

Debate Topic Paper 2027 – 2028

Presidential War Powers Topic Paper

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Table of Contents

Debate Topic Paper 2027 – 2028	1
The War Power Authority Topic.....	2
History of War Power Authority	4
Timeliness	5
Educational Value	6
Student Interests and Accessibility	7
Balanced AFF and NEG Ground	8
Potential Affirmative Cases	10
Potential Negative Ground	14
Proposed Resolutions	24
Definition—Statutory Restrictions	25
Definition—Judicial Restrictions	26
Definition—Statutory vs Judicial Restrictions	27
Definition—Restriction	29
Definition—War Power Authority	31
Definition—Power	32
Definition—Anticipatory Self-Defense	33
Definition—Private Military Company	34
Definition—Targeted Killing	35
Definition—Armed Forces	36
Bibliography	38
Toolbox	Error! Bookmark not defined.

The War Power Authority Topic

The topic I proposed is the War Power Authority topic for the 2027-2028 policy debate resolution. The resolutions below are the ones I propose to be considered for the topic and are ranked as follows:

- 1) Resolved: The United States Federal Government should substantially increase statutory and/or judicial restrictions on the war powers authority of the President of the United States in one or more of the following areas: targeted killing; private military contractors, anticipatory self-defense; or introducing United States Armed Forces into hostilities.
- 2) Resolved: The United States Federal Government should substantially increase statutory and/or judicial restrictions on the war powers authority of the President of the United States in one or more of the following areas: targeted killing; anticipatory self-defense; indefinite detention; offensive cyber operations; or introducing United States Armed Forces into hostilities.
- 3) Resolved: The United States Federal Government should substantially increase statutory and/or judicial restrictions on the war powers authority of the President of the United States in one or more of the following areas: targeted killing; indefinite detention; offensive cyber operations; or introducing United States Armed Forces into hostilities.
- 4) Resolved: The United States federal government should substantially increase statutory and/or judicial restrictions on the war powers authority of the President of the United States.
- 5) Resolved: The United States Federal Government should substantially increase statutory and/or judicial restrictions on the war powers authority of the President of the United States in introducing United States Armed Forces into hostilities.

Under this proposed topic, affirmative teams would argue for increasing congressional and/or judicial restrictions on the President of the United States' War Power Authority. Depending on the specific wording of the resolution, affirmative plans can argue for the restricting the President's authority to introduce armed forces into hostilities. Recent events in Venezuela question the legality of the President's ability to conduct such operations in introducing armed forces. Affirmative teams can argue restricting the President's authorization on military actions such as targeted killings, offensive cyber operations, covert special forces operations, use of private military companies, self-defense criteria, military air strikes and detaining enemy combatants. Affirmative advantages would vary based on the area of war powers, but common advantage themes would include increasing US transparency in military action is good for deterrence, adherence to International Laws and norms, alignment with allies and alliances, ending imperialist Presidential actions on foreign nations, and various legal doctrines in these debates.

Negative teams would have a wide range of arguments at their disposal including disadvantages about why Presidential flexibility on all war power authority is critical to deterring hostiles, separation of powers overreach is dangerous, assuring allies, and maintaining international

strong hold through the President. Negative teams could also advocate instead of congress or the judiciary restricting the President, the President could restrict themselves to maintain flexibility. The negative can also argue that restricting presidential war power authority could cause international overreach on the US which would collapse our nation's sovereignty. Negative teams have a wide variety of critical literature such as critiques of biopolitics and the law, the securitization of threats and critical theories of international relations.

Debatability on this topic is vast. Students on both the affirmative and negative have plethora of ground to discuss various issues under presidential war powers. Affirmative teams can restrict presidential war power actions in a variety of legal ways that are all highly contentious. Negative teams have access to strong and established negative ground that act as a functional limit to the topic such as congress/judiciary key warrants, the executive self-restraint counterplan, and the executive flexibility disadvantage. The negative team has a variety of negative disadvantages to team area of the proposed topics to discuss foreign affairs and the need for quick, presidential action involving the military.

Given the vast literature and discussions surrounding this topic, I propose the high school debate community debate about Presidential War Power authority. The closest topic that discussed about President War Power authority was the 2015-2016 Domestic Surveillance topic. Though that topic only focused on a domestic aspect of the President's military authority. It is time to expand debating about the President's foreign agenda in military action. No topic since the 2011-2012 military topic has discussed the US restricting any form of military activity. The topic offers timely affirmative cases such as drone strikes, introduction of hostilities, and other various actions of war power authority contention. The topic has a plethora of negative ground for the neg to debate the affirmative's plan with arguments mentioned above that link to every plan. As shown in the 2013-2014, NDT-CEDA topic was restricting presidential war power authority and the topic offered a balance of accessible literature, ground and rewarding discussions of diverse legal issues.

History of War Power Authority

In 1973, the 93rd United States Congress passed the War Powers Resolution of 1973 (WPR). Its intention is imposing a federal check on the President's power on sending armed forces without consent of congress. After particular events during the Vietnam war, the Resolution's purpose acted as an important feature to the US government's system of checks and balances.

In 2026, the War Powers Resolution has been violated, circumvented, or reduced to the point of questioning the legitimacy of the Resolution. The Resolution's effectiveness, implications, and enforcement ideals have been criticized, challenged, and/or flat out ignored. Recent events such as the military actions in Venezuela, the strikes in Iran, Syria, and continuous military threats over Greenland highlight the need to discuss and debate Presidential War Power Authority, an ongoing discussion since the Vietnam. Understanding and debating these discussions are critical and may offer great educational value for students about the complex dynamics in our governmental system. Who really get's to declare war? Congress or the president? What does it mean to be the Commander-in-Chief? Many questions still hotly debated about.

Again, the history of the Resolution goes back to the 1970s, during the Vietnam war. The law was passed so it required the President of the United States to consult with Congress on any usage of military troops or intervention in foreign lands or territories when hostilities are present or there is an imminent danger. The timeline established in the resolution states that armed forces are allowed a 60-day period, possibly 90 days; and if Congress does not approve of the military action, the President must ensure that the withdrawal of troops takes place within 30 days of congress's decision.

In the WPR, the resolution states the following purpose in Section 3:

“SEC. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.” (The War Powers Act of 1973)

It clearly outlines consultation must occur over any action of US armed forces into hostilities. However, how many consultations have occurred? Clearly it seems that congress continues to ignored or fail to engage in any consultation of armed forces in the recent events of Iran and Venezuela, to previous events such as Obama's intervention in Libya and Bush's intervention in Iraq. The President has been able to “interpret “hostilities” and related statutory language in these ways has undoubtedly allowed it to evade the 60- to 90-day limit” (Anderson 2023).

Timeliness

The War Powers topic could not be timelier than ever. Current trends of unilateral president military action has gained numerous attentions in congress and the media. Since 2025, President Trump's actions have prompted congress to speak about War Powers resolutions ever since the events in Venezuela. Unfortunately, congress is failing to enact any restrictions as recent bills such as Venezuela war-power resolutions have been struck down. A large enough political blockade ensures the topic will have problems that exist throughout the entire year.

Most US citizens are growing concerned about unilateral military action. Recent polls show that 70% of Americans want Congressional approval to be required for any military action. Recent actions in Venezuela have an overwhelming majority of voters wanting accountability on lethal strikes. The latest Iran conflict has recently been not worthy to Americans and has created economic and political backlash. Fears of an imperial Presidency are growing in the US. Most Americans are concerned of the President having too much power. With the lack of any possible restrictions on the President coming any time soon, uniqueness and inherency problems won't be an issue.

Educational Value

The topic intersects U.S. constitutional law, national security, international relations theory, international law, civil liberties, and ethics. It is a highly political and controversial topic that will give students dynamic viewpoints on the authority of War Powers. The topic allows students to learn about U.S. governance and power dynamics between the three branches of government. Students will also learn about US national security issues and their cross-over with international law. International law is a vast topic that most students have little to no knowledge about. The War Powers topic offers that opportunity to deep dive into the Law of Armed Conflict, UN Charters, and various human rights agreements.

The topic should not be just seen as an anti-Trump topic. Presidents on both sides have contributed to the expansion of War Power authority. There is lots of literature from both sides of the political aisle criticizing actions perceived as overstepping the bounds of War Power authority. President Trump presents the topic in a timely and unique manner for the debate community to debate about.

A lot of the literature is very accessible and easy to find as well. There are a lot of articles that come up that discuss the core controversy with simple Google searches. There are some articles and literature resources that do require access to legal databases and readings of various books. News sources are constantly discussing the president's military decision making.

Student Interests and Accessibility

War Powers serves as a unique and approachable topic that allows discussions in both legal and foreign policy issues. Students will be able to debate whether US military interventions and/or actions in foreign nations are good or bad. Students have opportunities to learn about the history of our military and discuss topics of deterrence, interventions, human rights, and the military industrial complex. Students will also learn about broad theories of international relations such as realism, liberalism, and constructivism. There are equally robust debates on the impact of the President conducting quick, speedy, non-transparent military actions in foreign landscapes.

On top of a foreign issues discussion, the topic also provide an in-depth discussion of legal debates. Legal issues are tough to grapple with for young students. But focusing the debates on War Powers gives students a focal point into both foreign and international politics along with narrowing legal questions on who should have the most power in the government. Students have an opportunity to discuss whether the executive, legislative and/or judicial branch should have the most power in the government. Students also have the opportunity to discuss topics of international law such as the Law of Armed Conflict and other laws and norms pertaining to military actions. No past debate resolution has had international law possibly be a large component of discussion.

Balanced AFF and NEG Ground

The great benefit of this topic is the robust affirmative and negative ground provided. Various legal scholars, think tanks, historical accounts and current events provide students with an ample amount of research. The affirmative must defend a very politically contentious solution on the balance between congress, the courts and the executive that there are many strong advocates and opponents writing about it. Both sides will have a vast, high-quality, high-detailed base of literature to explore upon to defend their positions.

Affirmative Ground

The affirmative team will have a ton of ground to defend a variety of executive war power abuses. With the focus of the affirmative team having to defend congressional and/or judicial restrictions on the President's war power authority, a strong focus on checks and balances is critical. Affirmative plans must defend a reason for why congress and/or the courts must hold power over the president in war power authority, a huge debate legal scholars argue about to this day. Affirmative plan's have a ton to argue with regards interpreting statutory language of the War Powers Resolution.

Negative Ground

The Negative team will have ample of ground from various disadvantages, counterplans and critiques. The core of the topic is about who has sole control of war power authority, congress, executive, or judiciary. The negative team will be able to argue the executive should be able to preserve their flexibility in times of war and take quick swift action. The executive flexibility disadvantage has a ton of warrants to justify why the president in scope should have swift actions. Arguments that congress and the judicial branch would leak any military action.

Scholars argue too much oversight from Congress or the Courts deck the separation of powers between the branches and makes war time decision making inefficient. Congress takes months to pass legislation, and the courts take years to hear and decide on cases would make military action slow, inefficient, and possibly watered down. Scholars definitely argue that it would be highly inappropriate for the judicial branch to decide on military action. The political question doctrine would be shattered if the judicial branch were able to decide what to do with military interventions. Scholars argue that executive flexibility allows military decision making to be kept secret.

The politics disadvantage would be a huge generic applied to the topic since the resolutions call for the affirmative plan to defend congressional action. Current congressional environment shows a ton of backlash and criticism to any bills presented forward to restrict Trump's military actions under the WPR.

Outside of disadvantages, there is good number of counterplans. With the given wordings of the proposed resolutions, affirmative plans must defend congress and/or courts. If the affirmative plan chooses one of the specified actors, they could argue the other in response. The debates centered on congressional vs judicial action would be great for students to discuss the different ways of restricting executive military decision making.

