

BUSINESS MEETING

Wednesday, August 4, 2021

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
WASHINGTON, DC.

The committee met, pursuant to notice, at 10:20 a.m., in Room SH-216, Hart Senate Office Building, Hon. Bob Menendez, chairman of the committee, presiding.

Present: Senators Menendez [presiding], Cardin, Shaheen, Coons, Murphy, Kaine, Markey, Merkley, Booker, Schatz, Van Hollen, Risch, Johnson, Romney, Portman, Paul, Young, Barrasso, Cruz, Rounds, and Hagerty.

OPENING STATEMENT OF HON. ROBERT MENENDEZ, U.S. SENATOR FROM NEW JERSEY

The Chairman: This business meeting of the Senate Foreign Relations Committee will come to order.

Today we are marking up S.J. Res. 10, a bill to repeal the 1991 and 2002 authorizations for the use of military force. Let me commend Senators Kaine and Young for their persistent leadership on this issue. I know that others as well have been interested -- Senator Murphy, Senator Cardin. I would also like to thank them for their patience in seeing this bill marked up, particularly since Senator Risch and I had agreed to a markup of this bill in June soon after our House colleagues voted in favor of repealing the 2002 AUMF.

I agreed to accommodate the requests from Senator Romney and other colleagues on the Republican side to hold a classified briefing on the issue as well as a public hearing --on repealing the

2002 AUMF because I believe that votes related to the use of force issues are weighty ones, ones that no member of Congress should take lightly. And I am pleased that all members of this committee have had an opportunity to fully understand the reasons for and implications of this profoundly important bill.

As I have made clear, I believe it would be a grave mistake if we do not act now to repeal the 1991 and 2002 AUMFs. As we heard very clearly from the Administration yesterday, in testimony from the deputy secretary of state and two senior lawyers on this matter, repeal of these AUMFs will have no impact whatsoever on our operations or detention activities. There is a scenario under which the United States could or would need to use force for which the Administration would rely on the 1991 or 2002 AUMFs. They either have the authority, in their view, under Article II of the Constitution or the 2001 AUMF, or they would come back to Congress to ask for additional authority, and that is the way it should be, and that will help ensure that the 2002 AUMF is not abused by any future Administration.

To those who believe that repealing the 1991 and 2002 AUMFs would somehow demonstrate a lack of resolve in Iraq or in the Middle East more generally, I would again point out to you the comments made by our Administration witnesses yesterday. Deputy Secretary Sherman stated clearly, "The 2002 AUMF against Iraq has outlived its usefulness and should be repealed." She also noted that as a result of the United States strategic partnership with Iraq, "The United States is poised to have a different relationship with Iraq and in the Middle East, and rather than speak to weakness, this speaks to strength."

I also point out to those colleagues who are concerned about this in our current reality, which is that any U.S. troops currently in Iraq are there at the invitation of the Iraqi government. And let us be very clear: repealed or not, the 2002 AUMF does not authorize any military activity against Iran. That is not to say that the United States will not or should not show resolve against Iran as it continues to threaten our people and our national security interests, but the 2002 AUMF provides no authority to do that. There is no longer any legitimate purpose for the 1992 or 2002 AUMFs, and the time has come for this committee to stop dealing in hypotheticals and to act responsibly. I am grateful to the Administration for being responsive to our requests for briefings and a public hearing, and I look forward to a strong vote in support of S.J. Res. 10 today.

Turning briefly to nominations, I am pleased that we will be voting on a number of nominees today. Unfortunately, we again have a blanket holdover request for seven newly-noticed nominees, and I must say this is stretching the bounds of comity, only to understand that there will be a 2:00 p.m. markup. So, the only thing that is being done is inconveniencing the members of the committee to come back at 2:00 p.m. to have a vote, a meeting that both the ranking member and I have set. If this continues, then I will have a conversation with the ranking member about how we are going to pursue this because this is beyond the pale. It is not what was meant. The purposes of holdover of a nominee was to get more information, to have questions answered, to get the Administration to deal with those questions through the State Department, but blanket holdovers of all nominees, that undermines the national interests and security of the United States. We have a holdover of the person who is supposed to be the head of our diplomatic security abroad, supposed to help us

protect our people abroad. God forbid something happens while this holdover continues. I would not want to be the person responsible for doing that. So, we will have a meeting at 2:00.

We have one more nominee that we will consider for this morning, which also will be held over: Chris Lu to be the ambassador to U.N. for management and reform. And we will apply the holdover to Lu and then take up his nomination with the others at 2:00 p.m. this afternoon. I am not going to speak to each of these nominees right now, but I do want to say I believe they are all well qualified and deserving of their nominations, and I look forward to their swift confirmations.

I would also ask for unanimous consent to enter nine letters of support that my office has received in support of the nomination of Secretary Kenneth Salazar to the hearing record. And due to COVID precautions, we will email the letters to the committee's clerk.

Without objection, those letters shall be included.

[The information referred to is located at the end of this transcript.]

The Chairman: With that, let me recognize the distinguished ranking member for his remarks, Senator Risch.

**STATEMENT OF HON. JAMES RISCH,
U.S. SENATOR FROM IDAHO**

Senator Risch: Well, thank you very much, Mr. Chairman. First of all, I want to speak to the markup on the repeal of the AUMFs. I am going to vote against this, and I want to say that we have spent a tremendous amount on this. The AUMF area of concern is something that many of us on this committee have spent a long, long time dealing with. This is really nibbling at the edge of what the real issues with AUMF, and that is, of course, the tug between the first and the second branch of government as to who has what authority and what power. So that everybody understands, that is

really not what we are arguing about here. Virtually all of us have the same agreement as to what that should look like. The difficulty is putting it in the writing, and I have seen dozens or more drafts of language to try to get us there, and we cannot seem to get there.

But speaking just to this, with all due respect to the chairman, I would disagree that this has no useful purpose, and I think that the purpose of this is to communicate our resolve in the region, particularly as it affects Iran. We spent the hearing that we had the other day with each party talking about what effect this will have. First of all, I will be first to concede that whether 2002 exists or does not exist, gets repealed or not get repealed, it will have zero effect on the decision by a chief executive, whether it is this one or another one, to take action that the chief executive thinks needs to be taken. I will be the first to admit that it makes no difference whatsoever. So then, we come down to messaging, and what we did was we argued at length about messaging, and everyone said, well, I think they are going to think this, and the fact of the matter is everybody is right.

When it comes to the messaging, there are people that are going to look at this and say, aha, the U.S. is getting weak on the region. The U.S. is not keeping the same commitment it has had to the region, and there will be others who will argue the other side. I, frankly, come down on this that there is just no reason to repeal it at this time that in any way endangers sending a message that we are committed to the region and committed to protecting our troops and American interests, and that we will do so. And I was delighted to hear the chairman and others say who are going to vote the opposite on this that they share the same view that we are committed, regardless of how we vote on this. And I think that is a message I want loud and clear as long we are messaging.

I understand what the vote is here and where this thing is going to go, but I really believe that it would be a bad message to send as far as repealing this AUMF that gives even the slightest inclination to anyone that we are backing away from this.

So, for that reason, I am going to vote "no" on that. I heard no reason whatsoever that we should repeal it and that it will make a difference. We have laws, executive orders, and everything else on the books that are hundreds of years old that are totally stale, that do not make a difference anymore, and I think that is where I come down on this. It can sit on the shelf just as well as not.

Regarding the nominations, I want to say that I appreciate working with the chairman on that. I think we have worked together quite well on them. We have had an issue, and this does not affect your comments regarding the blanket hold, but what we are finding from the State Department is their answers are getting less and less responsive to the questions for the record, and that is the reason for the one hold that I asked to have this afternoon, and I appreciate the chairman understanding that. But I hope that this will be a message to the State Department that they are getting handled more cavalierly than what they have in the past, and that is the reason why we are where we are with the one I am holding over, and that is, the first answers were wholly unresponsive and borderline insulting with the way they were answered. They were sent back. We did not get answers until 11:00 last night, so I do not feel really badly about holding over until this afternoon. But hopefully the Department will take this more seriously as we go forward. Thank you, Mr. Chairman. I yield back.

The Chairman: I want to thank the ranking member for his collaborative and cooperative work on these nominations. I agree with him and expect any member's questions for the record to be

fully answered, not to be vacant of any substance. So, I respect the senator's desire to do that, and appreciate him putting them on the agenda for this morning, and we will honor your holdover until this afternoon.

With that, first, since we have a majority, before we get to the legislation, unless there is a question on nominations. Yes?

Senator Johnson: Mr. Chairman, I am going to have to leave for another markup. I have not really spoken to this, but I would like to just make my --

The Chairman: Sure.

Senator Johnson: -- the rationale for my vote public. I truly appreciate the deliberate process here. I think that the secure briefings and the hearing, were excellent. I am in this process really inclined to repeal these because I agree with the both of you that they are really not necessary. But I think I was persuaded by just the bad timing here, the weakness that has been shown, whether it is acceding to Nord Stream 2, bugging out of Afghanistan. We are already seeing the atrocities occurring there. This looks bad, and we should be sending a signal of strength rather than weakness. So, again, I am completely sympathetic with repealing these, but this is a really bad time to do it. And I agree with Senator Risch. I mean, these things can sit on the shelf. They do no harm, other than the fact by repealing them I think does harm. So, again, I am going to be voting "no" on this resolution as well, and I just appreciate the time to be able to state my rationale. Thank you.

The Chairman: Thank you, and other members will have the opportunity to speak when we get to the legislation. But for now, since we have the appropriate quorum, without objection, we will now consider en bloc two Foreign Service officer promotion lists and nine nominations that had

previously been held over. They are PN 385-2, as modified, PN 357-2, as modified; Gentry Smith to be Assistant Secretary of State for Diplomatic Security; Monica Medina to be Assistant Secretary of State for Oceans and International Environment and Scientific Affairs; Rena Bitter to be an Assistant Secretary for Consular Affairs; Mark Knapper to be Ambassador to Vietnam; Brian Nichols to be Assistant Secretary of State for Western Hemisphere Affairs; Karen Donfried to be Assistant Secretary for European and Eurasian Affairs; Mary Catherine Phee to be Assistant Secretary of State for African Affairs and a member of the Board of Directors of the African Development Foundation; Anne Witkowsky to be Assistant Secretary for Conflict Stabilization Operations and Coordinator for Reconstruction and Stabilization; and Ken Salazar to be Ambassador to Mexico.

Would any members like to speak to these items before we vote?

[No response.]

The Chairman: If not, I will entertain a motion that these items be approved en bloc.

Voice. So move.

The Chairman: All in favor will say aye.

[Chorus of ayes.]

The Chairman: All those opposed will say no.

[No response.]

The Chairman: The ayes have it, and the nominees are reported favorably to the Senate.

Senator Risch: Mr. Chairman?

The Chairman: Yes?

Senator Risch: I would ask unanimous consent Senator Rubio be recorded as a "no" on the Phee nomination, please.

The Chairman: Senator Rubio will be recorded "no" on the Phee nomination.

Senator Cruz: Mr. Chairman, I would ask that I be recorded "no" on the Monica Medina nomination and on the Mary Catherine Phee nomination.

The Chairman: Senator Cruz will so be recorded on Medina and Phee.

Senator Barrasso: Mr. Chairman, I would also like to be recorded a "no" on both of those same nominations.

The Chairman: Senator Barrasso will be recorded a "no" as well on both of those, Medina and Phee.

With that, the nominees are favorably reported to the Senate as well as the Foreign Service officer promotion list.

We will now turn to S.J. Res. 10. Without objection, we will now consider S.J. Res. 10, a joint resolution to repeal the authorizations for the use of military force against Iraq. Are there any amendments or any member seeking recognition? Senator Cardin?

Senator Cardin: Mr. Chairman, I do have an amendment that I will offer, but will not seek a vote, and I would ask that my second-degree amendment be considered as the first-degree amendment, but with the understanding that I am not going to seek a vote on the amendment.

Mr. Chairman, I support the repeal of the 2002 and 1991 resolutions, and I applaud Senator Kaine and Young for their extraordinary patience and leadership in regards to that resolution. I am not going to offer my amendment for two reasons. First, I do not think it will be approved, but

secondly, if it got onto the resolution, it would make it more difficult for the resolution to pass, and I would like to see the resolution have the best opportunity to pass. Quite frankly, I was going to seek a vote on my amendment, which would put a sunset on the 2001 authorization, but a long delay before that would take effect in order for us to be able to pass a substitute or updated authorization.

I must tell you I have been impressed by the committee's process here. I think the classified briefing and yesterday's hearing was important. And I was impressed by the sincerity of the Biden Administration, particularly Secretary Sherman's comments about her working with us to get a replacement resolution for the 2001, but I want to make a comment on that. If we leave it up to the decisions at State or Defense, we will never get a resolution that I will support because I think it will be a blank check. That is what they want. They want a blank check. They would just as soon to see the legislative branch of government take a pass on the authorization for force or the oversight of that authorization, and that is normal. I understand that. I do believe the Biden Administration is sincere in working with us on a realistic authorization, and I have confidence that President Biden understands what he needs in order to keep America safe in regards to our fight against the terrorist groups in the Middle East.

So, I am prepared to work with the Biden Administration, but I must tell you I think that we are going to have an extremely difficult time with the lawyers at Defense and State as we look to replace the 2001 authorization. I am willing to give some time to the Biden Administration to work with us and to come up with a resolution that we can support. I mentioned at yesterday's hearing we need to deal with the geographical aspects and whether there are further requirements for consent by Congress before additional actions are taken. What is the mission that we are trying to seek? Is there

going to be a sunset on the new authorization? Those are issues that I think we have to talk about and come to agreement. I hope we can do that with the Biden Administration and reach a consensus here in our committee, in the Senate, and the House. But I think that without imposing a sunset on the 2001, us reaching that point will be even more difficult.

I will introduce as a separate legislation, separate resolution, a sunset of the 2001, but sufficient time for us to let this process reach a conclusion as to what substitute resolution should be considered. I think that puts more direct interest by the Biden Administration to come to an agreement with Congress on where we need to be. So, for all those reasons, I will not press a vote today on that. I strongly support the resolution that is before us, but I do think if we are going to assert the role of Congress, if we listen to some of our discussions on the fear of repealing the 2002 resolution and the 1991 resolution, we recognize that what we are doing on the fear of repealing the 2002 resolution and the 1991 resolution, we recognize that what we are doing is really saying that Congress will have no role in this, that we are going to let the executive branch make all the decisions here and we are giving a blank check. That is not what was envisioned in our Constitution. That is not our responsibility. We need to take the responsibility for the introduction of troops on a more permanent basis. That is our responsibility to give that authorization. There is clearly adequate protection for the American people in regards to urgent use of the military under Article II. I think that is pretty clear, but I do believe we have to reassert our position, and it cries out for us to update the 2001.

As the chairman has talked about, the 2002 and looking at the 1991, it clearly does not apply to today's circumstances. But I would point out the 2001 does not apply to the current situations. As

Senator Paul pointed out, reading the 2001 -- read it. Read what it says. We are not using it today -- the Administration is using today for force against entities that did not exist in 2001 and were not responsible for the attack of our country on September the 11th, and that is what it says specifically in the 2001 authorization. So, we have a responsibility to update that, and I hope that we will take advantage of that during this Congress, and I intend to offer legislation to give us that opportunity and have those discussions. And I really appreciate the chairman and ranking member making time available for us to deal with this most important issue.

The Chairman: Let me thank the senator for his sentiments and also for withholding today, and we look forward to working with the senator. The author of the resolution along with Senator Young, Senator Kaine?

Senator Kaine: Thank you, Mr. Chair, and I want to thank you and the ranking member for this process and for accommodating the desire of our colleagues for the closed session and public hearing before this vote. I especially want to thank Senator Young for his steadfast work as the co-sponsor of this bill.

Let me humbly suggest 10 reasons why this is a good idea. Number one, the two AUMFs supporting military action to counter the malignant activity of an Iraq governed by Saddam Hussein were rendered unnecessary more than a decade ago when he was toppled and executed and a new Government of Iraq was constituted. Second, Iraq is now a partner of the United States, and both nations want that relationship to continue as was evidenced by the recent positive meeting between President Biden and Prime Minister Kadhimi. In the aftermath of war, we didn't maintain war authorizations against Germany or Japan or Vietnam. Instead, we worked to try to make partners

and allies of them, and we are having success on that with Iraq, and I think we should try to continue on that path.

Number three, the 1991 and 2002 Iraq AUMFs are not used as the legal basis for any current U.S. military activity, nor are they needed to justify the detention of even a single detainee now in U.S. custody. Fourth, the repeal of the AUMFs will have no effect on the U.S.'s ability to keep Americans safe. Fifth, the powers conferred on the President by Article II of the Constitution enable the President to undertake military action against any entity who poses a direct and imminent threat to the U.S. or to our possessions, territories, or armed forces, including the militias in Iraq and Syria. In addition, the 2001 AUMF expands upon that power to undertake military action against non-state terrorist organizations who have a connection to al-Qaeda or ISIS.

Sixth, Congresses of both parties have abdicated our responsibility regarding the power to declare war and allowed presidents of both parties to act unilaterally. Congressional action to repeal these authorizations will represent a step toward Congress taking its most solemn responsibility seriously. Seven, some members of Congress were here in 2002 and voted against the Iraq War. Anyone who voted against the war should have no trouble repealing these outdated authorizations. Eighth, some members of Congress have stated that knowing what we know now, the Iraq War was a mistake. Anyone who believes the Iraq War was a mistake should have no trouble repealing these outdated authorizations. Ninth, allowing outdated authorizations to persist in perpetuity invites the prospect of serious abuses in the future. And 10th, the commander-in-chief, who spent 36 years dealing with war powers issues as a member of this committee, supports the repeal of these authorizations.

I ask this committee to send a clear and bipartisan message that a Congress that initiated military action against Iraq can also recognize the end of hostilities against Iraq. I urge the support of this bipartisan resolution.

The Chairman: I thank the senator. Senator Paul?

