

state of the Union, reported that that Committee, having had under consideration the bill (H.R. 5078) to preserve existing rights and responsibilities with respect to waters of the United States, and for other purposes, had come to no resolution thereon.

DISAPPROVAL OF THE ADMINISTRATION'S FAILURE TO NOTIFY CONGRESS BEFORE RELEASING INDIVIDUALS FROM GUANTANAMO BAY

Mr. McKEON. Mr. Speaker, pursuant to House Resolution 715, I call up the resolution (H. Res. 644) condemning and disapproving of the Obama administration's failure to comply with the lawful statutory requirement to notify Congress before releasing individuals detained at United States Naval Station, Guantanamo Bay, Cuba, and expressing national security concerns over the release of five Taliban leaders and the repercussions of negotiating with terrorists, and ask for its immediate consideration.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. Pursuant to House Resolution 715, the amendments to the text and preamble printed in the resolution are adopted and the resolution, as amended, is considered read.

The text of the resolution, as amended, is as follows:

Whereas section 1035 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66; 10 U.S.C. 801 note) requires the Secretary of Defense to notify the appropriate committees of Congress not later than 30 days before the transfer or release of any individual detained at United States Naval Station, Guantanamo Bay, Cuba (hereinafter referred to as "GTMO");

Whereas on May 31, 2014, the Department of Defense transferred five Taliban detainees held at GTMO to the State of Qatar;

Whereas according to declassified United States government documents, the five detainees were all senior Taliban leaders: Abdul Haq Wasiq was the Taliban Deputy Minister of Intelligence, Mullah Norullah Noori was the Taliban military commander at Mazar-e-Sharif, Mullah Mohammad Fazl was the Taliban Deputy Minister of Defense, Khairullah Said Wai Khairkwa was the Taliban Minister of Interior, and Mohammad Nabi Omari was the Taliban communications chief and border chief;

Whereas these five senior Taliban leaders have had associations with al-Qaeda or have engaged in hostilities against the United States or its coalition partners;

Whereas these five senior Taliban detainees held leadership positions within the Taliban in Afghanistan when it provided safehaven for al-Qaeda to conduct planning, training, and operations for the September 11, 2001, attacks;

Whereas in 2010, after an extensive evaluation meant to identify detainees who could be transferred out of the detention facility at GTMO, the Obama administration determined that these five should remain in United States detention because they were "too dangerous to transfer" because each "poses a high level of threat that cannot be mitigated sufficiently except through continued detention";

Whereas the President has stated that there is "absolutely" the "possibility of some" of these former Taliban detainees "trying to return to activities that are detrimental to" the United States;

Whereas other former GTMO detainees that were transferred have become leaders of al-Qaeda affiliates actively plotting against the United States and are "involved in terrorist or insurgent activities";

Whereas Secretary of Defense Chuck Hagel testified before the Committee on Armed Services of the House of Representatives that, pursuant to an agreement with Qatar, the five former detainees transferred in May would not be allowed to leave Qatar for one year, but after that date there would be no restrictions on the movement of the former detainees;

Whereas notwithstanding the fact that Qatar is an important regional ally, after another GTMO detainee was transferred to Qatar in 2008, Qatar apparently had difficulty implementing the assurances Qatar gave the United States in connection with that detainee's transfer;

Whereas senior officials in the Obama administration negotiated, through intermediaries in the government of Qatar, with the Taliban, and with the Haqqani Network, which the Department of State has designated as a foreign terrorist organization, and which held Sergeant Bowe Bergdahl captive;

Whereas Secretary Hagel testified to the Committee on Armed Services of the House of Representatives that negotiations for the transfer of the five Taliban detainees in exchange for Sergeant Bergdahl began in January 2014;

Whereas the General Counsel of the Department of Defense signed a memorandum of understanding with the Attorney General of the State of Qatar on May 12, 2014, regarding the security conditions for transfer of these five Taliban detainees;

Whereas in addition to an unknown number of officials of Qatar, senior Obama administration officials acknowledge that approximately 80 or 90 individuals within the Obama administration were knowledgeable of the planned transfer of the five Taliban detainees prior to their transfer;

Whereas Congress was not notified of the transfer until June 2, 2014, three days after such individuals were transferred, and 33 days after the date on which such notification was required by section 1035 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66; 10 U.S.C. 801 note) and section 8111 of the Department of Defense Appropriations Act, 2014 (Public Law 113-76);

Whereas the Secretary of Defense, in consultation with the President and other senior Obama administration officials, did not comply with the 30-day notification requirement;

Whereas article II, section 3 of the Constitution stipulates that the President "shall take care that the laws be faithfully executed";

Whereas on January 15, 2009, the Office of Legal Counsel in the Department of Justice acknowledged that, under article I of the Constitution, Congress possesses legislative authority concerning the detention and release of enemy combatants;

Whereas the Obama administration has complied with the law in all other detainee transfers from GTMO since the date of the enactment of prevailing law; and

Whereas in 2011, after leaders of the Senate and House of Representatives expressed their bipartisan opposition to the prospective transfer of these Taliban detainees from GTMO, senior Obama administration officials assured these Senators and Members of

Congress that there would be no exchange of Taliban detainees for Sergeant Bergdahl, and that any transfer of Taliban detainees that might otherwise occur would be part of a reconciliation effort with the Taliban and the Government of Afghanistan and that such a transfer would only take place in consultation with Congress pursuant to law: Now, therefore, be it

Resolved, That the House of Representatives—

(1) condemns and disapproves of the failure of the Obama administration to comply with the lawful 30-day statutory reporting requirement in executing the transfer of five senior members of the Taliban from detention at United States Naval Station, Guantanamo Bay, Cuba;

(2) expresses grave concern about the national security risks associated with the transfer of five senior Taliban leaders, including the national security threat to the American people and the Armed Forces of the United States;

(3) expresses grave concern over the repercussions of negotiating with terrorists, even when conducted through intermediaries, and the risk that such negotiations with terrorists may further encourage hostilities and the abduction of Americans;

(4) stipulates that further violations of the law set forth in section 1035 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66; 10 U.S.C. 801 note) and section 8111 of the Department of Defense Appropriations Act, 2014 (Public Law 113-76) are unacceptable;

(5) expresses that these actions have burdened unnecessarily the trust and confidence in the commitment and ability of the Obama administration to constructively engage and work with Congress; and

(6) expresses relief that Sergeant Bergdahl has returned safely to the United States.

The SPEAKER pro tempore. The gentleman from California (Mr. McKEON) and the gentleman from Washington (Mr. SMITH) each will control 30 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. McKEON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on H. Res. 644.

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

There was no objection.

Mr. McKEON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Resolution 644, a resolution offered by the gentleman from Virginia (Mr. RIGELL), condemning the Obama administration's failure to comply with the requirement to notify Congress before transferring individual detainees from Guantanamo Bay.

I would like to thank Mr. RIGELL for his leadership on this deeply troubling issue. He worked across the aisle to author a bipartisan resolution, sponsored by 94 Members of the House, including myself, focused on the Obama administration's clear violation of statute passed by the legislative branch and enacted into law by the President.

I would also like to thank Ranking Member SMITH. Though he did not support this resolution in its entirety, I

appreciate his candor and his commitment to fostering a thoughtful debate within our committee.

The administration violated the law, and House Resolution 644 articulates this simple message. It passed out of the Armed Services Committee with a bipartisan vote.

Section 1035 of the National Defense Authorization Act for Fiscal Year 2014 requires the Secretary of Defense to notify the appropriate committees of Congress at least 30 days before the transfer or release of any individual detained at GTMO. There are no waivers to this clause—no exceptions, period; yet, on May 31, at the request of the Taliban and in exchange for Sergeant Bergdahl, who was held by the Haqqani Network, the administration sent five senior Taliban leaders from GTMO to Qatar.

The administration took this action without notifying Congress. This is an obvious violation of the law. There can be no confusion on this point. In fact, the nonpartisan Government Accountability Office recently determined that the administration violated the law by failing to notify Congress, but also by expending funds to carry out the transfers without an appropriation for that purpose.

The statutory provision of the NDAA was written and approved by a bipartisan majority in Congress because of genuine concerns that dangerous terrorists were leaving GTMO and returning to fight against the U.S. or its allies.

By requiring the Secretary of Defense to convey detailed information to Congress, the provision is intended to allow Members to have a complete understanding of the risks of sending GTMO detainees elsewhere and how those risks might be mitigated.

In transferring the Taliban Five without lawfully notifying Congress, the administration deprived Congress of the opportunity to consider the national security risks that such a transfer could pose or the repercussions of negotiating with terrorists.

