

ASSOCIATED PRESS -- Militant leaders from the Islamic State group and al-Qaida gathered at a farm house in northern Syria last week and agreed on a plan to stop fighting each other and work together against their opponents, a high-level Syrian opposition official and a rebel commander have told The Associated Press. Such an accord could present new difficulties for Washington's strategy against the IS group.

INVESTOR'S BUSINESS DAILY - [As ObamaCare 2015 looms] the lowest cost bronze plan will increase an average of 7 % in many cases, the lowest cost silver plan by 9%, and the lowest priced catastrophic policy by 18 percent. Double digit rate hikes are anticipated in Kansas, Iowa, Louisiana, North and South Carolina, Tennessee, Iowa, and Virginia, among others. 2014 subsidies provided ¾ of the premiums for the federally-run exchanges. Businesses with 100 or more employees in 2015, 50 or more in 2016 will be required to offer affordable and subsidized health plans to at least 70 percent of their full time employees or face a \$2,000-\$3,000 penalty per employee.

NEW YORK TIMES - President Obama will ignore angry protests from Republicans and announce as soon as next week a broad overhaul of the nation's immigration enforcement system that will protect up to five million unauthorized immigrants from the threat of deportation and provide many of them with work permits, according to administration officials who have direct knowledge of the plan.

Saving Our Damaged Country from a Damaging President

Proposing a Legal Weapon, Damage Remediation & A Recovery Path

A BLUEPRINT

By **Jay B Gaskill**, Attorney at Law

A wounded narcissist in power is a scary sight, but history has knocked at the door of the new Congress.¹

There are four critical tasks for the new Congress. They are outlined here, along with a secret weapon. All this will be very challenging. Whatever the odds of success, all four tasks will require the urgent focused and relentless attention of the new Congress. This will be a full-on political and policy struggle, a task for which a typical congressperson or senator has not been prepared.

But that's why elected officials hire staff. Time is of the essence. Staff is urgently needed: highly competent, dedicated political, legal, national security and policy experts – separate teams assigned to

¹ The premise for this discussion is that an 18 month battle to impeach a lame duck POTUS in order to replace him with a lame duck VP is a non-starter. Impeachment is tantamount to political suicide. I don't need to spell out my reasoning here. But please note an important caveat: *What if criminal misuse of the IRS to harass political opponents of the administration and / or its agenda is actually proven and – more importantly – classic “smoking gun” evidence surfaces that such an odious anti-democratic abuse of power was ordered, initiated or approved by the President of the United States?* In that scenario, a swift impeachment and removal from office would be necessary. But I do not see the stars lining up for such a scenario in 2015 or 2016.

work each task area. If General McArthur's team could remake Japan after WWII, then Congress can remediate federal policy.

There is one immediate undertaking – fixing the Obama Care. It is a web as tangled as the Gordian knot of Greek legend. Just cutting that knot (as Alexander did) might disrupt medical care for existing patients –a bad idea on both policy and political levels. Untangling that web without doing harm will be particularly staff intensive, fully employing a special set of experts. This is a one-off opportunity to rescue American medicine from a strangling bureaucracy. The hard staff work on solutions will pay dividends for years, but the clock is running out.

And there are three other tasks, one of which - stopping the Islamist nuclear threat in its tracks – is of life and death significance to all Americans.

THE TASK LIST

1. Rescue American medicine from the bureaucratic tangle of the Affordable Care Act and its attendant regulations, side effects, intended and unintended consequences, without making things even worse. This legislation is an epic Gordian's knot tangle.
2. **Absolutely and securely prevent the Islamist-controlled state of Iran from acquiring an atomic bomb capability; and from making, deploying or developing missiles capable of delivering the same; and from retaining any significant nuclear bomb-making infrastructure for future use.**
3. Restrain the dangerous federal borrowing and get a handle on the grotesquely bloated national debt without crippling US military preparedness or economic progress.
4. Maintain secure national borders while protecting American health, security and jobs from unrestrained and un-vetted immigration, all the while shooting down the false charges of racism; promoting upward mobility; making room for lawful immigrants who can be readily assimilated. This president intends to present the new congress with an immigration *fait accompli*, the wholesale legalization of in-country, undocumented foreign nationals via Executive Order. This will be another Gordian's knot tangle to be addressed with great care.

