

Republican leader, and I are supporting this legislation. That should say a lot to the American people. As every Senator knows, the funding bill we approve must first have passed the House of Representatives, and it did that. Breaking up the legislation the House sent us is not a viable option at this juncture. We need to complete our work on the House-passed resolution as soon as possible. We have an agreement in place to vote on this measure no later than 5:30 p.m. this evening. With the cooperation of Senators, we could vote even earlier today.

There is one final unanimous consent request.

#### AUTHORIZATION TO APPOINT ESCORT COMMITTEE

Mr. President, I ask unanimous consent that the President of the Senate be authorized to appoint a committee on the part of the Senate to join with a like committee on the part of the House of Representatives to escort His Excellency Petro Poroshenko into the House Chamber for the joint meeting today.

The PRESIDING OFFICER (Mr. WALSH). Without objection, it is so ordered.

#### RECOGNITION OF THE MINORITY LEADER

The Republican leader is recognized.

#### TRIBUTE TO JERRY LINNELL

Mr. MCCONNELL. Mr. President, it frequently happens when we head into a recess that we have to say a reluctant farewell to some member of the Senate family. So before I yield the floor, I wish to say a word of thanks to Jerry Linnell, who has been a fixture here for more than 3 decades as an official reporter of debates and for the past 15 years as a somewhat hidden fixture up on the fourth floor as the chief reporter.

It is a tough job having to listen to the rest of us drone on every day, and as chief reporter Jerry has had the unenviable task of reviewing every single word we have said.

In his trademark suspenders, Jerry is a friendly and unmistakable presence up on the fourth floor, guiding his team through their daily rounds and maintaining a level of professionalism and integrity that has always been a key characteristic of the office.

It is a proud group. Back in the 1930s Senator Huey Long is said to have donated his own personal Bible to the office so they would have a handy reference when he quoted from it. It quickly became a tradition for new reporters to sign it when they were hired and then once they left.

In a sign of how dedicated these reporters are, only 35 names have been entered in the Bible over the past 80 years. So it is a very venerable fraternity, one that has its roots in article I of the Constitution. We thank Jerry for his many, many years of dedicated, honorable service.

I know Jerry and his wife Jane look forward to spending more time with their many children and grandchildren. After listening to us for all those years, I think he deserves it.

You have done your time. You have done it well. The entire Senate family thanks you. Jerry, all the best.

I yield the floor.

#### RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

#### JOINT MEETING OF THE TWO HOUSES—ADDRESS BY THE PRESIDENT OF UKRAINE

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess subject to the call of the Chair in order to attend a joint meeting of Congress.

Thereupon, the Senate, at 9:39 a.m. recessed subject to the call of the Chair, and the Senate, preceded by the Deputy Sergeant at Arms, Mike Stenger, the Secretary of the Senate, Nancy Erickson, and the Vice President of the United States, JOSEPH R. BIDEN, Jr., proceeded to the Hall of the House of Representatives to hear an address delivered by His Excellency Petro Poroshenko, President of Ukraine.

(The address delivered by the President of Ukraine to the joint meeting of the two Houses of Congress is printed in the proceedings of the House of Representatives in today's RECORD.)

Whereupon, at 11:11 a.m., the Senate, having returned to its Chamber, reassembled and was called to order by the Presiding Officer (Mr. BOOKER).

#### MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will be in a period of morning business until 1 p.m., with Senators permitted to speak therein for up to 10 minutes each, and with the time equally divided between the two leaders or their designees, with the Republicans controlling the first half.

The Senator from Texas.

#### UNANIMOUS CONSENT REQUEST— S. 2779

Mr. CRUZ. Mr. President, I rise today to ask that Republicans and Democrats in the Senate to come together and unanimously pass legislation to address the threat of American citizens fighting for ISIS and bringing our statutory system into the 21st century to protect the national security interests of our Nation.

As the American people are now painfully aware, the so-called Islamic State in Iraq and Syria, or ISIS, has emerged as the new face of the radical terrorist threat that has bedeviled the West in recent decades. This virulent jihadist group—so extreme they got kicked out of Al Qaeda, which I will note is not easy to do—is rampaging across Syria and Iraq in a campaign of oppression and genocide, including the relentless targeting and murder of Christians, of Jews, of Muslim minority sects, Yazidis—indeed, any who do not share their radical Sunni theology.

