# 2018 University of Utah Clinic – March Public Forum Cases

A full pro case (1AC) and full con case (1NC) are provided. Additional cards are provided as well.

# 1AC

We affirm the resolution – Resolved: On balance, the current Authorization for Use of Military Force gives too much power to the president.

We offer the following definitions:

A. The Authorization for Use of Military Force (AUMF) is a proper noun and term of art. Rudalevige on December 4, 2017 referring to both the 2001 AUMF, which granted the president authority for the use of necessary military force against al Qaeda, and the 2002 AUMF, which granted similar authority for Iraq.

**Rudalevige**, A. (**2017**, December 04). Here's why authorization to use military force is so important. Retrieved February 02, 2018, from http://thehill.com/opinion/national-security/363182-heres-why-authorization-to-use-military-force-is-so-important

B. Power is defined by the Merriam-Webster Dictionary (**Power. (2018). Retrieved February 02, 2018, from https://www.merriam-webster.com/dictionary/power**) as “possession of control, authority, or influence over others.”

The criteria for this debate should be cost-benefit analysis. By determining the benefits vs. the costs offered by the current AUMF, we can determine a basis on which “too much” power might be given.

Therefore, we offer three contentions: that the power granted by the AUMF causes unnecessary conflict, that the power of the AUMF disrupts the separation of powers that is modeled by other countries, and that alternatives to the power granted by the AUMF exist that can better solve conflict.

## Contention 1: Conflict

### The AUMF expands presidential war powers beyond the scope of its original intent and causes indefinite conflict overseas

**Healy,** Gene **(2016) Vice President of the Cato Institute** and author. “Ending the forever war” CATO https://www.cato.org/people/gene-healy

Two successive presidents have treated the 2001 Authorization for Use of Military Force (AUMF) as a wholesale, potentially permanent delegation of congressional war powers — a writ for war without temporal or geographic limits. The 2001 AUMF was passed by the 107th Congress three days after the 9/11 attacks and targeted those who “planned, authorized, [or] committed” the attacks and those who “aided” or “harbored” them. This referred to, respectively, al-Qaeda and the Taliban although they were not named in the authorization. Judging by what they said at the time, **the legislators who passed the resolution did not imagine that they’d sanctioned an open-ended, multi-generational war.** This AUMF was nothing like the Gulf of Tonkin Resolution that authorized the Vietnam War, then-Sen. Joe Biden insisted after the vote. This authorization was limited: “we do not say pell-mell, ‘Go do anything, any time, any place.’” The post-9/11 AUMF has now been in effect for over twice as long as the Gulf of Tonkin Resolution, and our two post-9/11 presidents have stretched it into the boundless grant of power Biden disclaimed. **Over the last decade and a half, the 2001 AUMF has served to underwrite a far-flung conflict against a shifting succession of jihadist groups with ever more tenuous connections to the resolution’s language and original purpose.** Lately, the Obama administration has invoked the 2001 AUMF as legal cover for war with ISIL — **a conflict that the army chief of staff has said will last some“10 to 20 years” more. This system will not hurry us into peace.**

### AUMF encourages the executive to conflate military intelligence reducing all threats to Al-Qaeda and warping military strategy

**Healy,** Gene **(2016)** Vice President of the Cato Institute and author. “Ending the forever war” CATO https://www.cato.org/people/gene-healy

**The administration’s current legal theory seems to be that ISIL basically is al-Qaeda** — or anal-Qaeda — based on its predecessor organization’s past connections to the group targeted by the 2001 AUMF and ISIL’s current claims that it is “the rightful successor to bin Laden’s legacy.” That **Osama bin Laden’s actual, designated successor,** Ayman al-Zawihiri, **has repudiated and excommunicated ISIL presents something of a problem for that theory as does the fact that the two groups are engaged in open warfare against each other.** Indeed, headlines like “ISIS Beheads Leader of Al Qaeda Offshoot Nusra Front,” or “Petraeus: Use Al Qaeda Fighters to Beat ISIS” might give one cause to wonder — or even debate - whether ISIL is the same enemy Congress authorized President Bush to wage war against back before Steve Jobs unveiled the first iPod.

