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To repeal the War Powers Resolution and to provide for proper war powers consultation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 16, 2014

Mr. KAINE (for himself, Mr. MCCAIN, and Mr. KING) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

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A BILL

To repeal the War Powers Resolution and to provide for proper war powers consultation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "War Powers Consultation Act of 2014".

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) The War Powers Resolution (50 U.S.C. 1541 et seq.) has not worked as intended, and has

added to the divisiveness and uncertainty that exists regarding the war powers of the President and Congress.

(2) The American people want both the President and Congress involved in the decisionmaking process when United States Armed Forces are committed to significant armed conflict, and the involvement of both branches is important in building domestic understanding and political support for doing so and ensuring the soundness of the resulting decision.

(3) Past efforts to call upon the judicial branch to define the constitutional limits of the war powers of the executive and legislative branches of government have generally failed because courts, for the most part, have declined jurisdiction on the grounds that the issues involved are ''political questions'' or that the plaintiffs lack standing.

(4) It harms the country to have the War Powers Resolution, the centerpiece statute in this vital area of United States law, regularly and openly questioned or ignored.

(5) The country needs to replace the War Powers Resolution with a constructive means by which the judgment of both the President and Congress

can be brought to bear when deciding whether the United States should engage in a significant armed conflict, without prejudice to the rights of either branch to assert its constitutional war powers or to challenge the constitutional war powers of the other branch.

(b) PURPOSE.—The purpose of this Act is to establish a constructive and practical means by which the judgment of both the President and Congress can be brought to bear when deciding whether the United States should engage in a significant armed conflict. This Act is not meant to define, circumscribe, or enhance the constitutional war powers of either the executive or legislative branch of government, and neither branch by supporting or complying with this Act shall in any way limit or prejudice its right or ability to assert its constitutional war powers or its right or ability to question or challenge the constitutional war powers of the other branch.

SEC. 3. SIGNIFICANT ARMED CONFLICT DEFINED.

(a) IN GENERAL.—In this Act, except as provided under paragraph (2), the term ''significant armed conflict'' means any conflict expressly authorized by Congress, or any combat operation involving members of the Armed Forces lasting more than a week or expected by the President to last more than a week.

(b) EXCEPTIONS.—The term ''significant armed conflict'' does not include any commitment of members of the Armed Forces for the following purposes:

(1) Actions taken by the President to repel attacks, or to prevent imminent attacks, on the United States, its territorial possessions, its embassies, its consulates, or its Armed Forces abroad.

(2) Limited acts of reprisal against terrorists or states that sponsor terrorism.

(3) Humanitarian missions in response to natural disasters.

(4) Investigations or acts to prevent criminal activity abroad.

(5) Covert operations.

(6) Training exercises.

(7) Missions to protect or rescue United States citizens or military or diplomatic personnel abroad.

SEC. 4. REPEAL OF WAR POWERS RESOLUTION.

The War Powers Resolution (50 U.S.C. 1541 et seq.) is hereby repealed.

SEC. 5. JOINT CONGRESSIONAL CONSULTATION COMMITTEE.

(a) ESTABLISHMENT.—There is established the Joint Congressional Consultation Committee.

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of the following members:

(A) The majority leader of the Senate and the Speaker of the House of Representatives.

(B) The minority leaders of the Senate and the House of Representatives.

(C) The chairman and ranking member of each of the following committees of the Senate:

(i) The Committee on Foreign Relations.

(ii) The Committee on Armed Services.

(iii) The Select Committee on Intelligence.

(iv) The Committee on Appropriations.

(D) The chairman and ranking member of each of the following committees of the House of Representatives:

(i) The Committee on Foreign Affairs.

(ii) The Committee on Armed Services.

(iii) The Permanent Select Committee on Intelligence.

(iv) The Committee on Appropriations.

(c) CHAIRMANSHIP.—The chairmanship and vice chairmanship of the Joint Congressional Consultation Committee shall alternate between the majority leader of the Senate and the Speaker of the House of Representatives, with the former serving as the chairman in each odd-numbered Congress and the latter serving as the chairman in each even-numbered Congress.

(d) STAFF OF JOINT COMMITTEE.—The chairman and vice chairman of the Joint Congressional Consultation Committee may jointly appoint and fix the compensation of a permanent, bipartisan staff as they deem necessary, within the guidelines for employees of the Senate and following all applicable rules and employment requirements of the Senate. The staff shall have access to all relevant national security and intelligence information considered by the Committee.

SEC. 6. CONSULTATION AND REPORTING.

(a) REGULAR CONSULTATION.—The President shall consult regularly with the Joint Congressional Consultation Committee regarding significant matters of foreign policy and national security.

(b) CONSULTATION AND REPORTING REQUIRED PRIOR TO ENGAGEMENT IN SIGNIFICANT ARMED CONFLICTS.—

(1) IN GENERAL.—Before ordering the deployment of members of the Armed Forces into a significant armed conflict, the President shall—

(A) consult with the Joint Congressional Consultation Committee, including providing sufficient time for the exchange of views regarding whether to engage in the significant armed conflict; and

(B) submit in writing to the Joint Congressional Consultation Committee a classified report setting forth the circumstances necessitating the significant armed conflict, the objectives, and the estimated scope and duration of the conflict.

