

# Can Congress Limit the President's Power to Launch Nuclear Weapons?

November 9, 2017 (LSB10026)

---



## Related Author

---

- [Stephen P. Mulligan](#)
- 

Stephen P. Mulligan, Legislative Attorney ([smulligan@crs.loc.gov](mailto:smulligan@crs.loc.gov), 7-8983)

---

Recent legislation [proposed](#) in the 115th Congress [intended to limit](#) the President's ability to launch nuclear weapons has prompted [heightened attention](#) on Congress's constitutional power to control the nuclear arsenal. As outlined in [earlier CRS products](#), the Constitution allocates the authorities necessary to conduct war and other military operations between Congress and the President. But the precise contours of each branch's respective powers have been the subject of debate since the [founding era](#). Moreover, courts traditionally have been reluctant to resolve wartime separation of powers disputes between the legislative and executive branches, often [dismissing](#) these [cases](#) on [jurisdictional grounds without reaching](#) the merits of the constitutional challenges.

Against this backdrop of uncertainty, commentators have reached dramatically differing conclusions on the constitutionality of proposals to restrict the President's power over the nuclear arsenal. Proponents of congressional authority reason that Congress's [many enumerated war powers](#)—including the power to "raise and support Armies" and "provide and maintain a Navy"—necessarily subsume a lesser authority to define how the President may utilize the forces and weapons that Congress has provided. But proponents of executive authority often argue that such restrictions would unconstitutionally infringe on the President's "[commander in chief](#)" power to make tactical decisions on how best to subdue an enemy.

As a matter of historical practice, Congress has used the [power of the purse](#) on several

occasions to effectively prohibit or compel the termination of military operations, or to otherwise limit the deployment of U.S. troops (as discussed in more detail [here](#)). While the appropriations power is [not unfettered](#), it is likely well within Congress's constitutional authority to end the production of nuclear weapons through the power of the purse. Legislation that limits the President's power to control weapons that are *already in* the military arsenal, however, could implicate the complex and long-standing debate over the scope of congressional war powers that then-Assistant Attorney General (and later-Chief Justice of the Supreme Court) William Rehnquist once described as "[the most difficult area of all of the Constitution\[.\]](#)"

(A congressional distribution memorandum with citations to the material discussed in this Sidebar and a more detailed analysis of the constitutional implications of legislation limiting the President's power to use nuclear is available upon [request](#) from the author.)