RECORDED VOTE

Mr. MCGOVERN. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 229, noes 192, not voting 9, as follows:

[Roll No. 119]

AYES—229

Aderholt
Amash
Bachmann
Bachus
Barber
Barletta
Barr
Benishek
Bentivolio
Bilirakis
Bishop (UT)
Black
Blackburn
Boustany
Brady (TX)
Bridenstine
Brooks (AL)
Brooks (IN)
Broun (GA)
Buchanan
Bucshon
Burgess
Byrne
Calvert
Camp
Campbell
Cantor
Capito
Carter
Cassidy
Chabot
Chaffetz
Coble
Coffman
Cole
Collins (GA)
Collins (NY)
Conaway
Cook
Cotton
Cramer
Crawford
Crenshaw
Culberson
Daines
Davis, Rodney
Denham
Dent
DeSantis
DesJarlais
Diaz-Balart
Duffy
Duncan (SC)
Duncan (TN)
Ellmers
Farenthold
Fincher
Fitzpatrick
Fleischmann
Fleming
Flores
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gardner
Garrett
Gerlach
Gibbs
Gibson
Gingrey (GA)
Gohmert
Goodlatte
Gowdy
Granger
Graves (GA)
Graves (MO)
Griffin (AR)
Griffith (VA)
Grimm
Guthrie
Hall
Hanna
Harper
Harris
Hartzler
Hastings (WA)
Heck (NV)
Hensarling
Herrera Beutler
Holding
Hudson
Huelskamp
Huizenga (MI)
Hultgren
Hunter
Hurt
Issa
Jenkins
Johnson (OH)
Johnson, Sam
Jones
Jordan
Joyce
Kelly (PA)
King (IA)
King (NY)
Kingston
Kinzinger (IL)
Kline
Labrador
LaMalfa
Lamborn
Lance
Lankford
Latham
Latta
LoBiondo
Long
Lucas
Luetkemeyer
Lummis
Marchant
Marino
Massie
McAllister
McCarthy (CA)
McCaul
McClintock
McHenry
McKeon
McKinley
McMorris Rodgers
Meadows
Meehan
Messer
Mica
Miller (FL)
Miller (MI)
Mullin
Mulvaney
Murphy (PA)
Neugebauer
Noem
Nugent
Nunes
Nunnelee
Olson
Palazzo
Paulsen
Pearce
Perry
Petri
Pittenger
Pitts
Poe (TX)
Pompeo
Posey
Price (GA)
Rahall
Reed
Reichert
Renacci
Ribble
Rice (SC)
Rigell
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rokita
Rooney
Ros-Lehtinen
Roskam
Ross
Rothfus
Royce
Runyan
Ryan (WI)
Salmon
Sanford
Scalise
Schock
Schweikert
Scott, Austin
Sensenbrenner
Sessions
Shimkus
Shuster
Simpson
Smith (MO)
Smith (NE)
Smith (NJ)
Smith (TX)
Southerland
Stewart
Stivers
Stockman
Stutzman
Terry
Thompson (PA)
Thornberry
Tiberi
Tipton
Turner
Upton
Valadao
Wagner
Walberg
Walden
Walorski
Weber (TX)
Webster (FL)
Wenstrup
Westmoreland
Whitfield
Williams
Wilson (SC)
Wittman
Wolf
Womack
Woodall
Yoder
Yoho
Young (AK)
Young (IN)

NOES—192

Barrow (GA)
Bass
Beatty
Becerra
Bera (CA)
Bishop (GA)
Bishop (NY)
Blumenauer
Bonamici
Brady (PA)
Braley (IA)
Brown (FL)
Brownley (CA)
Bustos
Butterfield
Capps
Capuano
Cárdenas
Carney
Carson (IN)
Cartwright
Castor (FL)
Castro (TX)
Chu
Cicilline
Clark (MA)
Clarke (NY)
Clay
Cleaver
Clyburn
Cohen
Connolly
Conyers
Cooper
Costa
Courtney
Crowley
Cuellar
Cummings
Davis (CA)
Davis, Danny
DeFazio
DeGette
Delaney
DeLauro
DelBene
Deutch
Doggett
Doyle
Duckworth
Edwards
Ellison
Enyart
Eshoo
Esty
Farr
Fattah
Foster
Frankel (FL)
Fudge
Gabbard
Gallego
Garamendi
Garcia
Grayson
Green, Al
Green, Gene
Grijalva
Gutiérrez
Hahn
Hanabusa
Hastings (FL)
Heck (WA)
Higgins
Himes
Hinojosa
Holt
Honda
Horsford
Hoyer
Huffman
Israel
Jackson Lee
Jeffries
Johnson (GA)
Johnson, E. B.
Kaptur
Keating
Kelly (IL)
Kennedy
Kildee
Kilmer
Kind
Kirkpatrick
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lipinski
Loebsack
Lofgren
Lowenthal
Lowey
Lujan Grisham (NM)
Luján, Ben Ray (NM)
Lynch
Maffei
Maloney, Carolyn
Maloney, Sean
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNerney
Meeks
Meng
Michaud
Miller, George
Moore
Moran
Murphy (FL)
Nadler
Napolitano
Neal
Negrete McLeod
Nolan
O'Rourke
Owens
Pallone
Pascrell
Pastor (AZ)
Payne
Pelosi
Perlmutter
Peters (CA)
Peters (MI)
Peterson
Pingree (ME)
Pocan
Polis
Price (NC)
Quigley
Rangel
Richmond
Roybal-Allard
Ruiz
Ruppersberger
Ryan (OH)
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schneider
Schrader
Schwartz
Scott (VA)
Scott, David
Serrano
Sewell (AL)
Shea-Porter
Sherman
Sinema
Sires
Slaughter
Smith (WA)
Speier
Swalwell (CA)
Takano
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Tsongas
Van Hollen
Vargas
Veasey
Vela
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Waxman
Welch
Wilson (FL)
Yarmuth

NOT VOTING—9

Amodei
Barton
Dingell
Engel
Gosar
Kuster
Lewis
Miller, Gary
Rush

□ 1353

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated against:

Ms. KUSTER. Mr. Speaker, on rollcall No. 119, had I been present, I would have voted "no."

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, March 12, 2014.

Hon. JOHN A. BOEHNER,
Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on March 12, 2014 at 10:52 a.m.:

That the Senate agreed to S.J. Res. 32.

With best wishes, I am

Sincerely,

KAREN L. HAAS.

PERMISSION FOR MEMBER TO BE CONSIDERED AS FIRST SPONSOR OF H.J. RES. 43

Ms. SPEIER. Mr. Speaker, I ask unanimous consent that I may hereafter be considered to be the first sponsor of H.J. Res. 43, removing the deadline for the ratification of the equal rights amendment, a bill originally introduced by Representative Robert Andrews of New Jersey, for the purposes of adding cosponsors and requesting reprintings pursuant to clause 7 of rule XII.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

EXECUTIVE NEEDS TO FAITHFULLY OBSERVE AND RESPECT CONGRESSIONAL ENACTMENTS OF THE LAW ACT OF 2014

GENERAL LEAVE

Mr. GOODLATTE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous materials on H.R. 4138.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 511 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 4138.

The Chair appoints the gentleman from Pennsylvania (Mr. THOMPSON) to preside over the Committee of the Whole.

□ 1457

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 4138) to protect the separation of powers in the Constitution of the United States by ensuring that the President takes care that the laws be faithfully executed, and for other purposes, with Mr. THOMPSON of Pennsylvania in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Virginia (Mr. GOODLATTE) and the gentleman from Michigan (Mr. CONYERS) each will control 30 minutes.

The Chair recognizes the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, our system of government is a tripartite one, with each branch having certain defined functions delegated to it by the Constitution. The President is charged with executing the laws, the Congress with writing the laws, and the judiciary with interpreting them.

The Obama administration, however, has ignored the Constitution's carefully balanced separation of powers and unilaterally granted itself the extraconstitutional authority to amend the laws and to waive or suspend their enforcement. This raw assertion of authority goes well beyond the executive power granted to the President and specifically violates the Constitution's command that the President is to take care that the laws be faithfully executed.

Mr. Chairman, from ObamaCare to welfare and education reform to our Nation's drug enforcement laws and other areas of the law, President Obama has been picking and choosing which laws to enforce. In place of the checks and balances established by the Constitution, President Obama has proclaimed that ''I refuse to take 'no' for an answer'' and that ''where Congress won't act, I will.''

Throughout the Obama Presidency, we have seen a pattern: President Obama circumvents Congress when he doesn't get his way, but the Constitution does not confer upon the President the executive authority to disregard the separation of powers and rewrite acts of Congress based on his policy preferences. It is a bedrock principle of constitutional law that the President must faithfully execute the laws passed by Congress.

We cannot continue to allow the President to ignore the constitutional limits on executive power. The President's far-reaching claims of executive power, if left unchecked, will vest this and future Presidents with broad domestic policy authority that the Constitution does not grant.

As prominent law professor, Jonathan Turley, who testified that he voted for President Obama, warned in testimony before the Judiciary Committee:

> The problem with what the President is doing is that he is not simply posing a danger to the constitutional system. He is becoming the very danger the Constitution was designed to avoid, that is, the concentration of power in a single branch.

That is why I join with Representative GOWDY and Chairman ISSA to introduce H.R. 4138, the ENFORCE the Law Act. This legislation puts a procedure in place to permit the House or the Senate to authorize lawsuits against the executive branch for failure to faithfully execute the laws.

The courts have held that lawsuits alleging institutional injuries must be brought by the injured institution itself, and H.R. 4138 is solidly in line with those judicial precedents. In addition, because it is an act of Congress, the ENFORCE the Law Act can apply special court procedural rules to significantly increase the speed at which cases challenging the President's failure to faithfully execute are considered by the courts. These provisions are critical to ensure the President cannot simply stall a lawsuit until his term is up.

In addition, these provisions are similar to those that were in the Line Item Veto Act. Litigation challenging the constitutionality of the line item veto proceeded through the district court and was decided by the Supreme Court within 7 months of being filed.

The ENFORCE the Law Act will help overcome the hostility the courts have shown toward deciding disputes between the political branches in the past.

The Constitution's Framers did not expect the judiciary to sit on the sidelines and watch as one branch aggrandized its own powers and exceeded the authority granted to it by the Constitution; rather, the Constitution gives the Federal courts very broad jurisdiction to hear ''all cases . . . arising under this Constitution and the laws of the United States.'' However, over time, the courts have read their own powers much more narrowly, refusing to exercise a vital check over unconstitutional action by the executive branch.

□ 1400

When the courts refuse to step in and umpire these disputes, they cede the field to this and future Presidents. The separation of powers is not strengthened by the refusal of the judicial branch to referee the division of power between the branches.

As then-Senator Obama observed in 2008:

> One of the most important jobs of the Supreme Court is to guard against the encroachment of the executive branch on the power of other branches. And I think the Chief Justice has been a little bit too willing and eager to give an administration, whether its mine or George Bush's, more power than I think the Constitution originally intended.

The ENFORCE the Law Act will help ensure that, when Congress brings a lawsuit against the administration for its refusal to enforce the laws, the courts take up the cases and decide it expeditiously.

This legislation is a good first step toward ending this crisis and restoring balance to our system of government.

I urge my colleagues to support this legislation, and I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, the ENFORCE Act, like so many other bills that we have considered this Congress, is truly a solution in search of a problem.

It was made clear during the two full committee oversight hearings that we held on the Constitution's Take Care Clause, the President, in fact, fully met his obligation to faithfully execute the laws.

