



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 01 2019

The Honorable Charles E. Grassley
President Pro Tempore
United States Senate
Washington, DC 20510

Dear Mr. President:

This letter presents the views of the Department of Justice (“Department”) on H.R. 9, the “Climate Action Now Act.” The Department would oppose enactment of this bill due to several constitutional concerns described below.

The centerpiece provision of the bill, section 3, would provide that “no funds are authorized to be appropriated, obligated, or expended to take any action to advance the withdrawal of the United States from the Paris Agreement.” This provision is unconstitutional. The Paris Agreement is an executive agreement. *See, e.g., United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 318 (1936) (recognizing the President’s authority to conclude certain kinds of international agreements “as do not constitute treaties in the constitutional sense.”). It was approved by the President alone. The Paris Agreement provides a mechanism for each State Party that has approved the Agreement to withdraw upon written notification. *Id.* art. 28, ¶¶ 1–2. The authority of the President to withdraw the United States from such an agreement follows both from his exclusive role in concluding it in the first place as well as, more generally, from his role as “the sole organ of the nation in its external relations, and its sole representative with foreign nations.” *Id.* at 319 (quoting then-Rep. John Marshall, 10 Annals of Cong. 595, 613 (1800)). Congress may not restrict the President in the exercise of this authority.

“[T]he historical gloss on the ‘executive Power’ vested in Article II of the Constitution has recognized the President’s ‘vast share of responsibility for the conduct of our foreign relations.’” *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 414 (2003) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610–11 (1952) (Frankfurter, J., concurring)). Because of that responsibility, the President has the “discretion traditionally available to any sovereign in its external relations, except insofar as the Constitution places that discretion in another branch of the government.” *The President’s Compliance with the “Timely Notification” Requirement of Section 501(b) of the National Security Act*, 10 Op. O.L.C. 159, 160–61 (1986). Congress has no constitutionally prescribed role in withdrawal from executive agreements. Indeed, even with respect to treaties, to the making of which the Senate must consent, “Congress has no

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Thank you for the opportunity to present our views. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration’s program, there is no objection to submission of this letter.

Sincerely,



Prim F. Escalona

Principal Deputy Assistant Attorney General

IDENTICAL LETTER SENT TO THE HONORABLE MITCH MCCONNELL, MAJORITY LEADER, UNITED STATES SENATE; THE HONORABLE CHARLES E. SCHUMER, MINORITY LEADER, UNITED STATES SENATE; THE HONORABLE NANCY PELOSI,

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The Honorable Mitch McConnell
Majority Leader
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Minority Leader
United States Senate
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The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

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Thank you for the opportunity to present our views. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration’s program, there is no objection to submission of this letter.

Sincerely,



Prim F. Escalona

Principal Deputy Assistant Attorney General

IDENTICAL LETTER SENT TO THE HONORABLE CHARLES E. GRASSLEY,
PRESIDENT PRO TEMPORE, UNITED STATES SENATE; THE HONORABLE MITCH
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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 01 2019

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Leader:

This letter presents the views of the Department of Justice (“Department”) on H.R. 9, the “Climate Action Now Act.” The Department would oppose enactment of this bill due to several constitutional concerns described below.

The centerpiece provision of the bill, section 3, would provide that “no funds are authorized to be appropriated, obligated, or expended to take any action to advance the withdrawal of the United States from the Paris Agreement.” This provision is unconstitutional. The Paris Agreement is an executive agreement. *See, e.g., United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 318 (1936) (recognizing the President’s authority to conclude certain kinds of international agreements “as do not constitute treaties in the constitutional sense.”). It was approved by the President alone. The Paris Agreement provides a mechanism for each State Party that has approved the Agreement to withdraw upon written notification. *Id.* art. 28, ¶¶ 1–2. The authority of the President to withdraw the United States from such an agreement follows both from his exclusive role in concluding it in the first place as well as, more generally, from his role as “the sole organ of the nation in its external relations, and its sole representative with foreign nations.” *Id.* at 319 (quoting then-Rep. John Marshall, 10 Annals of Cong. 595, 613 (1800)). Congress may not restrict the President in the exercise of this authority.