If Congress does not speak strongly now to condemn such blatant disregard for the law, any future administration may come to believe that obedience to statute is not a requirement for the executive branch. This is intolerable, and for this reason, I support this resolution and will ask my colleagues in the House to adopt it.

Again, I thank Mr. RIGELL, Mr. BARROW, Mr. RAHALL, and Mr. RIBBLE for introducing this important bipartisan resolution, and I urge my colleagues to adopt it.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of Washington. Mr. Speaker, I yield myself such time as I may consume.

There are two issues important to this piece of legislation. The first that the chairman mentioned is the legality of this. However, he is wrong in the idea in saying that this is clear on its

face and there is no debate. There is actually considerable debate as to whether or not the President's actions were legal.

The President and the Secretary of Defense have stated unequivocally that they believe they acted within the law, and this is actually an issue that comes up repeatedly between the legislative and the executive branch. It has been coming up for a couple hundred years now.

The administration's position is that they acted in accordance with their article II Commander in Chief authority in the interest of national security and in bringing one of our soldiers home, and it is their position that article II of the Constitution, which is a law, supersedes the piece of legislation that was referenced about 30 days' notice that was passed, and therefore, their actions were legal.

The first thing to really understand about this is that this is in no way unprecedented. I am sure if we went back and examined the history, just about every President at one time or another did something contrary to a piece of legislation or a law because they felt article II required them to do so. They felt article II—the Constitution, which is a law—superseded the legislation in question.

In fact, we don't have to go back very far. President George W. Bush repeatedly took actions that were in violation of the clear law post-9/11. He basically authorized warrantless wiretapping. He authorized indefinite detention.

Both of those issues were clearly contrary to statutory law, but President Bush asserted his article II authority and said that, therefore, it was legal to do that.

Go back to Abraham Lincoln, who suspended habeas corpus in the same way. This is a long-running debate between the legislative and the executive branch, and never before has the legislative branch stepped out with legislation like this to censure the President.

So, number one, the President did not violate the law. He followed what he felt was article II of the Constitution, perfectly consistent with what George W. Bush and a whole lot of other folks did, so I think it is wrong to call him out and say that he violated the law when this is simply part of a long-running debate between the legislative and the executive branch.

Now, let me say I feel that the President should have given us 30 days' notice. I do believe that. Now, the reason that they didn't is because they were concerned that the information would be leaked.

This was a very sensitive negotiation, and they were told that if the information was leaked, it would kill the deal, and they were deeply concerned about Sergeant Bergdahl's health and that if any further delay happened, that he might not survive his current incarceration with the Taliban, so that was their reason for doing it.

While I have said and will continue to say that I think he should have given us that 30 days' notice, that I think Congress has proven repeatedly that we can, in fact, keep a secret—we have been told about a number of very sensitive things and have not revealed that information.

I think it is worth noting that the President isn't completely without reason for that. In fact, Senator SAXBY CHAMBLISS, after this was revealed, was asked, "Well, if you had known about this, what would you have done?"

He initially said, "Well, I would have let people know, absolutely, because I didn't think it was a good idea, and I would have done everything I could to stop it."

Now, after having been explained that that is exactly why the President was reluctant to tell Congress, the Senator walked himself back from those remarks and said that he wouldn't, but his initial reaction sort of shows that the President and the administration were not completely out of bounds in thinking that their ability to bring Sergeant Bergdahl home might have been jeopardized by allowing Congress to know that.

Be that as it may, I think they should have. I think we have proven ourselves capable of keeping secrets, and they should have given us 30 days' notice, but on the legality question, this is perfectly consistent with what a large number of Presidents have done in the past.

So to call this President out specifically, I think, is wrong, which brings us to the second issue, and that is the partisan nature of this body. Now, it is not unique to this body. Regrettably, if you go back and you look at instances where the President is of one party and the Congress is of another, that is when investigations are off the charts.

Somehow, when both the President and the Congress are in the same party, we don't have anywhere near the condemnation, anywhere near the investigation for actions, on and on and on; and that regrettably reflects the deepening partisan rift in Washington, D.C.

That ultimately is what I think this legislation reflects. It is simply an opportunity for a Republican Congress to take a shot at a Democratic President. If it was more than that, then back 10 years ago, when President George W. Bush was violating all manner of different statutory law under his articulated article II powers, then we would have had something out of this Congress that said, "Hey, don't do that." We didn't. All we had was silence.

Now, unfortunately, what that leads the public to believe is that this is a partisan exercise, and we need fewer partisan exercises, not more. I think it is perfectly appropriate for many Members, as I did and others, to say the President should have given us notice. He should have given us 30 days.

For this to be the first—or I guess the second issue, since we had the

water bill just before this—that we take up when we come back from recess, when you think of all the economic and national security challenges and everything that is going on out there, I think once again makes the public just shake their head and say, “Here we go again, another partisan exercise.”

Unfortunately, I think this piece of legislation is unnecessary, and I think it further poisons the well between Congress and the President. Again, I do not feel that the President violated the law. He had a different interpretation of it, as many Presidents before him have.

With that, I reserve the balance of my time.

Mr. McKEON. Mr. Speaker, I must respond to just a couple of points made by my good friend from Washington.

We agree on more than we disagree on. This item we disagree on, but it seems to me that his main argument is that because other Presidents have done it, it is okay for this President to do it. In other words, two wrongs make a right. I don't think that is the point. I think at some point, you have to draw the line, and that is what we are doing right now.

Secondly, he said that the President said that he really believed he wasn't breaking the law. You know, prisons are full of people that say they don't think they broke the law, but some judge thinks they did, and in this instance, until you take the matter to the court, it is the law. Even though he is the President of the United States, he did break the law.

At this time, Mr. Speaker, I yield 5 minutes to the gentleman from Virginia (Mr. RIGELL), my friend and colleague who is a member of the Armed Services Committee, is the lead cosponsor, and is the one who has from day one provided the leadership on this issue.

Mr. RIGELL. Mr. Speaker, I thank Chairman McKEON for his leadership and bringing this resolution to the floor. I thank the original cosponsors, Congressmen RIBBLE, BARROW, and RAHALL for standing with me on this.

I respect my colleague from Washington, Ranking Member SMITH, and my respect for him is not diminished by the fact that we have strong but different views on this matter. I don't share the ease with which he has accepted the President's, I believe, refusal to follow the law, and I reject outright—and I must do so in this Chamber—the assertion that this is partisan.

□ 1530

It is not partisan. It is in my service to Virginia's Second Congressional District.

An increasing number of men and women from a very diverse audience in my district are deeply troubled by the President's continued pattern of going outside of the law and executive overreach. This is an example that hits

home in our district, which is home to more men and women in uniform, Active Duty and retired, than any other of the 435 congressional districts. They increasingly are asking me this question: What is Congress doing about this?

This resolution today is a direct manifestation of my duty and, I believe, our collective duty to hold the President accountable for breaking the law.

Now, again, the ease with which some have said that he hasn't broken the law, well, that is not shared by the GAO, the Government Accountability Office. It is an independent nonpartisan agency, and this summer it found that in releasing the Taliban senior commander, in fact, the administration did break the law. That is really not in dispute.

If we don't hold the administration accountable for this, who will? That is what we do: making sure that the balance of powers is adhered to.

I think it is important that we look at who was released. Among those released is Mullah Mohammad Fazl, the Taliban's deputy defense minister. The President himself acknowledged that there is absolutely the possibility of these senior Taliban commanders returning to the battlefield. They can be released by the Government of Qatar in less than 9 months. The President has more confidence in the Government of Qatar than I do and I think the American people do.

So, Mr. Speaker, despite the administration's lawful duty to engage Congress, despite Congress's clear objection in 2011 on these very same detainees, a bipartisan message was sent clearly to the administration: Don't release these prisoners; it is not in the national interests and security interests of the United States. And yet the administration did so.

Despite the damage that it has done to our policy of not negotiating with terrorists and, finally, despite the increased risk that this brings to Americans, I believe, on the battlefield in Afghanistan, the administration plowed ahead. And it was far more than unwise; it was unlawful, and it merits condemnation.

I will close with this. I really didn't want to bring this to the floor. I know we have plenty of partisan bickering around here, but I looked for someone else and maybe another Member that was bringing something to the floor. I couldn't find it. I thought, well, I guess it falls to us. And I appreciate the ranking member meeting with me and the conversation we had about this matter. We hold different views on this. But I believe this is best for our Nation and, indeed, best for our President and our country and certainly for our men and women in uniform that this is passed today, and I urge my colleagues on both sides of the aisle to vote in the affirmative.

The SPEAKER pro tempore. Members are reminded to refrain from en-

gaging in personalities toward the President.

Mr. SMITH of Washington. Mr. Speaker, I yield myself 2 minutes just to respond quickly.

