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To oppose loans at international financial institutions for the Government of Nicaragua unless the Government of Nicaragua is taking effective steps to hold free, fair, and transparent elections, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 2017

Ms. ROS-LEHTINEN (for herself, Mr. SIRES, Mr. DUNCAN of South Carolina, Ms. WASSERMAN SCHULTZ, Mr. YOHO, Mr. CÁRDENAS, Mr. DIAZ-BALART, Mr. NORCROSS, Mr. CURBELO of Florida, Mr. DEUTCH, Mr. BILIRAKIS, Mr. CUELLAR, Mr. SMITH of New Jersey, Ms. WILSON of Florida, Mr. POE of Texas, Mr. HASTINGS, Mr. DESANTIS, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. McCAUL, Ms. KELLY of Illinois, Mr. WEBER of Texas, Mr. DONOVAN, Mr. CHABOT, Mr. THOMAS J. ROONEY of Florida, and Mr. FRANCIS ROONEY of Florida) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To oppose loans at international financial institutions for the Government of Nicaragua unless the Government of Nicaragua is taking effective steps to hold free, fair, and transparent elections, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Nicaraguan Invest-
3 ment Conditionality Act (NICA) of 2017”.

4 **SEC. 2. FINDINGS.**

5 Congress makes the following findings:

6 (1) In 2006, Nicaragua, under President
7 Enrique Bolaños, entered into a \$175,000,000, 5-
8 year compact with the Millennium Challenge Cor-
9 poration (MCC).

10 (2) After the 2008 municipal elections, the
11 MCC stated that there was a pattern of decline in
12 political rights and civil liberties in Nicaragua.

13 (3) In 2009, the MCC terminated the compact
14 and reduced the amount of MCC funds available to
15 Nicaragua by \$61,500,000, which led to the compact
16 ending in 2011.

17 (4) According to Nicaraguan law, the National
18 Assembly is the only institution allowed to change
19 the constitution but in 2009, Daniel Ortega cir-
20 cumvented the legislature and went to the Supreme
21 Court, which he controls, to rule in his favor that
22 Presidential term limits were inapplicable.

23 (5) The House Committee on Foreign Affairs
24 convened a congressional hearing on December 1,
25 2011, entitled “Democracy Held Hostage in Nica-
26 ragua: Part 1” where former United States Amba-

1 sador to Nicaragua Robert Callahan testified,
2 “First, that Daniel Ortega’s candidacy was illegal,
3 illegitimate, and unconstitutional; second, that the
4 period leading to the elections and the elections
5 themselves were marred by serious fraud; third, that
6 Daniel Ortega and his Sandinista party have system-
7 atically undermined the country’s fragile govern-
8 mental institutions.”.

9 (6) From fiscal year 2012 until present, the
10 Department of State found that Nicaragua did not
11 meet international standards of fiscal transparency.

12 (7) On January 25, 2012, a press statement
13 from Secretary of State Hillary Clinton said: “As
14 noted by international observers and Nicaraguan
15 civil society groups, Nicaragua’s recent elections
16 were not conducted in a transparent and impartial
17 manner, and the entire electoral process was marred
18 by significant irregularities. The elections marked a
19 setback to democracy in Nicaragua and undermined
20 the ability of Nicaraguans to hold their government
21 accountable.”.

22 (8) According to the Department of State’s
23 2015 Fiscal Transparency Report: “Nicaragua’s fis-
24 cal transparency would be improved by including all
25 off-budget revenue and expenditure in the budget,

1 auditing state-owned enterprises, and conducting a
2 full audit of the government's annual financial state-
3 ments and making audit reports publicly available
4 within a reasonable period of time.”.

5 (9) According to the Department of State's
6 Country Reports on Human Rights Practices for
7 2015: “In 2011 the Supreme Electoral Council
8 (CSE) announced the re-election of President Daniel
9 Ortega Saavedra of the Sandinista National Libera-
10 tion Front (FSLN) in elections that international
11 and domestic observers characterized as seriously
12 flawed. International and domestic organizations
13 raised concerns regarding the constitutional legit-
14 imacy of Ortega's re-election. The 2011 elections
15 also provided the ruling party with a supermajority
16 in the National Assembly, allowing for changes in
17 the constitution, including extending the reach of ex-
18 ecutive branch power and the elimination of restric-
19 tions on re-election for executive branch officials and
20 mayors. Observers noted serious flaws during the
21 2012 municipal elections and March 2014 regional
22 elections.”.