### AUMF grants the executive powers to authorize domestic surveillance, the extrajudicial killings of Americans, indefinite detention, and an unending war

**Healy**, Gene **(2014)** Vice President of the Cato Institute and author. “After Almost 13 Years, It’s Time to End Congress’ Blanket Authorization of Force” CATO https://www.cato.org/publications/commentary/after-almost-13-years-its-time-end-congress-blanket-authorization-force

The last time the Senate held hearings on the AUMF, Sen. Lindsey Graham, R-S.C., asked the Pentagon’s civilian special operations chief, Michael Sheehan, “does [the president] have the authority to put boots on the ground in the Congo?” Answer: “Yes, sir, he does.” Predictably, the hawkish Graham was totally okay with that. “The battlefield is wherever the enemy chooses to make it,” right? Right, said Sheehan: “from Boston to the [Federally Administered Tribal Areas of Pakistan].” Asked how much longer the war on terrorism will last, Sheehan replied, “at least 10 to 20 years.” So presumably the AUMF can serve as the basis for Chelsea Clinton’s “kill list” in 2033, after she trounces George P. Bush. Lyndon Johnson once compared the Gulf of Tonkin resolution to “Grandma’s nightshirt” because “it covers everything.” Even LBJ might have marveled at how the last two administrations have stretched the post-9/11 AUMF. **Under the theory that “the United States is a battlefield in the war on terror,” the Bush administration invoked it to justify warrantless wiretapping and military detention of American citizens on American soil. The Obama administration cites it as legal authority for the extrajudicial killing of Americans via remote-control.**

## Contention 2: Separation of Powers Is Modeled Good or Bad by Other Countries

### US President Usurping Congressional Power to Direct the Military

Ivan **Eland,** xx-xx-xxxx, "Excessive Presidential War Power," HuffPost, https://www.huffingtonpost.com/ivan-eland/excessive-presidential-war-power\_b\_6692044.html

The founders of the nation, were they here to see such arrogant usurpation by imperial presidents of Congress’s constitutional war power, and Congress’s willing abdication of it, would simply pass out. **A few gray areas of the U.S. Constitution exist, but the war power isn’t one of them.** The document placed most of the war powers—including declaring of war, even the approval of lesser military action, the raising of armies, the maintenance of a navy, and the funding and regulation of the armed forces and militia—with the people’s branches of governments. **The American founders** intentionally created this unusual arrangement, because they **did not like the militarism of the European monarchs of the day, who took their countries to war on a whim and let the costs in blood and added taxes fall to common citizens.**

### B. Countries, like Kenya, model US system of Checks and Balances

**NPR**.org, 2-13-**2012**, "Should U.S. Constitution Be An International Model?," https://www.npr.org/2012/02/13/146816817/is-the-u-s-constitution-an-international-model

But just to strike a very different note, one of the moments that I found rather extraordinary **in the Kenyan constitution-making process** is once the very, very difficult problem of what type of system of government Kenya should adopt was resolved, **the politicians instructed us to draft a presidential system U.S.-style.**

So it came at an interesting moment, when there was something of a deadlock between the executive and Congress, but **what was emphasized was it must be a presidential system not like their past one - which concentrated power in an extraordinary way on the president - but like the U.S. one, with adequate checks and balances.**

### C. When modeling goes badly, things fall apart

Gary **Demar,** 2-6-**2012**, "Why Our Constitution Fails in Other Countries,” https://americanvision.org/5550/why-our-constitution-fails-in-other-countries/

In reality, our Constitution will not work in Egypt, but Justice Ginsburg does not know why or is afraid to say why. It’s not that there’s a problem with our Constitution. The problem is with the majority of the Egyptian people and their worldview. Consider the first words of the Constitution: “We the people of the United States.” Now try it this way: “We the people of Egypt.” It’s immediately apparent that until the Egyptians change, NO constitution will work.

