

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I have had a number of conversations over the last few days with my new friend, the junior Senator from Kentucky, Mr. PAUL. He feels very strongly about an issue, and he should have the right to talk about that.

I ask unanimous consent that there be 10 minutes for Senator PAUL to speak prior to my being recognized to have the bill called up; that is, the small business jobs bill, and that Senator PAUL be recognized as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. During that morning business time, it will be for debate only by Senator PAUL.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Kentucky is recognized.

WAR POWERS ACT

Mr. PAUL. Mr. President, I very much thank the majority leader for allowing this important debate to occur.

During his campaign, Candidate Barack Obama said no President should unilaterally initiate military conflict without Congressional authority. I agree with that statement. It is a very important constitutional principle and something that I think deserves debate.

I think the most important thing we do as representatives is voting on whether to go to war. If Congress does not vote to go to war or does not vote on the notion of going to war, we would have an unlimited Presidency, and this is a very dangerous notion.

I would take this position no matter what the party affiliation were of the President because I believe very strongly in the constitutional checks and balances. We will vote today on the President's own words verbatim. During the election, the President said: "The President does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the Nation."

Clearly, the circumstances in Libya do not rise to this, and I think this vote is incredibly important. Madison wrote that:

The Constitution supposes what history demonstrates. That the executive is the branch most interested in war and most

prone to it. Therefore, the Constitution has with studied care given that power to the legislature.

"Don't tread on me" was a motto and a rallying cry for our Founding Fathers. The motto of Congress appears to be: "Tread on me, please tread on me." The Congress has become not just a rubber stamp for an unlimited Presidency, but, worse, Congress has become a doormat to be stepped upon, to be ignored, and basically to be treated as irrelevant.

Some would say: We had no time. We had to go to war. There was no time for debate. When we were attacked in World War II on December 7, Pearl Harbor, within 24 hours this body came together and voted to declare war on Japan. There is no excuse for the Senate not to vote on going to war before we go to war.

The President had time to go to the United Nations, have a discussion, and a vote. The President had time to go to the Arab League, have a discussion, and a vote. The President had the time to go to NATO. But the President had no time to come to the people's house, to the Congress, and ask, as the Constitution dictates, for the approval of the American people and for the approval of Congress.

Why is this important? It is important because when our Nation was founded, we were founded as a constitutional Republic. We placed limitations not only on the President but on the Congress. We are supposed to obey the Constitution. These are important principles and we have gone beyond that. We have gotten to the point where my question is, Are we even obeying the Constitution in this body?

This is a sad day. This is a sad day for America. The thing is, we need to have checks and balances. Do we want an unlimited Presidency, a Presidency that could take us to war anywhere, anytime, without the approval of Congress?

Some have said: We are going to have a vote sometime, sometime in the next couple weeks. When we get around to it, we may have a debate about Libya. Had the President shown true leadership, the President would have, when he called the United Nations, when he called the Arab League, when he called NATO, the President would have called the leadership of the Senate and the leadership of the House, and we would have been here within 24 hours, having what should be the most momentous debate this body ever has on sending our young brave men and women to war.

We are currently engaged in two wars, and we are now going to be engaged in a third war. The interesting point is, when we went into Iraq and Afghanistan, we had votes in this body. President Bush came to Congress and there were votes.

The War Powers Act—some on the other side say: This is no big deal. The President can do whatever he wants as long as he notifies Congress within a certain period of time.

This is not a correct interpretation of the War Powers Act. The War Powers Act does say he needs to notify Congress. But the War Powers Act also says the President must meet three hurdles before taking our troops into harm's way.

No. 1, there should be a declaration of war or there should be an authorization of force from this body or there should be imminent danger to the Nation. None of those were adhered to. The law was not adhered to.

Some will say: The War Powers Act, no President recognizes it. Well, The War Powers Act is the law of the land, and the President needs to respect not only the statutory law of the land but the Constitution. I do not think these are trivial questions. But I am bemused, I am confused, I do not understand why your representatives are not down here debating such a momentous event as going to war.