So let us acknowledge what this legislation is really about. It is simply yet another attempt by the majority to prevent the President of the United States from implementing duly enacted legislative initiatives that they oppose.

Allowing the flexibility and the implementation of a new program, even where the statute mandates a specific deadline, is neither unusual nor a constitutional violation. It is the reality of administering sometimes complex programs and is part and parcel of the President's duty to ''take care'' that he ''faithfully'' execute laws.

This has been especially true with respect to the Affordable Care Act. The President's decision to extend certain compliance dates to help phase-in the act is not a novel tactic. And even though not a single court has ever concluded that reasonable delay in implementing a complex law constitutes a violation of the Take Care Clause, the majority insists that there is a constitutional crisis.

Additionally, the exercise of enforcement discussion is a traditional power of the Executive. For example, the decision to defer deportation of young adults who were brought to the United States as children, the DREAMers, is a classic exercise of such discretion.

H.R. 4138 could also have the perverse effect of preventing the President from taking steps to protect people's rights.

If H.R. 4138 had been law in 1861, the Congress could have sued President Lincoln for issuing the Emancipation Proclamation because Congress could have concluded that President Lincoln had failed to enforce then-existing laws protecting the institution of slavery, like the Fugitive Slave Law.

Likewise, if H.R. 4138 had been law in 1948, Congress could have sued President Truman for issuing Executive Order 9981, which desegregated the armed services in contravention of then-existing military policy.

And, it is no surprise that the Supreme Court has consistently held that the exercise of such discretion is a function of the President's power under the Take Care Clause.

As the Court held in Heckler v. Chaney:

> An agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion.

Even assuming there is a problem to address, H.R. 4138 is itself flawed because it violates fundamental separation of powers principles and may be unconstitutional as applied.

The ENFORCE Act would essentially allow Federal courts to second-guess decisions by the executive branch in a potentially vast range of areas that are committed under the Constitution to the discretion of the political branches like the conduct of foreign affairs.

Additionally, it is highly unlikely that Congress could satisfy the standing requirements of Article III of the

Constitution, which are meant to reinforce the Constitution's separation of powers principles.

To meet those standing requirements, a plaintiff must show that it suffered a concrete and particularized injury. The kind of injury that would be the subject of a civil action under H.R. 4138, however, would amount only to an alleged violation of a right to have the administration enforce the law in a particular way.

I reserve the balance of my time.

In closing, I want to ask my colleagues when is enough enough? At what point can we say its time to put away the partisan rhetoric, the demagoguery, and the synthetic scandals and start really working on the issues the American people want solutions to.

The American people are waiting for us to take action on a host of issues that this House refuses to address—from securing fair pay for a fair day's work, extending unemployment insurance, and fixing our broken immigration laws.

So lets stop the games and finally get to work. I reserve the balance of my time.

Mr. GOODLATTE. Mr. Chairman, at this time it is my distinct pleasure to yield 5 minutes to the gentleman from South Carolina (Mr. GOWDY), a member of the Judiciary Committee and the chief sponsor of the legislation.

Mr. GOWDY. Mr. Chairman, I would like to thank Chairman GOODLATTE for his leadership on this bill and a host of others in the Judiciary Committee.

Mr. Chairman, I want to have a pop quiz. That may seem unfair to my colleagues on the other side of the aisle, but I am going to give them a hint: the answer to every one of the questions is the same. I am going to read a quote and then you tell me who said it:

These last few years, we have seen an unacceptable abuse of power, having a President whose priority is expanding his own power.

Any guess on who said that? Mr. Chairman, it was Senator Barack Obama.

Here is another one:

No law can give Congress a backbone if it refuses to stand up as the coequal branch the Constitution made it.

That was Senator Barack Obama.

What do we do with a President who can basically change what Congress passed by attaching a letter saying I don't agree with this part or that part?

Senator Barack Obama.

I taught the Constitution for 10 years. I believe in the Constitution.

Senator Barack Obama.

And my favorite, Mr. Chairman:

One of the most important jobs of the Supreme Court is to guard against the encroachment of the executive branch on the power of the other branches. And I think the Chief Justice has been a little too willing and eager to give the President more power than I think the Constitution originally intended.

So my question, Mr. Chairman, is how in the world can you get before the Supreme Court if you don't have standing? What did the President mean by that when he looked to the Supreme Court to rein in executive overreach? If you don't have standing, how can you possibly get before the Supreme Court?

So my question is, Mr. Chairman, what has changed? How does going from being a Senator to a President rewrite the Constitution? What is different from when he was a Senator?

Mr. Chairman, I don't think there is an amendment to the Constitution that I missed. I try to keep up with those with regularity, but what I do know is this: process matters. If you doubt it, Mr. Chairman, ask a prosecutor or a police officer, both of whom, as my friends on the other side of the aisle know, both of them are members of the executive branch. What happens when a police officer fails to check the right box on a search warrant application? The evidence is thrown out even though he was well-intended, even though he had good motivations, even though he got the evidence, because process matters.

What happens when the police go and get a confession from the defendant? He did it. This is not a who-done-it; he admitted he did it. You got the right person for the right crime, but what happens if he doesn't follow the process? The defendant walks free. The criminal defense attorneys who are now Congressmen on the other side of the aisle know that is exactly what they argued when they were before the judge; not that the end justifies the means. Don't look at the motivations, look at the process.

Mr. Chairman, we are not a country where the end justifies the means, no matter how good your motivations may be. We all swore an allegiance to the same document that the President swears allegiance to: to faithfully execute the law. So I will be listening intently during this debate for one of my colleagues to explain to me what does that phrase mean. What does it mean, not to execute the law, but when the Framers thought enough of that phrase to add the modifier ''faithfully''? What does that mean?

If a President does not faithfully execute the law, Mr. Chairman, what are our remedies? Do we just sit and wait on another election? Do we use the power of the purse, the power of impeachment? Those are punishments; those are not remedies. The remedy is to do exactly what Barack Obama said to do: to go to court, to go to the Supreme Court and have the Supreme Court say once and for all.

We don't pass suggestions in this body, Mr. Chairman, we don't pass ideas; we pass laws, and we expect them to be faithfully executed.

□ 1415

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentleman from Tennessee (Mr. COHEN), who is the ranking member of the Constitution Subcommittee of House Judiciary.

Mr. COHEN. Thank you, Mr. Chairman. I appreciate you yielding.

Mr. Chairman, as some of my colleagues said so eloquently during last week's Judiciary markup on this bill, that the majority's attempts to turn routine exercises of Presidential discretion into constitutional violations is nothing but a show and a pretext to attack the President of the United States.

The hearing we had reminded me of a Woody Allen saying in a movie called Bananas. Acting as Fielding Mellish, he said this is ''a travesty of a mockery of a sham of a mockery of a travesty of two mockeries of a sham.'' That is what this bill is, that is what that hearing was, and that is what this proceeding is.

H.R. 4138 would establish a process by which one House of Congress could sue the President when it determines the President failed to faithfully execute a law—one House, not two Houses. They talk about the separation of powers.

The separation of powers is executive and legislative, and legislative is Senate and House. The House originates spending bills, and the Senate confirms judges and things like that.

There was some discussion yesterday, and the chairman brought up a situation where the Senate went to the court on an issue concerning some appointments, which the Senate had exclusive jurisdiction on, but it is when they had exclusive jurisdiction.

In situations where there is a bill passed and the Senate and the House coshare equally, unless the Senate and the House both want to act, it is not separation of powers; it is one House trying to act as a star Chamber to take down the President of the United States.

This bill would, if enacted, represent a massive upending of the carefully calibrated separation of powers of our Constitution—one House, not the two Houses of Congress acting.

One of the gentleman who tried to defend this law in Rules Committee talked about something in Florida. Well, Florida, whatever they have got, they have got some kind of situation; but that was a quo warranto action where the Governor was acting beyond his authority, ultra vires.

It wasn't where the President is acting within his authority in his discretion and determining what is the best way to act, a difference between taking action and not taking action and taking action you are authorized not to take and taking action you are authorized to take. They didn't defend their position once correctly.

Congress lacks the standing to sue, and Mr. CONYERS has brought that up. Standing requirements are necessary. Also, by drafting Federal Courts into deciding what are essentially political questions, the bill further upsets that separation of powers.

Questions about when and how to implement and enforce laws are within the President's discretion as the Take Care Clause makes clear. It is the President's duty alone to take care that the laws be faithfully executed, not the courts' and not Congress'. The

courts rightly avoid involving themselves of disputes between the branches on questions of how law is executed. This bill flies in the face of such.

Ultimately, though, this bill and the larger debate surrounding it have nothing to do with the finer points of constitutional law. That is a red herring. It is a part of a broader attempt by Republicans to delegitimize anything that this President, Barack Obama, does.

Here, the majority complains, among other things, about the fact the President delayed implementation of certain provisions of the Affordable Care Act, like the employer mandates for medium and large businesses. The Rolling Stones had a song, sometimes you get what you want, sometimes you get what you need.

With the Affordable Care Act, they got what they wanted and what the President thought the country needed. Now, they are against it, holding the President up to ridicule and claiming it is the process, even though they are in agreement with the substance.

In Yiddish, that is called chutzpah; in law, it is called estoppel. In a Congress, it is called not being able to take yes for an answer.

I find it odd that this is what they choose to emphasize, that this President is acting in an allegedly unconstitutional way to undermine his own signature legislation.

It shows the depths of what Dana Milbank referred to as Obama derangement syndrome, where the President's opponents are so determined to thwart him, they will say anything, including reversing their own long-held views, if they believe doing so will weaken his stature.

This is unfortunate because President Obama has led where this Republican House has failed on immigration reform, on financial reform, on environmental protection, on the minimum wage, and, yes, on health care.

The thanks President Obama gets from this majority for his efforts to implement and enforce the laws as thoughtfully as he could is to be accused of violating the Constitution.

Mr. GOODLATTE. Mr. Chairman, at this time, it is my pleasure to yield 3 minutes to the gentleman from Pennsylvania (Mr. GERLACH), another chief cosponsor of this legislation.

Mr. GERLACH. I thank the chairman.

Mr. Chairman, I rise today in support of this legislation that strives to restore the coequal balance of power between the legislative and executive branches and would establish a procedure for making sure all Presidents are accountable for meeting their constitutional obligation to faithfully execute all duly-enacted laws.

Chairman GOODLATTE, Congressman GOWDY, and members of the Judiciary Committee have done an outstanding job highlighting the need for such legislation and explaining to the American people why it is important to ensure the legislative and executive branches are functioning as intended by the framers.

The bill before us today represents a collaborative effort to craft an effective legislative response to a series of unilateral actions by the President that he has taken in the last few years to selectively apply, enforce, and ignore duly-enacted laws.

The Affordable Care Act—or ObamaCare—a law written and enacted exclusively by the President and Members of his party, has been delayed, amended, and effectively rewritten about two dozen times in the past year.

The law hasn't changed by coming to Congress and working with us on reasonable changes or following the legislative process we were taught in high school civics. No, the law was modified because the President and his administration simply declared it to be changed, in most cases, on late Friday afternoons or right before a major holiday like Thanksgiving.

Today's vote is not about rehashing the debate over ObamaCare. The President has also unilaterally acted to suspend enforcement of immigration laws, stop the prosecution of nonviolent drug offenses, and nullify sections of Federal laws and education.

