

## Testimony of Daniel Kuettel

### U.S. House of Representatives Subcommittee on Government Operations

#### “Reviewing the Unintended Consequences of the Foreign Account Tax Compliance Act”

April 26, 2017, 2:00 PM

Chairmen Meadows and Members of the Subcommittee on Government Operations of the House Committee on Oversight and Government Reform

Thank you for this opportunity to discuss the unintended consequences of the Foreign Account Tax Compliance Act (FATCA). This hearing is, in my view, one of the few instances in America’s 241 year history where Americans overseas are granted a glimpse of what it could possibly feel like to be politically represented. FATCA gains access to sensitive information at a heavy cost. There are plenty of tools for efficiently combatting tax evasion without harming the very people such efforts are meant to protect.

This is a story about me, an American veteran who holds on to his US Army jacket and a US passport with three holes punched into it.

Criticism of FATCA is often wrongly painted as being just a Republican thing.<sup>1</sup> I grew up in a liberal, Democrat-leaning environment. At times, I was a vegan or a vegetarian, a feminist, a human rights activist, or an environmentalist. I protested to save the whales and to boycott McDonalds, I advocated for urban sustainability, fought against the car culture and enjoyed alternative healthcare and preventative medicine. I am not here today for Republicans, nor for myself. I’m here today for all Americans, even those who have not yet noticed, don’t want to acknowledge<sup>2</sup> or those who belittle the unintended consequences of FATCA.

Sadly, many US residents often tell Americans overseas to renounce their US citizenship in response to problems caused by FATCA, and many are doing so, like I did. I renounced and yet I’ve always been compliant and enjoy being compliant with taxation, if only filing wasn’t so terribly complicated and costly! I don’t have any issues with the IRS and always did what was requested of me. I’m lower middle class and have nothing to hide. I joined the Army and Army Reserves to serve my country, to earn money for college, to get out into the world, and to learn a trade. I was proud to be American. I never imagined that one day I would not be a US citizen.

After getting married in the Philippines, I applied for my wife to join me in America, but lost my job during the dot-com crisis. I sent my resume around the country, but no full-time positions were available in the gutted job market at that time. My wife could not join me to support me while I searched for work since my check to pay for her INS application bounced due to a lack of funds. With no job, student loans, credit card debt, and mortgage debt, I could not afford to pay my bills, so I took to my chances and hopped on a cheap flight to Europe. At the time, California unemployment benefits were barely enough to cover my basic housing expenses. It was only later that they were increased 3 times, after I had left. My father offered for me to stay with him, but I didn’t want to be a financial burden on him. I’m an economic refugee, not a wealthy tax cheat. I did not leave America because of taxes. The IRS even owed me money when I left America. Why should I have to renounce citizenship of the country that I served due to a policy fueled with biases?

Living overseas after 9/11, I wanted to try to understand why someone would do such a terrible thing to the country that I loved and served. This led me into middle-eastern politics where, for a decade, I

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<sup>1</sup> International Advisor. US Republicans want Fatca repeal despite \$10bn tax haul. <http://www.international-adviser.com/news/1032545/us-republicans-fatca-repeal-despite-usd10bn-tax-haul>

<sup>2</sup> Robert Stack’s “Myth vs. FATCA” article failed to acknowledge the discrimination caused by FATCA <https://www.treasury.gov/connect/blog/Pages/Myth-vs-FATCA.aspx>

challenged bigotry against Americans. I was a free US ambassador overseas, defusing some negative consequences of US policy in ways that many US residents would never understand. Since the arrival of FATCA, I observed an increase in American hostility against Americans.<sup>3</sup> How can FATCA be just when it teaches Americans, or even the world, to view US citizens as being hunted tax cheats? With FATCA focusing on US indicia, why is it often coupled with the terrorism<sup>4</sup> card, to gather support, while Americans overseas are far more likely to become victims of terrorist attacks?

Around mid-2012, I was shocked when I inquired about refinancing my mortgage with a local bank and was told that they would not accept me as a client due to my US citizenship and FATCA.<sup>5</sup> I went to another bank, another, and then another, only to hear the same thing over and over again. I was being discriminated based on my American citizenship. It was unbelievable, like a nightmare. This nightmare is shared by many Americans living overseas, especially accidental Americans. My country that I had loyally served was causing me to be denied financial services.

