

# The Power to Make War: The War on Terror

Byrd Center Teacher Institute Online Workshop Outline

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Length of Session: 50 Minutes

Guiding Question: Has the War on Terror changed war powers in the American Government?

Topic 1: Authority: How does the Constitution devise war powers?

Overview: The Constitution is equally specific and ambiguous in its definition of war powers. While Congress is given the authority to declare war and oversee the creation and maintenance of the armed forces, the President is given power as the “Commander in Chief” of those same armed forces. This ambiguity has created a fluid interpretation of war powers throughout American history which continues to define the political arena around our present War on Terror.

1. The U.S. Constitution, Article I, Section 8 Excerpt
2. The U.S. Constitution, Article II, Section 2 Excerpt
3. Cartoon by Steve Benson, *The Arizona Republic*, 2011

Topic 2: Justification: What reasons should we have for going to war?

Overview: The authorization of use of force passed days after the terrorist attacks of September 11, 2001 provided sweeping power to the Executive Branch which had kept the United States in a constant state of war ever since. The unprecedented nature of this authorization changed the traditional argument and procedure used by the American government to declare and conduct war. A comparison to our entry to World War II demonstrates this dramatic change.

4. Resolution Declaring War on the Imperial Government of Japan, 1941
5. Resolution Authorizing Use of Military Force of 2001

Topic 3: Dissent: Should Congress be the ultimate arbiter of war powers?

Overview: Of the many conflicts the United States has entered during the War on Terrorism, the decision to go to war in Iraq drew considerable controversy. One of the most outspoken critics of the war was West Virginia Senator Robert C. Byrd who not only questioned the President’s motives for entering the conflict but also the Senate’s lack of debate on the matter. His interactions with constituents demonstrate Senator Byrd’s argument that as the “people’s branch,” the Legislative Branch should reclaim its authority in decisions of war.

6. Representative Barbara Lee’s Statement of September 14, 2001
7. *Byrd’s Eye-View: West Virginia’s Voice in Iraq Debate*, 2002
8. Constituent Letter to Senator Byrd, 2003

