

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.