



CONSTITUTIONAL ACTION REPORT

THE CONSERVATIVE CAUCUS RESEARCH, ANALYSIS & EDUCATION FOUNDATION, INC.

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PETER THOMAS, PRESIDENT

Analysis of H Res 442 Stop This Overreaching Presidency (STOP) Resolution

This resolution, introduced on December 12, 2013, by Rep. Tom Rice (R-SC) and 29 cosponsors (now up to more than 100), would require the leadership of the House of Representatives to bring suit in the Federal District Court of the District of Columbia. The suit would challenge one or more of several actions taken by the Executive Branch under President Obama on the grounds that they represent a “continuing failure to faithfully execute the laws” of the United States.

This resolution does not require Senate action since it applies only to the House, and Section 1(d) directs that it be funded from amounts already appropriated for the use of the House of Representatives. Passage by the House would compel the House leadership to proceed with the lawsuit.

H Res 442 designates four actions of the Executive Branch for possible challenge. These are (1) failure to enforce the ObamaCare provision making certain health insurance policies illegal after 2013, (2) suspension for one or two years of the employer mandate in ObamaCare, (3) the treatment of some illegal aliens as if the DREAM Act had passed Congress, and (4) the waiver of work requirements in the 1996 welfare reform bill.

The foundational assumption of this resolution is found in Article II, Section 3 of the U.S. Constitution, which assigns to the president the responsibility that “he shall take Care that the Laws be faithfully executed” If the president believes that there is a problem with the law which requires change, he is to go to Congress and “recommend to their Consideration such measures as he shall judge necessary and expedient” (Article II, Section 3). The president himself is not given any legislative power by the Constitution. He cannot pass or amend laws. Instead, Article I, Section 1 clearly states that “all legislative Powers herein granted shall be vested in a Congress”.

Given the clear guidance of the Constitution, the remaining question is whether President Obama and his administration have exercised legislative power, rather than merely administering the laws passed by Congress. The facts in the four matters cited by this resolution make a strong case that constitutional violations have occurred.

The ObamaCare cancelation of health insurance policies

In the fall of 2013, as insurance companies began sending out the cancelation notices required by ObamaCare, it became obvious that supporters of ObamaCare had not spoken accurately when promising that anyone who liked his policy could keep it. Public opinion demanded that something be done. Members of Congress began introducing bills to allow insurance companies to continue offering the policies, at least temporarily, and the House of Representatives scheduled a vote on HR 3522 for November 15.

The President had an obvious opportunity to work with Congress and amend the law. Instead, one day before the House vote, he announced that he would allow state insurance commissioners to “extend current plans that would otherwise be canceled into 2014”. The law continued to say that such policies were illegal, and the President was unwilling to support any change in the law. Instead of following the constitutional process of amendment, President Obama simply made it known that he would refuse to

enforce the law, and he encouraged the state insurance commissioners to follow his example.

Suspension of the ObamaCare Employer Mandate

Obama announced on July 2, 2013, that he would not enforce the law's requirements for employer-provided insurance and the associated penalties beginning January 1, 2014. Instead, he suspended that portion of the law for at least one year. (He later announced that, for some employers, it would be suspended for a second year.) Section 1513 of the Act, which mandates the penalty, contains nothing that gives the President any discretion as to whether he will enforce the law. Nor was there any need for the President to act unilaterally. The House of Representatives passed legislation to make the one-year delay fully legal (HR 2667), but President Obama called on the Senate to reject the House bill and promised a veto if the bill reached his desk. Rather than follow the only appropriate constitutional procedure, he insisted on acting outside of his constitutional authority.

The DREAM Act

The supporters of the DREAM (Development, Relief, and Education for Alien Minors) Act, believe that children who were brought into the United States illegally by their parents should not be held accountable for the actions of their parents, and should not be treated as illegal aliens. Repeated attempts to persuade Congress to enact the bill have failed, leaving the laws regarding illegal immigration in full force against the bill's intended beneficiaries.

As the 2012 presidential election approached, the President decided to proceed administratively as if the DREAM Act had been approved by Congress. The official announcement came from the Department of Homeland Security on June 15, 2012, affirming that illegal immigrants who met the standards of the DREAM Act could gain immunity from deportation and the ability to legally accept employment.

This decision was a clear refusal to enforce the existing law. The Obama administration has defended it on the grounds that the government has "prosecutorial discretion". However, while prosecutors do have some discretion in deciding who should be prosecuted, this is normally applied to specific individuals in cases where mitigating circumstances exist. It is very unusual, and perhaps unprecedented, to exempt an entire class of more than one million people from prosecution. Furthermore, the administration's actions go beyond mere refusal to prosecute, and actually provide the legal documentation needed to seek legal employment.

Work Requirements

The 1996 Welfare Reform Act, passed by a Republican Congress and signed into law by a Democratic president, contained a requirement which forced many welfare recipients to go to work. The increased employment was regarded by many as one of the great successes of welfare reform.

The Obama administration has been granting waivers to states, allowing them to cease enforcing the "workfare" requirement, even though the law itself remains on the books.

Given the above facts, the House appears to have a strong case that the Obama administration has acted in defiance of the Constitution. The Federal courts are the proper place in which to seek a remedy. However, those courts have been reluctant to take sides in disputes between the Legislative and Executive branches, and have avoided taking up the cases by declaring that a member of Congress lacks the "standing" to bring suit. This is a strong argument against proceeding with H Res 442, since attempting such a lawsuit could easily take more than a year and end without a trial on the merits. However, Rep. Rice argues that a suit brought by the House as an institution, rather than an individual member, might compel the courts to accept the case. Given the lack of precedent, his argument appears to have merit.