It is as if the President thinks our laws are written in pencil and it is his job to take a giant eraser to the parts he doesn't agree with and then scribble in some new words that fit his agenda; or as George Washington University Law Professor Jonathan Turley noted during his testimony recently:

> President Obama's become the very danger the Constitution was designed to avoid, the concentration of power in any one of the branches.
>
> If a President can unilaterally change the meaning of laws in substantial ways or refuse to enforce them, it takes offline that very thing that stabilizes our system.

After that hearing, I was able to introduce legislation to create a fast-track independent judicial review process that would settle disputes over whether a president has exceeded his constitutional authority and whether he has met his duty to faithfully execute the law.

The legislation today before us accomplishes those same goals. It represents a commonsense procedural reform that establishes a practical, effective solution to resolve serious questions of Executive overreach.

Our system of checks and balances was designed to prevent a President—or any other branch of the Federal Government—from being able to unilaterally declare a law by whatever that individual says it is at that point in time after the law was enacted.

No doubt Madison, Jefferson, and other Framers understood that allowing a concentration of power in one branch was a recipe for chaos and instability; so if Congress does not act and fails to hold a President accountable for executing the laws as written, how can we expect citizens to have any respect for the laws passed by this Chamber?

Therefore, I urge my colleagues to support this bill to restore and preserve the delicate constitutional balance among the three branches of our Federal system and to take an important step in restoring the confidence of the public in our system of governance.

Mr. CONYERS. Mr. Chairman, it is my pleasure to yield 3 minutes to the gentlelady from California (Ms. LOFGREN), who is the ranking member of the Immigration Subcommittee on Judiciary.

Ms. LOFGREN. Mr. Chairman, in the committee report that accompanies these bills, on page 13 and 14, there are three items that the majority says that the President can't do.

One is to defer action for the DREAMers, young people who are brought here innocently in violation of immigration laws; two, to allow the wives of American soldiers who are undocumented to stay and not be deported; and, finally, to allow parents who have been arrested for immigration to try and preserve their parental rights.

Is it legal for the President to take these actions? Certainly, it is. In Heckler v. Chaney, as well as in the Arizona v. United States court decision, the Supreme Court makes clear that, in immigration, the ability to enforce or decide not to enforce is part of the broad executive authority; and further, the United States Congress has actually delegated to the executive branch, at 6 U.S. Code 202, the national immigration enforcement priorities and policies to the President.

Now, is this anything new? No. We have paroled-in-place Cubans since John F. Kennedy was President. In 2010, a bipartisan group of members, including Congressman MICHAEL TURNER and MAC THORNBERRY from the Armed Services Committee and myself wrote and said: Please, Mr. President, don't deport the wives of American soldiers.

The President used his authority to do that as prior Presidents had done. The use of parole in place is delegated to the President and nothing new.

Now, why is this important? These bills are drafted to keep the President from doing the things that he did to allow the children to stay and to allow the wives of American soldiers not to be deported.

I think that what the majority wants to do is to not only have a do-nothing Congress, but to have a do-nothing President. When it comes to immigration, this is very serious. We have had one vote on immigration here in the Congress that was on Congressman KING's bill to deport the DREAM Act kids.

We have heard a lot of discussion about a bill supposedly that is going to be brought forward by the majority about the innocent children who have been brought here, but we haven't seen a bill; instead, we see these bills, which would allow the Congress to overrule

the President's action, so that the DREAM Act kids will be deported, so that the wives of soldiers who are in battle in Afghanistan would be deported, so that individuals who are caught up in an immigration problem would lose their children to social services, would lose their parental rights.

Mr. GOODLATTE. Mr. Chairman, at this time, it is my pleasure to yield 1 minute to the gentleman from Virginia (Mr. CANTOR), the majority leader.

Mr. CANTOR. Mr. Chairman, I thank Chairman GOODLATTE from Virginia for his leadership on this effort.

Mr. Chairman, I rise today in support of the ENFORCE the Law Act. Our Founders created a series of checks and balances for our democracy, to prevent any one of the three branches of government from becoming too powerful. This separation of powers has always been one of the most important pillars of our political system and an example of good governance for the world to follow.

For over 200 years, America has prospered because we adhere to a Constitution that makes each branch's role explicitly clear: the elected representatives in Congress pass laws, the President faithfully enforces them, and an independent judiciary adjudicates disputes.

This lesson is so important that we teach it to our school children and articulate it to our citizens, so they understand the rules of the road.

When we fail to uphold this system and one branch of government begins to tip the scales of power in its favor, we descend towards chaos. Today, we are seeing the system break down.

This administration's blatant disregard for the rule of law has not been limited to just a few instances. From gutting welfare reform and No Child Left Behind requirements to refusing to enforce immigration and drug laws, the President's dangerous search for expanded powers appears to be endless. Whether one believes in the merit of the end goal or not, this is not how the executive branch was intended by our Founders to act.

These actions not only weaken the credibility of our political institutions, they also threaten our chances of returning to a time of robust job growth by creating uncertainty in the economy.

□ 1430

This has become most evident with the implementation of the President's disastrous health care law, which is wreaking havoc on small businesses, which is wreaking havoc on wage earners and families. Even The Washington Post ran a story this weekend detailing how arbitrary changes to ObamaCare are creating mass confusion for consumers. Our constituents deserve better.

Steps taken by this administration show that it doesn't care for the rule of law or for the balance of powers designed by our Founders. The only way to reestablish the intent of our Constitution is to create a process by which either Chamber of Congress can take the matter to court, which is what this legislation does. It goes hand in hand with the Faithful Execution of the Law Act, which we will consider later today. That bill requires the administration to tell Congress when they have decided that they don't like a law and are refusing to do the constitutional duty and enforce it.

These bills are not just about President Obama. What if future Republican Presidents decide that they don't like the tax increases enacted by Democrats in Congress or by a past Democratic President? Can that President just refuse to collect those taxes or resist enforcing laws he doesn't like? No. Any future President must work with Congress to seek changes in laws that need to be reformed. As James Madison said, ''To see the laws fruitfully executed constitutes the essence of the executive authority.''

We have an opportunity today to stand together in a bipartisan manner and put mechanisms in place to prevent the executive branch from continually abusing its power, and they will remain in place no matter which party controls the White House. So let us pass this legislation and show the American people that we are committed to a government that functions the way it was intended to—within the framework of our Constitution.

I want to thank Chairman GOODLATTE, Representative GOWDY, Representative DESANTIS, and the rest of the Judiciary Committee, who have worked so hard on this very important issue. I strongly urge my colleagues in the House to support the bill.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 3 minutes to the distinguished gentleman from Illinois (Mr. GUTIÉRREZ).

Mr. GUTIERREZ. Mr. Chairman, the goal of the ENFORCE Act is to ensure that this do-nothing Congress forces President Obama to be a do-nothing President as well. It is not enough for the Republican majority to be setting records for how little they are doing. They expect the same do-nothingness from the President, especially on immigration.

What the Republicans have failed to do is to work with their Democratic colleagues to bring serious, realistic, and achievable immigration reform legislation to the floor, reform that is overwhelmingly popular with the American people. They worked with us for months. Then they decided they would rather deploy their sound bite strategy that the President can't be trusted to enforce the law—and walked away from negotiations. The Republicans put forward broad, vague but sensible principles they said would guide their reform efforts. Then, just as quickly, they decided they would deploy their sound bite strategy that the President can't be trusted to enforce the law—and walked away from the legislation.

I want to take a moment to show you this, and I want to point it over to my Republican colleagues in case they forgot. It is signed by LAMAR SMITH and Henry Hyde.

Here is what it says:

> There has been widespread agreement that some deportations were unfair and resulted in unjustifiable hardships. If the facts substantiate the presentations that have been made to us, we must ask why the INS pursued removal in such cases when so many other, more serious cases existed.

You wrote the President of the United States, and asked then-President Clinton to use his discretionary power.

You said further in your letter:

> It is well-grounded the prosecutorial discretion of the initiation and termination of removal proceedings. See attached referendum. Optimally, removal proceedings should be initiated—that is deportations—or terminated only upon specific instructions from authorized INS officials and issued in accordance with agency guidelines. However, the INS, apparently, has not yet promulgated such guidelines.

That is what the President of the United States did. He promulgated guidelines which you said that then-President Clinton would not promulgate. What were they? It was DACA. That is what he promulgated. He promulgated guidelines, and please don't tell me it was a group of people and that they had to do it individually. Tell the thousands of DREAMers who have been denied DACA that they didn't apply individually. Each and every case was applied individually. Each of them came before the authorities and said: I want to apply for this program under these guidelines promulgated by President Obama.

When he does it, I guess you don't care. I guess then we can't trust them. No, you can't trust them, because you do not want to act, and you want to use it as an excuse.

Moreover, I want to read to you from the Republican principles on immigration. This is what your caucus put forward:

> One of the greatest founding principles of our country was that children would not be punished for the mistakes of their parents. It is time to provide an opportunity for legal residence and citizenship for those who were brought to this country as children through no fault of their own and have no other place.

Yet, today, you want to take that very ability from the President of the United States.

The CHAIR. Members are reminded that they must direct their remarks to the Chair and not to others in the second person.

Mr. GOODLATTE. Mr. Chairman, I yield myself 30 seconds to point out that this legislation does two things: one, it expedites any court consideration of lawsuits brought under this legislation; two, it recognizes the distinction between constitutional standing and other standing that has been court created.

It says that that standing can be waived. That does not in any way determine what a court's ruling might be

or even what its ruling would be on the standing of a particular lawsuit brought, but it strengthens the hand of the Congress—any Congress—and under the control of any leadership to determine whether or not to bring lawsuits.

At this time, it is my pleasure to yield 2½ minutes to the gentleman from Texas (Mr. SMITH), a leader of the House and a former chairman of the Judiciary Committee.

Mr. SMITH of Texas. First of all, I want to thank the gentleman from Virginia, the chairman of the Judiciary Committee, for yielding me time, and I want to thank the gentleman from South Carolina (Mr. GOWDY) for introducing this bill.

Mr. Chairman, very quickly in order to respond to what the gentleman from Illinois just said, quite frankly, he is smarter than that. He knows that the letter had to do with individual prosecutorial discretion, and he knows the President basically exempted broad categories of individuals and went far beyond individual discretionary prosecution.

H.R. 4138 authorizes either Chamber of Congress to challenge, as an institution, the administration's failure to faithfully execute the laws, and in accordance with the constitutional ''separation of powers'' doctrine, it protects the legislative branch of government from an overreaching Executive.

The Obama administration has ignored laws, failed to enforce laws, undermined laws, and changed laws by executive orders and administrative actions. These include laws covering health care, immigration, marriage, drugs, and welfare requirements. Other Presidents have issued more executive orders, but no President has issued so many broad and expansive executive orders that have stretched the Constitution to its breaking point.

As for not enforcing laws, in 2011, the President instructed the Attorney General of the United States not to defend the Defense of Marriage Act in court. Recently, the Attorney General declared that State attorneys general are not obligated to defend laws they believe are discriminatory. At other times, the President has decided not to enforce immigration laws as they apply to entire categories of individuals, as I just mentioned, and the President has decreed a dozen changes to the Affordable Care Act, also known as ObamaCare.

But neither the President nor the Attorney General, himself, has the constitutional right to make or change laws.

The President and the Attorney General have a constitutional obligation to enforce existing laws. If they think a law is unconstitutional, they should wait for the courts to rule. Their opinions are no substitutes for due process and judicial review. It is their job to enforce existing laws, whether they personally like them or not.

Ours is a nation of laws, not a nation of random enforcement. All true reform starts with the voice of the people. If American voters rise up and speak loudly enough, they will be heard. Today, the United States House of Representatives is listening to them by bringing the ENFORCE the Law Act to the floor. I urge its adoption.