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Thank you for the opportunity to present our views. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration’s program, there is no objection to submission of this letter.

Sincerely,



Prim F. Escalona

Principal Deputy Assistant Attorney General

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PRESIDENT PRO TEMPORE, UNITED STATES SENATE; THE HONORABLE MITCH
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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 01 2019

The Honorable Eliot Engel
Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter presents the views of the Department of Justice (“Department”) on H.R. 9, the “Climate Action Now Act.” The Department would oppose enactment of this bill due to several constitutional concerns described below.

The centerpiece provision of the bill, section 3, would provide that “no funds are authorized to be appropriated, obligated, or expended to take any action to advance the withdrawal of the United States from the Paris Agreement.” This provision is unconstitutional. The Paris Agreement is an executive agreement. *See, e.g., United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 318 (1936) (recognizing the President’s authority to conclude certain kinds of international agreements “as do not constitute treaties in the constitutional sense.”). It was approved by the President alone. The Paris Agreement provides a mechanism for each State Party that has approved the Agreement to withdraw upon written notification. *Id.* art. 28, ¶¶ 1–2. The authority of the President to withdraw the United States from such an agreement follows both from his exclusive role in concluding it in the first place as well as, more generally, from his role as “the sole organ of the nation in its external relations, and its sole representative with foreign nations.” *Id.* at 319 (quoting then-Rep. John Marshall, 10 Annals of Cong. 595, 613 (1800)). Congress may not restrict the President in the exercise of this authority.

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Thank you for the opportunity to present our views. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration’s program, there is no objection to submission of this letter.

Sincerely,



Prim F. Escalona
Principal Deputy Assistant Attorney General

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 01 2019

The Honorable Michael McCaul
Ranking Member
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Congressman McCaul:

This letter presents the views of the Department of Justice ("Department") on H.R. 9, the "Climate Action Now Act." The Department would oppose enactment of this bill due to several constitutional concerns described below.

The centerpiece provision of the bill, section 3, would provide that "no funds are authorized to be appropriated, obligated, or expended to take any action to advance the withdrawal of the United States from the Paris Agreement." This provision is unconstitutional. The Paris Agreement is an executive agreement. *See, e.g., United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 318 (1936) (recognizing the President's authority to conclude certain kinds of international agreements "as do not constitute treaties in the constitutional sense."). It was approved by the President alone. The Paris Agreement provides a mechanism for each State Party that has approved the Agreement to withdraw upon written notification. *Id.* art. 28, ¶¶ 1–2. The authority of the President to withdraw the United States from such an agreement follows both from his exclusive role in concluding it in the first place as well as, more generally, from his role as "the sole organ of the nation in its external relations, and its sole representative with foreign nations." *Id.* at 319 (quoting then-Rep. John Marshall, 10 Annals of Cong. 595, 613 (1800)). Congress may not restrict the President in the exercise of this authority.

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Sincerely,



Prim F. Escalona
Principal Deputy Assistant Attorney General

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 01 2019

The Honorable Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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Thank you for the opportunity to present our views. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration’s program, there is no objection to submission of this letter.

Sincerely,



Prim F. Escalona

Principal Deputy Assistant Attorney General

IDENTICAL LETTER SENT TO THE HONORABLE CHARLES E. GRASSLEY,
PRESIDENT PRO TEMPORE, UNITED STATES SENATE; THE HONORABLE MITCH
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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 01 2019

The Honorable Greg Walden
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Walden:

This letter presents the views of the Department of Justice ("Department") on H.R. 9, the "Climate Action Now Act." The Department would oppose enactment of this bill due to several constitutional concerns described below.

