AMENDMENT TO RULES COMM. PRINT 115–70
OFFERED BY MR. DAVIDSON OF OHIO

Add at the end of subtitle F of title XII the following:

SEC. 12. SENSE OF CONGRESS REGARDING CONGRESSIONAL AUTHORIZATION OR A DECLARATION OF WAR FOR THE ARMED FORCES TO ENGAGE IN HOSTILITIES.

(a) FINDINGS.—Congress finds the following:

(1) The Constitution establishes the legal foundation for the National Government of the United States.

(2) Article I, section 8, clause 3, vests the following powers, among others, related to foreign affairs in a Congress of the United States:

(A) “To regulate Commerce with foreign Nations.”.

(B) “To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations.”.

(C) “To declare War, grant letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water.”.
(D) “To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years.”.

(E) “To provide and maintain a Navy.”.

(F) “To make Rules for the Government and Regulation of the land and naval Forces.”.

(G) “To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.”.

(H) “To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.”.

(I) “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”.

(3) Article I, section 10, clause 3, states that, “No State shall . . . engage in War, unless actually
invaded, or in such imminent Danger as will not admit of delay.”.

(4) Article II establishes the following powers and duties, among others, related to foreign affairs of the President of the United States:

(A) “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 actual Service of the United States.”.

(B) “He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate shall appoint Ambassadors.”.

(C) “He shall . . . recommend to their Consideration such Measures as he shall judge necessary and expedient; . . . he shall receive Ambassadors and other public Ministers; he shall take care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.”.

(5) Article IV, section 4, states that, “The United States shall guarantee to every State in this
Union a Republican Form of Government, and shall protect each of them against invasion.”.

(6) Article V establishes the processes by which the Constitution may be amended.

(7) No constitutional amendment has substantially altered the provisions described in this subsection.

(8) Broad principles comprise most of the language in the Constitution.

(9) Statutory law is the primary mechanism for establishing the “necessary and proper” instructions for putting constitutional principles into practice.

(10) A general practice of statutory construction is to establish broad objectives and standards with other provisions subsidiary to them and in their context, unless explicitly stated otherwise.

(11) A treaty is the primary mechanism for establishing claims, obligations, and expectations between nations.

(12) Precedents established by decisions of Federal courts under Article III further clarify the application of the Constitution, of treaties, and of laws.

(13) Article VI, clause 2, states that, “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all
Treaties made, or which shall be made, under the
Authority of the United States, shall be the supreme
Law of the Land.”.

(14) The War Powers Resolution (WPR) is the
statutory implementation of Congress’ power to de-
clare war and the President’s power to conduct it.

(15) Section 2(a) of the WPR (50 U.S.C.
1541(a)) declares the purpose of the legislation to
implement the intent of the Constitution’s drafters
regarding the respective war powers of Congress and
the President.

(16) Section 2(b) of the WPR affirms Congress’
power over legislation implementing all provisions of
the Constitution.

(17) Section 2(c) of the WPR states that “The
constitutional powers of the President as Com-
mander-in-Chief to introduce United States Armed
Forces into hostilities, or into situations where im-
minent involvement in hostilities is clearly indicated
by the circumstances, are exercised only pursuant to
(1) a declaration of war, (2) specific statutory au-
thorization, or (3) a national emergency created by
attack upon the United States, its territories or pos-
sessions, or its armed forces.”.
Section 5 of the WPR (50 U.S.C. 1544) requires that “Within sixty calendar days . . . the President shall terminate any use of United States Armed Forces . . . unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States.”.

Section 5 of the WPR remains limited by the requirements of section 2 that authorize the use of force only pursuant to a declaration of war, a congressional authorization for the use of military force, or an attack upon United States property or persons, and it does not constitute independent authority for the President to prosecute discretionary armed conflict for any period.

Section 8(a) of the WPR (50 U.S.C. 1547(a)) disallows any inference from any provision of law or treaty that the President is authorized to enter the Armed Forces into hostilities, except for a specific statutory authorization as defined in the WPR.
(21) Section 8(d) of the WPR states that the WPR does not expand the President’s authorities beyond those present in the Constitution.


(23) The 2001 AUMF authorized the President to “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons”.


(25) The Iraq AUMF authorized the President to—
“(1) defend the national security of the United States against the continuing threat posed by Iraq; and

“(2) enforce all relevant United Nations Security Council resolutions regarding Iraq.”.


(27) The Islamic State is a new threat to regional stability and offends global norms of decency and civilization, including to United States persons and property.

(28) Experts disagree whether the Islamic State is a closely related successor to the perpetrators of the September 11, 2001, attacks on the United States.

(29) Approximately 95 current members of the House of Representatives (22 percent) and approximately 36 current members of the Senate were present for votes on the 2001 AUMF or the Iraq AUMF.

(30) Accountability to the American people requires periodic review of and updates to authorities provided and instructions given to the executive branch.
(b) **SENSE OF CONGRESS.**—It is the sense of Congress that—

1. the Constitution requires congressional authorization for the Armed Forces to engage in hostilities, except to repel an attack or invasion;

2. the War Powers Resolution requires congressional authorization or a declaration of war for the Armed Forces to engage in hostilities, except to repel an attack or invasion;

3. the 2001 AUMF and the Iraq AUMF are sufficiently remote in time, mission, and membership of Congress that their legal authority has become uncertain;

4. the American people deserve representation on issues of war and peace through their elected members of Congress;

5. Congress is morally obliged to take responsibility for difficult policy decisions, including those that burden American taxpayers and especially those that endanger American service members and foreign innocents;

6. Congress should authorize the use of military force, or declare war, against the Islamic State, if Congress believes that defeating the Islamic State improves the national security of the United States.
and that the Armed Forces are an appropriate contribution to its defeat;

(7) the President should insist on the propriety of congressional authorization for conducting or supporting operations against the Islamic State; and

(8) each set of circumstances requiring an authorization for the use of military force properly deserves a separate authorization from Congress.