

AMENDMENT TO H.R. 3838
OFFERED BY MR. DELUZIO OF PENNSYLVANIA

At the appropriate place in title X, insert the following:

1 **SEC. 10____. LIMITED AUTHORITY TO USE THE ARMED**
2 **FORCES TO SUPPRESS INSURRECTION OR**
3 **REBELLION AND QUELL DOMESTIC VIO-**
4 **LENCE.**

5 (a) STATEMENT OF CONSTITUTIONAL AUTHORITY.—

6 This section represents an exercise of Congress’s authori-
7 ties under—

8 (1) clauses 14, 15, 16, and 18 of section 8 of
9 article I of the Constitution of the United States;

10 (2) section 4 of article IV of the Constitution
11 of the United States; and

12 (3) section 5 of the 14th Amendment to the
13 Constitution of the United States.

14 (b) AMENDMENTS TO INSURRECTION PROVISIONS IN
15 TITLE 10, UNITED STATES CODE.—Chapter 13 of title
16 10, United States Code, is amended by striking sections
17 251 through 255 and inserting the following new sections:

1 **“§ 251. Statement of policy**

2 “It is the policy of the United States that domestic
3 deployment of the armed forces for the purposes set forth
4 in this chapter should be a last resort and should be or-
5 dered only if State and local authorities in the State con-
6 cerned are unable or otherwise fail to suppress the insur-
7 rection or rebellion, quell the domestic violence, or enforce
8 the laws that are being obstructed, and Federal civilian
9 law enforcement authorities are unable to do so.

10 **“§ 252. Triggering circumstances**

11 “(a) IN GENERAL.—The authorities granted to the
12 President by section 253 of this title may be exercised only
13 if—

14 “(1) there is an insurrection or rebellion in a
15 State—

16 “(A) against the State or local govern-
17 ment, in such numbers, or with such force or
18 capacity, as to overwhelm State or local au-
19 thorities, and the chief executive of the State
20 requests assistance under this chapter; or

21 “(B) against the Government of the
22 United States, in such numbers, or with such
23 force or capacity, as to overwhelm State or local
24 authorities;

25 “(2) there is domestic violence in a State that
26 is sufficiently widespread or severe as to overwhelm

1 State or local authorities, and the chief executive of
2 the State, or super majority of the State legislature,
3 requests assistance under this chapter; or

4 “(3) there is, within a State—

5 “(A) obstruction of the execution of State
6 or Federal law that has the effect of depriving
7 any party or class of the people of that State
8 of a right, privilege, immunity, or protection
9 named in the Constitution and secured by law,
10 and State or local authorities or Federal civilian
11 law enforcement personnel are unable, fail, or
12 refuse to protect that right, privilege, or immu-
13 nity, or to give that protection;

14 “(B) obstruction of the execution of Fed-
15 eral law by private actors where such obstruc-
16 tion creates an immediate threat to public safe-
17 ty and the use of State or local authorities and
18 Federal civilian law enforcement personnel is
19 insufficient to ensure execution of the law
20 and—

21 “(i) the private actors are in such
22 numbers, or with such force or capacity, as
23 to overwhelm State or local authorities and
24 Federal civilian law enforcement personnel;
25 or

1 “(ii) State or local authorities and
2 Federal civilian law enforcement personnel
3 otherwise fail to address the obstruction;
4 or

5 “(C) obstruction of the execution of Fed-
6 eral law by the State or its agents, where the
7 use of Federal civilian law enforcement per-
8 sonnel is insufficient to ensure execution of the
9 law.

10 “(b) RULES OF CONSTRUCTION.—(1) Subsection
11 (a)(3)(A) shall be construed to encompass the obstruction
12 of any provision of the Voting Rights Act of 1965 (52
13 U.S.C. 10301 et seq.) or section 2004 of the Revised Stat-
14 utes (52 U.S.C. 10101) regarding protection of the right
15 to vote. Any deployment of the armed forces in such cir-
16 cumstances shall be subject to section 2003 of the Revised
17 Statutes (52 U.S.C. 10102), sections 592 and 593 of title
18 18, and any other applicable statutory limitations designed
19 to protect the right to vote.

