

CONFIDENTIAL DRAFT FOR URGENT COMMENTS

Testimony to the Maryland State Government in Favor of (FAV) [HB0220](#)

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A U.S. polling company called Zogby Research Services was able to poll U.S. troops in Iraq in 2006, and found that 72 percent of those polled wanted the war to be ended in 2006. For those in the Army, 70 percent wanted that 2006 ending date, but in the Marines only 58 percent did. In the reserves and National Guard, however, the numbers were 89 and 82 percent respectively. While we were hearing a constant chorus in the media about keeping the war going "for the troops," the troops themselves didn't want it kept going. And pretty much everybody, years later, admits that the troops were right.

But why were the numbers so much higher, so much more right, for the Guard? One likely explanation for at least part of the difference is the very different recruiting methods, the very different way in which people tend to join the Guard. In short, people join the guard after seeing advertisements for aiding the public in natural disasters, whereas people join the military after seeing advertisements for participating in wars. It's bad enough to be sent into a war on the basis of lies; it's even worse to be sent into war on the basis of lies plus wildly misleading recruitment ads.

There is a historical difference between the guard or militia and the military as well. The tradition of state militias is well worthy of condemnation for its role in slavery and expansion. The point here is that it is a tradition that was advanced in the early decades of the United States in opposition to federal power, including in opposition to the establishment of a standing military. Sending the guard or militia into wars at all, much less doing so without serious public deliberation, is to effectively make the guard part of the most expensive and far-flung permanent standing military the world has ever seen.

So, even if one were to accept that the U.S. military should be sent into wars, even without a Congressional declaration of war, there would be solid reasons for treating the guard differently.

But should anyone be sent into wars? What is the legality of the matter? The United States is party to various treaties that forbid, in some cases all, in other cases almost all, wars. These include:

The 1899 [Convention for the Pacific Settlement of International Disputes](#)

The [Hague Convention of 1907](#)

The 1928 [Kellogg-Briand Pact](#)

The 1945 [UN Charter](#)

Various UN resolutions, such as [2625](#) and [3314](#)

The 1949 [NATO](#) charter

The 1949 [Fourth Geneva Convention](#)

The 1976 [International Covenant on Civil and Political Rights](#) (ICCPR) and the [International Covenant on Economic, Social, and Cultural Rights](#)

The 1976 [Treaty of Amity and Cooperation in Southeast Asia](#)

But even if we treat war as legal, the U.S. Constitution specifies that it is the Congress, not the president or the judiciary, that has the power to declare war, to raise and support armies (for no longer than two years at a time), and to "provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions."

Already, we have a problem in that recent wars have tended to last a lot longer than two years and to have nothing to do with executing laws, suppressing insurrections, or repelling invasions. But even if we set all that aside, these are not powers for a president or a bureaucracy, but explicitly for the Congress.

HB0220 states: "NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE GOVERNOR MAY NOT ORDER THE MILITIA OR ANY MEMBER OF THE MILITIA INTO ACTIVE DUTY COMBAT UNLESS THE U.S. CONGRESS HAS PASSED AN OFFICIAL DECLARATION OF WAR OR HAS TAKEN AN OFFICIAL ACTION UNDER ARTICLE I, §8, CLAUSE 15 OF THE U.S. CONSTITUTION TO EXPLICITLY CALL FORTH THE STATE'S MILITIA OR ANY MEMBER OF THE STATE MILITIA TO EXECUTE THE LAWS OF THE UNITED STATES, REPEL AN INVASION, OR SUPPRESS AN INSURRECTION."

The Congress has not passed an official declaration of war since 1941, unless the definition of doing so is very broadly interpreted. The loose and arguably unconstitutional authorizations that it has passed have not been to execute laws, suppress insurrections, or repel invasions. As with all laws, HB0220 will be subject to interpretation. But it will accomplish at least two things for certain.

HB0220 will create the possibility of keeping Maryland's militia out of wars.

HB0220 will send a message to the U.S. government that the state of Maryland is going to offer some resistance, which may serve to help discourage more reckless warmaking.

U.S. residents are supposed to be directly represented in Congress, but in addition, their local and state governments are supposed to represent them to Congress. Enacting this law would be part of doing so. Cities, towns, and states routinely and properly send petitions to Congress for all kinds of requests. This is allowed under Clause 3, Rule XII, Section 819, of the Rules of the House of Representatives. This clause is routinely used to accept petitions from cities, and memorials from states, all across the United States. The same is established in the Jefferson Manual, the rule book for the House originally written by Thomas Jefferson for the Senate.

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