



EAGLE FORUM NEWS

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What Happened in the first session of the 112th Congress?

2011 Year End Report

2011 began with much excitement, as Republicans took back the Majority in the House of Representatives, welcoming 63 freshmen, and although remaining the Minority in the Senate, adding 6 to their numbers.

However, the year brought significant disappointment, as the newly-elected conservatives in the House, and the recently invigorated grassroots realized the limitations of conservatives controlling only one-half of one branch of government.

Additionally, Eagle Forum was disappointed that the only major legislation passed throughout the year were spending bills that cut far less than expected and Republican-supported corporate welfare bills that harm American innovation and job creation, like the so-called patent reform bill and so-called free trade agreements with Columbia, Panama and Korea.

However, conservative gains did yield some positive fruit including serious discussion about and efforts to defund Planned Parenthood, overturn ObamaCare, check Executive Branch overreach and cut spending. There were also definitive victories, like defeating radical judicial nominees and saving the Edison light bulb.

We must continue the fight to undo the damage done by President Obama and his liberal Congress and to hold conservatives accountable to get our nation back on track.

The following report is an overview of the battles in which Eagle Forum was involved in the first session of the 112th Congress. Unlike the last few years, many of the most important votes did not fall along party lines. Where practical, we have listed the Republicans who voted the wrong way and Democrats who voted the right way on these issues to assist in future activism.

Repealing ObamaCare Center

House Republicans introduced a repeal bill, H.R. 2, "Repealing the Job-Killing Health Care Law Act," on January 5, 2011, the first day of the 111th Congress. The House passed the bill by a vote of 245-189, with all Republicans and three Democrats, Boren, Ross (AR), and McIntyre, voting YES.

The Senate, however, rejected repeal language in a straight party line vote.

Potential government shutdown

Because Democrats refused to pass a budget in the 111th Congress, the new, deeply divided 112th Congress faced a government shutdown threat in April.

Conservatives in the House passed a budget written by Congressman Paul Ryan that included significant cuts and a full-scale defunding of Planned Parenthood. President Obama declared that he would veto any budget that defunded Planned Parenthood, even if it meant shutting down the government and failing to pay active duty military.

Eagle Forum issued an alert urging House members to vote for the Republican Study Committee budget, which went further and called for more significant cuts than the Ryan Budget. We did score this vote, but we were careful to note in our score letter that Representatives could vote for **both** the Ryan Budget and the RSC Budget.

A surprising number of Republicans, voted NO on the RSC budget, including: Adams, Aderholt, Alexander, Barletta, Bass (NH), Benishek, Berg, Biggert, Bilbray, Bilirakis, Black, Bonner, Bono Mack, Boustany, Buchanan, Bucshon, Camp, Canseco, Cantor, Capito, Cravaack, Crawford, Crenshaw, Davis (KY), Dent, DesJarlais, Diaz-Balart, Dold, Dreier, Duffy, Ellmers, Emerson, Farenthold, Fincher, Fitzpatrick, Forbes, Fortenberry, Frelinghuysen, Gardner, Gerlach, Gibbs, Gibson, Gohmert, Graves (MO), Griffin (AR), Grimm, Guthrie, Hanna, Hastings (WA), Hayworth, Heck, Heller, Herrera Beutler, Hultgren, Hurt, Jenkins, Johnson (OH), Jones, King (NY), Kinzinger, Latham, LaTourette, Lewis (CA), LoBiondo, Lucas, Luetkemeyer, Lungren, Marino, McCarthy (CA), McCotter, McKeon, McKinley, McMorris Rodgers, Meehan, Miller (MI), Murphy (PA), Noem, Nugent, Nunes, Paulsen, Pearce, Petri, Pitts, Platts, Reed, Rehberg, Renacci, Rivera, Roby, Rogers (AL), Rogers (KY), Rogers (MI), Rooney, Ros-Lehtinen, Roskam, Runyan, Ryan (WI), Schilling, Schock, Scott (SC), Sensenbrenner, Shuster, Simpson, Smith (NJ), Stivers, Thompson (PA), Tiberi, Tipton, Turner, Upton, Walden, Webster, Whitfield, Wittman, Wolf, Womack, Yoder, Young (AK), Young (FL), and Young (IN).

