

S. HRG. 110-109

**“THE INSURRECTION ACT RIDER” AND STATE
CONTROL OF THE NATIONAL GUARD**

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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“THE INSURRECTION ACT RIDER” AND STATE CONTROL OF THE NATIONAL GUARD

TUESDAY, APRIL 24, 2007

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, Pursuant to notice, at 2:44 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feingold, and Grassley.

Also Present: Senator Bond.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good afternoon. I apologize for being late, and I thank Senator Grassley. I might say, when Governor Easley and I were chatting about something else, but, Governor, I think I can speak for all Vermonters. My heart goes out to the people of your State on the loss in the last few hours. That was a pretty horrific battle, and those are very brave soldiers and, as you know from the training they get, among the best.

There was a little noticed but very sweeping change in the law regarding the National Guard by the last Congress. Specifically, we are examining the recent changes to the Insurrection Act, which controls when the President can use components of the U.S. military for domestic law enforcement purposes. The Insurrection Act is one of the major exemptions to our longstanding statutes but also the distinctive American tradition not to involve the military in domestic law enforcement. We are lucky in this country. We have superb domestic law enforcement. We have superb military. And they are better if they are allowed to do their own jobs. Both the House and Senate Armed Services Committee slipped provisions into the Defense Authorization bill last year, apparently at the request of the administration, to make it easier for the President to invoke the Insurrection Act in cases well short of insurrection.

In addition, the President's authority to nationalize State units of the National Guard was increased. The State units of the National Guard are controlled by our Governors. Frankly, I have been pretty impressed with the job the Governors have done, both Republicans and Democrats. They are doing a good job with that. This law authorizes the President essentially strip control of the State Guard units from a State's Governor without consent. I understand that none of the Nation's Governors were consulted. The Nation's

adjutant generals, who command the State Guard units, were not consulted. And the local law enforcement community was not consulted. I know this Committee was not consulted even though we have jurisdiction over law enforcement matters. There was no debate on it. Even after we discovered this add-on and objected and Governors objected, it went through and it was signed into law.

Now, it is not just bad process. It is also bad policy. The Insurrection Act Rider subverts sound policies for dealing with emergency situations that keep our Governors and other locally elected officials in the loop when they have to deal with disasters. The changes increase the likelihood that the military will be inserted into domestic situations. One of the characteristics of our Nation is that we do not have the military patrol our communities. We have local law enforcement doing it.

I will put the rest of my statement in the record and note that the National Guard has served spectacularly when the Governors have asked them. I think about Katrina. The active military forces came in, and they did a superb job there. The same cannot be said of FEMA, but the military performed very, very well.

So let us talk about what we need to be doing to help the Army Guard, not ways to put them into things that are not needed and should not be done.

With that, as I said, I will put my full statement in the record.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Chairman LEAHY. Senator Grassley, did you wish to say something?

Senator GRASSLEY. I wanted to introduce a constituent of mine.

Chairman LEAHY. By golly, if there is a constituent of yours, I will yield to you for that purpose.

**STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR
FROM THE STATE OF IOWA**

Senator GRASSLEY. Thank you very much. Iowa's sheriffs are proud, Iowa is proud, and I am proud to have the President of the National Sheriffs' Association here today. Sheriff Ted Kamatchus, of Marshall County, Iowa, is a dedicated law enforcement professional. Sheriff Kamatchus is here today in his capacity as President of the National Sheriffs' Association, and his testimony is going to be from 30 years' experience in law enforcement.

I have known him for a long, long time because he has been a sheriff a long, long time and I have been a Senator a long, long time. And he is a person who has a great deal of candor and experience on issues that he has to consider, and he is going to present his experience on those issues here to us in the Senate. As both a sheriff in rural Iowa and President of the National Sheriffs' Association, he can attest to the front-line role that law enforcement plays across the country on issues large and small.

So on behalf of the Committee, I welcome you, Sheriff. We value your insight and look forward to hearing your comments on this very important topic. Thank you for making the trip out here, and thank you for your friendship with me.

Chairman LEAHY. Sheriff, you be sure and get a copy of that part of the transcript. You are not going to do any better than that.

[Laughter.]

Sheriff KAMATCHUS. Thank you very much.

Chairman LEAHY. Thank you.

Gentlemen, would you mind to stand and raise your right hand, please? Do you swear that the testimony you will give in this matter will be the whole truth, so help you God?

Governor EASLEY. I do.

General BLUM. I do.

General LOWENBERG. I do.

Sheriff KAMATCHUS. I do.

Chairman LEAHY. The first witness, of course, the Honorable Michael Easley, is the Governor of the State of North Carolina. Prior to being elected Governor, he served as a district attorney. Those of us who have served as district attorneys think that is a pretty darn good reason for being here. He was then Attorney General of the State of North Carolina from 1992 to 2000, and correct me if I am off on these numbers, Governor. He is now in his second term. He has demonstrated outstanding leadership among the Nation's Governors on National Guard issues. Along with Governor Sanford of South Carolina, he leads the National Governors Association Committee on Homeland Security and Guard Issues, and he has been a tireless champion of these issues, and he has taken time out of what I know is an extraordinary schedule to be here.

Governor, why don't you start.

STATEMENT OF HON. MICHAEL F. EASLEY, GOVERNOR, STATE OF NORTH CAROLINA, RALEIGH, NORTH CAROLINA

Governor EASLEY. Thank you, Senator. It is an honor to be here with you all. First thank you for your kind remarks about the soldiers in Fort Bragg, and I am pleased to know that people are paying attention. We are very proud of our military in North Carolina. As you know, we are home to an awful lot of military. But we are also very proud of the National Guard.

I appear here today as Governor of the State of North Carolina, but also as Chair of the National Governors Association on National Guard Issues. My co-Chair is Governor Sanford in South Carolina. He has submitted a letter for the Committee, and I am asking if that could be submitted for the record.

Chairman LEAHY. Governor, a letter signed by every single Governor will be put in the record, the letters you referred to: the National Governors Association, the National Lieutenant Governors Association, the National Conference of State Legislators, the Adjutants General Association of the United States, the Enlisted Association, the National Guard, The National Guard Association of the United States, the National Sheriffs' Association, plus appropriate editorials. They will all be part of the record.

Governor EASLEY. Thank you. I just want the record to show I could build a consensus when necessary.

I want to note that our National Guard has been absolutely fantastic since I have been in office in 2001. We have had over 10,000 deployed to Iraq and Afghanistan of our 11,500, and at the same time, we have had 3,800 deployed on domestic issues at home. So you can see that it is critical to the Governors to have the National Guard in domestic emergencies. We are responsible under those

circumstances, and it is critical that we have the Guard available to us.

I am skipping my prepared remarks and just giving you a brief summary. Some of the examples I would cite just from me in my State, in 2003 we had Hurricane Isabel come through. The National Guard, with the high-water clearance vehicles, secured 130 people who otherwise probably would have perished in a flood. We could not have gotten them without the Guard.

In 2004, Hurricane Frances, after it hit Florida, came into the mountains of North Carolina. The Guard, using helicopters, literally picked people out of the trees, off rooftops.

The ice storms of 2002, 2003, 2004, the National Guard went door to door to make certain that those people who were shut-ins got the heat they needed, the food, medication, transportation, power, whatever it was that they needed. And it is important that we have the Guard as part of the community and knew where to go on the local level.

But it is very important not only that we have the Guard, but that we have the certainty of knowing that they will be there for us when we have a domestic emergency.

Under section 1076 of the National Defense Authorization Act was changed last year. As you point out, no Governor was consulted, no debate, no hearing, nothing took place. We unanimously came together and opposed it, and that is very difficult. We have only been able to get two unanimous letters since I have been over the last 6-1/2 in the National Governors Association, both of which dealt with the National Guard.

What this bill does, the one that now we are seeking to have repealed, is it unnecessarily expands the President's authority to call up the National Guard in domestic situations. The President currently has the authority we believe that he needs and that the Constitution gives him under the Insurrection Act. That is something that has been used very rarely over the years, I think since World War II only nine or ten times, generally when the States were not doing it, such as civil rights issues, when the President had to call out the National Guard.

The Governors unanimously came together on this particular piece of legislation because it seriously undermines our ability to protect the people we serve, that we all serve, but in individual States, each Governor has responsibility to respond to any disaster, manmade or natural, in their State. And it is important to note that we plan year-round for all types of disasters, and those plans involve the National Guard. They involve emergency management, fire and rescue, local police, a number of agencies, but all depend on those team members of the Guard. And if we cannot be assured that the Guard is going to be there, then we cannot plan and we cannot coordinate, and then there is a confusion in the chain of command.

As the Senator knows, the Governors are commanders-in-chief of the National Guard during domestic events, and the President, when he calls up the Guard for Federal service, as he has done for Iraq and Afghanistan, then he is commander-in-chief. The problem is that under this bill we do not know when the President is going to call up the Guard because the latitude is so much broader now.

Some of the language that is used in the bill is very troubling, especially as it relates to public health. Let me just mention three areas that Governors really have problems with here.

It affects our ability to plan. You cannot plan without every member of the team. All of our plans for these events—by the time you see an event on television, that a hurricane is headed for the east or west coast, that it may hit North or South Carolina, we have been through those exercises so many times. We know by watching the weather and keeping up with all the information that comes through, we know what package to put together, what units to call up of the Guard to put with our local other responders. And that is how we respond. If you do not do the planning, then you never get to the response stage. And that is why it would be ill-advised for the President to call up the Guard at response time when they have not been involved in the planning stage.

So the second piece to that is response. We cannot respond without the National Guard. We would be missing a critical element, and the rest of the response effort would probably collapse as a result of that. Also, I think the final point on that is the more local the control, the better the response is going to be. We have certain areas in the State when a weather event is coming, I can pretty much tell you what areas will and will not be evacuated when asked to, and we can go in and get them and get them out. We have learned these things over time, and so have the members of the National Guard.

So a very important team, whether the disaster is a hurricane, a terrorist attack, or pandemic. Let me just mention one thing about a pandemic. We had Secretary Leavitt come and honestly tell us that in the event of a pandemic, do not look for Washington to come riding in, that you are going to have to handle this yourself.

Under 1076, one of the events that allows the President to take control of the Guard is a serious public health measure. If that were to happen in a pandemic, we would not be able to respond.

So let me conclude my remarks by saying this is a serious problem for the Governors. It is our responsibility to respond, plan, to be held accountable when there is an event, a domestic disaster, and we believe that working in partnership with the Federal Government is what we ought to be about. This should not be a tug-of-war between the Governors and the President. This should be an effort to try and work to build a better partnership between Homeland Security and the Governors.

Chairman LEAHY. And you also have the fact that if something is happening at home, people are going to look at your first. They are not going to look at Washington. They are going to look at you and see what your reaction was.

[The prepared statement of Governor Easley appears as a submission for the record.]

Chairman LEAHY. Senator Bond is the Co-Chair of the Guard Caucus, and he and I Chair that, and we try to get bipartisan support on these things. We have bipartisan opposition to this legislation.

Senator Bond, did you want to say anything before we go to General Blum?

**STATEMENT OF HON. CHRISTOPHER S. BOND, A U.S. SENATOR
FROM THE STATE OF MISSOURI**

Senator BOND. Mr. Chairman, if I might, I have just come from the Intelligence Committee, where I am, with Chairman Rockefeller, holding a hearing. And if you do not mind, I wanted to put in my two cents' worth, and I say that I speak also for Governor Rockefeller as for Governor Bond.

Governor, we know, as the Chairman does, how rare it is to have the NGA all on the same page, but this is of such overwhelming importance that I think it is extremely important. And I would only say that all the comments you said about having to be in on the planning process when you get called into action might apply to a broader bill that Chairman Leahy and I are trying to push to get the Guard a seat at the table with the Pentagon, which would be a heck of a good idea.

Mr. Chairman, the measure that was included in last year's congressional Defense Authorization Act I think was ill-conceived, unnecessary, and dumb. Even some of the members of the—

Chairman LEAHY. And that is giving it the benefit of the doubt.

Senator BOND. Well, even some of the members of the SASC who should have did not know about it. But this is an influential panel, and you know how it has changed the old law, and we now know that all 50 of our Nation's Governors, Adjutants General, and local law enforcement are opposed to it. Nobody knows where it came from. Allowing the President to invoke the Act and declare martial law where public order breaks down as a result of natural disaster, epidemic, terrorist attack, is very ambiguous and gives him broad authority potentially to usurp the role of the Governors, which is extremely important. Why on Earth would anyone want to do it? If, for example, during and after the aftermath of the hurricane the Guard failed to respond, that might be one thing. But everything we all know is that the Guard performed magnificently when called upon. They were there, and the Governors and Adjutants General responded. While Katrina was one if not the Nation's most devastating natural disasters, at no time did anyone question the Guard's response. The only real significant challenge was the short-fall in equipment.

Governor, we had an engineer battalion down there doing a fabulous job, and they asked us for a second one. We had them all trained and ready to go, but they had to drive down in pick-up trucks. They had no communication, no equipment, none of the equipment they needed. And that was not the fault of the Guard. They were ready to go. And the current law as it stands limits the Guard's flexibility to perform their duties. It lessens the Governor's control over units and diminishes the Guard's ability to protect communities.

I am very proud to join with Senator Leahy in cosponsoring S. 513, but we also need to enact this bill quickly, and I hope we can get our almost 80 members of the Senator National Guard Caucus to join with us.

Thank you, Mr. Chairman, and I apologize to the witnesses for interrupting. But I feel strongly about it, and a harsh letter will follow.

Chairman LEAHY. And you can see, Governor, Generals, and Sheriff, there is this strong feeling. It is sort of like an attitude of it is not broken, why do we want to fix this if something has worked well. I will trust the Governors, Republican and Democratic alike, I will trust them to have the first idea, and I will trust the men and women of our Guard, who are so well trained, to respond well.

I should have mentioned, Governor Easley, that I traveled down to Camp Lejeune a couple times when young Lance Corporal Mark Patrick Leahy was there. I try not to mention that my Marine son with General Blum and General Lowenberg of different—

Senator BOND. Don't blow my cover, either.

Chairman LEAHY. Yes, that is right. General Blum, of course, is the Chief of the National Guard Bureau. He is responsible for coordinating all the activities of the National Guard across the country. He is in actually one of the most unusual positions in the United States military, not only officially serving as a Federalized member of the active military, but also as the chairman of communication for our Nation's Governors and Adjutants General. General Blum is no stranger to Capitol Hill.

General, I will turn it over to you.

**STATEMENT OF LIEUTENANT GENERAL H. STEVEN BLUM,
UNITED STATES ARMY, CHIEF, NATIONAL GUARD BUREAU,
ALEXANDRIA, VIRGINIA**

General BLUM. Thank you, Mr. Chairman, Senator Bond, Senator Feingold, distinguished members of the Committee. Thanks for the opportunity to be here today.

Disaster response and the management of disaster response has traditionally rested within the discretion of our Nation's Governors, and it has been very, very successful because those first able to respond and lead that response have a comprehensive and complete knowledge of the environment that they are responding to and the troops that they are employing under them.

