

Constitutional Opposition Grows To Rumsfeld Base-Closing Plans

by Carl Osgood

Developments over the past two weeks indicate Secretary of Defense Donald Rumsfeld's base-closing plan will not emerge from the Base Realignment and Closure (BRAC) Commissions' deliberations without substantial changes. And, regardless of what the commission ultimately decides, the plan may still face significant challenges both from a number of states and in the Congress. The BRAC Commission has until Sept. 8 to submit its report, incorporating whatever changes to the Defense Department proposals it decides on, to President Bush. Bush then has until Nov. 7 to accept the report or send it back to the commission. If he accepts it, it then goes to the Congress, which has 45 legislative days in which it can only reject the report completely—not make partial changes—by means of a joint resolution, which must go to the President for his signature. Since Bush supports the plan for base closings, Congress would have to reject it by a veto-proof margin—and that possibility is growing stronger as opposition grows to Rumsfeld's overreaching. Otherwise, the recommendations become binding and must be completed within six years.

Senators Robert Byrd (D-W.Va.) and John Warner (R-Va.) had already laid out grounds to challenge Rumsfeld's plan in testimony to BRAC Commission hearings on June 28 and July 7; the battle is following the broad Constitutional and legal lines the two senior Senators laid out. Broader opposition, in the form of state governors and attorneys general, is mobilizing against aspects of the Pentagon plan dealing with the Air National Guard, on the basis of the authorities granted to the states by the "militia clause" of the U.S. Constitution. The top National Guard officers of the states, the adjutants general, are also mobilized, not because they oppose the BRAC process itself, but because the Air Force coordinated poorly, or not at all, with the states in developing its plan to consolidate most of the flying assets of the Air National Guard.

Pentagon 'Roughshod Over Constitution'

In his July 7 prepared statement to the BRAC Commission, Warner had pointed out several areas in which the Pentagon had deviated from the criteria established in the base closing law while making its determinations. It had used "mil-

itary transformation" ideology, and Rumsfeld's desire to vacate leased office space in Crystal City, Virginia. "The commission must determine if the Department simply disregarded the selection criteria, and used subjective military judgment in place of the criteria in law, to justify certain BRAC recommendations when the analysis process, established to provide an objective review of data, did not support the recommendation," Warner said.

In his testimony, earlier, Byrd had taken up the issue of the National Guard, and the American tradition of the "citizen-soldier," not only for West Virginia—which stands to lose its Air National Guard contingent of eight C-130 cargo planes—but also for the nation as a whole.

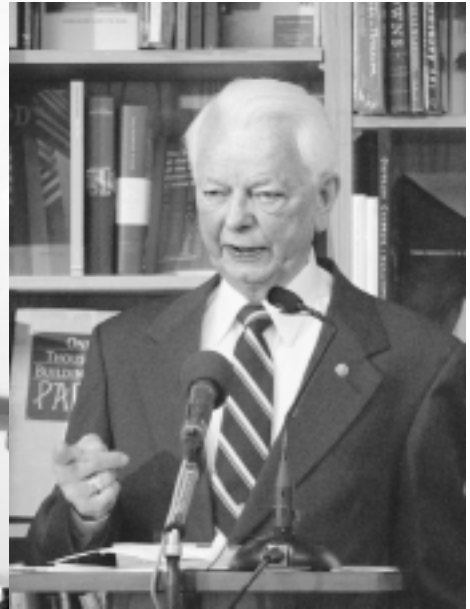
Resistance to Rumsfeld's plan has been shifting in the direction indicated by Byrd and Warner ever since. Pennsylvania and Illinois have both filed suit in Federal court to stop the proposed shutdown of Air National Guard units in those states. At least two other states, Michigan and Missouri have officially announced their opposition, as well. Michigan Gov. Jennifer Granholm, on July 20, officially informed Secretary of Defense Donald Rumsfeld that she does not consent to the proposed relocation of the Michigan Air National Guard's 110th Fighter Wing from Battle Creek to Selfridge Air National Guard Base, near Detroit, or the shutdown of the 127th Fighter Wing at Selfridge. "These Department of Defense recommendations have not been coordinated with me, my Adjutant General or members of his staff," Granholm wrote. She also noted that the recommendations "appear to be the result of a seriously flawed process that has completely overlooked the important role of the states with regard to the Air National Guard units."

