

AMENDMENT TO RULES COMM. PRINT 116-19

OFFERED BY MR. DAVIDSON OF OHIO

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

1 **SEC. 12 ____ . SENSE OF CONGRESS REGARDING CONGRES-**
2 **SIONAL AUTHORIZATION OR A DECLARATION**
3 **OF WAR FOR THE ARMED FORCES TO EN-**
4 **GAGE IN HOSTILITIES.**

5 (a) FINDINGS.—Congress finds the following:

6 (1) The Constitution establishes the legal foun-
7 dation for the National Government of the United
8 States.

9 (2) Article I, section 8, clause 3, vests the fol-
10 lowing powers, among others, related to foreign af-
11 fairs in a Congress of the United States:

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

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

17 (C) “To declare War, grant letters of
18 Marque and Reprisal, and make Rules con-
19 cerning Captures on Land and Water.”.

1 (D) “To raise and support Armies, but no
2 Appropriation of Money to that Use shall be for
3 a longer Term than two Years.”.

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

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

7 (G) “To provide for calling forth the Mili-
8 tia to execute the Laws of the Union, suppress
9 Insurrections and repel Invasions.”.

10 (H) “To provide for organizing, arming,
11 and disciplining, the Militia, and for governing
12 such Part of them as may be employed in the
13 Service of the United States, reserving to the
14 States respectively, the Appointment of the Of-
15 ficers, and the Authority of training the Militia
16 according to the discipline prescribed by Con-
17 gress.”.

18 (I) “To make all Laws which shall be nec-
19 essary and proper for carrying into Execution
20 the foregoing Powers, and all other Powers
21 vested by this Constitution in the Government
22 of the United States, or in any Department or
23 Officer thereof.”.

24 (3) Article I, section 10, clause 3, states that,
25 “No State shall . . . engage in War, unless actually

1 invaded, or in such imminent Danger as will not
2 admit of delay.”.

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

6 (A) “The President shall be Commander in
7 Chief of the Army and Navy of the United
8 States, and of the Militia of the several States,
9 when called into actual Service of the United
10 States.”.

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

17 (C) “He shall . . . recommend to their
18 Consideration such Measures as he shall judge
19 necessary and expedient; . . . he shall receive
20 Ambassadors and other public Ministers; he
21 shall take care that the Laws be faithfully exe-
22 cuted, and shall Commission all the Officers of
23 the United States.”.

24 (5) Article IV, section 4, states that, “The
25 United States shall guarantee to every State in this

1 Union a Republican Form of Government, and shall
2 protect each of them against invasion.”.

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

5 (7) No constitutional amendment has substan-
6 tially altered the provisions described in this sub-
7 section.

8 (8) Broad principles comprise most of the lan-
9 guage in the Constitution.

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

13 (10) A general practice of statutory construc-
14 tion is to establish broad objectives and standards
15 with other provisions subsidiary to them and in their
16 context, unless explicitly stated otherwise.

17 (11) A treaty is the primary mechanism for es-
18 tablishing claims, obligations, and expectations be-
19 tween nations.

20 (12) Precedents established by decisions of Fed-
21 eral courts under Article III further clarify the ap-
22 plication of the Constitution, of treaties, and of laws.

23 (13) Article VI, clause 2, states that, “This
24 Constitution, and the Laws of the United States
25 which shall be made in Pursuance thereof; and all

1 Treaties made, or which shall be made, under the
2 Authority of the United States, shall be the supreme
3 Law of the Land.”.

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

7 (15) Section 2(a) of the WPR (50 U.S.C.
8 1541(a)) declares the purpose of the legislation to
9 implement the intent of the Constitution’s drafters
10 regarding the respective war powers of Congress and
11 the President.

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

15 (17) Section 2(c) of the WPR states that “The
16 constitutional powers of the President as Com-
17 mander-in-Chief to introduce United States Armed
18 Forces into hostilities, or into situations where im-
19 minent involvement in hostilities is clearly indicated
20 by the circumstances, are exercised only pursuant to
21 (1) a declaration of war, (2) specific statutory au-
22 thorization, or (3) a national emergency created by
23 attack upon the United States, its territories or pos-
24 sessions, or its armed forces.”.