Even for a no-notice catastrophic event such as the World Trade Center attacks, it was very abundantly clear that an appropriate disaster response was well within the capability of the National Guard and the Governor and in that case the mayor of the city.

More recently, the unprecedented scale of Hurricane Katrina showed that local authorities' ability to respond could be exceeded, but the response capabilities available to the local and State authorities can be expanded, and the Governors of Mississippi and Louisiana used an option that was available to them called the Emergency Management Assistance Compact, EMAC for short, to provide an immediate assistance across a broad spectrum ranging from law enforcement to humanitarian relief, with great effect.

The EMAC model enabled the Governors of every State and Territory of this great Nation to deploy over 50,000 National Guard members with law enforcement authority and critical capabilities with efficiency and effectiveness to support the emergency response. It was, in fact, the largest, fastest domestic military response or mobilization of military assets in the history of our Nation, and it amassed all of the forces necessary. We deployed them to the right places under the command and control of the Gov-

errors in receipt of those forces from every State and Territory in our Nation.

As it existed at the time of the Hurricane Katrina disaster, the Insurrection Act permitted the President to call the militia or the National Guard into Federal service to suppress insurrections or to enforce the law, including when State authorities were unable or unwilling to secure the constitutional rights of their citizens, as Governor Easley talked about earlier. Rarely in the history of our Nation has the National Guard been Federalized under the provisions of the Insurrection Act. In fact, I can only identify ten occasions in the historical record of our Nation since World War II when the National Guard was Federalized under the provisions of the Insurrection Act, and as Governor Easley alluded to, that was largely done to enforce and protect the civil liberties or the Federal laws that guaranteed civil liberties in the States that were not affording those civil liberties or violating Federal law.

So when this authority is employed, it takes the control of the State's National Guard away from the Governor and places it in the command and control within the Federal Government.

I ask, sir, that my written statement be submitted for the record, and I look forward to answering your questions.

[The prepared statement of General Blum appears as a submission for the record.]

Chairman LEAHY. Thank you very much, General.

Our next witness is Major General Timothy Lowenberg, who is the Adjutant General of the State of Washington. He commands the fine men and women at the Washington National Guard. You are also, I understand, the State's emergency manager, a trained lawyer, an expert on homeland security issues. In 1999, General Lowenberg was the recipient of the Eagle Award. That is the highest honor awarded by the National Guard Bureau.

General, please go ahead.

**STATEMENT OF MAJOR GENERAL TIMOTHY LOWENBERG,
UNITED STATES AIR FORCE, ADJUTANT GENERAL, STATE OF
WASHINGTON, TACOMA, WASHINGTON**

General LOWENBERG. Thank you, Senator Leahy, Senator Feingold, distinguished members of the Committee. Thank you for the opportunity to testify today. I want to emphasize at the outset that I am testifying on behalf of Governor Chris Gregoire and the legislature of the State of Washington, as well as the Adjutants General Association of the United States. Although I am a U.S. Senate-confirmed General Officer of the Air Force, I appear before you today in State status at State expense as a State official, which means, if I can translate for you, that nothing I have said in my formal testimony or in this oral statement has been previewed, reviewed, or approved by anyone at the Department of Defense.

In a majority of the states and territories, including the State of Washington, the Adjutant General is responsible for managing all State emergency management functions in addition to command and control of the Army and Air National Guard forces. I am also responsible, as many of my colleagues are, for developing and executing our State Homeland Security Strategic Plan.

Adjutants General have extensive experience in the domestic use of military force. Our State, for example, has had a Presidential disaster declaration on average every year for the past 40 years, and the Governor's use and the Governor's control of the National Guard was particularly instrumental in helping restore civil order in Seattle during the World Trade Organization riots in November 1999, which was on my watch as well.

So I draw upon these experiences in telling you that passage of S. 513 is critical to restoring historic and appropriate State-Federal relationships and in enabling the States to carry out their responsibilities under the U.S. Constitution for maintaining civil order and protecting their citizens' lives and property.

In giving substantially expanded martial law powers to the President, last year's conference insertion of Section 1076 of the 2007 National Defense Authorization Act reversed more than a century of well-established and carefully balanced State-Federal and civil-military relationships. More than a century of policy and practice were changed without a single witness, without a single hearing, and without any public or private acknowledgment of proponency or authorship of the change.

I suggest to you very respectfully that when laws are changed for the better, there are many who claim some responsibility or measure of credit for their passage. But this is a provision which has no DNA, no fingerprints, no one claiming authorship, in fact, no one who will even acknowledge having reviewed or coordinated on the changes before or after they were added in conference.

Weaker measures in Section 511 of the House-passed bill were unanimously opposed by the Nation's Governors before the respective authorization bills went to conference. In fact, I have attached to my testimony several letters of opposition, including the one Governor Easley acknowledged that was signed by all 50 Governors. So this is not a partisan issue. It is a State-Federal issue of the highest order.

These conference amendments to the Insurrection Act give the President sweeping power to unilaterally take control of the Guard during a domestic incident, without any notice, consultation, or consent of the Governor. It even permits the President to take control of National Guard forces while they are in the midst of a Governor-directed response and recovery operation.

U.S. Northern Command has wasted little time in planning to use these new powers. They already have a final plan approved by Secretary Gates on March 15, 2007, which explicitly assumes the Guard "will likely be Federalized under Title 10" when the President unilaterally invokes the Act. The Governors and Adjutants General were given no notice of the development of these Federal plans, nor have we had any opportunity to present our concerns or to synchronize State plans approved by the Governors with NORTHCOM's plan.

To add insult to injury, NORTHCOM's plan requires that the National Guard Joint Forces Headquarters of each State and Territory actually develop the very plans under which the Federal Government would take control of our States' National Guard forces.

One key planning assumption at U.S. Northern Command is that the President will invoke his new martial law powers if he con-

cludes State or local authorities lack the will to maintain order. This highly subjective operational standard is one of several that have been developed without any notice, consultation, or collaboration with the Governors of the several States and Territories.

The Adjutants General Association of the U.S. joins with the Washington State Legislature, the National Governors Association, the National Lieutenant Governors Association, the National Conference of State Legislatures, the National Guard Association, the National Emergency Management Association, the International Association of Emergency Managers, and many, many other national associations in urging the members of this Committee, if you have not already done so, to cosponsor S. 513 and to work for its swift passage.

It is imperative that we have unity of effort at all levels—local, State, and Federal—when responding to domestic emergencies and disasters. Section 1076 of last year's Defense Authorization Act is a hastily conceived and ill-advised step backward. It openly invites disharmony, confusion, and the fracturing of what should be a united effort at the very time when the States and Territories need Federal assistance—not a Federal takeover—in responding to State emergencies.

Thank you for this opportunity to express the concerns of the State of Washington and the Adjutants General Association of the United States. I look forward to your questions.

[The prepared statement of General Lowenberg appears as a submission for the record.]

Chairman LEAHY. Thank you.

Senator Feingold has to go to the same Intelligence Committee meeting that Senator Bond has to go to. We are going to just hold for a moment on you, Sheriff.

Senator Feingold, I will yield to you.

**STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR
FROM THE STATE OF WISCONSIN**

Senator FEINGOLD. Thank you very much, Mr. Chairman. I do need to get to that meeting, but I did not want to go before thanking all the witnesses, and I especially want to thank Senator Leahy, the Chairman, for his efforts to ensure that the National Guard is properly resourced and that the Defense Department plans for its civil support mission, that the Governors are not cut out of the decisionmaking process when the Federal Government responds to natural and manmade disasters. And Senators Leahy and Bond both, I want to say, have shown tremendous leadership by introducing both the bill to restore the Insurrection Act, S. 513, and the National Guard Empowerment Act, S. 430. I am pleased to be a cosponsor of both bills. I am pleased to be one of the people that associate myself with them, using my role in the Budget Committee every year to try to advance the particular concerns of the National Guard.

I also come to this, as the Chairman does, because of our feelings about the Constitution, the traditional understandings that we have in this country of the difference between the standing military and the National Guard. These are important principles. They certainly should not be altered by a middle-of-the-night fast move.

I am particularly concerned about this because I look at what the National Guard has had to deal with in the last few years. I have always been proud of our National Guard, but I have got to tell you, what the National Guard in this country has been asked to do in the last few years is stunning. And I think of you, General Blum, and I think of you, General Lowenberg, I think of Adjutant General Wilkening in my State, I have never seen people respond with less complaint and more courage than I have seen in the National Guard in the last few years. It has been one of the best things I have seen in my 25 years as a legislator at the State and Federal level.

So my reaction to this, Mr. Chairman, is: What kind of thanks is this to an incredibly courageous response to a difficult time? So in the wake of Hurricane Katrina, the National Guard, the National Guard Bureau, the Adjutant Generals and volunteer reservists and members of the Armed Services all served honorably. They saved thousands of lives. Our Nation is indebted to them all. However, it is clear that much more needs to be done to ensure proper coordinate between local, State, and Federal officials and to ensure that the Defense Department properly plans and resources its civil support mission.

Unfortunately, as has been pointed out, last year the Congress made rush changes to the Insurrection Act that would transfer control of the National Guard from the Governors to the President in the wake of natural and manmade disasters. These changes would undermine coordination by cutting the officials with the most knowledge of local conditions—the Governors—out of the chain of command. These changes also failed to address the real military assistance issue that surfaced in the wake of Hurricane Katrina—the need for the Defense Department to properly plan for and resource its civil support mission.

The best course at this point is to pass S. 513 to restore the Insurrection Act and then take a closer and more careful look at these issues, including the National Guard Empowerment Act.

Thank you very much, Mr. Chairman, for letting me speak at this time.

Chairman LEAHY. Thank you very much. I know of your concern, Senator, and I appreciate your taking the time from the other matter to be here.

Sheriff, I could not even begin to give you the introduction that Senator Grassley did, but I know just being President of the National Sheriffs' Association gives you instant credibility. Go ahead, sir.

STATEMENT OF TED G. KAMATCHUS, SHERIFF, MARSHALL COUNTY, IOWA, PRESIDENT, NATIONAL SHERIFFS' ASSOCIATION, MARSHALLTOWN, IOWA

Sheriff KAMATCHUS. Good afternoon, Mr. Chairman and members of the Committee. I want to thank you for the opportunity to come here today. My name is Sheriff Ted Kamatchus. I am the sheriff of Marshall County, Iowa. I am the President of the National Sheriffs' Association. The National Sheriffs' Association represents over 3,000 sheriffs across the country and 22,000 members, professional

law enforcement members. We span the Nation from border to border and coast to coast.

I am pleased to have the opportunity to appear before you today to express my concerns, and what I know to be the concerns of sheriffs across the country, concerns about Section 1076 of the National Defense Authorization Act for fiscal year 2007. The changes represent an unprecedented and unnecessary expansion of Presidential power to Federalize the National Guard for domestic law enforcement purposes during emergencies and consequently undermine the ability of sheriffs to best serve and protect their constituents.

The Office of the Sheriff plays a distinctive role in the Nation's criminal justice and homeland security system and reflects a uniquely American tradition of a law enforcement leader who is elected. Over 99 percent of the Nation's sheriffs are elected and generally serve as the highest law enforcement officer in their respective counties in this country. I speak for all sheriffs when I say that we maintain a vested interest in protecting the well-being of our constituents who have entrusted us with such a responsibility. Being elected to such a position in the community offers sheriffs the ability to develop and maintain close relationships. Thus, given the close relationship of the constituents we serve, sheriffs are able to best predict the potential response behaviors and needs of a local community in a time of disaster or emergency.

Furthermore, as the chief law enforcement officer of his or her county, the sheriff provides protection, safety, and security at the local level. The sheriff knows exactly what resources are available to a community and where such resources can be located at a time of need.

I know from experience the first responders at the local level work together day in and day out to develop the best method of addressing both local and national emergencies. Each morning, I stop by various coffee shops in my community to interact with the people of Marshall County, Iowa. These are the same voters who elected me to the office five times. I am in my 20th year as sheriff. I respect their input and listen to their concerns, and we are all friends, neighbors, and citizens together in Marshall County, Iowa. The closeness that they give me blesses me with a unique understanding of their needs, their day-to-day needs that provides me with the information I require in order to serve them good as a sheriff in Marshall County, Iowa.

Citizens across this country have a real concern when they begin to consider that the military could enter their communities without invitation. They know firsthand that the Federal Government cannot provide them with the quality, caring, and necessary service they desire. They hold a deep inner fear that 1 day someone may utilize the power of the military for the wrong purpose, and in the majority of the States they select their sheriff to ensure that their homes remain safe, their communities free from crime.

This past December, agents from ICE made a raid in a meatpacking plant in my community. I was in Des Moines, Iowa, at a training session, and as I was watching the TV station across the bond scrolled the fact that there was a raid on a meatpacking plant in Marshalltown, Iowa. That was the first I had heard about

it, and I called my dispatch immediately. I was told that about 10 minutes prior to the raid, individuals of Immigration and Customs Enforcement had raided this meatpacking plant. I want you to know up front that I do not quarrel with them doing their job. They were enforcing immigration laws that I do not disagree with. But the bottom line was myself, the chief of police, our local law enforcement had no idea of this happening.

I head up a drug task force in the four-county area, and my agents work undercover in those type of facilities, and the first thing I thought about was: Did I have somebody in there undercover who would be armed? I shudder when I think about what might have happened had those agents run across one of my people, undercover, armed. It could have been a deadly encounter that I have no desire to think about.

I am happy that they conducted the raid, like I said, but it is important that you understand that it is important also to have communication. The old system of request and response that existed in the past between the National Guard and other Federal authorities, the responsibility to request additional aid from those Federal authorities rests on the shoulders of those local and State officials who are placed in office by the citizens. If those same local officials fail in reaching out to obtain the assistance necessary to accomplish their tasks, it falls upon us—us—by the citizens removing us from office by not voting us back in or asking us to step down.

The National Guard this past winter in the State of Iowa came to our aid when we requested them when a sheet of ice stretched across the entire State and winds of 50 miles an hour snapped off poles all over the countryside. My county, 85 percent of my county was without power for almost 10 days. The National Guard was there to assist me, work with me and my disaster people. They went door to door across my county, and they went ahead to make sure that the citizens of Marshall County were safe, but they did it at our request of the Governor, deployed by the Governor.

Given the significance of the sheriff in the community, it is paramount that the sheriff and other local first responders are not stripped of their ability and authority to serve their constituency in a time of need. To provide a blanket authority to Federal agencies and individuals to conduct domestic law enforcement functions, as the new language of the Insurrection Act does allow, jeopardizes the likelihood of a timely response and effective assistance to our citizens in a time of need.

