

Congress of the United States

Washington, DC 20515

April 27, 2006

The Honorable George W. Bush
President
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Bush:

We are concerned by the growing number of stories that your Administration is planning for military action against Iran.¹ We are writing to remind you that you are constitutionally bound to seek congressional authorization before launching any preventive military strikes against Iran.

As you know, Article I, Section 8 of the U.S. Constitution grants Congress the power "to declare war," to lay and collect taxes to "provide for the common defense" and general welfare of the United States, to "raise and support armies," to "provide and maintain a navy," to "make rules for the regulation for the land and naval forces," to "provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions," to "provide for organizing, arming, and disciplining, the militia," and to "make all laws necessary and proper for carrying into execution...all...powers vested by this Constitution in the Government of the United States."

Congress is also given exclusive power over the purse. The Constitution says, "No money shall be drawn from the Treasury but in consequence of appropriations made by law."

By contrast, the sole war powers granted to the Executive Branch through the President can be found in Article II, Section 2, which states, "The President shall be the Commander-in-Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into actual Service of the United States..."

Your Administration has argued that this "Commander-in-Chief" clause grants the President wide latitude to engage U.S. military forces abroad without prior authorization from Congress. You further argue that previous unilateral actions by presidents of both political parties add credence to your interpretation of the U.S. Constitution.

Contrary to your Administration's broad reading, nothing in the history of the "Commander-in-Chief" clause suggests that the authors of the provision intended it to grant the Executive Branch the authority to engage U.S. forces in military action whenever and wherever it sees fit without any prior authorization from Congress. The founders of our country intended this power to allow the President to repel sudden attacks and immediate threats, not to unilaterally launch, without

¹ "The Iran Plans," *The New Yorker*, by Seymour M. Hersh, April 17, 2006 issue; "U.S. Is Studying Military Strike Options on Iran," *The Washington Post*, by Peter Baker, Dafna Linzer and Thomas Ricks, April 9, 2006.

congressional approval, large-scale preventive military actions against foreign threats that are likely years away from materializing. With respect to Iran, according to the most definitive U.S. intelligence report, Iran is likely a decade away from developing a nuclear weapon.² Even the most pessimistic analysis by outside experts puts the timeline at least three years away, but that's only if everything in Iran's development program proceeds flawlessly, which would defy the history of nuclear programs around the world, including Iran's.³

The architects of the U.S. Constitution were well aware of government models, like the monarchy in Great Britain, which vested the power to go to war with the head of state. Instead, the Founding Fathers made a conscious decision to grant the solemn war-making powers to the Legislative Branch. The intent of the authors of the U.S. Constitution is clear.

In the Federalist Paper Number 69, while comparing the lesser war-making power of the U.S. president versus the King of Great Britain, Alexander Hamilton wrote, "...the President is to be commander-in-chief of the Army and Navy of the United States. In this respect his authority would be nominally the same with that of the King of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy; while that of the British king extends to the declaring of war and to raising and regulating of fleets and armies, all which, by the Constitution under consideration, would appertain to the legislature."

James Madison declared that it is necessary to adhere to the "fundamental doctrine of the Constitution that the power to declare war is fully and exclusively vested in the legislature."

In 1793, President George Washington, when considering how to protect inhabitants of the American frontier, instructed his Administration that "no offensive expedition of importance can be undertaken until after [Congress] have deliberated upon the subject, and authorized such a measure."

In 1801, Thomas Jefferson sent a small squadron of frigates to the Mediterranean to protect against possible attacks by the Barbary powers. He told Congress that he was "unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense." He further noted that it was up to Congress to authorize "measures of offense also."

While presidents in the latter half of the 20th Century have initiated military action without prior authorization by Congress, "everybody does it" is not a legitimate defense to ignore the plain words of the U.S. Constitution, the clear intent of the authors of the U.S. Constitution, and more than 150 years of legal precedent.

We also want to go on record that the Authorization of Force Resolution (Public Law 107-40) approved by Congress to go after those responsible for the September 11, 2001, terrorist attacks on our country does not, explicitly or implicitly, extend to authorizing military action against Iran

² "Iran is Judged 10 Years From Nuclear Bomb," *The Washington Post*, by Dafna Lizner, August 2, 2005.

³ *The Clock is Ticking, But How Fast?* The Institute for Science and International Security, by David Albright and Corey Hinderstein, March 27, 2006.

over its nuclear program. The legislation specifically says, "The President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons." There is no evidence that Iran was involved in the September 11, 2001, attacks. Nor is there any evidence that Iran harbored those who were responsible for the attacks.

Further, the Authorization of Force Resolution (Public Law 107-243) approved by Congress to go to war with Iraq does not extend to military action against Iran over its nuclear program. This resolution only authorized you to "(1) defend the national security of the United States against the continuing threat posed by Iraq; and (2) enforce all relevant United Nations Security Council resolutions regarding Iraq." Like P.L. 107-40, there is no explicit or implicit authorization on the part of Congress in P.L. 107-243 that would allow you to attack Iran without first coming to Congress to seek a new authorization.

When asked about reports of your administration planning for war with Iran, you said on April 10, 2006, "It [prevention] doesn't mean force, necessarily. In this case, it means diplomacy." We agree with the focus on diplomacy. But, we want to be clear, should you decide that force is necessary, seeking congressional authority prior to taking military action against Iran is not discretionary. It is legally and constitutionally necessary.

Sincerely,

Peter King

Pete Stark

Marcy Kaptur

Blah Blah

Ron Paul

Gerrit Staller

Dennis F. Kucinich

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Letter to President Bush re: congressional war powers and Iran
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April 2006

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10. Allen
11. Sanders
12. Wu
13. Waters
14. McDermott
15. Slaughter
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