

Statement of
The Honorable Russ Feingold

United States Senator
Wisconsin
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Opening Statement of U.S. Senator Russ Feingold
Senate Judiciary Committee Hearing
Exercising Congress's Constitutional Power to End a War
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Good morning, and welcome to this hearing of the Senate Judiciary Committee entitled "Exercising Congress's Constitutional Power to End a War." We are honored to have with us this morning a distinguished panel of legal scholars to share their views on this very important and timely issue.

I thank Chairman Leahy for allowing me to chair this hearing. Let me start by making a few opening remarks, then I will recognize Senator Specter for an opening statement, and then we will turn to our witnesses.

It is often said in this era of ubiquitous public opinion polls that the only poll that really matters is the one held on election day. On November 7, 2006, we had such a poll, and all across this country, the American people expressed their opinion on the war in Iraq in the most significant and meaningful way possible -- they voted. And with those votes, they sent a clear message that they disagree with this war and they want our involvement in it to stop.

The President has chosen to ignore that message. So it is up to Congress to act.

The Constitution gives Congress the explicit power "[to] declare War," "[t]o raise and support Armies," "[t]o provide and maintain a Navy," and "[t]o make Rules for the Government and Regulation of the land and naval Forces." In addition, under Article I, "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." These are direct quotes from the Constitution of the United States. Yet to hear some in the Administration talk, it is as if these provisions were written in invisible ink. They were not. These powers are a clear and direct statement from the founders of our republic that Congress has authority to declare, to define, and ultimately, to end a war.

Our founders wisely kept the power to fund a war separate from the power to conduct a war. In their brilliant design of our system of government, Congress got the power of the purse, and the President got the power of the sword. As James Madison wrote, "Those who are to conduct a war cannot in the nature of things, be proper or safe judges, whether a war ought to be commenced, continued or concluded."

The President has made the wrong judgment about Iraq time and again, first by taking us into war on a fraudulent basis, then by keeping our brave troops in Iraq for nearly four years, and now by proceeding despite the opposition of the Congress and the American people to put 21,500 more American troops into harm's way.

If and when Congress acts on the will of the American people by ending our involvement in the Iraq war, Congress will be performing the role assigned it by the founding fathers - defining the nature of our military commitments and acting as a check on a President whose policies are weakening our nation.

There is little doubt that decisive action from the Congress is needed. Despite the results of the election, and two months of study and supposed consultation -- during which experts and members of Congress from across the political spectrum argued for a new policy -- the President has decided to escalate the war. When asked whether he would persist in this policy despite congressional opposition, he replied: "Frankly, that's not their responsibility."

Last week Vice President Cheney was asked whether the non-binding resolution passed by the Foreign Relations Committee that will soon be considered by the full Senate would deter the President from escalating the war. He replied: "It's not going to stop us."

In the United States of America, the people are sovereign, not the President. It is Congress' responsibility to challenge an administration that persists in a war that is misguided and that the country opposes. We cannot simply wring our hands and complain about the Administration's policy. We cannot just pass resolutions saying "your policy is mistaken." And we can't stand idly by and tell ourselves that it's the President's job to fix the mess he made. It's our job to fix the mess, and if we don't do so we are abdicating our responsibilities.

Tomorrow, I will introduce legislation that will prohibit the use of funds to continue the deployment of U.S. forces in Iraq six months after enactment. By prohibiting funds after a specific deadline, Congress can force the President to bring our forces out of Iraq and out of harm's way.

This legislation will allow the President adequate time to redeploy our troops safely from Iraq, and it will make specific exceptions for a limited number of U.S. troops who must remain in Iraq to conduct targeted counter-terrorism and training missions and protect U.S. personnel. It will not hurt our troops in any way - they will continue receiving their equipment, training and salaries. It will simply prevent the President from continuing to deploy them to Iraq. By passing this bill, we can finally focus on repairing our military and countering the full range of threats that we face around the world.

There is plenty of precedent for Congress exercising its constitutional authority to stop U.S. involvement in armed conflict.

In late December 1970, Congress prohibited the use of funds to finance the introduction of United States ground combat troops into Cambodia or to provide U.S. advisors to or for Cambodian military forces in Cambodia.

In late June 1973, Congress set a date to cut off funds for combat activities in South East Asia. The provision read, and I quote:

"None of the funds herein appropriated under this act may be expended to support directly or indirectly combat activities in or over Cambodia, Laos, North Vietnam, and South Vietnam by United States forces, and after August 15, 1973, no other funds heretofore appropriated under any other act may be expended for such purpose."

More recently, President Clinton signed into law language that prohibited funding after March 31, 1994, for military operations in Somalia, with certain limited exceptions. And in 1998, Congress passed legislation including a provision that prohibited funding for Bosnia after June 30, 1998, unless the President made certain assurances.

Our witnesses today are well aware of this history, and I look forward to hearing their analysis of it as they discuss Congress's power in this area. They are legal scholars, not military or foreign policy experts. We are here to find out from them not what Congress should do, but what Congress can do. Ultimately, it rests with Congress to decide whether to use its constitutional powers to end the war.

The answer should be clear. Since the President is adamant about pursuing his failed policies in Iraq, Congress has the duty to stand up and use its power to stop him. If Congress doesn't stop this war, it's not because it doesn't have the power. It's because it doesn't have the will.