

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1410  
OFFERED BY MR. SMITH OF NEW JERSEY**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Vietnam Human Rights Act of 2012”.

4 (b) TABLE OF CONTENTS.—The table of contents for  
5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purpose.

Sec. 3. Prohibition on increased nonhumanitarian assistance to the Government  
of Vietnam.

Sec. 4. United States public diplomacy.

Sec. 5. Annual report.

**6 SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) The relationship between the United States  
9 and the Socialist Republic of Vietnam has grown  
10 substantially since the end of the trade embargo in  
11 1994, with annual trade between the two countries  
12 reaching over \$20,000,000,000 in 2011.

13 (2) The Government of Vietnam’s transition to-  
14 ward greater economic freedom and trade has not  
15 been matched by greater political freedom and sub-

1       stantial improvements in basic human rights for Vi-  
2       etnamese citizens, including freedom of religion, ex-  
3       pression, association, and assembly.

4               (3) The United States Congress agreed to Viet-  
5       nam becoming an official member of the World  
6       Trade Organization in 2006, amidst assurances that  
7       the Government of Vietnam was steadily improving  
8       its human rights record and would continue to do so.

9               (4) Vietnam remains a one-party state, ruled  
10       and controlled by the Communist Party of Vietnam  
11       (CPV), which continues to deny the right of citizens  
12       to change their Government.

13              (5) Although in recent years the National As-  
14       sembly of Vietnam has played an increasingly active  
15       role as a forum for highlighting local concerns, cor-  
16       ruption, and inefficiency, the National Assembly re-  
17       mains subject to the direction of the CPV and the  
18       CPV maintains control over the selection of can-  
19       didates in national and local elections.

20              (6) The Government of Vietnam forbids public  
21       challenge to the legitimacy of the one-party state, re-  
22       stricts freedoms of opinion, the press, and associa-  
23       tion and tightly limits access to the Internet and  
24       telecommunication.

1           (7) Since Vietnam's accession to the WTO on  
2           January 11, 2007, the Government of Vietnam arbi-  
3           trarily arrested and imprisoned numerous individ-  
4           uals for their peaceful advocacy of religious freedom,  
5           democracy, and human rights, including Father  
6           Nguyen Van Ly, human rights lawyers Nguyen Van  
7           Dai, Le Thi Cong Nhan, Cu Huy Ha Vu, and Le  
8           Cong Dinh, and bloggers Nguyen Van Hai and Phan  
9           Thanh Hai.

10           (8) The Government of Vietnam continues to  
11           detain, imprison, place under house arrest, convict,  
12           or otherwise restrict persons for the peaceful expres-  
13           sion of dissenting political or religious views.

14           (9) The Government of Vietnam has also failed  
15           to improve labor rights, continues to arrest and har-  
16           ass labor leaders, and restricts the right to organize  
17           independently.

18           (10) The Government of Vietnam continues to  
19           limit the freedom of religion, restrict the operations  
20           of independent religious organizations, and persecute  
21           believers whose religious activities the Government  
22           regards as a potential threat to its monopoly on  
23           power.

24           (11) Despite reported progress in church open-  
25           ings and legal registrations of religious venues, the

1 Government of Vietnam has halted most positive ac-  
2 tions since the Department of State lifted the “coun-  
3 try of particular concern” (CPC) designation for  
4 Vietnam in November 2006.

5 (12) Unregistered ethnic minority Protestant  
6 congregations, particularly Montagnards in the Cen-  
7 tral and Northwest Highlands, suffer severe abuses  
8 because of actions by the Government of Vietnam,  
9 which have included forced renunciations of faith,  
10 arrest and harassment, the withholding of social pro-  
11 grams provided for the general population, confisca-  
12 tion and destruction of property, subjection to severe  
13 beatings, and reported deaths.

14 (13) There has been a pattern of violent re-  
15 sponses by the Government to peaceful prayer vigils  
16 and demonstrations by Catholics for the return of  
17 Government-confiscated church properties. Pro-  
18 testers have been harassed, beaten, and detained  
19 and church properties have been destroyed. Catholics  
20 also continue to face some restrictions on selection  
21 of clergy, the establishment of seminaries and semi-  
22 nary candidates, and individual cases of travel and  
23 church registration.

