

Iraq and the War Powers Act: Congressional Opportunities

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In Brief

Congress has existing statutory authority under the War Powers Act to end the intervention in Iraq.

The threat to invoke the War Powers Act would encourage the President to engage in genuine consultation with Congress.

Last week, President Bush announced an escalation of the war in Iraq. Most observers have argued the new Democratic Congress has few to no options to challenge the President's leadership of the war without threatening to withhold funding for the troops—a politically unattractive choice. Yet it would be immoral to stand aside and allow a tiny cabal of senior leaders play dice with the lives of American service members and ignore the sentiments of the vast majority of the country. Between the two extremes of resignation and withholding funds for the war effort, there is another way.

Under Section 5(c) of the War Powers Act, a simple majority of both houses of Congress can require the President to terminate the military operation, now that the originally authorized goal of securing the nation from the threat posed by Saddam Hussein's regime has been achieved. The resultant concurrent resolution cannot be vetoed. The President would then have sixty days to withdraw forces, though he could request an additional thirty days to ensure the safety of the troops.

Though it may not yet be the right time to force an end to the military operation, knowing that a politically-viable response may force President Bush, Vice President Cheney, Senator McCain and other supporters of escalation to engage the Congressional leadership and the public.

Should both chambers of Congress pass resolutions ending U.S. engagement in Iraq, the President would likely refuse to comply, questioning the constitutionality of the War Powers Act. In such a scenario, the Supreme Court would be forced to rule on the matter. This should not discourage Congress from taking a stand. With the President ordering tens of thousands more American troops into the conflict, now is

the time for Congress to assert itself as an equal participant in the debate over the future of the war in Iraq.

Of the few options discussed, the least palatable alternative would be for Congress to terminate funding for the war effort as a means to force a withdrawal of U.S. forces. Strategically risky at best, this option would tempt the Administration to continue the intervention either on the cheap or by redirecting funds, and could be extremely dangerous to our Armed Forces. Furthermore, it could be politically disastrous—and for that reason alone it is unlikely to gain traction. The President has rightly calculated that Congress, both out of patriotism and political calculus, is unlikely to vote to cut off the money.

The final option for an assertive Congress rests in the threat to invoke the provisions of the War Powers Act. While almost no one believes escalation is a good idea, few are ready to simply throw in the towel on Iraq. The best chance for a successful strategy to emerge is through an open, vigorous debate involving both the executive and legislative branches of government and with both parties working together. It is the responsibility of the Congress to use every tool at its disposal to compel the Administration to engage it on the most important public policy issue of the day, regardless of whether or not the President believes it to be necessary.

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