

United States Senate

WASHINGTON, DC 20510

September 6, 2006

The Honorable John Warner
Chairman
U.S. Senate Committee on Armed Services
Washington, DC 20510

The Honorable Duncan Hunter
Chairman
U.S. House Committee on Armed Services
Washington, DC 20515

The Honorable Carl Levin
Ranking Minority Member
U.S. Senate Committee on Armed Services
Washington, DC 20510

The Honorable Ike Skelton
Ranking Minority Member
U.S. House Committee on Armed Services
Washington, DC 20515

Dear Chairman Warner, Senator Levin, Chairman Hunter, and Representative Skelton:

We write to urge the Conference Committee on the Fiscal Year 2007 Defense Authorization bill to drop provisions in both the House and Senate versions of the legislation that make it easier for the President to invoke federal martial law. Both the House and Senate versions of the defense bill include sections (House Sec. 511, Senate Sec. 1042) that change the Insurrection Act, which establishes when the President can declare federal martial law. The House provision specifies that the President could use this authority during natural disasters, disease epidemics, and terrorist attacks. The Senate version includes similar language, while placing greater time restrictions and certification requirements on the President's use of that authority.

Both provisions should be dropped because each makes it easier for a President to invoke martial law, which goes against one of the central tenets of our democratic society. The Insurrection Act already allows the President to federalize the military, including the National Guard, to restore public order. Presidents have invoked the authority sparingly -- in fact, only on three separate occasions over the past six decades. Specifying specific criteria — including such a regularly occurring trigger as a natural disaster -- changes the presumption against invoking federal martial law into a presumption for the domestic use of the military in our States and communities.

This provision also undermines the optimal, well-proven approach for handling domestic emergencies. This time-tested model for disaster relief has the elected executive — usually a mayor or governor closest to a disaster or an emergency -- in control of the situation. Resources and personnel from other levels of government, such as State or Federal governments, should come in to support that executive's efforts. However, the House and Senate provisions make it more likely that the President — the elected executive furthest away and with the least understanding of a local community — will be placed in charged of one of the most powerful response assets, our military.

We understand the President's budget office has submitted a modification to its original proposal that would exempt the National Guard from this change to the Insurrection Act. This change would be equally wrongheaded, creating competing military chains-of-control, one going through the States and another through the Federal Government. One could easily see a situation in which a mayor or Governor in control of an emergency situation is forced to compete against a high-ranking general officer sent to command the activated military.

It is clear that the implications of both proposals have not been formally reviewed by the relevant congressional committees, and jurisdiction of this subject matter goes well beyond the armed services committees of both houses. It does not make sense to give the President more authority to invoke the Insurrection Act and to call martial law without fully understanding the consequences of any such change.

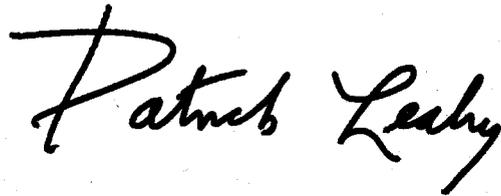
We believe that the best way to support the military's ability to support local communities is to empower the National Guard. In working under the command-and-control of the Nation's governors, the National Guard can effectively integrate with personnel and equipment from all levels of Government. Because members of the National Guard come straight out of civilian communities, well-justified posse comitatus provisions simply do not apply. The Senate version of the Defense Authorization Bill includes important portions of S.2658, the National Defense Enhancement and National Guard Empowerment Act, which when adopted will aid the National Guard Bureau's ability to support the State's Adjutant's General in their collective mission to provide military support to civilian authorities.

We urge you to retain the National Guard Empowerment Act, while dropping the problematic House and Senate provisions that give the President unprecedented power to declare federal martial law. We appreciate your attention to this matter.

Sincerely,



Christopher S. Bond
Co-Chair
U.S. Senate National Guard Caucus



Patrick Leahy
Co-Chair
U.S. Senate National Guard Caucus