

Republicans Overseas Action, Inc.

FOR IMMEDIATE RELEASE

Monday July 6, 2015

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Republicans Overseas Action files FATCA/IGAs/FBAR lawsuit and charges the U.S. government with eight constitutional violations

Today on behalf of Presidential candidate, Senator Rand Paul along with other six co-plaintiffs (A summary description of each plaintiff is attached), Republicans Overseas Action, Inc. (ROA) challenges the Foreign Account Tax Compliance Act (FATCA), the intergovernmental agreements (IGAs), and the Report of Foreign Bank and Financial Accounts (FBAR) in the U.S. District Court for the Southern District of Ohio.

ROA heartily thanks all seven plaintiffs, who are U.S. citizens, former U.S. citizens, Republicans, and/or non-Republicans, for their willingness to defend 8.7 million overseas Americans and 12.6 million stateside "green card" holders in their fight against FATCA tyranny.

The U.S. Treasury, IRS, and U.S. Financial Crimes Enforcement Network (FCEN) are named as Defendants in a verified complaint for declaratory and injunctive relief with eight-counts constitutional violations (the Ten Detailed Points on ROA FATCA/IGAs/FBAR Lawsuit is attached).

"This lawsuit will not only enable Republicans Overseas to defend all overseas Americans' and stateside "Green Card" holders' right to privacy and other constitutional protections, but also provide them immediate injunctive relief by crippling the Treasury's ability to enforce IGAs and IRS/FCEN FATCA enforcement capability," said James Bopp, Jr., the lead lawyer for the lawsuit.

"It also speaks volumes about Obama administration's lawlessness and disregard for the constitution when we have eight constitutional claims against FATCA/IGAs/FBAR in comparison to the Citizens United vs FEC case where I had only one constitutional claim," said Mr. Bopp.

A study conducted by Democrats Abroad (DA), the overseas arm of the Democrat National Committee establishes that FATCA wages war against overseas American women and middle-class taxpayers (<http://v.gd/oSZZJu>). The ROA lawsuit fights back on behalf of all Americans overseas to guarantee them their full constitutional protections.

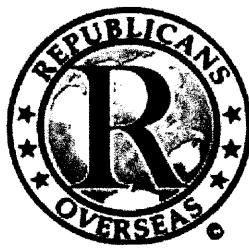
In contrast, DA has offered to "fix" FATCA by proposing a "Same Country Safe Harbor" (SCSH) which would continue to permit the IRS to collect financial data on Americans overseas with bank accounts in more than one country. The lawsuit confirms that DA's SCSH not only deprives those Americans' right to privacy, but also violates the Equal Protection Clause. Because of SCSH, the IRS would collect information on the financial assets of those U.S. citizens living overseas that it can't collect on U.S. citizens domestically and U.S. citizens abroad with all their accounts in one foreign country.

FATCA and SCSH both turn Americans abroad into the 2nd class citizens subject to discrimination by foreign banks.

"This lawsuit's aim is to restore those overseas Americans' and "Green Card" holders' full citizenship through legal action on constitutional grounds all the way to the U.S. Supreme Court," said Solomon Yue, Vice Chairman and CEO of Republicans Overseas Action and a 15-year veteran member of the Republican National Committee. "Those Americans have constitutional rights to the pursuit of happiness at home and abroad," said Mr. Yue.

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Republicans Overseas Action, Inc.

