



CONSTITUTIONAL ACTION REPORT

THE CONSERVATIVE CAUCUS RESEARCH, ANALYSIS & EDUCATION FOUNDATION, INC.
September 2014 PETER THOMAS, PRESIDENT

Analysis of S. 2611 and HR 5114 The Helping Unaccompanied Minors and Alleviating National Emergency (HUMANE) Act

The HUMANE Act was introduced in July 2014 by Sen. John Cornyn (R-TX) and Rep. Henry Cuellar (D-TX) as a response to the flood of illegal aliens coming across the Mexican border. Many of these are unaccompanied children taking advantage of a 2008 law, the William Wilberforce Trafficking Victims Protection Reauthorization Act (8 USC 1232).

The HUMANE Act would amend the Wilberforce Act so as to keep these children in Federal custody and allow for expedited deportations.

The Wilberforce Act was intended to protect children who were escaped victims of sexual trafficking, and treated them more leniently than others entering the US without legal authorization. The law requires that the children be transferred to the custody of the Department of Health and Human Services within 72 hours and that HHS place them in “the least restrictive setting that is in the best interest of the child”. The purpose was to ensure that they would not end up back in the hands of those who had abused them. The law included an exception for children from Mexico and Canada, since they could easily be put into the custody of the proper authorities in those two nations.

There was no intention of allowing even children who had been victims of sexual trafficking to become permanent residents of the United States. The law clearly states that the Attorney General and Secretaries of Homeland Security and Health and Human Services “shall develop policies and procedures to ensure that unaccompanied alien children in the United States are safely repatriated to their country of nationality or of last habitual residence.”

However, the provisions of this law have been exploited to create a program of de facto amnesty. Parents send their children through Mexico into the United States, where they immediately surrender themselves to the Border Patrol. Following the law, they are soon released into the custody of friends or relatives, if such can be located, and asked to appear at a later deportation hearing. Few show up, and little effort is being made to apprehend and deport them.

Title I of the HUMANE Act adds the nations of El Salvador, Guatemala and Honduras to the list of excepted nations, joining Mexico and Canada. Most of the unaccompanied minors are arriving from those three nations. However, since other nations may present a similar problem in the future, the Secretary of HHS is given discretion to add other nations to the list as necessary.

Furthermore, the bill requires that each unaccompanied minor be given a hearing within 7 days, at which he can make his case for asylum, and a judgment must be rendered within 72 hours. Deportation, in

accordance with the purpose of the Wiberforce Act, could therefore take place quickly. They would be held in the custody of the Federal government during this time, rather than released

However, this expedited process would not take place until the US had negotiated an agreement with the home country to govern the procedures for repatriation. This may allow other nations to delay the effectiveness of this provision, and could even allow the Secretary of State to deliberately drag his feet. It seems certain that some organizations would strongly lobby the Secretary to avoid putting the expedited process into action.

In order to deal with the enormous number of unaccompanied minors now arriving, the bill provides for as many as 40 new immigration judges to hear their cases.

Title II of the bill deals with border security. In some respects, it is similar to S. 744 passed by the Senate in 2013, in that it requires the Secretary of Homeland Security to submit a strategy for securing the border with Mexico against illegal aliens. It also requires twice a year reports to Congress on the effectiveness of border control. The bill establishes a definition for effectiveness, calculating the percentage of illegal crossing attempts that end unsuccessfully. However, any such calculation depends on both the competence and the good will of the executive branch personnel entrusted with making it. It is therefore subject to both human error and manipulation, and cannot be considered a reliable measure. Putting it in the hands of a more impartial body of judges would provide a more trustworthy figure, instead of relying on DHS employees to reveal their own ineffectiveness.

The bill does provide for testing of effectiveness by the DHS Inspector General and review by the Comptroller General. The Government Accountability Office must be provided certain information on methodologies, but is not given any permanent role in monitoring and evaluating the success of DHS. Considering that the GAO has proved itself to be an impartial critic of past DHS efforts, Congress would be well advised to make use of it even if not formally required by the statute.

The Comptroller General is to submit reports after two and five years, providing an evaluation of the effectiveness of various methods for securing the border. Given the potential for pork as Senators and Representatives push to help favored businesses, this is a crucial provision. Billions have been spent on border security, yet the border remains insecure.

The last few lines of the bill authorize fiscal year 2014 and 2015 funding for as much as needed to carry out the provisions of Title II.

