What happened in the second session of the 112th Congress?

2012 Year End Report

With liberals controlling the White House and Senate, and newly-elected conservatives bruised from battles with leadership, 2012 was a challenging year characterized by gridlock and politically motivated inaction.

The following report is an overview of the battles in which Eagle Forum was involved in the second session of the 112th Congress. We have listed the Republicans who voted the wrong way and Democrats who voted the right way on these issues to assist grassroots activists in future activism.

Unconstitutional Recess Appointments

President Obama began 2012 by making four unconstitutional appointments. On January 4th, Obama appointed Richard Cordray to lead the Consumer Financial Protection Bureau, a nomination Republicans blocked shortly before adjourning in late 2011. Obama also appointed three people to the National Labor Relations Board. Obama claimed these appointments were necessary “recess appointments.” The Constitution does allow Presidents to fill vacancies while the Senate is in recess. However, the Senate was not in recess when Obama made these appointments.

Article I, Section 5, of the Constitution states that neither house of Congress may adjourn for more than three days without the consent of the other house. The House of Representatives did not consent to a recess longer than three days at the end of last year. Thus, the Senate is required to hold “pro forma” sessions in which some business is conducted, and Senators can vote via designated representatives during long periods of adjournment. President Obama acknowledged that the Senate was still in a valid lawmakers session when he signed into law a piece of legislation passed by the Senate during a “pro forma” session on December 23, 2011.

Several lawsuits are pending challenging NLRB rulings made by the recess appointees, claiming the Board members were improperly appointed. Senate Republicans, with the exception of Scott Brown (MA), Dean Heller (NV), Olympia Snowe (ME), Lisa Murkowski (AK) and Mark Kirk (IL) joined one of these challenges currently pending in the D.C. Circuit Court of Appeals.

Fighting ObamaCare

Conservatives in the House of Representatives continued the fight to fully repeal ObamaCare. Here is an excellent analysis of ObamaCare’s impact since its passage from Heritage Action:

Two years ago, Congress crafted this legislation behind closed doors, the details kept secret from the American people. Since then, Americans have seen their premiums rise by 1% to 3% (about $1,200) each year since the law was passed. Not only have premiums gone up, but the Congressional Budget Office (CBO) reevaluated the cost of the bill and found that their initial estimate of $940 billion was woefully inaccurate, and that the true cost of the bill was at least
$1.76 trillion (other estimates put that number even higher). To pay for this tremendous cost, ObamaCare imposes at least 21 new or higher taxes on the American people, and 75% of the costs would fall on those making less than $120,000 a year. From taxes on tanning beds to medical devices to taxes on the people themselves for not purchasing government-approved health insurance, the effect this bill has had, and will continue to have, is devastating to our economy. Additionally, the law puts tens of millions of Americans at risk of losing their employer-sponsored health insurance; creates a 15-member, unelected and unaccountable Independent Payment Advisory Board tasked with saving money, but their recommendations will lead to healthcare rationing; funds plans that cover abortion, and forces those with religious, moral or ethical beliefs to pay an abortion premium.

**Supreme Court Decision**

On June 28, 2012, the Supreme Court handed down a stunning decision written by Chief Justice John Roberts upholding the individual mandate requiring all Americans to buy health insurance as constitutional. Here are highlights from this decision:

The Supreme Court declared that ObamaCare is a tax, thus, the law is a monumental breaking of President Obama’s promise not to raise taxes on “any American” making $250,000 or less per year.

Also, while the Court declared that Congress does have the power to legislate a tax to implement ObamaCare, it does not have the power to create such a system under the Interstate Commerce clause. It is incredibly important that the Court declined to further expand Congress’ power under the Interstate Commerce clause.

**Full Repeal of ObamaCare**

On July 11, 2012, conservatives in the House of Representatives made good on their promise to keep fighting to repeal ObamaCare. Members voted 244-185 to repeal ObamaCare. All Republicans and five Democrats, Jim Matheson of Utah, Larry Kissell and Mike McIntyre of North Carolina, Dan Boren of Oklahoma, and Mike Ross of Arkansas, voted for repeal.

This was the 31st attempt to overturn or repeal at least some aspect of ObamaCare since President Obama signed it into law, and was the first repeal attempt following the Supreme Court decision upholding the individual mandate.