First of all, the GAO study specifically said they didn't address the constitutional issue; they didn't address article II. They simply said on the plain reading of the statute, 30 days' notice was required and 30 days' notice wasn't given, which, by the way, didn't take a GAO study to figure out. That is very plain.

The statute itself is really not in question nor that the President didn't give the notice required. The question is one that we have had repeatedly as to when the President has the authority under his article II authority to go in a different direction of the statute. As was mentioned, that happened many times, most recently with George W. Bush, a warrant with wire tapping and indefinite detention and a number of other issues. That's number 1. The GAO did not comment on that specific issue.

The second thing I would say is we are not really arguing that two wrongs make a right. We are arguing about whether or not it was wrong in the first place. All right? I still haven't heard anyone stand up on the other side who supports this issue and say: Gosh, we missed an opportunity. President George W. Bush was absolutely wrong to have taken those actions that he did and contrary to statute and did something that was illegal, and we are very mad about that. As long as we are talking about it, we should mention the fact that—so I haven't heard anyone say that, because I think the implication is, on that side, they didn't think it was wrong.

And that is the issue: Is it wrong for the President to do something that he believes is in the national security interest of the country under his article II authority? I think most people would say: Sometimes yes, sometimes no. It is a debatable issue. It is not a matter of saying two wrongs make a right. It is a matter of arguing whether or not it was wrong in the first place. And consistency is the hobgoblin of small minds, as the saying goes, but there certainly is enough inconsistency on this issue to make people believe this is more partisan motivated than it is purely policy and conscience motivated.

I reserve the balance of my time.

Mr. McKEON. Mr. Speaker, I pointed out to the gentleman recently that neither of us were in these jobs when President Bush was in office, so we don't know what we would have done at that time. I would hope that, if he went against the law, we would take similar action. I think that we would have done that.

I yield at this time 3 minutes to the gentleman from Virginia (Mr. WITTMAN), my friend and colleague, the chairman of the Subcommittee on Readiness.

Mr. WITTMAN. Mr. Speaker, I rise today as a member of the House Armed Services Committee and as chairman of the Readiness Subcommittee to voice my support for H. Res. 644.

I would like to thank the chairman for his leadership in bringing this to the floor. I respect deeply the ranking member, but adamantly disagree with him on the points that he makes about this piece of legislation.

Very simply stated, the prisoner swap authorized by the President to exchange five Taliban captives for Sergeant Bergdahl was illegal. That part of the law was not followed. It is pretty plain and simple. By failing to notify the Congress in accordance with the 30-day reporting requirement, our President acted outside of the law. Clearly, it wasn't authorized and the law was ignored.

You can make arguments about what other prerogatives he had, but you can't say, well, article II we'll put in place and that trumps other areas of the law. I think you have to say that this law was disregarded.

Our Constitution clearly outlines those separations of powers. This principle is the cornerstone of our democracy. Our Framers carefully incorporated the division of the government and the responsibilities there in order to protect citizens by preventing any one branch of government from overreach and abuse of power. That is why we are here is to have these type of debates and say the President clearly acted outside of the law.

I will make this even clearer. Congress makes the laws; the President, on the other hand, has a constitutional charge of ensuring the laws are faithfully executed—not just part of them, but all of them. In this case, the President knowingly and wilfully disregarded his constitutional duties, and Americans deserve better.

Americans expect that their President will uphold his end of the constitutional bargain. Americans expect that the laws of the land apply to everyone and that they are applied properly in accordance with the direction from Congress. Americans also expect that their congressional leaders are simply not going to shrug their shoulders and look the other way. Congress has an obligation to the people to ensure that its laws are enforced. That is why we are elected.

Our Nation remains, today, at a tipping point in this world's history in a war against terrorism. The unlawful release of five Taliban prisoners, some of whom will certainly return to the battlefield, deeply concerns me. An investigation I led in 2012 indicated at the time that 27 percent return to the battlefield. That is why I remain skeptical of the administration's assessment that the released prisoners will not pose a threat to our national security.

We have no idea how much more terror those men now might unleash and what impacts they will have on the

lives of others. By ignoring the law, the President has decided that he's going to shoulder this responsibility. I argue he had an obligation under the law to consult Congress in doing this. That is why it was put into the National Defense Authorization Act.

We live in a nation where people expect their elected leaders to carry out their duties as the Constitution directs them, and every day each of us is entrusted by the public to uphold the Constitution, and we must live up to that obligation.

Mr. Speaker, I fully support H. Res. 644 and urge my colleagues to support this institution and our Constitution.

Mr. SMITH of Washington. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. SHERMAN).

Mr. SHERMAN. Mr. Speaker, we are here to consider a technical violation of section 1035 of the National Defense Authorization Act. A fair reading of that section would indicate that it is drafted and focused on gratuitous prisoner releases, the many occasions prior to the adoption of that section when the prior administration or this administration chose to release a prisoner. When applied to the situation for which it was drafted, it is a practical and fully constitutional provision.

It is practical because it involves a 30-day delay in release of a prisoner where there is no particular hurry to release the prisoner. We release the prisoner 30 days after the notice; we make the decision to release the prisoner; the prisoner is released; and it gives Congress 30 days to perhaps pass a law prohibiting such release.

I believe it is constitutional because it doesn't interfere with the Commander in Chief's ability to safeguard and protect the soldiers under his command.

Now there is an attempt to criticize the President for not following this statute when it is applied to a situation for which it was not drafted and when it is applied in such a way where it becomes incredibly impractical, perhaps impossible, and constitutionally questionable.

We have had prisoner exchanges in every war we have fought, and they have been implemented by the executive branch. Even in World War II, we had prisoner exchanges before the end of the war.

Now, as a practical matter, if you have a 30-day delay in effectuating a prisoner exchange, it is not just the U.S. Government that has 30 days to think about whether to go through with the decision. You also give the enemy 30 days to think about it. And the hard-liners within the enemy's council can eliminate the deal. So it is impractical, especially if it was a good deal.

Now, this may not have been a good deal, but there may come a time when we have negotiated a very good, favorable-to-America prisoner exchange. And this provision would say it is prevented not by decisions of the Congress

or the President, but by decisions made by our enemy in their council.

But, second, a prisoner exchange returns to the United States a soldier under the command and protection of the Commander in Chief. He has a constitutional duty to protect and hopefully return home safely our soldiers.

When you create a circumstance that makes it practically impossible to have a prisoner exchange because in order to have one you have to give the hard-liners within the enemy's council an ability to upset it, then you have, I believe, unconstitutionally interfered with the role of the Commander in Chief.

We tell our Commander in Chief to bring as many as possible of our men and women home safely. We cannot at the same time, in effect, prohibit any prisoner exchange with which the enemy hard-liners may disagree.

Now, I am not here to praise the Bergdahl decision. I think I disagree with it; I know I disagree with it. But I am here to say that this was a code section not designed to apply to the situation, cannot practically be applied to this situation, and is constitutionally questionable as applied to this situation.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. SMITH of Washington. I yield the gentleman an additional 1 minute.

Mr. SHERMAN. Given that, how can it be said that it is a good use of Congress' time to pass some formal resolution attacking the President for not applying to this situation a code section so infirm?

I think that what we are doing today is dodging the real responsibility of Congress. We are engaged now in bombing ISIS. The Constitution says that Congress should play a role in making that decision. Many of our colleagues would prefer to dodge the issue. It is safer to attack the President for what he did in the past than to participate in the decisions of the future.

We should be dealing with an authorization to utilize military force against ISIS. We should be debating the term that that applies. We should be debating whether it applies to airpower alone or whether, under some circumstances, we should have boots on the ground.

But, no, we are not dealing with that. That is too tough a vote. That is a vote on which members of both parties might disagree. Instead, we are playing around with this resolution.

Mr. MCKEON. Mr. Speaker, just a little reality check here. I offered the points that went into the National Defense Authorization Act. One of the reasons I did it was because we specifically did not want any detainees to be taken from Guantanamo without alerting the Congress, because they had tried it before and it had pushback from the Congress and we felt like we should have a part in that protection of our people.

□ 1545

There are 80 people, detainees, in Guantanamo that have been vetted and that are approved for possible transfer to a suitable location. None of these five were on that list. All were considered too dangerous to be on that list. There were several months of negotiations. There was plenty of time to give us the 30 days' notice. They talked to 80 to 90 people in four different executive branches: the State Department, the Defense Department, the White House, and Homeland Security, but not one Member of Congress, in compliance with the law. They didn't talk to Senator REID, they didn't talk to Senator FEINSTEIN, and they didn't talk to the Speaker. Nobody. And that was not accidental. That was a firm decision to avoid the law and to avoid going to the Congress, which was required.

Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. RIBBLE), my friend and colleague, a member of the Budget Committee, and cosponsor of the resolution.

Mr. RIBBLE. Mr. Speaker, I thank the chairman for yielding.

Article I, section 1 of the United States Constitution says: "The Congress shall have the power"—I want to repeat—"the Congress shall have the power to make rules concerning the capture on land and water."

December 26, 2013, the President of the United States signed into law the Congress' action on article I, section 8, regarding making rules.

The President had options on December 26, 2013. He could have signed it, as he did, accepted language that was in there, knowing it was in there—I am assuming someone over there read it. So he had an option to sign it. He had an option to send it back, and at that point the Congress could have done whatever they wanted to do. They could override it, they could rewrite it, they could revoke on it and send it back again.

What the President didn't have the right to do was to change it. And, in fact, I have heard a couple of times today quoting of article II of the Constitution. I have read it probably a dozen times just sitting here today. It is relatively short. I am having a hard time finding the authority here, but I did find some interesting thing. Article II: "Before he enter on the execution of his office, he shall take the following oath or affirmation, 'I do solemnly swear or affirm that I will faithfully execute the office of the President of the United States and will to the best of my ability preserve, protect, and defend the Constitution of the United States.'"

Later it says that the President, he shall take care that the laws be faithfully—faithfully—executed.

The idea that the President can take the very law that he signed into existence by putting his name on it—the very law—as a suggestion—whether or not any President before him did it—is tantamount to someone being pulled

over for speeding and saying, I can speed because the guy in front of me did it.

Then there is no law at all. The laws that this Congress sends over there and the President signs are not recommendations. They are not suggestions.

Mr. Speaker, the President of the United States broke the law. No matter what another Congress does, or another Congress did, or what another President ever did is irrelevant to this today.

The SPEAKER pro tempore. Members are reminded to refrain from engaging in personalities toward the President.

Mr. SMITH of Washington. I would again note that it is not a matter of speeding. It would be as if someone were stopped for speeding and said that there is no posted speed limit, how are you saying that I was speeding? That is the argument. It is the argument a number of Presidents have made, that their article II authority for national security purposes gives them the legal right to do this.

I would also note that in a couple hundred years of history, no court has ever said otherwise, has ever reversed one of these decisions by the President.

So this notion that the President knew he was breaking the law and just did it, and comparing it to two wrongs don't make a right or people speeding, it is the President's opinion—and, by the way, not just this President, but every President that I am aware of, including, again, George W. Bush, that this is not a violation of the law, this is not speeding, because of his article II authority. So it is not a matter of simply saying, well, he broke the law but if someone else did it, it is okay. It is arguing that none of those people actually broke the law. That is the argument in the debate.

As far as the bill itself, yes, the President was very much aware of it, that it was in that bill when he signed the bill, and it was part of a much larger bill. It was part of the National Defense Authorization Act.

When he signed that bill, he noted: "I disagree with this portion. I think it has the potential to violate my article II authority." So he absolutely noticed that it was in there and gave us notice that he did not feel that it would legally bind him in certain circumstances.

Again, it is a debatable point. All I know is that in a couple hundred years of history, the Presidents, all of them, have won that debate. And now here we stand today saying that this one President somehow uniquely should be condemned for doing what all before him have done and what all courts have said is perfectly okay.

So, again, I find this to be more partisan than substantive.

With that, Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. BECERRA).

Mr. BECERRA. I thank the gentleman for yielding.

Mr. Speaker, today, the President is meeting with congressional leaders to discuss our strategy moving forward in Iraq and Syria to protect Americans, our homeland, and our national interests.

It is hard for me to understand why we are debating this partisan resolution that would condemn the President and our government for having saved the life of an American soldier, Sergeant Bowe Bergdahl.

In the past month, we have seen with horror the sight of two Americans killed at the hands of some of these deranged insurgents, not unlike the situation many of our American soldiers have faced in Afghanistan where Mr. Bergdahl was captured.

So here we have 2 weeks to go in this congressional session because we are just back from an August recess where there were no votes, and we have already been told by the Republican leadership in the House that they don't intend to be in session more than 2 weeks now, this week and next week, possibly a few days in the following week, and we are going to be gone.

In that time, we have to finish a budget, we have to deal with all sorts of other pressing matters, and we have to work with the President to come up with a strategy to make sure that it is clear where America stands on these issues that impact the lives and security of Americans abroad and at home, and here we are debating a resolution that has no impact. It doesn't change the circumstance. Bowe Bergdahl is now alive and back home. It doesn't change the fact that James Foley is still dead and so is Steven Sotloff. They are both still gone. But what we do know is that the military kept its commitment to our men and women in uniform when they say we never leave one of our own in military uniform behind.

Now, you can have this semantic discussion about whether a statute supersedes the Constitution or whether this statute required the President to act a certain way. All I know is what General Dempsey has said before. General Dempsey being the chairman of the Joint Chiefs of Staff, Martin Dempsey, General Dempsey said this with regard to the rescue of Bowe Bergdahl:

This was likely the last best opportunity to free him.

Now, anyone in this Chamber has the right to argue whatever they want. But no one was in the shoes of Bowe Bergdahl, quite honestly, no one was in the shoes of General Dempsey, and at the end of the day, not one of us is in the shoes of President Barack Obama. And if that window is closing, he has got to make a decision because there is an American life on the line. And if we don't believe that, just ask the families of Mr. Foley and Mr. Sotloff.

Bowe Bergdahl is alive today. Thank the Lord, thank you, President Obama, and thank you to our men and women in uniform who risked their own lives to make sure that men and women like that could come back home.

We have 2 weeks to go before we are gone and out campaigning for election. You would think that we would work on the things that people in America are concerned about most. They want us to not shut down this government again, they want us to make sure that we continue the success of the last 55 months of creating 10 million jobs—because remember, don't forget, it wasn't too long ago, January 2009, when George Bush handed the keys over to Barack Obama at the White House, we bled 800,000 jobs in just 1 month. We have got more work to do to get people to work. There are a whole bunch of families, including mine, who are sending their kids to college.

The SPEAKER *pro tempore*. The time of the gentleman has expired.

Mr. SMITH of Washington. I yield the gentleman an additional 1 minute.

Mr. BECERRA. We have more student loan debt in America held by our young men and women trying to get their college degrees and, of course, their parents, as well, who are paying for them, than we hold in all the credit card debt in America today.

Does this bill do anything to help young Americans and their parents help their kids get through college? Not a thing. Does this help an American today who works full-time and still lives in poverty because he is working at a minimum-wage job? Not a thing.

Does this help a woman who is out there working just as hard as a man and doing the same exact thing but earning less money than he is? Not a thing.

We have got work to do.

Bowe Bergdahl is alive. Let's praise that. Let's make sure every American can come back home and say the same thing, and then let's get to work doing the real business of this country rather than passing partisan resolutions that have nothing to do with the business at hand.

Mr. McKEON. Mr. Speaker, I respect my friend. We came to Congress together, and I appreciate his remarks on a lot of things. But we should get back to the subject at hand. This has nothing to do with Sergeant Bergdahl. This has to do with the action that the President took. We are all happy that Sergeant Bergdahl is home, and we are glad that he is here, and his case will be taken care of separately.

Mr. Speaker, there is a call to do something for the President. The President hasn't asked us to do anything yet. He is not even speaking until tomorrow. Then we will see what he has to say, and then we will see how we move forward.

I am not an attorney. My good friend from Washington is a great attorney. And I recall when we had Secretary Hagel, and Secretary Hagel made the comment that he thought what they did was within the law. And my good friend responded that here is the way it works: The President signed the bill and said that he disagreed with it, but

that does not change it. It is still the law until it is challenged in the courts. That is our system.

Anyway, Mr. Speaker, at this time, I am happy to yield 2 minutes to the gentleman from Georgia (Mr. BARROW), my good friend from the other side of the aisle.

Mr. BARROW of Georgia. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise today as a supporter and a sponsor of this resolution, and I appreciate my friend from Virginia (Mr. RIGELL) for working with me on this bipartisan effort to hold the administration accountable. Under current law, the President is required to notify Congress prior to releasing any prisoners from Guantanamo Bay. Unfortunately, he failed to do that this summer when he transferred five high-priority detainees in exchange for Sergeant Bowe Bergdahl.

Although I am grateful that Sergeant Bergdahl has been reunited with his family, I strongly disagree with the President's decision to negotiate with terrorists, and I certainly don't agree with the President's decision to make this prisoner exchange without first consulting with Congress in the manner required by federal law.

