



September 1, 2014

RE: Congress Must Not Recess Next Week Until It Fulfills Its Constitutional Duties of Debating and Voting on Whether to Authorize or Reject the Use of Force in Iraq and Syria Against ISIS  
Four Steps to Take Before Recess

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Dear Representative:

The American Civil Liberties Union strongly urges you to oppose recessing the House of Representatives until Congress debates and votes whether to authorize the President to use force against the group often referred to as the Islamic State in Iraq and Syria (ISIS). Given the immediacy, gravity, and scope of the armed conflict that the President has already entered United States armed forces into in Iraq, and his stated intent to use military force against ISIS in Syria, there is no more pressing question before Congress or the country and no more fundamental constitutional question for you and your colleagues than whether to authorize or reject the use of force in Iraq and Syria.

The President has neither statutory nor Article II authority to carry out the plans he described in his televised speech last week. Only Congress has the constitutional authority to authorize such extensive war powers. However, the President has already claimed for himself the authority, over the past several weeks, to order more than 1,500 uniformed American service members into Iraq and order more than 150 airstrikes. Congress must decide now whether and how to authorize or prohibit the use of force in Iraq and Syria.

Even while the President is ramping up an air campaign and sending more American ground personnel into Iraq, Congress is poised to recess next week for nearly two months without deciding the question of whether to extend war authority for military force in Iraq and Syria. There may be as few as four legislative days left before the lengthy recess.

But waiting until after the election to take up this monumental question of whether the President may continue to use and expand and accelerate the use of military force in Iraq and Syria would mark an abdication by Congress of the war powers reserved for it under Article I of the Constitution. The failure of Congress to act promptly would strike at the very heart of the fundamental principle of separation of powers that the

core of the Constitution and is the undergirding of our democratic form of government.

The ACLU does not take a position on whether military force should be used in Iraq or Syria. However, we have been steadfast in insisting, from Vietnam through both wars in Iraq and up to conflicts during this presidential term in Libya and Syria, that decisions on whether to use military force require Congress-specific, advance authorization.

We are concerned that administration claims of inherent constitutional authority may be even broader than its claims under the 2001 AUMF.

powers between the Executive and Legislative branches, giving the Congress the power to declare war, i.e., make the decision whether to initiate hostilities, while putting the president under the command of the president. Congress must now claim and exercise its constitutional authority by either authorizing or rejecting the use of force in Iraq and Syria.

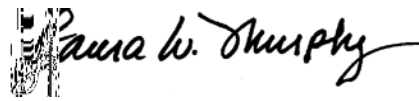
### STEP THREE: Follow Regular Order in Considering Any New AUMF

If Congress believes that there is a significant new threat to the national security of the United States that requires military force as a response, then it can declare or enact a new AUMF—but if it does so, Congress should follow regular order. Before Congress enacted the 2002 AUMF to authorize the war against the regime of Saddam Hussein, it held fifteen hearings, had extensive debates in both houses, and considered the AUMF as separate legislation. The resulting 2002 AUMF identified a specific enemy, and set specific limits and a clear objective, which, once met, effectively terminates the AUMF. Congress can best serve its role in the constitutional plan of checks and balances if it follows that regular order again.

by providing a standard against which to measure the progress of a war, and hold the President accountable for his actions. Specifying clear objectives for the use of force is important because, once the clear objectives are met, the authorization will no longer have effect.

Insertion of geographical limitations, restrictions on use of certain aspects of force (such as a bar on ground forces), or a sunset may impose some helpful limits on the scope or duration of an AUMF, but they are not a substitute for specificity in identifying the enemy, the scope, and the objectives of an authorization of force. Only with specificity on these latter criteria can Congress most effectively assert its constitutional authority, including setting the criteria for the effective termination of authority when objectives have been met.

President Obama has already unleashed his "Dog of war" against ISIS in Iraq, without congressional authorization. That constitutional wrong has already happened. It is now up to the Congress as representatives of the American citizenry, to exercise its authority under

A handwritten signature in black ink that reads "Pamela W. Murphy". The signature is written in a cursive style with a long, sweeping tail on the letter 'y'.