Mr. Chairman, as President of the National Sheriffs' Association, I represent the sheriffs of this country, and my interest is for the country as a whole, border to border and coast to coast. I cannot stress enough that the significance of working relationships among all local first responders, clear and understood chains of command, and pre-existing plans of action must not be overlooked when considering how to best prepare our Nation's response to unforeseeable, disastrous events. The changes made to the Insurrection Act by Congress last year will undoubtedly result in a confusion in the chain of command and inefficient and ineffective functioning of first responders where the Act is invoked. Such a result would inhibit the ability of sheriffs and other first responders to carry out their duties and protect public safety.

These possibilities represent an unwarranted diminution of State and local power as Governors and local law enforcement officials will lose their command structure and capabilities during times when the Act is invoked. Consequently, valuable resources may go unrecognized, unutilized in situations where Federal officials attempt to develop a response strategy without full or accurate knowledge of the community's resources and the capabilities we can allow.

I strongly believe that before such influential changes were made to the Insurrection Act, key officials, Governors, sheriffs, and other stakeholders should have been consulted. I speak for the sheriffs when I urge that Congress support the legislation that repeals Section 1076 of the National Defense Authorization Act.

I want to thank you, sir, very much for the opportunity. I want to let you know that we are fully behind this particular bill and the sheriffs across this country sit with the gentlemen to my right and their organizations in support.

[The prepared statement of Sheriff Kamatchus appears as a submission for the record.]

Chairman LEAHY. Thank you very much, and that is support well worth having.

Governor, I want to just make sure how all this stuff came about in the first place, why we are here. Can you tell us whether any of the Governors across the country were consulted by anyone in the administration, the Department of Defense, or within the Congress about these changes to the law?

Governor EASLEY. To my knowledge, Senator, none of us were consulted. We found out about it after it was put in the bill. My recollection is it was a little bit stronger in the earliest language and then was changed a little bit to make it not quite so egregious, but still the Governors oppose it. But, to my knowledge, no one at least admits to having been consulted in the States or the Territories—I should mention there are three or four Territories that those Governors—

Chairman LEAHY. Well, when you found out, what did you folks do?

Governor EASLEY. Well, we started calling Washington right away, writing our Senators and our House Members, and trying to make sure they understood the implications of this, calling our staffs here in Washington.

Chairman LEAHY. What kind of response did you get?

Governor EASLEY. Not many people knew about it, and we found very few of the Members of Congress were aware of it, and they were not particularly concerned about it. The bill had moved on pretty rapidly, and I think by the time we found out and we contacted them, it was more of a fait accompli, this train is on the track and it is probably not going to be stopped, was pretty much what we got.

Chairman LEAHY. What about you, General Blum? Did anybody in the White House or Capitol Hill or Department of Defense contact you last year about the possibility of changing the Insurrection Act?

General BLUM. No, sir.

Chairman LEAHY. Do you know who originally -it is awfully hard sometimes with some of these things to find out where the parentage is. It is hard to do a DNA test to find out. Do you know who originally requested the changes to the law?

General BLUM. No, sir. I have had nobody step forward and say that they proposed this or were behind it. No, sir.

Chairman LEAHY. Do you know whether the idea came exclusively from either the Congress or the executive branch?

General BLUM. Sir, I have no idea where the idea came from.

Chairman LEAHY. General Lowenberg, let me ask you, were you or any of the Adjutants General of the U.S. consulted about these Insurrection Act changes?

General LOWENBERG. We have not been consulted before, during the conference, or after with regard to these changes. And I would also add, Senator Leahy, that I chaired the National Governors' Homeland Security Advisors Council. None of my colleagues, many of whom are not Adjutants General, were consulted either.

Chairman LEAHY. And, Sheriff, what about you and other local law enforcement officials? Were any of you consulted?

Sheriff KAMATCHUS. No, sir. When we first found out about it, we checked with staff, and we tried to do a background on it as best we could, and we were unable to find out if any other sheriff or any other local law enforcement in the country had been consulted whatsoever.

Chairman LEAHY. You will not be surprised to know that I have asked the same questions of the Governor or Adjutant General or law enforcement in my State and I get precisely the same response. You know, Governor, when it comes right down to it, the old idea of "the buck stops here," who is ultimately responsible for the security and safety of the people in your State?

Governor EASLEY. Obviously, the Governors are. The Department of Emergency Management comes under each Governor in one form or another. We all have our Secretaries of Homeland Security in one form or another. Ours is Crime Control and Public Safety. But when a disaster is imminent or one occurs, some event occurs, we are expected to have planned it out how to respond and to respond appropriately. And I think the people see it as our responsibility, and I think if you search the statutes, Federal and State, you would find that it is primarily the Governor's responsibility.

Chairman LEAHY. If, God forbid, you had an emergency in your State tomorrow that required you to call on your Adjutant General to respond based on the planning you have done, do you have any worry that he would respond and respond the way you would expect him to?

Governor EASLEY. The National Guard always responds, and responds admirably every time. My only concern would be if there was some Federal intervention by the President calling up the National Guard under this power that we are talking about. If that was taken away from me as Governor, then obviously they could only do what they were allowed to do by the President.

So that is the only intervention I am aware of that would cause me any pause at all.

Chairman LEAHY. Does that worry you, if this power is in there, that Presidents might find the ability to just totally ignore the Governor if it is somebody they wanted to ignore?

Governor EASLEY. Well, it certainly bothers me with hurricane season coming up, knowing that the President could come in, take the Guard away. The bill, as I read it, does not require the President to consult with the Governor or even notify the Governor that he has taken over the Guard or called the Guard up, asserted his authority. So, I mean, there is that uncertainty there. It is kind of like if you are coach of a basketball team, they give you five players, and they say, "Now, this one may come, may not come, but you need to plan to coach the game." That makes it hard for the team to be cohesive, and not knowing whether you are going to have all of the players there is a problem.

The way everything is structured, emergency management and law enforcement, once the Governor declares an emergency, first responders, fire and rescue, they all work together under a central authority in the State, as does the National Guard. So they are all on the same team and working together.

If you interject Federal authority, the Presidential authority into that, then there is all kinds of confusion with command, control, coordination, communication. That results in loss of time responding. Time results in loss of life and property. That is our biggest concern.

Chairman LEAHY. Thank you.

General Blum, were these changes actually necessary for the National Guard to respond effectively in either natural or manmade disasters in the United States? Something the Guard has been doing all my lifetime.

General BLUM. Sir, I can only tell you what I know to be true, and under the law as it existed before the National Defense Authorization Act of 2007, the National Guard was able to respond effectively and efficiently to every natural disaster that has happened, and there were hundreds of them every single year since our Nation existed and since the National Guard has existed. In that long ordinary record of success, we have only been Federalized ten times, and as I said earlier, that was done under the provisions of the Insurrection Act to largely enforce the Federal law that would guarantee civil liberties to our citizens, and that was well understood.

The Governors of this Nation have never been reluctant to seek and receive Federal assistance beyond what their local and State capabilities and their EMAC capabilities were able to provide. So we have seen, before the enactment of this law, we have seen the responses to Katrina, Rita, Wilma, 9/11, the Southwest border mission, several national special security events, and literally tens of thousands of military responses to civil authorities. Today, for example, there are 17 State Governors that have called out their National Guard today. There are 11,307 citizen soldiers acting on behalf of the citizens of 17 States that are either saving lives or reducing suffering and restoring order or normalcy to events that are driven basically by weather patterns.

Chairman LEAHY. Well, let me ask you a little bit about that. You mentioned Katrina. I am not only referring to FEMA now. I

am referring to the military response made after Katrina, helping the civilian authorities. Would that response have really been any different if the President already had this new power? Did you need these new powers to be able to respond to help the people after Katrina?

General BLUM. No, sir. The only thing I needed was more equipment.

Chairman LEAHY. Also, in some reference to what you were saying, the President had—if it was necessary to—well, the President had the power to call up the military during Katrina if he wanted, didn't he?

General BLUM. Yes, sir, he did, and he actually did do that because in his judgment—and I share that—he thought it was a prudent thing to add additional capability into the region in case something unforeseen that we did not see on the horizon developed, and he just wanted to make sure that he had basically some insurance of capability above and beyond what was necessary.

Chairman LEAHY. But he did not need this change in the law to do that?

General BLUM. No, sir, he did not.

Chairman LEAHY. General Lowenberg, some of the people we have talked to say, well, these changes are simply a clarification in the law, we did not really -you know, they are not significant. How would you respond to that?

General LOWENBERG. For those who embrace the illusion that there is no change, I would say passage of S. 513 will have no consequence for them. But as attorneys—

Chairman LEAHY. I wish I could borrow you on the floor for the debate.

[Laughter.]

General LOWENBERG. As attorneys, we know that changes in statutes do have meaning. This also included a change to the title of the Insurrection Act from “insurrection” to “enforcement of the laws to restore public order.” I would suggest to you that in the legal context, the distinction between responding to a rebellion or insurrection or to something that is a restoration of public order are events of considerably different magnitude. And so from a legal context, the changes do have significance, tremendous significance, and I would suggest that that was not unintended.

And, Mr. Chairman, if I may, also, previous laws amply provided for both the use of Federal and State military force in response to Hurricane Katrina. I think that amply demonstrates that there was no need to change the law. But if this law had been in effect in 2005, it could have enabled the President, with really no check and balance, to take Federal control over the National Guard forces, over 50,000 of them from every State and Territory, who were then operating in the Gulf Coast States in an ongoing recovery operation under the command and control of the Governor of each of those supported States. That is a significant change. The President could have done that without any notice to the Governor of any one of the supported States. It would have prevented the Governors of the supporting States, which is all of the Nation's Governors, from having the authority to withdraw their forces and

bring them home in the event of an unanticipated emergency at home. And it would have significantly complicated the response.

When I provided forces to the Governors of Mississippi and Louisiana, for example, under the Emergency Management Assistance Compact, they were under the operational control of the Adjutant General and the Governor of the supported States. This law would fundamentally change those Federal- State relationships.

Chairman LEAHY. And, Sheriff, I was interested in your discussion of the raid. I spent 8 years in law enforcement, and under our provisions, the law at that time, basically the law enforcement in our county, which was about a quarter of the population, when they had to coordinate activities, they coordinated through my office. So much so that I can remember at 3 o'clock in the morning having a command center set up in my living room on an undercover operation. We did not want any leaks, and the people operating and doing it were operating there, with everybody kind of whispering so we would not wake up the children upstairs. But we had an ability to coordinate.

Conversely, these kinds of operations, significant raids and things of that nature, would not have gone on without me or one of my deputies knowing about it.

Do you see under this law the ability of outside military commanders—I am not concerned about the Guard in your State, in Iowa. I assume that if they have a major operation, rescue, disaster, whatever, in your area, they coordinate with you. Is that correct?

Sheriff KAMATCHUS. Yes, sir; very well.

Chairman LEAHY. And do you have a concern under this that you could suddenly ask, "Who are these people and why are they here?" I am not trying to put words in your mouth, although it appears that way. I was kind of struck by what you had to say.

Sheriff KAMATCHUS. Well, over this past 10 months, I have had a chance to travel across this country, not just in Iowa, but I heard it in Iowa also. People are concerned about those types of things. It is not necessarily with this President, but any President who would have this type of authority, there is the potential or the possibility under this new law that those type of things could rise up. And I think those things need to be answered. I think the citizens deserve the answer as to why this was done in the 11th hour, if you will. Why weren't we—I am a full-line sheriff. The majority of sheriffs in this country, we serve the correctional, civil, and criminal enforcement. Why weren't we and chiefs of police and local government all consulted in this?

That is the big problem I have. We have a great working relationship overwhelmingly with the Federal Government and also with the National Guard currently. My office works with them virtually daily in some cases. But when I see the type of situation that could have happened, like what happened with ICE, it makes me pause for a second and think how easily could that happen with the military and how much worse could that be.

Chairman LEAHY. I worry about these things. I do not pretend that my experience is the end-all, be-all, but I worry about that. And it seems in my State things work pretty well. We have a Governor, we have the head of the Department of Public Safety. And

so nobody would think there is anything political here, they are different parties than I am. In a disaster, I would certainly trust them fully to work very closely with our Adjutant General, as they have. And I suspect the scale changes, Governor, when we get down in your area, but I would also assume that you have coordination with the States in your area. I have never known a hurricane that follows a geographical border of a State carefully, but you must have coordination, do you not, in your State with adjoining States and also your Adjutants General?

Governor EASLEY. We do. We have coordination. First of all, things are broken up in regions, and I might note that Mississippi, I think, and Alabama were in a different region than Louisiana during Katrina and Rita. But we also have the Emergency Management Assistance Compact, "EMAC" it is referred to. What that does is it allows all of the States. We take turns being the coordinating State each year. It lets all of the States or any one of them call on all others for assistance they might need.

So let's assume that Vermont gets hit with some particular event that causes you to need additional resources. Then the Compact would come together, listen to your Governor and your Secretary of Emergency Management, find out what you need. If you need additional Guard troops, they will get the Guard troops, and if you need additional power, whether it is engineering, medical transportation, aviation, public health, whatever it is you need, then the States come together and assist each other.

So there is absolutely no problem with the coordination. That is why that is there. And I want to point out, that is practiced and exercised every day, every week. We go through these exercises, tabletop exercises, these "what if things went wrong." We just finished one not long ago dealing with a foreign animal disease that might enter a State and how you deal with it and how you contain it. These are things that we all work on together.

Chairman LEAHY. A few years ago, we had this extraordinary ice storm throughout the Northeast, and a lot of our power comes down from the province of Quebec. The ice took down miles and miles and miles of high-power lines in Quebec, just collapsed them, which, of course, has a ripple effect, and blackened part of our State, just without power. In an agricultural area where, among other things, they have a lot of dairy farms, and, you know, you cannot tell, "We will come and milk you in a few days." The Guard came in immediately, and others. But when you were talking about other States coming in, we had all the way down to Virginia, we had people coming up to help, and there was a wonderful ad afterward showing Virginia Power Company, and they were resetting the lines to this farmer's home, and the kids had put up a display that had a sled out there with Santa Claus in it. And the tag line was, "Yes, Santa Claus, there is a Virginia."

[Laughter.]

Chairman LEAHY. But the fact is we expected it, and they came. General Blum knows our situation there well. He knows in a small area in New England and all, the New England States respond immediately to each other. We respond to upstate New York.

Again, I mention this because it is not a geographical line, but it is not a question of whether the Federal Government has to step

in to make that known. The Governors work it out pretty well, do they not?

Governor EASLEY. They do, and I think it is important to note that the Federal Government does not have the resources to do but so much. If you look at 9/11, the response was the New York City Fire Department. Those are the people who have to respond to these types of events. And when we have them across the country, in one or two or three or four States, they do not have the resources on the Federal level to come in and handle one State, much less three or four or five.

That is the point I made earlier about pandemic. Mike Leavitt, who is a former Governor, now Secretary of the Department of Health and Human Services, has been to every State and made the point very clear to us that the States are in charge, you are responsible, you are the ones that are going to be held accountable, and you better set up your program. Now, we will help you. We will give you logistical advice and that sort of thing. But you are going to have to respond yourselves.

