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Return Our Weekend Warriors

by [Kelley B. Vlahos](#), May 04, 2010[Email This](#) | [Print This](#) | [Share This](#) | [Comment](#) | [Antiwar Forum](#)

If George W. Bush – notorious for skipping his Texas Air National Guard drills during the Vietnam War – were in the Guard today, he'd be up in the air without a propeller.

That's because today's National Guard has become virtually indistinguishable from the nation's active-duty forces in the war zone. The majority of these so-called part-time soldiers have served combat duty in Iraq and Afghanistan, with many– if not most – deployed more than once.

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As of April 24, [622 members of the Guard have been killed](#) [.pdf] in the two-front war since 2001. Forget the whole bit about “weekend warriors” – reservists have become indispensable to the ongoing overseas operations

since Bush himself launched the country into war nine years ago.

But activists in several states are saying that the founding fathers did not envision the state “militias” being used in foreign invasions and occupations, especially those against enemies that do not pose an imminent threat to the continental United States. Plus, the constant redeployment of the Guard has left local first-responders such as fire and police departments struggling to fill staff, families under mental and financial strain, and domestic emergency response capability increasingly at risk.

This is not to mention the psychological toll on the soldiers themselves. It has been estimated [that more than half of veteran suicides](#) – 53 percent – are among National Guard members returning home from war.

That’s why citizens are demanding – more than ever – “Bring ‘em home!”

“Certainly, these deployments are not what members of the National Guard signed up for – it was not what they were advertising in recruiting [these soldiers], it’s not the mission of the National Guard, which should be homeland defense,” insists Ben Manski, a Wisconsin attorney who serves as the executive director of the [Liberty Tree](#) and works with the [Bring the Guard Home project](#).

Activists in states such as Wisconsin, Vermont, Oregon, Idaho, Maryland, New Hampshire, Rhode Island, and New Mexico [have been pushing legislation](#) telling their governors to review – and stop – the orders sending the National Guard into Iraq. While the language varies, the proposals all suggest that the mission in Iraq no longer corresponds to the initial 2002 congressional [Authorization for the Use of Military Force \(AUMF\)](#) [.pdf] against now-dead Iraqi dictator Saddam Hussein, and therefore the continued use of the Guard is inappropriate and perhaps even unconstitutional.

“The Guard is being sent overseas without an authorization from Congress,” says Vermont state representative Mike Fisher, who managed to get 77 of his fellow legislators – more than half of the House membership – on board for a bill that would require the state attorney general to review and explain the state’s plan to deploy – or not deploy – its National Guard in light of what [the bill](#) [.pdf] calls a lack of federal authority to do so. Unfortunately for Fisher, the bill was stopped dead by the leadership of the General, Housing, and Military Affairs Committee in the last session.

“Having the states step into issues of the appropriateness of sending troops into battle is an unusual place for states to be,” admits Fisher, noting the hesitancy by some of his colleagues to get involved, despite Vermont’s reputation as a liberal, antiwar state. “There is a concern by some that we don’t want to send the wrong message [to the troops]. I personally think it’s absolutely the right message, saying, ‘We have your backs, and we only want to send you into the conflict when the military is clearly authorized.’”

Oregon activists had been similarly successful with [their own house bill](#), until it was thwarted before the end of last year’s legislative session and the [spring deployment](#) of 2,700 fresh Oregon National Guard troops to Afghanistan.

“What happened there is the leadership was unwilling to follow through with its commitment to the movement,” says Manski. “They are gearing up for the next session. A lot of groundwork has been laid, and the state party leaders have been given time to let democracy work, and now there is increasing frustration. We know what happens if Congress doesn’t follow through – there’s not much by way of accountability – but we have to see if we can put some accountability into play at the state level.”

As of *three years ago*, [417,000, or about 80 percent](#), of the nation’s National Guard members had already been overseas to Iraq or Afghanistan. About 20 percent of those had already been more than once. At the time those statistics were culled, there was much talk about active-duty and reserve forces being [severely strained, if not at a breaking point](#). Pennsylvania Gov. Ed Rendell, [in an appearance on Meet the Press last year](#), said more than 85 percent of his Guard had been overseas, some three or four times, and that they were “wasted” as a result.

The number of Guard and reserves as a percentage of the total force in Iraq and Afghanistan has fluctuated over the years. Official estimates in 2005 were at [28 percent](#); it was about [7 percent in Iraq and 15 percent in Afghanistan](#) at the end of 2008. Manski estimates it’s closer to one-third today. And new deployments are announced seemingly [every day](#). Despite plenty of talk of dramatically increasing the overall force, the Army is around the same size as it was at the beginning of the war – *if not shrinking*. And while the Army and reserves say they are exceeding recruitment projections, critics have wondered openly what kind of shell game – like reducing end-year goals – officials might be playing to keep up appearances.

[Said Slate’s Fred Kaplan in January](#):

“So here is the situation. The secretary of defense ordered, and Congress authorized, an expansion in the

size of the Army. But the Army reduced the recruitment goal – and reduced the retention goal. The size of the Army is in fact shrinking. It may look as if it's growing – the Pentagon report gives the impression it's growing – but it's growing only in comparison with the officially set goals."

