

JIM GERLACH

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HOUSE COMMITTEE ON WAYS AND MEANS
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January 7, 2014

To: All House Members
From: Rep. Jim Gerlach
Re: Legislative Authority to Ensure Enforcement of Federal Laws

I would like to bring to your attention legislation that I am introducing at the start of the Second Session that will ensure that a president fulfills the duty to faithfully enforce the laws of the land under Article III of the U.S. Constitution.

In recent months, we have witnessed an unparalleled use of executive discretion to selectively apply or enforce duly-enacted federal laws. These decisions have not only exceeded the rights and responsibilities bestowed on a president by the U.S. Constitution, but they have undermined the collective work that Congress constitutionally fulfills under Article I. The U.S. Code is not an a la carte menu compiled to serve the whims of a president and federal agencies – and no president or executive agency, regardless of political party or affiliation – should be able to simply pick and choose the laws they believe should be enforced based on their policy agenda or political wants.

As a result, I am introducing legislation that would provide Congress with a new procedural authority – one that would act to restore the constitutional balance in the separation of powers among the branches of government and allow the House or Senate to seek immediate judicial relief in the event that a president fails to “take care that the laws be faithfully executed.” Specifically, this legislation would authorize the House or Senate – upon passage of a resolution in either chamber by a 60% supermajority of votes – to bring an expedited action before a three-judge panel of the U.S. District Court for the District of Columbia seeking review and declaratory or injunctive relief in the event that a president fails to meet the constitutional requirement that all laws be faithfully executed. That Court’s decision would have to be issued within 90 days and would be immediately appealable directly to the U.S. Supreme Court for a final determination of whether a president has acted in an unconstitutional manner.

Currently, there is no method for expedited review of these executive actions and, as a result, we have seen a proliferation of executive orders, regulations, and policies that unquestionably demonstrate an improper and inadequate enforcement of federal laws without a “fast track” process for the U.S. Supreme Court to review and rule. This legislation would provide Congress with such a process.

I hope that you will become a cosponsor of this important legislation and join me in this effort to restore the checks and balances of our Constitution. If you would like more information or would like to become a cosponsor, please contact Dante Cutrona on my staff at dante.cutrona@mail.house.gov or x. 5-4315.

Attachment

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[DISCUSSION DRAFT]

JANUARY 7, 2014

113TH CONGRESS
2D SESSION

H. R. _____

To authorize the House of Representatives and the Senate to bring an action seeking declaratory and injunctive relief in response to the failure of the President to meet the requirement of the Constitution to faithfully execute the law, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. GERLACH introduced the following bill; which was referred to the Committee on _____

A BILL

To authorize the House of Representatives and the Senate to bring an action seeking declaratory and injunctive relief in response to the failure of the President to meet the requirement of the Constitution to faithfully execute the law, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. AUTHORIZATION OF HOUSE AND SENATE TO**
2 **BRING ACTION IN RESPONSE TO FAILURE OF**
3 **THE PRESIDENT TO EXECUTE THE LAW.**

4 (a) **AUTHORIZATION.**—

5 (1) **IN GENERAL.**—Upon the adoption of a reso-
6 lution declaring that, on the basis of any of the
7 Presidential actions described in subsection (b), the
8 President has failed to meet the requirement of sec-
9 tion 3 of article II of the Constitution of the United
10 States to take care that a law be faithfully executed,
11 the House of Representatives or the Senate may
12 bring an action (in the name of the House of Rep-
13 resentatives or the Senate, as the case may be) seek-
14 ing declaratory and injunctive relief to compel the
15 President to faithfully execute that law.

16 (2) **THRESHOLD FOR VOTE ON RESOLUTION.**—
17 The House of Representatives or the Senate shall
18 not be considered to have adopted a resolution under
19 this section unless the resolution is approved by not
20 fewer than 60 percent of the members present and
21 voting.

22 (b) **PRESIDENTIAL ACTIONS DESCRIBED.**—The Pres-
23 idential actions described in this subsection are as follows:

24 (1) The promulgation of a regulation or agency
25 administrative guidance.

1 (2) The issuance of an executive order, includ-
2 ing an order to not defend a challenge to the con-
3 stitutionality of a law and an order to not enforce
4 a law.

5 (3) The issuance of a signing statement with
6 respect to the enactment of a law.

7 (c) EXERCISE OF RULEMAKING AUTHORITY OF SEN-
8 ATE AND HOUSE.—This section is enacted by Congress—

9 (1) as an exercise of the rulemaking power of
10 the Senate and House of Representatives, respec-
11 tively, and as such it is deemed a part of the rules
12 of each House, respectively, but applicable only with
13 respect to the procedure to be followed in that
14 House in the case of a resolution described in sub-
15 section (a), and it supersedes other rules only to the
16 extent that it is inconsistent with such rules; and

17 (2) with full recognition of the constitutional
18 right of either House to change the rules (so far as
19 relating to the procedure of that House) at any time,
20 in the same manner, and to the same extent as in
21 the case of any other rule of that House.

22 **SEC. 2. SPECIAL RULES APPLICABLE TO ACTIONS.**

23 The following rules shall apply with respect to any
24 action brought by the House of Representatives or Senate
25 pursuant to the authority of section 1:

1 (1) The action shall be filed in the United
2 States District Court for the District of Columbia,
3 and shall be heard not later than 30 days after the
4 action is filed by a 3- judge court convened pursuant
5 to section 2284 of title 28, United States Code.

6 (2) A copy of the complaint shall be delivered
7 promptly to the Clerk of the House of Representa-
8 tives (in the case of an action brought by the House)
9 and the Secretary of the Senate (in the case of an
10 action brought by the Senate).

11 (3) A final decision in the action shall be issued
12 not later than 90 days after the action is filed and
13 shall be reviewable only by appeal directly to the Su-
14 preme Court of the United States. Such appeal shall
15 be taken by the filing of a notice of appeal within
16 10 days, and the filing of a jurisdictional statement
17 within 30 days, of the entry of the final decision.

18 (4) It shall be the duty of the United States
19 District Court for the District of Columbia and the
20 Supreme Court of the United States to advance on
21 the docket and to expedite to the greatest possible
22 extent the disposition of the action and appeal.