The negative team could also read the executive self-restraint counterplan that the executive could restrain themselves from performing violations under the WPR. The executive self-restraint counterplan would be the core topic counterplan that applies to every affirmative. It acts as a substantial limit on affirmative plans that are small and tiny. It makes the debate very much centered around the core controversy on who should control military decision making in the government.

Finally, critique literature is robust and very interesting. Specific arguments about law and legal solutions are critiqued as biopolitical or capitalist in nature. The nature of legal solutions ends up always failing and recycling the same problems over and over again. Solutions should come from outside of the law, not within.

Potential Affirmative Cases

One of the biggest areas of clear violation is the interpretation of “hostilities” under the War Powers Resolution. The president is circumventing the “hostilities” language to justify military missions such as Obama’s intervention of Libya to Trump’s strikes in Yemen. Congress has been losing control over the WPR.

Scott R. **Anderson 23**, a fellow in Governance Studies at the Brookings Institution and a Senior Fellow in the National Security Law Program at Columbia Law School, “The Underappreciated Legacy of the War Powers Resolution”, *Lawfare*, <https://www.lawfaremedia.org/article/the-underappreciated-legacy-of-the-war-powers-resolution>, November 9, 2023

The executive branch’s ability to interpret “hostilities” and related statutory language in these ways has undoubtedly allowed it to evade the 60- to 90-day limit in any number of cases where it might reasonably have applied. The clearest example came in 2011 when the Obama administration chose to interpret “hostilities” as not extending to situations where U.S. forces “engage in a military mission that involves limited exposure for U.S. troops and limited risk of serious escalation and employs limited military means”—an interpretation that allowed it to continue airstrikes in Libya past the 60- to 90-day limit. Prior administrations had similarly framed related military operations as separate incidents to restart the clock and thereby avoid the 60- to 90-day time limit. More recently, the Trump administration angered members of Congress by asserting that the definition of “hostilities” did not reach the various types of U.S. assistance being provided to the Saudi-led military campaign in Yemen.

The executive claims authority to “anticipatory self-defense” or “preemptive strikes” against threats, mainly terrorists. Interpretation of that can be changed to the scope of any nation which justified the invasion of Iraq. Affirmative plans can restrict the language of “self-defense” and cover advantages on congressional control on military action is better for deterrence or important to international norms of warfare.

Rebecca **Ingber 24**, Professor of Law, Cardozo Law School; Senior Fellow, Reiss Center on Law and Security at NYU School of Law, “The Insidious War Powers Status Quo”, *The Yale Law Journal*, Vol. 133, <https://yalelawjournal.org/essay/the-insidious-war-powers-status-quo#:~:text=But%20over%20time%2C%20through%20executive,that%20had%20not%20attacked%20us.,> March 8, 2024

Today, the executive branch claims an authority to act unilaterally under two different legal theories.¹² The first, linked most closely to Republican administrations, can be classified as the “self-defense” theory. While in theory self-defense derives most clearly from the “repel attacks” authority, the self-defense justifications that the executive branch has espoused over the last several decades bear little resemblance to that early concept.¹³ The executive branch has extended that theory to justify a range of actions far beyond the immediate defense of the homeland, especially in the aftermath of 9/11, when OLC issued opinions endorsing unilateral presidential power to engage in “anticipatory self defense” in Iraq and to use force “preemptively against terrorist organizations or the states that harbor or support them, whether or not they can be linked to the specific terrorist incidents of September 11.”¹⁴ The implication of the first: the President could on his own authority order a full scale ground invasion of a sovereign nation that had not attacked us. The implication of the second: the President could use force anywhere in the world against any actor or state or take “whatever actions he deems appropriate to pre-empt or respond to terrorist threats.”¹⁵ These are aggressive readings of self-defense, no doubt, but they are familiar moves—taking a small grant of power and expanding upon it until it bears little resemblance to the original delegation. We see the executive branch make analogous moves regularly with statutes in the war powers space. As one example, the executive branch’s current interpretation of its 2001 statutory authority to use force extends to groups such as ISIS that did not exist until many years after that statute was enacted.

Private military contractors is an AFF that could be restricted as a US Armed force but are not because of their “private status”. Congress should be able to impose checks on PMC action.

Brian T. **Warren 23**, J.D. Candidate 2023, Washington & Lee University School of Law; B.A., University of Nevada Las Vegas, 2019, “Reining in the “Third Path”: Rethinking the War Powers Resolution and Private Security Contractors”, *80 Wash. & Lee L. Rev.* 1013 (2023). Available at: <https://scholarlycommons.law.wlu.edu/wlulr/vol80/iss2/8>, Spring 2023

Although PSCs perform nearly the same services as the U.S. Armed Forces, they are **not subject** to the same rules—notably the War Powers Resolution of 1973 (“War Powers Resolution”).²¹ Congress passed the War Powers Resolution to restrain the President from unilaterally introducing U.S. troops into hostilities without congressional input.²² By including both political branches of the government, Congress sought to prevent the United States from entering conflicts that harm its strategic interests or domestic security.²³ To this day, the War Powers Resolution “remains the key statutory framework for regulating the relationship between the political branches with respect to the use of U.S. Armed Forces abroad.”²⁴ Despite these aspirations, the War Powers Resolution only applies to U.S. Armed Forces, not PSCs.²⁵

This statutory gap—not contemplated by Congress in 1973 when the War Powers Resolution was passed²⁶—leaves open the possibility that the President could deploy PSCs without much congressional oversight.²⁷ Congress, of course, has constitutional and statutory powers—like its appropriations powers—to limit the President from doing this.²⁸ But, for a host of reasons discussed later in this Note, such powers are insufficient to adequately check the President’s ability to deploy PSCs overseas.²⁹

While there has yet to be a conflict where uniformed service members have been completely replaced by PSCs, this possibility is a concern shared by many commentators.³⁰ The growing dependence on PSCs, the emergence of new conflicts, and traditional political pressures may cause a future President to rely on PSCs in a manner similar to Erik Prince’s plan.³¹ Because PSCs perform nearly the same tasks as uniformed service members while not being subject to the same checks, this Note proposes that the phrase “Private Security Contractors” be explicitly incorporated into the War Powers Resolution.³² Including PSCs in the War Powers Resolution will provide Congress more statutory tools to regulate the President’s use of PSCs, potentially averting future catastrophes.³

PMCs are a guaranteed loophole for “armed forces”. Congress needs to restore action on this executive abuse. Affirmative plans can discuss human rights violations and other accountability mechanisms on PMCs.

McKinney Voss **Wheeler 21**, Law Clerk to the Honorable Stephen Alexander Vaden, United States Court of International Trade, “Private Military Contractors: The Armed Forces Absent from the War Powers Resolution”, *12 Nat’l Sec. L. Brief* 1 (2021), HeinOnline, 2021,

Though there is currently no evidence that a United States executive has used this loophole as an opportunity to engage U.S. resources without committing the “Armed Forces,” the potential is alarming. PMCs, with **less accountability** to a national government ³ and the disciplinary processes of official military forces, have been guilty of shocking human rights violations in recent conflicts which has the potential to seriously undermine the international reputation of the United States where the PMCs are American corporations. ⁴ At the domestic level, the loophole also undermines the purpose of the War Powers Resolution, and creates dangerous incentives for the executive to evade congressional oversight. This Article argues that only proactive legislative efforts can address the current deficiencies in the War Powers Resolution created by this loophole. Indeed, Congress must act, to restore balance to the constitutional allocation of war powers and thus limit very possible future executive abuse.

Targeted killings have been rising with current Trump strikes on boats in the Caribbean. Congress can regulate and act with transparency over targeted killings. Affirmative teams can incorporate advantages of norms and why transparent actions regarding targeted killings are necessary.

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The Upholding of Principle in the Precision Strike Era

To ensure targeted killings remain a viable and principled instrument, the international community and individual states must take proactive steps to institutionalize accountability. First and foremost, clear guidelines must be established to govern when and how targeted strikes are authorized. They should require high-level scrutiny of intelligence (to minimize errors) and interagency or even judicial review where appropriate. The United States, after years of criticism over drone secrecy, has updated its policies to impose more discipline on strikes. In 2022, President Biden issued new directives mandating "the highest standards of precision and rigor" for any lethal action outside active war zones and requiring presidential approval of targets in those cases.

Secondly, there must be transparency and oversight mechanisms to the greatest extent possible. While some operational details must remain classified, governments can still provide post hoc accountability. Independent panels or legislative committees (with clearance to review classified operations) should audit targeted killing decisions to ensure compliance with law and policy. An idea worth exploring is the creation of a global oversight body or a special rapporteur system that monitors targeted strikes worldwide and reports on patterns and concerns.

Crucially, states employing targeted killings should also be honest in acknowledging mistakes. This accountability not only serves justice but also strengthens the strategic case for targeted killings by showing that democracies hold themselves responsible, undermining enemy propaganda that portrays these strikes as indiscriminate.

Finally, an appeal must be made to leadership and values. The responsible use of targeted killing requires a constant balance of effectiveness with restraint. Political and military leaders must resist the allure of viewing every problem as a nail just because they have a hammer-drone. Each strike should be weighed against alternatives, considering its long-term implications. This culture of caution must be ingrained from the top down. It is encouraging that, in some cases, leaders have shown restraint – for example, reportedly aborting strikes when a target was with family or when intelligence was doubtful – but such stories are rarely made public.

In conclusion, targeted killings will likely remain a fixture of modern conflict, given the individuals and networks that continue to threaten states around the world. Rather than banishing this tool, policymakers must improve it with oversight by developing a robust framework that governs targeted killings and is applicable internationally.

Presidential cyber attack authority can be restricted. AFF teams can discuss why congress is better in control of cyber conflict or outright prohibit the action all together.

Zach **Irwin 25**, J.D. Candidate, Class of 2025, Washington and Lee University School of Law, "Unraveling the War Powers Resolution's Role in Cyber Warfare", 82 Wash. & Lee L.Rev. 915 (2025), Spring 2025, <https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=4916&context=wlur>

CONCLUSION

This Note concludes that Congress holds the correct position: The WPR is applicable to and governs cyber warfare. The language employed within its provisions, though crafted in a different era, reveals a flexibility that encompasses the complexities of contemporary cyber operations. With due consideration, this Note ultimately defers to Congress as the rightful arbiter of war powers in the matters of cyber warfare. This is not to say that the President may not conduct cyber warfare, but that he must do so pursuant to Congress's authority and the limitations imposed in the WPR. While recognizing the need for adaptability, the WPR, when wielded judiciously and interpreted dynamically, serves as a vital instrument in preserving the delicate balance between executive and legislative authority. In the face of technological evolution, our legal foundation must evolve, and Congress, through its constitutional mandate, remains the linchpin in navigating the uncharted waters of cyber conflict.

Judicial action is critical. Reasons why congressional and executive action are bad and why the judicial branch is best. Affirmative ground of judicial legitimacy and key signal to international agreements and norms.

Scott R. **Anderson 25**, Fellow in Governance Studies at the Brookings Institution; Non-Resident Senior Fellow in the National Security Law Program at Columbia Law School, “War Powers and the Return of Major Power Conflict”, *The University of Chicago Legal Forum*, 2025, <https://legal-forum.uchicago.edu/print-archive/war-powers-and-return-major-power-conflict>

In a new era of major power conflict, such a role will be especially important. Congressional preferences are an important, if imperfect, democratic counterweight to how the executive branch perceives and reacts to new strategic pressures. Leaving a door open to potential judicial engagement will help discourage either political branch from going too far in disregarding the views and preferences of the other, no matter how malleable the lines of constitutional authority between the two may prove. And if the two political branches ultimately disagree to the point that there is a clear conflict between them, then judicial intervention may be the most timely and efficient way to resolve the resulting impasse, before the costs it imposes on the nation prove too great.

