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(Original Signature of Member)

114TH CONGRESS
1ST SESSION

H. RES.

Raising a question of the privileges of the House of Representatives.

IN THE HOUSE OF REPRESENTATIVES

Mr. ROSKAM submitted the following resolution; which was referred to the
Committee on _____

RESOLUTION

Raising a question of the privileges of the House of
Representatives.

Whereas Rule IX of the Rules of the House of Representatives states that a question of the privileges of the House “shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; and second, those affecting the rights, reputation, and conduct of Members, Delegates, or the Resident Commissioner, individually, in their representative capacity only”;

Whereas the Iran Nuclear Agreement Review Act of 2015 (in this preamble referred to as the “Review Act”) was passed by the Senate on May 7, 2015, by a vote of 98-1;

Whereas the House of Representatives passed the Review Act on May 14, 2015, by a vote of 400-25;

Whereas the Review Act was signed by President Barack Obama on May 22, 2015, becoming Public Law No. 114–17;

Whereas section 135(a)(1) of the Atomic Energy Act of 1954 (as enacted by section 2 of the Review Act) states, “Not later than 5 calendar 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—(A) the agreement, as defined in subsection (h)(1), including all related materials and annexes”;

Whereas section 135(h)(1) of the Atomic Energy Act of 1954 (as enacted by section 2 of the Review Act) states, “The term ‘agreement’ means an agreement related to the nuclear program of Iran that includes the United States, commits the United States to take action, or pursuant to which the United States commits or otherwise agrees to take action, regardless of the form it takes, whether a political commitment or otherwise, and regardless of whether it is legally binding or not, including any joint comprehensive plan of action entered into or made between Iran and any other parties, and any additional materials related thereto, including 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 Director General of the International Atomic Energy Agency (in this preamble re-

ferred to as the “IAEA”) and the President of the Atomic Energy Organization of Iran signed the “Roadmap for the Clarification of Past and Present Outstanding Issues regarding Iran’s Nuclear Program”, which refers to two “separate arrangements” between the IAEA and Iran;

Whereas the first of these separate arrangements seeks to clarify and resolve longstanding questions about the possible military dimensions of Iran’s nuclear program, including those identified in the IAEA Director General’s report to the Board of Governors, designated “GOV/2011/65”;

Whereas section G(38) of that report states, “Since 2002, the [IAEA] has become increasingly concerned about the possible existence in Iran of undisclosed nuclear related activities involving military related organizations, including activities related to the development of a nuclear payload for a missile, about which the [IAEA] has regularly received new information”;

Whereas the Roadmap describes the second of these separate arrangements as an effort to resolve outstanding issues regarding the military facility at Parchin;

Whereas in his November 29, 2012, report to the Board of Governors, the Director General of the IAEA stated, “As you will recall, the [IAEA] has information indicating that Iran constructed a large explosives containment vessel at the Parchin site in which to conduct hydrodynamic experiments. Despite repeated requests, Iran has still not granted the [IAEA] access to the Parchin site. Satellite imagery shows that extensive activities, including the removal and replacement of considerable quantities of earth, have taken place at this location. I am concerned that these activities will have seriously undermined the

[IAEA's] ability to undertake effective verification. I reiterate my request that Iran, without further delay, provide access to that location and substantive answers to the [IAEA's] detailed questions regarding the Parchin site”;

Whereas an August 20, 2015, report by the Associated Press includes draft text of the Parchin separate agreement, which details a process by which Iran will provide photographs, videos, soil samples, and other materials in lieu of giving the IAEA access to the Parchin site;

Whereas Dr. Olli Heinonen, a 27-year veteran of the IAEA and its former Deputy Director General and chief inspector, stated, “Much of the current concerns arise from the reported arrangements worked out between the IAEA and Iran in the side documents to address PMD [possible military dimension] issues. If the reporting is accurate, these procedures appear to be risky, departing significantly from well-established and proven safeguards practices. At a broader level, if verification standards have been diluted for Parchin (or elsewhere) and limits imposed, the ramification is significant as it will affect the IAEA's ability to draw definitive conclusions with the requisite level of assurances and without undue hampering of the verification process”;

Whereas the self inspection and verification by Iran of its own nuclear weapons-related activities performed at the Parchin military facility are inadequate and incapable of demonstrating Iran's compliance with safeguards against nuclear weapons development, as established by the IAEA or the international nuclear agreement with Iran;