Senator Paul: It is much easier to start a war than to end a war. I have been trying for over 10 years to bring an official end to the Iraq War. In 2011, I forced a vote on this. In 2013, I reintroduced it. In 2016, I reintroduced it and as recently as 2017. I lost every time. I am hoping I will be on the winning side this time, but I think it is a win for the American people. And I do not accept that it is meaningless. I do not think it changes what a President does in immediate sort of short-lived military actions. I think Presidents will do what they are going to do in those cases, but this authorization authorized 170,000 people to go to Iraq, a big, large land war. That is still on the books. If it authorized it once, it would authorize it again.

So, I think the vote today is not meaningless and symbolic. It is to say that we do not give any President -- Republican or Democrat -- permission for a large-scale land war in Iraq. We are taking away that permission. If you want to come back, come before the people. It is a big important vote. We all say it is the most important vote. Well, let us take it back and make it part of the Senate. So, I applaud the efforts of all those involved with this, and I am a wholehearted "yes." Thank you.

The Chairman: Thank you, Senator Paul. As someone who voted against the Iraq War in 2002, I totally agree with you. Senator Young?

Senator Young: Well, thank you, Mr. Chairman, for how you have conducted these proceedings and this entire process. And I, of course, want to thank Senator Kaine for his

longstanding leadership on this issue and other colleagues, like Senator Paul, who have been strong voices for ensuring that in this, as it is being characterized, invitation to struggle, which is how some have characterized the constitutional allocation of war powers. Congress is struggling. We are asserting ourselves and our constitutional prerogatives. So hopefully this can be a successful re-initiation of that long history of Congress speaking with a loud voice on matters of war powers.

All of America's five major declared wars ended by treaty, but not all of the more than 40 congressional authorizations for the use of military force have been repealed. The 1991 and 2002 AUMF against Iraq resolutions remain in force, even though their purpose has, by all accounts, been accomplished. These authorities authorized the Gulf War and military action against the government of Saddam Hussein, respectively, and repealing them -- I think we all agree here again, would not affect the 2001 AUMF, the primary domestic statutory authority for prosecution of the war against al-Qaeda, the Taliban, ISIS, and associated forces.

The 2001 AUMF is not what today's business meeting is about. Acquiescence in the area of war powers relieves Congress of their responsibility to decide whether to authorize war or repeal outdated authorizations at a time when the American people, the military, our allies, and enemies need to hear from Congress on issues of war and peace. Some of my colleagues are rightly concerned about the threat posed by Iran. I share that concern. However, I believe that the threat from Iran is so significant and so different from the wars since 9/11 or Saddam Hussein's Iraq that we must pass a new AUMF should the situation require it. Nothing about the 2002 AUMF or its repeal changes that fact. Those advocating for leaving 2002 in place as a means of deterring Iran, when that was in no way the intention of this authorization, would be building on past abuses and advocating for

precisely the kind of expansion of war power authorities that ultimately makes Congress and this committee irrelevant.

The Soleimani strike last January was carried out via the President's Article II powers to prevent an imminent attack. The 2002 AUMF was cited merely as a secondary authority, not the primary authorization. I candidly believe it should not have been cited at all. Soleimani needed to be taken out, but this was another misapplication of the authority granted by Congress.

I ask unanimous consent that an article by a scholar who has helped educate me on the issues of war powers in recent years, Charles Cawley Stimson of the Heritage Foundation, entitled, "Why Repealing the 1991 and 2002 Iraq War Authorizations is Sound Policy," be entered into the record.

The Chairman: Without objection, so ordered.

[The information referred to is located at the end of this transcript:]¹

Senator Young: Thank you.

The Chairman: Any other member seeking recognition or have amendments? Senator Cruz?

Senator Cruz: Thank you, Mr. Chairman. I call up my amendment, Cruz First Degree 1.

Let me start by commending the authors of this resolution. I agree with what you are trying to do. I think it is important, number one, to reassert Congress' authority over war making. Far too many Congresses, both Republican and Democrat, have willingly abdicated our constitutional authority over declaring war and over supervising the conduct of war to the executive, and we have allowed executive, both Republicans and Democrats, far too much leeway in exercising the awesome might of calling into battle the U.S. armed forces. I also am one of those who has long believed that

¹Stimson, Charles D., WHY REPEALING THE 1991 AND 2002 IRAQ WAR AUTHORIZATIONS IS SOUND POLICY, *The Heritage Foundation*, No. 256, January 6, 2020.

the Iraq War was a mistake, that the world was made more dangerous by going in and toppling a horrific dictator and leaving a power vacuum that allowed even more dangerous enemies of America to rise up. So, the endeavors that we are doing today are endeavors I very much support. I am a critic of the endless wars we have been in, and I think we should be far more reluctant to use U.S. military force than we have been previously.

That being said, this resolution is not being debated in a vacuum. It is instead being debated in the context of an Administration that is exercising a hard pivot towards Iran, that has decided one of, if not its preeminent, foreign policy objectives is to reenter some variant of the Iran Nuclear Deal, which I believe was a catastrophic deal, and in furthering that endeavor, it has consistently been turning a blind eye to malign acts from Iran. In just 6 months, the Biden Administration has revoked terrorism sanctions against Iran's terrorist proxies in Yemen. It has removed Iranian officials from sanctions. They have dialed back enforcement of oil sanctions, including violations related to the Chinese Communist Party. They have unlocked Iranian accounts worth billions of dollars to allow Iran to pay down its debts. They have repeatedly declined to respond to Iranian attacks against our troops, and they have not imposed even a single significant new sanction.

And Iran has noticed. I believe weakness is provocative and is an invitation to violence, and in this instance, that has proven true. We have seen in the opening weeks of this Administration Iranian proxies in Hamas raining over 4,000 rockets down on Israel that I think was directly provoked by what they perceive to be weakness towards Iran. We have seen the Iranians attacking U.S. forces repeatedly and killing an American military contractor, a U.S. citizen.

We have seen the Iranians try to conduct terrorism on U.S. soil, including sending a kidnap team to the United States of America to kidnap a U.S. journalist. We have seen them launch multiple attacks on our Arab allies. We have seen them launch multiple attacks on civilian vessels, including an attack on an Israeli citizen, and we have seen them kill citizens from two of our close allies, Britain and Romania. That pattern is significant and it is concerning.

Now, in the course of all of these debates, the Administration and the advocates of this resolution have said, as Senator Young just said a minute ago, that the ability to respond to Iranian aggression is contained within Article II. I agree with that as an abstract matter. All this amendment does is memorialize that in this resolution. So, if that argument is in good faith and genuinely believed by the proponents of this resolution, my amendment should be something easily adopted by both sides.

What I do not want to see is this resolution adopted, these AUMFs repealed, and I believe that is going to happen. The votes are clearly there to repeal them. I think that is a good thing. But what I do not want to see is 3 months, 6 months, 9 months from now when the Iranians launch yet another attack on U.S. forces, when they murder soldiers, or sailors, or airmen, or marines, I do not want to see the argument put forth by the Administration that our hands are tied now that the AUMF has been repealed. We need another AUMF so we can act. What I do not want to see is if, in some time in the future, we discover Iran is on the verge of acquiring a nuclear weapon, a nuclear weapon that could be used to take the lives of millions of Americans or millions of our close allies, I do not want to see the Administration saying, well, Congress repealed these AUMFs, so we have no power to act to protect American lives.

And so, I accept and embrace the arguments put forth by the proponents of this resolution that Article II gives the commander-in-chief the authority to protect American troops on the battlefield and to act to protect our national security interests. This resolution simply memorializes that in the resolution, and I encourage members of both sides to vote for it.

The Chairman: I thank the senator. This amendment describes the scope of the President's Article II authority in a way that I consider far too expansive. Under this amendment, we would be declaring that the President not only has inherent constitutional authority to use force to protect the Nation from an attack or threat of an imminent attack, but also to protect against unspecified important national interests. With reference to the concerns about the Biden Administration coming forth and saying I do not have the authorities, in February and June of this year, using Article II, the President has already struck at Iranian-backed military militia, so I do not think he is going to be hesitant to do that.

Embracing such a sweeping claim of presidential authority to use force, including for the purposes of "important national interests," which is an undefined category frequently invoked by the Department of Justice's Office of Legal Counsel without any limiting principle, would present a significant renunciation of Congress' own war power prerogatives. The point of this exercise is to remove two outdated AUMFs from the books, not to endorse a further tilt towards the executive branch and the use of force issues. And for those reasons, I will oppose the senator's amendment.

Is there anyone else seeking recognition? Senator Merkley?

Senator Merkley: Thank you, Mr. Chairman. I believe that there are two things I have concern with here. One is the solidification of Article II power, and the second is essentially inserting

an authorization into this resolution. I am very struck that our second President, John Adams, was very concerned about the French seizing our commercial ships in 1797, and so he sought permission of Congress to respond, and Congress did not act. So, in 1798, the following year, he again sought permission of Congress to act, and Congress did act in May of 1798. Our third President, Thomas Jefferson, was very concerned about commercial ships being seized in the Mediterranean by the Bey - B-e-y -- the ruler of Tripoli, and so he sought permission from Congress, and Congress acted 2 months later to give him that authorization to use our forces to protect our commercial ships. In 1815, President Madison was very concerned about the Regency of Algeria seizing our commercial ships, so he sought congressional action to authorize the ability to respond, and Congress did grant that 2 weeks later.

My point here is that in the early phase of the United States, there was great respect for our constitutional requirement for Congress to authorize the ability to use forces. It was very much understood that the commander-in-chief directed those forces subsequent to authorization by Congress. We have had a challenge in keeping that line in place, and we had Presidents of both parties -- Kennedy, Johnson, Nixon -- that ignored the need for a congressional authorization in Vietnam and led to the 1973 War Powers Act that tried to strike an arrangement to be able to respond quickly to concerns about our national security, but still embed congressional authority.

I would say to my colleague from Texas that the right thing to do in regard to Iran is to arrange for this committee to have a debate over authorization, a full debate because it is that important. It is not something that should be put in kind of through an amendment into a completely different bill. It merits a full examination by this committee, any use of force in that manner. And I

also would caution that we not be parties to continuing to corrupt the U.S. Constitution by embedding and strengthening the idea that a President has power to act without congressional authorization, and certainly not something as broad as conducting and directing attacks in response to Iran without clear authorization from Congress.

The Chairman: Senator Markey?

Senator Markey: Thank you, Mr. Chairman. I think you put your finger on it, Mr. Chairman, when you referred to the language here, which says that the President has the ability to protect "important national interests." The inherent vagueness of that term makes this amendment just completely unacceptable. We are having a markup of legislation -- and thank you, Senator Kaine, and Senator Young, and all who have worked on it -- to try to reassert congressional authority, to reclaim our authority. Here in this amendment, there would be an abdication of our authority. We would be saying to the President, any President, that they would just have the ability to protect important national interests undefined or defined only by the Office of Legal Counsel in the White House.

So, from my perspective, this is a very dangerous amendment. We need to absolutely give the attention to Iran that it deserves. This would be a much too casual and ultimately dangerous way to deal with that subject, especially if the goal is ultimately to ensure that the Congress asserts its powers under the Constitution, so I would urge a "no" vote on this amendment.

The Chairman: Senator Murphy?

Senator Murphy: Thank you very much, Mr. Chairman. I would argue on the merits that it would be a terrible idea for this committee to authorize an open-ended war with Iran. But I would

plead with my colleagues that even if you believe that is the right course for this committee, do not do it by sticking a "whereas" clause in the middle of a de-authorization of military force relative to 2002. This will sort of spin legal scholars in circles. I have read this seven different times, and I am not clear what it authorizes and what it does not. It certainly appears to be an open-ended, limitless authorization of war against Iran, but, man, if you are going to make this commitment as a body, we should not be doing it in a "whereas" clause. It should be its own piece of legislation subject to significant hearing and discussion.

So, I am ready for a conversation about how to better authorize the military actions that have taken place against Iranian-backed proxies in Iraq and other places. This is just a tremendously irresponsible way to do it.

The Chairman: Senator Cardin?

Senator Cardin: Yes, I also oppose the amendment, and I support the underlying resolution. As I said before, I voted against the 2002 authorization when I was in the House of Representatives, and I will vote to repeal it now. I mentioned earlier the 2001, and the reason I mentioned that, look how four Administrations have interpreted the language we put in the 2001 resolution. If we were to adopt the amendment, think about how this could be interpreted by Administrations as basically a blank check to do whatever they want to without Congress's approval. We are taking Congress out of the equation. So, I agree with my colleagues. We should be talking about the appropriate use of force in regards to the threat of Iran. It needs to be done as its own separate debate and its own separate deliberations, and I would encourage my colleagues to reject this amendment.

The Chairman: Does the senator seek a recorded vote or a voice vote?

Senator Cruz: I would like a recorded vote, but I would like a chance to respond to the arguments that have been made.

The Chairman: The senator will have that opportunity. First, let me recognize the ranking member, Senator Risch.

Senator Risch: Well, thank you, and I am going to be very brief on this. I am going to vote for this, and the reason I am voting for this is because of messaging. As I said, all we are talking about here is messaging, in my judgment. I would be very reluctant to vote for this if it was not a -- simply a "whereas" that was added. A "whereas" clause has no legal effect whatsoever. And so, if indeed we were going to adopt this as substance, as suggested by my good friends from the other side, I think this would take a lot more deliberation on our part, getting the lawyers in here and picking it apart word by word. But where it is a message in a "whereas" clause to Iran, I think it --

The Chairman: Senator Cruz, you can sum up.

Senator Cruz: Thank you, Mr. Chairman. You know, this is the second time in several weeks that members of this committee have presented two inherently contradictory arguments in response to amendments that were offered. A couple of weeks ago I offered an amendment to our bill dealing with China forced labor saying that the Administration should not be able to import electric vehicles that were manufactured by Chinese slave labor in concentration camps. That was amended with Senator Hagerty's amendment to include solar panels. The arguments of members of this committee against that amendment were twofold. Number one, it was unnecessary, that the underlying bill prohibited it already, but number two, that if we added the amendment, it would be a poison pill and

destroy the underlying legislation. Now, those two arguments cannot be both be correct. If it is unnecessary, it is not a poison pill.

We are seeing the exact same argument style concerning this resolution. Multiple proponents of this resolution have said that nothing in the repeal of the AUMFs would constrain the ability of the commander-in-chief to defend our troops in the field, to act against Iran. Indeed, in the June 14th statement of Administration policy, the White House stated that, "The United States has no ongoing military activities that rely solely on the 2002 AUMF as a domestic legal basis, and repeal of the 2002 AUMF would likely have minimal impact on current military operations."

Likewise, numerous proponents of the repeal have said this would not have constrained the ability of the U.S. Government to go after General Soleimani. Again, Senator Young made that argument a few minutes ago. Yesterday in this hearing room, the Biden Administration made that argument that you did not need the AUMF, that Article II gave the authority to go after General Soleimani. I will point out the language that numerous Democratic senators have taken which is quoted verbatim from the order authorizing going after General Soleimani. It is memorializing those sentiments. If those sentiments are, in fact, what this committee believes, voting for this amendment should be easy. But I suspect those sentiments are not what the Biden Administration believes and not what numerous members of this committee believe.

When the previous Administration went after General Soleimani and took out the world's most dangerous terrorists, numerous Democratic senators criticized that decision vociferously. And so now we have already seen just a few minutes ago Senator Merkley argued, well, if we need to respond militarily to Iran, the Administration should come to Congress and we should have a debate

and consider whether to authorize it. Well, that argument is not consistent with the argument everyone else is saying that Article II gives him the power to do it already. And I will tell you this: the Ayatollah is listening to this debate.

Look, if this amendment is adopted, I will vote "yes" on the underlying resolution to repeal the AUMFs. I want to vote "yes." If the amendment is not adopted, I am going to be forced to vote "no," because the Ayatollah is listening to what is happening. We have been seeing him testing the Biden Administration over and over and over again, escalating, raining rockets down on Israel, sending a kidnap team into the United States of America. That is a big damn deal. That is not the act of a friend. And when the Ayatollah hears Democratic senators say, even in the face of hostilities, that the Administration cannot act unless they come back to Congress and we have an endless debate that never happens, I believe that will invite more aggression. I believe U.S. servicemen and women, their lives are jeopardized if the Ayatollah looks at this debate and concludes that the power of the American President is so limited that there will be no response to military aggression.

I think we should be very reluctant to use military force, but that does not mean you ignore an attack on American citizens. That does not mean you fail to defend our servicemen and women, our soldiers, sailors, airmen, and marines who are in harm's way. And when you telegraph that the commander-in-chief's hands are tied and he will not act even in the face of hostile aggression, you invite more hostile aggression and more American blood shed by the enemies of our Nation. I know that none of us want to see that outcome.

The Chairman: I would just comment and then we will call a vote, I know the senator thinks that he is in the mindset of the President of the United States. The President of United States in

February and June took action, which some members have concerns about, but nonetheless, took action under his Article II powers to attack Iranian-backed militias. I think he sent a very clear message to Iran: do not mess with us. So I am not of the belief that the President of the United States, if he felt there was a threat by Iran that was imminent, or, in fact, did something that he would not necessarily wait for Congress. Some of us may disagree that he should come to Congress. But the suggestion that he is neutered by this debate or this amendment -- I mean, I should say this resolution -- is far from the President's action to date.

So, on that, the senator has asked for a recorded vote, and the clerk will call the roll.

The Clerk: Mr. Cardin?

Senator Cardin: No.

The Clerk: Mrs. Shaheen?

Senator Shaheen: No.

The Clerk: Mr. Coons?

Senator Coons: No.

The Clerk: Mr. Murphy?

Senator Murphy: No.

The Clerk: Mr. Kaine?

Senator Kaine: No.

The Clerk: Mr. Markey?

Senator Markey: No.

The Clerk: Mr. Merkley?

The Chairman: No by proxy.

The Clerk: Mr. Booker?

Senator Booker: No.

The Clerk: Mr. Schatz?

Senator Schatz: No.

The Clerk: Mr. Van Hollen?

Senator Van Hollen: No.

The Clerk: Mr. Risch?

Senator Risch: Aye.

The Clerk: Mr. Rubio?

Senator Risch: Aye by proxy.

The Clerk: Mr. Johnson?

