Testimony of James Bopp, Jr.[1]
Before the Subcommittee on Government Operations of the House Committee on Oversight and Government Reform Regarding the Foreign Account Tax Compliance Act

Thank you for the opportunity to testify regarding the Foreign Account Tax Compliance Act ("FATCA"). My testimony today will focus on FATCA, the accompanying Intergovernmental Agreements ("IGAs"), and the Report of Foreign Bank and Financial Accounts ("FBAR"). I will discuss (1) the current state of these laws, (2) their negative effects, and (3) their unconstitutionality.

I. Overview of the FATCA, the IGAs, and FBAR.

A. FATCA

FATCA was enacted on March 18, 2010 as a fiscal offset provision to the Hiring Incentives to Restore Employment Act of 2010, Pub. L. No. 111-147, 124 Stat. 71 (2010). It was enacted for the ostensible purpose of reducing tax evasion by U.S. taxpayers who fail to report foreign assets located outside of the U.S.[2] Yet in practice, FATCA has trapped innocent U.S. citizens in a shockingly draconian scheme, cutting them off from basic banking services in the country they call home and forcing them to disclose information that they would not otherwise disclose. Moreover, it forces foreign financial institutions—with the threat of a significant penalty if they do not comply—to search out and report any U.S. account holders. As discussed

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[2] *See generally* Andrew Quinlan, The Foreign Account Tax Compliance Act Will Fail to Curb Tax Evasion, Mar. 16, 2014, https://www.forbes.com/sites/realspin/2014/03/16/the-foreign-account-tax-compliance-act-will-fail-to-curb-tax-evasion/#1f8de1d768a8.

more fully below, the costs associated with such institutions becoming compliant is staggering.

FATCA is codified at 26 U.S.C. §§ 1471–74, 6038D and other scattered sections of Title 26, and has two primary components: (1) individual reporting and (2) foreign financial institution reporting.

1. Individual Reporting

The first FATCA component requires individuals to report foreign financial assets when the aggregate value of all such assets exceeds $50,000. 26 U.S.C. § 6038D(a). While the statute permits the Secretary of the Treasury to prescribe a higher threshold amount, this provision offers no additional protection to U.S. citizens. *Id*. This is because U.S. citizens are unable to rely on a threshold amount that is subjective and which the Secretary could revert at any time.

Currently, the Secretary has prescribed two separate FATCA reporting thresholds for individuals living within the U.S. and individuals living outside the U.S. For individuals living within the U.S., foreign financial assets become reportable if the aggregate value of one's assets is equal to or greater than $50,000 on the last day of the tax year or $75,000 at any time during the tax year.[3] These amounts double for married individuals filing jointly.[4] For individuals living outside of the U.S., foreign financial assets become reportable if the aggregate value of one's assets is equal to or greater than $200,000 on the last day of the tax year or $300,000 at any time

[3] *See generally* IRS, Comparison of Form 8938 and FBAR Requirements, https://www.irs.gov/Businesses/Comparison-of-Form-8938-and-FBAR- Requirements (last visited Apr. 19, 2017).

[4] *Id*.

during the tax year.[5] These amounts also double for married individuals filing jointly.[6]

An individual's reportable financial assets must be reported to the IRS with the individual's annual tax return using Form 8938. 26 C.F.R. § 1.6038D-4(a)(11). For each foreign account, the individual must report:

i. the name and address of the financial institution at which the account is maintained;

ii. the account number;

iii. the maximum value of the account during the taxable year;

iv. whether the account was opened or closed during the taxable year;

v. the amount of any income, gain, loss, deduction, or credit recognized for the taxable year and the schedule, form, or return filed with the IRS on which such amount is reported; and

vi. the foreign currency in which the account is maintained, the foreign currency exchange rate, and the source of the rate used to determine the asset's U.S. dollar value.

26 U.S.C. § 6038D(c); 26 C.F.R. § 1.6038D-4(a). Form 8938 additionally requires an individual to report the aggregate amount of interest, dividends, royalties, other income, gains, losses, deductions, and credits for all accounts.[7]

Individuals who fail to report such assets are subject to penalties of $10,000 for each

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[5] *Id.*

[6] *Id.*

[7] IRS, Form 8938, https://www.irs.gov/pub/irs-pdf/f8938.pdf (last visited Apr. 19, 2017).

failure to file a timely report and 40% of the amount of any underpaid tax related to the asset. *Id*. §§ 6038D(d), 6662(j)(3).

2. Foreign Financial Institution Reporting

The second FATCA component operates on all foreign financial institutions worldwide. FATCA requires such institutions to report detailed account information for any account held by a U.S. person to the U.S. government each year irrespective of whether the U.S. account-holder is suspected of tax evasion. *Id*. § 1471(b).

Foreign financial institutions must report U.S. accounts annually to the IRS on Form 8966. The report must include:

i. the name, address, and TIN of each account holder;

ii. the account number;

iii. the account balance or account value;

iv. the gross receipts and gross withdrawals or payments.

26 U.S.C. § 1471(c)(1); 26 C.F.R. § 1.1471-4(d)(3)(ii). Form 8966 additionally requires a foreign financial institution to report the aggregate gross amount of all income paid or credited to an account for the calendar year less any interest, dividends, and gross proceeds.[8]

Foreign financial institutions that fail to comply with FATCA's reporting scheme are subject to a substantial penalty of 30% of the amount of any payment originating from sources within the U.S. *Id*. § 1471(a).

[8] IRS, Instructions for Form 8966, 10, http://www.irs.gov/pub/irs-pdf/i8966.pdf (last visited Apr. 19, 2017).

B. IGAs

The Treasury Department and IRS have chosen to implement FATCA by adopting regulations[9] and by entering into intergovernmental agreements ("IGAs") with foreign nations.

The Treasury Department has entered into IGAs with 113 foreign countries.[10] The IGAs were entered into force on August 31, 2015.[11] Yet, none of these IGAs have been submitted to the Senate for its advice and consent pursuant to Article II, section 2, clause 2 of the Constitution or approved by a majority vote in both houses of Congress. Nor are any of the IGAs authorized by an existing Article II treaty.

The IGAs are styled as either Model 1 or Model 2 agreements.

1. Model 1 IGAs

Under Model 1 IGAs, the foreign government ("FATCA Partner") agrees to collect the financial account information that FATCA requires a foreign financial institution to report on

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[9] FATCA regulations primarily elaborate on the requirements of the statutory provisions and clarify the statutory requirements. *See e.g.,* Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities, 78 Fed. Reg. 5874 (Jan. 28, 2013); Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities, 79 Fed. Reg. 12812 (Mar. 6, 2014); Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons, Information Reporting and Backup Withholding on Payments Made to Certain U.S. Persons, and Portfolio Interest Treatment, 79 Fed. Reg. 12726 (Mar. 6, 2014); Reporting of Specified Foreign Financial Assets, 79 Fed. Reg. 73817 (Dec. 12, 2014).

