

TESTIMONY OF  
LIEUTENANT COLONEL MICHELLE HAGEL  
NORTH DAKOTA NATIONAL GUARD  
BEFORE THE  
HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE  
4 MARCH 2021  
SENATE BILL 2116

Good afternoon Mr. Chairman and members of the committee, I am Michelle Hagel, legal counsel for the North Dakota National Guard. I am here to testify in support of Senate Bill 2116. This bill provides a defense for using deadly force, if necessary, to protect nuclear assets.

The 219 Security Forces Squadron (SFS) is part of the North Dakota Air National Guard and is located at Minot AFB. Their mission is to provide support to the 91 Missile Wing Security Forces, by providing daily and surge capacity security to the missile field in North Dakota. In order to be qualified to conduct that mission, the 219 members must maintain certification in nuclear security through formal, and continual, training in the missile field.

To help frame the issue, I will briefly explain statuses. In the National Guard we have a number status we may serve in, three main ones are State Active Duty, Title 10 and Title 32, a reference to the section of United States Code which authorizes the status. First, State Active Duty is the status we are in when the Governor calls us out for a State purpose. Second, when called up under United States Code Title 10 (Title 10), we are in an active duty status called up by the President for a national purpose. Third, is Title 32 status, 32 U.S.C. § 502, we are under the administrative control of the Governor, but we are performing Federal training, such as annual training, guard drill or full-time National Guard Duty. Title 32 may also include operational training such as our COVID mission or the mission at the southern border. We are funded by the Federal government and have Federal benefits, but in a Title 32 status, we fall under State law, UCMJ and Rules for Use of Force.

At present, the 219 members when training and serving in the missile field are placed in a Title 10 Active Duty status, so they may respond to a real world emergency under Federal Rules for Use of Force. The Air Force may not be able to provide Title 10 funding for the 219 mission in the future, due to budget constraints. If this happens, our 219 members will need to continue to train and provide operational support to the missile field in a Federal training status, Title 32. Members, who perform training and operational support in a Title 32 status, though under Federal code, fall under the jurisdiction of their State law and, therefore, their State Rules for Use of Force.

North Dakota State law allows for the use of deadly force to defend self, or others, against imminent death or serious bodily harm. Federal law and Air Force Instruction, provides for use of deadly force, which is more expansive than North Dakota State law, for the protection of particular assets, like nuclear weapons. This presents a tactical and legal concern for the 219 members who may have to protect nuclear assets from a real world threat when in a Title 32 status, under State law.

Because of this gap in Federal and State law when protecting the nuclear asset, the Air Force will not allow the 219 members to enter the field to train in a Title 32 status, as they will not take any risk with our Airmen. If the Air Force does not allow our members to train in the missile field, the 219 members will lose their certification. As a result, the 219 will not be able to perform their mission. Consequently, we run the risk of losing the mission.

We are asking for a narrow expansion of authority to use deadly force to protect these nuclear assets, if the situation requires. This authority works in conjunction with Federal law and would allow the 219 members to continue to train and protect these critical national security assets, under the protection of State law.

I ask for your support of SB 2116 and will stand for any questions that you may have.