Senator Risch: Aye by proxy.

The Clerk: Mr. Romney?

Senator Romney: Aye.

The Clerk: Mr. Portman?

Senator Risch: Aye proxy.

The Clerk: Mr. Paul?

Senator Paul: No.

The Clerk: Mr. Young?

Senator Young: No.

The Clerk: Mr. Barrasso?

Senator Risch: Aye by proxy.

The Clerk: Mr. Cruz?

Senator Cruz: Aye.

The Clerk: Mr. Rounds?

Senator Rounds: Aye.

The Clerk: Mr. Hagerty?

Senator Hagerty: Aye.

The Clerk: Mr. Chairman?

The Chairman: No.

The clerk will report.

The Clerk: Mr. Chairman, the nays are 9; the nays are 13.

The Chairman: And the amendment is not agreed to.

Is there any other member seeking --

Senator Hagerty: Mr. Chairman, may I seek recognition?

The Chairman: Senator Hagerty?

Senator Hagerty: Thank you, Mr. Chairman. I ask to call up Hagerty First Degree

Amendment 1, 2, and 3, and I also request unanimous consent for en bloc consideration of these

Hagerty First Degree Amendments, as modified by their respective Hagerty Second Degree Amendments.

The Chairman: Without objection.

Senator Hagerty: Thank you. Mr. Chairman, my proposed amendment would do three important things. First, it would repeal the 1991 and 2002 Saddam-era authorizations for the use of military force in Iraq. Second, it would provide modern and tailored authority for the President to protect our national security interests from continuing threats that are posed by terrorists and state sponsors of terrorism that operate in Iraq. And third, it would provide modern and tailored authority for the President to prevent and respond to attacks against Americans by terrorists and state sponsors of terrorism who are operating in Iraq.

I am offering this amendment at a time when the Biden Administration is continuing to negotiate with Iran over how to revive the Iran Nuclear Deal, indeed, a deal that I believe to be fundamentally flawed. But even more broadly, the United States and our allies in the Middle East remain in a much longer struggle with Iran's terrorist-sponsoring regime. On that score, Iran is escalating its posture against us. It is repeatedly using terrorists, militants, rockets, and drones to attack Americans and our allies, and they have done so numerous times since January of 2021. As a lifelong businessman and a former diplomat, I am loathe to ever unilaterally take our own leverage off the table. It is bad negotiating strategy. I am no fan of unilateral disarmament, particularly in light of an escalation like this. It is simple. If you take a card off the table, you better get something for it, or you should put another card back down on the table.

President Trump cited the 2002 AUMF as one of two authorities used to justify his decision to eliminate General Soleimani, the Iran regime's terrorist-in-chief, who is responsible for the deaths of hundreds of American troops in the Middle East. If we are going to repeal that AUMF, we should replace it with something to keep protecting Americans, especially as Iran-backed terrorists keep escalating attacks on Americans in the Middle East. I believe that the United States can strengthen its position if Congress gets up off the sidelines and provides the President with clear and defined authorities to protect Americans here.

If we repeal the Iraq authorizations, we need to put something back on the table that is modern, that is tailored, and that is limited so that we can message clearly to our allies in the Middle East as well as to our adversaries, like Iran, and the United States remains resolved to protect our Nation's interest and, most of all, our people, including our diplomats and our troops. I believe that the legislative language that I proposed here can help us do just that, and I urge my colleagues to support it. Thank you.

The Chairman: I thank the senator. I appreciate and share the senator's concerns about protecting U.S. personnel and facilities from terrorist attacks. I believe his prior service as a chief-of-mission makes him keenly aware of the threats posed to our missions and outposts overseas. However, as we heard from our Administration witnesses yesterday, they already believe they have sufficient authority under Article II of the Constitution and under the 2001 AUMF to defend our forces and facilities in Iraq from attack.

S.J. Res. 10 is an effort to repeal two outdated AUMFs, but this amendment is part of a series of amendments that would transform the legislation into an authorization for the use of force. If passed,

this amendment would constitute a significant delegation of war-making authority to the President against unspecified entities, and implicitly including Iran, without limitations. So, I agree with the senator's sentiment that we need a modern and tailored AUMF, and I believe that repealing and replacing the 2001 AUMF is the best way to ensure that that scope of authority is appropriate, but I do not support converting this bill into an AUMF. And for that reason, I urge my colleagues to vote "no" on this en bloc amendment. Senator Risch?

Senator Risch: Mr. Chairman and fellow senators, I am going to vote "yes" for that. I have to tell you that I am pretty good at counting votes, so I know how this is going to come out. I would be very reluctant to vote "yes" on this if it was actually going to pass, and it is primarily because what this does is, as the chairman pointed out, something very significant in that it does authorize. And that is something that we have all learned over recent days, months, years, and for as long as I have been here, that this language really needs to be vetted, heard both in a classified setting and in a public setting as to what we are actually granting to the President. So that is serious business, and I am not prepared to say that this language is what we need to do. But nonetheless, because I think messaging is so important with what we are doing, I am going to vote "yes" on this just to send a message to Tehran.

The Chairman: Any other member? Senator Young?

Senator Young: Just an observation, Mr. Chairman, because I do know that so many Americans and world leaders follow these proceedings. It seems like we are placing more emphasis on the expressive power of one's vote than we are the actual text of language itself. And that just strikes me as a little bizarre that one would be supportive of legislative language that they do not

actually support because they think it sends a signal to the world that is different than the language itself. So, I am perplexed. I am perplexed because that is not how I make my decisions as it pertains to these votes, and I will invite my colleagues publicly to a broader conversation about how we make these decisions. It may make me rethink perhaps how I cast my own votes. I doubt it. Thank you.

The Chairman: Does the senator seek a recorded vote?

Senator Hagerty: If I might respond, Mr. Chairman?

The Chairman: Yes, Senator Hagerty?

Senator Hagerty: I agree that this whole process is odd, Senator Young, and the oddest thing is the timing of it. The fact that the Biden Administration would bring this up at a time when Iran is escalating its efforts against us, against the American people, against our allies, against our troops in Iraq. The timing of this does not make sense, except in the context of negotiations that are taking place in Vienna right now. I do not want to us de-leverage at this point. From a businessperson's standpoint, you do not de-leverage at a time when your opposition is escalating. That is why I am trying to at least offer an ability to keep our leverage on the table. We should get something for this, and we should not unilaterally disarm. That is my concern. Thank you.

The Chairman: I would just note that I see no leverage in the 2002 authorization as it relates to a time in which Saddam Hussein was the enemy of the United States and the actions were taken, and that has taken place. There is a new government, and so I respectfully disagree with the senator.

Does the senator seek a recorded vote or will he take a voice vote?

Senator Hagerty: A recorded vote, Mr. Chairman.

The Chairman: The clerk will call the roll.

The Clerk: Mr. Cardin?

Senator Cardin: No.

The Clerk: Mrs. Shaheen?

Senator Shaheen: No.

The Clerk: Mr. Coons?

Senator Coons: No.

The Clerk: Mr. Murphy?

Senator Murphy: No.

The Clerk: Mr. Kaine?

Senator Kaine: No.

The Clerk: Mr. Markey?

Senator Markey: No.

The Clerk: Mr. Merkley?

The Chairman: No by proxy.

The Clerk: Mr. Booker?

Senator Booker: No.

The Clerk: Mr. Schatz?

Senator Schatz: No.

The Clerk: Mr. Van Hollen?

Senator Van Hollen: No.

The Clerk: Mr. Risch?

Senator Risch: Aye.

The Clerk: Mr. Rubio?

Senator Risch: Aye by proxy.

The Clerk: Mr. Johnson?

Senator Risch: Aye by proxy.

The Clerk: Mr. Romney?

Senator Romney: Aye.

The Clerk: Mr. Portman?

Senator Risch: No by proxy.

The Clerk: Mr. Paul?

Senator Paul: No.

The Clerk: Mr. Young?

Senator Young: No.

The Clerk: Mr. Barrasso?

Senator Barrasso: Aye.

The Clerk: Mr. Cruz?

Senator Cruz: Aye.

The Clerk: Mr. Rounds?

Senator Rounds: No.

The Clerk: Mr. Hagerty?

Senator Hagerty: Aye.

The Clerk: Mr. Chairman?

The Chairman: No.

The clerk will report.

The Clerk: Mr. Chairman, the yeas are 7; the nays are 15.

The Chairman: And the amendment is not agreed to.

Is there any other member seeking recognition to offer an amendment?

[No response.]

The Chairman: If not, is there a motion to approve S.J. Res. 10, as amended?

Senator Cardin: So move.

The Chairman: So moved by Senator Cardin. Is there a second?

Senator Kaine: Second.

The Chairman: Seconded. The motion has been made and seconded.

The question is on the motion to approve S.J. Res. 10, as amended.

All those in favor will say aye.

[Chorus of ayes.]

The Chairman: All those opposed will say no.

[No response.]

The Chairman: The ayes have it. The majority of members present having voted in the affirmative, the ayes have it, and the legislation is agreed.

Senator Cruz: Mr. Chairman?

The Chairman: Senator Cruz?

Senator Cruz: I ask that I be recorded as voting "no."

The Chairman: Senator Cruz will be listed as -- recorded no.

Senator Hagerty: Likewise, Mr. Chairman.

The Chairman: As will Senator Hagerty.

Senator Barrasso: Mr. Chairman, vote no.

The Chairman: Senator Barrasso. Senator Rounds wants to be recorded "no."

Senator Risch: Myself, too.

The Chairman: Senator Risch wants to be recorded "no," and Senator --

Senator Risch: Senator Johnson wants to be recorded "no."

The Chairman: Senator Johnson and Senator Romney will be recorded as voting "no."

Now, before we close out, I would just ask we have a holdover of a series of nominees that the ranking member and I had agreed to have this morning. We are having a 2:00 meeting that will carry them over, which means that the only result is that members will be inconvenienced in coming back at 2:00. And I am wondering in light of that, is there a willingness just to bring those nominations that were before the committee for today's business meeting at this time for a vote.

Senator Cruz: Mr. Chairman?

The Chairman: Senator Cruz?

Senator Cruz: There is not, and I would note that the purpose of the holdover rule is being circumvented by the chairman's practice of multiple business meetings in a single day, and that practice is undermining the prerogatives of every member of this committee. So, if the chairman wants to call another meeting later today to undermine the prerogatives of members of this committee, the chairman has the authority to do so, but I am certainly not going to facilitate that change in how this committee operates.

The Chairman: For the senator's edification, holding a second business meeting is not a question of first instance here. We have done this many times before, and, in fact, today's second meeting had the concurrence of the ranking member.

This completes the committee's business --

Senator Risch: Mr. Chairman, before we --

The Chairman: Yes?

Senator Risch: I would ask unanimous consent Senator Johnson be recorded as a "no" on the Phee and Medina nominations, please.

The Chairman: On which ones?

Senator Risch: Phee and Medina. Senator Johnson.

The Chairman: Senator Johnson wants to be recorded "no" on Phee and Medina, and so he shall be recorded.

That completes the committee's business.

Senator Merkley: Mr. Chairman, may I be recorded as present and voting in support of the bill, of the resolution?

The Chairman: Present.

Senator Cardin: He voted in person.

The Chairman: Okay.

Senator Merkley: Be recorded as an aye. Present and voting. Thank you.

The Chairman: Senator Merkley will be recorded aye and in person on the bill that was just passed.

That completes the committee's business. I ask unanimous --

Mr. Kaine: Mr. Chair?

The Chairman: Let me just finish this, and then I am happy to recognize.

I ask unanimous consent that the staff be authorized to make technical and conforming changes.

And without objection, so ordered.

Who seeks recognition? Senator Kaine?

Senator Kaine: I was just curious about the vote because it was a voice vote, and I think there are seven recorded "noes," and now there is one recorded "aye." And so, I guess should all of the ayes be recorded ayes?

The Chairman: I am happy to consider that if that is what the --

Senator Kaine: Yeah.

The Chairman: All of those -- you know what? Just let us do a recorded vote. This way there is no confusion.

The clerk will call the vote on S.J. Res. 10 for adoption.

The Clerk: Mr. Cardin?

Senator Cardin: Aye.

The Clerk: Mrs. Shaheen?

Senator Shaheen: Aye.

The Clerk: Mr. Coons?

Senator Coons: Aye.

The Clerk: Mr. Murphy?

Senator Murphy: Aye.

The Clerk: Mr. Kaine?

Senator Kaine: Aye.

The Clerk: Mr. Markey?

Senator Markey: Aye.

The Clerk: Mr. Merkley?

[Laughter.]

Voice: Absent.

The Chairman: Aye by -- aye by proxy.

[Laughter.]

The Clerk: Mr. Booker?

The Chairman: Senator Booker?

Senator Booker: Aye.

The Clerk: Mr. Schatz?

Senator Schatz: Aye.

The Clerk: Mr. Van Hollen?

Senator Van Hollen: Aye.

The Clerk: Mr. Risch?

Senator Risch: No.

The Clerk: Mr. Rubio?

Senator Risch: No by proxy.

The Clerk: Mr. Johnson?

Senator Risch: No by proxy.

The Clerk: Mr. Romney?

Senator Romney: No.

The Clerk: Mr. Portman?

Senator Risch: Aye by proxy.

The Clerk: Mr. Paul?

Senator Paul: Aye.

The Clerk: Mr. Young?

Senator Young: Aye.

The Clerk: Mr. Barrasso?

Senator Barrasso: No.

The Clerk: Mr. Cruz?

Senator Cruz: No.

The Clerk: Mr. Rounds?

Senator Rounds: No.

The Clerk: Mr. Hagerty?

Senator Hagerty: No.

The Clerk: Mr. Chairman?

The Chairman: Aye.

The clerk will report.

The Clerk: Mr. Chairman, the ayes are 14; the nays are 18.

The Chairman: S.J. Res. 10 is affirmatively passed and sent to the Senate for its full consideration.

Senator Schatz?

Senator Schatz: Mr. Chairman, I ask unanimous consent that Senator Merkley be record as an "aye" in person.

[Laughter.]

The Chairman: Is there objection?

[No response.]

The Chairman: Without objection, so ordered, and Senator Merkley owes you one.

With that, the business meeting is adjourned.

**[Whereupon, at 11:26 a.m., the committee was
adjourned.]**

Why Repealing the 1991 and 2002 Iraq War Authorizations Is Sound Policy

Charles D. Stimson

KEY TAKEAWAYS

The 1991 and 2002 AUMF Against Iraq Resolutions remain in force even though their purpose has been accomplished.

Repeal would not affect the 2001 AUMF, the primary domestic statutory authority for the war against al-Qaeda, the Taliban, ISIS, or associated forces.

Debating and repealing those war authorizations is a matter of congressional hygiene and gets the Congress back in the business of exercising its Article I muscles.

The Constitution's allocation of war powers between the legislative and executive branches is a classic example of the separation of powers.¹ The Congress has the power to declare war but cannot fight the war on its own. The President, as commander in chief of the Army and Navy, has (and has uniformly claimed) the authority to use military forces abroad in the absence of specific prior congressional approval.² This authority derives from his constitutional responsibility as commander in chief and chief executive for foreign and military affairs. Without money from Congress, however, the President has no ability to fight those conflicts, nor does he have the authority to appropriate funds to pay for those military conflicts on his own.

This tension between the legislative and executive branches was purposeful, as the Founders anticipated the grave significance of the country's going to war.

This paper, in its entirety, can be found at <http://report.heritage.org/lm256>

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The United States was born of war, and the Founders knew that in the likely event the country would have to engage in future wars, the decision to take the country to war should be allocated between two coequal branches of government.

Like many other provisions in the Constitution, the Declare War Clause is brief. It authorizes Congress “To declare War.”³ The Constitution does not dictate *how* Congress should declare war, just that it has the authority *to* declare war. It authorizes Congress to “raise and support Armies,”⁴ “provide and maintain a Navy,”⁵ and “make Rules for the Government and Regulation of the land and naval Forces”⁶ and provides “for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.”⁷ The President, on the other hand, “shall be Commander in Chief of the Army and Navy of the United States.”⁸ There is one, and only one, commander in chief of the armed forces, and he enjoys capacious authority to defend the nation.⁹

According to advocates of presidential power, the Declare War Clause does not address the power to begin actual hostilities.¹⁰ It does not limit presidential war power.¹¹ Rather, they argue that it gives Congress the authority to alter legal relationships between subjects of warring nations and trigger certain rights, privileges, and protections under the laws of war.¹² Other scholars contend that the Declare War Clause limits presidential war power by giving the legislature the sole authority to begin an offensive war.¹³ One interpretation of the clause is that it requires Congress to issue a formal declaration of war before the United States may begin hostilities.¹⁴

Whatever one’s viewpoint on the matter may be, the Constitution is silent with respect to how wars are terminated and therefore leaves unanswered a host of important questions.

- Who has the authority to end an authorized war, be it a formal wartime declaration or a specific authorization for the use of military force?¹⁵
- If Congress repeals its own war authorization, does that act alone end the war, or must the President agree?
- What happens if Congress repeals its own war authorization and the President vetoes the legislation and the Congress cannot override his veto?
- What value is there, then, in Congress’s publicly debating war powers?

- What message does such a debate send to the American public?
- Does the absence of such a debate affect the American people and our warfighters and influence our allies or enemies?
- Does Congress have an obligation, if not legally at least morally, to debate war powers periodically when the country is at war?

Against this backdrop, Senators Tim Kaine (D-VA) and Todd Young (R-IN) have introduced a joint resolution to repeal two congressionally authorized war authorizations against the country of Iraq:¹⁶ the 1991 Authorization for Use of Military Force (AUMF) Against Iraq Resolution¹⁷ and the Authorization for Use of Military Force Against Iraq Resolution of 2002.¹⁸ They claim that the Iraq AUMFs make no sense, serve no operational purpose, run the risk of future abuse by a President, and help to keep the nation on a permanent war footing.¹⁹ They also claim that Congress has a vital role not only in declaring a war, but also in ending one.²⁰

The preamble to their resolution claims, among other things, that the repeal of both war authorizations would not affect ongoing military operations, which are conducted and authorized by the 2001 Authorization for Use of Military Force²¹ passed in the wake of the September 11, 2001, terrorist attacks, and would have no impact on the 2001 AUMF itself.

