

Calendar No. 346

112TH CONGRESS
2^D SESSION

S. RES. 344

Supporting the democratic aspirations of the Nicaraguan people and calling attention to the deterioration of constitutional order in Nicaragua.

IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2011

Mr. RUBIO (for himself, Mr. MENENDEZ, and Mr. COONS) submitted the following resolution; which was referred to the Committee on Foreign Relations

MARCH 28, 2012

Reported by Mr. KERRY, with an amendment and an amendment to the preamble

[Strike out all after the resolving clause and insert the part printed in *italic*]

[Strike the preamble and insert the part printed in *italic*]

RESOLUTION

Supporting the democratic aspirations of the Nicaraguan people and calling attention to the deterioration of constitutional order in Nicaragua.

~~Whereas in January 2007, President Daniel Ortega was inaugurated to a second 5-year presidential term, having served as President from 1985 to 1990;~~

~~Whereas as a result of widespread electoral fraud during the November 2008 municipal elections, Nicaragua lost more~~

than \$100,000,000 in international assistance and a \$175,000,000 Millennium Challenge Compact was suspended;

Whereas Article 147 of the Constitution of Nicaragua states that a candidate cannot serve consecutively as President and that a President cannot serve more than 2 terms;

Whereas, on October 19, 2009, the Sandinista-controlled Constitutional Chamber of the Supreme Court of Nicaragua issued a controversial ruling that partially annulled Article 147 of the Constitution of Nicaragua and allowed Daniel Ortega to run for a third presidential term;

Whereas the Department of State called the October 2009 Supreme Court ruling “... part of a larger pattern of questionable and irregular governmental actions, beginning before the flawed municipal elections of November 2008, that threatens to undermine the foundations of Nicaraguan democracy and calls into question the Nicaraguan Government’s commitment to uphold the Inter-American Democratic Charter”;

Whereas the Constitution of Nicaragua gives the National Assembly sole power to elect Supreme Court magistrates, Supreme Electoral Council magistrates, and other national public officials;

Whereas in January 2010, President Ortega issued a decree that circumvented the National Assembly and indefinitely extended the terms of 25 incumbent public officials, including members of the Supreme Court and the Supreme Electoral Council;

Whereas in August 2011, the Supreme Electoral Council announced that all international and national observers will be a part of the election and monitor the process under

the mandate of an “accompaniment ruling”, which included 25 articles, establishing, among other restrictions, who can participate, what their functions may be, the limits of their actions, and the process of accreditation to become an official observer;

Whereas, on November 10, 2011, the Department of State noted “... the Nicaraguan Government’s failure to accredit certain credible domestic organizations as observers, difficulties voters faced in obtaining proper identification and pronouncements by Nicaraguan authorities that electoral candidates might be disqualified after the elections” and agreed that “the Supreme Electoral Council did not operate in a transparent and impartial manner”;

Whereas the European Union Election Observing Mission to Nicaragua noted that elections had been supervised by “electoral authorities with very little independence and equanimity” and it further deemed a “grave reversal to the democratic quality of Nicaraguan elections”;

Whereas during the 2011 general elections in Nicaragua, the Mission of Electoral Accompaniment of the Organization of American States noted several “situations of concern”, including problems providing identification cards to voters, the accreditation of observers, and imbalances in the political parties present at polling stations;

Whereas the Organization of American States called upon Nicaraguan authorities to investigate acts of violence perpetrated on election day; and

Whereas as a member of the Organization of American States and signatory to the Inter-American Democratic Charter, the Nicaraguan Government has the legal re-

sponsibility to abide by the principles of constitutional, representative democracy, which includes free and fair elections and adherence to their own constitution. Now, therefore, be it

Whereas in January 2007, President Daniel Ortega was inaugurated to a second 5-year presidential term, having served as President from 1985 to 1990;

Whereas as a result of widespread electoral fraud during the November 2008 municipal elections, Nicaragua lost more than \$100,000,000 in international assistance and a \$175,000,000 Millennium Challenge Compact was suspended;

Whereas Article 147 of the Constitution of Nicaragua states that a candidate cannot serve consecutively as President and that a President cannot serve more than 2 terms;

Whereas on October 19, 2009, the Sandinista-controlled Constitutional Chamber of the Supreme Court of Nicaragua issued a controversial ruling that partially annulled Article 147 of the Constitution of Nicaragua and allowed Daniel Ortega to run for a third presidential term;

Whereas the Department of State called the October 2009 Supreme Court ruling “. . . part of a larger pattern of questionable and irregular governmental actions, beginning before the flawed municipal elections of November 2008, that threatens to undermine the foundations of Nicaraguan democracy and calls into question the Nicaraguan government’s commitment to uphold the Inter-American Democratic Charter”;

Whereas the Constitution of Nicaragua gives the National Assembly sole power to elect Supreme Court magistrates, Su-

preme Electoral Council magistrates, and other national public officials;

Whereas in January 2010, President Ortega issued a decree that circumvented the National Assembly and indefinitely extended the terms of 25 incumbent public officials, including members of the Supreme Court and the Supreme Electoral Council;