All Democrats voted NO.

Debt Ceiling Increase

On August 2, 2011, the United States public debt was projected to reach its statutory maximum. Newly elected conservatives in the House fought to tie an increase to reducing government spending. Over several weeks and months, negotiators from both parties, both houses, and the White House worked to forge a compromise. The House passed the compromise bill, the Budget Control Act of 2011, on August 1, 2011 and the Senate passed it on August 2.

Eagle Forum did not score this vote.

Patent Reform

Eagle Forum fought its most intensive legislative battle over so-called “patent reform” legislation. Eagle Forum has been engaged in the fight to protect our world-class, constitutionally mandated system of awarding patents to inventors from corporatists who sought to weaken our system in the interest of “harmonizing” with the rest of the world.

Unfortunately, the Chairs of the Judiciary Committees in both the Senate, Sen. Patrick Leahy (D-VT) and the House, Congressman Lamar Smith (R-TX), both happened to have big tech corporations as constituents, and the two Chairs worked together to ensure that the terrible bill, which had languished in both chambers’ Judiciary Committees for years, passed.

The Senate passed its version, S.23, in early March, as new Senators were still waiting for permanent office space, before any meaningful lobbying could take place. Senators were told the bill was non-controversial, and it passed by a vote of 95-5.

We had time to put up a stronger fight on the House side, and fight we did! Big tech interests talked Republican Leadership into including the so-called patent reform bill into their “jobs plan.” Eagle Forum worked with a broad coalition of universities, research corporations, venture capitalists and angel investors, inventors, manufacturers and conservative groups to inform particularly new members of Congress about the Constitutional and practical impact the proposed law would have on inventors.

Eagle Forum participated in and co-sponsored six Capitol Hill briefings on the issue and spent months meeting with Congressmen and staffers. Some of our most serious concerns about H.R. 1249 included:

Moving from first-to-invent to first-to-file

H.R. 1249 changed 220 years of patent law from a system of recognizing the first person to invent something to the first to file paperwork on an invention. This move stacks the deck overwhelmingly in favor of large corporations who are better staffed and funded to file applications.

Limiting the grace period inventors currently enjoy

H.R. 1249 also harms individual inventors and startup companies by limiting the grace period inventors currently enjoy. Under the current system, inventors have a one-year grace period to seek investors to take their inventions to market. H.R. 1249 limits the grace period and redefines it in a way that is hostile to small inventors.

Extending post grant review

This allows patent infringers more time to keep inventors tied up in expensive legal battles to defend their inventions. Not only does this bankrupt inventors, it makes it more difficult for inventors to find investors when the patent is open to unlimited legal challenges.

Threatening National Security

A letter from the Inventors Network of the Capitol Area indicated that H.R. 1249 endangers U.S. security. The letter explains that we have serious problems with Chinese hackers stealing U.S. security related innovation secrets while they are under development. H.R. 1249 will legitimize this theft by enabling hackers to then file applications with the U.S. Patent and Trademark Office, where under a first-to-file system, they will become the rightful owner of that technology.

Yet Another Bailout for Big Banks

Section 18 of H.R. 1249 contains a provision that subjects an existing patent for electronic check processing to retroactive attack in order to allow big banks to use the technology without paying for it. If this provision is found to be a “taking,” as Professor Richard Epstein, the nation’s foremost authority

on property rights wrote in a **15-page letter** says it is, we, the taxpayers, will have to pay for a patent on technology that only big banks use.

We had some hope that the bill would get stalled over the issue of fee diversion. One of the main problems with the U.S. Patent and Trademark Office, is that it is not properly funded. It is one of the few federal offices that is Constitutionally mandated, and it generates its own fees, so it has the ability to be self-sustaining, not a burden on taxpayers. However, USPTO fees go into the federal treasury, thus that fund can be and is raided by Congressional appropriators, who can divert the fees to other federal projects.

The Senate bill passed with a provision prohibiting funds from being diverted from the PTO. Early versions of H.R. 1249 had this language. This raised complaints from Congressional appropriators. Although Eagle Forum agrees that the PTO must be properly funded. We agreed with Congressional appropriators that they should still retain oversight over how the funding was used. Ultimately, proponents of the bill dropped the fee diversion language, but that meant that the bill increased mandatory federal spending. This violated House Leadership's "cut-go" rule, which prohibits the House from bringing to the floor any measure that increased mandatory spending. Thus, House leadership had to break its own self-imposed fiscal restraint rules to pass this bill, but they did.