23 (10) According to the Department of State's
24 Country Reports on Human Rights Practices for
25 2015 in Nicaragua: “The principal human rights

1 abuses were restrictions on citizens’ right to vote;
2 obstacles to freedom of speech and press, including
3 government intimidation and harassment of journal-
4 ists and independent media, as well as increased re-
5 striction of access to public information, including
6 national statistics from public offices; and increased
7 government harassment and intimidation of non-
8 governmental organizations (NGOs) and civil society
9 organizations.”.

10 (11) The same 2015 report stated: “Additional
11 significant human rights abuses included consider-
12 ably biased policies to promote single-party domi-
13 nance; arbitrary police arrest and detention of sus-
14 pects, including abuse during detention; harsh and
15 life-threatening prison conditions with arbitrary and
16 lengthy pretrial detention; discrimination against
17 ethnic minorities and indigenous persons and com-
18 munities.”.

19 (12) In February 2016, the Ortega regime de-
20 tained and expelled Freedom House’s Latin America
21 Director, Dr. Carlos Ponce, from Nicaragua.

22 (13) On June 3, 2016, the Nicaraguan Su-
23 preme Court—which is controlled by Nicaragua’s
24 leader, Daniel Ortega—instructed the Supreme Elec-
25 toral Council not to swear in Nicaraguan opposition

1 members to the departmental and regional electoral
2 councils.

3 (14) On June 5, 2016, regarding international
4 observers for the 2016 Presidential elections, Presi-
5 dent Ortega stated: “Here, the observation ends. Go
6 observe other countries . . . There will be no obser-
7 vation, neither from the European Union, nor the
8 OAS . . .”.

9 (15) On June 7, 2016, the Department of
10 State’s Bureau of Democracy, Human Rights and
11 Labor posted on social media: “Disappointed govern-
12 ment of Nicaragua said it will deny electoral observ-
13 ers requested by Nicaraguan citizens, church, and
14 private sector . . . We continue to encourage the
15 government of Nicaragua to allow electoral observers
16 as requested by Nicaraguans.”.

17 (16) On June 14, 2016, President Ortega ex-
18 pelled three United States Government officials (two
19 officials from U.S. Customs and Border Protection
20 and one professor from the National Defense Uni-
21 versity) from Nicaragua.

22 (17) On June 29, 2016, the Department of
23 State issued a Nicaragua Travel Alert which stated:
24 “The Department of State alerts U.S. citizens about
25 increased government scrutiny of foreigners’ activi-

1 ties, new requirements for volunteer groups, and the
2 potential for demonstrations during the upcoming
3 election season in Nicaragua . . . Nicaraguan au-
4 thorities have denied entry to, detained, questioned,
5 or expelled foreigners, including United States Gov-
6 ernment officials, academics, NGO workers, and
7 journalists, for discussions, written reports or arti-
8 cles, photographs, and/or videos related to these top-
9 ics. Authorities may monitor and question private
10 United States citizens concerning their activities, in-
11 cluding contact with Nicaraguan citizens.”.

12 (18) On August 1, 2016, the Department of
13 State issued a press release to express grave concern
14 over the Nicaraguan government limiting democratic
15 space leading up to the elections in November and
16 stated that “[o]n June 8, the Nicaraguan Supreme
17 Court stripped the opposition Independent Liberal
18 Party (PLI) from its long recognized leader. The
19 Supreme Court took similar action on June 17 when
20 it invalidated the leadership of the Citizen Action
21 Party, the only remaining opposition party with the
22 legal standing to present a presidential candidate.
23 Most recently, on July 29, the Supreme Electoral
24 Council removed 28 PLI national assembly members

1 (16 seated and 12 alternates) from their popularly-
2 elected positions.”.

3 (19) On November 7, 2016, the Department of
4 State issued a press release stating: “The United
5 States is deeply concerned by the flawed presidential
6 and legislative electoral process in Nicaragua, which
7 precluded the possibility of a free and fair election
8 on November 6. In advance of the elections, the Nic-
9 araguan government sidelined opposition candidates
10 for president, limited domestic observation at the
11 polls and access to voting credentials, and took other
12 actions to deny democratic space in the process. The
13 decision by the Nicaraguan government not to invite
14 independent international electoral observers further
15 degraded the legitimacy of the election.”.

