

On Earth Day: Environmental Activism is Spreading

Across America environmental activism is growing, and government and the fossil fuel industry are taking notice, say Kevin Zeese and Margaret Flowers.

By Kevin Zeese and Margaret Flowers



Tree-sits are growing in West Virginia where people are putting their bodies on the line to stop the destruction of the natural habitat that would result from building the Mountain Valley pipeline for fracked gas. In Virginia, Red Terry started a tree-sit on Easter weekend to protect her land from destruction. She remains, despite the company, with law enforcement support, denying her food and water – something illegal against prisoners or during war. As trees are felled she remains, as do protesters in Pennsylvania.

In Louisiana, a water protector locked herself into a cement-filled barrel placed in the trench of a horizontal directional drill to block construction of the Bayou Bridge Pipeline. Eleanor Goldfield reports this is part of the Battle of the Bayou, a coalition of groups and individuals standing against the destruction of a fragile environment, facing arrest and creating a future together.

Last November, Washington State activists defeated the largest oil-train terminal in the nation.

In Maryland, people blocked construction then escalated to a tractor blockadeto prevent the construction of a compressor station that will bring fracked gas from the Mid-Atlantic to the Dominion export terminal in southern Maryland. People who fought the export terminal for years are now joining with neighboring counties fighting gas infrastructure and mounting a campaign against the Maryland Department of the Environment as Governor Hogan pushes \$100 million in gas infrastructure.

The Message is Getting Through

Many political and economic elites want people to believe the environmental crisis doesn't exist or is exaggerated. But these acts of civil disobedience is starting to get the message to people in high place.

Protesters are getting in their faces. They are taking the issue to corporate offices, for instance, as a busload of Lancaster, PA people did when they

brought a 12 foot stretch of pipeline to a meeting room, singing songs, chanting and asking, "How does it feel to be invaded?" In Bellevue Washington, protesters constructed a small longhouse blocking the main entrance to the corporate headquarters of an energy company.

California's Governor Jerry Brown was protested when spoke last week at the National Press Club in Washington. Hundreds of people protested Governor Tom Wolf of Pennsylvania over his pro-fracking policies.

Those in power seek to protect profits from dirty energy rather than transition to 100 percent clean energy. They seek to protect agribusiness food, pesticides, and genetically modified foods rather than transform food to organic, locally grown foods using regenerative agriculture. They deny the reality of environmental racism rather than correct decades of racism and provide reparations. They seek to put profits ahead of the health and necessities of people as well as ahead of protecting and restoring the planet.

Despite this, a growing portion of the public understands these realities and is taking action to challenge the system. People know, for example, as activist Steven Norris writes, that they should be concerned about the impact of carbon infrastructure on their communities and the planet.

Last week, David Buckel, a nationally known advocate for gay rights and the environment, died in a self-immolation suicide in a protest against environmental degradation. He wrote in his suicide note, "Pollution ravages our planet, oozing inhabitability via air, soil, water and weather. Most humans on the planet now breathe air made unhealthy by fossil fuels, and many die early deaths as a result – my early death by fossil fuel reflects what we are doing to ourselves."

The undertow being created by organized resistance is growing, and so is the push back against it. The industry recognizes that pipeline protesters are having an impact. Canada is having a hard time moving tar sands and fracked gas because protests are stopping pipeline investment. Oil companies are successfully being pressured to examine the risks their actions are causing to the environment and human rights.

Protests are resulting in cities divesting from banks who fund fossil fuel projects. Europe's largest bank, HSBC just announced it will no longer fund oil or gas projects in the Arctic, tar sands projects, or most coal projects. Corporations realize they are investing in stranded assets that may not pay off and they may be held legally accountable for causing climate change.

Ligation Raises Risks

Corporations and the federal government are facing lawsuits from individuals, organizations and state and local governments over climate change and environmental degradation. Protesters are using the courts to underscore the urgent need for action by using a climate necessity defense. Courts are beginning to accept it, but protesters willingly understand they risk incarceration.

ExxonMobil is facing a raft of litigation arguing the company was aware of climate risks but continued to mislead the public and to pollute. State and local governments are seeking damages and calling for a federal criminal investigation. Litigation highlights the science of climate change and demonstrates how oil giants made immense profits while billions of dollars of cost from climate change, for example, immense storms and sea level rise, are borne by individuals and governments. Most suits were brought by coastal communities but recently Colorado communities are suing oil corporations over climate change-caused droughts and fires.

ExxonMobil tried to stop state investigations in Massachusetts, New York, and Texas by misleading investors for years about climate change risks. The judge issued a sharp rebuke with prejudice preventing an appeal and allowing the investigations to continue. Oil companies may well be behind new legislation in states to give severe penalties to people protesting "critical infrastructure."