(2) EXCEPTION.—If the President determines that the need for secrecy or other emergency circumstances preclude carrying out the consultation required under subparagraph (A) of paragraph (1) or submitting the report required under subparagraph (B) of such paragraph before significant armed conflict is ordered or begins, the President shall carry out such consultation or submit such re-

port not later than three calendar days after the beginning of the significant armed conflict.

(c) ONGOING CONSULTATION DURING SIGNIFICANT ARMED CONFLICTS.—The President shall consult with the Joint Congressional Consultation Committee at least every two months for the duration of any significant armed conflict.

(d) ANNUAL REPORT.—Not later than April 15 of each year, the President shall submit to the Joint Congressional Consultation Committee a classified written report describing, for the previous calendar year—

(1) all significant armed conflicts in which the United States was engaged; and

(2) all other operations, as described in section 3(b), other than covert operations, in which the United States was engaged.

SEC. 7. CONGRESSIONAL APPROVAL OR DISAPPROVAL.

(a) JOINT RESOLUTION OF APPROVAL.—

(1) REQUIREMENT.—Not later than 30 days after the deployment of members of the Armed Forces into a significant armed conflict with respect to which Congress has not enacted a formal declaration of war or otherwise enacted a specific authorization for the use of military force, the chair and vice

chair of the Joint Congressional Consultative Committee shall introduce a joint resolution of approval.

(2) CONTENTS OF RESOLUTION.—For purposes of this subsection, the term ''joint resolution of approval'' means a joint resolution the sole matter after the resolving clause of which is as follows: ''That Congress approves the use of members of the Armed Forces for the significant armed conflict covered in the report submitted to the Joint Congressional Consultation Committee pursuant to section 6(b) of the War Powers Consultation Act of 2014 on _____.'', with the blank space being filled with the appropriate date.

(3) REFERRAL TO COMMITTEE.—A joint resolution of approval introduced in the Senate shall be referred to the Committee on Foreign Relations of the Senate. A joint resolution of approval introduced in the House of Representatives shall be referred to the Committee on Foreign Affairs of the House of Representatives.

(4) DISCHARGE OF COMMITTEE.—If the committee to which is referred a joint resolution of approval has not reported such resolution (or an identical resolution) at the end of 7 calendar days after its introduction, such committee shall be deemed to

be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(5) FLOOR CONSIDERATION.—

(A) IN GENERAL.—When the committee to which a resolution is referred has reported, or has been deemed to be discharged (under paragraph (4)) from further consideration of, a joint resolution of approval, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain

the unfinished business of the respective House until disposed of.

(B) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(C) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on the joint resolution of approval and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(D) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the

Senate or the House of Representatives, as the case may be, to the procedure relating to a joint resolution of approval shall be decided without debate.

(6) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by one House of a joint resolution of approval of that House, that House receives from the other House a joint resolution of approval, then the following procedures shall apply:

(A) The resolution of the other House shall not be referred to a committee.

(B) With respect to the joint resolution of approval of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(7) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and House of Representatives, re-

spectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution of approval, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) JOINT RESOLUTION OF DISAPPROVAL.—

(1) CONTENTS OF RESOLUTION.—For purposes of this subsection, the term ''joint resolution of disapproval'' means a joint resolution introduced in a House after that House has voted against passage of a joint resolution of approval under subsection (a), the sole matter after the resolving clause of which is as follows: ''That Congress disapproves the use of members of the Armed Forces for the significant armed conflict covered in the report submitted to the Joint Congressional Consultation Committee pursuant to section 6(b) of the War Powers Consultation

Act of 2014 on _____.", with the blank space being filled with the appropriate date.

(2) FLOOR CONSIDERATION.—

(A) IN GENERAL.—After a joint resolution of disapproval has been introduced under this subsection, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(B) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(C) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on the joint resolution of disapproval and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(D) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a joint

resolution of disapproval shall be decided without debate.

(3) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by one House of a joint resolution of disapproval of that House, that House receives from the other House a joint resolution of disapproval, then the following procedures shall apply:

(A) The resolution of the other House shall not be referred to a committee.

(B) With respect to the joint resolution of disapproval of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(4) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but appli-

cable only with respect to the procedure to be followed in that House in the case of a joint resolution of disapproval, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as limiting or otherwise affecting the right of any Member of Congress to introduce a resolution or bill approving, disapproving, expanding, narrowing, or ending a significant armed conflict.

SEC. 8. TREATIES.

Nothing in this Act shall be construed as modifying any obligations of the United States under any treaty or international agreement.

SEC. 9. SEVERABILITY.

If any provision of this Act, or the application of a provision to any person or circumstance, is held to be unconstitutional, the remainder of the Act, and the applica-

tion of the provisions to any person or circumstance, shall not be affected by the holding.

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