

Extended Controversial Issue Discussion Lesson Plan Template

Lesson Title: War Powers Act and the Constitution

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Appropriate for Grade Level(s): 10-12

US History Standard(s)/Applicable CCSS(s): RH 11-12 1.; RH 11-12 9.; RST 11-12 2.; WRST 1.b.

Discussion Question(s): Did the creation of the War Powers Act conflicts with Congress' Constitutional power to declare war?

Engagement Strategy: Structured Academic Controversy **Student Readings (list):** Modified "War Powers Act" actual legislation, The War Powers Resolution: After Thirty-Six Years, The Constitutional Limitations on the President's Powers

Total Time Needed: [Type text]

Lesson Outline: 1.5 70 minute blocks

Time Frame (e.g. 15 minutes)	What is the teacher doing?	What are students doing?
10 Mins	Description of procedures/ norms	Listening
Homework		Reading/ taking notes on key points
5	Facilitating writing prompt	Students summarize information from readings
5	Assigning groups/ points of view	Moving to groups
5	Walking around	Students are discussing their discussion points with their partner
10	Overseeing productive discussion	Side A is presenting their points/ B is taking notes
5		Side B presents questions and summarizes Side A points
10		Side B presents points/ Side A takes notes
5		Side A presents questions and summarizes Side B points
10	Facilitates whole group discussion	Side A students present their major points, Side B present their major points
5	Essay Assignment	

Description of Lesson Assessment: Students will write an essay addressing the over-arching question of the discussion.

How will students reflect on the process and their learning? On accompanying work sheets/ essay assignment.

The pages that follow the Lesson Plan Template include a detailed background paper on the topic for teachers, student readings and reading strategy/questions, source(s), handouts, assignment sheet, self-assessment/reflection and a rubric related to this lesson.

Does the War Powers Resolution of 1973 challenge Congress' power to declare war?

The War Powers Act states, "The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situation where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations."¹ The intent of the War Powers Act, which will be henceforth referred to as "WPA 1973", was to limit the power of the president in reference to engagement in military intervention. Created in an era that resulted in death as well as division within the nation, the WPA 1973 was and continues to be a highly controversial piece of legislation within the United States. Although the War Powers Act was initially created in 1941 as an instrument for America to engage in World War II, the War Powers Act was changed greatly in the midst of the Vietnam conflict. Due to the highly controversial nature of the Vietnam conflict, Congress believed the powers of the Executive needed to be checked. Since the president is cited as the Commander in Chief in the United States Constitution, some debate surrounds WPA 1973. Some believe that the President should be allowed to make military decisions within the jurisdiction of his fulfillment of the role of Commander in Chief. Others believe that without the consent of Congress to declare war, which is also required by the constitution, the power of the executive is much greater, thus challenging the balance of powers among the branches. Both perspectives will be further explored and explained throughout the paper.

Although the Constitution reserves the President of the United States as the Commander in Chief of our armed forces, the Constitution gave the power to actually declare war to Congress. Congress exhibited great concern regarding the President having the power to engage in military conflicts without their consent, "The congressional view was that the framers of the Constitution gave Congress the power to declare war, meaning the ultimate decision whether or not to enter a war."² The framers believed it was important to maintain a balance of powers between the legislative and the executive regarding the power to declare war. The Tonkin Gulf Resolution challenged this balance as the president felt it was necessary to engage in military action as a result of an attack in the Tonkin Gulf. The Tonkin Gulf Resolution was seen by many as a way to circumvent to necessary checks set out by the constitution. "Penetrating beneath the skin,

¹ *The War Powers Act 1973, H. Res. 542, 93rd Congress, November 7, 1973 S. 3.*

² Grimmett, Richard F. *The War Powers Resolution: After Thirty-Six Years.* Congressional Research Service. April 22, 2010. Page 11.

