

The Constitutional and Legal Basis for the Defend the Guard Act

The **Defend the Guard Act** is firmly grounded in constitutional principles, federal statutes, and Supreme Court precedent. It is both a **necessary** and **lawful** measure to restore the proper balance of war powers between the federal and state governments while ensuring that the National Guard is deployed in accordance with the U.S. Constitution. Below is a comprehensive legal and constitutional argument demonstrating that **Defend the Guard is not only legal but imperative** to uphold the rule of law and the integrity of the American federal system.

I. The Constitutional Framework for War Powers and the Role of the National Guard

A. The War Powers Clause: Congress Holds the Sole Authority to Declare War

Article I, Section 8, Clause 11 of the **U.S. Constitution** grants **Congress**—and only Congress—the power to **declare war**. This clause was included to prevent unilateral military action by the executive branch and to ensure that military force would only be used with the direct consent of the people's representatives.

The **Defend the Guard Act** enforces this constitutional mandate by ensuring that the National Guard cannot be deployed into **undeclared foreign wars** without a formal **Congressional declaration of war**. The absence of such a declaration renders executive deployments of the Guard unconstitutional.

B. Constitutional Limits on the Use of the Militia (National Guard)

The Constitution **explicitly** defines when the militia (modern-day National Guard) may be called into federal service. **Article I, Section 8, Clauses 15-16** grant Congress the power:

- **"To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions."**
- **"To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States."**

These powers **limit** the conditions under which the National Guard can be federalized. The militia may only be called forth:

1. **To execute domestic laws** (law enforcement functions).

2. **To suppress insurrections** (domestic rebellion).
3. **To repel invasions** (defense of the homeland).

Overseas military expeditions—such as those in Iraq, Afghanistan, Syria, Libya, or Somalia—**do not fall under these categories**. Thus, the **Defend the Guard Act** ensures constitutional fidelity by preventing state National Guard units from being deployed in unconstitutional, undeclared wars.

C. The Role of the States in the National Guard

The National Guard operates under a **dual sovereignty structure**, meaning it serves both the federal and state governments. **The states have primary authority over their National Guard units unless they are lawfully federalized.** This principle was reinforced by:

- **Title 32 U.S.C.**, which establishes that the National Guard remains a state-controlled force unless lawfully called into federal service.
- **Title 10 U.S.C.**, which governs the federal activation of the National Guard but only under conditions explicitly authorized by law.

The **Defend the Guard Act upholds** this principle by ensuring that the Guard remains under state control **unless** the federal government follows the constitutional process for lawful deployment.

II. Federal Statutory Limitations on Deploying the National Guard

A. Title 10 U.S.C. § 12301 and § 12302: Federalization Requirements

Federal law provides specific mechanisms for federalizing the National Guard. **10 U.S.C. § 12301** states that:

- The President may activate the National Guard **only** in a national emergency that has been formally declared by Congress.

Similarly, **10 U.S.C. § 12302** allows for the mobilization of the Guard **only** in a partial mobilization scenario when a **national emergency** exists. However, these provisions cannot override the constitutional requirement for a **formal declaration of war by Congress** before offensive military actions occur.

Since **no formal declarations of war** have been issued by Congress since World War II, the mobilization of National Guard units for foreign conflicts under these statutes is constitutionally **dubious at best** and blatantly **unlawful at worst**.

The **Defend the Guard Act** ensures that state National Guard forces are not unlawfully deployed by reinforcing the necessity of a **formal Congressional declaration of war** before federalization.

B. Title 32 U.S.C.: The National Guard as a State-Controlled Force

Under **Title 32 U.S.C.**, the National Guard is primarily a **state** military force unless lawfully federalized. Governors are the **commander-in-chief** of their respective National Guard units when they are not in federal service.

- This means states retain the authority to **deny** the deployment of their National Guard forces unless the federal government follows the proper constitutional process.
- The **Defend the Guard Act** simply **clarifies and enforces this existing authority**, ensuring that National Guard forces cannot be deployed unlawfully.

III. Supreme Court Precedents Supporting Defend the Guard

A. *Perpich v. Department of Defense* (1990): The Dual Role of the National Guard

In ***Perpich v. Department of Defense*, 496 U.S. 334 (1990)**, the Supreme Court affirmed that:

"The National Guard is a state force unless and until it is federalized."

This case **recognized the constitutional limitations** on federalizing the National Guard. **Defend the Guard** upholds this precedent by ensuring that federalization only occurs **under constitutional conditions**—namely, a Congressional declaration of war.

B. *Prize Cases* (1863): Limiting Executive War Powers

In ***The Prize Cases*, 67 U.S. (2 Black) 635 (1863)**, the Supreme Court ruled that the President **may only** take military action in defense of the nation **when facing actual invasion or rebellion**.

Since modern overseas conflicts **do not constitute** an invasion of the United States, the President **cannot unilaterally** deploy the National Guard without congressional authorization. **Defend the Guard** reinforces this limitation.

C. *Bas v. Tingey* (1800): The Necessity of a Declared War

The Supreme Court in ***Bas v. Tingey*, 4 U.S. (4 Dall.) 37 (1800)** drew a critical distinction between **war** and mere **hostilities**.

- The decision held that a **formal declaration of war** is legally distinct from limited conflicts.
- Since **Congress has not declared war since 1942**, National Guard deployments into modern conflicts **do not meet constitutional standards**.

Defend the Guard prevents this unlawful use of state military forces.

IV. The Founders' Intent: A Safeguard Against Executive Overreach

The Founding Fathers were **explicit** in their belief that the power to **declare war** must remain in the hands of **Congress**, not the Executive Branch.

A. James Madison (1793): Executive War Power is Tyranny

Madison warned against executive war-making, writing:

"The power to declare war, including the power of judging the causes of war, is fully and exclusively vested in the legislature."

B. Thomas Jefferson (1798): The Check on the "Dog of War"

Jefferson emphasized:

"We have already given, in example, one effectual check to the dog of war by transferring the power of letting him loose from the executive to the legislative body."

C. Alexander Hamilton (Federalist No. 69)

Hamilton wrote that the President is **not** a king and **cannot** initiate war unilaterally.

The **Defend the Guard Act** honors these founding principles by **blocking unauthorized military deployments**.

Conclusion: The Defend the Guard Act is Legal, Constitutional, and Necessary

- It upholds Article I, Section 8 of the Constitution.
- It aligns with Title 10 and Title 32 of the U.S. Code.
- It is reinforced by Supreme Court rulings.
- It reflects the Founders' explicit intent.

The **Defend the Guard Act** is not merely **lawful**—it is essential to restoring the constitutional balance of power and ensuring that American military forces are deployed only **when lawfully authorized**.