Whereas on July 14, 2015, the P5+1 (the United States, the United Kingdom, France, the People's Republic of China, the Russian Federation, and Germany) and Iran an-

nounced that the parties had agreed to a Joint Comprehensive Plan of Action;

Whereas section C(13) of the Joint Comprehensive Plan of Action requires Iran's parliament and president to implement the Additional Protocol to Iran's Comprehensive Safeguards Agreement with the IAEA;

Whereas section C(14) of the agreed Joint Comprehensive Plan of Action requires Iran to fully implement the "Roadmap for Clarification of Past and Present Outstanding Issues regarding Iran's Nuclear Program", which was agreed to with the IAEA;

Whereas the Joint Comprehensive Plan of Action is necessarily predicated on and interdependent with the two side agreements between the IAEA and Iran, all of which are mutually reinforcing and indivisible;

Whereas State Department spokesman John Kirby issued a public statement on July 19, 2015, stating that "today the State Department transmitted to Congress the Joint Comprehensive Plan of Action, its annexes, and related materials. These documents include the Unclassified Verification Assessment Report on the JCPOA and the Intelligence Community's Classified Annex to the Verification Assessment Report, as required under the law. Therefore, Day One of the 60-day review period begins tomorrow, Monday, July 20";

Whereas section 135(c)(1)(E) of the Atomic Energy Act of 1954 (as enacted by section 2 of the Review Act) states, "it is critically important that Congress have the opportunity, in an orderly and deliberative manner, to consider and, as appropriate, take action affecting the statutory sanctions regime imposed by Congress", thereby pro-

viding the right to the House collectively, and the Members of the House individually in their representative capacities, to review the Iran nuclear agreement, as defined in section 135(h)(1) of the Atomic Energy Act of 1954, in order to determine what action, if any, to take;

Whereas section 135(h)(1) of the Atomic Energy Act of 1954 (as enacted by section 2 of the Review Act) specifically requires the President to provide Congress with the text of “side agreements” and “related agreements”, including those agreements “between Iran and any other parties”;

Whereas the State Department’s transmission to Congress did not include the text or materials relating to the two side agreements between the IAEA and Iran and was therefore incomplete as a matter of law;

Whereas on July 21, 2015, Senate Foreign Relations Committee Chairman Bob Corker and Ranking Member Ben Cardin sent a bipartisan letter to the State Department requesting the actual text of the two separate agreements between the IAEA and Iran;

Whereas on July 22, 2015, Congressman Mike Pompeo and Senator Tom Cotton, along with the Speaker of the House and the Majority Leader of the Senate, sent a letter to the President requesting the text of the two separate agreements between the IAEA and Iran;

Whereas on August 4, 2015, Congressman Pompeo sent a further letter to the President, co-signed by the House Majority Leader and 92 other Members of the House, requesting the President to provide the text of the two separate agreements between the IAEA and Iran;

Whereas contrary to the law and these requests, the President did not provide the text of the separate agreements to Congress or any of its Members;

Whereas on July 22, 2015, State Department spokesman John Kirby stated, “There’s no side deals. There’s no secret deals between Iran and the IAEA that the P5+1 has not been briefed on in detail”;

Whereas in an August 5, 2015, letter to Members of Congress, Assistant Secretary of State for Legislative Affairs Julia Frifield contradicted this claim, saying, “The Roadmap refers to two ‘separate agreements’ between the IAEA and Iran. Within the IAEA system, such arrangements related to safeguards procedures and inspection activities are confidential and are not released to other member states”;

Whereas on July 28, 2015, Secretary of State John Kerry told the House Foreign Affairs Committee, in responding to the statement that National Security Advisor Susan Rice has seen the actual text of the two side agreements, “I don’t believe Susan Rice, National Security Advisor, has seen it”;

Whereas responding further to whether he has seen the actual text, Secretary Kerry said, “No, I haven’t seen it, I’ve been briefed on it”;

Whereas on July 29, 2015, Secretary of Energy Ernest Moniz stated, “I, personally, have not seen those documents”;

Whereas on July 31, 2015, White House Press Secretary Josh Earnest stated, “Our negotiators were briefed on the contents of that agreement” (a reference to the side agreements);

Whereas being briefed second- or third-hand, including by Obama Administration officials who themselves have not read the actual text of the side agreements, is akin to a game of telephone and is not the same thing as allowing Members of Congress to read the actual text of the agreements;