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

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

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

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

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

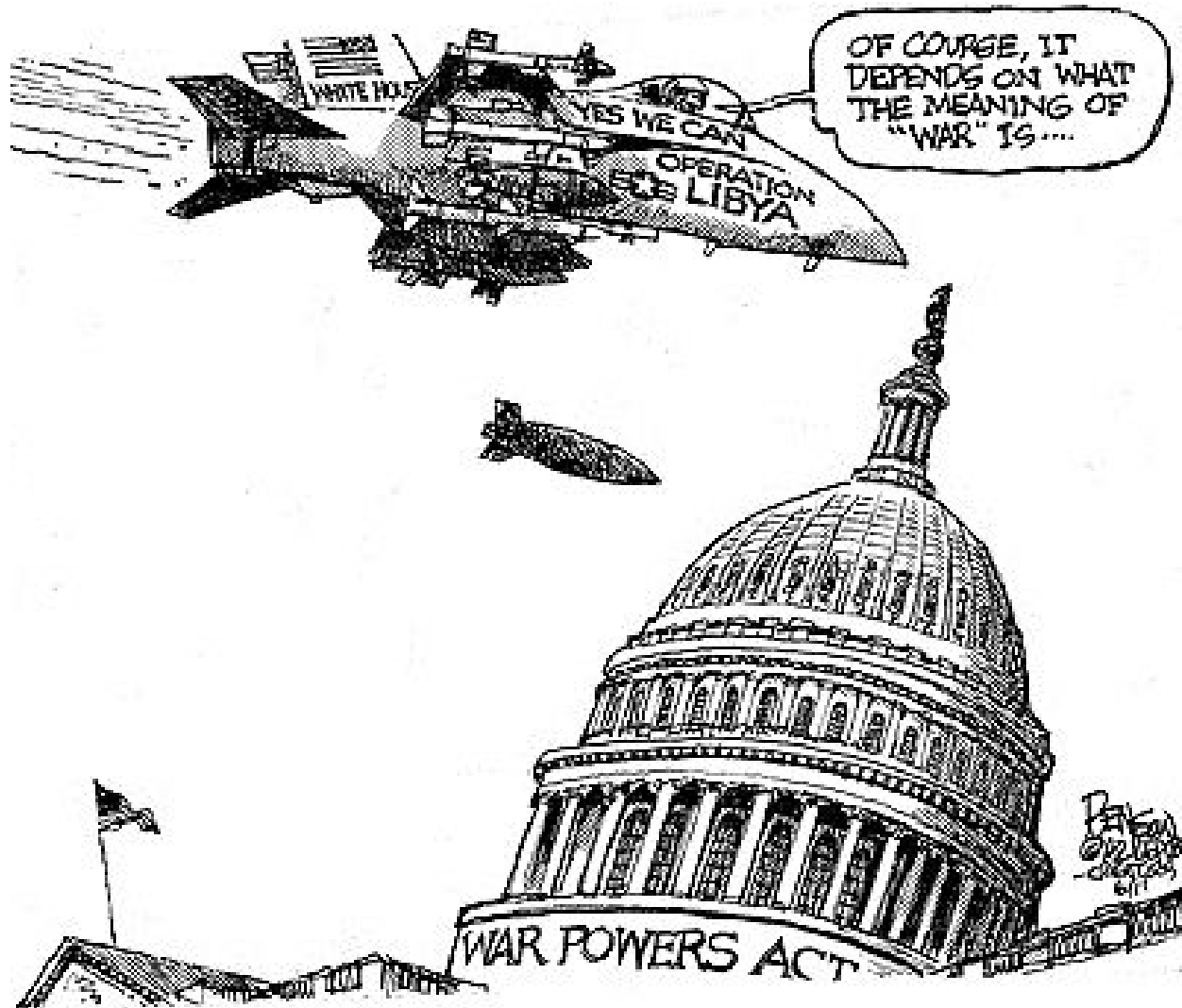
He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

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2011

War in Libya Cartoon by Steve Benson,

Times Educational Supplement Blendspace [[Source](#)]  
Originally Published in *The Arizona Republic*



**Seventy-seventh Congress of the United States of America;**  
**At the First Session**

Begun and held at the City of Washington on Friday, the third  
day of January, one thousand nine hundred and forty-one

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**JOINT RESOLUTION**

Declaring that a state of war exists between the Imperial Government  
of Japan and the Government and the people of the United States  
and making provisions to prosecute the same.

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Whereas the Imperial Government of Japan has committed unpro-  
voked acts of war against the Government and the people of the  
United States of America: Therefore be it

*Resolved by the Senate and House of Representatives of the  
United States of America in Congress assembled,* That the state of  
war between the United States and the Imperial Government of  
Japan which has thus been thrust upon the United States is hereby  
formally declared; and the President is hereby authorized and  
directed to employ the entire naval and military forces of the United  
States and the resources of the Government to carry on war against  
the Imperial Government of Japan; and, to bring the conflict to a  
successful termination, all of the resources of the country are hereby  
pledged by the Congress of the United States.

*Samuel Rayburn*  
Speaker of the House of Representatives.

*J. A. Wallace*  
Vice President of the United States and  
President of the Senate.

*Approved*

*Dec. 8<sup>th</sup> 1941 4.10 p.m. E.S.T.*

*Franklin D. Roosevelt*

Public Law 107-40  
107th Congress

Joint Resolution

Sept. 18, 2001  
[S.J. Res. 23]

To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States.

Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and  
Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad; and  
Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence; and  
Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States; and  
Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

Authorization for Use of Military Force.  
50 USC 1541 note.

**SECTION 1. SHORT TITLE.**

This joint resolution may be cited as the "Authorization for Use of Military Force".

**SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.**

President.