While other terrorist organizations have been content with a parasitic relationship with state sponsors of terrorism—notably Syria and Iran—ISIS has a new agenda, which is to establish its own state or caliphate. They now control a territory about the size of Indiana with oilfields they can exploit on the black market to the tune of some \$1.5 million a day. Their ranks have grown in the last 3 months alone from roughly 10,000 to now more than 30,000.

Unlike some regional jihadists, ISIS also represents a direct and growing threat to our citizens here at home, and increasingly to our homeland itself. Just this week there were news reports of an online posting urging individual jihadists in the United States to attack targets such as Times Square, the Las Vegas strip, and even locations in my home State of Texas, with homemade pipe bombs. This is not the first time we have heard such threats, but we have to take them seriously. ISIS has made no secret that its goal is not simply to establish a caliphate in the Middle East; its desire is to impose Sharia law on the Muslim population and to exterminate any religious minorities, and that desire is not confined by geography. When the leader of ISIS, Abu al-Baghdadi, was released from a detention camp in Iraq in 2009, he reportedly remarked to Army COL Kenneth King, "See you in New York." This danger, this evil intends to come home to America.

ISIS has in recent weeks graphically demonstrated their eagerness to murder American civilians by beheading two journalists, gruesomely demonstrating on the world stage their hatred for America. This is not a situation where if we simply leave ISIS alone, they will leave us alone. This is a case where America's national security interests demand a serious response, which should be both to attack ISIS directly and take them out in its claimed caliphate, as well as to defend against the attacks ISIS is planning to execute here at home.

The Obama administration's approach to this crisis has unfortunately lacked a clear focus on that issue. It doesn't help that ISIS is surrounded by regional chaos borne out of a Syrian civil war, and ISIS has exploited the inherent political weakness in Iraq. However, while both the crisis in Syria and the upheaval in Baghdad are unfortunate, concerning situations, we cannot allow resolving them to become preconditions to any military action we might need to take against ISIS.

All too often, the Obama administration proposals threaten to become embroiled in the midst of these political crises. For example, they have made training and equipping the Free Syrian Army a cornerstone of their plan to fight ISIS. But just this week, the leader of the Free Syrian Army reportedly announced he would not participate in the fight against ISIS unless we pledged to join in his fight against Syrian dictator Bashir al-Assad.

While this is certainly understandable from his perspective, resolving the Syrian civil war is not our mission nor the job of the military and we should not be making the Free Syrian Army, whose focus is Assad, central to the American plan of defending our Nation against the jihadist threat of ISIS.

The administration's ISIS policy is also marked by internal confusion that further demonstrates a lack of focus on what should be our clear mission. The President has repeatedly insisted that there will be no American boots on the ground in Iraq and Syria, as he wants any action to be led by others, even while he increases U.S. personnel in the country by a few hundred here and a few hundred there. Earlier this week, his top general, the Chairman of the Joint Chiefs of Staff, admitted there were circumstances under which he would change his advice to the President to recommending ground troops—a suggestion that was subsequently echoed by the Chief of Staff of the Army and even Vice President BIDEN. The American people need and deserve greater clarity on what exactly our military mission is, and how what the President envisions relates to the advice his Department of Defense is giving him.

The disconnect between what we know or do not know about the Americans fighting for ISIS in Iraq and Syria is equally concerning. Estimates range from about one dozen, according to one Pentagon spokesman, to Secretary of Defense Chuck Hagel's reassertion of about 100 Americans fighting with ISIS in this week's Senate Armed Services Committee hearing.

Either way, Secretary Hagel agreed with my characterization of the risks posed that Americans will take U.S. passports after fighting with ISIS, after training with ISIS, to come back and commit unspeakable acts of terror here at home. Secretary Hagel agreed that risk was significant. It seems only prudent to address that threat.

I am, therefore, going to be asking for unanimous consent for the Senate to pass the Expatriate Terrorist Act of 2014, which will make fighting for ISIS, taking up arms against the United States, an affirmative renunciation of American citizenship.