Taking leadership in each of these areas will pit the new Congress against a recalcitrant, passive-aggressive Executive Branch superintended by a president not known for keeping his promises. It will call on the new congress to exercise more leadership than it ever has before. The vehicle, the legal weapon of choice, is a disciplined and relentless Joint Resolution strategy, using the process proposed below as both a sword and a shield². This will demand the highest standard of party discipline and the most effective effort to recruit key allies from across the aisle since the height of interparty Cold War cooperation.

Popular support must be constantly courted and maintained.

² See the appended POLICY ILLUSTRATIONS.

A shadow presidency committed to these aims will be needed. It would consist of well-known, articulate and sincere proponents of the new agenda, men and women accessible to the media, accountable, ready to explain and defend Congressional policy initiatives.

The goal is that four Congressional initiatives will so dominate the discussion that all presidential candidates must be tested against the new Congressional agenda.³ The GOP proponents should be credible. Recruiting a leader like Florida's second-generation Cuban Senator, Marco Rubio (for example) will be needed make an effective case for immigration and borders policy reform, item four.

Key congressional committee leaders and well known national security figures will need to be enlisted to speak out in public forums in support of items three and two, respectively.

New leaders will necessarily emerge from this process. That is a good thing. If democratic members of congress are critical of the administration's record and approach in the four areas and have something constructive to add, they are to be welcomed. Absolute ideological purity is less important than achieving a practical consensus about remediating the damage this president has done to the country and preventing him from doing even more harm in his remaining two years.

Much damage has been done and more looms in prospect. Yes, the stakes for America's future are grave, but this is a no-lose program on the political stage. Any success is a plus, and failure is never the end of the effort. That Shining City on a Hill⁴ will not be rebuilt in a single year.

Successes and failures aside, this two year struggle will establish bright-line clarity, a preview of the constructive opposition alternatives, preparing the playing field on conservative terms for the 2016 POTUS election.

THE NOT-SO-SECRET WEAPON

THE JOINT RESOLUTION AS A SWORD AND A SHIELD

A Legislative Strategy

Using a Joint Resolution procedure, the new Congress opens up a full-court-press effort to amend the jurisdictional and procedural statutes that deal with the authority and procedures of the US Court of Appeal essentially as follows:

³ Even Hillary, for example, will have little choice but to support the second objective or fail to differentiate herself from the president she served.

⁴ <http://millercenter.org/president/speeches/speech-3418>

Notwithstanding any other provision in law,⁵ Any Circuit of the United States Court of Appeals has original jurisdiction to decide the validity of Presidential Executive Orders when challenged by a Resolution of Congress. Any sitting Member of the Congress has legal standing as a proper party to file, pursue and present a case before the US Court of Appeal, opposing the validity of an Executive Order of the President under this section, when designated by a Resolution of Congress for that purpose. Any Executive Order of the President of the United States that has been determined by any panel of the United States Court of Appeals, from any Circuit thereof, to be in violation of the US Constitution or of any existing Act of Congress, shall be immediately stayed, and provisionally rendered void, unless and until that Executive Order is declared valid by a final decision of the United States Supreme Court.

This will be a very powerful tool because it will create a clear path to obtain a stay of any challenged Executive Order from a federal appeals panel that will remain in effect pending Supreme Court decision. Of course, this measure will be opposed by the president. So the first introduction of this will greatly benefit from key bipartisan support. That means that the first Executive Order to be challenged will need to be a very unpopular one. **There are many to choose from.**

If successfully vetoed, this measure is resubmitted in two forms:

- A. It is submitted in the form of a constitutional amendment (which is veto-proof by law). The vote on the Amendment will be strategically delayed for negotiations between Congress and POTUS.
- B. For negotiation purposes, the measure attacking illegal Executive Orders is also resubmitted as a regular joint resolution.