I can think of no vote and no debate more important than sending our young men and women to war. It should be done reluctantly. We should go to war only when threatened as a nation. When engaged in two wars, we should debate the prudence of being involved in a third war. These are not trivial questions. I am amazed this body does not take the time to debate whether we should be in Libya.

Some have said: We will debate it next week. The problem is, the debate should occur before we go to war. At this point, we will have a vote. We will have a vote on the President's own words.

I will yield for a minute or two for a question, if that is OK. I yield to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. LEE. Mr. President, what we have with the situation with Libya presents us with a fundamental question, one we have wrestled with for a couple centuries as a nation. The founding era was a time that was fraught with wars. It was a time when we learned that executives sometimes abuse their power. Sometimes they will take us into wars in faraway nations without the support of the people, knowing full well it is the sons and the daughters of the people on the ground who are asked to make the ultimate sacrifice in those battles.

We channeled the war power in the Constitution so as to make sure these debates would always come to the forefront, that they would always be brought up by the elected representatives of the people in Congress. For that reason, although we give power to the President to be the Commander in Chief in article II of the Constitution, in article I of the Constitution, we reserve that power, the power to declare war, to Congress.

This is how we guarantee that the people's voice will be heard and that people's sons and their daughters will not be sent off to war without some public debate and discussion by those

who have been duly elected by the people and stand accountable to the people.

We have, over time, clarified the intent. We have made clear there are certain steps that have to be taken. We have also made clear that although there is, to be sure, a certain unknown continuum, a continuum that can be hard to define in every circumstance, between the President's plenary authority as Commander in Chief, on the one hand, and Congress's power to declare war on the other, there does come a point at which we can recognize that we are at war and that some authorization is required by Congress.

This very body, Congress, has, through the war powers resolution, attempted to distill some of these principles. In section 1541 of the War Powers Act—it is found at 50 United States Code section 1541—we are told there are circumstances, three circumstances to be precise—

The PRESIDING OFFICER. The Senator's time has expired.

Mr. REID. Mr. President, first of all, I wish to express my appreciation to the Senator from Kentucky. He is a gentleman. I know how sincere he feels about this issue. I admire him for feeling sincerely about issues, as he does on a number of them.

It has been good for me to get to know him better during the last 4 or 5 days.

I ask for the clerk to report the pending business.

SBIR/STTR REAUTHORIZATION ACT OF 2011—Resumed

The PRESIDING OFFICER. The clerk will report the pending business. The bill clerk read as follows:

A bill (S. 493) to reauthorize and improve the SBIR and STTR programs, and for other purposes.

Pending:

McConnell amendment No. 183, to prohibit the Administrator of the Environmental Protection Agency from promulgating any regulation concerning, taking action relating to or taking into consideration the emission of a greenhouse gas to address climate change.

Vitter amendment No. 178, to require the Federal Government to sell off unused Federal real property.

Inhofe (for Johanns) amendment No. 161, to amend the Internal Revenue Code of 1986 to repeal the expansion of information reporting requirements to payments made to corporations, payments for property and other gross proceeds, and rental property expense payments.

Cornyn amendment No. 186, to establish a bipartisan commission for the purpose of improving oversight and eliminating wasteful government spending.

Paul amendment No. 199, to cut \$200,000,000,000 in spending in fiscal year 2011.

Sanders amendment No. 207, to establish a point of order against any efforts to reduce benefits paid to Social Security recipients, raise the retirement age or create private retirement accounts under title II of the Social Security Act.

Hutchison amendment No. 197, to delay the implementation of the health reform law in

the United States until there is final resolution in pending lawsuits.

Coburn amendment No. 184, to provide a list of programs administered by every Federal department and agency.

Pryor amendment No. 229, to establish the Patriot Express Loan Program under which the Small Business Administration may make loans to members of the military community wanting to start or expand small business concerns.

Landrieu amendment No. 244 (to amendment No. 183), to change the enactment date.

