

Statement of Walter B. Jones (NC-3)  
**Hearing on H.R. 743, the Executive Accountability Act**  
House Subcommittee on Crime, Terrorism, and Homeland Security  
July 27, 2009

Chairman, thank you for the opportunity to testify today on my bill, H.R. 743, the *Executive Accountability Act*.

I'd like to begin by reading an excerpt from an essay that appeared in *TIME* magazine in 2006 authored by Lieutenant General Greg Newbold, entitled "Why Iraq was a mistake." Lieut. General Newbold states:

From 2000 until October 2002, I was a Marine Corps lieutenant general and director of operations for the Joint Chiefs of Staff. After 9/11, I was a witness and therefore a party to the actions that led us to the invasion of Iraq – an unnecessary war. Inside the military family, I made no secret of my view that the zealots' rationale for war made no sense. And I think I was outspoken enough to make those senior to me uncomfortable. But I regret now that I did not more openly challenge those who were determined to invade a country whose actions were peripheral to the real threat – al Qaeda. I retired from the military four months before the invasion, in part because of my opposition to those who had used 9/11's tragedy to hijack our security policy.

Later in the essay, Lieut. Gen. Newbold cites, and I quote, "the distortion of intelligence in the buildup to the war." After reading this article, I met with Lieut. Gen. Newbold, and at least 18 other key figures - including Senator Chuck Hagel, member of the Senate Intelligence Committee - to discuss the justification for the war in Iraq. After these meetings, I was convinced that the war in Iraq was not justified.

I introduced this bill after reflecting on the Iraq War and the Vietnam War, where 58,220 Americans lost their lives. Last week, a column appeared in the *Raleigh News and Observer* entitled, "From Vietnam 1959 to Afghanistan 2009." The column's author, Joseph Galloway, recounts a meeting between then Secretary of Defense Robert McNamara and President Lyndon Johnson. He writes,

McNamara dictated a Top Secret/Eyes Only memo to Johnson dated Nov. 30, 1965. In that report he stated that the enemy had not only met but had exceeded our escalation of the war and we had reached a decision point. In his view there were two options. Option One: We could arrange whatever diplomatic cover we could arrange and pull out of South Vietnam. Option Two: We could give Gen. Westmoreland the 200,000 more U.S. troops he was asking for, in which case by early 1967 we would have more than 500,000 Americans on the ground, and they would be dying at the rate of 1,000 a month. (He was wrong; the death toll would reach over 3,000 a month at the height of the war). "All we can possibly achieve (by this) is a military stalemate at a much higher level of violence," McNamara wrote. On Dec. 15, 1965, the president assembled what he called the "wise men" for a brainstorming session on Vietnam. He entered the Cabinet room holding McNamara's memo. He shook it at McNamara and asked: "Bob, you mean to tell me no matter what I do, I can't win in Vietnam?" McNamara nodded yes; that was precisely

what he meant. ...This was 1965, 10 years before the last helicopter lifted off that roof in Saigon.

In that case, the President knew that we couldn't win that war, yet he continued on. After that day in 1965, over 56,000 Americans were killed in Vietnam. I bring this up to remind us that the arrogance of power by previous presidents has prevented them from changing course, and from relaying key information. As many have said before me, if we cannot learn from history, we will repeat it.

We must be able to trust our President at his word – especially when making the decision, as Members of Congress, to go to war. On October 7, 2002, while giving a speech in Cincinnati, Ohio, President Bush talked about Iraq's possession of weapons of mass destruction. He said: "The Iraqi regime...possesses and produces chemical and biological weapons. It is seeking nuclear weapons." In that same speech he said: "The evidence indicates that Iraq is reconstituting its nuclear weapon program." These statements were documented in the Senate Intelligence Committee's June 2008 report entitled "Whether Public Statements Regarding Iraq by U.S. Government Officials Were Substantiated by Intelligence Information." I bring up these examples not to hark on the past, but to make the point that we rely on our President's statements when committing to sending U.S. troops abroad.

Let me be clear: this bill is not about the past. The bill is not retroactive, and would only apply to presidents in office during and after the signing of the bill into law. This bill is about the future. In the future, a President must be certain to defend his justification for sending Americans into harms way, where death is a very real possibility. And, Presidents should be held responsible for sending Americans into jeopardy without verifying the facts for going to war. The President does not have the power to go to war simply because it is the President's wish.

I would like to briefly outline the *Executive Accountability Act's* provisions. The bill would: impose criminal penalties on presidents or executive agency officials who knowingly and willfully mislead Congress for the purpose of persuading Congress to authorize the use of armed forces; suspend the running of the 5-year statute of limitations until the end of the term of the president in office at the time the offense is committed; and, enable a simple or concurrent resolution by Congress to trigger a referral of a violation to the attorney general. As I mentioned before, the bill would apply to present and future administrations only, not past presidents or Executive agency officials.

This bill is different from existing law – namely, 18 USC 1001, the *False Statements Act* – in that it explicitly applies to the President. Legal scholars disagree as to whether or not, theoretically, 18 USC 1001 could be applied to President. I think it is important, as a matter of policy, for this Congress to express that it is unacceptable for a President to mislead the Congress when making the case for going to war. This bill makes it clear that a President cannot willfully or knowingly mislead the Congress to authorize the use of U.S. armed forces.

While this bill does not address the past, we should learn from the past and demand that our President and executive branch officials do not mislead Congress when asking for authorization to go to war. Lieut. Gen. Newbold notes in his *TIME* magazine essay, “In 1971, the rock group The Who released the antiwar anthem We Won’t Get Fooled Again. To most in my generation, the song conveyed a sense of betrayal by the Nation’s leaders, who had led our country into a costly and unnecessary war in Vietnam.” To me, this song serves as a reminder of the importance of the President’s truthfulness when trying to gain support for the use of Armed Forces. The President should be absolutely certain of war’s justification, and the Congress must be able to rely on the President’s statements when making the decision to authorize the use of Armed Forces.

It is my hope that this bill will spark thought and action on this important issue. I thank the Chairman for the opportunity to testify today.