

Army captain's lawsuit challenges legality of Obama's war against ISIS

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A lawsuit filed last week by Army Captain Nathan Michael Smith alleges that the Obama administration's unilateral decision to launch a war against ISIS in Syria and Iraq violates the Constitution and the 1973 War Powers Resolution, since only Congress has the power to declare war.

Smith is currently deployed to Camp Arifjan in Kuwait, where he works as an intelligence officer. In his lawsuit filed Friday, Smith presents himself as a "proud" soldier who completely accepts the framework of the so-called "war on terror," which he calls a "good war." Nevertheless, he alleges that since the president does not have any legal authority to unilaterally launch wars without congressional approval, "My conscience bothered me."

Regardless of Smith's personal motives, the lawsuit sheds light on the assertion of unlimited presidential powers to launch and wage wars. Under the American political framework as set forth in the Constitution, the president is the "commander in chief" of the armed forces, but only Congress can declare war or conclude peace treaties. This is one of the many examples of the "separation of powers" and system of "checks and balances" set forth in the Constitution, designed to prevent tyrannical power from accumulating in the hands of one office or institution.

The War Powers Resolution was passed by the US Congress in 1973, during the deep military and political crisis, including the Watergate scandal, linked to the debacle of the Vietnam War. A constitutional breakdown loomed in 1971 when Congress repealed the 1964 Gulf of Tonkin resolution that had authorized the war, but the Nixon administration continued the war anyway.

The War Powers Resolution requires that the president report to Congress within 48 hours of authorizing military action. It also requires that the president request congressional approval within 60 days of launching

hostilities. If congressional approval is not obtained, the president must cease the war within 90 days. President Nixon vetoed the act, but Congress overrode the veto with a two-thirds majority. Nixon's own Justice Department acknowledged that the resolution was constitutional and binding.

Over the past several decades, and accelerating in the course of the so-called "war on terror," this essential constitutional framework and the War Powers Resolution have been abrogated in practice. Each successive administration has adopted a more and more hostile attitude to the War Powers Resolution, reflecting the growing assertiveness of authoritarian tendencies within the American political establishment.

With respect to the issue of war powers, the Obama administration's rejection of basic constitutional principles goes further than any previous administration.

Obama launched and waged the 2011 war in Libya in flagrant violation of the War Powers Resolution, conspicuously allowing the 60-day period to lapse without making any attempt to obtain congressional approval. Summoned to Congress to explain the administration's conduct, then-Secretary of State Hillary Clinton testified in March 2011 that the president had the power to launch military interventions without congressional authorization. Clinton's contempt for basic constitutional principles drew public criticism from a number of congressional Republicans at the time.

Clinton, now the Democratic Party's frontrunner in the 2016 presidential elections, was a primary conspirator in the illegal regime-change operation against Libya in 2011, which left tens of thousands killed.

In 2014, Obama announced that he was ordering the US military to begin hostilities in a "war against ISIS" that included Syria and Iraq. This occurred after the Obama administration had declared a formal end to hostilities in Iraq. In unilaterally declaring war and sending soldiers

into combat, the supposed constitutional scholar simply ignored the Constitution and the War Powers Resolution.

When Obama was posturing as the Democratic presidential candidate of “hope and change” in 2007, he stated, “The president does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation.” As the well-connected private intelligence web site Stratfor observed in a recent article, “campaign rhetoric tends to diverge from post-election policy.”

Yale Law Professor Bruce Ackerman, who is representing Smith in his lawsuit, wrote in a *New York Times* article in September 2014 that Obama’s actions in violation of the War Powers Resolution constituted “a decisive break in the American constitutional tradition.” He continued: “Nothing attempted by his predecessor, George W. Bush, remotely compares in imperial hubris.”

The nominal political and legal justification for the ongoing US military aggression throughout the Middle East remains the Authorization for Use of Military Force (AUMF), passed overwhelmingly by congressional Democrats and Republicans immediately after the events of September 11, 2001. The brief document purported to authorize the Bush administration to use “necessary and appropriate force” against anyone who “planned, authorized, committed or aided” the September 11 attacks.

Both the Bush and Obama administrations have cited that authorization, together with the September 11 attacks themselves, as a blank check authorizing US military aggression anywhere in the world. However, almost 15 years later, this pretext for unlimited war has worn increasingly threadbare and absurd. In the year 2001, at the time the AUMF was passed, ISIS did not exist. ISIS grew into prominence during the American- and Saudi-supported efforts to overthrow the Syrian government of Bashar Al-Assad beginning in 2011.

Smith’s lawsuit alleges a total of five counts of illegal conduct by the Obama administration: violation of the War Powers Resolution; violation of the president’s constitutional duty to “take care that the laws be faithfully executed”; violation of the 2001 Authorization for Use of Military Force; violation of the 2002 authorization to use military force in Iraq; and violation of limits on the president’s powers as commander in chief.

Smith’s lawsuit requests a declaration “that the war against ISIS in Syria and Iraq violates the War Powers Resolution because the Congress has not declared war or

given the president specific statutory authorization to fight the war,” and that “the War Powers Resolution will require the disengagement, within thirty days, of all United States armed forces from the war against ISIS in Iraq and Syria.”

It is significant that these fundamental constitutional and legal issues are being raised in a lawsuit by a lone Army officer. If Obama’s conduct were a question on a final exam in a high school civics class 50 years ago, the correct answer would be obvious. Any student who thought that Obama’s conduct was legal would receive the exam back with a red “x” next to the answer. However, the year 2016 finds virtually the entire political establishment, the media and both political parties in a conspiracy of silence with respect to this flagrant violation of the Constitution.

This silence exists because both the Democratic and Republican parties are complicit in facilitating the assertion of dictatorial war powers by the president, and they have accommodated themselves to the “war on terror” and its assault on core democratic principles. Moreover, as the entire political establishment lurches to the right and the bulk of the population surges to the left, both capitalist parties are in agreement that the war crimes perpetrated by members of the other party cannot be discussed, let alone investigated and prosecuted.

After promising at least 16 times on camera not to put American “boots in the ground” in Syria, Obama revealed the deployment of 50 Special Forces soldiers to Syria in December of last year. Last month, he increased the number to 300. In addition, Obama recently called for the number of US soldiers in Iraq to be increased to 1,600. Three US soldiers have died in the conflict with ISIS so far.

State Department spokesman John Kirby recently claimed that Obama never made these promises. He also claimed that Special Forces soldiers are not “boots on the ground” because they do not have a conventional combat mission.



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