

Short Ballot Title

An initiative limiting the deployment of national guard members, defining Governor's authority and nullifying federal law.

Long Ballot Title

An initiative related to the national guard; amending Title 46, Idaho Code, to authorize the Governor to bring members of the Idaho National Guard home from international deployment; adding a new Section 4, to exempt Idaho National Guard from deployments absent an explicit authorization for use of military force or a declaration of war by the U.S. Congress. Defining Governor's authority, limiting federal authority and nullifying federal law.

Text of Initiative

SECTION 1. PURPOSE. Under the U.S. Constitution, each state's National Guard unit is controlled by the governor, 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. 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. In October 2002, the U.S. Congress adopted the Authorization for Use of Military Force Against Iraq (Public Law No. 107-243) (AUMF), a law enacted in response to a presidential request consistent with the War Powers Act. The Iraq AUMF stated in relevant part that the President was authorized to use the armed forces of the United States 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. U.S. forces, including members of the Idaho National Guard and guard members from other states, have long since addressed the purposes recited under the AUMF, to wit, Iraq does not pose a continuing threat to the national security of the United States, and there are no relevant United Nations Security Council Resolutions regarding Iraq yet to be enforced. The Iraq AUMF has therefore expired by its own terms, and other than the AUMF, there is no authority under the Constitution or the laws of the United States for the continued presence of Idaho National Guard members in Iraq. The maintenance of Idaho National Guard members in Iraq beyond the time and scope set for in the AUMF has resulted in significant harm to Guard members and their families, including death and injury, loss of time together, and financial hardships. Therefore, the purpose of this act is to authorize and direct the governor to bring members of the Idaho national guard home from unconstitutional and illegal international deployments such as the current deployment of national guard troops in Iraq.

SECTION 2. That Section 46-101, Idaho Code, be, and the same is hereby amended to read as follows:

46-101.NATIONAL DEFENSE ACT -- DEFINITIONS. The state of Idaho does hereby accept the benefits and provisions of the national defense act, and it is the intent of this code to conform to all laws and regulations of the United States affecting the national guard, unless such laws and regulations violate the United States Constitution.

DEFINITIONS. --As used in this code:

(a) "National guard" means the Idaho army national guard and the Idaho air national guard.

(5) "National defense act" means the federal law for making further and more effective provisions for the national defense and for other purposes approved June 3, 1916, (Title 32, United States Code) and any and all other acts that have been or may hereafter be enacted amendatory thereof and supplementary thereto.

(c) "Uniform code of military justice" means the law for the disciplining of the armed forces of the United States Chapter 47, Title 10, United States Code).

(d) "Officer" means commissioned officers and warrant officers.

SECTION 3. That Section 46-107, Idaho Code, be, and the same is hereby amended to read as follows:

46-107. CONFORMITY OF THE NATIONAL GUARD TO FEDERAL LAW. The governor is authorized and it shall be his duty from time to time to make and publish such orders as may be necessary to conform the national guard in organization, armament and discipline, and otherwise, to that prescribed and authorized by the national defense act and other laws of the United States and the regulations issued there under for the national guard. The governor, however, shall not be obliged to make any effort to conform to any terms of the national defense act or other laws and orders of the United States which exceed the authority vested in the federal government by the United States Constitution.

SECTION 4. That Chapter 8, Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTION, to be known and designated as Section 46-805, Idaho Code, and to read as follows:

46-805. PROTECTION OF NATIONAL GUARD FROM UNLAWFUL DEPLOYMENTS. (1) The Idaho National Guard shall only be sent into national service for deployment pursuant to a declaration of war or other congressional enactment that expressly authorizes the use of military force in a country or region and specifically describes the mission for which the national guard troops are to be deployed.

(2) The governor shall withhold approval of the transfer of the national guard to federal control in the absence of:

(a) An explicit authorization for use of military force adopted by the U.S. Congress and in force on the date of the federal request for transfer conforming to (1) of this section; or

(b) A declaration of war by the U.S. Congress.

(3) If an authorization for use of military force has by its terms expired or is no longer valid authority for federal control over units of the national guard, and there is otherwise no action underway for the prompt return of the units to State control, the governor shall request the return of the units to the control of the State.

(4) If a request pursuant to (3) of this section is denied by the federal government, the governor shall take appropriate action to effect the prompt return of the units to state control. Appropriate action may include commencing a legal action in state or federal court to prevent the national guard from remaining on federal active duty.

(5) The attorney general is authorized to appear in any state or federal court with jurisdiction over the deployment of the Idaho National Guard to defend any decision of the governor--his or her decision to deploy or not deploy the guard.

(6) Any federal law, code, treaty, or mandate to the contrary of the provisions of this act

is null and void and of no force or effect in Idaho.

SECTION 5. SEVERABILITY. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.