In Missouri, Attorney General Jay Nixon, a Democrat, announced on July 22 that he would be filing a lawsuit to stop the closure of the Missouri Air National Guard's 131st Fighter Wing, which has 15 F-15 jets stationed at St. Louis's Lambert Airport. In a letter to Gov. Matt Blunt (R), Nixon wrote, "The cooperative relationship between the federal and state governments with respect to state National Guards requires a delicate balance—a balance so important that it was written into the United States Constitution." He said that Rumsfeld's recommendations "run roughshod over these principles." A spokes-



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The Pentagon's base-closings plan is patently un-Constitutional, in that it tramples on the rights and duties of governors to deploy their Air National Guard units. Senior Senators John Warner (R) of Virginia (left) and Robert Byrd (D) of West Virginia have taken the Constitutional lead in stopping Rumsfeld's usurpation of the base-closings law.



man for Blunt said the governor would encourage Nixon to begin preparing the suit.

Concerns of the governors were echoed in a House Armed Services Committee hearing, on July 20, called to take testimony from the Air Force on its "Future Total Force" concept. During that hearing, several members of the committee upbraided the Air Force for ignoring the concerns of the states. Rep. Curt Weldon (R-Penna.) said "it really frustrates and bothers me that this has happened, that clearly the Guard and Reserve have not been given proper consideration on recommendations that will impact them." Pennsylvania Gov. Ed Rendell, among other state officials, has sued to stop the BRAC usurpation of his state's National Guard. Rep. Jim Cooper (D-Tenn.) added that, since the Pentagon has had almost ten years (The Defense Department has been calling for a new round of base closures since the mid-1990s) to work on this, one would think that "we'd get it right, and that governors would be consulted, since there does seem to be a legal requirement that governors be talked to. And whether it's Governor Rendell in Pennsylvania or governors in other states, it seems to be a massive and perhaps crippling oversight that this was apparently not done."

White House Threatens a Veto

The Defense Department has been asserting that it has done nothing wrong, has followed the law, and has consulted with the states as much as it needed to. The strongest indication, however, of how the Bush Administration views the

battle now ongoing, is the veto threat emanating from the White House, on the Fiscal 2006 defense authorization bill, should an amendment sponsored by Sen. John Thune (R-S.D.) to delay the BRAC process until certain conditions are met, be attached to it. The Senate began debate on that bill on July 20, but Senate Majority Leader Bill Frist (R-Tenn.) unceremoniously pulled it from the Senate floor after a failed 50-48 cloture vote on July 26. Frist had moved to invoke cloture on July 22 after Vice President Dick Cheney made clear his opposition, not only to the Thune amendment, but also to other amendments relating to the treatment of detainees held in the custody of the U.S. military.

The conditions to be met before any BRAC final decisions, which would be imposed by Thune's amendment, include the completion of the next Quadrennial Defense Review, the redeployment of substantially all U.S. combat forces from Iraq, and a complete analysis of the report of the Overseas Basing Commission, among others. "BRAC should not occur while this country is engaged in a major war and rotational deployments are still ongoing," he told the Senate on July 21. He added that "There is no need to rush into decisions, that in a few years, could turn out to be colossal mistakes." The Senate is now not scheduled to resume work on the defense bill until September. Thune has made it clear, however, that he will continue to push for his amendment because its effect is to extend the time in which Congress has to review the plan, not stop the work of the BRAC Commission, itself.