That is why it is particularly disturbing to see that language “of serious public health concern” in 1076, because that sends a signal to us that if we have a pandemic or a serious public health issue in a State, that might be the time that the President would nationalize the National Guard at the very time that we need them the most.

Chairman LEAHY. I understand that. In fact, Senator Bond, who was here earlier, he and I put in a supplemental bill, our amendment was to add \$1 billion for new equipment for the Guard. It does not begin to cover all the need they had, and there is controversy over the issue of Iraq, of course. But I found no controversy from either party, across the political spectrum, on that money.

Well, gentlemen, I appreciate your being here, and I again apologize for the delay. This has been extremely helpful. You will get copies of the transcript, and when you get them, if you think there is something that you wish you had added, we actually keep the record open so you can.

Thank you.

[Whereupon, at 3:50 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

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STATEMENT BY

LIEUTENANT GENERAL H STEVEN BLUM
CHIEF, NATIONAL GUARD BUREAU

BEFORE THE

SENATE JUDICIARY COMMITTEE

FIRST SESSION, 110TH CONGRESS

ON

READINESS OF THE ARMY AND AIR NATIONAL GUARD

April 24, 2007

NOT FOR PUBLIC DISSEMINATION
UNTIL RELEASED BY
THE COMMITTEE ON APPROPRIATIONS

UNCLASSIFIED

**STATEMENT BY
LIEUTENANT GENERAL H STEVEN BLUM
CHIEF, NATIONAL GUARD BUREAU**

Thank you for the opportunity to appear before you today. Throughout the long history of this nation, disaster response management has traditionally rested within the purview and prerogative of State governors. Thus, when a military response to a disaster is required, a Governor is able to employ his or her National Guard in a State-funded, State Active Duty status. Depending upon the circumstances, the Federal government may reimburse a State under the Stafford Act or other authorities. This concept of operations has been proven to be highly successful on myriad occasions for one simple reason: those first to respond and lead that response have the most complete knowledge of the environs and the troops employed in them, as well as the most at stake in the outcome – they are responding to the needs of their families, friends, and communities. Indeed, even for events as great as the destruction of the World Trade Center, it is clear that a professional and competent disaster response is well within the capability of the National Guard of the several states.

More recently, Hurricane Katrina wrought death and destruction on an unprecedented scale, and quickly exceeded the response capabilities immediately available to local and state authorities. The States of Mississippi and Louisiana required immediate assistance across a broad spectrum, ranging from law enforcement assets to materiel and provisions. Mississippi and Louisiana were able to obtain this assistance from other States under the Emergency Management Assistance Compact (EMAC).

The EMAC model enabled the Governors of 51 States and Territories to deploy nearly 50,000 National Guard members with law enforcement authority, vital supplies, and critical equipment to efficiently and effectively support the emergency response needs of Governors Barbour and Blanco. Those National Guard forces from 54 States and Territories in the first critical days of the disaster rescued more than 17,000 citizens in Mississippi and Louisiana from life-threatening circumstances and transported more than 70,000 citizens to shelter outside the devastated region. They were later joined on the ground by Active Component troops.

EMAC was the vehicle by which the Nation's Governors quickly and decisively initiated the largest and fastest military mobilization in the history of hundreds of thousands of National Guard responses to natural disasters. It was an historic case of massing the necessary forces with the right capabilities and deploying them to the right places under the control of the receiving Governors to save American lives on a scale larger than any other in the history of the Nation.

Shortly after the relief efforts got underway, I sought and obtained from the Secretary of Defense the authority to place the on-scene National Guard troops on orders under 32 USC 502(f). Doing so ensured commonality of entitlements, pay, liability coverage and other benefits while maintaining gubernatorial command and control of all National Guard forces from the respective state as well as those National Guard forces deployed to their states from throughout the Nation.

As it existed at the time of the Hurricane Katrina disaster, the Insurrection Act permitted the President to call the militia into Federal service to suppress insurrections and to enforce the law, including when State authorities were unable or unwilling to secure the Constitutional rights of their citizens. Rarely in U.S. history has this authority been employed. In fact, the National Guard has been federalized under the provisions of the Insurrection Act only ten (10) times since World War II as follows:

1957-1958 - Little Rock, Arkansas (Desegregation of Central High School)

24 September 1957 to 29 May 1958; authorized by Executive Order (EO) 10730 of 23 September 1957

9,873 total called from Arkansas Army National Guard (ARNG) and Air National Guard (ANG) – 8,973 released from active duty 10 November 1957, the remaining 900 retained on Active Duty until 29 May 1958

Governor Orval Faubus of Arkansas had initially ordered his National Guard to surround Central High School to prevent black enrollments, claiming he did this to protect citizens and property from riots should they be allowed to enroll. Later, after meeting with President Eisenhower, Faubus withdrew the Guardsmen and, when black students enrolled, rioting broke out which Faubus failed to stop. At the request of the mayor of Little Rock and an Arkansas congressman, President Eisenhower sent federal assistance in the form of U.S. Marshals, then placed the Arkansas National Guard under federal control and deployed 1,000 paratroopers from the 101st Airborne Division to assist in maintaining order.

1962 – Oxford, Mississippi

30 September 1962 – 23 October 1963; authorized by EO 11053 of 30 September 1962
10,927 total Mississippi Guard called up (9,894 ARNG – 122 units; 1,033 ANG – 4 units)

The University of Mississippi in Oxford refused to enroll James Meredith despite a court order to do so. President Kennedy told the nation he “federalized the Mississippi National Guard as the most appropriate instrument, should any be needed, to preserve law and order while U.S. Marshals carried out the orders of the court ...”

1963 – Tuscaloosa, Alabama

11 June - 11 July 1963; authorized by EO 11111 of 11 June 1963

16,463 AL Guard called (14,435 ARNG – 154 units; 2,028 ANG – 17 units)

After Governor George Wallace stood in the doorway of the University of Alabama at Tuscaloosa to prevent integration, President Kennedy federalized the Alabama National Guard. Wallace left the university grounds after being informed by Major General Henry Graham, Commanding General of the 31st Infantry Division, “Governor Wallace, it is my

sad duty to inform you that the National Guard has been federalized. Please stand aside so that the order of the court can be accomplished."

1963 – Integration of Public Schools, Alabama

10-14 September 1963; authorized by EO 11118 of 10 September 1963

All of the Alabama National Guard called to active duty but held on standby in armories for these five days. Incident precipitated by the integration of Tuskegee High School in Huntsville, Alabama.

1965 – Selma to Montgomery Civil Rights March, Alabama

20-29 March 1965; authorized by EO 11207 of 20 March 1965

Total of 4,000 Alabama ARNG and ANG federalized.

On 7 March 1965, Alabama State Troopers and deputies beat civil rights marchers in the outskirts of Selma as they were beginning a peaceful march from Selma to Montgomery. National outrage at the televised images led to President Johnson's federalization of the Alabama National Guard to protect the marchers when they left Selma for Montgomery a second time on 21 March.

1967 – Detroit Riots

23 July - 2 August 1967; authorized by EO 11364 of 24 July 1967

10,253 Michigan ARNG federally mobilized.

1968 – King Assassination Riots

5-16 April 1968; authorized by EO 11403 of 5 April 1968 (1,854 DC National Guard)

7-11 April 1968; authorized by EO 11404 of 7 April 1968 (7,174 Illinois National Guard in Chicago)

7-12 April 1968; authorized by EO 11405 of 7 April 1968 (5,783 Maryland National Guard in Baltimore).

Total 14,811 Guardsmen federalized in two states and the District of Columbia.

1970 - New York City Postal Strike

17-25 March 1970; authorized by EO 11519 of 23 March 1970

28,100 total Active and Reserve (26,273 Reserve, which included 10,845 ARNG and 1,876 ANG)

More than 1,000 troops delivered mail in New York City's financial district; the remainder sorted mail and kept strikers from interfering with delivery.

1989 – Virgin Islands (Hurricane Hugo)

Initially, beginning on 16 September 1989, Governor Alexander Farrelly called up troops under a Territorial mobilization

On 20 September 1989 via EO 12690, President Bush invoked the Insurrection Act to federalize the National Guard to impose order following violence and looting in the wake of Hurricane Hugo.

Virgin Islands reported 954 ARNG and 29 ANG personnel mobilized for the year.

1992 – Los Angeles (Rodney King) Riots

At the request of Governor Pete Wilson, 11,398 California Guardsmen mobilized under state active duty call up.

After two days, President Bush invoked the Insurrection Act and called the National Guard into federal service via EO 12804 of 1 May 1992. Virtually the entire 40th Infantry Division was mobilized.

As evidenced above, U.S. Presidents invoked the Insurrection Act when a Governor requested such a decree or when State authorities were clearly unable or unwilling to secure the Constitutional rights of their citizens. When this authority is employed it takes control of a state's National Guard from the Governor and places command and control within the Federal government. This requires the federalized National Guard forces to perform missions assigned by the federal government, where and when specified, which may not be consistent with a Governor's direction that these forces conduct lifesaving, law enforcement or other critical emergency functions in support of the State emergency management agencies and incident commanders.

Statement
United States Senate Committee on the Judiciary
"The Insurrection Act Rider" and State Control of the National Guard
April 24, 2007

The Honorable Kit Bond
United States Senator , Missouri

Statement

Chairman Leahy, thank you very much for holding this important hearing today to discuss an ill conceived, unnecessary and downright dumb provision included in last Congress's Defense Authorization act.

Thank you to the distinguished panel for appearing before the committee today as well.

As all of you know very well, the Insurrection Act governs when the President can declare martial law.

When the Act is invoked, the military, including the National Guard, can carry out law enforcement functions without the consent of a Governor.

Under the old law, the President could invoke the Insurrection Act during violent and extraordinary situations that deprive a citizen of his or her rights.

But the provision we are examining here today instead makes it easier for the President to invoke the Insurrection Act and, in turn, to declare martial law.

ALL 50 of our nation's governors, their adjutants generals, and local law enforcement – all most ably represented here today – do not even know where this provision came from or why it even came about!

In fact, as is often the case when policies are made impacting the National Guard, they were not even consulted.

Under the provision, the President can invoke the act and declare martial law in cases where public order breaks down as a result of a natural disaster, epidemic, terrorist attack, or—very ambiguously—“other conditions.”

This change creates triggers that make it virtually automatic that the Act will be invoked during such emergencies.

And why on Earth would anyone want to do this?

I would understand if, for example, during and in the aftermath of Hurricane Katrina the Guard failed to respond..

But as we all know, that certainly was not the case.

While Katrina was one of if not the nation's most devastating natural disasters in which many questioned the federal, state and local government's response, at no time did anyone question the

Guard's response.

Their only real significant challenge was a shortfall in equipment.

And this provision is certainly not going to address that perilous problem.

Instead, it limits the Guard's flexibility to perform their unique support to civil authorities mission – a mission that allows them to integrate seamlessly with local, state and federal law enforcement and first responders.

As a former Governor who has called upon the National Guard in crisis, I called on the Guard numerous times and share our current Governors' and Adjutant Generals' concerns and opposition to these provisions..

These provisions reduce our nation's governors' control over their Guard units and provide the President with unnecessary and unprecedented power.

Lessening the governors' control over their National Guard units would diminish the Guard's ability to protect our communities.

It would prohibit the Guard from taking full advantage of the ties and relationships its citizen soldiers have with local first responders and authorities.

These established relationships and local ties facilitate effective responses.

If this Congress wants to improve our nation's ability to respond to future terrorist attacks or natural disasters I suggest it should enable, not restrict, the Guard .

We should be supporting measures like the National Guard Empowerment Act and making sure the Guard has the equipment it needs so they can unleash the full spectrum of response capability that they can provide.

I am proud to be cosponsoring S 513 with Sen. Leahy that will repeal this harmful provision.

And Mr. Chairman, I thank you again for holding this hearing..

We need to shed some much needed light on this provision that has the potential to be harmful to our nation's ability to respond to domestic disasters.

STATEMENT OF

GOVERNOR MICHAEL F. EASLEY
STATE OF NORTH CAROLINA

Before the

Senate Judiciary Committee

On

THE INSURRECTION ACT RIDER'
AND STATE CONTROL OF THE NATIONAL GUARD

Tuesday, April 24, 2007

**THE INSURRECTION ACT RIDER'
And State Control of the National Guard**

Thank you Chairman Leahy and members of the Senate Judiciary Committee for the opportunity to speak to you today. I am here in two capacities.

First, I am here as the Governor of North Carolina, a state recognized as one of the most military friendly in the country.

Second, I am here in my capacity as the co-lead on National Guard issues for the National Governors' Association. I appreciate the opportunity to speak to you, wearing both these hats, to let you know how important the Guard is, not only to homeland security and homeland defense, but in the critical role these units play in emergency preparedness and disaster response efforts at the state level.

This role must be strengthened and that is why governors unanimously support repeal of portions of last year's National Defense Authorization Act that expanded presidential control of the National Guard without consultation with governors or Congress.

North Carolina is home to more than 101,000 active-duty military personnel at Fort Bragg, Pope Air Force Base, Camp Lejeune Marine Corps Base, Seymour Johnson Air Force Base, the U.S. Coast Guard Air Station at Elizabeth City and Marine Corps Air Stations at New River and Cherry Point. The active duty bases are supported by 17,000 civilians.

North Carolina has 164 Army and Air National Guard units, nearly 12,000 members strong, as well as another 10,234 Army, Navy, Air Force, Marine and Coast Guard reservists.

In North Carolina and in many other states, there is strong community support for our active, Guard and Reserve service members. And I am proud to say North Carolina is a model for other states in serving our National Guard families.

Our employers in North Carolina and across the country have been supportive of their employees serving the nation in the National Guard. In North Carolina, we pay our state employees the difference between their regular salary and their Guard salary if they are called into active federal duty.

This kind of support is not unique. Many businesses also do this and we are working on other ways to make it more attractive and affordable to get more employers to support the Guard and their employees who serve.

Since September 11, 2001, these 12,000 members of the N.C. National Guard have proven themselves at home and abroad. More than 10,000 of our North Carolina National Guard soldiers and airmen have been mobilized in Operations Iraqi Freedom, Enduring Freedom and Noble Eagle. During the same time period, more than 3,800 have been called to duty to support civil authorities responding to hurricanes, floods, ice storms and other disasters.

The National Guard units in the states are committed to the national defense and the role they play in keeping our country secure. They are equally committed, and, I believe all governors would agree, essential, in keeping our communities safe when called upon in response to natural and manmade disasters.

In North Carolina, during the ice storms that blanketed our state in 2002, 2003 and 2004, Guard personnel, in addition to their usual emergency response duties, went door-to-door in many of our rural communities to check on residents who were without power. They also worked during power outages to direct traffic, rescue stranded motorists and provide emergency power.

During Hurricane Isabel in 2003, our Guard troops were on duty when flood waters rose around the isolated coastal town of Harlowe. The Guard rescued more than 130 trapped residents.

When Hurricane Frances soaked the western areas of the state in September 2004, residents escaping flood waters, stranded in trees and on top of cars, were rescued by chopper crews from the 126th Aviation Regiment based in Salisbury.