Ten Detailed Points on ROA FATCA/IGAs/FBAR Lawsuit

- 1) Republicans Overseas Action, Inc. challenges the Foreign Account Tax Compliance Act (FATCA), the intergovernmental agreements (IGAs) unilaterally negotiated by the U.S. Treasury to supplant FATCA in the signatory countries, and the Report of Foreign Bank and Financial Accounts (FBAR) legal requirements in the U.S. district court for the Southern District of Ohio on behalf of seven plaintiffs. The U.S. District Court of the Southern District of Ohio is in the jurisdiction of U.S. Court of Appeals for the Sixth Circuit.
- 2) U.S. Senator Rand Paul, Mark Crawford, Roger Johnson, Daniel Kuettel, Stephen Kish, Donna-Lane Nelson, and Marc Zell are named as co-plaintiffs while the U.S. Department of the Treasury, U.S. Internal Revenue Service (IRS), and U.S. Financial Crimes Enforcement Network (FCEN) are named as Defendants in a verified complaint for declaratory and injunctive relief.
- 3) Republicans Overseas complaint claims FATCA, IGAs, FBAR are not only discriminatory against 8.7 million overseas American taxpayers, but also makes them second class citizens. FATCA discriminates against Americans living abroad in violation of their equal protection rights under the 5th Amendment by collecting information about their financial affairs that is not permitted to be collected about the financial affairs of Americans domestically.
- 4) FATCA is a warrant-less financial data dragnet that violates the 4th amendment. It requires foreign financial institutions to report to the IRS detailed information on overseas U.S. citizens' account balances and transactions even when the IRS has no probable cause to suspect that a particular taxpayer is cheating on taxes. It destroys the presumption of innocence.
- 5) The complaint also demonstrates that FATCA wages war against overseas American women, middle-class taxpayers, citizens living and working abroad with a normal life, and American owned businesses' competitiveness. According to a study conducted by the Democrats Abroad, American women abroad became collateral damage of this FATCA war against privacy. Stay-at-home mothers are highly vulnerable because FATCA caused the need to separate Americans spouses from a family's non-American earned financial assets. It can leave them without property and access to their family's bank accounts and credit.
- 6) The same study showed that those most affected by FATCA appear to be overwhelmingly middle class Americans. 68% of checking accounts and 40.4% of savings accounts closed due to FATCA had balances of less than \$10,000. 69.3% of retirement accounts and 58.9% of investment accounts closed due to FATCA had a balance of less than \$50,000. 5.6% of respondents reported they had been denied a position because of FATCA.

7) FATCA causes foreign banks to discriminate against Americans abroad by denying basic banking services. The same study also showed that 22.5% of overseas Americans were unable to open a savings or retirement account. Some Mexican banks now refuse to cash checks for American retirees. 5.6% of respondents reported they had been denied a position because of FATCA. Many American business based abroad cannot open a bank account because of FATCA.

8) FATCA IGAs violates the well-established constitutional framework for concluding international agreements. The Executive Branch has neither submitted them to the Senate for advice and consent under Article II or to the Congress as a whole for approval as congressional-executive agreements. FATCA IGAs were ratified by the signatory countries' national legislative bodies as treaties.

9) The complaint also challenges both FATCA and FBAR penalties as excessive under the 8th Amendment. The penalty for FATCA non-compliant foreign financial institutions is a 30% withholding "tax" on any U.S. sourced income. The penalty for U.S. citizens not filing FBAR is 50% of the highest aggregate balance of all unreported foreign financial accounts per year for up to six years.

10) James Bopp, Jr., U.S. Supreme Court litigator and the architect of the *Citizens United v. FEC* case represents all seven plaintiffs in the Republicans Overseas Action's FATCA/IGAs/FBAR lawsuit to charge the Treasury, IRS, and FCEN eight counts:

Count 1

The IGAs are Unconstitutional Sole Executive Agreements Because they Exceed the Scope of the President's Independent Constitutional Powers

Count 2

The IGAs are Unconstitutional Sole Executive Agreements Because They Override FATCA

Count 3

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

Count 4

The FATCA FFI Penalty is Unconstitutional under the Excessive Fines Clause

Count 5

The FATCA Pass-through Penalty is Unconstitutional under the Excessive Fines Clause

Count 6

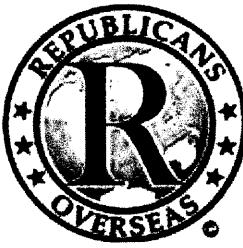
The FBAR Willfulness Penalty is Unconstitutional under the Excessive Fines Clause

Count 7

FATCA's Information Reporting Requirements are Unconstitutional under the Fourth Amendment

Count 8

The IGAs' Information Reporting Requirements are Unconstitutional under the Fourth Amendment



Republicans Overseas Action, Inc.

A Summary Description of Each Plaintiff

1) Plaintiff U.S. Senator Rand Paul:

Through FATCA, the Executive Branch is attempting to usurp Congress's constitutional power to approve international tax agreements and override the law written by Congress simply because the IRS and US Treasury would prefer to enforce a different law.

Senator Paul has been a vocal opponent of FATCA from the beginning. He has introduced legislation to repeal parts of FATCA in 2013 and 2015 and opposed international tax treaties in the Senate related to FATCA. However, because the Treasury Department and IRS have refused to abide by the constitutional framework for concluding international agreements, Senator Paul has been denied the opportunity to exercise his constitutional right as a member of the U.S. Senate to vote against the FATCA IGAs. Senator Paul would vote against the FATCA IGAs if the Executive Branch submitted them to the Senate for advice and consent under Article II or to the Congress as a whole for approval as congressional-executive agreements.

