

# H. RES. [ ]

To define presidential wars not declared by Congress under Article I, section 8, clause 11 (Declare War Clause) as impeachable “high crimes and misdemeanors” within the meaning of Article II, section 4 of the Constitution.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2017

[ ] submitted the following resolution; which was referred to the Committee on the Judiciary

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# RESOLUTION

To define presidential wars not declared by Congress under Article I, section 8, clause 11 (Declare War Clause) as impeachable “high crimes and misdemeanors” within the meaning of Article II, section 4 of the Constitution and defining the meanings of war and co-belligerency for purposes of the Declare War Clause and Impeachment provisions.

Whereas presidential wars not declared by Congress under Article I, section 8, clause 11 are the most flagrant and dangerous of presidential usurpations;

Whereas President George Washington, who had presided over the constitutional convention and supported the Declare War Clause, elaborated during his service in office: “The Constitution vests the power of declaring war with Congress; therefore, no offensive expedition of importance can be undertaken until after they have deliberated on the subject and authorized such a measure.”

Whereas presidential wars saddle the people with multi-trillion dollar indebtedness, diverts national genius from production to destruction, cripples liberty, silences the law, awakens enemies, and provokes blowback in the United States;

Whereas the absence of impeachment standards creates an appearance that impeachment is a partisan exercise, which undermines its legitimacy and deters its use;

Whereas the absence of definitions of war and co-belligerency for purposes of the Declare War Clause undermines its enforcement through the impeachment process or otherwise;

Whereas the law should warn before it strikes;

Whereas Article I, section 2, clause 5 provides that, “The House of Representatives ... shall have the sole Power of Impeachment”;

Whereas the impeachment power of the House of Representatives is a cornerstone safeguard against Presidential tyranny;

Whereas the past neglect of the House of Representatives to use the impeachment power against Presidential usurpations and lawlessness has concentrated alarming power in the executive branch, crippled liberty, undermined transparency, and encouraged Presidents to further aggrandizements;

Whereas Article II, section 4 of the Constitution provides that, “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors”;

Whereas the constitutional convention rejected “neglect of duty” or “maladministration” as impeachment standards in favor of “high crimes and misdemeanors” because the former terms were too broad;

Whereas impeachable “high crimes and misdemeanors” has an objective meaning based on the intent of the Constitution’s framers and British impeachment precedents;

Whereas Alexander Hamilton in Federalist 65 explained that impeachable offenses “proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself”;

Whereas the House of Representatives has voted articles of impeachment against two Presidents, one Cabinet officer, one Senator, one Supreme Court Justice, and fourteen (14) Federal judges without providing a general standard for defining an impeachable offense and,

Whereas every participant in the drafting, debating, and ratifying of the Constitution understood that the Declare War Clause prohibited presidential wars and entrusted exclusively to Congress the solemn responsibility for deciding whether the nation should cross the Rubicon from a state of peace to a state of war: Now, therefore, be it

*Resolved,*

## **SECTION 1. DEFINING PRESIDENTIAL WARS AS IMPEACHABLE OFFENSES.**

The House of Representatives declares the following Presidential actions shall constitute impeachable “high crimes and misdemeanors” within the meaning of Article II, section 4, which will cause the House to vote an article or articles of impeachment to send to the Senate for trial—

Initiating wars against state or non-state actors without prior congressional declarations under Article I, section 8, clause 11 (Declare War Clause) by which Congress itself decides to take the United States from a condition of peace to a condition of war against an identified enemy.

**SECTION 2. DEFINING PRESIDENTIAL WARS.** Nothing in this resolution shall be interpreted to prohibit the President from responding with proportionate military force in the exercise of national self-defense to actual or imminent aggression or a declaration of war against the United States.

**SECTION 3. CO-BELLIGERENCY.** This resolution shall be interpreted to prohibit the President from making the United States a co-belligerent in an ongoing war without a congressional declaration under the Declare War Clause. For purposes of this section, the United States becomes a co-belligerent if it systematically or substantially supplies war materials, military troops, trainers, or advisers, military intelligence, financial support or their equivalent in association, cooperation, assistance, or common cause with another belligerent.

**SECTION 4. NON-EXCLUSIVITY.** This Resolution shall not be interpreted to preclude the House of Representatives from concluding that other presidential actions constitute impeachable “high crimes and misdemeanors” within the meaning of Article II, section 4 either by supplemental resolutions or by ad hoc determinations.

### **SEC. 3. EFFECTIVE DATE.**

This Resolution shall take effect upon passage by the House of Representatives.

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