



Written by [Alex Newman](#) on May 13, 2014

Critics Mount Constitutional Attack on Dreaded FATCA Tax Regime

As the implementation deadline looms large for a [deeply controversial new tax regime](#) adopted largely by congressional Democrats and the Obama administration, critics of the measure are mounting a constitutional challenge, saying the scheme is wildly unconstitutional and must be struck down. Opponents of the [Foreign Account Tax Compliance Act](#), or FATCA, have now brought on one of America's top constitutional lawyers to lead the fight. In his initial analysis, the heavyweight attorney concluded that the sprawling addition to the U.S. tax code violates multiple provisions of the Constitution and, as such, must come down.



Faced with what even compliance mongers have said would be a “train wreck” on July 1, the day full enforcement of FATCA was supposed to begin following previous unilateral delays by the Obama administration, the IRS and the U.S. Treasury recently announced a “transition period” extending into 2015. According to the opaque announcement, the federal government will delay imposing harsh penalties on banks for now — as long as authorities believe they are trying in “good faith” to comply with the byzantine new tax regime. In other words: more lawlessness.

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If opponents of the scheme get their way, however, it may all be a moot point. Attorney Jim Bopp — described by analysts as a [“superlawyer”](#) for his role in the Supreme Court striking down other unconstitutional statutes such as McCain-Feingold — announced that he was taking up the case. In an interview with the *Washington Times* and other statements, Bopp, who is working with the group Republicans Overseas to kill the scheme, outlined three primary constitutional problems with FATCA and the related Foreign Bank Account Report (FABR).

“It is our preliminary opinion that the potentially meritorious claims are a violation of the treaty power, an 8th Amendment Excessive Fines Claim, and a 4th Amendment Search and Seizure Claim,” Bopp said in a [statement posted online by Republicans Overseas](#). “We do not believe that a claim based on an unconstitutional delegation of Congressional power has merit. We believe that these three claims form the basis for a successful suit that would stop the damage that FATCA and FBAR have inflicted on U.S. citizens.”

First of all, because the Treasury is unilaterally signing [unauthorized pseudo-treaties with foreign governments to violate privacy rights](#), the Senate's constitutionally mandated role in ratifying treaties has been usurped. Numerous other experts have made the same argument, as *The New American* magazine reported in a [major report on FATCA](#) published last month. Already, without any purported



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authority to do so from the Constitution, or the FATCA statute itself, [dozens of such “agreements”](#) to gather and share private financial information have been [signed with foreign rulers](#).

According to Bopp, the FATCA statute also violates two of the unalienable rights enshrined in the U.S. Constitution. Under the Fourth Amendment, privacy is supposed to be protected and the government needs a warrant to infringe on it. FATCA, though, takes the opposite approach, indiscriminately gathering sensitive information on everyone in an [NSA-style dragnet for perusal by authorities](#). Multiple foreign governments have been coerced by the Obama administration to [undo their own protections for privacy rights](#) in an effort to comply with FATCA.

Finally, the Eighth Amendment prohibiting cruel and unusual punishment, as well as excessive fines, might also represent a viable avenue for challenging FATCA and related schemes. Under the emerging tax regime, Americans abroad who for whatever reason have not complied perfectly with unimaginably complex IRS demands can be hit with crippling penalties and fines that in some cases could literally threaten the life savings of entire families. Critics say that must end; and experts believe the courts might be inclined to agree. Most U.S. expats were not even aware of the purported IRS requirements that now threaten their financial survival.

“The U.S. Constitution protects every citizen’s liberty and freedom, while FATCA undermines both,” Bopp was quoted as saying by the *Washington Times* last week in an article about the legal challenges. “This astonishingly bad law manages to thumb its nose at the Constitution.” Indeed, more than a few analysts have actually described FATCA as potentially the “worst” tax law currently on the books — and it has not even gone into full effect yet, though Americans overseas in particular are already suffering from it.