2) Plaintiff Mark Crawford:

A foreign bank discriminated against Mark by denying banking service to his business because of FATCA. FATCA is hurting overseas American business' competitiveness.

Mark, a U.S. citizen, is the founder and sole owner of Aksioner International Securities Brokerage, sh.a., located in Tirana, Albania. It is the only active licensed brokerage firm in Albania and had been a partner of Saxo Bank in Copenhagen since 2011. The Saxo relationship would not allow Aksioner to accept clients who are U.S. citizens in part because the bank does not wish to assume the burdens that would be foisted on it by FATCA if it were to accept U.S. citizens. This has impacted Mark financially, forcing him to turn away prospective American clients living in Albania who come to him for brokerage services. Ironically, in April of 2012, Mark applied for a brokerage account with his own company and was denied because he is a U.S. citizen.

Mark and his wife maintain personal bank accounts at a bank in Albania. The accounts are used to support Mark and his family's day-to-day financial needs such as purchasing food, clothing, and fuel and paying for housing.

Mark does not want the financial details of his accounts, including the account numbers, the account balances, and the gross receipts and withdrawals from the accounts, disclosed to the United States government, the IRS, or the Treasury. Mark would not disclose or permit others, including his bank, to disclose his private account information to the United States government, the IRS, or the Treasury but for the fact that FATCA and the FBAR require the disclosure. Mark fears that he will be subject to the unconstitutionally excessive fines if he fails to file an FBAR for the accounts in the future.

3) Plaintiff Roger Johnson:

Major Johnson, who fought for his country and defended the Constitution of the United States against all enemies, foreign and domestic, faces a combat veteran's day Sophie's Choice: "I once got trapped in an enemy minefield with no good choices — getting hit with FATCA felt a bit like that," said Mr. Johnson, who "had to choose between renouncing my U.S. citizenship or face onerous tax penalties." The Washington Times, quoting Roger Johnson, March 2015.

<http://www.washingtontimes.com/news/2015/mar/10/rand-paul-pushes-repeal-of-obama-tax-law-despised/#ixzz3d34l8bCf>

Roger, a U.S. citizen, is a combat veteran of the United States Army and served in combat during Operation Desert Storm with the 3rd Armored Division. He retired from the U.S. Army Reserve as a major. His wife is a citizen of the Czech Republic, and his children are dual citizens of the United States and the Czech Republic.

During the course of the twenty one years that Roger and his wife have made their home in the Czech Republic, they have founded two small advertising businesses, purchased a personal residence together, purchased several rental properties, invested their money, and maintained joint bank accounts. FATCA, however, forced Roger and his wife to significantly alter their financial affairs. Roger's wife strongly objected to having her financial affairs disclosed to the United States government under FATCA. After consulting with their tax advisor, who strongly recommended that they separate their assets, Roger and his wife decided to legally separate all of their jointly owned assets to protect his wife's privacy. As a result of that separation, Roger no longer has any ownership interest in his home, rental properties, or his wife's company. Roger and his wife are now forced to maintain completely separate bank accounts to protect her privacy.

Roger does not want the financial details of his accounts, including the account numbers, the account balances, and the gross receipts and withdrawals from the accounts, disclosed to the United States government, the IRS, or the Treasury. Roger would not disclose or permit others, including his bank, to disclose his private account information to the United States government, the IRS, or the Treasury but for the fact that the IGAs, FATCA, and the FBAR require the disclosure. Roger fears that he will be subject to the unconstitutionally excessive fines if he fails to file an FBAR for the accounts in the future.

4) Plaintiff Stephen Kish

Stephen, like many Americans living abroad, resents being treated by the US tax laws as a second-class citizen simply because he lives outside the United States. He fervently opposes the fact that the U.S. government is allowed to pry more deeply into his financial affairs than it is allowed to do to US citizens living in the United States, even though he is not accused of tax evasion. He is committed to defending his rights against warrantless searches under the Fourth Amendment.