Without the assistance of the Guard in these cases, clearly commanded by the governor, there would have been significant loss of life in North Carolina.

And that is why it is critical for Congress to repeal Section 1076 of the National Defense Authorization Act (Public Law 109-364).

This section was slipped, with little debate and no open discussion, into the National Defense Authorization Act. The section was added without regard to a call by the nation's governors for hearings on the consequences of this action.

There is unanimous support, and you know how hard that is to find among the nation's governors, to repeal these dangerous provisions. They unnecessarily expand the president's authority to federalize the National

Guard during natural disasters and manmade disasters and encroach on our constitutional authority to protect the citizens of our states.

The role of the Guard to the states and nation is too important to have major policy decisions made without input from governors and full debate throughout the policy-making process.

The nation's governors unanimously opposed the inclusion of this section in the bill because managing the Guard within a state must rest with the governor. But more importantly, governors have the responsibility for assuring the security and wellbeing of our residents. The Guard is a key part of that duty during disasters and other local emergencies.

The changes in the Act undermine governors' authority over the Guard, place the safety and welfare of citizens in jeopardy and should be repealed.

Unless activated in purely federal service, the National Guard is and should remain under state control with governors as commanders-in-chief. The dual mission of the Guard, a combat ready force that can be called on by the President and a first responder in domestic emergencies or disasters under the command and control of the governor, requires that federal law clearly delineate chains of command for each mission.

The changes made to the "Insurrection Act" by Section 1076 of the National Defense Authorization Act confuse the issue of who commands the Guard during a domestic emergency. By granting the President specific authority to use the Guard during a natural disaster or emergency without the consent of a governor, Section 1076 could result in confusion and an inability to respond to residents' needs. As currently written, it calls into question whether the governor or the President has primary responsibility during a domestic emergency.

In North Carolina, and I know in other states, our National Guard units train with local and state first responders on specific scenarios and in disaster preparedness exercises. These drills do not simply involve role-playing and response, but establish critical lines of communication and uniform operating procedures. Unwarranted injection of federal command would result in confusion and miscommunication.

A basic element of our system of government forbids the use of the military for domestic law enforcement except in the most extraordinary of circumstances and even then only with the knowledge of Congress. Use of the military for law enforcement has come only in the rarest of instances. Presidents Eisenhower and Kennedy nationalized the Guard to enforce Supreme Court civil rights decisions. In 1992 President George H.W. Bush nationalized the Guard to deal with rioting in Los Angeles following the Rodney King trial.

The Insurrection Act, prior to passage of the National Defense Authorization Act, served the nation well as an extraordinary remedy that allowed the President to take control of the Guard in the most rare and exceptional of cases. Despite the role of governors as commander-in-chief of the Guard in their states, Section 1076 of the National Defense Authorization Act was drafted without consultation with governors and without full discussion or debate regarding the ramifications of such a change on domestic emergency response.

Furthermore, I would be remiss if I did not take this opportunity to address National Guard training needs and equipment shortfalls. The availability and status of training and equipment for both state and federal missions is critical for a timely and effective National Guard response.

Governors commend the Army and the Air Force for their efforts to enhance training and better equip the National Guard in recognition of its vital contribution to our national defense. But here at home, many states and territories are suffering equipment shortages in critical mission areas such as responding to natural disasters like hurricanes, fighting forest fires and other emergencies. Equipment is left on the battlefields of Iraq or other foreign missions.

Attention must be paid to Army National Guard units returning from active duty abroad. These units must be re-equipped to ensure they are ready for redeployment or response to domestic emergencies and other responsibilities.

Additionally, last month the Commission on the National Guard and Reserves released a report to the House and Senate Armed Services Committees. The report made note of the National Guard shortfalls in equipment and other resources along with facing challenges in recruiting.

One of the Commission's 23 recommendations directly relates to our topic today, the changes to the Insurrection Act. That recommendation (Number 8) says that "the Department of Defense should develop protocols that allow Governors to direct the efforts of federal military assets responding to an emergency such as a natural disaster."

Governors have had this responsibility in the past and I see no reason why governors should not be in charge of all National Guard resources, including active military personnel and materials, so responses to natural disasters or emergency events are effectively coordinated. Indeed, I would say that state, local and federal agencies need to begin training together so that all military, active duty and National Guard, as well as local and state responders, will know what to expect and who is in charge.

As a lead for the National Governor's Association on National Guard matters I can assure you I have never seen governors as united on any issue as we are on this one. I urge Congress to repeal the provision in Section 1076 of the Act and open a dialogue with governors regarding how to best enhance the effectiveness of the Guard in responding to domestic disasters and emergencies.

I will be happy to respond to any of your questions.

Senate Committee on the Judiciary Hearing

“The Insurrection Act Rider’ and State Control of the National Guard”

Ted G. Kamatchus

Sheriff, Marshall County, Iowa

President, National Sheriffs’ Association

April 24, 2007

Good afternoon Mr. Chairman and members of the Committee. My name is Ted Kamatchus and I currently serve as the Sheriff of Marshall County, Iowa and President of the National Sheriffs’ Association. The National Sheriffs’ Association represents over 3,000 elected sheriffs across the country and over 22,000 law enforcement professionals making us one of the largest law enforcement associations in the nation.

I am pleased to have this opportunity to appear before you today to express my concerns, and what I know to be the concerns of sheriffs across the country, about the recent changes made to the Insurrection Act under Section 1076 of the John Warner National Defense Authorization Act for FY2007. The changes represent an unprecedented and unnecessary expansion of presidential power to federalize the National Guard for domestic law enforcement purposes during emergencies, and consequently undermine the ability of sheriffs to best serve and protect their constituents.

Background

The Office of the Sheriff plays a distinctive role in the nation’s criminal justice and homeland security system and reflects a uniquely American tradition of a law enforcement leader who is elected. Over 99% of the nation’s sheriffs are elected and generally serve as the highest law enforcement officer in their respective counties. I speak for all sheriffs when I say that we maintain a vested interest in protecting the well-being of our constituents who have entrusted us with such a responsibility. Being elected to such a position in a community offers sheriffs the ability to develop and maintain close relationships with and develop a true understanding of the needs of our constituents.

Each morning I stop by various coffee shops in my community to interact with the people of Marshall County. These are the same voters who have elected me to office 5 times. I respect their input and listen to their concerns. We are friends, neighbors and citizens together in Marshall County. This closeness blesses me with a unique understanding of their day to day needs and thus provides me with the information I require in order to keep Marshall County safe. I am certain that each of our nation’s sheriffs share similar close relationships with the

constituents they serve and therefore are able to best predict the potential response behaviors and needs of a local community in a time of disaster or emergency.

Furthermore, as the chief law enforcement officer in his or her county, the sheriff provides protection, safety and security at the local level. The sheriff knows exactly what resources are available to a community and where such resources can be located during a time of need.

Citizens across this country have a real concern when they begin to consider that the military could enter their communities without invitation. They know first hand that the federal government can not provide them with the quality, caring and necessary service they desire. They hold a deep inner fear that one day someone may utilize the power of the military for the wrong purpose or without the appropriate consultation with their local leaders.

This past December, agents from ICE made a raid on a meat packing plant in my community. I was in Des Moines at a training conference when I found out about the raid and only became aware of the activities in my hometown by noticing headlines scrolling across the bottom of the TV screen in my hotel room. "We have learned that Agents from the Immigration and Customs Enforcement (ICE) are currently conducting a raid of the Swifts Meats pork packing plant in Marshalltown Iowa." I immediately called my dispatch and was told that ICE had notified my agency only 10 minutes prior to the raid being conducted. I drove back to Marshalltown and was advised by supervisory agents on the scene that they were simply following the orders of higher ranking individuals and were not responsible for the time at which local officials such as myself were to be notified of the federal activities.

I am happy that ICE conducted the raid. They were doing their job, enforcing the immigration laws of this country. My immediate concern was stimulated by the lack of communication on the part of the Federal Government with my agency and the local Police Department. It is impossible for local law enforcement to function efficiently and effectively if their authority is unexpectedly compromised or if their knowledge of the community is not utilized to its fullest extent possible in times of need.

Thus, when I was not notified or consulted by the ICE regarding their plans to raid the meat packing industry in Marshalltown, my thoughts turned toward the safety and well-being of my staff. My agency heads up the Mid-Iowa Drug Task Force. Oftentimes we conduct undercover operations in that particular plant and I wondered if there had been undercover agents assigned in the plant on the morning of the raid. If we were working undercover in the plant that day, the agents of ICE would have ultimately found armed individuals. Without knowing them as officers, the encounter could have easily turned deadly.

This is only one example of potential dangers that could arise from an expansion of Presidential authority to deploy military and federal officials to local communities. I strongly believe that the old system of request and response for National Guard deployment worked. The responsibility to request additional aid from the Federal Authorities rests on the shoulders of those local and state officials who are placed in office by the citizens. If those same local officials fail in reaching out to obtain the assistance necessary to accomplish their tasks, it falls upon the citizens to remove them from office.

Concerns

Given the significance of the sheriff in a community, it is paramount that the sheriff and other local first responders are not stripped of their ability and authority to serve their constituents in a time of need. I can assure you that outside parties such as the military and National Guard lack the familiarity with a particular community which is necessary to effectively and efficiently secure its residents during a time of disaster or emergency. To provide a blanket authority to such federal agencies and individuals to conduct domestic law enforcement functions, as the new language of the Insurrection Act does, jeopardizes the likelihood of a timely response and effective assistance to our citizens in times of need.

Mr. Chairman, as President of the National Sheriffs' Association, I represent the sheriffs of this country and my interest is for the country as a whole, border to border and coast to coast. Therefore, I find an invitation to the President to allow external entities such as the military and National Guard to entirely usurp the established power and command of sheriffs and other first responders without prior consultation as unacceptable and a dangerous policy to remain in effect.

I cannot stress enough that the significance of working relationships among local first responders, clear and understood chains of command, and pre-existing plans of action must not be overlooked when considering how to best prepare our nation's response to unforeseeable, disastrous events. The changes made to the Insurrection Act by Congress last year will undoubtedly result in a confusion in the chain of command and inefficient and ineffective functioning of first responders were the Act invoked. Such a result would inhibit the ability of sheriffs and other first responders to carry out their duties and protect public safety.

Furthermore, I am gravely concerned with the empowering language utilized to alter the Insurrection Act. Particularly, the Act's reference to "other conditions" under which the President can invoke the Act and its conferring authority to the President to invoke the Act without the consent of the governor or local law enforcement authorities yields ambiguity in reference to when and under what circumstances a President may decide to invoke martial law. Unlike the old language, which put the emphasis against invoking the Act in situations other than a clear case of insurrection, this new language creates the likelihood that the Act will be invoked more frequently and hastily during emergencies.

These possibilities represent an unwarranted diminution of state and local power as governors and local law enforcement officials will lose their command structure and capabilities during times when the Act is invoked. Consequently, valuable resources may also go unrecognized and underutilized in situations where federal officials attempt to develop a response strategy without full or accurate knowledge of the community's resources, capabilities and capacities. Furthermore, the changes made to the Act undermine the American tradition manifested under the original Insurrection Act of 1807 and the Posse Comitatus Act of 1878 which helped enforce strict prohibitions on military involvement in domestic law enforcement.

Suggestions

I strongly believe that before such influential changes were made to the Insurrection Act, key officials, governors, sheriffs, and other stake holders should have been consulted. This being the case, in addition to the several potentially troublesome effects of the new Insurrection Act

language that I just discussed, I believe legislation should be enacted that repeals Section 1076 of the John Warner National Defense Authorization Act for FY2007. I speak for sheriffs across the nation as I urge Congress to support the legislation before your committee which would repeal the new Insurrection Act language. After such repeal, if beliefs remain that the President's authority to invoke martial law needs to be reconsidered, then thorough, effective, and professional research can be conducted and necessary inquiries can be made as to what the appropriate next steps may be.

Conclusion

I want to thank you for the opportunity to come before you and express my concerns. I hope I have conveyed to you the potentially dangerous situations that may result if the language of the Insurrection Act is not returned to its original form. The well-being and safety of American citizens, both locally and nationally, must be of highest priority. I believe, particularly as an elected official, that officials and leaders must always act with the best interest of the public in mind. It is my opinion that the hasty and ill-informed passage of Section 1076 fails to consider the American public and therefore represents unwise and undemocratic policy.

Sheriffs interact on a daily basis with the voting public and therefore have a unique and unequivocal understanding of the needs of and resources available to local communities. This capacity must never be overlooked, particularly in times of emergency. Therefore, I ask for your full consideration on my comments today not just as a Sheriff but as also as a concerned citizen. I know that through your commitment and efforts together we can protect our nation's citizens and homeland security.

Statement
United States Senate Committee on the Judiciary
"The Insurrection Act Rider" and State Control of the National Guard
April 24, 2007

The Honorable Patrick Leahy
United States Senator , Vermont

Opening Statement Of Senator Patrick Leahy,
Chairman, Senate Judiciary Committee
Hearing On "The Insurrection Act Rider" And State Control Of The National Guard"
April 24, 2007

The Committee is holding this hearing to focus on a little-noticed but sweeping change in the law governing the National Guard made by the last Congress. Specifically, we are examining the recent changes to the Insurrection Act, which controls when the President can use components of the United States military for domestic law enforcement purposes. The Insurrection Act is one of the major exemptions to our longstanding statutes and distinctive American tradition not to involve the military in domestic law enforcement. Last year, both the House and Senate Armed Services Committees slipped provisions into the Defense Authorization Bill, apparently at the request of the Administration, to make it easier for the President to invoke the Insurrection Act in cases well short of insurrection.

In addition, the President's authority to nationalize State units of the National Guard was increased. These State units of the National Guard are controlled by our Governors. Even though this change in law authorizes the President essentially to strip control of State Guard units from a State's Governor without consent, none of the Nation's Governors was consulted. The Nation's adjutant generals, who command the State Guard units, were not consulted. The local law enforcement community was not consulted. Congressional committees with jurisdiction over law enforcement matters were not consulted. There was no debate about the significance of this change when the bill was before the House or the Senate. Even after some of us discovered these add-ons to the bill and raised our concerns and the Governors came forward to raise their strong objections to these changes, our concerns were ignored, and the Insurrection Act rider was retained in the final version of the legislation.

The changes to the Insurrection Act were not just bad process. More to the point, the changes reflect bad policy. The "Insurrection Act Rider" subverts sound policies for dealing with emergency situations that keep our Governors and other locally-elected officials in the loop when they are having to deal with disasters that affect the people they represent. These changes increase the likelihood that the military will be inserted into domestic situations. One of the distinguishing characteristics of the United States is that we do not use the military to patrol our communities and neighborhoods, to make ordinary arrests or to execute searches and seizures involving American citizens. Our tradition has been to call on the military as a last resort and only with great care and caution.