**State Exchanges**

November 16th was the deadline for governors to tell the federal government whether they will set up state-run health exchanges or allow the federal government to set up federal exchanges in the state. HHS Secretary Kathleen Sebelius pushed this deadline back to December 14th hoping more governors would cooperate with ObamaCare.

Conservatives launched an effort to urge governors not to cooperate with ObamaCare by refusing to set up state exchanges, instead forcing the federal government to do all the work and bear the full cost. To date, twenty-five states opted for a federally operated exchange, including Alabama, Alaska, Arizona, Florida, Georgia, Indiana, Kansas, Louisiana, Maine, Missouri, Montana, Nebraska, New Hampshire, New Jersey, North Dakota, Ohio, Oklahoma,
Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Wisconsin, and Wyoming. Seventeen states and the District of Columbia will run their own. Mississippi is having an internal struggle and has not yet declared what it will do.

Contraception Mandate

ObamaCare generated more controversy in January of 2012 when the Department of Health and Human Services, responsible for writing the regulations that govern ObamaCare, issued a mandate that all employers, even religious employers with deeply held moral objections, provide their employees with health insurance policies that cover contraception, sterilization, and abortifacient drugs. HHS added insult to injury when it responded to outcry from the U.S. Conference of Catholic Bishops, which had staunchly supported ObamaCare, by informing the Catholic Church that it would give them an additional year to comply with the mandate.

In February, HHS announced a laughable “compromise,” claiming that the employers themselves did not have to provide the contraception coverage, but the insurance companies providing the health care plans would have to make such coverage available free of charge to religious institutions. This so-called compromise fooled no one, as it is widely recognized that insurance companies would not donate such coverage, but would simply integrate the cost into the overall price of the religious institution’s plan.

The contraception mandate has drawn intense criticism, notably in Phyllis Schlafly’s 2012 book, No Higher Power: Obama’s War on Religious Freedom.

To date, more than 40 lawsuits have been filed by religious employers challenging the mandate.

Senators Marco Rubio, Roy Blunt and others offered bills to overturn the contraception mandate. The bill stated that employers retain the right to provide, purchase, or enroll in health coverage that is consistent with their religious beliefs and moral convictions, without fear of being penalized or discriminated against under federal law. Senator Roy Blunt’s bill was deemed to offer the strongest protection to religious employers, so Rubio and other conservative Senators joined his bill, the Respect for Conscience Act (S. 1813). The bill was offered as an amendment to a highway funding bill, but it failed by a vote of 51-48, with 3 Democrats, Robert P. Casey Jr. of Pennsylvania, Joe Manchin of West Virginia and Ben Nelson of Nebraska breaking ranks to support it, and Republican Olympia Snowe of Maine opposing the amendment.

Feminist Pork

Violence Against Women Act (VAWA)

Feminists and liberals, led by Senate Judiciary Chair Patrick Leahy championed a reauthorization of the Violence Against Women Act (VAWA) loaded with expensive new programs based on radical feminist ideology. In a small victory, Republicans in the Senate Judiciary Committee unanimously voted against the reauthorization (S. 1925), which would have expanded coverage to men, homosexuals, transgendered individuals and prisoners, and expanded already duplicative grant programs. For the first time in history, the bill would allow non-Native Americans accused of domestic violence on tribal lands to be tried in tribal courts, thereby eliminating the right of the accused to face a jury of their peers. Under VAWA, men would
effectively lose their constitutional rights to due process, presumption of innocence, equal
treatment under the law, the right to a fair trial and to confront one’s accusers, the right to bear
arms, and custody and visitation rights.

Eagle Forum worked with Texas Senator Kay Bailey Hutchison and Iowa Senator Chuck
Grassley on a substitute amendment to the reauthorization that would have eliminated these three
sticking points from S. 1925. However, that amendment failed.

S. 1925 passed, and it was disappointing that ALL the Senate women voted YES on the
bill, including freshman Republican Senator Kelly Ayotte of New Hampshire, who is a co-chair
of the Senate Values Action Team and was elected because of her claims to conservatism, Maine
Senators Olympia Snowe and Susan Collins, Lisa Murkowski of Alaska, and Kay Bailey
Hutchison of Texas. Other Republicans voting for the bill were Lamar Alexander and Bob
Corker of Tennessee, Scott Brown of Massachusetts, Dan Coats of Indiana, Mike Crapo of
Idaho, Dean Heller of Nevada, John Hoeven of North Dakota, John McCain of Arizona, Rob
Portman of Ohio and David Vitter of Louisiana.

