic rationale" to question the unratified treaty. Looking forward, Kerry said "we have to raise our ambition" to meet the stringent goals set by the Administration under the Paris Agreement, and promised an "all-of-government effort" that includes—among other agencies—the Departments of Defense, Energy, Homeland Security, and Treasury.¹²⁰
- ❖ Kerry is advocating for more spending for international climate finance. In an interview with former Vice President Al Gore, Kerry suggested that if the U.S. is comfortable spending \$265 billion dollars to provide relief to the communities devastated by Hurricanes Harvey, Irma, and Maria, it should be comfortable spending \$100 for international climate projects through the Green Climate Fund (GCF).¹²¹ This statement comes while the GCF continues to use dollars to invest in strategic American competitors, like China and Iran.¹²²

¹¹⁷ France 24, *France says climate deal must avoid US Congress vote*, June 2, 2015, <https://www.france24.com/en/20150602-climate-change-deal-congress-fabius-bonn-usa>.

¹¹⁸ *Stephen Eule*, "Obama Administration Confirms 'Gap' in Paris Emissions Pledge" (January 27, 2016), <https://www.globalenergyinstitute.org/obama-administration-confirms-gap-paris-emissions-pledge>

¹¹⁹ *Elian Peltier and Somini Sengupta*, "U.S. formally rejoins the Paris climate accord." (February 19, 2021), <https://www.nytimes.com/2021/02/19/world/us-rejoins-paris-climate-accord.html>.

¹²⁰ John Kerry, Al Gore, and Christiana Figueres, *The US is back in the Paris Agreement. What's Next?*, Ted, Feb. 2021, https://www.ted.com/talks/john_kerry_and_al_gore_the_us_is_back_in_the_paris_agreement_what_s_next.

¹²¹ *Ibid.*

¹²² Green Climate Fund, *FP082: Catalyzing Climate Finance (Shandong Green Development Fund)*, Nov. 14, 2019, <https://www.greenclimate.fund/project/fp082>. See also Green Climate Fund. Approved readiness proposal. *NDA Strengthening*

❖ Kerry spearheaded a behind-closed-doors campaign to pressure American financial institutions to deny services to energy companies developing oil and natural gas projects. On April 20, 2021, Minority members of the Senate Committee on Banking, Housing, and Urban Affairs wrote to Kerry, explaining that his extralegal pressure on financial institutions will “distort capital allocation, raise energy costs for consumers, and slow economic growth.”¹²³

❖ Kerry supported the job-killing and abrupt halt of the Keystone Pipeline. Kerry issued a determination in 2015 that Keystone was not in the public interest, and he suggested that the “perception” of increasing GHG emissions—regardless of a factual basis—would “undercut the credibility and influence of the United States.”¹²⁴ Kerry’s animus toward the pipeline is perplexing given his verification under oath that Keystone is more carbon efficient than trucks and other delivery methods.¹²⁵ When asked about the carbon efficiency of the pipeline by Rep. Darrell Issa, Kerry responded, “Yeah, that is true. I think that is true, but it doesn’t mean you necessarily want to be adding another line when there are other alternatives. But is it better than train, and better than that? Yes, it is.”¹²⁶ But to add insult to injury, Kerry suggested that ex-Keystone workers be able to transition to jobs in solar.¹²⁷

❖ While Kerry talks a big talk on climate, he seems hesitant to walk the walk. In 2019, Kerry chartered a private jet to accept an award in Iceland honoring his contribution to climate activism.¹²⁸ Kerry and his family have not stopped using their carbon-intensive private jet (an individual’s carbon footprint from flying private can be as much as 40 times larger than flying commercial) since he took on his new role as Special Presidential Envoy for Climate. In fact, a report by the *Daily Mail* claims that the jet had taken 16 trips in Mr. Kerry’s first seven months on the job—some for purely personal trips.¹²⁹

OPINION | LETTERS

Keep Appointing John Kerry

... if you want nothing to get done.



and Country Programming support for Iran through FAO, Jan. 10, 2019. <https://www.greenclimate.fund/document/nda-strengthening-and-country-programming-support-iran-through-fao>.

¹²³ Letter from Senator Pat Toomey et al to Mr. John Kerry (April 20, 2021), https://www.banking.senate.gov/imo/media/doc/toomey_gop_members_letter_to_kerry.pdf.

¹²⁴ <https://web.archive.org/web/20151121145230/http://keystonepipeline-xl.state.gov/documents/organization/249450.pdf>. See also, James McCarten, National Observer, *The Keystone XL Project Nixed by John Kerry in 2015 has changed significantly, Canada’s U.S. envoy says*, Nov. 25, 2020, <https://www.nationalobserver.com/2020/11/24/news/keystone-xl-project-john-kerry-canadas-us-envoy-pipeline>.

¹²⁵ Ronald Bailey, *Special Presidential Envoy for Climate John Kerry Admits Pipelines are Carbon-Delivery-Efficient*, Reason, May 13, 2021, <https://reason.com/2021/05/13/special-presidential-envoy-for-climate-john-kerry-admits-pipelines-are-carbon-delivery-efficient/>.

¹²⁶ *Ibid.*

¹²⁷ Kenneth Rapoza, *Climate Czar Kerry Wants Ex-Keystone Workers to Make Solar Panels. That will require importing less China Solar panels*, Forbes, Jan. 31, 2021, <https://www.forbes.com/sites/kenrapoza/2021/01/31/climate-czar-kerry-wants-ex-oil-workers-to-make-solar-panels-that-will-require-importing-less-china-solar-panels/?sh=3d7007957ac0>.

¹²⁸ David Harsanyi, *The Insufferable Hypocrisy of John Kerry*, National Review, Aug. 9, 2021, <https://www.nationalreview.com/corner/the-insufferable-hypocrisy-of-john-kerry/>.

¹²⁹ Morgan Phillips, *Climate Envoy John Kerry’s family private jet has taken 16 flights this year and has just landed in Martha’s Vineyard in time for Obama’s 60th birthday, records show*, Daily Mail, Aug. 5, 2021, <https://www.dailymail.co.uk/news/article-9865161/Climate-Envoy-John-Kerrys-family-private-jet-taken-16-flights-year.html>.

GINA MCCARTHY

BACKGROUND

- ❖ Gina McCarthy has served as an environmental regulator since starting in the City of Canton, Massachusetts in the 1980s.¹³⁰ Her first federal job was serving at the U.S. Environmental Protection Agency (EPA) as the Assistant Administrator for the Office of Air and Radiation, a position she held from 2009 until her appointment as Administrator in 2013. In the summer of 2013, after a long confirmation battle, the Senate confirmed her by a vote of 59-40.¹³¹
- ❖ Following the Obama Administration, McCarthy served as president of the Natural Resources Defense Council, a national environmental activism group who sued the Trump Administration more than 100 times.¹³²
- ❖ McCarthy has long been criticized for pushing environmental policies that exceed the EPA's authority granted through Congress. A significant number of the rules EPA promulgated under her watch at EPA were thrown out in court, including the Waters of the U.S. (WOTUS)¹³³ regulation, the Clean Power Plan (CPP),¹³⁴ and the Mercury Air Toxic Standards Rule (MATS), under which the Supreme Court required EPA to reconsider its cost-benefit analysis.¹³⁵
- ❖ A *Rolling Stone Magazine* profile highlighting her role in the Biden Administration describes her as someone who “knows a thing or two about how to wield executive power.”¹³⁶



¹³⁰ Bravender, Robin. *If EPA's Air Chief Loves a Brawl, She's Come to the Right Place*. New York Times. November 19, 2009. <https://archive.nytimes.com/www.nytimes.com/gwire/2009/11/13/13greenwire-if-epas-air-chief-loves-a-brawl-shes-come-to-t-30096.html>. Accessed: January 20, 2022.

¹³¹ Tennille Tracy. *Senate Confirms McCarthy as Head of EPA*. The Wall Street Journal. July 18, 2013

¹³² Juliet Eilperin and Brady Dennis. *Biden picks former EPA chief Gina McCarthy as White House climate czar*. The Washington Post. December 15, 2020. <https://www.washingtonpost.com/climate-environment/2020/12/15/gina-mccarthy-climate-change-czar-biden/>. Accessed January 20, 2022.

¹³³ Congressional Research Service. *Waters of the United States" (WOTUS): Current Status of the 2015 Clean Water Rule*. R45424. December 12, 2018.

¹³⁴ Jonathan Adler. *Supreme Court puts the brakes on the EPA's Clean Power Plan*. Washington Post. February 9, 2016. <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/02/09/supreme-court-puts-the-brakes-on-the-epas-clean-power-plan/>. Accessed January 20, 2022.

¹³⁵ On June 29, 2015, Supreme Court determined that the EPA acted within its regulatory authority in issuing the MATS rule, but that it did not reasonably calculate accurate costs and benefits when drafting the rule. Instead of vacating MATS, the Supreme Court required the EPA to reconsider its cost-benefit calculations.

¹³⁶ Andy Kroll. *Nothing's Off the Table: Gina McCarthy Has Big Plans for the Climate Fight*. Rolling Stone Magazine. March 12, 2021. <https://www.rollingstone.com/politics/politics-features/gina-mccarthy-climate-biden-coal-clean-energy-1139692/>. Accessed January 20, 2022.

PAST EXECUTIVE BRANCH RECORD

- ❖ McCarthy was the architect of several Obama-era regulations which exceeded the EPA’s statutory authority and ran into serious problems in the courts:
 - The Clean Power Plan: Dozens of states sued the EPA over the CPP’s implementation, arguing that the rule exceeded the agency’s authority under the Clean Air Act. In 2016, the Supreme Court stayed implementation of the final rule.¹³⁷ Never before had the Supreme Court stayed a federal regulation in advance of a lower court reviewing the merits of the case. The court’s willingness to do so in this case demonstrated its extraordinary concern about the legality of the rule and the immediate harm it may cause.

According to National Economic Research Associates analysis, the CPP would have raised average annual U.S. electricity prices by 11% to 14% and could reduce household spending power by up to \$79 billion. American Action Forum analysis found that the CPP could cause the loss of as many as 125,800 jobs by 2030.¹³⁸

Despite all of these legal distractions, McCarthy later admitted that “[t]he CPP was designed to follow the clean-energy transition that was already underway, the one that the energy market depends on and the one that the energy market will continue to demand.”¹³⁹

- The EPA’s Waters of the U.S. Rule: In 2015, the Obama Administration finalized a rulemaking to define WOTUS through its so-called “Clean Water Rule.” Congress attempted to repeal the Obama rule through a disapproval resolution sponsored by Senator Joni Ernst of Iowa. The resolution passed both the House and the Senate but was vetoed by President Obama.¹⁴⁰
- The MATS Rule: The Obama Administration issued the final MATS rule for coal-and oil-fired power plants on February 16, 2012. EPA estimated that the rule would reduce power plant mercury emissions by 90 percent and dramatically reduce emissions of other toxics like arsenic, nickel, dioxins, and acid gases. According to EPA, the benefits of reducing mercury emissions were monetized to \$4 million to \$6 million annually. However, because the costs of compliance were estimated at \$9.6 billion, the EPA argued that costs were irrelevant and that the regulation met the statutory bar of “appropriate and necessary.”

In 2015, the Supreme Court sharply criticized this interpretation in *Michigan v. EPA*. The majority opinion stated, “[n]o regulation is ‘appropriate’ if it does significantly more harm than good.” In response to this ruling, EPA conducted a supplemental

¹³⁷ WEST VIRGINIA, ET AL., APPLICANTS V. ENVIRONMENTAL PROTECTION AGENCY, ET AL., 15A773

¹³⁸ Philip Rossetti. *The Clean Power Plan Explained*. May 11, 2016. <https://www.americanactionforum.org/insight/clean-power-plan-explained/>. Accessed January 20, 2022.

¹³⁹ Jack Fitzpatrick. *McCarthy: Clean Power Plan Is Great, but Largely Symbolic*. Morning Consult. November 21, 2016. <https://morningconsult.com/2016/11/21/mccarthy-clean-power-plan-great-largely-symbolic/>. Accessed: January 20, 2022.

¹⁴⁰ Executive Office of the President, Veto Message from the President—S.J. Res 22, January 19, 2016, <https://www.whitehouse.gov/the-press-office/2016/01/19/president-obama-vetoes-sj-22>. Accessed: January 20, 2022.

review and found that a consideration of costs does not change EPA's earlier appropriate and necessary finding. In this supplemental finding, EPA concluded that \$9.6 billion annual costs of compliance should save at least \$37 billion in "co-benefits."

Conservatives have long criticized the EPA's use of "co-benefits" to effectively run-around cost structures and in effect, avoid providing justification for regulating the pollutant of concern (in this case, mercury.) Further, because EPA's use of co-benefits is not transparent, it risks double counting of alleged "co-benefits."

- ❖ McCarthy was a key Administration participant in the negotiations of the Paris Climate Agreement (PCA), an unenforceable international pact that required western countries to make significant emissions cuts while letting the world's largest emitters like China, Russia, and India off of the hook. The PCA also required the United States to contribute billions of dollars to international climate financing for developing countries.

ISSUES TO WATCH

- ❖ McCarthy EPA was punctuated by a strong focus on reducing emissions at the expense of other EPA environmental programs which, in many cases, are more effective at improving the daily environmental outcomes for Americans. Her overwhelming focus on climate left the Trump Administration with a significant workload that had been neglected during the Obama Administration. For example, the Superfund Program, which was created by the *Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)* in 1980, is tasked with cleaning up toxic and heavily polluted domestic sites. Over time, however, Superfund performance declined. In fact, from the late 1990s to 2014, the number of completed Superfund cleanups fell from an average of 87 (over the second Clinton Administration) to eight. During the Trump Administration, EPA finished seven cleanups in 2017, 22 cleanups in 2018, and 27 cleanups in 2019—the highest yearly total since 2001.
- ❖ Aside from CO₂ emissions, the EPA regulates air quality standards for six criteria pollutants (carbon monoxide, lead, particulate matter (PM), ozone, nitrogen dioxide, and sulfur dioxide). Further, EPA regularly collects, analyzes, and reports county-level air quality data in order to identify which counties are and are not in attainment with the NAAQS.¹⁴¹ During the Trump Administration, EPA regional offices began to push re-designations as its main goal, working collaboratively with state governments. This strategy saw success, including a recent proposed attainment for Southwest Indiana with respect to sulfur dioxide.¹⁴²
- ❖ In 2015, Secretary Kerry completed his PCA negotiation, with significant help from Administrator McCarthy. Watch for McCarthy to continue to push both unenforceable international commitments and to continue to advocate for accelerated climate commitments by the U.S. government.