however, reveals true intent, and in the case of the Tonkin Gulf Resolution it is clear that Congress intended only that military action be used to repel an allegedly 'unprovoked attack' by a few gun boats. It was certainly no carte blanche to the Executive to wage large scale war unilaterally and indefinitely."³ In addition to the Tonkin Gulf Resolution, the WPA 1973 was created to assist in more clearly defining the role of the president regarding engagements abroad. The WPA 1973 stated that, "The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into [actual or imminent hostilities]... are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack on the United States, its territories or possessions, or its armed forces."⁴ Although the idea was to more clearly define the role of the Executive, WPA 1973 created a loophole in which many Presidents will exploit. This loophole is based within the language, a national emergency or imminent threat. These are the ideas that have allowed the Executive to become engaged abroad more easily than ever before. While the Congress interpreted its use of the Tonkin Gulf Resolution and the War Powers Act in one way, the Executive chose to interpret in another way.

There are a few ambiguities that allow the Executive to exploit the guidelines set about in WPA 1973. One example of an ambiguity is, "The WPR neither defines 'consult' nor indicates whom the President is to consult, so presidents have often purported to 'consult with Congress' by simply notifying a few selected members, sometimes only hours before forces engaged in hostilities." This oversight directly conflicts with the purpose of the document. If there are loopholes in which the President may abuse, the resolution is null. This truly raises the constitutionality of the resolution in its entirety. Does this challenge the basic idea of Congress determining whether or not to engage in war? The executives have utilized the War Powers Resolution countless times since its enactment to engage in military conflict without an official declaration of war. One example was after the attacks on the World Trade Center buildings on September 11, 2001. "President George W. Bush reported to Congress, 'consistent with the War Powers Resolution,' and 'Senate Joint Resolution 23' that on October 7, 2001, U.S. Armed Forces 'began combat action in Afghanistan against Al Qaida terrorists and their Taliban supporters.'"⁵ Bush used the nuances in the

³ Goldberg, Arthur "The Constitutional Limitations on the President's Powers," *The American University Law review*, 22, no. 4 (1973): 680-681.

⁴ Ibid.

⁵ Grimmer, Richard F. *The War Powers Resolution: After Thirty-Six Years*. Congressional Research Service. April 22, 2010. Page 45.

resolution to get involved abroad without the consent of Congress. It basically allowed Bush to inform Congress that military action had been initiated, rather than ask Congress for its consent for initiated. The WPA 1973 has created much confusion regarding the jurisdiction of military action, “deployments without congressional authorization have sometimes been defended on the grounds that the WPR *authorizes* the President to use forces in hostilities for sixty days and does not require their withdrawal before that time (absent a two-house veto that is probably unconstitutional).”⁶

The War Powers Act of 1973 has been greatly debated since its establishment. While it was initially created in order to limit the Executive’s power, it may have actually expanded presidential powers. The Congress strongly believes that it is absolutely necessary to follow the desires of the founding fathers in regards to balancing the Commander in Chief’s role and the Legislative Branch. The executive believes it should have an ability to engage in conflicts regardless of congressional consent if it sees necessary. Nuances in the language used in the War Powers Resolution have in some ways pleased both parties, but created confusion as well. Does the War Powers Resolution of 1973 challenge the constitution in regards to Congress’ power to declare war?

⁶ Ibid

Question:

The creation of the War Powers Act conflicts with Congress' Constitutional power to declare war.

