



Written by [Steve Byas](#) on January 23, 2016

McConnell Would Give President Sweeping War Authority

Senate Majority Leader Mitch McConnell introduced legislation (S. J. Res. 29) on Wednesday that would give President Obama sweeping authority to take action against the Islamic terrorist group ISIS. The proposal has no termination date, and no limitations on where troops could be sent or how they would be used. Additionally, the proposal would maintain the 2001 Authorization for Military Force, which has never expired, designed to let the president take military action against anyone, anywhere, if a connection is made to those allegedly involved in the 9/11 attacks.



Obama spokeswoman Brandi Hoffine said that the White House welcomes interest by the Republicans “in specifically authorizing the continued use of military force against ISIL.” She promised,

We will review the proposal put forward by Leader McConnell, and look forward to continued consultations as Congress undertakes what we hope will be the robust debate and amendment process the American people deserve on this important topic.

But, she added,

The president has been clear from the beginning that we will not be engaging in the type of armed conflict we saw in Iraq and Afghanistan, and that remains the case.

President Obama has used the 2001 Authorization for Use of Military Force (AUMF) passed in the aftermath of the 9/11 attacks, arguing that ISIS (ISIL) is an offshoot of al-Qaeda, and therefore, he may carry out attacks on various individuals and groups in the Middle East without further congressional action.

There is wide support in Congress for military action against ISIS, but because of differences of opinion as to the exact nature of that action, there has been no new authorization of force from Congress. Some, such as Senator Lindsey Graham (R-S.C.), have even called for the insertion of American ground troops into Syria and Iraq: that is, “boots on the ground.”

Of course, those boots would be worn by American soldiers.

Senator Chris Murphy (D-Conn.) disagreed with McConnell’s proposal, declaring,

This resolution is a total rewrite of the War Powers Clause in the U.S. Constitution. It is essentially a declaration of international martial law, a sweeping transfer of military power to the president that will allow him or her to send U.S. ground troops almost anywhere in the world, for almost any reason, with absolutely no limitations.

Murphy’s inclusion of the pronoun “her” to describe the next president illustrates one of the problems with McConnell’s proposed resolution. Murphy is expecting that any initiation of force under such a proposal would drag on into at least the tenure of the next occupant of the White House, and he is no



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doubt suggesting that that person could be former Secretary of State Hillary Clinton. The 2001 AUMF that gave President George W. Bush sweeping authority to make war on the alleged perpetrators of the 9/11 attacks is still in effect today, more than 14 years later.

Before introducing his bill Wednesday, McConnell defended his position on ABC's *This Week*, asserting, "Look, I don't want to tie the hands of the next president. The next president may want to actually defeat ISIL. I think an AUMF ... that ties the president's hands behind his back is not something I would want to do to a new president who's going to have to clean up this mess, created by all of the passivity over the last eight years."

Not surprisingly, among McConnell's co-sponsors is the bellicose Senator Lindsey Graham. Others who favor giving either this president or the next almost unlimited power to make war include Republican Senators Dan Coats (R-Ind.), Orrin Hatch (R-Utah), and Joni Ernst (R-Iowa).

While ISIS (or ISIL) is certainly a nasty group of thugs, members of Congress should carefully consider the possible ramifications before handing either Obama or the next president such extensive war-making authority. After the 9/11 attacks, Congress swiftly passed the AUMF, giving President Bush approval to go after those who were alleged to have planned and executed the attacks.

Even former Congressman Ron Paul (R-Texas) voted for that AUMF.

Paul cautioned at the time that the authorization to use force against the Taliban was not a declaration of war. He argued instead that the Framers of the Constitution had provided a better tool to retaliate against organizations such as al-Qaeda than an open-ended authorization of force, or a declaration of war. He pointed out that Congress had constitutional authority to grant *letters of marque and reprisal*, contending that would allow more clearly defined objectives than the AUMF Congress was granting the president. An authorization of force, Paul explained, provided no clarity as to scope and purpose.

The Tenth Amendment Center stated,

Several times during his tenure as a Congressman, Ron Paul suggested using letters of marque and reprisal to seize property and exact harm upon Osama bin Laden and other Al Qaeda officials. Offering a bill in October of 2001, Paul's suggestion would have allowed:

Congress to authorize the President to specifically target Bin Laden and his associates using non-government armed forces. Since it is nearly impossible for U.S. intelligence teams to get close to Bin Laden, the marque and reprisal approach creates an incentive for people in Afghanistan or elsewhere to turn him over to the [United States]."

Paul argued that the letters would be cost effective, produce motivation for locals to assist in capture, and protect liberty at home while hindering foes abroad.

But, since he had no other alternative than to do nothing (which he believed was unthinkable, following the 9/11 attacks), Paul voted for the AUMF resolution.

