

Opening Statement of Chairman Rand Paul, M.D  
Federal Spending Oversight Subcommittee

*War Powers and the Effects of Unauthorized Military Engagements on Federal Spending*  
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For years now, critics have complained the global war on terror has never been authorized.

After the attacks of 9/11, President Bush did his Constitutional duty. He asked Congress to authorize war against the people who attacked us on 9/11 or anyone who harbored or aided and abetted those who attacked us.

If you read the authorization, it's actually very specific. Bush originally asked for more expansive language but Congress insisted on narrowing the mandate to use force against only those who either attacked us or planned the attack or harbored the attackers.

Force is authorized against un-named entities but they are narrowly defined by their relationship to the attacks of 9/11. Authorization was not given for a global war on "terror," or against radical Islamists or separatists or insurgents of various civil wars. Authorization was not given for "associated" forces.

Authorization was specific and solely to be directed against the people who attacked us on 9/11 or anyone who helped or harbored them. Period.

It is safe to say, that no one in Congress believed they were voting for a worldwide war on "terrorism" in twenty some odd countries that would go on for decades.

So, intellectually honest observers have for years now complained that the 9/11 authorization of war does not cover the wars being fought throughout dozens of countries in Africa, the Middle east, and the South Pacific.

So, basically the expansion of the "war on terrorism" really has occurred without the required Constitutional authorization.

Senators Corker, Kaine and others wish to rectify the lapse in Constitutional declaration of war by passing a new authorization for force.

I don't disparage their effort. Their motives are genuine. But really there are two big issues here that need to be fully debated.

Number one: Does it matter who wields the power to initiate war?

Our founding fathers believed strongly that it did. They squarely delegated the power to declare war to Congress. Madison put it this way: "The executive is the branch most prone to war, therefore, the Constitution, with studied care, gave the power to declare war to the legislature."

So, yes, it is the job of Congress to declare or initiate war and Congress has been negligent for over a decade now. Congress has not done its job. Congress has let President after President strip the war power from Congress and concentrate that power in the Executive.

The second and inseparable issue is: when and where should we be at war?

It is not enough to say Congress should authorize war. The bigger question is where and when should we fight. Our job is not just to put a Congressional imprimatur on war. The vast and important job of Congress is to decide when and where we go to war.

The debate that should ensue must ask: “Are we to authorize the status quo? Are we to authorize war in all of the theaters the President has taken us?”

Or, should Congress limit the scope of the worldwide wars we find ourselves involved in?

Here the Corker/Kaine authorization fails us. The Corker/Kaine Authorization does not limit the scope of war it merely codifies the status quo and I would argue actually expands the current theaters of war.

Corker/Kaine authorizes war against at least eight groups that are known to operate, all- together, in over 20 countries. Hardly sounds like we’ll have any less war.

Equally concerning is that Corker/Kaine unconstitutionally delegates or transfers an enumerated power from Congress to the President.

Article 1 Section 8 gives Congress the sole power to declare war. Corker/Kaine initially authorizes war against eight groups but says to the President: “Hey, you get back to us and give us an initial list in case we missed anyone we are currently at war with. And, by the by, if you want to add any “associated forces” to the list, please send us a report.

So, this authorization transfers the power to name the enemy and its location from Congress to the President.

Worse yet, this authorization changes the nature of declaring war from a simple majority, affirmative vote to require a supermajority, veto-proof vote to disapprove of Presidential wars.

So, if the President defines a new “associated force” that our military will attack, the only way Congress can stop him is now a 2/3rds vote to overcome his veto.

The constitution is flipped on its head. This authorization fundamentally transfers the delegated power of war declaration from Congress to the President.

The hearing today is convened to explore precisely that question: Can Congress transfer the power to declare war to the President?

In that context, we will discuss the Constitutionality of the Corker/Kaine authorization for war. I hope we'll have a spirited discussion.