



Rep. Jim Jordan (R-OH), Chairman
Paul Teller, Executive Director
1524 Longworth House Office Bldg.
Washington, D.C. 20515

RSC.JORDAN.HOUSE.GOV

ph. (202) 226-9717 / fax (202) 226-1633

Legislative Bulletin.....March 17, 2011

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H.Con.Res. 28—Afghanistan War Powers Resolution (Kucinich, D-OH)

Order of Business: The resolution is scheduled to be considered on Thursday, March 17, 2011, under a unanimous consent agreement that provides for two hours of debate.

Summary: H.Con.Res. 28 uses the War Powers Resolution of 1973 to direct the President to remove the United States Armed Forces from Afghanistan:

- By no later than the end of the period of 30 days beginning on the day on which this concurrent resolution is adopted; or
- If the President determines that it is not safe to remove the United States Armed Forces before the end of that period, by no later than December 31, 2011, or such earlier date as the President determines that the Armed Forces can safely be removed.

Additional Background: For more background on the events leading up to the Afghanistan War and the surge, see this [RSC Policy Brief on Afghanistan](#).

On December 1, 2009, President Obama ordered a troop surge of 30,000 to begin in early 2010. The President also ordered that after 18 months, troops will begin to leave Afghanistan. The surge has proven successful in capturing numerous Taliban leaders and liberating key areas of Afghanistan.

The War Powers Resolution (Public Law 93-148; November 7, 1973) states that “the constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.” Section 5(b) of the War Powers Resolution asserts that: Within sixty calendar

days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), *unless the Congress (emphasis added)*:

- Does not declare war or enact a specific authorization for such use of United States Armed Forces;
- Does not extend by law such sixty-day period; or
- Is not physically able to meet as a result of an armed attack upon the United States.

To read the full text of the War Powers Resolution, visit this webpage:
http://avalon.law.yale.edu/20th_century/warpower.asp

Potential Conservative Concerns: Many conservatives may be concerned that this resolution undermines the mission of the U.S. and its allies in Afghanistan, demoralizes the troops and their families, and emboldens America's enemies, who gain strength from American weaknesses, retreats, and failures. The passage of this resolution will be seen as a retreat in the eyes of the terrorist enemy in Afghanistan and surrounding areas.

Some conservatives also might be concerned about the constitutionality of the War Powers Resolution. Historically, it has been controversial due to the question of whether the Resolution blurs the lines between Legislative and Executive branch authority (see Constitutional Authority section for more).

Operations in Afghanistan fall under the 2001 Authorization for Use of Military Force (AUMF). See the vote on the AUMF [here](#). The War Powers Resolution, which Rep. Kucinich is using to direct the President to withdraw forces, explicitly states that "the President shall terminate any use of United States Armed Forces... unless the Congress...does not declare war or enact a specific authorization for such use of United States Armed Forces." Congress has authorized the use of military forces in the 2001 AUMF.

Committee Action: H.Con.Res. 28 was introduced on March 9, 2011 and referred to the House Committee on Foreign Affairs. No further public action was taken.

Similar legislation was acted on by the House during the 111th Congress. [H.Con.Res. 248](#) failed by a [roll call vote of 65-356](#).

Administration Position: No Statement of Administration Policy is provided.

Cost to Taxpayers: No CBO score is available.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: An earmarks/revenue benefits statement required under House Rule XXI, Clause 9(a) was not available at press time. However, the resolution contains no earmarks.

Constitutional Authority: None is cited in the legislation, and a committee report citing constitutional authority is not available. Additionally, House Rules do not require a statement of constitutional authority on H.Con.Res. However, the War Powers Act has been surrounded with controversy regarding its constitutionality for decades. Presidents typically treat it as an overreach of Congressional authority and Congress typically cites the Necessary and Proper Clause as its constitutional authority. As stated in the War Powers Resolution of 1973: “(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.”

RSC Staff Contact: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-9717.