

# POST-9/11 PRESIDENTIAL

How the attacks led to expanding the use of force

BY LAURA FIGUEROA HERNANDEZ  
laura.figueroa@newsday.com

WASHINGTON — The retaliatory drone strike approved by President Joe Biden in the final days of the U.S. withdrawal from Afghanistan marked the latest example of how a nearly 20-year-old congressional authorization, passed in the days after 9/11, came to expand presidential war powers across four presidencies.

Three days after the 2001 attacks, Congress approved a resolution granting then-President George W. Bush wide authority to use all “necessary and appropriate force” to attack those found responsible and those found to be harboring terrorist groups tied to 9/11.

The 60-word document, known as an “Authorization for Use of Military Force,” passed with only one dissenting Democratic vote, and gave the president the directive to “prevent any future acts of international terrorism against the United States.”

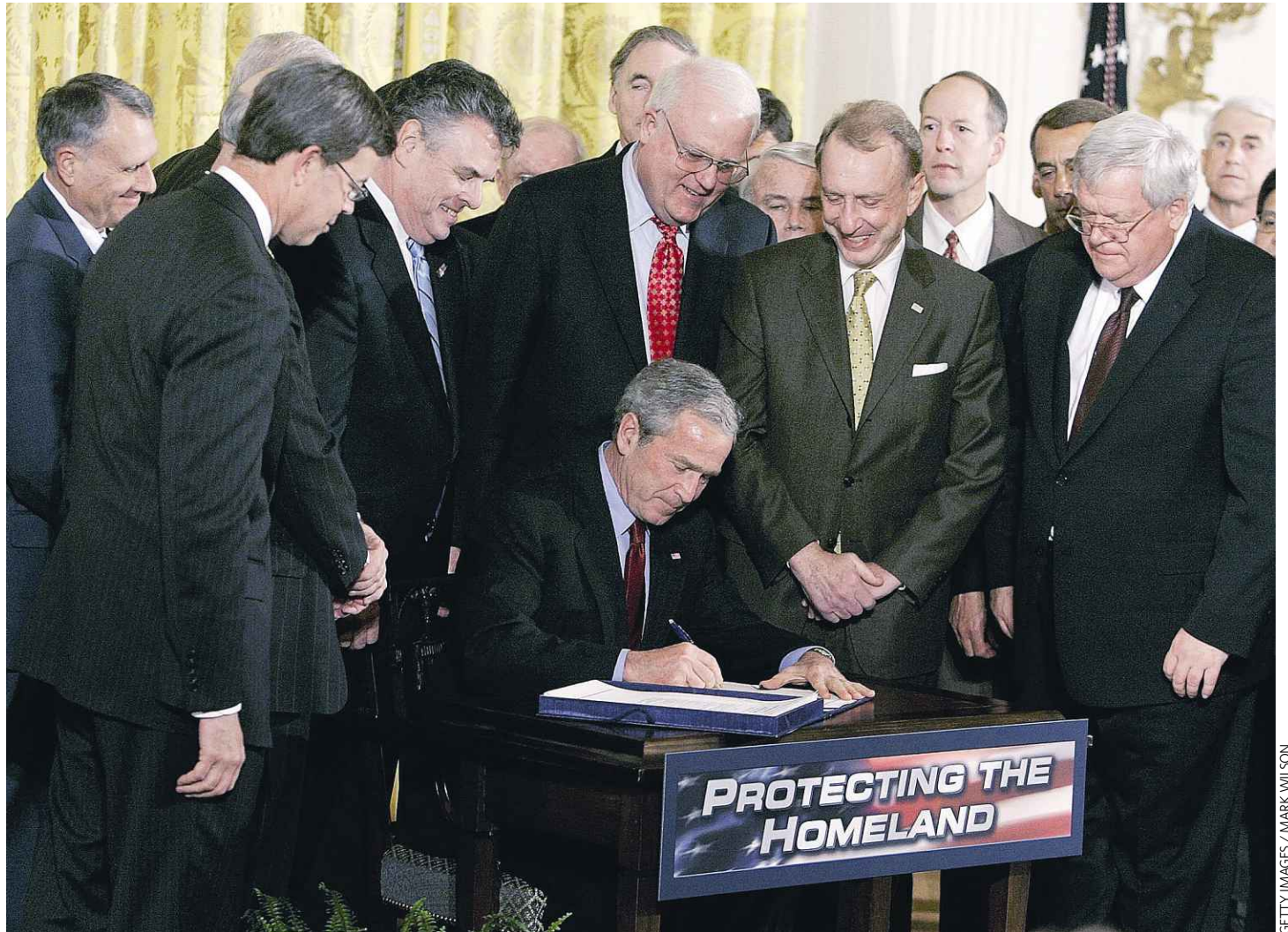
## Using to expand operations

Bush and his successors leaned on the authorization to expand military operations beyond Afghanistan and the hunt for al-Qaida and the Taliban to places such as Iraq, Syria, Yemen and Libya.