Stephen J. Kish, Ph.D. is a citizen of the United States of America and a citizen of Canada. He currently resides in Toronto, Ontario, Canada. Stephen is a professor of psychiatry and pharmacology at the University of Toronto and the head of the Human Brain Laboratory at the Centre for Addiction and Mental Health (CAMH) in Toronto, Ontario. Stephen met his wife in Toronto in April, 1981 shortly after joining CAMH. She is a Canadian citizen. Stephen and his wife have built a life together in Toronto and established deep roots in the community. And, while they have a good marriage, FATCA has at times caused some discord between the two because she, as a Canadian citizen, strongly opposes the disclosure of her personal financial information from her and Stephen's joint bank account to the U.S. government.

Stephen does not want the financial details of his accounts, including the account numbers, the account balances, and the gross receipts and withdrawals from the accounts, disclosed to the United States government, the IRS, or the Treasury. Stephen would not disclose or permit others, including his bank, to disclose his private account information to the United States government, the IRS, or the Treasury but for the fact that the IGAs, FATCA, and the FBAR require the disclosure. Stephen fears that he, his wife, or the funds in their joint bank account will be subject to the unconstitutionally excessive fines if he fails to file an FBAR for the accounts.

5) Plaintiff Daniel Kuettel

Daniel, a veteran, renounced his U.S. citizenship to refinance his mortgage. FATCA denied him the right to pursue happiness and live a normal life. Yet, even after renouncing his citizenship, Daniel still can't escape the far-reaching tentacles of U.S. tax law. He is now in a FATCA induced "Catch 22" situation: He would like to open a college savings account for his daughter in her name but can't unless he also agrees to file FBAR and FATCA reports for the account until his daughter is 16 years old.

Daniel Kuettel is a citizen of Switzerland and a former citizen of the United States of America. Daniel resides in Bremgarten, Switzerland. In 1992, after graduating from high school, Daniel enlisted in the United States Army. Upon completing his enlistment in 1995, he joined the U.S. Army Reserve. Daniel eventually decided to move to Switzerland in search of employment in 2001. Daniel met his wife, who is originally from the Philippines, in 2000. She is a citizen of Switzerland and the Philippines. She is a nurse and is currently working as a stay-at-home mother to their two young children.

Daniel relinquished his U.S. citizenship in 2012 because of difficulties caused by FATCA. He and his wife's home is located in Switzerland, and many Swiss banks have been unwilling to accept American clients because of FATCA. Daniel made several inquiries at Swiss banks attempting to find one that would refinance his mortgage. His efforts, however, were mostly unsuccessful with all of them citing policies related to his U.S. citizenship. He contacted both the U.S. Veterans Administration and the U.S. Department of Housing and Urban Development for assistance, but both agencies declined and stated that they do not provide assistance in obtaining mortgages to Americans living abroad. Left with few options, Daniel decided to renounce his citizenship so that he and his family could continue with the life they had built in Switzerland. After renouncing his U.S. citizenship, Daniel was able to refinance his home with a Swiss bank shortly thereafter. Daniel will always consider himself an American but felt that renunciation was the only real option for his family. FATCA forces Daniel, a veteran to renounce his U.S. citizenship in order to refinance his mortgage while living and working abroad.

Daniel currently maintains a college savings account for his daughter in his own name at a bank in Switzerland but would like to transfer ownership of the account to her and place it in her name. Having the account in her name would offer several advantages such as better interest rates and discounts for local businesses.

Daniel will refrain from transferring ownership of the college savings account to his daughter because he fears that he, his daughter, or the funds in the account will be subject to the unconstitutionally excessive fines of \$100,000 or 50% of the balance of the account if his daughter should fail to file an FBAR as required by FinCEN. Daniel's daughter is not capable of complying with this reporting requirement because she is only ten years old and too young to shoulder such an obligation.

6) Plaintiff Donna-Lane Nelson

For love, Donna-Lane jumped out of FATCA frying pan into FBAR fire. Donna-Lane renounced her U.S. citizenship to protect her right to privacy.

Donna-Lane told USA Today in March of 2014, "I felt like I had gotten a divorce," says Donna-Lane Nelson, a 71-year-old Geneva-based editor and writer who renounced her U.S. citizenship in 2011 in favor of a Swiss passport, in part because of what she felt were the increasingly arduous and punishing tax reporting requirements from U.S. authorities. <http://www.usatoday.com/story/news/world/2014/03/08/usa-citizens-relinquish-passports-tax-filing/5859371/>

AP reported in April of 2014 the following, at the U.S. consulate in Geneva, "I talked to a man who explained to me that I could never, ever get my nationality back," says Donna-Lane Nelson, whose Boston accent lingers though she's lived in Switzerland 24 years. "It felt like a divorce. It felt like a death. I took the second oath and I left the consulate and I threw up." <http://finance.yahoo.com/news/more-renounce-us-citizenship-deniestereotype-162509477.html>