The centerpiece provision of the bill, section 3, would provide that "no funds are authorized to be appropriated, obligated, or expended to take any action to advance the withdrawal of the United States from the Paris Agreement." This provision is unconstitutional. The Paris Agreement is an executive agreement. *See, e.g., United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 318 (1936) (recognizing the President's authority to conclude certain kinds of international agreements "as do not constitute treaties in the constitutional sense."). It was approved by the President alone. The Paris Agreement provides a mechanism for each State Party that has approved the Agreement to withdraw upon written notification. *Id.* art. 28, ¶¶ 1–2. The authority of the President to withdraw the United States from such an agreement follows both from his exclusive role in concluding it in the first place as well as, more generally, from his role as "the sole organ of the nation in its external relations, and its sole representative with foreign nations." *Id.* at 319 (quoting then-Rep. John Marshall, 10 Annals of Cong. 595, 613 (1800)). Congress may not restrict the President in the exercise of this authority.

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Sincerely,



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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 01 2019

The Honorable James P. McGovern
Chairman
Committee on Rules
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 01 2019

The Honorable Lisa Murkowski
Chair
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

Dear Madam Chair:

This letter presents the views of the Department of Justice ("Department") on H.R. 9, the "Climate Action Now Act." The Department would oppose enactment of this bill due to several constitutional concerns described below.

The centerpiece provision of the bill, section 3, would provide that "no funds are authorized to be appropriated, obligated, or expended to take any action to advance the withdrawal of the United States from the Paris Agreement." This provision is unconstitutional. The Paris Agreement is an executive agreement. *See, e.g., United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 318 (1936) (recognizing the President's authority to conclude certain kinds of international agreements "as do not constitute treaties in the constitutional sense."). It was approved by the President alone. The Paris Agreement provides a mechanism for each State Party that has approved the Agreement to withdraw upon written notification. *Id.* art. 28, ¶¶ 1–2. The authority of the President to withdraw the United States from such an agreement follows both from his exclusive role in concluding it in the first place as well as, more generally, from his role as "the sole organ of the nation in its external relations, and its sole representative with foreign nations." *Id.* at 319 (quoting then-Rep. John Marshall, 10 Annals of Cong. 595, 613 (1800)). Congress may not restrict the President in the exercise of this authority.

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Sincerely,



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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 01 2019

The Honorable Tom Cole
Ranking Member
Committee on Rules
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Cole:

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 01 2019

The Honorable Joe Manchin III
Ranking Member
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

Dear Senator Manchin:

This letter presents the views of the Department of Justice (“Department”) on H.R. 9, the “Climate Action Now Act.” The Department would oppose enactment of this bill due to several constitutional concerns described below.

The centerpiece provision of the bill, section 3, would provide that “no funds are authorized to be appropriated, obligated, or expended to take any action to advance the withdrawal of the United States from the Paris Agreement.” This provision is unconstitutional. The Paris Agreement is an executive agreement. *See, e.g., United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 318 (1936) (recognizing the President’s authority to conclude certain kinds of international agreements “as do not constitute treaties in the constitutional sense.”). It was approved by the President alone. The Paris Agreement provides a mechanism for each State Party that has approved the Agreement to withdraw upon written notification. *Id.* art. 28, ¶¶ 1–2. The authority of the President to withdraw the United States from such an agreement follows both from his exclusive role in concluding it in the first place as well as, more generally, from his role as “the sole organ of the nation in its external relations, and its sole representative with foreign nations.” *Id.* at 319 (quoting then-Rep. John Marshall, 10 Annals of Cong. 595, 613 (1800)). Congress may not restrict the President in the exercise of this authority.

“[T]he historical gloss on the ‘executive Power’ vested in Article II of the Constitution has recognized the President’s ‘vast share of responsibility for the conduct of our foreign relations.’” *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 414 (2003) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610–11 (1952) (Frankfurter, J., concurring)). Because of that responsibility, the President has the “discretion traditionally available to any sovereign in its external relations, except insofar as the Constitution places that discretion in another branch of the government.” *The President’s Compliance with the “Timely Notification” Requirement of Section 501(b) of the National Security Act*, 10 Op. O.L.C. 159, 160–61 (1986). Congress has no constitutionally prescribed role in withdrawal from executive agreements. Indeed, even with respect to treaties, to the making of which the Senate must consent, “Congress has no

