

110TH CONGRESS
2D SESSION

H. R. 5626

To reassert the constitutional role of Congress in making long-term security commitments, to defer significant long-term security commitments to Iraq to the next Administration and Congress, and to maintain international legal authority and immunity for United States Armed Forces in Iraq by promoting the extension of the United Nations mandate.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 2008

Mr. DELAHUNT (for himself and Ms. DELAURO) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reassert the constitutional role of Congress in making long-term security commitments, to defer significant long-term security commitments to Iraq to the next Administration and Congress, and to maintain international legal authority and immunity for United States Armed Forces in Iraq by promoting the extension of the United Nations mandate.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 The Act may be cited as the “Protect Our Troops
3 and Our Constitution Act of 2008”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) On November 26, 2007, by signing the Dec-
7 laration of Principles for a Long-Term Relationship
8 of Cooperation and Friendship Between the Republic
9 of Iraq and the United States of America (herein-
10 after in this Act referred to as the “Declaration of
11 Principles”), the President of the United States
12 pledged to negotiate by July 2008 an agreement to
13 replace the United Nations mandate that currently
14 provides international legal authority as well as im-
15 munity from Iraqi prosecution for United States
16 Armed Forces and other Coalition forces operating
17 in Iraq.

18 (2) In the Declaration of Principles, the Presi-
19 dent pledged that this agreement would include the
20 following security commitments by the United
21 States:

22 (A) “Supporting the Republic of Iraq in
23 defending its democratic system against inter-
24 nal and external threats.”.

25 (B) “Providing security assurances and
26 commitments to the Republic of Iraq to deter

1 foreign aggression against Iraq that violates its
2 sovereignty and integrity of its territories, wa-
3 ters, or airspace.”.

4 (C) “Supporting the Republic of Iraq in its
5 efforts to combat all terrorist groups, at the
6 forefront of which is Al-Qaeda, Saddamists, and
7 all other outlaw groups regardless of affiliation,
8 and destroy their logistical networks and their
9 sources of finance, and defeat and uproot them
10 from Iraq.”.

11 (3) However, in testimony before the United
12 States Senate on February 6, 2008, Secretary of
13 Defense Robert Gates effectively renounced this
14 pledge by the President when he said, “[T]he status
15 of forces agreement that is being discussed will not
16 contain a commitment to defend Iraq, and neither
17 will any strategic framework agreement. My under-
18 standing is—and it’s, frankly, a clearer point than
19 I made earlier—and we certainly do not consider the
20 declaration of principles a security commitment to
21 the Iraqis.”.

22 (4) On November 26, 2007, the President’s
23 Deputy National Security Advisor for Iraq and Af-
24 ghanistan, General Douglas Lute, stated in a press
25 briefing that permanent United States military bases

1 in Iraq “will certainly be a key item for negotiation
2 next year”. On January 28, 2008, when signing into
3 law the National Defense Authorization Act for Fis-
4 cal Year 2008, which includes a ban on permanent
5 United States military bases in Iraq, President
6 George W. Bush indicated in a signing statement ac-
7 companying the bill that he would not be bound by
8 a provision of that law that prohibits the United
9 States from establishing permanent military bases in
10 Iraq.

11 (5) However, in testimony before the Senate on
12 February 6, 2008, Secretary of Defense Gates stat-
13 ed, “The fact is, in every meeting that I’ve taken
14 part in, it has been affirmed from the president on
15 down that we do not want permanent bases in
16 Iraq.”.

17 (6) General Lute stated in a press briefing on
18 November 26, 2007, in response to a question as to
19 whether the Administration would seek congressional
20 input into the agreement, “We don’t anticipate now
21 that these negotiations will lead to the status of a
22 formal treaty which would then bring us to formal
23 negotiations or formal inputs from the Congress.”.
24 However, the Department of State has failed to con-
25 sult with congressional leaders on the Declaration of

1 Principles as required by the Department of State's
2 Circular 175 procedure, which implements United
3 States law regarding the conduct of negotiations for
4 international agreements.

