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The Magnitsky Act Is Wrong

By Mark Nuckols

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Sergei Magnitsky was a Russian lawyer who exposed the fraudulent use of corporate documents of his client to defraud both his client and the Federal Treasury of $230 million. Rather than arrest and prosecute the persons Magnitsky testified were responsible for this crime, prosecutors had Magnitsky himself arrested and imprisoned. After enduring 11 months of inhumane treatment, Magnitsky died in police custody under suspicious circumstances. His death is a tragedy and miscarriage of justice and demands a thorough investigation by the Russian government. Unfortunately, however, the wheels of justice in Russia often fail to turn as they should, particularly when they threaten wrongdoers in the government.

The U.S. Congress has responded with the Magnitsky Act. The proposed law would require the U.S. Secretary of State to provide Congress with a list of people believed complicit in Magnitsky's death, to deny them visas to the U.S. and to direct U.S. banks to freeze any assets they hold in the country. If U.S. President Barack Obama signs this law, it will be a mistake. It would violate basic principles of the rule of law, needlessly poison U.S. relations with Russia, and fail to advance the cause its authors believe they are championing. Obama should veto this bill if it passes Congress.

One disturbing feature of this bill is its extraordinary selectivity. Magnitsky's arrest, prosecution and death in police custody are hardly unique in Russia. The only reason congressmen even heard of Magnitsky was because of his client: Hermitage Capital, a prominent and wealthy hedge fund manager that heavily lobbied U.S. and European lawmakers to propose the Magnitsky Act. The U.S. Congress has conspicuously not shown the same concern for human rights violations in dozens of other countries, namely China, with whom the U.S. trades extensively. It is true that the U.S. Senate has approved an alternative version of the proposed law that extends its application to "human rights violators" in all countries worldwide, but in both versions Russia remains the clear target of the law.

The main reason the U.S. Magnitsky Act is a bad idea is that the Magnitsky affair is strictly an internal matter for Russia. The events that led to Magnitsky's death occurred on the territory of an independent state with its own judicial organs, whose sovereignty the U.S. should respect.

This Magnitsky Act's blacklist is a symbolic judgment of guilt — not only of the accused officials but of Russia itself. It is not a verdict rendered by a competent judicial body after a proper trial and opportunity for the accused to defend themselves but a politically loaded statement by the U.S. Congress aimed at Russia. If these officials are in fact guilty of violating Russian law, only a Russian court has the jurisdiction and competence to make this determination. If Russian courts fail to provide justice in this case, it is a failure that must be addressed by Magnitsky's fellow citizens, not U.S. lawmakers, the State Department or Obama.

To be sure, the sanctions that the act levies out are purely symbolic. If the accused officials are, in fact, guilty of an extra-judicial murder and embezzlement, being denied permission to visit Disneyland or Las Vegas is a parody of just and appropriate punishment. It is safe to assume that these officials moved their money and assets out of the U.S. long ago if they were ever there to begin with. The more serious concern for Russian officials is that European countries will adopt similar and perhaps broader legislation.

But enactment of the act will have other serious, if unintended, consequences. Although the U.S. and Russia are not strong allies, they do have many vital common interests, ranging from trade and international security to nuclear arms control and fighting global terrorism. Passage of the act will inevitably cause unnecessary friction between Washington and Moscow.

Russians are proud people — perhaps too proud at times — but perceived hectoring from the U.S. about Russia's failings is far more likely to provoke indignation and anger than renewed resolve to root out corruption and injustice in Russia's bureaucracy and criminal justice system.

The death of Magnitsky is a tragedy that demands justice, and he deserves a fitting tribute for his sacrifice and his devotion to the rule of law. But the Magnitsky Act achieves neither of these objectives.

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