



# We the People

## THE CITIZEN AND THE CONSTITUTION

Directed by the Center for Civic Education

### Strengthening Democracy in America

#### Issue Brief

#### Topic 16—Congress, the President, and War Powers

*No free government, or the blessing of liberty, can be preserved to any people but by a ... frequent recurrence to fundamental principles. —George Mason, Virginia Declaration of Rights, 1776*

- 1. Context**—The Preamble to the U.S. Constitution states that one of the major purposes of our government is to “provide for the common defense.” To fulfill this responsibility while providing for a check on the power to engage the armed forces of the United States in other countries, the Constitution divides and shares the war making power between Congress and the President as head of the executive branch. In Article 1, Section 8, the Constitution states that Congress has the power to make declarations of war, and to raise and support the armed forces. The Constitution states in Article 2, Section 2 that the President is the Commander and Chief of the armed forces.

The Constitution is not completely clear about the power of each branch of the national government to engage our armed forces in foreign nations. Although the president is commander in chief of the armed forces (Article II, Section 2), only Congress has the power to declare war (Article 1, Section 8). Congress also controls the money necessary to wage a war. Therefore, the power to declare and wage war is shared. From 1789 to 1950, all of the major U.S. wars were either declared or authorized by Congress. However, Congress has not exercised the power to declare war since June of 1942.

Despite the fact that Congress has not formally declared war since 1942, presidents have engaged the armed forces of the United States in foreign countries almost every year to the present time. Some of these engagements have been limited “police actions,” but others have clearly been large scale wars such as in Korea, Vietnam, Afghanistan, Iraq, and Syria.

**Congress surrenders war making powers to the presidency**—Former congressman Lee Hamilton served thirty-four years in the House of Representatives. During that time, he was a

member of the House Committee on Foreign Relations and he served as chairman of that committee for ten years.

In his book *Strengthening Congress*, Lee Hamilton describes how Congress has surrendered to the president the power to declare war and engage the armed forces of the United States in conflicts with other nations.

Harry Truman contended he didn't need congressional approval to fight in Korea. Congress sat on the sidelines for the invasions of Panama and Grenada in the 1980s, and made only modest steps to assert itself when U.S. troops got involved in Somalia in 1992, Haiti in 1994, and the Balkans in the mid-1990s. It willingly gave its go-ahead to the Vietnam War and the two wars in Iraq (Afghanistan, Syria, and Libya have also been included in this conflict in the Middle East and North Africa), basically turning power over to the president to do as he wished. In essence, for over a half of a century Congress has been content to act a postscript when it comes to war-making, rather than as the president's equal. It has left the question of when to go to war to the president.

Recently Lee Hamilton also said, "In the end, the calculation is simple. Going to war is the most important decision a government can make, because it means that young people will die. That decision ought not be made by one person, even if that person is the president of the United States."

**Inadequate justifications for military conflicts**—It is important to note that in a number of situations, presidents have engaged the American military in armed conflicts in other nations. False or misleading information has been used to justify their actions to Congress and the American people. For example:

**Korean War (1950–53)**—On June 25, 1950, North Korea invaded South Korea. The Truman Administration believed that the Soviet Union had encouraged the invasion in an attempt to turn all of Korea into a communist state and eventually invade Japan and convert it to communism. The communist nations China and the Soviet Union supported the North Koreans. The United States supported South Korea. The Truman Administration believed that resisting communist aggression was vital to the security of the United States and other western countries. The United Nations Security Council approved military action to stop the invasion. The military force acting on the behalf of the United Nations was made up of military forces from twenty-one western nations. The United States provided almost ninety percent of the troops, however, and did most of the fighting, with more than 50,000 dead and 100,000 wounded. Altogether, more than one million people were killed. President Truman committed the military forces of the United States to the war without Congress having declared war. Congress had surrendered that power to the president.