Ironically, while effectively blocking Thune's amendment, Frist has written to several of the members of the BRAC Commission, urging the commission to give "full consideration" to keeping open Ellsworth Air Force Base, the proposed closure of which Thune has been consistently opposed.

Plan 'Violates Regulations and Laws'

The Air National Guard proposals, as well as other aspects of the Pentagon plan, have raised concerns within the BRAC Commission itself. An early indication of this was an internal memorandum written by the commission's deputy general counsel, Dan Cowhig, which was surfaced by the *Buffalo News* on July 14. Cowhig noted several problems with the plan, including the use of the BRAC law to do things that the Pentagon already has authority to do without the BRAC process, such as the movement of aircraft between bases. Cowhig noted that the statutes which require the consent of state governors, before the Defense Department can make substantial changes to National Guard units, "not only flesh out the exercise of the powers granted [by the Constitution] to the Legislative and Executive branches of the Federal government; they also express the long-standing compromise with the prerogatives of the governors, as chief executives of the states, that antedate the ratification of the Constitution."

Cowhig concluded that the commission may not approve any recommendation that has the effect of changing or disbanding an organization of a state's Air National Guard, without the consent of the state's governor.

The cumulative effect of the state opposition and Cowhig's memo began to show on the commission during a hearing in Washington, D.C. called by the BRAC Commission on July 18. The hearing was called in order to give the Pentagon the chance to answer questions many of its proposals had raised with the commission. The commission's view of the Air National Guard plan was encapsulated by commissioner and retired Admiral Harold Gehman. He told the Air Force witnesses, led by Lt. Gen. Stephen Wood, the Deputy Chief of Staff for Plans and Policies, that the Air National Guard plan "appears to substantially deviate from the BRAC legislation. It appears that you have inconsistently applied military value to your decisions. It appears to violate several standing regulations and laws, and it appears to have several policy issues embedded in it." Gehman told Wood and the other witnesses that they need to help the commission "with what appears to be an unworkable and unsatisfactory set of recommendations."

Commission chairman Anthony Principi echoed Gehman's concerns and seconded his call for a commissioner-level briefing by the Air Force, so that the commissioners can take the time to work through all of their concerns.

As one result of the hearing, the Adjutants General Association of the United States (AGAUS), made up of the top

National Guard officers from each of the states, held a closed-door meeting in Washington, on July 22, to try to hammer together an alternative to the Air Force proposal; they were unable to do so. A spokesman for the association told *EIR* that, while the adjutants general were able to come up with some basic working concepts, it was "unrealistic to expect that they could undo in a few hours what the Air Force has been working on for two years."

Maj. Gen. Roger Lempke, the president of AGAUS, and the adjutant general for the state of Nebraska, wrote to Principi on July 26 that the association believes that "the proposed recommended actions are beyond the scope of the Base Closure Act, and it would be improper for the BRAC Commission to include these actions in its recommendations to the President and to the Congress." He noted that a "realignment" under the act pertains to installations, not to units, unit equipment, people or positions.

In opposition to these improper recommendations, Lempke said, the the AGAUS is putting forward what Lempke called a "way ahead," that provides a flying mission in every state, access to air refueling and airlift missions for all the governors in times of domestic emergencies, sufficient air defense to cover all population centers in the continental U.S. and retirement of aging aircraft and participation in new and emerging flying and non-flying missions.

Lempke explained, in a telephone interview with *EIR* on July 27, that what the adjutants general are proposing is to separate the "programmatic elements"—the movement of people and aircraft—from the BRAC process, so that those issues can be dealt with separately. He said that "that will allow us, then, to begin working with the Air Force, to better plan those movements and retirements of aircraft, to align with bringing in new missions." He noted that the time constraints of the BRAC process—the commission has to send its report to the President by Sept. 8—just does not allow these discussions to take place. "If we had time to sit down with the Air Force, right now," he said, "we could eventually get to something that would work fine for everybody . . . but the BRAC process just doesn't allow that to happen. . . . So that's why we're recommending the BRAC action that we are."

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