Leaders in the fight against FATCA vowed to take the challenge all the way to the Supreme Court if needed. “Seeking legal rather than legislative remedy on behalf of Americans living abroad before the scheduled July 1 full implementation of the law is the only available course for now,” Republicans Overseas leader Solomon Yue told the *Times*. He is also a member of the Republican National Committee, which [adopted a resolution advocating repeal of FATCA for a wide range of reasons](#).

“FATCA violates citizens’ right to privacy,” Yue explained in an interview with a Swiss financial publication. “Personal financial data transferred from foreign banks to the IRS violates the Fourth Amendment which prohibits unreasonable searches and seizures without a warrant. However, even living abroad, a U.S. citizen still is protected by our Constitution. Using an IGA (Intergovernmental Agreement) between the U.S. government and a foreign government as a license for a warrantless search is unconstitutional.”

He also blasted the executive branch’s usurpation of power. Especially troubling, Yue added, is the fact that thousands of Americans living abroad — the vast majority of them in the middle class — are being forced by FATCA to surrender their citizenship. And because the new tax regime imposes draconian mandates and penalties on foreign banks, U.S. citizens worldwide are being shut out of foreign banking systems, with financial institutions preferring to steer clear of Americans to avoid the infamous IRS and compliance with FATCA.

For Yue, the disaster has a special significance. “I was born in Shanghai and lived under Chinese Communist tyranny,” he explained in the interview when discussing his [successful effort to have the Republican Party stand up against FATCA](#). “For me, U.S. citizenship is freedom and when I read that Americans were forced to renounce their citizenship, it hit a raw nerve.”



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Noting that Bopp brought down the major assaults against the First Amendment contained in the McCain-Feingold campaign-finance legislation, Yue expressed confidence in the high-profile attorney's ability to derail FATCA, too. "His winning record in the U.S. Supreme Court is 9 out of 13 cases," Yue said. Across the growing global anti-FATCA alliance, Bopp's involvement has been a cause for celebration.

Aside from the obvious constitutional issues plaguing FATCA, critics say pragmatic and economic concerns are also huge. More than a few experts and lawmakers in both parties, for example, have warned of potential [devastation to the American economy](#) as the new tax regime goes into effect. Among other concerns, officials and analysts say the scheme could spark massive disinvestment from the United States and a flight of deposits from U.S. banks. The entire financial sector could again be put in jeopardy, [according to multiple sources](#). U.S. exports and jobs, by extension, will also suffer.

Separately, Americans abroad — teachers, missionaries, small-business owners selling U.S.-made products, and more — have been especially hard hit by FATCA so far. The problem has become so bad that [record numbers of Americans are being forced to surrender their citizenship](#). Lives have already been destroyed, and more will be in the future unless the scheme is stopped. An estimated 7.5 million U.S. citizens live abroad.

Perhaps even more alarming is how self-styled international "authorities" have [seized on FATCA to erect a new global tax regime](#). Both the Organization for Economic Cooperation and Development (OECD) and the G-20, which includes ruthless dictatorships and gangster regimes, have joined forces to create what is being dubbed by analysts GATCA, or the Global Account Tax Compliance Act. Their [socialist-backed plot is admittedly inspired by, and modeled on, the new FATCA regime](#). The potential for disaster is gargantuan.

While Americans work through Congress and the courts to kill FATCA, Canadians are also mounting serious challenges to the U.S. tax regime. A broad coalition in Canada that includes FATCA critics from across the political spectrum, for example, is working to quash the scheme in court as well. They argue, among other points, that it violates Canada's sovereignty along with multiple provisions and individual rights guaranteed under the Canadian equivalent of the Bill of Rights.

Of course, if the scheme is struck down by the courts in the United States first, it would all be a moot point anyway. Still, critics say every avenue must be pursued before the full destructive power of FATCA is completely unleashed on Americans — and the world.

Alex Newman is a correspondent for The New American, covering economics, education, politics, and more. He can be reached at anewman@thenewamerican.com. Follow him on Twitter [@ALEXNEWMAN_JOU](#).

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