

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1798

To prevent foreign states that do business, issue securities, or borrow money in the United States, and then fail to satisfy United States court judgments totaling \$100,000,000 or more based on such activities, from inflicting further economic injuries in the United States, from undermining the integrity of United States courts, and from discouraging responsible lending to poor and developing nations by undermining the secondary and primary markets for sovereign debt.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 6, 2011

Mr. MACK (for himself, Mr. KING of New York, Ms. LORETTA SANCHEZ of California, Mr. CARNAHAN, and Mrs. MALONEY) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To prevent foreign states that do business, issue securities, or borrow money in the United States, and then fail to satisfy United States court judgments totaling \$100,000,000 or more based on such activities, from inflicting further economic injuries in the United States, from undermining the integrity of United States courts, and from discouraging responsible lending to poor and developing nations by undermining the secondary and primary markets for sovereign debt.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Judgment Evading  
5 Foreign States Accountability Act of 2011”.

6 **SEC. 2. STATEMENT OF PURPOSE.**

7        The purpose of this Act is to prevent foreign states  
8 that do business, issue securities, or borrow money in the  
9 United States, and then fail to satisfy United States court  
10 judgments totaling \$100,000,000 or more based on such  
11 activities, from inflicting further economic injuries in the  
12 United States, from undermining the integrity of United  
13 States courts, and from discouraging responsible lending  
14 to poor and developing nations by undermining the sec-  
15 ondary and primary markets for sovereign debt.

16 **SEC. 3. FINDINGS.**

17        Congress finds the following:

18            (1) Foreign states that do business, issue secu-  
19 rities, or borrow money in the United States, and  
20 then refuse to satisfy judgments of United States  
21 courts entered against them in connection with dis-  
22 putes resulting from these or other commercial ac-  
23 tivities, directly or indirectly inflict billions of dollars  
24 of damage in the United States, and undermine the  
25 credibility of the United States courts.

1           (2) Foreign states that engage in such behavior  
2           can infect the management of corporations and  
3           other entities that they own or control with their  
4           profligate and irresponsible habits. When negligent  
5           ethical standards permit government officials to re-  
6           pudiate lawful judgments, the injury to United  
7           States taxpayers is multiplied.

8           (3) The Republic of Argentina is a primary ex-  
9           ample of a foreign state that has incurred large  
10          debts in the United States, defaulted on those debts,  
11          and then refused to honor lawful judgments of  
12          United States and other courts ordering repayment.  
13          In 2001, Argentina defaulted on more than  
14          \$81,000,000,000 in sovereign debt, the largest such  
15          default in history. In 2005, after refusing all efforts  
16          by creditors to negotiate the terms of an exchange  
17          offer, Argentina unilaterally offered lenders approxi-  
18          mately 27 cents on the dollar in its restructuring  
19          deal, far below the international norm for sovereign  
20          debt restructurings. Argentina repudiated the debts  
21          owed to the unprecedented proportion of bondholders  
22          who rejected that offer.

23          (4) Argentina still owes United States bond  
24          holders more than \$3,500,000,000. Overall, the de-  
25          fault and restructuring by Argentina have cost

1 United States bondholders, taxpayers, and share  
2 holders more than \$10,000,000,000.

3 (5) Argentina has the capacity to pay its exter-  
4 nal creditors. Argentina now holds more than  
5 \$54,000,000,000 in reserves. Argentina chose to pay  
6 off its \$9,800,000,000 debt to the International  
7 Monetary Fund in full in 2005, years before it was  
8 due, and has similarly announced an intention to  
9 pay sovereign creditors of the Paris Club, of which  
10 the United States is owed \$360,000,000.

11 (6) United States bondholders have won numer-  
12 ous court rulings against Argentina relating to Ar-  
13 gentina's default on debt owed to such bondholders  
14 and Argentina's decision to repeatedly ignore these  
15 judgments threatens the United States legal system.  
16 Despite having agreed to submit to the jurisdiction  
17 of the State of New York and to waive claims of sov-  
18 ereign immunity, Argentina is now contesting at  
19 least 170 lawsuits and refusing to honor 100 judg-  
20 ments against it, totaling more than  
21 \$7,000,000,000.