Mr. CONYERS. Mr. Chairman, I am pleased now to yield 2 minutes to the distinguished gentleman from Georgia (Mr. JOHNSON), a ranking member of a subcommittee on the House Judiciary Committee.

Mr. JOHNSON of Georgia. Mr. Chairman, I rise in opposition to H.R. 4138, the ENFORCE Act.

The ENFORCE Act seeks to diminish the power of the executive branch by giving Congress the ability to act as an enforcement agency.

As the most do-nothingness House of Representatives in American history, this body doesn't need any extra responsibilities, especially that which would be unconstitutional. The seminal case of Marbury v. Madison not only establishes judicial power to review the constitutionality of laws and actions, but it affirms the fact that we have three separate, coequal branches of government. If there is an issue with the President's failing to execute the laws, the Supreme Court has the authority by way of writ of mandamus to compel the President to act.

Have my righteously indignant friends on the other side of the aisle sought to use that process to check the alleged abuse of authority by the President?

No, they have not.

Why haven't they sued to force this President to enforce laws that they contend he has refused to implement?

They haven't sued because they know that they would not present a truthful case. They know that they would lose the case. They know that this President has not exceeded his constitutional authority.

This legislation is simply a showcase for the false narrative that the Republicans continue to perpetuate upon the American people. That false narrative is that this President is not an American, that he is not one of us, and that the President is a Communist-Socialist, who is doing everything he can to turn this Nation into a Third World country. That is a false narrative. Our Forefathers, by way of the United States Constitution, have already put safeguards in place to ensure that the Executive faithfully executes the laws passed by the legislative branch.

The CHAIR. The time of the gentleman has expired.

Mr. CONYERS. I yield the gentleman an additional 1 minute.

Mr. JOHNSON of Georgia. Mr. Chairman, I offered an amendment to this patently absurd piece of legislation when it was considered by the Judiciary Committee. My amendment stressed the importance of protecting the delicate balance of power that the Constitution affords the legislative and executive branches.

The President has the right to choose how to set enforcement priorities with respect to immigration policy as well as the power to exercise discretion in the implementation of the Affordable Care Act.

Mr. GOODLATTE. Mr. Chairman, at this time, it is my pleasure to yield 2 minutes to the gentleman from Texas (Mr. POE), a member of the Judiciary Committee.

Mr. POE of Texas. I thank the chairman for yielding time.

Mr. Chairman, the Constitution and the laws of the land are not mere suggestions for any President, whether it is this President, future Presidents, or Presidents before us; but this administration, for some reason, continues to enforce laws that Congress passes and that have been signed by other Presidents.

Despite the constitutional phrase that the executive will ''faithfully execute the law,'' the administration ignores the ''faithful'' part. He has been unfaithful in many cases of executing the laws of the land. The former constitutional law professor in the White House said he will rule by pen and phone.

Whatever happened to ruling by the Constitution? I guess we don't use that anymore.

If the administration doesn't like a law, the administration ignores the law. If the administration wants to change a law rather than to go to Congress and let us work with the President to amend the law, the President just issues an edict and changes the law.

This has created a constitutional nightmare, a constitutional crisis—constitutional chaos—because we never know what is going to happen with the law of the land. Is it a mere suggestion or is it in concrete?

□ 1445

This is a democracy, not a kingdom. The United States President is not supposed to be an emperor, and not supposed to rule down from Mount Sinai about what he thinks the law should be.

We disagree on whether the President has abused that power or not. We will disagree on future Presidents. So what do we do about that?

Well, let's go to court. Let's resolve those issues in a court of law, where the Constitution and the law of the land is followed, Mr. Chairman.

That is all this bill does. It gets us in the courtroom. It allows us to make our case, they make their case on any particular issue, and then we will let an impartial judge make the decision.

I support the legislation.

And that's just the way it is.

Mr. CONYERS. Mr. Chairman, it is my pleasure to yield 1 minute to the distinguished gentlelady from California (Ms. CHU).

Ms. CHU. Mr. Chairman, once again, Republicans are attempting to restrict the President's constitutional authority of prosecutorial discretion.

Deferring deportations of DREAMers is squarely within the President's authority. It is right there under the Constitution's Take Care Clause.

The Deferred Action for Childhood Arrivals program is legally sound, makes sense, and is the right thing to do. These kids study in our schools. They play in our neighborhoods. They pledge allegiance to our flag. All they want to do is to continue calling their home ''home.''

Every day that Republicans stonewall immigration reform, another 1,100 people are deported and families are split up. Instead, the ICE Parental Interest Directive protects the parental rights of detained parents. It does not limit immigration enforcement at all.

The directive is about family values. It is about American values. Bills like this waste time while thousands of families are separated. This must end now.

I urge a ''no'' vote on this bill.

Mr. GOODLATTE. Mr. Chairman, may I inquire how much time is remaining on each side?

The CHAIR. The gentleman from Virginia has 11 minutes remaining, and the gentleman from Michigan has 11½ minutes remaining.

Mr. GOODLATTE. Mr. Chairman, at this time it is my pleasure to yield 1½ minutes to the gentlewoman from Michigan (Mrs. MILLER), the chairman of the House Administration Committee.

Mrs. MILLER of Michigan. I thank the gentleman for yielding.

Mr. Chair, in our Republic, Congress debates and passes the laws, the President signs and enforces the law, and the judicial branch interprets the law. These checks and balances protect freedom and prevent the kind of tyranny which our revolution defeated by keeping any single branch or individual from gaining too much power.

Article II, section 3 of the Constitution says the President ''shall take care that the laws be faithfully executed,'' and not maybe or not if it isn't really working the way that he would like. It says the President ''shall faithfully execute the law.''

The ENFORCE Act that we are debating today will simply give a House of Congress standing in Federal court to bring suit to make certain that the President upholds his constitutional responsibility to faithfully execute the law.

I have been listening to this debate. If my friends on the other side of the aisle and the President believe that all of the actions this administration has taken on ObamaCare are constitutional, then they should have no fear, Mr. Speaker, of giving Congress this standing.

I would urge all of my colleagues to join me in standing up for our Constitution and ensuring that the rule of law is followed in our great Nation.

Mr. CONYERS. Mr. Chairman, it is with great pleasure I yield 3 minutes to the gentlelady from Texas (Ms. JACKSON LEE).

Ms. JACKSON LEE. Mr. Chair, let me thank the ranking member for his kindness, the managers of this legislation, and all of my colleagues that have come to the floor to try to seek truth.

We have often said, Truth to power. The Constitution is the powerful document that all of us abide by. We take an oath of office to do so.

Going through the markup, as we do in regular order, we as the loyal opposition over and over again try to query what was the truth of this legislation, what was the purpose of it, and how was it going to be valid in light of the Constitution and the powers that are inured to the Presidency.

The Presidency has executive powers, and those powers were on the basis of his or her ability to work with the three branches of government. Now we have legislation that wants to do a number of things, like abolish the powers of the Presidency—abolish them because you disagree with policy.

Believe me, all of us would like standing to challenge anything. We understand that when we made that attempt on several occasions, the courts have said, You don't have standing; it is to the people.

So now we want to orchestrate that so that rather than the legislative process, which is given to the Congress, we desire to go and put ourselves in place on immigration reform; on protecting the environment; on questions of justice, whether it has to be ensuring that the election is unimpeded, whether it has to do with correcting policies that need to be corrected. We now want to get in front of that rather than doing it through the legislative process.

I am glad my colleagues have spoken about immigration, because one of the bills that did not come forward was to abolish a position that the administration has every right to utilize dealing with advocacy for undocumenteds who are in a detention center who are not charged particularly with criminal acts.

We already know that there is a veto threat, and it is a veto threat not for the present President of the United States but to uphold the Constitution.

So the charge is that there is no trust in this President and there is a violation of the Constitution—I can assure you that people beyond this body would raise the issue of constitutionality if it was real. It is not.

There are some professors who want to write a variety of law review papers and want to talk about how far we are exceeding our powers. These are purely addressing the question of the law and making sure that the law is applied fairly.

The CHAIR. The time of the gentlewoman has expired.

Mr. CONYERS. I yield the gentlelady an additional 30 seconds.

Ms. JACKSON LEE. I thank the gentleman very much.

I will conclude by saying that what this bill is doing is seeking to usurp the powers of the President, particularly President Obama, and my friends on the other side, although I never attribute any malfeasance or bad intentions to Members that come on this floor, we never did this with President Bush.

There was some question about signing statements, and some of us wanted to address the question of signing statements, but we never decided to be able to put on the floor of the House the complete abolishment of the powers of the Presidency.

I ask my colleagues to vote down this legislation because it is unconstitutional.

The purpose of the bill is to provide a mechanism for one House of Congress to enforce the "take care" clause in article II, section 3 of the United States Constitution, which requires the President to "take Care that the Laws be faithfully executed."

The bill authorizes either chamber of Congress to bring a civil action against the executive branch for failure to faithfully execute existing laws.

My colleagues on the other side argue that lawsuits by Congress to force the administration to enforce federal laws will prevent the president from exceeding his constitutional authority.

But the Supreme Court has constantly held that the exercise of executive discretion being taken by President Obama is within the president's powers under the Constitution.

But we must uphold the Constitution and that is why my amendment which I will hopefully bring before the House shortly, addresses situations.

It is hard to believe that I would even need an amendment which instructs the Executive Branch that it is okay to—ENFORCE THE LAW.

If separation-of-powers principles require anything, it is that each branch must respect its constitutional role.

When a court issues a decision interpreting the Constitution or a federal law, the other branches must abide by the decision.

The Executive Branch's ability to fulfill its obligation to comply with judicial decisions should not be hampered by a civil action by Congress pursuant to this bill.

Basic respect for separation of powers requires adoption of this amendment.

But that is exactly what this bill is doing—in seeking to usurp the powers of the president—particularly President Obama—my colleague whom I realize was a former prosecutor—has put forth a piece of legislation which baffles me.

In our Constitutional Democracy, taking care that the laws are executed faithfully is a multifaceted notion.

And it is a well-settled principle that our Constitution imposes restrictions on Congress' legislative authority, so that the faithful execution of the Laws may present occasions where the President declines to enforce a congressionally enacted law because he must enforce the Constitution—which is the law of the land.

In fact Mr. Chair, if the legislation raises no question of constitutionality, the laws that we pass in this pose complicated questions, and executing them can raise a number of issues of interpretation, application or enforcement that need to be resolved before a law can be executed.

This bill, H.R. 4138, The ENFORCE Act, has problems with standing, separation of powers, and allows broad powers of discretion incompatible with notions of due process.

The legislation would permit one House of Congress to file a lawsuit seeking declaratory and other relief to compel the President to faithfully execute the law. Any such decision would be reviewable only by the Supreme Court.

These are critical problems. First, Congress is unlikely to be able to satisfy the requirements of Article III standing, which the Supreme Court has held that the party bringing suit have been personally injured by the challenged conduct.

In the wide array of circumstances in which the bill would authorize a House of Congress to sue the president, that House would not have suffered any personal injury sufficient to satisfy Article III's standing requirement in the absence of a complete nullification of any legislator's votes.

Second, the bill violates separation of powers principles by inappropriately having courts address political questions that are left to the other branches to be decided.

And Mr. Chair I thought the Supreme Court had put this notion to rest as far back as Baker v. Carr, a case that hails from 1962. Baker stands for the proposition that courts are not equipped to adjudicate political questions—and that it is impossible to decide such questions without intruding on the ability of agencies to do their job.