24 (14) In May 2010 the village of Con Dau, a  
25 Catholic parish in Da Nang, faced escalated violence

1 during a funeral procession as police attempted to  
2 prohibit a religious burial in the village cemetery;  
3 more than 100 villagers were injured, 62 were ar-  
4 rested, five were tortured, and at least three died.

5 (15) The Unified Buddhist Church of Vietnam  
6 (UBCV) suffers persecution as the Government of  
7 Vietnam continues to restrict contacts and move-  
8 ment of senior UBCV clergy for refusing to join the  
9 state-sponsored Buddhist organization, the Govern-  
10 ment restricts expression and assembly, and the  
11 Government continues to harass and threaten UBCV  
12 monks, nuns, and youth leaders.

13 (16) The Government of Vietnam continues to  
14 suppress the activities of other religious adherents,  
15 including Cao Dai and Hoa Hao Buddhists who lack  
16 official recognition or have chosen not to affiliate  
17 with the state-sanctioned groups, including through  
18 the use of detention, imprisonment, and strict Gov-  
19 ernment oversight.

20 (17) During Easter weekend in April 2004,  
21 thousands of Montagnards gathered to protest their  
22 treatment by the Government of Vietnam, including  
23 the confiscation of tribal lands and ongoing restric-  
24 tions on religious activities. Credible reports indicate  
25 that the protests were met with violent response as

1 many demonstrators were arrested, injured, or went  
2 into hiding, and that others were killed. Many of  
3 these Montagnards and others are still serving long  
4 sentences for their involvement in peaceful dem-  
5 onstrations in 2001, 2002, 2004, and 2008.  
6 Montagnards continue to face threats, detention,  
7 beatings, forced renunciation of faith, property de-  
8 struction, restricted movement, and reported deaths  
9 at the hands of Government officials.

10 (18) Ethnic minority Hmong in the Northwest  
11 Highlands of Vietnam also suffer restrictions,  
12 abuses, and persecution by the Government of Viet-  
13 nam, and although the Government is now allowing  
14 some Hmong Protestants to organize and conduct  
15 religious activities, some Government officials con-  
16 tinue to deny or ignore additional applications for  
17 registration, and to persecute churches and believers  
18 who do not wish to affiliate with Government-con-  
19 trolled religious entities.

20 (19) In 2007, the Government of Vietnam ar-  
21 rested, beat, and defrocked several ethnic Khmer  
22 Buddhists in response to a peaceful religious protest.  
23 The Government continues to restrict Khmer Krom  
24 expression, assembly, association, and controls all re-

1 religious organizations and prohibits most peaceful  
2 protests.

3 (20) The Government of Vietnam controls all  
4 print and electronic media, including access to the  
5 Internet, jams the signals of some foreign radio sta-  
6 tions, including Radio Free Asia, and has detained  
7 and imprisoned individuals who have posted, pub-  
8 lished, sent, or otherwise distributed democracy-re-  
9 lated materials.

10 (21) People arrested in Vietnam because of  
11 their political or religious affiliations and activities  
12 often are not accorded due legal process as they lack  
13 full access to lawyers of their choice, may experience  
14 closed trials, have often been detained for years  
15 without trial, and have been subjected to the use of  
16 torture to admit crimes they did not commit or to  
17 falsely denounce their own leaders.

18 (22) Vietnam continues to be a source country  
19 for the commercial sexual exploitation and forced  
20 labor of women and girls, as well as for men and  
21 women legally entering into international labor con-  
22 tracts who subsequently face conditions of debt  
23 bondage or forced labor, and is a destination country  
24 for child trafficking and continues to have internal  
25 human trafficking.

1           (23) Although the Government of Vietnam re-  
2           ports progress in combating human trafficking, it  
3           does not fully comply with the minimum standards  
4           for the elimination of trafficking, and is not making  
5           substantial efforts to comply.