Specific court action as a solvency advocate for the courts being able to influence war power authority. Affirmative plans can gain advantages on specific court procedures and rulings that make the topic expansive and brings a real debate about court intervention on foreign policy being legal or not.

Erwin **Chemerinsky 26**, the Dean and Jesse H. Choper Distinguished Professor of Law, University of California, Berkeley School of Law, “Abandoning the separation of powers in times of war”, *SCOTUSblog*, March 11, 2026, <https://www.scotusblog.com/2026/03/abandoning-the-separation-of-powers-in-times-of-war/>

But *Curtiss-Wright* has shaped how both presidents and courts have treated foreign policy, causing courts to give great deference to the president and refuse to hear challenges to his war making powers. During the Vietnam War, several dozen cases were filed in the federal courts arguing that the war was unconstitutional because there was no congressional declaration of war. In line with *Curtiss-Wright*, the lower courts dismissed the lawsuits as posing non-justiciable political questions (that is, as not for the courts to decide). A few of these cases came to the Supreme Court, but there never were more than three votes for certiorari so none were heard or decided – *Curtis-Wright*’s reasoning held sway.

Since then, there have been lawsuits, including by members of Congress, challenging military actions in El Salvador, Iraq, and Libya. All have been dismissed as political questions without reaching the Supreme Court.

In *Marbury v. Madison*, Chief Justice Marshall explained that the Constitution exists to limit the government and that these limits are meaningless unless they can be enforced. The constitutional requirement for Congress to affirmatively declare war before the United States is involved in one now has become meaningless. At least until recently, presidents and Congress thought some form of congressional approval of a war was essential. President Lyndon Johnson sought and received congressional approval of the Gulf of Tonkin Resolution in 1965 authorizing military force in Vietnam. President George W. Bush sought and received congressional approval of the Authorization for Use of Military Force in 2001 before the wars in Iraq and Afghanistan.

There obviously has been no congressional approval of the war in Iran. Congress, divided almost entirely along party lines, failed in its effort to do so. The courts should repudiate the legacy of *Curtiss-Wright* and enforce these constitutional provisions, just as they do all others. When Marshall wrote in *Marbury v. Madison* that “[i]t is emphatically the province and duty of the Judicial Department to say what the law is,” he did not say except in foreign policy or as to war powers.

Potential Negative Ground

The executive flexibility disadvantage is the core disadvantage of the topic. Negative teams can argue that War Power restrictions decks the secrecy of the president and special military operations. Congress is bad at handling military matters.

Turner '12 [Robert; Former Professor at the University of Virginia School of Law, author of 17 books; Case Western Reserve Journal of International Law, "The War Powers Resolution at 40: Still an Unconstitutional, Unnecessary, and Unwise Fraud that Contributed Directly to the 9/11 Attacks," <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1074&context=jil>, vol. 45] This same Inspector General report revealed what may be another consequence of the congressional assault of presidential powers following the Vietnam War. Specifically, a strong case can be made that the reason America could not get the information necessary to sustain a FISA warrant for Moussaoui is because one of our most important foreign allies did not believe we could be trusted with extremely sensitive intelligence information. The report notes that the FBI had made repeated inquiries both in writing and by phone of the British government seeking any information it might have tying Moussaoui to al-Qaeda or any other "foreign power."¹²⁷ Although it was emphasized that the request was extremely urgent, weeks went by with no response. The day after the attacks of September 11, 2001, killed thousands of Americans, the British provided the FBI with information that Moussaoui had attended an al-Qaeda training camp¹²⁸—information that might theoretically have allowed the FBI to obtain a FISA warrant to search Moussaoui's laptop and collect other information that might have prevented the attacks. (I say "theoretically," because FISA warrants require considerable documentation and layers of high-level approval, and in 2001 usually took weeks if not months to obtain once the necessary evidence of a tie to a "foreign power" like al-Qaeda had been established. So even if the British had been more cooperative, the request for a warrant might well have still been tied up in procedural delay when the attacks occurred. The entire fiasco reaffirms the brilliance of the Founding Fathers, who repeatedly emphasized the need for "speed and dispatch" in military and diplomatic matters.) The Inspector General report concluded: "It is not clear why the information from the British was not provided to the FBI until after September 11."¹²⁹ One possible explanation that comes readily to mind is that the source of the British intelligence might have been extremely sensitive—someone providing information of the greatest importance who might be killed if such information became public, and the United States could not be relied upon to keep secrets. While classified information is leaked by members of both political branches, the access given to legislators and their staff starting in the mid-1970s has been a source of particular concern to foreign intelligence services that have traditionally been cooperative with the United States. And while I deplore the delay that might possibly have prevented the 9/11 attacks, I can't honestly say that I blame the British for wishing to protect their sources and methods. If fear of American "leaks" was in reality the reason the British withheld the information on Moussaoui, it was hardly a new concern. Writing in Federalist No. 64 in 1788, John Jay had explained that the reason the Congress had been excluded from any role in "the business of intelligence" was because their members could not be trusted to keep secrets¹³⁰ and foreign intelligence sources would be unwilling to share sensitive information if they knew it would be shared with legislators: These are cases where the most useful intelligence may be obtained, if the persons possessing it can be relieved from apprehensions of discovery. Those apprehensions will operate on those persons whether they are actuated by mercenary or friendly motives; and there doubtless are many of both descriptions, who would rely on the secrecy of the President, but who would not confide in that of the Senate, and still less in that of a large popular Assembly. The convention have done well, therefore, in so disposing of the power of making treaties, that although the President must, in forming, them act by the advice and consent of the Senate, yet he will be able to manage the business of intelligence in such manner as prudence may suggest.¹³¹

The Negative can also argue that congress/courts are much slower at handling military action, makes us vulnerable to our adversaries or allows them to perform swift attacks on the US collapsing any deterrent value.

Scott R. Anderson **25**, Fellow in Governance Studies at the Brookings Institution; Non-Resident Senior Fellow in the National Security Law Program at Columbia Law School, “War Powers and the Return of Major Power Conflict”, *The University of Chicago Legal Forum*, 2025, <https://legal-forum.uchicago.edu/print-archive/war-powers-and-return-major-power-conflict>

There are also ways the executive branch might use an exclusive self-defense authority to advance broader strategic goals. For example, the President could deploy U.S. troops to allied territories to create what are sometimes called “tripwires,” wherein a threat against or attack on that allied position will also threaten the U.S. soldiers stationed there and trigger the President’s self-defense authority.¹⁴⁷ The President could then claim the ability to pursue military action under his exclusive constitutional authority over self-defense. Similar arguments could also be made in relation to allied territories where a significant number of U.S. nationals are resident, or even where there is a substantial amount of U.S.-owned property. Such tripwires aren’t necessarily fool-proof, as major power adversaries may be able to tailor their actions in a way that avoids or limits any direct threat against U.S. personnel and property. But at a minimum, they substantially complicate potential adversaries’ strategic calculus in considering an attack.

Depending on how far the executive branch is willing to push, an exclusive self-defense authority might also be used to pursue more ambitious military objectives. Past presidents have premised major military interventions, including cases of regime change, in part on the need to defend U.S. nationals.¹⁴⁸ By his own account, then-Deputy Attorney General (and later Attorney General) William Barr similarly advised President George H.W. Bush that he could justify the 1990 invasion of Iraq simply by virtue of determining that Iraq posed a threat to U.S. soldiers that had already been deployed to the region, without seeking congressional authorization.¹⁴⁹ In each of these cases, the self-defense justification appears to have largely been a fig leaf concealing ulterior motives. And using such an expansive view of the President’s exclusive self-defense authority as transparent pretext seems likely to raise many of the same political risks as other broad claims of presidential war-making authority. Nonetheless, it may have appeal for an executive branch intent on taking military action.

The Negative team can argue that attempts to constrain Trump's power causes lashout. Acts as a great net benefit to the executive self-restraint counterplan.

VandeHei ‘26 [Jim VandeHei; CEO and Founder of Axios; Mike Allen; American Journalist and Co-Founder of Axios; 03-06-2026; "Behind the Curtain: Trump's power play"; Axios; <https://www.axios.com/2026/03/06/behind-the-curtain-trump-iran-war-tariffs-anthropic>; accessed 03-11-2026; we don't endorse problematic language]

President **Trump seethed** when the Supreme **Court stripped away** his **unilateral** tariff **authority** the first **real check** on his presidency.

Then **he set out to impose his will on every remaining vector of American power** – smashing norms and shrugging off Congress in a historic, 14-day show of executive force.

Why it matters: Over the past two weeks, Trump launched a massive Middle East war, banned the hottest AI company on the planet, ordered new global tariffs and presided over the biggest media merger in two decades.

He did it all **unilaterally**—without passing a **single law**, and without pretending he needed to. Axios' Zachary Basu narrates this epic fortnight:

[illegible]

The answer lies with Adam Smith. Trump demanded that Trump's personal paragon Prime Minister Theresa May's cabinet members pick him or his wife and child to be partner from criminal gangster.

The big picture: **Trump has spent his second term systematically testing how much power a president can seize without Congress, the courts or public opinion stopping him. The answer, so far almost limitless.**

Trump has signed fewer laws than any modern president at this stage — because he doesn't need them. Executive orders, military force and the bully pulpit have proven more efficient.

Trump's advisers say he's **content** using unilateral powers **and** congressional **Republicans** — with rare exceptions — have **cheered him on** at **every turn**.

Between the lines: **What's all the more remarkable is that Trump is doing this with most of America opposed to his performance in office** — and to these specific actions.

Congressional war authority is ineffective – executive war powers key to combating a litany of transnational threats – combating terror, rogue states, and proliferants all require a flexible executive

Yoo 7 (John is a professor of law at the Boalt Hall School of Law at the University of California, Berkeley, and visiting scholar at the American Enterprise Institute. He has also served as general counsel for the Senate Judiciary Committee; as a law clerk to Justice Clarence Thomas and Judge Laurence H. Silberman; and, from 2001 to 2003, as a Deputy Assistant Attorney General in the Office of Legal Counsel of the U.S. Department of Justice. 4/18, “Exercising Wartime Powers,” <http://hir.harvard.edu/archives/1369>)