So, however one reads this, don't expect a letup on Guard deployments any time soon. For the so-called part-time warriors, this has been an incredible strain on their personal and professional lives. While federal law ensures they will have their regular jobs when they get back, they often face a cut in pay while on active duty and don't have the same centralized support network as the active-duty military.

"They are not able to plan for the future. They had careers, maybe they were in school. Then it got interrupted," says Manski of the younger soldiers on repeat deployments.

"It's proven very disruptive to have the Pentagon use the National Guard in this way, where they are so dependent on the Guard for the occupation of Iraq and Afghanistan."

But it is illegal?

Depends on whom you ask.

While the U.S. Constitution ([Article 1, Section 8](#)) says Congress has the power to call up the state "militia" (the progenitor of today's Guard) to "execute the Laws of the Union, suppress Insurrections and repel Invasions," the role of the militia has been further defined and guided by numerous laws and amendments over the last 100 years. The modern National Guard was born with the Dick Act in 1903, and a later amendment allowed the president to send Guard units overseas for duty.

In a series of acts from 1916 to 1933, the National Guard eventually became a regular component of the Army that would be under the control of the state *and* the federal government, which retained the authority to federalize the Guard in times of emergency. In 1952, the Armed Forces Reserve Act allowed for the call-up of the Guard, including overseas training, without an emergency, but not without the consent of the governors impacted by the order. In 1986, the Montgomery Amendment partially rescinded the consent requirement, charging that governors could not object to the federal deployment of their Guard troops over the "location, purpose, type, or schedule of [federal] duty." The Supreme Court affirmed this in [Perpich v. Department of Defense](#), saying in that case that governors cannot object to the training of troops overseas under federal orders.

Experts like David Rittgers, a judge advocate general reserve officer and veteran who did three tours in Afghanistan, says in reference to the state efforts to stop the deployment of Guard troops to war, "Governors don't have the power to override the president in this matter." He adds that this opinion is his own, and not necessarily that of the U.S. military. Rittgers is [currently a legal analyst](#) for the Cato Institute.

"After the *Perpich* decision, it is hard to see a court saying that the troops must come home," he says, noting that since 1933 the law has recognized the Guard as having "dual enlistment," in that soldiers serve as part of both the federal Army and the state militia, with prevailing authority given to the federal government to call up its reserves for both active duty and active-duty training. Governors, says Rittgers, cannot object based on the type and purpose of the specified duty, which is what it seems the activists currently want to do.

Others obviously disagree, noting that in the *Perpich* decision, the justices did not close the door on a gubernatorial veto. In fact, the court said that "governors may withhold their consent on other grounds."

Attorney Benson Scotch, [in a legal memo](#) for the Wisconsin backers of [proposed state legislation](#) questioning the continued use of National Guard soldiers for federal duty in Iraq, claims that, based on the orders that federalized the reserves in the first place, "there is no authority under the Constitution or the laws of the United States for the continued presence of National Guard members in Iraq, and indeed no authority for the use of force at all in Iraq."

He argues that both Congress and the president share warmaking powers in the Constitution and that the 1973 War Powers Act, [the authority of which remains disputed to this day](#), recognizes the role of Congress in mobilizing federal troops for war. In fact, it was such an [authorization, passed by Congress and signed by President Bush in October 2002](#), that allowed Bush to send Guard troops into Iraq "to enforce all relevant United Nations Security Council resolutions regarding Iraq" and to "defend the national security of the United States against the continuing threat posed by Iraq."

That 2002 AUMF is now moot, argues Scotch, because Saddam is dead and the search for the so-called weapons of mass destruction that were the basis of the UN resolutions has long been aborted. These facts form the basis the state's legal argument.

Scotch admits that "courts have usually declined to hear war powers cases – cases challenging the exercise of

war powers, typically the initiation of the use of military force.” However, that does not mean the states should knuckle under. Scotch:

“But the reluctance of courts to accept jurisdiction of war powers cases at the present time cannot be cited as grounds for states to willingly comply with invalid federalization orders. If A 203 [the Wisconsin bill] is adopted and appropriately applied, there may come a time when a federal agency seeks judicial assistance in compelling state compliance.

“Win or lose in such an event, the issue of accountability in the exercise of war powers would be brought more clearly into the public square. It would be useful to know if Congress can impose enforceable conditions in an Authorization for Use of Military Force, and if so, what the path to enforcement might be.”

Fisher says there is a similar case to be made against the Guard’s involvement in Afghanistan, too, noting that [the 2001 AUMF against the 9/11 terrorists](#) is too broad, and must be examined for its legitimacy as well.

“While I am going to be persistent in getting [our bills] passed somewhere, my real goal is to keep getting this discussed. Whether you believe it is wrong or evil or necessary, when America decides to go to war, we’re all better off when it gets done within a legal process. This is really about the next war – and there will be a ‘next war.’”

Manski acknowledges that “it would be hard to turn back the clock to 1902,” before state militias became an appendage of the federal government, but states should still exert what prerogatives they do have, and perhaps help to bring U.S. foreign policy closer to what the founders envisioned, “that this be a nation of liberty, not empire.”

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