

1 SENATE JOINT MEMORIAL 20

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Carlos R. Cisneros

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10 A JOINT MEMORIAL

11 REQUESTING THE PRESIDENT AND THE SECRETARY OF DEFENSE TO
12 WITHDRAW ALL NEW MEXICO NATIONAL GUARD TROOPS FROM IRAQ IN THE
13 ABSENCE OF A VALID CONGRESSIONAL AUTHORIZATION FOR SUCH SERVICE
14 AND REQUESTING THE GOVERNOR TO WITHHOLD CONSENT FOR ANY FURTHER
15 DEPLOYMENT OF THE NEW MEXICO NATIONAL GUARD TO IRAQ.

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

23 WHEREAS, the United States department of the army has
24 directed the New Mexico national guard to prepare for a new
25 deployment to Iraq in 2009; and

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

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

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

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

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

21 WHEREAS, under the United States constitution, each
22 state's national guard unit is controlled by the governor, but
23 can be called up for federal duty by the president, provided
24 that the president is acting pursuant to the constitution and
25 the laws of the United States; and

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

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

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

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

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

25 WHEREAS, the president may not maintain United States

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1 military forces, and in particular members of the New Mexico
2 national guard, in Iraq other than for the purposes set forth
3 by congress in the AUMF; and

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

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

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

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

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

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