After the military victory over the Taliban, Paul called for the withdrawal of American troops from Afghanistan, declaring that the people who had allegedly attacked the United States had been defeated, and that America should not be involved in nation-building.

The power to declare war was among the enumerated powers of Congress found in Article I, Section 8 of the U.S. Constitution, along with, as Congressman Paul mentioned, the power to "grant letters of marque and reprisal." Both as a constitutional and a practical manner, the practice by members of Congress of simply turning over their constitutional authority to the president is unwise — as has been



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borne out by history.

In 1950, after Communist forces from North Korea invaded South Korea in an act of naked aggression, President Harry Truman acted without a shred of constitutional authority to insert American ground troops into the Korean peninsula. When challenged by such congressional leaders as Senator Robert Taft (R-Ohio) that only Congress had the constitutional authority to declare war, Truman replied, “We are not at war. We are involved in a police action.”

In the 1960s, President Lyndon Johnson sent hundreds of thousands of American ground forces into the jungles of South Vietnam, relying not on a declaration of war, but rather on an authorization of force: the infamous Gulf of Tonkin Resolution.

It is not to say that American presidents did not use military force in the early years of the Republic; however, those early authorizations of force were extremely limited and targeted.

In the Quasi War with France, according to Tom Woods’ book *33 Questions About American History*, President John Adams took no independent action. Following the war, the Supreme Court ruled that Congress could either declare war or approve hostilities by means of statutes that authorized an undeclared war. Adams complied strictly with congressional statutes, which were very specific.

President Thomas Jefferson made war on the Barbary Pirates in 1805; however, he was careful to have the clear direction of Congress, which explicitly authorized this action in 10 separate statutes. In a letter to James Madison in 1789, Jefferson had commended the work of the delegates at the Constitutional Convention in giving a “check to the dog of war by transferring the power of letting him loose from the executive to the legislative body.”

In tense moments with the Spanish in a border dispute concerning Louisiana and Florida, Jefferson sent a message to Congress asking for direction. “Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using in any degree which could be avoided,” he stated.

Perhaps a comparison to other statutes would be enlightening. Congress makes a law, which is its constitutional role, and the president’s constitutional job is to carry out the law — *not make law on his own*. Just as the Framers did not give the president any authority to make law on his own, neither did they give him the authority to make war on his own. Open-ended authorizations of military force are an unwarranted and unconstitutional delegation of congressional authority to the president.

And they have usually been disastrous.

While the Founders disagreed on some things, they were united in believing that the decision to go to war, along with the objectives it would achieve, was a legislative, not an executive, function. Alexander Hamilton stated, “The Congress shall have the power to declare war; the plain meaning of which is, that it is the peculiar and exclusive duty of Congress, when the nation is at peace, to change that state into a state of war.”

Madison was just as blunt: “The executive has no right, in any case, to decide the question, whether there is or is not cause for declaring war.” He later wrote to Jefferson, “It [the Constitution] has accordingly with studied care vested the question of war to the legislature,” noting that it was the executive that was “most prone” to take the country to war.

President George Washington had no illusions that he could go to war on his own, stating: “The Constitution vests the power of declaring war in Congress; therefore no offensive expedition of



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importance can be undertaken until after they shall have deliberated upon the subject and authorized such a measure.”

Washington believed a president was required to obtain congressional authorization before undertaking any offensive expedition. But what about defensive actions? It is clear from a reading of the minutes of the Constitutional Convention that the Framers understood that a president might have to use unilateral defensive action were the nation attacked. This is why the delegates used the language to withhold from the president the power to “declare” war, but not the power to “make” war.

Many have compared this to a ship’s captain at sea who finds his vessel under attack. Certainly, he is allowed to take all necessary actions of *defense*, but just as certainly, it would be highly inappropriate and beyond his authority to take *offensive* actions.

Following the unpopular Vietnam War, Congress passed the War Powers Act of 1973. While often used as an example of Congress rising up to restrain the war powers of the president, Tom Woods contends it actually “codified executive war-making powers that would have astonished the Framers of the Constitution.”

For example, this law permits a president to commit troops to offensive operations anywhere in the world, for any reason, all without the consent of Congress, for a period of 60 days. Despite the toothlessness of the law, it was basically ignored by President Bill Clinton during his war in Bosnia.

Woods recalled Ron Paul’s insistence that, if the country were to go to war, the Constitution required that Congress approve a declaration of war — not simply a cowardly resolution authorizing the president to use force if and when he chose, thereby abdicating their constitutional authority to the White House. Prominent Republicans bluntly informed Paul that his position was outdated, and things were not done that way anymore.

Paul responded that he could not find an expiration date on his copy of the Constitution.

Photo of Sen. Mitch McConnell: AP Images

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