Whereas the congressional review period prescribed in section 135(b) of Atomic Energy Act of 1954 (as enacted by section 2 of the Review Act) to review the Iran nuclear agreement begins only “if an agreement, including all materials required to be transmitted to Congress pursuant to subsection (a)(1)” is transmitted by the President to the Congress for review;

Whereas on July 14, 2015, President Obama stated, “This deal is not built on trust. It is built on verification” ;

Whereas it is impossible for the President, Congress, and the American people to consider and determine whether to support or oppose an Iran nuclear agreement without reviewing key inspection and verification details contained in the text of the two side agreements between the IAEA and Iran;

Whereas the determination by the Parliamentarian of the House of Representatives, acting as an Officer of the House, that the President has transmitted to Congress the agreement and related materials as required by law, and therefore to begin counting the elapsing of the congressional review period beginning on July 20, 2015, deprives the House collectively and the Members of the House individually in their representative capacities, of the right to the review the Iran nuclear agreement;

Whereas the Congressional Record for the legislative day of July 27, 2015, is incorrect, listing under the heading “Executive Communications” the following entry: “A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting a letter and attachments satisfying all requirements of Sec. 135(a) of the Atomic Energy Act of 1954, as amended by the Iran Nuclear Agreement Review Act of 2015 (Pub. L. 114-17), as received July 19, 2015; jointly to the Committees on Foreign Affairs, Financial Services, the Judiciary, Oversight and Government Reform, and Ways and Means”;

Whereas the House of Representatives is scheduled to vote on a resolution of disapproval of the Iran nuclear agreement as soon as September 9, 2015, a procedure provided for under section 135(e)(4) of the of Atomic Energy Act of 1954 (as enacted by section 2 of the Review Act);

Whereas such a vote is injurious to the integrity of the proceedings of the House as it violates the process provided under section 135 of the Atomic Energy Act of 1954 (as enacted by section 2 of the Review Act), which is contingent upon both the President’s transmittal of the Iran nuclear agreement and all related documents, including side agreements, and the observance of the congressional review period provided in such section 135;

Whereas in her August 5, 2015, letter to Members of Congress, Assistant Secretary of State Frifield inaccurately stated, “The United States does not have a right to demand these [side agreement] documents from the IAEA”;

Whereas Dr. Heinonen, the former Deputy Director General and chief inspector of the IAEA stated, “According to

the IAEA rules and practices, such documents could be made available to the members of the IAEA Board”;

Whereas Dr. Heinonen further stated, “The issue of confidentiality is an important matter for the IAEA. However, it should not be used as a blanket to stop legitimate questions, particularly regarding verification methods at Parchin. Historically, the IAEA has not viewed such issues as confidential. The IAEA and its member states have disclosed much more detailed facility-specific approaches at regular safeguards symposia. Additionally, in 2007 the IAEA Iran Work Plan addressing outstanding issues, accumulated over several years, was made available to all IAEA member states, and the Board also received a 2012 document from Iran related to very specific PMD [possible military dimensions] questions, which happened while the IAEA was negotiating with Iran for greater clarity and access”;

Whereas part I, section 5 of IAEA Information Circular 153 provides that “specific information relating to such implementation [of measures to safeguard nuclear materials] in the State may be given to the Board of Governors and to such Agency staff members as require such knowledge”;

Whereas Article VI of the Statute of the IAEA authorizes the Board of Governors of the IAEA to direct the work of the IAEA, including in safeguarding nuclear materials and ensuring the peaceful ends of a participating member state’s nuclear program;

Whereas Rule 18 of the Rules of the Board of Governors of the IAEA, entitled “Circulation of Documents of Particular Importance”, establishes procedures by which

member states of the IAEA Board of Governors may access relevant documents related to their duties;

Whereas the United States serves on the Board of Governors of the IAEA and has both the need and the authority to access the actual text of the two side agreements between the IAEA and Iran;

Whereas on July 30, 2015, White House Press Secretary Josh Earnest, speaking on behalf of the President of the United States, stated, “I will acknowledge that I don’t know exactly what the requirements are of the Iran Review Act, so I’m not sure exactly what that means [Congress is] asking for”;

Whereas on April 6, 2015, White House Press Secretary Josh Earnest stated, “[W]e do believe that Congress should play their rightful role in terms of ultimately deciding whether or not the sanctions that Congress passed into law should be removed”;

Whereas on April 7, 2015, White House Press Secretary Josh Earnest further stated, “[M]embers of Congress should consider the agreement and decide whether or not the President has achieved his stated objective of preventing Iran from obtaining a nuclear weapon, shutting down every pathway they have and making them cooperate with the most intrusive set of inspections that have ever been imposed on a country’s nuclear program”;