Third, the bill makes one House of Congress a general enforcement body able to direct the entire field of administrative action by bringing cases whenever such House deems a President's action to constitute a policy of non-enforcement.

This bill attempts to use the notion of separation of powers to justify an unprecedented effort to ensure that the laws are enforced by the president—and I say one of the least creative ideas I have seen in some time.

I ask my colleagues to reject this legislation.

Mr. GOODLATTE. Mr. Chairman, I yield myself 15 seconds to remind those here that during the time that the other party was in the majority, they sued the Bush administration to enforce a subpoena related to Harriet Miers. All we are trying to do is that, when you do that, we make it very clear that there will be an expedited process.

We have sued to get documents for the Fast and Furious matter. That is more than 4 years old.

So we are only trying to make this process of holding up the powers of the House work better.

At this time I am pleased to yield 2 minutes to the gentleman from Pennsylvania (Mr. MARINO), a member of the Judiciary Committee.

Mr. MARINO. Mr. Chairman, the President has shown a complete disregard for the rule of law. Rather than upholding and enforcing the laws as written by Congress, President Obama has decided to rewrite them however it pleases him.

The United States Constitution, to which every President swears an oath, commands that the President:

shall take care that the laws be faithfully executed.

As a former U.S. Attorney, I took an oath to execute fully my duties. I took this oath very seriously, and that meant following the rule of law, even though I disagreed with it.

It is time to hold the President accountable for violating his oath of office and restore balance between the three branches of government.

I would like to remind my colleagues that there is an old saying:

Power corrupts, and absolute power corrupts absolutely.

Just recently, the President was caught on an open mike saying:

I'm the President; I can do what I want.

My colleagues, I ask you to join me in supporting H.R. 4138, introduced by my esteemed colleague on the Judiciary Committee, Representative TREY GOWDY.

The CHAIR. Members are reminded to refrain from engaging in personalities toward the President.

Mr. CONYERS. Mr. Chairman, I would like to remind my friend, the chairman of the Judiciary Committee, that subpoenas are a regular exercise of power in the House of Representatives.

I yield 1 minute to the gentleman from Illinois (Mr. FOSTER).

Mr. FOSTER. Mr. Chairman, I rise today in opposition to the ENFORCE Act.

For 20 years, our immigration system has been left to rot due to congressional inaction. As a result, today we have over 11 million undocumented immigrants living in the shadows.

After 20 years of neglect, we finally have a commonsense immigration reform package that has already passed the Senate with bipartisan support and has an unprecedented array of support from religious groups, law enforcement, and business leaders throughout the country. It is rare to find a subject that labor leaders and the Chamber of Commerce can agree on, but both have called on Congress to promptly pass comprehensive immigration reform. Speaker BOEHNER and the House Republican leadership have ignored the millions of voices calling for reform, refusing even to bring it up for a vote.

Now, today, we are preparing to vote on the ENFORCE Act, legislation that would have the practical effect of ripping millions of young men and women away from the only home they have ever known.

The Deferred Action for Childhood Arrivals program has allowed countless undocumented youth to remain in the U.S. to attend our schools and to contribute to our economy.

The CHAIR. The time of the gentleman has expired.

Mr. CONYERS. Mr. Chair, I yield the gentleman an additional 30 seconds.

Mr. FOSTER. Instead of fixing our broken immigration system, Republicans are doubling down on costly deportation and detention practices that are costing taxpayers millions and tearing families apart.

Mr. Chairman, we can't fix the problem by ignoring the symptoms. We cannot fix our broken immigration system either with more deportations or specious constitutional arguments, which is exactly what Republicans are attempting to do today with the ENFORCE Act.

It is time for Republicans to stop inventing incoherent, self-serving, and self-contradictory lines of constitutional reasoning and to start listening to the millions of voices calling for action and pass comprehensive immigration reform.

Mr. GOODLATTE. Mr. Chairman, it is my pleasure to yield 2 minutes to the gentleman from Pennsylvania (Mr. ROTHFUS).

Mr. ROTHFUS. Mr. Chairman, in our exceptional system of government the House and Senate pass laws which the President must ''take care to faithfully execute.'' This is a bedrock principle of our Constitution.

President Obama has repeatedly exceeded the boundaries of the executive powers allowed to him in the Constitution. We have worked to check this overreach in the House, but the President has unilaterally decided to ignore, waive, or change laws without authorization from Congress.

Notably, President Obama has repeatedly created exemptions and delayed provisions to cover for the many broken promises of his health care law.

The legislation under consideration today will grant the House and Senate the authority to file suit against the President to simply force him to carry out his constitutional duty and enforce the law.

This should not be a partisan issue. The ENFORCE Act will protect all Americans and our system of government from overreach by Presidents of any political party.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentlelady from Nevada (Ms. TITUS).

Ms. TITUS. I rise today in opposition to both H.R. 4138, the so-called ENFORCE Act, and H.R. 3973, Faithful Execution of the Law Act.

□ 1500

These bills reveal a Republican majority that is more interested in undermining the President that in serving the American people.

These bills could undo the critical actions that President Obama has taken to protect DREAMers. DACA gives DREAMers, including almost 10,000 who have applied in Nevada, the chance to pursue their American Dream. We should be encouraging these bright young people to explore their options and develop their talent, not to hide away in the shadows. These bills would take that opportunity away.

The bills would also undermine another executive action that gives the undocumented families of military members and veterans the chance to stay in the United States as long as they don't have a criminal record. Do

we really want to tear apart the families of those who serve our Nation?

Instead of taking real steps to address the many problems our country faces, we are wasting time with these cheap political gimmicks, these sham constitutional arguments. So I would urge my colleagues to reject those and to vote against these harmful, unconstitutional bills.

Mr. GOODLATTE. Mr. Chairman, may I inquire how much time is remaining on each side?

The Acting CHAIR (Mr. DUNCAN of Tennessee). The gentleman from Virginia has 6¾ minutes remaining. The gentleman from Michigan has 5 minutes remaining.

Mr. GOODLATTE. Mr. Chairman, I yield myself 1 minute.

I want to respond to my good friend and the ranking member of the committee, Mr. CONYERS, regarding his comment about lawsuits brought with regard to a subpoena when the Democrats were in the majority.

I also want to point out, and I will ask at the appropriate time that the first page, since it is voluminous, and only the first page of each of four lawsuits that were brought by the gentleman from Michigan against three separate Presidents, Ronald W. Reagan, George W. Bush, and interestingly, Barack Obama, be inserted into the RECORD.

I would only point out that this legislation simply—when there is consensus, as there was not in those cases because only a few other Members joined the gentleman, but when there is consensus in an entire body, the House or the Senate votes to bring a lawsuit, that this would do two things.

It would expedite that process, so we don't have it drag on for years and years like the Fast and Furious case has been dragging on, and it would also make sure that only the standing issues that are in the United States Constitution would be a bar to bringing the lawsuit, and not court-administered, court-created standing issues.

So I urge my colleagues again to support the legislation.

[From LexisNexis]

John Conyers, Member, United States House of Representatives, et al., Appellants v. RONALD WILSON REAGAN, individually, and as President of the United States, et al.

No. 84–5171

United States Court of Appeals for the District of Columbia Circuit

765 F.2d 1124; 246 U.S. App. D.C. 371; 1985 U.S. App. Lexis 30754

January 18, 1985, Argued

June 28, 1985

Prior History: [**1] Appeal from the United States District Court for the District of Columbia (D. C. Civil Action No. 83–3430)

Counsel: Margaret A. Burnham, a member of the bar of the Supreme Court of Massachusetts, pro hac vice, by special leave of court, with whom Michael D. Ratner, Frank E. Deale, John W. Garland, and William Genego, were on the brief, for Appellants.

John M. Rogers, Attorney, Department of Justice, with whom, Richard K. Willard, Acting Assistant Attorney General, Joseph E. DiGenova, United States Attorney, and Leonard Schaitman, Attorney, Department of Justice, were on the brief, for Appellees.

Theodore M. Lieverman, Ira J. Katz, and Alan Dranitzke, were on the brief for Amici Curiae National Lawyers Guild, et al., urging reversal.

Daniel J. Popco and Paul D. Kamenar, were on the brief for Amici Curiae U.S. Senators Strom Thurmond, et al., urging affirmance.

Judges: Tamm, Wald, and Bork, Circuit Judges. Opinion for the court filed by Circuit Judge Tamm.

Opinion by: Tamm.

Opinion: [*1125] Tamm, Circuit Judge:

This is an appeal from the dismissal, 578 F. Supp. 324, of a suit brought by eleven members of the United States House of Representatives challenging [**2] as unconstitutional the military invasion of Grenada in October of 1983. Because the actions complained of have long since ended, we dismiss the appeal as moot.

I. Background

A. The Invasion of Grenada

On October 25, 1983, United States military forces invaded the island nation of Grenada. At the time of the invasion, the political situation in Grenada was unstable: Prime Minister Maurice Bishop and other government officials had been assassinated on October 19, political power had been seized by a newly established Revolutionary Military Council under the leadership of Army Commander General Hudson Austin, and a 24-hour curfew had been declared. President Reagan stated that he [*1126] ordered the invasion to protect innocent lives, including approximately 1,000 Americans living in Grenada, to prevent further chaos and to assist in restoring law and order and government institutions to Grenada.

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[From LexisNexis]

John Doe I, John Doe II, John Doe III, John Doe IV, Jane Doe I, Susan E. Schumann, Charles Richardson, Nancy Lessin, Jeffrey McKenzie, John Conyers, Dennis Kucinich, Jesse Jackson, Jr., Sheila Jackson Lee, Jim McDermott, Jose E. Serrano, Sally Wright, Deborah Regal, Alice Copeland Brown, Jerrye Barre, James Stephen Cleghorn, Laura Johnson Manis, Shirley H. Young, Julian Delgaudio, Rose Delgaudio, Danny K. Davis, Maurice D. Hinchey, Carolyn Kilpatrick, Pete Stark, Diane Watson, Lynn C. Woolsey, Plaintiffs, Appellants, v. George W. Bush, President, Donald H. Rumsfeld, Secretary of Defense, Defendents, Appellees.

No. 03–1266

United States Court of Appeals for the First Circuit

323 F.3d 133; 2003 U.S. App. Lexis 4477

March 13, 2003, Decided

Subsequent History: As Amended March 18, 2003.

Rehearing denied by Doe v. Bush, 322 F.3d 109, 2003 U.S. App. Lexis 4830 (1st Cir., Mar. 18, 2003)

Prior History: [**1] Appeal from the United States District Court for the District of Massachusetts. Hon. Joseph L. Tauro, U.S. District Judge.

Doe v. Bush, 240 F. Supp. 2d 95, 2003 U.S. Dist. Lexis 3451 (D. Mass., 2003)

Doe v. Bush, 257 F. Supp. 2d 436, 2003 U.S. Dist. Lexis 2773 (D. Mass., 2003)

Disposition: Affirmed.

Counsel: John C. Bonifaz, with whom Cristobal Bonifaz, Law Offices of Cristobal Bonifaz, Margaret Burnham, Max D. Stern, and Stern Shapiro Weissberg & Garin were on the brief, for appellants.

Michael Avery on the brief for seventy-four concerned law professors, amici curiae.

D. Lindley Young on the brief amicus curiae in propria persona.

Gregory G. Katsas, Deputy Assistant Attorney General, with whom Robert D. McCallum, Jr., Assistant Attorney General, Michael J. Sullivan, United States Attorney, Douglas N. Letter, Attorney, Civil Division, Scott R. McIntosh, Attorney, Civil Division, and Teal Luthy, Attorney, Civil Division, were on the brief, for appellees.

