



Written by [Steve Byas](#) on March 12, 2015

Senators' Letter to Iran Raises Constitutional Questions

After 47 Republican U.S. senators sent a letter to Ayatollah Khamenei of Iran, cautioning him that any agreement he might reach with President Obama over Iran's nuclear weapons program could be reversed by a future U.S. president, it touched off a storm of protest from defenders of the Obama administration. Some are even accusing the senators of treason.

The senators attempted to explain to the Ayatollah that the U.S. Constitution does not allow the president to reach legally binding agreements with foreign nations without Senate approval. "In the case of a treaty," the letter stated, "the Senate must ratify it by a two-thirds vote."



The letter told Khamenei and the rest of the Iranian government,

We will consider any agreement regarding your nuclear-weapons program that is not approved by the Congress as nothing more than an executive agreement between President Obama and Ayatollah Khamenei. The next president could revoke such an executive agreement with the stroke of a pen and a future Congress could modify the terms of the agreement at any time.

The "We the People" petition filed with the Whitehouse.gov website has garnered over 150,000 signatures, calling upon the Obama administration to prosecute the senators who signed the letter:

Forty-seven senators saw fit to issue a condescending letter to the Iranian government, stating that any agreement brokered by our president would not be upheld once the president leaves office. This is a clear violation of federal law. In attempting to undermine our own nation, these 47 senators have committed treason.

The petition also cites the 1799 Logan Act, which forbids unauthorized U.S. citizens from negotiating with foreign governments.

Of course, treason is the most serious charge leveled against the 47 senators, because it could carry the death penalty, and the charge of these petitioners illustrates how little respect they have for the U.S. Constitution. Treason is the *only* crime defined in the Constitution. The Framers wrote,

Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Constitution gives Congress the power to "declare the punishment of treason," but places limits on that power, stating: "No attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attained."

So, the clear wording of the Constitution would seem to preclude a charge of treason against the 47



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senators, who were simply warning the Ayatollah that, under our Constitution, the president of the United States is not to exercise dictatorial powers, even in foreign policy. Certainly the senators are not making war against the United States by simply writing a letter, and if their detractors believe the letter is somehow giving “aid and comfort” to the “enemies” of the United States, then we must conclude they believe Iran is an enemy of the United States. Since the senators have informed Iran’s Ayatollah Khamenei that any future president could reverse the agreement reached with Obama, it is difficult to see how that is in any way “comforting” to the mullahs of Iran.

When the Constitution was written, the Founders wanted to prevent the U.S. government from misusing a charge of treason to stifle political dissent. In history, kings were often considered to have been chosen by God, and therefore, opposition to the king was not only a betrayal of the country, but regarded as doing the work of the devil. In fact, the etymology of the word “traitor” means “one who delivers,” and is a reference to the betrayal of Jesus by Judas, when he delivered the Lord to the authorities. The delegates at the constitutional convention were well aware of how charges of treason were abused, such as when King Henry VIII of England had several men executed for treason, who had simply expressed opposition to his divorce from Queen Catherine to marry Lady Anne Boleyn.

In England, family members of those convicted of treason could also be executed, and often the family was kept from inheriting the traitor’s estate. To prevent this in America, the Constitution specifically forbade the “corruption of blood” (that descendants could not inherit), and provided that only the life of the traitor himself could be “forfeited.”

The charge of treason has been used only sparingly in American history. Several men were convicted of treason after the Whiskey Rebellion, but President George Washington pardoned them, against the objections of Secretary of the Treasury Alexander Hamilton. Aaron Burr was charged with treason during the Jefferson administration, but was acquitted. Even when John Walker Lindh fought against American forces in Afghanistan in 2001, he was not charged with treason. Perhaps the best example of a person who met the constitutional definition of treason was John Brown. In 1859, he seized a federal arsenal in Virginia, with the hope of leading a slave rebellion which would make him president of the United States. He was hanged for treason.

But more recently, we have seen frivolous accusations of treason. For example, when Rush Limbaugh expressed the hope that Obama would “fail” to achieve his presidential goals, some Obama supporters called the radio commentator’s caustic comments “treason.” Australian Julian Assange of WikiLeaks certainly released some documents which could be considered damaging to the United States, but since he is not a U.S. citizen, it is impossible for him to have committed “treason” against the United States.

It would also be difficult to reasonably argue that the 47 senators who sent the letter to Iran’s Ayatollah Khamenei had violated the Logan Act, which forbids unauthorized U.S. citizens from negotiating with foreign governments. After all, Article II of the U.S. Constitution specifically gives the Senate a significant role in any negotiations with foreign governments. Referring to the president, Article II states, “He shall have power, *by and with the advice and consent of the Senate*, to make treaties, provided two-thirds of the senators present concur.” Of course, the president has rejected the advice of the Senate in the course of his negotiations with Iran, but they have certainly been within their constitutional rights to have offered it. In fact, some constitutional experts have interpreted the “consent” of the Senate to mean that the president must have the “consent” of the Senate to even enter into any treaty *negotiations* with a foreign power. Even if one does not take that position, the Constitution is clear that any agreement the president makes with a foreign government must have the



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approval, or concurrence, of two-thirds of the Senate.

By this analysis, it appears that the 47 senators are the political leaders who are following the intent of the Framers of the Constitution, not the president of the United States.

Obama himself dismissed the letter writers, saying they had entered into an “unusual coalition” with the hard-line religious leaders of Iran. But, if anyone is in a coalition with Iran’s leaders, it is President Obama, not the senators. Iran’s foreign minister, Javad Zarif, appeared to have entered into an actual coalition with Obama, because he argued that if a president revoked a deal between his government and Obama, it would be a blatant “violation of international law.” Zarif insisted that “international law” trumped U.S. “domestic” law. The *domestic* law that Zarif was referencing is the U.S. Constitution, which requires the concurrence of two-thirds of the U.S. Senate before a presidential agreement with a foreign government is considered a treaty, and therefore a binding law in the United States.

Former Secretary of State Hillary Clinton (an expected Democratic candidate for president next year) joined in the attack on the senators, declaring, “Either these senators were trying to be helpful to the Iranians or harmful to the Commander-in-chief in the midst of high-stakes international diplomacy.”

Clinton’s use of the term “Commander-in-chief” raises some questions about her understanding of the Constitution. A president is “Commander-in-chief” only of the nation’s armed forces. The term does not apply to his role in negotiating an agreement with a foreign government. One must ask, just who is the president commanding when he makes these agreements? Congress? The Constitution does not make the president the “Commander” of Congress, or the “Commander” of the American people in general. That would be a more appropriate title for an American *king*, not a president.

Vice President Joe Biden weighed in as well, arguing that the senators’ letter “ignores two centuries of precedent.” This is also instructive, since Biden does not cite (probably because he cannot) the Constitution as giving the president power to make agreements on his own, without the advice and consent of the Senate. He instead cites “*precedent*.”

Regardless of what one thinks concerning the merits of an agreement with Iran over its nuclear program, including the question of whether Iran is even pursuing a nuclear weapons program as claimed (see [here](#) and [here](#)), the larger issue is the continued trend of the concentration of power in the executive branch of the federal government, in clear violation of the letter and the spirit of the Constitution.



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