Weldon Patenting Policy

One positive aspect of the bill is that it codified the "Weldon Patenting Amendment," which prohibits the patenting of human embryos. The Weldon amendment was previously included in the annual Commerce, Justice, Science appropriations act, and had to be defended each year. Making the ban permanent eliminates the need for the appropriations amendment. We were disappointed, however, that the proponents of this terrible bill were able to draw support for the bill from pro-family groups, who have no interest in the underlying bill, but supported it because it codified the Weldon Amendment. We contacted these groups and urged them to encourage leadership to add this codification to a different bill. We did manage to keep several groups from scoring in favor of the bill once we shared our concerns.

Despite all our lobbying and seven alerts to our grassroots members, the bill passed and President Obama signed it into law on September 16, 2011.

Inventors have already filed lawsuits challenging the law. Eagle Forum is closely monitoring these challenges and will continue to fight to have this unconstitutional law overturned.

Republicans voting YES: Adams, Alexander, Austria, Bachus, Barletta, Barton, Bass (NH), Biggert, Bilbray, Black, Blackburn, Bonner, Bono Mack, Boustany, Brady (TX), Buchanan, Bucshon, Calvert, Camp, Campbell, Canseco, Cantor, Capito, Carter, Cassidy, Chabot, Coble, Cole, Conaway, Crawford, Crenshaw, Culberson, Dent, DesJarlais, Diaz-Balart, Dold, Dreier, Duffy, Ellmers, Farenthold, Fincher, Fitzpatrick, Fleischmann, Fleming, Flores, Forbes, Foxx, Frelinghuysen, Gallegly, Gardner, Gerlach, Gibbs, Goodlatte, Gowdy, Granger, Graves (MO), Griffin, Griffith, Grimm, Guinta, Guthrie, Hall, Hanna, Harper, Harris, Hastings (WA), Hayworth, Heck, Hensarling, Herger, Herrera Beutler, Huizenga, Hurt, Issa, Jenkins, Johnson (IL), Johnson (OH), Johnson (TX), Jordan, Kelly, King (NY), Kinzinger, Kline, Labrador, Lance, Lankford, Latham, LaTourette, Latta, Lewis (CA), LoBiondo, Long, Lucas, Luetkemeyer, Marino, McCarthy (CA), McCaul, McHenry, McKeon, McKinley, McMorris Rodgers, Meehan, Mica, Miller (MI), Miller (Gary), Mulvaney, Murphy (PA), Myrick, Neugebauer, Noem, Nugent, Nunes, Olson, Palazzo, Paulsen, Pence, Platts, Poe, Pompeo, Price (GA), Quayle, Reed, Reichert, Renacci, Ribble, Rigell, Rivera, Roby, Roe, Rogers (AL), Rogers (KY), Rogers (MI), Rokita, Rooney, Ros-Lehtinen, Roskam, Ross (FL), Runyan, Ryan (WI), Scalise, Schmidt, Schweikert, Scott (SC), Sessions, Shimkus, Shuster, Simpson, Smith (NJ), Smith (TX), Stearns,

Stutzman, Sullivan, Thornberry, Tiberi, Tipton, Upton, Walberg, Walden, Walsh, Westmoreland, Whitfield, Wilson (SC), Wittman, Womack, Woodall, Yoder, Young (AK), and Young (IN).

Democrats voting NO: Andrews, Baldwin, Brady (PA), Clarke (MI), Conyers, Costello, DeFazio, DeGette, Edwards, Eshoo, Farr, Filner, Garamendi, Gonzalez, Green, G., Grijalva, Hinchey, Hirono, Honda, Kaptur, Kildee, Kind, Kucinich, Lee, Lipinski, Lofgren, Luján, Markey, Matsui, McNerney, Miller (George), Moore, Pastor, Payne, Pelosi, Pingree, Rush, Ryan (OH), Sanchez (Loretta), Schiff, Sherman, Slaughter, Stark, Sutton, Tsongas, Velázquez, Visclosky, Waters, Waxman, and Woolsey.