The Insurrection Act Rider is emblematic of this Administration's overreaching "unitary executive" approach to all things and its viewing military power as the answer to all problems. Here the Administration has misunderstood the lessons of Hurricane Katrina. The National Guard, serving at the State level under the command of the Governors, actually performed spectacularly after Katrina. Active military forces did come in to support local relief efforts and worked professionally alongside the Guard and our first responders after Katrina. So let us be clear – in the aftermath of Hurricane Katrina, the problem was a breakdown in FEMA, a federal agency, which did anything but a

"heckuva job" in preparing for and responding to that emergency. The disaster response coordinators from President Bush on down — including Governor Blanco and Mayor Nagin -- did not have an effective, coordinated response. This dangerous change in statute in which a fundamental law that protects the basic rights of the American people is being upset to increase presidential power and score political points is wrong.

This change is also part of a pattern of Defense Department mismanagement of issues concerning the National Guard that we have seen all too often in recent years. What we should be doing is ensuring that our 500,000 men and women in the National Guard have the equipment and the policies in place that provide them the support they need for the expanded missions they are being asked to perform. Instead, Pentagon leaders generate proposals that reduce and undermine the force's ability to handle their traditional missions. We should be giving the Army Guard the billions of dollars in equipment it needs to respond to emergencies at home, not forcing the Guard to leave its equipment in Iraq and then providing no backfill. We should be making sure that insightful and experienced Guard leaders have a voice in key debates, not keeping the Guard out of vital discussions and then trying to pay for the enormous costs of the Iraq war by cutting corners on the needs of our citizen-soldiers and our citizen-airmen.

If we do not take steps to strengthen and protect the Guard and their ability to respond here at home, we are going to see States resort to private contracting -- that is right, private contractors -- to maintain a baseline level of response capabilities when they are needed to help a State in a crisis. Who do you want at a time of local need? Do you want Blackwater, or do you want the Nation's Adjutants Generals and the outstanding men and women from among our neighbors who wear the uniforms of the National Guard? And do we really want this President to be deciding to press into service in our communities the active military that is already overstretched, or do we want the home-grown National Guard? That is what is at stake. It is that simple.

Some have argued that the changes made to the Insurrection Act were just a "clarification" of existing law. They contend that there is no real expansion of authority. When you change the title of something -- particularly a law -- you change its meaning and purpose. That in turn changes the way we perceive the law and the way it could be interpreted. Common sense tells us that a mere technical clarification would not draw the attention of Governors, Adjutant Generals, and local law enforcement. Why thumb your nose at Governors and local law enforcement for a mere technical clarification? The idea that the change is just a little tinkering to the law here, a little touch-up to the wording there, is hogwash.

There is certainly something going on that is far more than just a clarification. As with so much else this Administration has done, this is a raw expansion of Presidential power. It is certainly not an expansion of power that should be granted without thoughtful deliberation, and without extensive consideration of the far-reaching consequences. That is why Senator Bond and I have sponsored bipartisan legislation to repeal the changes and to restore the Insurrection Act to its original form.

Today we begin to shed light on this change in law. I thank our distinguished witnesses for being with us. I appreciate all of you taking the time to testify today, and we look forward to your testimony.

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UNCLASSIFIED

FOR RECORD

STATEMENT BY

MAJOR GENERAL TIMOTHY LOWENBERG
THE ADJUTANT GENERAL – WASHINGTON NATIONAL GUARD
AND
DIRECTOR, WASHINGTON MILITARY DEPARTMENT

BEFORE THE

SENATE JUDICIARY COMMITTEE

ON

'THE INSURRECTION ACT RIDER'
AND
STATE CONTROL OF THE NATIONAL GUARD

APRIL 24, 2007

UNCLASSIFIED

**STATEMENT BY
MAJOR GENERAL TIMOTHY J. LOWENBERG
ADJUTANT GENERAL, STATE OF WASHINGTON**

Thank you for the opportunity to appear before you today. I want to emphasize at the outset that I am testifying on behalf of the State of Washington and the Adjutants General Association of the United States (AGAUS). Although I am a federally recognized and U.S. Senate-confirmed General Officer of the U.S. Air Force, I appear before you today as a state official in pure state status and at state expense. My formal testimony, oral statement and responses to your questions should therefore be understood as independent expressions of states' sovereign interests. Unlike other military panelists who typically appear before you, nothing I am about to say has been previewed, edited or otherwise approved by anyone in the Department of Defense.

In a majority of the states and territories, including the State of Washington, the Adjutant General is responsible for all state emergency management functions in addition to command and control of the state's Army and Air National Guard forces. In addition, I am responsible for Washington's statewide Enhanced 911 telecommunications system and for development and execution of our statewide Homeland Security Strategic Plan and administration of all Homeland Security grant programs. Washington has averaged more than one Robert T. Stafford Relief and Emergency Assistance Act (the Stafford Act, 42 U.S.C. sections 5121 *et seq.*) Presidential Disaster declaration each year for the past 40 years and our National Guard forces, acting under the command and control of the Governor and the Adjutant General, have been an indispensable response force in nearly every one of these disasters. The Governor's use of the Washington National Guard was especially instrumental in helping civil authorities restore public order during the World Trade Organization riots in Seattle in November 1999.

I speak to you, therefore, as my state's senior official responsible for military support to civil authorities. I have experience as both a supported state commander (the WTO riots referenced above) and supporting state commander (I deployed more than 1,000 National Guard soldiers and airmen to Gulf Coast states in 2005 in response to Hurricanes Katrina and Rita). S.513 is not an esoteric, "academic" or "technical" subject for Governors and Adjutants General. Section 1076 of the 2007 National Defense Authorization Act (Public Law 109-364; hereafter referred to as the 2007 NDAA) has very negative and destructive implications for the state, local and federal unity of effort called for in Homeland Security Presidential Directive 5 (HSPD 5) and in the comprehensive emergency management plans of the several states and territories. Under the U.S. Constitution, states retain the primary responsibility and authority to provide for civil order and protection of their citizens' lives and property. Passage of S.513 is critical to restoration of historic state-federal relationships and to the states' ability to carry out their constitutional responsibilities

Applicable Federal Statutes

The Posse Comitatus Act (18 U.S.C. 1385) punishes those who, “except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully use [] any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws....” The Posse Comitatus Act does not apply to the National Guard when in state active duty or federal Title 32 service because the Guard is under the command and control of the Governor and the Adjutant General in both statuses. It does apply to the Guard when in Title 10 service, however, because when the Guard is federalized under Title 10 it becomes an indistinguishable part of the federal forces and is under federal as opposed to state control.

The Robert T. Stafford Act (cited above) authorizes the President to make a wide range of federal services available to states that have become victims of natural or human-caused disasters. The Stafford Act authorizes the use of federal military forces for the widest possible range of domestic disaster relief but not for maintaining law and order and not as an exception to the Posse Comitatus Act. Some other independent authority is required if federal military forces are to be used to enforce the laws.

The Insurrection Act (enacted in 1807) delegates authority to the President to federalize and deploy the National Guard domestically during an insurrection or civil disturbance (10 U.S.C. Sections 331-335). Section 331 authorizes the President to use federal military forces to suppress an insurrection at the request of a state government. Section 332 authorizes the President to use armed forces in such manner as he deems necessary to enforce the laws or suppress a rebellion. Section 333 authorizes the President to use federal military forces to protect individuals from unlawful actions that obstruct the execution of federal laws or which impede the course of justice under federal laws. Section 333 was enacted to implement the Fourteenth Amendment and does not require the request or consent of the governor of the affected state.

Prior to the 2007 National Defense Authorization Act, therefore, there were carefully crafted statutes that delegated authority to the President to federalize the National Guard and to employ the Title 10 National Guard forces and other Title 10 active duty military forces for domestic purposes in response to domestic emergencies (Stafford Act) and/or violence (Insurrection Act). The Insurrection Act’s martial law authority has been used sparingly. In fact, it has been invoked only 10 times in the past half-century. In every instance in which it has been used in the past 40 years, the President has acted at the request and with the concurrence of the governor of the state whose National Guard forces were federalized.

2007 National Defense Authorization Act Expansion of Federal Martial Law

The House-passed version of the 2007 National Defense Authorization Act (NDAA) proposed to fundamentally expand the circumstances in which the President could seize control of the

National Guard (i.e. “federalize” the Guard) for domestic purposes. As noted above, the Stafford Act already permits the President to use active duty military forces for emergency response operations including debris removal and road clearance; search and rescue; emergency medical care and shelter; provision of food, water and other essential needs; dissemination of public information and assistance regarding health and safety measures; and the provision of technical advice to state and local governments on disaster management and control. Since the Stafford Act authority does not constitute an exception to the Posse Comitatus Act, however, active duty military forces cannot be used for law enforcement purposes unless circumstances permit the President to independently invoke the Insurrection Act. Similarly, the President lacked authority to federalize the National Guard unless he was doing so under the Insurrection Act to suppress an “insurrection, domestic violence, unlawful combination, or conspiracy....” 10 U.S.C. 333.

Section 511 of the House-passed version of the 2007 NDAA would have delegated to the President authority to involuntarily seize control of the National Guard in the event of any “serious natural or manmade disaster, accident or catastrophe”. The effect of Section 511, therefore, would have been to authorize the President to involuntarily take control of the Guard for emergency response purposes but not for law enforcement operations unless circumstances independently justified the President’s invocation of the Insurrection Act.

As the 2007 NDAA went to conference, the National Governors Association (NGA) sent letters to the ranking majority and minority members of the U.S. Senate and House of Representatives and to the Secretary of Defense (see attached August 1, 2006 letters) protesting the provisions of Section 511. The governors noted that Section 511 and similar provisions in the Senate bill would represent “a dramatic expansion of federal authority during natural disasters that could cause confusion in the command-and-control of the National Guard and interfere with states’ ability to respond to natural disasters within their borders”. They reiterated that any such fundamental change in law should be considered only in consultation and coordination with the governors and “The role of the Guard in the states and to the nation as a whole is too important to have major policy decisions made without full debate and input from the governors throughout the policy process.”

In conference, the chairs dropped the House version (Section 511) but substituted an even broader provision that simultaneously amended the federal Insurrection Act and authorized the President to take control of the Guard in response to any “natural disaster, epidemic or other serious public emergency, terrorist attack or incident, or other condition in any State or possession of the United States.....” Because this was done under an expansion of the President’s Insurrection Act powers, military forces operating at the President’s direction in such circumstances are not subject to the Posse Comitatus Act and can be used to force compliance with laws by any rules for use of lethal force (RUF) or rules of engagement (ROE) authorized by the President or those acting under his delegated authority.

The conference report was agreed to in the House on the same day as its filing (September 29, 2006) and in the Senate the following day (September 30, 2006).

Without any hearing or consultation with the governors and without any articulation or justification of need, Section 1076 of the 2007 NDAA changed more than 100 years of well-

established and carefully balanced state–federal and civil -military relationships. One hundred years of law and policy were changed without any publicly or privately acknowledged author or proponent of the change. As written, the Act does not require the President to contact, confer or collaborate in any way with a governor before seizing control of a state’s National Guard forces. It requires only notice to Congress that the President has taken the action but no explanation, justification or consent of congress is required.

If these provisions had been in effect during the 2005 Hurricane Katrina response, the President could have unilaterally seized control of the National Guard forces of all 54 states, territories and the District of Columbia as they were engaged in recovery operations in the Gulf Coast states. He could have done so by a unilateral determination that state authorities were incapable of preventing public violence and maintaining public order. Ironically, the President’s unilateral assumption of control over the Guard might well be the very act that would preclude a state from having the resources to maintain or restore public order.

In the event of such a federal take-over, governors of supporting state forces would be unable to withdraw their units or exercise any control or influence over their personnel even if they were needed in response to an unexpected emergency in their own state.

The Adjutants General Association of the United States (AGAUS) urges Congress to restore the historic balance of state and federal interests by swiftly passing S.513. AGAUS believes that, with the exception of the two circumstances noted below, governors should control any and all domestic use of military force within their state (regardless of whether the domestically employed forces are Active, Reserve or National Guard forces) and should retain control over their own National Guard forces wherever and whenever they are employed within the United States or its territories or the District of Columbia. The two exceptions are: (1) if National Guard lethal force is required under the direction of national command authorities to repel an attack or invasion against the United States or (2) if National Guard units or personnel are being used in state status to resist a lawful order of the judicial, legislative or executive branches of the federal government (e.g., the school desegregation and civil rights cases of 1957-1965).

Impact on Essential State Interests

The National Guard is the only organized, trained and equipped military force a governor can call upon to restore or sustain public safety in the event of a state or local emergency, including enforcement of state declarations of martial law (see, for example, RCW 38.08.030, authorizing the governor’s “Proclamation of complete or limited martial law”). With the exception of the two circumstances noted above, the domestic use of military force within any state without the governor’s consent, supervision and ultimate control and the imposition of federal control over a state’s National Guard units or personnel for domestic purposes without the governor’s prior knowledge and consent are infringements of state sovereignty and deprive states of the means of carrying out the core functions of state government, including protection of a state’s citizens under the state’s existing laws or as part of a state’s imposition and enforcement of its own martial law provisions.

Further, imposing Presidential control over the National Guard for domestic purposes without

notice to the governor and without the governor's consent negates the unity of local-state-federal effort needed in times of domestic peril and would undermine the speed and efficiency with which the National Guard responds under the Governor's control to in-state emergencies and in support of other states through state-to-state mutual aid agreements such as the Emergency Management Assistance Compact (EMAC)

Federal Plans for Implementing Expanded Martial Law Authority

US Northern Command (USNORTHCOM) has been engaged for some time in deliberative planning for implementation of Section 1076 of the 2007 National Defense Authorization Act (the law was effective October 17, 2006). The formal NORTHCOM CONPLAN 2502-05 was approved by Secretary of Defense Gates on March 15, 2007. The final approved plan states "This document is classified UNCLASSIFIED to ensure ease of use by both military and interagency organizations and personnel whose official duties require specific knowledge of this plan, including those required to develop supporting plans. Information in USNORTHCOM CONPLAN 2502 may be disseminated to all interagency, National Guard Bureau, federal, tribal, state and local governments."

Although the 2007 NDAA provisions could be used to compel National Guard forces to engage in civil disturbance operations under federal control, states have had no notice of the development of these operational plans nor have governors or their Adjutants General had any opportunity to present their concerns or to synchronize their plans during the development and coordination of this USNORTHCOM plan.

The UNCLASSIFIED plan I have seen says National Guard forces conducting civil disturbance operations in the affected state(s) [both National Guard forces from the affected or supported states and National Guard forces from supporting states operating therein] "will likely be federalized (T10)" upon execution of the plan. Further, the plan requires the Joint Forces Headquarters of each state and territory to develop the very plans under which the federal government would assume control over their state's National Guard forces.

One key USNORTHCOM planning assumption is that the President will invoke the new Martial Law powers if he concludes state and/or local authorities no longer possess either the capability or the will to maintain order. This highly subjective operational assumption has been developed without any notice, consultation or collaboration with the governors of the several states and territories.

