



Could Maine Be First State To Defend The Guard?

A state senator makes the case for a measure that would bring citizen soldiers home from foreign wars not properly declared by Congress.

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Will Maine be the first state to defend its state National Guard from deployment into unconstitutional wars?

On Monday, the Maine Veterans and Legal Affairs Committee will hold a work session on my proposed “Defend the Guard” legislation (L.D. 1054), which would bring the men and women of our Maine National Guard home from foreign wars that have not been properly declared by Congress. During that work session, a vote will likely take place.

That’s why I would like to take a moment to reflect upon the arguments made during the public hearing several weeks ago. When all are compared against each other, the proper course of action is clear.

As the sponsor of the bill, I argued several key points (alongside policy experts and many veterans of the military whose combined years of military experience totals nearly a century). Not a single one was refuted effectively by the three opponents present: the Adjutant General of the Maine National Guard, State Senator Brad Farrin (R-Somerset County), and former Maine House Republican Minority Leader, Ken Fredette.

To begin, we established the clear cost this state of undeclared forever war has had upon the men and women of our military and their families. Our military is demoralized. Recruitment rates have fallen. Veteran suicide rates are at historic highs. The declassified Afghanistan Papers revealed these wars continue for their own sake, with no clear missions or articulated victory conditions. All this is why the national American Legion — the largest veterans organization in the country — has repeatedly demanded an end to the undeclared forever wars. And yet, after 20 years, Congress takes no practical action.

Sergeant Aaron Rollins, former commander of the local American Legion post in Madison, Maine (which passed a unanimous resolution in support of this legislation just two years ago), spoke about his service across two tours in Iraq — and described how two of his fellow Maine guardsmen were killed before his eyes

while on patrol in a foreign country where they never should have been. Sgt. Rollins demanded the committee uphold their oaths of office by voting to bring our Maine guardsmen home from these unconstitutional wars.

Not a single person at the hearing contested the fact that Sgt. Rollins is right: these wars are unconstitutional. As I argued (alongside a lawyer from the Maine ACLU) before the committee, the deployment of our Maine guardsmen into undeclared foreign wars violates the U.S. Constitution on two counts.

First, Article I, Section 8, Clause 11 gives Congress the exclusive power to declare war. Sending any U.S. soldier abroad into a foreign war not declared by Congress is a violation of this provision.

Further, Article I, Section 8, Clause 15 gives Congress the authority to call state guardsmen into action for three circumstances: to repel invasion, suppress insurrection, and enforce the laws of the union. The first two are necessarily domestic uses of the National Guard (which cannot be accomplished in far-flung regions of the world like Syria or Iraq). As for the third circumstance, a law cannot be enforced which does not exist. Without a Congressional declaration of war, there is no legal authority upon which to send our Maine guardsmen into foreign wars.

All three of the opponents were men who swore their own oaths to the U.S. Constitution. To these charges of unconstitutionality, however, they would only plead no contest, admitting that they were not “constitutional scholars.” Instead, they regularly reminded the committee that Maine guardsmen swear two oaths — to the Maine and U.S. Constitutions (as if illegal orders violating two Constitutions are somehow better than those that only violate one).

The only argument of any substance made by the opposition was that passing Defend the Guard would jeopardize federal funding. First, it is amazing to believe there is any acceptable price tag for the lives lost of our service members in illegal wars halfway across the world with no mission or American purpose.

As Sgt. Aaron Rollins told me after the hearing, would they tell this to the mothers of his fallen comrades? Would they tell them the deaths of their sons

were worth it because the state got a few million dollars out of the deal? And even if you were the kind of person who would put a price on the lives of our soldiers in wars Congress does not consider important enough to declare, what kind of money are we actually talking about?

It was firmly established — and opponents even conceded — that there would be no legal basis for any immediate de-appropriation of federal dollars. Under Title 32 of the U.S. Code, a state national guard may only lose federal funding if it fails to fulfill its domestic mission. Deployment into foreign war zones is not an obligation included in Title 32. Further, any threat against the funding of a state national guard is legally required to come with a time window for correction of the issue.

The only other avenue for swift federal retribution against funding for our Maine National Guard would have to come from Congress, but no member of Congress is going to vote to defund a state National Guard simply because they were too cowardly to vote for a declaration of war. Further, Maine is in an especially strong position to defend our federal funding. Our U.S. Senator Susan Collins is the leading Republican on the Senate Appropriations Committee. She would never vote for a budget that cut funding for the Maine National Guard.

Opponents went into the public hearing fear mongering through emails, declaring this legislation “could put the very existence of the Maine National Guard at risk.” By the end of the hearing, they had retreated to a much more timid position. Now, they argued that unelected bureaucrats at the Pentagon might possibly in the future gradually propose allocating less money to Maine (and more to other states) than they otherwise would have.

Even if that were the case, this argument presupposes that Maine would be alone in passing Defend the Guard legislation — able to be singled out by the Pentagon for our isolated rebellion. Perhaps twelve years ago, when this legislation was first brought forward by former Representative Aaron Libby of Waterboro (the only legislator in America brave enough at the time to do so), this assumption could have been taken seriously.

But in 2023, thanks to the work of combat veterans at Bring Our Troops Home,

nearly two dozen states are considering Defend the Guard legislation. Just a few weeks ago, the legislation passed in the Arizona State Senate.

Under vague threats from Washington, D.C. every state is understandably afraid of being the first, but the dam will break the moment any one state takes the lead. If Maine takes the lead by swiftly passing this legislation, Maine could be the first, but Maine will not be the last. Further it is Maine's stated purpose, "Dirigo," to lead on matters of weight such as these.

As I reflect on history, our forefathers risked their lives and fortunes, standing up to British warships at our shores in the defense of Maine's pine trees. Are not the lives and sacred honors of our guardsmen more precious than our trees? Will we sell them out for so little in response to such hollow threats? Or will we defend the Maine National Guard as our Constitution demands?

On Monday, I urge the members of the Veterans and Legal Affairs Committee to stand by our men and women in uniform (and all our shared oaths to the U.S. Constitution) by voting to pass LD 1054, Defend the Guard.



Eric Brakey

Sen. Eric Brakey (R-Androscoggin) is serving his third term in the Maine State Senate. Brakey is the author of Maine's Constitutional Carry law and ran as the 2018 Maine Republican nominee for the U.S. Senate. Brakey began his work in politics as the Maine state director of the Ron Paul 2012 Presidential Campaign. Before returning to the Maine Senate in 2022 after a four year hiatus, Brakey worked as the National Spokesperson at Young Americans for Liberty.

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Top image credit: Maine National Guard unit returns home in March. The unit had been deployed to Europe since May 2022 supporting Operation Atlantic Resolve. (Public domain/Maj. Carl Lamb)