Judges: Before Lynch, Circuit Judge, Cyr and Stahl, Senior Circuit Judges.

Opinion by: Lynch.

Opinion: [*134] Lynch, Circuit Judge. Plaintiffs are active-duty members of the military, parents of military personnel, and members of the U.S. House of Representatives. They filed a complaint in district court . . .

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[From LexisNexis]

Honorable John Conyers, Jr., et al., Plaintiffs, v. George W. Bush, et al., Defendants.

Case No. 06-11972

United States District Court for the Eastern District of Michigan, Southern Division

2006 U.S. Dist. Lexis 80816

November 6, 2006, Decided

Counsel: [*1] For John Conyers, Jr., John D. Dingell, Honorable, Representing Michigan's 15th District, Charles B. Rangel, Representing New York's 15th district, George Miller, Honorable, Representing California's 7th District, James L. Oberstar, Honorable, Representing Minnesota's 8th District, Barney Frank, Honorable, Representing Massachusetts' 4th District, Collin C. Peterson, Honorable, Representing Minnesota's 7th District, Bennie Thompson, Honorable, Representing Mississippi's 2nd District, Fortney Pete Stark, Honorable, Representing California's 13th District, Sherrod Brown, Honorable, Representing New York's 29th District, Louise M. Slaughter, Honorable, Representing New York's 28th District, Plaintiffs: Mayer Morganroth, Lead Attorney, Morganroth and Morganroth, Southfield, MI.

For George W. Bush, President of the United States, Mike Johanns, Secretary of the Department of Agriculture, Carlos Guiterrez, Secretary of the Department of Commerce, Margaret Spellings, Secretary of the Department of Education, Michael O. Leavitt, Secretary of the Department of Health and Human Services, Michael Chertoff, Secretary of the Department of Homeland Security, Alphonso Jackson, Secretary of the [*2] Department of Housing and Urban Development, Norman Mineta, Secretary of the Department of Transportation, John Snow, Secretary of the Treasury, Bradley D. Belt, Executive Director, Pension Benefit Guaranty Corporation, Leonidas Ralph Mecham, Director, Administrative Office of the United States Courts; Defendants: Brian G. Kennedy, U.S. Department of Justice (Civil Division), Washington, DC.

For John F. Bovenzi, Chief Operating Officer, Federal Deposit Insurance Corporation, Thomas Holzman, Lead Attorney, Federal Deposit Insurance Corp (Arlington), Arlington, Va.

Judges: Honorable Nancy G. Edmunds, United States District Judge.

Opinion by: Nancy G. Edmunds.

Opinion: Order Granting Defendants' Motions to Dismiss [17, 18]

This matter comes before the Court on Defendants' motions to dismiss, brought pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Defendants' motions argue that Plaintiffs do not have standing to bring this lawsuit; and, even if

they did, the ''enrolled bill rule'' announced in *Marshall Field & Co.* v. *Clark, 143 U.S. 649, 12 S. Ct. 495, 36 L. Ed. 294 (1892)*, forecloses Plaintiffs' from [*3] stating a claim for the relief they seek. For the reasons discussed below, Defendants' motions are Granted.

[From LexisNexis]

Dennis Kucinich, et al., Plaintiffs, v. Barack Obama, et al., Defendants.

Civil Action No. 11-1096 (RBW)

United States District Court for the District of Columbia

821 F. Supp. 2d 110; 2011 U.S. Dist. Lexis 121349

October 20, 2011, Decided

October 20, 2011, Filed

Counsel: [**1] For Dennis Kucinich, Member, U.S. House of Representatives, Ron Paul, Member, U.S. House of Representatives, Timothy V. Johnson, Member, U.S. House of Representatives, John J. Duncan, Jr., Member, U.S. House of Representatives, Howard Coble, Member, U.S. House of Representatives, Dan Burton, Member, U.S. House of Representatives, Michael E. Capuano, Member, U.S. House of Representatives, Roscoe Bartlett, Member, U.S. House of Representatives, John Conyers, Jr., Member, U.S. House of Representatives, Walter B. Jones, Member, U.S. House of Representatives, Plaintiffs: Jonathan Turley, Lead Attorney, George Washington Law School, Washington, DC.

For Barack Hussein Obama, II, President of the United States of America, Robert Gates, Secretary of Defense, Defendants: Eric R. Womack, Lead Attorney, U.S. Department of Justice, Washington, DC.

Judges: Reggie B. Walton, United States District Judge.

Opinion by: Reggie B. Walton.

Opinion: [*112] *Memorandum Opinion*

Is case in which the plaintiffs, ten members of the United States House of Representatives, filed a five-claim complaint against the defendants alleging, among other things, violations of the War Powers Clause of the United States Constitution, U.S. Const. art. I, §8, cl. 11, [**2] and the War Powers Resolution, 50 U.S.C. §§1541–1548 (2006), is before the Court on the defendants' motion to dismiss. For the reasons explained below, the defendants' motion will be granted.

1 In deciding the defendants' motion, the Court considered the following filings made by the parties: the Complaint for Injunctive and Declaratory Relief (''Compl.''); the Memorandum in Support of Defendants' Motion to Dismiss (''Defs.' Mem.''); the Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss (''Pls.' Opp'n''); and the Reply in Support of Defendants' Motion to Dismiss (''Defs.' Reply'').

I. Background

2 Because the defendants' motion to dismiss raises purely legal questions, the Court will only briefly describe the facts underlying this lawsuit.

Viewed in the light most favorable to the plaintiffs, the facts currently before the Court are as follows. On . . .

Mr. Chairman, I yield 2 minutes to the gentleman from South Carolina (Mr. GOWDY).

Mr. GOWDY. Mr. Chairman, I want to thank Chairman GOODLATTE.

I also want to thank my friend and colleague from the great State of South Carolina, Mr. TOM RICE, whose legal research and expertise and acumen and leadership is one of the reasons we are here today.

I also am curious about this notion of prosecutorial discretion. I am curious, even though I was a prosecutor for 16 years. I guess I am curious, Mr. Chairman, as to whether there are any limitations on this thing they call prosecutorial discretion.

Can the President refuse to enforce discrimination laws under that same theory of prosecutorial discretion?

Can the President refuse to enforce election laws under that same theory of prosecutorial discretion?

Mr. Chairman, how about term limits? Do we have to have an election in November?

I mean, if he is well-intentioned, as long as his heart is in the right place, if you can suspend other categories of laws, why not?

If prosecutorial discretion is as broad as our colleagues on the other side of the aisle want us to believe it is, are there any limits, Mr. Chairman, to this thing they call prosecutorial discretion?

There are laws that prohibit conduct, like laws against possession of child pornography. There are laws that require conduct, like filing a tax return in April. Is the Chief Executive equally capable of suspending both categories of law, Mr. Chairman? Is he?

Can he suspend those that require conduct as well as those that prevent conduct?

I am just trying to get an idea of what limits, if any, exist to this thing you call prosecutorial discretion.

Hearing none, Mr. Chairman, I know a little bit about it. It is case by case. It is on the facts. It is not the wholesale refusal to enforce the law.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Chairman, this legislation isn't just about bringing a lawsuit. I think it is important to note on page 13, 14 of the committee report, item 3, it says, unlawful extension of parole in place.

I think that shows what the majority thinks about that, and shockingly enough, that is the action that was taken by the President pursuant to express statutory authority, section 212(d)(5) of the Immigration and Nationality Act, to allow the wives of American soldiers to not be deported.

In July of 2010, a letter was sent to the Department signed by nine Democrats and nine Republicans. I will insert the letter into the RECORD. And we said this:

Although many of the immigration issues experienced by our men and women in uniform require legislative action, Congress has already given you tools to provide some relief to these brave soldiers and their families.

We urged them to consider deferred action, to favorably exercise parole authority for close family members and to forbear from initiating removal in certain cases.

Now, this is nothing new. We have used parole authority pursuant to the Immigration Act in faithful enforcement of the law to prevent Cubans from being deported back to Cuba since John F. Kennedy was President of the United States.

For the majority to suggest that keeping the wives of American soldiers who were under fire in Afghanistan from being deported is, and I quote, ''an unlawful extension of parole in place,'' I think it is a truly shocking, and I would say, very distressing and disturbing phenomenon. We knew that the majority wanted to deport the DREAM Act kids because they voted for the King amendment last year. When Democrats took the DREAM Act up for a vote, all but eight voted against it.

But that you want to deport the wives of American soldiers in Afghanistan, I am sorry, is a new low.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, July 9, 2010.

Hon. JANET NAPOLITANO,
Secretary of Homeland Security, Department of Homeland Security, Washington, DC.

DEAR SECRETARY NAPOLITANO: We write to commend your attention to a May 8, 2010 New York Times article entitled, ''Illegal Status of Army Spouses Often Leads to Snags.'' It describes the struggle of U.S. Army Lt. Kenneth Tenebro to serve his country while at the same time navigating a complex immigration system that has, thus far, failed to grant legal immigration status for his wife, Wilma.

The article explains that Lt. Tenebro,

served one tour of duty in Iraq, dodging roadside bombs, and he would like to do another. But throughout that first mission, he harbored a fear he did not share with anyone in the military. Lieutenant Tenebro worried that his wife, Wilma, back home in New York with their infant daughter, would be deported.

Although Lt. Tenebro would like to continue deploying for combat, today he does not volunteer for deployment for fear of losing his wife to deportation and because he does not know what would happen to his three-year-old daughter while he is away on a military mission.

Lt. Tenebro is not alone. Many soldiers are unable to secure legal immigration status for their family members, even as they risk their lives for our country. Some have testified before Congress about their own stories and those of fellow soldiers they seek to assist.

This is not only an issue of keeping U.S. citizen families together. It is a military readiness issue. After 33 years of service, Retired Lieutenant General Ricardo Sanchez, a former commander of ground forces in Iraq, stated in a 2008 letter to the House Committee on the Judiciary, ''We should not continue to allow our citizenship laws and immigration bureaucracy to put our war-fighting readiness at risk.'' He explained:

As a battlefield commander, the last thing I needed was a soldier to be distracted by significant family issues back home. Resolving citizenship status for family members while serving our country, especially during combat, must not be allowed to continue detracting from the readiness of our forces. When soldiers have to worry about their families, individual readiness falters—which can lead to degradation in unit effectiveness and the risk of mission failure. I have personally witnessed this on the battlefield.

Although many of the immigration issues experienced by our men and women in uniform require legislative action, Congress has already given you tools to provide some relief to these brave soldiers and their families. We hope that you will use all the power at your disposal to assist Lt. Tenebro and other soldiers, veterans, and their close family members to attain durable solutions. For example, DHS can join in motions to reopen cases where there may be legal relief available; consider deferred action where there is no permanent relief available but significant equities exist, such as deployment abroad; favorably exercise its parole authority for close family members that entered without inspection; forbear from initiating removal in certain cases where equities warrant exercise of prosecutorial discretion; and, other tools that would ease the burden for soldiers suffering from immigration-related problems to the extent that the current law allows. Of course, we expect that you will continue to conduct all necessary national security and criminal background checks before providing relief in any case.

As this country is engaged in two wars in Iraq and Afghanistan, we must do everything we can to address the immigration needs of our soldiers. As Lt. Gen. Sanchez stated,

It matters greatly that those who fight for this country know that America values their sacrifices. As leaders, it is our duty to sustain the readiness, morale and war-fighting spirit of our warriors. We must not fail them for America's future depends on their sacrifices and their willingness to serve.

