

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. CON. RES. 391

Expressing the sense of Congress that the President should not initiate military action against Iran with respect to its nuclear program without first obtaining authorization from Congress.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2006

Mr. DEFAZIO (for himself, Ms. SCHAKOWSKY, Mr. ABERCROMBIE, Mr. HONDA, Ms. MILLENDER-MCDONALD, Ms. JACKSON-LEE of Texas, Ms. LEE, Mr. GEORGE MILLER of California, Mr. SANDERS, Mr. BROWN of Ohio, Mr. DOGGETT, Mr. MCGOVERN, Ms. MCCOLLUM of Minnesota, Ms. BALDWIN, Mr. MCDERMOTT, Mr. BLUMENAUER, Mr. SERRANO, Mr. INSLEE, Ms. KILPATRICK of Michigan, Mr. LEWIS of Georgia, Mr. PAYNE, Mr. KUCINICH, Mr. CONYERS, Ms. WATSON, Mr. HOLT, Mr. CAPUANO, Mr. HINCHEY, and Mr. OBERSTAR) submitted the following concurrent resolution; which was referred to the Committee on International Relations

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## CONCURRENT RESOLUTION

Expressing the sense of Congress that the President should not initiate military action against Iran with respect to its nuclear program without first obtaining authorization from Congress.

Whereas Article I, section 8 of the Constitution grants Congress the power “to declare war,” to lay and collect taxes, to “provide for the common defense” and general welfare of the United States, to “raise and support armies,” to “provide and maintain a navy,” to “make rules for the

regulation for the land and naval forces,” to “provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions,” to “provide for organizing, arming, and disciplining, the militia,” and to “make all laws necessary and proper for carrying into execution . . . all . . . powers vested by this Constitution in the Government of the United States”;

Whereas the Constitution also grants Congress exclusive power over the purse: “No money shall be drawn from the Treasury but in consequence of appropriations made by law”;

Whereas the sole war power granted to the executive branch through the President can be found in Article II, section 2, which states, “The President shall be the Commander-in-Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into actual Service of the United States . . .”;

Whereas President George W. Bush and the Administration have argued that the “Commander-in-Chief” clause in the Constitution grants the President wide latitude to engage United States military forces abroad without prior authorization from Congress;

Whereas the President further argues that previous unilateral actions by presidents of both political parties add credence to this interpretation of the Constitution;

Whereas in reality, nothing in the history of the “Commander-in-Chief” clause suggests that the authors of the provision intended it to grant the executive branch the authority to engage United States forces in military action without any prior authorization from Congress, ex-

cept to allow the President to repel sudden attacks and immediate threats;

Whereas in the Federalist Paper Number 69, while comparing the lesser war-making power of the United States President versus the King of Great Britain, Alexander Hamilton wrote, “. . . the President is to be commander-in-chief of the Army and Navy of the United States. In this respect his authority would be nominally the same with that of the King of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy; while that of the British king extends to the declaring of war and to raising and regulating of fleets and armies, all which, by the Constitution under consideration, would appertain to the legislature.”;

Whereas James Madison declared that it is necessary to adhere to the “fundamental doctrine of the Constitution that the power to declare war is fully and exclusively vested in the legislature”;

Whereas in 1793, President George Washington, when considering how to protect inhabitants of the American frontier, instructed his administration that “no offensive expedition of importance can be undertaken until after [Congress] have deliberated upon the subject, and authorized such a measure”;

Whereas in 1801, Thomas Jefferson sent a small squadron of frigates to the Mediterranean to protect against possible attacks by the Barbary powers; he told Congress that he was “unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of de-

fense.”; and he further noted that it was up to Congress to authorize “measures of offense also”;

Whereas with respect to Iran, according to the most definitive United States intelligence report, Iran is likely a decade away from developing a nuclear weapon, and even the most pessimistic analysis by outside experts puts the timeline at least three years away, assuming Iran suffers no setbacks during development, which would be unprecedented;

Whereas diplomatic efforts involving Iran, the United States, the European Union, Russia, the People’s Republic of China, the International Atomic Energy Agency (IAEA), and the United Nations Security Council continue; and

Whereas, despite these diplomatic efforts and statements by President Bush, Secretary of Defense Rumsfeld, and others members of the Administration that diplomacy is the preferred route, there are an increasing number of reports that preparations for war are underway: Now, therefore, be it

1        *Resolved by the House of Representatives (the Senate*  
2 *concurring), That Congress—*

3            (1) strongly believes initiating military action  
4            without congressional approval in response to Iran’s  
5            nuclear program does not fall within the President’s  
6            “Commander-in-Chief” powers under the Constitu-  
7            tion;

8            (2) rejects any suggestion that Public Law  
9            107–40, the authorization of force resolution ap-  
10          proved in response to the terrorist attacks of Sep-

1       tember 11, 2001, explicitly or implicitly, extends to  
2       authorizing military action against Iran over its nu-  
3       clear program;

4           (3) rejects any suggestion that Public Law  
5       107–243, the authorization of force resolution ap-  
6       proved by Congress to go to war with Iraq, explicitly  
7       or implicitly, extends to authorizing military action  
8       against Iran over its nuclear program; and

9           (4) strongly and unequivocally believes that  
10       seeking congressional authority prior to taking mili-  
11       tary action against Iran is not discretionary, but is  
12       a legal and constitutional requirement.

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