22 (7) Argentina has demonstrated a similar dis-  
23 regard for claims brought by United States investors  
24 before the International Centre for Settlement of In-  
25 vestment Disputes (ICSID), a tribunal of the World

1 Bank. Argentina is the respondent in more ICSID  
2 cases than any other nation, now accounting for  
3 more than a quarter of the tribunal's caseload. It is  
4 important to note that Argentina's arguments for  
5 nonpayment have been outright rejected by both the  
6 Department of State and the ICSID. Argentina is  
7 currently receiving \$5,810,000,000 from the World  
8 Bank and has requested an additional  
9 \$1,630,000,000 in funding. Argentina has behaved  
10 in a manner that undermines the viability of the  
11 ICSID process, thereby alarming the worldwide in-  
12 vestments of United States businesses that rely upon  
13 this forum for adjudication of disputes.

14 (8) Argentina's debts are legitimate. Any asser-  
15 tion that the Argentine debt now outstanding was  
16 incurred by the repressive, nondemocratic regimes  
17 that ruled Argentina in the late 1970s and early  
18 1980s is inaccurate. The bonds currently held by  
19 United States creditors were not incurred by non-  
20 democratic regimes; rather, they were issued by  
21 democratically elected Argentine governments.

22 (9) While it is true that the Argentine military  
23 junta—which caused tremendous suffering during a  
24 tyrannical 7-year reign—borrowed from foreign  
25 banks, 96 percent of that debt was refinanced in

1 1993 when Argentina’s “Brady Plan” restructuring  
2 was completed. That restructuring was underwritten  
3 by the United States Government. Prior to the  
4 Brady Plan restructuring, Argentina had undergone  
5 two “major restructurings” of its foreign debt—the  
6 first in 1985, and the second in 1987.

7 (10) None of the debt now held by United  
8 States creditors dates from the days of the Argen-  
9 tine military junta. Further, even if it were fair to  
10 characterize the debt issued in the 1993 Brady Plan  
11 restructuring as somehow derivative of junta-era  
12 debt—a notion that maligns the United States pol-  
13 icymakers who approved and underwrote the Brady  
14 Plan on behalf of the American people—only five  
15 percent of the defaulted debt now held by United  
16 States creditors was issued during or before 1993.  
17 Ninety-five percent of the defaulted debt held by  
18 United States creditors was incurred after 1993 by  
19 freely elected Argentine governmental officials and  
20 has no relationship to the military junta.

21 (11) Argentina’s defaults have raised the costs  
22 of borrowing for both the public and private sectors.  
23 If the country took action to remediate its debts, its  
24 annual interest expense would certainly decline. Ar-  
25 gentina’s defaults have discouraged foreign direct in-

1 investment. One study from 2007 states that Argen-  
2 tina loses over \$6,000,000,000 in foreign direct in-  
3 vestment every year as a result of its default and  
4 debt repudiation and the resultant risk profile.

5 (12) An October 2010 evaluation report by the  
6 Financial Action Task Force (FATF), an intergov-  
7 ernmental body that analyzes financial systems for  
8 criminal activity, gave Argentina the most negative  
9 evaluation of any G-20 nation. FATF evaluated Ar-  
10 gentina on 49 financial standards, of which Argen-  
11 tina failed to meet 47 out of the 49 standards. Ar-  
12 gentina was given an original timeline of three  
13 months, then an additional ten months to dem-  
14 onstrate compliance to the standards or face being  
15 blacklisted due to financial corruption and defi-  
16 ciencies in combating financing of terrorism (CFT)  
17 and anti-money laundering (AML) systems.

18 (13) Drawing further conclusions, FATF re-  
19 ported several shortcomings in Argentina's financial  
20 sector, most notably corruption and the poor en-  
21 forcement of Argentine financial laws. The lack of  
22 enforcement has prompted wide-spread money laun-  
23 dering in Argentina's financial sector creating an en-  
24 vironment that puts Argentina at risk of becoming

1 a hub for terrorism and drug trafficking in the  
2 Western Hemisphere.