(a) **IN GENERAL.**—That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

(b) **WAR POWERS RESOLUTION REQUIREMENTS.**—

(1) **SPECIFIC STATUTORY AUTHORIZATION.**—Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) **APPLICABILITY OF OTHER REQUIREMENTS.**—Nothing in this resolution supercedes any requirement of the War Powers Resolution.

Approved September 18, 2001.

Ms. LEE. Mr. Speaker, I want to thank our ranking member and my friend for yielding time.

Mr. Speaker, I rise today really with a very heavy heart, one that is filled with sorrow for the families and the loved ones who were killed and injured this week. Only the most foolish and the most callous would not understand the grief that has really gripped our people and millions across the world.

This unspeakable act on the United States has forced me, however, to rely on my moral compass, my conscience, and my God for direction. September 11 changed the world. Our deepest fears now haunt us. Yet I am convinced that

military action will not prevent further acts of international terrorism against the United States. This is a very complex and complicated matter.

This resolution will pass, although we all know that the President can wage a war even without it. However difficult this vote may be, some of us must urge the use of restraint. Our country is in a state of mourning. Some of us must say, let us step back for a moment. Let us just pause for a minute and think through the implications of our actions today so that this does not spiral out of control.

I have agonized over this vote, but I came to grips with it today and I came to grips with opposing this resolution during the very painful yet very beautiful memorial service. As a member of the clergy so eloquently said, "As we act, let us not become the evil that we deplore."



### West Virginians' Voice in the Iraq Debate

In the coming days, Congress, the Bush Administration, and the entire nation will engage in the debate surrounding whether to commit American military forces to battle against Iraq. For a Member of Congress, there is no discussion more somber, no decision more critical as the decision whether to send the nation's sons and daughters to war. It is a decision which should never be left solely to an elite few in Washington. This decision should be studied and discussed by all Americans.

Every West Virginian should play a role in the national debate concerning whether our country should launch an unprovoked attack on Iraq. Consider the crucial questions. Does Saddam Hussein pose an imminent threat to the United States? Should the United States act alone? Should Congress grant the President authority to launch a preemptive attack on Iraq? What would be the repercussions around the globe? These and other questions are not simple to answer.

Without a solid foundation of knowledge upon which to analyze the serious issues involved, Americans will be buffeted this way and that way by spin doctors, by politicians seeking to follow the latest opinion polls, and by talk shows which often have an edito-