[10] U.S. Dept. of the Treasury, Foreign Account Tax Compliance Act (FATCA) https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx (last visited Apr. 19, 2017).

[11] Tax Scan Team, *Block all Accounts that do not provide Self Certification by April 30 for FATCA: CBDT to Financial Institutions*, Apr. 11, 2017, http://www.taxscan.in/block-accounts-not-provide-self-certification-april-30-fatca-cbdt-financial-institutions/6644/.

behalf of the U.S. government and report that information to the IRS itself.[12] In effect, a foreign financial institution identifies U.S. accounts then reports specified information about the U.S. accounts to its own government.[13] That foreign government then reports such information to the IRS.[14]

In Model 1 IGAs, the foreign government has agreed to collect information similar to, but not coextensive with, the information required to be reported by a foreign financial institution to the U.S. government under FATCA.[15]

The information required to be collected regarding depository accounts includes:

i. the name, address, and U.S. TIN of each U.S. account holder;

ii. the account number of each U.S. account holder;

iii. the name and identifying number of the foreign financial institution maintaining the account;

iv. the calendar year-end balance or value of the account; and

v. the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period.

In Model 1 IGAs, the foreign government has agreed to transmit the above listed

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[12] *See, e.g.*, U.S. Dept. of Treasury Resource Center, Model 1A IGA Reciprocal, Preexisting TIEA or DTC, art. 2, § 1, (Nov. 30, 2014), http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Reciprocal-Model-1A-Agreement-Preexisting-TIEA-or-DTC-11-30-14.pdf.

[13] IRS, FATCA Information for Governments, https://www.irs.gov/businesses/corporations/fatca-governments (last visited Apr. 19, 2017).

[14] *Id*.

[15] *See, e.g.*, Model 1A IGA Reciprocal, Preexisting TIEA or DTC, *supra* note 12, at art. 2, § 2(a).

information directly to the U.S. government.[16] In return, the U.S. government has agreed to treat each of the foreign government's reporting foreign financial institution as complying with FATCA and as not subject to the 30% withholding under § 1471(a).[17]

2. Model 2 IGAs

Under Model 2 IGAs, the foreign government has agreed (1) to direct all covered foreign financial institutions to register with the IRS and comply with all obligations under FATCA[18] and (2) to exempt such foreign financial institutions from any of the foreign government's laws that would prohibit or otherwise criminalize such conduct.[19] In return, the U.S. government has agreed to treat each of the foreign government's reporting foreign financial institutions that complies with the IGA as complying with FATCA and not subject to the 30% withholding under § 1471(a).[20]

C. FBAR

The Report of Foreign Bank and Financial Accounts ("FBAR")—while not technically part of FATCA or the IGAs—is part of the same scheme to curb tax evasion. FBAR must be filed annually with the IRS by persons who have a financial interest in, or signatory authority

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[16] Model 1A IGA Reciprocal, Preexisting TIEA or DTC, *supra* 12, at art. 2, § 1.

[17] *Id*. at art. 4, § 1.

[18] *See e.g.,* U.S. Dept. of Treasury FATCA Resource Center, Model 2 IGA, Preexisting TIEA or DTC, art. 2, (Nov. 30, 2014), https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Model-2-Agreement-Preexisting-TIEA-or-DTC-11-30-14.pdf.

[19] *See e.g.,* Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA, Feb. 14, 2013, art. 4, available at http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-Switzerland-2-14-2013.pdf.

[20] Model 2 IGA, Preexisting TIEA or DTC, *supra* note 18, art. 3, § 1.

over, a bank, securities, or other financial account in a foreign country with an aggregate value of more than $10,000. 31 U.S.C. § 5314; 31 C.F.R. §§ 1010.306(c), 1010.350(a). Persons required to file include, not only citizens and residents of the U.S., but also other entities such as corporations, partnerships, trusts, etc. 31 C.F.R. § 1010.350(b). The FBAR must be filed separately from an individual's regular federal income tax return by April 15th of each year.[21]

Under FBAR, reportable bank accounts include savings accounts, depository accounts, checking accounts, securities accounts, and "other financial accounts." 31 C.F.R. § 1010.350(c). Persons can have a financial interest in a reportable account in several circumstances, including when a person owns or holds legal title to a reportable account, when they are the agent or attorney with respect to the account, or when they own more than 50% of the voting power, total value of equity, interest, or assets, or interest in profits. *Id.* § 1010.350(e). Persons have signature authority over a reportable account when they have "authority . . . (alone or in conjunction with another) to control the disposition of money, funds or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained." *Id.* § 1010.350(f)(1).

Failure to file the FBAR can bring both civil and criminal penalties. 31 U.S.C. § 5321(d). Civil penalties vary depending on whether the failure to file was willful. *Id.* § 5321(a)(5). For non-willful violations, the maximum penalty is $10,000 for each unfiled report. *Id.* § 5321(a)(5)(B)(i). The penalty may not be imposed for non-willful violations if the violation was due to "reasonable cause" and the account balance was "properly reported." *Id.*

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[21] FinCEN, BSA Electronic Filing Requirements For Report of Foreign Bank and Financial Accounts (FinCEN Form 114) 8 (2017), https://www.fincen.gov/sites/default/files/shared/FBAR%20Line%20Item%20Filing%20Instructions.pdf

§ 5321(a)(5)(B)(ii). For willful violations, the maximum penalty is $100,000 or 50% of the balance of the account at the time of the violation. *Id*. § 5321(a)(5)(C)(i). The "reasonable cause" defense is unavailable for willful violations. *Id*. § 5321(a)(5)(C)(ii). The maximum criminal penalty for FBAR violations is a $250,000 fine and five years imprisonment. *Id*. § 5322(a).

II. These Laws Impose Unique and Discriminatory Burdens on U.S. Citizens Living and Working Abroad, and Foist Staggering Compliance Costs on Foreign Financial Institutions.

A. FATCA and the IGAs

FATCA is a sweeping financial surveillance program of unprecedented scope that allows the Internal Revenue Service ("IRS") to peer into the financial affairs of any U.S. citizen with a foreign bank account. At its core, FATCA is a bulk-data-collection program requiring foreign financial institutions to report to the IRS detailed information about the accounts of U.S. citizens living abroad, including their account balances and account transactions. 26 U.S.C. § 1471(c)(1). FATCA eschews the privacy rights enshrined in the Bill of Rights in favor of efficiency and compliance by requiring institutions to report citizens' account information to the IRS even when the IRS has no reason to suspect that a particular taxpayer is violating the tax laws.