¹⁴¹ "NAAQS Table," *U.S. Environmental Protection Agency*, visited Nov. 12, 2020.

¹⁴² Press Release, "EPA and Indiana Propose Southwest Indiana Now Meets Federal Air Quality Standard for Sulfur Dioxide," *U.S. Environmental Protection Agency Region 5*, Oct. 28, 2020.

BRENDA MALLORY

BACKGROUND

- ❖ Brenda Mallory is a former Obama Administration official, spending the last four years as a policy director at the Southern Environmental Law Center (SELC), and as Executive Director and Senior Counsel at the Conservation Litigation Project—which frequently sued the Trump Administration over its deregulatory actions at Environmental Protection Agency (EPA) and Interior Department.¹⁴³
- ❖ During the Obama Administration, Mallory served as General Counsel at the White House Council on Environmental Quality (CEQ), as well as in several senior positions at EPA. Mallory holds an undergraduate degree from Yale College and a law degree from Columbia.



PAST EXECUTIVE BRANCH ROLE:

- ❖ Prior to the 2020 Election, Mallory helped lead the Climate 21 Project, which developed a set of policy and regulatory recommendations for the incoming administration related to reorienting the federal government to address climate change.¹⁴⁴ The report calls for climate and social justice considerations factored into every action of the federal government. For example, the summary document advocates to “incorporate social justice metrics in rulemaking,” and recommends applying “social justice criteria” when considering federal procurement.¹⁴⁵ Specifically related to Mallory’s role at the CEQ, the Climate 21 summary notes that “the Council on Environmental Quality is best suited to elevate environmental justice to the White House and to lead the agenda on climate change resilience.”¹⁴⁶

ISSUES TO WATCH

- ❖ Mallory is likely to advocate for and support repealing Trump Administration efforts to streamline environmental permitting for infrastructure projects of national significance. The Trump Administration invested heavily to ensure that permitting, as required by the National Environmental Policy Act (NEPA), was not unnecessarily delaying projects.¹⁴⁷ However, on

¹⁴³ Joseph Morton. *Brenda Mallory to take environmental policy in a new direction*. Roll Call. April 22, 2021. <https://www.rollcall.com/2021/04/22/brenda-mallory-to-take-environmental-policy-in-a-new-direction/>. Accessed January 20, 2022.

¹⁴⁴ Neela Banerjee and Rebecca Hersher. *Biden To Nominate Brenda Mallory To Run Council On Environmental Quality*. NPR. December 17, 2020. <https://www.npr.org/sections/biden-transition-updates/2020/12/17/947355441/biden-to-nominate-brenda-mallory-to-run-council-on-environmental-quality>. Accessed January 21, 2022.

¹⁴⁵ Christy Goldfuss, et. al. *Summary Report: Transition Recommendations for Climate Governance and Action*. The Climate 21 Project. November 2020. https://climate21.org/documents/C21_Summary.pdf. Accessed January 21, 2022.

¹⁴⁶ *Ibid.*

¹⁴⁷ Early in his Administration, President Trump signed an executive order to “Establish Discipline and Accountability in the Environmental Review and Permitting Process.” With respect to NEPA, the EO instructed agencies to increase coordination and

his first day in office, President Biden signed an executive order on “Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis,” which called for the immediate review of all climate-adjacent regulations promulgated under Trump and rescinded a series of Trump-era executive orders.¹⁴⁸ Notably, Trump’s NEPA reform was rescinded by this Biden order. Prior to being named Biden’s nominee to lead CEQ, Mallory expressed her support for this action, telling *E&E News* that, with respect to Trump’s NEPA reform, “you almost don’t have a choice but to remove the whole thing.”¹⁴⁹

- ❖ Mallory will bring a new focus towards environmental justice to CEQ. Following Biden’s nomination of Mallory to lead the CEQ, the environmental community celebrated Mallory as a capable nominee to promote “environmental justice” through federal regulations.¹⁵⁰ Mallory has said that the President’s Build Back Better plan will “breathe new life into the CEQ,” stoking concerns that Biden and Mallory would weaponize the NEPA process to indefinitely stall mineral developments. Mallory has also spoken out about “environmental justice” and the connections between racial justice and climate policy.
- ❖ Mallory may take extra steps to ensure that deliberations that could be embarrassing to the Administration are withheld from public view. In January, *E&E News* reported that the CEQ circulated a memo to its White House Environmental Justice Advisory Council with a set of guidelines, which included that members “do not share what happened in the meeting with anyone.”¹⁵¹ This guidance is despite the fact that these advisory councils are designed to ensure that public input is considered as the CEQ develops policy.

to develop a single permitting timetable, prepare a single environmental impact study (EIS), sign a single Record of Decision (ROD), and issue all project approvals within 90 days of the ROD.

¹⁴⁸ Exec. Order No. 13,990, January 20, 2021. 86 FR 7037. Page: 7037-7043.

¹⁴⁹ Kelsey Brugger. *Biden CEQ pick signals NEPA changes*. *E&E News*. December 21, 2020.

<https://www.eenews.net/articles/biden-ceq-pick-signals-nepa-changes/>. Accessed January 21, 2022.

¹⁵⁰ Jeff Turrentine. *Biden’s Choice for the Council on Environmental Quality: Brenda Mallory*, The Natural Resources Defense Council. April 14, 2021. <https://www.nrdc.org/stories/bidens-choice-council-environmental-quality-brenda-mallory>. Accessed: January 20, 2022.

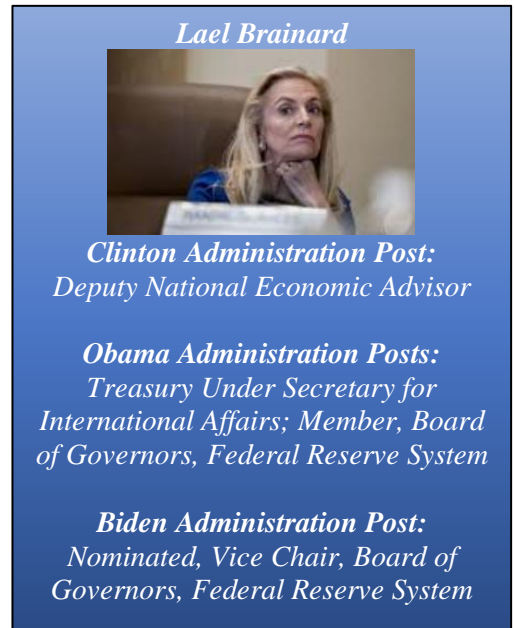
¹⁵¹ Kelsey Brugger, *Biden environmental justice advisers air frustrations*. *E&E News*. January 18, 2022.

<https://www.eenews.net/articles/biden-environmental-justice-advisers-air-frustrations/>. Accessed January 21, 2022.

LAEL BRAINARD

BACKGROUND

- ❖ President Biden nominated economist Lael Brainard to serve as Vice Chair of Federal Reserve Board of Governors, a federal body that helps to implement the monetary policy of the United States.
- ❖ The Vice Chair is the number two position at the Federal Reserve, and plays a key role helping the Federal Reserve meet its responsibilities, which are “maximum employment, stable prices, and moderate long-term interest rates.”¹⁵²
- ❖ Biden’s nomination of Brainard to serve as Vice Chair is a promotion from her current role as Board member, and despite the poor judgment she demonstrated—downplaying inflationary risk, being weak on China, skepticism of cryptocurrencies, and her stated intentions to divert the Federal Reserve’s energies away from core objectives and into the climate arena.



PAST EXECUTIVE BRANCH RECORD

- ❖ Brainard has served on the Federal Reserve Board of Governors since 2014. She previously served as Under Secretary of the Treasury for International Affairs (2010 to 2013). Brainard also served as Deputy National Economic Adviser to former President Bill Clinton.
- ❖ While Undersecretary of Treasury for International Affairs, Brainard oversaw many issues relating to China. According to a research of the American Accountability Foundation, Brainard worked to alleviate pressure on China for their currency manipulation while serving in this capacity. Brainard oversaw reports to Congress concluding that China did not meet the legal parameters to be listed as a currency manipulator, including a report transmitted to Congress in 2011 concluding that their discussions with China and other findings did not show that China is a currency manipulator.¹⁵³ Brainard’s failure to hold China accountable was rectified by the Trump Administration in 2019 when President Trump’s Treasury Department designated China as a currency manipulator.¹⁵⁴ Regrettably, the Biden Administration has failed to follow suit, however, and declined to label China as a currency

¹⁵² Board of Governors of the Federal Reserve System, FAW, *What Economic goals does the Federal Reserve seek to achieve through its monetary policy*, <https://www.federalreserve.gov/faqs/what-economic-goals-does-federal-reserve-seek-to-achieve-through-monetary-policy.htm>.

¹⁵³ American Accountability Foundation, *Despite Bipartisan Action Against China’s Currency Manipulation, Lael Brainard Does the Opposite*, Jan. 3, 2022, <https://www.bidennoms.com/news/1350/bipartisan-action-against-chinas-currency-manipulation-lael-brainard-does-the-opposite>.

¹⁵⁴ U.S. Department of the Treasury press release, *Treasury Designates China as a Currency Manipulator*, <https://home.treasury.gov/news/press-releases/sm751>.

manipulator.¹⁵⁵

- ❖ In 2014, President Obama nominated Brainard to become a Member of the Board of Governors of the Federal Reserve System, calling her one of his “top and most trusted international economic advisors.”¹⁵⁶

ISSUES TO WATCH

- ❖ As recently summarized by David McIntosh, President of The Club for Growth, “Instead of serving as an impartial arbiter, Brainard’s past statements show that she will push for an aggressive left-wing political agenda. Brainard’s Fed would punish banks who don’t push the left’s climate change agenda, redefine old issues unrelated to the Federal Reserve’s core mandate to be politically correct, attempt to establish a centralized cryptocurrency and reimpose burdensome regulations. If confirmed, Brainard will bring her woke agenda to one of the Fed’s most important roles.”¹⁵⁷
- ❖ Regarding inflation, in September 2021, Brainard argued that the spike seen in inflation in 2021 was “transitory.”¹⁵⁸ In a speech to the National Association for Business Economics in September 2021, Brainard diminished the rising inflation, commenting that, “I expect inflation to decelerate, and pre-COVID inflation dynamics to return when COVID disruptions dissipate.”¹⁵⁹ Brainard’s judgement missed the mark, and just two months later, inflation hit a 40 year high.¹⁶⁰ As a key member of the Board, keep a close eye on what tools Brainard will use to address inflation.
- ❖ Brainard has publicly called for greater government regulation of cryptocurrency. In July 2021, Brainard “laid out a range of reasons for ‘urgency’ around the issue of developing a U.S. central bank digital currency, including the fact that other countries such as China are moving ahead with their own.”¹⁶¹ Brainard has argued that, “‘it is very important that the regulatory framework has to catch up,’ warning some currencies ‘have characteristics that really lend themselves to run-like behavior.’”¹⁶² Watch to see if Brainard and the Fed issue its own central bank digital currency.

¹⁵⁵ Marin Crutsinger, *No Currency Manipulator Labels from U.S., China on Watch*, Dec. 3, 2021, <https://www.usnews.com/news/politics/articles/2021-12-03/no-currency-manipulator-labels-from-us-china-on-watch>.

¹⁵⁶ The White House, Office of the Press Secretary, press release, *President Obama Announces His Intent to Nominate Three to Serve on the Board of Governors of the Federal Reserve System*, <https://obamawhitehouse.archives.gov/the-press-office/2014/01/10/president-obama-announces-his-intent-nominate-three-serve-board-governor>.

¹⁵⁷ Opinion by David McIntosh Appearing in Fox News, *Lael Brainard, Biden’s Pick for Vice Chair would Further Politicize the Federal Reserve*, Jan. 14, 2022, <https://www.foxbusiness.com/politics/lael-brainard-biden-vice-chair-federal-reserve-david-mcintosh>.

¹⁵⁸ Gregg Robb, *Fed’s Brainard says Spike in Inflation is ‘Transitory’*, Market Watch, Sept. 27, 2021, <https://www.marketwatch.com/story/feds-brainard-says-spike-in-inflation-this-year-is-transitory-11632767846>.

¹⁵⁹ Ibid.

¹⁶⁰ The Heritage Foundation, *Inflation Hits Nearly 40 year high as Biden Administration Embraces Reckless Spending*, Dec. 10, 2021, <https://www.heritage.org/press/inflation-hits-nearly-40-year-high-biden-administration-embraces-reckless-spending>.

¹⁶¹ Ann Saphir, *Fed’s Brainard: Can’t Wrap head around not having a U.S. central bank digital currency* Reuters, July 30, 2021, <https://www.reuters.com/technology/feds-brainard-cant-wrap-head-around-not-having-us-central-bank-digital-currency-2021-07-31/>.

¹⁶² Matt Smith, *Brainard is an Inflation Skeptic Who Sees Poverty Reduction as Key*, Barrons, Nov. 16, 2021, <https://www.barrons.com/articles/brainard-is-an-inflation-skeptic-who-sees-poverty-reduction-as-key-51637106995>.