Anyone wishing to read the testimony given at the February 26, 2014 Judiciary Committee hearing on H Res 442 can find it on the Committee's website, at <http://judiciary.house.gov/index.cfm/hearings?ID=4B00641F-3944-4308-BF89-F68AA9FF4653>

FIGHT OBAMACARE POLL

The March issue of the Constitutional Action Report asked TCCF members for their opinion on matters concerning ObamaCare. The results were as follows.

1. Should conservatives still work for the repeal of ObamaCare?
Yes 97% No 0% Undecided 3%
2. Should conservatives support passage of legislation that would weaken ObamaCare, and perhaps undermine it in such a way as to make repeal inevitable?
Yes 96% No 2% Undecided 2%
3. Should The Conservative Caucus Foundation (TCCF) continue to point out the many problems caused by ObamaCare?
Yes 98% No 0% Undecided 2%

Is the Obama Budget Constitutional?

Each year, The Conservative Caucus Foundation examines the president's proposed budget for some of the cabinet departments to determine how much of the recommended spending is actually permitted by the Constitution. This line by line review of the departmental budgets is the only detailed study of how badly the US government is violating the Constitution.

Four cabinet departments have had the proposed FY 2015 budget put to the test so far, and the results confirm that Federal overspending and deficits are caused by failing to obey the Constitution.

Commerce	78% unconstitutional
Education	98% unconstitutional
Interior	76% unconstitutional
Labor	99% unconstitutional

Copies of the FY 2015 Constitutional Budget may be requested by email (info@ConservativeUSA.org), phone (540-219-4536), or writing to TCCF's Warrenton headquarters.

Additional departments will be examined and the findings released as the year goes on.

Illegal Immigration Shows an Upward Trend

Last year, TCCF examined the Federal government's own statistics and reports, and found strong evidence that the border with Mexico was far from secure. We concluded that any decline in illegal entry had been primarily the result of the recession, predicted that illegal entry would increase as the economy improved, and pointed to indications that it was already increasing.

Now a key statistic of the US Border Patrol indicates that illegal immigration across the Mexican border has increased for a second consecutive year. The Border Patrol cannot know for certain how many illegally enter the United States, but increases and decreases in the number who are caught while crossing is generally accepted as an accurate sign of broad trends in either direction. When the number of apprehensions near the border was declining from 2004 to 2011, it was hailed as a sign that the border had been secured. Now, however, apprehensions have increased by 9% in 2012 and 16% in 2013. As the recession ends, and American jobs beckon, the illegals are proving that the border can still be crossed.

Despite this disturbing trend, President Obama announced on March 14 that he was asking the Department of Homeland Security to reduce the deportation of illegal immigrants (carry out their enforcement of the immigration laws "more humanely", as he put it).

Will the Supreme Court Take Advantage of Its Second Opportunity to Strike Down ObamaCare as Unconstitutional?

Two years ago, the Supreme Court saved ObamaCare by ruling that, although the constitutional theory of its supporters was wrong, it could be made legitimate by declaring the individual mandate to be a tax (which its supporters had firmly insisted it was not).

Now the Court has another chance to strike down ObamaCare, using a different constitutional flaw. Last month the Court heard arguments in *Sissel v. US Department of Health and Human Services*, which makes the argument that the bill's taxes originated in the Senate, while the US Constitution requires all tax bills to start in the House of Representatives. Article I, Section 7 clearly states "All Bills for raising Revenue shall originate in the House of Representatives: but the Senate may propose or concur with Amendments as on other Bills." The Pacific Legal Foundation is handling the case on behalf of Matt Sissel.

The Obama administration argues that ObamaCare was enacted as HR 3590, which was introduced in the House, and as introduced would have made changes to the tax law for some homebuyers. However, in the Senate, the bill's original content was completely removed and replaced by ObamaCare, making it an entirely new bill despite the old HR 3590 number. To say that passing it as HR 3590 makes it a bill that originated in the House is a clear violation of the intent of the intent of the authors of the Constitution.

The origination clause is not something that was put into the Constitution casually. It was brought up and debated repeatedly, with the arguments for and against being made over and over again. The delegates were thoroughly familiar with those arguments, and decided that all tax bills should start in the larger House that represented the people, rather than the smaller Senate representing the states. There was even concern that if Senators were allowed to introduce tax bills, the Senate might over time come to be the dominant house for such legislation.

TCCF Poll Reveals Distrust of Obama Administration in IRS Scandal

1: Given what you've seen in the news and read about the IRS in your letter, do you think the IRS has broken the law by delaying and denying Tea Party group applications for tax-exempt status?

Strongly agree 90% Agree 9% Unsure 1% Disagree 0% Strongly disagree 0%

2: Did IRS employees take the initiative to block Tea Party group applications? Or did the IRS receive orders from the Obama White House to do that?

IRS staff did it on their own 3% IRS staff was ordered to by the White House 93% Undecided 4%

3: Do you think the IRS will stop delaying and denying tax-exempt applications for Tea Party groups without pressure from Congress?

Definitely No 67% No 17% Unsure 11% Yes 1% Definitely Yes 4%

4: Do you think the IRS' abuse of power threatens our Constitutionally-protected rights?

Strongly agree 93% Agree 5% Unsure 2% Disagree 0% Strongly disagree 0%

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