Moreover, FATCA imposes enormous economic costs on financial institutions. An estimated 250,000 foreign financial institutions are affected by FATCA.[22] And many of those foreign financial institutions have found that it costs more to become compliant than they originally anticipated. In a 2014 survey, more than a quarter (27%) of the surveyed financial institutions estimated their annual compliance cost for 2015 to be between $100,000 and $1

[22] William Byrnes & Robert J. Munro, Background and Current Status of FATCA, LexisNexis® Guide to FATCA & CRS Compliance 1-110 (5th ed., 2017) available at https://ssrn.com/abstract=2926119Background and Current Status of FATCA.

million.[23] And 55% of financial institutions surveyed said that they expected to exceed their original budget for FATCA compliance while only 35% said they expected to remain within budget.

Another study estimates that the costs of some of the larger institutions may reach more than $200 million.[24] A representative for Banco Bilbao Vizcaya Argentaria, one of the largest banks in Spain, stated that "compliance costs could range from €8 million for a local entity to €800 million for a global entity."[25] And the British government estimated the aggregate initial costs to U.K. financial institutions to be £900 million to £1,600 million, with a continuing cost of £50 million to £90 million each year.[26] The total cost of implementing FATCA, has been estimated to be between $200 billion and $1 trillion.[27]

What is most striking about these costs is that they are expected to exceed the amount of additional revenue that FATCA is projected to raise. While the legislature did not perform a cost-benefit analysis before FATCA was enacted,[28] the Joint Committee on Taxation estimated

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[23] Thomson Reuters, *Thomson Reuters survey indicates FATCA compliance to cost more than anticipated*, Nov. 12, 2014, https://tax.thomsonreuters.com/press-room/press-release/thomson-reuters-survey-indicates-fatca-compliance-cost-anticipated/.

[24] Bynes and Munro, *supra* note 22, at 1-110.

[25] *Id*.

[26] *Id*.

[27] Simon Black, *Genius: FATCA Has Brought in Just $13.5 Billion in Revenue on a Cost of $1 Trillion*, Feb. 11, 2016, https://www.sovereignman.com/trends/genius-fatca-has-brought-in-just-13-5-billion-in-revenue-on-a-cost-of-1-trillion-18665/.

[28] Nigel Green, *A Corporate-Welfare Bonanza for Tax-Compliance Firms*, Apr. 2, 2017, https://www.wsj.com/articles/a-corporate-welfare-bonanza-for-tax-compliance-firms-1491163938.

that it would generate approximately $8.7 billion in additional tax revenue between 2010 and 2020.[29] The disjunction between FATCA's costs and benefits is perhaps best illustrated by the Australian experience where experts in 2014 estimated that FATCA will extract an additional $20 million in revenue for the U.S. at an estimated implementation cost of around $1 billion.[30] This marked inefficiency has led many, including the U.S. Taxpayer Advocate, to question whether FATCA's costs and difficulties are worth the marginal increase in revenues.[31]

FATCA's burdens, however, are not limited to financial institutions and fall most heavily on individual U.S. citizens. On the most fundamental level, FATCA deprives individuals of the right to the privacy of their financial affairs. FATCA authorizes the IRS to collect information on the financial assets of U.S. citizens living abroad that it cannot collect on U.S. citizens domestically. On a practical level, FATCA is severely impinging on the ability of U.S. citizens to live and work abroad. It is affecting all facets of individuals' lives from day-to-day finances and employment to family relations and citizenship.

FATCA is causing many foreign financial institutions to curtail their business dealings with U.S. citizens living abroad because the costs associated with compliance are simply not worth the trouble. According to a study conducted by the group Democrats Abroad in 2014, almost one-quarter (22.5%) of Americans living abroad who attempted to open a savings or retirement account and 10% of those who attempted to open a checking account were unable to

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[29] Joint Committee on Taxation, JCX-6-10, Estimated Revenue Effects of HIRE Act, p.1 (Mar. 4, 2010), https://www.jct.gov/publications.html?func=startdown&id=3650.

[30] Australian Banker's Association Inc., Financial System Inquiry, (Mar. 2014), 107–108, http://fsi.gov.au/files/2014/04/ABA_1.pdf.

[31] William Hoffman, *FATCA 'Tormenting' Taxpayers, Olson Says*, Tax Analysts, Oct. 8, 2014, http://www.taxanalysts.org/content/fatca-tormenting-taxpayers-olson-says.

due so.[32] The 2014 study also revealed that some Mexican financial institutions are even refusing to cash checks for Americans living in that country, many of whom are retirees.[33]

But banks are not only refusing to open new accounts or cash checks for U.S. citizens, they are also closing existing customer accounts.[34] In 2014, it was estimated that one million Americans living abroad (one-sixth of all such citizens) have had bank accounts closed because of FATCA.[35] Nearly two-thirds (60%) of those who reported having an account closed had lived abroad for twenty or more years, and most affected appear to be "overwhelmingly middle class Americans, not high income individuals."[36] More than two-thirds (68%) of checking accounts and nearly half (40.4%) of savings accounts closed had balances of less than $10,000.[37] And, over two-thirds (69.3%) of dedicated retirement accounts and more than half (58.9%) of other

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[32] Democrats Abroad, FATCA: Affecting Everyday Americans Every Day 6 (2014), https://d3n8a8pro7vhmx.cloudfront.net/democratsabroad/pages/4734/attachments/original/1449777271/Democrats_Abroad_2014_FATCA_Research_Report.pdf?1449777271 (last visited Apr. 19, 2017).

[33] Democrats Abroad, *supra* note 32, at 7.

[34] Martin Hughes, *FATCA Fall Out Closes A Million US Bank Accounts*, Money International, Oct. 7, 2014, http://www.moneyinternational.com/tax/fatca-fall-closes-million-us-bank-accounts/; Eyk Henning, *Deutsche Bank Asks U.S. Clients in Belgium to Close Accounts*, The Wall Street Journal, May 2, 2014, http://www.wsj.com/articles/SB10001424052702303678404579537610638716116; Nat Rudarakanchana, *Americans Abroad Can't Bank Smoothly As FATCA Tax Evasion Reform Comes Into Play*, International Business Times, Dec. 20, 2013, http://www.ibtimes.com/ americans-abroad-cant-bank-smoothly-fatca-tax-evasion-reform-comes-play-1517032; Jeff Berwick, *Breaking News: US Expats in Mexico Left Stranded in Latest FATCA Escalation*, The Dollar Vigilante, June 4, 2014, http://dollarvigilante.com/blog/2014/6/4/breaking-news-us-expats-in-mexico-left-stranded-in-latest-fa.html.