I should note the Expatriate Terrorist Act is very similar to the bipartisan legislation proposed by Senators Joe Lieberman and Scott Brown in 2010 to address Americans who were joining Al Qaeda overseas, notably the radical cleric Anwar al-Awlaki, or here at home Faisal Shahzad, who attempted to blow up a car bomb in Times Square.

The Expatriate Terrorist Act thus has applicability beyond the immediate threat of ISIS. It is an important adjustment of our existing laws governing the renunciation of citizenship. To reflect the threat posed by non-nation terrorist groups, as then-Secretary of State Hillary Clinton said concerning the Brown-Lieberman legislation:

United States citizenship is a privilege. It is not a right. People who are serving foreign powers—

Or in this case, foreign terrorists—are clearly in violation of that oath which they swore when they became citizens.

The Expatriate Terrorist Act of 2014 is only a very modest change to current law. It is one small step in a larger and necessary effort to refocus our ISIS strategy that I urge President Obama to consider immediately.

We also urgently need to address the question of border security on our southern border so our failure to defend ourselves does not become a weakness that ISIS and other terrorists exploit to carry out unspeakable acts of terror here at home.

The American people expect Republicans and Democrats to join together to speak in one uniform voice when it comes to protecting the national security and when it comes to protecting the lives of Americans here at home.

If we do not pass this legislation, the consequence will be that Americans fighting alongside ISIS today may come home tomorrow with a U.S. passport, may come home to New York or Los Angeles or Houston or Chicago. Innocent Americans may be murdered if the Senate does not act today.

Therefore, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 554, S. 2779. I further ask consent that the bill be read a third time and passed and the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Is there objection?

The Senator from Hawaii.

Ms. HIRONO. Mr. President, reserving the right to object. This bill has not been brought before the Judiciary Committee, which has jurisdiction over these issues. This bill affects fundamental constitutional rights and should be given the full deliberation of the Senate.

Legislation that grants the government the ability to strip citizenship from Americans is a serious matter raising significant constitutional issues. Again, we have not had the opportunity to fully consider and register a significant bill.

In addition, objections to this bill are detailed in two letters, both dated September 2014. The letters are from the bipartisan Constitution Project and the American Civil Liberties Union.

I ask unanimous consent that these letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE CONSTITUTION PROJECT,  
Washington, DC, September 17, 2014.

DEAR SENATOR: On September 5, 2014, Senator Ted Cruz (R-TX) introduced the Expatriate Terrorist Act (ETA). According to Senator Cruz, the bill is a common sense counterterrorism tool that would strip U.S. citizenship from Americans who fight with or support foreign terrorist organizations working to attack the United States. In fact, the ETA serves virtually no practical pur-

pose, raises serious constitutional concerns, and would do nothing to keep America safe. I urge you to oppose it.

Like previous iterations of the same idea, the ETA would amend 8 U.S.C. §1481(a), which sets out limited circumstances under which U.S. citizens can be denaturalized or expatriated. The bill would add the following to the short list of predicate acts that can result in loss of citizenship: 1) taking an oath of allegiance to a foreign terrorist organization; 2) joining a foreign terrorist organization's armed forces while they are fighting the United States; and 3) "becoming a member of, or providing training or material assistance to," a foreign terrorist organization that the person knows or has reason to know will engage in hostilities or terrorism against the U.S.

Senator Cruz has said repeatedly that his bill works an "affirmative renunciation" of U.S. citizenship. To the extent he means to suggest that, under the ETA, a person would automatically lose citizenship simply by engaging in the above conduct, he is wrong. The ETA does not and could not achieve that result.

Citizenship is a constitutional right, and the Constitution prohibits the government from revoking a person's citizenship against his will under any circumstances. As the Supreme Court has explained, "the intent of the Fourteenth Amendment, among other things, was to define citizenship . . . [and] that definition cannot coexist with a congressional power to specify acts that work a renunciation of citizenship even absent an intent to renounce. In the last analysis, expatriation depends on the will of the citizen rather than on the will of Congress and its assessment of his conduct." As a constitutional right, citizenship can be knowingly and voluntarily waived, but it cannot be taken away from an individual absent such a waiver. Thus, to revoke a person's citizenship the government must prove not only that he committed an expatriating act prescribed in section 1481(a), but also that he did so voluntarily and with the specific intent to relinquish his citizenship.