Proponents of congressional war power often argue that the executive branch is unduly prone to war. In this view, if the president and Congress have to agree on warring, the nation will enter fewer wars and wars that do occur will arise only after sufficient deliberation. But it is far from clear that outcomes would be better if Congress alone had the power to begin wars. First, congressional deliberation does not necessarily ensure consensus. Congressional authorization may represent only a bare majority of Congress or an unwillingness to challenge the President's institutional and political strengths, regardless of the merits of the war. And even if it does represent consensus, it is no guarantee of consensus after combat begins. The Vietnam War, which was initially approved by Congress, did not meet with a consensus over the long term but instead provoked some of the most divisive politics in US history. It is also difficult to claim that congressional authorizations to use force in Iraq, either in 1991 or 2002, reflected a deep consensus over the merits of the wars there. The 1991 authorization barely survived the Senate, and the 2002 authorization received significant negative votes and has become a deeply divisive issue in national politics. It is also not clear that the absence of congressional approval has led the nation into wars it should not have waged. The experience of the Cold War, which provides the best examples of military hostilities conducted without congressional support, does not clearly come down on the side of a link between institutional deliberation and better conflict selection. Wars were fought throughout the world by the two superpowers and their proxies, such as in Korea, Vietnam, and Afghanistan, during this period. Yet the only war arguably authorized by Congress--and this point is debatable--was the Vietnam War. Aside from bitter controversy over Vietnam, there appeared to be significant bipartisan consensus on the overall strategy of containment, as well as the overarching goal of defeating the Soviet Union. The United States did not win the four-decade Cold War by declarations of war; rather, it prevailed through the steady presidential application of the strategy of containment, supported by congressional funding of the necessary military forces. On the other hand, congressional action has led to undesirable outcomes. Congress led the United States into two "bad" wars, the 1798 quasi-war with France and the War of 1812. Excessive congressional control can also prevent the United States from entering into conflicts that are in the national interest. Most would agree now that congressional isolationism before World War II harmed US interests and that the United States and the world would have been far better off if President Franklin Roosevelt could have brought the United States into the conflict much earlier. Congressional participation does not automatically or even consistently produce desirable results in war decision making. Critics of presidential war powers exaggerate the benefits of declarations or authorizations of war. What also often goes unexamined are the potential costs of congressional participation: delay, inflexibility, and lack of secrecy. In the post-Cold War era, the United States is confronting the growth in proliferation of WMDs, the emergence of rogue nations, and the rise of international terrorism. Each of these threats may require pre-emptive action best undertaken by the President and approved by Congress only afterward. Take the threat posed by the Al Qaeda terrorist organization. Terrorist attacks are more difficult to detect and prevent than conventional ones. Terrorists blend into civilian populations and use the channels of open societies to transport personnel, material, and money. Although terrorists generally have no territory or regular armed forces from which to detect signs of an impending attack, WMDs allow them to inflict devastation that once could have been achievable only by a nation-state. To defend itself from this threat, the United States may have to use force earlier and more often than when nation-states generated the primary threats to US national security. The executive branch needs the flexibility to act quickly, possibly in situations wherein congressional consent cannot be obtained in time to act on the intelligence. By acting earlier, the executive branch might also be able to engage in a more limited, more precisely targeted, use of force. Similarly, the least dangerous way to prevent rogue nations from acquiring WMDs may depend on secret intelligence gathering and covert action rather than open military intervention. Delay for a congressional debate could render useless any time-critical intelligence or windows of opportunity. The Constitution creates a presidency that is uniquely structured to act forcefully and independently to repel serious threats to the nation. Instead of specifying a legalistic process to begin war, the Framers wisely created a fluid political process in which legislators would use their appropriations power to control war. As the United States confronts terrorism, rogue nations, and WMD proliferation, we should look skeptically at claims that radical changes in the way we make war would solve our problems, even those stemming from poor judgment, unforeseen circumstances, and bad luck.

The assurances disadvantage acts as a key negative ground disadvantage. Negative team can argue that allies are fearful of congress or the courts taking the reigns of military action since it is very uncertain.

M. Patrick **Hulme*** and Matthew **Waxman** 26**, * Assistant Professor of Law and Political Science at the Hamilton School, a political scientist, with a focus on congressional-executive relations in U.S. Foreign Policy, previously served as a fellow at Stanford's Center for International Security and Cooperation and at the Harvard Kennedy School's Belfer Center, **Liviú Librescu Professor of Law at Columbia School of Law, chairs the National Security Law Program and has co-chaired the Cybersecurity Center at Columbia's Data Science Institute, J.D., Yale Law School, 1999, "Minding the Commitment Gap: Alliance Reassurance and the Image of the Imperial Presidency", *Security Studies Vol. 35, Issue 1, 2026*, <https://www.tandfonline.com/doi/full/10.1080/09636412.2026.2617892> In sum, there are **several plausible reasons** allies either **might** not care about the extent of the president's unilateral war powers or may even **prefer** that a president be required to obtain formal **authorization** from Congress before intervening. As we will show below, **however**, allies have long **been highly attuned to constitutional war powers debates** in the United States, **and they care deeply that the president not be legally barred** from action **without** formal **approval** of lawmakers. The overriding reason allies strongly prefer a presidency unconstrained legally by Congress is because they want to be reassured that an American response will be **automatic**. More specifically, they want to be reassured that a U.S. response will occur (**certainty**), and it will happen quickly (**immediacy**).

Certainty

First and foremost, effective alliance reassurance requires a belief by protégés that a **response by the patron is near-certain**. British Defense Minister Denis Healey famously reckoned in the context of Cold War Europe that **it took "five percent credibility of American retaliation to deter the Russians, but ninety-five percent credibility to reassure the Europeans"** (Healey 1990). Allies intuitively realize that a U.S. **response is more likely** when a president is **unbound by strict legal constraint** than when formally restrained from unilateral intervention by Congress. In other words, they see **more certainty in an executive willing and able to act unilaterally** than one risking veto from, or simple inaction by, the legislature.²¹ Notably, the addition of another veto player would only serve to make an American response less likely: **even in a case where Congress strongly supported an alliance**, but the president did not, the addition of Congress as a veto player would **not increase the probability of American intervention**.

There are, moreover, **institutional reasons** why **allies** view the executive as more reliable than Congress. First, they **worry** about Congress's **reputation for gridlock and inaction**. Even if members of Congress wanted to defend an ally just as much as a president did, collective action problems in a **group of 535** could prevent a response, especially when political **polarization has increased** dramatically since the end of the Cold War (Myrick 2020).

More deeply, **presidents are far more incentivized to take responsibility** and respond to an attack on an ally because they have direct control of the means to intervene, and, additionally, are **more squarely exposed to the costs of inaction** than are individual lawmakers.²²

in foreign policy vis-à-vis Congress (Canes-Wrone, Howell, and Lewis 2008), avoiding blame is not one of them. Presidents, by virtue of their office, cannot escape the burden of use of force decisions. Lawmakers, in contrast, face precisely the opposite problem in foreign policy: difficulty in claiming credit but an ability to avoid blame (Schultz 2003; Weaver 1986). They have no direct control of military action, and "they" are actually 535. They can, and will, "pass the buck" to each other, to past Congresses, to the executive branch, and to others.

Allies thus **see the president as more predisposed to fulfill an obligation than lawmakers who** are notoriously incentivized to **avoid responsibility in the war powers context**. Authorization from Congress might be seen by allies as a nice-to-have, but at the end of the day they want to know that presidents are willing and able to come to their aid unilaterally.

Negative teams can also use warrants of quickness and swiftness of the president assures allies to maintain commitments. With restrictions imposed by the plan, allies feel incentivized to proliferate their own nuclear weapons.

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Immediacy

Besides seeking certainty, **allies oppose requiring a congressional vote before an American military response because that process takes time.** It has long been recognized that the **executive branch has a decisive advantage in making decisions swiftly**—what Alexander Hamilton called in Federalist 70 “energy in the executive” allowing for “decision, activity...and dispatch.” Congress, by contrast, was designed to be slow. **Allies know** that whereas **the executive branch can prepare to respond militarily anywhere in the world within hours** (or in some cases **minutes**), such a response from the cumbersome **legislature would take at least days, and maybe weeks or more.**

Allies have **consistently shown concern** about this immediacy problem. Blankenship and Lin-Greenberg, for example, recently highlighted the importance for alliance reassurance of “not only having capabilities, but demonstrating the ability to use them quickly,” (2022, pg. 94. Emphasis added). **23** **Waiting for congressional action could expose frontline states to a risk of being overrun** before a response was authorized. There is the further possibility that Congress might be less willing to approve the use of force to **retake territory lost** than to **defend an unoccupied ally at the start.**

Consequently, because allies want to know that the U.S. will show up (certainty), and will show up quickly (immediacy), they prefer that the executive branch be willing to do so unilaterally. To be sure, generally a best case scenario from an ally's perspective would be widespread domestic American support for the intervention—to include possible authorization from Congress. However, **given the choice between an imperial presidency willing to act unilaterally and an American commitment that requires an affirmative vote from Congress, allies will choose the former.**

Bridging the Commitment Gap

Because allies strongly desire that a U.S. response be as “automatic” as possible, the “constitutional processes” provisions found in American defense treaties creates a mismatch between the level of commitment required to satisfy allies, and that actually provided by the agreement—a “commitment gap.” **It is well recognized that allies that are not sufficiently reassured will seek to achieve security through other means, including conventional military arming, the acquisition of nuclear weapons, or realignment** (Blankenship 2020; Lanoszka 2018). Blankenship argues that these outside options available to American protégés are quite consequential, as they may lessen allies' incentives to support American foreign policy initiatives, join in military conflict, host American bases, or accede to favorable economic agreements. Moreover, these allies will likewise have less incentive to deny adversaries such benefits (Blankenship 2020). American leaders will thus seek to reassure U.S. allies in order to head off these consequences.

Unilateral powers from the president is best for allies for assurance.

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First, although there has been a sharp decline in Senate-ratified treaties over time—and the use of executive agreements has grown—the fact remains that all formal U.S. defense pacts in the world today exist under Senate-ratified treaties that lack expiration dates (NATO, as well as treaties with Japan, South Korea, Australia, and the Philippines, for example).⁹¹ Whether or not future international agreements are made as Senate-ratified treaties, these **existing pacts** in Europe and Asia **will likely remain core American commitments** well into the future. The Senate jealously guards its prerogatives in this area (Krutz and Peake 2011), and all new NATO accessions, including those in recent years, have gone through formal Senate approval.⁹² When President Biden pursued a possible security guarantee for Saudi Arabia, it was generally assumed that the Senate would need to formally approve it. While better left for future research, it seems intuitive that even partners that lack a formal treaty commitment with the U.S. (e.g., Israel or Taiwan) would similarly prefer a president be legally-unconstrained from coming to their aid instantly and unilaterally. Indeed, because future protégés may already have reason to doubt the credibility of an American commitment absent the costly-signaling of Senate ratification (Martin 2005), they may be even more sensitive to legal checks on presidential action.

Second, one might reasonably point out that our case evidence is primarily focused on periods in which the executive branch was generally more supportive of defending allies than Congress, whereas the current president (Trump) has publicly raised questions of his own commitment to allies while Congress has in some recent years been the branch trying harder to reassure allies. This role-reversal has been rare in the eight decades since WWII, although not without precedent. The Carter administration, for instance, faced substantial opposition in Congress toward its plans to withdraw troops from South Korea and to terminate the mutual defense treaty with Taiwan.

Even in the current uncommon situation, though, we would expect our argument to generally hold, because allies do not want even an alliance-skeptic president facing legal hurdles to intervene on their behalf. Or, in other words, whereas **allies** may dislike the current president's imperial tendencies in areas like international trade or immigration, they will likely **still prefer that the president retain broad unilateral powers** specifically **in** the area of **military force**. This follows from our theory presented above. Indeed, allies' heightened worries about whether the president will follow through on defense commitments in the event of crises probably makes them **especially sensitive to adding in Congress** as an additional, legally-required veto player to the initiation of U.S. action on their behalf.⁹³ There is some historical evidence from the Carter years to support that proposition. It was during that period that many allies were pressing the White House to assert its willingness to act unilaterally in the war initiation context (e.g., the Philippines, as discussed above). While Seoul was fighting U.S. troop withdrawal plans proposed by the Carter Administration in early 1977, it was at the exact same time requesting of the White House that "the War Powers Act or the Mutual Security Treaty be amended to authorize automatic U.S. involvement in case of a conflict."⁹⁴ Even when facing a Congress more supportive of the alliance than the executive, allies are wary of any requirement for U.S. congressional approval of American intervention.

Politics is a core generic.