There are consequences to congressional inaction, whether it is failure to pass appropriations on time, delaying decisions on major infrastructure programs, failure to fund health insurance programs, or failure to reauthorize vital national security or defense programs on time. The consequences are real and have devastating effects. Congressional failure to authorize force against ISIS, for example, or refusal to repeal outdated war authorizations has consequences. It affects the relationship between the legislative branch and the executive branch, with the former ceding power to the latter. Congressional acquiescence seemingly relieves the legislative branch of the responsibility to decide whether to authorize war or repeal outdated authorizations at a time when the American people, the military, our allies, and enemies need to hear from Congress on the issue of war and peace.

There is great value in our democratic republic for Congress to debate war powers, and just as there is value in debating whether to authorize war, there is the concomitant value in debating the repeal of war authorizations passed years or decades ago, especially when the object and purpose of those war authorizations have been accomplished. Debating and then

repealing those vestigial war authorizations is a matter of congressional hygiene and gets the Congress back in the business of exercising its Article I muscles.

The 1991 Iraq Authorization for Use of Military Force

The 1991 Iraq AUMF remains in place to this day, despite the fact that the primary purpose of that war authorization was accomplished decades ago. It is a vestigial war authorization. Senator Kaine calls it a “zombie authorization.”²² The use of the word “zombie” is colorful but nonetheless apt, as the concern is that this war authorization could come back to life years or decades after its primary purpose has been met and used by a future Administration for a purpose entirely disconnected and unrelated to the original purpose of the statute.²³ Moreover, although the 1991 and 2002 Iraq AUMFs are stand-alone war authorizations, they are connected to each other in a way that the other 40-plus AUMFs and congressional declarations of war are not.

The 1991 Iraq AUMF, which remains in effect, references several United Nations Security Council Resolutions (UNSCRs) in the text of the statute and states that the “President is authorized...to use United States Armed Forces pursuant to United Nations Security Council Resolution 678 in order to achieve implementation” of 11 other U.N. Security Council Resolutions.²⁴ Understanding those UNSCRs is essential if one is to understand both why the purpose of the 1991 Iraq AUMF has been accomplished and its close relationship to the 2002 AUMF.

In late May of 1990, Iraqi President Saddam Hussein accused Kuwait and the United Arab Emirates of overproducing oil, threatening the economic viability of Iraqi oil exports. In July, Hussein accused Kuwait of stealing Iraq’s oil, and on August 2, 1990, he ordered an invasion of Kuwait. Approximately 140,000 Iraqi soldiers, supported by 850 tanks, entered and occupied Kuwait. Iraqi aircraft bombed Kuwait City and air bases in the country.²⁵ The invasion was condemned by Saudi Arabia and Egypt, as well as by the United States and other Western nations.

The day of the invasion, the United Nations Security Council passed UNSCR 660,²⁶ which determined that the invasion of Kuwait was a “breach of international peace and security,” condemned the invasion, and demanded an immediate withdrawal of all Iraqi forces. UNSCR 660 was the first of several Security Council resolutions that condemned Iraq’s unlawful invasion and demanded a complete withdrawal from Kuwait.

In response to the invasion, President George H.W. Bush ordered the U.S. Navy to deploy ships to the Persian Gulf on August 3, 1990. The next day, on

August 4, Saddam Hussein appointed Alaa Hussein Ali as Prime Minister of the Provisional Government of Free Kuwait, and Iraq declared that Kuwait was the 19th Governorate of Iraq.

On August 6, 1990, the Security Council passed UNSCR 661, which reaffirmed UNSCR 660 and expressed “deep concern” that it had not been implemented. The resolution expressed the council’s determination to bring the invasion and occupation of Kuwait by Iraq “to an end and to restore the sovereignty, independence and territorial integrity of Kuwait.”²⁷ The same day, United States Secretary of Defense Richard B. Cheney visited the King of Saudi Arabia to discuss sending U.S. troops to the region.

On August 7, 1990, the United States launched Operation Desert Shield and deployed approximately 15,000 troops, Navy ships, and military aircraft to the Kingdom of Saudi Arabia. The United States Air Force sent 48 F-15 fighters of the 1st Fighter Wing from Langley Air Force Base to Saudi Arabia, where they immediately began to patrol the Saudi–Kuwait–Iraq border areas.²⁸

On August 9, 1990, the Security Council passed UNSCR 662, which expressed alarm at Iraq’s declaration of a “comprehensive and eternal merger” with Kuwait and demanded that Iraq immediately withdraw, end its occupation, and “restore the authority of the legitimate Government of Kuwait.”²⁹ It also determined that the “annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void;” urged other states, organizations, and agencies not to recognize that annexation; and demanded that Iraq rescind its actions.³⁰ Also in August, the League of Arab States met in Cairo to condemn the invasion and called on Iraq to withdraw its troops.³¹

On August 18, 1990, the Security Council, upping the diplomatic pressure once more, passed UNSCR 664, which demanded that Iraq permit the immediate departure from Kuwait and Iraq of third-country nationals; grant immediate and continuing access of consular officials; demanded that Iraq take “no action to jeopardize the safety, security or health of such nationals;” and reaffirmed the previous Security Council resolutions.

Despite U.N. condemnation, Arab League pressure, and the growing presence of U.S. and other military forces in the region, however, Iraq continued to occupy Kuwait and conduct offensive military operations. On August 20, Iraq detained 3,000 Americans and 83 British citizens in Iraq and Kuwait. President Bush condemned the act and said the Americans and British being detained “are, in fact, hostages.”³²

What followed was a succession of Security Council resolutions, each of which is referenced in the 1991 Iraq AUMF and summarized below:

1. UNSCR 665, calling on those member states cooperating with Kuwait that are deploying maritime forces to halt all inward and outward maritime shipping in order to inspect and verify their cargoes.³³
2. UNSCR 666, noting (among other provisions) that it may be necessary to provide food to civilians in Iraq and Kuwait in order to “relieve human suffering” and that Iraq remains fully responsible under international humanitarian law, including the 4th Geneva Convention, to protect civilians.³⁴
3. UNSCR 667, which, after noting that Iraq is a party to the Vienna Convention on Diplomatic Relations of April 18, 1961, and the Vienna Convention on Consular Relations of April 24, 1963, condemned Iraq for ordering the closure of diplomatic and consular missions in Kuwait, as well as its decision to withdraw the privileges and immunities of those missions; condemned the acts of violence against diplomatic missions and their personnel in Kuwait; and demanded the immediate release of nationals and foreign nationals.³⁵
4. UNSCR 669, which reaffirmed UNSCR 661 and acknowledged the fact that “an increasing number of requests for assistance have been received under the provisions of Article 50 of the [United Nations] Charter.”³⁶
5. UNSCR 670, which reaffirmed UNSCRs 660, 661, 662, 665, 666, and 667; condemned continued occupation of Kuwait and Iraqi forces’ treatment of Kuwaiti nationals; confirmed that UNSCR 661 applied to all means of transport including aircraft; decided that all states shall deny permission to any aircraft destined to land in Iraq or Kuwait to overfly their territory except under certain conditions; and increased sanctions against Iraq.³⁷
6. UNSCR 674, which reaffirmed UNSCRs 660, 661, 662, 664, 665, 666, 667, and 670; stressed the urgent need for immediate and unconditional withdrawal of all Iraqi forces from Kuwait and restoration of Kuwait’s sovereignty, independence, and territorial integrity; condemned Iraqi authorities for taking third-country nationals hostage and for mistreating and oppressing Kuwaiti and third-country nationals; and other measures.³⁸

7. UNSCR 677, which expressed grave concern at the ongoing attempts by Iraq to alter the “demographic composition of Kuwait and to destroy the civil records maintained by the legitimate Government of Kuwait.”³⁹

By late fall of 1990, it was becoming increasingly clear that Saddam Hussein had no intention of complying with the United Nations resolutions and was convinced that the military buildup in the region was most likely a hollow threat by the West and its allies in the Gulf Region.

By October 30, 1990, President Bush had made the decision to push Iraq out of Kuwait by force if necessary.⁴⁰ The President increased the U.S. force presence in the region and petitioned the United Nations for authorization to use force.⁴¹ By the end of the year, approximately 350,000 U.S. forces had been deployed to the area.⁴²

On November 29, 1990, the Security Council adopted UNSCR 678, which gave Iraq until January 15, 1991, to implement UNSCR 660 fully.⁴³ In the absence of compliance by Iraq, paragraph 2 of UNSCR 678 authorized member states “to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area.”⁴⁴

On January 8, 1991, in a letter to congressional leaders, President Bush requested a congressional resolution supporting the use of all necessary means to implement UNSCR 678. The President stated that he was “determined to do whatever is necessary to protect America’s security” and that he could “think of no better way than for Congress to express its support of the President at this critical time.”⁴⁵

On January 14, 1991, both houses of Congress passed the Authorization for Use of Military Force Against Iraq Resolution, or Public Law (P.L.) 102-1.⁴⁶ Subsection 2(a) authorized the President “to use United States Armed Forces pursuant to United Nations Security Council Resolution 678 (1990) in order to achieve implementation of Security Council Resolutions 660, 661, 662, 664, 665, 666, 667, 669, 670, 674, and 677.” Subsection (b) required the President, before exercising the authority granted in Subsection (a), to use diplomatic and “other peaceful means to obtain compliance by Iraq” with the Security Council resolutions and make a determination that those “efforts have not been and would not be successful in obtaining such compliance.”⁴⁷

Upon signing P.L. 102-1, President Bush issued a signing statement wherein he stated that “my request for congressional support did not, and my signing [P.L. 102-1] does not, constitute any change in the longstanding

positions of the executive branch on...the President's constitutional authority to use the Armed Forces to defend vital U.S. interests."⁴⁸

Iraq refused to withdraw from Kuwait before the January 15, 1991, deadline, and on January 16, 1991, President Bush made the determination required by P.L. 102-1 that diplomatic means had not compelled and would not compel Iraq to withdraw from Kuwait. On January 18, he reported to Congress "consistent with the War Powers Resolution"⁴⁹ that he had directed U.S. forces to commence combat operations on January 16, 1991.

Note that President Bush did not ask for "authorization" from Congress to use military force, but rather requested congressional "support" for his undertaking in the Persian Gulf.⁵⁰ He believed that he had all the legal authority he needed to go to war, based not only on his authority under Article II of the Constitution, but also on applicable Security Council Resolutions. Recall that UNSCR 678 authorized member states "to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area."

When asked at a press conference on January 9, 1991, whether he thought he needed P.L. 102-1 and whether, if it didn't pass, he would feel bound by Congress's decision, President Bush stated, "I don't think I need it.... I feel that I have the authority to fully implement the United Nations Resolutions" as well as "the constitutional authority—many attorneys having so advised me."⁵¹ President Bush's statement was consistent both with his earlier signing statement and with the position taken by other Presidents regarding their constitutional authority under Article II of the Constitution to protect and defend the United States and use the military to do so, even absent express congressional authorization.⁵²

Allied air forces commenced an attack on military targets in Iraq and Kuwait. Ground forces were introduced on February 23, 1991, and Iraq was expelled from Kuwait four days later.⁵³ Exactly 100 hours after ground operations began, President Bush suspended offensive combat operations⁵⁴ because the Iraqi Army was defeated and surrendering in droves.

The (Temporary) Cease-Fire. On April 3, 1991, the Security Council adopted UNSCR 687, which established conditions for a formal cease-fire suspending hostilities in the Persian Gulf.⁵⁵ The resolution "reaffirmed the need to be assured of Iraq's peaceful intentions" given Iraq's invasion of Kuwait, its use of chemical weapons and ballistic missiles in unprovoked attacks, and reports that it had attempted to acquire materials to build nuclear weapons.⁵⁶ Among the conditions for a formal cease-fire, the resolution specified that "Iraq shall unconditionally accept the destruction,

removal, or rendering harmless, under international supervision,” of “[a]ll chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities related thereto” and “[a]ll ballistic missiles with a range greater than 150 kilometres, and related major parts and repair and production facilities.”⁵⁷

On April 6, 1991, Iraqi officials accepted the terms set forth in UNSCR 687, and a formal cease-fire went into effect between Iraq, Kuwait, and the U.N. member countries that had cooperated with Kuwait under UNSCR 678, including the United States.⁵⁸ Yoram Dinstein, a preeminent law of war scholar, stated that the “labelling of [Security Council] Resolution 687 as a permanent cease-fire is a contradiction in terms; a cease-fire, by definition, is a transition-period arrangement.”⁵⁹

It is important to note that Security Council Resolution 687 suspended but did not terminate the authority to use force under UNSCR 678.⁶⁰ The cease-fire established by UNSCR 687 is similar to an armistice: Unlike a peace treaty, it does not terminate the state of war, but merely “suspends military operations by mutual agreement between the belligerent parties.”⁶¹ A cease-fire allows a party to a conflict to resume hostilities under certain conditions.⁶²

It could be argued that Iraq’s expulsion from Kuwait in February 1991 by the United States and the allied nations fully implemented the UNSCRs listed in P.L. 102-1 and that the authorization in Subsection 2(a) for the use of U.S. armed forces has therefore expired,⁶³ but Iraq accepted the terms of the cease-fire agreement in name only, as it defied, eluded, and skirted the terms of agreement throughout the 1990s. As a result, the Administrations of Presidents William J. Clinton and George W. Bush maintained that P.L. 102-1 remained in effect.⁶⁴

The 2002 Iraq AUMF

In January 2002, four months after the September 11, 2001, attacks against the United States, President George W. Bush delivered the annual State of the Union Address.⁶⁵ During his address, he outlined the national security threats to America and, in particular, singled out Iraq, Iran, and North Korea, calling them an “axis of evil.”⁶⁶ They seek “weapons of mass destruction” and “pose a grave and growing danger” to the United States and our allies.⁶⁷

By the summer of 2002, less than a year after the September 11 terrorist attacks in the United States by al-Qaeda, the Bush Administration started to talk about the significant threat to U.S. interests posed by Iraq.⁶⁸ As the

war against al-Qaeda, the Taliban, and associated forces was being waged, President Bush met with congressional leadership on September 4, 2002, and stated that he would seek congressional support in the near future for action he deemed necessary to deal with the threat that Saddam Hussein's regime posed to the United States.⁶⁹ The President told congressional leaders that "Saddam Hussein is a serious threat. He is a significant problem. And it's something that this country must deal with."⁷⁰

On September 12, 2002, in a major speech to the U.N. General Assembly, President Bush outlined his concerns about Iraq's actions since the end of the Gulf War in 1991.⁷¹ He reminded the international audience about Iraq's numerous violations of U.N. Security Council resolutions since 1991, including those related to disarmament.⁷²

A week later, the White House proposed legislation to authorize the use of military force against Iraq. It was introduced as Senate Joint Resolution 45 on September 26 and debated by the Senate from October 3 to October 11. The Senate eventually passed House Joint Resolution 114, which was a slightly amended version of the Senate resolution, on October 11. President Bush signed the Authorization for Use of Military Force Against Iraq Resolution of 2002, also known as P.L. 107-243, into law on October 16, 2002.⁷³ The 2002 Iraq AUMF did not include any geographical or temporal limitations.

On November 8, 2002, the Security Council passed UNSCR 1441, which gave Iraq one "final opportunity to comply with its disarmament obligations."⁷⁴ Failure to comply would result in "serious consequences," which everyone understood to mean the use of military force.

The primary focus of the 2002 Iraq AUMF was the threat posed by Saddam Hussein and Iraq. Section (3) authorized the President to "use the Armed Forces of the United States as he determines to be necessary and appropriate 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."⁷⁵

Note, however, that unlike the 1991 Iraq AUMF, which authorized the President to enforce previously adopted and delineated Security Council resolutions (mentioned by number in the statute), the 2002 Iraq AUMF arguably gave the President broader authority because it included "all relevant" resolutions.⁷⁶ All relevant resolutions included the UNSCRs mentioned in the 1991 Iraq AUMF, thus tying the two Iraq AUMFs to each other.

It is also worth noting that the 2002 Iraq AUMF includes several paragraphs of findings before the operative text of the statute, each paragraph beginning with the word "whereas,"⁷⁷ and that two of these paragraphs are relevant to the Trump Administration's continued reliance on the statute.⁷⁸

The Bush and Obama Administrations relied on the 2002 Iraq AUMF to maintain the presence of U.S. armed forces and to conduct military operations in Iraq. The U.N. Security Council terminated the mandate of the U.S.-led multinational force in Iraq (MNF-I) as of December 31, 2008. President Barack Obama ordered all U.S. forces to withdraw at the end of December 2011, which they did.⁷⁹

President Obama's move to withdraw all troops from Iraq at the end of 2011 was controversial.⁸⁰ Many claim that by not leaving a standby or residual military presence, President Obama contributed to, and in fact created, the circumstances that led to the rise of the Islamic State (ISIS).⁸¹ Regardless of one's views on the issue, as a legal matter, the 2002 Iraq AUMF remained on the books after the pullout and the rise of ISIS, through the degradation of ISIS and al-Qaeda, and remains current law.⁸² Some question its continued effectiveness.⁸³

Suffice it to say that when ISIS became a dominant force in Iraq in the years from 2012–2014, the Obama Administration took military action against ISIS and relied on the 2001 AUMF and the 2002 Iraq AUMF as domestic statutory authority. In its first (and only) National Defense Authorization Act (NDAA) Section 1264 war powers report,⁸⁴ the Obama Administration stated that “as a matter of domestic law, the 2001 AUMF and the 2002 [Iraq] AUMF authorize the U.S. use of force against ISIL in Iraq.”⁸⁵ Similarly, the Obama Administration wrote that, with respect to Syria, “[t]he 2001 AUMF and, in certain circumstances, the 2002 AUMF authorize the use of force in Syria against al-Qa’ida in Syria and ISIL.”⁸⁶

Oddly enough, even while it was engaged in military action against ISIS, including bombing ISIS fighters, the Obama Administration was signaling that it wanted to repeal the 2002 AUMF. On September 14, 2014, during the height of offensive military operations against ISIS, a senior Obama Administration official emailed a *New York Times* reporter when speaking about the legal authorities for military airstrikes against ISIS:

The President may rely on the 2001 AUMF as statutory authority for the military airstrike operation he is directing against ISIL. As we have explained, the 2002 Iraq AUMF would serve as an alternative statutory authority basis on which the President may rely for military action in Iraq. Even so, our position on the 2002 Iraq AUMF hasn't changed and we'd like to see it repealed.⁸⁷

Two months before this email to *The New York Times*, Susan Rice, Assistant to the President for National Security Affairs,⁸⁸ sent a letter to Speaker of the House John Boehner urging “the repeal of the outdated 2002 Authorization for Use of Military Force in Iraq.”⁸⁹

The Trump Administration has also submitted one NDAA Section 1264 war powers report.⁹⁰ In the section entitled “The Domestic Law Bases for the Ongoing Use of U.S. Military Force,” the Administration acknowledges that the “primary focus of the 2002 AUMF” was “the threat posed by Saddam Hussein’s regime in Iraq.”⁹¹ However, the report states that the “express goals” have always been understood to authorize the use of force for the related dual purposes of helping to establish a stable, democratic Iraq and addressing terrorist threats emanating from Iraq.⁹² Finally, it adds that “the 2002 AUMF reinforces the authority for military operations against ISIS in Iraq and, to the extent necessary to achieve the purposes described above, in Syria and elsewhere.”⁹³

It is at best debatable whether the 2002 Iraq AUMF’s “express goals” have “always” been understood to include “helping establish a stable, democratic Iraq.” Nowhere in the statute does it say that the goal is to “establish a stable, democratic Iraq.” The closest the statute comes to that is where, in the findings preamble to the operative section of the statute, it references the Iraq Liberation Act of 1998, P.L. 105-338, which expressed the sense of Congress that it “should be the policy” of the United States to remove from power the “current Iraqi regime” and, according to the 2002 Iraq AUMF, “promote the emergence of a democratic government to replace the regime.”

