

AMENDMENT TO RULES COMMITTEE PRINT 116-

19

OFFERED BY MS. GABBARD OF HAWAII

At the end of subtitle G of title XII, add the following new section:

1 **SEC. 12___ . SENSE OF CONGRESS ON PRESIDENTIAL WAR**
2 **MATTERS.**

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

4 (1) Presidential wars not declared by Congress
5 under article I, section 8, clause 11 are the most fla-
6 grant and dangerous of Presidential usurpations.

7 (2) James Madison, father of the Constitution,
8 wrote: “[T]he Legislature can alone declare war, can
9 alone actually transfer the nation from a state of
10 peace to a state of hostility”.

11 (3) President George Washington, who had pre-
12 sided over the Constitutional Convention and sup-
13 ported the Declare War Clause, elaborated during
14 his service in office: “The Constitution vests the
15 power of declaring war with Congress; therefore, no
16 offensive expedition of importance can be under-
17 taken until after they have deliberated on the sub-
18 ject and authorized such a measure.”

1 (4) Chief Justice of the United States John
2 Marshall taught that, “The whole powers of war
3 being, by the Constitution of the United States, vest-
4 ed in Congress, the acts of that body can alone be
5 resorted to as our guides in this inquiry”.

6 (5) Senator Daniel Webster, the foremost con-
7 stitutional advocate of his era, maintained that
8 President James K. Polk should have been im-
9 peached for beginning a presidential war against
10 Mexico.

11 (6) Senator Henry Clay, a renowned constitu-
12 tional lawyer, explained: “A declaration of war is the
13 highest and most awesome exercise of sovereignty.
14 The Convention which framed our federal constitu-
15 tion had learned from the pages of history. . .that
16 such a vast and tremendous power ought not to be
17 confided to the perilous exercise of one single man.
18 The Convention, therefore, resolved. . .to vest the
19 war-making power in the Congress”.

20 (7) Presidential wars saddle the people with
21 multitrillion dollar indebtedness, diverts national ge-
22 nius from production to destruction, cripples liberty,
23 silences the law, awakens enemies, and provokes
24 blowback in the United States.

1 (8) The absence of impeachment standards cre-
2 ates an appearance that impeachment is a partisan
3 exercise, which undermines its legitimacy and deters
4 its use.

5 (9) The absence of definitions of war and co-
6 belligerency for purposes of the Declare War Clause
7 undermines its enforcement through the impeach-
8 ment process or otherwise.

9 (10) The law should warn before it strikes.

10 (11) Article I, section 2, clause 5 of the Con-
11 stitution provides that, “The House of Representa-
12 tives . . . shall have the sole Power of Impeach-
13 ment”.

14 (12) The impeachment power of the House of
15 Representatives is a cornerstone safeguard against
16 Presidential tyranny.

17 (13) The past neglect of the House of Rep-
18 resentatives to use the impeachment power against
19 Presidential usurpations and lawlessness has con-
20 centrated alarming power in the executive branch,
21 crippled liberty, undermined transparency, and en-
22 couraged Presidents to further aggrandizements.

23 (14) Article II, section 4 of the Constitution
24 provides that, “The President, Vice President and
25 all civil Officers of the United States, shall be re-

1 moved from Office on Impeachment for, and Convic-
2 tion of, Treason, Bribery, or other high Crimes and
3 Misdemeanors”.

4 (15) The Constitutional Convention rejected
5 “neglect of duty” or “maladministration” as im-
6 peachment standards in favor of “high crimes and
7 misdemeanors” because the former terms were too
8 broad.

9 (16) Impeachable “high crimes and mis-
10 demeanors” has an objective meaning based on the
11 intent of the Constitution’s Framers and British im-
12 peachment precedents.

13 (17) Alexander Hamilton in Federalist 65 ex-
14 plained that impeachable offenses “proceed from the
15 misconduct of public men, or, in other words, from
16 the abuse or violation of some public trust. They are
17 of a nature which may with peculiar propriety be de-
18 nominated POLITICAL, as they relate chiefly to in-
19 juries done immediately to the society itself”.

20 (18) House of Representatives has voted Arti-
21 cles of Impeachment against two Presidents, one
22 Cabinet officer, one Senator, one Supreme Court
23 Justice, and 14 Federal judges without providing a
24 general standard for defining an impeachable of-
25 fense.

1 (19) Every participant in the drafting, debat-
2 ing, and ratifying of the Constitution understood
3 that the Declare War Clause prohibited Presidential
4 wars and entrusted exclusively to Congress the sol-
5 emn responsibility for deciding whether the Nation
6 should cross the Rubicon from a state of peace to
7 a state of war.

8 (b) SENSE OF CONGRESS.—It is the sense of Con-
9 gress that it is a high crime and misdemeanor within the
10 meaning of article II, section 4 of the Constitution to use
11 the Armed Forces offensively against a state or non-state
12 actor unless such force is being used in self defense or
13 pursuant to a prior congressional declaration of war or
14 specific statutory authorization by which Congress inde-
15 pendently decides to take the Nation from a state of peace
16 to a state of war or lesser hostilities against an identified
17 enemy.