But Donna-Lane's FATCA nightmare started all over again after she married a U.S. citizen and opened a joint business account. In 2011, Donna-Lane re-met a professional colleague and an American. He moved to Europe. They married in May 2015. Prior to marrying, they started a business together and opened a joint business account and personal account. Because her partner is a U.S. citizen, their joint accounts are subject to the requirements of the Swiss IGA, FATCA, and the FBAR. Donna-Lane has been required to prove to their bank that she is not a U.S. citizen and has had her private financial account information disclosed to the IRS and the Treasury Department despite the fact that she is not a U.S. citizen.

Donna-Lane Nelson is a citizen of Switzerland and a former citizen of the United States of America. She lives in Geneva, Switzerland and Argelès-sur-mer, France. Donna-Lane was married in 1962 to a member of the United States military. During the first years of their marriage, they lived in Stuttgart, Germany while her then-husband was stationed for service at the Army base in Möhringen. It was during this time that Donna-Lane became acquainted with Europe, its lifestyle, and its history. After a few years in Germany, she and her then-husband returned to the United States. She earned her bachelor's degree at Lowell University in 1967 and later earned a master's degree at Glamorgan University in Wales. In 1969, her then-husband left her shortly after the birth of their daughter. After his departure, she worked various jobs in public relations and communications while raising her daughter as a single mother. Donna-Lane has written eleven novels, which are published in the United States by Five Star Publishing.

Donna-Lane became a Swiss citizen in 2006 because she believed it was her civic duty as a resident of the Swiss community to participate in local affairs and politics through voting. She also wanted to ensure that she would be able to remain in Switzerland if she was unable to obtain a work permit. Nonetheless, Donna-Lane did not eschew her American heritage and remained an active citizen in the United States, monitoring legislation on a wide array of subjects and urging her elected representatives to take appropriate action.

After FATCA was enacted, Donna-Lane's local bank in Switzerland notified her that she would not be able to open a new account if she ever closed her existing one because she was an American. Fearing that she would eventually not be able to bank in the country where she lived, she decided to relinquish her U.S. citizenship. She did so on December 11, 2011 at the U.S. Consulate in Bern, Switzerland. The decision to relinquish her U.S. citizenship was not easy, but ultimately she felt that she had to choose between having the ability to access local financial services where she lived or be a U.S. citizen. Once she had completed the renunciation process, Donna-Lane approached a local Swiss bank and was offered investment opportunities that were not available to her as an American.

Donna-Lane does not want the financial details of her business account, including the account number, the account balance, or the gross receipts and withdrawals from the account, disclosed to the United States government, the IRS, or the Treasury Department. Donna-Lane would not disclose or permit others, including her partner and her bank, to disclose her private business account information to the United States government, the IRS, or the Treasury but for the fact that the IGAs, FATCA, and the FBAR require the disclosure.

Donna-Lane fears that she and/or the funds in her joint business account will be subject to the unconstitutionally excessive fines imposed if her husband should fail to file an FBAR for the account.

7) L. Marc Zell

FATCA not only hurts Marc Zell's business, but also violates the constitutionally protected sanctity of the attorney-client privilege. Marc Zell will defend his clients' right to privacy but risks subjecting himself and his client to the unconstitutionally excessive FATCA Pass-through Penalty, the 30% withholding tax on recalcitrant account holders.

Marc Zell is a dual citizen of the United States of America and the State of Israel. He currently resides in Israel as an Israeli-American attorney. Marc Zell and his firm are frequently asked by their clients to hold funds and foreign securities in trust. Because of FATCA, Marc Zell and his firm have been required by their Israeli banking institutions to complete IRS withholding forms (either W-8BEN or W-8BEN-E) as a precondition for opening trust accounts for both U.S. and non-U.S. persons and entities. The Israeli banking officials have stated that they will require such submissions regardless of whether the beneficiary is a U.S. person (i.e. citizen or resident alien) because the trustee is or may be a U.S. person. As a result, the banks have required Marc Zell and his firm to close the trust account in some cases, and in other instances the banks have refused to open the requested trust account.

In one case, Marc Zell has been repeatedly requested by his firm's bank to transfer securities of a company registered on the Tel Aviv Stock Exchange to remove the securities (having a current fair market value in excess of \$2.5 million) from the trust account.