16 (20) In November and December of 2016, the
17 Board of Executive Directors of the Inter-American
18 Development Bank postponed consideration of a pol-
19 icy based loan of \$65 million to the Government of
20 Nicaragua due to the efforts of the United States
21 mission that expressed serious concerns of the ab-
22 sence of transparency, systemic corruption, and the
23 lack of free and fair elections in Nicaragua.

24 (21) On February 2017, the European Par-
25 liament issued a resolution on the situation of

1 human rights and democracy in Nicaragua and ex-
2 pressed concern of the “deteriorating human rights
3 situation in Nicaragua and deplores the attacks and
4 acts of harassment to which human rights organiza-
5 tions and their members and independent journalists
6 have been subjected by individuals, political forces
7 and bodies linked to the State”.

8 (22) According to the Department of State’s
9 Country Reports on Human Rights Practices for
10 2016: “[A]ctions by the ruling Sandinista National
11 Liberation Front (FSLN) party resulted in de facto
12 concentration of power in a single party, with an au-
13 thoritarian executive branch exercising significant
14 control over the legislative, judicial, and electoral
15 functions.”.

16 (23) According to the Department of State’s
17 Country Reports on Human Rights Practices for
18 2016 in Nicaragua, “The November 6 elections for
19 president, vice president, national assembly mem-
20 bers, and representatives for the Central American
21 parliament did not meet the conditions of being free
22 and fair . . . The November 6 presidential and leg-
23 islative elections were marred by allegations of insti-
24 tutional fraud and the absence of independent oppo-
25 sition political parties. National observers and oppo-

1 sition leaders claimed rates of abstention from 60 to
2 70 percent.”.

3 (24) According to the Department of State’s
4 Country Reports on Human Rights Practices for
5 2016: “Companies reported that bribery of public of-
6 ficials, unlawful seizures, and arbitrary assessments
7 by customs and tax authorities were common . . .
8 The courts remained particularly susceptible to
9 bribes, manipulation, and other forms of corruption,
10 especially by the FSLN, giving the sense that the
11 FSLN heavily influenced CSJ and lower-level court
12 actions.”.

13 **SEC. 3. STATEMENT OF POLICY.**

14 It is the policy of the United States to support—

15 (1) the rule of law and an independent judiciary
16 and electoral council in Nicaragua;

17 (2) independent pro-democracy organizations in
18 Nicaragua;

19 (3) free, fair, and transparent elections under
20 international and domestic observers in Nicaragua;
21 and

22 (4) anti-corruption and transparency efforts in
23 Nicaragua.

1 **SEC. 4. INTERNATIONAL FINANCIAL INSTITUTIONS.**

2 (a) IN GENERAL.—The President shall instruct the
3 United States Executive Director at each international fi-
4 nancial institution to use the voice, vote, and influence of
5 the United States to oppose any loan for the benefit of
6 the Government of Nicaragua, other than to address basic
7 human needs or promote democracy, unless the Secretary
8 of State certifies and reports to the appropriate congres-
9 sional committees that the Government of Nicaragua is
10 taking effective steps to—

11 (1) hold free, fair, and transparent elections
12 overseen by credible domestic and international elec-
13 toral observers;

14 (2) promote democracy, as well as an inde-
15 pendent judicial system and electoral council;

16 (3) strengthen the rule of law;

17 (4) respect the right to freedom of association
18 and expression;

19 (5) combat corruption, including investigating
20 and prosecuting government officials that are
21 credibly alleged to be corrupt; and

22 (6) protect the right of political opposition par-
23 ties, journalists, trade unionists, human rights de-
24 fenders, and other civil society activists to operate
25 without interference.

1 (b) REPORT.—The Secretary of the Treasury shall
2 submit to the appropriate congressional committees a
3 written report assessing—

4 (1) the effectiveness of the international finan-
5 cial institutions in enforcing applicable program
6 safeguards in Nicaragua; and

7 (2) the effects of the matters described in sec-
8 tion 2 on long-term prospects for positive develop-
9 ment outcomes in Nicaragua.

