

HB0220 Favorable

Dear House Health and Government Operations Committee:

I write in support of House Bill 220, the Maryland Defend the Guard Act.

In September 2001, the Bush administration was preparing a “Global War on Terrorism” in response to the attacks of September 11th. The White House expressed the desire to be granted the latitude to control the war-making capacity of the government, which according to the U.S. Constitution is to be checked by the Congress. In the post-9/11 climate of fear that further terrorist attacks might be undertaken against Americans, both the U.S. House of Representatives and the Senate passed an open-ended Authorization for Use of Military Force (AUMF), effectively ceding both their right and their authority to limit the Executive’s ability to mobilize the Armed Forces of the United States to fight, kill, and possibly die in wars abroad. Rather than needing to confer with the Congress before sending troops into harm’s way, the AUMF of 2001 vested in the president the power of a monarch to wage war at his discretion and according to his own timetable.

Under the Constitution, the president already possessed the legal ability to wage war in an emergency or invasion scenario, when time was of the essence and so consultation with Congress could not be undertaken. What changed with the 2001 AUMF was that the Congress delegated to the president the right and authority to wage war without needing to demonstrate or claim conditions of emergency. In emergency military actions, the executive is required within a narrow timeframe to secure the retroactive consent of the Congress, without which the mobilization may not legally continue. With the 2001 AUMF, however, the requirement of retroactive advice and consent was lifted.

What ensued over the next twenty years was the nonstop engagement of U.S. military forces, including National Guardsmen, in the Middle East and Africa, with four successive presidential administrations asserting the right to wage war without congressional consultation. The 2001 AUMF and the subsequent 2002 AUMF against Iraq were ratified under President George W. Bush, but they were regarded by President Barack Obama and President Donald Trump as permitting them to continue the work begun by Bush. Today, in 2023, President Joe Biden continues to deploy troops and bomb countries in the Middle East supposedly under the AUMF authority granted to George W. Bush, while 88% of the people who initially voted for these resolutions have departed from Congress.

It is hard to believe that the men who penned the U.S. Constitution envisioned a scenario in which one Congress could permanently change the balance of war-making power through passing a single law, but that is what has transpired.

It is unsurprising that no president after Bush chose to roll back the expanded executive powers he had assumed. Power once secured is seldom surrendered. Nor should we expect a Congress to acknowledge the mistakes of the past. An effort to repeal the 2002 AUMF is underway, but this would not stop the president’s ability to wage endless, global war granted by the much broader 2001 AUMF.

With the unlikelihood that either the president will cede his warmaking powers back to the legislative branch, or that the Congress will demand that they be returned, House Bill 220 currently under consideration would provide the restraint needed to prevent the Maryland National Guard from being deployed into combat missions abroad at the executive's caprice, by requiring that the U.S. Congress pass an official declaration of war.

I support the Defend the Guard Act because National Guardsmen enlisted to serve the country under specific conditions which have been bypassed since 2001. The politicians in Washington, DC, have abdicated the most weighty of all of their responsibilities, that of determining whether and when soldiers must be sent to fight. Because Congress has neglected their responsibility under the Constitution to serve as a restraint on the warmaking powers of the executive, the time has arrived for states to assert their sovereign rights and protect their local Guardsmen from reckless and counterproductive deployments as occurred throughout the past two decades of the Global War on Terror in several different countries for which no mission-specific AUMF was ever ratified by Congress.

It is too late to do anything about the soldiers sacrificed in Afghanistan, only to withdraw from that country with the Taliban still in power in 2021. Nor can the tragic loss of Guardsmen to suicide be undone. But House Bill 220, the Maryland Defend the Guard Act, will help to protect future guardsmen from such fates.

Sincerely,

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