The House of Representatives charged freshman Republican Sandy Adams of Florida
with sponsoring the Republican version of VAWA, H.R. 4970. Congressman Adams was an
excellent person to lead this charge, because she, herself, had suffered domestic violence and had
been a law enforcement officer. Congressman Adams’ bill included enhanced accountability for
VAWA funding, measures to stop immigration fraud, and did not contain the problematic
portions of the Senate bill dealing with tribal jurisdiction, LGBT programs and immigration
visas. Eagle Forum worked with longtime allies on VAWA, Stop Abusive and Violent
Environments (SAVE) led by Ed Bartlett, and lobbied to eliminate mandatory arrest policies
VAWA mandates.

Research indicates that mandatory arrest policies silence victims and keep them from
calling the police for help. As a result, mandatory arrest policies have resulted in a 60% increase
in partner homicides according to a Harvard University study. Unfortunately, the mandatory
arrest requirements remained in the bill.

Eagle Forum worked with Congressman Adams’ office to improve the bill, but we did
not score it because, although a vast improvement on the Senate bill, it was still a bad bill full of
feminist pork. The bill passed on May 16, 2012 by a vote of 222-205 with 4 Members not
voting.

While the House worked to pass its version of the bill, it was discovered that the Senate
bill was unconstitutional. Back room deals were made to make the Senate bill revenue neutral.
However, those deals made the bill revenue generating, and according to the Constitution, all
revenue generating bills must originate in the House of Representatives. Thus, the only properly
passed bill was the House of Representatives’ bill.

Liberals were furious and would not accept the House version of VAWA because it did
not contain the provisions extending tribal jurisdiction, providing funding for LGBT groups and
creating new visas for illegal immigrants. They took full advantage of the “war on women”
rhetoric and tried to shame House Republicans into adding the controversial aspects to the House
bill. Bruised from the election, House Majority Leader Eric Cantor was reportedly very close to
a deal with Senator Pat Leahy on a compromise, but the fiscal cliff issues took precedence and time ran out on the 112th Congress without a VAWA Reauthorization passing.

Paycheck Fairness Act (PFA)

Senate liberals reintroduced the so-called Paycheck Fairness Act that was originally introduced by Hillary Clinton during her time in the Senate. The same language was introduced to perpetuate the so-called “war on women” rhetoric.

The Paycheck Fairness Act would amend the Fair Labor Standards Act of 1938 and the Equal Pay Act of 1963 (EPA) in the following ways:

- **Allows for unlimited compensatory and punitive damages to be granted, even without proof of intent to discriminate.** Currently, an employer must be found to have intentionally engaged in discriminatory practices in order for an employee to receive monetary compensation, and even then, the employee is entitled only to back pay. The provision in the PFA is unacceptable and unnecessary, as damages are already available under Title VII for pay discrimination.

- **Changes the “establishment” requirement.** The EPA currently requires that employees whose pay is being compared must work in the same physical place of business. The PFA would amend the word “establishment” to mean workplaces in the same county or political district. It would also invite the Equal Employment Opportunity Commission (EEOC) to develop “rules or guidance” to define the term more broadly. This leaves the door open for the EEOC to compare a woman’s job in a rural area to a man’s job in an urban area that has a much higher cost of living, which would drive up the cost of employing the woman in the rural lower-cost area. Such increase in employment costs would result in fewer people being employed, and would also result in employers shipping jobs overseas.

- **Replaces a successful pay discrimination-determining system with a proven failed system.** The PFA would invalidate the successful, Supreme Court-endorsed system for determining whether pay discrimination has occurred (known as the Interpretative Standards for Systemic Compensation Discrimination), and would replace it with the highly inaccurate Equal Opportunity Survey, which has found true discriminators to be non-discriminators 93 percent of the time.

- **Increases the numbers in class-action suits.** Under EPA, if an employee wants to participate in a class-action suit against his employer, he must affirmatively decide to participate in the suit. The PFA would automatically include employees in class-action suits, unless they affirmatively opt out. This change would result in booming business for trial attorneys, and huge costs to employers, who may decide to ship jobs overseas to avoid such costs altogether.

