

HOUSE JOINT MEMORIAL 18

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

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A JOINT MEMORIAL

REQUESTING THE PRESIDENT AND SECRETARY OF DEFENSE TO WITHDRAW ALL NEW MEXICO NATIONAL GUARD TROOPS FROM IRAQ IN ABSENCE OF A VALID CONGRESSIONAL AUTHORIZATION FOR SUCH SERVICE; REQUESTING THE DEPARTMENT OF DEFENSE TO CANCEL ANY PENDING DEPLOYMENT OF THE NEW MEXICO NATIONAL GUARD TO IRAQ; REQUESTING THE GOVERNOR TO WITHHOLD CONSENT FROM ANY FURTHER DEPLOYMENT OF THE NEW MEXICO NATIONAL GUARD TO IRAQ.

WHEREAS, the war in Iraq has entered its sixth year, resulting in the deaths of over four thousand American military men and women, and the cost of the war now exceeds one trillion three hundred billion dollars (\$1,300,000,000,000), which corresponds to sixteen thousand five hundred dollars (\$16,500) for each American family of four and continues to rise; and

WHEREAS, the United States department of the army has

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1 directed the New Mexico national guard to prepare for a new  
2 deployment to Iraq in 2009; and

3 WHEREAS, Governor Richardson has expressed concern that  
4 the loss of the New Mexico national guard's heavy trucks and  
5 Blackhawk helicopters to deployment in Iraq may impair the  
6 state's ability to respond to an emergency; and

7 WHEREAS, even if such adverse impacts on the New Mexico  
8 national guard were absent, and assuming *arguendo* that the war  
9 in Iraq was lawful when commenced, the presence of the New  
10 Mexico national guard members in Iraq is not now lawful; and

11 WHEREAS, pursuant to Article I, Section 8 of the United  
12 States constitution, congress may call forth the militia to  
13 execute the laws of the union, suppress insurrection and repel  
14 invasions; and

15 WHEREAS, since 1933, federal law has provided that persons  
16 enlisting in a state national guard unit simultaneously enlist  
17 in the national guard of the United States, part of the United  
18 States army; and

19 WHEREAS, the enlistees retain their status as state guard  
20 members unless and until ordered to active federal duty and  
21 then revert to state status upon being relieved from federal  
22 service; and

23 WHEREAS, pursuant to the United States constitution, each  
24 state's national guard unit is controlled by the governor, but  
25 can be called up for federal duty by the president, provided

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1 that the president is acting pursuant to the constitution and  
2 laws of the United States; and

3 WHEREAS, the War Powers Act of 1973 (Public Law 93-148)  
4 specifically limits the power of the president of the United  
5 States to wage war without the approval of congress; and

6 WHEREAS, in October 2002, the United States congress  
7 authorized military force pursuant to the Authorization for the  
8 Use of Military Force Against Iraq (Public Law 107-243 or the  
9 AUMF), a law enacted in response to a presidential request  
10 pursuant to the War Powers Act; and

11 WHEREAS, the AUMF stated in part that the president is  
12 authorized to use the armed forces of United States as the  
13 president determines to be necessary and appropriate in order  
14 to defend the national security of the United States against  
15 the continuing threat posed by Iraq and enforce all relevant  
16 United Nations security council resolutions regarding Iraq; and

17 WHEREAS, the AUMF contained neither a termination date nor  
18 a process or procedure to determine when the authorization  
19 should terminate; and

20 WHEREAS, United States military forces, including members  
21 of the New Mexico national guard and guard members from other  
22 states, have long since addressed the purposes recited in the  
23 AUMF, and Iraq does not pose a continuing threat to the  
24 national security of the United States nor is there an extant  
25 United Nations security council resolution to be enforced; and

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1           WHEREAS, the president may not maintain United States  
2 military forces, and in particular members of the New Mexico  
3 national guard, in Iraq other than for the purposes set forth  
4 by congress in the AUMF; and

5           WHEREAS, without a specific date for withdrawal of United  
6 States military forces from Iraq in the AUMF or a method or  
7 formula for determining the time for withdrawal, and in the  
8 absence of congressional legislation curing these omissions,  
9 the president is required to order the withdrawal of troops  
10 within a reasonable time and in a reasonable manner; and

11           WHEREAS, the president has taken no such action; and

12           WHEREAS, other than the AUMF, there is no authority  
13 pursuant to the constitution or the laws of the United States  
14 for the continued presence of New Mexico national guard members  
15 in Iraq; and

16           WHEREAS, the maintenance of New Mexico national guard  
17 members in Iraq beyond the time and scope set forth in the AUMF  
18 has resulted in significant harm to guard members and their  
19 families, including death and injury, loss of time together and  
20 financial hardship; and

21           WHEREAS, since New Mexico is home to five military-related  
22 institutions that have handled and continue to handle extremely  
23 dangerous radioactive materials and explosives, and the  
24 wildfire probabilities due to increased global warming and  
25 drought are significant, national guard members are needed in

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1 New Mexico;

2 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE  
3 STATE OF NEW MEXICO that the president of the United States be  
4 requested to order the return of the New Mexico national guard  
5 units and that the governor of New Mexico be requested to  
6 consent to New Mexico national guard units being limited to  
7 service within and on behalf of the state of New Mexico, unless  
8 called into federal service pursuant to a declaration of war or  
9 a duly enacted and substituting federal statute authorizing the  
10 use of military force; and

11 BE IT FURTHER RESOLVED that the state attorney general be  
12 requested to appear in any state or federal court with  
13 jurisdiction over the deployment of the New Mexico national  
14 guard to defend any decision to consent, or not to consent, to  
15 the deployment of the New Mexico national guard to Iraq or to  
16 file an action on behalf of the state of New Mexico with  
17 respect to deployment; and

18 BE IT FURTHER RESOLVED that copies of this memorial be  
19 transmitted to the president of the United States, the  
20 secretary of defense, the governor, members of the New Mexico  
21 congressional delegation and the state attorney general.