Caitlin Yilek and Kaia Hubbard 26, both staff writers for CBS News, “Senate rejects latest resolution to limit Trump's Iran war powers”, *CBS News*, June 16, 2026, <https://www.cbsnews.com/news/senate-war-powers-vote-iran-trump-deal/>

Washington — The Senate on Tuesday narrowly rejected a war powers resolution on Iran as President Trump touts a framework agreement with Tehran to end the monthslong conflict.

Senators rejected a motion to discharge the resolution out of committee in a 47 to 48 vote. Four Republicans — Sens. Susan Collins of Maine, Bill Cassidy of Louisiana, Lisa Murkowski of Alaska and Rand Paul of Kentucky — joined nearly all Democrats in favor. Sen. John Fetterman of Pennsylvania was the sole Democrat to oppose.

The vote comes as lawmakers are eager for more information about the terms of a U.S.-Iran deal that remains secret. In 2015, Congress passed the Iran Nuclear Agreement Review Act, which requires that any deal relating to Iran's nuclear program be submitted to Congress for review before any sanctions can be lifted. Senate Majority Leader John Thune, a South Dakota Republican, told reporters earlier Tuesday that he had requested the text of the agreement along with a briefing from the administration.

The political question doctrine disadvantage would be a core disadvantage against affirmative plans that defend the courts as the main actor. The negative team is able to argue the courts are breaking judicial powers and bylaws and would set an precedent on judicial overreach.

Jenkins 10 – Assistant Professor of Law, University of Copenhagen (member of the Centre for European Constitutionalization, in collaboration with the Centre for Advanced Security Theory); Attorney at Law. (David, “Judicial Review Under a British War Powers Act,” 43 Vand. J. Transnat'l L. 611)

Nevertheless, as American experience suggests and despite understandable concerns over the role of judicial process, a statutory reform of the war prerogative in the United Kingdom would not [624] necessarily lead to undue judicial involvement in matters of war. In applying statutory requirements (at least openly worded ones subject to varying interpretations, in contrast perhaps to procedurally detailed ones leaving less room for political maneuvering), British courts would have to assess whether a war powers dispute indeed infringed discernible fundamental rights or led to a constitutional impasse - and so threatened the rule of law - in which political means of resolution had reached deadlock, were inadequate, or for some other reasons ought to give way to legal processes. 50 The latter occasion would likely be very rare in practice, thus ameliorating the risks of judicial interference in matters of war. Despite their power of judicial review, American courts have shown remarkable self-restraint in war powers cases. 51 They have taken the expansive language of the Constitution and the possibilities of branch conflict not as an invitation or opportunity for judicial intervention but as a warning that the political arena is the best place for resolution of such disputes. 52 Even the War Powers Act of 1973, setting out specific guidelines for presidential use of force without congressional pre-authorization, has not provoked a judicial change in habits of review. 53 U.S. courts clearly favor political solutions and defer to the political branches, which can better balance efficiency and accountability concerns, especially where the initiation and conduct of armed conflict is at issue. 54 The courts will assert themselves only in those extraordinary war powers cases when the rule of law is at [625] stake, and adjudication of a war powers dispute becomes both desirable and necessary for defining and maintaining outer constitutional boundaries for political action. 55 American courts have consistently based this deferential posture on the "political question doctrine," discussed in the next Part of this Article, which sets out criteria of justiciability for determining whether a particular constitutional question is indeed an issue more suitable for political or judicial resolution. 56 In war powers cases, the doctrine has most usually compelled the former conclusion. 57 This doctrine requires that a judge consider how a war powers dispute implicates operational efficiency, democratic accountability, and rule of law values. 58 He or she must then assess the institutional competency of a court to adjudicate a solution in light of those values' relative weight and the competencies of the political branches. The doctrine gives preference to the political processes in military matters, excepting again cases in which a political branch attempts to invoke war powers to infringe fundamental rights (seen in President Bush's unilateral attempt to designate, try, and imprison so-called "enemy combatants" without due process of law 59) or when there arises a potentially dangerous constitutional conflict between the other two branches (as with Congress' opposition to President Nixon's military actions in Cambodia 60). At times, these individual liberty interests and separation of powers concerns will closely coincide and [626] heighten justiciability, as they did when President Truman attempted the unilateral executive nationalization of the steel industry during the Korean War without any statutory authority to do so. 61 In "run-of-the-mill" executive-legislative disputes over the authority to commit the nation to war or manage military operations, however, courts will accordingly abstain from review. 62 The end result, at first glance, is that the American political question doctrine appears not so different in substance from the British doctrine of justiciability, which already applies not only to review of the executive's statutory powers but also to its prerogative decisions. 63 There is no reason why these justiciability concerns would not continue to apply to cases arising under any future British war powers act. A closer look at just how and why American courts shy away from involving themselves in war powers cases is thus a good starting point for re-thinking how British courts might, would, or should one day apply a war powers act.

The executive self-restraint counterplan acts as a key functional limit to the topic since it is internal restriction.

Metzger 15—Gillian E. Metzger, Stanley H. Fuld Professor of Law, Columbia Law School, “The Constitutional Duty To Supervise”, *The Yale Law Journal* Vol. 124, No.6, 1839-2201, <https://www.yalelawjournal.org/article/the-constitutional-duty-to-supervise>, April 2015//Lee

Internal supervision and oversight are also central to political accountability for other reasons: they allow the public to be informed about administrative actions and provide a mechanism for public participation in administration.²⁵⁶ Political accountability in this sense is less about electoral control, though awareness of agency actions allows stakeholders to exert pressure on elected officials to ensure that their interests are addressed.²⁵⁷ Instead, the focus is often on direct involvement by affected groups and other interested parties in administrative decisionmaking.²⁵⁸ Agency oversight structures help achieve transparency and opportunities for participation,²⁵⁹ for example, by requiring advance notice, creating disclosure presumptions, reviewing decisions for responsiveness to identified concerns, and monitoring of agency actions for adherence to agreed-upon norms and goals. Supervision and oversight are similarly pivotal when it comes to legal accountability. While courts play a central role in enforcing legal constraints on government, a variety of factors can limit the effectiveness and availability of such judicial review.²⁶⁰ Internal supervision is **free** of many of these **obstacles** and thus plays a critical role in guaranteeing administrative adherence to governing legal requirements.²⁶¹ Reliance on internal supervision and oversight to achieve legal accountability, instead of solely on courts, also minimizes the risk that enforcing legal constraints will undermine managerial control and accountability.²⁶² Despite its resistance to according supervision much constitutional significance, the Court has noted the role that bureaucratic supervision plays in ensuring legal adherence. For example, it has emphasized the availability of internal administrative complaint mechanisms that can uncover and address constitutional violations in refusing to infer a Bivens right to challenge such violations in court.²⁶³ A number of scholars have gone further, underscoring the importance of internal administrative constraints in ensuring that delegated power is not wielded in an arbitrary fashion.²⁶⁴ And while the scope of delegated federal power is much vaster today, similar concerns with ensuring that government officials adhere to governing legal requirements have fueled bureaucratic supervision since the birth of the nation.²⁶⁵ Indeed, the Take Care Clause formally links supervision and legal accountability by tying supervision to faithful execution of the laws.²⁶⁶ Put starkly, bureaucratic and managerial accountability in the form of internal executive-branch supervision is an essential precondition for political and legal accountability given the phenomenon of delegation. Scholars debate whether the broad delegations that characterize modern administrative government can ever accord with the Constitution’s grant of legislative power to Congress and separation of powers principles. That debate will no doubt continue, but it has been eclipsed by reality; modern delegation is here to stay.²⁶⁷ The more pressing question today is how best to integrate the inevitable phenomenon of delegation into the Constitution’s structure. The answer, as I argue, lies in recognizing that delegation creates a constitutional imperative to ensure that the powers transferred are used in accordance with constitutional accountability principles. In short, delegation creates a duty to supervise delegated power.

Circumvention is a core negative case argument that acts as a great net benefit to the executive self-restraint counterplan. Trump can ignore rulings.

Brian T. **Warren 23**, J.D. Candidate 2023, Washington & Lee University School of Law; B.A., University of Nevada Las Vegas, 2019, “Reining in the “Third Path”: Rethinking the War Powers Resolution and Private Security Contractors”, *80 Wash. & Lee L. Rev.* 1013 (2023). Available at: <https://scholarlycommons.law.wlu.edu/wlulr/vol80/iss2/8>, Spring 2023

Moreover, dramatically **expanding the scope of the War Powers Resolution** might **cause the President to outright reject the binding effect of the statute**. A President faced with an even tighter straitjacket on his war powers **would not react too kindly**.³⁵⁵ Requiring the President to consult, report, and notify Congress regarding a plethora of new actors could be too burdensome. The President could react by emphasizing the unconstitutionality of the War Powers Resolution, posing credibility issues to the statute by showing flagrant disregard for its provisions.³⁵⁶ **Courts decline to hear suits dealing with the War Powers Resolution, so Congress will not have recourse to challenge the President’s action in the courts**.³⁵⁷ Broadening the statute could render the whole statute ineffective by encroaching too far on the President’s ability to wage war.

Furthermore, omitting the phrase “**Armed Forces**” could result in an underinclusive application of the statute. **Clever lawyers at the Office of Legal Counsel (OLC) and the Department of Justice (DOJ) get around supposedly clear laws**. For example, government lawyers have interpreted the word “torture” not to include “enhanced interrogation”³⁵⁸ and interpreted “imminent” to permit drone strikes of U.S. citizens for feared future acts of violence.³⁵⁹ **“United States” could be interpreted to apply to anyone formally employed by the federal government—excluding contractors that are employed on an ad-hoc basis**. By attempting to include a broad range of actors, PSCs could inadvertently not be included. These disadvantages make this option an inept solution.

Proposed Resolutions

Resolution 1 – Broad Focus on War Powers

Resolved: The United States federal government should substantially increase statutory and/or judicial restrictions on the war powers authority of the President of the United States.

Resolution 2 – List: Targeted Killing, PMCs, anticipatory self-defense, Armed Forces

Resolved: The United States Federal Government should substantially increase statutory and/or judicial restrictions on the war powers authority of the President of the United States in one or more of the following areas: targeted killing; private military contractors, anticipatory self-defense; or introducing United States Armed Forces into hostilities.

Resolution 3 – List: Targeted Killing, OCOs, Indefinite detention, Armed Forces (2013-2014 CEDA wording)

Resolved: The United States Federal Government should substantially increase statutory and/or judicial restrictions on the war powers authority of the President of the United States in one or more of the following areas: targeted killing; indefinite detention; offensive cyber operations; or introducing United States Armed Forces into hostilities.

Resolution 4 – Just Armed Forces

Resolved: The United States Federal Government should substantially increase statutory and/or judicial restrictions on the war powers authority of the President of the United States in introducing United States Armed Forces into hostilities.

Resolution 5 – List: Targeted Killing, anticipatory self-defense, OCOs, Indefinite detention, Armed Forces

Resolved: The United States Federal Government should substantially increase statutory and/or judicial restrictions on the war powers authority of the President of the United States in one or more of the following areas: targeted killing; anticipatory self-defense; indefinite detention; offensive cyber operations; or introducing United States Armed Forces into hostilities.