In addition to these changes, the PFA would institute a system of “comparable worth” which would effectively allow judges, juries and unelected bureaucrats to set employees’ wages, instead of employers. Thus, an employee’s compensation level would be based on some vague notion of his “worth,” instead of on concrete factors like education, experience, time in the labor force, and hours worked per week. The PFA would also cause employers to avoid hiring women in low-paying positions, since the employers may then become targets for burdensome lawsuits. This trend would result in even higher unemployment for low-skilled women, potentially increasing the number of families dependent on government assistance.
Elaine Chao, Secretary of Labor under President George W. Bush, called the PFA a “job killing, trial attorney bonanza,” and said employers potentially would see female applicants as instigators of lawsuits, instead of contributors of productivity.

On June 4, 2012, Senate liberals failed to get the necessary 60 votes to move the Paycheck Fairness Act. All Senate Republicans, including all Republican women, voted against the Motion to Proceed to the bill.

**Protecting a Culture of Life**

In late January 2012, Susan G. Komen for the Cure, the nation’s largest breast cancer research and prevention fund announced that it would defund Planned Parenthood.

Twenty-six Senators signed onto a letter chastising Komen, a private foundation, calling their action “troubling,” declaring that the Foundation’s decision cut “life-saving services” to women, and urging them to reconsider their decision. The Senators included: Frank Lautenberg, D-NJ, Patty Murray, D-WA, Barbara Mikulski, D-MD, Barbara Boxer, D-CA, Maria Cantwell, D-WA, Kirsten Gillibrand, D-NY, Robert Menendez, D-NJ, Ron Wyden, D-OR, Richard Blumenthal, D-CT, Jeanne Shaheen, D-NH, Mark Begich, D-AK, Jeff Merkley, D-OR, Jon Tester, D-MT, Daniel Akaka, D-HI, Bernie Sanders, I-VT, Sherrod Brown, D-OH, Patrick Leahy, D-VT, Max Baucus, D-MT, Ben Cardin, D-MD, Dianne Feinstein, D-CA, Al Franken, D-MN, John Kerry, D-MA, Claire McCaskill, D-MO, Debbie Stabenow, D-MI, Chris Coons, D-DE, and Jeff Bingaman D-NM.

Planned Parenthood and abortion advocates threw a tantrum and demanded that people stop contributing to the Komen Foundation and call and e-mail the Foundation to protest their decision. Pro-abortion donors have flooded Planned Parenthood with donations well beyond the amount the Komen Foundation provided. Some reports indicate that Planned Parenthood received over $1 million in 24 hours, far surpassing the $680,000 they received in Komen Foundation Grants.

The Komen Foundation caved to this pressure, and issued a confusing statement indicating they would continue funding all current grants, including those to Planned Parenthood, and that Planned Parenthood would be eligible for future grants.

**Prenatal Non-Discrimination Act (PRENDA)**

In June 2012, Lila Rose’s Live Action released another set of damaging undercover videos featuring actual visits to Planned Parenthood facilities in Austin, Texas and New York in which Planned Parenthood staff counseled and encouraged a pregnant woman about not only obtaining a sex-selection abortion and keeping her intentions quiet to avoid being “judged,” but using Medicaid to pay for the ultrasound so she could determine the sex and decide to abort if the baby were a girl.

Arizona Congressman Trent Franks sponsored the Prenatal Non-Discrimination Act (PRENDA), which prohibits sex-selection abortions. Unfortunately, the bill was brought up under Suspension of the Rules, meaning it needed a two-thirds majority to be approved, and although a significant bipartisan majority voted for the bill, with a vote of 246-168, it fell short

**Abortion Expanded in Military**

Following devastating political losses on the issue of the rape exception for abortion funding, pro-life conservatives caved and allowed the Hyde Amendment language which allows taxpayer-funded abortion in cases involving rape and incest to be added to the 2013 Defense Authorization bill. The Shaheen Amendment, sponsored by liberal Senator Jeanne Shaheen of New Hampshire added the rape and incest exception to what had been a full prohibition on military abortions. Republican Senators Scott Brown of Massachusetts, Susan Collins of Maine and John McCain of Arizona joined all Democrat Committee members in voting YES on the Amendment, and the Authorization passed the House and Senate with the rape and incest exceptions added.

**Defending Marriage**

On May 9th, 2012 just days after the people of North Carolina voted by a 60% margin to protect traditional marriage, President Obama announced that he supported same-sex marriage and the full repeal of the Defense of Marriage Act (DOMA).

