

# Sklaroff and Bender: The Senate Must Sue Obama to Block the Iran TREATY



President Obama at American University

August 5, 2015

When we published "[How Best to Overturn the Iran Nuclear Pact](#)" in the August 2015 *New English Review*, we reviewed several options. One proposal suggested by Dr. Robert B. Sklaroff entailed direct litigation by Congress before the Supreme Court under provisions of the US Constitution seeking a ruling treating the Iran nuclear pact as a treaty requiring advise and consent of the Senate . We wrote:

That proposal entailed independent Congressional litigation on demonstrable Constitutional legal grounds regarding executive overreach. If the Senate was granted standing on direct appeal, based on the B. Altman SCOTUS ruling, it might result in a predisposed SCOTUS rendering a positive ruling thus quashing the Iran nuclear pact. Further, the ruling might unfetter the hands of any successor to President Obama on inauguration day in 2017 to undertake remedial actions. Such actions might reduce the current existential threats to both the US and Israel.

In furtherance of that original proposal we are publishing the following article by Dr. Robert A. Sklaroff and Lee S. Bender, Esq. which expands upon the original concept noting support from Constitutional law experts and applicable case citations.

**The Senate Must Sue Obama to Block the Iran TREATY**

By Robert B. Sklaroff, M.D. and Lee S. Bender, Esq.

When Congress returns from recess after Labor Day, one of the most pressing issues on the agenda is the Joint Comprehensive Plan of Action (JCPOA), known commonly as “the Iran deal.” Much has been discovered since the Corker-Cardin-Menendez bill was enacted, including the White House’s and State Department’s deceit which influenced the Senate to abandon its constitutionally-provided role regarding treaties.

Now it might take a lawsuit spearheaded by Senate Majority Leader Mitch McConnell (R-KY) to reverse not only the damage to the Constitution but also potential damage to America and our allies as a result of the provisions of the Iran nuclear-deal.

Senate Majority Leader Mitch McConnell has overwhelming justification to sue President Obama over the JCPOA which constitutes a treaty and thereby must be ratified by a 2/3-vote of those present prior to implementation.

Such a suit could ultimately prompt the Supreme Court to disclaim Obama’s portrayal of this document as an Executive Agreement. It could also sustain the overwhelming will of the American people—according to polling data—to trash this “legacy” effort, for reasons that have been exhaustively detailed.

Blocking implementation of the Iran nuclear-deal would thereby necessitate the legislative branch triggering a confrontation between the judicial and the executive branches.

Two essays {authored by RBS} published in *The Hill* explored the legalities of this initiative, focused on its “treaty” [July 29] and “rule-of-law” [August 25] components.

In the interim [*USA Today*, August 5], Professor Alan Dershowitz recognized that a Supreme Court opinion challenged the President’s power to enter into long-term deals with

foreign powers without the consent of Congress. He cannot avoid Congressional oversight by simply declaring an important deal with foreign powers to be an executive agreement rather than a treaty [*Gibbons v. Ogden*]: “[G]eneral and permanent commercial regulations with foreign powers must be made by treaty, but...the particular and temporary regulations of commerce may be made by an agreement of a state with another, or with a foreign power, by the consent of Congress.”

Two other authors, legal-authority Andrew C. McCarthy [*National Review Online*, July 17] and accomplished-author Caroline B. Glick [*Jerusalem Post*, July 21] also claimed the deal is a treaty, but none of these columnists proposed a remedy that would force a clash with this out-of-control Obama Administration. Jerry Gordon has detailed, comprehensively, [“How Best to Overturn the Iran Nuclear Pact”](#) [*New English Review*, August 2015].

The drip-drip-drip of news about details of the deal as well as “secret” side arrangements that has emerged this summer congeals into two major rationales for such litigation, addressing both specifics and lack of transparency. Specifically, multiple side-deals between Iran and the IAEA satirize the concept of “anytime, anywhere surveillance” but, perhaps more important, Obama and his cabinet-members “inexplicably” failed to reveal this information to Congress as secrets. Moreover, the Administration also misled Congress and the American public about the nature of the deal and the resulting preservation of Iran’s nuclear infrastructure and right to continue advanced research that will provide it with a bomb when the pact expires in a mere decade to 15 years.

The “legislative intent” of the Corker-Cardin Bill ([one week prior to when the deal was signed](#) [July 14] during a [follow the law](#)” governing existing congressional sanctions if Congress voted to override a veto? The elitist reply challenged rule-of-law: “I can’t begin to answer that at this point without consulting with the President and determining

what the circumstances are.”

Could BHO go rogue?

The ability of the Supreme Court to exercise “judicial review” is rooted in the Supremacy Clause, was affirmed in 1803 [[Coleman v. Miller](#) case on all fours.” This 1939 landmark decision ensured that Congress was empowered to specify a deadline by which an external entity was to affirm proposed legislation, such as a Constitutional amendment.

The Ottoman-Islamic defeat at the “Gates of Vienna” in 1683 is on the verge of being reversed by Obama/Kerry and their P5+1 partners, again in Vienna; the irony is that the West is validating Iranian-Islamic supremacism. It seems only the U.S. Senate can rescue (Judeo-Christian) Western Civilization from the Administration’s collaboration and perfidy.

The Senate must definitively impose a limit to the President’s executive lawlessness before a constitutional crisis erupts. Resolution by the courts may be the most effective way to check and to balance the scales that Obama has usurped.

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