Relying on a 1998 law that merely expresses the sense of Congress to promote the emergence of a democratic government in Iraq is odd indeed. A “sense of” provision is not legally binding because it is not presented to the President for his signature.⁹⁴ Even if a “sense of” provision is incorporated into a bill—such as the 2002 Iraq AUMF—that becomes law, such a provision merely expresses the opinion of Congress or the relevant chamber.⁹⁵ It has no formal effect on public policy and no force of law.⁹⁶

The fact that the findings include a sense of Congress to promote the emergence of a democratic Iraq back in 1998 is historically interesting, but it has no legal effect. The Trump Administration is at best overreaching when it relies on that finding to assert, as it does in its NDAA Section 1264 war powers report, that the dual purpose of the 2002 Iraq AUMF includes “establish[ing] a stable, democratic Iraq.”

The second part of the 2002 Iraq AUMF’s dual purpose as cited in the Trump Administration’s NDAA Section 1264 war powers report is to address terrorist threats emanating from Iraq. The findings do include several paragraphs that, arguably, remain just as factually true in the fall of 2019 as they were in 2002 when the statute was passed. Today, however, Iraq is a partner and hosts a small number of U.S. military and other government personnel

to ward off the terrorist threat. Fortunately, Iraq is no longer a threat to the United States as it was under the Saddam Hussein regime or when ISIS controlled large areas of Iraq.

Finally, it is worth highlighting the language used by the Obama and Trump Administrations in their war powers reports when referencing the 2002 Iraq AUMF. The primary war authorization relied upon by the Bush, Obama, and Trump Administrations to prosecute the war against al-Qaeda, the Taliban, ISIS, and associated forces has been and continues to be the 2001 AUMF. Each Administration has relied and continues to rely on that war authorization as the bedrock domestic legal authority for wartime operations.⁹⁷ It has no expiration date, no geographical limitation, and no sunset clause and applies to a discrete but ever-evolving group of terrorists with connections to the 9/11 attacks. Most important, it applies in Iraq.

Furthermore, repealing the 1991 and 2002 Iraq AUMFs would have no operational, legal, or prudential impact on the efficacy of the 2001 AUMF. The 2001 AUMF has been used by successive Administrations to go after evolving terrorist threats, including terrorist groups that did not even exist in 2001. Unless Congress decides to exercise the political courage to amend it to include ISIS and other associated forces, the 2001 AUMF will remain the bedrock domestic statutory authorization to fight terrorism.

In truth, however, the lack of political will to amend, repeal, or replace the 2001 AUMF has nothing to do with repealing two unrelated, outdated AUMFs.

The Obama Administration called the 2002 Iraq AUMF an “alternative statutory authority,” meaning, no doubt, that it was supplementary to or duplicative of the authority already existing in the 2001 AUMF. Similarly, the Trump Administration said the 2002 Iraq AUMF “reinforces” the authorities needed for military operations, suggesting without saying that the 2001 AUMF provides all the authority necessary for military operations against ISIS, al-Qaeda, or associated forces in Iraq.

There has been an open and vibrant debate about whether the 2001 AUMF covers ISIS, a terrorist organization that did not even exist when the 2001 statute was passed and has disavowed and formally broken away from al-Qaeda, the group that is covered by the 2001 AUMF,⁹⁸ Yet both the Obama and Trump Administrations claim that the 2001 AUMF covers ISIS and associated forces.⁹⁹ Efforts to amend that statute have failed, and that failure on the part of the Congress and the Obama Administration has infected the debate. As a result, Congress has shied away from the much-needed debate about whether to amend the 2001 AUMF to cover ISIS and associated forces.¹⁰⁰

Nevertheless, that failure to debate the all-encompassing 2001 AUMF should not blind Congress to the fact that the 2002 Iraq AUMF is no longer necessary and merely acts as a belt-and-suspenders approach to war authorizations.

The Price of Inaction

Before addressing the issue of why it would be sound policy to repeal the two Iraq war authorizations, it is important to look back on the Framers' understanding of how wars were to end. As we have seen, the constitutional separation of power and allocation of war power is between the Congress and the President. This power is likewise a shared power of Congress and the President, but in a somewhat different sense than the allocation of warmaking powers discussed above.¹⁰¹

Debates at the Constitutional Convention reveal an understanding that Congress could not effectively end war simply by passing a resolution declaring a cessation of hostilities.¹⁰² The Framers believed that only a peace treaty signed by the President and ratified by two-thirds of the Senate could formally terminate a war and that the President's role as protector and representative of the nation prevented Congress from ending a war without his consent.¹⁰³ It is telling, as some scholars argue, that the Framers did not give Congress the sole power to terminate a war, just as they did not give it the sole power to begin one.¹⁰⁴

The Framers no doubt realized that politics, as an expression of the will of the people, would heavily influence decisions about whether to go to war and whether to terminate or end a war. Both decisions have potentially grave consequences that are borne by the very people who elected representatives to Congress in the first place.

Congress possesses the appropriations power and can employ such power to defund an authorized war.¹⁰⁵ For Congress to exercise that power and cut off funds for an authorized war would effectively terminate the war as an operational matter because the President would not have the money to prosecute it, but it arguably would not terminate the war as a legal matter, at least according to some scholars.¹⁰⁶

In practice, throughout our nation's history, all declared wars have ended in treaties,¹⁰⁷ and some war authorizations¹⁰⁸ have ended in a variety of ways.¹⁰⁹ For example, while President Dwight David Eisenhower's Formosa AUMF was repealed by Congress in 1974,¹¹⁰ his 1957 Middle East Force Resolution¹¹¹ has never been repealed.

For obvious reasons, the 1991 and 2002 Iraq AUMFs are not likely candidates for treaties. Unlike the five previous declarations of war, which were

against countries that we fought to victory in total war, the Iraq AUMFs were fought primarily against a country headed by a ruthless dictator who by his actions threatened the United States, its allies, and the world community with weapons of mass destruction. Saddam Hussein was captured in December 2003, was tried in an Iraqi court for crimes against humanity, and was hanged in December 2006. The current country of Iraq is an ally, and the United States and coalition partners work with the Iraqi leadership at their request to help safeguard their country from terrorist elements.

It therefore would not be practical to sign a peace treaty with Iraq. In fact, the object and purposes of the 1991 Iraq AUMF have been met, and the 2002 Iraq AUMF was directed, as a practical matter, at Saddam Hussein. A peace treaty is not in the offing, nor is one necessary. That leaves two options on the table: keep the Iraq AUMFs in place and risk the danger that some future Administration will try to rely on one or both of them to go back into Iraq or elsewhere, or repeal them and convince the President to sign the repeal bill.

Senators Kaine and Todd Young have been consistent and vocal proponents of repealing the two Iraq AUMFs. In their joint repeal resolution, there are several congressional findings of note. They point out that the 2002 Iraq AUMF only reinforces the 2001 AUMF; that repealing the Iraq AUMFs would “not effect ongoing United States Military operations;” that since 2014, the United States military forces have been operating in Iraq at the request of the government of Iraq for the sole purpose of supporting its efforts to combat ISIS; and that neither the 1991 nor the 2002 Iraq AUMF is being used as the sole legal basis for any detention of enemy combatants held by the United States.¹¹²

Those proposed congressional findings are hard to dispute.

In November 2016, Senator Kaine took to the Senate floor to outline why he thought the Senate should debate the applicability of the 2001 AUMF to ISIS. He made a number of points, each of which has merit, and set the stage for his later efforts to repeal the Iraq AUMFs.

First, he noted that in Congress, there is a “tacit agreement to avoid debating this one in the one place that it ought to be debated: in the halls of Congress.”¹¹³ He noted that 80 percent of the Members of Congress were not in Congress when the 2001 AUMF was debated and said that “80% of us that were not here in 2001 have never had a meaningful debate or vote upon this war against ISIL.”¹¹⁴ It is time, according to Senator Kaine, for “Congress to reassert its rightful place in this most important set of decisions. Of all the powers that we would have as a Congress, I can’t think of any that are more important than the power to declare war.”¹¹⁵

The same logic can and should be applied to the two Iraq AUMFs. Virtually no current Members of Congress were in office when the 1991 Iraq AUMF was voted on, and only a handful were in office for the 2002 Iraq AUMF. Congress has no stake in either war authorization.

There are consequences to congressional inaction on the 2001 AUMF, as Ben Wittes, cofounder of the influential Lawfareblog.com, has written.¹¹⁶ Congressional failure to engage constitutes a “meaningful congressional acquiescence in the President’s bold and relatively attenuated claim of authority to confront ISIS under the 2001 AUMF.”¹¹⁷ Again, the same logic applies to the Iraq AUMFs. Senator Young asserts that repealing the two Iraq AUMFs would act to “prevent the future misuse of the expired Gulf and Iraq War authorizations and strengthen Congressional oversight over war powers.”¹¹⁸

Conclusion

There is little doubt that taking up the Kaine–Young resolution and holding a public debate, perhaps with expert witnesses, would educate Members of Congress and the public about war powers in general and whether there is a need for these two outdated, vestigial war authorizations. Congress has not had the political will or institutional stomach to be frank with the American people about the outdated and stretched-to-the-legal-brink 2001 AUMF.

The Obama Administration, to its credit, sent out senior Administration officials to give a series of public speeches explaining the legal basis for a whole host of national security–related topics, from drone strikes to detention policy to war powers. The Trump Administration has failed to follow suit, but speeches or no speeches, each Administration relied and continues to rely on an almost two-decade-old 2001 war authorization against a terrorist group that did not exist on September 11, 2001, has disavowed its connection to the group that was responsible for 9/11, and has at best a tenuous connection to the small number of terrorists covered under the 2001 AUMF.

Debating the repeal of the two Iraq war authorizations would allow Congress to re-engage its constitutional muscles on a topic about which Members should be flexing their muscles on a regular basis and that is not kryptonite to their political futures.¹¹⁹ A robust, fulsome debate would engage senior U.S. military leadership, senior U.S. diplomats, and law-of-war scholars and historians. It would require the Administration either to defend the use of the Iraq AUMFs or to agree that their usefulness has expired.

Finally, such a debate would be an act of congressional hygiene. Clearing (or cleaning) out the legislative closet of war authorizations that have long since been used up would be a first step in restoring the balance of power between Congress and the President with respect to the warmaking power.¹²⁰

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Endnotes

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2. See *Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations*, Dec. 2016 at 7. See also Caroline D. Krass, Principal Deputy Assistant Attorney General, O.L.C. Opinion of April 1, 2011, Authority to Use Military Force in Libya, at 6; See also Authority to Use United States Military Forces in Somalia, 16 U.S. Op. O.L.C. 6, 9 (1992), and Authority of the President Under Domestic and International Law to Use Military Force Against Iraq, 26 U.S. Op. O.L.C. 143, 6 (2002).
3. See U.S. CONST. art. I, § 8, cl. 11.
4. See U.S. CONST. art. I, § 8, cl. 12.
5. See U.S. CONST. art. I, § 8, cl. 13.
6. See U.S. CONST. art. I, § 8, cl. 14.
7. See U.S. CONST. art. I, § 8, cl. 15.
8. See U.S. CONST. art. II, § 2, cl. 1.
9. See John Yoo, *The Continuation of Politics by Other Means: The Original Understanding of War Powers*, 84 CALIF. L. REV. 167 (1996).
10. See MATTHEW SPALDING & DAVID FORTE, *THE HERITAGE GUIDE TO THE CONSTITUTION* 165 (2d Ed. 2014).
11. See ROBERT F. TURNER, *REPEALING THE WAR POWERS RESOLUTION: RESTORING THE RULE OF LAW IN U.S. FOREIGN POLICY* 80–96 (1991) (arguing that the President has the authority to begin armed conflict in the absence of congressional authorization). See also Eugene V. Rostow, *Great Cases Make Bad Law: The War Powers Act*, 50 TEX. L. REV. 833 (1972).
12. *Id.*
13. *Id.* See also Saikrishna Prakash, *Unleashing the Dogs of War: What the Constitution Means by Declare War*, 93 CORNELL L. REV. 45 (2007).
14. *Id.*
15. A topic beyond the scope of this paper is the difference between a formal congressional declaration of war and a congressional authorization for the use of military force. That topic, not surprisingly, has been the subject of significant debate among scholars. See, e.g., Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 HARV. L. REV. 2047, 2057–2066 (2005). See also Harold Hongui Koh, *The Coase Theorem and the War Power: A Response*, 41 DUKE L.J. 122, 126 (1991).
16. See Senator Tim Kaine, *Kaine & Young Introduce Bill to Repeal 1991 & 2002 AUMFs, Formalizing End of Gulf & Iraq Wars*, Press Release, March 6, 2019, https://www.kaine.senate.gov/press-releases/kaine-and-young-introduce-bill-to-repeal-1991_2002-aumfs-formalizing-end-of-gulf--iraq-wars.
17. See Pub. L. No. 102-1, 105 Stat. 3, 50 U.S.C. 1541, enacted on January 4, 1991.
18. See Pub. L. No. 107-243, 116 Stat. 1498, 50 U.S.C. 1541, enacted on October 16, 2002.
19. See Kaine, *supra* note 16.
20. *Id.*
21. See Pub. L. No. 107-40, 115 Stat. 224, 50 U.S.C. 1541, enacted on September 18, 2001.
22. See Niels Lesniewski, *Tim Kaine and the War on Zombie Wars*, Roll Call, March 7, 2019. In the same article, Senator Todd Young, cosponsor of the 1991–2002 Iraq AUMF repeal bill, says that the failure of Congress to repeal the 1991 Iraq AUMF “illustrates the level of congressional failure to perform its constitutionally mandated oversight role.”
23. According to Webster’s Dictionary, zombies are dead humans who through some supernatural power come back to life yet are speechless and appear drugged. Movie zombies murder, maim, and decapitate living human beings. Many are cannibals. They are also very hard to kill, even after they are shot. Killing a zombie usually requires decapitation of the monster. A number of zombie movies have achieved cult classic status. See, e.g., *Dawn of the Dead* (1978); *Night of the Living Dead* (1968); *Zombie* (Lucio Fulci, 1979); and dozens of others. Zombie books are also popular, the most famous being *Frankenstein* by Mary Shelley.
24. The 1991 Iraq AUMF cites U.N. Security Council Resolutions 660, 661, 662, 664, 665, 666, 667, 669, 670, 674, 677, and 678. Each UNSCR is discussed briefly in the body of this paper.
25. For a thorough, day-by-day, year-by-year chronology of Operations Desert Shield and Desert Storm, see Lieutenant Colonel Joseph P. Englehardt, *Desert Shield and Desert Storm: A Chronology and Troop List for the 1990–1991 Persian Gulf Crisis*, Strategic Studies Institute, U.S. Army War College, March 25, 1991, <https://apps.dtic.mil/dtic/tr/fulltext/u2/a234743.pdf>.
26. See S.C. Res. 660 (1990), <http://unscr.com/en/resolutions/660>.
27. See S.C. Res. 661 (1990), <http://unscr.com/en/resolutions/661>.
28. See Jim Garamone, *Marking 20 Years Since Operation Desert Shield*, American Forces Press Service, Aug. 7, 2010, <https://archive.defense.gov/news/newsarticle.aspx?id=103010>.