Marriage did not fare so well in four other states as referenda approving same-sex marriage passed in Maine, Maryland and Washington state; Minnesota voters defeated a constitutional amendment to protect the definition of marriage.

The Supreme Court announced in December 2012 that it will rule on the federal lawsuit seeking to overturn Proposition 8, California’s ban on same-sex marriage, and a separate lawsuit seeking to overturn DOMA, the federal Defense of Marriage Act.

**Judicial Nominations**

**Jesse Furman**

One of President Obama’s most controversial judicial nominees was Jesse Furman, nominated to the U.S. District Court for the Southern District of New York. Eagle Forum objected to Furman’s nomination because:

Furman actively advocated against religious freedom. In 2001, Furman joined in filing an amicus brief in the landmark Supreme Court case of *Good News Club v. Milford Central School*, seeking to ban a Christian organization from using public school property, outside of school hours, even when the use was clearly not a school sponsored event. The Supreme Court soundly rejected Furman’s invitation to legislate from the bench.
Furman singled out Christians and declared that First Amendment free speech rights do not extend to Christians because they do not “promote cohesion among a heterogeneous democratic people.”

In his amicus brief in the Good News Club case, Furman argued:

“In short, while the public school is ‘[d]esigned to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people,’ the Good News Club is designed to do quite the opposite: to label children as either ‘saved’ or ‘unsaved’ and, thus, to promote religious belief in general and Christian belief in particular. Indeed, the Good News Club expressly teaches that adherence to a particular faith is essential to one’s standing in the community — that those who ‘have received the Lord Jesus as [their] Savior from sin … belong to God’s special group — His family.’”

Furman characterized all of traditional Christianity as intolerant, and arrogantly declared that a “categorical exclusion of that [Christian] speech as both a reasonable, viewpoint-neutral limitation, consistent with the Free Speech Clause of the First Amendment, and as a limitation mandated by the Establishment Clause of the First Amendment.”

Furman was a leader of the American Constitution Society, which rejects a literal reading of the Constitution. Furman is a member of the Executive Committee of the ACS’s New York Lawyers Chapter, assisting in their advocacy for an activist interpretation of the Constitution. This group rejects original intent and judicial restraint, and advocates for an activist judiciary. Furman’s chapter of the ACS has sponsored events such as “Conservative Justices Run Amok: A Return to Principlled Constitutionalism.”

Furman supported ultra-leftist Goodwin Liu, a judicial nominee the Senate refused to confirm because of his radical advocacy for judicial usurpation of legislative power.

In 2012, Furman signed a joint letter from Yale Law School alumni expressing support for extremist Goodwin Liu, a nominee to the United States Court of Appeals for the Ninth Circuit, whose nomination was ultimately withdrawn following significant controversy and bipartisan opposition. In the joint letter, Furman endorsed the notion that “based on what we know first-hand, that Goodwin would approach every case with diligence, care, and impartiality.”

On February 17, 2012, Furman was CONFIRMED by a vote of 62-34. Republicans who voted YES on Furman include: Scott Brown of Massachusetts, Susan Collins and Olympia Snowe of Maine, Bob Corker of Tennessee, Lindsey Graham of South Carolina, John McCain of Arizona and Jeff Sessions of Alabama.

Andrew Hurwitz

In November 2012, President Obama nominated Andrew David Hurwitz, the self-identified architect of Roe v. Wade to the Ninth Circuit Court of Appeals.

Hurwitz bragged about helping to write two decisions that formed the basis for Roe v. Wade, the Supreme Court decision that legalized abortion. The 1972 decisions by Hurwitz’ then
boss, Federal Judge Jon O. Newman, have been called a “crucial influence” on Justice Harry Blackmun as he was drafting *Roe v. Wade*.

*Roe v. Wade* is not only the most deadly Supreme Court decision in history, legalizing the killing of millions of unborn children, it is one of the most constitutionally questionable. Even Justice Blackmun’s pro-abortion law clerk Edward Lazarus, who considered Blackmun a father figure, said of the decision, “As a matter of constitutional interpretation and judicial method, *Roe* borders on the indefensible.”

Hurwitz was voted out of the Senate Judiciary Committee by a vote of 13-5 with all ten Democrat Senators and Republicans Tom Coburn of Oklahoma, Lindsey Graham of South Carolina and Jon Kyl of Arizona voting YES, while Republican Senators John Cornyn of Texas, Chuck Grassley of Iowa, Orrin Hatch and Mike Lee of Utah and Jeff Sessions voted NO.