- ❖ Brainard has been outspoken on several issues, including the need for the Fed to take a more active role in climate-related issues.¹⁶³ Brainard said in 2021 that she believes the central bank has a responsibility to address climate change.¹⁶⁴ The Banking Committee’s top republican, Senator Pat Toomey of Pennsylvania, has run the alarm that Brainard’s goals are political in nature and beyond the scope of the Federal Reserve. In a letter to Federal Reserve Board Chair Jerome Powell, Toomey noted concerns using financial regulation and supervision to further environmental policy objectives “would be beyond the scope of the Federal Reserve’s mission.”¹⁶⁵ Brainard has allowed mission creep toward a highly politicized agenda whereas the Federal banks as the Minneapolis, Boston and Atlanta banks hosted a joint ‘Racism and the Economy’ series.¹⁶⁶

¹⁶³ Madeline NGO, *Who is Lael Brainard, President Biden’s pick for the Fed’s vice chair?* The New York Times, Nov. 22, 2021, <https://www.nytimes.com/article/lael-brainard-federal-reserve.html>.

¹⁶⁴ Alexander Bolton, *Top Republican warns Biden against picking Brainard for Fed Chair*, Nov. 18, 2011, The Hill, <https://thehill.com/policy/finance/582159-top-republican-warns-biden-on-picking-brainard-for-fed-chair>.

¹⁶⁵ Ibid.

¹⁶⁶ Press Release, U.S. Senate Committee on Banking, Housing and Urban Affairs, *Toomey Expands Review of Woke Mission Creep by Regional Federal Reserve Banks*, May 24, 2021, <https://www.banking.senate.gov/newsroom/minority/toomey-expands-review-of-woke-mission-creep-by-regional-federal-reserve-banks>.

SARAH BLOOM RASKIN

BACKGROUND

- ❖ In January 2022, President Biden nominated Sarah Bloom Raskin to serve as the Vice Chair of Supervision at the Federal Reserve. If confirmed, Raskin will be the regulator in chief for the Fed. The board's vice chair of supervision is a position created by the 2010 Dodd-Frank financial reform law.¹⁶⁷
- ❖ During the Obama Administration, Raskin served as a member of the Board of Governors of the Federal Reserve (2010-2014) and also as Deputy Treasury Secretary (March 2014 to January 2017).
- ❖ Raskin is a founding member of the Regenerative Crisis Response Committee, which was formed to advocate the use of monetary policy and banking regulations to address climate change.¹⁶⁸
- ❖ Raskin is the spouse of Jamie Raskin, a member of the U.S. House of Representatives and manager during the impeachment trial of President Donald Trump.



PAST EXECUTIVE BRANCH ROLE:

- ❖ During her time at the Fed under the Obama Administration, Raskin solidified her mark as an aggressive regulator, serving as the lone dissent on the Fed's 2012 approval of the Volcker Rule, arguing it was not stringent enough. The Volcker Rule was a provision of Dodd-Frank designed to limit proprietary trading by banks—a statutory mandate then hastily designed through regulation by five regulatory agencies.¹⁶⁹ Raskin argued the guard rails were not strict enough in the rule, while banks argued that a too-restrictive Volcker rule could crimp liquidity and raise costs for American business.¹⁷⁰
- ❖ In her capacity as Deputy Secretary of the Treasury, Raskin, a political official and not an intelligence officer, was among a number of officials that submitted requests to the National Security Agency seeking to unmask intercepted conversations involving then-incoming National Security Adviser Michael Flynn under President Trump. Raskin submitted such

¹⁶⁷ Sylvan Lane, *Biden Selects Sarah Bloom Raskin, Two Others for Fed Board*, The Hill, Jan. 14, 2022, <https://thehill.com/policy/finance/589744-biden-announces-picks-for-fed-board>.

¹⁶⁸ Regenerative Crisis Response Committee, "Meet the Committee," <https://regenerativecrisisresponsecommittee.org/>.

¹⁶⁹ Louise Bennetts, *Some Preliminary Thoughts on the New "Final" Volcker Rule*, Cato, Dec. 10, 2013, <https://www.cato.org/blog/some-preliminary-thoughts-new-final-volcker-rule>.

¹⁷⁰ Speech by Sarah Bloom Raskin, presented at Graduate School of Banking at Colorado, Boulder, Colorado, *How Well is Our Financial System Serving Us? Working Together to Find the High Road*, July 23, 2012, <https://www.federalreserve.gov/newsevents/speech/raskin20120723a.htm>. See also, Victoria McGrane, *Fed Official Wants Tough Volcker Rule*, The Wall Street Journal, July 23, 2012, <https://www.wsj.com/articles/SB10000872396390443437504577545542308041140>.

request on December 14, 2016, after President Trump won the 2016 presidential election but before he assumed office. Raskin and others were criticized for using the power of national intelligence against their political enemies.¹⁷¹

ISSUES TO WATCH

❖ If confirmed by the Senate as a Fed board governor, Raskin will have a vote on monetary policy. Given the forty-year inflationary high, watch how Raskin chooses to prioritize and tackle monetary policy.

❖ Raskin will also be in a position to advocate for changes to the Volcker Rule she once dissented upon. Her predecessor, Randal Quarles, worked during the Trump Administration to ease the Volcker Rule, tailoring the rule to banks' risks.¹⁷²



John Solomon
@jsolomonReports

Revealed: The wife of Rep. Jamie Raskin, one of President Trump's most ardent critics in Congress, was one of the Obama-era officials who sought to unmask a Mike Flynn conversation. | Just The News

❖ Onlookers will be monitoring if “America First” is a distant concept. The choice of Raskin to serve as Fed Vice Chair for Supervision is being heralded by international climate change enthusiasts who see her as key to international banking cooperation in the climate space. For example, Green Central Banking wrote that Raskin is “a strong advocate for a precautionary approach to climate risk” and “is seen as the preferred candidate among US climate campaigners who were disappointed at Biden’s recent renomination of Fed chair Jerome Powell. ...As central banks call for increased international cooperation in addressing climate risk, Raskin is also well placed to work with supervisory counterparts such as the European Central Bank’s Frank Elderson and the Bank of England’s Sarah Breeden.”¹⁷³

❖ Raskin also argues that America is “lagging behind the rest of the world on tackling climate change” and that the long-held definition of fiduciary duty rules “may need to be reimagined and accounting standards clarified.”¹⁷⁴

❖ Raskin has stirred fears that she will attempt to interfere in the marketplace. Raskin told the Green Swan conference that market forces are not equipped to manage the transition away from carbon, and she pointed to the “radical uncertainty” and “vast scale of the climate threat” as reasons for the adoption of a precautionary approach from central banks and

¹⁷¹ John Soloman, *The Line between Lawful unmasking and political spying, and what comes next*, Just the News, May 29, 2020, <https://justthenews.com/accountability/russia-and-ukraine-scandals/line-between-lawful-unmasking-and-political-spying-and-> See also, Letter from Ric Grenell, Acting Director of National Intelligence, to Senator Charles Grassley and Senator Ron Johnson, May 13, 2020 (on file with office, available on request).

¹⁷² Pete Schroeder and Michelle Price, Andrea Shalal, *Raskin Nomination for Fed Regulation Chief Puts Wall Street on Notice*, Reuters, Jan. 14, 2022, <https://www.reuters.com/business/finance/raskin-fed-nomination-would-put-wall-street-notice-2022-01-14/>. See also, Lalita Clozel, *Banks Get Some Relief in Volcker-Rule Changes*, The Wall Street Journal, Aug. 20, 2019, <https://www.wsj.com/articles/regulators-ease-proprietary-trading-compliance-for-biggest-banks-11566311407>.

¹⁷³ Graham Caswell, *Is Raskin in a Pole Position For Fed’s Supervision Vice Chair?*, Green Central Banking, Nov. 30, 2021, <https://greencentralbanking.com/2021/11/30/sarah-bloom-raskin-fed-supervision-vice-chair/>.

¹⁷⁴ Sarah Bloom Raskin, *US Climate Finance is Approaching a Leapfrog Moment*, Financial Times, Jan. 22, 2021.

financial supervisors.¹⁷⁵ Raskin’s statements follow advocacy during the height of the COVID-19 pandemic for the federal government to discriminate against fossil fuel companies in the provision of federal aid and support—which she called a dying industry despite the over eleven million jobs it has created.¹⁷⁶ Raskin wrote in May 2020 that “The Fed is singularly poised to seed strategic investments in future economic stability” and went on to argue that “the Fed is ignoring clear warning signs about the economic repercussions of the impending climate crisis by taking action that will lead to increases in greenhouse gas emissions.”¹⁷⁷ As noted by *The Wall Street Journal* editorial Board, “This showed colossally bad judgment. The crisis of the hour was Covid and a potential depression, not climate. Yet at that perilous moment Ms. Raskin was urging the Fed to discriminate against an industry that employed hundreds of thousands of people. Had the Fed taken her advice, many more oil and gas producers would have gone bankrupt, and energy prices would be even higher today.”¹⁷⁸ While some have claimed that Raskin was merely advocating *in favor* of market forces, the totality of her record indicates that she holds a different bias.¹⁷⁹

- ❖ If confirmed, watch to see if Raskin oversteps in the role. In a September 2021 op-ed in *Project Syndicate*, Raskin argued for the need for banking regulators to be “creative” about climate change, go beyond their typical job, and disrupt the energy economy through banking regulation.” Raskin noted, “[w]hile none of its regulatory agencies was specifically designed to mitigate the risks of climate-related events, each has a mandate broad enough to encompass these risks within the scope of the instruments already given to it by Congress.” She later goes on to argue that financial regulators need to work quickly, and rapidly move society away from fossil fuels.¹⁸⁰

¹⁷⁵ Graham Caswell, *Is Raskin in a Pole Position For Fed’s Supervision Vice Chair?*, Green Central Banking, Nov. 30, 2021, <https://greencentralbanking.com/2021/11/30/sarah-bloom-raskin-fed-supervision-vice-chair/>.

¹⁷⁶ Sarah Bloom Raskin, *Why is the Fed Spending So Much Money on a Dying Industry?* The New York Times, May 28 2020, <https://www.nytimes.com/2020/05/28/opinion/fed-fossil-fuels.html>. See also, Sylvan Lane, *Biden Selects Sarah Bloom Raskin, Two Others for Fed Board*, The Hill, Jan. 14, 2022, <https://thehill.com/policy/finance/589744-biden-announces-picks-for-fed-board>. See also, Ed Pritchard, American Petroleum Institute, *New Analysis: American-Made Natural Gas and Oil Drives U.S. Economic Recovery, Strengthens All Industries*, July 20, 2021, <https://www.api.org/news-policy-and-issues/news/2021/07/20/2021-pwc-analysis>.

¹⁷⁷ Sarah Bloom Raskin, *Why is the Fed Spending So Much Money on a Dying Industry?* The New York Times, May 28 2020, <https://www.nytimes.com/2020/05/28/opinion/fed-fossil-fuels.html>.

¹⁷⁸ The Wall Street Journal Editorial Board, *Biden Plays Capture the Federal Reserve*, Jan. 17, 2022, <https://www.wsj.com/articles/biden-plays-capture-the-fed-sarah-bloom-raskin-nominee-11642457683>.

¹⁷⁹ Patrick McHenry, *Conservatives are Outraged that Sarah Bloom Raskin Actually Believes in Capitalism*, The Hill, Jan. 21, 2022, <https://thehill.com/blogs/congress-blog/politics/590739-conservatives-are-outraged-that-sarah-bloom-raskin-actually>.

¹⁸⁰ Sarah Bloom Raskin, *Changing the Climate of Financial Regulations*, Project Syndicate, Sept. 20, 2021.

LISA COOK

BACKGROUND

- ❖ In January 2022, President Biden nominated Lisa Cook to serve as a Member of the Board of Governors of the Federal Reserve. Cook also served on Biden’s transition team.¹⁸¹
- ❖ Under the Obama Administration, Cook served at the White House Council of Economic Advisers.
- ❖ Cook currently serves as a professor of international relations and economics at Michigan State University. Despite being nominated for a prestigious monetary role, it has been reported that Cook’s published work does not show any peer-reviewed macroeconomic publications.¹⁸²
- ❖ Cook is also member of the Regenerative Crisis Response Committee, which was formed to advocate the use of monetary policy and banking regulations to address climate change.¹⁸³
- ❖ Media reports signal trouble ahead for Cook’s nomination. For example, one outlet notes: “Cook is facing scrutiny as critics say she is not qualified for the job, and she also faces various allegations of deception, dishonesty and/or academic fraud.”¹⁸⁴
- ❖ Adding to this nomination’s controversy is footage recently published by the American Accountability Foundation of Cook claiming in 2020 that President Trump was “definitely a fascist” who put the U.S on a path to genocide,¹⁸⁵ and also footage of Cook proudly boosting that she bailed out rioters who burned down American cities in the 2020.¹⁸⁶



ISSUES TO WATCH

- ❖ The success of Cook’s nomination is far from certain. Watch to see if the U.S. Senate confirms her to a key post affecting the nation’s monetary system.

¹⁸¹ Michigan State University press release, *MSU Economist Lisa Cook Named to Biden Transition Team*, Nov. 11, 2020, <https://msutoday.msu.edu/news/2020/Cook-Biden-Transition-Team>.

¹⁸² Chris Brunet, *Biden’s Fed Nominee Lisa Cook Criticized for Being Unqualified, Embellishing Resume*, Daily Caller, Jan. 20, 2022, <https://dailycaller.com/2022/01/20/bidens-fed-nominee-lisa-cook-criticized-for-being-unqualified-embellishing-resume/>.

¹⁸³ Regenerative Crisis Response Committee, “Meet the Committee,” <https://regenerativecrisisresponsecommittee.org/>.

¹⁸⁴ Chris Brunet, *Biden’s Fed Nominee Lisa Cook Criticized for Being Unqualified, Embellishing Resume*, Daily Caller, Jan. 20, 2022, <https://dailycaller.com/2022/01/20/bidens-fed-nominee-lisa-cook-criticized-for-being-unqualified-embellishing-resume/>.

¹⁸⁵ American Accountability Foundation Twitter, @bidennoms, Jan. 20, 2022, <https://twitter.com/bidennoms/status/1484301296958341120?s=20>.