Future generations from Our Children's Trust have brought eight suits against the federal government over the destruction of the environment, claiming a public trust over the atmosphere. A suit filed by 21 youth in Washington has overcome government efforts to dismiss the case and will be going to trial after both the trial court and Ninth Circuit rejected the government's argument.

Environmental racism is also being challenged. Recently a court ruled that the Environmental Protection Agency violated the Civil Rights Act for decades of inaction over complaints filed by residents of Flint, MI. Hundreds of complaints about environmental racism have been made to the EPA. An ultimate case of racism is coming up in the Supreme Court when it considers whether the United States must abide by treaties made with Indigenous Peoples. The long history of racism from the founding of the U.S. by colonizing land inhabited by millions, followed by ethnic cleansing of the Indigenous who lived there is on trial.

Change Is Coming

Despite the government continuing to invest in dirty energy, clean energy is growing. Wind farming is creating jobs in red states like Texas. The Solar

Foundation mapped solar jobs by congressional district as solar is the fastest growing source of new energy. Research has been developed on a state-by-state basis to make the United States 100% renewable by 2050, with a national mobilization it could happen more quickly.

There are many challenges at the national level with corrupt federal agencies tied to polluting industries, but people pressure is still having an impact. The Federal Energy Regulatory System (FERC) which has been in bed with the oil, gas, and nuclear industries since its founding, indeed it is funded by those industries, has been the focus of a more than four-year pressure campaign by Beyond Extreme Energy. This June 23-25 they will be holding a Crack the FERC protest campaign to escalate pressure. The protest coincides with the Poor People's Campaign as addressing the environmental crisis is linked to economic inequality, racism, and other issues.

The undertow of protest is having an impact. Corporations fear they will be held accountable for the damage they have done. Governments and elected officials are aware the people are angry and their careers can end with the new political culture created by popular revolt.

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Trump's Blank Check for War

Tomorrow a Senate committee will consider a new bill that would solidify the unconstitutional shift in power to declare war from Congress to the White House, as Marjorie Cohn explains.

By Marjorie Cohn



On Monday the Senate Foreign Relations Committee is set to review a bill that would virtually give President Donald J. Trump a blank check to wage war anywhere in the world any time he pleases.

The Constitution places the power to declare war exclusively in the hands of the Congress. However, for the past 75 years, Congress has allowed that power to drift toward the executive branch.

The new bill, should it pass, would effectively make the transfer of the war power from Congress to the president complete. It is hard to imagine a worse time in American history for this to happen.

Why Only Congress Can Declare War

The framers of the Constitution were well aware of the dangers of placing the power to declare war in the hands of the president. Delegates to the 1787 Constitutional Convention overwhelmingly rejected South Carolina delegate Pierce Butler's proposal that the president be given the power to start a war, according to James Madison's notes on the congressional debates. George Mason said he was "against giving the power of war to the executive" because the president "is not safely to be trusted with it."

The framers of the Constitution therefore specified in Article I that only Congress has the power to declare war. Article II states, "The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States." Those articles, taken together, mean the president commands the armed forces once Congress authorizes war.

In spite of its exclusive constitutional power, Congress has not declared war since 1942. After that time, starting with President Truman, a series of US presidents committed American troops to hostilities around the world without waiting for Congress to act. Following the debacle in Vietnam, Congress enacted the War Powers Resolution in an effort to reclaim its constitutional authority to decide when and where the nation would go to war.

The 2001 and 2002 Authorizations for Use of Military ForceThe War Powers Resolution allows the president to introduce US Armed Forces into hostilities or imminent hostilities only after Congress has declared war, or in "a national emergency created by attack upon the United States, its territories or possessions, or its armed forces," or when there is "specific statutory authorization," such as an Authorization for the Use of Military Force.

Congress enacted Authorizations for the Use of Military Force (AUMF) in 2001 and 2002, which were directed at al-Qaeda and Iraq, respectively. Although these authorizations were limited, George W. Bush, Barack Obama and Donald Trump have all used them to justify attacking or invading whatever country they wished.

In the 2001 AUMF, Congress authorized the president to use military force

against individuals, groups and countries that were seen as having supported the 9/11 attacks. Congress rejected the Bush administration's request for open-ended military authority "to deter and preempt any future acts of terrorism or aggression against the United States."

Nevertheless, the 2001 AUMF has been used to justify at least 37 military operations in 14 countries, according to the Congressional Research Service. Many of them were unrelated to the 9/11 attacks.