At the time, a lot of bigotry in America was being aimed at Switzerland. Instead of being respected for serving America, I was frequently accused of being a Nazi banker who stole money from Jews, or a wealthy tax cheat hiding in a tax haven. I was supposed to be hiding billions of dollars in a secret Swiss bank account. Yet, I paid my taxes, was compliant with US filing requirements, and had no money to hide. Some Americans even argued that Switzerland would be destroyed with FATCA, and the US government was not shy in making excessive threats, like LEX USA,<sup>6</sup> which threatened Swiss banks<sup>78</sup> if the Swiss Parliament didn't approve a law whose details they were not allowed to know.<sup>9</sup> Switzerland was treated as an international whipping boy.<sup>10</sup> FATCA was argued as being a "Golden Opportunity"<sup>11</sup> to squash financial secrecy. I was originally not against FATCA and yet I didn't understand why it was having an impact upon me or why its impact was being ignored and denied. I didn't earn enough to be burdened with US double-taxation. I'm just a middle class American Veteran who is humbly happy to have food and shelter.

Being concerned that my family would not have shelter, I wanted to know what my options were for refinancing, if the local discrimination against Americans persisted. So, I filed a complaint with the Office of Fair Housing and Equal Opportunity on Housing Discrimination. They didn't respond.<sup>12</sup> I then tried again, and they told me that they do "not have jurisdiction to handle complaints outside of the United States."<sup>13</sup> Similarly, the VA responded that their mortgage assistance only applies to Veterans who reside in America.<sup>14</sup> I called the Department of Justice to inquire on this national origin discrimination, but they referred me to some statute, which I never found, which was supposed state that US federal laws prohibiting national origin discrimination only protected US residents. How is it possible that the US government can force FATCA upon residents of other nations by using IGA's to override local laws, without providing its Veterans with any protections?

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<sup>3</sup> «It is no secret that FATCA teaches Americans to be racist against Americans.»

<http://isaacbrocksociety.ca/2013/11/03/stated-in-honor-of-fatca-you-americans-disgust-me/>

<sup>4</sup> «The background of this law is to detect foreign assets involving illegal savings, money laundering, combating terrorism and financing of terrorism». <https://rubestax.com/en/questions/fatca/>

<sup>5</sup> <https://expatami.wordpress.com/2012/07/30/us-bank-denying-americans-services-for-being-us-persons/>

<sup>6</sup> <http://www.bilan.ch/thierry-boitelle/questions-fiscales/lex-usa-100-made-usa-cette-fois>

<sup>7</sup> <https://insideparadeplatz.ch/2013/06/17/panikmache-der-lex-usa-lobbyisten/>

<sup>8</sup> <https://www.fuw.ch/article/nationalrat-soll-nicht-auf-lex-usa-eintreten/>

<sup>9</sup> [http://www.swissinfo.ch/ger/steuerstreit\\_lex-usa\\_nimmt-wichtige-huerde/36126994](http://www.swissinfo.ch/ger/steuerstreit_lex-usa_nimmt-wichtige-huerde/36126994)

<sup>10</sup> <https://www.theguardian.com/business/2009/mar/01/swiss-banks-anonymity-ubs>

<sup>11</sup> "they fail to mention the golden opportunity they have this year to make concrete progress"

<http://eurodad.org/1545339/>

<sup>12</sup> <https://expatami.wordpress.com/2012/07/23/filed-a-complaint-with-the-office-of-fair-housing-and-equal-opportunity-on-housing-discrimination/>

<sup>13</sup> <https://expatami.wordpress.com/2012/09/02/resubmitted-complaint-on-housing-discrimination-to-hud>

<sup>14</sup> <https://expatami.wordpress.com/2012/08/27/hud-complaint-on-housing-discrimination-vanished/>

Like many Americans overseas, I wrote various US politicians, including Mitt Romney,<sup>15</sup> Bill Nelson,<sup>16</sup> and Joe Biden,<sup>17</sup> but they either didn't respond or sent automated boilerplate responses. I called politicians like Connie Mack and Keith Fitzgerald, but they responded that they didn't have any time for "expat issues"<sup>18</sup> or that their opposition would use it against them. I got the impression that many were afraid of standing up for expats in Switzerland due to the massive amount of propaganda being waged against the country.

In Switzerland, the government stated in the press that the US conflict was not going to end anytime soon. I was often told that the only way to avoid the discrimination was to renounce US citizenship. Local banks didn't publish their policy on FATCA and it was frequently changing. Some were charging US citizens outrageous fees. FATCA advocates were aware of the discrimination,<sup>19</sup> but claimed that they would fix FATCA after implementing it, just like they are still claiming today, many years later.<sup>20</sup> With US pressure growing, no support from America for its Veterans overseas and the problem lasting indefinitely, I found that it was safest to renounce my US citizenship to avoid the risk of being denied refinancing.