¹⁸⁶ Ibid.

- ❖ If confirmed, onlookers will be watching to see if Cook works to turn the Fed into a social engineering project. For example, Economist John Cochrane analyzes Cook’s qualifications, observing that, “Lisa Cook is superbly qualified, by written word, experience, and connections—if the job is to bring the Administration and progressive supporters’ racial policies to the Fed. That might mean requiring DEI or ESG practices at banks, or to companies that banks lend to, directing credit to some areas or by race, and strengthening the DEI initiatives and race based hiring and promotion practices within the Fed.”¹⁸⁷

Biden's woke Federal Reserve nominees: Economist married to a Democrat who wants to choke off oil and gas lending, Obama-era official who has written about the economics of lynching and professor who is expert on economics of poverty

*Source: The Daily Mail,
<https://www.dailymail.co.uk/news/article-10401311/Meet-Bidens-woke-Fed-nominees.html>*

¹⁸⁷ John Cochrane, *Fed Nominees*, The Grumpy Economist, Jan. 18, 2022, <https://johnhcochrane.blogspot.com/2022/01/fed-nominees.html>.

NEERA TANDEN

BACKGROUND

- ❖ President Biden nominated Neera Tanden to be his first Director of the Office of Management and Budget (OMB), a federal agency that develops and executes the nation's budget, coordinates and reviews federal regulations, and carries out other key management activities.
- ❖ Tanden is a consistent figure in recent Democratic administrations. Tanden served in the Clinton Administration, as Senior Policy Advisor to the First Lady & Associate Director for Domestic Policy (November 1997—July 1999).¹⁸⁸ Tanden was President Obama's Domestic Policy Director during his general election campaign (June 2008—November 2008), and later served as a member of his transition team (November 2008—January 2009). Tanden then served as a Senior Advisor to HHS Secretary Kathleen Sebelius during the Obama Administration (January 2009—February 2010).
- ❖ President Biden's choice in Tanden to lead OMB was received with controversy given her record of making disparaging comments about lawmakers.¹⁸⁹ She referred to former Senate Majority Leader Mitch McConnell as “Moscow Mitch” (implying he was working on behalf of Russia), and called Senator Susan Collins and then-Sen. Jeff Flake “criminally ignorant.”¹⁹⁰ During her confirmation process, Tanden was asked to answer why she deleted more than 1,000 negative tweets upon being formally nominated.¹⁹¹ On March 3, 2021, Tanden became the first nomination to be withdrawn by the Biden Administration.¹⁹²
- ❖ Despite concerns about her fitness to serve, President Biden stated that he “remains committed” to finding a position in his administration that does not require Senate



¹⁸⁸ Senate Budget Committee, Nominee Questionnaire, February 2021.

¹⁸⁹ Sen. Joe Manchin (D-WV) opposed Tanden's nomination, stating, “I believe her overtly partisan statements will have a toxic and detrimental impact on the important working relationship between members of Congress and the next director of the Office of Management and Budget.” Emily Cochrane, *Neera Tanden, Biden's Budget Nominee, Faces Challenge to Confirmation*, The New York Times, Feb. 19, 2021 (updated Feb. 25, 2021), <https://www.nytimes.com/2021/02/19/us/politics/neera-tanden-confirmation-challenge.html>. See also, Jenima McEvoy, *Romney and Collins to Oppose Neera Tanden Nomination, Narrowing Chances of Biden's Budget Pick*, Forbes, Feb. 22, 2021, <https://www.forbes.com/sites/jemimamcevoy/2021/02/22/romney-and-collins-to-oppose-neera-tanden-nomination-narrowing-chances-of-bidens-budget-pick/?sh=6159554b4df6>.

¹⁹⁰ Hannah Grossman, Kelsey Koberg, *How the Mainstream Media Backed Biden's Controversial Nominees*, Fox News, <https://www.foxnews.com/media/mainstream-media-biden-controversial-nominees>.

¹⁹¹ Emily Cochrane, *Neera Tanden, Biden's Budget Nominee, Faces Challenge to Confirmation*, The New York Times, Feb. 19, 2021 (updated Feb. 25, 2021), <https://www.nytimes.com/2021/02/19/us/politics/neera-tanden-confirmation-challenge.html>.

¹⁹² Press release from the office of Senator Joe Manchin, *Manchin Opposes OMB Director Neera Tanden*, Feb. 19, 2021, <https://www.manchin.senate.gov/newsroom/press-releases/manchin-opposes-omb-director-nominee-neera-tanden>.

confirmation.¹⁹³ In May 2021, he appointed her as a Senior Advisor within the White House.¹⁹⁴ Just a few months later, he promoted her to a second role—

White House Staff Secretary, “putting her in the nerve center of the building charged with overseeing the paper flow for President Biden.”¹⁹⁵

 Politico

Neera Tanden is back. Could she be more powerful?

- ❖ As the President’s Staff Secretary, she serves behind the scenes with various interest groups to build support for President Biden’s agenda, and while the role is “not as flashy,” press reports note that “Tanden may have just stepped into a more quietly powerful position: entering President Joe Biden’s inner sanctum and avoiding the scrutiny from her detractors that would have come with a more public-facing role.”¹⁹⁶

ISSUES TO WATCH

- ❖ In her current dual role, Tanden will be at the center of driving Biden’s overall agenda, which is to-date getting poor reviews. Results from a *CNBC/Change Research* find that 60 percent of respondents disapprove of President Biden’s handling of the economy one year into office.¹⁹⁷ On personal economic issues, 72 percent disapproved of his handling of the price of everyday goods, while 66 percent disapprove of his efforts to help their wallets.¹⁹⁸
- ❖ Tanden was considered a “key architect” of the Affordable Care Act (ACA)¹⁹⁹ and she is expected to continue to drive health care policy from the White House.
- ❖ In her role as President of the liberal Center for American Progress, Tanden has been said to have champion for climate action.²⁰⁰ Tanden has been reported to be part of a brain trust in the Administration that is working to insert a climate focus into numerous areas, through the development of financial regulations.²⁰¹

¹⁹³ John Wagner, *Biden Remains Committed to Finding Neera Tanden an Administration job, Psaki says*, The Washington Post, April 23, 2021, <https://www.washingtonpost.com/politics/2021/04/23/joe-biden-live-updates/>.

¹⁹⁴ Tyler Pager, *Biden Hires Neera Tanden into the White House*, The Washington Post, May 14, 2021, https://www.washingtonpost.com/politics/neera-tanden-biden/2021/05/14/21928e88-b4f2-11eb-9059-d8176b9e3798_story.html.

¹⁹⁵ Michael Scherer, *Neera Tanden is Named as the Next White House Staff Secretary for President Biden*, The Washington Post, Oct. 22, 2021, https://www.washingtonpost.com/politics/neera-tanden-white-house/2021/10/22/252c0b70-32cc-11ec-93e2-dba2c2c11851_story.html.

¹⁹⁶ Natasha Korecki and Anita Kumar, *Neera Tanden is back. Could she be more powerful?* Politico. May 28, 2021, <https://www.politico.com/news/2021/05/28/neera-tanden-white-house-biden-491304>.

¹⁹⁷ Thomas Franck, *Biden disapproval hits new high as voters give him bad grades on economy, new CNBC/Change poll says*, CNBC, Jan. 4, 2022, <https://www.cnbc.com/2022/01/04/biden-disapproval-rating-high-voters-blame-him-on-economy-cnbc-poll.html>.

¹⁹⁸ *Ibid.*

¹⁹⁹ Russell Berman, *The Clinton Transition Team Takes Shape*, The Atlantic, Aug. 16, 2016, <https://www.theatlantic.com/politics/archive/2016/08/the-clinton-transition-team-takes-shape/496034/>

²⁰⁰ Environmental Defense Fund press release, *Economic Team is Further Evidence Biden Wants Bold Climate Action, Strong Economy*, Dec. 1, 2020, <https://www.edf.org/media/economic-team-further-evidence-biden-wants-bold-climate-action-strong-economy>.

²⁰¹ Jim Tankersley and Lisa Friedman, *For Biden’s Economic Team, an Early Focus on Climate*, The New York Times, Dec. 11, 2020, <https://www.nytimes.com/2020/12/11/business/biden-global-warming-economic-team.html>. See also, Environmental Defense Fund press release, *Economic Team is Further Evidence Biden Wants Bold Climate Action, Strong Economy*, Dec. 1, 2020, <https://www.edf.org/media/economic-team-further-evidence-biden-wants-bold-climate-action-strong-economy>. See also,

XAVIER BECERRA

BACKGROUND

- ❖ As Secretary of the Department of Health and Human Services (HHS), Xavier Becerra is the primary advisor to the President on health care matters, wielding power over the health and well-being of all citizens across the country.
- ❖ Prior to becoming HHS Secretary, Becerra served as the Attorney General of California. Becerra also served in the U.S. House of Representatives, during which his tenure was largely characterized by his support for far-left policies, including pro-choice legislation and Medicare for All.
- ❖ In 2001, as a Member of Congress, Becerra became enmeshed in a clemency scandal when President Bill Clinton granted the early release of a convicted cocaine trafficker. Becerra, as well as current DHS Secretary Mayorkas, reached out to President Clinton about the sentence of Carlos Vignali Jr., whose father, Horacio, was a major Democratic donor in California. Carlos Vignali was convicted in 1994 of involvement in a drug ring that shipped hundreds pounds of cocaine from Los Angeles to Minnesota, where it was converted to crack and sold on the streets. President Clinton commuted Vignali's sentence on his last day in office in 2001.²⁰² Horacio Vignali, advocated for the release of his son, donating \$11,000 to Becerra's political action committee, as well as nearly \$6,000 to Becerra's campaigns for Congress and his unsuccessful 2001 Los Angeles mayoral bid.²⁰³
- ❖ A lifelong politician with no prior experience in health care, many were surprised when President Biden nominated Xavier Becerra as Secretary of HHS.²⁰⁴ A year into the Administration, it appears Becerra is taking a "backseat" with regards to the nation's response to COVID-19, allowing coronavirus coordinator Jeff Zients and Surgeon General Vivek Murthy to take the reins with key aspects of the pandemic response.²⁰⁵
- ❖ Becerra is said to be worth \$7 million, with a federal pension worth more than \$750,000.²⁰⁶



Indian-American Policy Expert Neera Tanden Appointed White House Senior Adviser, The Economic Times, May 15, 2021, <https://economictimes.indiatimes.com/nri/migrate/indian-american-policy-expert-neera-tanden-appointed-white-house-senior-adviser/articleshow/82652392.cms?from=mdr>.

²⁰² Rosalind S. Helderman and Tom Hamburger, *Two Biden Cabinet picks played role in Clinton-era commutation that drew complaints of political favoritism*, The Washington Post, Dec. 8, 2020, https://www.washingtonpost.com/politics/biden-cabinet-clemency/2020/12/08/7abe4a0c-38b4-11eb-bc68-96af0daae728_story.html.

²⁰³ Ibid.

²⁰⁴ McFall, Caitlin. "Xavier Becerra: What to know about Biden's HHS secretary pick." *Fox News*, 22 Jan. 2020, <https://www.foxnews.com/politics/xavier-becerra-what-to-know-about-bidens-hhs-secretary-pick>.

²⁰⁵ Adam Cancryn, *Becerra Takes a Back Seat While Others Steer Covid Response*, Politico, Sept. 21, 2021, <https://www.politico.com/news/2021/09/21/becerra-covid-response-hhs-513270>.

²⁰⁶ Forbes, *The Net Worth of Joe Biden's Cabinet*, Jun. 29, 2021, <https://www.forbes.com/sites/michelatindera/2021/06/29/the-net-worth-of-joe-bidens-cabinet/?sh=2414550d7749>.

PAST ROLES

- ❖ Becerra has a long record of promoting Democrats' liberal agenda before he assumed his role as HHS Secretary. He served in Congress as a House Representative for various California Districts from 1993 to 2017. In Congress, Becerra was a noted progressive, and later, a crusader for President Obama's agenda. He pushed far-left policies on immigration, reforms to criminal justice, and even helped draft the Affordable Care Act.²⁰⁷
- ❖ Becerra was later appointed to replace Kamala Harris as the Attorney General of California. He litigated not only against the Trump administration but also against pro-life states like Mississippi. In this capacity, he cost the state over \$40 million suing the Trump Administration more than 100 times, defending DACA, excessive environmental regulations, reckless abortion laws, and the Affordable Care Act.²⁰⁸
- ❖ In 1997, Becerra paid a personal visit to Communist Cuban Dictator Fidel Castro and neglected to address free and fair elections in Cuba. His visit stirred contempt within his party, leading to the resignation of several members of the House Hispanic caucus.²⁰⁹
- ❖ Becerra is well known for using his position as Attorney General of California to persecute pro-life and religious groups. Becerra weaponized federal and state healthcare systems to bring lawsuits against religious groups practicing their sincerely held beliefs, targeted pro-life pregnancy centers, and prosecuted whistleblowers for exposing Planned Parenthood's involvement in organ harvesting.²¹⁰
- ❖ While serving in the House of Representatives, Becerra supported countless radical abortion policies pushed by the Obama Administration. Becerra voted against funding a Congressional investigation into Planned Parenthood fetal organ trafficking, the *Child Interstate Abortion Notification Act*, *Unborn Victims of Violence Act*, and the *Partial-Birth Abortion Ban Act*, among many other pieces of life-saving legislation.²¹¹

²⁰⁷ Office of the Historian. "BECERRA, Xavier." *History, Art & Archives: United States House of Representatives*. <https://history.house.gov/People/Detail/9147>.

²⁰⁸ Hubler, Shawn, and Stolberg, Sheryl Gay, *Xavier Becerra, H.H.S. Pick, Was California's Anti-Trump Attack Dog*, The New York Times, March 18, 2021, <https://www.nytimes.com/2020/12/08/us/xavier-becerra-hhs.html>.
Lyons, Byrhonda. "California's bill for fighting Trump in court? \$41 million so far." *Cal Matters*, 22 January 2021, <https://calmatters.org/justice/2021/01/california-cost-trump-lawsuits/>.