[35] Hughes, *supra* note 34.

[36] Democrats Abroad, *supra* note 32, at 4, 6.

[37] Democrats Abroad, *supra* note 32, at 6.

investment or brokerage accounts closed had a balance of less than $50,000.[38]

In addition to causing Americans overseas to lose access to basic financial services abroad, FATCA is also having a detrimental impact on U.S. citizens living abroad at work and at home. Many have reported that they are being denied consideration for promotions at their jobs, particularly with respect to high-level positions,[39] because of the concomitant compliance burdens foisted on employers by FATCA.[40] Indeed, in the study by Americans Abroad, 5.6% of respondents reported that they had been denied a position because of FATCA.[41] Others reported difficulty opening a business or partnering with others in joint ventures because of obstacles created by FATCA.[42] Such trends will undoubtedly affect the ability of U.S. citizens to remain economically competitive in an increasingly globalized world.

At home, FATCA is forcing Americans abroad to rearrange not only their financial affairs but also reconsider their personal relationships.[43] More than one-fifth (20.8%) of Americans abroad surveyed by Democrats Abroad have already or are considering separating

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[38] Democrats Abroad, *supra* note 32, at 6.

[39] Democrats Abroad, 2014 FATCA Research Project Datapack 21 at Table VII.3 (2014), https://d3n8a8pro7vhmx.cloudfront.net/democratsabroad/pages/4734/attachments/original/1449777269/Democrats_Abroad_2014_FATCA_Research_Datapack.pdf?1449777269 (last visited Apr. 19, 2017).

[40] Barbara Stcherbatcheff, *Why Americans Abroad Are Giving Up Their Citizenship*, June 28, 2014, http://www.newsweek.com/why-americans-abroad-are-giving-their-citizenship-256447?utm_source=taboola&utm_medium=referral

[41] Democrats Abroad, *supra* note 32 at 9.

[42] Democrats Abroad, *supra* note 32 at 10.

[43] *See generally* Democrats Abroad, *supra* note 32, at 7–9 (noting several instances where FATCA was negatively affecting familial relationships).

their accounts from their non-American spouse.[44] And 2.4% have or are considering separating or divorcing as a result of FATCA's expansive reporting requirements,[45] further destabilizing American families by adding to the already increasing divorce rate.[46] This instability is likely having the harshest impact on Americans living abroad whose spouses are the primary breadwinners and themselves not American citizens. For these individuals, such as stay-at-home mothers, FATCA is undermining their financial security and placing them in "highly vulnerable" positions because of the need to separate American spouses from a family's non-American earned financial assets.[47] It can leave them without property and without access to their families' bank accounts and credit.[48]

The issues discussed above have not only affected American expatriates, but also a group of people referred to as "accidental Americans." These accidental Americans may not have any personal or business ties to the U.S.[49] but could have been granted citizenship by being born in the U.S. or to a U.S. citizen. Yet, despite their lack of personal or business ties, they are subject to the significant burdens stemming from FATCA.

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[44] Democrats Abroad, *supra* note 32 at 7.

[45] Democrats Abroad, *supra* note 32, at 7.

[46] Christophen Ingraham, *Divorce is actually on the rise, and it's the baby boomers' fault*, The Washington Post, March 27, 2014, http://www.washingtonpost.com/blogs/wonkblog/wp/2014/03/27/divorce-is-actually-on-the-rise-and-its-the-baby-boomers-fault/.

[47] Democrats Abroad, *supra* note 32 at 8.

[48] Democrats Abroad, *supra* note 32, at 8 (reporting numerous situations where non-income earning spouses were removed from the families financial affairs).

[49] Bynes and Munro, *supra* note 22, at 1-107.

For some Americans living abroad, FATCA's burdens have become so heavy that they are choosing to relinquish their US citizenship just so they can avoid the crushing weight of this unprecedented law. As one author put it, FATCA "threaten[s] your bank to get your bank to threaten you. The only way to get the IRS off your back is to . . . get that expensive [Certificate of Loss of Nationality]."[50]

Indeed, record numbers of Americans have relinquished their U.S. citizenship since FATCA's passage.[51] From 2010 to 2015, a record number of citizenship renunciations occurred—totaling more than 10,000.[52] And the trend shows no signs of slowing down. In 2016, there were 5,411 renunciations, a number well above the previous record in 2015 of 4,279.[53]

In some cases, non-American spouses are pressuring their American spouses to relinquish their U.S. citizenship to avoid entangling the non-American spouses financial affairs

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[50] Daily Kos, How America holds its expats hostage on tax day, Apr. 16, 2017, http://m.dailykos.com/story/2017/4/16/1653591/-How-America-holds-its-expats-hostage-on-tax-day.

[51] Catherine Bosley and Richard Rubin, *A Record Number of Americans Are Renouncing Their Citizenship*, Bloomberg Business, Feb. 10, 2015, http://www.bloomberg.com/news/articles/2015-02-10/americans-overseas-top-annual-record-for-turning-over-passports; Ali Weinberg, *Record Number of Americans Renouncing Citizenship Because of Overseas Tax Burdens*, ABC News, Oct. 28, 2014, http://abcnews.go.com/International/record-number-americans-renouncing-citizenship-overseas-tax-burdens/story?id=26496154; Laura Saunders, *More Americans Renounce Citizenship, With 2014 on Pace for a Record*, The Wall Street Journal, Oct. 24, 2014, http://blogs.wsj.com/totalreturn/2014/10/24/more-americans-renounce-citizenship-with-2014-on-pace-for-a-record/; Robert W. Wood, *Americans Renouncing Citizenship Up 221%, All Aboard The FATCA Express*, Forbes, Feb. 6, 2014, http://www.forbes.com/sites/robertwood/2014/02/06/americans-renouncing-citizenship-up-221-all-aboard-the-fatca-express/.

[52] Bosley and Rubin, *supra* note 51.

[53] Ephraim Moss, *FATCA Causing Record Amount of Citizenship Renunciations*, Apr. 5, 2017, https://www.taxconnections.com/taxblog/fatca-causing-record-amount-of-citizenship-renunciations/#comments.

in FATCA.[54] And, at the same time, as if to add insult to injury, the U.S. government has sought to make the price of citizenship for these persons even higher. For, just as FATCA's burdens are growing steadily more burdensome as the law moves toward full implementation, the U.S. government has simultaneously increased the cost of citizenship renunciation five-fold, from $450 to $2,350.[55] The U.S. now has the highest cost of renunciation in the world.[56]

Finally, the extent of some negative effects remain to be seen. FATCA and the IGAs open the door for other countries to demand the same information from U.S. residents. The reciprocal version of the IGAs provide that the U.S. will exchange information from U.S. financial accounts held by residents of partner countries.[57] This is sure to subject U.S. financial institutions to the enormous financial burdens of implementation that foreign financial institutions are already experiencing.