Whereas in August 2011, the Supreme Electoral Council announced that all international and national observers will be a part of the election and monitor the process under the mandate of an “accompaniment ruling”, which included 25 articles, establishing, among other restrictions, who can participate, what their functions may be, the limits of their actions, and the process of accreditation to become an official observer;

Whereas on November 10, 2011, the Department of State noted “. . . the Nicaraguan Government’s failure to accredit certain credible domestic organizations as observers, difficulties voters faced in obtaining proper identification and pronouncements by Nicaraguan authorities that electoral candidates might be disqualified after the elections” and agreed that “the Supreme Electoral Council did not operate in a transparent and impartial manner”;

Whereas the European Union Election Observing Mission to Nicaragua noted that elections had been supervised by “electoral authorities with very little independence and equanimity” and it further deemed a “grave reversal to the democratic quality of Nicaraguan elections”;

Whereas during the 2011 general elections in Nicaragua, the Mission of Electoral Accompaniment of the Organization of American States noted several “situations of concern”,

including problems providing identification cards to voters, the accreditation of observers, and imbalances in the political parties present at polling stations;

Whereas the Organization of American States called upon Nicaraguan authorities to investigate acts of violence perpetrated on election day;

Whereas on January 25, 2012, Secretary of State Hillary Clinton stated that “the elections marked a setback to democracy in Nicaragua and undermined the ability of Nicaraguans to hold their government accountable”; and

Whereas as a member of the Organization of American States and signatory to the Inter-American Democratic Charter, the Government of Nicaragua has the legal responsibility to abide by the principles of constitutional, representative democracy, which includes free and fair elections and adherence to their own constitution: Now, therefore, be it

1 *Resolved, That the Senate—*

2 ~~(1)~~ *supports the democratic aspirations of the*
3 *people of Nicaragua;*

4 ~~(2)~~ *deplores the interruption of constitutional*
5 *order in Nicaragua that led to the fraudulent reelection*
6 *of Daniel Ortega on November 6, 2011, elec-*
7 *tions;*

8 ~~(3)~~ *condemns the acts of violence perpetrated*
9 *on election day and calls upon Nicaraguan authori-*
10 *ties to fully investigate and prosecute those respon-*
11 *sible;*

1 (4) urges President Barack Obama and Sec-
 2 retary of State Hillary Clinton to take immediate
 3 and meaningful measures to encourage the restora-
 4 tion of constitutional rule in Nicaragua, including
 5 opposing loans by international financial institutions
 6 to the Nicaraguan Government;

7 (5) urges the immediate issuance of a final re-
 8 port on the Mission of Electoral Accompaniment of
 9 the Organization of American States, including a de-
 10 tailed report on constitutional irregularities impact-
 11 ing the preelectoral phase in Nicaragua; and

12 (6) urges the United States Ambassador to the
 13 Organization of American States to lead an effort to
 14 use the full power of the organization in support of
 15 meaningful steps to restore democracy and the rule
 16 of law in Nicaragua in accordance to the Inter-
 17 American Democratic Charter, including formally
 18 suspending the Nicaraguan Government under Arti-
 19 cles 20 and 21 of the Inter-American Democratic
 20 Charter.

21 *That the Senate—*

22 (1) *supports the democratic aspirations of the*
 23 *people of Nicaragua;*

1 (2) *deplores the interruption of constitutional*
2 *order in Nicaragua that led to the fraudulent reelec-*
3 *tion of Daniel Ortega on November 6, 2011, elections;*

4 (3) *mourns the victims of act of violence per-*
5 *petrated on election day and calls upon Nicaraguan*
6 *authorities to fully investigate and prosecute those re-*
7 *sponsible;*

8 (4) *urges President Barack Obama, Secretary of*
9 *State Hillary Clinton, and Secretary of the Treasury*
10 *Timothy Geithner to take immediate and meaningful*
11 *measures to encourage the restoration of constitu-*
12 *tional rule in Nicaragua, including withholding*
13 *waivers under section 7031(b) of the Consolidated Ap-*
14 *propriations Act, 2012 (Public Law 112–74; 125*
15 *Stat. 786);*

16 (5) *notes the rapid issuance of a final report by*
17 *the Mission of Electoral Accompaniment of the Orga-*
18 *nization of American States;*

19 (6) *welcomes the January 25, 2012, statement on*
20 *the democratic conditions in Nicaragua by Secretary*
21 *of State Clinton;*

22 (7) *urges the Organization of American States to*
23 *issue a detailed report on constitutional irregularities*
24 *impacting the preelectoral phase in Nicaragua;*

1 (8) *urges the United States Ambassador to the*
2 *Organization of American States to work in concert*
3 *with other member States to use the full power of the*
4 *organization in support of meaningful steps to restore*
5 *democracy and the rule of law in Nicaragua in ac-*
6 *cordance with the Inter-American Democratic Char-*
7 *ter, including invoking articles related to unconstitu-*
8 *tional interruptions of the democratic order in a*
9 *member State; and*

10 (9) *urges the United States Ambassador to the*
11 *Organization of American States to work in concert*
12 *with other member States to strengthen the ability of*
13 *the Organization to protect democratic institutions*
14 *and to respond to the erosion of democracy in member*
15 *States.*

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preamble