Hurwitz was confirmed by a voice vote on June 27, 2012, so the only recorded vote on his nomination was the June 11, 2012 Cloture vote. Eight Republicans voted YES on the Cloture motion including: Lamar Alexander of Tennessee, Scott Brown of Massachusetts, Susan Collins and Olympia Snowe of Maine, Jon Kyl of Arizona, Richard Lugar of Indiana, John McCain of Arizona, Lisa Murkowski of Alaska, and Democrat Joe Manchin of West Virginia voted NO.

**United Nations Treaties**

**Law of the Sea Treaty (LOST)**

Massachusetts Senator John Kerry, Chair of the Senate Foreign Relations Committee, was lobbying hard to become Secretary of State well before the Presidential election. He tried hard to get a UN Treaty through the Senate to boost his stature. There were three potential Treaties looming, a UN small arms treaty, the Law of the Sea Treaty and the UN Convention on the Rights of Persons with Disabilities. It became clear politically that any effort to undercut second amendment rights would negatively impact the November elections, so liberals deferred action on the Small Arms Treaty and attempted to pass the Law of the Sea Treaty and the UN Convention on the Rights of Persons with Disabilities.

Those pushing the treaty claim that it will expand U.S. sovereignty, but the truth is it will diminish U.S. sovereignty. The three main interest groups pushing for the treaty are the U.S. Navy, the big multinational oil companies led by Shell, and the radical environmentalist lawyers.

Here are the facts:

The Navy says we need LOST to preserve our freedom of transit in dangerous waters such as the Strait of Hormuz, which Iran has threatened to block, and the South China Sea, where China wants to be the dominant naval power.

In fact, freedom of navigation is recognized and has been successfully ensured by centuries of international law, effectively policed by the British Navy for 400 years, and by our U.S. Navy since 1775. The United Nations has no navy of its own, so American sailors will still be expected to protect the world’s sea lanes and punish piracy.
Big Oil supports LOST because of its provision to extend jurisdiction over the continental shelf beyond the current 200-mile limit. But LOST would require a royalty of 1 to 7 percent on the value of oil and minerals produced from those waters to be paid to the International Seabed Authority based in Kingston, Jamaica.

There’s no need for a 181-nation organization to regulate offshore and deep-sea production everywhere in the world, mostly financed by American capital, and then allow it to be taxed for the benefit of foreign freeloaders. The riches of the Arctic, for example, can be resolved by negotiation among the five nations that border the Arctic.

This third leg of the unholy coalition to ratify LOST are salivating over its legal system of dispute resolution, which culminates in a 21-member International Tribunal based in Hamburg, Germany. The Tribunal’s judgments could be enforced against Americans and cannot be appealed to any U.S. court.

This tribunal, known as ITLOS (International Tribunal of LOST), has jurisdiction over “maritime disputes,” which suggests it will merely deal with ships accidentally bumping each other in the night. But radical environmental lawyers have big plans to make that sleepy tribunal the engine of all disputes about global warming, with power to issue binding rules on climate change, in effect superseding the discredited Kyoto Protocol which the U.S. properly declined to ratify.

Steven Groves of the Heritage Foundation recently published a paper in which he lays out the roadmap for how the radical environmentalist lawyers can use LOST to file lawsuits against the U.S. to advance their climate-change agenda.

Former UN Ambassador John Bolton warns us that the Law of the Sea Treaty is even more dangerous now than when President Ronald Reagan rejected it: “With China emerging as a major power, ratifying the treaty now would encourage Sino-American strife, constrain U.S. naval activities, and do nothing to resolve China’s expansive maritime territorial claims.” Bolton warns that LOST will give China the excuse to deny U.S. access to what China claims is its “Exclusive Economic Zone” extending 200 miles out into international waters.

**House of Representatives Action on LOST**

Congressmen Jeff Duncan of South Carolina and Republican Study Committee Chair Jim Jordan offered an amendment to the 2013 National Defense Authorization Act that prohibited any funding from being used to implement the Law of the Sea Treaty should the Senate ratify the Treaty. The amendment passed by a vote of 229-193. Republicans who voted NO include: Lou Barletta of Pennsylvania, Robert Dold, Tim Johnson and Aaron Schock of Illinois, Chris Gibson and Nan Hayworth of New York, Kay Granger of Texas, Gregg Harper of Mississippi, Jim Renacci and Steve Stivers of Ohio and Don Young of Alaska. Only Democrat Gene Green of Texas voted YES.