But those operations have repeatedly come under legal scrutiny. And there are bipartisan efforts underway in Congress to narrow some of the powers granted in the 2001 authorization and two authorizations passed in 2002 and 1991 that approved the use of military force in the Iraq War and the Gulf War.

“The authorization for military force after 9/11 was a remarkable tectonic expansion of presidential authority,” said presidential historian Jeffrey Engel.

Engel noted that the 2001 authorization provided presidents with the wide discretion to act unilaterally, without consulting Congress, about most operational matters, including



President George W. Bush signs the USA PATRIOT Improvement and Reauthorization Act of 2005 at the White House on March 8, 2006.

the deployment of drone strikes, surveillance campaigns and where to place troops.

“Previous authorizations were delineated in some form or fashion,” said Engel, director of the Center for Presidential History at Southern Methodist University.

“Whether they were limited by time or whether they were limited by the enemy or a geographic space, this one basically gave the president the authority to do whatever he thought was necessary to combat the people who committed 9/11,” Engel said.

“It is a remarkable step up from what we had seen before.”

The Bush White House used the post 9/11 authorizations to secretly launch the National Security Agency’s widespread surveillance of emails and calls without court orders and for greenlighting the use of torture to interrogate alleged terrorists.

It also used the 2001 authorization to build the case for lawmakers to pass the 2002 authorization for force in Iraq, citing the need to “defend U.S. national security against the continuing threat posed by Iraq.”

The Bush administration said intelligence at the time showed Iraq was developing “weapons of mass destruction.”

But those claims would be dispelled in 2005 when a Central Intelligence Agency probe turned up no evidence of a burgeoning chemical weapons program.

Obama administration officials cited the 2001 authorization after President Barack Obama ordered a series of airstrikes in August 2016 against Islamic State terrorists operating in Libya, without prior congressional notification.

President Donald Trump invoked the 2001 authorization in ordering airstrikes in Syria in 2017 and 2018 in response to the Assad regime’s use of chemical weapons against civilians.

Trump also cited the 2002 authorization to use force in Iraq to justify his order last January to kill Iranian general Qassem Soleimani in a drone strike in Baghdad.

Biden administration officials cited the 2001 authorization in justifying a series of drone strikes in July in Somalia targeting the operations of the al-Qaida affiliated group al-Shabab.

The post-9/11 authorizations ushered in an era in which the U.S. president, “has become more of a lone actor, acting quickly and only informing people afterward rather than getting involved bringing Congress in,” said Jeremi Suri, a global affairs professor at the University of Texas at Austin.

The authorizations increased “the use of warfare

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— Jeffrey Engel, presidential historian



# POWER

and military technology overseas, with very little oversight by Congress and certainly by the American public," said Suri, the author of several books about the U.S. presidency.

Meena Bose, executive director of Hofstra University's Kalikow Center for the Study of the American Presidency, said one of the most significant changes to the presidency in the wake of 9/11 has been Congress' "deference to the presidency" when it comes to foreign policy matters.

"Two decades later, as we look at the consequences of the U.S. withdrawal from Afghanistan in the past few weeks, and evaluate what U.S. interests are moving forward to combat terrorism . . . there's a real question as to how to move forward constructively with strong executive power, combined with consultation with Congress, and steady public support," Bose said.

"I think we're evaluating that today, much more critically than we were following 9/11," said Bose.

## Support to update growing

Bipartisan support has been building gradually in Congress to update the 2001 authorization and repeal the 2002 and 1991 authorizations. Lawmakers have argued the authorizations have amounted to a blank check with little congressional oversight.

In June, the U.S. House voted to repeal the 2002 and 1991 authorizations.

Senate Majority Leader Chuck Schumer, in a Senate floor speech, voiced his support for repealing the 2002 Iraq War authorization, promising to "bring this matter to a floor vote this year."

Schumer (D-N.Y.) said repealing the authorization would, "eliminate the danger of a future administration reaching back into the legal dustbin to use it as a justification for military adventurism."