20 “(2) In any situation covered by subsection (a)(3)(A),
21 the State shall be considered to have denied the equal pro-
22 tection of the laws secured by the Constitution.

23 **“§ 253. Authority of the President**

24 “(a) IN GENERAL.—Subject to subsection (b) and
25 sections 254 through 257 of this title, the President may,

1 if the conditions specified in section 252 of this title are
2 met, order to active duty any reserve component forces
3 and use the armed forces to suppress the insurrection or
4 rebellion, quell the domestic violence, or enforce the laws
5 that are being obstructed.

6 “(b) LIMITATIONS.—(1) During any deployment of
7 the armed forces under subsection (a), the armed forces
8 shall remain subordinate to the chain of command pre-
9 scribed in section 162(b) of this title.

10 “(2) Any part of the armed forces employed to sup-
11 press an insurrection or rebellion, quell domestic violence,
12 or enforce the law under the authorities granted by sub-
13 section (a) must operate under the Standing Rules for the
14 Use of Force.

15 “(3) Nothing in this chapter shall be construed to
16 authorize—

17 “(A) suspension of the writ of habeas corpus; or

18 “(B) any action that violates Federal law or,
19 where consistent with Federal law, State law.

20 “(c) STANDING RULES FOR THE USE OF FORCE.—

21 In this section, the term ‘Standing Rules for the Use of
22 Force’ means Chairman of the Joint Chiefs of Staff In-
23 struction (CJCSI) 3121.01B, dated June 13, 2005, and
24 titled, ‘Standing Rules of Engagement/Standing Rules for

1 the Use of Force for U.S. Forces’, or any successor in-
2 struction.

3 **“§ 254. Consultation with Congress; proclamation to**
4 **disperse; reporting requirement; effective**
5 **periods of authorities**

6 “(a) CONSULTATION.—The President shall, to the
7 maximum extent practicable, consult with Congress before
8 exercising the authorities granted under section 253 of
9 this title.

10 “(b) PROCLAMATION.—Before exercising the authori-
11 ties granted by section 253 of this title, the President
12 shall, by proclamation immediately transmitted to Con-
13 gress and the Federal Register—

14 “(1) specify which paragraph and, where appli-
15 cable, subparagraph and clause, of section 252(a) of
16 this title provides the basis for such exercise of au-
17 thority; and

18 “(2) order the lawbreakers to disperse peace-
19 ably within a reasonable, limited time period.

20 “(c) REPORT.—Contemporaneously with the procla-
21 mation required under subsection (b), the President shall
22 submit to the President pro tempore of the Senate and
23 the Speaker of the House of Representatives a written re-
24 port setting forth the following:

1 “(1) The circumstances necessitating the exer-
2 cise of the authorities granted to the President by
3 section 253 of this title.

4 “(2) Where applicable, a certification by the At-
5 torney General of the United States that the chief
6 executive of the State in question has requested as-
7 sistance under this chapter or that State authorities
8 are unable or have otherwise failed to address the
9 circumstances necessitating exercise of the Presi-
10 dent’s authorities under section 253 of this title.

11 “(3) Certification by the Attorney General of
12 the United States that options other than the use of
13 the armed forces have been exhausted, or that those
14 options would likely be insufficient to resolve the sit-
15 uation and that delay would likely cause significant
16 harm.

17 “(4) A description of the size, mission, scope,
18 and expected duration of the use of the armed
19 forces, with a certification by the Secretary of Secre-
20 taries concerned that, in their best military advice
21 and opinion, the armed forces to be called for duty
22 are trained, equipped, and able to complete the as-
23 signed mission.

1 **“§ 255. Congressional approval**

2 “(a) TEMPORARY EFFECTIVE PERIODS.—(1) Any
3 authority made available under section 253 of this title
4 shall terminate seven days after the President makes the
5 proclamation required under section 254(b) of this title
6 unless—

7 “(A) there is enacted into law a joint resolution
8 of approval under subsection (b) with respect to the
9 proclamation; or

10 “(B) there is a material and significant change
11 in factual circumstances that are set forth in a new
12 proclamation and report to Congress as provided in
13 subsections (b) and (c) of section 254 of this title.