B. FBAR

But FATCA is not the only attack being leveled at Americans living abroad. The Bank Secrecy Act imposes an extra requirement on overseas Americans in the form of a special reporting requirement for foreign accounts. Under the FBAR, Americans living abroad must disclose detailed information about any foreign bank accounts with a balance in excess of $10,000. In practice, it is just a trap for the unprepared and the uninformed, pinching regular

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[54] Democrats Abroad, *supra* note 32, at 9.

[55] Weinberg, *supra* note 51.

[56] Robert W. Wood, U.S. Has World's Highest Fee to Renounce Citizenship, Oct. 23, 2015, https://www.forbes.com/sites/robertwood/2015/10/23/u-s-has-worlds-highest-fee-to-renounce-citizenship/#7b74c3e247de.

[57] Bynes and Munro, *supra* note 22, at 1-83.

middle-class Americans residing outside the U.S.

The penalties for failing to file the report can be financially devastating and can wipe out a person's entire savings. The maximum penalty for failing to file an FBAR is $100,000 or 50% of the value of the account, *whichever is greater* with each unfiled report begetting a separate penalty. 31 U.S.C. § 5321(a)(5)(C). As a result, a single unreported account with a static balance can be penalized multiple times for the same course of conduct continued over multiple years. Because the FBAR civil penalties are cumulative, ultimately the fine for failing to file the FBAR can far exceed the actual value of the unreported financial asset. A person who fails to report an account for only two years could be subject to a penalty *equal to the full balance of the account*. Each unfiled FBAR could subject the person to a fine of 50% of the balance of the account, resulting in an aggregate fine after two years of 100% of the value of the account. One person who failed to file the FBAR for four years was subjected to a fine of 150% of the balance of his account.[58]

III. FATCA, the IGAs and FBAR Are Unconstitutional.

On July 14, 2015, a number of Plaintiffs, including Senator Rand Paul, filed suit in the United States District Court for the Southern District of Ohio, challenging FATCA, the IGAs, and FBAR. The case is styled *Crawford v. U.S. Department of the Treasury*, Case No. 3:15-cv-00250. The merits of the case have not yet been reached and the Court has not ruled on the constitutionality of FATCA, the IGAs, and FBAR. This is because the Court dismissed the case—finding that none of the Plaintiffs had standing to challenge FATCA, the IGAs, or FBAR.

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[58] David Voreacos and Susannah Nesmith, *Florida Man Owes Record 150% IRS Penalty on Swiss Account*, Bloomberg Business, May 29, 2014, http://www.bloomberg.com/news/articles/2014-05-28/florida-man-87-owes-150-of-swiss-account-jury-says.

The Court reasoned that Plaintiff's harms were the result of third-party bank action, not the government. The Court's reasoning was flawed because it failed to take into account that banks would not have reported on U.S. accounts nor denied U.S. account holders were it not for FATCA and the IGAs. The case is now pending in the United States Court of Appeals for the Sixth Circuit. *See Crawford v. U.S. Department of the Treasury*, Case No. 16-3539.

For the reasons listed below and in *Crawford v. U.S. Department of the Treasury*, FATCA, the IGAs, and FBAR are unconstitutional.

A. The IGAs Are Unconstitutional Sole Executive Agreements.

There are four recognized sources of authority for the Executive Branch to make international agreements: (1) the Treaty Clause, (2) an act of Congress, (3) an existing treaty, and (4) the President's independent constitutional powers. Restatement (Third) of Foreign Relations Law § 303 (1987). These four sources give rise to four types of international agreements: (1) Article II treaties, (2) congressional-executive agreements, (3) treaty-based agreements, and (4) sole executive agreements. John E. Nowak & Ronald D. Rotunda, Treatise on Const. L. § 6.8(a).

Each of the first three types of agreements require action by at least one chamber of Congress. Treaties must be ratified by two-thirds of the Senators present. U.S. Const. art. II, § 2, cl. 2. Congressional-executive agreements must be authorized or approved by a majority vote in both Houses like ordinary legislation. Restatement (Third) of Foreign Relations Law § 303. Treaty-based agreements must be made pursuant to authorization contained in an existing Article II treaty. Nowak & Rotunda, *supra* § 6.8(a).

Only the fourth type of agreement—sole executive agreements—can be brought into force, if at all, without congressional action. *Id.*; 11 FAM § 723.2-2(C). They are "reserved for

agreements made solely on the basis of the constitutional authority of the President." 11 FAM § 723.2-2; *accord United States v. Guy W. Capps, Inc.*, 204 F.2d 655, 658–59 (4th Cir. 1953), *aff'd*, 348 U.S. 296 (1955).

1. The IGAs Exceed the Scope of the President's Independent Constitutional Powers.

The Executive Branch has identified possible sources of the President's independent power to make international agreements as including "(1) The President's authority as Chief Executive to represent the nation in foreign affairs; (2) The President's authority to receive ambassadors and other public ministers, and to recognize foreign governments; (3) The President's authority as 'Commander-in-Chief'; and (4) The President's authority to "take care that the laws be faithfully executed." *See* 11 FAM § 723.2-2(C).

The President, however, lacks an independent power to impose taxes or specify the manner of their collection or any other power which would grant him the power to enter the IGAs unilaterally. *See generally* U.S. Const. art. II (reserving taxing power exclusively to Congress).

Yet, the IGAs are fundamentally international agreements concerning taxation and the collection of taxes. And none of them has received Senate or congressional approval or is pursuant to any authorization contained in any Article II treaty. The IGAs have not been submitted to the Senate for advice and consent.[59]

Furthermore, while FATCA authorizes the Treasury Department to adopt regulations and "other guidance," it does not authorize the making of international agreements like the IGAs. *See*

[59] U.S. Dep't of State, Treaties Pending in the Senate (updated as of Dec. 30, 2016), http://www.state.gov/s/l/treaty/pending/index.htm (last visited Apr. 19, 2017).

26 U.S.C. § 1474(f). Finally, there is no valid treaty that otherwise authorizes the IGAs.[60]

The President, therefore, lacks the power to conclude the IGAs as sole executive agreements because their subject matter lies outside his constitutional powers.

2. The IGAs Override FATCA.

Sole executive agreements may not be "inconsistent with legislation enacted by the Congress in the exercise of its constitutional authority." 11 FAM § 732.2-2(C); *accord Guy W. Capps*, 204 F.2d at 658–600; *Swearingen v. United States*, 565 F. Supp. 1019 (D. Colo. 1983).