The freeing of terrorists poses a national security threat to Americans and our Armed Forces, and it complicates our current efforts to combat terrorism worldwide. Negotiating with terrorists will only weaken this Nation in the future and encourage other terrorists to kidnap Americans in an attempt to extort future prisoner exchanges.

□ 1600

Checks and balances aren't negotiable. It is unacceptable for this or any other administration to treat Congress as an afterthought or adversary, particularly with decisions impacting our national security and especially since, in this case, Congress could have helped the President get this decision right.

For all these reasons, Mr. Speaker, I urge my colleagues to support this resolution.

Mr. SMITH of Washington. Mr. Speaker, I yield 3 minutes to the gentleman from Connecticut (Mr. COURTNEY).

Mr. COURTNEY. Mr. Speaker, as a Member of the House Armed Services Committee and having the honor to serve under Mr. McKEON and Ranking Member SMITH, I would like to just share a couple of thoughts, having sat through the hearing with Secretary Hagel where he was held accountable that day, he was asked very probing, difficult questions about a very difficult decision, which was happening at Mach speed, when an opportunity—a small window of opportunity opened up to recover an American soldier held in captivity by the enemy.

When the President signed the National Defense Authorization Act, including the 30-day notice, the adminis-

tration put up a big red warning flag saying that article II of the U.S. Constitution, which empowers the President to be the Commander in Chief, conflicted with that section, and they reserved their rights to continue to act pursuant to the Constitution.

Now, any first-year law student—frankly, almost any high school student who takes American history—knows that a constitutional provision trumps a statute, that when there is a conflict of law between a constitutional provision and a statute, the Constitution prevails.

The President, as Secretary Hagel laid out in excruciating detail when he was asked about the sequence of events which led up to the decision that was made, again reviewed through the Justice Department their authority.

Realizing that again there was no plan B, there was no plan C to get Sergeant Bergdahl out of captivity, there was no Special Forces sort of ready to rev up and go in and free him, the fact of the matter is that it was this or there was nothing and that, exercising his rights under the Constitution, they moved forward and freed Sergeant Bergdahl, which apparently everybody agrees with the outcome, they are just upset with the fact that the President's interpretation of the law is different than the committee.

So where are we with this resolution? Is there a remedy? Is anybody proposing to do anything other than just sort of issue what I think is just a political polemic criticizing the President for his actions?

This resolution is a nullity in terms of any effect or impact that it actually has in terms of the President's actions. He is not being held to account by impeachment, which probably there is a lot of talk on the Internet when this was all taking place, but that is not happening.

So it is just really we are filling up space here on the floor of the House when we have so many other pressing issues. At the end of the day, it is not going to change the events. It is not going to change the two sides in terms of their interpretation of what happened here one iota.

Mr. Speaker, again, I understand that people had an honest disagreement about the way the statute was interpreted and implemented, but what I will just say to you is that that is an honest disagreement that happens and has happened in American history over and over again.

We should move on. We should let the military do whatever disciplinary proceedings they are going to do with Sergeant Bergdahl.

The SPEAKER *pro tempore*. The time of the gentleman has expired.

Mr. SMITH of Washington. Mr. Speaker, I yield an additional 30 seconds to the gentleman.

Mr. COURTNEY. We should let the military act as they deem appropriate in terms of Sergeant Bergdahl's actions in the Middle East, but the fact of the

matter is it is Secretary Hagel who came before this committee as a wounded warrior from the war in Vietnam, an impeccable military history—in my opinion, one of the most outstanding individuals I have had the privilege to meet in Washington, D.C.—testified honestly and sincerely. He took his hits before the committee.

Let's move on. Let's accept his explanation. Disagree with it if we honestly feel that he acted improperly, but the fact of the matter is he acted pursuant to the Constitution. It is time for this Congress to focus on real issues that have a real effect on the American people.

Mr. McKEON. Mr. Speaker, I yield 2 minutes to the gentleman from Colorado (Mr. LAMBORN), my friend and colleague, and a member of the Committee on Armed Services.

Mr. LAMBORN. Mr. Speaker, I thank the chairman.

I rise today in strong support of H. Res. 644. The President's actions in unilaterally swapping five Taliban members for an American prisoner swept away a decades-old policy of not negotiating with terrorists. This policy prevents the United States from being extorted by evil people who hold no regard for human life.

The President's actions lead to an open season on Americans all over the world. Are we now in the business of negotiating with terrorists? Is ISIL up next at the bargaining table with this administration? These are senior Taliban detainees, not low-level foot soldiers. Will the administration stop at five next time? Why not 50 or 100? This is unacceptable.

The President's actions were also troublesome because he did not inform Congress prior to making the swap. Even the independent Government Accountability Office explicitly said that this exchange broke the law. Some will try to say that this is just partisan rhetoric, but what did they say to the findings of the nonpartisan GAO?

While it is a relief to have an American home, the way this was done further erodes the working relationship between the President and Congress. The President asked the Congress to act and pass bills, but how can we trust him with new legislation when time and time again he has abused that trust? How do we know he is not just going to ignore the next law that we send him?

Congress must stand up against the way this prisoner exchange took place. We are a nation that believes in the rule of law. We have a Congress that makes law and a President who is supposed to enforce them. In this case, the law was broken, and Congress cannot remain silent.

I urge every one of my colleagues to support this important resolution.

Mr. SMITH of Washington. Mr. Speaker, may I inquire as to how much time is remaining?

The SPEAKER pro tempore (Mr. YODER). The gentleman from Wash-

ington has 7 minutes remaining. The gentleman from California has 10 minutes remaining.

Mr. SMITH of Washington. Mr. Speaker, I yield myself 2 minutes.

The issue here of negotiating with terrorists misses the fact that this happened on the battlefield. The five Taliban commanders were captured on the battlefield, as was Bowe Bergdahl. This was a prisoner exchange, as has happened in every war that we have fought.

Now, it is a slightly different situation because it is the Taliban who are now out of power. We are not actually fighting a government at this point. We are fighting a group of insurgents, but nonetheless, Bowe Bergdahl was captured on the field of battle, as were the five Taliban commanders, and this was a prisoner exchange.

To equate this with negotiating with terrorists I think totally misses the point of that aspect of it, that we were exchanging prisoners, not dealing with a straight terrorist situation. I don't think it sets that precedent at all, and I think we need to be aware that that was what the President was facing.

Was the exchange a good deal? That is highly debatable. I am glad I wasn't the Commander in Chief having to make that call, facing the deteriorating health of Bowe Bergdahl and wondering if five Taliban prisoners were worth saving his life, but these sorts of decisions are made all the time.

I would remind you that Prime Minister Netanyahu of Israel, no shrinking violet when it comes to terrorism, once exchanged over 1,000 Palestinian prisoners for two Israel soldiers because that was a prisoner exchange. That was bringing home the people that Israel wanted brought home, and it was not easy.

So this is not simply a matter of negotiating with terrorists or giving away prisoners. It is the difficult choice of what you do to bring your own soldier home, a difficult choice that every President or Prime Minister whose country is engaged in warfare has to face. I don't think we should diminish the difficulty or the importance of that decision.

I reserve the balance of my time.

Mr. McKEON. Mr. Speaker, I yield 2 minutes to the gentlewoman from Indiana (Mrs. WALORSKI), my friend and colleague and a member of the Committee on Armed Services.

Mrs. WALORSKI. Mr. Speaker, I rise in support today of H. Res. 644, for which I am a proud cosponsor.

This bipartisan bill condemns and disapproves the Obama administration's failure to comply with the lawful requirement to notify Congress before releasing individuals detained at Guantanamo Bay and expresses national security concerns over the effects of releasing five Taliban leaders and negotiating with terrorists.

Our constitutional system of checks and balances maintains a separation of

powers that ensures Congress is involved in major decisions that affect our country's national security.

I have serious concerns when the President deliberately ignores Congress, negotiates with terrorists, and violates the law which requires that he consult with Congress before releasing detainees.

Those five Taliban leaders that were released are already responsible for the deaths of many Americans. In 2010, they were determined "too dangerous to transfer" by President Obama's own task force. One of the five had ties to Bin Laden himself. Another is wanted by the United Nations for war crimes.

Unfortunately, there is a good chance these five terrorists will return to their radical jihadist fight against America and against our Western allies. Nearly 30 percent of detainees reengage in terrorist activity after being released.

In any major decision of war and peace, Congress must have a say because the American people must have a voice. As we continue to face many tough decisions over how to best protect Americans at home and abroad, Congress should be an active participant in decisionmaking. I will continue to work hard to ensure our homeland remains safe from terrorist attacks.

I urge my colleagues to support this resolution.

Mr. SMITH of Washington. Mr. Speaker, I reserve the balance of my time.

Mr. McKEON. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. DESANTIS), my friend and colleague and a member of the Foreign Affairs Committee.