All States and Territories and numerous national associations join in urging Congress to swiftly enact S. 513

The Adjutants General Association of the U.S. (AGAUS) joins the following institutions and national organizations in urging Congress to repeal Section 1076 of the 2007 NDAA through swift enactment of S. 513: the Washington State Legislature, the National Governors Association (NGA), the National Lieutenant Governors Association (NLGA), the National Conference of State Legislatures (NCSL), the Enlisted Association of the National Guard of the United States (EANGUS), the National Sheriffs Association (NSA), the National Emergency

Management Association (NEMA) and the International Association of Emergency Managers (IAEM).

Conclusion

It is imperative that we have unity of effort at all levels – local, state and federal – when responding to domestic emergencies and disasters. Section 1076 of the 2007 National Defense Authorization Act is a hastily conceived and ill-advised step backward. It openly invites disharmony, confusion and the fracturing of what should be a united effort at the very time when states and territories need federal assistance – not a federal take over -- in responding to state and local emergencies.

Thank you for this opportunity to express the concerns of the State of Washington, the Adjutants General Association of the United States and the other national associations referenced herein.

EXHIBITS

1. State of Washington Substitute Senate Joint Memorial 8012
2. National Governors Association (NGA) letter – February 6, 2007
3. NGA letter – February 5, 2007
4. NGA letter – August 31, 2006
5. NGA letter (signed by all governors) – August 6, 2006
6. National Lieutenant Governors Association Resolution – March 16, 2007
7. National Conference of State Legislatures (NCSL) letter – March 27, 2007
8. NCSL Policy Statement
9. Adjutants General Association of the U.S. letter – February 7, 2007
10. Enlisted Association of the National Guard of the U.S. letter – February 6, 2007

S-1882.1

SUBSTITUTE SENATE JOINT MEMORIAL 8012

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Government Operations & Elections (originally sponsored by Senators Brown, Hewitt, Franklin, Fraser, Oemig, Kline, Kilmer, Swecker, Hobbs, Hatfield, Marr, Spanel, Regala, Kohl-Welles, Berkey, Pridemore, Rasmussen, McAuliffe, Sheldon and Shin)

READ FIRST TIME 02/27/07.

1 TO THE HONORABLE GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES,
2 AND TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF
3 REPRESENTATIVES, AND TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE
4 UNITED STATES, IN CONGRESS ASSEMBLED:

5 We, your Memorialists, the Senate and House of Representatives of
6 the State of Washington, in legislative session assembled, respectfully
7 represent and petition as follows:

8 WHEREAS, The Washington National Guard has served Washington well
9 and faithfully since territorial times; and

10 WHEREAS, Nearly 8,600 men and women of the Washington Air and Army
11 National Guard continue to serve our state and nation, at home and
12 abroad; and

13 WHEREAS, The National Guard supports civil authorities in a
14 multitude of ways that are particular to our local communities and to
15 our state and region; and

16 WHEREAS, The Militia clause of the United States Constitution
17 guarantees to each state the right to maintain an organized militia
18 (the National Guard) for the protection and defense of its citizens;
19 and

1 WHEREAS, The National Guard plans, trains, and exercises with
2 local, state, and federal officials to provide relief under the
3 Governor's control during emergencies and disasters that may befall the
4 state of Washington or any other state; and

5 WHEREAS, State control of the Guard in the event of such
6 emergencies is critical to execution of the National Response Plan
7 (NRP), the Washington State Comprehensive Emergency Management Plan
8 (CEMP), city and county emergency plans, and all intrastate and
9 interstate mutual aid arrangements such as the Emergency Management
10 Assistance Compact (EMAC) and the Pacific Northwest Emergency
11 Management Arrangement (PNEMA); and

12 WHEREAS, Placing the Washington National Guard under federal
13 control without the consent of the Governor would undermine the Guard's
14 effectiveness and deprive the state of Washington of the ability to
15 perform its most essential function, the protection of its own
16 citizens; and

17 WHEREAS, Section 1076 of the John Warner National Defense
18 Authorization Act of 2007 (P.L. 109-364) was adopted without any public
19 hearing and improvidently amended the federal Insurrection Act by
20 authorizing the President to impose federal control over the National
21 Guard, without notice, consultation, or consent of the Governor, in the
22 event of a "natural disaster, epidemic or *other serious* public
23 emergency, terrorist attack or *incident*" (emphasis added); and

24 WHEREAS, The unilateral Presidential authority conferred by Section
25 1076 of P.L. 109-364 is similarly devoid of any required consultation
26 or consent of the Congress; and

27 WHEREAS, The provisions of Section 1076 of P.L. 109-364 were signed
28 into law despite the opposition of the nation's governors acting on
29 behalf of their respective sovereign states; and

30 WHEREAS, imposing Presidential control over the National Guard for
31 domestic purposes without the Governor's consent would negate the unity
32 of local, state, and federal effort needed in times of domestic peril
33 and would undermine the speed and efficiency with which the National
34 Guard responds, under the Governor's control, to emergencies within the
35 state of Washington and in support of other states through state-to-
36 state mutual aid agreements such as the Emergency Management Assistance
37 Compact (EMAC); and

1 WHEREAS, S.513 and HR 869, if enacted into law, will rescind the
2 objectionable provisions of Section 1076 of P.L. 109-364;

3 NOW, THEREFORE, Your Memorialists respectfully urge the Congress to
4 swiftly pass and the President to sign into law S.513 and HR 869.

5 BE IT RESOLVED, That copies of this Memorial be immediately
6 transmitted to the Honorable George W. Bush, President of the United
7 States, the President of the United States Senate, the Speaker of the
8 House of Representatives, and each member of Congress.

--- END ---

NATIONAL
GOVERNORS
 ASSOCIATION

Janet Napolitano
 Governor of Arizona
 Chair

Tim Aschbery
 Governor of Minnesota
 Vice Chair

Raymond C. Schapach
 Executive Director

February 6, 2007

The Honorable Carl Levin
 Chairman
 Committee on Armed Services
 United States Senate
 Washington, D.C. 20510

The Honorable John McCain
 Ranking Member
 Committee on Armed Services
 United States Senate
 Washington, D.C. 20510


Dear Mr. Chairman and Senator McCain:

Section 1076 of the John Warner National Defense Authorization Act (Public Law 109-364) unnecessarily expanded the President's authority to federalize the National Guard during certain emergencies and disasters. The nation's governors opposed the inclusion of this section in the bill because responsibility for responding to disasters and other local emergencies to assure the security and wellbeing of our residents along with managing the Guard within a state must rest with the governor. The changes made in Section 1076 of the National Defense Authorization Act undermine governors' authority over the Guard, place the safety and welfare of citizens in jeopardy and should be repealed.

Unless activated in purely federal service, the National Guard is and should remain under state control with governors as commanders-in-chief. The dual mission of the Guard, a combat ready force that can be called on by the President and a first responder in domestic emergencies or disasters under the command and control of the governor, requires that federal law clearly delineate chains of command for each mission. The changes made to the "Insurrection Act" by Section 1076 of the National Defense Authorization Act are likely to confuse the issue of who commands the Guard during a domestic emergency. By granting the President specific authority to usurp the Guard during a natural disaster or emergency without the consent of a governor, Section 1076 could result in confusion and an inability to respond to residents' needs because it calls into question whether the governor or the President has primary responsibility during a domestic emergency.

The Insurrection Act, prior to passage of the National Defense Authorization Act served the nation well as an extraordinary remedy that allowed the President to take control of the Guard in the most rare and exceptional of cases. Despite the role of governors as commander-in-chief of the Guard in their states, Section 1076 of the National Defense Authorization Act was drafted without consultation with governors and without full discussion or debate regarding the ramifications of such a change on domestic emergency response. We urge Congress to repeal the provision in Section 1076 of the Act and open a dialogue with governors regarding how to best enhance the effectiveness of the Guard in responding to domestic disasters and emergencies.

Sincerely,



Governor Michael F. Easley
 Co-Lead on the National Guard



Governor Mark Sanford
 Co-Lead on the National Guard



Janet Napolitano
Governor of Arizona
Chair

Tina Pavlenty
Governor of Minnesota
Vice Chair

Raymond C. Schappach
Executive Director

February 5, 2007

The Honorable Patrick J. Leahy
United States Senate
Washington, D.C. 20515

The Honorable Christopher "Kit" Bond
United States Senate
Washington, D.C. 20510


Dear Senator Leahy and Senator Bond:

Section 1076 of the John Warner National Defense Authorization Act (Public Law 109-364) unnecessarily expanded the President's authority to federalize the National Guard during certain emergencies and disasters. The nation's governors opposed the inclusion of this section in the bill because responsibility for responding to disasters and other local emergencies to assure the security and wellbeing of our residents along with managing the Guard within a state must rest with the governor. The changes made in Section 1076 of the National Defense Authorization Act undermine governors' authority over the Guard, place the safety and welfare of citizens in jeopardy and should be repealed.

Unless activated in purely federal service, the National Guard is and should remain under state control with governors as commanders-in-chief. The dual mission of the Guard, a combat ready force that can be called on by the President and a first responder in domestic emergencies or disasters under the command and control of the governor, requires that federal law clearly delineate chains of command for each mission. The changes made to the "Insurrection Act" by Section 1076 of the National Defense Authorization Act are likely to confuse the issue of who commands the Guard during a domestic emergency. By granting the President specific authority to usurp the Guard during a natural disaster or emergency without the consent of a governor, Section 1076 could result in confusion and an inability to respond to residents' needs because it calls into question whether the governor or the President has primary responsibility during a domestic emergency.

The Insurrection Act, prior to passage of the National Defense Authorization Act served the nation well as an extraordinary remedy that allowed the President to take control of the Guard in the most rare and exceptional of cases. Despite the role of governors as commander-in-chief of the Guard in their states, Section 1076 of the National Defense Authorization Act was drafted without consultation with governors and without full discussion or debate regarding the ramifications of such a change on domestic emergency response. We urge Congress to repeal the provision in Section 1076 of the Act and open a dialogue with governors regarding how to best enhance the effectiveness of the Guard in responding to domestic disasters and emergencies.


Governor Michael F. Easley
Co-Lead on the National Guard

Sincerely,

Governor Mark Sanford
Co-Lead on the National Guard

NATIONAL
GOVERNORS
ASSOCIATION

Janet Napolitano
Governor of Arizona
Chair

Tim Pawlenty
Governor of Minnesota
Vice Chair

Raymond C. Scheppach
Executive Director

August 31, 2006

The Honorable Donald Rumsfeld
Secretary
Department of Defense
The Pentagon
Washington, D.C. 20301

Dear Mr. Secretary:



Governors oppose statutory changes in the House and Senate Department of Defense authorization bills to federalize the National Guard during emergencies and disasters. Provisions in both the House and Senate bills to expand the President's authority over the National Guard during natural and manmade disasters were developed without consultation with governors and encroach on our constitutional authority to protect the citizens of our states.



Fifty-one governors recently sent a letter to Congress opposing Section 511 of the House-passed bill because it would usurp the authority of governors to command the National Guard in response to a "serious natural or manmade disaster." Since then, governors also have become increasingly concerned with the Senate's proposal to expand the President's authority to intervene in a state under the Insurrection Act (Section 1042) and proposals to federalize disaster response through the use of reserve forces. Each of these proposals represents a dramatic expansion of federal authority during natural disasters that could cause confusion in the command-and-control of the National Guard and interfere with states' ability to respond to natural disasters within their borders.

As we reiterated during our meeting with you in February, any issue that affects the mission of the Guard in the states must be addressed in consultation and coordination with governors. The role of the Guard in the states and to the nation as a whole is too important to have major policy decisions made without full debate and input from governors throughout the policy process.

Governors welcome the opportunity to improve the nation's disaster response capabilities, but we must work together to ensure that any changes do not hinder our ability to respond to those in need. We therefore urge you to join us in calling for the House and Senate to remove Section 511 of the House bill and Section 1042 of the Senate bill from the final conference report.

Sincerely,


Governor Janet Napolitano

Governor Michael F. Easley
Co-Lead Governor on the National Guard


Governor Tim Pawlenty

Governor Mark Sanford
Co-Lead Governor on the National Guard



Mike Huckabee
Governor of Arkansas
Chairman

Janet Napolitano
Governor of Arizona
Vice Chair

Raymond C. Schappach
Executive Director

August 6, 2006

The Honorable Bill Frist
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Harry Reid
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable J. Dennis Hastert
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Senator Frist, Senator Reid, Speaker Hastert and Representative Pelosi:

The nation's governors strongly oppose legislation to allow the President to federalize the National Guard in a state without the consent of the governor. The House-passed version of the National Defense Authorization Act (H.R. 5122) would authorize the President to take control of the Guard in case of "a serious natural or manmade disaster, accident, or catastrophe that occurs in the United States, its territories and possessions, or Puerto Rico." This provision was drafted without consultation or input from governors and represents an unprecedented shift in authority from governors as Commanders and Chief of the Guard to the federal government.

We take very seriously our constitutional duty to protect our citizens and lead our Guard. We are responsible for the safety and welfare of our citizens and are in the best position to coordinate all resources to prepare for, respond to and recover from disasters. The current process by which we use our National Guard in emergencies and request federal assistance when necessary works well and should not be changed.

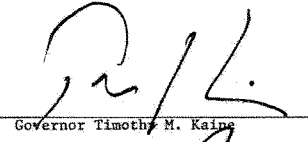
We urge you to drop provisions that would usurp governor's authority over the National Guard during emergencies from the conference agreement on the National Defense Authorization Act.

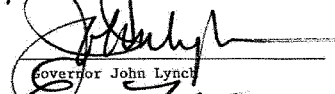
Sincerely,

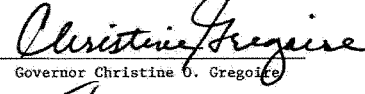
Governor Mike Huckabee

Governor Janet Napolitano

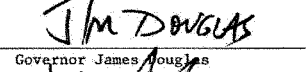

Governor Haley Barbour


Governor Timothy M. Kaine


Governor John Lynch


Governor Christine O. Gregoire


Governor E. F. Fletcher

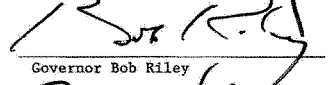

Governor James Douglas

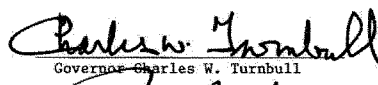

Governor Kathleen Babineaux Blanco


Governor Jennifer M. Granholm


Governor Tim Pawlenty


Governor Matt Blunt

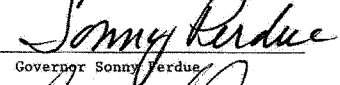

Governor Bob Riley

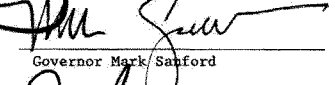

Governor Charles W. Turnbull

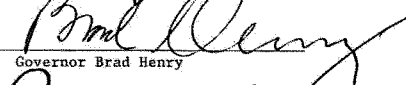

Governor Ruth Ann Minner

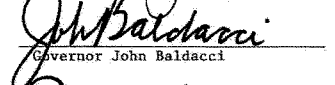

Governor Joe Manchin III


Governor James Risch

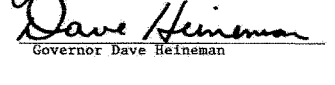

Governor Sonny Perdue

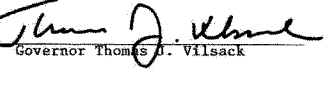

Governor Mark Sanford


Governor Brad Henry


Governor John Baldacci


Governor Rod Blagojevich


Governor Dave Heineman


Governor Thomas J. Vilsack

Arnold Schwarzenegger

Governor Arnold Schwarzenegger

Bill Richardson

Governor Bill Richardson

M. Jodi Rell

Governor M. Jodi Rell

Jon S. Corzine

Governor Jon S. Corzine

Jeb Bush

Governor Jeb Bush

George E. Pataki

Governor George E. Pataki

Mitt Romney

Governor Mitt Romney

Theodore R. Kulongoski

Governor Theodore R. Kulongoski

Robert L. Ehrlich Jr.

