



Eroding U.S. Sovereignty:

POPs Implementation Bill Would Undermine Constitution, Harm World's Poor

by Angela Logomasini

In early 2004, the Senate is expected to vote on legislation that would allow international bureaucrats to initiate worldwide bans and regulations on chemicals and give the Environmental Protection Agency (EPA) lone authority to essentially ratify them for the United States. The measure is designed to implement the Global Convention on Persistent Organic Pollutants (the so-called POPs Treaty), which the Bush Administration signed in 2001. If passed into law, this proposal promises to make an already dangerous treaty

authorization or consent—when international bureaucrats add them to the POPs Treaty list. The Bush Administration proposed granting EPA authority to regulate *only* the 12 chemicals listed in the treaty. The Senate would then have to ratify addition of chemicals added to the POPs treaty list, and the full Congress would have to pass any necessary implementation laws.

Republicans on the Senate Environment and Public Works Committee discarded this approach

EPA's litigation costs, but courts could also award attorney and witness costs to litigants—which will come from taxpayer dollars as well. In addition, since many environmental groups receive government funding, the federal government, in effect, subsidizes such litigation against itself.

Setting up a process like this will exacerbate problems that are fundamental to the POPs Treaty. The assumption behind bans is that there are no valuable uses for the banned products. Were that true, there would

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much worse—eroding U.S. sovereignty, subverting the Constitution, and advancing policies that could greatly harm the world's poor.

The legislation (S. 1486), which was approved by the Senate Environment and Public Works Committee in July, must now go through the Senate Agriculture and Foreign Relations committees before reaching the floor, providing members with opportunities to reverse course.

The POPs Treaty imposes international bans on 12 chemicals—chlordane, DDT, dieldrin, aldrin, dioxins, endrin, furans, heptachlor, hexachlorobenzene, mirex, PCBs, and toxaphene. Disagreement on treaty implementation legislation has held up ratification. Democratic lawmakers proposed allowing EPA to implement bans—without any congressional

in July—with the administration's support—by supporting a compromise bill. It would require EPA to consider bans or other regulations for a year before making them official. EPA could decide against bans and regulations, but the legislation makes it difficult for it to prevail in such cases. First, EPA would be forced to give "substantial weight" to POPs listing decisions—placing the burden on EPA to prove them wrong. In addition, statist environmental groups could sue EPA if the agency doesn't impose new POPs-mandated chemical bans or regulations. Courts could then order EPA to ban or regulate unless the agency proves that such action is unnecessary. However, this standard would be tough to beat since it basically asks EPA to prove a negative.

And as if that weren't bad enough, taxpayers would not only pay for

be no markets for such products and no need for bans. In reality, these bans only harm consumers by raising prices and denying access to wanted—and often needed—products. The world's poor are often hit the hardest by such policies because they can least afford expensive alternatives even when they are available.

This is clearly the case with the existing POPs Treaty bans. These were initiated by wealthy nations where people can better afford expensive alternatives. Meanwhile, people in poor nations, who don't have access to alternatives, are left to suffer the consequences. The most outrageous example is the treaty's ban on the pesticide DDT, which is still the best available, and only reasonably affordable, pesticide for controlling

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the spread of malaria-carrying mosquitoes in developing nations. In some developing countries, public health authorities spray DDT on the walls of buildings to repel mosquitoes from entering dwellings. Contrary to environmentalist claims, this limited use of DDT does not produce any measurable environmental impact, but can save millions of lives.

U.S. bans on this product have led other nations to follow suit—and eventually led to the POPs international ban—producing deadly consequences. In the absence of DDT use, the number of malaria cases in developing nations has skyrocketed. According to the World Health Organization, malaria now infects 300 to 400 million people a year. In Africa alone 1.5 to 2.7 million people—mostly children—die from malaria every year.

Tropical medicine specialist Donald Roberts and his colleagues reported in 1997 that “countries that have recently discontinued their spray programs are reporting large increases in malaria incidence.” In contrast, Ecuador, which increased use of DDT after 1993, “is the only country reporting a large reduction (61 percent) in malaria rates since 1993.” Because of such realities, the treaty allows limited use for malaria control—but treaty regulations make it difficult for poor nations to access DDT, and the treaty aims to eventually impose a total worldwide ban.

For these reasons alone, it would make the most sense for members of Congress to call for the unsigning of the POPs Treaty. But, barring that, members should defend their constitutional responsibility by demanding that the treaty include an “opt-in” provision, which would require that the Senate ratify any treaty changes and pass laws each time for implementing any change. If Congress acts accordingly, we could avoid taxpayer-subsidized lawsuits.

Congress has a constitutional responsibility to govern. If it doesn't meet that responsibility, we can expect many more deadly mistakes.

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