

ASSEMBLY JOINT RESOLUTION

No. 104

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED SEPTEMBER 25, 2008

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Urges President and Secretary of Defense to withdraw NJ National Guard from Iraq and withholds consent of Governor and Legislature from further National Guard deployments to Iraq.

CURRENT VERSION OF TEXT

As introduced.



AJR104 VAINIERI HUTTLE

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1 **A JOINT RESOLUTION** urging the President and Secretary of
2 Defense to withdraw all New Jersey National Guard troops from
3 Iraq in absence of a valid and subsisting Congressional mandate
4 for such service; urging the Department of Defense to cancel the
5 pending deployment of the 50th Heavy Brigade Combat Team to
6 Iraq in the absence of such mandate; and withholding the consent
7 of the Governor and State Legislature from any further
8 deployment of the New Jersey National Guard to Iraq in the
9 absence of such mandate.

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11 **WHEREAS**, The war in Iraq has entered its sixth year, resulting in the
12 deaths of over 4,000 American service men and women, and the
13 cost of the war now exceeds \$1.3 trillion, \$16,500 for each
14 American family of four, and continues to rise; and

15 **WHEREAS**, On October 19, 2007, the Department of the Army alerted
16 the 50th Heavy Brigade Combat Team of the New Jersey National
17 Guard, based at Fort Dix, to prepare for deployment to Iraq in the
18 autumn of 2008; and

19 **WHEREAS**, The planned deployment of National Guard forces
20 represents roughly 50% of the total strength of the New Jersey
21 National Guard, making this the largest deployment of New Jersey
22 National Guard personnel since World War II; and

23 **WHEREAS**, Governor Corzine has expressed concern that the loss of
24 the National Guard's heavy trucks and Blackhawk helicopters may
25 impair the State's ability to respond to an emergency; and

26 **WHEREAS**, Even if such adverse impacts on the New Jersey National
27 Guard were absent, and assuming *arguendo* that the war was lawful
28 when commenced, the presence of the Guard members in Iraq is not
29 now lawful. Under Article I, Section 8, Clause 15 of the United
30 States Constitution, Congress may call forth the militia to execute
31 the laws of the union, suppress insurrection, and repel invasions;
32 and

33 **WHEREAS**, Since 1933, federal law has provided that persons enlisting
34 in a state National Guard unit simultaneously enlist in the National
35 Guard of the United States, part of the U.S. Army. The enlistees
36 retain their status as state guard members unless and until ordered
37 to active federal duty and then revert to state status upon being
38 relieved from federal service; and

39 **WHEREAS**, Under the U.S. Constitution, each state's National Guard
40 unit is controlled by the governor, but can be called up for federal
41 duty by the President, provided that the President is acting pursuant
42 to the Constitution and laws of the United States; and

43 **WHEREAS**, The War Powers Act of 1973 (Public Law 93-148)
44 specifically limits the power of the President of the United States to
45 wage war without the approval of Congress; and

46 **WHEREAS**, In October 2002, the U.S. Congress authorized military
47 force under the Authorization for the Use of Military Force Against
48 Iraq, (Public Law No. 107-243) (AUMF), a law enacted in response

1 to a presidential request under the War Powers Act. The AUMF
2 stated in part that the President is authorized to use the armed forces
3 of United States as he determines to be necessary and appropriate
4 in order to defend the national security of the United States against
5 the continuing threat posed by Iraq and enforce all relevant United
6 Nations Security Council Resolutions regarding Iraq; and

7 **WHEREAS**, The AUMF contained neither a termination date, nor a
8 process or procedure to determine when the authorization should
9 terminate; and

10 **WHEREAS**, U.S forces, including members of the New Jersey National
11 Guard and guard members from other states, have long since
12 addressed the purposes recited under the AUMF, and Iraq does not
13 pose a continuing threat to the national security of the United
14 States, nor is there an extant United Nations Security Council
15 Resolution to be enforced; and

16 **WHEREAS**, The President may not maintain U.S. forces, and in
17 particular members of the New Jersey National Guard, in Iraq other
18 than for the purposes set forth by Congress in the AUMF. Without
19 a specific date for withdrawal of U.S. forces from Iraq in the
20 AUMF or a method or formula for determining the time for
21 withdrawal, and in the absence of Congressional legislation curing
22 these omissions, the President is required to order the withdrawal of
23 troops within a reasonable time and in a reasonable manner. The
24 President has taken no such action; and

25 **WHEREAS**, Other than the AUMF, there is no authority under the
26 Constitution or the laws of the United States for the continued
27 presence of New Jersey National Guard members in Iraq; and

28 **WHEREAS**, The maintenance of New Jersey National Guard members
29 in Iraq beyond the time and scope set for the in the AUMF has
30 resulted in significant harm to Guard members and their families,
31 including death and injury, loss of time together, and financial
32 hardships; now, therefore,

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34 **BE IT RESOLVED** *by the Senate and General Assembly of the*
35 *State of New Jersey:*

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37 1. The Governor and Legislature of the State of New Jersey
38 declare that the Congressional Authorization for the Use of Military
39 Force of October 16, 2002 has expired and no further authorization
40 has issued, and therefore the President is urged to order the return
41 of the New Jersey National Guard's 50th Heavy Brigade Combat
42 Team.

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44 2. The Governor and Legislature resolve that the New Jersey
45 National Guard shall hereafter be limited to service within and on
46 behalf of the State of New Jersey, unless called into federal service
47 pursuant to a declaration of war or a duly enacted and substituting
48 federal statute authorizing the use of military force.

1 3. The New Jersey Attorney General is authorized to appear in
2 any state or federal court with jurisdiction over the deployment of
3 the New Jersey National Guard to defend any decision to consent,
4 or not consent, to the deployment of the New Jersey National Guard
5 to Iraq; or to file an action on behalf of the State of New Jersey with
6 respect to the same subject matter.

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8 4. This joint resolution shall take effect immediately.

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STATEMENT

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13 This joint resolution addresses the limits to the Constitutional
14 and statutory authority of the President and Department of Defense
15 to federalize and deploy the New Jersey National Guard to Iraq,
16 absent a valid and subsisting mandate from Congress. The
17 resolution declares that the authority for the deployment of New
18 Jersey National Guard members to Iraq has terminated and requests
19 that in the absence of valid federal authorization for their
20 deployment to Iraq, the President order the return of New Jersey
21 National Guard members to New Jersey. The President and
22 Secretary of Defense are urged to cancel the pending deployment of
23 the 50th Heavy Brigade Combat Team to Iraq. The resolution
24 declares that New Jersey National Guard members must hereafter
25 be limited to service within and on behalf of the State of New
26 Jersey, and resolves that consent to further federalization and
27 deployment of New Jersey National Guard members to Iraq must be
28 withheld, unless the New Jersey National Guard is properly and
29 lawfully called into federal service under a valid and subsisting
30 authorization from Congress.