To find the strength to renounce the from nation that I had served to defend, I returned to the village that I had lived in when I first came to live in Switzerland at the age of 10, and asked myself if I could this time make the departure permanent. The beauty and peacefulness of the area gave me the strength that I needed to detach myself from the ability of being able to live with my family in America. Are these the types of choices we want for our Veterans to be making, to not be with their family because it is American?

After renouncing, the US government forced the US program on Switzerland, which was its method of violating the double-taxation treaty to do group fishing needed to enforce FATCA. The US program fined Swiss banks for having US clients. It didn't matter if the US clients were innocent or guilty or where they resided. With its non-prosecution agreements, the US Department of Justice approved national origin discrimination against Americans. The impact was that, by the time that I needed to refinance, no bank in Switzerland was willing to have US clients as customers. US citizens had become a risk and a threat. If I had not renounced, then I would have lost my home.<sup>21</sup>

Because of the US Program, I had to prove my innocence, even though I was tax-compliant, simply because I used to be a US citizen. Under threat of being denied financial services, I was forced to hand over to my local bank many years of my US tax returns. After having proven my innocence, the bank then demanded, due to FATCA, for me to waive my right to privacy where I live in Switzerland for the rest of my life and beyond. I replied that I was willing to waive my right to privacy for those years that I was a US citizen, but not afterwards, since such violated local privacy protection laws. The Joint Statement on FATCA states that the US government respects Swiss law.<sup>22</sup>

After renouncing, my son, the son of a US Veteran and a descendant of the Mayflower, was born without US citizenship. This means that he can take his savings to any local bank and they will accept him as new client, treating him as a respected local. Yet, my daughter was rejected by approximately 310 out of 330 banks, simply because she is a tax-compliant US citizen,<sup>23</sup> due to US policy. If she

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<sup>15</sup> <https://expatami.wordpress.com/category/representative/mitt-romney/>

<sup>16</sup> <https://expatami.wordpress.com/2012/08/03/letter-to-senator-bill-nelson-on-h-r-6263/>

<sup>17</sup> <https://expatami.wordpress.com/category/representative/joe-biden/>

<sup>18</sup> <https://expatami.wordpress.com/category/representative/connie-mack/>

<sup>19</sup> <https://www.gpo.gov/fdsys/pkg/CHRG-111hrg63014/pdf/CHRG-111hrg63014.pdf>

<sup>20</sup> <https://www.facebook.com/DemsAbroad/posts/10158421674145005>

<sup>21</sup> <http://isaacbrocksociety.ca/2013/06/07/its-official-renouncing-us-citizenship-saved-our-home/>

<sup>22</sup> <https://www.sif.admin.ch/sif/de/home/dokumentation/medienmitteilungen/medienmitteilungen.msg-id-50049.html>

<sup>23</sup> «19 Banken nehmen wieder US-Bürger als Kunden auf»

<http://www.tagesanzeiger.ch/wirtschaft/standard/19-Banken-nehmen-wieder-USBuerger-als-Kunden-auf/story/26115487>

could renounce US citizenship, then she would be treated the same as my son. Both of my children were born to the same parents in the same country, the same city, and the same hospital and have the right to be treated equally. US Federal Law prohibit national origin discrimination.<sup>24</sup> The US government could enable innocent children to not be discriminated against, if it allowed them to be able to choose to become US citizens at the age of 18. Yet, instead, the US Department of State is charging children an outrageous fee of \$2,350<sup>25</sup> to avoid discrimination, assuming they are permitted to renounce. US citizens with disabilities are denied the right to renounce. They have no refuge from discrimination.

I hope that this helps you to gain a better visualization of the world of FATCA beyond US borders. The bridge connecting America to its overseas population is crumbling under its weight, and I hope that this bridge can be renovated before it collapses.

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<sup>24</sup> «Federal laws prohibit discrimination based on a person's national origin, race, color, religion, disability, sex, and familial status.» <https://www.justice.gov/crt/federal-protections-against-national-origin-discrimination-1>

<sup>25</sup> <https://www.forbes.com/sites/robertwood/2016/02/20/422-fee-increase-to-renounce-citizenship-yields-millions-with-exits-up-560/#7c0c3c2c2219>