Yet, the IGAs establish a different regulatory scheme than the one mandated by FATCA. The Model 1 IGAs, for example, exempt covered foreign financial institutions from the statutory requirement that they report account information directly to the Treasury Department, 26 U.S.C. § 1471(b)(1)(C), and instead allow such foreign financial institutions to report the account information to their national governments.[61]

The Model 2 IGAs, for example, exempt covered foreign financial institutions from the obligation "to obtain a valid and effective waiver" of any foreign law that would prevent the reporting of information required by FATCA, 26 U.S.C. § 1471(b)(1)(F)(i), and instead obligates the foreign government to suspend such laws with respect to FATCA reporting by covered foreign financial institutions.[62] This deprives account holders of their right under the statute to refuse a waiver.

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[60] Allison Christians, *The Dubious Legal Pedigree of IGAs (and Why it Matters)*, 69 Tax Notes Int'l 565, 567 (2013) (The "IGAs are not treaty-based agreements.").

[61] *See e.g.*, Model 1A IGA Reciprocal, Preexisting TIEA or DTC, *supra* note 12, at art. 2, § 1.

[62] Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA, *supra* note 19, at art. 4.

The President, therefore, lacks the power to conclude the IGAs as sole executive agreements because they override a duly enacted statute.

B. The Heightened Reporting Requirements for Foreign Financial Accounts Deny U.S. Citizens Living Abroad the Equal Protection of the Laws.

The Fifth Amendment provides that "No person shall . . . be deprived of life, liberty, or property, without due process of law. . . ." U.S. Const. amend. V. The Due Process Clause of the Fifth Amendment includes a guarantee of equal protection equivalent to that expressly provided in the Equal Protection Clause of the Fourteenth Amendment. "An equal protection claim against the federal government is analyzed under the Due Process Clause of the Fifth Amendment." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 217 (1995); *United States v. Ovalle*, 136 F.3d 1092, 1095 (6th Cir. 1998). Thus, the federal government may not "deny to any person within its jurisdiction the equal protection of the laws," U.S. Const. amend. XIV, § 1.

The only financial information reported to the IRS about domestic accounts is the amount of interest paid to the accounts during a calendar year, 26 U.S.C. §§ 6049(a), (b); 26 C.F.R. §§ 1.6049-4(a)(1), 1.6049-4T(b)(1). For a foreign account, the information reported to the IRS includes not only the interest paid to the account,[63] but also the amount of any income, gain, loss, deduction, or credit recognized on the account,[64] whether the account was opened or closed during the year,[65] and the balance of the account.[66] Comparable information is not required to be

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[63] 26 USC § 1471(c)(1)(C); 26 C.F.R. §§ 1.1471-4(d)(3)(ii), -4(d)(4)(iv); Model 1A IGA Reciprocal, Preexisting TIEA or DTC, *supra* note 12, at art. 2, §2.

[64] 26 C.F.R. § 1.6038D-4(a)(8)

[65] *Id.* § 1.6038D-4(a)(6).

[66] 26 USC §§ 1471(c)(1)(C), 6038D(c)(4); 26 CFR §§ 1.1471-4(d)(3)(ii), 1.6038D-4(a)(5); Model 1A IGA Reciprocal, Preexisting TIEA or DTC, *supra* note 12, at art. 2, §2;

disclosed regarding domestic accounts of U.S. citizens. The result is that U.S. citizens living in a foreign country are treated differently than U.S. citizens living in the United States.

The federal government has no legitimate interest in knowing the amount of any income, gain, loss, deduction, or credit recognized on a foreign account, whether a foreign account was opened or closed during the year, or the balance of a foreign account. The fact that the local bank accounts of citizens living abroad are not held in the U.S. bears no rational relationship to any legitimate state interest the federal government might have in prying into the private affairs of citizens living abroad.

C. The Penalties Imposed under FATCA and FBAR Are Unconstitutional Under the Excessive Fines Clause.

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

The Excessive Fines Clause is not limited only to fines that are criminal in nature but extends to civil fines as well. *Austin v. United States*, 509 U.S. 602, 610 (1993). A fine is subject to the Excessive Fines Clause if one of the purposes of the fine is punishment. *Id.*; *United States v. Bajakajian*, 524 U.S. 321, 328 (1998). Fines calibrated for retributive or deterrent purposes are considered to be for the purpose of punishment. *Austin*, 509 U.S. at 610.

To withstand constitutionality, fines governed by the Excessive Fines Clause must not be "excessive." U.S. Const. amend. VIII. The "touchstone" of the excessiveness analysis is "principle of proportionality," requiring a comparison of the amount of the fine and the gravity of offense. *Bajakajian*, 524 U.S. at 334. A fine violates the Eighth Amendment when the fine is

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Model 2 IGA, Preexisting TIEA or DTC, *supra* note 18, at art. 2.

grossly disproportional to the gravity of the offense. *Id.*.

The Supreme Court has identified three "general criteria" to guide the determination of whether a fine is grossly disproportionate: (1) "the degree the defendant's reprehensibility or culpability"; (2) "the relationship between the penalty and the harm to the victim caused by the defendant's actions"; and (3) "the sanctions imposed in other cases for comparable misconduct." *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 434–35 (2001).

1. The FATCA Foreign Financial Institution Penalty Is Unconstitutional.

Under FATCA, payments from U.S. sources to foreign financial institutions not compliant with FATCA are subject to a 30% "tax" (hereinafter the FATCA "FFI Penalty"). 26 U.S.C. § 1471(a); 26 C.F.R. § 1.1471-2T(a)(1). This penalty can be applied to any financial institution anywhere in the world if an institution fails to comply with FATCA.

Without the FFI Penalty, foreign financial institutions likely would not comply with FATCA and Plaintiffs' private financial information would not be disclosed to the U.S. government. The penalty leaves foreign financial institutions no meaningful alternative but to implement costly compliance systems and comply with FATCA. In fact, former Senator, Carl Levin, stated that "FATCA was intended to 'force foreign financial institutions to disclose their U.S. account holders or pay a steep penalty for nondisclosure.'"[67]

The FFI Penalty is intended as punishment and is therefore subject to the Excessive Fines Clause. *Austin*, 509 U.S. at 610. The penalty is used as a hammer to coerce compliance by foreign financial institutions everywhere in the world, whether or not they fall within the

[67] Byrnes and Munro, *supra* note 22, at 1-4 (citing HIRE Act,156 Cong Rec § 1745, § 1745 (daily ed Mar 18, 2010) (Statement of Senator Levin)).

regulatory jurisdiction of the U.S. Furthermore, the FFI Penalty is grossly disproportional to the gravity of the offense it seeks to punish and is therefore unconstitutional. *Bajakajian*, 524 U.S. at 334.