Mr. DESANTIS. Mr. Speaker, it seems to me you have two issues here: one, Congress, which we have an enumerated power to make rules for detainees captured on land and water; then you also have, as the GAO report pointed out, a funding prohibition that withheld funds contingent on the President providing that notification.

As Madison said in the Federalist Papers, the power of the purse is the most effectual weapon that we have in terms of vindicating the interests of our constituents. So whatever the President's article II power is, clearly, if we remove the funding, then he is not able to do that through the executive branch.

So the question is: Knowing that, why go ahead and do it? Why not comply with both the statute and the funding restriction? I think the reason is because they knew this would not be popular with the American people. One of my colleagues on the other side of the aisle said, "Well, this statute really shouldn't apply in this situation because hard-liners in the enemy camp can nix the deal."

I have got news for you, Mr. Speaker, the hard-liners were the subject of the deal. I served in Guantanamo for a time. The Bush administration released detainees who they thought may not have been a danger anymore. Nobody would have even suggested that

this Taliban Five did not represent a danger to our national security.

So here we have an instance where Congress clearly exercised its authority in order to check the President on an issue with, in terms of the terrorist detainees, that his views are, quite frankly, not representative of the American people as a whole. We did that legitimately, and this President decided to flagrantly violate the lawful actions that we took.

I urge support for this resolution.

Mr. SMITH of Washington. Mr. Speaker, I continue to reserve the balance of my time.

Mr. McKEON. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. SCHOCK).

Mr. SCHOCK. Mr. Speaker, I rise in support of this resolution.

The release of the Taliban Five, in violation of a law that President Obama himself signed, is among the greatest examples of this administration's disregard of the Constitution. It reflects contempt for this Congress and for the people who are represented here. Worst of all, his actions have emboldened Islamic militants and endangered American service personnel and civilians around the world.

Five years ago, when I first came to Congress, the President announced his intentions to close the terrorist detention facility at Guantanamo Bay. The Justice Department went shopping for a prison back in my State of Illinois to relocate those most dangerous and hardened enemy combatants from the wars in Afghanistan and Iraq.

Back then, Democrats had a majority in this House and a supermajority in the United States Senate. Even then, the President could not get authority from this Congress, controlled by his party in both chambers, to empty Guantanamo and move terrorists even detained back here to United States soil.

It is one thing for the President to defy any old law. It is another thing for the President to defy the very laws that he, himself, signed into law, but President Obama has gone even further.

By refusing to notify Congress of his intention to open the gates at GTMO and thus avoiding the anticipated political pressure that his carelessness would invite, the President has done the unthinkable. He has negotiated with terrorists, plain and simple.

I would say that he has abused the office and the power which comes with it, except in this case he has done something that he doesn't even have the power to do.

□ 1615

Tomorrow night the President will address the Nation about his latest strategy to deal with Islamic jihadists, but I would suggest that the world has seen enough about how this administration deals with terrorists and nothing he says tomorrow night can hide the growing sense among jihadists

around the world that they finally have an American President who will negotiate with them.

It is important for Congress to tell the world where we stand. I urge my colleagues to vote "yes" on today's resolution.

The SPEAKER pro tempore. Members are reminded to refrain from engaging in personalities toward the President.

Mr. SMITH of Washington. Mr. Speaker, I have to ask: What is personalities toward the President, just for a point of clarification? Personal attacks, perhaps?

The SPEAKER pro tempore. Members are allowed to engage in debate on policy. They are not allowed to engage in personally offensive remarks regarding the President.

Mr. SMITH of Washington. Thank you.

Mr. Speaker, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON LEE).

Ms. JACKSON LEE. Mr. Speaker, I think it is important to take note of the importance of this debate and, as well, the respect that we as Members of Congress owe each other and this institution.

I have long said that our longevity comes not only because of the democratic principles of our Constitution, but because there is the groundwork of the Founding Fathers and those who took to the floor to debate such raging issues as the question of slavery in the 1800s. Each time we are given the microphone, I think that we should adhere to that respect, and each time we put our pen to paper to create legislation, it should equally be based on the grounds of respect and understanding of the constitutional divisions of the three branches of government.

Today I think we have failed. This is, as I said, a personal attack against the President. If we would read the resolution, we would see five items that completely dictate the failure of the Obama administration.

Let me say that all of us concede the point that section 1035 that was added under the Obama administration in 2012—or, more recently—does ask the President to give a 30-day notice to Congress. No other President has been asked to do that.

The President has been very clear on his intent to close Guantanamo. Many of us have been to Guantanamo. But the issue before us was not an effort to close Guantanamo. And so to suggest that there was malicious intent of this President is, from my perspective, showing disrespect and dishonor to us, the institution, and the three branches of government.

Let me be very clear. There is a debate on the powers that the President has under the war powers. Some say there is a statute that says he had to notify us. But there was an explanation. This very strong committee, the Armed Services Committee, with the chairman, whom I respect, and the

ranking member, had a very thorough hearing that many of us were able to read some of the transcript where the Secretary of Defense came and explained.

I think one of the key elements for me as a member of Homeland Security is that the Secretary made it very clear that this was a military operation with very high risk, as spoken by Secretary Hagel on June 11, 2014, and a very short window of opportunity that we didn't want to jeopardize, both for the sake of Sergeant Bergdahl—there is a sentence that congratulates us for not leaving our precious treasure behind—and our operators in the field who put themselves at great risk to secure this return. There are those of us who remember that brief glimpse that we had of the rescue. Our men and women swooped down and picked up Sergeant Bergdahl. It was a military action.

This is an unnecessary resolution, Mr. Speaker. It is wrongly condemning. The President had authority and he explained what the action was.

Vote against this resolution. It is untimely and wrong. Vote against it.

Mr. Speaker, I rise in opposition to the rule governing debate of H. Res. 644, and the underlying resolution.

I oppose the resolution because at bottom it is nothing more than another partisan attack on the President and will make it difficult for this body and the Administration to find the common ground and goodwill needed to devise and support policies needed to address the real threats and challenges facing our country, particularly the threat posed by ISIS.

H. Res. 644, a resolution disapproving of the Obama administration's failure to provide Congress with 30 days advance notice before making the transfer of certain Guantanamo detainees that secured the release of an American soldier, U.S. Army Sgt. Bowe Bergdahl.

Sgt. Bergdahl's health was poor and rapidly deteriorating at the time his release from captivity was secured by his Commander-in-Chief, President Obama, who speaking for the nation, said on June 3, 2014 in response to critics of his decision:

The United States has always had a pretty sacred rule, and that is: we don't leave our men or women in uniform behind. Regardless of the circumstances, we still get an American soldier back if he's held in captivity. Period. Full stop.

Mr. Speaker, the resolution condemns the Obama Administration for failing to comply with the 30-day advance notice requirement imposed by Section 1034 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66; 10 U.S.C. 801 note) and section 8111 of the Department of Defense Appropriations Act, 2014 (Public Law 113-76).

I disagree for several reasons. First, as Defense Secretary Hagel testified before the House Armed Services Committee on June 11, 2014, "this was not simply a detainee transfer, but a military operation with very high risk and a very short window of opportunity that we didn't want to jeopardize—both for the sake of Sergeant Bergdahl, and our operators in the field who put themselves at great risk to secure his return."

As a military operation, rather than a routine transfer of detainees, the President had the constitutional authority as Commander-in-Chief to authorize this sensitive military operation for which time was of the essence.

The resolution put forward by the House majority assumes that the provisions of Section 1034 of National Defense Authorization Act trump the President's constitutional authority under Article II if the two are in conflict. This clearly is an erroneous assumption since Article VI of the Constitution makes clear that the Constitution is the supreme law of the land and prevails in the event of a conflict with federal or state law. See, e.g., *INS v. CHADHA*, 462 U.S. 919 (1983) (federal law conferring "legislative veto" power to be exercised by only House of Congress held unconstitutional).

But even if it were less clear whether a conflict existed between a federal law and the President's authority as Commander-in-Chief, as Justice Robert Jackson pointed out 62 years ago in the famous "Steel Seizure Case," *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 640 (1952), it does not automatically follow that the president has "broken the law" if he relies upon his claimed constitutional authority:

[B]ecause the President does not enjoy unmentioned powers does not mean that the mentioned ones should be narrowed by a niggardly construction. Some clauses could be made almost unworkable, as well as immutable, by refusal to indulge some latitude of interpretation for changing times. I have heretofore, and do now, give to the enumerated powers the scope and elasticity afforded by what seem to be reasonable, practical implications, instead of the rigidity dictated by a doctrinaire textualism.