Our second president, John Adams, understood the relationship between morality and Constitution writing:

**“Because we have no government, armed with power, capable of contending with human passions, unbridled by morality and religion. Avarice, ambition, revenge and licentiousness would break the strongest cords of our Constitution**, as a whale goes through a net. Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.”[1](https://americanvision.org/5550/why-our-constitution-fails-in-other-countries/#footnote_0_5550)

**What made our Constitution work was the worldview of the people that framed it. They were not perfect men, but they understood that in order for a constitution to work, the majority of the people had to be self-governing.** That is not the case in Egypt. Compare the days of rioting after a soccer match where 74 people were killed and 250 injured with the end of our Super Bowl.

The President and his liberal compatriots were excited to see the Arab Spring bring democracy to a nation like Egypt. There is no doubt that the presidency of Hosni Mubarak was corrupt and needed to be changed. Riots in the streets don’t breed confidence. It would be like putting the worst elements of the Occupy movement in control of America. Not a good idea.

There is an old saying that is mostly true: Be careful what you wish for because you may actually get it. Democracy does not always get you the results you want.

There’s a lot of history to show that revolutions do not bring about good government. The war we had with Great Britain was a war for independence not a revolution. Thirteen governments defended themselves against a foreign aggressor. The colonies were already self-governing. The character of the people made all the difference.

## Contention 3 is that the power granted by the AUMF is not necessary.

### Presidents still have the ability to react timely to sudden threats without AUMF

**Healy, Gene** **(2014)** Vice President of the Cato Institute and author. “After Almost 13 Years, It’s Time to End Congress’ Blanket Authorization of Force” CATO https://www.cato.org/publications/commentary/after-almost-13-years-its-time-end-congress-blanket-authorization-force

**Without the AUMF, presidents still retain the constitutional power to “repel sudden attacks,”** as James Madison put it. **And if they think groups like al-Shabaab or Boko Haram demand a more sustained military response, they’ll be free to make that case to Congress.** But delegating new authorities in advance might permanently change our constitutional default setting from peace to war. Madison also said that “No nation could preserve its freedom in the midst of continual warfare.” We’re now into our second decade running that experiment; how much longer do we want to risk proving him right?

For all of these reasons, we strongly encourage a pro ballot.

## Additional PRO Cards:

### Congress should not pass AUMF’s, because it illegally passes the political buck

Ivan Eland, xx-xx-xxxx, "Excessive Presidential War Power," HuffPost, https://www.huffingtonpost.com/ivan-eland/excessive-presidential-war-power\_b\_6692044.html

If Congress has the courage to pass any approval of this questionable American use of force, it should at minimum take out the “associated persons and forces” language, limit the geographical scope of the fight, and be very specific about what limited ground operations are authorized. Congress should also repeal the 2001 AUMF and the 2002 Iraq War authorizations because they are out of date, and Obama will continue to abuse them, especially if Congress fails to agree on any new resolution for fighting ISIS.

Restrictions to Presidential Power to Engage in War was Limited after Vietnam, but unleashed after 9-11

Heather Timmons, 7-4-2017, "The office of the US president has too much power, and Congress is finally moving to limit it," Quartz, https://qz.com/1020499/the-office-of-the-us-president-has-too-much-power-and-congress-is-finally-moving-to-limit-it/

With [2.5 million military personnel](http://www.globalfirepower.com/country-military-strength-detail.asp?country_id=united-states-of-america), and the world’s most powerful stash of weapons, fighter jets, and battleships at his command, the US president’s role as “Commander in Chief” is technically limited by Congress, which holds the power to “declare war.” But that’s something Congress hasn’t done since WWII, and plenty of presidents have engaged in military action since then.

Only after American soldiers fought and died in the Vietnam War for nearly 20 years did Congress pass the [War Powers Resolution](http://avalon.law.yale.edu/20th_century/warpower.asp) of 1973, to “insure that the collective judgment” of Congress and the president would apply when US troops were put in harms way, or where hostilities could be “imminent.” It requires the president to get authorization from Congress in those situations and was only passed after Congress overrode president Richard Nixon’s veto.

Days after the terrorist attacks of Sept. 11, 2001, however, Congress quickly gave the president new military powers.

### Framers wanted Congress and the President to work together on issues of war

Donald Hudson, 12-1-2013, "Balance of U.S. War Powers," Council on Foreign Relations, https://www.cfr.org/backgrounder/balance-us-war-powers

[Susan Low Bloch](http://www.law.georgetown.edu/curriculum/tab_faculty.cfm?Status=Faculty&Detail=220), a constitutional law expert at the Georgetown University Law Center, says the framers of the Constitution deliberately divided the war powers between the two branches to induce them to work together on such a vital issue.