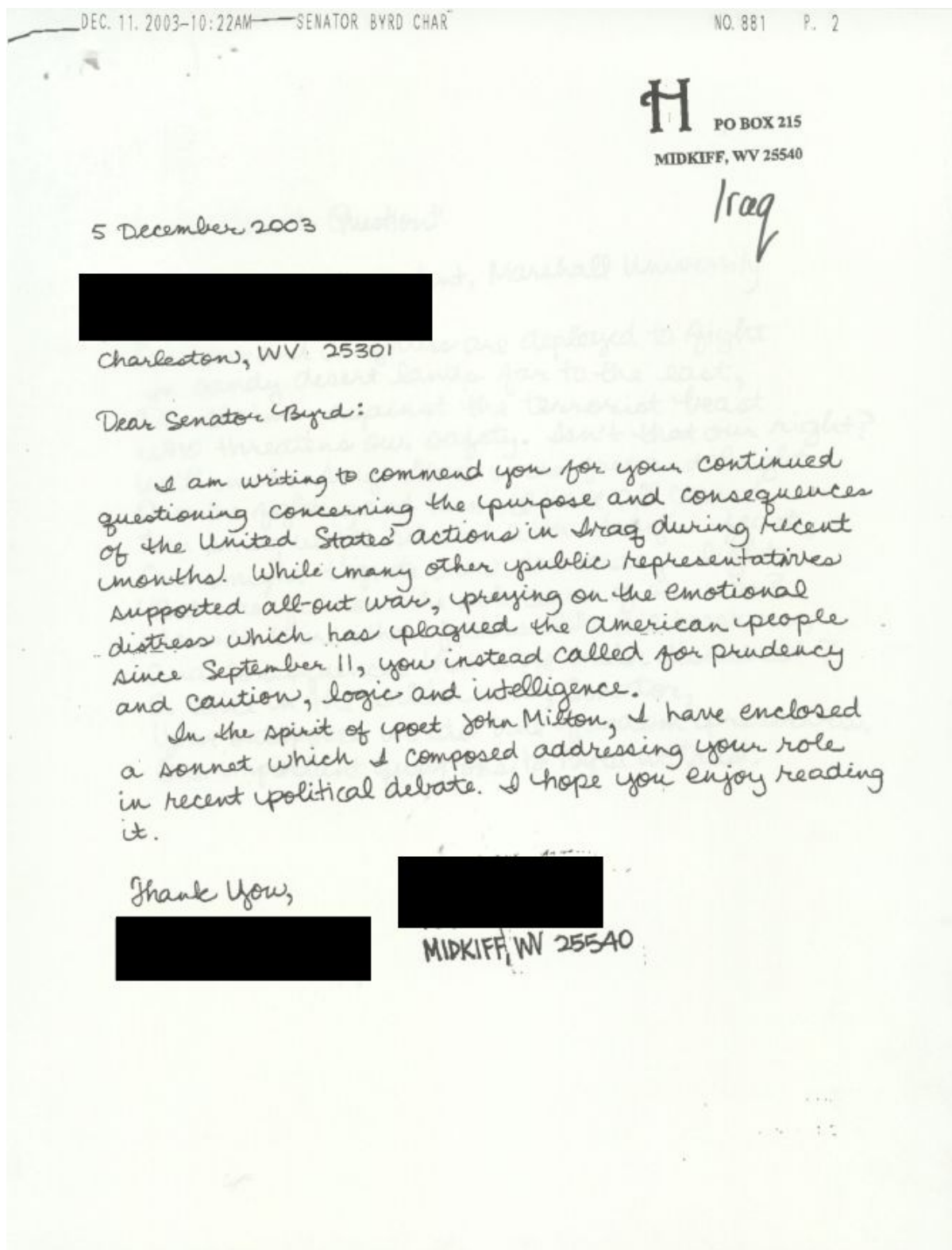
rial agenda. Americans should arm themselves with information so that they can cut through the fog, discern the truth, and recognize attempts at manipulation.

The American constitutional system of government has an inherent system of checks and balances which the Framers crafted to keep the American people free and to protect our liberties from being arbitrarily swept aside. The power of the purse, which resides with the Legislative Branch, is the ultimate check on an overreaching Executive and a prime guarantor of the people's freedoms. But there is another power which can serve as a check against abuses by overzealous government officials and that is the power of the informed citizenry -- a citizenry that is well equipped to judge truths from falsehoods. An informed citizenry is essential to preserving a republic such as ours.

This is a nation "of the people, by the people, and for the people." Never in our history has the role of a knowledgeable people been more important than in these turbulent days. An informed citizenry has to participate, ask questions, and demand answers and accountability. It is up to each American to do what he or she can do to provide the all-important check on power -- the wisdom of the people.

September 18, 2002





"He Who Dares to Question"

by [REDACTED] student, Marshall University

Our sons and daughters are deployed to fight  
In sandy desert lands far to the east,  
DC claims against the terrorist beast  
Who threatens our safety. Isn't that our right?  
We'll make Iraqi lives more free and bright  
Once the fighting and turmoil have all ceased.  
Then smug we'll sit and with Iraqis feast,  
Our might t'ignite new democracy's light.  
But was freedom the sole cause of our war?  
Weren't there other factors like oil reserves,  
and consequences that were never discussed?  
A voice in the wilderness, Senator,  
Your outspoken words true freedom preserves.  
The important questions to Byrd we trust.

Additional Resources:

[Congress, the President, and the War Powers](#), a lesson plan from the Center for Legislative Archives at the National Archives and Records Administration

[Nixon and the War Powers Resolution](#), a lesson plan from the Bill of Rights Institute

[Official Declarations of War by Congress](#), primary sources provided by the United States Senate Historical Office