On July 16, 2012, 34 Senators indicated their intention to vote against the Law of the Sea Treaty. Thirty-one Senators signed onto a letter circulated by leader of the Senate conservative faction, Jim DeMint. Later three other Senators declared their intention to oppose the treaty through individual press releases. Since Treaties require 2/3 of a 100-member Senate, 34 Senators opposing effectively killed the Treaty, and it has remained tabled.
UN Convention on the Rights of Persons with Disabilities (CRPD)

With LOST defeated, and especially after Republican Richard Lugar, a fan of United Nations treaties, lost his primary, Senator John Kerry was desperate to expand UN control and his candidacy for Secretary of State by delivering a ratified Treaty to the UN. Liberals chose the UN Convention on the Rights of Persons with Disabilities (CRPD), thinking that even if the treaty did not pass, they could use the vote to claim that Republicans do not care about people with disabilities.

The truth is that the CRPD Treaty would:

- Exceed the bounds of the Americans with Disabilities Act and eliminate any remaining state sovereignty on the issue of disability law.
- Demand that all American law on this subject conform to UN standards.
- Force “every person, organization, or private enterprise” to eliminate discrimination on the basis of disability. This imposes impossible burdens and expenses onto private citizens, as they can be held in violation of the treaty if their private property is not fully accessible to persons with disabilities, even if they do not know any persons with disabilities.
- Give the UN the power to determine the legitimacy and lawfulness of the United States’ budgets to assess compliance with such treaties.

The Treaty would also have imposed a burden on all signatory countries to provide reproductive freedom to persons with disabilities, meaning fully taxpayer-funded abortion on demand.

Senator Marco Rubio introduced an amendment that would have clarified that the United States does not recognize the terms in the Treaty “sexual and reproductive health” to include abortion, but the liberals killed this amendment, claiming that the Treaty language does not mandate abortion.

Before the Senate adjourned in September prior to the elections, Utah conservative Senator Mike Lee compiled a list of 38 Senators urging Leader Reid not to bring up any Treaties during the Lame Duck session to come.

Despite this request from 38 Senators, Harry Reid did bring the CRPD to the Senate floor for a ratification vote during the Lame Duck session, and on December 4, 2012, the Senate, by a vote of 61-38 failed to achieve the 2/3 majority needed. Republicans who voted YES on the Treaty include Kelly Ayotte of New Hampshire, John Barrasso of Wyoming, Scott Brown of Massachusetts, Susan Collins and Olympia Snowe of Maine, Richard Lugar of Indiana, John McCain of Arizona and Lisa Murkowski of Alaska.
Amnesty/Immigration

Amnesty/Dream Act

President Obama blatantly violated the Constitution when he announced in June 2012 that he would grant amnesty to more than 800,000 illegal immigrants under the age of 31. The policy will allow these aliens to not only live but also work in the United States.

This policy is similar to that proposed in the Dream Act, which passed in the House of Representatives under Nancy Pelosi, but failed in the Senate in 2010, even while liberals still had a commanding majority.

Congressman Steve King (R-IA) declared that he will sue the Obama Administration to keep the policy from going into effect. King used this remedy successfully in Iowa when then-Governor, now U.S. Secretary of Agriculture Tom Vilsack attempted to implement policy by Executive Order.

Oversight over Executive Overreach

EPA MACT Regulations

One of the worst examples of President Obama implementing through regulation what he cannot pass even through the radical liberal Senate are the onerous regulations that will have the same effect as cap-and-trade — eliminating the American coal industry. The regulation forces coal companies to either invest millions of dollars in unnecessary renovations or shut down.

Many coal-fired power plants will have no choice but to lay off workers or close their doors under the EPA’s burdensome Utility MACT regulation.

Oklahoma Senator Jim Inhofe, who has been a hawkish check against EPA mischief, took advantage of the Congressional Review Act, which only requires 30 votes to bring to the Senate floor a resolution reviewing Executive actions. Inhofe forced a floor vote on S.J. Res. 37, a Resolution that would repeal the EPA’s new costly regulation.