### Authorizations of Use for Military Force should be immediate and only under certain circumstances

Ivan Eland, xx-xx-xxxx, "Excessive Presidential War Power," HuffPost, https://www.huffingtonpost.com/ivan-eland/excessive-presidential-war-power\_b\_6692044.html

In the founders’ original conception of their system of government, the executive was only the commander-in-chief of the armed forces after war had been decided by the people’s branches and under whatever restrictions they imposed. As the debate in the Constitutional Convention indicated, only in the extreme case of the country being under imminent attack and the Congress not being in session, could the president take military action without congressional approval; even then he should seek a prompt authorization when possible. Furthermore, as a court case early in the republic’s history during John Adams’s administration confirmed, the founders envisioned only a narrow role for the president as commander-in-chief—he was commander of the armed forces on the battlefield, not the commander-in-chief of the nation, as he seemingly has purported to be during the Bush and Obama administrations and other recent presidencies.

### Too Much Power in the Hands of Leaders can be Corrupting

Rice, 2011 (Brian K., 8/23/11, "The Dangers of Too Much Leadership Power," LeadershipConneXtions, <http://lci.typepad.com/leaders_resourcing_leader/2011/08/the-dangers-of-too-much-leadership-power.html>)

Here are just four reasons why too much power can be so dangerous.

(1) Too much power makes it easy for impulsive, selfish leaders to pursue their own goals at the expense of the needs and well-being of others. (2) Those in power protect their position by attacking those they perceive as threats to their position. (3) Those with too much power are prone to biased judgments because they have little interest in input from followers. Therefore, they act with faulty, limited perspective and often make bad decision. (4) Those with too much power are resistant to feedback. They gather around them, other senior leaders, who basically agree with and don't challenge them. Even though there may be the appearance of accountability, in actually they have little or no real accountability.

And when that is going on, financial fraud and sexual scandal is hanging around as well. We have seen these dangers, especially in the business world in recent years. The titans of business and industry, are often, exactly that. Powerful, isolated, independent, forceful, intimidating, ruthless...

# 1NC

We negate the resolution: on balance, the current Authorization for Use of Military Force gives too much power to the president.

We offer the following definitions:

A. The Authorization for Use of Military Force (AUMF) is a proper noun and term of art referring to both the 2001 AUMF, which granted the president authority for the use of necessary military force against al Qaeda, and the 2002 AUMF, which granted similar authority for Iraq.

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B. Power is defined by the Merriam-Webster Dictionary as “possession of control, authority, or influence over others.”

Power. (2018). Retrieved February 02, 2018, from https://www.merriam-webster.com/dictionary/power

The criteria for this debate should be cost-benefit analysis. By determining the benefits vs. the costs offered by the current AUMF, we can determine a basis on which “too much” power might be given.

We present the following two contentions: first, that the AUMF provides necessary power to deter current conflict, and second, that the AUMF still exists within appropriate checks and balances.

## Contention 1: AUMF Good

### The U.S. has been afforded important military opportunities due to the AUMF.

**Rudalevige**, A. (**2017**, December 04). Here's why authorization to use military force is so important. Retrieved February 02, 2018, from http://thehill.com/opinion/national-security/363182-heres-why-authorization-to-use-military-force-is-so-important

Currently, however, **the U.S. has military personnel deployed and equipped for combat in at least 19 countries: Afghanistan, Iraq, Syria, Yemen, Somalia, Libya, Kenya, Niger, Cameroon, Uganda, South Sudan, Democratic Republic of Congo, Central African Republic, Djibouti, Jordan, Turkey, Egypt, Cuba, and Kosovo.**

**In October, three U.S. soldiers were killed in an apparent ambush in Niger. And the U.S. military has recently stepped up operations in both Yemen and Somalia.**

### Modern Democracies would be fool hardy to not place military control under the executive, rather than legislative body.