Additionally, Mr. Speaker, it should be pointed out that the constitutionality of Section 1035, the statutory provision which the resolution asserts the President has violated, has never upheld by any court, and certainly not upheld against a challenge that it impermissibly infringes upon the President's duty as Commander in Chief to protect the lives of Americans abroad and to protect U.S. service members.

The Administration strongly objected to the inclusion of Section 1035 in the National Defense Authorization Act for 2014, on the ground that it unwisely and inappropriately interferes with the Executive Branch's ability to manage detainees in a time of armed conflict.

Indeed, the President has informed Congress of his objection to the inclusion of these and similar provisions in prior versions of the Defense Authorization and Defense Appropriations Act is law, and it is interesting to note that they only began to be inserted after President Obama assumed the office.

Mr. Speaker, not only is the resolution before us ill-conceived and unwise, its timing could not be worse.

There are only a few days left before the Congress adjourns. We need to devote all our time on addressing the real problems facing the American people, like raising the minimum wage, making college more affordable, passing immigration reform, and responding to the threat to the security of the nation and the homeland by ISIS.

Mr. Speaker, the threat posed by ISIS is serious and real and the President has reached out to Congress to work with him to develop a unified and international response to meet the threat.

And tomorrow evening, the President will address the nation on the nature of the ISIS threat and the actions the United States will take to protect the security of the nation and the homeland.

In the midst of this international crisis, it does not help or strengthen our country for the House to be debating a partisan resolution condemning the President and Commander-in-Chief.

In concluding, let me quote again Defense Secretary Hagel:

The options available to us to recover Sergeant Bergdahl were few, and far from perfect. But they often are in wartime, and especially in a complicated war like we have been fighting in Afghanistan for 13 years. Wars are messy and full of imperfect choices.

In the decision to rescue Sergeant Bergdahl, we complied with the law, and we did what we believed was in the best interests of our country, our military, and Sergeant Bergdahl.

The President has constitutional responsibilities and authorities to protect American citizens and members of our armed forces. That's what he did. America does not leave its soldiers behind.

We made the right decision, and we did it for the right reasons—to bring home one of our people.

Mr. Speaker, we should not waste this precious remaining on matters intended to score political points or to hold the current president to standards we never applied to his predecessors.

I urge all Members to join me in opposing the rule and the underlying resolution.

Mr. McKEON. Mr. Speaker, might I inquire as to how much time is left?

The SPEAKER pro tempore. The gentleman from California has 4½ minutes remaining. The gentleman from Washington has 2½ minutes remaining.

Mr. McKEON. We have just one more speaker.

Mr. Speaker, the inference has been that this happened on the spur of the moment and they didn't have time to tell Congress. These negotiations on this transfer went on for months. They have admitted they told 80 to 90 people in four of the departments of the executive branch but not one Member of Congress, in compliance with the law.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of Washington. Mr. Speaker, I yield myself the balance of my time.

On the last point about the people who were noticed how long this was going on for, yes, the negotiations were going on for around 3 years, but the timeliness came in when they actually had a deal. The President's concern was once they got to the point where they had the deal, if the details of it had been leaked, it would have nixed the deal. And they were deeply concerned about Sergeant Bergdahl's health.

As I have said, this is an extraordinarily difficult call. I don't know if I would have done this deal or not. It is hard. The Commander in Chief has that responsibility. As I have mentioned, other leaders through the world have done it, including Prime Minister Benjamin Netanyahu, who gave up over a

thousand prisoners in exchange for two Israeli soldiers. Those choices are difficult, and I am certain that those thousand Palestinians that were released posed some risk to Israel, but that is the decision they made. And that is the decision the President made.

This resolution is not primarily about whether or not the deal should have been done; it is about whether or not we should condemn the President for a clear violation of the law. And I will simply come back to the fact that this President has only done what every other President before him did in exercising his article II authority—under his interpretation and every previous Executive's—that this was legal.

It has been implied throughout this resolution that the President looked at the law and said: I'm just not going to follow it. That is not what he did. He did what every President before him has done. He said that he believed it was within his legal authority to make this decision.

So to put forward a resolution that said he intentionally broke the law, I think, is wrong on its face. This President made a determination about his article II authorities and went forward with it. He did not knowingly violate the law. Secretary Hagel has explained that repeatedly.

Again, I said it a little while ago that President Bush did the exact same thing. He violated any number of different laws and said that article II is the reason. We have been told: Well, that was years ago. I don't know what we would have done then.

I have offered up the opportunity for anybody on the other side to as roundly criticize and condemn President Bush for those actions now that we are here. I haven't heard it. It hasn't been said. All of which leads us to the inescapable conclusion that this is more partisan than principled. This President is the one who is being condemned by a Republican Congress. All the other Presidents have done it and it is just: Oh, we are just not going to do anything about that. That leads to the belief that this is a partisan action.

I think Congress should comment on this. We had great hearings on this. We should have had a hearing on this. We brought in Secretary Hagel. He explained himself. We criticized some of those decisions. That is appropriate.

This resolution is unprecedented and I think once again shows that this body has become more partisan than principled.

I urge everyone to reject the resolution, and I yield back the balance of my time.

Mr. McKEON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am leaving Congress at the end of this year, but I am sure at home I will still be able to hear blame on President Bush for at least the next 2 years.

One thing we can't escape is the fact that this went on for months. Even

though they had to make a critical last-minute decision, they still had time to notify 80 to 90 people in the executive branch and not one Member of the House of Representatives or the U.S. Senate, in accordance with the law.

Mr. Speaker, I am proud to yield such time as he might consume to the gentleman from Texas (Mr. THORNBERRY) to give the concluding remarks on this debate. He is the vice chairman of the Armed Services Committee and the chairman of the Subcommittee on Emerging Threats and Capabilities.

Mr. THORNBERRY. Mr. Speaker, how much time remains?

The SPEAKER pro tempore. The gentleman has 3½ minutes remaining.

Mr. THORNBERRY. Mr. Speaker, I thank the gentleman for yielding, and I want to commend the gentleman from Virginia (Mr. RIGELL) for introducing this measuring and shepherding it through the committee and onto the House floor.

Mr. Speaker, I think that it is important for us to vote on this measure for two reasons. One is that it is important for Congress to speak clearly and directly when a President violates the law, and that is exactly what GAO said the administration did. They violated section 811.

Now, it is true that throughout the country's history there have been differences of opinion about the constitutionality of various provisions of law. I think it is fairly rare, however, that a President has chosen to violate a provision that is as clear as this one. There was no waiver authority. There was no ambiguity. There was no matter of interpretation. The law was clear. It says, if you are going to transfer somebody from Guantanamo Bay, you have got to give at least 30 days' notice. And they did have meetings within the administration that discussed whether to follow that 30-day requirement, and they decided not to do it. So it was a clear-cut decision not to follow the law.

In addition to that, the point was made by the gentleman from Florida that they also violated the Antideficiency Act. There has never been a dispute about the ability of Congress to put conditions on funding. And yet, by carrying out this action, they spent funds for which they were not authorized to spend, which also violated a separate law.

They didn't have to tell everybody. They could have just told the Speaker and majority leader. I think they are pretty safe at keeping secrets. Yet the President chose not to. The rule of law is important. It is fundamental to our system. And so it is important to speak clearly on that.

But here is the second reason. The Constitution gives Congress a variety of powers related to national security; but in carrying out those powers, whether it is oversight of the money we spend, oversight of the operations, making decisions to authorize the use

of military force, all of that depends upon Congress having accurate, timely information. This decision not to follow the law undercuts the trust that is required between the military and the intelligence community and the Congress in carrying out our responsibilities.

Tomorrow night we are all going to listen to the President as he, hopefully, gives us his goals and strategy for achieving the goals to diminish and destroy ISIL, but all of that is possible only if there is an exchange of information so that we can carry out the responsibilities that the Constitution puts upon us.

When we don't have trust that the President and the military or the intelligence community following his orders are giving us that information, then we can't have trust that we have the ability to carry out our duties under the Constitution.

On a bipartisan basis, over the last several years, we have set up oversight structures on cyber, on terrorism, on sensitive military operations that allow the military to operate in a complicated world but give us the ability to get the information to carry out the oversight that we have to have.

That is the other reason this is important. This undermines that trust that is necessary for an executive and legislative branch to defend the country in a complex world. For that reason, I think it is important for us to speak clearly about it because there are going to be more instances in the days ahead.

We need—we deserve—to have full information.

Mr. McKEON. Mr. Speaker, I yield back the balance of my time.

Mr. WILSON of South Carolina. Mr. Speaker, the United States should not negotiate with terrorists. Members of Congress on both sides of the aisle agree, which is why we have passed laws requiring the President notify us if he wishes to change effective foreign policy. Sadly, when the President unilaterally organized a prisoner swap with the Taliban for the release of Army Sgt. Bowe Bergdahl, he broke the law, disregarded the Constitution, and placed all American families at risk.

