

Michael Maharrey
Tenth Amendment Center
1315 Belcher Dr.
Tarpon Springs, FL, 34689

Maryland's National Guard is supposed to be the state militia. But like every state Guard unit, it is being overused and used in a way that is contrary to its constitutional purpose. The Maryland National Guard should serve Maryland and as part of the "home guard" defending the national borders. The National Guard should not be an extension of the regular military or used for military operations around the globe.

The misuse of the National Guard puts additional stresses on Maryland. Their absence from the state in foreign wars prevents them from doing their job at home.

Looking at the bigger picture, Congress has abdicated its responsibility to take America into war only with careful deliberation. Instead, it has placed the power of war and peace in the hands of the president – a single individual.

One person should never have that much power.

As James Madison put it in [*Helvidius No. I*](#), "*Those who are to **conduct a war** cannot in the nature of things, be proper or safe judges, whether a **war ought to be commenced, continued, or concluded**. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws.*" [emphasis in original]

I know there are concerns that refusing to release Maryland Guard units into active-duty combat might somehow be unconstitutional. I'll start by reminding the committee that sending Guard units into combat without an actual declaration of war or in response to three constitutionally prescribed situations is unconstitutional to begin with. It can't be unconstitutional to protect the Constitution.

That said, there was a Supreme Court decision limiting the governor's discretion when it comes to Guard deployments, but the opinion in *Perpich* only narrowly applies to overseas **peacetime training**. HB299 doesn't limit this. It only applies to active-duty combat which is carefully defined in the bill. The Court opinion does not apply to active-duty combat. The fact is the Court has never weighed in on this issue.

Another common argument is that Authorizations to use military force allow for these deployments. But an AUMF isn't the same as a declaration of war and it doesn't pass constitutional muster.

In practice, these resolutions authorize the president to decide **if and when** he wants to take military action. In effect, Congress gives the president its blessing to use his independent discretion and make a unilateral decision to send the US military into combat.

This flips the constitutional process on its head by placing decision-making power in the hands of the president and it violates the constitutional separation of powers. Congress is supposed to make the determination, not the president. As James Madison put it, “The executive has no right, **in any case** to decide the question, whether there is or is not cause for declaring war.”

Passage of Defend the Guard would force the federal government to only use the Guard for the three expressly delegated purposes in the Constitution, and at other times to remain where the Guard belongs, at home, supporting and protecting their home state.

While getting this bill passed won't be easy and will face fierce opposition from the establishment, it certainly is, as Daniel Webster once noted, “one of the reasons state governments even exist.”

Webster made this observation in an 1814 speech on the floor of Congress where he urged actions similar to the Maryland Defend the Guard Act. He said, “The operation of measures thus unconstitutional and illegal ought to be prevented by a resort to other measures which are both constitutional and legal. It will be the solemn duty of the State governments to protect their own authority over their own militia, and to interpose between their citizens and arbitrary power. These are among the objects for which the State governments exist.”