**U.S. Senator Tim Kaine Introduces
War Powers Consultation Act of 2014 on Senate Floor

January 16, 2014**

Today, together as cosponsors, Senator McCain and I are introducing the War Powers Consultation Act of 2014, which would repeal the 1973 War Powers Resolution and replace it. I could not have a better cosponsor than Senator McCain and appreciate all the work that he and his staff have done over the last months with us. I gave a floor speech about this issue in this chamber in July of 2013, almost to the day 40 years after the Senate passed the War Powers Resolution of 1973. And many of you remember the context of that passage.

When it was passed in the summer of 1973, it was in the midst of the end of the Vietnam War. President Nixon had expanded the Vietnam War into Cambodia and Laos without explicit congressional approval, and the congress reacted very negatively and passed this act to try to curtail executive powers in terms of the initiation of military hostilities. It was a very controversial bill. When it was passed, President Nixon vetoed it. Congress overrode the veto at the end of 1973, but as Senator McCain indicated, no president has conceded the constitutionality of the 1973 act, and most constitutional scholars who have written about the question have found at least a few of what they believe would be fatal infirmities in that 1973 resolution. It was a hyper-partisan time, maybe not unlike some aspects of the present, and in trying to find that right balance in this critical question of when the nation goes to war or initiates military action, congress and the president did not reach an accord.

I came to the Senate, Mr. President, with a number of passions and things I hoped to do, but I think I only came with one obsession, and this is that obsession. Virginia is a state that's most connected to the military of any state in the country. Our map is a map of American military history, from Yorktown where the Revolutionary War ended to Appomattox where the Civil War ended to the Pentagon where 9/11 happened. That is who we are. One in nine Virginians is a veteran. If you add to our population our active duty, our guard, reserve, our military families, our D.O.D. civilians, our D.O.D. contractors, you're basically talking about one in three Virginians. These issues of war and peace matter so deeply to us as they do to all Americans. The particular passion that I had in coming to this body around war powers was a -- kind of a disturbing thought -- which is if the President and Congress do not work together and find consensus in matters around war, we might be asking our men and women to fight and potentially give their lives without a clear political consensus and agreement behind the mission. I do not think there is anything more important than -- than the Senate and Congress can do than to be on the board on decisions about whether or not we initiate military action, because if we don't, we are asking young men and women to fight and potentially give their lives, with us not having done the hard work of creating the political consensus to support them. And so that is why I have worked hard to bring this to the attention of this body and Senator McCain.

The Constitution actually sets up a fairly clear framework. The President is the Commander in Chief, not 535 Commanders in Chief as Senator McCain indicated, but Congress is the body that has the power both to declare war and then to fund military action. And in dividing the responsibilities in this way, the framers were pretty clear. James Madison who worked on the constitution, especially the bill of rights, wrote a letter to Thomas Jefferson and said, "The constitution supposes what the history of all governments demonstrates, that the executive is the branch of power most interested in war and most prone to it. It is accordingly with studied care vested the question of war in the legislature. Despite that original constitutional understanding, our history has not matched the notion that congress would always be the initiator of military action. Congress has only declared war five times in the history of the United States, while presidents have initiated military action prior to any congressional approval more than 120 times. Now, in some of these instances where the president has initiated war, Congress has come back and either subsequently ratified presidential action, sometimes by a former approval or sometimes by informal approval such as budgetary allocation. But in other instances, including recently, presidents have acted and committed American military forces to military action without any congressional approval, and the senator from Arizona mentioned the most recent one. President Obama committed military force to NATO, action against Libya in 2011 without any congressional approval, and he was formally censured by the House of Representatives for doing so.