1 **DOCUMENT 1**

2 **The Congress's Constitutional Role in War Powers**

3 The framers shared the view that an absolute monarch would be prone to squandering⁷ his
4 subjects' lives and money on reckless military adventures. "Absolute monarchs," John Jay wrote in *The*
5 *Federalist Papers*, "will often make war when their nations are to get nothing by it, but for purposes and
6 objects merely personal, such as thirst for military glory, revenge for personal affronts⁸, ambition, or
7 private compacts to aggrandize⁹ or support their particular families or partisans." The best precaution
8 against unilateral¹⁰ war-making by the executive was to require a collective decision to go to war. "It will
9 not be in the power of a single man, or a single body of men, to involve us in such distress; for the
10 important power of declaring war is vested in the legislature at large," James Wilson later explained to
11 the Pennsylvania ratifying convention. Moreover, vesting this power in the whole Congress meant that
12 the popularly-elected House, the body most directly responsive to the voters, had to act and so helped
13 to assure the widest possible political consensus for war. The Senate — originally chosen by state
14 legislatures — could not alone provide this assurance. Since the people could not be asked directly
15 whether the nation should go to war, requiring the assent of the House as well as the Senate was the
16 next best thing. If presidents bent on war could not persuade the Congress, they presumably could not
17 persuade the people either and would therefore lack the consensus required to assume the costs and
18 risks of war.

19 In short, the framers insisted on a collective judgment for war because it was likely that a
20 collective judgment would be superior to an individual judgment, would help assure that the United
21 States would not go to war without a political consensus¹¹, and, by requiring a President to persuade
22 Congress, would effectively make him or her explain why war was necessary to the public who would
23 ultimately bear its cost. These reasons for insisting on a collective judgment for war are still valid today.

24 For the foregoing reasons, the Constitution assigns to the full Congress the power "[t]o declare
25 War [and] grant Letters of Marque and Reprisal." According to international law in 1789, a state could
26 declare war *either* by "word or action," as the influential political theorist John Locke put it. A state
27 publicly announced the state of war "by word" by making a formal declaration of war and delivering it to
28 the enemy. A state initiated a state of war "by action" simply by committing an act of war.

⁷ to spend or use extravagantly or wastefully

⁸ a personally offensive act or [word](#)

⁹ increase in size or intensity

¹⁰ relating to, occurring on, or involving one side only

¹¹ majority of opinion

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1 **DOCUMENT 2**

2 **THE CONSTITUTIONAL LIMITATIONS ON THE PRESIDENT'S POWERS**

3 The expansion of presidential power in the conduct of foreign relations threatens to destroy our system of
4 separation of powers in the war power area.' Relying on notions of the scope of their power as Commander in
5 Chief, recent Presidents have unilaterally determined whether this nation should engage in prolonged hostilities
6 abroad. In doing so, the Executive has pursued a hegemonous¹² course into the war power domain of Congress
7 which has led to the usurpation¹³ of Congress' war declaring role. The arguments that allegedly support a broad-
8 based presidential prerogative¹⁴ to wage war in the absence of a congressional declaration of war, have been
9 rebutted by other commentators. Yet, while the war power issue can be resolved on academic grounds by
10 reference to one document-the Constitution-the prevention of future unauthorized uses of the war power by the
11 President will only come about when Congress forcibly reasserts itself by legislating in this vital area. The proposed
12 War Powers Act' discussed later in this section represents the best effort to date by the Senate to restore our
13 constitutional scheme. "Nothing in the Constitution is plainer," Justice Jackson observed in the *Steel Seizure Case*,
14 "than that declaration of a war is entrusted only to Congress." Indeed the Constitution is unambiguous¹⁵ and
15 unequivocal¹⁶ in conferring this most important facet of the war power on the Legislature: "Congress shall have
16 power . . . to declare war." One does not have to be a jurist or a lawyer to understand these explicit words; nor
17 does one have to be an historian, although the constitutional debates are clear that Congress was entrusted with
18 the power to sanction the use of the sword. In fact, the question of the meaning of the war-making power vis-a-
19 vis¹⁷ the President, which has caused so much consternation in recent years, was confronted, debated, and
20 answered by the delegates to the Philadelphia convention in August 1787. In agreeing to give Congress the power
21 "to declare war" as opposed "to make war," the delegates made it clear that the President was given only a limited
22 mandate to repel sudden attacks against the United States The President's repelling power is by definition a
23 defensive exercise of force and was conferred solely to provide the President with the power to respond to a
24 surprise attack or to forestall an invasion against this nation until Congress could act. It was by no means a
25 mandate to Presidents to initiate hostilities abroad in the absence of a congressional declaration of war...

