



# ADVOCACY TEAMS

QUAKER VISION. COLLECTIVE ACTION.



## BACKGROUND: February 2019

*We seek a world free of war and the threat of war.*

## REPEALING THE 2001 AUTHORIZATION FOR USE OF MILITARY FORCE

### The Problem

Three U.S. Presidents have used the 2001 Authorization for Use of Military Force (AUMF) and 2002 Iraq AUMF to justify sending the U.S. military to conduct an ever-expanding number of operations around the world without congressional approval. According to a recent Congressional Research Report, for nearly two decades the 2001 AUMF has been used to conduct 41 military operations in 19 countries. And that count doesn't include covert lethal operations waged away from the public eye. These "endless wars" have now lasted longer than the Civil War, World War I, and World War II combined. They have [cost](#) more than \$5.6 trillion and [resulted](#) in the deaths of approximately 500,000 people, with half of those killed being civilians.

As a Quaker organization, we oppose all war. As a matter of public policy, we believe our government should, at a minimum, take all steps possible to avoid war and provide adequate oversight for any effort to take the country into war. The U.S. Constitution gives Congress the power to authorize and oversee war. However, for more than 17 years the executive branch has expanded the scope of U.S. wars by interpreting the 2001 and 2002 AUMFs to apply to groups and situations that Congress never intended. Congress, for its part, has essentially abdicated its constitutional authority by failing to debate and vote on U.S. wars.

It's long past time for Congress to reassert its constitutional war powers. Repealing the 2001 AUMF would force Congress to debate and vote on current U.S. military operations and take a critical step towards ending these endless wars.

### Constitutional Division of War Powers

**Congress:** Article I Section 8 of the U.S. Constitution gives Congress the power to declare war. Under the Constitution, Congress also has a duty to conduct appropriate oversight of U.S. wars. As stated in a [bipartisan expert report](#) on war powers states by the Constitution Project, Congress has a duty to regularly examine the scope and progress of wars and, when appropriate, revise or repeal its authorization to use force.

**The President:** As Commander in Chief, under Article II of the Constitution, the President has some limited powers to use military force without congressional approval. But this power only allows the President to use force to defend the United States against a sudden attack. Only Congress can allow the President to take the country into a prolonged war.

# ADVOCACY TEAMS

QUAKER VISION. COLLECTIVE ACTION.

## War Powers Resolution

In 1973, Congress passed the War Powers Resolution (also called the War Powers Act) to clarify the division of war powers between the Congress and the President. The War Powers Resolution requires the President to do three things:

- 1) Consult with Congress before committing troops to war;
- 2) Notify Congress within 48 hours after introducing military forces into hostilities or into situations where hostilities are imminent; and
- 3) End foreign military actions after 60 days unless Congress specifically authorizes them.

The War Powers Resolution provides a framework for how the President and Congress should act in accordance with the constitutional division of war powers. For example, if the U.S. was faced with a sudden attack, the President would be permitted to respond, with military force, to defend the U.S. against this attack without congressional approval. However, the President could only use military force for 60 days. Anything longer than this would require the President to obtain authorization from Congress.

## The 2001 AUMF

The [2001 AUMF](#) was passed by Congress three days after the 9/11 attacks and signed into law on September 18, 2001. It authorized the President to use military force against those who attacked the United States on 9/11 and those who harbored them. FCNL [opposed this initial authorization](#) for war as a matter of faith and because we believed the perpetrators of this crime should be brought to justice through an international legal action.

The 2001 AUMF was originally understood to target al Qaeda—who launched the attack on 9/11—and the Taliban in Afghanistan—who harbored al Qaeda. Members of Congress, on both sides of the aisle, are on record saying that these are the only groups they intended to authorize force against. For example, Rep. Lamar Smith (R-TX) [said](#) “the resolution limits the President to using force only against those responsible for the terrorist attacks last Tuesday.” And Rep. Jan Schakowsky (D-IL) [said](#) “This resolution has been carefully drafted to restrict our response to those we know to be responsible for this atrocity.”

However, since then, the executive branch has interpreted the 2001 AUMF to essentially provide a blank check for endless war. It has claimed that the 2001 AUMF authorizes the President to wage war against an array of groups, including those with no connection to the 9/11 attacks, and in numerous countries, including Yemen, Iraq, Syria, Libya, Somalia, and Niger.

For more than 17 years, Congress has largely been on the sidelines. They have appropriated funds for these wars, but have not debated nor voted on them since 2001. The vast majority of current members weren't even in Congress in 2001, so they have never voted to authorize these wars.

# ADVOCACY TEAMS

QUAKER VISION. COLLECTIVE ACTION.

## FAQ

### **Q: Is there a number for Rep. Barbara Lee's bill?**

**A:** Yes. The bill is titled H.R. 1274: To repeal Public Law 107-40 or "Repeal of the Authorization for Use of Military Force."

### **Q: Has the Senate taken any steps to repeal the 2001 AUMF? Who are the leaders on this issue in the Senate?**

**A:** There isn't currently a companion effort to repeal the 2001 AUMF in the Senate, however, Sen. Rand Paul (R-KY) [forced a vote](#) on repealing the AUMF in 2017. Last year, Sen. Paul also held a subcommittee hearing on an overbroad new AUMF bill from former-Senator Bob Corker (R-TN) and Sen. Tim Kaine (D-VA) AUMF. That hearing helped to garner opposition for the Corker-Kaine proposal. Sen. Bernie Sanders (D-VT) was active in this hearing and has also been very engaged on the need to rein in the President's ever-expanding wars.