2. The FATCA Passthrough Penalty Is Unconstitutional.

FATCA and the IGAs require foreign financial institutions to "deduct and withhold a tax equal to 30 percent of" any payments made to recalcitrant account holders (hereinafter the FATCA "Passthrough Penalty").[68] Recalcitrant account holders are persons who fail to provide (a) information sufficient to determine whether the account is a U.S. account to the foreign financial institution holding their account, (b) their name, address, or TIN to the foreign financial institution holding the account, or (c) who fails to provide waiver of a foreign law that would prevent the foreign financial institution from reporting the information to the IRS under FATCA. 26 U.S.C.. § 1471(d)(6).

The Passthrough Penalty is designed to punish and is therefore subject to the Excessive Fines Clause. *Austin*, 509 U.S. at 610. Furthermore, the Passthrough Penalty is grossly disproportionate to the gravity of the offense and is therefore unconstitutional. *Bajakajian*, 524 U.S. at 334.

3. The FBAR Willfullness Penalty Is Unconstitutional.

Section 5321 of the United States Code imposes a maximum penalty of $100,000 or 50% of the balance of the account at the time of the violation, whichever is greater, for failures to file an FBAR as required by § 5314 (hereinafter the FBAR "Willfulness Penalty"). 31 U.S.C.

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[68] 26 U.S.C. § 1471(b)(1)(D); 26 C.F.R. §§ 1.1471-4(a)(1), 1.1471-4T(b)(1); Model 1A IGA Reciprocal, Preexisting TIEA or DTC, *supra* note 12, art. 2, § 1; Model 2 IGA, Preexisting TIEA or DTC, *supra* note 18, art. 2.

§ 5321(b)(5)(C)(i).

The Willfulness Penalty is designed to punish and is therefore subject to the Excessive Fines Clause. *Austin*, 509 U.S. at 610. The Willfulness Penalty is grossly disproportionate to the gravity of the offense and is therefore unconstitutional. *Bajakajian*, 524 U.S. at 334.

D. FATCA and the IGAs Information Reporting Requirements Are Unconstitutional Under the Fourth Amendment.

The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Amendment is violated in where "the Government, through 'unreviewed executive discretion,' [is permitted to make] a wide-ranging inquiry that unnecessarily 'touch(es) upon intimate areas of an individual's personal affairs.'" *U.S. v. Miller*, 425 U.S. 435, 444 n.6 (1976) (quoting *California Bankers Assn. v. Shultz*, 416 U.S. 21, at 78-79 (1974) (Powell, J., concurring)). Such indiscriminate searches may only be conducted, at a minimum, after some "invocation of the judicial process" because "the potential for abuse is particularly acute." *California Bankers Assn.*, 416 U.S. at 79 (Powell, J., concurring); *see also*, *Miller* 425 U.S. at 444 n.6 (distinguishing situations where "the Government has exercised its powers through narrowly directed subpoenas duces tecum subject to the legal restraints attendant to such process"); *Los Angeles v. Patel*, 135 S. Ct. 2443, 2452 (2015) (holding that, for administrative searches, "the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker.").

1. FATCA's Information Reporting Requirements Are Unconstitutional.

FATCA requires foreign financial institutions to report a broad range of information about the accounts of U.S. account holders to the U.S. government, including:

i. the name, address, and TIN of the account holder;

ii. the account number;

iii. the average calendar year or year-end balance or value of the account;

iv. the aggregate gross amount of interest paid or credited to the account during the year; and

v. the aggregate gross amount of all income paid or credited to an account for the calendar year less any interest, dividends, and gross proceeds.

26 U.S.C. § 1471(c)(1); 26 C.F.R. § 1.1471-4(d)(3)(ii); IRS, Instructions for Form 8966 at 10, http://www.irs.gov/pub/irs-pdf/i8966.pdf.

FATCA makes no provision for judicial oversight of the searches of the private financial records of American citizens held by foreign financial institutions in violation of the Fourth Amendment.

2. The IGAs' Information Reporting Requirements Are Unconstitutional.

The IGAs require foreign financial institutions and their governments to report a broad range of information about the accounts of U.S. account holders to the U.S. government, including:

i. the name, address, and U.S. TIN of each U.S. account holder;

ii. the account number of each U.S. account holder;

iii. the name and identifying number of the foreign financial institution

maintaining the account;

iv. the calendar year-end balance of the account; and

v. the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period.[69]

The IGAs make no provision for judicial oversight of the searches of the private financial records of American citizens held by foreign financial institutions in violation of the Fourth Amendment.

Conclusion

As discussed above, FATCA is a sweeping financial surveillance program of unprecedented scope that allows the IRS to peer into the financial affairs of any U.S. citizen with a foreign bank account. And FBAR is a trap for the unprepared and the uninformed. The negative effects of these laws are significant and disturbing.

Innocent Americans are being denied bank accounts, having their accounts closed, being forced to separate their jointly held assets, and missing out on career and investment opportunities as a result of these laws. They are also being forced to shoulder significant penalties. Moreover, the costs associated with foreign financial institution compliance far outweighs any revenues FATCA brings in—costs U.S. banks will surely have to bear when partner jurisdictions demand reciprocal information.

Senator Rand Paul put it perfectly when he said, "FATCA is a textbook example of a bad law that doesn't achieve its stated purpose but does manage to unleash a host of unanticipated

[69] Model 1A IGA Reciprocal, Preexisting TIEA or DTC, *supra* note 12, art. 2, § 1; Model 2 IGA, Preexisting TIEA or DTC, *supra* note 18, art. 2.

destructive consequences . . . FATCA should be repealed and Congress should find a less onerous means of enforcing tax laws."[70] Repealing FATCA and FBAR will curb the significant harms being imposed on U.S. citizens living abroad and on foreign financial institutions. For these reasons and others discussed above, FATCA and FBAR should be repealed.

[70] Byrnes and Munro, *supra* note 22, at 1-83 (citing Sen. Paul Introduces Bill to Repeal Anti-Privacy Provisions in FATCA. May 8, 2013).

Committee on Oversight and Government Reform
Witness Disclosure Requirement — "Truth in Testimony"

Pursuant to House Rule XI, clause 2(g)(5) and Committee Rule 16(a), non-governmental witnesses are required to provide the Committee with the information requested below in advance of testifying before the Committee. You may attach additional sheets if you need more space.

Name:

1. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

Name of Entity	Your relationship with the entity
The Bopp Law Firm, PC	owner
Republican Overseas, Inc	Treasurer and General Counsel

2. Please list any federal grants or contracts (including subgrants or subcontracts) you or the entity or entities listed above have received since January 1, 2015, that are related to the subject of the hearing.

