

**Proposed resolution to
KEEP OREGON'S NATIONAL GUARD
FROM DEPLOYMENT IN IRAQ AND AFGHANISTAN**

AN ACT RELATING TO THE FEDERAL DEPLOYMENT OF OREGON'S NATIONAL GUARD IN IRAQ AND AFGHANISTAN

Section 1: BACKGROUND

- (1) In September 2007, a letter signed by 61 local elected representatives in 27 Oregon counties calling for the troops to come home was sent to President Bush;
- (2) In October 2007, Rep. Lynn Woolsey sent a letter to President Bush signed by at least 89 members of the U.S. House that pledged only to allocate more money to bring the troops home from Iraq; that letter was signed by Oregon Reps. Blumenauer and DeFazio;
- (3) On May 1, 2007, the Oregon Senate passed SM1 by a vote of 19-11 on May 1, 2007, asking Congress to "exercise its appropriate constitutional authority to oppose the administration's escalation of United States forces in Iraq, and to move the United States toward a phased redeployment of United States forces out of Iraq with a responsible transition to Iraqi control of Iraq's security and of the personnel and resources necessary to achieve stability in Iraq."
- (4) On March 20, 2007, the Oregon House passed statewide resolution HJM 9 by a vote of 33- 25, urging the President not to send more troops to Iraq and calling for a withdrawal to begin "as soon as possible";
- (5) On March 12, 2007, the Eugene City Council passed a resolution calling for the U.S. Government to immediately commence a withdrawal of United States military personnel from Iraq, and for Congress to only approve further funds to carry out a safe, rapid and orderly withdrawal and Iraqi reconstruction efforts;
- (6) On November 30, 2006, on a 5-0 vote, Portland's City Council passed a resolution calling for the troops to come home in order to fund human needs.
- (7) In October, 2006, the Oregonian reported that "After once saying he supported President Bush's decision to invade Iraq, Gov. Ted Kulongoski now says the war 'is just spinning out of control' and the United States should set a strict timetable for getting out. In some of his strongest anti-war statements yet, Kulongoski told the Oregonian's editorial board that, like most of the American public, he believes the continued presence of U.S. troops in Iraq 'is making things worse. I don't think this is good for America.'"
- (8) On February 21, 2006, the Corvallis City Council passed a resolution calling for an "orderly, rapid, and comprehensive withdrawal of United States military personnel from Iraq" ;
- (9) In 2005, hundreds of Oregonians sent postcards to Gov. Kulongoski urging him to bring the National Guard back from Iraq, and on June 13, 150 Oregonians on the "Walk for Justice" stopped in his office to deliver many of those postcards and that message;
- (10) At least 170 cities/towns/counties/legislative districts and state legislatures had passed resolutions calling for the troops to come home and/or condemning the use of funds for war that could be spent locally;
- (11) In April, 2005, Governors Kulongoski, Gregoire (Washington), Kempthorne (Idaho) and Schweitzer (Montana) raised concerns about Guard members and equipment deployed in Iraq with wildfire season approaching;
- (12) The Authorization for Use of Military Force in Iraq (2002) is based in part on Iraq being in possession of weapons of mass destruction, harboring Al Quaida members responsible for the September 11, 2001 attacks, and enforcing UN resolutions against Saddam Hussein's regime, reasons which were never or are no longer valid;
- (13) The Authorization for Use of Military Force of September 18, 2001, which launched the "War on Terror," is overly broad and has allowed the United States to occupy Afghanistan and attack Somalia, Pakistan, and elsewhere, as well as enabling the opening of the prison camp at Guantanamo, unknown military holding sites around the planet, the PATRIOT act, military tribunals, and other affronts to human, civil and constitutional rights.

Section 2: STATEMENT OF FINDINGS

The Legislature finds that:

- (1) Under Article I, Section 8, Clause 15 of the United States Constitution, Congress may call forth the militia to execute the laws of the union, suppress insurrections and repel invasions. Assuming for the sake of argument that the war was lawful when commenced, the presence of the Guard members in Iraq is not now lawful.
- (2) Since 1933, federal law has provided that persons enlisting in a state national guard unit simultaneously enlist in the national guard of the United States, a part of the U.S. Army. The enlistees retain their status as state guard members unless and until ordered to active federal duty and then revert to state status upon being relieved from federal service.
- (3) In 1986, Congress passed and the President signed the "Montgomery Amendment," which provides that a governor cannot withhold consent with regard to active duty outside the United States because of any objection to the location, purpose, type, or schedule of such duty.
- (4) Under the U.S. Constitution, each state's national guard unit is controlled by the governor in time of peace, but can be called up for federal duty by the President, provided that the President is acting pursuant to the Constitution and laws of the United States.
- (5) The War Powers Act of 1973 (Public Law 93-148) specifically limits the power of the President of the United States to wage war without the approval of Congress.
- (6) In October 2002, the U.S. Congress authorized military force under the Authorization for the Use of Military Force Against Iraq (AUMF) resolution in response to a presidential request under the War Powers Act. The resolution stated in part that:

