

**U.S. House of Representatives
Committee on the Judiciary**

**Hearing:
Enforcing the President's Constitutional Duty to Faithfully Execute the Laws**

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Written Statement

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Thank you Mr. Chairman, Ranking Member Conyers, and all members of the Committee for the invitation to testify at today's hearing.

There is no question that on several occasions in recent years, we have witnessed an unparalleled use of executive power to selectively apply, enforce, and even ignore duly-enacted laws. Testimony presented to this Committee last December outlined a number of instances where, by regulation or executive order, the President has acted contrary to his power and duty under Article II to faithfully execute all laws.

The Affordable Care Act is just one, and perhaps the most glaring, example.

The ACA has been revised, altered and effectively rewritten by the President and his Administration 23 times since July – with the most recent executive action coming two weeks ago when the President unilaterally declared a one-year delay of the employer mandate for companies with 50-99 full-time workers.

My reading of the testimony presented at the hearing in December made it quite clear that the President, through his actions on the ACA, as well as in other areas of executive action, is fundamentally altering the delicate constitutional balance among the three branches of our federal system, and the concept of an “Imperial Presidency” has reentered our national dialogue.

It was because of this powerful testimony that I began thinking about how we, in Congress, as a co-equal branch of government, can work to preserve that critical balance between the legislative and executive branches that our Framers worked so hard to establish.

To start, I think we can agree that Congress has fairly limited means of redress in the event that the executive branch circumvents the legislative branch through its decisions not to enforce certain federal law. Congress can try to pass new laws to either remedy or defund a violating action – but a president who undertook the action will not likely support the measure. Where the action rises to a “high crime or misdemeanor,” the House may initiate an impeachment proceeding. But, such an avenue would surely be extremely divisive within the Congress and the nation generally, and would divert the attention of Congress from other important issues of the day.

Finally, judicial relief could be sought, but we well know that that process can take years and years while the underlying transgression continues.

So these thoughts ultimately led me to introduce H.R. 3857, the proposed Enforce the Take Care Clause Act.

I drafted this bill to provide either house of Congress with a new “fast-track” process to have the federal courts quickly and thoroughly review questions of whether a president is properly executing this Take Care Clause power and, if not, present a mechanism for immediate judicial relief to remedy the situation.

Specifically, this legislation would authorize the House or Senate, upon passage of a resolution in either chamber by a 60% supermajority, to bring an expedited action before the U. S. District Court for the District of Columbia seeking review and declaratory or injunctive relief in the event that a president fails to meet the constitutional requirement that the law be faithfully executed. That Court’s decision would have to be issued within 90 days and would be immediately and directly appealable to the U.S. Supreme Court for a final determination of whether a president has acted in a constitutional manner.

Some have questioned whether Congress has “standing” to bring a legal action against a president in such a situation. I believe it does. Article I vests Congress with all legislative power including, in Section 8, the power “to make all Laws which shall be necessary and proper for carrying into Execution ...all other Powers vested by the Constitution in the Government of the United States... or any officer thereof.”

One of the “other powers” is a president’s “executive power” under Article II - the power and duty to faithfully execute the laws.

Further, the Supreme Court has the authority to hear any cases arising from this legislation because the “judicial power” conveyed to it in Article III extends to “all Cases...arising under this Constitution [and] the Laws of the United States.” In

other words, I believe the Court may hear a case procedurally brought to it by a duly-enacted law on the issue of whether the Congress believes a president has failed to properly execute his constitutionally-vested power.

Given the growing number of examples where this President has clearly failed to faithfully execute all laws, I believe it is time for Congress to put in place a procedure for a fast-track, independent review of those executive actions.

Consequently, I look forward to working with all the members of the Committee to implement the commonsense procedural reform outlined in my legislation so that we can: (1) establish a practical mechanism to resolve serious questions of executive overreach; (2) retain the deep-rooted constitutional balance between the legislative and executive branches; and (3) help restore the public's overall confidence in our system of governance.

Thank you again for the opportunity to testify today.