6           (24) United States refugee resettlement pro-  
7           grams, including the Humanitarian Resettlement  
8           (HR) Program, the Orderly Departure Program  
9           (ODP), Resettlement Opportunities for Vietnamese  
10          Returnees (ROVR) Program, general resettlement of  
11          boat people from refugee camps throughout South-  
12          east Asia, the Amerasian Homecoming Act of 1988,  
13          and the Priority One Refugee resettlement category,  
14          have helped rescue Vietnamese nationals who have  
15          suffered persecution on account of their associations  
16          with the United States or, in many cases, because of  
17          such associations by their spouses, parents, or other  
18          family members, as well as other Vietnamese nation-  
19          als who have been persecuted because of race, reli-  
20          gion, nationality, political opinion, or membership in  
21          a particular social group.

22          (25) While previous programs have served their  
23          purposes well, a significant number of eligible refu-  
24          gees from Vietnam were unfairly denied or excluded,  
25          including Amerasians, in some cases by vindictive or



1 corrupt Vietnamese officials who controlled access to  
2 the programs, and in others by United States per-  
3 sonnel who imposed unduly restrictive interpreta-  
4 tions of program criteria. In addition, the Govern-  
5 ment of Vietnam has denied passports to persons  
6 who the United States has found eligible for refugee  
7 admission.

8 (26) Congress has passed numerous resolutions  
9 condemning human rights abuses in Vietnam, indi-  
10 cating that although there has been an expansion of  
11 relations with the Government of Vietnam, it should  
12 not be construed as approval of the ongoing and se-  
13 rious violations of fundamental human rights in  
14 Vietnam.

15 (b) PURPOSE.—The purpose of this Act is to promote  
16 the development of freedom and democracy in Vietnam.

17 **SEC. 3. PROHIBITION ON INCREASED NONHUMANITARIAN**  
18 **ASSISTANCE TO THE GOVERNMENT OF VIET-**  
19 **NAM.**

20 (a) ASSISTANCE.—

21 (1) IN GENERAL.—Except as provided in sub-  
22 section (b), the Federal Government may not pro-  
23 vide nonhumanitarian assistance to the Government  
24 of Vietnam during any fiscal year in an amount that

1 exceeds the amount of such assistance provided dur-  
2 ing fiscal year 2011 unless—

3 (A) the Federal Government provides as-  
4 sistance, in addition to the assistance author-  
5 ized under section 4, supporting the creation  
6 and facilitation of human rights training, civil  
7 society capacity building, noncommercial rule of  
8 law programming, and exchange programs be-  
9 tween the Vietnamese National Assembly and  
10 the United States Congress at levels commensu-  
11 rate with, or exceeding, any increases in non-  
12 humanitarian assistance to Vietnam;

13 (B) with respect to the limitation for fiscal  
14 year 2012, the President determines and cer-  
15 tifies to Congress, not later than 30 days after  
16 the date of the enactment of this Act, that the  
17 requirements of subparagraphs (A) through (G)  
18 of paragraph (2) have been met during the 12-  
19 month period ending on the date of the certifi-  
20 cation; and

21 (C) with respect to the limitation for sub-  
22 sequent fiscal years, the President determines  
23 and certifies to Congress, in the most recent  
24 annual report submitted pursuant to section  
25 601, that the requirements of subparagraphs

1 (A) through (G) of paragraph (2) have been  
2 met during the 12-month period covered by the  
3 report.

4 (2) REQUIREMENTS.—The requirements of this  
5 paragraph are the following:

6 (A) The Government of Vietnam has made  
7 substantial progress toward releasing all polit-  
8 ical and religious prisoners from imprisonment,  
9 house arrest, and other forms of detention.

10 (B) The Government of Vietnam has made  
11 substantial progress toward—

12 (i) respecting the right to freedom of  
13 religion, including the right to participate  
14 in religious activities and institutions with-  
15 out interference, harassment, or involve-  
16 ment of the Government, for all of Viet-  
17 nam's diverse religious communities; and

18 (ii) returning estates and properties  
19 confiscated from the churches and religious  
20 communities.