On the Senate side, we only scored the Senate's vote on H.R. 1249 (along with several good amendments, none of which passed), not its earlier vote on S. 23, because, although we issued a score warning letter urging a NO vote, we gave Senators another chance, because we didn't want to penalize anyone who changed their mind and voted the right way.

Republicans voting YES: Alexander, Ayotte, Barrasso, Blunt, Boozman, Brown, Burr, Chambliss, Coats, Cochran, Collins, Corker, Cornyn, Crapo, Enzi, Graham, Grassley, Hatch, Heller, Hoeven, Hutchison, Inhofe, Isakson, Johanns, Kirk, Kyl, Lugar, McConnell, Moran, Murkowski, Portman, Risch, Roberts, Sessions, Shelby, Snowe, Thune, Toomey, Vitter, and Wicker. **Note:** Senators Lee, Johnson, DeMint, Coburn, Paul and McCain all voted YES earlier in the year on S. 23, but changed their position and voted NO on H.R. 1249.

Democrats who voted NO: Boxer, Cantwell, and McCaskill.

Protecting Marriage

On February 23, 2011, Attorney General Eric Holder announced that President Obama had unilaterally decided the Defense of Marriage Act, which was enacted on a widely bi-partisan basis in Congress and signed by President Clinton in 1996, is unconstitutional and that the Justice Department would no longer do its job and defend the law against multiple pending federal suits challenging the law.

Eagle Forum-endorsed freshman Congressman Vicky Hartzler (R-MO) introduced a Resolution urging President Obama to reverse course and continue defending DOMA on March 4, 2011. The Resolution never came to the House floor for a vote.

House Speaker John Boehner responded to the Justice Department's action by swiftly convening the Bipartisan Legal Advisory Group (BLAG) and requesting that they hire counsel to defend DOMA on Congress' behalf in light of the Justice Department's refusal. BLAG is a standing body of the U.S. House of Representatives comprised of the House leadership (the Speaker, the majority and minority leaders, the majority and minority whips), which directs the activities of the House Office of General Counsel. BLAG voted 3-2, along partisan lines, to hire counsel to defend DOMA.

Former Solicitor General Paul Clement under President George W. Bush, was selected to represent Congress in this matter. On April 25, 2011, King & Spalding, the law firm through which Clement was representing the government, announced it was dropping the matter. On the same day, Clement resigned from King & Spalding in protest and joined Bancroft PLLC, which allowed him to continue work for BLAG.

DOMA and the Military

In a hasty effort to implement the reversal of the 1993 law prohibiting homosexuals from openly serving in the military, often called “don’t ask, don’t tell,” which Congress approved during the lame duck session in December 2010, the Navy Chief of Chaplains issued a memorandum in May stating that chaplains could perform same-sex marriages once the ban was lifted. However, after grassroots activists protested this potential violation of the Defense of Marriage Act (DOMA), the Navy reversed its position.

Congressman Todd Akin, Chairman of the Seapower & Projection Forces Subcommittee of the House Armed Services Committee, wrote a letter to the Secretary of the Navy, signed by 63 Congressmen, urging the Navy to suspend this policy.

Akin and Congressman Vicky Hartzler added an amendment during the House Armed Services Committee mark-up of the National Defense Authorization Bill for FY 2012 declaring that no Department of Defense property or personnel can perform same-sex marriages. Unfortunately, the Senate removed the Akin-Hartzler language from the NDAA before passing the bill.

Congressmen Virginia Foxx (R-NC) and Dan Burton proposed a similar amendment to the House Defense Appropriations bill simply stating that no funds could be used in contravention of DOMA. The Foxx Amendment passed on July 7 by a vote 248-175. Six Republicans voted No: Biggert, Bono Mack, Diaz-Balart, Hanna, Hayworth, and Ros-Lehtinen, and 19 Democrats voted YES: Altmire, Barrow, Bishop (GA), Boren, Chandler, Costello, Critz, Cuellar, Donnelly, Gene Green, Holden, Kissell, Lipinski, Matheson, McIntyre, Peterson, Rahall, Ross (AR) and Shuler.

The Senate has not yet taken up the 2012 Defense Appropriations Act.