²⁰⁹ Kaminsky, Gabe, *Xavier Becerra Met With Cuban Dictator Fidel Castro In 1997 And Refused To Call For Free Elections*, The Federalist, Feb. 24, 2021, <https://thefederalist.com/2021/02/24/xavier-becerra-met-with-cuban-dictator-fidel-castro-in-1997-and-refused-to-call-for-free-elections/>.

²¹⁰ Mancini, Jeanne, *Becerra Would Be a Radical Pro-Abortion Warrior at HHS*, National Review, Dec. 10, 2020, <https://www.nationalreview.com/2020/12/becerra-would-be-a-radical-pro-abortion-warrior-at-hhs/>.

National Institute of Family and Life Advocates, DBA NIFLA, et al. v. Becerra, Attorney General of California, et. al, No. 16-1140 (October Term, 2017), https://www.supremecourt.gov/opinions/17pdf/16-1140_5368.pdf.

Rich Lowry, *What Kind of Bully Harasses Nuns*, National Review, Feb. 22, 2021,

<https://www.nationalreview.com/2021/02/what-kind-of-bully-harasses-nuns/>.

Internet Archive. "9th Circuit Court of Appeals State of California v. Little Sisters of the..." *CSPAN*, 6 Nov. 2018,

https://archive.org/details/CSPAN3_20181106_131100_9th_Circuit_Court_of_Appeals_State_of_California_v._Little_Sisters_of_the.../start/0/end/60.

²¹¹ Office of the Clerk, U.S. House of Representatives. "Roll Call 31 Bill Number H.R. 1997." 26 Feb. 2004,

<https://clerk.house.gov/Votes/200431>. Office of the Clerk, U.S. House of Representatives. "Roll Call 144 Bill Number H.R.

748." 27 Apr. 2005, <https://clerk.house.gov/Votes/2005144>. Office of the Clerk, U.S. House of Representatives. "Roll Call 595

ISSUES TO WATCH

HEALTH CARE Becerra takes a back seat while others steer Covid response

The nation's top health official has seldom been the one giving orders.

- ❖ Becerra was confirmed to run HHS, but appears reluctant to lead. As reported by *Politico*, “But when Biden’s senior health officials gathered one Sunday in August to make the high-stakes decision that all adults should get Covid-19 booster shots, Becerra wasn’t included on the call. ... The episode, described by two administration officials, was emblematic of Becerra’s first six months atop the Department of Health and Human Services. During a period dominated by difficult choices and intense debates over the direction of the pandemic response, the former lawmaker and California attorney general has ceded much of the authority to the White House and government scientists—and seldom been the one giving orders.”²¹²
- ❖ With Governor Gavin Newsome, then Attorney General Becerra established and enforced strict lock down procedures during the COVID-19 pandemic.²¹³ As COVID variants continue to emerge, Americans should watch for Becerra’s efforts to establish inflexible, one-size-fits-all protocols.
- ❖ Becerra has also taken controversial steps to address the opioid crisis. Becerra’s HHS has recently announced a budget of \$11.2 billion (a 54 percent increase from last year’s budget) to expand substance use prevention, treatment, harm reduction, and recovery support services. Becerra has stated on behalf of his administration, “We are willing to go places where our opinions and our tendencies have not allowed us to go [before],” suggesting an openness to supporting controversial measures like safe consumption sites. These are sites where people use illegal drugs that are overseen by medical professionals in case of overdose.²¹⁴
- ❖ In March of 2020, Becerra asked the U.S. Food and Drug Administration (FDA) to weaken the safety regulations assigned to mifepristone, a chemical abortion drug. Recognizing that the FDA is an agency within HHS, it is not difficult to see that the removal of mifepristone’s safety regulations and abortion on-demand is a Becerra priority. Concerned voters should carefully watch which drugs are being approved regardless of scientific research indicating harmfulness, and how these approvals align with the Biden-Harris administration and abortion lobby interests.²¹⁵

Bill Number H. Res. 933.” 1 Dec. 2016, <https://clerk.house.gov/Votes/2016595>. Office of the Clerk, U.S. House of Representatives. “Roll Call 242 Bill Number H.R. 760. 4 Jun. 2003, <https://clerk.house.gov/Votes/2003242>.

²¹² Adam Cancryn, *Becerra Takes a Back Seat While Others Steer Covid Response*, *Politico*, Sept. 21, 2021, <https://www.politico.com/news/2021/09/21/becerra-covid-response-hhs-513270>.

²¹³ De Lea, Brittany. *HHS nominee Xavier Becerra oversaw Newsom’s COVID lockdowns struck down by courts*, *Fox News*, Feb. 8, 2021, <https://www.foxnews.com/politics/hhs-nominee-xavier-becerra-newsoms-covid-lockdowns>.

²¹⁴ HHS.gov, The Department of Health and Human Service, *Overdose Prevention Strategy*. <https://www.hhs.gov/overdose-prevention>. See also, Brian Mann, *Overdose deaths are so high that the Biden team is embracing ideas once seen as taboo*, *NPR*, 27 Oct. 2021, <https://www.npr.org/2021/10/27/1049245787/biden-hhs-tackle-drug-overdose-deaths>.

²¹⁵ Tessa Longbons, *The Impact of Chemical Abortion by Mail*, *Society of St. Sebastian*, 20 May 2021, <https://www.societyofstsebastian.org/abort-by-mail-longbons>.

- ❖ Americans may expect Secretary Becerra’s continued hostility toward pro-life interests, religious groups, and congressional authority. Since his confirmation to lead HHS, Becerra and the Biden Administration have bypassed longstanding congressional prohibitions on federal funding of abortion to use Title X funds to promote abortion, dismissed a federal lawsuit against the University of Vermont Medical Center for violating federal conscientious-protection laws, allowed the National Institutes of Health to offer grants to the University of Pittsburgh to study fetal tissue in ways noncompliant with federal law, and revoked HHS’s Office for Civil Rights ability to enforce violations of the First Amendment and the *Religious Freedom Restoration Act*, among other challenges to life interests and separation of powers.²¹⁶

²¹⁶ Becerra, Xavier. Xavier Becerra Letter to Secretary Alex M. Azar and Commissioner Stephen Hahn. 30 Mar. 2020, <https://www.oag.ca.gov/system/files/attachments/press-docs/FINAL%20AG%20Letter%20HHS%20Medication%20Abortion%202020%20%289%29%5B1%5D.pdf>
HHS.Gov. “HHS Takes Action to Prevent Discrimination and Strengthen Civil Rights.” 18 Nov. 2021, <https://www.hhs.gov/about/news/2021/11/18/hhs-takes-action-to-prevent-discrimination-and-strengthen-civil-rights.html>.
HHS.Gov. “HHS Issues Final Regulation Aimed at Ensuring Access to Equitable Affordable, Client-Centered, Quality Family Planning Services.” 4 Oct. 2021, <https://www.hhs.gov/about/news/2021/10/04/hhs-issues-final-regulation-aimed-at-ensuring-access-to-equitable-affordable-client-centered-quality-family-planning-services.html>.
Severino, Roger. “Becerra and Biden Betray Medical Professionals Forced to Assist in Abortions.” *National Review*, 3 Aug. 2021, <https://www.nationalreview.com/corner/becerra-and-biden-betray-medical-professionals-being-forced-to-assist-in-abortions/>.

VIVEK MURTHY

BACKGROUND

- ❖ Dr. Vivek Murthy was nominated by President Biden on December 3, 2020 to serve as the Surgeon General, and confirmed by the Senate on March 23, 2021.²¹⁷ The Surgeon General serves as the principal communicator of health priorities of the country. Murthy served in the same role under President Barack Obama (December 2014—April 2017).
- ❖ Murthy came into the Biden Administration as co-chair of the COVID-19 Advisory Board (November 2020 to January 2021), an entity that was subsequently replaced by the White House COVID-19 Response Team.²¹⁸
- ❖ In 2020, prior to the start of the Biden Administration, Murthy was paid over \$2 million for coronavirus-related consulting and speeches, including \$5,000 from Planned Parenthood.²¹⁹
- ❖ Murthy’s associations following his time as President Obama’s Surgeon General have stirred concern. As reported by *The Hill*, “Following his financial disclosures, public health actors and watchdogs pointed out that Murthy could face an obstacle by having the most financial entanglements of any surgeon general pick in recent history.”²²⁰



PAST EXECUTIVE BRANCH ROLE

- ❖ Murthy co-founded Doctors for Obama, a group that worked to elect Barack Obama as president (the group was later renamed Doctors for America and was also known as Docs Against Glocks).²²¹ In his capacity as President of Doctors for America, Murthy supported “a wide array of gun control policies.”²²² At the time, Murthy’s group also urged Congress to institute mandatory gun licensing “for anyone purchasing guns and ammunition—including mandatory firearm safety training and testing.”²²³ Under this proposal, further regulations

²¹⁷ U.S. Senate website, Roll Call Vote #131,

https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=117&session=1&vote=00131.

²¹⁸ Kate Duffy, *Biden Reveals the 13 members of his covid-19 advisory board, cochaired by a former surgeon general, a former FDA commissioner, and a Yale professor*, Business Insider, Nov. 9, 2021, <https://www.businessinsider.com/biden-covid-19-advisory-board-coronavirus-panel-vivek-murthy-2020-11>

²¹⁹ Celine Castronuovo, *Biden pick for surgeon general made over \$2M on COVID-19 consultation and speaking events: report*, The Hill, Feb. 2, 2021, <https://thehill.com/homenews/administration/539738-biden-pick-for-surgeon-general-made-over-2m-on-covid-19-consultations>.

²²⁰ Ibid.

²²¹ Sheryl Gay Stolberg, *The Senate Confirms Dr. Vivek Murthy to be the Surgeon General—again*, March 23, 2021 (updated Sept. 12, 2021), <https://www.nytimes.com/2021/03/23/us/politics/vivek-murthy-surgeon-general.html>.

²²² NRA-ILA, *Anti-Gun Obama Nominee—Vivek Murthy Clears First Hurdle in Confirmation for U.S. Surgeon General*, Feb. 28, 2014, <https://www.nraaila.org/articles/20140228/anti-gun-obama-nominee-vivek-murthy-clears-first-hurdle-in-confirmation-for-us-surgeon-general>.

²²³ Ibid.

would place “limits on the purchase of ammunition,” and establish a “mandatory waiting period of at least 48 hours.”²²⁴

- ❖ In 2011, Murthy was appointed to Obama’s Presidential Advisory Council on Prevention, Health Promotion, and Integrative and Public Health, and became co-chair of Obama’s health care advisory committee during his re-election campaign in 2012.²²⁵ Murthy was nominated to become the 19th Surgeon General in December 2013 and confirmed in December 2014.²²⁶

The Senate confirms Dr. Vivek Murthy to be the surgeon general — again.

- ❖ Prior to his nomination, in October 2012, Murthy said on Twitter, “Tired of politicians playing politics w/ guns, putting lives at risk b/c they’re scared of NRA. Guns are a health care issue.”²²⁷ In 2013 the group he founded, Doctors for America, petitioned Congress to “immediately” pass a ban on popular semi-automatic firearms and their magazines, and also signed on in support of Senator Dianne Feinstein’s *Assault Weapons Ban of 2013*.²²⁸
- ❖ After his confirmation, Murthy generated controversy for characterizing gun violence as a “public health crisis.”²²⁹ In 2016, he doubled down on his comments about guns stating, “I wouldn’t say that I’ve avoided it. What’s interesting to me is I had a series of issues I wanted to focus on and gun violence was an important issue I wanted to speak upon.”²³⁰

ISSUES TO WATCH

- ❖ Some argue that the Surgeon General role is an antiquated position that has largely had its responsibilities gutted, and that the “national nanny” position should be eliminated.²³¹ Nevertheless, it appears that Murthy is making the most of the role as HHS Secretary Becerra reportedly takes a “backseat” related to leading the nation’s response to COVID-19, allowing Murthy and others to take the reins with key aspects of the pandemic response, including booster strategies.²³² Murthy has demonstrated support of one-size-fits all government mandates, even if they are unconstitutional. For example, Murthy recently lamented the

²²⁴ Ibid.

²²⁵ Alec Stone, *Vivek Murthy Confirmed as U.S. Surgeon General, Again*, ONS Voice, May 20, 2021, <https://voice.ons.org/advocacy/vivek-murthy-confirmed-as-us-surgeon-general-again>.

²²⁶ Ed O’Keefe, Brady Dennis, *Surgeon General Nominee Vivek Murthy, Opposed by Gun Lobby, Confirmed*, The Washington Post, Dec. 15, 2014, <https://www.washingtonpost.com/news/post-politics/wp/2014/12/15/surgeon-general-nominee-vivek-murthy-opposed-by-gun-lobby-confirmed/>.

²²⁷ Tweet by @Vivek_Murthy, Oct. 16, 2012, https://twitter.com/vivek_murthy/status/258393687871074304.

²²⁸ See NRA-ILA.

²²⁹ Becker’s Hospital Review, *Dr. Vivek Murthy Confirmed as Surgeon General*, Dec. 16, 2014, <https://www.beckershospitalreview.com/legal-regulatory-issues/dr-vivek-murthy-confirmed-as-surgeon-general.html>.

²³⁰ <https://www.politico.com/story/2016/11/pulse-check-the-surgeon-generals-prescriptions-for-americas-health-230703>.

²³¹ Dan Diamond, *Pulse Check: The Surgeon General isn’t Scared to speak out on guns*, Politico, Nov. 3, 2016, Daniel J. Mitchell, *Get Rid of the Surgeon General’s Office*, Cato, July 18, 2007, <https://www.cato.org/blog/get-rid-surgeon-generals-office>.

²³² Adam Cancryn, *Becerra Takes a Back Seat While Others Steer Covid Response*, Politico, Sept. 21, 2021, <https://www.politico.com/news/2021/09/21/becerra-covid-response-hhs-513270>.

