

# THE HUFFINGTON POST

## **Congress Should Reject War Authorization Against Islamic State: Tell President No to Stupid War**

By Doug Bandow  
November 18, 2014

President Barack Obama finally is obeying the law. He wants Congress to authorize military action against the Islamic State. That's what the Constitution requires.

Congress should respond as it was prepared to do when the president requested permission last year to bomb Syria. Capitol Hill should say no.

Barack Obama once believed in congressional supremacy. In December 2007 candidate Obama stated: "The president does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation." At the same time candidate Joseph Biden insisted that the Constitution gave "Congress the power to initiate all hostilities, even limited wars."

But that was then and this is now. Three years ago President Barack Obama took America into war against Libya. Three months ago he initiated hostilities in Iraq against the Islamic State. Since then he has expanded the conflict to Syria. All without a congressional vote.

Most recently administration officials claimed authority under the Authorization for Use of Military Force against al-Qaeda adopted in the aftermath of September 11. But the Islamic State is not al-Qaeda and ISIL's leaders did not help organize the attacks on the twin towers and the Pentagon. Indeed, while latter group's fighters are loathsome, they are insurgents, not terrorists, seeking to create a quasi-nation state in the Middle East, not launch assaults on America.

In short, the attempt to use the original AUMF was dishonest. Sen. Bob Corker, set to take over the chairmanship of the Senate Foreign Relations Committee in January, complained that the Obama administration exhibited the "worst judgment possible" by not seeking a separate authorization as required by the Constitution.

The president obviously changed his mind after his party was defeated in the off-year elections. He requested that Congress back his war against the Islamic State: "The world needs to know we are united behind this effort and the men and women of our military deserve our clear and unified support."

His decision to ask for authority now looks highly political and has run into criticism. For instance, his former ambassador to Iraq, James Jeffrey, worries about lost credibility: "The whole world thinks he wants to wimp out of war." Some legislators, like war-happy Sen. John McCain (R-Ariz.), believe that presidents are elective dictators who can make war whenever and however they like.

The Founders thought differently, however. They gave most military powers to Congress: raising and funding the military, writing the rules of war, issuing letters of marque, and ratifying treaties. Moreover, Article 1, Section 8 (11) stated: "Congress shall have the power ... to declare war."

The president's latest unilateral military action well-illustrates the need for vigorous legislative debate. He has bombed military forces in two different nations which had taken no action against the U.S. Yet the ill consequences were immediate -- the murder of three American citizens held by the group. And President Obama predicted that the conflict could go on for years, with continuing unpredictable consequences for the nation. This is a lengthy military campaign, not a limited reprisal or emergency strike.

The early Americans feared just such a president and war. They disliked being the makeweight of European politics, dragged into conflict whenever the British king decided to battle the French or Spanish. They were particularly opposed to a system which left the peace of an entire nation subject to the whims of one man, accountable to no one.

For instance, at the Constitutional Convention George Mason advocated "clogging rather than facilitating war" because he didn't believe the president to be "safely to be entrusted with" the authority to commence military action. James Wilson applauded the convention's handiwork: "It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is in the legislature at large."

James Madison, a future president commonly called the father of the Constitution, said the "fundamental doctrine of the Constitution that the power to declare war is fully and exclusively vested in the legislature." Thomas Jefferson was away in Paris during the proceedings, but he endorsed the document's "effectual check to the dog of war by transferring the power of letting him loose."

Today's "president-as-king" club contends that "declare" simply meant to take note of the fact that the chief executive had dragged America into war. He got to wander the world ordering Americans into battle. Congress got to say that a state of war existed with those nations he had attacked.

But serious participants in a serious convention with so many serious disputes would not have spent so much time debating such a minor, indeed, almost frivolous point. In fact, the convention delegates explicitly complained about the monarch taking them into unnecessary wars, not for declaring the wars that he'd started to be wars.

John Jay, a Federalist commonly associated with support for a stronger executive, complained that kings relied on dubious motives and engaged "in wars not sanctified by justice or the voice and interests of his people." Pierce Butler spoke against placing in the president's "hands the influence of a monarch, having an opportunity of involving his country in a war whenever he wished to promote her destruction."

Even Alexander Hamilton, who rather liked the idea of reestablishing royalty in America, indicated that "declare" involved real power. He contended that as commander-in-chief the president was merely the "first general and admiral." As a result, the latter's authority was "in substance much inferior to [that of the king]. It would amount to nothing more than the supreme command and direction of the land and naval forces ... while that of the British king extends to the declaring of war." That is, choosing when America was to fight.

That is the understanding of Supreme Court Justice Antonin Scalia, a conservative icon. He wrote: "Except for the actual command of military forces, all authorization for their maintenance and all explicit authorization for their use is placed in the control of Congress under Article I, rather than the president under Article II. As Hamilton explained, the president's military authority would be 'much inferior' to that of the British King."

Of course, the Founders recognized that the chief executive might have to respond to exigent circumstances, so they changed "make" to "declare." But they didn't intend that to treat war as just another option, with the president allowed to unilaterally bomb other countries, invade other states, and occupy other nations, and especially to do so for months or years.

Unsurprisingly, though unfortunately, many presidents, including the current occupant of the White House, have misused the flexibility necessarily incorporated in a provision governing presidential action in a dangerous world. But even most of these earlier unilateral executive actions have been limited and temporary, while many had colorable legislative authority. The Korean War was the turning point, when presidents began claiming that they could start big wars on their own, Constitution be twisted or damned, as necessary.

Notably, over the centuries several of America's most respected presidents affirmed the original constitutional understanding. George Washington, military commander during the American Revolution, observed: "The Constitution vests the power of declaring war with Congress; therefore no offensive expedition of importance can be undertaken until after they shall have deliberated upon the subject, and authorized such a measure."

Abraham Lincoln, president when the country was sundered by civil war, opined that the Framers recognized war "to be the most oppressive of all Kingly oppressions; and they resolved to so frame the Constitution that no one man should hold the power of bringing this oppression upon us." Dwight Eisenhower, supreme allied European commander in World War II, explained

that "I am not going to order any troops into anything that can be interpreted as war, until Congress directs it."

Now that President Obama finally has requested congressional authorization, legislators should act. By voting no.

Congress has no obligation to support a bad presidential request. The fact that the president has committed America doesn't matter. In this case there are no troops involved in ongoing operations who might seem abandoned by a congressional rejection. The bombers would stop taking off. The drones would no longer be sent. The advisers and spotters would come home.

The Islamic State is evil, but that hardly sets it apart in today's world. American foreign policy should focus on protecting Americans, and not undertaking a Quixotic crusade for all that is good and right around the globe. After all, Washington has demonstrated that it is incapable of doing anything in the Middle East without creating new and more serious problems. Bombing ISIL is unlikely to be any different, resulting in additional unpredictable blowback.

Perhaps worst of all is what perpetual war does to America's character and institutions. "War is the health of the state," noted social critic Randolph Bourne. Indeed, there is no bigger big government program than war. It's a lesson that conservatives as well as liberals should take to heart.

President Obama did the right thing by belatedly asking Congress for authority to go to war. But he wants to fight another unnecessary conflict that is not in America's interest. He wants to pursue another war that will create far more costs than benefits. Congress also should do the right thing. It should simply, and soundly, say no.

*Doug Bandow is a Senior Fellow at the Cato Institute and former Special Assistant to President Ronald Reagan.*