The Biden administration, in a departure from Obama and Trump, also declared support for repealing the 2002 Iraq War authorization, issuing a policy statement in June saying the repeal "would

likely have minimal impact on current military operations."

The White House also said Biden was "committed to working with Congress" to update the 2001 authorization "with a narrow and specific framework."

A previous attempt under the Obama administration failed after lawmakers and the White House failed to reach consensus on the extent of limiting the president's ability to respond to a foreign threat.

Days after 13 U.S. service members and dozens of Afghan civilians were killed in an attack outside of Kabul's main airport, White House Press Secretary Jen Psaki said Biden remained "open to" working with lawmakers to update the 2001 authorization.

Political analysts contend the efforts to repeal the two authorizations related to Iraq may still move forward as planned this year.

But the withdrawal of U.S. troops from Afghanistan and the threat of ISIS-K in that country may make it more challenging to reform the 2001 authorization, particularly ahead of the 2022 midterm election.

"There's not a lot of political upside for Congress saying, 'Let's limit the War on Terror,' because if something subsequently blows up, they could get in trouble," Engel said. "Whereas, if they keep quiet, and something blows up, it's not their fault."

Engel said part of the challenge in updating the 2001 authorization is getting Congress and White House to agree on the specifics of what a new and narrower authorization would look like.

Secretary of State Antony Blinken, during his confirmation hearing in January, touched upon the challenges of updating the 2001 authorization, recalling the failed effort under the Obama administration.

"It's not easy to get to yes," Blinken said. "For some the porridge is too hot. For others the porridge is too cold. And can we get a consensus around what's just right? But I would be determined and committed to working on that."

# New laws to expand first-responder status

BY ANTHONY M. DESTEFANO  
anthony.destefano@newsday.com

Gov. Kathy Hochul signed into law three pieces of legislation on the anniversary of Sept. 11, 2001, all designed to expand the pool of people considered first responders during the terrorist attacks and make it easier for them to apply for benefits online.

She also proposed legislation that would allow New York National Guard members to qualify as veterans under state law.

One of the new laws she signed expressly defined the first responder category to include 911 operators, EMS dispatchers and others working in similar jobs as defined by local government regulations.

"These laws will help not only first responders who were at the World Trade Center on that terrible day and those who cleaned the site for weeks afterward, but also the emergency dispatchers and communications personnel who keep us safe today," Hochul said in a statement accompanying her signings. "We will ensure they receive the support and benefits they deserve."

Another signed measure allows for first responders to apply for benefits online through their relevant retirement systems.

A third expands the definition of a World Trade Center responder to include any person who is currently a member of a public retirement system, regardless of whether the employee was a participant of the retirement system at that time of the attacks, subject to certain time limitations.

This measure would allow employees who were not vested in their respective retirement systems at the time of the attack to be covered for benefits, explained Daniel Levler, head of the Suffolk Association of Municipal Employees. Those covered by the measure include people who participated in rescue, recovery and cleanup work related to Sept. 11.

Levler helped push for the changes in the law that provided first responder status for the operators and dispatchers. A spokesman for Hochul didn't immediately return a telephone call for comment, and it wasn't clear how many people are impacted by the changes.

NYPD officials said the city 911 system alone has approximately 1,500 operators and staff. Levler told Newsday about 300 Suffolk County employees would be affected, and an estimated 3,000 to 4,000 statewide.

"New York's emergency operators and dispatchers provide

invaluable services to us all. It is long past time we remove existing roadblocks that prevent these essential emergency workers from providing the full range of support they can give and denying them of benefits they deserve," said State Sen. John Brooks (D-Seaford).

Levler agreed with Brooks and in a statement noted that Suffolk 911 operators played a critical role during Tropical Storm Ida, answering calls for relatives whose family members in Queens were trapped by rising flood water.

State Rep. Peter Abbate (D-Brooklyn) said allowing online filing for benefits instead of by paper — a measure he sponsored — is particularly helpful during the time of the COVID-19 pandemic.

For the New York National Guard members, Hochul pointed out that some who responded on Sept. 11 are not eligible for support services and federal and state benefits because they were not on active federal duty at the time. "I am introducing legislation that will ensure that all of the National Guard members who were ordered into service at Ground Zero, and who have not otherwise earned veteran status through federal activation, are fully recognized as veterans under New York State law."



Gov. Kathy Hochul met with members of the National Guard in Manhattan on Saturday.