AMENDMENT TO RULES COMMITTEE PRINT 116–19

OFFERED BY MS. GABBARD OF HAWAI’I

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

SEC. 12. SENSE OF CONGRESS ON PRESIDENTIAL WAR MATTERS.

(a) FINDINGS.—Congress finds the following:

(1) Presidential wars not declared by Congress under article I, section 8, clause 11 are the most flagrant and dangerous of Presidential usurpations.

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

(3) President George Washington, who had presided over the Constitutional Convention and supported the Declare War Clause, elaborated during his service in office: “The Constitution vests the power of declaring war with Congress; therefore, no offensive expedition of importance can be undertaken until after they have deliberated on the subject and authorized such a measure.”
Chief Justice of the United States John Marshall taught that, “The whole powers of war being, by the Constitution of the United States, vested in Congress, the acts of that body can alone be resorted to as our guides in this inquiry”.

Senator Daniel Webster, the foremost constitutional advocate of his era, maintained that President James K. Polk should have been impeached for beginning a presidential war against Mexico.

Senator Henry Clay, a renowned constitutional lawyer, explained: “A declaration of war is the highest and most awesome exercise of sovereignty. The Convention which framed our federal constitution had learned from the pages of history. . .that such a vast and tremendous power ought not to be confided to the perilous exercise of one single man. The Convention, therefore, resolved. . .to vest the war-making power in the Congress”.

Presidential wars saddle the people with multitrillion dollar indebtedness, diverts national genius from production to destruction, cripples liberty, silences the law, awakens enemies, and provokes blowback in the United States.
The absence of impeachment standards creates an appearance that impeachment is a partisan exercise, which undermines its legitimacy and deters its use.

The absence of definitions of war and co-belligerency for purposes of the Declare War Clause undermines its enforcement through the impeachment process or otherwise.

The law should warn before it strikes.

Article I, section 2, clause 5 of the Constitution provides that, “The House of Representatives . . . shall have the sole Power of Impeachment”.

The impeachment power of the House of Representatives is a cornerstone safeguard against Presidential tyranny.

The past neglect of the House of Representatives to use the impeachment power against Presidential usurpations and lawlessness has concentrated alarming power in the executive branch, crippled liberty, undermined transparency, and encouraged Presidents to further aggrandizements.

Article II, section 4 of the Constitution provides that, “The President, Vice President and all civil Officers of the United States, shall be re-
moved from Office on Impeachment for, and Convic-
tion of, Treason, Bribery, or other high Crimes and
Misdemeanors”.

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

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

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

(18) House of Representatives has voted Arti-
cles of Impeachment against two Presidents, one
Cabinet officer, one Senator, one Supreme Court
Justice, and 14 Federal judges without providing a
general standard for defining an impeachable of-
fense.
(19) Every participant in the drafting, debating, and ratifying of the Constitution understood that the Declare War Clause prohibited Presidential wars and entrusted exclusively to Congress the solemn responsibility for deciding whether the Nation should cross the Rubicon from a state of peace to a state of war.

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