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S. CON. RES. 25

Expressing the sense of Congress that the President should submit the Paris climate change agreement to the Senate for its advice and consent.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2015

Mr. LEE (for himself, Mr. COTTON, Mr. CRUZ, Mr. VITTER, Mr. SHELBY, Mr. THUNE, Mr. SCOTT, Mr. WICKER, Mr. HATCH, Mr. MCCAIN, Mr. BLUNT, Mr. JOHNSON, Mr. ROUNDS, Mr. ROBERTS, Mr. SESSIONS, Mr. COCHRAN, Mr. TILLIS, Mr. GRASSLEY, Mr. COATS, Mr. CASSIDY, Mr. CRAPO, Mr. INHOFE, Mr. MCCONNELL, Mr. SASSE, Mr. DAINES, Mr. TOOMEY, Mr. BARRASSO, Mr. PAUL, Mrs. CAPITO, Mr. ENZI, and Mr. CORNYN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations

CONCURRENT RESOLUTION

Expressing the sense of Congress that the President should submit the Paris climate change agreement to the Senate for its advice and consent.

Whereas the United States is party to the United Nations Framework Convention on Climate Change, with annexes, done at New York May 9, 1992, and entered into force March 21, 1994 (in this resolution referred to as the “Convention”);

Whereas the Convention requires the United States to “adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropo-

genic emissions of greenhouse gases,” but does not require the United States to commit to specific targets or timetables for emissions reductions;

Whereas, during the Convention’s advice and consent process in the Committee on Foreign Relations of the Senate (in this resolution referred to as the “Foreign Relations Committee”) a question arose whether future protocols made pursuant to the Convention “containing targets and timetables” for emissions reductions should be submitted to the Senate for advice and consent;

Whereas the Foreign Relations Committee submitted a written question, “Would a protocol containing targets and timetables be submitted to the Senate?” to which the Executive Branch responded, “If such a protocol were negotiated and adopted, and the United States wished to become a party, we would expect such a protocol to be submitted to the Senate.”;

Whereas the Foreign Relations Committee, chaired by Senator Claiborne Pell, issued Executive Report 102–55 regarding the Convention in which it noted “that a decision by the Conference of the Parties to adopt targets and timetables would have to be submitted to the Senate for its advice and consent before the United States could deposit its instruments of ratification for such an agreement”;

Whereas Executive Report 102–55 further noted “that a decision by the executive branch to reinterpret the Convention to apply legally binding targets and timetables for reducing emissions of greenhouse gases to the United States would alter the ‘shared understanding’ of the Convention between the Senate and the executive branch and would therefore require the Senate’s advice and consent”;

Whereas, under the auspices given by the Executive Branch that future agreements made pursuant to the Convention containing targets and timetables for emissions reductions would be submitted to the Senate, the Senate gave its consent to ratification of the Convention on October 7, 1992;

Whereas, in December 2011, at the seventeenth session of the Conference of the Parties (COP–17) in Durban, South Africa, the Ad Hoc Working Group on the Durban Platform for Enhanced Action was established, *inter alia*, “to develop a protocol, another legal instrument or an agreed outcome with legal force” under the Convention to be completed no later than 2015 and adopted at the twenty-first session of the Conference of the Parties (COP–21);

Whereas, subsequent to COP–17, representatives of President Barack Obama, including the Special Envoy for Climate Change, have made public statements indicating that the United States intends to finalize a climate change agreement at COP–21 that contains targets and timetables for emissions reductions;

Whereas the Executive Branch has made clear through its public statements that it intends to negotiate a climate change agreement at COP–21 that contains legally binding provisions as well as nonbinding provisions—including targets and timetables for emissions reductions—attached as an addendum or schedule to the legally binding agreement;

Whereas the French Minister of Foreign Affairs, Laurent Fabius, who will host COP–21, has stated, “We must find a formula which is valuable for everybody and valuable for the U.S. without going to the Congress.”;