The current context that requires a review of this thorny question after 40 years of the war powers resolution is well stated by the senator from Arizona. Wars are different. They start differently. They are not necessarily nation state against nation state. They could be limited in time or as of now we are still pursuing a military force that was authorized on September 18, 2001, 12 or 13 years later, wars of different duration, scope, geography. Nation states are no longer the only entities that are engaged in war, and these new developments that are challenging, what do we do about drones and countries far afield from where battles were originally waged raises the issue of the need to go back into this War Powers Resolution and update it for the current times. As the Senator from Arizona mentioned, this has been a question that members of congress have grappled with and thought about, as have diplomats and scholars and administration officials and Members of Congress for some time.

In 2007, the Miller Center for the Study of the Presidency at the University of Virginia convened a National War Powers Commission under the chairmanship of two estimable and bipartisan leaders, former Secretaries of State Warren Christopher and James Baker, and the remaining members of the commission were a complete A-list of thinkers in this area, Slade Gordon, Ab Mikva, Lee Hamilton. The commission's historian was no less than Doris Kearns Goodwin who looked at the entire scope of this problem in American history and what the role of congress and the president should be. And the commission issued a unanimous report on the War Powers Resolution of 1973, briefed Congress and the incoming President Obama on the particular act for consideration of this bill. But now that we're 40 years into an unworkable War Powers Resolution, and now, as the Senator indicated we have had a string of presidents, both Democratic Presidents and Republican Presidents who maintain that the act is unconstitutional and now that we have had a 40-year history of Congress often exceeding to the claim of unconstitutionality by not following the War Powers Resolution itself, we do think it is time to revisit. Let me just state two fundamental substantive issues that this bill presents in the War Powers Consultation Act of 2014.

First, there is a set of definitions. What is war? Well, the bill defines significant military action is any action where the involvement of U.S. troops would be expected to be in combat for at least a week or longer, and under those circumstances, the provisions of the act would be triggered. There are some exceptions to the act. The act would not cover a defined covert action operations. But once a combat operation was expected to last for more than seven days, the act would be triggered. The act basically sets up two important substantive improvements on the war powers resolution. First, a permanent consultation committee is established by congress with the majority and minority leaders of both houses and the chairs and ranking members of the four key committees in both houses that deal with war issues, Intel, Armed Services, Foreign Relations and Appropriations. That permanent consultation committee is a venue for discussion between the executive and legislative branches, permanent and continuous over matters in the world that may require the use of American military force. Because the question comes up often, well, what did the president do to consult with congress? Is it enough to call a few leaders or call a few committee chairs? This act would normalize and regularize what consultation with congress means by establishing a permanent consultation committee and requiring ongoing dialogue between the executive and that committee.

The second requirement of this bill is that once military action is commenced, it would make more than seven days, there is a requirement for a vote in both houses of congress. The consultation committee itself would put a resolution on the table in both houses to approve or disapprove of military action. It would be a privileged motion with expedited requirements for debate, amendment and vote, and that would ensure that we do not reach a situation where action is being taken at the instance of one branch with the other branch not in agreement, because to do that would put our men and women who are fighting in any harm's way at the risk of sacrificing their lives when we and the political leadership have not done the job of reaching a consensus behind the mission.

To conclude, I will acknowledge what the Senator from Arizona said. This is a very, very thorny and difficult question that has created challenges and differences of interpretation since the constitution was written in 1787, despite the fact that the framers who wrote the constitution actually had a pretty clear idea about how it should operate. It's never really operated down there. 40 years of a failed war powers resolution in today's dangerous world suggests that it's time now to get back in and to do some careful deliberation, to update and normalize the appropriate level of consultation between a president and the legislature, and the recent events as cited by the senator, whether it's the merits or the equities, whether it's Libya or Syria, the discussions we're having now with respect to Iran or any other of a number of potential spots around the world that can lead to conflict suggest that while decisions about where and initiation of military action will never be easy, they get harder if we don't have an great process for coming to understand each other's points of view and then acting in the best interests of the nation to forge a consensus. So with that, Mr. President, I appreciate the opportunity to stand with my colleague after a number of months of discussion and introduce this bill, and I look forward to the opportunity to carry this dialogue forward with my colleagues in this body. Thank you very much.