

TO: Committee on Veterans and Legal Affairs

FROM: Marianne Hill, Ph.D.

DATE: February 12, 2025

RE: LD 265. An Act to Prohibit the Maine National Guard from Combat Deployment Absent an Act of the US Congress

Senator Craig Hickman, Chair; Representative Laura Supica, Chair; and Members of the Committee.

Maine's National Guard serves and protects both Maine and the United States, and is due the utmost respect and consideration. I urge the Committee to exercise caution when considering LD265, which does not address the potential uses of our National Guard domestically.

The first part of this bill, with good reason, asserts that an act of Congress to declare war or similar Congressional action would be required to permit combat deployment of Maine's National Guard outside of Maine. This requirement would provide well-deserved protection for troops exposed to the possibility of bodily harm. Congressional debate provides safeguards against impulsive or ill-informed actions that exacerbate, rather than remediate, conflict. Maine's National Guard deserves the protection provided by democratic debate. The Committee should maintain the checks and balances that have preserved our democracy over the years. This bill could clarify that it does not prevent sending troops to assist with humanitarian or other work in non-combat roles.

However, I note that the use of National Guard troops at US borders to perform duties related to policing the entry of asylum seekers and other immigrants is not an appropriate use of those troops. This bill could benefit from an amendment to that effect. The second part of the bill permits the deployment of Maine's National Guard for any civil mission, presumably including deployment to US borders or even to Puerto Rico or Guam for immigration control purposes. However, that is not the purpose of the National Guard. The Guard may well be needed to help another state put out fires or help with flood control, but the current language is too broad.

The Brennan Center asserts states' rights to refuse deployment of troops when requested by the President for civil missions such as border or crowd control¹:

Section 502(f) of Title 32 of the U.S. Code is a long-standing authority on important domestic National Guard missions. Does § 502(f) authorize the use of National Guard personnel to perform any mission the president could conceivably request? No.

"32 U.S.C. § 328 makes clear that a governor is the party empowered to order National Guard troops to duty under either prong of § 502(f). A governor's right to refuse was evident in the summer of 2020—the Trump administration asked a total of 15 governors to deploy their Guard personnel into Washington, but four declined to do so." However, subsection 3 of LD265 states in part that the Governor "may deploy the military forces for a civil mission within the United States and the territories of the United States pursuant to section 103". There are no restrictions suggested on such deployments.

I urge the Committee to consider language restricting such domestic deployments to exclude immigration control.

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¹<https://www.brennancenter.org/our-work/analysis-opinion/presidents-power-call-out-national-guard-not-blank-check>

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I am proposed an amendment intended to prevent the deployment of our National Guard to assist with immigration control, especially at the borders. That is not the purpose or purview of the Guard.