26 The constitutional role of Congress, therefore, is not merely to legislate war into existence. It extends far
27 beyond that, permitting Congress to legislate regarding the scope of hostilities to be engaged in and the general
28 course and conduct of war to be pursued...

29 Penetrating beneath the skin, however, reveals true intent, and in the case of the Tonkin Gulf Resolution
30 it is clear that Congress intended only that military action be used to repel an allegedly "unprovoked attack" by a
31 few gun boats. It was certainly no carte blanche to the Executive to wage large scale war unilaterally and
32 indefinitely.

¹² leadership; predominance.

¹³ illegal seizure and occupation of a throne.

¹⁴ an exclusive right, privilege, etc., exercised by virtue of rank, office, or the like

¹⁵ not ambiguous; clear

¹⁶ absolute; unqualified; clear

¹⁷ in relation to; compared with

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1 **DOCUMENT 3**

2 **War Powers of President and Congress**

3 The heart of the challenge to the constitutionality of the War Powers Resolution rests on
4 differing interpretations by the two branches of the respective war powers of the President and
5 Congress. These differing interpretations, especially the assertions of presidential authority to send
6 forces into hostile situations without a declaration of war or other authorization by Congress, were the
7 reason for the enactment of the Resolution. The congressional view was that the framers of the
8 Constitution gave Congress the power to declare war, meaning the ultimate decision whether or not to
9 enter a war. Most Members of Congress agreed that the President as Commander-in-Chief had power to
10 lead the U.S. forces once the decision to wage war had been made, to defend the nation against an
11 attack and perhaps in some instances to take other action such as rescuing American citizens. But, in this
12 view, he did not have the power to commit armed forces to war. By the early 1970s, the congressional
13 majority view was that the constitutional balance of war powers had swung too far toward the President
14 and needed to be corrected. Opponents argued that Congress always held the power to forbid or
15 terminate U.S. military action by statute or refusal of appropriations, and that without the clear will to
16 act the War Powers Resolution would be ineffective. In his veto message, President Nixon said the
17 Resolution would impose restrictions upon the authority of the President which would be dangerous to
18 the safety of the Nation and "attempt to take away, by a mere legislative act, authorities which the
19 President has properly exercised under the Constitution for almost 200 years."

20 The War Powers Resolution in section 2(c) recognized the constitutional powers of the President
21 as Commander-in-Chief to introduce forces into hostilities or imminent hostilities as "exercised only
22 pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency
23 created by attack upon the United States, its territories or possessions, or its armed forces." The
24 executive branch has contended that the President has much broader authority to use forces, including
25 for such purposes as to rescue American citizens abroad, rescue foreign nationals where such action
26 facilitates the rescue of U.S. citizens, protect U.S. Embassies and legations¹⁸, suppress civil insurrection¹⁹,
27 implement the terms of an armistice or cease-fire involving the United States, and carry out the terms of
28 security commitments contained in treaties.

¹⁸ a diplomatic minister and staff in a foreign mission.

¹⁹ an act or instance of rising in revolt

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1 **DOCUMENT 4**

2 **The War Powers Act of 1973**

3 **50 USC S.1541-1548, 1973**

4 The War Powers Resolution, generally known as the War Powers Act, was passed by Congress over President
5 Nixon's veto to increase congressional control over the executive branch in foreign policy matters, specifically in
6 regard to military actions short of formally declared war. Its central provision prohibited the President from
7 engaging in military actions for more than sixty days, unless Congress voted approval.

8 The key Section 1541(c) reads:

9 (c) Presidential Executive Power as Commander-in-Chief; Limitation The constitutional powers of the President as
10 Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent
11 involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration
12 of war, (2) specific statutory²⁰ authorization, or (3) a national emergency created by attack upon the United States,
13 its territories or possessions, or its armed forces...

14 Purpose and Policy

15 Sec. 2. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the
16 United States and insure that the collective judgment of both the Congress and the President will apply to the
17 introduction of United States Armed Forces into hostilities, or into situations where imminent²¹ involvement in
18 hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such
19 situations.

