

August 20, 2014

The Honorable Patrick J. Leahy
President Pro Tempore
United States Senate
437 Russell Senate Office Building
Washington, DC 20510

The Honorable John A. Boehner
Speaker
United States House of Representatives
H-232 The Capitol
Washington, DC 20515

Dear Senator Leahy and Speaker Boehner,

We wrote to all Members of Congress in June urging respect for the constitutional requirements for using force abroad as to any U.S. intervention in Iraq. On July 25, the House of Representatives took an important step towards fulfilling its constitutional responsibility when it resolved, by an overwhelming bipartisan majority (370-40), that “The President shall not deploy or maintain United States Armed Forces in a sustained combat role in Iraq without specific statutory authorization for such use....” We have reached that point. The U.S. intervention in Iraq that began in June now includes the use of military force and continues steadily to expand and deepen. Even before these developments, but especially after the President’s prediction that “[t]his is going to be a long-term project,” the Constitution required Congress to authorize any combat operations in Iraq.

On June 15, the President ordered 275 troops deployed to Iraq to protect U.S. personnel and the embassy in Baghdad. There are now nearly 1000 military personnel on the ground in Iraq. On August 8, the President ordered “targeted airstrikes” that he said would be “limited in their scope and duration.” Over the next ten days, U.S. forces conducted 68 such strikes, the purposes of which expanded from protecting American personnel, to assisting a humanitarian mission, to, most recently, helping Iraqi forces recapture “critical infrastructure.”

In taking these actions without congressional approval, the President invoked “constitutional authority to conduct U.S. foreign relations and as Commander in Chief and Chief Executive.” While the Constitution arguably permits the President to act without prior congressional authorization in a limited set of circumstances in defense of the Nation and its citizens, U.S. military intervention in Iraq exceeds that narrow exception and lacks a discernible limit. The President said on August 18 that the United States has a national security interest in making sure that ISIS “is contained because ultimately it can pose a threat to us.” That may well be, but authorizing and funding offensive military force to that end is the prerogative and responsibility of Congress under Article I section 8 – and not a decision that the Executive may take unilaterally.

A decision to continue the current military campaign in Iraq is one that must be made by the Congress through the legislative process. We therefore call on you to reconvene the Congress from its recess to consider the matter. Proceeding without congressional approval is unlawful and violates the rule of law and democratic values.

Sincerely and respectfully,

Mickey Edwards, Vice President, Aspen Institute; former Member of Congress (R-OK) and Chairman of the House Republican Policy Committee

Louis Fisher, Specialist in Constitutional Law, Law Library of Congress (ret.); Scholar in Residence, The Constitution Project

Peter Raven-Hansen, Glen Earl Weston Research Professor of Law and Co-director, National Security and U.S. Foreign Relations Law Program, George Washington University Law School

David Skaggs, Adjunct Professor of Law, University of Colorado Law School; former Member of Congress (D-CO) and Member of the Appropriations Committee and Permanent Select Committee on Intelligence

All signatories are members of the Constitution Project's War Powers Committee.

CC: Members of the United States House of Representatives
Members of the United States Senate