



Written by [Michael Tennant](#) on June 17, 2011

## Kucinich, Colleagues Sue Obama Over Libya War

The other plaintiffs in the lawsuit are Reps. Walter Jones (R-N.C.), Howard Coble (R-N.C.), John Duncan (R-Tenn.), Roscoe Bartlett (R-Md.), John Conyers (D-Mich.), Ron Paul (R-Texas), Michael Capuano (D-Mass.), Tim Johnson (R-Ill.), and Dan Burton (R-Ind.). They are being represented by George Washington University law professor Jonathan Turley.



Their 36-page complaint cogently and thoroughly makes the case that Obama's military action is indeed a war, that it was undertaken and is being funded in violation of the U.S. Constitution, that the administration has failed to satisfy the requirements of the War Powers Resolution, and that therefore the court should order the President to "suspend military operations in Libya absent a declaration of war from Congress."

The administration has maintained from the outset that its participation in the NATO operation in Libya does not amount to war. The White House reiterated this position in a June 15 report to Congress:

The President is of the view that the current U.S. military operations in Libya are consistent with the War Powers Resolution and do not under that law require further congressional authorization, because U.S. military operations are distinct from the kind of "hostilities" contemplated by the Resolution's 60 day termination provision. U.S. forces are playing a constrained and supporting role in a multinational coalition.

However, as the lawsuit makes clear,

U.S. operations in Libya now include all of the classic elements of a war, including but not limited to close combat support, bombing of Libya's capital and key Libyan military assets, and commitment of U.S. personnel to ground operations to assist the rebel forces in the Libyan civil war.

Moreover, while Obama now claims that the War Powers Resolution does not apply to the Libyan operation, at the time the operation commenced he [notified](#) Congress that he had ordered the armed forces to undertake the mission, specifically stating that he was "providing this report as part of [his] efforts to keep the Congress fully informed, consistent with the War Powers Resolution." The President obviously wants to have it both ways: abiding by the law when it is convenient for him and ignoring it when it is inconvenient.

The complaint alleges that Obama has violated the war powers clause of the Constitution, which "expressly requires the President to secure a declaration of war from Congress prior to committing U.S.



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military forces." It cites the words of the Framers of the Constitution, "who spoke often of the need to avoid unilateral commencement of wars by the Chief Executive," and the even more damning utterances of Obama, Vice President Joseph Biden, and Secretary of State Hillary Clinton, all of whom, when they were mere Senators, explicitly [stated](#) that the President could not commit military forces to war without congressional authorization. "The Obama Administration," says the suit, "has read the mandatory consent of Congress out of the Constitution and replaced it with a purely discretionary power of the President to commence war with or without congressional approval."

It also alleges that Obama is in violation of the War Powers Resolution for having failed to obtain congressional authorization to continue the Libyan war within 60 days of its commencement. Furthermore, it notes that the war has always been illegal under the Resolution since it was undertaken neither at the direction of Congress nor in response to "a national emergency."

The administration has argued that the President may order a military action based on U.N. resolutions and NATO decisions. Kucinich *et al.* disagree, saying that "neither U.N. resolutions nor treaties can relieve the President of constitutional obligations under Article I on congressional authorizations of war." In addition, the plaintiffs point out that NATO's Libya mission is itself a violation of the North Atlantic Treaty since the treaty "allows only for military actions in defense of a member state or states" but "Libya did not attack or threaten a member state in the NATO alliance."

Then there is the matter of funding the war. Congress has neither authorized the war nor appropriated funds for its prosecution — neither of which has prevented Obama from expending over \$750 million on the mission anyway. The Pentagon appears to be diverting previously appropriated monies for this purpose. "While Congress has allowed the Department of Defense discretion in the use of some funds to handle emergencies," the complaint reads, "these funds cannot be used for a facially unconstitutional purpose or to circumvent express legislative powers.... Such use of funds is a misuse of federal funds in violation of Article I and exceeds the authority of the President under Article II."

The lawsuit asks the court to declare that the Libyan operation is a war and, therefore, unconstitutional since Congress has not declared war on Libya; that the President may not employ NATO to engage in military action unrelated to an attack on a NATO member state; that the President may not use the North Atlantic Treaty or UN resolutions to authorize a war in lieu of seeking a declaration of war from Congress; that the President may not spend previously appropriated monies on an undeclared war; and that the war must be suspended unless Congress declares war.

The Congressmen would certainly seem to have an open-and-shut case against the Obama administration — one that would probably prevail easily if it went to trial. Unfortunately, courts have previously ruled that members of Congress do not have standing to sue the executive branch, so the court could dismiss this case on similar grounds.

The complaint addresses this matter in three ways. First, it acknowledges the precedents but adds that the plaintiffs "believe that these decisions allow for an exception for these claims and that members of Congress must have the ability to seek judicial review in this context." Second, it suggests that the plaintiffs "have standing as taxpayers given the use of hundreds of millions of dollars in federal funds without authorization of Congress to support a war in violation of a specific constitutional limitation in Article I." Third, it argues that previous cases prohibiting judicial review of certain executive branch policies "were wrongly decided" and should be reconsidered. Whether the court will accept any of these arguments remains to be seen.



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If this case goes to trial, it will certainly make for interesting political theater. It will also be a true test of the judiciary's commitment to the Constitution and the rule of law. A victory for the plaintiffs would be a victory for congressional supremacy in matters of war and peace — possibly a first step down the road to a less interventionist America. If, however, the case is dismissed or decided in the administration's favor, to preserve the constitutional balance of power Congress may have to resort to the one weapon in its arsenal that the courts cannot overrule: impeachment.

*Photo: Dennis Kucinich*



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