

Adoption of a “policy, practice, or procedure” is not an exercise in prosecutorial discretion; rather, the exercise of prosecutorial discretion involves a determination as to whether a particular individual or entity should be the subject of an enforcement action for past conduct.

□ 1530

In other words, nothing in this bill limits prosecutorial discretion. Thus, inserting into the bill an exception for the undefined term “prosecutorial discretion” would only serve to cause confusion.

Worse, including an exception for prosecutorial discretion would also allow the executive branch to move to dismiss every case brought pursuant to this bill on the grounds that it was merely exercising prosecutorial discretion. This would result in costly and wasteful delays in the court’s ability to decide the merits of these important separation of powers disputes in a timely manner.

Additionally, if adopted, the amendment would cause confusion as to the meaning of the Take Care Clause itself. The clause imposes an affirmative duty on the President to “take care that the laws be faithfully executed.” This amendment proposes to interpret that duty by codifying into statutory law that there is a “constitutional authority of the executive branch to exercise prosecutorial discretion.”

However, unlike the duty imposed by the Take Care Clause, the words “prosecutorial discretion” appear nowhere in the text of the Constitution. We should not place an undefined limit on the Take Care Clause into the United States Code.

Finally, the amendment would, in practice, act to prohibit the Federal courts from further refining the contours of appropriate prosecutorial discretion. The base bill seeks to encourage courts to engage in active constitutional issues, not to put entire categories of subjects off-limits from review by the Federal courts.

I urge my colleagues to oppose this amendment, and I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, how much time remains?

The Acting CHAIR. The gentleman from New York has 1½ minutes remaining.

Mr. NADLER. I will yield 1 minute to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Chairman, this is about deporting the DREAM Act students. On page 13 of the committee report, the majority calls out for condemnation the exercise of prosecutorial discretion relative to the DREAMers. It is quite a departure from when Republicans joined with Democrats to say that it is well established that prosecutorial discretion can be used in immigration cases and asking that guidelines be developed and be implemented and used for categories of individuals.

In fact, the “discretion” in “prosecutorial discretion” comes from the Take Care Clause. That is what the Supreme Court has told us. That is the guidance we have from the highest law in the land.

What this is really about, Mr. Chairman, is about the majority’s apparently voracious appetite to deport these young people. That is why the deportation of DREAMers is called out in the committee report. It is why they oppose prosecutorial discretion. I think it is quite a shame.

Mr. GOODLATTE. May I inquire how much time each side has remaining?

The Acting CHAIR. The gentleman from Virginia has 2½ minutes remaining, and the gentleman from New York has 30 seconds remaining.

Mr. GOODLATTE. At this time, I am pleased to yield 2 minutes to the gentleman from South Carolina (Mr. GOWDY).

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. Chairman, prosecutorial discretion encompasses the executive power to decide whether to bring charges, seek punishment, penalties, or sanctions. This next line is really important. It does not include the power to disregard other statutory obligations.

Mr. Chairman, that is from a United States Supreme Court case. So, I guess my question is: I have heard about immigration. I haven’t mentioned immigration. I want to talk about mandatory minimums in drug cases. That has been the law for 20-something years. You have X amount of methamphetamine, you get X amount of time in prison. It is called a mandatory minimum. Are you telling me that the phrase “prosecutorial discretion” includes the Attorney General telling his prosecutors to disregard the law, not to not prosecute the case? That would be consistent. He is not telling them not to prosecute the case. He is telling them don’t inform the judiciary of the drug amounts. That is not prosecutorial discretion; that is anarchy.

So, yes, Mr. NADLER, I agree—or my friend from New York, I agree, Mr. Chairman, with the concept of prosecutorial discretion. I used it for 16 years. But your amendment does not define it. And my fear is—while my friend from New York would never do this, my fear is some may overread it to include allowing a President to disregard obligations that we place on him or her, and under no theory of prosecutorial discretion is that legal.

Mr. NADLER. Mr. Chairman, I don’t have the time to answer all of Mr. GOWDY’s arguments except to say that if this bill were to pass, which it won’t because the Senate won’t look at it, but if the bill were to pass and if my amendment were adopted, it would simply make it easier for the courts to define what prosecutorial discretion is and is not, and I am confident that they would agree with Mr. GOWDY as to some of the horrors not being prosecutorial discretion. But since it would

put prosecutorial discretion as an exception to the bill, then you could get a judicial determination as to what prosecutorial discretion is and what it isn’t.

I urge my colleagues to vote for this amendment, and I yield back the balance of my time.

Mr. GOODLATTE. Mr. Chairman, for the reasons already cited, I urge my colleagues to oppose this amendment which would gut the bill, and I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from New York (Mr. NADLER).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. NADLER. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from New York will be postponed.

The Acting CHAIR. The Committee will rise informally.

The Speaker pro tempore (Mr. GOWDY) assumed the chair.

#### MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Brian Pate, one of his secretaries.

The SPEAKER pro tempore. The Committee will resume its sitting.

#### EXECUTIVE NEEDS TO FAITHFULLY OBSERVE AND RESPECT CONGRESSIONAL ENACTMENTS OF THE LAW ACT OF 2014

The Committee resumed its sitting.

AMENDMENT NO. 3 OFFERED BY MS. JACKSON LEE

The Acting CHAIR (Mr. DUNCAN of South Carolina). It is now in order to consider amendment No. 3 printed in part A of House Report 113-378.

Ms. JACKSON LEE. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Add, at the end of the bill, the following:

(d) LIMITATION.—Nothing in this Act limits or otherwise affects the ability of the executive branch to comply with judicial decisions interpreting the Constitution or Federal laws.

The Acting CHAIR. Pursuant to House Resolution 511, the gentlewoman from Texas (Ms. JACKSON LEE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Texas.

Ms. JACKSON LEE. Mr. Chairman, frankly, maybe I should offer a good thanks to the distinguished members of the majority, the Republicans, my chairman and others, for giving us an opportunity to have a deliberative constitutional discussion that reinforces