

**MEMO:** H.Con.Res.86 Is a Binding Directive Under the War Powers Resolution & Constitution

**To:** Reporters covering the Iran War Powers Resolutions

**From:** Demand Progress

**Re:** Inaccurate descriptions of H.Con.Res.86 as "symbolic" or "non-binding"

**Topline: What Reporters Should Know**

- **H.Con.Res.86 should not simply be described as "symbolic" or "non-binding."**
  - First, no court has held that a concurrent resolution adopted pursuant to Section 5(c) of the War Powers Resolution lacks the force of law. While the Trump administration argues that Section 5(c)'s concurrent-resolution mechanism is unconstitutional, **coverage should, at a minimum, acknowledge that this is an unresolved legal and constitutional dispute/question rather than present the administration's position as the definitive legal answer.**
  - Second, regardless of whether H.Con.Res.86 is itself legally binding, the Iran war lacked constitutional and statutory authority from the outset, and the President therefore remains legally required to terminate U.S. participation in the hostilities. Even if one accepts the administration's view that the War Powers Resolution allowed the hostilities to continue for up to 60 days, that period has long since expired, notwithstanding the administration's claim that it reset following the April 7 ceasefire. **Coverage should acknowledge that H.Con.Res.86 is a rejection both of the administration's asserted authority to unilaterally initiate the war and its claim that the April 7 ceasefire terminated the War Powers Resolution's 60-day clock.**
- **The relevant constitutional question is not whether concurrent resolutions are generally non-binding.** It is whether Congress may use Section 5(c) of the War Powers Resolution to enforce its constitutional authority over war by directing the termination of unauthorized hostilities.
- **Leading members of Congress are actively seeking judicial enforcement of H.Con.Res.86.** House Foreign Affairs Committee Ranking Member Gregory Meeks (D-NY) has [introduced a resolution](#) directing the speaker to initiate litigation challenging executive actions inconsistent with Congress's constitutional war powers, underscoring that the legal bindingness and legal effects of Section 5(c) are an active dispute, not a settled question.
- **Regardless of the Section 5(c) debate,** the legality of the underlying hostilities is a separate constitutional and statutory question. Congress's position is that the war against Iran lacked constitutional and statutory authorization from the outset.

Demand Progress, alongside the Brennan Center and Just Foreign Policy, helped lead a [coalition letter](#) signed by more than 30 organizations, including MoveOn and Indivisible, urging Congress to defend and enforce H.Con.Res.86 and its constitutional war powers authorities. This memo is intended as a resource for reporters covering the legal issues surrounding

H.Con.Res.86, Section 5(c) of the War Powers Resolution, and related litigation. We welcome questions and are happy to discuss the legal issues, provide additional background, or connect reporters with legal experts.

## Detailed Memo

[H.Con.Res.86](#), the Iran War Powers Resolution, passed both the House and Senate with bipartisan support. [H.Con.Res.89](#) has recently passed the House and remains pending in the Senate. Both invoke [Section 5\(c\) of the War Powers Resolution of 1973](#) and direct the president to remove U.S. armed forces from unauthorized hostilities against Iran.

Congress did not merely express its disapproval of the war. It exercised its core constitutional authority to direct the termination of unauthorized hostilities. Section 5(c) of the War Powers Resolution provides the statutory mechanism through which Congress enforces that constitutional judgment, and H.Con.Res.86 satisfied every requirement of that mechanism.

News coverage has repeatedly described these measures as "symbolic," "non-binding," or lacking "the force of law." That presents one side of a disputed constitutional question as settled law and skips over an active legal debate being advanced by members of Congress, including [House Foreign Affairs Committee Ranking Member Gregory Meeks](#), [Representative John Larson](#) (D-CT), [Senator Tim Kaine](#) (D-VA), [Senator Chris Van Hollen](#) (D-MD) and others.

## A Common Misconception About Concurrent Resolutions

Many assume that because H.Con.Res.86 is a concurrent resolution, it cannot have legal effect. That confuses the ordinary use of concurrent resolutions with their unique role in enforcing Congress's constitutional war powers under the War Powers Resolution.

Most concurrent resolutions simply express Congress's views or govern internal congressional business. H.Con.Res.86 is different. Congress enacted Section 5(c) of the War Powers Resolution specifically to give lawmakers a legally binding mechanism for directing the removal of U.S. armed forces from unauthorized hostilities.

The relevant legal question is therefore not whether concurrent resolutions are usually non-binding. It is whether Section 5(c)'s enforcement mechanism is constitutional.

## The *INS v. Chadha* Misconception

Some commentators and the Trump Administration point to the Supreme Court's 1983 decision in *INS v. Chadha* and argue that its ruling rendered Section 5(c)'s concurrent-resolution mechanism unconstitutional. That overreads *Chadha* and misunderstands Section 5(c).