3 (14) Many persons in the United States are un-  
4 aware of Argentina's irresponsible behavior and dis-  
5 regard for the rule of law. Further, United States  
6 citizens continue to invest in, lend to, and do busi-  
7 ness with Argentina and are unfamiliar with the as-  
8 sociated risks.

9 (15) Those who are injured as a result of this  
10 conduct often have little or no recourse. Judgment  
11 evading foreign states and their state owned cor-  
12 porations enjoy a safe haven within their national  
13 borders, and this fact often presents an insurmount-  
14 able obstacle to recovery for those who are injured  
15 by the behavior of those states.

16 (16) The absence of a remedy for defaults by  
17 such foreign states undermines nations that badly  
18 need to access capital from foreign lenders, with dis-  
19 proportionate harm falling on responsible and demo-  
20 cratic nations. By undermining confidence in the  
21 secondary market for sovereign debt, judgment evad-  
22 ing foreign states significantly increase the risk that  
23 primary lending to less-advantaged nations will be  
24 curtailed, depriving deserving sovereign borrowers of  
25 access to the international capital markets.

1           (17) Action by the United States Government  
2           to combat this growing problem must include meas-  
3           ures that both protect against the irresponsible con-  
4           duct of judgment evading foreign states and their  
5           state owned corporations, and motivate such states  
6           and corporations to raise their standards of behav-  
7           ior.

8           (18) An effective means of achieving this impor-  
9           tant objective is to deprive judgment evading foreign  
10          states and their state owned corporations of the  
11          privilege of issuing securities or borrowing in the  
12          United States, and requiring that warnings of their  
13          irresponsible behavior be given to persons in the  
14          United States who are contemplating investing in,  
15          lending to, or doing business with such states and  
16          businesses, until those states demonstrate that such  
17          measures are no longer necessary.

18 **SEC. 4. DEFINITIONS.**

19          For purposes of this Act:

20               (1) AGENCY OR INSTRUMENTALITY OF A FOR-  
21               EIGN STATE.—The term “agency or instrumentality  
22               of a foreign state” has the meaning given that term  
23               in section 1603(b) of title 28, United States Code.

24               (2) FINAL JUDGMENT.—The term “final judg-  
25               ment” means any judgment of a United States dis-

1       trict court, the Court of International Trade, or the  
2       court of any State, that is no longer eligible to be  
3       appealed to any court in the United States.

4           (3) FOREIGN STATE.—The term “foreign state”  
5       has the meaning given that term in section 1603(a)  
6       of title 28, United States Code, except that it does  
7       not include an agency or instrumentality of a foreign  
8       state.

9           (4) INTERNATIONAL ORGANIZATION.—The term  
10       “international organization” means an entity des-  
11       ignated by the President as being entitled to enjoy  
12       the privileges, exemptions, and immunities provided  
13       by the International Organizations Immunities Act  
14       (22 U.S.C. 288 et seq.).

15           (5) JUDGMENT EVADING FOREIGN STATE.—  
16       The term “judgment evading foreign state” means  
17       any foreign state that—

18           (A) has one or more judgments entered  
19       against it by any United States district court,  
20       the Court of International Trade, or the court  
21       of any State, the combined amount of which  
22       judgments exceeds \$100,000,000;

23           (B) fails to satisfy in full any such judg-  
24       ment for a period of more than two years after  
25       the judgment becomes a final judgment, regard-

1 less of whether such judgment became a final  
2 judgment before the date of the enactment of  
3 this Act; and

4 (C) is not a foreign state eligible for—

5 (i) financing through the Inter-  
6 national Development Association but not  
7 from the International Bank for Recon-  
8 struction and Development; and

9 (ii) debt relief under the Enhanced  
10 HIPC Initiative (as defined in section  
11 1625(e)(3) of the International Financial  
12 Institutions Act) or under the Multilateral  
13 Debt Relief Initiative.