29. See S.C. Res. 662 (1990), <http://unscr.com/en/resolutions/662>.
30. *Id.*
31. The League of Arab States, established in 1945, is a loose confederation of 22 Arab nations, including Palestine, whose broad mission is to improve coordination among its members on matters of common interest. See Jonathan Master and Mohammed Aly Sergie, *The Arab League*, Council on Foreign Relations, October 21, 2014, <https://www.cfr.org/backgrounder/arab-league>. See also William Drozdiak, *Arab Nations Break Silence, Condemn Iraq*, WASH. POST, Aug. 4, 1990, and John Kifner, *Confrontation in the Gulf Arab Vote to Send Troops to Help Saudis; Boycott of Iraqi Oil Is Reported Near 100%; Baghdad Isolated*, N.Y. TIMES, Aug. 11, 1990.
32. See James Gerstenzang, *Bush Says 3,000 Americans Are Hostages and Warns Iraq: Gulf Crisis: "America Will Not Be Intimidated," He Declares. Hussein Is Held Responsible for the Safety of U.S. Citizens. Baghdad Gives Kuwait Embassies 5 Days to Close*, L.A. TIMES, Aug. 21, 1990.
33. See S.C. Res. 665 (1990), September 25, 1990, <http://unscr.com/en/resolutions/665>.
34. See S.C. Res. 666 (1990), September 13, 1990, <http://unscr.com/en/resolutions/666>.
35. See S.C. Res. 667 (1990), September 16, 1990, <http://unscr.com/en/resolutions/667>.
36. See S.C. Res. 669 (1990), September 24, 1990, <http://unscr.com/en/resolutions/669>.
37. See S.C. Res. 670 (1990), September 25, 1990, <http://unscr.com/en/resolutions/670>.
38. See S.C. Res. 674 (1990), October 29, 1990, <http://unscr.com/en/resolutions/674>.
39. See S.C. Res. 677 (1990), November 28, 1990, <http://unscr.com/en/resolutions/677>.
40. See Office of the Historian, *The Gulf War*, 1991, U.S. Department of State, <https://history.state.gov/milestones/1989-1992/gulf-war>.
41. *Id.*
42. See Jennifer K. Elsea and Mathew C. Weed, *Declaration of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications*, Congressional Research Service, Apr. 18, 2014, at 12.
43. See Jay Bybee, 26 U.S. Op. Off. Legal Counsel 143, 2 (O.L.C.) (2002).
44. *Id.*
45. See Elsea and Weed, *supra* note 42, at 12–13.
46. See Pub. L. No. 102-1, January 14, 1991.
47. *Id.*
48. See Statement on Signing the Resolution Authorizing the Use of Military Force Against Iraq, 1 Pub. Papers of George Bush 40 (1991).
49. 50 U.S.C.A. Section 1541. See also Elsea and Weed, *supra* note 42, at 26. The War Powers Resolution was enacted over President Richard Nixon's veto in 1973 purportedly to restore a congressional role in authorizing the use of force that was thought by many to have been lost in the Cold War and the Vietnam War. It mandates that the President consult with Congress "in every possible instance" before introducing U.S. armed forces into hostilities and regularly afterwards. See also Bybee, *supra* note 43, at 11–12: "Every President has taken the position that the War Powers Resolution is an unconstitutional infringement by the Congress on the President's authority as Commander-in-Chief."
50. See Statement, *supra* note 48.
51. See The President's News Conference on the Persian Gulf Crisis of January 9, 1991, 1 Pub. Papers of George Bush 20 (1991). See also Elsea and Weed, *supra* note 42, at 13.
52. For a review of the legal issues from a military lawyer's perspective, including but not limited to operational law challenges in the Persian Gulf War, see W. Hays Parks, *The Gulf War: A Practitioner's View*, 10 DICK. J. INT'L L. 393 (1992). Hays Parks was also one of the primary authors of the updated and newly issued Department of Defense Law of War Manual (June 2015), which was updated in December 2016, <https://dod.defense.gov/Portals/1/Documents/pubs/DoD%20Law%20of%20War%20Manual%20-%20June%202015%20Updated%20Dec%202016.pdf?ver=2016-12-13-172036-190>.
53. See Englehardt, *supra* note 25, at 5–10. The armed forces in the coalition totaled about 737,000, to include 190 ships and 1,700 aircraft. Thirty-five countries, in addition to the United States, made up the international coalition.
54. *Id.* See also Address to the Nation on the Suspension of Allied Offensive Combat Operations in the Persian Gulf, 1 Pub. Papers of George Bush 187 (1991).
55. *Id.*
56. *Id.*
57. See S.C. Res. 687 (1991), April 3, 1991, <http://unscr.com/en/resolutions/687>. See also S.C. Res. 688 (1991), April 5, 1991, <http://unscr.com/en/resolutions/688>, which concerned the repression of the Iraqi civilian population and access by international organizations and demanded that Iraq cooperate with the U.N. Secretary-General to effect the cease-fire.
58. See Bybee, *supra* note 43, at 2.
59. See Yoram Dinstein, *WAR, AGGRESSION AND SELF-DEFENCE* 50 (3d ed. 2001).

60. See Lord Goldsmith (U.K. Attorney General) answer to House of Lords Question of March 17, 2003, <https://publications.parliament.uk/pa/cm200203/cmselect/crmfaff/405/3030407.htm>.
61. See Bybee, *supra* note 43, at 20. See also Regulations annexed to the Hague Convention on the Law and Customs of War on Land, October 18, 1907, art. 36, 36 Stat. 2277, 2305 (Hague Regulations). See also *Ludecke v. Watkins*, 335 U.S. 160, 167 (1948), and *Commercial Cable Co. v. Burselson*, 255 F. 99, 104–05 (S.D.N.Y.) (L. Hand, J.), *rev'd and vacated as moot*, 250 U.S. 188 (1919) (“An armistice effects nothing but a suspension of hostilities; the war still continues.”).
62. See Bybee, *supra* note 43, at 20. As this O.L.C. opinion notes, under Hague Regulations, “any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.”
63. *Id.* at 9.
64. *Id.* As stated in the O.L.C. opinion: “Subsequent congressional legislation demonstrates, however, that the authorization in Public Law 102-1 remains in effect. First, the same Congress that enacted Public Law 102-1 twice expressed its ‘sense’ that Public Law 102-1 continued to authorize the use of force even after Iraq’s withdrawal from Kuwait. Enacted on December 5, 1991, section 1095 of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. No. 102-190, 105 Stat. 1290, 1488 (‘1992-1993 Defense Authorization Act’), contains a congressional finding that Iraq is violating UNSCR 687’s requirements relating to its WMD program and expresses Congress’s sense that ‘the Congress supports the use of all necessary means to achieve the goals of Security Council Resolution 687 as being consistent with the Authorization for Use of Military Force Against Iraq Resolution (Public Law 102-1).’ And section 1096 of the 1992–1993 Defense Authorization Act expresses the same Congress’s ‘sense’ that ‘Iraq’s noncompliance with United Nations Security Council Resolution 688 constitutes a continuing threat to the peace, security, and stability of the Persian Gulf region...and [that] the Congress supports the use of all necessary means to achieve the goals of United Nations Security Council Resolution 688,’ which condemns the repression of the Iraqi civilian population, ‘consistent with all relevant United Nations Security Council Resolutions and...Public Law 102-1.’ 105 Stat. at 1489. Second, in 1999, Congress amended Public Law 102-1 to extend the reporting requirements from every 60 days to every 90 days, thereby indicating that the law continues in effect. See Consolidated Appropriations Act, 2000, Pub. L. No. 106-113, div. B, § 1000(a)(7), 113 Stat. 1501, 1536 (1999).”
65. See President George W. Bush, State of the Union Address, January 29, 2002, <https://georgewbush-whitehouse.archives.gov/news/releases/2002/01/20020129-11.html>.
66. *Id.*
67. *Id.*
68. See Elsea and Weed, *supra* note 42, at 16.
69. *Id.*
70. See Andrew Glass, *Bush Makes Case for War with Iraq*, Politico, September 4, 2002, <https://www.politico.com/story/2018/09/04/this-day-in-politics-sept-4-2002-805725>.
71. See Bybee, *supra* note 43. The O.L.C. opinion, dated October 23, 2002, concluded that the President possesses the constitutional authority to use military force against Iraq to protect United States national interests. That independent constitutional authority was supplemented by the 1991 Authorization for Use of Military Force Against Iraq Resolution and was consistent with international law because it was authorized by the United Nations Security Council or would be justified as anticipatory self-defense. The opinion also cited the Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001), passed a week after the September 11, 2001, terrorist attacks, as further legal authority to use military force against Iraq.
72. See Remarks by President in Address to the United Nations General Assembly, September 12, 2002, <https://georgewbush-whitehouse.archives.gov/news/releases/2002/09/20020912-1.html>. See also Elsea and Weed, *supra* note 42, at 16.
73. See Elsea and Weed, *supra* note 42, at 16–17. See also Pub. L. No. 107-243, 116 Stat. 1498.
74. See U.N. Sec. Res. 1441, <https://undocs.org/S/RES/1441> (2002).
75. See Pub. L. No. 107-243 (3)(a)(1–2).
76. See Elsea and Weed, *supra* note 42, at 17–18: “Thus, it appears to have incorporated resolutions concerning Iraq that were subsequently adopted by the Security Council at least up to the expiration of the UN mandate on December 31, 2008, as well as those resolutions adopted prior to the enactment of P.L. 107-243. The authority also appears to extend beyond compelling Iraq’s disarmament to implementing the full range of concerns expressed in those resolutions. Unlike P.L. 107-40, the President’s exercise of the authority granted is *not* dependent upon a finding that Iraq was associated in some direct way with the September 11, 2001, attacks on the United States. Moreover, the authority conferred can be used for the broad purpose of defending ‘the national security of the United States against the continuing threat posed by Iraq.’ Nevertheless, P.L. 107-243 is narrower than P.L. 107-40, as well as President Bush’s originally proposed authorization, in that it limits the authorization for the use of force to Iraq. It also requires as a predicate for the use of force that the President determine that peaceful means cannot suffice and that the use of force against Iraq is consistent with the battle against terrorism. P.L. 107-243 further limits the force used to that which the President determines is ‘necessary and appropriate.’ Finally, as with P.L. 107-40, the statutory authorization for use of force granted to the President in P.L. 107-243 is not dependent for its exercise upon prior authorization by the U.N. Security Council.” Emphasis in original. Internal footnote omitted.
77. See Pub. L. No. 107-243.

78. Courts are deeply divided over what role congressional findings should play in a court's standing inquiry. See, e.g., *Dellums v. Nuclear Regulatory Comm'n*, 863 F2d 968 (DC Cir. 1988); *United Transportation Union v. Interstate Commerce Comm'n*, 891 F2d 908 (DC Cir. 1989); *City of Los Angeles v. National Highway Traffic Safety Admin.*, 912 F2d 478 (DC Cir. 1990). Interesting as those cases are, and as alive as the debate is in the courts today, the findings at issue here do not say what the Trump Administration says they do in its NDAA Section 1264 war powers report.
79. See Tim Arango and Michael S. Schmidt, *Last Convoy of American Troops Leaves Iraq*, N.Y. TIMES, December 18, 2011.
80. Why removing all U.S. troops from Iraq was controversial is beyond the scope of this paper. To read more about the topic, see James Phillips, *Obama Administration Gambles on U.S. Troop Strength in Iraq*, THE DAILY SIGNAL, September 8, 2011. See also James Phillips, *Politics Trumps Security in Obama's Bungled Troop Negotiations with Iraq*, THE DAILY SIGNAL, October 13, 2011; James Phillips, *Iraqi Government Balks in Negotiations over Extending U.S. Troop Presence*, THE DAILY SIGNAL, October 16, 2011; James Phillips, *Abrupt End of the U.S. Military Mission Boosts Security Risks in Iraq*, THE DAILY SIGNAL, December 16, 2011; James Phillips, *Iraq Plunges into Chaos as Obama Administration Celebrates End of U.S. Military Presence*, THE DAILY SIGNAL, December 2011; and James Phillips, *Q & A: What You Need to Know About ISIS in Iraq*, THE DAILY SIGNAL, June 14, 2014.
81. See Ryan N. Mannina, *How the 2011 US Troop Withdrawal from Iraq Led to the Rise of ISIS*, Small Wars Journal, December 2018, <https://smallwarsjournal.com/jrnl/art/how-2011-us-troop-withdrawal-iraq-led-rise-isis>. See also Kenneth M. Pollack, *The Fall and Rise and Fall of Iraq*, The Brookings Institution, Middle East Memo Number 29, July 2013, https://www.brookings.edu/wp-content/uploads/2016/06/Pollack_Iraq.pdf, and Luke Coffey, James Jay Carafano, Thomas Spoehr, & Walter Lohman, *Now Is Not the Time to Repeat Obama's Iraq Mistake in Afghanistan*, THE DAILY SIGNAL, December 26, 2018, <https://www.heritage.org/middle-east/commentary/now-not-the-time-repeat-obamas-iraq-mistake-afghanistan>.
82. President Trump has claimed that ISIS has been defeated. See Charles Lister, *Trump Says ISIS Is Defeated. Reality Says Otherwise*, Politico, March 18, 2019. After U.S. special operations personnel killed ISIS leader Abu al-Baghdadi in October 2019, Trump again claimed that ISIS was 100 percent defeated, only to back off the claim days later, saying that the number was closer to 70 percent defeated. See John T. Bennett, *Trump Walks Back Claim of Defeating 100% of the ISIS Caliphate*, ROLL CALL, October 28, 2019, <https://www.rollcall.com/news/whitehouse/in-another-reversal-trump-walks-back-claim-of-defeating-100-of-the-isis-caliphate>.
83. See Robert Chesney, *A Response to Bruce Ackerman: Whether the 2001 and 2002 AUMFs Are Exhausted*, Lawfareblog, September 8, 2011, <https://www.lawfareblog.com/response-bruce-ackerman-whether-2001-and-2002-aumfs-are-exhausted>.
84. Section 1264 of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91 (2017), required the Administration to provide the legal, factual, and policy bases for the United States' use of military force and related national security operations every year. The Obama Administration submitted one Section 1264 report, commonly referred to as the "war powers report." In its December 2016 report, it referred to ISIS as ISIL, which stands for the Islamic State of Iraq and the Levant, <https://www.documentcloud.org/documents/3232529-Framework-Report-Final.html#document/p1>.
85. See Trump Administration, *Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations*, undated, <https://assets.documentcloud.org/documents/4411804/3-18-War-Powers-Transparency-Report.pdf>, at 15.
86. *Id.* at 16.
87. See email by Senior Obama Administration official to N.Y. Times, undated, provided via email to the N.Y. Times on September 12, 2014, <https://www.documentcloud.org/documents/1301198-is-war-powers-theory-background-statement.html>.
88. Otherwise known as the National Security Advisor to the President.
89. See letter from Susan Rice to John Boehner, July 25, 2014, https://www.scribd.com/fullscreen/235109249?access_key=key-iGB8BlgK4cxNeXtuFT4l&allow_share=true&escape=false&view_mode=scroll.
90. See Trump Administration, *Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations*, undated.
91. *Id.* at 3.
92. *Id.*
93. *Id.*
94. See Christopher M. Davis, "Sense Of" Resolutions and Provisions, Congressional Research Service, October 16, 2019, at 1, <https://fas.org/sgp/crs/misc/98-825.pdf>.
95. *Id.*
96. *Id.*
97. See Trump Administration report, *supra* note 85. For the Obama Administration's war powers report, see *Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations*, December 2016, <https://www.documentcloud.org/documents/3232529-Framework-Report-Final.html#document/p1>. See also Oona Hathaway, Samuel Adelsberg, Spencer Amdur, Phillip Levitz, Freya Pitts, and Sirine Shebaya, *The Power to Detain: Detention of Terrorism Suspects After 9/11*, 38 YALE J. INT'L L. 123 (2013); Speech by Jennifer O'Connor, Department of Defense General Counsel, *Applying the Law of Targeting to the Modern Battlefield*, November 28, 2016, given at New York University School of Law, <https://dod.defense.gov/Portals/1/Documents/pubs/Applying-the-Law-of-Targeting-to-the-Modern-Battlefield.pdf>; and Speech by Jeh Johnson at Yale Law School, *National Security Law, Lawyers and Lawyering in the Obama Administration*, February 22, 2012, <https://www.lawfareblog.com/jeh-johnson-speech-yale-law-school>.