*Chadha* involved what is known as a legislative veto. After Congress delegated authority to the executive branch under an immigration law (the Immigration and Nationality Act), the House acting alone attempted to overturn an executive decision without Senate approval or presenting the measure to the President for signature or veto. The Supreme Court held that this one-house

legislative veto was unconstitutional because Congress sought to reverse the exercise of authority it had previously delegated to the executive branch.

### **Section 5(c) of the War Powers Resolution Addresses a Fundamentally Different Situation**

The immigration law at issue in *Chadha* governed a statutory delegation of executive authority. Section 5(c), by contrast, concerns the Constitution's allocation of war powers between Congress and the president. It is an enforcement mechanism for fundamental constitutional limits on executive war-making, not an attempt to reclaim authority Congress previously delegated. (Note that the War Powers Resolution's 60-day clock is *not* a delegation of war-making authority for 60 days; as section 2(c) of the War Powers Resolution explains, the clock is designed to accommodate limited defensive uses of force that fall within the president's constitutional power as commander in chief.)

Unlike the legislative veto at issue in *Chadha*, the president never possessed constitutional authority to initiate or continue hostilities against Iran absent congressional authorization. The expiration of the War Powers Resolution's 60-day deadline independently foreclosed any remaining statutory basis the administration claimed for continuing those hostilities. H.Con.Res.86 therefore did not revoke delegated executive authority. It enforced the Constitution's allocation of war powers by directing the termination of military hostilities that lacked congressional authorization.

Congress understood this distinction when it enacted the War Powers Resolution. It chose a concurrent resolution not to reclaim authority previously delegated to the executive branch, but to provide a mechanism for enforcing Congress's constitutional authority over war and ensuring the termination of unauthorized hostilities.

### **The Supreme Court Has Never Resolved Section 5(c)**

Because Section 5(c) presents a fundamentally different constitutional question than the legislative veto at issue in *Chadha*, the Supreme Court has never ruled on the constitutionality of the War Powers Resolution's concurrent-resolution mechanism.

No court has held that Section 5(c) is unconstitutional, nor has any court held that a concurrent resolution adopted pursuant to that provision lacks legal effect.

Congress enacted Section 5(c) as the statutory mechanism for enforcing its constitutional authority over war by directing the termination of unauthorized hostilities. During consideration of the War Powers Resolution, members debated whether to use a concurrent resolution or a joint resolution mechanism, understanding that concurrent resolutions in many legal contexts were on shaky footing. Members ultimately decided that the war power was a unique context because the concurrent resolution mechanism would enforce constitutional limits on presidential war-making, not claw back power statutorily delegated to the president. As former Rep. Lester Wolff, a cosponsor of the House War Powers Resolution, [explained](#) during floor debate that,

although some argued a concurrent resolution would not bind the president, “what we are saying here is that the Constitution is binding and the president is bound by the Constitution.”

Section 5(c) remains part of the United States Code. Congress has never repealed it, no court has invalidated it, and no court has held that a concurrent resolution adopted pursuant to that provision is non-binding — let alone that it lacks legal effects. The administration may challenge Section 5(c)'s constitutionality. It cannot transform that contested legal argument into settled law simply by declaring H.Con.Res.86 "symbolic" or "non-binding." This view has also been affirmed by leading constitutional scholars such as Louis Fisher and John Hart Ely.

### **This Is an Active Legal Dispute**

The legal bindingness and legal effect of H.Con.Res.86 are not merely academic questions. Ranking Member Gregory Meeks has introduced a resolution directing the speaker to initiate litigation challenging executive actions inconsistent with Congress's constitutional war powers, including continued unauthorized hostilities. Whatever one's view of the merits, senior members of Congress are actively seeking judicial enforcement of these constitutional and statutory questions.

Coverage that simply states H.Con.Res.86 is "symbolic" or "non-binding" without, at a minimum, acknowledging this live legal dispute presents the administration's argument as though it were settled law, rather than one side of a constitutional and statutory dispute.

### **The Underlying Illegality of the Hostilities**

The debate over Section 5(c) should not obscure the broader legal reality: the administration's military operations against Iran were unauthorized from the outset. Section 5(c) does not create the president's obligation to end unlawful hostilities. It recognizes the president's lack of constitutional authority to prosecute an unauthorized war and provides Congress with a statutory mechanism to enforce that constitutional limit.

Put differently, the legality of the war does not turn on Section 5(c). Whether a court ultimately upholds Congress's chosen enforcement mechanism is a separate question from whether the president lawfully initiated or continued hostilities against Iran. H.Con.Res.86 enforces constitutional and statutory limits that already existed; it is not the source of those limits.

The Administration may dispute Congress's chosen enforcement mechanism. It cannot transform an unauthorized war into a lawful one simply by challenging the constitutionality of Section 5(c).