14 (6) STATE OWNED CORPORATION OF A JUDG-  
15 MENT EVADING FOREIGN STATE.—The term “state  
16 owned corporation of a judgment evading foreign  
17 state” means any corporation or entity, other than  
18 a natural person—

19 (A) that is an agency or instrumentality of  
20 a foreign state that is a judgment evading for-  
21 eign state; or

22 (B) a majority of the shares or other own-  
23 ership interest of which is held, either directly  
24 or indirectly, by a judgment evading foreign  
25 state or by an agency or instrumentality of a

1 foreign state that is a judgment evading foreign  
2 state.

3 (7) STATE.—The term “State” means each of  
4 the several States, the District of Columbia, and any  
5 commonwealth, territory, or possession of the United  
6 States.

7 **SEC. 5. STATEMENT OF POLICY.**

8 It shall be the policy of the United States—

9 (1) to advocate within the governing bodies of  
10 international organizations, international financial  
11 institutions such as the World Bank and the Inter-  
12 national Monetary Fund, and other foreign policy  
13 settings for the full compensation and fair treatment  
14 of United States taxpayers in whose favor judgments  
15 have been awarded by the United States courts;

16 (2) to seek to protect the economic interests of  
17 such taxpayers and other persons and of nations  
18 that benefit from a reliable flow of foreign capital  
19 by—

20 (A) restricting the access to the United  
21 States capital markets of judgment evading for-  
22 eign states and their state owned corporations;

23 (B) requiring that such persons be warned  
24 of the dangers of investing in, lending to, or

1 doing business with such states and state owned  
2 corporations; and

3 (C) call on the World Bank, the Inter-  
4 national Monetary Fund, and other inter-  
5 national financial institutions to vote against  
6 providing funding or foreign capital to judg-  
7 ment evading foreign states; and

8 (3) to further solidify the authority of the  
9 United States courts by preventing judgment evad-  
10 ing foreign states from willfully disregarding the  
11 judgments of those courts.

12 **SEC. 6. BAR ON ACCESS TO UNITED STATES LENDERS AND**  
13 **INVESTORS.**

14 (a) MEASURES WITH RESPECT TO JUDGMENT EVAD-  
15 ING FOREIGN STATES.—The Securities and Exchange  
16 Commission shall—

17 (1) take all necessary measures to deny every  
18 judgment evading foreign state access to United  
19 States capital markets, including the ability, directly  
20 or indirectly, to borrow money or sell securities in  
21 the United States; and

22 (2) require that all periodic filings made by the  
23 judgment evading foreign state with the Securities  
24 and Exchange Commission under the securities laws  
25 bear the following legend prominently on the cover

1 page: “WARNING: THIS REPORT IS SUB-  
2 MITTED BY A FOREIGN STATE THAT HAS  
3 BEEN DETERMINED BY THE UNITED  
4 STATES DEPARTMENT OF THE TREASURY  
5 TO BE A JUDGMENT EVADING FOREIGN  
6 STATE BASED UPON ITS FAILURE TO SAT-  
7 ISFY OUTSTANDING UNITED STATES  
8 COURT JUDGMENTS.”.

9 (b) MEASURES WITH RESPECT TO STATE OWNED  
10 CORPORATIONS OF JUDGMENT EVADING FOREIGN  
11 STATES.—If any judgment evading foreign state remains  
12 in default on any final judgment for more than three  
13 years, irrespective of whether such judgment became final  
14 before the date of the enactment of this Act, the Securities  
15 and Exchange Commission shall—

16 (1) take all necessary measures to deny any  
17 state owned corporation of a judgment evading for-  
18 eign state access to the United States capital mar-  
19 kets, including the ability to issue debt, equity or  
20 other securities, or borrow money, unless the pro-  
21 ceeds of such borrowing of securities issuance are to  
22 be used, in the first instance, to satisfy in full all  
23 final judgment against its parent judgment evading  
24 foreign state; and

1           (2) require that all periodic filings made by  
2 each state owned corporation of a judgment evading  
3 foreign state with the Securities and Exchange Com-  
4 mission under the securities laws bear the following  
5 legend prominently on the cover page: “WARNING:  
6 THIS REPORT IS SUBMITTED BY A STATE  
7 OWNED CORPORATION OF A FOREIGN  
8 STATE THAT HAS BEEN DETERMINED BY  
9 THE DEPARTMENT OF THE TREASURY TO  
10 BE A JUDGMENT EVADING FOREIGN STATE  
11 BASED UPON ITS FAILURE TO SATISFY  
12 OUTSTANDING UNITED STATES COURT  
13 JUDGMENTS.”.