98. See *The Law of Armed Conflict, the Use of Military Force, and the 2001 Authorization for Use of Military Force*, hearing before the Senate Armed Services Committee, May 16, 2013, <https://www.armed-services.senate.gov/hearings/oversight-the-law-of-armed-conflict-the-use-of-military-force-and-the-2001-authorization-for-use-of-military-force>. See also Jack Goldsmith, testimony before United States Senate, Committee on Armed Services, May 16, 2013, https://www.armed-services.senate.gov/imo/media/doc/Goldsmith_05-16-13.pdf; Charles Stimson, testimony before United States Senate, Committee on Armed Services, May 16, 2013, https://www.armed-services.senate.gov/imo/media/doc/Stimson_05-16-13.pdf; and Scott R. Anderson, *A Primer on Sen. Merkley's Proposal to Replace the AUMF*, Lawfareblog.com, May 25, 2018, <https://www.lawfareblog.com/primer-sen-merkleys-proposal-replace-aumf>.
99. See Charles D. Stimson and Hugh Danilack, *The Case Law Concerning the 2001 Authorization for Use of Military Force and Its Application to ISIS*, HERITAGE FOUND. LEGAL MEMORANDUM No. 203, April 17, 2017, <https://www.heritage.org/defense/report/the-case-law-concerning-the-2001-authorization-use-military-force-and-its>.
100. On October 30, 2017, the United States Senate Committee on Foreign Relations held a hearing on *The Authorizations for the Use of Military Force: Administration Perspective*. The two witnesses were The Honorable Rex Tillerson, Secretary of State, and The Honorable James Mattis, Secretary of Defense. See https://www.foreign.senate.gov/hearings/the-authorizations-for-the-use-of-military-force-administration-perspective_103017.
101. See Paulsen, *supra* note 1, at 128.
102. See Yoo, *supra* note 9, at 265.
103. *Id.*
104. *Id.*
105. See Paulsen, *supra* note 1, at 131. See also Gregory Sidak, *To Declare War*, 41 DUKE L.J. 27, 99–108 (1991).
106. See Paulsen, *supra* note 1, at 131. See also Mark W. Mosier, *The Power to Declare Peace Unilaterally*, 70 U.Chi.L.Rev. 1609 (2003).
107. The five declared wars were the War of 1812, ended by the Treaty of Ghent; Mexican–American War, ended by the Treaty of Guadalupe Hidalgo; Spanish–American War, ended by the Treaty of Paris; World War I, ended by the Treaties of Berlin, U.S. Austrian Peace Treaty, and Hungarian Peace Treaty; and World War II, ended by the Japanese Instrument of Surrender, Treaty of San Francisco, German Instrument of Surrender, Treaty on the Final Settlement with Respect to Germany, and Treaty of Vienna with Austria.
108. See Elsea and Weed, *supra* note 42, at 5–19.
109. The question of when the war powers that arose from the declarations of war terminated was addressed by the Supreme Court in two cases. See *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138 (1948), and *Commercial Trust Co. v. Miller*, 262 U.S. 51 (1923). The war powers end not when the peace treaty is signed or the President declares that hostilities are over but when Congress concludes that the need for the power no longer exists. See also David A. Simon, *Ending Perpetual War? Constitutional War Termination Powers and the Conflict Against al Qaeda*, 41 Pepp.L.Rev. 685 (2014) (arguing that terminating war without meaningful cooperation between the President and Congress generates tension with the principle of separation of powers that underpins the U.S. constitutional system, with the Framers' division of treaty-making authority, and with the values they enshrine).
110. See Pub. L. No. 93-475, Section 3, 88 Stat 1439, October 26, 1974. *But see* Matthew Waxman, *Remember Eisenhower's Formosa AUMF*, Lawfareblog, January 29, 2019. See also Elsea and Weed, *supra* note 42, at 8.
111. See Joint Resolution of May 9, 1957, Pub. L. No. 87-5, 71 Stat. 5. See also Matthew Waxman, *Remembering Eisenhower's Middle East Force Resolution*, Lawfareblog, March 9, 2019.
112. See S.J. Res. (116th Congress, 1st Session), Joint Resolution to Repeal the Authorizations for Use of Military Force Against Iraq and for Other Purposes, Senators Tim Kaine and Todd Young, <https://www.scribd.com/document/401216220/Kaine-Young-Introduce-Bill-to-Repeal-1991-2002-AUMFs-Formalizing-End-of-Gulf-Iraq-Wars>.
113. See Senator Tim Kaine, Speech on the floor of the United States Senate, November 30, 2016, <https://www.kaine.senate.gov/press-releases/kaine-renews-call-for-congress-to-vote-on-war-against-isis-encourages-new-debate-on-changing-security-challenges>.
114. *Id.*
115. *Id.*
116. See Benjamin Wittes, *The Consequences of Congressional Inaction on the AUMF*, Lawfareblog.com, April 8, 2015.
117. *Id.*
118. See Senator Todd Young, Press Statement, March 6, 2019, <https://www.young.senate.gov/newsroom/press-releases/young-and-kaine-introduce-bill-to-repeal-1991-and-2002-aumfs-formalizing-end-of-gulf-and-iraq-wars>.
119. Kryptonite is a fictional alien mineral that has the property of depriving Superman of his powers. It came from the comic book series *Superman*, first released in June 1938.
120. While Congress is at it, Members might also consider repealing the 1957 Middle East Force Resolution.



**DRY CREEK RANCHERIA
BAND OF POMO INDIANS**

August 3, 2021

The Honorable Robert Menendez, Chairman
U.S. Senate Committee on Foreign Relations
423 Dirksen Office Building
Washington, DC 201510

The Honorable James Risch
Ranking Member
U.S. Senate Committee on Foreign Relations
423 Dirksen Office Building
Washington, DC 201510

Dear Chairman Menendez and Ranking Member Risch:

As the Chairman of the Dry Creek Rancheria Band of Pomo Indians, a federally recognized tribe located in Santa Rosa, ca, I write and submit this letter to express my strongest support for the nomination and eventual confirmation of former Secretary of the United States Department of Interior Ken Salazar for the position of Ambassador Extraordinary and Plenipotentiary to the United Mexican States.

As it relates to tribal affairs and working with approximately 575 federally recognized Tribes, Secretary Salazar has a long history of working with tribes, including the Dry Creek Rancheria Band of Pomo Indians. I believe Secretary Salazar is uniquely suited to bring his depth of knowledge on tribal sovereignty to his service as an ambassador. Not only is he knowledgeable, but he is compassionate and has a passion for building and nurturing relationships with Tribes, each of which are very unique and diverse in their own way. He has worked collaboratively with Tribes through some of the most novel and challenging issues related to Indian Country, most notably the negotiations of water rights settlements, the Cobell trust class action litigation, and others. He understands and recognizes that some Tribes have relatives and cultural resources that are separated by the U.S.-Mexico border, and that many tribal citizens are tied to the land on both sides of the border. Yet, he has worked with Tribes to ensure that these challenges are addressed in the most diplomatic, appropriate, and compassionate way.

In addition, he has deep experience with natural resources and the Colorado River, an international river that serves Tribes in Arizona, as well as water users in Mexico. Despite the complex challenges, he has always worked to ensure that tribal interests and perspectives are represented and heard. He has built a positive and collaborative relationship with tribal leaders. These experiences make him uniquely qualified and the ideal candidate for ambassador not only to ensure the Indigenous views appropriately inform policy, but that the voices of all whose lives have a stake in a particular issue are heard.

Mailing Address: P.O BOX 607, Geyserville, CA 95441
Rancheria Address: 3250 Highway 128 East, Geyserville, CA 95441
Office Address: 1450 Airport Boulevard, Suite 200A, Santa Rosa, CA 95403

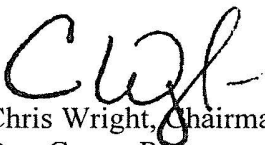
On a national level, Secretary Salazar's record of public service is extraordinary. In his many roles as a state and federal official, he has served as a gracious leader and has left a lasting legacy in both his home state of Colorado and the nation. He has served honorably in positions such as the executive director of the Colorado Department of Natural Resources, Colorado Attorney General, United States Senator, and most recently, as Secretary of the United States Department of Interior. From these positions, Secretary Salazar has gained a unique perspective and deep knowledge of the Western and Southwestern regions of the United States. This experience will serve him well as ambassador to Mexico.

Hailing from the San Luis Valley and Southern Colorado regions, Secretary Salazar has served the public for five decades. As a fifth-generation rancher and a natural resources attorney, he also has a sound understanding of the importance of agricultural and natural resource markets, and the importance of Mexico as one of our top trading partners. Secretary Salazar also comes from a rich Hispanic heritage, again making him particularly suited for the great responsibilities of representing American interests before our neighbor, Mexico.

We are at a significant juncture in U.S.-Mexico relations. Mexico remains one of the largest trading partners of the United States. Present conditions at the U.S.-Mexican border continue to draw concerns that require skilled diplomacy. The next American ambassador to Mexico should be a seasoned statesman who appreciates and holds a true understanding of our nation's interdependence with Mexico, understands the importance of trade between our markets, and who is committed to addressing border and immigration issues in a humane yet compassionate manner. Not only does Secretary Salazar possess these qualities and attributes, but he is well equipped to meet each of these challenges.

Again, the Dry Creek Rancheria Band of Pomo Indians is proud to support Secretary Salazar's nomination to be the next ambassador to Mexico. We urge the Senate Committee on Foreign Relations and the U.S. Senate to move with all deliberate speed to vote to confirm his appointment. Should you have any questions, please contact me at 707-814-4155.

Sincerely,



Chris Wright, Chairman

DRY CREEK RANCHERIA BAND OF POMO INDIANS



July 28, 2021

The Honorable Robert Menendez, Chairman
U.S. Senate Committee on Foreign Relations
423 Dirksen Office Building
Washington, DC 201510

The Honorable James Risch
Ranking Member
U.S. Senate Committee on Foreign Relations
423 Dirksen Office Building
Washington, DC 201510

Dear Chairman Menendez and Ranking Member Risch:

As the Chairman of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (a/k/a the “Gun Lake Tribe”), a federally-recognized tribe located in Shelbyville, Michigan, I write and submit this letter to express my strongest support for the nomination and eventual confirmation of former Secretary of the United States Department of Interior Ken Salazar for the position of Ambassador Extraordinary and Plenipotentiary to the United Mexican States.

As it relates to tribal affairs and working with approximately 575 federally recognized Tribes, Secretary Salazar has a long history of working with tribes, including the Gun Lake Tribe. I believe Secretary Salazar is uniquely suited to bring his depth of knowledge on tribal sovereignty to his service as an ambassador. Not only is he knowledgeable, but he is compassionate and has a passion for building and nurturing relationships with Tribes, each of which are very unique and diverse in their own way. He has worked collaboratively with Tribes through some of the most novel and challenging issues related to Indian Country, most notably the negotiations of water rights settlements, the Cobell trust class action litigation, and others. He understands and recognizes that some Tribes have relatives and cultural resources that are separated by the U.S.-Mexico border, and that many tribal citizens are tied to the land on both sides of the border. Yet, he has worked with Tribes to ensure that these challenges are addressed in the most diplomatic, appropriate, and compassionate way.

In addition, he has deep experience with natural resources and the Colorado River, an international river that serves Tribes in Arizona, as well as water users in Mexico. Despite the complex challenges, he has always worked to ensure that tribal interests and perspectives are represented and heard. He has built a positive and collaborative relationship with tribal leaders. These experiences make him uniquely qualified and the ideal candidate for ambassador not only to ensure the Indigenous views appropriately inform policy, but that the voices of all whose lives have a stake in a particular issue are heard.

BAND OF POTTAWATOMI INDIANS | GUN LAKE TRIBE

On a national level, Secretary Salazar's record of public service is extraordinary. In his many roles as a state and federal official, he has served as a gracious leader and has left a lasting legacy in both his home state of Colorado and the nation. He has served honorably in positions such as the executive director of the Colorado Department of Natural Resources, Colorado Attorney General, United States Senator, and most recently, as Secretary of the United States Department of Interior. From these positions, Secretary Salazar has gained a unique perspective and deep knowledge of the Western and Southwestern regions of the United States. This experience will serve him well as ambassador to Mexico.

Hailing from the San Luis Valley and Southern Colorado regions, Secretary Salazar has served the public for five decades. As a fifth-generation rancher and a natural resources attorney, he also has a sound understanding of the importance of agricultural and natural resource markets, and the importance of Mexico as one of our top trading partners. Secretary Salazar also comes from a rich Hispanic heritage, again making him particularly suited for the great responsibilities of representing American interests before our neighbor, Mexico.

We are at a significant juncture in U.S.-Mexico relations. Mexico remains one of the largest trading partners of the United States. Present conditions at the U.S.-Mexican border continue to draw concerns that require skilled diplomacy. The next American ambassador to Mexico should be a seasoned statesman who appreciates and holds a true understanding of our nation's interdependence with Mexico, understands the importance of trade between our markets, and who is committed to addressing border and immigration issues in a humane yet compassionate manner. Not only does Secretary Salazar possess these qualities and attributes, but he is well equipped to meet each of these challenges.

Again, the Gun Lake Tribe is proud to support Secretary Salazar's nomination to be the next ambassador to Mexico. We urge the Senate Committee on Foreign Relations and the U.S. Senate to move with all deliberate speed to vote to confirm his appointment. Should you have any questions, please contact me at 269-397-1780.

Sincerely,

A handwritten signature in cursive script that reads "Bob Peters".

Bob Peters, Chairman
Gun Lake Tribe



Tonto Apache Tribe

Tonto Apache Reservation #30 ♦ Payson, AZ 85541
Telephone: (928) 474-5000 Fax: (928) 474-4158

July 28, 2021

The Honorable Robert Menendez, Chairman
U.S. Senate Committee on Foreign Relations
423 Dirksen Office Building
Washington, DC 201510

The Honorable James Risch
Ranking Member
U.S. Senate Committee on Foreign Relations
423 Dirksen Office Building
Washington, DC 201510

Dear Chairman Menendez and Ranking Member Risch:

As the Chairman of the Tonto Apache Tribe, a federally-recognized tribe located in Payson, AZ, I write and submit this letter to express my strongest support for the nomination and eventual confirmation of former Secretary of the United States Department of Interior Ken Salazar for the position of Ambassador Extraordinary and Plenipotentiary to the United Mexican States.

As it relates to tribal affairs and working with approximately 575 federally recognized Tribes, Secretary Salazar has a long history of working with tribes, including the Tonto Apache Tribe. I believe Secretary Salazar is uniquely suited to bring his depth of knowledge on tribal sovereignty to his service as an ambassador. Not only is he knowledgeable, but he is compassionate and has a passion for building and nurturing relationships with Tribes, each of which are very unique and diverse in their own way. He has worked collaboratively with Tribes through some of the most novel and challenging issues related to Indian Country, most notably the negotiations of water rights settlements, the Cobell trust class action litigation, and others. He understands and recognizes that some Tribes have relatives and cultural resources that are separated by the U.S.-Mexico border, and that many tribal citizens are tied to the land on both sides of the border. Yet, he has worked with Tribes to ensure that these challenges are addressed in the most diplomatic, appropriate, and compassionate way.

In addition, he has deep experience with natural resources and the Colorado River, an international river that serves Tribes in Arizona, as well as water users in Mexico. Despite the complex challenges, he has always worked to ensure that tribal interests and perspectives are represented and heard. He has built a positive and collaborative relationship with tribal leaders. These experiences make him uniquely qualified and the ideal candidate for ambassador not only

to ensure the Indigenous views appropriately inform policy, but that the voices of all whose lives have a stake in a particular issue are heard.

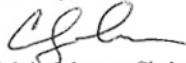
On a national level, Secretary Salazar's record of public service is extraordinary. In his many roles as a state and federal official, he has served as a gracious leader and has left a lasting legacy in both his home state of Colorado and the nation. He has served honorably in positions such as the executive director of the Colorado Department of Natural Resources, Colorado Attorney General, United States Senator, and most recently, as Secretary of the United States Department of Interior. From these positions, Secretary Salazar has gained a unique perspective and deep knowledge of the Western and Southwestern regions of the United States. This experience will serve him well as ambassador to Mexico.

Hailing from the San Luis Valley and Southern Colorado regions, Secretary Salazar has served the public for five decades. As a fifth-generation rancher and a natural resources attorney, he also has a sound understanding of the importance of agricultural and natural resource markets, and the importance of Mexico as one of our top trading partners. Secretary Salazar also comes from a rich Hispanic heritage, again making him particularly suited for the great responsibilities of representing American interests before our neighbor, Mexico.

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Again, the Tonto Apache Tribe is proud to support Secretary Salazar's nomination to be the next ambassador to Mexico. We urge the Senate Committee on Foreign Relations and the U.S. Senate to move with all deliberate speed to vote to confirm his appointment. Should you have any questions, please contact me at 928-474-5000.

Sincerely,



Calvin Johnson, Chairman
Tonto Apache Tribe

Lac Vieux Desert Band Of Lake Superior Chippewa Tribal Government

N4698 US 45 P.O. Box 249 • Watersmeet, Michigan 49969

Phone: 906-358-4577 • Fax: 906-358-4785

Executive Officers:

James Williams Jr., Tribal Chairman
Samuel Klingman, Tribal Vice-Chairman
Patrick Garrison, Tribal Treasurer
Priscilla Smith, Tribal Secretary



Council Members:

Patrick Hazen II
Cynthia McGeshick
Jeffery McGeshick
Mitchell McGeshick
Tyrone McGeshick

July 28, 2021

The Honorable Robert Menendez, Chairman
U.S. Senate Committee on Foreign Relations
423 Dirksen Office Building
Washington, DC 201510

The Honorable James Risch
Ranking Member
U.S. Senate Committee on Foreign Relations
423 Dirksen Office Building
Washington, DC 201510

Dear Chairman Menendez and Ranking Member Risch:

As the Chairman of the Lac Vieux Desert Band of Lake Superior Chippewa, a federally-recognized Indian tribe located near Watersmeet, Michigan, I write and submit this letter to express my support for the nomination and confirmation of former Secretary of the United States Department of Interior Ken Salazar for the position of Ambassador Extraordinary and Plenipotentiary to the United Mexican States.

As it relates to Tribal affairs and working with approximately 575 federally recognized Indian tribes, Secretary Salazar has a long history of working with Indigenous populations, including the Lac Vieux Desert Band of Lake Superior Chippewa Indians. I believe Secretary Salazar is uniquely suited to bring his depth of knowledge on Tribal sovereignty to his service as an ambassador. Not only is he knowledgeable, but he also has a passion for building and nurturing relationships with Indigenous populations. Secretary Salazar has worked collaboratively with Indian tribes through some of the most novel and challenging issues related to Indian Country, most notably the negotiations of water rights settlements, the Cobell trust class action litigation, and much more. He understands and recognizes that some Indian tribes have relatives and cultural resources that are separated by the U.S.-Mexico border, and that many Tribal citizens are tied to the land on both sides of the border. These relationship to land and people creates unique challenges for Indian tribes, the U.S. and Mexico. Secretary Salazar has a history of working with Indian tribes to ensure that unique challenges such as these are addressed in the most diplomatic, appropriate, and compassionate way.

In addition, I am aware that he has a wealth of experience with natural resource issues and particularly those related to the Colorado River, an international river that serves Indian tribes in Arizona, as well as water users in Mexico. Secretary Salazar has always worked to ensure that tribal interests and perspectives are represented. His commitment to Indian Country, reflected by advocacy and action, has built a positive and collaborative relationship with many Tribal leaders. These experiences make him uniquely qualified and the ideal candidate for ambassador not only to ensure the Indigenous views appropriately inform policy, but that the voices of all whose lives have a stake in a particular issue are heard.

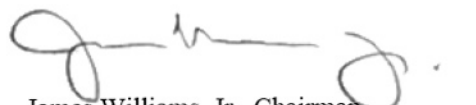
On a national level, Secretary Salazar's record of public service is extraordinary. In his many roles as a state and federal official, he has served as a gracious leader and has left a lasting legacy in both his home state of Colorado and throughout the nation. He has served honorably in positions such as the executive director of the Colorado Department of Natural Resources, Colorado Attorney General, United States Senator, and most recently, as Secretary of the United States Department of Interior. From these positions, Secretary Salazar has gained a unique perspective and deep knowledge of the Western and Southwestern regions of the United States. This experience will serve him well as ambassador to Mexico.

Hailing from the San Luis Valley and Southern Colorado regions, Secretary Salazar has served the public for five decades. As a fifth-generation rancher and a natural resources attorney, he also has a sound understanding of the importance of agricultural and natural resource markets, and the importance of Mexico as one of our top trading partners. Secretary Salazar also comes from a rich Hispanic heritage, again making him particularly suited for the great responsibilities of representing U.S. interests before our neighbor, Mexico.

