



Written by [Joe Wolverton, II, J.D.](#) on September 13, 2015

Massie, Amash Citing Constitutional Concerns Oppose Iran Deal

Last week, two of the most constitutionally consistent congressmen voted to oppose President Barack Obama's agreement with Iran regarding the latter's nuclear ambitions.

U.S. Representatives Thomas Massie of Kentucky (shown on left) and Justin Amash of Michigan (right) explained that their decision to reject the president's plan was based on their understanding of the Constitution and their role as members of the House of Representatives.



"Consistent with my oath to support and defend the Constitution, I must oppose this nuclear deal. There are at least two major constitutional defects with the nuclear deal," Amash wrote in a statement published on his official Facebook page.

Amash then laid out the two constitutional concerns that prompted him to block the Iran nuclear deal championed by the president:

First, President Barack Obama refuses to recognize the agreement as a treaty, subject to approval under the Constitution's Treaty Clause (Art. II, Sec. 2, Cl. 2). Under the Treaty Clause, the president "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur." To avoid this higher threshold for approval, the Obama administration asserts that the nuclear deal is merely an "executive agreement" that binds only this president.

Even if we accept this dubious claim, there is a second constitutional defect that compels me to reject the nuclear deal. Under the Take Care Clause (Art. II, Sec. 3, Cl. 5), the president must "take Care that the Laws be faithfully executed."

The congressmen then goes on to detail this point of opposition:

In May, both houses of Congress passed, and the president signed into law, H.R. 1191, the Iran Nuclear Agreement Review Act of 2015 (Review Act). The Review Act provides a process for congressional oversight of any nuclear deal, so that Congress can determine whether the nuclear-related sanctions Congress has imposed on Iran should be lifted. I have supported sanctions on Iran directed at preventing the country from obtaining or using a nuclear weapon (in contrast to sanctions targeting non-nuclear-related civilian activities), and it's likely that negotiations would not have taken place had those sanctions not been enacted.

The Review Act requires the president to submit to Congress the text of any nuclear deal reached with Iran. Submission of the nuclear deal triggers a period of review for Congress to analyze the agreement—a period during which the president is prohibited from taking any actions to lift statutory sanctions.



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The precise language of the Review Act recognizes that a comprehensive nuclear deal includes many separate components, and that for members of Congress to accurately assess the merits of the agreement, Congress must have access to all portions of the agreement. Thus, the Review Act carefully defines “agreement” to include “annexes, appendices, codicils, side agreements, implementing materials, documents, and guidance, technical or other understandings, and any related agreements.”

We now know that there are at least two side agreements between Iran and the International Atomic Energy Agency (IAEA) that are integral to the nuclear deal but nevertheless will not be shared with Congress. These side agreements cover how a primary Iranian military site will be inspected for nuclear activity and how Iran will resolve outstanding issues on possible military dimensions of its nuclear program. Remarkably, it was only through a chance meeting between two members of Congress and the IAEA that the existence of these secret agreements came to light. The Obama administration apparently preferred to keep Congress in the dark, and even now the administration refuses to provide the side agreements to Congress. Indeed, Secretary of State John Kerry claims that even the president’s negotiating team doesn’t have access to these side agreements.

The Obama administration’s secrecy surrounding these side agreements casts serious doubts on its other claims about the nuclear deal, and it makes clear that the president has not been working with Congress in good faith. The president signed the Review Act into law knowing full well that it requires him to provide all side agreements to Congress. The administration should not have negotiated a final nuclear deal that allows portions of the agreement to be withheld from Congress, because the president knows that his agreeing to such a nuclear deal violates U.S. law and his duty under the Constitution’s Take Care Clause.

While Amash joined the rest of the Republican majority in voting against the Iran nuclear deal, Representative Massie chose to signal his position by voting “present.”

Massie stood alone (as he has done in the past), with every other member of the House of Representatives voting along party lines.

Though he did not vote with Amash, Massie expressed constitutional concerns about the deal with Iran struck by the president, as well.

“Pursuant to the Constitution, treaties must be approved by a ‘2/3 concurrence’ of the Senate,” Massie explained in a statement released after Friday’s vote. “As a member of the House of Representatives, I have no authority to approve a treaty.”

Although both lawmakers refused to rubber stamp President Obama’s “executive agreement,” the explanations offered by them are subtly though substantially different.

Massie demurred, describing the legislation offered Friday as “a ‘show-boat’ vote at best,” and one that would never be taken up by the upper chamber.

Amash described his disapproval with reference to the Constitution, yet took upon himself the responsibility of rejecting the president’s proposal. Massie, on the other hand, having searched the charter for authority to opine on the issue and finding none, cast no vote at all.

As is so often the case in our era, however, neither the vote nor the philosophy of the two congressmen will matter much in the long run. The fix, again, is in and the president will get his way without being



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forced to conform to constitutional limits on his power.

On September 5, *The New American's* Steve Byas [reported the Republican-sponsored betrayal](#):

Although the Constitution clearly states that any treaty negotiated by the president must have the approval of two thirds of the U.S. Senate, Senator Bob Corker (R-Tenn.) paved the way for yet another Obama victory over Congress and the Republicans when he won passage of the Corker-Menendez bill back in April. This legislation flipped the necessity of a president obtaining the vote of two thirds of the Senate to gain treaty approval, creating a situation wherein he, in effect, must have the support of only one third of each house of Congress.

This is because, thanks to Senator Corker and all those members of Congress who voted for his legislation (S. 615), the president would submit the measure (which Obama insists on calling an "executive agreement" rather than a treaty) to Congress, which could then vote a resolution of disapproval. If the measure failed to win two thirds of both houses of Congress, then President Obama could simply veto the act of disapproval.

While the threat of a nuclear-armed Iran may be real, the threat of a constitutionally contrary Congress acting in concert with an aggressively expansive executive is clear, present, and perilous to the rule of law and the future of this republic.

Photo at top shows Reps. Thomas Massie (left) and Justin Amash: AP Images



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