

114TH CONGRESS
1ST SESSION

S. RES. 251

Expressing the sense of the Senate that the congressional review provision of the Iran Nuclear Agreement Review Act of 2015 does not apply to the Joint Comprehensive Plan of Action announced on July 14, 2015, because the President failed to transmit the entire agreement as required by such Act, and that the Joint Comprehensive Plan of Action would only preempt existing Iran sanctions laws as “the supreme Law of the Land” if ratified by the Senate as a treaty with the concurrence of two thirds of the Senators present pursuant to Article II, section 2, clause 2, of the Constitution or if Congress were to enact new implementing legislation that supersedes the mandatory statutory sanctions that the Joint Comprehensive Plan of Action announced on July 14, 2015, purports to supersede.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 2015

Mr. JOHNSON (for himself, Mr. TOOMEY, and Mr. LEE) submitted the following resolution; which was referred to the Committee on Foreign Relations

RESOLUTION

Expressing the sense of the Senate that the congressional review provision of the Iran Nuclear Agreement Review Act of 2015 does not apply to the Joint Comprehensive Plan of Action announced on July 14, 2015, because the President failed to transmit the entire agreement as required by such Act, and that the Joint Comprehensive Plan of Action would only preempt existing Iran sanctions laws as “the supreme Law of the Land” if ratified by the Senate as a treaty with the concurrence

of two thirds of the Senators present pursuant to Article II, section 2, clause 2, of the Constitution or if Congress were to enact new implementing legislation that supersedes the mandatory statutory sanctions that the Joint Comprehensive Plan of Action announced on July 14, 2015, purports to supersede.

Whereas the United States Government has enacted and enforced multiple statutes and regulations that impose comprehensive sanctions on Iran and on companies and individuals doing business with Iran;

Whereas Article II, section 2, clause 2 of the Constitution provides that the President “shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur”;

Whereas Article VI, clause 2 of the Constitution provides that “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land”;

Whereas, on April 28, 2015, 39 Senators voted for Senate Amendment 1150, the purpose of which was “To declare that any agreement reached by the President relating to the nuclear program of Iran is deemed a treaty that is subject to the advice and consent of the Senate”;

Whereas, according to subsection (a)(1) of section 135 of the Atomic Energy Act of 1954 (42 U.S.C. 2160e), as added by section 2 of the Iran Nuclear Agreement Review Act of 2015, which the President signed into law as Public Law 114–17 on May 22, 2015, “[n]ot later than 5 cal-

endar days after reaching an agreement with Iran relating to the nuclear program of Iran, the President shall transmit to the appropriate congressional committees and leadership the agreement, as defined in subsection (h)(1), including all related materials and annexes”;

Whereas subsection (h)(1) of such section 135 defines the “agreement” that the President “shall” transmit to Congress not later than 5 calendar days after reaching an agreement with Iran to include all “annexes, appendices, codicils, side agreements, implementing materials, documents, and guidance, technical or other understandings, and any related agreements, whether entered into or implemented prior to the agreement or to be entered into or implemented in the future”;

Whereas such section 135 further provides that a 60-day congressional review period will commence upon the President’s transmittal of the agreement, including all annexes, appendices, codicils, side agreements, implementing materials, documents, and guidance, technical or other understandings, and any related agreements, whether entered into or implemented prior to the agreement or to be entered into or implemented in the future;

Whereas, on July 14, 2015, the Secretary of State announced a multilateral agreement with Iran and six other nations, labeled the Joint Comprehensive Plan of Action (JCPOA), in Annex II of which the United States purports to agree that “[t]he United States commits to cease the application, and to seek such legislative action as may be appropriate to terminate, or modify to effectuate the termination of, all nuclear-related sanctions as specified in Sections 4.1–4.9 below,” and Sections 4.1–4.9 specifies the following United States statutes: “the Iran Sanc-

tions Act of 1996 (ISA), as amended by Section 102 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) and Sections 201–207 and 311 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (TRA); CISADA, as amended by Sections 214–216, 222, 224, 311–312, 402–403, and 605 of TRA and Section 1249 of the Iran Freedom and Counter-Proliferation Act of 2012 (IFCA); the National Defense Authorization Act for Fiscal Year 2012 (NDAA), as amended by Sections 503–504 of TRA and Section 1250 of IFCA”;

Whereas the United States statutes specified in sections 4.1 through 4.9 of Annex II, of which the Joint Comprehensive Plan of Action purports to provide for United States agreement to “cease the application”, may only be superseded by a Senate-ratified treaty or by new legislation;

Whereas the United States statutes and regulations concerning Iran sanctions include section 2 of CISADA, in which Congress made comprehensive findings of fact concerning Iran, which remain true and accurate today, including that “[t]he illicit nuclear activities of the Government of Iran, combined with its development of unconventional weapons and ballistic missiles and its support for international terrorism, represent a threat to the security of the United States, its strong ally Israel, and other allies of the United States around the world”;

Whereas Congress also found in section 2(10) of CISADA that “[e]conomic sanctions imposed pursuant to the provisions of this Act, the Iran Sanctions Act of 1996, as amended by this Act, and the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), and other authorities available to the United States to impose

economic sanctions to prevent Iran from developing nuclear weapons, are necessary to protect the essential security interests of the United States”;