We are at a significant juncture in U.S.-Mexico relations. Mexico remains one of the largest trading partners of the United States. Present conditions at the U.S.-Mexican border continue to draw concerns that require skilled diplomacy. The next American ambassador to Mexico should be a seasoned statesman who appreciates and holds a true understanding of our nation's interdependence with Mexico, understands the importance of trade between our markets, and who is committed to addressing border and immigration issues in an informed, humane yet compassionate manner. Not only does Secretary Salazar possess these qualities and attributes, but he is well equipped to meet each of these challenges.

Again, the Lac Vieux Desert Band of Lake Superior Chippewa is proud to support Secretary Salazar's nomination to be the next ambassador to Mexico. We urge the Senate Committee on Foreign Relations and the U.S. Senate to move with all deliberate speed to vote to confirm his appointment. Should you have any questions, please contact me at 906-358-4577.

Sincerely,



James Williams, Jr., Chairman

Lac Vieux Desert Band of Lake Superior Chippewa



July 28, 2021

The Honorable Robert Menendez, Chairman
U.S. Senate Committee on Foreign Relations
423 Dirksen Office Building
Washington, DC 201510

The Honorable James Risch
Ranking Member
U.S. Senate Committee on Foreign Relations
423 Dirksen Office Building
Washington, DC 201510

Dear Chairman Menendez and Ranking Member Risch:

As the Chairman of the Mechoopda Indian Tribe, a federally-recognized tribe located in Chico, CA, I write and submit this letter to express my strongest support for the nomination and eventual confirmation of former Secretary of the United States Department of Interior Ken Salazar for the position of Ambassador Extraordinary and Plenipotentiary to the United Mexican States.

As it relates to tribal affairs and working with approximately 575 federally recognized Tribes, Secretary Salazar has a long history of working with tribes, including the Mechoopda Indian Tribe. I believe Secretary Salazar is uniquely suited to bring his depth of knowledge on tribal sovereignty to his service as an ambassador. Not only is he knowledgeable, but he is compassionate and has a passion for building and nurturing relationships with Tribes, each of which are very unique and diverse in their own way. He has worked collaboratively with Tribes through some of the most novel and challenging issues related to Indian Country, most notably the negotiations of water rights settlements, the Cobell trust class action litigation, and others. He understands and recognizes that some Tribes have relatives and cultural resources that are separated by the U.S.-Mexico border, and that many tribal citizens are tied to the land on both sides of the border. Yet, he has worked with Tribes to ensure that these challenges are addressed in the most diplomatic, appropriate, and compassionate way.

In addition, he has deep experience with natural resources and the Colorado River, an international river that serves Tribes in Arizona, as well as water users in Mexico. Despite the complex challenges, he has always worked to ensure that tribal interests and perspectives are represented and heard. He has built a positive and collaborative relationship with tribal leaders. These experiences make him uniquely qualified and the ideal candidate for ambassador not only

to ensure the Indigenous views appropriately inform policy, but that the voices of all whose lives have a stake in a particular issue are heard.

On a national level, Secretary Salazar's record of public service is extraordinary. In his many roles as a state and federal official, he has served as a gracious leader and has left a lasting legacy in both his home state of Colorado and the nation. He has served honorably in positions such as the executive director of the Colorado Department of Natural Resources, Colorado Attorney General, United States Senator, and most recently, as Secretary of the United States Department of Interior. From these positions, Secretary Salazar has gained a unique perspective and deep knowledge of the Western and Southwestern regions of the United States. This experience will serve him well as ambassador to Mexico.

Hailing from the San Luis Valley and Southern Colorado regions, Secretary Salazar has served the public for five decades. As a fifth-generation rancher and a natural resources attorney, he also has a sound understanding of the importance of agricultural and natural resource markets, and the importance of Mexico as one of our top trading partners. Secretary Salazar also comes from a rich Hispanic heritage, again making him particularly suited for the great responsibilities of representing American interests before our neighbor, Mexico.

We are at a significant juncture in U.S.-Mexico relations. Mexico remains one of the largest trading partners of the United States. Present conditions at the U.S.-Mexican border continue to draw concerns that require skilled diplomacy. The next American ambassador to Mexico should be a seasoned statesman who appreciates and holds a true understanding of our nation's interdependence with Mexico, understands the importance of trade between our markets, and who is committed to addressing border and immigration issues in a humane yet compassionate manner. Not only does Secretary Salazar possess these qualities and attributes, but he is well equipped to meet each of these challenges.

Again, the Mechoopda Indian Tribe is proud to support Secretary Salazar's nomination to be the next ambassador to Mexico. We urge the Senate Committee on Foreign Relations and the U.S. Senate to move with all deliberate speed to vote to confirm his appointment. Should you have any questions, please contact me at 530-899-8922.

Sincerely,



Dennis Ramirez (Jul 29, 2011 10:26 PDT)

Dennis Ramirez, Chairman
Mechoopda Indian Tribe



Mooretown Rancheria

#1 Alverda Drive

Oroville, CA 95966

(530) 533-3625 Office

(530) 533-3680 Fax

July 28, 2021

The Honorable Robert Menendez, Chairman
U.S. Senate Committee on Foreign Relations
423 Dirksen Office Building
Washington, DC 201510

The Honorable James Risch
Ranking Member
U.S. Senate Committee on Foreign Relations
423 Dirksen Office Building
Washington, DC 201510

Dear Chairman Menendez and Ranking Member Risch:

As the Chairman of the Mooretown Rancheria of Maidu Indians of California a federally-recognized tribe located in Oroville, CA, I write and submit this letter to express my strongest support for the nomination and eventual confirmation of former Secretary of the United States Department of Interior Ken Salazar for the position of Ambassador Extraordinary and Plenipotentiary to the United Mexican States.

As it relates to tribal affairs and working with approximately 575 federally recognized Tribes, Secretary Salazar has a long history of working with tribes, including the Mooretown Rancheria. I believe Secretary Salazar is uniquely suited to bring his depth of knowledge on tribal sovereignty to his service as an ambassador. Not only is he knowledgeable, but he is compassionate and has a passion for building and nurturing relationships with Tribes, each of which are very unique and diverse in their own way. He has worked collaboratively with Tribes through some of the most novel and challenging issues related to Indian Country, most notably the negotiations of water rights settlements, the Cobell trust class action litigation, and others. He understands and recognizes that some Tribes have relatives and cultural resources that are separated by the U.S.-Mexico border, and that many tribal citizens are tied to the land on both sides of the border. Yet, he has worked with Tribes to ensure that these challenges are addressed in the most diplomatic, appropriate, and compassionate way.

"Concow - Maidu"

In addition, he has deep experience with natural resources and the Colorado River, an international river that serves Tribes in Arizona, as well as water users in Mexico. Despite the complex challenges, he has always worked to ensure that tribal interests and perspectives are represented and heard. He has built a positive and collaborative relationship with tribal leaders. These experiences make him uniquely qualified and the ideal candidate for ambassador not only to ensure the Indigenous views appropriately inform policy, but that the voices of all whose lives have a stake in a particular issue are heard.

On a national level, Secretary Salazar's record of public service is extraordinary. In his many roles as a state and federal official, he has served as a gracious leader and has left a lasting legacy in both his home state of Colorado and the nation. He has served honorably in positions such as the executive director of the Colorado Department of Natural Resources, Colorado Attorney General, United States Senator, and most recently, as Secretary of the United States Department of Interior. From these positions, Secretary Salazar has gained a unique perspective and deep knowledge of the Western and Southwestern regions of the United States. This experience will serve him well as ambassador to Mexico.

Hailing from the San Luis Valley and Southern Colorado regions, Secretary Salazar has served the public for five decades. As a fifth-generation rancher and a natural resources attorney, he also has a sound understanding of the importance of agricultural and natural resource markets, and the importance of Mexico as one of our top trading partners. Secretary Salazar also comes from a rich Hispanic heritage, again making him particularly suited for the great responsibilities of representing American interests before our neighbor, Mexico.

We are at a significant juncture in U.S.-Mexico relations. Mexico remains one of the largest trading partners of the United States. Present conditions at the U.S.-Mexican border continue to draw concerns that require skilled diplomacy. The next American ambassador to Mexico should be a seasoned statesman who appreciates and holds a true understanding of our nation's interdependence with Mexico, understands the importance of trade between our markets, and who is committed to addressing border and immigration issues in a humane yet compassionate manner. Not only does Secretary Salazar possess these qualities and attributes, but he is well equipped to meet each of these challenges.

Again, the Mooretown Rancheria of Maidu Indians of California is proud to support Secretary Salazar's nomination to be the next ambassador to Mexico. We urge the Senate Committee on Foreign Relations and the U.S. Senate to move with all deliberate speed to vote to confirm his appointment. Should you have any questions, please contact me at 530-533-3625.

Sincerely,



Benjamin Clark, Chairman
Mooretown Rancheria of Maidu Indians of California



July 28, 2021

The Honorable Robert Menendez, Chairman
U.S. Senate Committee on Foreign Relations
423 Dirksen Office Building
Washington, DC 201510

The Honorable James Risch
Ranking Member
U.S. Senate Committee on Foreign Relations
423 Dirksen Office Building
Washington, DC 201510

Dear Chairman Menendez and Ranking Member Risch:

As the Chairman of the Middletown Rancheria of Pomo Indians of California, a federally-recognized tribe located in Middletown, CA, I write and submit this letter to express my strongest support for the nomination and eventual confirmation of former Secretary of the United States Department of Interior Ken Salazar for the position of Ambassador Extraordinary and Plenipotentiary to the United Mexican States.

As it relates to tribal affairs and working with approximately 575 federally recognized Tribes, Secretary Salazar has a long history of working with tribes, including the Otoe-Missouria Tribe. I believe Secretary Salazar is uniquely suited to bring his depth of knowledge on tribal sovereignty to his service as an ambassador. Not only is he knowledgeable, but he is compassionate and has a passion for building and nurturing relationships with Tribes, each of which are very unique and diverse in their own way. He has worked collaboratively with Tribes through some of the most novel and challenging issues related to Indian Country, most notably the negotiations of water rights settlements, the Cobell trust class action litigation, and others. He understands and recognizes that some Tribes have relatives and cultural resources that are separated by the U.S.-Mexico border, and that many tribal citizens are tied to the land on both sides of the border. Yet, he has worked with Tribes to ensure that these challenges are addressed in the most diplomatic, appropriate, and compassionate way.

In addition, he has deep experience with natural resources and the Colorado River, an international river that serves Tribes in Arizona, as well as water users in Mexico. Despite the complex challenges, he has always worked to ensure that tribal interests and perspectives are represented and heard. He has built a positive and collaborative relationship with tribal leaders.

These experiences make him uniquely qualified and the ideal candidate for ambassador not only to ensure the Indigenous views appropriately inform policy, but that the voices of all whose lives have a stake in a particular issue are heard.

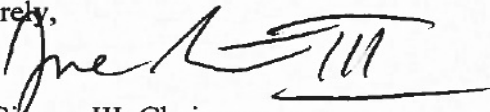
On a national level, Secretary Salazar's record of public service is extraordinary. In his many roles as a state and federal official, he has served as a gracious leader and has left a lasting legacy in both his home state of Colorado and the nation. He has served honorably in positions such as the executive director of the Colorado Department of Natural Resources, Colorado Attorney General, United States Senator, and most recently, as Secretary of the United States Department of Interior. From these positions, Secretary Salazar has gained a unique perspective and deep knowledge of the Western and Southwestern regions of the United States. This experience will serve him well as ambassador to Mexico.

Hailing from the San Luis Valley and Southern Colorado regions, Secretary Salazar has served the public for five decades. As a fifth-generation rancher and a natural resources attorney, he also has a sound understanding of the importance of agricultural and natural resource markets, and the importance of Mexico as one of our top trading partners. Secretary Salazar also comes from a rich Hispanic heritage, again making him particularly suited for the great responsibilities of representing American interests before our neighbor, Mexico.

We are at a significant juncture in U.S.-Mexico relations. Mexico remains one of the largest trading partners of the United States. Present conditions at the U.S.-Mexican border continue to draw concerns that require skilled diplomacy. The next American ambassador to Mexico should be a seasoned statesman who appreciates and holds a true understanding of our nation's interdependence with Mexico, understands the importance of trade between our markets, and who is committed to addressing border and immigration issues in a humane yet compassionate manner. Not only does Secretary Salazar possess these qualities and attributes, but he is well equipped to meet each of these challenges.

Again, the Middletown Rancheria of Pomo Indians of California is proud to support Secretary Salazar's nomination to be the next ambassador to Mexico. We urge the Senate Committee on Foreign Relations and the U.S. Senate to move with all deliberate speed to vote to confirm his appointment. Should you have any questions, please contact me at 707-987-3670.

Sincerely,

A handwritten signature in black ink, appearing to read "Jose Simon, III", with a long horizontal flourish extending to the right.

Jose Simon, III, Chairman
Middletown Rancheria of Pomo Indians of California



OTOE-MISSOURIA TRIBE OF INDIANS

8151 HIGHWAY 177
RED ROCK, OK 74651-0348

July 28, 2021

The Honorable Robert Menendez, Chairman
U.S. Senate Committee on Foreign Relations
423 Dirksen Office Building
Washington, DC 201510

The Honorable James Risch
Ranking Member
U.S. Senate Committee on Foreign Relations
423 Dirksen Office Building
Washington, DC 201510

Dear Chairman Menendez and Ranking Member Risch:

As the Chairman of the Otoe-Missouria Tribe, a federally-recognized tribe located in Red Rock, Oklahoma, I write and submit this letter to express my strongest support for the nomination and eventual confirmation of former Secretary of the United States Department of Interior Ken Salazar for the position of Ambassador Extraordinary and Plenipotentiary to the United Mexican States.

As it relates to tribal affairs and working with approximately 575 federally recognized Tribes, Secretary Salazar has a long history of working with tribes, including the Otoe-Missouria Tribe. I believe Secretary Salazar is uniquely suited to bring his depth of knowledge on tribal sovereignty to his service as an ambassador. Not only is he knowledgeable, but he is compassionate and has a passion for building and nurturing relationships with Tribes, each of which are very unique and diverse in their own way. He has worked collaboratively with Tribes through some of the most novel and challenging issues related to Indian Country, most notably the negotiations of water rights settlements, the Cobell trust class action litigation, and others. He understands and recognizes that some Tribes have relatives and cultural resources that are separated by the U.S.-Mexico border, and that many tribal citizens are tied to the land on both sides of the border. Yet, he has worked with Tribes to ensure that these challenges are addressed in the most diplomatic, appropriate, and compassionate way.

In addition, he has deep experience with natural resources and the Colorado River, an international river that serves Tribes in Arizona, as well as water users in Mexico. Despite the complex challenges, he has always worked to ensure that tribal interests and perspectives are represented and heard. He has built a positive and collaborative relationship with tribal leaders.

PHONE: 580.723.4466 • TOLL FREE: 877.692.6863 • FAX: 580.723.4273 • www.omtribe.org

These experiences make him uniquely qualified and the ideal candidate for ambassador not only to ensure the Indigenous views appropriately inform policy, but that the voices of all whose lives have a stake in a particular issue are heard.

On a national level, Secretary Salazar's record of public service is extraordinary. In his many roles as a state and federal official, he has served as a gracious leader and has left a lasting legacy in both his home state of Colorado and the nation. He has served honorably in positions such as the executive director of the Colorado Department of Natural Resources, Colorado Attorney General, United States Senator, and most recently, as Secretary of the United States Department of Interior. From these positions, Secretary Salazar has gained a unique perspective and deep knowledge of the Western and Southwestern regions of the United States. This experience will serve him well as ambassador to Mexico.

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Again, the Otoe-Missouria Tribes is proud to support Secretary Salazar's nomination to be the next ambassador to Mexico. We urge the Senate Committee on Foreign Relations and the U.S. Senate to move with all deliberate speed to vote to confirm his appointment. Should you have any questions, please contact me at 580-723-4466.

Sincerely,



John R. Shotton, Chairman
Otoe-Missouria Tribe

The Honorable Bob Menendez
The Honorable James E. Risch
Senate Foreign Relations Committee
423 Dirksen Senate Office Building
Washington, DC. 20510-6225

Dear Chairman Menendez and Ranking Member Risch,

As former Assistant Secretaries of State of the Bureau of Educational and Cultural Affairs, we write to endorse President Biden's nomination of Lee Satterfield as Assistant Secretary of State for Educational and Cultural Affairs. We understand how important it is to equip an administration with qualified public servants. No one is more qualified to assume this role than Lee Satterfield.

Previously serving in the Bureau of Educational and Cultural Affairs as Deputy Assistant Secretary as well as acting Assistant Secretary, Lee made tremendous contributions to public diplomacy during her tenure at the State Department. Currently serving as President and COO of Meridian, Lee expertly leads day to day operations, expands public-private partnerships, and oversees the implementation of the strategic plan. She has spearheaded significant growth in operations, business development, and human resources including technological, executive, and talent development. Lee is also responsible for organizing and leading Meridian's Equity, Diversity, and Inclusion staff-led taskforce.

Lee's strategic perspective and leadership has resoundingly improved Meridian across all spectrums, effectively rebuilding the organization's infrastructure. She has the unique ability to simultaneously lead and listen, essential traits for executing successful diplomatic relations. We are confident Lee will bring these skill sets to the Bureau and continue the critical work on behalf of the United States in people-to-people exchanges among current and future global leaders. We know well how important these programs are in achieving US policy goals by creating mutual understanding, building enduring networks and personal relationships, and promoting U.S. national security and values.

The State Department will gain an incredible asset in Lee Satterfield, she will be a strong advocate for people to people exchanges and public diplomacy. We urge the committee to confirm Ms. Satterfield as Assistant Secretary of State for Educational and Cultural Affairs as soon as possible.

Sincerely,



Ann Stock



Marie Royce



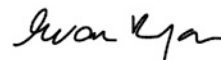
Pat Harrison



Dina Powell



Goli Ameri



Evan Ryan