

NATIONAL FOREIGN TRADE COUNCIL, INC.

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May 25, 2011

The Honorable Rick Scott
Governor of Florida
400 South Monroe Street
Tallahassee, FL 32399

Dear Governor Scott:

I am writing on behalf of the National Foreign Trade Council, an association of some 300 U.S. companies engaged in international trade and investment, to urge you to veto SB 444 2011, a bill recently passed by the Florida legislature. SB 444 2011 is inconsistent with the U.S. Supreme Court's unanimous decision in 2000 in *Crosby v. NFTC*. In fact, this bill takes an approach that was explicitly found to be unconstitutional in that case.

The *Crosby* decision struck down a Massachusetts law that prohibited the state from purchasing goods and services from companies that had commercial ties to Burma. It found that the state was preempted from imposing sanctions under the Supremacy Clause of the Constitution since Congress had previously imposed sanctions on Burma. The Court held that "even without an express preemption provision, state law must yield to a congressional act if Congress intends to occupy the field." The Court went on to say "it is implausible to think that Congress would have gone to such lengths to empower the President had it been willing to compromise his effectiveness by allowing state or local ordinances to blunt the consequences of his actions. Yet this is exactly what the state Act does...The state Act undermines the President's capacity for effective diplomacy."

As in Burma, U.S. companies are prohibited by federal law from doing business in Iran and Sudan. Executive Orders in 1995 and 1997 by President Clinton prohibited most commerce with Sudan and Iran and the Sudan Accountability and Divestment Act of 2007 codified the sanctions while making an exception for southern Sudan. The 1996 "Iran-Libya Sanctions Act," revised as the "Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010," prohibits commerce with Iran. Title II of that Act does assert the sense of Congress that the U.S. should "support the decision" of state and local governments to "divest from, or prohibit the investment of" their assets in companies investing more than \$20 million in Iran's energy sector. However, the *Crosby* decision draws a bright line between divestment and procurement, which SB 44 2011 crosses. As did the Massachusetts Burma sanctions law, SB 444 2011 prohibits Florida state agencies from contracting for goods and services from companies that engage in sanctionable activity. In the case of Iran and Sudan the federal government has also occupied the field by enacting comprehensive sanctions on Iran.

There are obvious and valid reasons for concern about Iran's nuclear ambitions and Sudan's domestic repression. The United States must, however, act and speak with one voice to conduct an effective foreign policy. State sanctions clearly undermine the ability of the United States to conduct a unified and effective policy to address this serious situation. Consequently, we urge you to veto SB 444 2011.

Sincerely,

A handwritten signature in black ink, appearing to read "W. A. Reinsch". The signature is fluid and cursive.

William A. Reinsch
President

Advancing Global Commerce for Nearly A Century

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