Whereas, based on the above and other similar statutory findings since 1979, the United States enacted ISA, CISADA, section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81), the IFCA, and the TRA, as well as various preceding statutes that each of the named laws amended over time, and, taken as a whole, those Acts of Congress directed and authorized the Secretaries of State, Treasury, Defense, and Energy, and other Federal agencies, to promulgate and enforce implementing regulations, which they have done under the guidance of multiple executive orders and under close congressional oversight;

Whereas the Department of Justice has prosecuted, or entered into non-prosecution agreements with, corporations and individuals for Iran sanctions violations under this body of law;

Whereas existing legislation includes mandatory sanctions that may only be repealed or amended by law, including CISADA section 104, which provides that the Secretary of the Treasury shall prescribe regulations to prohibit or restrict correspondent accounts for foreign financial institutions that knowingly engage in a prohibited activity, and TRA section 202, which provides that the President shall impose statutorily prescribed sanctions with respect to persons that own, operate, control, or insure vessels used to transport crude oil from Iran to another country;

Whereas the President’s authority to waive statutorily prescribed sanctions is limited, conditional, and circumscribed by law;

Whereas the period of five days for the President to transmit to Congress the “agreement with Iran relating to the nuclear program of Iran,” as defined in section 135 of the Atomic Energy Act of 1954, as added by section 2 of the Iran Nuclear Agreement Review Act of 2015, began to run on July 14, 2015, and by July 19, 2015, the President had transmitted to Congress only part of the “agreement with Iran relating to the nuclear program of Iran” reached five days earlier;

Whereas the Administration publicly acknowledged on July 22, 2015, that at least two side agreements existed that had not yet been provided to Congress, specifically between the International Atomic Energy Agency (IAEA) and Iran, but has steadfastly refused to provide those agreements;

Whereas such section 135 provides that the President “shall” transmit to Congress any agreement with Iran, “including all related materials and annexes”, defined under such section to include “side agreements”—with no statutory exceptions for either secret or unavailable (to the United States) side agreements—within five days of reaching such an agreement; and

Whereas, as a result, the President has never fully transmitted to Congress the “agreement with Iran relating to the nuclear program of Iran” as defined by such section 135, and specifically did not transmit the full agreement within the timeline mandated by law: Now, therefore, be it

- 1 *Resolved*, That it is the sense of the Senate that—
- 2 (1) the congressional review provision under
- 3 section 135 of the Atomic Energy Act of 1954 (42

1 U.S.C. 2160e), as added by section 2 of the Iran
2 Nuclear Agreement Review Act of 2015 (Public Law
3 114–17), does not apply to the Joint Comprehensive
4 Plan of Action announced on July 14, 2015, because
5 the President failed to comply with the transmission
6 to Congress provisions of such section 135;

7 (2) because the President did not transmit to
8 Congress “all related materials and annexes” within
9 five days of reaching agreement with Iran, the statu-
10 tory congressional review provided for in such sec-
11 tion 135 did not occur, at least not in the manner
12 envisioned by the members of Congress who voted
13 for Public Law 114–17;

14 (3) in light of the President’s failure to submit
15 the entire “agreement with Iran relating to the nu-
16 clear program of Iran,” including side agreements,
17 to Congress within five days, the congressional re-
18 view provision of such section 135 by its own terms
19 was not applicable to the partial agreement that the
20 President submitted to Congress, known as the
21 JCPOA, and therefore in order for the substance of
22 what was submitted to Congress to become “the su-
23 preme Law of the Land” pursuant to Article VI,
24 clause 2 of the Constitution, it would need to be ei-
25 ther treated by the Senate as a treaty “provided two

1 thirds of the Senators present concur” pursuant to
2 Article II, section 2, clause 2 of the Constitution, or
3 Congress would need to enact new implementing leg-
4 islation that supersedes the mandatory statutory
5 sanctions that the JCPOA purports to supersede;

6 (4) the Comprehensive Iran Sanctions, Account-
7 ability, and Divestment Act of 2010 (CISADA), sec-
8 tion 1245 of the National Defense Authorization Act
9 for Fiscal Year 2012 (Public Law 112–81), the Iran
10 Freedom and Counter-Proliferation Act of 2012
11 (IFCA), and the Iran Threat Reduction and Syria
12 Human Rights Act of 2012 (TRA) remain “the su-
13 preme Law of the Land” unless and until a Senate-
14 ratified treaty or duly enacted statute repeals or oth-
15 erwise supersedes them and becomes “the supreme
16 Law of the Land” pursuant to Article VI, clause 2
17 of the Constitution; and

18 (5) the Senate, which has the power to consent
19 to treaties under Article II, section 2, clause 2 of the
20 Constitution, has not and does not consent to the
21 JCPOA, which is therefore not “the supreme Law of
22 the Land”, and the President therefore has a con-
23 stitutional duty to ensure that the Iran sanctions
24 laws, including CISADA, section 1245 of the Na-
25 tional Defense Authorization Act for Fiscal Year

- 1 2012 (Public Law 112–81), IFCA, and TRA, con-
- 2 tinue to be faithfully executed.