14 “(2) Notwithstanding subparagraphs (A) and (B) of
15 paragraph (1), no authority may be exercised after the
16 seven-day period described in such paragraph if the exer-
17 cise of authority has been enjoined by a court of competent
18 jurisdiction.

19 “(3) If Congress is physically unable to convene as
20 a result of an insurrection, rebellion, domestic violence, or
21 obstruction of law described in a proclamation issued pur-
22 suant to section 254(b) of this title, the seven-day period
23 described in paragraph (1) shall begin on the first day
24 Congress convenes for the first time after the insurrection,
25 rebellion, domestic violence, or obstruction of law.

1 “(b) EFFECT OF A JOINT RESOLUTION OF AP-
2 PROVAL.—If there is enacted into law a joint resolution
3 of approval as defined in subsection (d), then any author-
4 ity made available under this chapter may be exercised
5 with respect to the insurrection, rebellion, or domestic vio-
6 lence described in the proclamation that is the subject of
7 such resolution for 14 days from the date of the enactment
8 of such resolution, except that such exercise of authority
9 must terminate if enjoined by a court of competent juris-
10 diction on the ground that it violates the terms of this
11 chapter, the Constitution of the United States, or other
12 applicable Federal law.

13 “(c) RENEWAL OF JOINT RESOLUTIONS OF AP-
14 PROVAL.—An exercise of authority subject to a joint reso-
15 lution of approval may not be exercised for longer than
16 14 days, unless—

17 “(1) there is enacted into law another joint res-
18 olution of approval renewing the President’s author-
19 ity pursuant to section 253 of this title; or

20 “(2) there has been a material and significant
21 change in factual circumstances that are set forth in
22 a new proclamation and report to Congress as pro-
23 vided in subsections (b) and (c) of section 254 of
24 this title.

1 “(d) JOINT RESOLUTION OF APPROVAL DEFINED.—

2 In this section, the term ‘joint resolution of approval’
3 means a joint resolution that contains only the following
4 provisions after its resolving clause:

5 “(1) A provision approving the exercise of au-
6 thority specified by the President in a proclamation
7 made under subsection (b) of section 254 of this
8 title.

9 “(2) A statement that the exercise of authority
10 may continue for a period of 14 days unless enjoined
11 by a court of competent jurisdiction on the ground
12 that it violates the terms of this chapter, the Con-
13 stitution of the United States, or other applicable
14 Federal or State law.

15 “(e) PROCEDURES FOR CONSIDERATION OF JOINT
16 RESOLUTIONS OF APPROVAL.—(1) A joint resolution of
17 approval may be introduced in either House of Congress
18 by any member of that House at any time that authority
19 under section 253 of this title is in effect pursuant to a
20 proclamation made under section 254(b) of this title or
21 a joint resolution of approval enacted into law pursuant
22 to subsection (b).

23 “(2) If, when the President transmits to Congress a
24 proclamation under section 254(b) of this title or at any
25 time that authority under section 253 of this title is in

1 effect as described in paragraph (1), Congress has ad-
2 journed sine die or has adjourned for any period in excess
3 of three calendar days, the majority leader of the Senate
4 and the Speaker of the House of Representatives, or their
5 respective designees, acting jointly after consultation with
6 and with the concurrence of the minority leader of the
7 Senate and the minority leader of the House, shall notify
8 the Members of the Senate and House, respectively, to re-
9 assemble at such place and time as they may designate
10 if, in their opinion, the public interest shall warrant it.

11 “(3) A joint resolution of approval shall be referred
12 in each House of Congress to the committee or committees
13 having jurisdiction over the emergency authorities invoked
14 by the proclamation under section 254(b) of this title that
15 are the subject of the joint resolution.

16 “(4) In the Senate, the following shall apply:

17 “(A) If the committee to which a joint resolu-
18 tion of approval has been referred has not reported
19 it at the end of 3 calendar days after its introduc-
20 tion, that committee shall be automatically dis-
21 charged from further consideration of the resolution
22 and it shall be placed on the calendar.