So-called “Respect for Marriage Act” (DOMA Repeal)

California Senator Dianne Feinstein attempted to appease President Obama’s liberal base who were complaining the President has not done enough to advance their agenda by sponsoring S. 598, the so-called “Respect for Marriage Act” that would repeal the Defense of Marriage Act. The Senate Judiciary Committee held a hearing on the bill on July 20, 2011. Multiple homosexual couples who claimed they were aggrieved by not being allowed to marry delivered emotional testimony before a standing-room-only crowd. On, November 10, 2011, the Senate Judiciary Committee voted 10-8, along party lines to pass the bill out of Committee. After the Committee vote, there was serious talk about liberals attempting to attach the bill to the Defense Authorization Bill.

Eagle Forum issued an alert to our members and a letter to Senators urging them to oppose any effort to move the bill forward. No such amendment was proposed to the DOD Authorization.

Protecting a Culture of Life

Defunding Planned Parenthood

As one of its first actions, the House passed a prohibition on funding for Planned Parenthood as an amendment to H.R. 1, the original House-passed Continuing Resolution for FY 2011. However, this provision was dropped during compromise negotiations to avoid a government shutdown. The amendment to H.R. 1, defunding Planned Parenthood was offered by Rep. Mike Pence (R-IN) and passed by a vote of 240-185-1. Justin Amash (R-MI) voted Present.

Instead of retaining the Pence amendment in the final FY11 CR, the House and Senate held votes on an enrollment correction resolution (H. Con. Res. 36) authored by Reps. Diane Black (R-TN) and Martha Roby (R-AL). If the enrollment correction had been passed by both the House and the Senate, the final CR would have included language to defund Planned Parenthood. The enrollment correction passed the House by a vote of 241-185-1, but failed in the Senate by a vote of 42-58. Rep. Justin Amash (R-MI) again voted Present.

Republicans voting NO: Bass (NH), Biggert, Bono Mack, Dent, Dold, Frelinghuysen, and Hanna.

Democrats voting YES: Boren, Costello, Critz, Donnelly, Lipinski, McIntyre, Peterson, Rahall, Ross (AR), and Shuler.

Appropriations: FY12

On November 18, 2011 and December 23, 2011 final FY2012 appropriations bills (P.L. 112-74 and P.L. 112-55) were enacted. These bills retained all current pro-life riders. P.L. 112-55 reduced funding for Title X from \$299 million to \$297 million, reduced funding for UNFPA from \$40 million to \$35 million and level funded international population control and family planning at \$575 million. P.L. 112-74 passed by the House by a vote of 298-121 on November 17 and the Senate by a vote of 70-30 on November 17. P.L. 112-55 passed by the House by a vote of 296-121 on December 16 and the Senate by a vote of 67-32 on December 17.

Several new policies had been included in the House appropriations bills, but were rejected by the Senate and are not included in the final FY12 appropriations. These policies included: providing conscience protection (the Abortion Non-Discrimination Act), eliminating funding for abortion and abortion coverage under the Affordable Care Act, defunding Planned Parenthood and reinstating the Mexico City Policy.

H.R. 358, the Protect Life Act

On October 13, 2011, the House passed H.R. 358, the "Protect Life Act," by a vote of 251-172. H.R. 358, introduced by Health Subcommittee Chairman Joe Pitts (R-PA) and Representative Dan Lipinski (D-IL), would prohibit funding for abortion and abortion coverage under P.L. 111-148, the "Patient Protection and Affordable Care Act" (PPACA or "ObamaCare"). H.R. 358 would prohibit federal funding for abortion or abortion coverage through the government-related exchanges, community health centers, Office of Personnel Management administered plans, or any other program authorized or appropriated under PPACA. The legislation also protects conscience rights for health care providers by specifying that Federal agencies and State or local governments funded by PPACA

may not discriminate against health care entities that refuse to be involved in abortion. The Senate has not brought H.R. 358 or the Senate companion bill, S. 877, introduced by Senator Orrin Hatch (R-UT), to the floor for a vote.

Eagle Forum did not take an official position on this bill. We chose not to score the bill for the same reason we did not score the Stupak/Pitts amendment to PPACA, because we so strongly oppose the bill, we believe ObamaCare needs to be fully repealed, not made a “little less bad.” We also do not want to provide political cover to so-called “pro-life” Democrats.