On August 1, 2014, the House of Representatives passed a supplemental appropriations bill (HR 5230) which contained language similar to Title I of the HUMANE Act (i.e. the part relating to expedited deportation. It also contained funding for additional deportation judges and for sending the National Guard to the Mexican border. The Senate took no action to address the large number of unaccompanied minors crossing the Mexican border.

House Lawsuit to Target Obama's Illegal Actions on ObamaCare

The House of Representatives, at the urging of Speaker Boehner, is now pursuing a lawsuit against President Obama relating to the President's illegal suspension of the employer mandate for two years. The Speaker chose to sue only on that one matter, ignoring a host of others.

The Speaker's choice has strengths and weaknesses. The law is crystal clear, setting January 1, 2014 as the date on which the mandate was to go into effect. There is no doubt that the President refused to enforce the law passed by Congress. The second year of delay, which applies only to businesses with 50-99 employees, involves not only a delay but an actual rewriting of the law, which recognizes only two classes of employers, those with 50 or more employees and those with fewer. The fact that the suspensions were made for political reasons, rather than because of some administrative necessity, is also important.

However, a temporary suspension of a law may be a weaker case than Obama's indefinite refusal to enforce other laws. Obama's defense might also argue that because the House has voted to repeal ObamaCare, and also voted for a one-year suspension of the individual mandate, it cannot claim to truly oppose what the President has done.

A broader lawsuit including other aspects of ObamaCare as well as immigration, labor law, and foreign aid, would give the courts more opportunity to find clear violations of the law. Such a suit would also make the point that the President's actions are part of a broad pattern of executive encroachment on the constitutional powers of Congress.

It is possible that the House might decide on a second lawsuit if Obama, as expected, expands his "deferred action" program for illegal aliens. This program goes beyond the mere prioritizing of prosecution resources, and grants illegal aliens the right to legally work in the United States. However, the House may decide to wait until next year, hoping that a new Republican majority in the Senate will make it possible to pass appropriations bills that defund the deferred action program.

A Special Prosecutor Is Needed for the IRS Investigation

For more than two centuries, one of the great strengths of American politics and society has been the vigorous debate encouraged by our First Amendment. National disputes have been thoroughly discussed, with every side having its say. Americans have been allowed to hear the facts and each one could then make up his own mind.

Four years ago, in his 2010 State of the Union message, President Obama denounced the Supreme Court's recent decision upholding the First Amendment's protection for the freedom of political speech. The President expressed his concern that such unlimited freedom of speech (much of it critical of him) was dangerous to America.

Soon liberal Members of Congress began contacting the IRS, urging it to focus investigations on conservative organizations which might succeed in influencing public opinion against the President and his fellow liberals.

The IRS followed through by targeting newly-formed organizations with "Tea Party", "Patriots" and "9/12 Project" in their names, or which said they would focus on such issues as "government spending, government debt or taxes". "Potential political campaign intervention" was *not* among the criteria used for targeting, according to the IRS Inspector General. Key decisions concerning this targeting were being made at the IRS headquarters in Washington, despite attempts to blame it on a few employees in Cincinnati.

The targeted organizations were greatly delayed in getting tax-exempt status (a few are still awaiting approval). The IRS did not even begin serious review of these applications until twenty months after the first one was received.

Targeted organizations were asked by the IRS to provide confidential information (e.g. lists of donors) which the IRS now admits should never have been requested. The targets were also asked to respond to what the Inspector General later described as "unnecessary" and "burdensome" questions, which were irrelevant but quite time-consuming for the organizations.

None of the targeted groups has been denied tax exempt status, despite the long and intense investigations by the IRS, attempting to find information that would justify denial.

The only proper solution is the appointment of a Special Prosecutor, with the independence necessary to dig out the truth and prosecute anyone who has broken the law.

Members Divided on Best Way to Stop Obama

The Save the Constitution Poll in the June Constitutional Action Report showed that TCCF members are divided on how Congress should protect the U.S. Constitution from President Obama's usurpation of power. A majority favored passage of the STOP resolution, authorizing a lawsuit against the President. However, a substantial minority supported impeachment proceedings.

Which is the most effective method at this time to protect the Constitution from Obama's many violations?

Impeachment	35.6%	
STOP resolution	55.6%	
Asking the U.S. Attorneys appointed by Obama to charge him with a Federal Crime		8.9%

In July, the House voted to proceed with a lawsuit against the President (see separate article), although they did it through an existing provision of law rather than by passing STOP.

Constitutional Budget Project

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.

This review of the most recent budget proposal has so far been done for the departments of Commerce, Education, Labor, and Interior.

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.

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