



Written by [R. Cort Kirkwood](#) on July 12, 2023

More Incompetence From the ‘Adults’: HHS Failed to Reappoint NIH Directors

It’s a good thing the “[adults are back in charge](#).”

Otherwise, we wouldn’t have [cocaine found](#) inside the White House.

We wouldn’t have “transgenders” exposing themselves on the White House lawn.

We wouldn’t have a mentally ill man who thinks he is a woman prancing about in a dress and [calling himself](#) an admiral as he helps run the Health and Human Services Department.

And, as we learned a few days ago, we wouldn’t have more than a dozen federal health officials who were never properly reappointed in 2021.



AP Images
Xavier Becerra

The latest on the benefits of “adults in charge” comes to us courtesy of a letter from the U.S. House Energy and Commerce Committee to HHS Secretary Xavier Becerra. Chairwoman Cathy McMorris Rodgers (R-Wash.) and co-signers have alleged Becerra did not properly reappoint even Dr. Anthony Fauci, head of the National Institute for Allergy and Infectious Disease.

And that, liberal law professor Jonathan Turley says, could mean big trouble for Sleepy Joe. Lawsuits could challenge the legality of those officials’ decisions.

But worse still, as a practical matter, no one will be punished; not Becerra for not reappointing those officials, and not Fauci or any other director for acting without authority.

The Letter

Becerra was supposed to appoint those officials pursuant to the [21st Century Cures Act](#), which explains how bureau directors at the National Institutes for Health must be appointed and reappointed. The HHS secretary was supposed to do so by December 13, 2021.

Yet “it has become increasingly clear,” the congressmen wrote, “that you never appointed or reappointed” 14 NIH directors, though “HHS and the NIH repeatedly assured the Committee” they were properly reappointed “but did not produce proper supporting documentation.”

The committee has been investigating the major oversight since at least April. Responding to a committee inquiry, NIH claimed that “[a]ll current IC Directors who were serving as of December 13, 2016 have undergone review and have been reappointed to new 5-year term appointments,’ and submitted a chart showing that the NIH Director was the official who made the reappointments ... which even if true, is contrary to what the law requires.”

NIH’s response “did not provide any documents establishing the HHS Secretary had made the



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appointments and reappointments,” the letter alleged, and “HHS staff also declined to confirm the reappointments.” Instead, HHS told staffers to look at the chart.

Here is what happened, the [committee averred](#):

[Y]ou failed to reappoint ... NIH IC Directors ... after their terms expired on December 13, 2021. Instead, the NIH handled the reappointments as an internal matter, signed by an NIH human resources director, whose name was redacted by HHS. Only after multiple investigative letters and extensive discussion with the Committee did you apparently attempt to reappoint these NIH IC Directors in a series of signed appointment affidavits issued on June 8, and 15, 2023, some eighteen months after their terms expired.

Those retroactive reappointments are not valid, the letter says, and are all the more worrisome because a recent federal court decision could mean that those directors’ actions are “legally invalid.”

Now retired, Fauci is the biggest name on the list of 14 directors. Also included are the directors of almost every major bureau inside NIH.

The problem for Becerra: His incompetence could legally jeopardize more than \$25 billion in medical grants in 2022 alone.

Fauci is the key example:

HHS has produced no documentation showing that Dr. Fauci and Dr. [Roger] Glass were reappointed as NIAID Director and Fogarty International Center Director, respectively. Both retired prior to the issuance of the June 2023 appointment affidavits. Given his central role in the COVID-19 response, the Committee is particularly concerned about the failure to reappoint Dr. Fauci. Without reappointment, Dr. Fauci continued to serve as NIAID Director until his retirement on December 31, 2022. If Dr. Fauci was never reappointed, every action he took is potentially invalid.

During that time, Dr. Fauci also served as President Biden’s Chief Medical Adviser. He regularly attended high-level meetings with Biden administration leadership and policy makers, including the National Security Council and the intelligence community. He was instrumental in crafting the administration’s response to the pandemic and was an outspoken advocate for intrusive public health mandates.

Dr. Fauci ... awarded a new grant to EcoHealth Alliance despite unanswered concerns raised by us and others about possible EcoHealth double-billing USAID and NIH for the same research expenses and their failure to produce laboratory notebooks and other records from the Wuhan Institute of Virology.

That he could have amassed and exercised all of this authority and influence without being duly reappointed as NIAID Director demonstrates how ineffective HHS is at managing its component agencies and how little accountability currently exists.

EcoHealth is the rogue NIH/NIAID grantee that sent U.S. tax dollars to the lab in Wuhan, [which performed](#) dangerous gain-of-function viral research that [experts believe](#) created the Covid-19 virus. Those grants violated federal policy.



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Appeals Court: Appointments Not Just a Technicality

Turley, who frequently kicks the administration in the shins, said Biden and Becerra might have a major problem on their hands.

The U.S. Court of Appeals for the Ninth Circuit, to which the committee referred, [he wrote](#), “stressed in [Cody v. \[Kijakazi\]](#) that such a ‘violation is thus no mere technicality or quaint formality — it weakens our constitutional design. An appointment too far removed from the President or the head of an executive agency may, for example, erode political accountability.’”

Every decision could be legally problematic, Turley wrote:

This could not come at a worse time for the administration. This month, the Supreme Court ruled that President Biden had unconstitutionally ordered up to a half-trillion dollars in college loan forgiveness; previously, it found that the administration violated the Constitution with its national eviction moratorium and some vaccine mandates. Now some of the same officials involved in those mandates potentially acted without legal authority after 2021, if their appointments were not properly carried out.

It is not clear where we go from here, if the allegation proves to be true. It could mean that Fauci and others were a type of “undead” directors who were statutorily expired but still walking the halls of HHS. If so, the Biden Administration could be looking at a legal zombie apocalypse, as those directors’ decisions are challenged in courts as having been invalid.

The obvious question is what the revelation means for Fauci, who lied about funding gain-of-function research. As well, Fauci worked overtime to “dispel the myths being spun around the virus’ origins,” meaning the truth that it [leaked from](#) the poorly run lab in Wuhan.

Answer: Nothing. Nothing will happen to Fauci, who didn’t have the authority to buy a box of paper clips let alone spend tax money on illegal virus research in Red China.

And nothing will happen to Becerra.



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