

**Date: 1/30/2025**

**Bill number: SB38 – Defend The Guard**

**Indicate Disposition: Proponent**

**Dan McKnight**

**13 Year Veteran (USMC, US Army, ID Army National Guard)**

**Chairman and Founder of *Bring Our Troops Home*.**

### **Chairman Thompson and Members of the Committee,**

We are here to discuss **Defend the Guard**, a legally sound measure designed to close a loophole in existing law and ensure that the Kansas National Guard is never misused by the federal government outside its constitutional and statutory authority.

At its core, **Defend the Guard is about enforcing and clearly defining the limits of executive power** so that Kansas Guardsmen are deployed only for their rightful and lawful missions—not at the whim of a single individual or unelected bureaucrat. It is about honoring the men and women who put on the uniform of the National Guard and ensuring that they are never used for political purposes.

### **The President’s Limited Authority to Federalize the National Guard**

The **supreme law of the land—the Constitution—grants only three purposes** for which the National Guard, formerly known as the militia, may be called into federal service:

1. **To repel an invasion.**
2. **To suppress an insurrection.**
3. **To enforce the laws of the Union.**

Beyond these very specific constitutional mandates, **federal law has further clarified and restricted when and how the National Guard can be federalized** to prevent executive overreach. The primary laws governing this authority are found in **Title 10, U.S. Code, Sections 12301 and 12302.**

#### **10 U.S.C. § 12301 – Full Mobilization (Congressional Action Required)**

- **§ 12301(a) – Full Mobilization:** If Congress **declares war** or authorizes military force in a **national emergency**, the President may activate any reserve component—including the National Guard—for the **duration of the war or emergency plus six months.**
  - This is the strongest form of mobilization and **requires congressional action.**
- **§ 12301(b) – Voluntary Activation:** Guardsmen and reservists **can be called up voluntarily** for up to **365 days.**
- **§ 12301(d) – Voluntary Active Duty Orders:** Individual service members **may volunteer** for federal active duty.
- **§ 12301(g) – Involuntary Retention (Stop-Loss Authority):** In times of **war or national emergency**, the President can **prevent service members from leaving the military**, even after their contractual obligation ends.

## **10 U.S.C. § 12302 – Partial Mobilization (Presidential Action Without Congress)**

- **§ 12302 allows the President to activate up to 1,000,000 members** of the National Guard and Reserves for **up to 24 months** if he **declares a national emergency**.
- Unlike **§ 12301, this does not require a congressional war declaration**.
- The term **“national emergency”** is **not strictly defined**, meaning a President can declare one **for any reason** and federalize the Guard **without legislative approval**.

And **this is the issue we are here to address today**.

## **The Problem: Congress and the President Have Abused This Authority**

Congress has **not issued a formal declaration of war since 1942**—yet our National Guard has been sent to fight in:

- **Vietnam**
- **Iraq**
- **Afghanistan**
- **Syria**
- **And beyond.**

Instead of following the **constitutional process**, Congress has relied on **Authorizations for Use of Military Force (AUMFs)**—open-ended permissions that allow Presidents to wage **endless wars** without clear constitutional limits.

Additionally:

- The **1973 War Powers Resolution** was intended to **correct this abuse**, requiring Congress to **approve military action within 60 days** or demand withdrawal.
- **However, it has never been properly followed or enforced**—by **either** Congress or the President.

What this means in practice is that **Kansas Guardsmen—our neighbors, our family members—have been deployed into foreign wars that Congress never declared**. This is not a hypothetical issue; it is an ongoing violation of both **constitutional intent and federal law**.

## **The Syrian Civil War: A Case Study in National Guard Abuse**

A **perfect example** of this abuse is the **Syrian Civil War**.

In **2013, President Barack Obama went to Congress seeking authorization for military force in Syria**. Congress rejected his request.

But instead of respecting the constitutional separation of powers, **President Obama ignored Congress and sent the military into Syria anyway**—intervening in a foreign civil war without congressional approval.

This reckless overreach led to **U.S. forces fighting on multiple sides of a chaotic conflict**, arming and funding various factions, many of which later turned against American interests.

At the **beginning of U.S. involvement in Syria**, fewer than **3%** of the troops deployed—including boots on the ground and support units—were from the **National Guard**.

Yet, in **2024, just a few months ago, when the al-Assad regime finally collapsed**, more than **58%** of the U.S. forces involved in the conflict—including combat troops and support forces—were **National Guard personnel**.

This is **precisely what Defend the Guard is meant to prevent**.

The **National Guard was never meant to be the “easy button” for endless U.S. foreign interventions**.

It was never meant to be a **permanent auxiliary force for an out-of-control foreign policy**. Yet, over the course of the **Global War on Terror**, that is exactly what has happened.

## **Defend the Guard: A Necessary Solution**

**Defend the Guard does not stop the National Guard from serving its rightful role.**

- It does not interfere with disaster relief, federal training, or legal mobilization for domestic emergencies.
- It does not prevent the Guard from being called up **in the event of an invasion, insurrection, or to enforce the laws of the Union**.

**What it does do is restore constitutional order.** It ensures that before the Kansas National Guard is sent to fight in a foreign war, **Congress must first formally declare that war**.

This is not a **radical idea**—it is **simply a return to the law as written**.

If war is necessary, let **Congress debate it, vote on it, and take responsibility for it**—as the Founders intended.

Kansas has always led the way in **defending constitutional principles and the rights of our state and our people**.

By passing **Defend the Guard**, we reaffirm that commitment, ensuring that Kansas Guardsmen are never sent to war **unless Congress does its job**.

**I urge you to pass Defend the Guard and protect both our Guardsmen and the rule of law.**

Thank you.



**Dan McKnight**