23 “(B) Notwithstanding Rule XXII of the Stand-
24 ing Rules of the Senate, when the committee to
25 which a joint resolution of approval is referred has

1 reported the resolution, or when that committee is
2 discharged under subparagraph (A) from further
3 consideration of the resolution, it is at any time
4 thereafter in order (even though a previous motion
5 to the same effect has been disagreed to) for a mo-
6 tion to proceed to the consideration of the joint reso-
7 lution, and all points of order against the joint reso-
8 lution (and against consideration of the joint resolu-
9 tion) are waived. The motion to proceed is subject
10 to 4 hours of debate divided evenly between those fa-
11 voring and those opposing the joint resolution of ap-
12 proval. The motion is not subject to amendment, or
13 to a motion to postpone, or to a motion to proceed
14 to the consideration of other business.

15 “(C) A joint resolution of approval shall be sub-
16 ject to 10 hours of consideration, to be divided even-
17 ly between those favoring and those opposing the
18 joint resolution of approval.

19 “(D) No amendments shall be in order with re-
20 spect to a joint resolution of approval.

21 “(E) A motion to reconsider a vote on passage
22 of a joint resolution of approval shall not be in
23 order.

1 “(F) Points of order, including questions of rel-
2 evancy, and appeals from the decision of the Pre-
3 siding Officer, shall be decided without debate.

4 “(5) In the House of Representatives, the following
5 shall apply:

6 “(A) If any committee to which a joint resolu-
7 tion of approval has been referred has not reported
8 it to the House within three calendar days after the
9 date of referral, such committee shall be discharged
10 from further consideration of the joint resolution.

11 “(B)(i) Beginning on the third legislative day
12 after each committee to which a joint resolution of
13 approval has been referred reports it to the House
14 or has been discharged from further consideration of
15 the joint resolution, and except as provided in clause
16 (ii), it shall be in order to move to proceed to con-
17 sider the joint resolution in the House. The previous
18 question shall be considered as ordered on the mo-
19 tion to its adoption without intervening motion. The
20 motion shall not be debatable. A motion to recon-
21 sider the vote by which the motion is disposed of
22 shall not be in order.

23 “(ii) A motion to proceed to consider a joint
24 resolution of approval shall not be in order after the

1 House has disposed of another motion to proceed on
2 that resolution.

3 “(C) Upon adoption of the motion to proceed in
4 accordance with subparagraph (B)(i), the joint reso-
5 lution of approval shall be considered as read. The
6 previous question shall be considered as ordered on
7 the joint resolution to final passage without inter-
8 vening motion except 2 hours of debate, equally di-
9 vided and controlled by the sponsor of the joint reso-
10 lution (or a designee) and an opponent. A motion to
11 reconsider the vote on passage of the joint resolution
12 shall not be in order.

13 “(D) No amendments shall be in order with re-
14 spect to a joint resolution of approval.

15 “(6) If, before passing a joint resolution of approval,
16 one House receives a joint resolution of approval from the
17 other House, then—

18 “(A) the joint resolution of the other House
19 shall not be referred to a committee and shall be
20 deemed to have been discharged from committee on
21 the day it is received; and

22 “(B) the procedures set forth in paragraphs (4)
23 and (5), as applicable, shall apply in the receiving
24 House to the joint resolution received from the other

1 House to the same extent as such procedures apply
2 to a joint resolution of the receiving House.

3 “(f) RULE OF CONSTRUCTION.—The enactment of a
4 joint resolution of approval under this section shall not
5 be interpreted to serve as a grant or modification by Con-
6 gress of statutory authority of the President.