Definition—Statutory Restrictions

“Statutory restrictions” require congressional action

Kershner 10 (Joshua, Articles Editor, Cardozo Law Review. J.D. Candidate (June 2011), Benjamin N. Cardozo School of Law, “Political Party Restrictions and the Appointments Clause: The Federal Election Commission's Appointments Process Is Constitutional” Cardozo Law Review de novo 2010 Cardozo L. Rev. De Novo 615)

The process by which the President fills an Executive Branch position is governed by the

Appointments Clause: [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

n81 This process is divided into three phases: (1) Congress creates an Executive Branch position by statute; n82 (2) the President nominates an individual to fill the position; n83 and (3) the Senate confirms the nominee. n84 The Clause covers a specified list of positions and the generic “other Officers of the United States.” n85 The Clause controls who nominates, appoints, and confirms an individual for such a position. n86 Finally, the Clause defines a separate process for inferior officers. n87 It should be noted, however, that the Appointments Clause limits but does not empower Congress to create positions. n88 That power comes from the Necessary and Proper Clause. n89 The House of Representatives has no role in the process of nomination and appointment and is specifically not mentioned in the [*626]

Appointments Clause. All of the powers contained in the Appointments Clause are reserved to the President, the Senate, or both. n90 The Appointments Clause makes a distinction between the power to nominate and the

separate power to appoint. The power of nomination is textually reserved to the President of the United States, n91 whereas the power of appointment is shared by the President and the Senate. n92

Statutory restrictions violate the plain text of the Appointments Clause because the very act of passing a statute requires the involvement of the House of Representatives. n93 Statutory

restrictions on the appointments process are further problematic because the Appointments Clause's power to nominate is vested solely in the President. n94 Those statutory restrictions that limit the President's power to

nominate violate the plain text of the Clause. n95 Where the Constitution provides a clear procedural process, the Supreme Court has consistently applied strict principles of formalism, construing the text so as to limit, rather than expand, the powers of the various branches of government. n96 The Senate's role in the appointments process is the final confirmation of a nominee. n97 The “advice and consent” of the Senate applies only to the appointment power. n98 The President and the Senate have interpreted advice as non-binding guidance, and have interpreted [*627] consent as the act of confirmation. n99 Thus, the Appointments Clause gives the Senate only the narrow function of confirming nominees. n100

“Statutory restrictions” require statutory language - Congress

Kershner 10 (Joshua, Articles Editor, Cardozo Law Review. J.D. Candidate (June 2011), Benjamin N. Cardozo School of Law, “Political Party Restrictions and the Appointments Clause: The Federal Election Commission's Appointments Process Is Constitutional” Cardozo Law Review de novo 2010 Cardozo L. Rev. De Novo 615)

n117 The phrase “statutory restrictions” is used hereinafter to mean statutory language that restricts the President's powers of nomination and appointment to those individuals meeting specific criteria. Examples include gender, state of residence, and most importantly political party. n18 Since 1980, more than one hundred Presidential signing

statements have specifically mentioned the Appointments Clause. See The Public Papers of the Presidents, AM. PRESIDENCY PROJECT, <http://www.presidency.ucs.edu/ws> (search for “Appointments Clause”). n19 These signing statements typically invoke the authority of the Appointments Clause to argue that statutory restrictions on appointment or removal of Officers of the United States are merely advisory. For numerous examples, see id. See also infra note 175. n20 The phrase “hyper-partisan atmosphere” has been frequently used by the news media and commentators to describe the political gridlock in Washington during the first years of the Obama administration. See, e.g., Eric Moskowitz, Hundreds Brave Cold to Hear From Scott Brown, THE BOSTON GLOBE, Jan. 29, 2010, http://www.boston.com/news/local/breaking_news/2010/01/scores_wait_for.html (reporting on then Senator-Elect Scott Brown explaining that “he felt the hyper-partisan atmosphere in Washington was already changing as a result of his election” ten days earlier); Editorial, Bayh Bailout No Cause to Mourn Moderation, ORANGE COUNTY REG., Feb. 17, 2010, at H, available at <http://www.ocregister.com/opinion/bayh-234673-sen-one.html> (describing Senator Bayh's verbal attacks on the operation of the Senate after announcing his decision not to run for reelection as “using the occasion to decry the hyperpartisan atmosphere in Washington”). n21 As political battles over delays in approving Presidential nominations continue to be the norm, it is progressively more likely that Presidents will seek to bypass the Senate in the nomination process. This could include recess appointments bypassing both the “advice and consent” of the Senate, as well as any statutory restrictions. See, e.g., Scott Wilson, Obama Considers Recess Appointments, WASH. POST, Feb. 9, 2010 (“President Obama is considering recess appointments to fill some or all of the nominations held up in the Senate. President Bush used a recess

appointment to make John Bolton the U.S. ambassador to the United Nations bypassing Democrats.”). n22 Statutory restrictions date back to the first Congress and continue today. See infra notes 116, 118, 122. n23 See discussion infra Part I.D and note 128. n24 The

phrase “political party restrictions” is used hereinafter to mean statutory restrictions on the President's powers of nomination and appointment by political party.

Definition—Judicial Restrictions

“Judicial restrictions” require the judiciary.

Singer 07 (Jana, Professor of Law, University of Maryland School of Law, SYMPOSIUM A HAMDAN QUARTET: FOUR ESSAYS ON ASPECTS OF HAMDAN V. RUMSFELD: HAMDAN AS AN ASSERTION OF JUDICIAL POWER, Maryland Law Review 2007 66 Md. L. Rev. 759)

n25. See, e.g., *Dep't of the Navy v. Egan*, 484 U.S. 518, 530 (1988) (noting the reluctance of courts "to intrude upon the authority of the Executive in military and national security affairs"); see also Katyal, *supra* note 1, at 84 (noting that "in war powers cases, the passive virtues operate at their height to defer adjudication, sometimes even indefinitely"); Harold Hongju Koh, *Why the President (Almost) Always Wins in Foreign Affairs: Lessons of the Iran-Contra Affair*, 97 Yale L.J. 1255, 1313-17 (1988) (discussing the Court's use of justiciability doctrines to refuse to hear challenges to the President's authority in cases involving foreign affairs); Gregory E. Maggs, *The Rehnquist Court's Noninterference with the Guardians of National Security*, 74 Geo. Wash. L. Rev. 1122, 1124-38 (2006) (discussing the Rehnquist Court's general policy of nonintervention in cases concerning actions of governmental agencies and political entities in national security matters); Peter E. Quint, Reflections on the Separation of Powers and Judicial Review at the End of the Reagan Era, 57 Geo. Wash. L. Rev. 427, 433-34 (1989) (discussing the use of the political question doctrine as a means to avoid **judicial restrictions** on presidential power in cases involving military force).

Definition—Statutory vs Judicial Restrictions

Congress enacts “statutory restrictions” the court imposes “judicial restrictions”

Peterson 91 (Todd D. Peterson, Associate Professor of Law, The George Washington University, National Law Center; B.A. 1973, Brown University; J.D. 1976, University of Michigan, Book Review: The Law And Politics Of Shared National Security Power -- A Review Of The National Security Constitution: Sharing Power After The Iran-Contra Affair by Harold Hongju Koh, New Haven, Conn.: Yale University Press. 1990. Pp. x, 330, March, 1991 59 Geo. Wash. L. Rev. 747)

Based on both case law and custom, it is hard to argue that Congress does not have substantial power to control the President's authority, even in the area of national security law. From the time of Little v. Barreme, the Supreme Court has recognized Congress's power to regulate, through legislation, national security and foreign affairs

No Supreme Court case has struck down or limited Congress's ability to limit the President's national security power by passing a statute. Although there may be some areas where the Court might not permit statutory regulation to interfere with the President's national security powers, these are relatively insignificant when compared to the broad authority granted to Congress by express provisions of the Constitution and the decisions of the Supreme Court.

Even in cases in which the Court has given the President a wide berth because of national security concerns, the Court has noted the absence of express statutory limitations. For example, in *Department of the Navy v. Egan*, the Court refused to review the denial of a security clearance, but it concluded that “unless Congress specifically has provided otherwise, courts traditionally have been reluctant to intrude upon the authority of the

Executive in military and national security [“762] affairs.” In other cases, of course, such as *Youngstown*, the Supreme Court has clearly stated that Congress may restrict the President's authority to act in matters related to national security.

Not even Koh's bete noire, the *Curtiss-Wright* case, could reasonably be interpreted as a significant restriction on Congress's authority to limit the President's authority by statute. First, as Koh himself forcefully demonstrates, *Curtiss-Wright* involved the issue whether the President could act pursuant to a congressional delegation of authority that under the case law existing at the time of the decision might have been deemed

excessively broad. Thus, the question presented in *Curtiss-Wright* was the extent to which Congress could increase the President's authority, not decrease it. At most, the broad dicta of *Curtiss-Wright* could be used to restrict the scope of mandatory power sharing on the ground that the President's inherent power in the area of international relations “does not require as a basis for its exercise an act of Congress.”

Even the dicta of *Curtiss-Wright*, however, give little support to those who would restrict permissive power sharing on the ground that Congress may not impose statutory restrictions on the President in the area of national security and foreign affairs. Justice Sutherland's claims with respect to exclusive presidential authority are comparatively modest when compared with his sweeping statements about the President's ability to act in the absence of any congressional prohibition. He asserts that the President alone may speak for the United States, that the President alone negotiates treaties and that “[i]nto the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it.” It is in this context of the President's power to be the communicator for the nation that Justice Sutherland cites John Marshall's famous statement that the President is the “sole organ of the nation” in relations with other nations. This area of exclusive authority in which even permissive sharing is inappropriate is limited indeed. When he writes of the need to “accord to the President a

degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved,” Justice Sutherland refers to the permissibility of a broad delegation, not the constitutional impermissibility of a statutory restriction.

Indeed, the Court specifically recognized that Congress could withdraw the authority of the President to act and prohibit him from taking the actions that were the subject of the case. To be fair to Koh, he would not necessarily disagree with this reading of *Curtiss-Wright*; he clearly believes that Congress does have the authority to restrict the President's national security power. Nevertheless, Koh's emphasis on *Curtiss-Wright* still gives the case too much import. Oliver North's protestations to the contrary notwithstanding, there is no Supreme Court authority, including the dicta in *Curtiss-Wright*, that significantly restricts the power of Congress to participate by statutory edict in the national security area. Thus, contrary to Koh's model, *Curtiss-Wright* and *Youngstown* do not stand as polar extremes on a similar question of constitutional law. To be sure, they differ significantly in tone and in the attitude they take to presidential power, but the cases simply do not address the same issue. Therefore, it does Koh's own thesis a disservice to suggest

that the cases represent different views on the scope of permissive power sharing. There simply is no Supreme Court precedent that substantially restricts Congress's authority to act if it can summon the political will.

The absence of judicial restrictions on permissive power sharing is particularly important because it means that the question of statutory restrictions on the President's national security powers should for the most part be a political one, not a constitutional one. Congress has broad power to act, and the Court has not restrained it from doing so.

The problem is that Congress has refused to take effective action.

“Statutory and Judicial restrictions” are common phrases with war powers authority

Fisher 12 (Louis, Scholar in Residence at The Constitution Project; served for four decades at the Library of Congress, as Senior Specialist, Congressional Research Service, “Basic Principles of the War Power,” 2012 Journal of National Security Law & Policy 5 J. Nat'l Security L. & Pol'y 319)

Article II designates the President as Commander in Chief, but that title does not carry with it an independent authority to initiate war or act free of legislative control. Article II provides that the President "shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States." Congress, not the President, does the calling. Article I grants Congress the power to provide "for calling forth the Militia to execute the laws of the Union, suppress Insurrections, and repel invasions." Presidential use of the militia depends on policy enacted by Congress.

The Commander in Chief Clause is sometimes interpreted as an exclusive, plenary power of the President, free of statutory checks. It is not. Instead, it offers several protections for republican, constitutional government.