Teaching Health Centers

On May 24, 2011 Rep. Virginia Foxx (R-NC) offered a pro-life amendment to legislation converting funding for qualified teaching health centers from mandatory to discretionary spending (H.R. 1216). The Foxx amendment prohibits abortion funding and provides conscience protection in qualified teaching health centers. The Foxx amendment passed on May 25, 2011 by a vote of 234 to 182. H.R. 1216 has not been taken up by the Senate.

H.R. 3, the No Taxpayer Funding for Abortion Act

On May 4, 2011 the House passed H.R. 3, the No Taxpayer Funding for Abortion Act by a vote of 251-175. H.R. 3 was introduced by Pro-life Caucus Co-Chairs Chris Smith (R-NJ) and Dan Lipinski (D-IL) and would establish a government-wide permanent prohibition on funding for elective abortion and insurance coverage that includes elective abortion. It would also close abortion-funding loopholes created by the Patient Protection and Affordable Care Act (PPACA), prohibit tax-preferred status for abortion through health savings accounts (and other similar arrangements) and itemized deductions. Finally, H.R. 3 would make the Hyde-Weldon conscience clause permanent. The Senate has not taken up H.R. 3 or the Senate companion bill, S. 906, introduced by Senator Roger Wicker (R-MS).

Appropriations: FY11

On April 14, 2011 the House passed the final FY11 Continuing Resolution or “CR” (P.L. 112-10) which was also passed by the Senate and signed into law. The final FY11 CR reinstated the D.C. Hyde amendment (Dornan amendment) to ensure that no congressionally appropriated funds (federal or local) are used to pay for elective abortion. In addition, funding for UNFPA was reduced from \$55 million to \$40 million; Title X domestic family planning was reduced from \$317 million to \$299 million; and International Population Control and Family Planning Funding was reduced from \$648 million to \$575 million.

Defunding United Nations Population Fund (UNFPA)

On October 5, 2011, the House Foreign Affairs Committee considered H.R. 2059, which defunds the United Nations Population Fund. The UN Population Fund (UNFPA) is known for its close association with China’s brutal one-child policy. The Committee rejected 10 hostile amendments before passing the measure by a vote of 23-17.

2012 Foreign Relations Authorization Act

On July 21, 2011, the House Foreign Affairs Committee approved H.R. 2583, the Foreign Relations Authorization Act, which provides authorizations for various international programs and activities. The bill as introduced includes the Mexico City Policy, which prohibits funding to foreign nongovernmental organizations that promote or perform abortion. During consideration of H.R. 2583, Rep. Howard Berman (D-CA) offered an amendment to strip the policy out of the bill. The Berman amendment failed by a vote of 17-25. In addition, Rep. Jeff Fortenberry (R-NE) offered an amendment declaring it to be U.S. policy that sex-selection abortion is a human rights violation. The Fortenberry amendment was adopted by voice vote.

The D.C. Hyde (Dornan) Amendment

On June 23, 2011 the House Appropriations Committee considered H.R. 2434, the FY2012 Appropriations bill authored by Rep. Jo Ann Emerson (R-MO). An amendment offered by Rep. Barbara Lee (D-CA) to nullify the D.C. Hyde amendment was defeated by a vote of 20-27. The Financial Services Appropriations bill was approved by the House Appropriations Committee by a vote of 27-21 with the D.C. Hyde amendment intact.

Cut, Cap and Balance

“Cut, Cap and Balance,” a phrase coined by Republican Study Committee staffer and 2011 Eagle Award recipient Wes Goodman, began as Republican Study Committee initiative urging Members of Congress to insist that any agreement to increase the debt limit be tied to strict budget cuts and caps and meaningful effort to balance the federal budget. Eagle Forum supported the RSC’s initial call. However, we did not score H.R. 2560, the Cut, Cap and Balance Act, because it required Congress to vote on a Balanced Budget Amendment, which we do not support.

Although H.R. 2560 passed the House of Representatives overwhelmingly, it did not pass the Senate. Also, because it required the house to vote on a Balanced Budget Amendment (BBA), it led to several weeks of unproductive infighting among Congressional conservatives about the best strategy for a BBA, ranging from a “clean” BBA, a simple requirement that Congress balance its budget each year, or a “strong” BBA requiring that specifically defined its terms and required a super majority to raise taxes. Ultimately, the House passed a “clean” BBA. The Senate failed to pass a BBA, when Democrats and Republicans both offered their preferred versions and neither garnered enough votes to pass.