Sen. Kaine has been identified by his colleagues as a leader in calling for Congress to reassert its constitutional powers over U.S. wars. Indeed, he published a [letter to the editor](#) on this issue in January. He is generally considered the leading voice in the Senate on this issue and is someone who it would be helpful to provide with more education and support.

In 2018 Sen. Jeff Merkley (D-OR) [introduced](#) a very good proposal for an authorization to replace the 2001 AUMF. Sen. Merkley's effort to craft an AUMF was made in response to the overbroad Corker-Kaine AUMF and it helped to defeat that bill. While our focus is on AUMF repeal, if representatives raise the issue of replacement, the Merkley proposal is a good alternative and FCNL would consider supporting such language as a means of reining in the wars, limiting the President's war powers, and eventually getting to peace. It is also worth reminding members and their staff that even without an AUMF, the President still has the constitutional power to use force to defend the U.S. against a sudden attack without congressional approval.

### **Q: What about the 2002 AUMF? What is the difference between the 2001 AUMF and the 2002 AUMF?**

**A:** The 2002 AUMF, also referred to as the 2002 Iraq AUMF, was passed to authorize the President to use military force against the Saddam Hussein regime in Iraq. While the executive branch has largely relied on the 2001 AUMF for its military activities, it has also [claimed](#) that the 2002 AUMF "reinforces" these powers, arguing that it allows the President to fight any threat "to or emanating from Iraq." Congress did not intend to authorize such military action in 2002. Rep. Lee is planning to separately introduce a bill to repeal the 2002 AUMF.

# ADVOCACY TEAMS

QUAKER VISION. COLLECTIVE ACTION.

## FAQ (continued)

**Q: Have there been attempts to bring legal actions to challenge the President's unilateral expansion of U.S. wars without congressional approval.**

**A:** There have been attempts to bring legal actions, however, these have not led to a decision on the matter. For example, in 2016 U.S. Army Captain Nathan Smith [sued](#) the then-Obama administration, arguing that the war against ISIS had not been authorized by Congress and as such, he was being asked to violate the Constitution by continuing to fight against ISIS. The case was dismissed because the judge [ruled](#) that Captain Smith did not suffer any personal damage and that he therefore lacked sufficient standing to bring it. The judge also held that the case presented a "political question" that could not be decided by the courts.

More recently, a dual U.S./Saudi citizen was captured in Syria and sued for his release arguing, in part, that his detention was not authorized under U.S. law because the 2001 and 2002 AUMFs do not apply to ISIS. The detainee was eventually [transferred](#) out of U.S. custody, which mooted the decision of whether the 2001 and 2002 AUMFs authorized his detention.

**Q: Would Rep. Lee's bill amend the War Powers Act?**

**A:** No. Rep. Lee's would repeal the 2001 AUMF but it would leave the War Powers Act (also called the War Powers Resolution) in place. The War Powers Act provides a framework how the President and Congress should act in accordance with the constitutional division of war powers. The War Powers Act, by itself, does not authorize the President to use military force.

**Q: Do we need to replace the AUMF or just sunset it?**

**A:** Whether we should replace the AUMF with a new congressional force authorization is a question for members of Congress to consider and debate. As a matter of faith, FCNL does not support any authorization for war. As a matter of public policy, we believe Congress repealing the blank check for war and replacing it with a much more limited authorization would be progress in reigning in endless military conflict.

Congress has largely failed to examine the scope of current wars and the consequences of these wars. The U.S. government has an extensive range of effective, non-military tools available to counter the threat posed by terrorism, including pursuing diplomatic channels, law enforcement tools, and intelligence resources. Military force should only be employed if it is the only means available to effectively respond to a threat.

Should Congress conclude that a new AUMF is needed, any new authorization should include a sunset and geographic limit, specify the group(s) targeted, and prohibit the use of ground troops without additional approval from Congress.



# ADVOCACY TEAMS

QUAKER VISION. COLLECTIVE ACTION.



## FAQ (continued)

### **Q: What are the boundaries between the War Powers Act and the Constitution?**

**A:** Article I of the Constitution gives Congress the power to declare war and to conduct oversight of wars. Article II of the Constitution gives the President, as Commander in Chief, the power to use force without prior congressional approval to defend the U.S. against a sudden attack. The Founding Fathers did not specify how long the President could use force to defend the U.S. against a sudden attack before congressional approval would be required. The War Powers Act was an effort by Congress, in 1973, to more clearly define these boundaries. It should be noted that the constitutionality of the War Powers Act has been disputed. Indeed, no U.S. President has accepted the limits on their power instituted under War Powers Act. Nonetheless, they have sought to justify their actions as “consistent” with the law.

### **Q: Wouldn't repealing the AUMF unduly restrict the President from protecting national security?**

**A:** Even without an AUMF, under Article II of the Constitution, the President [retains](#) the authority to use force to defend the United States against a sudden attack without congressional approval. If a threat rose to the level such that prolonged military force was necessary, Congress could pass a new AUMF and authorize the President to continue using force beyond the 60-day limit set out in the War Powers Resolution.

Further, as noted above, protecting national security requires more than the use of military force. The U.S. government has an extensive range of non-military tools available to counter the threat posed by terrorism, including pursuing diplomatic channels, law enforcement tools, and intelligence resources. Indeed, the overuse of military force, and the deaths and injury to civilians that have resulted, have proven to be [strategically damaging](#) to the U.S. These actions have turned local populations against us, helped extremist groups recruit people to their cause, and resulted in allies refusing to share critical counterterrorism intelligence over concerns about how that intelligence will be used.