Donald **Hudson**, 12-1-**2013**, "Balance of U.S. War Powers," Council on Foreign Relations, https://www.cfr.org/backgrounder/balance-us-war-powers

**Legal experts** Noah Feldman and Samuel Issacharoff **wrote** in March 2007 in Slate **that while the Constitution empowered the Congress to make and end war, it intended the president to have the power to wage war effectively, once an authorized war was begun.** "**In the modern era, no country--not even a parliamentary democracy--has been so foolhardy as to place a war under the guidance of a legislative body, rather than a single, unified command."**

### C. AUMF is the legal ground to contain ISIS

**Stimson**, Charles; **Chief of Staff and Legal Fellow at the Heritage foundation**. A Framework for an Authorization for Use of Military Force Against ISIS. Heritage https://www.heritage.org/terrorism/report/framework-authorization-use-military-force-against-isis#\_ftn23

the 2001 **AUMF offers sufficient legal authority to use military force against ISIS.** Their justification, as stated on background by a senior Administration official, is that: **Based on ISIL’s longstanding relationship with al-Qa’ida (AQ) and Usama bin Laden**; **its long history of conducting, and continued desire to conduct, attacks against U.S. persons and interests, the extensive history of U.S. combat operations against ISIL dating back to the time the group first affiliated with AQ in 2004; and ISIL’s position—supported by some individual members and factions of AQ-aligned groups—that it is the true inheritor of Usama bin Laden’s legacy ,** **the** **President may rely on the 2001 AUMF as statutory authority for the use of force against ISIL**, notwithstanding the recent public split between AQ’s senior leadership and ISIL.

### D. ISIS is a threat and US policy should account for American readiness

**Fishman**, Brian; counterterrorism research fellow (**2014**) The Islamic State a persistent threat. PDF file:///C:/Users/Owner/Desktop/HHRG-113-AS00-Wstate-FishmanB-20140729.pdf

**In conventional military terms, the Islamic State is the most powerful jihadi entity in the world—and it has no real competitors**, including al-Qaeda. But unlike al-Qaeda, the Islamic State is focused primarily on regional power projection rather than global terrorism. Nonetheless, **the Islamic State is so large and multifaceted (including several thousand foreign fighters) that it would be surprising if subgroups did not intend such strikes [against the US]—and U.S. policy toward the Islamic State should account for that risk.**

## Contention 2: AUMF is not too much power, Checks and Balances still exist

### Presidents have followed the law as passed by Congress

Donald **Hudson**, 12-1-**2013**, "Balance of U.S. War Powers," Council on Foreign Relations, https://www.cfr.org/backgrounder/balance-us-war-powers

The Congressional Research Service says that **from 1975 through 2011, presidents submitted 132 reports related to deployment of U.S. forces** (PDF), **as required by the resolution.** But only one--the 1975 Mayaguez incident--cited action triggering the time limit. It found the reports from **presidents, who usually said their actions were "consistent with the War Powers Resolution," ranged from embassy operations to full combat like the 2003 war with Iraq, which Congress authorized.** Fisher, of the Constitution Project, says there has been some acknowledgment from presidents of the law’s power. "I think in a lot of actions--in Granada [in 1983], in Panama in 1989--there seemed to be efforts to get things wrapped up by the sixty-day limit," he says.

### B. Congress has the Constitutional Authority to Provide Authorization, it’s when there is not an authorization that there is a problem

CHARLES V. **PEÑA**, TheHill, 12-4-**2017**, "Here's why authorization to use military force is so important," http://thehill.com/opinion/national-security/363182-heres-why-authorization-to-use-military-force-is-so-important

In October, Secretary of State Rex Tillerson and Secretary of Defense James Mattis made the case that a new AUMF was not necessary. **Testifying before Senate Foreign Relations Committee, Mattis said, “A new [war authorization] is not legally required to address the continuing threat posed by al Qaeda, the Taliban, and ISIS.”**

However, some members of Congress are pushing back. There are currently six AUMF proposals being considered on the Hill. They are different in their details, but all attempt to exert Congress’ explicit authority in Article I, Section 8 of the Constitution to “declare war” — or in the context of modern times, use military force.

For all of these reasons, we encourage a strong negative ballot.