

House Joint Memorial 5

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Urges Congress to enact legislation that restores powers of Governors to withhold consent to federalization of their National Guard units, unless declaration of war has been adopted or United States faces attack or invasion and President has invoked powers authorized by act of Congress to address those circumstances.

JOINT MEMORIAL

1
2 To the President of the United States and the Senate and the House of Representatives of the United
3 States of America, in Congress assembled:

4 We, your memorialists, the Seventy-fifth Legislative Assembly of the State of Oregon, in legis-
5 lative session assembled, respectfully represent as follows:

6 Whereas under clause 15, section 8, Article I of the United States Constitution, Congress may
7 call forth the militia to execute the laws of the union, suppress insurrections and repel invasions;
8 and

9 Whereas since 1933, federal law has provided that persons enlisting in a state National Guard
10 unit simultaneously enlist in the National Guard of the United States, a part of the United States
11 Army; and

12 Whereas state National Guard enlistees retain their status as state National Guard members
13 unless and until ordered to federal active duty and then revert to state status upon being relieved
14 from federal service; and

15 Whereas in 1986, Congress passed and the President signed the "Montgomery Amendment,"
16 which provides that a Governor cannot withhold consent with regard to federal active duty outside
17 the United States because of any objection to the location, purpose, type or schedule of such duty;
18 and

19 Whereas under the United States Constitution, each state's National Guard unit is controlled
20 by the Governor in time of peace, but can be called up for federal duty by the President, provided
21 that the President is acting pursuant to the Constitution and laws of the United States; and

22 Whereas the War Powers Act of 1973 specifically limits the power of the President to wage war
23 without the approval of Congress; and

24 Whereas in October 2002 Congress authorized military force under the Authorization for Use
25 of Military Force (AUMF) Against Iraq in a resolution in response to a presidential request under
26 the War Powers Act; and

27 Whereas if the Congressional intent of the 2002 Iraq AUMF was to enforce then, current and
28 all future United Nations Security Council resolutions about Iraq, then the 2002 Iraq AUMF is too
29 broad and the National Guard could remain federalized indefinitely; and

30 Whereas the Authorization for Use of Military Force Against Terrorists of September 18, 2001,

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 similarly is overly broad and should not be construed to allow the President to call up the National
2 Guard to go to Iraq, Afghanistan or any other country deemed part of the “war on terror”; and

3 Whereas the AUMF resolutions contained neither a termination date nor a process or procedure
4 to determine when the authorization should terminate; and

5 Whereas United States military forces, including members of the Oregon National Guard and
6 guard members from other states, have long since addressed the purposes recited under the 2002
7 Iraq AUMF resolution and Iraq does not pose a continuing threat to the national security of the
8 United States nor is there an extant United Nations Security Council resolution to be implemented;
9 and

10 Whereas the President may not maintain United States military forces, and in particular mem-
11 bers of the Oregon National Guard, in Iraq other than for the purposes set forth by Congress in the
12 AUMF resolutions; and

13 Whereas without a specific date for withdrawal of United States military forces, or a method
14 or formula for determining the time for withdrawal, and in the absence of congressional legislation
15 curing these omissions, the President is required to order the withdrawal of troops within a rea-
16 sonable time and in a reasonable manner, and the President has taken no such action; and

17 Whereas other than the AUMF resolutions, there is no authority under the Constitution or the
18 laws of the United States for the continued presence of Oregon National Guard members in Iraq and
19 Afghanistan; and

20 Whereas the maintenance of Oregon National Guard members in Iraq beyond the time and scope
21 set forth in the AUMF resolutions has resulted in, and continues to result in, significant harm to
22 guard members and their families, including death and injury, loss of time together and financial
23 hardship; now, therefore,

24 **Be It Resolved by the Legislative Assembly of the State of Oregon:**

25 (1) The Congress of the United States is respectfully requested to revisit the 1986 Montgomery
26 Amendment and enact legislation that restores the powers of a governor to withhold consent to
27 federalization of a state National Guard unit, except when a declaration of war has been adopted
28 or when the United States faces attack or invasion and the President has invoked powers authorized
29 by an act of Congress to address those circumstances.

30 (2) A copy of this memorial shall be sent to the President of the United States, to the Senate
31 Majority Leader, to the Speaker of the House of Representatives and to each member of the Oregon
32 Congressional Delegation.

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