Given these requirements, the ETA will almost certainly result in no additional expatriations. Unless Senator Cruz expects citizens subject to expatriation proceedings freely to admit that they joined or supported a foreign terrorist group specifically intending to renounce their U.S. citizenship, no one will in fact be expatriated. I doubt that government officials would believe it an efficient use of resources to try, especially given the broad reach of existing laws that already provide harsh penalties for U.S. citizens who engage in acts of terrorism.

The ETA also raises serious constitutional concerns. The ETA makes membership in or "providing training or material assistance to" certain foreign terrorist organizations a predicate act to expatriation. There are two constitutional problems with this provision. First, neither "training" nor "material assistance" is defined. Similar language in 18 U.S.C. §2389B was ruled unconstitutionally vague until Congress added specific definitions. Because Congress has not done so here, this provision of the ETA suffers from the same constitutional flaw.

Second, unlike other crimes currently listed in section 1481(a) that can result in loss of citizenship (see section 1481(a)(7)), Senator Cruz's addition does not require proof of a conviction as a prerequisite. As the Constitution Project's Liberty and Security Committee explained in opposing similar past attempts to amend section 1481(a):

"[T]he language of 1481(a)(7) expressly requires a conviction as a necessary prerequisite to denaturalization or expatriation proceedings. This requirement protects the

constitutional right of due process, since one cannot actually be said to have committed the acts specified in §1481(a)(7)—each of which are crimes against the United States—until and unless those acts have been proven to a jury beyond a reasonable doubt. As the Supreme Court expressly held in *Kennedy v. Mendoza-Martinez*, Congress cannot deprive an individual of his or her citizenship as a “punishment” absent the procedural safeguards of a criminal trial.”

Congress has precious little time left before adjourning until November to decide how and under what authority to address the situation in Iraq and Syria. Members should spend this time debating these grave questions, not preoccupied with needless and likely unconstitutional legislation. In the event that Senator Cruz moves forward with the Expatriate Terrorist Act, I urge you to oppose it.

Sincerely,

DAVID COLE,

*Hon. George J. Mitchell Professor in Law and Public Policy at Georgetown University Law Center; co-chair of the Constitution Project's Liberty and Security Committee.*

AMERICAN CIVIL LIBERTIES UNION,

*Washington, DC, September 17, 2014.*

Re Oppose Cruz Bill S. 2779, Expatriate Terrorists Act; S. 2779 Is Unnecessary and Dangerous.

DEAR SENATOR: The American Civil Liberties Union urges you to refrain from cosponsoring—and oppose if offered—S. 2779, the Expatriate Terrorists Act, which is sponsored by Senator Ted Cruz. The bill would strip U.S. citizenship from Americans who have not been convicted of any crimes, but who are suspected of being involved with designated foreign terrorist organizations. S. 2779 is dangerous because it would attempt to dilute the rights and privileges of citizenship, one of the core principles of the Constitution. As the Supreme Court explained in 1967 in *Afroyim v. Rusk*, “the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. . . . [It creates] a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship.” The bill is also unnecessary because existing laws already provide significant penalties for U.S. citizens who engage in acts of terrorism.

The Supreme Court has consistently found that citizenship is a fundamental constitutional right that cannot be taken away from U.S.-born citizens unless voluntarily renounced. An already overbroad federal statute, 8 U.S.C. §1481, provides that an American can lose his or her nationality by performing either of the following broad categories of acts with the intention of relinquishing his or her nationality:

acts that affirmatively renounce one's American citizenship, such as taking an oath of allegiance to a foreign government or serving as an officer in the armed forces of a foreign nation; or

committing crimes such as treason or conspiracy to overthrow the U.S. government, or bearing arms against the United States, “if and when [the citizen] is convicted thereof by a court martial or by a court of competent jurisdiction.”

The Expatriate Terrorists Act would add a new category of expatriating acts—“becoming a member of, or providing training or

material assistance to, any designated foreign terrorist organization.” This implicates several constitutional concerns.

