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AMASH ON LIBYA: THE CONSTITUTION MUST COME FIRST

Washington, D.C.—U.S. Representative Justin Amash (MI-03) reiterated his constitutional objections to the President's congressionally unauthorized strikes against Libya, after the President delivered an address concerning the intervention on Monday night.

“The Constitution empowers Congress to declare war and to provide for the Armed Services. The President cannot constitutionally order an offensive military operation without Congress's authorization,” said Amash. “The argument is not about ‘consultation’ with Congress. It's more fundamental than that. It's about whether the President by himself can order an attack on another country when that country has not attacked or is not about to attack the U.S. The Constitution plainly forbids such action.”

In 2007, then-Senator Obama had a similar view of the executive's war powers when he observed, 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.” Then-Senator Obama also introduced a resolution stating that the President lacked independent authority to order “offensive military operations” against Iran.

The President is not alone among administration figures who have recently changed their views on the Constitution's restraints on executive power. Then-Senator Clinton in 2007 said, “If the administration believes that any—any—use of force against Iran is necessary, the President must come to Congress to seek that authority.” Vice President Biden went even further. As a presidential candidate, he told a crowd in Iowa: “I drafted, with the help of 17 years I was the Chairman of the Judiciary Committee or the ranking member . . . an outline of what I think the constitutional limits we have on the President [are], [based] on the war clause If [the President] takes this nation to war in Iran without congressional approval, I will make it my business to impeach him. And that's a fact. That is a fact.”

Over the past several days, the administration has failed to argue its actions are constitutional, instead relying on statutory and foreign relations bases for the strikes. The administration told Congress last week that it intended to act “consistent with” the War Powers Resolution (WPR), even though the WPR specifically prohibits congressionally unauthorized offensive military action, and even though the WPR is a statute and cannot override the Constitution. In Monday's speech and on Sunday's political shows, administration figures attempted to justify the strikes with a U.N. Security Council resolution passed two weeks ago. In contrast to the administration's intense behind-the-scenes efforts to secure the U.N. resolution, no administration figure yet has suggested the White House even will ask Congress for authorization for the Libyan strikes.

“It is astonishing that the administration seems to think a U.N. resolution is required but a declaration from Congress is not required to initiate offensive military strikes. No U.N. resolution and no press release from the Arab League can replace Congress’s authorization,” said Amash. “Major players in the administration used to be forceful and articulate defenders of the Constitution’s constraints on executive war powers. Now that they’re pulling the trigger, they seem to have had a radical change of heart.”

Amash will introduce the RECLAIM Act (attached) on Tuesday to halt strikes in Libya until the President seeks and is given authorization for such force.

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