**Vietnam War (1955–75): The Gulf of Tonkin Resolution and the war in Vietnam**—In August 1964, Congress passed the Gulf of Tonkin Resolution authorizing the president to take any action necessary to repel an attack by North Vietnam. The resolution was a reaction to claims by the president that naval vessels from North Vietnam had attacked U.S. ships in the Gulf of Tonkin. Evidence revealed later provided some grounds for the view that the U.S. had actually provoked one attack and lied about another to justify the war, but the evidence was ambiguous and historians are not agreed on the actual course of events. Nevertheless, such

situations demonstrate the need for Congress to assert its authority to ensure that the United States does not enter into foreign conflicts that are not fully justifiable. The ensuing Vietnam War led to 63,000 American lives being lost.

**Congress attempts to limit the war powers of the president**—The wars in Korea and especially Vietnam led many in Congress and elsewhere to call for limits on the presidents' power to send U.S. armed forces into hostile situations abroad without a declaration of war or some other form of Congressional approval. As a result, in 1973 Congress passed the **War Powers Act (War Powers Resolution)** to address these concerns and provide a set of procedures for both the president and Congress to follow in situations where the introduction of U.S. forces abroad could lead to their involvement in armed conflict. The resolution made Congress the sole authority to declare war, and to initiate any kind of offensive operations, big or small. The president's power to initiate a defensive war was limited to the purpose of repelling sudden attacks.

**Presidents ignore the War Powers Act**—Despite the adoption of the War Powers Act/Resolution in 1973, presidents have continued to engage the United States in military actions in other nations without prior approval or declaration of war by Congress. Many experts agree that the War Powers Resolution is not adequately limiting the powers of the president and Congress is not fulfilling its constitutional responsibility in regard to the United States committing its armed forces to action against other nations or international movements such as organized terrorism.

The current wars in Afghanistan, Iraq, and Syria and the surrounding region are examples of major military operations the United States is engaged in without the consultation of Congress required by the War Powers Act.

**Afghanistan (2001–present)**—The War Powers Resolution was not invoked by President Bush in the war in Afghanistan as it constituted a broader international effort to fight terrorism. The Security Council of the United Nations adopted Resolution 1386 which authorized an International Assistance Force to support efforts to restore peace to Afghanistan. However, in the years following many debates ensued on troop levels and an exit strategy.

Most U.S. combat troops left Afghanistan by the end of 2014, and the Obama Administration agreed upon leaving about 8,400 troops. The Trump Administration announced in the summer of 2017 that they are adding between 3,000 and 5,000 troops in Afghanistan to help in the war against the Taliban. Congress has expressed concern that the decision about the number of troops is being decided by Defense Secretary Jim Mattis, sparking yet another debate on the need for Congress to assert their constitutional authority regarding authority to wage war.

On June 19, 2017, Senator John McCain (R-Arizona), chair of the Senate Armed Services Committee, called for Congress to play a greater role in the process. He said, “After nearly sixteen years of war, we are at a stalemate in Afghanistan. Worse, we have no strategy to end that stalemate and achieve victory. The recent deaths of three brave American soldiers underscore the urgency for a new strategy to turn the situation around in Afghanistan.”

After Defense Secretary Mattis gave testimony about Afghanistan before the Senate Armed Services, Senator McCain issued a press release saying that “We are not winning in Afghanistan. And yet, six months into the new administration, it still has not delivered a strategy. We cannot keep going like this. If the administration fails to develop a strategy for success, Congress will need to play a greater role. We owe it to our brave men and women serving in Afghanistan, their families here at home, and all of the American people.”

**The Iraq War (2003–2011)**—The Iraq War was justified by the Bush administration on the basis of disarming Saddam Hussein’s Iraqi regime of weapons of mass destruction, although none were ever found by the Iraq Survey Group (IRG), which consisted of 1,200 inspectors. The Iraq War debacle led Congressman Walter Jones, a Republican from North Carolina, to make the following statement in an interview on the *The Tyler Cralle Show*, “I did not do what I should have done to read and find out whether Bush was telling us the truth about Saddam being responsible for 9/11 and having weapons of mass destruction.” Congressman Jones went on to say, “Because I did not do my job then, I helped kill 4,000 Americans, and I will go to my grave regretting that.”