Whereas the Department of State developed guidelines known as the Circular 175 Procedure (C-175) to facilitate “the application of orderly and uniform measures to the negotiation, conclusion, reporting, publication, and registration of U.S. treaties and international agreements”;

Whereas C-175, inter alia, set forth eight factors for determining “whether any international agreement should be brought into force as a treaty or as an international agreement other than a treaty”;

Whereas the Executive Branch must give “due consideration” to the eight factors outlined in C-175, and “the utmost care is to be exercised to avoid any invasion or compromise of the constitutional powers of the President, the Senate, and the Congress as a whole”;

Whereas the eight factors are as follows: (1) the extent to which the agreement involves commitments or risks affecting the Nation as a whole; (2) whether the agreement is intended to affect State laws; (3) whether the agreement can be given effect without the enactment of subsequent legislation by the Congress; (4) past United States practice as to similar agreements; (5) the preference of the Congress as to a particular type of agreement; (6) the degree of formality desired for an agreement; (7) the proposed duration of the agreement, the need for prompt conclusion of an agreement, and the desirability of concluding a routine or short-term agreement; and (8) the general international practice as to similar agreements;

Whereas COP-21 will be held in Paris, France, from November 30 to December 11, 2015;

Whereas, at COP-21, the United States will be expected, inter alia, to commit billions of dollars in taxpayer money

to fund the Green Climate Fund and other financial mechanisms to fund mitigation and adaptation projects in developing countries;

Whereas the Paris climate change agreement, either in the form contemplated by the President or in its current draft form released on October 5, 2015, by the Ad Hoc Working Group on the Durban Platform, reflects the characteristics of a treaty as set forth in C-175, and does not reflect the characteristics of an international agreement other than a treaty; and

Whereas, pursuant to commitments made by the Executive Branch to the Senate during the advice and consent process for the Convention the Executive Branch stated that any protocol containing targets and timetables would be submitted to the Senate: Now, therefore, be it

1 *Resolved by the Senate (the House of Representatives*
2 *concurring)*, That it is the sense of Congress that—

3 (1) the statements made by the Executive
4 Branch to the Senate during Senate consideration of
5 the Convention and set forth in Executive Report
6 102–55 remain valid and in force and, accordingly,
7 any agreement adopted at COP–21 containing tar-
8 gets and timetables, whether deemed “legally bind-
9 ing” or not, must be submitted to the Senate for ad-
10 vice and consent pursuant to Article II, section 2 of
11 the Constitution;

12 (2) any agreement or decision made at COP–21
13 that contains targets and timetables—whether they

1 are contained within a legally binding instrument or
2 attached as a nonbinding schedule or addendum to
3 a legally binding instrument—shall be considered by
4 the Congress to be an agreement “containing targets
5 and timetables”;

6 (3) a decision by the Executive Branch made at
7 COP–21 or any other venue to apply targets and
8 timetables for reducing emissions of greenhouse
9 gases to the United States would alter the “shared
10 understanding” of the Convention between the Exec-
11 utive Branch and the Senate and would therefore re-
12 quire the Senate’s advice and consent;

13 (4) the Department of State developed the
14 “Circular 175 Procedure” to determine how inter-
15 national agreements would be negotiated, and the
16 eight factors contained in the Procedure strongly
17 support the conclusion that any agreement made
18 under the Convention that contains targets and
19 timetables for reducing emissions of greenhouse
20 gases must be submitted to the Senate for advice
21 and consent;

22 (5) until all commitments on emissions targets
23 and timetables made at COP–21 are submitted to
24 the Senate for advice and consent and subsequently
25 ratified by the Executive Branch, such commitments

1 shall have no effect on the interpretation of United
2 States law or the international obligations of the
3 United States; and

4 (6) Congress should refuse to consider any
5 budget resolutions and appropriations language that
6 include funding for the Green Climate Fund or any
7 affiliated body or financing mechanism unless and
8 until all agreements on emissions targets and time-
9 tables reached at COP-21 are submitted to the Sen-
10 ate for advice and consent.

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