

# Rumsfeld's Military Base Shutdowns Are Becoming a Constitutional Issue

by Carl Osgood

A political shift has been occurring from the last part of June into the early part of July, in the battle over Secretary of Defense Donald Rumsfeld's base-closing plan. That shift has moved the fight to save bases from a strategy of "begging and pleading" to save particular bases, to one of challenging the Pentagon plan on the basis of law and the U.S. Constitution.

The escalation was indicated by Sen. John Warner's (R-Va.) threat, on July 7, to file a lawsuit against the Pentagon, on the basis that the Rumsfeld plan was developed in violation of the base-closing law. Earlier, on June 28, Sen. Robert Byrd (D-W.Va.) challenged the part of the plan that shrinks the 50 states' Air National Guards, on the basis that existing statutory law forbids the Secretary of Defense from closing or changing the mission of any National Guard unit without the

concurrence of the governor of the state in which the unit resides. Byrd and Warner are two leaders of the "gang of 14," the bipartisan group of Senators who acted to sabotage Vice President Dick Cheney's "nuclear option" coup against the Senate on May 23.

Byrd cited the statutory law regarding the National Guard, in testimony to the BRAC Commission on June 28 in Charlotte, North Carolina. He also noted that the Supreme Court has ruled that the governor of a state has the power to veto certain National Guard deployments, if the mission would substantially impact that governor's ability to respond to local emergencies. He told the commission that if the Pentagon's plan to remove the eight C-130s stationed at Charleston, West Virginia were implemented, it "would have a dramatic impact

on the ability of our governor and the West Virginia National Guard to respond to local emergencies."

Byrd, emphasizing the importance of having "citizen soldiers," noted that the National Guard is not just a backup for the active duty military forces, but "it is also the militia of the United States." As such, it is needed to protect and care for the population in time of natural disasters and emergencies—this principle is in line with that which guides Lyndon LaRouche's formulation that draftees to a universal military service should learn from an Army Corps of Engineers.

Byrd said that what BRAC should be focussing on, "as directed by law," is its primary mission, which is "efficiency" in military strength and positioning. From that point of view, the West Virginia Air National Guard and its contingent of C-130s, has a "high operational readiness," and in particular, the unit is 104% manned, with a 95% retention rate, which is among the highest in the nation. Byrd also cited the "significant discrepancies" in the Penta-

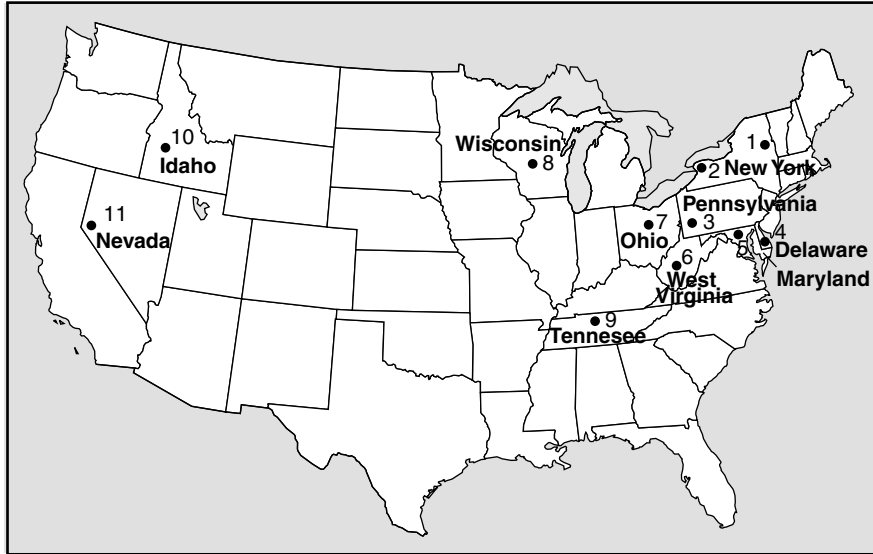


DoD/Sgt. 1st Class Eric Wedeking, Air National Guard

*Airmen unload relief supplies from a North Carolina Air National Guard C-130 in Wilmington, North Carolina, after Hurricane Floyd on Sept. 17, 1999. If Rumsfeld's base-closing plan goes through, the ability of many states to provide such services after a natural disaster will be severely curtailed, because it removes 80 C-130s from the Air National Guards of ten states.*

FIGURE 1

## Rumsfeld's Base Closings Would Take 80 C-130 Planes from 10 States



Source: Department of Defense Base Realignment and Closure Report, May, 2005

## States Losing Planes And Air National Guards

### Northeastern States: 44 C-130s:

- 1: **New York:** Schenectady County (4)
- 2: **New York:** Niagara Falls Air Force Reserve (8)
- 3: **Pennsylvania:** Pittsburgh Air Force Reserve (8)
- 4: **Delaware:** (8)
- 5: **Maryland:** Martin State (8)
- 6: **West Virginia:** Charleston (8)

### Central States: 24 C-130s:

- 7: **Ohio:** Mansfield (8)
- 8: **Wisconsin:** Mitchell Air Reserve Station (8)
- 9: **Tennessee:** Nashville (8)

### Western States: 12 C-130s:

- 10: **Idaho:** Boise (4)
- 11: **Nevada:** Reno-Tahoe (8)

gon's data regarding the facility in Charleston, which the Air Force says can handle only 8 C-130s, when the facility regularly handles 12, and has room to expand to 16. Such errors of fact are rampant throughout the BRAC analysis, as has been shown in other BRAC hearings throughout the country.

