

# Testimony of James Klimaski, National Lawyers Guild, Military law Task Force, in support of House Bill 907

March 11, 2009

House Bill 907 concerning continued overseas deployment of the Maryland National Guard is narrowly draft legislation which calls upon the governor to question the authority of the Federal Government to continue mobilizing Maryland National guard Units and send them to fight overseas in Iraq. Such action by the governor is neither unconstitutional nor preempted by any Federal law.

The basis for the Guard mobilization, the 2002 Congressional Authorization for Use of Military Force (AUMF) in Iraq, was narrow and specific. Its purposes were (1) to protect the United States from the perceived threat posed by Iraq, and (2) to enforce United Nations resolutions relating to this Iraq threat. Since Iraq no longer, if it ever did, poses a threat to the national security of the United States, nor are there any relevant United Nations Security Council resolutions left to be enforced, authorization for continued call up of Maryland National Guard units is clearly in question.

Change in the basis for the 2002 Congressional authorization is not within the President's discretion as commander-in-chief. The President may not maintain National Guard forces in Iraq for purposes other than those set forth in the Congressional authorization. This legislation, House Bill 907, authorizes the Governor to withhold future compliance with federalization orders to mobilize the Maryland Guard for duty in Iraq absent proper and lawful authorization by Congress. Presently, such authorization is lacking.

This legislation is not in conflict with federal law. In fact, it is formulated on the bedrock upon which this country was created – a federal republic. The United States Constitution recognizes that the Federal Government's powers stem for the people and the states which make up this Republic. The Governor of Maryland has a right and a duty to the citizens in this state to question the federalization of the Maryland National Guard for continued service in Iraq where the mandate for such action is no longer authorized by Congressional Resolution and where the United States has not delegated any authority to the United Nations to authorize deployment of U.S. Forces based upon U.N. resolutions not specified in the 2002 Congressional action.