1 (18) Section 5 of the WPR (50 U.S.C. 1544)
2 requires that “Within sixty calendar days . . . the
3 President shall terminate any use of United States
4 Armed Forces . . . unless the Congress (1) has de-
5 clared war or has enacted a specific authorization
6 for such use of United States Armed Forces, (2) has
7 extended by law such sixty-day period, or (3) is
8 physically unable to meet as a result of an armed at-
9 tack upon the United States.”.

10 (19) Section 5 of the WPR remains limited by
11 the requirements of section 2 that authorize the use
12 of force only pursuant to a declaration of war, a con-
13 gressional authorization for the use of military force,
14 or an attack upon United States property or per-
15 sons, and it does not constitute independent author-
16 ity for the President to prosecute discretionary
17 armed conflict for any period.

18 (20) Section 8(a) of the WPR (50 U.S.C.
19 1547(a)) disallows any inference from any provision
20 of law or treaty that the President is authorized to
21 enter the Armed Forces into hostilities, except for a
22 specific statutory authorization as defined in the
23 WPR.

1 (21) Section 8(d) of the WPR states that the
2 WPR does not expand the President’s authorities
3 beyond those present in the Constitution.

4 (22) The Authorization for Use of Military
5 Force (2001 AUMF) became Public Law 107–40 on
6 September 18, 2001, following a Senate vote of 98-
7 0 and a House of Representatives vote of 420-1.

8 (23) The 2001 AUMF authorized the President
9 to “use all necessary and appropriate force against
10 those nations, organizations, or persons he deter-
11 mines planned, authorized, committed, or aided the
12 terrorist attacks that occurred on September 11,
13 2001, or harbored such organizations or persons, in
14 order to prevent any future acts of international ter-
15 rorism against the United States by such nations,
16 organizations or persons”.

17 (24) The Authorization for Use of Military
18 Force Against Iraq Resolution of 2002 (Iraq
19 AUMF) became Public Law 107–243 on October
20 16, 2002, following a House of Representatives vote
21 of 296-133 and a Senate vote of 77-23.

22 (25) The Iraq AUMF authorized the President
23 to—

1 “(1) defend the national security of the United
2 States against the continuing threat posed by Iraq;
3 and

4 “(2) enforce all relevant United Nations Secu-
5 rity Council resolutions regarding Iraq.”.

6 (26) The Government of Iraq referenced in the
7 Iraq AUMF ceased to exist on April 9, 2003.

8 (27) The Islamic State is a new threat to re-
9 gional stability and offends global norms of decency
10 and civilization, including to United States persons
11 and property.

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

16 (29) Approximately 95 current members of the
17 House of Representatives (22 percent) and approxi-
18 mately 36 current members of the Senate were
19 present for votes on the 2001 AUMF or the Iraq
20 AUMF.

21 (30) Accountability to the American people re-
22 quires periodic review of and updates to authorities
23 provided and instructions given to the executive
24 branch.

1 (b) SENSE OF CONGRESS.—It is the sense of Con-
2 gress that—

3 (1) the Constitution requires congressional au-
4 thorization for the Armed Forces to engage in hos-
5 tilities, except to repel an attack or invasion;

6 (2) the War Powers Resolution requires con-
7 gressional authorization or a declaration of war for
8 the Armed Forces to engage in hostilities, except to
9 repel an attack or invasion;

10 (3) the 2001 AUMF and the Iraq AUMF are
11 sufficiently remote in time, mission, and membership
12 of Congress that their legal authority has become
13 uncertain;

14 (4) the American people deserve representation
15 on issues of war and peace through their elected
16 members of Congress;

17 (5) Congress is morally obliged to take respon-
18 sibility for difficult policy decisions, including those
19 that burden American taxpayers and especially those
20 that endanger American service members and for-
21 eign innocents;

22 (6) Congress should authorize the use of mili-
23 tary force, or declare war, against the Islamic State,
24 if Congress believes that defeating the Islamic State
25 improves the national security of the United States

1 and that the Armed Forces are an appropriate con-
2 tribution to its defeat;

3 (7) the President should insist on the propriety
4 of congressional authorization for conducting or sup-
5 porting operations against the Islamic State; and

6 (8) each set of circumstances requiring an au-
7 thorization for the use of military force properly de-
8 serves a separate authorization from Congress.

