

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

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Experts Question Proposed Changes in War Powers *TCP: Kaine-McCain Legislation Raises Constitutional Concerns*

WASHINGTON, D.C. -- War powers experts organized by The Constitution Project, a bipartisan legal watchdog group, today raised serious constitutional concerns about legislation changing how presidents consult with Congress before sending the military into armed conflict.

In a [letter](#) sent to members of Congress earlier today, the group -- which includes former members of Congress, constitutional scholars and foreign relations experts -- said the proposal from Senators John McCain (R-Ariz.) and Tim Kaine (D-Va.) would "undermine core constitutional principles and strengthen the president and executive power at the expense of Congress and representative government."

The [legislation](#), called the War Powers Consultation Act of 2014 (S. 1939), would repeal the 1973 War Powers Resolution and replace it with a new law that requires the president to consult with a 20-person joint legislative committee before "ordering deployment into a 'significant armed conflict,' or, combat operations lasting, or expected to last, more than seven days." Under the proposal, the consultation between the president and the committee must occur within three days of deployment.

The experts said the U.S. Constitution assigns the power to decide on war -- at least on offensive military action -- to the Congress. By shifting the decision largely to the president and a 20-person committee, the legislation would undermine "the constitutional role of 515 other members of Congress and the duty they have to represent the interests of their constituents," they said.

In addition, they charged that the new proposal could cause a president to downplay a military action in order to avoid consulting with Congress altogether. For example, they noted that President Obama told congressional leaders that the 2011 bombing of Libya would be a matter of "days, not weeks," when, in fact, it lasted seven months.

They also noted that the legislation does not require any consultation with Congress on covert operations. They said the Vietnam-era "secret" war in Laos, during which the U.S. conducted more than 580,000 bombing missions over the course of nine years and dropped more than two million tons of ordnance on that country, "might have been considered a covert operation that would fall within this exception."

While agreeing with the bill's sponsors that the current law needs to be changed, the war power

experts noted that their "opposition reflects a range of concerns that the legislation would only make matters worse." They suggested instead that Congress look at the report of The Constitution Project's (TCP) War Powers Committee, [Deciding to Use Force Abroad: War Powers in a System of Checks and Balances](#), for a constitutionally valid alternative to address the shortcomings of the current law.

The group of experts signing the letter includes: former Congressman Mickey Edwards (R-Okla.), who served as chair of the House Republican Policy Committee; former Congressman David Skaggs (D-Colo.), who served on the House Permanent Select Committee on Intelligence; Dr. Louis Fisher, Scholar in Residence at The Constitution Project, who worked for the Library of Congress for four decades as a specialist in constitutional law and separation of powers, and who authored the 2013 book, *Presidential War Power*; Michael J. Glennon, professor of international law at the Fletcher School of Law & Diplomacy, and a former legal counsel to the U.S. Senate Committee on Foreign Relations; Professor Peter Raven-Hansen, co-director of the National Security and U.S. Foreign Relations Law Program at George Washington University Law School; and Georgetown University Law Professor Don Wallace, Jr., chair of the International Law Institute.

All of the letter signers are members of TCP's War Powers Committee; Edwards and Skaggs are the committee's co-chairs.

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[About The Constitution Project](#)

Created out of the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project (TCP) brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time. TCP seeks to reform the nation's broken criminal justice system and to strengthen the rule of law through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.