

Written Statement
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“The President's Constitutional Duty to Faithfully Execute the Laws”
Committee on the Judiciary
United States House of Representatives
2141 Rayburn House Office Building
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Chairman Goodlatte, Ranking Member Conyers, and Members of the Judiciary Committee,

Thank you for inviting me to discuss the constitutional concerns raised by President Obama's ability to faithfully execute the law.

In 1792, when charged with enforcing an unpopular tax on whiskey in the face of rebellion, President George Washington noted in a letter to Alexander Hamilton, "It is my duty to see the Laws executed: to permit them to be trampled upon with impunity would be repugnant to" that duty. Understanding the overwhelming power of a monarch, the Founding Fathers did not seek to grant one man the power to unilaterally create and execute the law; instead, they created a carefully-crafted democracy. They protected that new citizenry by dividing it into three branches and providing checks and balances to limit the power of each branch. The legislative branch creates the law. The executive branch enforces the law. The judicial branch interprets the law.

However, more than 220 years after Washington recognized his duty, we find ourselves confronted with a Commander in Chief eager to forget his duty.

The "take care" clause in Article II, section 3 of the Constitution provides that the President shall "take care that the laws be faithfully executed." While the President has the right to exercise reasonable discretion, he may not choose which laws shall be enforced. This is fundamental to our constitutional framework. Knowing the expectations for the executive branch, I have watched President Obama's various actions with great dismay.

My constituents overwhelmingly share this dismay. Throughout my first months in office, my constituents continually voiced the same refrain: President Obama is overstepping the bounds of his office and Congress is doing nothing to stop his power grabs. Some have even suggested impeachment. If the President can continually use his discretion to rewrite laws without congressional approval, the House of Representatives and the Senate may as well cease to exist. This erosion of our separation of powers diminishes our democracy; leaving us with an imperial presidency.

Troubled by the implications of a careless executive branch, I have consulted many constitutional scholars for direction on how the House of Representatives could attempt to

restore our separation of powers without requiring a vote in the Senate. From these conversations, I drafted the Stop This Overreaching Presidency (STOP) Resolution, H.Res.442.

STOP highlights four instances in which President Obama's Administration overstepped its bounds in enforcing our laws. The first two are in reference to the Patient Protection and Affordable Care Act (ACA): the delay of the employer mandate and the extension of "substandard" healthcare plans.

Last summer, President Obama's Administration delayed the employer mandate for business owners, but deliberately chose not to delay the individual mandate. It is deeply disconcerting to believe that the executive branch may choose when or when not to enforce a tax against a selected group of Americans. This announcement was made two days before the Fourth of the July on a Department of Treasury blog post, in the hopes that many Americans would miss it. When the House of Representatives responded to this selective tax delay by supporting a delay of the individual mandate, President Obama threatened to veto any delay of the individual mandate. To be very clear, President Obama's Administration announced a one-year delay of the employer mandate **without involving Congress**.

After receiving overwhelmingly negative feedback regarding the ACA's implementation, specifically negative feedback concerning the false claim that "if you like your healthcare plan, you can keep it," President Obama unilaterally extended cancelled plans by one year. These plans were substandard by the ACA's definition, but concerned by the political implications of the "biggest lie of the year¹," President Obama opted for a quick fix. His Administration announced the change in a letter rather than work with Congress to correct this issue. To be very clear, President Obama announced an administrative fix in regard to cancelled healthcare plans **without involving Congress**.

While President Obama's actions regarding the ACA are troublesome, those are only two examples of his overreach. What if the President unilaterally decided to open our nation's borders to whomever, whenever, without the need for background checks, visas or green cards? When President Obama's Administration legislated via memorandum Deferred Action for Childhood Arrivals (DACA), he approved special treatment for a specified class of immigrants. While President Obama has prosecutorial discretion, he does not have the authority to exempt a specified class of up to 1.76 million individuals. DACA also resembled efforts of the DREAM Act, legislation that has failed in Congress. To be very clear, President Obama's Administration granted temporary status to illegal immigrants who entered the United States **without involving Congress**.

The last example cited in STOP is in reference to significant changes to the Temporary Assistance for Needy Families (TANF) program by memorandum. In June 2012, the Administration provided a waiver initiative for the welfare work requirement under TANF. The TANF work requirement was one of the heralded successes from the 1996 welfare reform, and

¹ Angie Drobnic Holan, *Lie of the Year: 'If you like your health care plan, you can keep it'*, POLITIFACT.COM, (Dec. 12, 2013, 4:44 PM), <http://www.politifact.com/truth-o-meter/article/2013/dec/12/lie-year-if-you-like-your-health-care-plan-keep-it/>. (The fact-checking organization PolitiFact declared President Obama's "If you like your health care plan, you can keep it" as 2013's "Lie of the Year".)

unfortunately, the Administration has chosen to roll back this success without congressional consultation. To be very clear, President Obama's Administrative provided a waiver initiative for the welfare work requirement under TANF **without involving Congress**.

In prior cases between the legislative and executive branches, the court has questioned if a particular Member of Congress has suffered from vote nullification, also known as the *Raines* standard². Standing in a suit is difficult to establish if legislative remedies are available. However, a legislative remedy is not plausible as President Obama's Administration wilfully ignores the laws that Congress passes. Thereby, Congress's hands are tied. Congress may pass laws to address President Obama's behavior, but if he declines to enforce said laws – which is likely – Congress's voice and vote are silenced. Feeling that Congress has no other legislative remedy available, STOP directs the House to authorize legal action as an institutional body alleging an institutional injury.

Since its introduction in December, STOP has gathered 114 cosponsors, as well as significant interest from Americans across the country. If adopted by a majority of the House, this resolution will require the House to take legal action against the President for his failure to uphold our Nation's laws.

I understand that there are many bills designed to protect Section II, article 3, but this resolution has a distinct advantage. **It only requires House action.** Allow me to be very clear. As my colleagues are well aware, the Senate rarely acts on House-passed legislation. Since STOP is a House-specific resolution, we are not at the mercy of the Senate. We can move forward to protect our Constitution as soon as STOP passes. It directs the House to take action, rather than idly watch President Obama's Administration continually erode our separation of powers. We owe it to our constituents to protect our Constitution. As Representatives, we have stated that we would like for 2014 to be a year of action. If we are sincere in this belief, STOP takes action.

Opponents of such a measure are sure to dismiss it as a conservative vendetta, a Republican versus Democrat partisan battle, or personal animosity against the President. My friends across the political spectrum may also point out the number of executive orders President Obama has issued in comparison to his predecessors. **It is important to note that the four instances outlined in this testimony are not the product of executive orders. Rather, they are the product of executive action.** Knowing that executive action does not receive the same scrutiny as executive orders makes this Administration's oversteps even more unsettling.

One hundred and fourteen of my colleagues and I support STOP because we believe, as our Founders did, that one man is not greater than the Constitution, and that a government of the people, by the people, and for the people is more than just a broken campaign promise. It is who we are as Americans and it must not be ignored.

² *Raines v. Byrd* is the Supreme Court case that established the current standard for evaluating whether individual Members of Congress have standing to sue the executive branch. See *Raines*, 521 U.S. 811 (1997).