This places POTUS in a bind, because ratification of a constitutional amendment can be obtained by the agreement of the legislatures of 3/4ths of the states, and in 2015 2/3rds of state legislatures will be under GOP control. In the current political landscape, a threatened constitutional amendment is no idle one, especially because it is aimed at patently illegal Executive Orders. Unhindered by party discipline, a number of Senate democrats may well switch sides.

Therefore, negotiations would begin with the understanding that the constitutional amendment version will be withdrawn only if the president signs the measure, or allows it to become law by not vetoing it within 10 days during which congress is in session.

Congress needs to dead serious, and unless the president signs or vetoes the measure, both chambers would remain in continuous session for the 10 day period, as necessary.

⁵ The detailed drafting is left to others. The following language is offered to outline the approach: 28 US Code, Section 1295 (jurisdiction of the United States Court of Appeals for the Federal Circuit) is amended: (Added) *The United States Court of Appeals for the Federal Circuit has original jurisdiction to rule on any dispute between the Congress and the President over the validity of an Executive Order of the President over an alleged conflict between the specified order and the Constitution or any Act of Congress. The action may be filed in any Circuit by designated parties under the authority of a Resolution of Congress (not requiring the approval of the president) to that effect. If the decision of the Court of Appeals is that the challenged Executive Order violates an Act of Congress or the Constitution, a stay shall be immediately issued and remain in effect until the full Supreme Court of the United States has agreed to review the decision.*

Meantime the search for the veto-proof 60 senate votes for the original Joint Resolution intensifies. Many holdouts may well reconsider because the constitutional amendment scenario will be perceived as the greater threat.

This will be a major battle, one that should be relentlessly pursued for the good of the order.

A JOINT RESOLUTION PRIMER

A joint resolution is a legislative measure that requires approval by the Senate & House and is presented to the President for approval. Joint resolutions that propose amendments to the Constitution do not require the approval of the President. Joint Resolutions have the force of law and can be vetoed. But they become law with a veto override vote, or without the president's approval, if ten days elapse while Congress is in session. Joint resolutions may declare war.

And only joint resolutions may be used to propose amendments to the US Constitution.

If the **Joint Resolution** Strategy against unlawful Executive Orders works, then the president's most unpopular Executive Orders would be undone, one by one. Additionally, each of the Executive Orders used to save Obama-Care from its internal contradictions and wildly unpopular consequences would be attacked in series by using Joint Resolutions, followed quickly by a court challenge. Then, in each instance, an appropriate remediation measure would be submitted as legislation.

POLICY EXAMPLES & ILLUSTRATIONS

OBAMA CARE

The misnamed Affordable Care Act is a complex legislative and regulatory monster. Using this strategy for a redo will require a great deal of very technical advance planning requiring additional Congressional legislative staff – medical, legal, political. All these experts will be tasked to carefully work through the Affordable Care Act, identifying the real-world consequences of repeal and replacement, wholesale or through increments. The key is to reverse the bureaucratic takeover of American medicine without further disrupting existing medical care relationships to the patients' detriment.

IRAN AND THE ATOMIC BOMB

A huge separation of powers issue is presented: *Only the President can determine foreign policy.* But there are cracks and vulnerabilities in the presidential monolith. Neither the Pentagon nor the other

players in the national security apparatus are on the same page with the president. *If Vlad Putin could intimidate Mr. Obama to erase a red line, the Congress can intimidate him into allowing the military to do its job.* Mrs. Clinton's surrogates have begun to unload on the president's foreign policy and security weakness. This is an opening, psychological and political permission to pile on. It is time for fully televised Congressional Hearings.