Importantly, it preserves civilian supremacy over the military. The individual leading the armed forces is an elected civilian, not a general or admiral. Attorney General Edward Bates in 1861 concluded that the President is Commander in Chief not because he is "skilled in the art of war and qualified to marshal a host in the field of battle." He possesses that title for a different reason. Whatever military officer leads U.S. forces against an enemy, "he is subject to the orders of the civil magistrate, and he and his army are always "subordinate to the civil power."

n23 Congress is an essential part of that civil power.

The Framers understood that the President may "repel sudden attacks," especially when Congress is out of session and unable to assemble quickly, but the power to take defensive actions does not permit the President to initiate wars and exercise the constitutional authority of Congress. President Washington took great care in instructing his military commanders that operations against Indians were to be limited to defensive actions. n24 Any offensive action required congressional authority. He wrote in 1793: "The Constitution vests the power of declaring war with Congress; therefore no offensive expedition of importance can be undertaken until after they have deliberated upon the subject, and authorized such a measure." n25

[*324] In 1801, President Jefferson directed that a squadron be sent to the Mediterranean to safeguard American interests against the Barbary pirates. On December 8, he informed Congress of his actions, asking lawmakers for further guidance. He said he was "unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense" It was up to Congress to

authorize "measures of offense also." n26 In 1805, after conflicts developed between the United States and Spain, Jefferson issued a public statement that articulates fundamental constitutional principles: "Congress alone is constitutionally invested with the power of changing our condition from peace to war." n27 In the Smith case of 1806, a federal circuit court acknowledged that if a foreign nation invades the United States, the President has an obligation to resist with force. But there was a "manifest distinction" between going to war with a nation at peace and responding to

an actual invasion: "In the former case, it is the exclusive province of congress to change a state of peace into a state of war." n28

The second value that the Founders embraced in the Commander-in-Chief Clause is accountability. Hamilton in Federalist No. 74 wrote that the direction of war "most peculiarly demands those qualities which distinguish the exercise of power by a single hand." The power of directing war and emphasizing the common strength "forms a usual and essential part in the definition of the executive authority." n29 Presidential leadership is essential but it cannot operate outside legislative control. The President is subject to the rule of law, including statutory and judicial restrictions.

Definition—Restriction

Restriction is a prohibition

Northglenn 11 (City of Northglenn Zoning Ordinance, “Rules of Construction – Definitions”, http://www.northglenn.org/municode/ch11/content_11-5.html)

Section 11-5-3. Restrictions. As used in this Chapter 11 of the Municipal Code, **the term "restriction" shall mean a prohibitive regulation. Any use, activity, operation, building, structure or thing which is the subject of a restriction is prohibited, and no such use, activity, operation, building, structure or thing shall be authorized by any permit or license**

Restrictions are prohibitions

Supreme Court of Delaware 83 (THE MAYOR AND COUNCIL OF NEW CASTLE, a municipal corporation of the State of Delaware, Plaintiff Below, Appellant, v. ROLLINS OUTDOOR ADVERTISING, INC., Defendant Below, Appellee, No. 155, 1983, 475 A.2d 355; 1984 Del. LEXIS 324, November 21, 1983, Submitted, April 2, 1984, Decided)

The term "restrict" is defined as: To restrain within bounds; to limit; to confine. Id. at 1182. The Supreme Court of the United States has recognized that HN5the term "regulate" necessarily entails a possible prohibition of some kind. That Court has stated: "It is an oft-repeated truism that every regulation necessarily speaks as a prohibition." Goldblatt v. Hempstead, 369 U.S. 590, 592, 8 L. Ed. 2d 130, 82 S. Ct. 987 (1962). The Supreme Court of Massachusetts in reviewing a statute containing language similar to that found in 22 Del.C. § 301 (which empowered municipalities to "regulate and restrict" outdoor advertising on public ways, in public places, and on private property within public view) **held that the statute in question authorized a town to provide, through amortization, for the elimination of nonconforming off-site signs five years from the time the ordinance was enacted.** The court held that the Massachusetts enabling act: Conferred on the Legislature plenary power to regulate and restrict outdoor advertising Although the word "prohibit" was omitted from [the enabling act], **it was recognized that the unlimited and unqualified power to regulate and restrict can be, for practical purposes, the power to prohibit** [*10] **"because under such power the thing may be so far restricted that there is nothing left of it."** (Citations omitted.) The court continued its discussions of the two terms by stating: The distinction between regulation and outright prohibition is often considered to be a narrow one: "that regulation may take the character of prohibition, in proper cases, is well established by the decisions of this court" . . . quoting from United States v. Hill, 248 U.S. 420, 425, 63 L. Ed. 337, 39 S. Ct. 143 (1919). John Donnelly and Sons, Inc. v. Outdoor Advertising Board, Mass. Supr., 369 Mass. 206, 339 N.E.2d 709 (1975). We hold that, through Article II, Section 25 of the Delaware Constitution and 22 Del.C. § 301, the General Assembly has authorized New Castle to terminate nonconforming off-site signs upon reasonable notice, that is, by what has come to be known as amortization. We hold that the power to "regulate and restrict" as such term applies to zoning matters includes the power, upon reasonable notice, to prohibit some of those uses already in existence.

Restrict doesn't mean prohibit—it also could mean to limit

Coffey, 82 - US Circuit Judge, dissenting (VICTOR D. QUILICI, ROBERT STENGL, et al., GEORGE L. REICHERT, and ROBERT E. METLER, Plaintiffs-Appellants, v. VILLAGE OF MORTON GROVE, et al., Defendants-Appellees Nos. 82-1045, 82-1076, 82-1132 UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT 695 F.2d 261; 1982 U.S. App. LEXIS 23560, lexis)

Pursuant to section 83, a municipality can enact an ordinance reasonably restricting or confining the use and possession of firearms. A municipality can also require registration of firearm ownership. What the legislature has authorized is limited regulation of firearm possession by local units of government, but not prohibition. Section 83 does not allow a municipality such as Morton Grove to categorically prohibit handgun possession. [**35] **To limit or restrict involves a circumscription which falls far short of an absolute prohibition.** **"The words 'prohibit' and 'restrict' are not synonymous.** They are not alike in their meaning in their ordinary use **"To restrict is to restrain within bounds; to limit; to confine and does not mean to destroy or prohibit."**

Restriction is a limit on the use or availability –

SIEGEL 02 Senior Counsel, Legal Department, International Monetary Fund [Deborah E. Siegel, LEGAL ASPECTS OF THE IMF/WTO RELATIONSHIP: THE FUND'S ARTICLES OF AGREEMENT AND THE WTO AGREEMENTS, THE AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol. 96:561]

Second, the exercise of Fund jurisdiction over exchange restrictions does not by itself help eliminate trade restrictions. As discussed in part V, the Fund defines exchange restrictions for purposes of its jurisdiction in a limited fashion: "The guiding principle in ascertaining whether a measure is a restriction on payments and transfers for current transactions under Article VIII, Section 2, is whether it involves a direct governmental limitation on the availability or use of exchange as such."²² The Fund therefore identifies an exchange restriction by this technical criterion, rather than by the purposes or economic effect of the restriction; otherwise, there would be no way of distinguishing between trade and exchange restrictions, as both may be used to achieve the same purposes and have the same economic effect. Thus, while a restriction on payments for particular imports is covered by Fund jurisdiction, an outright ban on the imports (i.e., the underlying transaction) is not.²³ Fund members are obliged to avoid restrictions that are not maintained consistently with the Fund's Articles, but the Articles impose no such obligation with respect to trade restrictions.

Definition—War Power Authority

The “war powers authority” of the President is their Commander-in-Chief authority

Gallagher, Pakistan/Afghanistan coordination cell of the U.S. Joint Staff, Summer **2011**

(Joseph, “Unconstitutional War: Strategic Risk in the Age of Congressional Abdication,” *Parameters*, <http://strategicstudiesinstitute.army.mil/pubs/parameters/Articles/2011summer/Gallagher.pdf>)

First, consider the constitutional issue of power imbalance. Central to the Constitution is the foundational principle of power distribution and provisions to check and balance exercises of that power. This clearly intended separation of powers across the three branches of government ensures that no single federal officeholder can wield an inordinate amount of power or influence. The founders carefully crafted constitutional war-making authority with the branch most representative of the people—Congress.⁴

The Federalist Papers No. 51, “The Structure of Government Must Furnish the Proper Checks and Balances Between the Different Departments,” serves as the wellspring for this principle. Madison insisted on the necessity to prevent any particular interest or group to trump another interest or group.⁵ This principle applies in practice to all decisions of considerable national importance. **Specific to**

war powers authority, the Constitution empowers the legislative branch with the authority to declare war but endows the Executive with the authority to act as

Commander-in-Chief.⁶ This construct designates Congress, not the president, as the primary decisionmaking body to commit the nation to war—a decision that ultimately requires the consent and will of the people in order to succeed. By vesting the decision to declare war with Congress, the founders underscored their intention to engage the people—those who would ultimately sacrifice their blood and treasure in the effort.

Definition—Power

Power is what the president may do not what the president can do

Ellen **Taylor 96**, 21 Del. J. Corp. L. 870 (1996), Hein Online

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.⁸⁹ **Power refers to an agent's ability or capacity to produce a change** in a legal relation (whether or not the principal approves of the change), **and authority refers to the power given (permission granted) to the agent** by the principal to affect the legal relations of the principal; **the distinction is between what the agent can do and what the agent may do.**

Definition—Anticipatory Self-Defense

Power not to wait for enemy to strike. Stems from Article II’s “repel sudden attacks” power.

Dakota S. **Rudesill 24**, Associate Professor of Law at the Moritz College of Law at The Ohio State University, “Presidential war power beyond its outer limits”, *Center for Ethics and the Rule of Law, University of Pennsylvania*, <https://www.penncenter.org/the-rule-of-law-post/presidential-war-power-beyond-its-outer-limits/>, February 15, 2024

C. No anticipatory self-defense presidential authority

The idea is contested, but an anticipatory self-defense prerogative—that is, **the power not to wait for the enemy’s imminent first blow to land**—logically flows from the Article II “repel sudden attacks” power. In view of Congress’ Article I power to “declare War,” that theory requires a good faith presidential judgement of true **imminence** of foreign attack and **necessity** of striking first: there is no real possibility of avoiding combat, there is only a fleeting opportunity to preempt and thereby block or mitigate the incoming foreign assault, and there is no time to go to Congress.

Actions that are deemed “anticipatory self-defense” must meet the Caroline Doctrine.

Major Megan C. **Mallone*** and Captain Christine E. **Seibert 18****, *607 Air Operations Center, Legal Advisor, Osan AB, Republic of Korea; University of Toledo College of Law, Member of the Missouri Bar Association, and **Augmentee to 607 AOC Legal Advisor/11th Air Force Legal Office, Salmon P. Chase College of Law, Member of the Kentucky Bar Association, “Anticipatory Self-Defense”, *JAG Reporter*, <https://www.jagreporter.af.mil/Post/Article-View-Post/Article/2549128/anticipatory-self-defense/#:~:text=and%20military%20leaders.-,THE%20CAROLINE%20DOCTRINE,to%20move%20resources%20and%20personnel.,> December 13, 2018

THE CAROLINE DOCTRINE

In order to fully understand anticipatory self-defense, it is necessary to review the origin of the Caroline legal doctrine.