Thank you for your attention to this matter. We look forward to your immediate response.

Sincerely,

Zoe Lofgren; John Conyers, Jr.; Mac Thomberry; Mike Pence; Howard Berman; Silvestre Reyes; Solomon Ortiz; David Price; Henry Cuellar; Xavier Becerra; Susan Davis; Ileana Ros-Lehtinen; Sam Johnson; Michael Turner; Adam Putnam; Lincoln Diaz-Balart; Mario Diaz-Balart; Anh ''Joseph'' Cao.

Mr. GOODLATTE. Mr. Chairman, at this time I yield 1 minute to the gentleman from Virginia (Mr. HURT).

Mr. HURT. Mr. Chair, I thank the chairman for yielding, and I thank the gentleman from South Carolina for his leadership on this issue.

Mr. Chairman, I rise in support of the ENFORCE Act which reins in the growing problem of executive overreach in this administration, and helps reestablish the checks and balances inherent in our Constitution.

Our founders crafted a Constitution with limited and enumerated powers for the three branches of government. Unfortunately, executive branch overreach, especially into the prerogatives of the legislative branch, has significantly increased in recent years.

This overreach is so significant that this administration has not only ignored and undermined statutory requirements, it has effectively made law without congressional consent.

While the executive branch undoubtedly has great powers, the Constitution expressly prohibits it from picking and choosing which laws it will enforce. If the constitutional limits on executive power are simply being ignored, it is up to Congress to demand accountability on behalf of the American people.

This should not be a partisan issue but, instead, should focus on restoring the proper role of the executive to ensure that the laws of Congress that are passed are faithfully executed.

I urge my colleagues to join me in support of this legislation which restores the balance of power to our government and preserves the foundation of our Constitution.

Mr. CONYERS. Mr. Chairman, I am prepared to close if the other side is ready.

Mr. GOODLATTE. Mr. Chairman, we have only one closing speaker remaining, so if the gentleman is prepared to close, we will close right after.

Mr. CONYERS. Mr. Chairman, I yield myself the balance of my time.

Ladies and gentlemen, let's acknowledge that this legislation is really another attempt by some of the Members here in the majority to prevent the President of the United States from implementing duly-enacted legislative initiatives that they oppose. It is rather unusual.

But I want to ask my colleagues, friends, when is enough enough?

At what point can we say, it is time to put away rhetoric of a partisan nature, of demagoguery, and of synthetic scandals and start really working on the issues that many people in this country really want solutions to?

We have constituents, and so do you, that are waiting for us to take action on a host of problems that this House refuses to address, from securing fair pay for a fair day's work, to extending unemployment insurance, and also in the Judiciary Committee, fixing our broken immigration laws. So let's put aside some of the business that has gone on here today and finally get to work.

Mr. Chairman, I yield back the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I yield myself the balance of my time.

This House has passed close to 200 bills that are piled up in the United States Senate that create jobs, that promote domestic energy production, that reform our out-of-control Federal regulatory process in this country, but it is also well worth taking our time to protect this institution's prerogatives and the people.

Here in the people's House, we represent the interests of the people of this country, and to uphold the powers, the article I powers of the House, is vitally important.

The Constitution provides that ''all legislative powers herein granted shall be vested in a Congress of the United States.''

Yet, the current administration has unilaterally sought to rewrite the law, not by working with the people's elected representatives, but through:

blog posts like this one, which removes penalties for employers who would otherwise be required to provide insurance coverage for their employees;

regulatory ''fact sheets'' like this one, which creates an entirely new category of businesses and exempts them from their responsibility under the law;

letters such as this one, which acknowledges that people are having their health insurance terminated under ObamaCare, in violation of the President's promise that ''if you like your health care plan, you can keep it,'' and then claims to suspend the law's insurance requirement to a date uncertain.

This one letter alone suspends the application of eight key provisions of ObamaCare, namely, those requiring fair health insurance premiums, guaranteeing the availability of coverage, guaranteeing renewable coverage, prohibiting exclusions for preexisting conditions, prohibiting discrimination based on health status and others.

Why is this being done?

To delay the terrible consequences of ObamaCare until after the next election. As this headline from The Hill newspaper announced just last week: ''New ObamaCare delay to help midterm Dems: Move will avoid cancelation wave before Election Day.''

These actions are not supported by the United States Constitution. It is time for Congress and the judiciary to act. This bill would empower the Congress and the judiciary to remind the President that ours is a system of government consisting of three separate, coequal branches, not one-branch control of our government.

Support the ENFORCE the Law Act, and restore the constitutional basis for the American system of government and the rule of law.

Mr. Chairman, I yield back the balance of my time.

□ 1515

The Acting CHAIR. All time for general debate has expired.

Pursuant to the rule, the bill shall be considered for amendment under the 5-minute rule.

It shall be in order to consider as an original bill for the purpose of amendment under the 5-minute rule an amendment in the nature of a substitute consisting of the text of Rules Committee Print 113–43. That amendment in the nature of a substitute shall be considered as read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 4138

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Executive Needs to Faithfully Observe and Respect Congressional Enactments of the Law Act of 2014'' or the ''ENFORCE the Law Act of 2014''.

SEC. 2. AUTHORIZATION TO BRING CIVIL ACTION FOR VIOLATION OF THE TAKE CARE CLAUSE.

(a) IN GENERAL.—Upon the adoption of a resolution of a House of Congress declaring that the President, the head of any department or agency of the United States, or any other officer or employee of the United States has established or implemented a formal or informal policy,

practice, or procedure to refrain from enforcing, applying, following, or administering any provision of a Federal statute, rule, regulation, program, policy, or other law in violation of the requirement that the President take care that the laws be faithfully executed under Article II, section 3, clause 5, of the Constitution of the United States, that House is authorized to bring a civil action in accordance with subsection (c), and to seek relief pursuant to sections 2201 and 2202 of title 28, United States Code. A civil action brought pursuant to this subsection may be brought by a single House or both Houses of Congress jointly, if both Houses have adopted such a resolution.

(b) RESOLUTION DESCRIBED.—For the purposes of subsection (a), the term ''resolution'' means only a resolution—

(1) the title of which is as follows: ''Relating to the application of Article II, section 3, clause 5, of the Constitution of the United States.''

(2) which does not have a preamble; and

(3) the matter after the resolving clause which is as follows: ''That _____ has failed to meet the requirement of Article II, section 3, clause 5, of the Constitution of the United States to take care that a law be faithfully executed, with respect to _____.'' (the blank spaces being appropriately filled in with the President or the person on behalf of the President, and the administrative action in question described in subsection (a), respectively).

(c) SPECIAL RULES.—If the House of Representatives or the Senate brings a civil action pursuant to subsection (a), the following rules shall apply:

(1) The action shall be filed in a United States district court of competent jurisdiction and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.

(2) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.

(3) It shall be the duty of the United States district courts and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any such action and appeal.

The Acting CHAIR. No amendment to that amendment in the nature of a substitute shall be in order except those printed in part A of House Report 113–378. Each such amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. CONYERS

The Acting CHAIR. It is now in order to consider amendment No. 1 printed in part A of House Report 113–378.

Mr. CONYERS. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Add, at the end of the bill, the following:

(d) LIMITATION.—Nothing in this Act limits or otherwise affects any action taken by the President, the head of a department or agency of the United States, or any other officer or employee of the United States in order to—

(1) combat discrimination; or

(2) protect the civil rights of the people of the United States.

The Acting CHAIR. Pursuant to House Resolution 511, the gentleman from Michigan (Mr. CONYERS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, ladies and gentlemen of the House, my amendment would exclude actions to combat discrimination and protect civil rights enforcement from the scope of this bill before us.

The last thing we should want to do as a Congress is to pass legislation that makes it more difficult to protect our citizens' civil rights, by executive action or otherwise; yet if H.R. 4138 had been law, several of the most critical civil rights milestones of our Nation would have been subject to unnecessary congressional challenge in the courts.

In 1863, President Abraham Lincoln issued perhaps the most important executive order in our Nation's history, the Emancipation Proclamation; and by this order, Lincoln freed the slaves in those southern States that were engaged in military conflict with the Union.

By doing so, Lincoln not only encouraged slaves to take up arms in fighting the Civil War for the Union, he also struck a blow for freedom that resonated around the world.

By issuing the order, however, President Lincoln made a decision to not enforce then-existing laws, protecting the institution of slavery, including the Federal Fugitive Slave Act.

Clearly, history has shown Lincoln's decision to be not only a legal and a military turning point, but morally correct; and clearly, had the so-called ENFORCE Act been law, the Emancipation Proclamation could have been subject to an unnecessary and unhelpful legal challenge in the courts from the Congress.

Another example is President Truman's Executive Order 9981 issued in 1948 that desegregated the United States military. With more than 125,000 African Americans serving overseas in World War II, this was a worthwhile and appropriate action by the President.

Nevertheless, by issuing this order, Truman contravened the then-military policy of segregating certain African American military units from white units.

Again, had this bill before us been law, it would have permitted an unnecessary congressional legal challenge in the courts, and such a challenge would not have been politically unpopular in many quarters.

Remember that 1948 was the year that Strom Thurmond bolted from the Democratic Party to form the Dixiecrats and went on to carry four States and strongly compete in many others in the Presidential election.

I urge my colleagues on both sides of the aisle to please consider the unintended consequences of the legislation before us. It would not only represent a permanent stain on the principle of separation of powers written by our Founding Fathers into the Constitution, but it would make it far more difficult to protect our citizens' civil rights and other constitutional protections.

Accordingly, I urge a ''yes'' vote to protect civil rights, and I yield back the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I rise in opposition to the amendment.

The Acting CHAIR. The gentleman from Virginia is recognized for 5 minutes.

Mr. GOODLATTE. Mr. Chairman, I oppose this amendment, as it would allow the President to rewrite the civil rights laws on his own without any accountability in court.

The amendment, if adopted, would literally provide that nothing in the bill shall affect any action taken by the President or by the head of an agency or, indeed, any action taken by ''any other officer or employee of the United States,'' with regards to the protections provided under the civil rights laws.

If adopted, this amendment would immunize from accountability in court this President and any President and other Federal employees when they fail to enforce the civil rights laws, as written.

What if a President decides that certain groups should not be protected under the civil rights laws and fails to enforce those laws to protect certain groups?

Indeed, what if any entry-level employee of the Federal Government decides the civil rights laws should not be enforced to protect certain groups that are protected under the clear terms of the civil rights laws?

This amendment, if adopted, would immunize the President or any entry-level employee of the executive branch from accountability.

In fact, this amendment stands for the very policy this bill opposes. This bill provides for holding accountable the President or any other Federal employee whenever they fail to faithfully execute the law.

This amendment, in stark contrast, would prevent the Federal courts from ordering the President and other Federal officials to enforce the civil rights laws when they are failing to faithfully execute them.

It was a sad day when Members of this House stood up and applauded this President when he said, during his State of the Union Address, that he would seek to circumvent Congress when the people's duly elected Representatives oppose his proposals and when a senior member of the Senate called for the President to unilaterally stop enforcing the law against certain individuals if legislation is not passed by September, as Senator SCHUMER did last Thursday.

It is another sad day when an amendment is offered to explicitly shield the President or any other Federal employee from accountability when their actions are not authorized by the laws enacted by the people's elected Representatives.

The President should not be above the law; and by that, I mean any law, not the least of which are the civil rights laws of the United States.