These hearings must focus like a laser on the most accurate and troubling estimates of the dangers and state of readiness to bomb-making status of Iran's hostile regime. After that is clearly established, focus should be on the president's information feed and his waffling and indecision.

The single most dangerous presidential advisor – from the national security perspective is the Iranian-born Chicago operative, Valerie Jarrett. The congressional tool here is the investigative hearing on national television. Scandal is a lever. It is time for hardball and no time to be squeamish.

The fulcrum for the national security challenge to a weak president is "The United States-Israel Enhanced Security Cooperation Act of 2012" passed by the House but stalled in the Senate. Here are some key provisions:

Since 1948, United States Presidents and both houses of Congress, on a bipartisan basis and supported by the American people, have repeatedly reaffirmed the special bond between the United States and Israel, based on shared values and shared interests.

The Middle East is undergoing rapid change, bringing with it hope for an expansion of democracy but also great challenges to the national security of the United States and our allies in the region, particularly our most important ally in the region, Israel. Over the past year, the Middle East has witnessed the fall of some regimes long considered to be stabilizing forces and a rise in the influence of radical Islamists. Iran, which has long sought to foment instability and promote extremism in the Middle East, is now seeking to exploit the dramatic political transition underway in the region to undermine governments traditionally aligned with the United States and support extremist political movements in these countries. At the same time, Iran may soon attain a nuclear weapons capability, a development that would fundamentally threaten vital American interests, destabilize the region, encourage regional nuclear proliferation, further empower and embolden Iran, the world's leading state sponsor of terrorism, and provide it the tools to threaten its neighbors, including Israel. ... the strategic environment that has kept Israel secure and safeguarded United States national interests for the past 35 years has eroded.

To reaffirm the enduring commitment of the United States to the security of the State of Israel as a Jewish state. To provide Israel the military capabilities necessary to deter and defend itself by itself against any threats. To veto any one-sided anti-Israel resolutions at the United Nations Security Council. To support Israel's inherent right to self-defense.

Provide Israel such support as may be necessary to increase development and production of joint missile defense systems, particularly such systems that defend the urgent threat posed to Israel and United States forces in the region.

Senior presidential advisor *Valerie Jarrett* is notoriously opposed to a strong Israel and has consistently advised Mr. Obama go soft on her native Iran. The United States-Israel Enhanced Security Cooperation Act of 2012 was passed by the House but stalled at the Administration's urging in the Democrat controlled Senate. That measure should be strengthened and reenacted in a 2015 Joint Resolution. Any

Executive Orders contrary to the security of Israel should be scrubbed. Sympathetic pentagon and intelligence officials need to be compelled to testify. Hence the hearings.

THE DEFICIT, FEDERAL BORROWING & NATIONAL SECURITY SPENDING

President Obama created the *Simpson-Bowles* deficit commission in 2010; then he betrayed the very process he had created. After that, an unpopular sequester game ensued. Military spending was held hostage while social spending, including Obama Care ran largely unrestrained.

The federal debt is about equal to the Gross Domestic Product. Mere service of that federal debt is now a budget line item running just under half a trillion dollars, at current interest rates. That number is well over half the entire military budget. Mandatory spending, i.e., the entitlements, burn through 2/3rd of the federal budget, leaving precious little latitude to trim so-called discretionary spending. This has allowed the Administration to hold the military budget hostage. In light of the power shift in the Congress, this may open an opportunity to attain a compromise with the president, but only if the Congress stays in front and stands firm. Interest rates are not as volatile as the experts once feared. Caution should trump panic⁶. A goal worth fighting for: Move some of the entitlement pending sector into the discretionary category, and relocate some the essential part of the national security sector out of the discretionary sector into the non-discretionary.

But at all times, heed the bottom line: Avoid the traps. Resurrect the Simpson-Bowles model. Protect the military. Avoid shutdowns. Wait for 2016.

IMMIGRATION & LEAKING NATIONAL BORDERS

Congress controls immigration. A perfect storm for the open-borders progressive liberals has arrived. This is an opportunity.