10 (c) DEFINITIONS.—In this section:

11 (1) APPROPRIATE CONGRESSIONAL COMMIT-
12 TEES.—The term “appropriate congressional com-
13 mittees” means—

14 (A) the Committee on Foreign Affairs, the
15 Committee on Appropriations, and the Com-
16 mittee on Financial Services of the House of
17 Representatives; and

18 (B) the Committee on Foreign Relations,
19 the Committee on Appropriations, and the
20 Committee on Banking, Housing, and Urban
21 Affairs of the Senate.

22 (2) INTERNATIONAL FINANCIAL INSTITU-
23 TION.—The term “international financial institu-
24 tion” means the International Monetary Fund,
25 International Bank for Reconstruction and Develop-

1 ment, European Bank for Reconstruction and Devel-
2 opment, International Development Association,
3 International Finance Corporation, Multilateral In-
4 vestment Guarantee Agency, African Development
5 Bank, African Development Fund, Asian Develop-
6 ment Bank, Inter-American Development Bank,
7 Bank for Economic Cooperation and Development in
8 the Middle East and North Africa, and Inter-Amer-
9 ican Investment Corporation.

10 (d) TERMINATION.—This section shall terminate on
11 the day after the earlier of—

12 (1) the date on which the Secretary of State
13 certifies and reports to the appropriate congressional
14 committees that the requirements of subsection (a)
15 are met; or

16 (2) 5 years after the date of the enactment of
17 this Act.

18 (e) WAIVER.—The President may waive this section
19 if the President determines that such a waiver is in the
20 national interest of the United States.

21 **SEC. 5. ORGANIZATION OF AMERICAN STATES.**

22 (a) FINDINGS.—Congress finds that, according to the
23 Organization of American States (OAS) report on the Nie-
24 araguan 2011 Presidential elections, Nicaragua: Final Re-
25 port, General Elections, OAS (2011), the OAS made the

1 following recommendations to the Government of Nica-
2 ragua:

3 (1) “Prepare alternative procedures for updat-
4 ing the electoral roll when a registered voter dies.”.

5 (2) “Publish the electoral roll so that new addi-
6 tions, changes of address and exclusions can be
7 checked.”.

8 (3) “Reform the mechanism for accreditation of
9 poll watchers using a formula that ensures that the
10 political parties will have greater autonomy to ac-
11 credit their respective poll watchers.”.

12 (4) “Institute regulations to ensure that party
13 poll watchers are involved in all areas of the elec-
14 toral structure, including the departmental, regional
15 and municipal electoral councils and polling stations.
16 Rules should be crafted to spell out their authorities
17 and functions and the means by which they can ex-
18 ercise their authority and perform their functions.”.

19 (5) “Redesign the CSE administrative structure
20 at the central and field levels, while standardizing
21 technical and operational procedures, including the
22 design of control mechanisms from the time registra-
23 tion to the delivery of the document to the citizens;
24 the process of issuing identity cards should be timed

1 to the calendar and, to avoid congestion within the
2 process, be evenly spaced.”.

3 (b) ELECTORAL OBSERVATION MISSION.—The Presi-
4 dent shall direct the United States Permanent Represent-
5 ative to the OAS to use the voice, vote, and influence of
6 the United States at the OAS to strongly advocate for an
7 Electoral Observation Mission to be sent to Nicaragua in
8 2017.

9 **SEC. 6. STATEMENT OF POLICY.**

10 The Department of State and the United States
11 Agency for International Development should prioritize
12 foreign assistance to the people of Nicaragua to assist civil
13 society in democracy and governance programs, including
14 human rights documentation.

15 **SEC. 7. REPORT ON CORRUPTION IN NICARAGUA.**

16 (a) REPORT REQUIREMENT.—Not later than 90 days
17 after the date of the enactment of this Act, the Secretary
18 of State, in consultation with the intelligence community
19 (as defined in section 3(4) of the National Security Act
20 of 1947 (50 U.S.C. 3003(4)), shall submit to Congress
21 a report on the involvement of senior Nicaraguan govern-
22 ment officials, including members of the Supreme Elec-
23 toral Council, the National Assembly, and the judicial sys-
24 tem, in acts of public corruption or human rights viola-
25 tions in Nicaragua.

1 (b) FORM.—The report required in subsection (a)
2 shall be submitted in unclassified form, but may contain
3 a classified annex. The unclassified portion of the report
4 shall be made available to the public.

○