Bush utilized the 2001 AUMF to invade Afghanistan and initiate the longest war in US history, which continues unabated. Obama relied on that AUMF to lead a NATO force into Libya and forcibly change its regime, creating a vacuum that ISIS moved in to fill. Obama invoked the same AUMF to carry out targeted killings with drones and manned bombers, killing untold numbers of civilians. And Trump is relying on that AUMF as justification for his drone strikes, which have killed thousands of civilians.

Senate Foreign Relations Committee member Ben Cardin (D-Maryland) stated at an October 2017 hearing that the 2001 and 2002 AUMFs have now become "mere authorities of convenience for presidents to conduct military activities anywhere in the world," adding, "They should not be used as the legal justification for military activities around the world." Congress granted Bush the 2002 AUMF specifically to remove Saddam Hussein from power in Iraq. Once that was accomplished, that license ended. So, the 2002 AUMF does not provide an ongoing legal basis for US to engage in military action.

At that 2017 hearing, Defense Secretary James Mattis and then-Secretary of State Rex Tillerson told the Senate Foreign Relations Committee that Trump had sufficient legal authority to kill people in any part of the world he desired. They cited the 2001 and 2002 AUMFs, as well as Article II of the Constitution. With an abundance of political caution, however, Mattis and Tillerson invited Congress to enact a new AUMF with no temporal or geographical limitations.

At his April 12 confirmation hearing, Mike Pompeo, Trump's nominee for Secretary of State, told Sen. Cory Booker that Trump had legal authority to bomb Syria without congressional approval. Pompeo testified, "I believe that he has the authority he needs to do that today. I don't believe we need a new AUMF for the president to engage in the activity you described."

The following day, the US, United Kingdom and France launched airstrikes in Syria. Like Trump's 2017 Syria bombing, they violated both US and international law. The Trump administration persists in its refusal to reveal the memo that

purportedly explains its legal justification for the 2017 bombing of Syria.

Attempts in Congress to repeal and/or replace the 2001 and 2002 AUMFs have thus far been unsuccessful. But Mattis and Tillerson may now get their wish.

A New Authorization

On April 16, 2018, a bipartisan group of senators introduced a new AUMF to replace the 2001 and 2002 AUMFs. Senate Foreign Relations Committee Chair Bob Corker (R-Tennessee) and Democratic committee member Tim Kaine (Virginia) sponsored the proposed legislation. Co-sponsors include Senators Jeff Flake (R-Arizona), Christopher Coons (D-Delaware), Todd Young (R-Indiana) and Bill Nelson (D-Florida).

The 2018 AUMF would authorize the president to use military force, with no limitations, in Iraq, Afghanistan, Syria, Yemen, Libya and Somalia. It would also allow the president to take military action against al-Qaeda, ISIS and the Taliban, as well as their “associated forces” in any geographical location.

And although the president cannot add nation-states to the list of countries he wants to attack, he could circumvent that limitation by claiming that terrorists are operating in a new country, or say a particular country is a state sponsor of terrorism, and he needs to use military force to fight terrorism. If the president wants to add countries or groups to his hit list, he must report to Congress. However, he can withhold whatever information he says is classified, as Elizabeth Goitein, co-director of the Liberty & National Security Program at the NYU School of Law’s Brennan Center for Justice, has noted.

The president must notify Congress within 48 hours of expanding his military operations into countries beyond the six listed in the AUMF or “new designated associated forces.” If Congress doesn’t object within 60 days, the president’s expansion will stand.

The bill has no expiration date. Every four years, the president would be required to send Congress a proposal to modify, repeal or maintain the authorization. But if Congress does not respond in 60 days, the AUMF would remain in force. Once again, it places the burden on Congress to take action. Alarming, the new bill contains a presumption that the president can decide when and where to make war. It would require affirmative action by two-thirds of both houses of Congress to prevent military action.

In light of Congress’s failure to meaningfully object to presidential uses of military force, including most recently in Syria, a president should have no

concern about congressional pushback. He could continue to make war with impunity, cashing the blank check Congress has provided him.

The proposed AUMF would violate the United Nations Charter. The charter requires that countries settle their disputes peacefully, and forbids the use of military force except when conducted in self-defense or with the blessing of the Security Council. The new AUMF would allow the president to attack or invade another country with no requirement that the attack or invasion be conducted in self-defense or with the council's permission. It would thus violate the charter.

What's Next?

Corker has scheduled a committee hearing on the proposed legislation for Monday. But even if the bill passes out of committee, there is no guarantee it will get a hearing on the floor of the Senate or the House. Both Senate Majority Leader Mitch McConnell and Republican House Speaker Paul Ryan have shown little appetite for allowing discussion of a new AUMF.

The 2001 and 2002 AUMFs should be repealed, and Congress should not give the president a new one. As George Mason sagely said, a president "is not safely to be trusted" with the power of war.

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