The doctrine arose in 1837 after a tense diplomatic incident between Britain and the U.S. during the Canadian Independence Movement.[8] The Caroline was a U.S. flagged steamer vessel owned and operated in the U.S. which regularly entered U.S. ports for extended periods of time. The Canadian Independence Movement had been fighting the British for increased democratic processes and a reduction in corruption. Canadian troops had been using the Caroline to move resources and personnel. Following a battle, the Canadians used the Caroline to retreat to Navy Island, outside of what is now Ontario. After dropping off the Canadian forces, the Caroline travelled back to Schlosser Port in New York and remained there overnight. British forces identified the ship as assisting the Canadian troops and planned an attack on the night of 29 December 1837, while it was in the New York port.[9] It is unclear whether the British knew that 23 U.S. citizens had boarded the vessel to stay the night.[10] On 29 December 1837, British troops, on order by their superiors, attacked the Caroline, set it on fire, and sent the vessel over Niagara Falls.[11] The U.S. immediately condemned the attack, claiming neutrality in the battle between the Canadian Independence Movement and Britain.[12] Further, the U.S. demanded prosecution of the perpetrators and reparations for the destruction of the vessel.[13] In response, Britain claimed any U.S. citizens or property used to support the Canadian Independence Movement are no longer neutral.[14] Additionally, even though the Caroline was on U.S. sovereign territory, Britain asserted what is now known as anticipatory self-defense.[15] The U.S. claimed that in order to be entitled to use self-defense, there must be an “instant and overwhelming” need to defend, leaving no other means to defend oneself, and no moment for deliberation.[16] Additionally the U.S. claimed the actions must be proportional and avoid unreasonable or excessive actions.[17] Britain ultimately asserted that the Caroline was an immediate and overwhelming threat due to its assistance to the Canadian Independence Movement and the only option was to destroy the vessel while it was in a U.S. port.[18] While the question of whether Britain

truly faced an instant and overwhelming threat remained unresolved between Britain and the U.S. for many years, the Caroline doctrine and the rule of anticipatory self-defense became prevailing legal doctrine in the international community. Today, just as in 1837, the elements of anticipatory self-defense require an imminent threat that is instant and overwhelming, leaving no moment for deliberation, and requiring a necessary and proportional response.[19]

Definition—Private Military Company

PMCs are private business that provide military services.

McKinney Voss **Wheeler 21**, Law Clerk to the Honorable Stephen Alexander Vaden, United States Court of International Trade, “Private Military Contractors: The Armed Forces Absent from the War Powers Resolution”, *12 Nat’l Sec. L. Brief 1 (2021)*, HeinOnline, 2021,

A brief explanation of terms is necessary to set the stage. Though definitions for what constitutes PMCs vary, the most authoritative is the one adopted by international agreement in the Montreux Document in 2008, and this is the definition accepted by this Article.¹⁵ According to the Montreux Document, PMCs

are private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.”

While PMCs may conceptually resemble the traditional perceptions of mercenaries (both could be casually referred to as “hired guns”), mercenaries are specifically defined by the 1977 Additional Protocol to the 1949 Geneva Convention as individual soldiers who are primarily motivated by financial gain substantially in excess of what they might be paid by a national army. ¹⁷ In this way, mercenaries differ both in intent and form from the companies or businesses that constitute PMCs. Though some of the sources referenced by this Article may less precisely conflate PMCs and mercenaries, this Article focuses on PMCs, the security companies that contract with governments or other groups to provide military assistance-not on the individual (and traditionally less reputable) hired soldiers who are mercenaries.

Definition—Targeted Killing

Targeted killings are strikes carried out against pre-meditated, individually designated targets---signature strikes are distinct

Kenneth **Anderson 11**, Professor at Washington College of Law, American University, Hoover Institution visiting fellow, Non-Resident Visiting Fellow at Brookings, “Distinguishing High Value Targeted Killing and ‘Signature’ Attacks on Taliban Fighters,” August 29 2011, <http://www.volokh.com/2011/08/29/distinguishing-high-value-targeted-killing-and-signature-attacks-on-taliban-fighters/>

From the US standpoint, it is partly that it does not depend as much as it did on Pakistan’s intelligence. But it is also partly, as a couple of well-publicized incidents a few months ago made clear, that sharing targeting decisions with Pakistan’s military and ISI runs a very considerable possibility of having the targets tipped off (as even The Onion has observed). The article notes in this regard, the U.S. worries that “if they tell the Pakistanis that a drone strike is coming someone within Pakistani intelligence could tip off the intended target.” However, the Journal’s reporting goes from there to emphasize an aspect of targeted killing and drone warfare that is not sufficiently appreciated in public discussions trying to assess such issues as civilian collateral damage, strategic value and uses, and the uses of drones in counterterrorism and counterinsurgency as distinct activities. The article explains:¶ The CIA carries out two different types of drone strikes in the tribal areas of Pakistan—those against so-called high-value targets, including Mr. Rahman, and “signature” strikes targeting Taliban foot-soldiers who criss-cross the border with Afghanistan to fight U.S. forces there.¶ High-value targets are added to a classified list that the CIA maintains and updates. The agency often doesn’t know the names of the signature targets, but it tracks their movements and activities for hours or days before striking them, U.S. officials say.¶ Another way to put this is that, loosely speaking, the high value targets are part of a counterterrorism campaign – a worldwide one, reaching these days to Yemen and other places. It is targeted killing in its strict sense using drones – aimed at a distinct individual who has been identified by intelligence. The “signature” strikes, by contrast, are not strictly speaking “targeted killing,” because they are aimed at larger numbers of fighters who are targeted on the basis of being combatants, but not on the basis of individuated intelligence. They are fighting formations, being targeted on a mass basis as part of the counterinsurgency campaign in Afghanistan, as part of the basic CI doctrine of closing down cross-border safe havens and border interdiction of fighters. Both of these functions can be, and are, carried out by drones – though each strategic function could be carried out by other means, such as SEAL 6 or CIA human teams, in the case of targeted killing, or manned aircraft in the case of attacks on Taliban formations. The fundamental point is that they serve distinct strategic purposes. Targeted killing is not synonymous with drone warfare, just as counterterrorism is analytically distinct from counterinsurgency. (I discuss this in the opening sections of this draft chapter on SSRN.)¶ This analytic point affects how one sees the levels of drone attacks going up or down over the years. Neither the total numbers of fighters killed nor the total number of drone strikes – going up or down over months – tells the whole story. Total numbers do not distinguish between the high value targets, being targeted as part of the top down dismantling of Al Qaeda as a transnational terrorist organization, on the one hand, and ordinary Taliban being killed in much larger numbers as part of counterinsurgency activities essentially part of the ground war in Afghanistan, on the other. Yet the distinction is crucial insofar as the two activities are, at the level of truly grand strategy, in support of each other – the war in Afghanistan and the global counterterrorism war both in support of the AUMF and US national security broadly – but at the level of ordinary strategic concerns, quite distinct in their requirements and conduct. If targeted killing against AQ leadership goes well in Pakistan, those might diminish at some point in the future; what happens in the war against the Afghan Taliban is distinct and has its own rhythm, and in that effort, drones are simply another form of air weapon, an alternative to manned aircraft in an overt, conventional war. Rising or falling numbers of drone strikes in the aggregate will not tell one very much without knowing what mission is at issue.

Definition—Armed Forces

US Armed Forces = DOD components

Farlex 13 The Free Dictionary By Farlex, "United States Armed Forces," Accessed 7-23, <http://www.thefreedictionary.com/United+States+Armed+Forces>

Used to denote collectively **only the regular components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.** See also Armed Forces of the United States.

“Armed forces” are military personnel

Lorber, JD University of Pennsylvania, January **2013**

(Eric, “Executive Warmaking Authority and Offensive Cyber Operations: Can Existing Legislation Successfully Constrain Presidential Power?” 15 U. Pa. J. Const. L. 961, Lexis)

As discussed above, critical to the application of the War Powers Resolution - especially in the context of an offensive cyber operation - are **the definitions of key terms, particularly "armed forces,"** as the relevant provisions of the Act are only triggered if the President "introduces armed forces] into hostilities or into situations [of] imminent ... hostilities," n172 or if such forces are introduced "into the territory, airspace, or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces." n173 The requirements may also be triggered if the United States deploys armed forces "in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation." n174 As is evident, the definition of "armed forces" is crucial to deciphering whether the WPR applies in a particular circumstance to provide congressional leverage over executive actions. The definition of "hostilities," which has garnered the majority of scholarly and political attention, n175 particularly in the recent Libyan conflict, n176 will be dealt with secondarily here because it only becomes important if "armed forces" exist in the situation. As is evident from a textual analysis, n177 an examination of the legislative history, n178 and the broad policy purposes behind the creation of the Act, n179 [*990] **"armed forces" refers to U.S. soldiers and members of the armed forces, not weapon systems or capabilities** such as offensive cyber weapons. Section 1547 does not specifically define "armed forces," but it states that "the term "introduction of United States Armed Forces' includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government." n180 While this definition pertains to the broader phrase "introduction of armed forces," the clear implication is that **only members of the armed forces count for** the purposes of the definition under the WPR. Though not dispositive, the term "member" connotes a human individual who is part of an organization. n181 Thus, it appears that the term "armed forces" means human members of the United States armed forces. However, there exist two potential complications with this reading. First, the language of the statute states that "the term "introduction of United States Armed Forces' includes the assignment of members of such armed forces." n182 By using inclusionary - as opposed to exclusionary - language, one might argue that the term "armed forces" could include more than members. This argument is unconvincing however, given that a core principle of statutory interpretation, expressio unius, suggests that expression of one thing (i.e., members) implies the exclusion of others (such as non-members constituting armed forces). n183 Second, the term "member" does not explicitly reference "humans," and so could arguably refer to individual units and beings that are part of a larger whole (e.g., wolves can be members of a pack). As a result, though a textual analysis suggests that "armed forces" refers to human members of the armed forces, such a conclusion is not determinative. An examination of the legislative history also suggests that Congress clearly conceptualized "armed forces" as human members of the armed forces. For example, disputes over the term "armed forces" revolved around who could be considered members of the armed forces, not what constituted a member. Senator Thomas Eagleton, one of the Resolution's architects, proposed an amendment during the process providing that the Resolution cover military officers on loan to a civilian agency (such as the Central [*991] Intelligence Agency). n184 This amendment was dropped after encountering pushback, n185 but the debate revolved around whether those military individuals on loan to the civilian agency were still members of the armed forces for the purposes of the WPR, suggesting that Congress considered the term to apply only to soldiers in the armed forces. Further, during the congressional hearings, the question of deployment of "armed forces" centered primarily on past U.S. deployment of troops to combat zones, n186 suggesting that Congress conceptualized "armed forces" to mean U.S. combat troops.

Excludes law enforcement units

Raven-Hansen, professor of law at George Washington University, December **1998**

(Peter, "The War Powers Resolution: Origins, History, Criticism and Reform: Chapter 2: Scope of the War Powers Resolution: Section 2," 2 J. Nat'l Security L. 23, Lexis)

Law Enforcement Operations

Presumably, overseas law enforcement is principally conducted by small contingents of DEA agents or other civilian police forces, armed with sidearms or light automatic weapons. WPR uncertainty arises when U.S. Navy combat vessels are used on the high seas to interdict suspected shipping and when U.S. military forces augment DEA agents or civilian or foreign police units.

Despite theoretical uncertainties, however, the WPR has been ignored in this area. Therefore, considering the general lack of reaction from Congress, it is unlikely that the WPR's provisions cover small military detachments operating with the consent of foreign governments in their territory against nonmilitary foes. Additionally, although the forces involved may be "likely to incur or inflict casualties,"ⁿ¹⁰⁶ their purpose is not to engage in any form of open warfare against another sovereign nation or political group. In view of the legislative history of the WPR, law enforcement operations are not what Congress envisioned when it used the word "hostilities."ⁿ¹⁰⁷

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