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MARTIAL LAW MADE EASY

OMINOUS LEGISLATION PASSES CONGRESS WITH LITTLE PROTEST



By James P. Tucker Jr.

A little-noted provision of the recently passed Defense Authorization Act allows President Bush to send in the military to police any trouble spot in this country regardless of the wishes of state governors.

On Oct. 17, President Bush signed the John Warner National Defense Authorization Act for Fiscal Year 2007.

The act grants the military the authority to seek from Congress \$462.8 billion. In addition, Senate and House conferees added another \$70 billion in supplemental defense spending bringing the overall total of the act to an unprecedented \$532.8 billion. The supplemental funding provides billions of dollars to help “reset” Army and Marine Corps equipment, which is wearing out faster than planned because of the war in Afghanistan and the

occupation of Iraq.

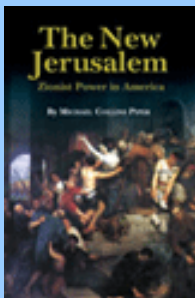
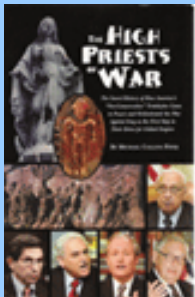
A highly controversial and little-known aspect of the act “contains a widely opposed provision to allow the president more control over the National Guard [by adopting] changes to the Insurrection Act, which will make it easier for this or any future president to use the military to restore order without the consent of the nation’s governors,” Sen. Patrick Leahy (D-Ver.) said.

Americans “certainly do not need to make it easier for presidents to declare martial law,” Leahy said. “Invoking the Insurrection Act and using the military for law enforcement activities goes against some of the central tenets of our democracy. One can easily envision governors and mayors in charge of an emergency having to constantly look over their shoulders while someone who has never visited their communities gives the orders.”

The act “subverts solid, long-standing Posse Comitatus statutes that limit the military’s involvement in law enforcement, thereby making it easier for the president to declare martial law,” Leahy said. This had been “slipped in as a rider with little study” while “other congressional committees with jurisdiction over these matters had no chance to comment, let alone hold hearings on these proposals.”

There is good reason, Leahy said, “for the constructive friction in existing law when it comes to martial law declarations. Using the military for law enforcement goes against one of the founding tenets of our democracy. We fail our Constitution, neglecting the rights of the states, when we make it easier for the president to declare martial law and trample on local and state sovereignty.”

The law allows the president to “employ the armed forces,



including the National Guard in federal service, to restore public order and enforce the laws of the United States when, as a result of a natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, or other condition in any state or possession of the United States, that the president determines that domestic violence has occurred to such an extent that the constituted authorities of the state or possession are incapable of maintaining public order to suppress in any state, any insurrection, domestic violence, unlawful combination or conspiracy.”

“Or other condition” is a critical line in the new law, skeptics say. The president can send the National Guard into any community for any—even frivolous—reasons, they argue.

The Founders, as expressed in the written history of the times—published speeches and letters—were anxious to never have a national police force for fear it would be used to centralize power at the federal level and weaken the role of states. The president can now, effectively, deploy a national police force to any location in the country on a whim.

The 1878 Posse Comitatus Act reads: “Whoever, except in cases and under circumstances expressly authorized by the Constitution or act of Congress, willfully uses any part” of the military “as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned for not more than two years or both.”

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