

constitutional right of due process, since one cannot actually be said to have committed the acts specified in §1481(a)(7)—each of which are crimes against the United States—until and unless those acts have been proven to a jury beyond a reasonable doubt. As the Supreme Court expressly held in *Kennedy v. Mendoza-Martinez*, Congress cannot deprive an individual of his or her citizenship as a “punishment” absent the procedural safeguards of a criminal trial.”

Congress has precious little time left before adjourning until November to decide how and under what authority to address the situation in Iraq and Syria. Members should spend this time debating these grave questions, not preoccupied with needless and likely unconstitutional legislation. In the event that Senator Cruz moves forward with the Expatriate Terrorist Act, I urge you to oppose it.

Sincerely,

DAVID COLE,

*Hon. George J. Mitchell Professor in Law and Public Policy at Georgetown University Law Center; co-chair of the Constitution Project's Liberty and Security Committee.*

AMERICAN CIVIL LIBERTIES UNION,

*Washington, DC, September 17, 2014.*

Re Oppose Cruz Bill S. 2779, Expatriate Terrorists Act; S. 2779 Is Unnecessary and Dangerous.

DEAR SENATOR: The American Civil Liberties Union urges you to refrain from cosponsoring—and oppose if offered—S. 2779, the Expatriate Terrorists Act, which is sponsored by Senator Ted Cruz. The bill would strip U.S. citizenship from Americans who have not been convicted of any crimes, but who are suspected of being involved with designated foreign terrorist organizations. S. 2779 is dangerous because it would attempt to dilute the rights and privileges of citizenship, one of the core principles of the Constitution. As the Supreme Court explained in 1967 in *Afroyim v. Rusk*, “the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. . . . [It creates] a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship.” The bill is also unnecessary because existing laws already provide significant penalties for U.S. citizens who engage in acts of terrorism.

The Supreme Court has consistently found that citizenship is a fundamental constitutional right that cannot be taken away from U.S.-born citizens unless voluntarily renounced. An already overbroad federal statute, 8 U.S.C. §1481, provides that an American can lose his or her nationality by performing either of the following broad categories of acts with the intention of relinquishing his or her nationality:

acts that affirmatively renounce one's American citizenship, such as taking an oath of allegiance to a foreign government or serving as an officer in the armed forces of a foreign nation; or

committing crimes such as treason or conspiracy to overthrow the U.S. government, or bearing arms against the United States, “if and when [the citizen] is convicted thereof by a court martial or by a court of competent jurisdiction.”

The Expatriate Terrorists Act would add a new category of expatriating acts—“becoming a member of, or providing training or

material assistance to, any designated foreign terrorist organization.” This implicates several constitutional concerns.

First, the material assistance provision added by the bill would treat suspected provision of material assistance as an act that affirmatively renounces one's American citizenship. Thus, unlike treason or conspiracy to overthrow the U.S. government, this provision would not require a prior conviction. It would only require an administrative finding by an unspecified government official that an American is suspected of providing material assistance to a designated foreign terrorist organization with the intention of relinquishing his or her citizenship. This provision would violate Americans' constitutional right to due process, including by depriving them of citizenship based on secret evidence, and without the right to a jury trial and accompanying protections enshrined in the Fifth and Sixth Amendments. In sum, the bill turns the whole notion of due process on its head. Government officials do not have the power to strip citizenship from American citizens who never renounced their citizenship and were never convicted of a crime.

Second, the material assistance provision suffers from the same constitutional flaws that plague other material support laws, and goes far beyond what the Supreme Court has held is constitutionally permissible when First and Fourth Amendments rights are at stake. In 2010, the U.S. Supreme Court disappointingly ruled in *Holder v. Humanitarian Law Project* that teaching terrorist groups how to negotiate peacefully could be enough to be found guilty of material support. That logic might apply to criminal conduct; it should not cause an American to lose his or her citizenship.

For these reasons, the ACLU urges you to refrain from cosponsoring S. 2779, and oppose it if it is offered for a vote. Please contact Arjun Sethi if you have any questions regarding this letter.

Sincerely,

LAURA MURPHY,  
*Director, Washington Legislative Office.*

ARJUN SETHI,  
*Legislative Counsel, Washington Legislative Office.*

Ms. HIRONO. Mr. President, I object to the unanimous consent request.

The PRESIDING OFFICER. Objection is heard.

The Senator from Texas.

