

WebMemo



Published by The Heritage Foundation

No. 1422
April 12, 2007

President Must Veto Unconstitutional, Irresponsible War Funding Legislation

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After two months of delay, Congress may soon send President George W. Bush an emergency spending bill that would supply needed funds to U.S. soldiers in Iraq and Afghanistan, but the bills already passed by the House and Senate—which have yet to be reconciled into final form—are unacceptable. The bills would tie the President's hands in conducting the wars in Iraq and Afghanistan, a blatantly unconstitutional usurpation of the President's constitutional authority as commander in chief. At the same time, Congress's legislation is weighted down with billions of dollars in pork-barrel spending. Congress owes the American people and U.S. troops a clean emergency spending bill that does not violate the Constitution or make funding for body armor contingent on money for citrus growers. If Congress's legislation falls short, the President must veto it.

Irresponsible and Unconstitutional. Sixty-six days ago, on February 5, 2007, President Bush requested a supplemental spending bill to provide urgently needed funds for the troops on the front lines in Afghanistan and Iraq. In response, the House and Senate passed bills, but each chamber included in its legislation an unconstitutional requirement for the withdrawal of U.S. combat forces from Iraq over the next year. Congress then left for the Easter holiday without sending a final bill to the President.

The result of Congress's passing unconstitutional legislation and then leaving town is a harmful delay in getting vital funds to the troops. On March 29, Joint Chiefs of Staff Chairman Peter Pace told the

House Appropriations Subcommittee on Defense that if the supplemental funds were not available by mid-April, National Guard and Reserve units would have to curtail some training activities.

Mid-April has arrived, and still no funding is imminent.

The congressional leadership is using the supplemental bill as a vehicle to debate the war strategy and putting the troops on the front line at risk in the process. If Congress does not wish to provide adequate funding for the war effort, that is its prerogative, but Congress has other tools it can use to influence the outcome in the Afghani and Iraqi theaters of the larger war the U.S. is fighting, such as confirmation power over military commanders, setting of military reorganization policy and overall troop levels, and decisions regarding procurement of weapons systems and supplies. The one thing that Congress may *not* do is fund military units and then attempt to control where, when, and how they engage in combat. Under the Constitution, the President is the commander in chief, and Congress cannot usurp his constitutional authority over troop operations through funding bills, no matter whether it intends micro- or macro-management of the war.¹

This paper, in its entirety, can be found at:
www.heritage.org/research/budget/wm1422.cfm

Produced by the President's Office

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
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Congress should act *now* to send the President a clean bill, free of unconstitutional provisions, and conduct its debate about the wars separately in an appropriate forum. If Congress sends him a bill which contains unconstitutional limits on the President's authority as commander in chief—for example, one that specifies when and in which theaters of war he should deploy or withdraw troops—the President must veto it to fulfill his oath to support and defend the Constitution.

Pork Signals Abandoning Pretenses of Fiscal Discipline. Loading its troop-funding supplemental with unrelated pork is the first sign that the new Congress does not intend to take its promise of fiscal discipline seriously. In mid-February, Congress passed a spending bill that capped 2007 discretionary non-emergency spending, but emergency spending is not counted against this cap. By packing its emergency supplemental legislation with non-emergency pork—such as \$100 million for citrus growers in the House's bill—Congress stealthily breaks its own rules, making a mockery of its pledge of fiscal responsibility.

This is a moral tragedy. Rather than send the President a clean supplemental bill to ensure that the troops have adequate funding to fulfill their mission, Congress has passed a \$20 billion ransom note. Unless it receives \$20 million for cricket eradication and \$95 million for dairy farmers, among other questionable expenditures, the Senate will not direct funds to pay for military training. The House, meanwhile, is demanding \$74 million for peanut storage, \$25 million for spinach growers, and \$6.4 million for additional congressional salaries and expenses before it will agree to fund body armor.² Congress should not play political games when soldiers' lives are at stake, and the fact that this supple-

mental turns U.S. troops into collateral for pork is morally offensive.

Members of the House and Senate leadership should know that their troop-funding strategy is self-defeating. Representative Charles Rangel (D-NY) admitted on *Meet the Press* that the pork in the bill was being used to buy Representatives' votes. But if Members of Congress think that pork will bring them votes in the next election, they have clearly lost touch with their constituents. A recent poll by Public Opinion Strategies revealed that 56 percent of Americans support fully funding the troops and 64 percent oppose attaching non-defense spending to defense bills. Indeed, most Americans are patriots who are grateful to U.S. soldiers for putting their lives on the line. They prefer to send thanks and the necessary resources in exchange for the protection troops provide, and they do not demand peanuts or spinach in return. Citizens know that emergency war funding ought to fund troops, not pork. Congress should listen and strip all the pork and unrelated policy provisions from its emergency spending legislation. If Congress refuses, the President should veto the bill.

Conclusion. If Congress is serious about its commitment to U.S. troops and serious about its commitment to fiscal responsibility, it must act quickly to send the President a war funding bill that does not violate the Constitution or include unrelated spending items. The President is right to threaten a veto of Congress's legislation. Anything that falls short of the standards of constitutionality and responsibility must face a presidential veto.

—Edwin J. Feulner, Ph.D., is President of The Heritage Foundation.

1. For a more detailed discussion of constitutional separation of powers in this context, see letter from Edwin Meese III *et al.*, to congressional Leadership, "Re: Constitutional Problems with Congress's Attempted Micromanagement of the War," March 20, 2007, at www.heritageblogs.org/wordpress/wp-content/uploads/2007/03/warpowersletter.html.
2. Brian M. Riedl, "Congress Hijacks Troop Funding for Pork," Heritage Foundation *WebMemo* No. 1397, March 15, 2007 at www.heritage.org/Research/Budget/wm1397.cfm.