7 “(g) RULES OF THE HOUSE AND SENATE.—This sec-
8 tion is enacted by Congress—

9 “(1) as an exercise of the rulemaking power of
10 the Senate and the House of Representatives, re-
11 spectively, and as such is deemed a part of the rules
12 of each House, respectively, but applicable only with
13 respect to the procedure to be followed in the House
14 in the case of joint resolutions described in this sec-
15 tion, and supersedes other rules only to the extent
16 that it is inconsistent with such other rules; and

17 “(2) with full recognition of the constitutional
18 right of either House to change the rules (so far as
19 relating to the procedure of that House) at any time,
20 in the same manner, and to the same extent as in
21 the case of any other rule of that House.

22 **“§ 256. Termination of authority**

23 “(a) IN GENERAL.—Any exercise of authority speci-
24 fied by the President in a proclamation made under sec-
25 tion 254(b) of this title shall terminate on the earliest of—

1 “(1) the date provided for in section 255(a) of
2 this title;

3 “(2) the date provided for in section 255(b) of
4 this title;

5 “(3) the date specified in an Act of Congress
6 terminating the authority;

7 “(4) the date specified in a proclamation of the
8 President terminating the emergency; or

9 “(5) the date of a revocation of a request for
10 assistance under this chapter by the chief executive
11 of the State in question.

12 “(b) EFFECT OF TERMINATION.—(1) Effective on
13 the date of the termination of authority under subsection
14 (a)—

15 “(A) except as provided by paragraph (2), any
16 powers or authorities exercised by reason of the au-
17 thority shall cease to be exercised;

18 “(B) any amounts reprogrammed or transferred
19 under any provision of law with respect to the exer-
20 cise of authority that remain unobligated on that
21 date shall be returned and made available for the
22 purpose for which such amounts were appropriated;
23 and

1 “(C) any contracts entered into under any pro-
2 vision of law relating to the execution of authority
3 shall be terminated.

4 “(2) The termination of an exercise of authority
5 under this chapter shall not affect—

6 “(A) any legal action taken or pending legal
7 proceeding not finally concluded or determined on
8 the date of the termination under subsection (a);

9 “(B) any legal action or legal proceeding based
10 on any act committed prior to that date; or

11 “(C) any rights or duties that matured or pen-
12 alties that were incurred prior to that date.

13 **“§ 257. Judicial review**

14 “(a) IN GENERAL.—Notwithstanding, and without
15 prejudice to, any other provision of law, any individual or
16 entity (including a State or local government) that is in-
17 jured by, or has a credible fear of injury from, the use
18 of members of the armed forces under this chapter may
19 bring a civil action for declaratory or injunctive relief. In
20 any action under this section, the district court shall have
21 jurisdiction to decide any question of law or fact arising
22 under this chapter, including challenges to the legal basis
23 for members of the armed forces to be acting under this
24 chapter.

1 “(b) STANDARD OF REVIEW.—A determination that
2 the conditions specified in section 252 of this title are met
3 shall be upheld if supported by substantial evidence.

4 “(c) EXPEDITED CONSIDERATION.—It shall be the
5 duty of the applicable district court of the United States
6 and the Supreme Court of the United States to advance
7 on the docket and to expedite to the greatest possible ex-
8 tent the disposition of any matter brought under this sec-
9 tion.

10 “(d) APPEALS.—(1) The Supreme Court of the
11 United States shall have jurisdiction of an appeal from
12 a final decision of a district court of the United States
13 in a civil action brought under this section.

14 “(2) A party shall file an appeal under paragraph (1)
15 not later than 30 days after the court issues a final deci-
16 sion under subsection (a).

17 **“§ 258. State defined**

18 “For purposes of this chapter, the term ‘State’ in-
19 cludes the Commonwealth of Puerto Rico, the District of
20 Columbia, Guam, and the Virgin Islands.

21 **“§ 259. Limitation on use of National Guard members**
22 **performing training or other duty for cer-**
23 **tain purposes**

24 “A member of the National Guard performing train-
25 ing or other duty under section 502(a) or (f) of title 32

1 may not be used to suppress a domestic insurrection or
2 rebellion, quell domestic violence, or enforce the law.”.

3 (c) CONFORMING AMENDMENT.—Section 109(c) of
4 title 32, United States Code, is amended by inserting “,
5 except as provided by section 253 of title 10” after “armed
6 forces”.