Mr. CRUZ. Mr. President, I would note that the objection from my friend from Hawaii observed that this legislation has not gone through the Judiciary Committee, and that is true. It is true, of course, because the Senate is expected to adjourn this week as Senators return to their home States to campaign for elections.

If it were to go through the Judiciary Committee, it would mean it would not pass in time to prevent Americans fighting right now with ISIS from coming back and murdering other Americans. There is an urgency and exigency to this situation.

This is also legislation the Senate considered before. As I noted, it was bipartisan legislation. Joe Lieberman, Scott Brown, Hillary Clinton are all in one accord.

It is unfortunate the Democratic Senators chose to object to this, to prevent this commonsense change in law.

I would note when it comes to constitutional concerns, I don't know if anyone in this Senate has been more vigorous or more consistent in terms of defending the constitutional rights of Americans than I have endeavored to be during my short tenure.

I will yield to no one in passion for defending constitutional liberties, but I note there is an existing law that has been on the books for many decades covering the renunciation of U.S. citizenship.

It is current law right now that if someone goes and joins a foreign nation and takes up arms against America, that act has long been recognized as constituting a constructive renunciation of U.S. citizenship. As for the question of due process, existing law provides due process that an individual who goes and takes up arms with ISIS—and all this does is treat ISIS, a nonstate terrorist group, on the same footing as taking up arms with a foreign nation against America. It is a recognition of the changed circumstances of this world that many of the gravest threats facing this country are not coming from nation states but are coming from terrorist groups that sadly some Americans are choosing to join forces. The existing law has considerable due process protection such that anyone who is determined to have affirmatively renounced his or her citizenship has a right to challenge that in Federal district court and a full proceeding under existing due process standards to have that matter resolved.

The question is very simple: Would any reasonable person want an American who is right now in Iraq, who is right now training with ISIS, who is right now taking up arms, who is right now participating in crucifying Christians, who is right now beheading children, who is right now participating in beheading two American journalists, who is right now standing arm in arm with virulent terrorists who have pledged to take jihad to America—would anyone in good conscience of either party want that person to be able to come back and land at La Guardia Airport with a U.S. passport and walk unmolested onto our streets? The obvious answer is no.

It saddens me we could not see Republicans and Democrats come together, and it saddens me that in an election year the Democratic Senator, who is up for reelection, chose to block this commonsense legislation rather than to work together to protect the American citizens.

I hope in time we see less election-year politics and more service to the men and women whom all of us are obliged to protect.

I yield the floor.

The PRESIDING OFFICER. The Republican leader.

UKRAINE

Mr. McCONNELL. Earlier we had an opportunity to hear from Ukraine's

President Petro Poroshenko. Ukraine is a friend of the United States and it has looked to the West to meet naked Russian aggression.

As President Poroshenko's speech reminded us, there are objectives that bind our countries, such as the pursuit of freedom and representative government. Let's make it clear. We stand with Ukraine. We stand with the Ukrainian people in their struggle against external aggression and we stand with them in their struggle to secure the same kinds of rights and liberties each of us enjoy in America.

#### THE CONTINUING RESOLUTION

Mr. McCONNELL. On a different matter, today the Senate will consider House legislation to fund the government and address the threats of Ebola and ISIL.

These are important issues. Many Members on both sides plan to support this legislation. I know others have some concerns too. I understand those concerns. I share some of them, but while no bill is perfect, I believe this legislation is worth supporting.

I would like to thank my fellow Kentuckian, Representative HAL ROGERS, for his leadership and work on this bill because it does a lot of important things and all without raising discretionary spending. It would reauthorize important counternarcotics operations that help keep our children and communities safe and it would extend the Internet Tax Freedom Act until December, giving us a chance to secure a permanent extension.

It would block some of the administration's discretionary policies against Kentucky coal and help address the administration's veterans crisis by providing more resources to address the backlog and investigations into potential wrongdoing that is a positive step toward the more comprehensive reforms Republicans would like to see.

Critically, the legislation would provide authorization to train and equip a moderate Syrian opposition ground force, a key component of the President's efforts to disrupt, dismantle, and defeat ISIL.

While I am concerned about the ability of the coalition to generate sufficient combat power to defeat ISIL within Syria, I do support the President's proposal to begin the program. The authorization is of limited duration and it now contains important reporting requirements that will allow Congress to assess and oversee this program to measure whether the mission is actually being accomplished.

