



Republicans Overseas Action, Inc.

Ten Detailed Points on ROA FATCA/IGAs/FBAR Lawsuit

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

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

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

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

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

Count 1

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

Count 2

The IGAs are Unconstitutional Sole Executive Agreements Because They Override FATCA

Count 3

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

Count 4

The FATCA FFI Penalty is Unconstitutional under the Excessive Fines Clause

Count 5

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

Count 6

The FBAR Willfulness Penalty is Unconstitutional under the Excessive Fines Clause

Count 7

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

Count 8

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