20 (b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power
21 to make all laws necessary and proper for carrying into execution, not only its own powers but also all other
22 powers vested by the Constitution in the Government of the United States, or in any department or officer
23 thereof.

24 (c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces
25 into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the
26 circumstances, are exercised only pursuant to (1) a declaration of war , (2) specific statutory authorization, or (3) a
27 national emergency created by attack upon the United States, its territories or possessions, or its armed forces...

28

²⁰ Pertaining to a specific law

²¹ likely to occur at any moment; impending

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1 **DOCUMENT 5**

2 **2. Consulting and Reporting Under the WPR (War Powers Resolution)**

3 The WPR requires a President "in every possible instance...[to] consult with Congress" before, and to report to it
4 within forty-eight hours after, deploying U.S. armed forces into actual or imminent hostilities, foreign territory,
5 airspace, or waters, or in numbers which "substantially enlarge" combat-equipped U.S. forces already located in a
6 foreign nation. All reports must set forth the circumstances necessitating the introduction of forces, the authority
7 for the introduction, and the "estimated scope and duration of the hostilities or involvement," but only a report of
8 a deployment into actual or imminent hostilities (a "hostilities report") starts the sixty-day clock running. Although
9 President Nixon conceded that the consulting and reporting requirements were "constructive measures...[which]
10 would foster [inter-branch cooperation in exercising war powers]...by enhancing the flow of information from the
11 executive branch to the Congress," presidents have consistently exploited ambiguities²² in these requirements to
12 render them effectively meaningless.

13 The WPR neither defines "consult" nor indicates whom the President is to consult, so presidents have
14 often purported to "consult with Congress" by simply notifying a few selected members, sometimes only hours
15 before forces engaged in hostilities. Because only "hostilities reports" start the sixty-day clock, all presidents after
16 President Ford have submitted reports that are strategically silent about the subsection under which they are
17 submitted. Moreover, even when these reports have described the circumstances, their identification of the
18 authority for the deployment and their assessment of the scope and duration of hostilities are usually perfunctory
19 boilerplate. Periodic follow-up reports required by the WPR have rarely filled in the details.

²² doubtfulness or uncertainty of meaning or intention

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Works Cited

1. *The War Powers Act 1973, H . Res. 542, 93rd Congress, November 7, 1973 S. 3.*
2. Grimmett, Richard F. The War Powers Resolution: After Thirty-Six Years. Congressional Research Service. April 22, 2010.
3. Goldberg, Arthur. "The Constitutional Limitations on the President's Powers." *The American University Law review*. 22. no. 4 (1973): 680-681.
4. Laurie, Clayton D. "War Powers Resolution of 1973." In *American Government*. ABC-CLIO, 2000-. Accessed November 25, 2011. <http://americangovernment.abc-clio.com/>.
5. Young, Marilyn B. *"The Vietnam Wars:1945-1990"*. New York: HarperCollins, 1991.

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Review the Reading

Determine the most important facts and/or interesting ideas and write them below.

Reading 1:

1) _____

2) _____

Reading 2:

1) _____

2) _____

Reading 3:

1) _____

2) _____

Reading 4:

1) _____

2) _____

Reading 5:

1) _____

2) _____

My Personal Position

In the space below, write down reasons to support your opinion. You may suggest another course of action than the policy proposed in the question or add your own ideas to address the underlying problem.

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Learning the Reasons

Reasons to Support the Deliberation Question (Team A)	Reasons to Oppose the Deliberation Question (Team B)

Large Group Discussion: What We Learned

What were the most compelling reasons for each side?

Side A:

Side B:

What were the areas of agreement?

What questions do you still have? Where can you get more information?

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Individual Reflection: What I Learned

Which number best describes your understanding of the focus issue? [circle one]

1

2

3

4

5

NO DEEPER UNDERSTANDING

MUCH DEEPER UNDERSTANDING

What new insights did you gain?