The Ebola crisis is another area where the President deserves congressional support. As you know, he recently announced several messages to contain the spread of the disease in Africa and prevent it from reaching our shores.

Accordingly, the bill contains additional resources to support research and bolster our Nation's effort in as-

sisting Africa to manage this growing crisis.

In summary, this isn't perfect legislation, but it begins to address many of our constituents' top concerns without raising discretionary spending. It positions us for better solutions in the months to come.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. HOEVEN. Mr. President, I ask unanimous consent to speak for 35 minutes for the purposes of engaging in a colloquy with my colleagues on the issue of the Keystone XL Pipeline.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### KEYSTONE XL PIPELINE

Mr. HOEVEN. Mr. President, tomorrow is the sixth anniversary of the application for approval of the Keystone XL Pipeline. Six years. Six years ago, September 19, 2008, the TransCanada company applied for a permit for approval to cross the Canadian border to build the Keystone XL Pipeline from Hardisty, Canada, down to Cushing and ultimately the gulf coast, to provide not only oil from Canada but to move oil from States such as my State of North Dakota, of light, sweet Bakken crude, oil from Montana, to our refineries here in the United States. Six years ago, that application was filed, effective tomorrow. So we are here today to talk about the need not only for a decision on the Keystone XL Pipeline but for approval of this vitally important project.

The reality is we can make this country energy secure, energy independent, working with our closest friend and ally, Canada. But to do it we not only need to develop all of our resources, our energy resources in this country, and work with Canada as they develop their energy resources, but we need the infrastructure to safely, effectively, efficiently, dependably move that energy to where it is needed, to our consumers.

That is what the Keystone XL Pipeline project is all about. This is truly about building the roads, the rails, the pipelines, the transmission, the energy infrastructure we need as a vital part of our energy plan for this country. We have bipartisan support. We have 57 Senators who support this legislation—57. The reality is I think by next year we will have 60.

So while we sit here and wait—now for 6 years, effective tomorrow 6 years, waiting for a decision from the President on the Keystone XL Pipeline—ultimately I believe this decision will be made by the American people, as it always is and as it always should be. Because I believe that after these elections in November as we go into next year we will not only have 57 Senators who support this project, we will have over 60.

Then Congress will pass legislation, a bill that we have submitted, a bipartisan bill we have pending before this

body right now. We will pass it. We will attach it to something the President will not veto. The House has already passed this legislation. Because over 70 percent, I think in the most recent poll, of the American people want this project. They want this project approved.

So here after 6 years—we are going to talk about some of the history of this and all of the work we have done. But before I do that, I want to turn to my colleague from Wyoming, somebody who is incredibly knowledgeable when it comes to energy, somebody who has worked on energy in all different aspects, somebody who truly understands that, look, for the benefit of the American people to build our energy future we not only need to produce that energy, we need the infrastructure to transport it safely, effectively, and well.

I wish to call on the Senator from Wyoming for his remarks on this sixth anniversary of the application, waiting for approval, waiting for a decision from the administration on the Keystone XL Pipeline, for his thoughts and for his comments. I turn to the good Senator from Wyoming.

Can the Senator give us his thoughts as to why this project is still awaiting a decision from the administration, after the President told us, told our caucus last year, at a caucus we had here in an adjacent room, that we would have a decision by the end of 2013, why we are here still awaiting a decision on behalf of the American people?

Mr. BARRASSO. Mr. President, I appreciate and want to salute the significant leadership we have seen on this issue from the Senator from North Dakota. He has been a stalwart fighter, very focused on this issue, and focused on putting together a bipartisan coalition of supporters. Americans want the jobs, they want the energy, they want action. We have an opportunity, but we have been waiting 6 long years.

The Senator from North Dakota is absolutely right. It was at a meeting in the Republican conference where the President of the United States came in. I asked the specific question: When will we expect an answer so we can get moving with the jobs and the energy that the American people are asking for?

President Obama said: Well, by the end of the year. He said that almost a year and a half ago. It was the end of the year 2013 that the promise was going to be fulfilled. Now here we are halfway—beyond halfway—through 2014. Nothing yet. Not a thing from the White House, a White House held hostage by environmental extremists who are trying to block important jobs and important energy and this important project.

We are here in the Senate today and the majority leader is ready to close this place down until after the elections. He closed it down—if you count the number of days from the beginning