

Committee for the Republic  
816 Connecticut Avenue, N.W.  
Washington, D.C. 20006

January 18, 2021

President-elect Joe R. Biden, Jr.  
Biden-Harris Transition  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

Dear President-Elect Biden:

The Committee for the Republic congratulates you for the Electoral College's certification that you have been elected President of the United States to be inaugurated January 20, 2021. We expect the Constitution will begin a long journey back to restoration under your stewardship.

On that score, the Committee strongly urges you to announce in your inaugural address that you will terminate within 60 days any use of the United States armed forces to participate directly, indirectly, or otherwise, either as a belligerent or co-belligerent, in the ongoing wars in Libya, Somalia, Yemen, Syria, Iraq, Afghanistan, Pakistan, and against Al Qaeda and ISIS **for the express reason that the Declare War Clause of the Constitution entrusts exclusively to Congress responsibility for deciding whether to use the armed forces in an offensive capacity.** Congress has never mandated the use of the armed forces offensively against any of these nations or non-state actors. Indeed, Congress voted against our unilateral military misadventure in Yemen in passing S.J. Res. 7, vetoed by President Donald Trump on April 16, 2019.

The Declare War Clause permits no delegation of congressional authority over war to the President. Indeed, the premise of the Clause is that the President would be an untrustworthy steward of the war power because of the constant temptation to concoct excuses for belligerency to aggrandize executive power. James Madison, father of the Constitution, elaborated:

*"Those who are to conduct a war cannot in the nature of things, be proper or safe judges, whether a war ought to be commenced, continued, or concluded. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws."*

You formerly served as Chairman of the Senate Judiciary Committee and Senate Foreign Relations Committee. You understand that the Constitution's framers unanimously understood that only Congress was empowered take the nation from a state of peace to a state of war, leaving the President authority to respond in self-defense to sudden attacks that had already

broken the peace. President George Washington, who presided over the creation of the Constitution, spoke for every participant in explaining:

“The constitution vests the power of declaring war in Congress; therefore, no offensive expedition of importance can be undertaken until after they shall have deliberated upon the subject and authorized such a measure.”

As a presidential candidate in 2007, echoing President Washington, you adamantly declared in an exchange with Chris Matthews on NBC that a president who initiates war or otherwise uses the armed forces offensively without a prior declaration of war by Congress commits an impeachable high crime and misdemeanor justifying removal from office.

**MATTHEWS:** You said that if the president of the United States had launched an attack on Iran without congressional approval, it would have been an impeachable offense.

**BIDEN:** Absolutely.

**MATTHEWS:** Do you want to review that comment you made? Well, how do you stand on that now?

**BIDEN:** Yes, I do. I want to stand by that comment I made. The reason I made the comment was as a warning. I don't say those things lightly, Chris. You've known me for a long time. I was chairman of the Judiciary Committee for 17 years, or its ranking member. I teach separation of powers and constitutional law. This is something I know.

So I got together and brought a group of constitutional scholars together to write a piece that I'm going to deliver to the whole United States Senate, pointing out the president has no constitutional authority to take this nation to war against a country of 70 million people, unless we're attacked or unless there is proof that we are about to be attacked.

And if he does, I would move to impeach him. The House obviously has to do that, but I would lead an effort to impeach him.

Your exchange with Mr. Matthews was not a slip of the tongue. During a 2007 New Hampshire town meeting, you stated categorically: “I want it on the record, and I want to make it clear. If [President George W. Bush attacks Iran without congressional authorization] I will move to impeach him.”

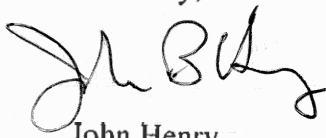
Your enlightened understanding of the Declare War Clause is reflected in the Committee's collaboration with the late Congressman Walter Jones (R.-N.C.) and Congresswoman Tulsi Gabbard (D-Hawaii) to introduce H.Res. 922 (115<sup>th</sup> Cong.), and H.Res. 411 (116<sup>th</sup> Cong.), respectively, to define and to make unconstitutional presidential wars impeachable offenses.

Article II, Section 1, Clause 7 of the Constitution requires you, as a condition of assuming office, to take the following Oath or Affirmation: “I do solemnly swear (or affirm) that

I will...to the best of my Ability, preserve, protect, and defend the Constitution of the United States." According to your own longstanding understanding of the Declare War Clause, we expect you, promptly after your inauguration, to inform Congress that the nine ongoing unconstitutional presidential wars will be terminated within 60 days unless declarations of war are enacted before then.

You can end our constitutional crisis by reclaiming the cornerstone of separation of powers, breaking the vicious cycle of congressional abdication and executive usurpation. By honoring your constitutional understanding, you can begin the long journey back in restoring the intended equilibrium between the two political branches. History will remember you for renouncing an imperial presidency. For that, you will have earned our highest praise and the reverence of our posterity.

Sincerely,

A handwritten signature in black ink, appearing to read "John Henry".

John Henry  
Chairman

A handwritten signature in black ink, appearing to read "Bruce Fein".

Bruce Fein  
Vice Chairman