The President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to [1] defend the national security of the United States against the continuing threat posed by Iraq; and [2] enforce all relevant United Nations Security Council Resolutions regarding Iraq.
- (7) If the Congressional intent of the 2002 AUMF was to enforce then-current and all future UN Security Council resolutions about Iraq, then the AUMF is too broad and the National Guard could remain federalized indefinitely.
- (8) The Authorization for Use of Military Force of September 18, 2001, similarly is overly broad and could be construed to allow the President to call up the National Guard to go to Iraq, Afghanistan or any other country deemed part of the "war on terror."
- (9) The AUMF resolutions contained neither a termination date nor a process or procedure to determine when the authorization should terminate.
- (10) U.S. forces, including members of the Oregon National Guard and guard members from other states, have long since addressed the purposes recited under the Iraq AUMF resolution, and Iraq does not pose a continuing threat to the national security of the United States, nor is there an extant United Nations Security Council Resolution to be implemented.
- (11) The President may not maintain U.S. forces, and in particular members of the Oregon National Guard, in Iraq other than for the purposes set forth by Congress in the AUMF resolutions. Without a specific date for withdrawal of U.S. Forces the AUMF resolutions or a method or formula for determining the time for withdrawal, and in the absence of congressional legislation curing these omissions, the President is required to order the withdrawal of troops within a reasonable time and in a reasonable manner. The President has taken no such action.
- (12) Other than the AUMF resolutions, there is no authority under the Constitution or the laws of the United States for the continued presence of Oregon National Guard members in Iraq and Afghanistan.
- (13) The maintenance of Oregon National Guard members in Iraq beyond the time and scope set forth in the AUMF resolution has resulted, and continues to result, in significant harm to guard members and their families, including death and injury, loss of time together, and financial hardship.
- (14) The Legislature finds that Congress should revisit the 1986 Montgomery Amendment and adopt legislation that restores the powers of the governors of the several states to withhold consent to federalization of their National Guards, except where a declaration of war has been adopted or where the United States faces attack or invasion, and the President has invoked powers authorized by an act of Congress to address those circumstances.

It is hereby enacted by the Legislature of the State of Oregon:

Section 3. EXPIRATION OF THE 2002 AUTHORIZATION FOR USE OF MILITARY FORCE AND WITHHOLDING OF OREGON NATIONAL GUARD MEMBERS FROM DUTY IN IRAQ.

(a) The Authorization for the Use of Military Force of October 16, 2002 having expired, the Legislature declares that all members of the Oregon National Guard should be withheld from deployment to Iraq.

(b) The Legislature calls on the Governor of Oregon take prompt steps as the Commander-in-Chief of the Oregon National Guard to effectuate these purposes.

Section 4. ALTERATION OF 2001 AUTHORIZATION FOR USE OF MILITARY FORCE AND WITHHOLDING OF OREGON NATIONAL GUARD MEMBERS FROM DUTY IN AFGHANISTAN.

(a) The Authorization for the Use of Military Force of September 18, 2001, having been used to depose the then-government of Afghanistan and capture or kill individuals suspected of engineering the attacks on September 11, 2001, must be altered to limit Executive power over military and judicial issues. The Legislature calls upon the United States Congress to alter the AUMF to allow only detaining those individuals or groups suspected of participation in the September 11th attacks for trial in international criminal courts. As there is no end date for this authorization, the Legislature declares that all members of the Oregon National Guard should be withheld from deployment to Afghanistan.

(b) The Legislature calls on the Governor of Oregon take prompt steps as the Commander-in-Chief of the Oregon National Guard to effectuate these purposes.

Section 5. A new section of Oregon Revised Statutes shall be added to read:

LIMITATION OF OREGON NATIONAL GUARD SERVICE IN WARS NOT STATUTORILY OR CONSTITUTIONALLY AUTHORIZED

The Oregon National Guard shall be limited to service on behalf of the state of Oregon, unless called into service pursuant to a constitutionally authorized federal directive pursuant to a congressional declaration of war or resolution.

Section 6. A new section of Oregon Revised Statutes shall be added to read:

AUTHORITY FOR OREGON ATTORNEY GENERAL TO DEFEND DECISIONS TO DEPLOY OR NOT DEPLOY OREGON NATIONAL GUARD

The attorney general is authorized to appear in any state or federal court with jurisdiction over the deployment of the Oregon National Guard to defend any decision of the governor and adjunct general with respect to their decision to deploy or not deploy the guard.

Section 7. A new section of Oregon Revised Statutes shall be added to read:

PRESERVATION OF COMMAND STRUCTURE DURING SERVICE

No member of the Oregon National Guard shall decline, while serving in the U.S. armed forces, to follow military orders unless those orders are in violation of the Geneva Conventions or other international law.

(June 3, 2008: Sections 5, 6 and 7 modified for Oregon.)

(June 6, 2008: Modified Section 1 subsection 12 for clarification; Added sentence to Section 2 subsection 1 regarding legality of Iraq deployment; Added Section 2 subsection 7; corrected numbering of subsections throughout.)

(July 1, 2008: Added word "be" to Section 4 (a). Clarified limiting service "on behalf of the state" in Section 5; added article "the" to Oregon National Guard where needed.)