First, the material assistance provision added by the bill would treat suspected provision of material assistance as an act that affirmatively renounces one's American citizenship. Thus, unlike treason or conspiracy to overthrow the U.S. government, this provision would not require a prior conviction. It would only require an administrative finding by an unspecified government official that an American is suspected of providing material assistance to a designated foreign terrorist organization with the intention of relinquishing his or her citizenship. This provision would violate Americans' constitutional right to due process, including by depriving them of citizenship based on secret evidence, and without the right to a jury trial and accompanying protections enshrined in the Fifth and Sixth Amendments. In sum, the bill turns the whole notion of due process on its head. Government officials do not have the power to strip citizenship from American citizens who never renounced their citizenship and were never convicted of a crime.

Second, the material assistance provision suffers from the same constitutional flaws that plague other material support laws, and goes far beyond what the Supreme Court has held is constitutionally permissible when First and Fourth Amendments rights are at stake. In 2010, the U.S. Supreme Court disappointingly ruled in *Holder v. Humanitarian Law Project* that teaching terrorist groups how to negotiate peacefully could be enough to be found guilty of material support. That logic might apply to criminal conduct; it should not cause an American to lose his or her citizenship.

For these reasons, the ACLU urges you to refrain from cosponsoring S. 2779, and oppose it if it is offered for a vote. Please contact Arjun Sethi if you have any questions regarding this letter.

Sincerely,

LAURA MURPHY,

*Director, Washington Legislative Office.*

ARJUN SETHI,

*Legislative Counsel, Washington Legislative Office.*

Ms. HIRONO. Mr. President, I object to the unanimous consent request.

The PRESIDING OFFICER. Objection is heard.

The Senator from Texas.

Mr. CRUZ. Mr. President, I would note that the objection from my friend from Hawaii observed that this legislation has not gone through the Judiciary Committee, and that is true. It is true, of course, because the Senate is expected to adjourn this week as Senators return to their home States to campaign for elections.

If it were to go through the Judiciary Committee, it would mean it would not pass in time to prevent Americans fighting right now with ISIS from coming back and murdering other Americans. There is an urgency and exigency to this situation.

This is also legislation the Senate considered before. As I noted, it was bipartisan legislation. Joe Lieberman, Scott Brown, Hillary Clinton are all in one accord.

It is unfortunate the Democratic Senators chose to object to this, to prevent this commonsense change in law.

I would note when it comes to constitutional concerns, I don't know if anyone in this Senate has been more vigorous or more consistent in terms of defending the constitutional rights of Americans than I have endeavored to be during my short tenure.

I will yield to no one in passion for defending constitutional liberties, but I note there is an existing law that has been on the books for many decades covering the renunciation of U.S. citizenship.

It is current law right now that if someone goes and joins a foreign nation and takes up arms against America, that act has long been recognized as constituting a constructive renunciation of U.S. citizenship. As for the question of due process, existing law provides due process that an individual who goes and takes up arms with ISIS—and all this does is treat ISIS, a nonstate terrorist group, on the same footing as taking up arms with a foreign nation against America. It is a recognition of the changed circumstances of this world that many of the gravest threats facing this country are not coming from nation states but are coming from terrorist groups that sadly some Americans are choosing to join forces. The existing law has considerable due process protection such that anyone who is determined to have affirmatively renounced his or her citizenship has a right to challenge that in Federal district court and a full proceeding under existing due process standards to have that matter resolved.

The question is very simple: Would any reasonable person want an American who is right now in Iraq, who is right now training with ISIS, who is right now taking up arms, who is right now participating in crucifying Christians, who is right now beheading children, who is right now participating in beheading two American journalists, who is right now standing arm in arm with virulent terrorists who have pledged to take jihad to America—would anyone in good conscience of either party want that person to be able to come back and land at La Guardia Airport with a U.S. passport and walk unmolested onto our streets? The obvious answer is no.

It saddens me we could not see Republicans and Democrats come together, and it saddens me that in an election year the Democratic Senator, who is up for reelection, chose to block this commonsense legislation rather than to work together to protect the American citizens.

I hope in time we see less election-year politics and more service to the men and women whom all of us are obliged to protect.

I yield the floor.

The PRESIDING OFFICER. The Republican leader.

#### UKRAINE

Mr. McCONNELL. Earlier we had an opportunity to hear from Ukraine's