Because this amendment would codify the terrible policy of allowing a President carte blanche to enforce or not enforce the civil rights laws as he deems fit, it should be opposed by every Member of this body, especially those who would like to see the civil rights laws protect everyone, as they are written.

Mr. NADLER. Will the gentleman yield?

Mr. GOODLATTE. I would be happy to yield to the gentleman from New York.

Mr. NADLER. I thank the gentleman.

Isn't it true, sir, that the language that you read from the amendment says ''nothing in this bill''? It means that if the amendment were passed, the ability of the Congress or the courts to enforce the law against the President would be exactly the same as if the bill didn't pass, so it wouldn't immunize the President from the current law.

It would immunize him from whatever new thing the bill would do, but not from the current law and whatever ability the courts have to restrain the President from not enforcing civil rights laws right now.

Mr. GOODLATTE. Reclaiming my time, the amendment is clear that it would prohibit the language of the bill from bringing a lawsuit when the President fails to enforce the civil rights laws.

Mr. Chairman, I oppose the amendment, and I yield back the balance of my time.

The Acting CHAIR. Members are reminded to address their remarks to the Chair.

Mr. SESSIONS. Mr. Chair, as chair of the Committee on Rules, I want to take a moment to address the procedural status of the resolutions discussed in this measure. It is my understanding that the resolutions contemplated by H.R. 4138 would not be privileged or otherwise subject to expedited procedures in the House. Because there would be no procedural ramifications for a measure failing to adhere to the statutory prescription, there should be no occasion for the Chair to rule on whether or not that measure meets the definition of a ''resolution'' as that term is used in H.R. 4138.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Michigan (Mr. CONYERS).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. CONYERS. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Michigan will be postponed.

AMENDMENT NO. 2 OFFERED BY MR. NADLER

The Acting CHAIR. It is now in order to consider amendment No. 2 printed in part A of House Report 113–378.

Mr. NADLER. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Add, at the end of the bill, the following:

(d) LIMITATION.—Nothing in this Act limits or otherwise affects the constitutional authority of the executive branch to exercise prosecutorial discretion.

The Acting CHAIR. Pursuant to House Resolution 511, the gentleman from New York (Mr. NADLER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from New York.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment adds a new section to the bill to ensure that the President retains the well-established constitutional authority to exercise prosecutorial discretion when enforcing our laws.

H.R. 4138 would empower either the House or the Senate to file a lawsuit whenever one House disagrees with how the executive branch is implementing a law. The bill applies to enforcement decisions made by any officer or employee of the United States, thus reaching into every decision across hundreds of thousands of ''Federal statutes, rules, regulations, programs, policies, or other laws.''

H.R. 4138 is a practical nightmare. It invites endless costly litigation over policy disagreements that do not raise any legitimate constitutional concerns. We need look no further than the examples cited by the sponsors of this bill to see that this is true.

Far from representing a violation of the Take Care Clause, President Obama's decision to delay—not to refuse—enforcement of various deadlines under the Affordable Care Act are reasonable implementation decisions that are designed to ensure the ultimate success of the President's signature law. Delaying implementation of a complex law is not unusual.

Similarly, the administration's setting of immigration enforcement priorities falls well within its exercise of prosecutorial discretion and raises no legitimate constitutional concern.

The administration's decision to provide temporary relief from removal for certain DREAMers—young adults brought to the United States as children—complies both with Congress' statutory directive to establish national immigration enforcement priorities and within the President's responsibility to exercise prosecutorial discretion under the Take Care Clause of the Constitution.

While my colleagues now seek to drag courts into nonjusticiable political disputes, the fact of the matter is that no court has ever found delay in implementation of a law or the routine exercise of criminal or civil enforcement powers to constitute a violation of the Take Care Clause.

The fact is that courts likely will refuse jurisdiction over lawsuits brought by Congress against a President because H.R. 4138 violates bedrock principles of constitutional law.

The Supreme Court has long recognized that the Take Care Clause vests the President with ''broad'' discretion to determine when, against whom, how, and even whether to prosecute apparent violations of the law.

In Heckler v. Chaney, for example, the Court confirmed this core principle when it recognized that:

An agency's refusal to institute proceedings shares to some extent the characteristics of the decision of a prosecutor in the executive branch not to indict—a decision which has long been regarded as the special province of the executive branch, inasmuch as it is the Executive who is charged by the Constitution to ''take care that the laws be faithfully executed.''

The injection of Congress and the courts into decisions that the Constitution squarely commits to the President's discretion raises significant separation of powers concerns. It also lies beyond the purview of the courts to accept any such case under the Supreme Court's political question jurisprudence.

In Baker v. Carr, the Supreme Court made clear that the courts cannot and will not interfere in matters that the Constitution commits to a coordinate branch of government.

My amendment seeks to mitigate H.R. 4138's unconstitutional encroachment into the President's authority to faithfully execute the law by adding a new subsection (d) to ensure that nothing in H.R. 4138 ''limits or otherwise affects the clearly established constitutional authority of the executive branch to exercise prosecutorial discretion.''

My amendment cures one of H.R. 4138's many constitutional infirmities. I urge all of my colleagues to support it.

I reserve the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I rise in opposition to the amendment.

The Acting CHAIR. The gentleman from Virginia is recognized for 5 minutes.

Mr. GOODLATTE. Mr. Chairman, Mr. NADLER's amendment purports to clarify that nothing in this legislation limits or otherwise affects prosecutorial discretion. If this amendment is adopted, it will only serve to cause confusion regarding the scope of the President's duty under the Take Care Clause and the ability of Congress to bring a lawsuit pursuant to this legislation.

The underlying bill provides that the House or Senate may authorize a lawsuit based upon adoption of a resolution declaring that the executive branch ''established or implemented a formal or informal policy, practice, or procedure to refrain from enforcing'' Federal law in violation of the Take Care Clause.

Adoption of a ''policy, practice, or procedure'' is not an exercise in prosecutorial discretion; rather, the exercise of prosecutorial discretion involves a determination as to whether a particular individual or entity should be the subject of an enforcement action for past conduct.

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In other words, nothing in this bill limits prosecutorial discretion. Thus, inserting into the bill an exception for the undefined term ''prosecutorial discretion'' would only serve to cause confusion.

Worse, including an exception for prosecutorial discretion would also allow the executive branch to move to dismiss every case brought pursuant to this bill on the grounds that it was merely exercising prosecutorial discretion. This would result in costly and wasteful delays in the court's ability to decide the merits of these important separation of powers disputes in a timely manner.

Additionally, if adopted, the amendment would cause confusion as to the meaning of the Take Care Clause itself. The clause imposes an affirmative duty on the President to ''take care that the laws be faithfully executed.'' This amendment proposes to interpret that duty by codifying into statutory law that there is a ''constitutional authority of the executive branch to exercise prosecutorial discretion.''

However, unlike the duty imposed by the Take Care Clause, the words ''prosecutorial discretion'' appear nowhere in the text of the Constitution. We should not place an undefined limit on the Take Care Clause into the United States Code.

Finally, the amendment would, in practice, act to prohibit the Federal courts from further refining the contours of appropriate prosecutorial discretion. The base bill seeks to encourage courts to engage in active constitutional issues, not to put entire categories of subjects off-limits from review by the Federal courts.

I urge my colleagues to oppose this amendment, and I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, how much time remains?

The Acting CHAIR. The gentleman from New York has 1½ minutes remaining.

Mr. NADLER. I will yield 1 minute to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Chairman, this is about deporting the DREAM Act students. On page 13 of the committee report, the majority calls out for condemnation the exercise of prosecutorial discretion relative to the DREAMers. It is quite a departure from when Republicans joined with Democrats to say that it is well established that prosecutorial discretion can be used in immigration cases and asking that guidelines be developed and be implemented and used for categories of individuals.

In fact, the ''discretion'' in ''prosecutorial discretion'' comes from the Take Care Clause. That is what the Supreme Court has told us. That is the guidance we have from the highest law in the land.

What this is really about, Mr. Chairman, is about the majority's apparently voracious appetite to deport these young people. That is why the deportation of DREAMers is called out in the committee report. It is why they oppose prosecutorial discretion. I think it is quite a shame.

Mr. GOODLATTE. May I inquire how much time each side has remaining?

The Acting CHAIR. The gentleman from Virginia has 2½ minutes remaining, and the gentleman from New York has 30 seconds remaining.

Mr. GOODLATTE. At this time, I am pleased to yield 2 minutes to the gentleman from South Carolina (Mr. GOWDY).

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. Chairman, prosecutorial discretion encompasses the executive power to decide whether to bring charges, seek punishment, penalties, or sanctions. This next line is really important. It does not include the power to disregard other statutory obligations.

Mr. Chairman, that is from a United States Supreme Court case. So, I guess my question is: I have heard about immigration. I haven't mentioned immigration. I want to talk about mandatory minimums in drug cases. That has been the law for 20-something years. You have X amount of methamphetamine, you get X amount of time in prison. It is called a mandatory minimum. Are you telling me that the phrase ''prosecutorial discretion'' includes the Attorney General telling his prosecutors to disregard the law, not to not prosecute the case? That would be consistent. He is not telling them not to prosecute the case. He is telling them don't inform the judiciary of the drug amounts. That is not prosecutorial discretion; that is anarchy.

So, yes, Mr. NADLER, I agree—or my friend from New York, I agree, Mr. Chairman, with the concept of prosecutorial discretion. I used it for 16 years. But your amendment does not define it. And my fear is—while my friend from New York would never do this, my fear is some may overread it to include allowing a President to disregard obligations that we place on him or her, and under no theory of prosecutorial discretion is that legal.

Mr. NADLER. Mr. Chairman, I don't have the time to answer all of Mr. GOWDY's arguments except to say that if this bill were to pass, which it won't because the Senate won't look at it, but if the bill were to pass and if my amendment were adopted, it would simply make it easier for the courts to define what prosecutorial discretion is and is not, and I am confident that they would agree with Mr. GOWDY as to some of the horribles not being prosecutorial discretion. But since it would put prosecutorial discretion as an exception to the bill, then you could get a judicial determination as to what prosecutorial discretion is and what it isn't.

I urge my colleagues to vote for this amendment, and I yield back the balance of my time.

Mr. GOODLATTE. Mr. Chairman, for the reasons already cited, I urge my colleagues to oppose this amendment which would gut the bill, and I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from New York (Mr. NADLER).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. NADLER. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from New York will be postponed.

The Acting CHAIR. The Committee will rise informally.

The Speaker pro tempore (Mr. GOWDY) assumed the chair.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Brian Pate, one of his secretaries.

The SPEAKER pro tempore. The Committee will resume its sitting.

EXECUTIVE NEEDS TO FAITHFULLY OBSERVE AND RESPECT CONGRESSIONAL ENACTMENTS OF THE LAW ACT OF 2014

The Committee resumed its sitting.

AMENDMENT NO. 3 OFFERED BY MS. JACKSON LEE

The Acting CHAIR (Mr. DUNCAN of South Carolina). It is now in order to consider amendment No. 3 printed in part A of House Report 113–378.

Ms. JACKSON LEE. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Add, at the end of the bill, the following:

(d) LIMITATION.—Nothing in this Act limits or otherwise affects the ability of the executive branch to comply with judicial decisions interpreting the Constitution or Federal laws.

The Acting CHAIR. Pursuant to House Resolution 511, the gentlewoman from Texas (Ms. JACKSON LEE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Texas.

Ms. JACKSON LEE. Mr. Chairman, frankly, maybe I should offer a good thanks to the distinguished members of the majority, the Republicans, my chairman and others, for giving us an opportunity to have a deliberative constitutional discussion that reinforces