Eagle Forum did not take a position on H.R. 2560 or on any BBA offered in the House or Senate.

Immigration

On May 26, 2011, the Supreme Court ruled, in a 5-3 decision in *Chamber of Commerce v. Whiting*, that The Legal Arizona Workers Act, which allows the state of Arizona to strip businesses who repeatedly hire illegal aliens of their business licenses and requires Arizona businesses to use E-Verify was not preempted by federal legislation. (Justice Kagan recused herself from the case because of her direct role in the case while she was Solicitor General.)

House Judiciary Chairman Lamar Smith proposed H.R. 2164, the so-called Legal Workforce Act, which purported to be a national E-Verify bill. The bill enjoyed support from members of the

immigration community, like Numbers USA and the Center for Immigration Studies and the Chamber of Commerce. In reality, H.R. 2164 was an attempt to undo the Supreme Court's ruling in *Chamber of Commerce v. Whiting*. H.R. 2164 was a relatively toothless bill full of loopholes that would put the federal government in charge of enforcing the E-Verify requirement, while stripping the states of their right to enforce the requirement.

Phyllis wrote an excellent column about the issue, which we sent to all Republican Judiciary staffers. Eagles lobbied on this issue, and we made personal visits to several members of the Judiciary Committee, and worked closely with Congressman Steve King's staff. King was a leading voice in the Judiciary Committee against the bill. Ultimately, Lamar Smith abandoned H.R. 2164, and is reportedly working on an alternative bill. We are closely monitoring this issue.

Trade Agreements

Despite Eagle Forum's strong opposition, including a brilliant column from Phyllis that we sent to all Republican Chiefs of Staff and Legislative Directors, Conservative Congressmen and Senators, even some of our most stalwart allies, voted for jobs-killing free trade agreements with Panama, Columbia and most devastating, Korea.

The numbers were overwhelming and devastating: the Panama Agreement passed by a vote of 300-129, with 4 not voting in the House, and in the Senate by a vote of 77-22. The Columbia Agreement passed by a vote of 262-167, with 4 not voting, and in the Senate by a vote of 66-33, with 1 not voting. The Korea Agreement passed by a vote of 278-151, with 4 not voting, and in the Senate by a vote of 83-15, with 2 not voting.

Judicial Nominations

Goodwin Liu

For a second time in 2011, the Senate rejected President Obama's radical nominee to the already radical Ninth Circuit Court of Appeals, Berkeley Law Professor Goodwin Liu. The Senate sent back Liu's nomination at the end of the 111th Congress after he failed to get 60 votes for confirmation. President Obama promptly renominated him. Liu is so radical, even Obama's former Chief of Staff, now Chicago Mayor Rahm Emanuel urged Obama not to nominate him.

Liu has written extensively in favor of affirmative action, abortion rights, and same-sex marriage and has been critical of Bush-era waterboarding policy and the death penalty. He clerked for Supreme Court Justice Ruth Bader Ginsberg, where he contributed to her dissenting opinion in *Bush v. Gore*. Liu failed to disclose many of his controversial writings to the Senate Judiciary Committee. Additionally, there was speculation that Liu, who is only 40 years old, was being groomed for a potential Supreme Court nomination.

After his nomination was blocked a second time, Liu withdrew his name from consideration. Soon thereafter, Governor Jerry Brown nominated him to the California Supreme Court.

Caitlin Halligan

On December 6th, the Senate blocked Caitlin Halligan, President Obama's nominee to the D.C. Circuit Court of Appeals. As Solicitor General of New York, Halligan wrote an opinion arguing for same sex marriage, even though the state's domestic law required that marriage licenses only be issued to opposite sex couples. Halligan declared that observing the statute as written raised "serious Constitutional concerns." She also joined briefs supporting racial quotas at universities. Three out of four of the policies she supported were later declared unconstitutional.

