Senate Committee on the Judiciary Hearing

"'The Insurrection Act Rider' and State Control of the National Guard"

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April 24, 2007

Good afternoon Mr. Chairman and members of the Committee. My name is Ted Kamatchus and I currently serve as the Sheriff of Marshall County, Iowa and President of the National Sheriffs' Association. The National Sheriffs' Association represents over 3,000 elected sheriffs across the country and over 22,000 law enforcement professionals making us one of the largest law enforcement associations in the nation.

I am pleased to have this opportunity to appear before you today to express my concerns, and what I know to be the concerns of sheriffs across the country, about the recent changes made to the Insurrection Act under Section 1076 of the John Warner National Defense Authorization Act for FY2007. The changes represent an unprecedented and unnecessary expansion of presidential power to federalize the National Guard for domestic law enforcement purposes during emergencies, and consequently undermine the ability of sheriffs to best serve and protect their constituents.

Background

The Office of the Sheriff plays a distinctive role in the nation's criminal justice and homeland security system and reflects a uniquely American tradition of a law enforcement leader who is elected. Over 99% of the nation's sheriffs are elected and generally serve as the highest law enforcement officer in their respective counties. I speak for all sheriffs when I say that we maintain a vested interest in protecting the well-being of our constituents who have entrusted us with such a responsibility. Being elected to such a position in a community offers sheriffs the ability to develop and maintain close relationships with and develop a true understanding of the needs of our constituents.

Each morning I stop by various coffee shops in my community to interact with the people of Marshall County. These are the same voters who have elected me to office 5 times. I respect their input and listen to their concerns. We are friends, neighbors and citizens together in Marshall County. This closeness blesses me with a unique understanding of their day to day needs and thus provides me with the information I require in order to keep Marshall County safe. I am certain that each of our nation's sheriffs share similar close relationships with the

constituents they serve and therefore are able to best predict the potential response behaviors and needs of a local community in a time of disaster or emergency.

Furthermore, as the chief law enforcement officer in his or her county, the sheriff provides protection, safety and security at the local level. The sheriff knows exactly what resources are available to a community and where such resources can be located during a time of need.

Citizens across this country have a real concern when they begin to consider that the military could enter their communities without invitation. They know first hand that the federal government can not provide them with the quality, caring and necessary service they desire. They hold a deep inner fear that one day someone may utilize the power of the military for the wrong purpose or without the appropriate consultation with their local leaders.

This past December, agents from ICE made a raid on a meat packing plant in my community. I was in Des Moines at a training conference when I found out about the raid and only became aware of the activities in my hometown by noticing headlines scrolling across the bottom of the TV screen in my hotel room. "We have learned that Agents from the Immigration and Customs Enforcement (ICE) are currently conducting a raid of the Swifts Meats pork packing plant in Marshalltown Iowa." I immediately called my dispatch and was told that ICE had notified my agency only 10 minutes prior to the raid being conducted. I drove back to Marshalltown and was advised by supervisory agents on the scene that they were simply following the orders of higher ranking individuals and were not responsible for the time at which local officials such as myself were to be notified of the federal activities.

I am happy that ICE conducted the raid. They were doing their job, enforcing the immigration laws of this country. My immediate concern was stimulated by the lack of communication on the part of the Federal Government with my agency and the local Police Department. It is impossible for local law enforcement to function efficiently and effectively if their authority is unexpectedly compromised or if their knowledge of the community is not utilized to its fullest extent possible in times of need.

Thus, when I was not notified or consulted by the ICE regarding their plans to raid the meat packing industry in Marshalltown, my thoughts turned toward the safety and well-being of my staff. My agency heads up the Mid-Iowa Drug Task Force. Oftentimes we conduct undercover operations in that particular plant and I wondered if there had been undercover agents assigned in the plant on the morning of the raid. If we were working undercover in the plant that day, the agents of ICE would have ultimately found armed individuals. Without knowing them as officers, the encounter could have easily turned deadly.

This is only one example of potential dangers that could arise from an expansion of Presidential authority to deploy military and federal officials to local communities. I strongly believe that the old system of request and response for National Guard deployment worked. The responsibility to request additional aid from the Federal Authorities rests on the shoulders of those local and state officials who are placed in office by the citizens. If those same local officials fail in reaching out to obtain the assistance necessary to accomplish their tasks, it falls upon the citizens to remove them from office.

Concerns

Given the significance of the sheriff in a community, it is paramount that the sheriff and other local first responders are not stripped of their ability and authority to serve their constituents in a time of need. I can assure you that outside parties such as the military and National Guard lack the familiarity with a particular community which is necessary to effectively and efficiently secure its residents during a time of disaster or emergency. To provide a blanket authority to such federal agencies and individuals to conduct domestic law enforcement functions, as the new language of the Insurrection Act does, jeopardizes the likelihood of a timely response and effective assistance to our citizens in times of need.

Mr. Chairman, as President of the National Sheriffs' Association, I represent the sheriffs of this country and my interest is for the country as a whole, border to border and coast to coast. Therefore, I find an invitation to the President to allow external entities such as the military and National Guard to entirely usurp the established power and command of sheriffs and other first responders without prior consultation as unacceptable and a dangerous policy to remain in effect.

I cannot stress enough that the significance of working relationships among local first responders, clear and understood chains of command, and pre-existing plans of action must not be overlooked when considering how to best prepare our nation's response to unforeseeable, disastrous events. The changes made to the Insurrection Act by Congress last year will undoubtedly result in a confusion in the chain of command and inefficient and ineffective functioning of first responders were the Act invoked. Such a result would inhibit the ability of sheriffs and other first responders to carry out their duties and protect public safety.

Furthermore, I am gravely concerned with the empowering language utilized to alter the Insurrection Act. Particularly, the Act's reference to "other conditions" under which the President can invoke the Act and its conferring authority to the President to invoke the Act without the consent of the governor or local law enforcement authorities yields ambiguity in reference to when and under what circumstances a President may decide to invoke martial law. Unlike the old language, which put the emphasis against invoking the Act in situations other than a clear case of insurrection, this new language creates the likelihood that the Act will be invoked more frequently and hastily during emergencies.

These possibilities represent an unwarranted diminution of state and local power as governors and local law enforcement officials will lose their command structure and capabilities during times when the Act is invoked. Consequently, valuable resources may also go unrecognized and underutilized in situations where federal officials attempt to develop a response strategy without full or accurate knowledge of the community's resources, capabilities and capacities. Furthermore, the changes made to the Act undermine the American tradition manifested under the original Insurrection Act of 1807 and the Posse Comitatus Act of 1878 which helped enforce strict prohibitions on military involvement in domestic law enforcement.

Suggestions

I strongly believe that before such influential changes were made to the Insurrection Act, key officials, governors, sheriffs, and other stake holders should have been consulted. This being the case, in addition to the several potentially troublesome effects of the new Insurrection Act

language that I just discussed, I believe legislation should be enacted that repeals Section 1076 of the John Warner National Defense Authorization Act for FY2007. I speak for sheriffs across the nation as I urge Congress to support the legislation before your committee which would repeal the new Insurrection Act language. After such repeal, if beliefs remain that the President's authority to invoke martial law needs to be reconsidered, then thorough, effective, and professional research can be conducted and necessary inquiries can be made as to what the appropriate next steps may be.

Conclusion

I want to thank you for the opportunity to come before you and express my concerns. I hope I have conveyed to you the potentially dangerous situations that may result if the language of the Insurrection Act is not returned to its original form. The well-being and safety of American citizens, both locally and nationally, must be of highest priority. I believe, particularly as an elected official, that officials and leaders must always act with the best interest of the public in mind. It is my opinion that the hasty and ill-informed passage of Section 1076 fails to consider the American public and therefore represents unwise and undemocratic policy.

Sheriffs interact on a daily basis with the voting public and therefore have a unique and unequivocal understanding of the needs of and resources available to local communities. This capacity must never be overlooked, particularly in times of emergency. Therefore, I ask for your full consideration on my comments today not just as a Sheriff but as also as a concerned citizen. I know that through your commitment and efforts together we can protect our nation's citizens and homeland security.