Recipient of the grant or contact (you or entity above)	Grant or Contract Name	Agency	Program	Source	Amount
None					

2. Please list any payments or contracts (including subcontracts) you or the entity or entities listed above have received since January 1, 2015 from a foreign government, that are related to the subject of the hearing.

Recipient of the grant or contact (you or entity above)	Grant or Contract Name	Agency	Program	Source	Amount
None					

I certify that the information above and attached is true and correct to the best of my knowledge.

Signature _____ Date: 4/17/17

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SUMMARY OF RESUME OF JAMES BOPP, JR.

James Bopp, Jr. is an attorney with The Bopp Law Firm, PC, in Terre Haute, Indiana. His law practice concentrates on constitutional litigation, on not-for-profit corporate and tax law, on campaign finance and election law, on the biomedical issues of abortion, foregoing and withdrawing life-sustaining medical treatment and assisted suicide, on federal and state trial and appellate litigation, and on United States Supreme Court practice. He represents numerous not-for-profit organizations, political action committees, candidates, and political parties.

Bopp is Treasurer and General Counsel for Republicans Overseas, Inc. and is lead counsel in *Crawford v. U.S. Department of the Treasury*, which challenges the constitutionality of FATCA, FBAR, and related intergovernmental agreements.

Bopp has achieved national recognition for his legal work. In 2013, the National Law Journal named Bopp one of the 100 Most Influential Lawyers in America. In 2009, Bopp was named the Republican Lawyer of the Year by the Republican National Lawyers Association. And in 2005, Bopp was awarded the John Cardinal O'Connor Pro-Life Hall of Fame Award by Legatus International.

Bopp's successful campaign finance and election law litigation practice includes over 140 campaign finance cases against federal laws and state laws in over 35 states. His extensive U. S. Supreme Court practice includes winning nine of 13 of his cases that the Court has decided on the merits.

Bopp successfully argued the landmark United State Supreme Court cases of *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), which struck down restrictions on the speech of candidates for elected judicial office on First Amendment grounds; *Wisconsin Right to Life v. Federal Election Commission*, 126 S. Ct, 1016 (2006), which held that McCain-Feingold's "electioneering communication" corporate prohibition could be subject to as-applied challenges for genuine issue ads; *Randall v. Sorrell*, 126 S. Ct. 2479 (2006), which struck down Vermont's mandatory candidate expenditure limits and candidate contribution limits; and *Federal Election Comm'n v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007), which held that McCain-Feingold's "electioneering communication" prohibition is unconstitutional as applied to grass roots lobbying ads. He was lead counsel for Citizens United in *Citizens United v. Federal Election Commission*, 558 U. S. 310 (2010), which struck down McCain-Feingold's electioneering

communication provision and prohibitions on corporations advocating the election or defeat of candidates and lead counsel for the Republican National Committee in *McCutcheon v Federal Election Commission*, 134 S. Ct. 1434 (2014), which struck aggregate limits on the total amount that an individual may contribute to all political parties, PACs and federal candidates in an election cycle.

As a result of his successful litigation, the ABA Journal called Bopp: "The most prominent lawyer in the country in campaign finance and election law." The liberal advocacy group Common Cause said that he is "One of the most powerful and influential leaders of corporate America's efforts to dismantle the post-Watergate campaign finance system." The Washington DC insider publication ROLL CALL describe Bopp as"The pre-eminent election law attorney for conservative groups. He has scored a string of victories challenging restrictions on political activity on First Amendment grounds." And in 2014, Reuters identified Bopp as one of an "elite cadre" of "lawyers (that) dominate the (U.S. Supreme Court) docket."

In 1984, President Ronald Reagan appointed Bopp to the President's Committee on Mental Retardation and, in 1987, the United States Congress appointed him to the Biomedical Ethics Advisory Committee which advises Congress on the ethical issues arising from the delivery of health care and biomedical and behavioral research. He was a former appointee by the United States Secretary of State to the United States National Commission for UNESCO. He is currently a Commissioner of the Uniform Law Commission, by appointment of Indiana Governors Mitch Daniels and Mike Pence.

Bopp's extensive political experience and involvement in Indiana includes serving as Indiana National Committeeman, 2006 - 2012, State Party Treasurer, 2005 - 2006, and pro bono legal counsel to the Indiana Republican Party, 2004 - 2010. He was pro bono General Counsel to Mitch Daniels' successful campaigns for Governor in 2004 and 2008 and was Vigo County Republican Chairman, 1993 - 1997. He is currently providing pro bono legal services to the Indiana Republican Party, including establishing and administering the Hoosier Host Committee, LLC, which provides corporate funding for activities of Indiana delegates to the 2016 Republican National Convention in Cleveland.

Bopp's national political experience and involvement includes serving as a member of the Republican National Committee, 2006-12, and its Vice Chairman, 2008-12, as well as the Chairman of the RNC Committee on Presidential Debates, 2011 - 2012, and Vice Chairman of the RNC Committee on Redistricting, 20111- 2012. He has been a delegate or alternate delegate to each Republican National Convention since 1992, a member of the National Convention Platform Committee since 2000, and Chairman of the Subcommittee on Restoring Constitutional Government of the 2012 Platform Committee. He also served as Special Counsel to the RNC from 2012 to 2017, including serving as counsel to the RNC Standing Committee on Rules.

In addition to Bopp's involvement with the RNC, he has also served as Special Advisor to Mitt Romney's 2008 Presidential Campaign, as a member of the Board of Governors of the

Republican National Lawyers Association, 2002 -2015, and Chairman of the Republican National Conservative Caucus, 2009 - 2012.

His clients have included: Republican National Committee, the State Republican Parties of Alabama, Indiana, Louisiana, Michigan, Minnesota, Rhode Island, Texas and Vermont, Republicans Overseas, Republican Governors Association, Senators Mitch McConnell and Rand Paul, Congressmen Mike Pence and Anh Cao, RNC Chairmen Mike Duncan, Michael Steele and Reince Priebus, College Republican National Committee, National Right to Life Committee, American Federation for Children, Focus on the Family, Susan B. Anthony List, Catholic Answers, Home School Legal Defense Association, National Organization for Marriage, the Christian Coalition, Christian Life Commission of the Southern Baptist Convention, Knights of Columbus of the United States, Concerned Women of America, National Right to Work Legal Defense and Education Foundation, Club for Growth, Citizens United, and National Federation of Independent Businesses.

He has been profiled in:

The Echo Chamber: At America's court of last resort, a handful of lawyers now dominates the docket, Reuters (December 8, 2014)
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