2023 HOUSE POLITICAL SUBDIVISIONS

HCR 3012

2023 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Room JW327B, State Capitol

HCR 3012
2/10/2023

Recognizing the constitutional duty of Congress to declare war and the unconstitutional deployment of military personnel to active duty pursuant to clause 11 of section 8 of article I of the United States Constitution

9:15 A.M. Chairman Longmuir opened the hearing. Members present: Chairman Longmuir, Vice Chairman Fegley, Rep. Hatlestad, Rep. Heilman, Rep. Holle, Rep. Jonas, Rep. Klemin, Rep. Motschenbacher, Rep. Ostlie, Rep. Rios, Rep. Toman, Rep. Warrey, Rep. Davis, and Rep. Hager.

Discussion Topics:

- Unconstitutional deployment.
- Declaration of war.
- Unintended consequences.

Rep. Heilman: Introduced the bill.

Chris Martinson, Attorney with National Guard: Testimony #20447

Hearing closed at 9:25 AM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Room JW327B, State Capitol

HCR 3012
2/16/2023

Recognizing the constitutional duty of Congress to declare war and the unconstitutional deployment of military personnel to active duty pursuant to clause 11 of section 8 of article I of the United States Constitution

10:38 AM. Chairman Longmuir opened the meeting. Members present: Chairman Longmuir, Vice Chairman Fegley, Rep. Hatlestad, Rep. Heilman, Rep. Holle, Rep. Jonas, Rep. Klemin, Rep. Motschenbacher, Rep. Ostlie, Rep. Rios, Rep. Toman, Rep. Warrey, Rep. Davis, and Rep. Hager.

Discussion Topics:

- National Guard concerns
- Committee action.

Rep. Heilman moved a Do Pass;
Seconded by Rep. Rios

Representatives	Vote
Representative Donald W. Longmuir	N
Representative Clayton Fegley	N
Representative Jayme Davis	N
Representative LaurieBeth Hager	N
Representative Patrick Hatlestad	N
Representative Matt Heilman	Y
Representative Dawson Holle	Y
Representative Jim Jonas	N
Representative Lawrence R. Klemin	N
Representative Mike Motschenbacher	N
Representative Mitch Ostlie	N
Representative Nico Rios	Y
Representative Nathan Toman	Y
Representative Jonathan Warrey	N

Roll call vote: 4 Yes 10 No 0 Absent Failed

Rep. Ostlie moved a Do Not Pass;
Seconded by Rep. Davis

Representatives	Vote
Representative Donald W. Longmuir	Y
Representative Clayton Fegley	Y
Representative Jayme Davis	Y
Representative LaurieBeth Hager	Y
Representative Patrick Hatlestad	Y
Representative Matt Heilman	N
Representative Dawson Holle	N
Representative Jim Jonas	Y
Representative Lawrence R. Klemin	Y
Representative Mike Motschenbacher	Y
Representative Mitch Ostlie	Y
Representative Nico Rios	N
Representative Nathan Toman	N
Representative Jonathan Warrey	Y

Roll call vote: 10 Yes 4 No 0 Absent Motion carried.
Carrier: Rep. Longmuir

Meeting closed at 10:42 AM.

Delores Shimek, Committee Clerk

REPORT OF STANDING COMMITTEE

HCR 3012: Political Subdivisions Committee (Rep. Longmuir, Chairman) recommends **DO NOT PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HCR 3012 was placed on the Eleventh order on the calendar.

TESTIMONY

HCR 3012

TESTIMONY OF

MR. CHRISTOPHER MARTENS

NORTH DAKOTA NATIONAL GUARD

BEFORE THE

HOUSE POLITICAL SUBDIVISIONS COMMITTEE

10 FEBRUARY 2023

HCR 3012

Good morning Mr. Chairman and members of the committee, I am Chris Martens, an Attorney for the North Dakota National Guard. I am here today to raise concerns about the assertion in this resolution that the deployment of the National Guard over the years has been unconstitutional, and to share impacts to the North Dakota National Guard if Congress changed our laws in accordance with this resolution.

This resolution asserts that the only way for Congress to carry out the war powers granted by Article I of the Constitution is through a formal declaration of war. In 1800, the Supreme Court found that a formal declaration of war was not necessary for Congress to authorize military action. Instead the Court found that Congress has the power to declare war through a formal resolution, or authorize a more limited use of the military. This laid the foundation for how our Congress has authorized military force for over two centuries.

Since 1798, Congress has declared war in five conflicts. During that same period, Congress has authorized the use military force without a declaration of war eleven times. A declaration of war and a more limited authorization for military force are not unique from each other in terms of Congressional oversight. Both are introduced, debated, and passed by both chambers of Congress, and then signed by the President. The constitutional framework of checks and balances remains consistent for both.

The National Guard is a critical part of the joint force in both conflict and our non-combat efforts to strengthen alliances and deter potential adversaries. Members of your North Dakota National Guard currently advance the strategic initiatives of Africa Command through our participation in State Partnership Program in Togo, Ghana, and Benin. Members of your North Dakota Air National Guard performing the MQ-9 UAV mission currently take part in Indo-Pacific Command exercises and missions designed to advance strategic interests by demonstrating capabilities against China. Finally, members of your North Dakota National Guard have traveled to Romania, and taken part in a joint NATO exercise with the goal of strengthening our strategic partnerships in the European Command. Through participation in these missions and exercises, our National Guard members gain knowledge and experience that greatly advances the overall readiness of our formations. Soldiers and Airmen must be in a federalized active-duty status to perform these missions. If our Soldiers and Airmen can only perform these missions after a declaration of war, we stand to lose these missions, and the assets and resources allocated to the State to support them.

Our concern is that there are possible unintended consequences to our peace-time training and our on-going support to combatant commanders if this resolution was adopted by Congress.

Thank you for your time today and I will stand for any questions that you may have.