21 (C) The Government of Vietnam has made  
22 substantial progress toward respecting the right  
23 to freedom of expression, assembly, and associa-  
24 tion, including the release of independent jour-

1           nalists, bloggers, and democracy and labor ac-  
2           tivists.

3           (D) The Government of Vietnam has made  
4           substantial progress toward repealing or revis-  
5           ing laws that criminalize peaceful dissent, inde-  
6           pendent media, unsanctioned religious activity,  
7           and nonviolent demonstrations and rallies, in  
8           accordance with international standards and  
9           treaties to which Vietnam is a party.

10          (E) The Government of Vietnam has made  
11          substantial progress toward allowing Viet-  
12          namese nationals free and open access to  
13          United States refugee programs.

14          (F) The Government of Vietnam has made  
15          substantial progress toward respecting the  
16          human rights of members of all ethnic and mi-  
17          nority groups.

18          (G) Neither any official of the Government  
19          of Vietnam nor any agency or entity wholly or  
20          partly owned by the Government of Vietnam  
21          was complicit in a severe form of trafficking in  
22          persons, or the Government of Vietnam took all  
23          appropriate steps to end any such complicity  
24          and hold such official, agency, or entity fully  
25          accountable for its conduct.

1 (b) EXCEPTION.—

2 (1) CONTINUATION OF ASSISTANCE IN THE NA-  
3 TIONAL INTEREST.—Notwithstanding the failure of  
4 the Government of Vietnam to meet the require-  
5 ments of subsection (a)(2), the President may waive  
6 the application of subsection (a) for any fiscal year  
7 if the President determines that the provision to the  
8 Government of Vietnam of increased nonhumani-  
9 tarian assistance would promote the purpose of this  
10 Act or is otherwise in the national interest of the  
11 United States.

12 (2) EXERCISE OF WAIVER AUTHORITY.—The  
13 President may exercise the authority under para-  
14 graph (1) with respect to—

15 (A) all United States nonhumanitarian as-  
16 sistance to Vietnam; or

17 (B) one or more programs, projects, or ac-  
18 tivities of such assistance.

19 (c) DEFINITIONS.—In this section:

20 (1) NONHUMANITARIAN ASSISTANCE.—The  
21 term “nonhumanitarian assistance” means—

22 (A) any assistance under the Foreign As-  
23 sistance Act of 1961 (including programs under  
24 title IV of chapter 2 of part I of that Act, relat-

1           ing to the Overseas Private Investment Cor-  
2           poration), other than—

3                   (i) disaster relief assistance, including  
4                   any assistance under chapter 9 of part I of  
5                   that Act;

6                   (ii) assistance which involves the pro-  
7                   vision of food (including monetization of  
8                   food) or medicine;

9                   (iii) assistance for environmental re-  
10                  mediation of dioxin-contaminated sites and  
11                  related health activities;

12                  (iv) assistance to combat severe forms  
13                  of trafficking in persons;

14                  (v) assistance to combat pandemic  
15                  diseases;

16                  (vi) assistance for refugees; and

17                  (vii) assistance to combat HIV/AIDS,  
18                  including any assistance under section  
19                  104A of that Act; and

20                  (B) sales, or financing on any terms, under  
21                  the Arms Export Control Act.

22                  (2) SEVERE FORM OF TRAFFICKING IN PER-  
23                  SONS.—The term “severe form of trafficking in per-  
24                  sons” means any activity described in section 103(8)  
25                  of the Trafficking Victims Protection Act of 2000

1 (Public Law 106–386 (114 Stat. 1470); 22 U.S.C.  
2 7102(8)).

3 (d) **EFFECTIVE DATE.**—This section shall take effect  
4 on the date of the enactment of this Act and shall apply  
5 with respect to the provision of nonhumanitarian assist-  
6 ance to the Government of Vietnam during fiscal year  
7 2013 and subsequent fiscal years.

8 **SEC. 4. UNITED STATES PUBLIC DIPLOMACY.**

9 (a) **RADIO FREE ASIA TRANSMISSIONS TO VIET-**  
10 **NAM.**—It is the sense of Congress that the United States  
11 should take measures to overcome the jamming of Radio  
12 Free Asia by the Government of Vietnam.