5 (7) However, in testimony before the Senate on
6 February 6, 2008, Secretary of Defense Gates stat-
7 ed, "My view is that there ought to be a great deal
8 of openness and transparency to the Congress as we
9 negotiate this status of forces agreement so that you
10 can satisfy yourselves that those kinds of commit-
11 ments are not being made, and that there are no
12 surprises in this."

13 (8) According to the Congressional Research
14 Service, while the primary purpose of a status of
15 forces agreement between the United States and an-
16 other country or organization is typically to provide
17 United States Armed Forces with immunity from
18 local prosecution, and no existing status of forces
19 agreement authorizes offensive combat operations by
20 United States Armed Forces (absent reference to a
21 treaty, law, or United Nations Security Council reso-
22 lution), Secretary of Defense Gates and Secretary of
23 State Condoleezza Rice have written in an opinion
24 piece published February 13, 2008, in the Wash-
25 ington Post that it is the intention of the Adminis-

1 tration to have the status of forces agreement with
2 Iraq include the “authority to fight” for United
3 States Armed Forces engaged in combat operations.

4 (9) The inconsistencies between the various
5 statements and pledges described in paragraphs (1)
6 through (8) raise significant questions about the Ad-
7 ministration’s objectives in seeking new agreements
8 with Iraq.

9 (10)(A) Since August 6, 2004, United States
10 Armed Forces and other Coalition forces in Iraq
11 have had international legal authority to operate in
12 Iraq under the United Nations mandate for the Mul-
13 tinational Force–Iraq, most recently renewed in De-
14 cember 2007 until December 31, 2008, and have
15 had immunity from local prosecution under an Iraqi
16 law known as CPA Order 17, which is dependent on
17 that mandate.

18 (B) The Iraqi Ambassador to the United
19 States, Samir Sumaidaie, said on February 5, 2008,
20 “If we cannot have an agreement by that time [De-
21 cember 31, 2008,] we would have no choice but to
22 go back to the Security Council. Basically, we need
23 to have some legal cover for foreign forces.”.

1 **SEC. 3. LIMITATION ON USE OF FUNDS.**

2 No funds appropriated or otherwise made available
3 to any department or agency of the United States may
4 be used—

5 (1) to establish or maintain any permanent or
6 long-term United States military base or facility in
7 Iraq; or

8 (2) to implement any agreement that is con-
9 sistent with the security commitments of the United
10 States to Iraq under the Declaration of Principles,
11 including the security commitments described in
12 subparagraphs (A) through (C) of section 1(2) of
13 this Act, or any agreement that provides “authority
14 to fight” for United States Armed Forces engaged
15 in combat operations, other than for self-defense
16 purposes, unless the agreement is in the form of a
17 treaty with respect to which the Senate has given its
18 advice and consent to ratification under Article II of
19 the Constitution of the United States or the agree-
20 ment is approved by an Act of Congress enacted
21 after the date of the enactment of this Act.

22 **SEC. 4. SENSE OF CONGRESS.**

23 It is the sense of Congress that—

24 (1) long-term relations between the United
25 States and Iraq should be determined by the United

1 States Administration taking office on January 20,
2 2009;

3 (2) in determining its policy toward Iraq, the
4 United States Administration referred to in para-
5 graph (1) should consult fully with the United
6 States Congress, the Government of Iraq, Coalition
7 partners, and Iraq's neighbors; and

8 (3) to maintain current international legal au-
9 thority as well as immunity from Iraqi prosecution
10 for United States Armed Forces and other Coalition
11 forces operating in Iraq while the United States Ad-
12 ministration referred to in paragraph (1) determines
13 United States policy toward Iraq, the current United
14 States Administration should encourage the Govern-
15 ment of Iraq to request the renewal of the United
16 Nations mandate for Iraq beyond December 31,
17 2008.

○