Paul motion to commit the bill to the Committee on Foreign Relations with instructions to report the same back to the Senate forthwith with Paul amendment No. 276 (to the instructions on Paul motion to commit the bill), of a perfecting nature.

Mr. LEVIN. Mr. President, I rise to oppose the Paul amendment on the President's constitutional authority to order the use of military force. This amendment is flawed because it doesn't allow the President to respond militarily to a completed attack and only allows action to stop an actual or imminent threat to the Nation.

The amendment would in effect make it illegal for the President to unilaterally order the use of military force to protect U.S. interests except only in situations that involve preventing an actual threat to the United States or an imminent threat to the United States.

Numerous Presidential decisions to order the use of military force over the last 30 years would not meet the standard of the Paul amendment.

For example, under the Paul amendment President Ronald Reagan would have acted illegally in 1983 when he unilaterally ordered the invasion of Grenada, which did not involve an "actual" or "imminent" threat against the United States from Grenada.

Similarly President George H.W. Bush would have acted illegally under the Paul amendment when he ordered the 1989 invasion of Panama. President Bush justified the Panama invasion based on protecting the lives of U.S. citizens, defending democracy and human rights in Panama, and countering drug trafficking, not on an "actual or imminent threat to the nation."

Also, President Reagan's ordering airstrikes against Libya in 1986, 11 days after Libyan terrorist agents bombed the LaBelle discotheque and killed or wounded over 100 U.S. soldiers, might have been illegal under the Paul amendment. The President's response to Libya's sponsorship of terrorism arguably would not have met the standard of "stopping an actual or imminent threat to the nation" because the tragic act of terrorism had already happened days earlier.

Finally, according to this amendment, President Obama acted beyond his constitutional authority when he authorized the use of deadly force by Navy SEALs to rescue Captain Richard Phillips from Somali pirates on April 10, 2010.

There are numerous other examples over the past decades when Presidents

have ordered the use of military force to protect U.S. interests, but where such actions would not have met the standards of the Paul amendment.

I urge my colleagues to vote to table this amendment.

Mr. REID. Mr. President, it is my understanding that the Paul amendment is the pending business; is that right?

The PRESIDING OFFICER (Mr. FRANKEN). The motion to commit by Senator PAUL is pending.

Mr. REID. I move to table that and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays are ordered.

The question is on agreeing to the motion.

The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 90, nays 10, as follows:

[Rollcall Vote No. 50 Leg.]

YEAS—90

Akaka	Feinstein	Menendez
Alexander	Franken	Merkley
Ayotte	Gillibrand	Mikulski
Barrasso	Graham	Murkowski
Baucus	Grassley	Murray
Begich	Hagan	Nelson (NE)
Bennet	Harkin	Nelson (FL)
Bingaman	Hatch	Portman
Blumenthal	Hoeben	Pryor
Blunt	Hutchison	Reed
Boozman	Inhofe	Reid
Boxer	Inouye	Risch
Brown (MA)	Isakson	Roberts
Brown (OH)	Johanns	Rockefeller
Burr	Johnson (SD)	Rubio
Cantwell	Kerry	Sanders
Cardin	Kirk	Schumer
Carper	Klobuchar	Shaheen
Casey	Kohl	Shelby
Chambliss	Kyl	Stabenow
Coats	Landrieu	Tester
Coburn	Lautenberg	Thune
Cochran	Leahy	Udall (CO)
Conrad	Levin	Udall (NM)
Coons	Lieberman	Vitter
Corker	Lugar	Warner
Cornyn	Manchin	Webb
Crapo	McCain	Whitehouse
Durbin	McCaskill	Wicker
Enzi	McConnell	Wyden

NAYS—10

Collins	Lee	Snowe
DeMint	Moran	Toomey
Ensign	Paul	
Johnson (WI)	Sessions	

The motion was agreed to.

Mr. MCCONNELL. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Louisiana.

MORNING BUSINESS

Ms. LANDRIEU. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. LANDRIEU. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.