What did you do well in the deliberation? What do you need to work on to improve your personal deliberation skills?

What did someone else in your group do or say that was particularly helpful? Is there anything the group should work on to improve the group deliberation?

Respond to the following essay prompt in a well-organized 5 paragraph essay.

Did the creation of the War Powers Act conflicts with Congress' Constitutional power to declare war?

Be sure to consider the following points:

- Constitutional powers given to Congress
- Presidential powers as Commander in Chief
- Obscurities in the language of the act
- Historical background
- Impact in contemporary history.

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Class Debate : War Powers Resolution SAC

Teacher Name: **Ms. Barry**

Student Name: _____

CATEGORY	4	3	2	1
Respect for Other Team	All statements, body language, and responses were respectful and were in appropriate language.	Statements and responses were respectful and used appropriate language, but once or twice body language was not.	Most statements and responses were respectful and in appropriate language, but there was one sarcastic remark.	Statements, responses and/or body language were consistently not respectful.
Information	All information presented in the debate was clear, accurate and thorough.	Most information presented in the debate was clear, accurate and thorough.	Most information presented in the debate was clear and accurate, but was not usually thorough.	Information had several inaccuracies OR was usually not clear.
Rebuttal	All counter-arguments were accurate, relevant and strong.	Most counter-arguments were accurate, relevant, and strong.	Most counter-arguments were accurate and relevant, but several were weak.	Counter-arguments were not accurate and/or relevant
Use of Facts/Statistics	Every major point was well supported with several relevant facts, statistics and/or examples.	Every major point was adequately supported with relevant facts, statistics and/or examples.	Every major point was supported with facts, statistics and/or examples, but the relevance of some was questionable.	Every point was not supported.
Understanding of Topic	The team clearly understood the topic in-depth and presented their information forcefully and convincingly.	The team clearly understood the topic in-depth and presented their information with ease.	The team seemed to understand the main points of the topic and presented those with ease.	The team did not show an adequate understanding of the topic.

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Persuasive Essay : War Powers Resolution Essay

Teacher Name: **Ms. Barry**

Student Name: _____

CATEGORY	4 - Above Standards	3 - Meets Standards	2 - Approaching Standards	1 - Below Standards	Score
Attention Grabber	The introductory paragraph has a strong hook or attention grabber that is appropriate for the audience. This could be a strong statement, a relevant quotation, statistic, or question addressed to the reader.	The introductory paragraph has a hook or attention grabber, but it is weak, rambling or inappropriate for the audience.	The author has an interesting introductory paragraph but the connection to the topic is not clear.	The introductory paragraph is not interesting AND is not relevant to the topic.	
Position Statement	The position statement provides a clear, strong statement of the author's position on the topic.	The position statement provides a clear statement of the author's position on the topic.	A position statement is present, but does not make the author's position clear.	There is no position statement.	
Support for Position	Includes 3 or more pieces of evidence (facts, statistics, examples, real-life experiences) that support the position statement. The writer anticipates the reader's concerns, biases or arguments and has provided at least 1 counter-argument.	Includes 3 or more pieces of evidence (facts, statistics, examples, real-life experiences) that support the position statement.	Includes 2 pieces of evidence (facts, statistics, examples, real-life experiences) that support the position statement.	Includes 1 or fewer pieces of evidence (facts, statistics, examples, real-life experiences).	
Sources	All sources used for quotes, statistics and facts are credible and cited correctly.	All sources used for quotes, statistics and facts are credible and most are cited correctly.	Most sources used for quotes, statistics and facts are credible and cited correctly.	Many sources are suspect (not credible) AND/OR are not cited correctly.	
Grammar & Spelling	Author makes no errors in grammar or spelling that distract the reader from the content.	Author makes 1-2 errors in grammar or spelling that distract the reader from the content.	Author makes 3-4 errors in grammar or spelling that distract the reader from the content.	Author makes more than 4 errors in grammar or spelling that distract the reader from the content.	

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