Supreme Court’s decision to halt a nationwide vaccine mandate on private businesses.²³³ Murthy has also used the power of his position to press Big Tech to bend to his demands.²³⁴

- ❖ Following his first tour of duty as Surgeon General, Murthy promoted what he perceives to be a “loneliness epidemic” that he argued should be treated as a public health crisis.²³⁵ Congressional Democrats have included \$250 million in drafts of the House of Representative and President Biden’s *Build Back Better* reckless tax and spending bill to provide grant funding to combat loneliness. While the Senate version dropped the provision, watch to see if the government prioritizes scarce resources in support of loneliness grants.²³⁶



- ❖ Keep an eye out for partnership from Becerra and Murthy that affect gun rights. Gun control advocates recently told media that, “America is facing down two intertwined crises right now—COVID and gun violence—and Attorney General Becerra and Dr. Murthy understand that we need to tackle both at the same time.”²³⁷
- ❖ In December 2021, Murthy issued an *Advisory on Youth Mental Health Crisis Further Exposed by COVID-19 Pandemic*.²³⁸ The report makes frequent references to gun violence as a contributing factor to mental health challenges among the nation’s youth, and cites a study, entitled, “Guns in child’s home raise risk of suicide, unintentional death.”²³⁹ Given the advocacy of Murthy’s former organization, Doctors for America, encouraging doctors to ask patients, including minors, whether they have legal guns in the home to enable counseling if guns are present, keep a close eye on Murthy’s next steps.²⁴⁰

²³³ Oren Oppenheim, *SCOTUS Blocking of Vaccine Mandate ‘a setback for public health’: Vivek Murthy*, ABC News, Jan. 16, 2022, <https://abcnews.go.com/US/scotus-blocking-vaccine-mandate-setback-public-health-vivek/story?id=82284158>.

²³⁴ Ronn Blitzer, *Surgeon General: Facebook’s efforts to combat COVID misinformation ‘not enough’*, CNN, July 18, 2021, <https://www.foxnews.com/politics/surgeon-general-facebook-efforts-covid-misinformation-not-enough>.

²³⁵ Jena McGregor, *This Former Surgeon General Says there’s a ‘loneliness epidemic’ and work is partly to blame*, The Washington Post, Oct. 4, 2017, <https://www.washingtonpost.com/news/on-leadership/wp/2017/10/04/this-former-surgeon-general-says-theres-a-loneliness-epidemic-and-work-is-partly-to-blame/>.

²³⁶ Risa Wilkerson and Edward Garcia, *There’s a social isolation epidemic. But it can be fixed*. Changing American opinion piece in The Hill, Jan. 14, 2022, <https://thehill.com/changing-america/opinion/589801-theres-a-social-isolation-epidemic-but-it-can-be-fixed>.

²³⁷ David Sherfinski, *Vivek Murthy, Xavier Becerra Signal Gun Control Path for Joe Biden*, The Washington Times, Dec. 7, 2020, <https://www.washingtontimes.com/news/2020/dec/7/vivek-murthy-xavier-becerra-signal-gun-control-pat/>.

²³⁸ HHS website, *U.S. Surgeon General Issues Advisory on Youth Mental Health Crisis Further Exposed by COVID-19 Pandemic*, Dec. 7, 2021, <https://www.hhs.gov/about/news/2021/12/07/us-surgeon-general-issues-advisory-on-youth-mental-health-crisis-further-exposed-by-covid-19-pandemic.html>.

²³⁹ Ibid.

²⁴⁰ Emily Miller, *Miller: Obama’s Surgeon General Nominee Dr. Vivek Murthy is a radical gun grabber*, The Washington Times, Feb. 10, 2014, <https://www.washingtontimes.com/news/2014/feb/10/obamas-surgeon-general-nominee-dr-vivek-murthy-rad/>.

CHIQUITA BROOKS-LASURE

BACKGROUND

- ❖ Administrator Brooks-LaSure was nominated by President Biden on February 19, 2021 to serve as Administrator of the Centers for Medicare and Medicaid Services (CMS). Brooks-LaSure also served on Biden’s HHS agency transition review team.²⁴¹
- ❖ Prior to being nominated, Chiquita Brooks-LaSure spent almost two decades in Washington.²⁴² During the Obama Administration, Brooks-LaSure “helped lead [HHS] work to carry out the ACA.”²⁴³ Brooks LaSure specifically served as a Director of Coverage Policy at HHS, and as Deputy Director of Policy and Regulation at CMS.
- ❖ Prior to joining the Obama Administration, she served as a Professional Staffer member to the House Ways and Means Committee Democrats. It has been reported that Brooks-LaSure overlapped in her time working on the House Ways and Means Committee with Biden’s HHS secretary, Xavier Becerra.²⁴⁴
- ❖ In 2021, Brooks-LaSure was confirmed by a 55-44 vote margin.²⁴⁵ At the helm of CMS, the largest agency within HHS, Brooks-LaSure is responsible for administering Medicare and Medicaid, the Children’s Health Insurance Plan (CHIP), and has influence over the entire health care system.



PAST EXECUTIVE BRANCH ROLE

- ❖ On the Hill, Brooks-LaSure worked closely with the Obama Administration to pass the Affordable Care Act, commonly known as Obamacare. Original co-sponsor of the ACA and current Ways and Means Chairman Richard Neal of Massachusetts praised Brooks-LaSure as a “tremendous asset” in “helping to guide the Affordable Care Act through implementation...”²⁴⁶

²⁴¹ Gabriel Perna, *Chiquita Brooks-LaSure: 5 Things to Know about Biden’s CMS Pick*, Health Evolution, Feb. 23, 2021, <https://www.healthevolution.com/insider/chiquita-brooks-lasure-5-things-to-know-about-bidens-cms-pick/>.

²⁴² Chiquita Brooks-LaSure LinkedIn profile, <https://www.linkedin.com/in/chiquita-brooks-lasure-05173995>.

²⁴³ Shira Stein, *Obamacare Veteran Brooks-LaSure Named to Lead Medicare Agency*, Bloomberg Law, Feb. 19, 2021, <https://news.bloomberglaw.com/health-law-and-business/obamacare-veteran-brooks-lasure-named-to-lead-medicare-agency>.

²⁴⁴ *Ibid.*

²⁴⁵ U.S. Senate website, Roll Call Vote 117th Congress, 1st Session, Vote Number 201, PN124, https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=117&session=1&vote=00201.

²⁴⁶ Press release from the Office of House Ways and Means Chairman Richard Neal, *Neal Praises Biden Nomination of Chiquita Brooks-LaSure to Head of the Centers for Medicare & Medicaid Services*, Feb. 19, 2021, <https://waysandmeans.house.gov/media-center/press-releases/neal-praises-biden-nomination-chiquita-brooks-lasure-head-centers>.

ISSUES TO WATCH

- ❖ Keep an eye on whether or not CMS continues to push onerous COVID-19 vaccines mandates that are currently being challenged in the courts. On December 28, 2021, January 14, 2022, and January 20, 2022, CMS issued three sets of compliance guidance on its health care worker mandate for three sets of states following the Supreme Court’s decision to uphold the mandate: 1) states already subject to the vaccine mandate, 2) states that were subject to the vaccine mandate following the Supreme Court’s decision, and 3): Texas.²⁴⁷ America is in the midst of a health care worker shortage and this mandate will further exacerbate Americans’ access to health care services.
- ❖ Brooks-LaSure promised in her testimony to the Committee on Finance that she would “make the programs overseen by CMS work better,” implement the “critical reforms in [December 2020’s] appropriations bills ... particularly the prohibition on surprise medical bills.”²⁴⁸ However, under Brooks-LaSure’s leadership implementation of the *No Surprises Act* has failed to conform to congressional intent, and the interim final rule adequately address surprise billing for the American people.²⁴⁹ Congress spent much of the 116th Congress debating various legislative proposals to address surprise billing, but the Administration deviated from the final congressional agreement in a manner that will give an unfair advantage to insurers.²⁵⁰
- ❖ As CMS Administrator, Brooks-LaSure has already helped roll back and nullify numerous Trump-era innovations and policies, including the community engagement requirement of Indiana’s Healthy Indiana Plan (HIP) Medicaid program.²⁵¹ This requirement was granted as a Section 1115 waiver by her agency in 2018, which allowed Indiana to innovate within its Medicaid program to best address the needs of Indiana’s Medicaid population. Worse still, Indiana was not alone in having its Section 1115 waiver pulled: 16 other states across the nation were affected by this erratic roll back set in motion by President Biden and Administrator Brooks-LaSure.

²⁴⁷ Alston & Bird, *CMS Issues Guidance After Supreme Court Greenlights CMS Health Care* Jan. 24, 2022, <https://www.jdsupra.com/legalnews/cms-issues-guidance-after-supreme-court-1813624/>.

²⁴⁸ Testimony before U.S. Senate Committee on Finance, Statement of Chiquita Brooks-LaSure, April 15, 2021, https://www.finance.senate.gov/imo/media/doc/Chiquita%20Brooks%20LaSure%20Opening%20Statement_WRITTEN%20FIN%20AL.pdf.

²⁴⁹ Consolidated Appropriations Act, 2021. *See also*, Letter from Senator Mike Braun, Indiana, to the Honorable Chiquita Brooks-LaSure concerning Docket ID No. RIN 0938-AU62; RIN 1210-AB00, Dec. 6, 2021 (on file with office; available upon request). *See also*, Letter from 26 U.S. Senators to Secretaries Becerra, Walsh, and Yellen concerning implementation of the *No Surprises Act*, Dec. 28, 2021 (on file with office; available upon request).

²⁵⁰ *See also*, Letter from Senator Mike Braun, Indiana, to the Honorable Chiquita Brooks-LaSure concerning Docket ID No. RIN 0938-AU62; RIN 1210-AB00, Dec. 6, 2021 (on file with office; available upon request).

²⁵¹ Letter from Senator Mike Braun, Indiana, to Sec. Becerra, July 1, 2021 (on file with office; available upon request).

ROBERT CALIFF

BACKGROUND

- ❖ In November 2021, President Biden nominated Dr. Robert Califf to serve a second tour of duty as the Administrator of the Food and Drug Administration (FDA), a key federal agency tasked with promoting the public health.²⁵² If confirmed, Califf would oversee an agency that regulates one-fourth of every dollar spent in the United States.²⁵³ He would wield broad regulatory power over aspects of public health affecting all Americans—everything from prescription drugs, to vaccines and medical technology, to food and tobacco products, and even cosmetics. He would also be the first FDA Commissioner to serve two tours of duty since the 1940s.²⁵⁴
- ❖ In January 2015, Califf was appointed Deputy FDA Commissioner for the Office of Medical Products and Tobacco—a role that is considered to be the number two role at the FDA.²⁵⁵ Califf later was nominated and confirmed by the U.S. Senate to serve as FDA Administrator (February 2016 to January 2017).
- ❖ President Biden’s decision to bring Califf back to the FDA ranks has stirred controversy given his past work at the FDA and his deep ties to drug companies.²⁵⁶ While some argue his past work experience provides important insight into how the industry functions, it has been reported that Califf’s income from the health industry “skyrocketed” following his time at the FDA.²⁵⁷ Since leaving the FDA following the Biden Administration, Califf has been paid \$2.7 million by Verily Life Sciences, the biomedical research organization operated by Google’s Alphabet Inc., and sits on the boards of two pharmaceutical companies, AmyriAD and Centessa Pharmaceuticals PLC.²⁵⁸ He also reported ties to 16 other research organizations and biotech companies.²⁵⁹ His close ties to industry, when coupled with a poor track record combatting opioid addiction, and a failure to help drive down drug prices, has



²⁵² White House press release, *Statement from President Joe Biden Announcing His Intention to Nominated Dr. Robert M. Califf for Commissioner of Food and Drugs*, Nov. 12, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/12/statement-from-president-joe-biden-announcing-his-intention-to-nominate-dr-robert-califf-for-commissioner-of-food-and-drugs/>.

²⁵³ Emily Kopp, *Biden Taps Califf as FDA Commissioner*, CQ-Roll Call, Nov. 12, 2021, https://www.nny360.com/news/biden-taps-califf-as-fda-commissioner/article_5218ca2c-8dde-5193-8cca-9881ac38035f.html.

²⁵⁴ Matthew Perone and Zeke Miller, *Biden Picks Ex-FDA Chief Robert Califf to Again Lead Agency*, U.S. News & World Report, Nov. 12, 2021, <https://www.usnews.com/news/health-news/articles/2021-11-12/biden-picks-former-fda-chief-califf-to-again-lead-agency>.

²⁵⁵ Ibid.

²⁵⁶ Alex Ruoff, Jeannie Baumann, and Celine Castronuovo, *Biden’s Drug Agency Nominee Returns With Deeper Industry Ties*, Bloomberg Government, Nov. 23, 2021, <https://about.bgov.com/news/bidens-drug-agency-nominee-returns-with-deeper-industry-ties/>.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

led to bipartisan opposition to Califf's re-nomination.²⁶⁰ In addition, Califf has proven not to be a friend to the unborn, as Califf directed the FDA to act directly against its statutory purpose and relax regulations on mail-order abortion pills (mifepristone).