The EPA’s new regulations are so complex that companies have already shut down because they simply could not afford to comply. The Utility MACT regulation is the most expensive power plant rule ever written and threatens tens of thousands of jobs. Additionally, Americans could see their energy bills increase anywhere from 10-19%. The Utility MACT rule will hamper innovation and development in the nation’s energy markets, harming consumers and the economy as a whole.

Unfortunately, the Resolution failed. Republican Senators Kelly Ayotte of New Hampshire, Olympia Snowe and Susan Collins of Maine, Scott Brown of Massachusetts, and Lamar Alexander of Tennessee voted against the Resolution. However, Democratic Senators from coal-dependant states such as Mary Landrieu of Louisiana, Joe Manchin of West Virginia, Ben Nelson of Nebraska, Mark Warner and Jim Webb of Virginia voted for the resolution.
HHS Waiver of Work Welfare Requirements

The Department of Health and Human Services issued an “Information Memorandum” waiving work requirements established by the Welfare Reform Act of 1996.

Representative Dave Camp, Chair of the House Ways and Means Committee passed a Resolution reversing the waivers out of Committee. Utah Senator Orrin Hatch tried to pass a similar resolution under Unanimous Consent, however, liberal Maryland Senator Ben Cardin objected to the resolution.

Resolution to Disapprove the NLRB’s “Snap Election” Decision

The Obama Administration has also implemented policies similar to “Card Check,” radical anti-worker legislation that was too extreme to pass the Senate even when liberals had a commanding majority.

The National Labor Relations Board (NLRB) issued a regulation that allows union elections to take place as early as 10 days after an organizing petition is filed, commonly referred to as “snap elections.” Until recently, the NLRB would conduct union elections five or six weeks after a petition is filed to give employers time to inform employees of the impact of unionization.

“Snap elections” deprive employees the opportunity to make an informed choice. If an election takes place less than two weeks after the petition is filed, workers’ decisions will only be informed by the union organizers, who are paid to persuade employees to become dues-paying union members and who have been preparing their case long before the petition was filed. According to The Heritage Foundation, “with regard to their ability to make an independent, informed choice on union organization, snap elections are no better than card check.” Congress should focus on protecting the rights of employees, and not allowing the empowerment of union organizers through bureaucratic overreach.

The Resolution of disapproval was defeated by a vote of 45-54. All Democrats and Lisa Murkowski voted against the Resolution.

RAISE Act

Senator Marco Rubio introduced his bill, the RAISE Act, as an Amendment to the Farm Bill. The amendment would allow employers to pay individual union workers more than their union contract specifies. Currently, collective bargaining agreements set both a floor and a ceiling on wages, meaning that while workers cannot be paid below a certain amount they also cannot be paid above a certain amount, thus eliminating true performance-based pay.

The National Labor Relations Board (NLRB) has sided with the unions, and not the workers, in such cases, claiming the bonuses constituted an illegal “direct dealing” with the workers. “Direct dealing” is forbidden under collective bargaining law. This means that if a union worker works hard, takes initiative and proves to be an indispensable asset to their actual employer, they can’t be rewarded unless the union approves.

Lisa Murkowski is the only Republican who voted against the bill.
Education

Elementary and Secondary education policy has floundered throughout the Obama Administration. The Administration set forth blueprints for reauthorizing the Bush Administration’s “No Child Left Behind” (NCLB), but those plans were never implemented.

When Republicans took the majority in the House of Representatives after the 2010 elections, partisan gridlock stalled all efforts to reauthorize NCLB, but as he’s done on so many fronts, President Obama is bypassing Congress to do through Administration what he cannot do through legislation. The Obama Administration has begun issuing waivers from the law to states willing to accept Department of Education conditions.

States that secure waivers are no longer required to ensure universal student proficiency in math and reading under NCLB’s Adequate Yearly Progress provision. NCLB requires that, over time, states raise the bar to achieve 100-percent student proficiency in reading and math.

NCLB also requires that all teachers of core subjects — defined as reading, math, science, foreign language, government, economics, art, geography, and history — be “highly qualified” under the law’s Higher Qualified Teacher mandate. To obtain this status, a teacher must hold a bachelor’s degree, hold state certification, and demonstrate subject matter mastery.

In order to secure waivers from these and other provisions of NCLB, states must agree to the Obama Administration’s policy preferences, which include basing teacher evaluations in part on student performance and adopting national standards and tests for what every child will be taught in school.