Governor Robert L. Ehrlich Jr.

Kathleen Sebelius

Governor Kathleen Sebelius

Edward G. Rendell

Governor Edward G. Rendell

Anibal Acevedo Vila

Governor Anibal Acevedo Vila

Jim Doyle

Governor Jim Doyle

Frank W. Murkowski

Governor Frank H. Murkowski

Phil Bredesen

Governor Phil Bredesen

Michael F. Easley

Governor Michael F. Easley

John Hoeven

Governor John Hoeven

Jon Huntsman Jr.

Governor Jon Huntsman Jr.

M. Michael Rounds

Governor M. Michael Rounds

Kenny Guinn

Governor Kenny Guinn

Mitch Daniels

Governor Mitch Daniels

Bob Taft

Governor Bob Taft

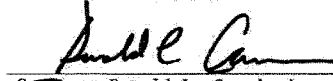
Page 4



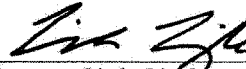
Governor Brian Schweitzer



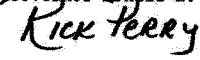
Governor Dave Freudenthal



Governor Donald L. Carcieri



Governor Linda Lingde



Governor Rick Perry



National Lieutenant Governors Association

**RESOLUTION REGARDING URGED CHANGE TO
THE NATIONAL DEFENSE AUTHORIZATION ACT**

WHEREAS section 1076 of the John Warner National Defense Authorization Act (Public Law 109-364) unnecessarily expanded the President's authority to federalize the National Guard during unspecified emergencies and disasters, and

WHEREAS responsibility for responding to disasters and other local emergencies to assure the security and wellbeing of our residents along with managing the Guard within a state must rest with the governor, and

WHEREAS the changes made in Section 1076 of the National Defense Authorization Act undermine governors' authority over the Guard, place the safety and welfare of citizens in jeopardy, and

WHEREAS unless activated in purely federal service, the National Guard is and should remain under state control with governors as commanders-in-chief; the dual mission of the Guard, a combat ready force that can be called on by the President and a first responder in domestic emergencies or disasters under the command and control of the governor, requires that federal law clearly delineate chains of command for each mission; the changes made to the "Insurrection Act" by Section 1076 of the National Defense Authorization Act are likely to confuse the issue of who commands the Guard during a domestic emergency; and by granting the President specific authority to usurp the Guard during a natural disaster or emergency without the consent of a governor, Section 1076 could result in confusion and an inability to respond to residents' needs because it calls into question whether the governor or the President has primary responsibility during a domestic emergency, and

WHEREAS the Insurrection Act, prior to passage of the National Defense Authorization Act served the nation well as an extraordinary remedy that allowed the President to take control of the Guard in the most rare and exceptional of cases; and despite the role of governors as commander-in-chief of the Guard in their states, Section 1076 of the National Defense Authorization Act was drafted without consultation with governors and without full discussion or debate regarding the ramifications of such a change on domestic emergency response,

SO NOW, THEREFORE, BE IT RESOLVED the members of NLGA urge Congress to repeal the provision in Section 1076 of the Act and open a dialogue with governors regarding how to best enhance the effectiveness of the Guard in responding to domestic disasters and emergencies; and

BE IT RESOLVED THAT the National Lieutenant Governors Association strongly urges that changes made in Section 1076 of the National Defense Authorization Act should be repealed.

Sponsored by: Lt. Governor Brian Dubie, Vermont

Additional Co-Sponsors:

Lt. Governor John Bohlinger, Montana
Lt. Governor Michael Fedele, Connecticut
Lt. Governor Elizabeth Roberts, Rhode Island
Lt. Governor Rick Sheehy, Nebraska

Lt. Governor Patty Judge, Iowa
Lt. Governor Mark Parkinson, Kansas
Lt. Governor Anthony Brown, Maryland

As finally passed by the Executive Committee and General Business session this 16th day of March, 2007.



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

March 27 2007

The Honorable Patrick Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Christopher Bond
United States Senate
274 Russell Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Bond:

The National Conference of State Legislatures (NCSL) applauds you for introducing legislation (S. 513) to repeal Section 1076 of the Defense Authorization Act of 1076 (P.L. 109-364), which expands the President's authority to federalize the National Guard during certain emergencies and disasters.

The National Guard serves as the primary emergency response unit in every state. In nearly half the states, the National Guard fills the role of state emergency management agency. State legislators across the country believe the historic domestic mission of the National Guard in emergency management under state authority must be strengthened rather than co-opted by federal decree. Section 1076 could potentially compromise each state's ability to respond to those in need and preempt a viable public safety system. Preemption in this instance could not be more blatant or more dangerous to the public safety and welfare of our states.

We look forward to working with you on this important issue. For additional assistance and information, please have your staff contact Molly Ramsdell (202-624-3584; molly.ramsdell@ncsl.org) or Garner Girthoffer (202-624-7753; garner.girthoffer@ncsl.org) in NCSL's Washington, D.C. office.

Respectfully,

Senator Richard T. Moore
Massachusetts General Court

Senator Thomas J. Wyss
Indiana General Assembly

Co-Chairs, NCSL Task Force on Homeland Security
and Emergency Preparedness

Denver
7700 East First Place
Denver, Colorado 80230
Phone 303.364.7700 Fax 303.364.7800

Washington
444 North Capitol Street, N.W. Suite 515
Washington, D.C. 20001
Phone 202.624.5400 Fax 202.737.1069

Website www.ncsl.org



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

FEDERAL PREEMPTION OF STATE AUTHORITY OVER NATIONAL GUARD

NCSL EXECUTIVE COMMITTEE

Whereas, the National Guard has an historic role as guardian of public safety in the states during times of natural and man-made disasters, major accidents or other catastrophes since the birth of the republic that began when ordinary citizens answered the alarm to defend freedom in Lexington, Massachusetts, and has continued for more than two hundred years, and

Whereas, the National Guard serves as the primary emergency response unit in every state, even filling the role of state emergency management agency in nearly half of the states and the National Conference of State Legislatures (NCSL) believes that the historic domestic mission of the Guard in emergency management under state authority must be strengthened rather than pre-empted by federal decree, and

Whereas, the United States House of Representatives has passed its version of the National Defense Authorization (DoD) Act (H.R. 5122) including a provision in Section 511 that would allow the President to federalize the National Guard of the states without the consent of the governor in case of "a serious natural or manmade disaster, accident, or catastrophe that occurs in the United States, its territories and possessions, or Puerto Rico," and

Whereas, it has long been the policy of the National Conference of State Legislatures to vigorously oppose federal preemption of state authority, be it hereby

RESOLVED, that the National Conference of State Legislatures (NCSL) strongly opposes Section 511 of H.R.5122 that would amend Title 10 of the United States Code to give authority to the President to federalize and take control of the National Guard at a time when its services are most needed by the respective states in responding to major disasters, and be it further

RESOLVED, that NCSL instructs its officers and staff to notify the House and Senate conferees working on resolving differences between H.R. 5122 and S.2766 and other members of Congress that the National Conference of State Legislatures opposes Section 511, in the House bill, and any other effort to preempt domestic control of the National Guard from state authority, and to work against passage of any such provision by the Congress, and be it further

RESOLVED, that NCSL work cooperatively and in a bipartisan manner with the National Governor's Association and other organizations to oppose this egregious attempt at preemption of state authority.



7 February 2007

The Honorable Patrick Leahy
United States Senate
Washington, DC 20515

The Honorable Kit Bond
United States Senate
Washington, DC 20515

The Adjutants General Association of the United States (AGAUS) represents the 54 Adjutants General of the fifty states, three territories, and District of Columbia who are responsible for training and readiness of Army and Air National Guard units under their jurisdiction. We are united in support of your legislation that repeals all language contained in the John Warner National Defense Authorization Act for Fiscal Year 2007 that significantly altered existing law known as the Insurrection Act.

The language in the NDAA seriously upset the delicate balance between Governors and the President in determining the authority under which the National Guard will be used to respond to domestic conditions endangering citizens. The language significantly broadens the President ability to declare martial law and mobilize the National Guard under national command without consulting with the Governors. It may in fact cause factions to pressure the President into ill advised actions because the constructive ambiguity of the original language which encourages consultation with Governors no longer exists. For the National Guard this can mean being federalized prematurely thereby losing important capabilities available under State Active Duty and Title 32.

The National Guard has proven capable of operating flexibly and responsively when retained under governor control. This is well documented from the airport security mission in the aftermath of 9/11 to sending 6,000 National Guard Soldiers and Airmen to the southwest border in 2006 (with over 50,000 citizen-soldiers rapidly deployed under EMAC and Title 32 to support Hurricane Katrina recovery sandwiched in between). The language in NDAA 2207 would likely discourage using the National Guard in these innovative, responsive, and cost effective ways.

NDAA 2007 enabled something completely unnecessary without committee or floor debate in either legislative chamber and with explicit opposition from the Governors. Your bill restores the Insurrection Act to a proper balance. Expect willing and energetic support from the AGAUS.

Sincerely,

ROGER P. LEMPKE
Major General
President



EANGUS

3133 MT. VERNON AVENUE
ALEXANDRIA, VA 22305

www.eangus.org

(703) 519-3846
FAX (703) 519-3849

February 6, 2007

The Honorable Patrick Leahy
United States Senate
Washington, D.C. 20510

The Honorable Christopher Bond
United States Senate
Washington, D.C. 20510

The Enlisted Association of the National Guard of the United States (EANGUS) is the only military service association that represents the interests of every enlisted soldier and airmen in the Army and Air National Guard. With a constituency base of over 414,000 soldiers and airmen, their families, and a large retiree membership, EANGUS engages Capitol Hill on behalf of courageous Guard persons across this nation.

On behalf of EANGUS, and the soldiers and airmen it represents, I'd like to communicate our support for legislation to repeal the changes to the Insurrection Act as passed in Public Law 109-364, Section 1076, and to restore the authority of the Governors as our founding fathers designed over 230 years ago.

Public Law 109-364 stripped the nation's Governors of their rightful authority to use the militia of the United States (to wit, the National Guard) in times of natural disasters and major public emergencies. Congress made this move without any consultation with those Governors, duly elected by the people of this great nation. It was an obvious knee-jerk reaction to the events surrounding Hurricane Katrina in 2005, yet without merit.

We applaud you for taking legislative steps to repeal this law, and to restore to the Governors their rightful authority over the militia when not in Federal service. The people of America have a unspoken need for the National Guard in times of public emergencies, and Washington is too far removed from the challenges in each state. We look forward to working with your staff as this legislation works its way into law.

Working for America's Best!

MSG Michael P. Cline, USA (Ret)
Executive Director



State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

Post Office Box 12267
COLUMBIA 29211

April 24, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on Judiciary
United States Senate
Washington, DC 20510

Dear Messrs. Chairman and Ranking Member,

I would like to begin by thanking you for today's hearing on the repeal of Section 1076 of the FY 2007 Defense Authorization Act. This hearing will, I hope, offer Washington a chance to see how this far-reaching legislation will impact the lives of citizens around the country in times of natural disaster.

We have evaluated how this law will affect South Carolina, as well as states around the country and I wanted to share those concerns with you today. Unfortunately, I could not be here with my colleague and neighbor, Governor Michael Easley, to meet with you in person.

To begin, both as a member of the U.S House of Representatives for six years and now in my second term as Governor, I have always subscribed to Thomas Jefferson's belief that, "[t]he government closest to the people serves the people the best." Section 1076 sets aside that notion and instead, blurs the lines of authority in a time of crisis within a state and weakens an operational structure that, I believe, serves the states well.

Both Governor Easley and I represent Atlantic Coast states prone to hurricanes. In fact, over the last century and a half, North Carolina and South Carolina rank fourth and fifth, respectively, of all states impacted by hurricanes in the Gulf and Atlantic regions. In my home state of South Carolina, we have been impacted by slightly more than one of every ten hurricanes.

As a result, South Carolina has constructed a well thought out and well designed hurricane plan that deals with large scale evacuations, loss of power, and support of local law enforcement. This plan relies on the participation of not only the National Guard, but also state and local law enforcement, emergency management, first responders, medical personnel and transportation officials. In short, every natural disaster is a team effort instituted to ensure that our state's resources can be committed in times of need along the coast or some other part of the state. No

plan is perfect, but I believe that the folks involved in this process know the communities and, the people they serve, better than anyone else, and are key to disaster recovery in times of need.

In South Carolina, we have instituted a plan that relies on local government first, with state government providing resources as needed. We do this because local emergency management can provide us on the ground intelligence and a working knowledge of the affected areas more effectively than at the state level. This should logically extend to the federal government to play a support role, not the lead role, in responding to natural or manmade disasters.

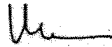
Instituting a federal role in the middle of this process, I believe, only weakens our ability to respond fast and flexibly to events occurring with the best information available. Moreover, adding a chain of command from Washington, without the consent of the Governor, invites mass confusion that could result in greater, not lesser, harm being done.

Mr. Chairman and members of the Committee, I am grateful for the service rendered by the men and women of the South Carolina National Guard, both at home and abroad. They and their families have made tremendous sacrifices in defense of this nation and in times of the greatest needs within South Carolina. They have answered the call of duty whenever asked, and we know they always will. This provision, while well intended, will not help them in our times of distress, but instead, will undermine a well-thought out command structure.

I stand ready, with Governor Easley and the rest of our colleagues, to work with Congress and the federal government on improving our disaster response capabilities. We objected to this provision long before its enactment and are now asking Congress to reconsider this expansion of the Insurrection Act and, ultimately, repeal Section 1076.

Again, thank you for your leadership on this issue, and the leadership of the entire National Guard Caucus in the United States Senate. We stand ready to work with you and your colleagues to repeal this section of the FY 2007 Defense Authorization Act and work in coordination to address the needs of our citizens in times of need. Take care.

Sincerely,



Mark Sanford

MS/se

cc: Governor Mike Easley