However, it seems clear that it was Halligan's second amendment problems that cost her confirmation. As the National Rifle Association declared in its letter of opposition to Halligan's confirmation as New York's Solicitor General, she strongly supported "inside and outside the courtroom" the State of New York's activist efforts to sue gun manufacturers for crimes committed with guns. When Congress passed the bipartisan Protection of Lawful Commerce in Arms Act to protect manufacturers from such frivolous suits, Halligan signed onto a friend of the Court brief arguing that the law was unconstitutional.

All Democrats voted YES on her confirmation, and of non-Democrats, only Lisa Murkowski voted YES.

Victoria Nourse

Another tremendous victory stemming from the conservative gains in the 2010 election was the defeat of radical feminist University of Wisconsin Law School Professor Victoria Nourse, whom President Obama nominated on July 14, 2010 to fill a vacancy on the Seventh Circuit Court of Appeals. The nomination was sent back to the White House when the Senate still had not confirmed her at the end of 2010, and President Obama promptly resubmitted the nomination in 2011.

Nourse has written extensively on her terrifying jurisprudence that includes terms like "New Legal Realism" and she advocates a results-based "Radical Theory of Judging," while condemning judges who base their decisions on a strict reading of the Constitution. She has even argued that judges can amend the text of the Constitution through a mini "Constitutional Convention."

Also, while serving as Senior Counsel for the Senate Judiciary Committee, Nourse wrote most of the Violence against Women Act ("VAWA"), which authorizes over \$1 billion in feminist pork. Vice President Joe Biden claimed to have written VAWA, himself, but later noted that it was Nourse and he who authored the bill.

Conservative freshman Senator, Ron Johnson (R-WI), who stunned liberals by beating Russ Feingold in 2010, "blue slipped" Nourse's nomination, meaning he withheld his consent. Judicial nominees from a Senator's home state are generally granted tremendous deference, and if a home state Senator withholds their consent, the Senate generally will defer and not move forward. This was a bold move for Johnson.

Eagle Forum signed onto several letters urging Senators to vote NO on Nourse's confirmation, and we sent a letter to Senator Johnson thanking him profusely and urging him to stand strong in his opposition. On January 18, 2012, Nourse wrote to President Obama asking him to withdraw her nomination.

Saving the Edison Light Bulb

When liberals controlled Congress, they enacted “efficiency” standards, which required a phase-out of the incandescent light bulb, starting January 1, 2012 with the 100-watt bulb. Joe Barton of Texas sponsored the BULB Act, which would have overturned the efficiency standards. House leadership recognized the grassroots demand to save the light bulbs, but they did not want Energy and Commerce Committee Chairman, Fred Upton, who had vocally supported the standards to be embarrassed. So they kept the matter from being discussed on the floor, and attempted to pass an amended version of the BULB Act under suspension of rules, which requires a 2/3 vote threshold. Although the bill had wide support, the vote was 233-193, so the measure failed.

On July 15, the House adopted (by a voice vote) an amendment by Rep. Michael Burgess, M.D. (R-TX) to the FY12 Energy and Water Appropriations bill (H.R. 2354). The Burgess amendment prohibits funds under that act from being used to enforce the energy efficiency standards which effectively ban Edison light bulbs.

As the phase-out deadline loomed, the language that would stop it languished. Eagle Forum undertook a massive effort to keep the light bulb issue front and center. We consistently brought up the light bulb issue on every occasion and urged leadership to take action. We issued five action alerts on the issue, and our online petition urging Congress to overturn the ban garnered more than 10,000 signatures.

As the end of the year approached, the Energy and Water Appropriations bill was combined with several others in an end of the year Omnibus Appropriations bill that had to be negotiated between both parties in both houses of Congress. We worked closely with House leadership staff who assured us they would fight to repeal the ban. We received a call indicating that the light bulb language was one of the main “sticking points” holding up negotiations, so we issued a last alert asking people to tell leadership to stand strong. They did, and the language survived the negotiation.

The language that passed is not a full-scale repeal of the efficiency standards. It is only a prohibition on using any funds to enforce the standards. That has the practical effect of reversing the ban, but it is rider language that is only valid until October 1, 2012. Once riders like these are added, it is difficult, but certainly possible to get rid of them.

We are disappointed that Republican leadership did not fully repeal the ban. However, we will continue to work with House Leadership and the Energy and Commerce Committee to have the efficiency standards repealed in full.