The open-door immigration nightmare has three features that leave the current administration and its supporters vulnerable to a new approach from the opposition:

- I. The Ebola virus crisis is a stark reminder of an old truth: Open borders can kill.
- II. Meantime, the pampered elites of the left have lost touch with two core constituencies – the unionized and non-unionized mid-to-low end workers, and the African American communities. Both groups are losing job opportunities to foreigners. Both groups oppose the administration's wide-open immigration policies.
- III. The open-immigration burden is falling heavily and differentially on these same groups, overwhelming the very health and education institutions that serve them. The flood of immigrants has damaged and continues to damage them economically. The left's answer is to trot out that overused opiate of the masses - more welfare. This is the path that robs these men and women of the dignity of work, earning and upward mobility.

Therefore, Congressional immigration reform must perform careful surgery on the president's predicted wholesale legalization Executive Order, by aiming like a laser on these three goals:

⁶ <http://www.aei.org/publication/is-the-cost-of-servicing-us-debt-really-ready-to-explode/>

- ✓ Adopt a guard-dog approach to immigration-borne public health and security threats, meaning total border accountability for any and all entrants who pose a security or health risk to the rest of us. Anything less amounts to pathologically misplaced compassion to the detriment of those migrants who will quickly contribute and assimilate.
- ✓ Preserve and expand the employment opportunities for the Americans who are already here with particular sensitivity the needs of the newer arrivals, foremost of which is the need to achieve rapid assimilation.
- ✓ Proactively promote education and upward mobility for all Americans, again with emphasis on the assimilation of newcomers.

NOTE: The US military is one of the best educators in the country's educational system, especially remedial education; it is also one of the great engines of cultural assimilation. The armed services should be allowed to recruit and train all qualified in-country immigrants, and after a full and honorable service to the country, a soldier's status should be that of a lawful permanent resident eligible for citizenship. The administration should not be allowed to dumb down the patriot training, teaching standards and ethos of its internal education programs with inane politically-correct diktats from the left.

The first among several implementing Joint Resolutions would make these three objectives official American immigration policy.

As a result, no new immigration would be lawful unless it is certified not to burden employment, health care and the employment opportunities of Americans and others legally resident here. The executive branch would be required to submit to the Congress periodic impact reports about the effects of its immigration policies and enforcement patterns on the employment of Americans, their health, safety and education (much as environmental impact Reports are required). Negative impacts must be averted as a condition precedent to allowing any more immigrants other than bonafide tourists, diplomats and other special invitees to come inside US borders. Any and all so called subsequent amnesty orders issued by the president or under the color of presidential authority attempting to confer even provisional lawful status for the unlawful migrants currently living in the USA would be void, unless and until authorized by the Congress.

COURAGE AND CAUTION

Of course, the foregoing proposals and goals are large scale and thematic.

Of course, the details do matter. There is heavy lifting ahead. This is why careful staff work is absolutely necessary.

Conservatives, the few remaining old fashioned liberals, and their allies must not repeat the mistakes of the Affordable Care Act mess by rushing through poorly executed and structured reforms

And this is why I need to reemphasize that the key threshold step is to hire the needed staff and get well ahead of the White House in each of the four critical areas, and stay ahead.

The Congress than must take the leadership role and keep it until a better president has been selected by the American people.

History has called the new congress to lead. Will they?



The author is a California trial and appellate lawyer who served as the 7th chief Public Defender for the County of Alameda before leaving his “life of crime” to begin a second career as analyst and writer.

APPENDIX & FURTHER READING

The Graduate Course in American Exceptionalism

The Emerging Coalition of the Creative Non-Left

<http://jaygaskill.com/ANewDay.pdf>

Liberty Indivisible

<http://jaygaskill.com/LibertyIndivisible.pdf>

The American Creative Surge

<http://jaygaskill.com/ACS2011.pdf>