constitutionally prescribed role in treaty termination. Memorandum for Cyrus Vance, Secretary of State, from John M. Harmon, Assistant Attorney General, Office of Legal Counsel, *Re: Proposed Reservation to SALT II Conditioning Termination on Senate Approval* at 4 (Nov. 13, 1979). “[T]reaty termination is part of the *Executive* power, as are the negotiation, ratification and interpretation of treaties. That authority is not conferred by and cannot be limited by Congress.” *Id.* at 4 n.4; *cf. also Goldwater v. Carter*, 617 F.2d 697, 699–708 (D.C. Cir.) (en banc; per curiam) (“[W]e think it is not without significance that out of all the historical precedents brought to our attention, in no situation has a treaty been continued in force over the opposition of the President.”), *vacated*, 444 U.S. 996 (1979). Given that Congress may not prevent the President from terminating a treaty, where the Senate at least would have had to consent to the making of the treaty, it follows that Congress may not prevent the President from withdrawing from an executive agreement, where neither Congress nor the Senate played any role in the making of the agreement. Indeed, we are unaware of a single instance in the history of the Republic in which Congress has enacted a statute that would have prevented the President from taking action to terminate a treaty, much less from taking action to withdraw from an executive agreement.

The fact that the prohibition is phrased as a restriction on spending does not change this analysis. “Broad as Congress’s spending power undoubtedly is, it is clear that Congress may not deploy it to accomplish unconstitutional ends.” *Placing of United States Armed Forces Under United Nations Operational or Tactical Control*, 20 Op. O.L.C. 182, 188 (1996) (footnote omitted). In particular, “Congress may not use its power over appropriation of public funds “to attach conditions to Executive Branch appropriations requiring the President to relinquish his constitutional discretion in foreign affairs.”” *Id.* (quoting *Issues Raised by Provisions Directing Issuance of Official or Diplomatic Passports*, 16 Op. O.L.C. 18, 28 (1992) (quoting *Issues Raised by Foreign Relations Authorization Bill*, 14 Op. O.L.C. 3, 42 n.3 (1990) (quoting *Constitutionality of Proposed Statutory Provision Requiring Prior Congressional Notification for Certain C.I.A. Covert Actions*, 13 Op. O.L.C. 258, 261 (1989)))).

Thank you for the opportunity to present our views. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration’s program, there is no objection to submission of this letter.

Sincerely,



Prim F. Escalona
Principal Deputy Assistant Attorney General

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U.S. Department of Justice

Office of Legislative Affairs

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Washington, D.C. 20530

MAY 01 2019

The Honorable James E. Risch
Chairman
Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

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The centerpiece provision of the bill, section 3, would provide that "no funds are authorized to be appropriated, obligated, or expended to take any action to advance the withdrawal of the United States from the Paris Agreement." This provision is unconstitutional. The Paris Agreement is an executive agreement. *See, e.g., United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 318 (1936) (recognizing the President's authority to conclude certain kinds of international agreements "as do not constitute treaties in the constitutional sense."). It was approved by the President alone. The Paris Agreement provides a mechanism for each State Party that has approved the Agreement to withdraw upon written notification. *Id.* art. 28, ¶¶ 1-2. The authority of the President to withdraw the United States from such an agreement follows both from his exclusive role in concluding it in the first place as well as, more generally, from his role as "the sole organ of the nation in its external relations, and its sole representative with foreign nations." *Id.* at 319 (quoting then-Rep. John Marshall, 10 Annals of Cong. 595, 613 (1800)). Congress may not restrict the President in the exercise of this authority.

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Thank you for the opportunity to present our views. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration’s program, there is no objection to submission of this letter.

Sincerely,



Prim F. Escalona
Principal Deputy Assistant Attorney General

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Washington, D.C. 20530

MAY 01 2019

The Honorable Bob Menendez
Ranking Member
Committee on Foreign Relations
United States Senate
Washington, DC 20510

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