13 (b) **UNITED STATES EDUCATIONAL AND CULTURAL**  
14 **EXCHANGE PROGRAMS WITH VIETNAM.**—It is the sense  
15 of Congress that any programs of educational and cultural  
16 exchange between the United States and Vietnam should  
17 actively promote progress toward freedom and democracy  
18 in Vietnam by providing opportunities to Vietnamese na-  
19 tionals from a wide range of occupations and perspectives  
20 to see freedom and democracy in action and, also, by en-  
21 suring that Vietnamese nationals who have already dem-  
22 onstrated a commitment to these values are included in  
23 such programs.

1 **SEC. 5. ANNUAL REPORT.**

2 (a) IN GENERAL.—Not later than 6 months after the  
3 date of the enactment of this Act and every 12 months  
4 thereafter, the Secretary of State shall submit to the Con-  
5 gress a report on the following:

6 (1) The determination and certification of the  
7 President that the requirements of subparagraphs  
8 (A) through (G) of section 3(a)(2) have been met,  
9 if applicable.

10 (2) Steps taken to carry out section 3(a)(1)(A),  
11 if applicable.

12 (3) Efforts by the United States Government to  
13 promote access by the Vietnamese people to Radio  
14 Free Asia transmissions.

15 (4) Efforts to ensure that programs with Viet-  
16 nam promote the policy set forth in section 102 of  
17 the Human Rights, Refugee, and Other Foreign Pol-  
18 icy Provisions Act of 1996 regarding participation in  
19 programs of educational and cultural exchange.

20 (5) Lists of persons believed to be imprisoned,  
21 detained, or placed under house arrest, tortured, or  
22 otherwise persecuted by the Government of Vietnam  
23 due to their pursuit of internationally recognized  
24 human rights. In compiling such lists, the Secretary  
25 shall exercise appropriate discretion, including con-  
26 cerns regarding the safety and security of, and ben-



1       efit to, the persons who may be included on the lists  
2       and their families. In addition, the Secretary shall  
3       include a list of such persons and their families who  
4       may qualify for protections under United States ref-  
5       ugee programs.

6               (6) A description of the development of the rule  
7       of law in Vietnam, including—

8                       (A) progress toward the development of in-  
9       stitutions of democratic governance;

10                      (B) processes by which statutes, regula-  
11       tions, rules, and other legal acts of the Govern-  
12       ment of Vietnam are developed and become  
13       binding within Vietnam;

14                      (C) the extent to which statutes, regula-  
15       tions, rules, administrative and judicial deci-  
16       sions, and other legal acts of the Government of  
17       Vietnam are published and are made accessible  
18       to the public;

19                      (D) the extent to which administrative and  
20       judicial decisions are supported by statements  
21       of reasons that are based upon written statutes,  
22       regulations, rules, and other legal acts of the  
23       Government of Vietnam;

24                      (E) the extent to which individuals are  
25       treated equally under the laws of Vietnam with-

1 out regard to citizenship, race, religion, political  
2 opinion, or current or former associations;

3 (F) the extent to which administrative and  
4 judicial decisions are independent of political  
5 pressure or governmental interference and are  
6 reviewed by entities of appellate jurisdiction;  
7 and

8 (G) the extent to which laws in Vietnam  
9 are written and administered in ways that are  
10 consistent with international human rights  
11 standards, including the requirements of the  
12 International Covenant on Civil and Political  
13 Rights.

14 (b) CONTACTS WITH OTHER ORGANIZATIONS.—In  
15 preparing the report under subsection (a), the Secretary  
16 shall, as appropriate, seek out and maintain contacts with  
17 nongovernmental organizations and human rights advo-  
18 cates (including Vietnamese-Americans and human rights  
19 advocates in Vietnam), including receiving reports and up-  
20 dates from such organizations and evaluating such re-  
21 ports. The Secretary shall also seek to consult with the  
22 United States Commission on International Religious  
23 Freedom for appropriate sections of the report.