PAST EXECUTIVE BRANCH ROLE

USA Today

Biden picks former FDA commissioner Robert Califf to lead agency again

- ❖ In 2016, Califf directed the FDA to act directly against its statutory purpose and relax regulations on abortion pills (mifepristone). This dangerous and deliberate dereliction of FDA responsibility, coupled with the FDA's decision in December 2021 to allow the distribution of abortion pills by mail without ever seeing a doctor in person, has not only resulted in deaths of unborn children, but has put so many women at risk of severe complications or death.²⁶¹
- ❖ While at FDA, Califf acknowledged the agency failed to do enough to deter opioid addiction, telling the *Associated Press*, "If addiction to opioids and misuse of opioids is an enemy, then we at the FDA—like every other part of society—underestimated the tenacity of the enemy."²⁶² Indeed, under his leadership, the FDA announced an unambitious and halfhearted plan for FDA to address the opioid epidemic. According to the *AMA Journal of Ethics*, in 2017, "the President's Commission on Combatting Drug Addiction and the Opioid Crisis found that the opioid crisis was caused in part by 'inadequate oversight by the Food and Drug Administration,' and the National Academy of Sciences (NAS) publicly called on the FDA to overhaul its opioid policies...Despite this mounting criticism, FDA policies for approving and labeling opioids remain largely unchanged."²⁶³ Examining FDA's actions in 2016 and 2017, one will notice an abundance of bureaucratic meetings and new opioid approvals, and a lack of hard action. Califf's FDA made only weak progress on its goals. For instance, HHS' Inspector General reviewed FDA's implementation and oversight of the Risk Evaluation and Mitigation Strategy (REMS) Program for certain opioid analgesics between 2011 and 2017,

²⁶⁰ On January 13, 2022, the Senate Committee approved Califf's nomination with bipartisan opposition (voting "nay" were Senators Sanders, Hassan, Cassidy, Braun, Marshall, Scott, Tuberville, Moran). See also, Press Release, Senator Maggie Hassan (D-NH), Senator Hassan Statement on Decision to Vote No on FDA Commissioner Nominee, Robert Califf, Jan. 11, 2022, <https://www.hassan.senate.gov/news/press-releases/senator-hassan-statement-on-decision-to-vote-no-on-fda-commissioner-nominee-robert-califf>. See also, Press Release, Senator Joe Manchin, *Manchin Opposes Nomination of Dr. Robert Califf for FDA Commissioner*, Nov. 12, 2021, <https://www.manchin.senate.gov/newsroom/press-releases/manchin-opposes-nomination-of-dr-robert-califf-for-fda-commissioner> <https://www.manchin.senate.gov/newsroom/press-releases/manchin-opposes-nomination-of-dr-robert-califf-for-fda-commissioner>. See also, Press Release, Senator Bernie Sanders, *Sanders Opposes Califf for FDA Commissioner*, Dec. 14, 2021, <https://www.sanders.senate.gov/press-releases/news-sanders-opposes-califf-for-fda-commissioner/>. See also, Press Release, Senator Ed Markey, *Senator Markey Outlines Opposition to FDA Commissioner Nominee Dr. Robert Califf, Calls for Reforms at FDA to Address Failures that Lead to, Worsened, the Opioid Epidemic*, Jan. 13, 2022, <https://www.markey.senate.gov/news/press-releases/senator-markey-outlines-opposition-to-fda-commissioner-nominee-dr-robert-califf-calls-for-reforms-at-fda-to-address-failures-that-lead-to-worsened-opioid-epidemic>.

²⁶¹ Charlotte Lozier Institute, *Analysis: FDA Decision Ignores Data on Complications, Puts Women at Risk*, Dec. 16, 2021, <https://lozierinstitute.org/analysis-fda-decision-ignores-data-on-complications-puts-women-at-risk/>. See also, Approval Letter MIFEPREX™ (mifepristone) Tablets (loc.gov), (NDA 20-687) Sept. 28, 2000, <http://webarchive.loc.gov/all/20011116012552/http%3A/www.fda.gov/cder/foi/appletter/2000/20687appltr.htm>.

²⁶² Matthew Perone and Zeke Miller, *Biden Picks Ex-FDA Chief Robert Califf to Again Lead Agency*, U.S. News & World Report, Nov. 12, 2021, <https://www.usnews.com/news/health-news/articles/2021-11-12/biden-picks-former-fda-chief-califf-to-again-lead-agency>.

²⁶³ Andrew Kolodny, MD, *How FDA Failures Contributed to the Opioid Crisis*, *AMA Journal of Ethics*, Aug. 2020, <https://journalofethics.ama-assn.org/article/how-fda-failures-contributed-opioid-crisis/2020-08#:~:text=not%20gone%20unnoticed,-,In%202017,-%2C%20the%20President%E2%80%99s%20Commission>.

and concluded that the REMS was an ineffective tool in addressing the opioid crisis, even though it was a target of reform for Califf. Regrettably, Califf took the backseat on opioids when he had the opportunity to be a fighter.²⁶⁴

- ❖ Under his leadership, the FDA announced, but only halfheartedly implemented, a plan for FDA to address the opioid epidemic.²⁶⁵ When comparing FDA's actions from 2016 and 2017 to the plan crafted by Califf, one will notice an abundance of bureaucratic meetings and new opioid approvals, and a lack of hard action. Indeed, Dr. Califf's FDA failed to meet most of its own goals, including: 1) Strengthening postmarket requirements for opioid manufacturers; 2) Updating the Risk Evaluation and Mitigation Strategy (REMS) Program; 3) Expanding access to abuse-deterrent formulations (ADFs) to discourage opioid abuse; and 4) Making naloxone more accessible to treat opioid overdose.²⁶⁶
- ❖ As Commissioner, Califf refused to testify before the Senate Committee on Homeland Security and Governmental Affairs on development of a bill known as *Right to Try* in Congress—legislation that sought to speed access to drugs for the terminally ill once they cleared a specific safety stage at the FDA. Senator Ron Johnson, then committee chairman, criticized Califf for refusing to testify and sending what he considered an inadequate substitute that was not prepared to answer Congress' questions.²⁶⁷ While he refused to testify before Congress, Califf did not shy away from publicly criticizing the *Right to Try* in 2018, after leaving the FDA.²⁶⁸ *Right to Try* would later become law in May 2018.²⁶⁹
- ❖ In 2016, while FDA Commissioner and following his post leading the FDA Office of Medical Products and Tobacco, the Obama White House intervened in FDA's finalization of the vaping rule to strike a provision that would have banned flavored e-cigarettes, which could have mitigated the youth vaping epidemic. Despite his position of authority, Califf claimed he “had no idea how the provision was deleted.”²⁷⁰

²⁶⁴ David Shotlander and Tiffany Jang, *A Look Back at Risk Evaluation and Mitigation Strategies at the Food and Drug Administration in 2020: Year in Review*, Food and Drug Law Institute, Winter 2020, <https://www.fdli.org/2020/12/a-look-back-at-risk-evaluation-and-mitigation-strategies-at-the-food-and-drug-administration-in-2020-year-in-review/#:~:text=guidance%20practices.%5B30%5D-.U.S.,-Department%20of%20Health>.

²⁶⁵ Robert M. Califf, Janet Woodcock, and Stephen Ostroff, *A Proactive Response to Prescription Opioid Abuse*, *The New England Journal of Medicine*, April 14, 2016, https://www.nejm.org/doi/full/10.1056/NEJMSr1601307?query=featured_home. See also, FDA press release, *Califf, FDA top officials, call for sweeping review of agency opioids policies*, Feb. 4, 2016, <https://www.fda.gov/news-events/press-announcements/califf-fda-top-officials-call-sweeping-review-agency-opioids-policies>.

²⁶⁶ FDA website, “Timeline of Selected FDA Activities and Significant Events Addressing Opioid Misuse and Abuse,” <https://www.fda.gov/drugs/information-drug-class/timeline-selected-fda-activities-and-significant-events-addressing-opioid-misuse-and-abuse>.

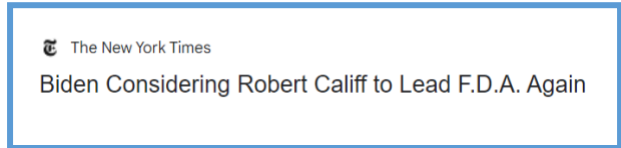
²⁶⁷ Ed Silverman, *Lawmakers Criticize FDA Head for Skipping Hearing on Right to Try Laws*, *Stat*, Sept. 21, 2016, <https://www.statnews.com/pharmalot/2016/09/21/fda-robert-califf-right-to-try/>.

²⁶⁸ Jesse Hellman, *Former FDA Head Speaks Out Against 'Right to Try'*, *The Hill*, March 19, 2018, <https://thehill.com/policy/healthcare/379123-former-fda-leaders-speak-out-against-right-to-try-bills>.

²⁶⁹ Allie Malloy, *Trump Signs 'Right to Try Act' aimed at helping terminally ill patients seek drug treatments*, *CNN*, May 30, 2018, <https://www.cnn.com/2018/05/30/politics/right-to-try-donald-trump/index.html>.

²⁷⁰ Katie Thomas and Sheila Kaplan, *E-cigarettes went unchecked in 10 years of inaction*, *The New York Times*, Oct. 14, 2019, <https://www.nytimes.com/2019/10/14/health/vaping-e-cigarettes-fda.html>.

- ❖ Califf fell short on modernizing efforts while leading the FDA, failing to create a data clearinghouse called the National Medical Evidence Generation Collaborative.²⁷¹ It has been summarized that, “One of his first initiatives as



FDA commissioner was creating a data clearinghouse called the National Medical Evidence Generation Collaborative, which, he thought, could help with everything from recruiting patients for clinical trials to detecting epidemics. Califf and a top deputy released a report outlining their vision for the collaborative, including various ideas on how to structure the organization and fund it but the idea never progressed past a concept paper.”²⁷²

ISSUES TO WATCH

- ❖ Califf’s confirmation in the Senate is anything but certain, as he faces bipartisan opposition.²⁷³ If confirmed, and given Califf’s refusal to testify before Congress in the past,²⁷⁴ the public should watch to see if Califf will testify when called upon by Congress.
- ❖ If confirmed, watch how Califf addresses the opioid epidemic—everything from what drugs are given new approval to the implementation of requirements for opioid manufacturers to present different types of data to demonstrate risk-to-benefit value.
- ❖ While e-cigarettes reduce the health risks associated with smoking, the agency in charge of the public health of the nation has responsibility to help Americans decrease their reliance on tobacco products through a clearly established regulatory framework that does not pick winners and losers, and that strives to keep all tobacco and nicotine out of the hands of our children—given Califf’s indifference in 2016, all eyes will be on how he manages tobacco regulation during his second tour of duty.
- ❖ Califf’s experience as FDA Commissioner led to more deaths of the unborn, but his decision to weaken safety protocols also endangered countless women. Safety policies are designed to protect women by requiring medical professionals to distribute the drugs in a manner that provides direction, and examines recipients for conditions that could lead to fatal complications and to deter abuse. The failure to uphold these safety precautions increases the likelihood that many women will experience traumatic and life threatening complications. Watch to see how Califf’s FDA reviews drugs with profound impacts on the life and safety.
- ❖ The terminally ill and their families will be watching to see if Califf modernizes clinical trials to promote the use of real-world evidence and diversity, and thereby support access to safe drugs and treatment to the terminally ill.²⁷⁵

²⁷¹ GeorgiaBio, *Biden Taps Califf to Helm FDA—an agency where he has plenty of unfinished business*, Nov. 12, 20221, <https://gabio.org/biden-taps-califf-to-helm-fda-an-agency-where-he-has-plenty-of-unfinished-business/>.

²⁷² Ibid.

²⁷³ David Lim, Adam Cancryn, Lauren Gardner, ‘*The White House Isn’t Supporting him’: Biden’s FDA Pick Left in Limbo*, Politico, Jan. 28, 2022, <https://www.politico.com/news/2022/01/28/white-house-biden-fda-pick-califf-00003053>.

²⁷⁴ Ed Silverman, *Lawmakers Criticize FDA Head for Skipping Hearing on Right to Try Laws*, Stat, Sept. 21, 2016, <https://www.statnews.com/pharmalot/2016/09/21/fda-robert-califf-right-to-try/>.

²⁷⁵ COTA, *Real-World Data Champion Robert Califf Nominated for FDA Commissioner*, Nov. 30. 2021.

DAVID WEIL

BACKGROUND

- ❖ The Department of Labor’s Wage and Hour Division (WHD) plays an essential role in the everyday life of Americans, enforcing federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act (FLSA). Regrettably, President Biden recycled the controversial WHD Administrator from the Obama Administration whose actions were hostile toward many small business entrepreneurs.
- ❖ Dr. David Weil was nominated by President Biden on June 3, 2021 to be WHD Administrator. Weil served in this role during the Obama Administration (April 2014 to January 2017), following a career almost exclusively in academia.²⁷⁶
- ❖ In August 2021, the Senate HELP Committee lacked the votes necessary to report favorably the nomination. No further action was taken by the full Senate and on December 21, 2021, Weil’s nomination was formally returned to the White House. On January 4, 2022, President Biden re-nominated Weil.²⁷⁷ In January 2022, the HELP Committee reconsidered the Weil nomination, favorably reporting the nomination by an 11-10 margin (with one member previously being a “nay” on the nomination being absent).
- ❖ Organizations representing small business entrepreneurs and taxpayer organizations have expressed concerns: “Business lobbying groups, including the National Restaurant Association, National Association of Wholesaler-Distributors and International Franchise Association (IFA), sent a letter to committee leaders Tuesday urging them to reject Weil’s nomination.”²⁷⁸ Chief among the concerns: promulgation of a job-killing overtime rule that was struck down by the courts; an arbitrarily strict standard for classification of independent contractors; and a destructive expansion of “joint employer” definition.²⁷⁹



²⁷⁶ Weil is the Dean and Professor at the Heller School for Social Policy and Management at Brandeis University, a post held since August of 2017. From Jan. 2017 to July 2017, Weil was the Peter and Deborah Wexler Professor of Management at Boston University. From Sept. 2002 to the present, Weil was employed as Senior Scholar and Co-Director of Harvard’s Kennedy School of Government. From Jan. 1991 to April 2014, Weil was Professor of Markets, Public Policy and Law at Boston University. From July 1987 to Dec. 1990, Weil was a Senior Associate at Klein & Co. From Sept. 1985 to July 1987, Weil was a Teaching and Research Assistant at Harvard University.

²⁷⁷ White House press release, *Nominations Sent to the Senate*, (Jan. 4, 2022).