**Libya and Syria (2016, 2017)**—The controversy over the president’s power to engage American troops in other nations continued under President Obama when he launched missile strikes into Libya in August 2016. Defenders of the President’s military action claimed Libya was a limited action and within the constitutional authority of the Executive Branch.

The Trump Administration provided a defense similar to that used by the Obama Administration to justify the missile attack on Syria in April 2017. However, a bipartisan group of ten congressmen sued President Obama, citing his action as a violation of the War Powers Resolution. Constitutional law professor Jonathan Turley represented the ten members of Congress in the law suit.

**Costs in lives and taxpayer dollars**—Since the end of World War II, military engagements initiated by presidents without declarations of war by Congress have resulted in 399,586 American deaths and many more foreign civilian and military casualties. The costs to the American taxpayer of these wars has been enormous. The National Priorities Project states that “every hour, taxpayers in the United States are paying \$8.36 million for the total cost of wars since 2001.”

The Library of Congress noted in their report, *The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11* (December 2014), “Congress has approved appropriations for the past 13 years of war that total \$1.6 trillion for military operations, base support, weapons maintenance, training of Afghan and Iraq security forces, reconstruction, foreign aid, embassy costs, and veterans’ health care for the war operations initiated since the 9/11 attacks.”

**2. Issue**—Are current limitations on the war making powers of the president sufficient? Is Congress fulfilling its constitutional responsibility?

**3. Remedies** (See “Online resources” below for links to documents related to these remedies.)

- **Strengthen the War Powers Resolution**—Senators John McCain (R-Arizona) and Tim Kaine (D-Virginia) introduced legislation in 2014 to strengthen the 1973 War Powers Resolution by strengthening the consultative process between Congress and the president regarding engagement in military action.
  - **Strengthen congressional oversight**—Congress should use their oversight responsibility in the appropriate committees to insist relevant administrative agencies such as the Departments of Defense and State give adequate justification for the commitment of the armed forces to action in other nations and frequently monitor their actions. This should include efforts to ensure transparency, cost effectiveness, and accountability.
  - **Interagency oversight committee**—Joint committee of the leadership of both houses of Congress and the president should be established that must approve any military action before it is initiated and have the continuation of the action subject to Congressional approval within sixty days after an action has been initiated. At least two bills have been introduced in the House and Senate to create such a committee to advise and approve of this way to limit the powers of the president. Both bills failed approval by Congress.
  - **S.J.Res. 323 (1988) and S. 2 (1999)**—These were introduced in the Senate by Senators Byrd, Nunn, Warner, and Mitchell to establish a permanent consultation group to the president of eighteen members consisting of the leadership and the ranking and minority members of the Committees on Foreign Relations. The bill would permit an initial consultative process to be limited to a core group of six members—the majority and minority leaders of both chambers, plus the speaker of the House and president pro tempore of the Senate. The bill was not adopted.
  - **H.R. 3405**—This resolution was introduced in the House on October 28, 1993 by House Foreign Affairs Chairman Lee Hamilton to establish a congressional consultative group equivalent to the National Security Council. No action was taken on this proposal.
4. **Online resources**—The following is a short list of some online resources that might be useful in gaining more understanding of the topics covered in this issue brief. Reviewers are encouraged to find more resources and to forward any they find useful to the Center at [quigley@civiced.org](mailto:quigley@civiced.org). Please also send any suggestions for improving this issue brief to the same address.
- a. **Strengthening Democracy in America video series.** View highly informed perceptions on the issue of war powers and how they are shared within American government by scholars. Watch these videos for additional information:
- Video 3, Section 8, with The Honorable Lee Hamilton
  - Video 4, Section 12, with Norman Ornstein, Resident Scholar, American Enterprise Institute

