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The battle over America's War Powers Act

Trump, like Nixon before him, believes Congress should not constrain his belligerence

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When originally enacted in 1973, the War Powers Act was viewed as a response to Richard Nixon's abuses of power in the Watergate scandal © Bettmann Archive

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On the first day of his war against Iran, Donald Trump triumphantly declared that he had killed Iran's Supreme Leader Ayatollah Ali Khamenei in a surprise attack. He made this announcement on Truth Social and has since repeatedly refused to justify his démarche to Congress.

The implications of this unilateralism are enormous. Long after Trump leaves the White House, future presidents will invoke the death of Khamenei as a precedent to kill any leader of any country they choose to denounce as “evil”.

Late last month, however, the House of Representatives and the Senate confronted Trump's power grab in extraordinary fashion. They both passed War Powers resolutions declaring that “Congress directs the President to remove United States Armed Forces from hostilities against the Islamic republic of Iran”. Unsurprisingly, Trump responded by reasserting his unilateral war-making authority as commander-in-chief.

More remarkably, the overwhelming majority of commentators treat the War Powers Act as if it did not take a decisive stand on the Iran War. But this is a big mistake. When originally enacted in 1973, the Act was viewed as a response to Richard Nixon's abuses of power in the Watergate scandal. Public outrage ultimately forced him to resign in 1974 to avoid impeachment. But even before Nixon's humiliating retreat from office, Congress passed the War Powers Act to prevent future presidents from seeking to transform themselves into potential dictators.

The Act gives the president only 48 hours to submit to Congress “a report, in writing, setting forth the circumstances necessitating the introduction of United States Armed Forces”. At that point, it not only requires Congress to decide within 60 days whether the president's action is justified, but imposes a detailed timetable to ensure it reaches a quick-but-thoughtful decision.

It explicitly provides that, upon receiving the commander-in-chief's report, the foreign affairs committee in each chamber can spend no longer than 45 days deliberating on its merits. They must then propose a resolution that gives their colleagues at least 15 days to define their own positions before making a final decision by the 60-day deadline. If, as is the current case, both Houses adopt the same resolution repudiating the president's action, the Act explicitly requires the commander-in-chief to “terminate” any use of US armed forces without “a declaration of War”, a “specific statutory authorisation” or “a national emergency created by [an] attack upon the United States, its territories or possessions, or its armed forces”.

Nixon vetoed the War Powers Act, denouncing it as “unconstitutional and dangerous” and advancing the very same arguments Trump’s lawyers are using today. However, his veto served only to catalyse broader political support. It took the authors of the original bill, Republican Senator Jacob Javits and Democratic Representative Clement Zablocki, just two weeks to organise the two-thirds majorities required to secure its enactment.

Nixon nonetheless continued to insist that the War Powers Act was unconstitutional during his remaining 10 months in office. Gerald Ford, however, refused to follow in his footsteps upon entering the White House in August 1974, and promptly affirmed his commitment to the Act.

More than 50 years later, the War Powers Act remains the law of the land. This is the first time, however, that the House and Senate have passed a joint resolution unconditionally demanding an immediate end to presidential war-making. The challenge for the Act’s defenders is to make Trump’s unprecedented defiance of its commands into a central theme of the midterm elections in November. If their campaign against the Iran war decisively reduces Maga support in the House and Senate, the peacemaking majority could then deploy their powers over taxation and regulation to compel Trump to recognise that the 1973 Act serves as the basis for vindicating the founding principle of checks-and-balances in the 21st century.

To be sure, a lot can happen between now and November. Despite the confident predictions of pollsters, Trump might maintain his stranglehold on Congress during his remaining years in office. Under this grim scenario, the Republican leadership would undoubtedly applaud his continuing contempt for the Act. Regardless of the outcome, however, one thing is clear: the midterms will determine the shape of American warmaking for a very long time to come.

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