A recent GAO report details the extent of which the President ignored current law and disregarded Congress in his decision-making. In addition to violating the thirty-day rule, funding was used that was not available to complete the transfer, which violates the Antideficiency Act.

The five members of the Taliban whom the President released and effectively pardoned from Guantanamo Bay are "high risk" and dangerous with extensive ties to al Qaeda. These terrorists have the blood of innocent civilians by the 9/11 attacks and American soldiers on their hands and are fixated on destroying our freedoms. Immediately upon their release, members of the Taliban praised this "big victory" as the first time the "enemy officially recognized our status." One Taliban leader went as far as to say that the return of one prisoner was "like pouring 10,000 Taliban fighters into the battle on the side of jihad. Now the Taliban have the right lion to lead

them in the final moment before victory in Afghanistan." These detainees are sure to relocate to Afghanistan and resume launching attacks against the United States and our Allies. At a time when our brave men and women are still fighting the Global War on Terrorism in Afghanistan, this decision further places our heroes in harms way.

This administration has a history of ignoring our laws in order to achieve its own agenda. According to Secretary of Defense Chuck Hagel, these negotiations did not happen overnight, but were in the works for months. The reason why the President did not notify Congress thirty days before giving the go-ahead to release and pardon five jihadists as required by law is because he did not feel it was necessary. It's time to put a stop to this irresponsible behavior and hold the President accountable. I urge my colleagues to support this bipartisan resolution that condemns and disapproves of the President's unlawful actions, which have placed American families at risk here at home and abroad.

Mr. THOMPSON of California. Mr. Speaker, I rise today to express my strong concern regarding President Obama's failure to notify Congress at least 30 days in advance of exchanging five Taliban prisoners held at U.S. Naval Station, Guantanamo Bay, for U.S. Army Sergeant Bowe Bergdahl, who was held by the Taliban as a Prisoner of War (POW).

However, this resolution is a clear example of partisan overreach by the House Majority and does not appropriately address these issues. Nor does it advance this debate in a constructive way. In the words of the Dissenting Views of the House Armed Services Committee members, this resolution is "an overstated and unnecessary product of a rhetorical exercise fueled by over partisanship."

We, as a nation, have an obligation to the men and women who serve in our Armed Forces to do everything in our power as a nation to bring them home. Americans do not leave our soldiers behind.

Section 8111, of the Department of Defense (DOD) Appropriations Act of 2014, prohibits the President from using any Congressionally appropriated funds to transfer any individuals detained at Guantanamo Bay, unless Congress is notified 30 days in advance. This is the law, and the President is required to comply with the law.

The nonpartisan Government Accountability Office (GAO) concluded that "DOD violated section 8111 because it did not notify the relevant congressional committees at least 30 days in advance of the transfer." Additionally, GAO concluded that DOD violated the Antideficiency Act "because DOD used appropriated funds to carry out the transfer when no money was available for that purpose."

While I agree with the GAO findings, I cannot vote for a purely partisan measure written under the pretense of addressing a violation of the law.

This is a serious matter that requires deliberative debate in Congress. The President should have followed the law, as laid out in section 8111, and notified Congress 30 days in advance of this release. However, the American people deserve better than this highly politicized resolution.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 715, the previous question is ordered on the

resolution and on the preamble, as amended.

The question is on the resolution, as amended.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. McKEON. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 249, nays 163, not voting 19, as follows:

[Roll No. 485]

YEAS—249

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

Wenstrup
Westmoreland
Whitfield
Williams
Wilson (SC)

Wittman
Wolf
Womack
Woodall
Yoder

Yoho
Young (AK)
Young (IN)

NAYS—163

Barber	Gutiérrez	Negrete McLeod
Bass	Hahn	Nolan
Beatty	Hanabusa	Owens
Becerra	Hastings (FL)	Pallone
Bishop (GA)	Heck (WA)	Pascarell
Bishop (NY)	Higgins	Pastor (AZ)
Blumenauer	Himes	Payne
Bonamici	Hinojosa	Perlmutter
Brady (PA)	Holt	Peters (CA)
Brown (FL)	Honda	Pingree (ME)
Butterfield	Horsford	Pocan
Capps	Hoyer	Polis
Capuano	Huffman	Price (NC)
Cárdenas	Israel	Quigley
Carney	Jackson Lee	Rangel
Carson (IN)	Jeffries	Richmond
Cartwright	Johnson (GA)	Roybal-Allard
Castor (FL)	Johnson, E. B.	Ruppersberger
Castro (TX)	Kaptur	Ryan (OH)
Chu	Keating	Sánchez, Linda
Clay	Kelly (IL)	T.
Cleaver	Kennedy	Sanchez, Loretta
Clyburn	Kildee	Sarbanes
Cohen	Kilmer	Schakowsky
Connolly	Kind	Schiff
Conyers	Kirkpatrick	Schneider
Cooper	Kuster	Schwartz
Courtney	Langevin	Scott (VA)
Crowley	Larsen (WA)	Scott, David
Cummings	Larson (CT)	Serrano
Davis (CA)	Levin	Shea-Porter
Davis, Danny	Lewis	Sherman
DeFazio	Loeb sack	Sires
DeGette	Lofgren	Slaughter
Delaney	Lowenthal	Smith (WA)
DeLauro	Lowe	Speier
DelBene	Lujan Grisham	Swalwell (CA)
Deutch	(NM)	Takano
Doggett	Lujan, Ben Ray	Thompson (CA)
Doyle	(NM)	Thompson (MS)
Duckworth	Lynch	Titus
Edwards	Maffei	Tonko
Ellison	Maloney, Sean	Tsongas
Enyart	Matsui	Van Hollen
Eshoo	McCarthy (NY)	Vargas
Esty	McCollum	Veasey
Farr	McDermott	Vela
Fattah	McGovern	Visclosky
Foster	McNerney	Wasserman
Frankel (FL)	Meng	Schultz
Fudge	Miller, George	Waters
Garamendi	Moore	Waxman
Grayson	Moran	Welch
Green, Al	Nadler	Wilson (FL)
Green, Gene	Napolitano	Yarmuth
Grijalva	Neal	

NOT VOTING—19

Cicilline	Lee (CA)	Olson
Clark (MA)	Maloney	Pelosi
Clarke (NY)	Carolyn	Rush
DesJarlais	McIntyre	Sewell (AL)
Dingell	Meeks	Tierney
Engel	Miller, Gary	Velázquez
King (IA)	Nunnelee	

□ 1655

Mr. CARSON of Indiana changed his vote from "yea" to "nay."

Mr. FARENTHOLD changed his vote from "nay" to "yea."

So the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

The title was amended so as to read: "Resolution condemning and disapproving of the failure of the Obama administration to comply with the lawful statutory requirement to notify Congress before transferring individuals detained at United States Naval Station, Guantanamo Bay, Cuba, and expressing concern about the national security risks over the transfer of five Taliban leaders and the repercussions of negotiating with terrorists."

A motion to reconsider was laid on the table.

Stated for:

Mr. MCINTYRE. Mr. Speaker, during rollcall vote No. 485 on September 9, 2014, I was unavoidably detained. Had I been present, I would have voted "yes."

Mr. OLSON. Mr. Speaker, on rollcall No. 485, had I been present, I would have voted "aye."

WATERS OF THE UNITED STATES REGULATORY OVERREACH PROTECTION ACT OF 2014

The SPEAKER pro tempore. Pursuant to House Resolution 715 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the further consideration of the bill, H.R. 5078.

Will the gentleman from Georgia (Mr. COLLINS) kindly take the chair.

□ 1656

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 further consideration of the bill (H.R. 5078) to preserve existing rights and responsibilities with respect to waters of the United States, and for other purposes, with Mr. COLLINS of Georgia (Acting Chair) in the chair.

The Clerk read the title of the bill.

The Acting CHAIR. When the Committee of the Whole rose earlier today, a request for a recorded vote on amendment No. 3 printed in House Report 113-581 offered by the gentleman from New York (Mr. BISHOP) had been postponed.

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments printed in House Report 113-581 on which further proceedings were postponed, in the following order:

Amendment No. 2 by Mr. BISHOP of New York.

Amendment No. 3 by Mr. BISHOP of New York.

The Chair will reduce to 2 minutes the minimum time for any vote in this series.

AMENDMENT NO. 2 OFFERED BY MR. BISHOP OF NEW YORK

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from New York (Mr. BISHOP) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 2-minute vote.

The vote was taken by electronic device, and there were—ayes 163, noes 248, not voting 20, as follows: