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—For section..... Voices/Legislative Update  
—Format..... Opinions  
—Dateline..... Dover  
—Article Number:..... 43256



**Notes from editor (not for publication):**



HEADLINE ELEMENTS:

####BEGIN HED####

1 Let's avoid legal confusion and false expectations

####END HED####

####BEGIN SUBHED####

2 Under the Supremacy Clause of the Constitution, federal  
3 law governs when National Guard units are federalized

####END SUBHED####

4 TEXT BODY:

####BEGIN TEXT####

5 I HAVE HEARD from Vermonters, many of them outside the  
6 Windham-2 district I represent, about [H.355](#), often called the  
7 “Defend the Guard Act.” I believe that outreach is happening in  
8 part because I come from a military family and serve as co-chair  
9 of the Vermont National Guard and Veterans Affairs Caucus.  
10 Issues affecting Guard members and their families matter deeply  
11 to me.

12 Before taking a position on any bill, I believe it is  
13 important to understand where it comes from, what it is trying to  
14 do, and how it proposes to do it.

15 [“Defend the Guard”](#) is a national grassroots movement  
16 led largely by veterans of Iraq and Afghanistan. Supporters argue  
17 that the Constitution gives Congress the power to declare war,  
18 that Congress has not issued formal declarations of war in  
19 decades, and that National Guard members have been deployed  
20 overseas under [Authorizations for Use of Military Force](#) rather  
21 than formal declarations.

22 Their conclusion is that states should refuse to allow  
23 Guard units into combat unless Congress formally authorizes it.

24 Versions of this legislation have been introduced in  
25 multiple states over the past several years. The goal appears to be  
26 to pressure Congress to reclaim its war powers.

27 H.355 would require the governor to review federal  
28 orders placing the Vermont National Guard into active duty  
29 combat. It would prohibit him from releasing Guard members  
30 into federal combat service unless Congress has issued an official  
31 declaration of war or specifically called forth the militia under  
32 limited constitutional clauses. It would further direct the governor  
33 to prevent deployment if those criteria are not met.

34 Supporters describe this as a constitutional safeguard. To  
35 evaluate that claim, we have to look at how the Guard actually  
36 operates.

37 \* \* \*

38 THE NATIONAL GUARD has a dual structure:

- 39 • Under Title 32 of the U.S. Code, Guard units operate  
40 under state control unless called into federal service. In that  
41 status, the governor directs state missions such as disaster  
42 response and civil support.
- 43 • Under Title 10, Guard units are federalized and  
44 become part of the U.S. Armed Forces. In that status, the  
45 president is commander in chief, and the Guard performs federal

46 missions such as overseas deployments and national defense  
47 operations.

48 Guard members hold dual enlistments. They are  
49 members of both their state National Guard and the National  
50 Guard of the United States. When the federal government  
51 invokes authority, they transition into federal service.

52 This structure is not optional. It is foundational. The U.S.  
53 Supreme Court affirmed this in [Perpich v. Department of Defense](#),  
54 holding that once Guard members are ordered into federal  
55 service, a governor does not have authority to block that  
56 activation.

57 It is also true that Congress has not formally declared war  
58 in recent decades. The last formal declarations were in [1942](#)  
59 [against Bulgaria, Hungary, and Romania](#). Instead, Congress has  
60 passed broader statutory authorizations.

61 Whether one believes that is good policy or not, those  
62 authorizations are federal law. Under the [Supremacy Clause of](#)  
63 [the Constitution](#), federal law governs when Guard units are  
64 federalized. A state cannot nullify federal military orders.

65 \* \* \*

66 THERE ARE Vermonters who are understandably  
67 concerned about current and recent deployments. Whenever  
68 Vermont Guard members are deployed, their safety matters  
69 deeply to me.

70 But there are two distinct questions here. Should  
71 Congress be more accountable when authorizing military action?  
72 And can a state legally refuse a federal activation order?

73 The first is a legitimate and ongoing debate about war  
74 powers. The second has already been answered by constitutional  
75 law.

76 Many supporters of H.355 are veterans. They want clear  
77 congressional votes before war, fewer open-ended conflicts,  
78 protection for Guard members, and preserved Guard capacity at  
79 home. I respect and share those goals.

80           However, if Vermont were to pass a law declaring certain  
81 federal military orders invalid, it would almost certainly face  
82 immediate legal challenge and likely lose in federal court. That  
83 would not protect our Guard members. It would create legal  
84 confusion and false expectations.

85           If the concern is congressional accountability, there are  
86 constructive steps that do not conflict with constitutional limits.  
87 We can hold legislative hearings and hear from our federal  
88 delegation about overseas activation, we can pass formal  
89 resolutions urging Congress to debate and authorize military  
90 force, and we can work directly with our congressional  
91 delegation on war powers reform.

92           Those actions reinforce democratic accountability  
93 without putting Vermont in a legal position it is clearly preempted  
94 from.

####END TEXT####

BIO/COATTAIL:

####BEGIN BIO/COATTAIL####

95           **LAURA SIBILIA**, an independent, represents the  
96 Windham-2 district (Dover, Jamaica, Somerset, Stratton, and  
97 Wardsboro) in the Vermont House of Representatives.

####END BIO/COATTAIL####

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