## b. Other online resources

### ○ General information

- Atomic Energy Act—42 U.S.C. §2011 et seq. (1946): This act gives the president sole control over the use of nuclear weapons. <https://www.epa.gov/laws-regulations/summary-atomic-energy-act>
- Law Library of Congress on War Powers: <http://www.loc.gov/law/help/war-powers.php>
- New York Times Archival Information on the War Powers Act of 1973: <https://www.nytimes.com/topic/subject/war-powers-act-of-1973>
- Congressional Research Service Report RL30172, Instances of Use of United States Armed Forces Abroad, 1798 – 2004: <http://www.au.af.mil/au/awc/awcgate/crs/rl32170.pdf>
- Congressional Research Service, War Powers Resolution: Presidential Compliance: <https://fas.org/sgp/crs/natsec/RL33532.pdf>
- Congressional Research Service, The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11, Library of Congress, Amy Belasco Specialist in U.S. Defense Policy and Budget
- Costs of War on Terror since 9/11: <https://fas.org/sgp/crs/natsec/RL33110.pdf>
- News clipping on War Powers Act: <https://www.bing.com/videos/search?q=war+powers+act+video&view=detail&mid=96166D51791C9EC15FC396166D51791C9EC15FC3&FORM=VIRE>
- Senate staff discuss War Powers Act: <https://www.bing.com/videos/search?q=war+powers+act+video&view=detail&mid=A8603C1D996F2BF26325A8603C1D996F2BF26325&FORM=VIRE>
- Expert testimony before the Senate Judiciary Committee on the War Powers Act: <https://www.bing.com/videos/search?q=war+powers+act+video&qvpt=war+powers+act+video&view=detail&mid=AA662F2A3D79234D9E53AA662F2A3D79234D9E53&FORM=VRDGAR>
- Press Release, June 19, 2017, Office of Senator John McCain: <https://www.mccain.senate.gov/public/index.cfm/press-releases?ID=6538E07D-08E7-4D68-84FE-04C858D954F0>, <http://www.nytimes.com/2012/04/28/opinion/a-history-of-the-expansion-of-presidential-power.html>
- Obama report to Congress on Libya: <https://obamawhitehouse.archives.gov/the-press-office/2011/03/21/letter-president-regarding-commencement-operations-libya>
- Article on Congressional objections to Trump action in Libya: <https://jonathanturley.org/2011/06/15/members-of-congress-challenge-libyan-war-in-federal-court/>
- United Nations Security Council resolution on Afghanistan: [http://www.nato.int/isaf/topics/mandate/unscr/resolution\\_1386.pdf](http://www.nato.int/isaf/topics/mandate/unscr/resolution_1386.pdf)
- Cost of wars: <https://www.nationalpriorities.org/cost-of/war/>, <https://fas.org/sgp/crs/natsec/RL33110.pdf>
- Article on “Why The War Powers Act Doesn't Work”: <https://mail.google.com/mail/u/0/#inbox/15d7b99ddaffb393>

- Control of decision-making regarding nuclear weapons:  
<http://view.e.iu.edu/?qs=5c047a037423b19010b275c42fad173d8840c7854a287bed2ed71763758fdb9229b828de42babbd1caa609d162864b99d67a060095cf632876e8631cf0c5df7062c66b26ba7fe2b2>
- **Information related to proposed remedies**
  - Senator Tim Kaine and Senator John McCain—S. 1939, War Powers Consultation Act of 2014: <https://www.congress.gov/bill/113th-congress/senate-bill/1939/text>, - <https://www.kaine.senate.gov/press-releases/kaine-mccain-introduce-bill-to-reform-war-powers-resolution>
  - Library of Congress—History of Congressional action on war powers: <https://www.loc.gov/law/help/war-powers.php>