²⁷⁸ Karl Evers-Hillstrom, *Business Groups Lobby Against Key Biden Labor Nominee*, The Hill (July 13, 2021) <https://thehill.com/business-a-lobbying/business-a-lobbying/562667-business-groups-lobby-against-key-biden-labor-nominee>. See also, Luke Hogg, *FreedomWorks Leads Coalition Letter Opposing the Confirmation of David Weil to be Administrator of the Department of Labor’s Wage and Hour Division*, FreedomWorks, August 3, 2021, <https://www.freedomworks.org/content/freedomworks-leads-coalition-letter-opposing-confirmation-david-weil-be-administrator>.

²⁷⁹ Letter to Senator Patty Murray, Chair of the Senate Committee on Health, Education, Labor and Pensions and Senator Richard Burr, the Committee’s Ranking Member, Letter Re: Nomination of David Weil to be Administrator of the Wage and Hour Division, July 13, 2021 (letter on file with Office of Senator Braun).

WEIL RECORD DURING OBAMA ADMINISTRATION

- ❖ During his tenure under President Obama, Weil promulgated job-killing rules that hurt small businesses, independent contractors, and franchisees.
- ❖ For example, in 2016, WHD, under Weil’s leadership, promulgated a Final Rule that revised the threshold by which workers were eligible for overtime compensation, severely limiting the exemption.²⁸⁰ “Layoffs, reduced employee benefits and diminished customer services are just some of the reasons why many employers opposed the 2016 proposed revisions to the overtime rule.”²⁸¹ In August 2017, after issuing a nationwide order enjoining enforcement of the Rule, the U.S. District Court for the Eastern District of Texas struck down the overtime rule, holding WHD exceeded its legal authority.²⁸²
- ❖ As another example, in July 2015, WHD, again under Weil’s leadership, circumvented its proper rulemaking process by issuing a dubious letter of interpretation designed to reclassify independent contractor under the FLSA as employees through the adoption of an “economic realities” test.²⁸³ The Weil economic realities doctrine was an overly broad test that encompasses application of a number of ambiguous, ill-defined factors.²⁸⁴ It was later thrown out by Secretary Acosta during the Trump Administration in 2017.²⁸⁵
- ❖ As another example, then Administrator Weil again circumvented rulemaking obligations to issue another interpretation letter calling for an expansive definition of “joint employment” that led to a greater amount of employers being held responsible for wage and hour violations under the FLSA.²⁸⁶ This interpretation was also withdrawn by Secretary Acosta during the Trump Administration in 2017.²⁸⁷

 Reuters

Back to the future: Obama-era labor policies to return in 2022

²⁸⁰ Wage and Hour Division Final Rule, “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees,” May 23, 2016 (RIN 1235-AA11), <https://www.federalregister.gov/documents/2016/05/23/2016-11754/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and-computer-employees>.

²⁸¹ Allen Smith, J.D., *Employers Don’t Want New Overtime Rule to Repeat 2016 Mistakes*, SHRM, Oct. 17, 2018, <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/hearing-march-overtime-rule.aspx>.

²⁸² Case 4:16-cv-00731-ALM Document 99 Filed 08/31/17 Page 1 of 18 PageID #: 4753, <https://www.saul.com/sites/default/files/sites/default/files/documents/WISE083117.pdf>.

²⁸³ U.S. Department of Labor, Wage and Hour Division, “Administrator’s Interpretation No. 2015-1, July 15, 2015, https://www.blr.com/html_email/ai2015-1.pdf.

²⁸⁴ For example, (i) the extent to which the work performed is an integral part of the employer’s businesses, (ii) the worker’s opportunity for profit or loss depending on his or her managerial skill; and (iii) the extent of the relative investments of the employer and the worker, among other factors.

²⁸⁵ U.S. Department of Labor press release, *U.S. Secretary of Labor Withdraws Joint Employment, Independent Contractor Informal Guidance*, June 7, 2017 (Release number, 17-0807-NAT), <https://www.dol.gov/newsroom/releases/opa/opa20170607>.

²⁸⁶ U.S. Department of Labor press release, *Joint Employment Under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act*, Administrator’s Interpretation No. 2016-1, Jan. 20, 2016, https://www.hallrender.com/wp-content/uploads/2016/01/DOL_Joint_Employment_1_20_16.pdf.

²⁸⁷ U.S. Department of Labor press release, *U.S. Secretary of Labor Withdraws Joint Employment, Independent Contractor Informal Guidance*, June 7, 2017 (Release number, 17-0807-NAT), <https://www.dol.gov/newsroom/releases/opa/opa20170607>.

- ❖ Through his tenure in the Obama Administration, Weil focused the agency’s resources on disproportionately fining and sanctioning franchises. In congressional testimony, Weil cited and heralded enforcement actions against multiple franchise owners. This specific targeting stems from Weil’s “fissured workplace” theory—a theory that “alleges that outsourcing, independent contracting, and franchising are directly responsible for lower wages and inadequate health and safety standards for workers.”²⁸⁸
- ❖ Weil’s track record during the Obama Administration proved to be hostile to employers, unproductive to the employees served by such employers, and the actions he took at the federal level were mired in costly litigation.

ISSUES TO WATCH DURING BIDEN ADMINISTRATION

- ❖ Should the Senate confirm Weil in 2022, employees and business owners should be on alert for possible job-killing guidance and rules. Weil would be tasked with returning to the burdensome rules of the Obama Administration and with creating new interpretations that could be hostile to business creators and their employees.



David Weil: Wrong man, wrong place, wrong time | TheHill

- ❖ Keep an eye out for the reversal of the Trump Administration’s Independent Contractor and Joint Employer rules. If these rules are reversed to those of the Obama Administration, businesses could face significant legal and operational costs. For example, it is estimated that Weil’s joint employer interpretation cost franchise businesses more than \$33 billion per year and resulted in 376,000 lost job opportunities from 2016-2018.²⁸⁹ Weil’s previous interpretations of independent contractors and joint employers are nearly identical to the *Protecting the Right to Organize (PRO) Act* currently pending before Congress. If confirmed, Weil has shown a history of circumventing Congress and proper rulemaking processes, and will attempt to the *PRO Act* through regulatory fiat.
- ❖ Enforcement of wage and hour compliance is also an issue to watch. Weil and the Biden Administration have already shown they favor penalties over remedies. For example, in March 2018 the Payroll Audit Independent Determination (PAID) pilot program was launched to provide an efficient method for employers to proactively rectify inadvertent overtime and minimum wage violations under the Fair Labor Standards Act through self-audits and self-reporting. The Biden Administration abruptly ended the PAID program in January 2021, even with a DOL report that showed that the program resulted in employees receiving 100 percent of back wages owed in a timelier manner, as opposed to traditional DOL investigations that take more time, are more costly, and reach fewer employers.²⁹⁰

²⁸⁸ International Franchise Association, “Fool Me Twice, Shame on Me: Franchise Critic David Weil Nominated to Return to the Department of Labor,” June 28, 2021, <https://www.franchise.org/blog/fool-me-twice-shame-on-me-franchise-critic-david-weil-nominated-to-return-to-the-department-of>.

²⁸⁹ Zachary Halaschak, *Business Groups Raise Alarm Biden Nominee Would Threaten Independent Contractors*, The Washington Examiner, July 14, 2021, <https://www.washingtonexaminer.com/news/business-groups-concern-biden-nominee-david-weil-independent-contractors>.

²⁹⁰ Dep’t of Labor, WHD, Payroll Audit Independent Determination (PAID) Program Report (Sept. 19, 2019).

CATHERINE LHAMON

BACKGROUND

- ❖ A polarizing figure in the Obama Administration for trampling due process rights of postsecondary students throughout the country, President Biden was quick to nominate Catherine Lhamon (“LaYmon”) for a second tour of duty.
- ❖ On October 20, 2021, the U.S. Senate confirmed Lhamon as Assistant Secretary for Civil Rights (OCR) at the U.S. Department of Education, with Vice President Kamala Harris forced to break the deadlocked 50-50 vote in order for the confirmation to be approved. The Assistant Secretary for Civil Rights serves as the chief enforcement officer for several Federal civil rights laws that prohibit discrimination in programs or activities that receive federal funds at the Department.
- ❖ Lhamon served in the same role under President Barack Obama (August 2013—January 2017).
- ❖ Upon her recent confirmation, some expressed concern over the choice. For example, as noted by the *Wall Street Journal* Editorial Board prior to her second confirmation, “Ms. Lhamon’s history shows she has an agenda to impose progressive social policy on campus no matter the costs to normal rules of due process and other rights. Senators who vote to confirm her should expect the same divisive results as the first time.”²⁹¹



OBAMA RECORD

- ❖ During her tenure under President Obama, Lhamon forced through policy through executive fiat. OCR issued 20 guidance documents during Lhamon’s tenure—no formal regulations were issued. By short-circuiting the full rulemaking process, by failing to conduct a single notice and comment rulemaking, the American public was deprived of the opportunity to provide valuable input into the development of key guidance.
- ❖ The most pernicious of these guidance documents was a 2011 Title IX *Dear Colleague Letter* that resulted in confusion on college campuses, harm to falsely accused students, and costly litigation. Lhamon’s OCR dictated exactly how approximately 6,000 colleges and universities should handle allegations of sexual harassment and assault on campuses. Schools were told how—and how not—to handle cases, and were threatened with a withdrawal of

²⁹¹ *The Wall Street Journal* editorial board, “The Senate’s Lhamon Test: A Title IX enforcer returns to gut due process protections” (July 20, 2021), <https://www.wsj.com/articles/catherine-lhamon-title-ix-college-due-process-11626720890>.

their federal funding if OCR was unhappy.²⁹²

- ❖ Lhamon’s guidance strongly discouraged “a school from allowing the parties to personally question or cross-examine each other during a hearing on alleged sexual violence” because it “may be traumatic or intimidating” for the victim. The standard of guilt for the accused was merely a preponderance of evidence.²⁹³
- ❖ Law professors at leading universities have criticized such guidance. For example, 28 Harvard law professors noted, “Harvard has adopted procedures for deciding cases of alleged sexual misconduct which lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused, and are in no way required by Title IX law or regulation.”²⁹⁴ In addition, her guidance required schools use a “preponderance of the evidence standard,” which UCLA professors estimated has a 30% chance of error.²⁹⁵
- ❖ OCR quickly began opening investigations against schools that were not following their guidance. In 2014, OCR publically released a list of 55 schools under investigation; the list quadrupled by the end of the Obama Administration with 304 schools under investigation. Schools were placed on the public list without any regard to whether the school actually violated the law.
- ❖ Under President Obama, Ms. Lhamon presided over policies that led to hundreds of due process violations that were the center of more than **300 lawsuits** against colleges and universities. Students successfully defended their rights in 90 federal decisions, and in more than 70 additional lawsuits settled with a school prior to a court decision.

ISSUES TO WATCH

- ❖ Americans should closely watch to see if OCR, under Lhamon’s leadership, takes steps to undo a final rule issued in 2020 that restored balance and due process to Lhamon’s overreaching guidance.
- ❖ Under the Trump Administration, OCR entered into a two-and-half year rulemaking process that adhered to Administrative Procedures Act processes meant to guide healthy and transparent rulemaking. As part of this process, the Trump Administration received 124,000 public comments before finalizing a new Title IX rule that requires schools to act in meaningful ways to support survivors of sexual misconduct, without sacrificing important

Back to the Drawing Board: Catherine Lhamon Seeks to Amend Title IX Regulations, Again

²⁹² Meredith Clark, *Officials to College: Fix sexual assault or lose funding*, MSNBC, July 14, 2014, <https://www.msnbc.com/msnbc/campus-sexual-assault-conference-dartmouth-college-msna368981>.

²⁹³ U.S. Department of Education, *Dear Colleague Letter* (April 4, 2011), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

²⁹⁴ Opinion, “Rethink Harvard’s Sexual Harassment Policy” (Oct. 14, 2014), <https://www.bostonglobe.com/opinion/2014/10/14/rethink-harvard-sexual-harassment-policy/HFDDiZN7nU2UwuUuWMnqbM/story.html>.

²⁹⁵ John Villasenor, “A probabilistic framework for modeling false Title IX ‘convictions’ under the preponderance of the evidence standard,” *Oxford Academic Law, Probability and Risk*, Volume 15, Issue 4 (Dec. 2016, Pages 223–237) <https://doi.org/10.1093/lpr/mgw006>.

safeguards to ensure a fair and transparent process.

- ❖ *The Washington Post* Editorial Board took a positive view of the Trump Administration’s rule, opining, “But the old guidance was in need of improvement, and the new Title IX rules do not provide license for schools to ignore sexual assault and harassment. The revisions, as we observed when the proposal was put out for public comment in 2018, include some changes that would bring needed balance to disciplinary proceedings.”²⁹⁶
- ❖ Nevertheless, Lhamon claimed on Twitter that the Trump Administration rule was a return “to the bad old days, that predate my birth, when it was permissible to rape and sexually harass students with impunity.”²⁹⁷
- ❖ What’s more, the 2019 U.S. Commission on Civil Rights report, which Lhamon oversaw as Chair, stated: “[w]hile guidance documents are not themselves legally binding—binding parties depends on the underlying law they rely on—the Commission has found *that they are an important tool for effective civil rights enforcement.*”²⁹⁸
- ❖ Supporters of due process should keep close eyes on OCR in the coming months and years to make sure history does not repeat itself.



²⁹⁶ *The Washington Post* editorial board, “New Guidance on Campus Sexual Assault is Ill-Timed and Partially Ill-Advised. But It’s Not a Return to the Bad Old Days,” (May 19, 2020), https://www.washingtonpost.com/opinions/new-guidance-on-campus-sexual-assault-is-ill-timed-and-partially-ill-advised-but-its-not-a-return-to-the-bad-old-days/2020/05/19/f6aaedc2-9941-11ea-ac72-3841fcc9b35f_story.html.

²⁹⁷ See *Wall Street Journal* editorial board.

²⁹⁸ United States Commission on Civil Rights, “Are Rights a Reality?”, (November 21, 2019) <https://www.usccr.gov/files/pubs/2019/11-21-Are-Rights-a-Reality.pdf>.