Whereas the Joint Comprehensive Plan of Action, which was negotiated and agreed to by the Obama Administration, fails to accomplish those objectives;

Whereas any recognition by the House of Representatives of the transmittal by the President of an Iran nuclear agreement that does not include all of the materials re-

quired by law, including the text of the 2 side agreements agreed to between the IAEA and Iran, violates the rights of the Members of the House individually in their representative capacity, impeding their ability to make a fully informed decision on how to vote on behalf of their constituents, as conceived and provided for in the enactment of the Review Act;

Whereas Director of National Intelligence James Clapper has labeled Iran the world's leading state sponsor of terrorism;

Whereas the Web site WhiteHouse.gov states that Iran currently has a 2-3 month breakout time to build a nuclear bomb;

Whereas legislative action on an Iran nuclear agreement is one of the most important issues that will ever come before the House, as it directly affects the safety and security of the Members of the House and their constituents;

Whereas the taking of legislative action without reasonable consideration and knowledge damages the reputation and credibility of the House collectively and its Members individually in their representative capacities; and

Whereas the President's failure to follow a law that he signed is an affront to the dignity of the House and cannot be ignored: Now, therefore, be it

- 1 *Resolved*, That the House of Representatives—
- 2 (1) reaffirms its legal right to obtain all mate-
- 3 rials, including the full text of all side agreements,
- 4 comprising the Iran nuclear agreement, as defined in
- 5 section 135(h)(1) of the Atomic Energy Act of 1954,
- 6 as enacted by section 2 of the Iran Nuclear Agree-

1 ment Review Act of 2015 (in this section referred to
2 as the “Review Act”), which was signed into law by
3 President Obama;

4 (2) directs the Parliamentarian of the House of
5 Representatives not to recognize, for purposes of de-
6 termining the dates of the congressional review pe-
7 riod prescribed in section 135(b) of Atomic Energy
8 Act of 1954 (as enacted by section 2 of the Review
9 Act), any agreement and related documents sub-
10 mitted by the President that do not include the ac-
11 tual text of the two side agreements between the
12 IAEA and Iran;

13 (3) directs the Clerk of the House of Represent-
14 atives and the Officers of the House to correct Exec-
15 utive Communication numbered 2207, appearing on
16 page 5522 in the Congressional Record of the legis-
17 lative day of July 27, 2015, to state the following:
18 “A letter from the Assistant Secretary, Legislative
19 Affairs, Department of State, transmitting a letter
20 and attachments which does not satisfy all require-
21 ments of Sec. 135(a) of the Atomic Energy Act of
22 1954, as amended by the Iran Nuclear Agreement
23 Review Act of 2015 (Pub. L. 114-17), as received
24 July 19, 2015; jointly to the Committees on Foreign

1 Affairs, Financial Services, the Judiciary, Oversight
2 and Government Reform, and Ways and Means”;

3 (4) instructs the Speaker of the House of Rep-
4 resentatives to dispatch without delay a notification
5 to the President, on behalf of the whole House, enti-
6 tled “Failure to Follow the Law” and stating that—

7 (A) the President’s transmittal of that
8 agreement to the House is incomplete as a mat-
9 ter of law;

10 (B) consequently, the congressional review
11 period provided in section 135 of the Atomic
12 Energy Act of 1954 (as enacted by section 2 of
13 the Review Act) has not begun; and

14 (C) pursuant to section 135(b)(3) of the
15 Atomic Energy Act of 1954 (as so enacted),
16 until the end of the congressional review period,
17 “the President may not waive, suspend, reduce,
18 provide relief from, or otherwise limit the appli-
19 cation of statutory sanctions with respect to
20 Iran under any provision of law or refrain from
21 applying any such sanctions pursuant to an
22 agreement described in subsection (a)”;

23 (5) instructs the Speaker of the House of Rep-
24 resentatives, on behalf of the whole House, to return
25 the agreement and related materials provided in the

1 President's transmission of July 19, 2015, in order
2 that the President may provide a full and complete
3 transmission of all materials required by law, includ-
4 ing the text of side agreements; and

5 (6) instructs the Speaker to take such actions
6 as may be necessary to provide an appropriate rem-
7 edy to ensure that the integrity of the legislative
8 process is protected and to report his actions and
9 recommendations to the House.