14 **SEC. 7. REQUESTS FOR AID OR ASSISTANCE FROM JUDG-**  
15 **MENT EVADING FOREIGN STATES.**

16       (a) **BILATERAL ASSISTANCE.**—Whenever any pro-  
17 posal is made to a department, agency, or other instru-  
18 mentality of the United States Government to extend aid,  
19 a loan, or any other form of assistance to a judgment  
20 evading foreign state, the head of the department, agency,  
21 or other instrumentality may consider the proposal only  
22 if it bears prominently the legend described in subsection  
23 (c).

24       (b) **MULTILATERAL ASSISTANCE.**—Whenever any  
25 proposal is made to an international organization to ex-

1 tend aid, a loan, or any other form of assistance to a judg-  
2 ment evading foreign state, the Secretary of State shall  
3 provide prompt notice of such proposal to the Congress.  
4 Such notice shall bear prominently the legend described  
5 in subsection (c).

6 (c) LEGEND DESCRIBED.—The legend of a proposal  
7 referred to in subsection (a) and the legend of a notice  
8 referred to in subsection (b) is the following: “REQUEST  
9 FOR GRANT-IN-AID OR LOAN BY A JUDGMENT  
10 EVADING FOREIGN STATE.”.

11 **SEC. 8. REPORTS; RECOMMENDATIONS OF ADDITIONAL**  
12 **MEASURES.**

13 (a) ANNUAL REPORTS TO CONGRESS.—Not later  
14 than January 31 of each year, the Secretary of the Treas-  
15 ury shall provide a report, in writing, to the Congress  
16 identifying each judgment evading foreign state, and, for  
17 each such judgment evading foreign state—

18 (1) quantifying the impact on the United States  
19 economy, and cost to United States taxpayers, of the  
20 unsatisfied final judgments outstanding against the  
21 judgment evading foreign state; and

22 (2) describing all measures that the Secretary  
23 of the Treasury and the Securities and Exchange  
24 Commission have taken in the preceding year to  
25 carry out this Act.

1           (b) CONSIDERATION OF DOCUMENTS AND OTHER IN-  
2 FORMATION.—The Secretary of the Treasury may con-  
3 sider documents and other information received from third  
4 parties and from judgment evading foreign states in pre-  
5 paring each report under subsection (a).

6           (c) TERMINATION OF DESIGNATION.—At such time  
7 as the Secretary of the Treasury determines that any  
8 judgment evading foreign state no longer qualifies as a  
9 judgment evading foreign state, the Secretary shall so cer-  
10 tify to the Congress no later than in the next annual re-  
11 port to Congress under subsection (a), at which time the  
12 requirements and prohibitions under this Act shall no  
13 longer apply to such former judgment evading foreign  
14 state, or to any state owned corporation of such judgment  
15 avoiding foreign state. The Secretary may consider docu-  
16 ments and other information received from third parties  
17 and from the judgment evading foreign state in making  
18 this determination.

19           (d) OTHER PUBLIC REPORTS TO INCLUDE INFORMA-  
20 TION ABOUT JUDGMENT EVADING FOREIGN STATES.—  
21 The Secretary of State, the Secretary of the Treasury, and  
22 the Secretary of Commerce shall each reference the find-  
23 ings of the Secretary of the Treasury from the Secretary's  
24 most recent annual report to Congress under subsection  
25 (a) relating to the unsatisfied final judgments outstanding

1 against the judgment evading foreign state in every report  
2 prepared for the public relating to the country risk or in-  
3 vestment climate of such judgment evading foreign state.

4 (e) ADDITIONAL MEASURES.—The Secretary of the  
5 Treasury shall recommend to the Congress in writing ad-  
6 ditional measures to carry out the purposes of this Act.

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