### The National Guard and the Constitution

As *EIR* showed in its July 1 issue, Rumsfeld's plan attacks the tradition of the citizen-soldier—of which the National Guard is the modern expression—in favor of the development of a professional warrior caste. A standing military force, separate from the general population, is a development that the framers of the Constitution sought to avoid. Alexander Hamilton, in *Federalist No. 29*, wrote that if a “well regulated militia be the most natural defense of a free country, it ought certainly to be under the regulation and at the disposal of that body which is constituted the guardian of the national security”—in other words, the Congress. “If standing armies are dangerous to liberty,” Hamilton went on, “an efficacious power over the militia in the same body ought, as far as possible, to take away the pretext to such unfriendly institutions.”

The “militia clause” of the Constitution, in Article I, Section 8, gives Congress the authority and responsibility to provide for the organizing, arming, and disciplining of the militia. The authority to appoint officers and train the militia is reserved to the states.

Pennsylvania Gov. Ed Rendell invoked that authority on

July 11, announcing that he, a Democrat, would begin legal action, in which he is joined by Pennsylvania's two Republican Senators—Arlen Specter (R) and Rick Santorum (R)—to prevent the Pentagon from closing down the 111th Fighter Wing of the Pennsylvania Air National Guard. The 111th is based at Willow Grove Naval Air Station, just north of Philadelphia, and is also slated for closure. Rendell's suit does not challenge the BRAC law itself, but rather, according to the lawsuit, “the gist of the instant action is that the Department of Defense derogated rights granted by Congress to Governor Rendell, independent of the BRAC Act.”

Illinois Gov. Rod Blagojevich (D), though not threatening a lawsuit, did, in July 11 letters, notify both BRAC Commission chairman Anthony Principi and Secretary of Defense Rumsfeld that he was refusing to give his consent to the shutdown of the 183rd Fighter Wing, which has 15 F-16's based in Springfield. “The Department of Defense did not coordinate this recommendation with either my office or the Illinois Adjutant General,” Blagojevich wrote. “This lack of consultation compromises the integrity of the process used to develop the BRAC recommendations and disregards my role as Commander-in-Chief of the Illinois National Guard.”

So far, the only response from the Pentagon has been to say, “leave it to the courts to decide.” The Pentagon is arguing that the base-closing law supersedes other laws regarding military installations. Lt. Gen. Steven Blum told reporters on July 12, that the laws invoked by the governors,



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*Pennsylvania Gov. Edward Rendell announced on July 11 that he will begin legal action, joined by his state's two Republican Senators, to prevent the Pentagon from closing down the 111th Fighter Wing of the Pennsylvania Air National Guard. Here, Rendell gives an interview at the Democratic National Convention in 2004.*

and the base-closing law, are in conflict. “When you have two laws in conflict, the courts have to decide what has priority,” he reportedly said. He did admit, however, that the states were not consulted during the Pentagon’s BRAC process. “I was not involved, nor were the adjutants general involved in BRAC decisions” affecting the Air Guard, he said. Nor did he know why the Air Force excluded the states from the process.

### Commission Hears From National Guard

The issue of the Air National Guard has become so hot that the commission held a separate hearing on it, in Atlanta, Georgia on June 30, just to hear from state adjutants general on the matter. All the issues of the impact on the Guard of the Air Force plan, were aired. One day later, Principi sent a letter to Rumsfeld asking, among other things, “Were the adjutants general and the governors of the states consulted in the reallocation of aircraft, personnel, facilities, and missions from their states?” Furthermore, Principi wanted to know, “What impact does the realignment of the ANG have on the homeland defense and homeland security missions?”

One recurring theme of the June 30 hearing was the dual nature of the Guard, with both a Federal and a state mission. Maj. Gen. Bruce Tuxill, the adjutant general of Maryland, told the commission that “We are a militia nation, dependent on our citizen soldiers. Americans willing to serve in the community and the nation, is our heritage, and the citizen soldier will be a critical part of our security contract.” He argued that the recommendations to close 29 flying units “increases the threat to our infrastructure by centralizing assets and negatively affecting response times to our natural and

man-made disasters.” He also noted that the Air National Guard has 100% of the air defense mission over the continental United States, and 49% of the Air Force’s airlift capacity and 45% of its air-refueling tanker support. General Tuxhill also reported the Air National Guard has flown over 30,000 sorties just since Jan. 1, 2005, in support of U.S. military operations.

According to other testimony at the June 30 hearing, the Air Force appears to regard the Air National Guard as nothing more than a support force for overseas military operations, and treated it as such in its BRAC process. Maj. Gen. Mike Haugen, the adjutant general of North Dakota, told the commission, “The Air Force focus since the Cold War has been largely offensive or expeditionary in nature, and doesn’t effectively consider state and homeland defense requirements.” One effect of this outlook was to evaluate Air National Guard bases as if active-duty bases, a process which biased the results in favor of large active-duty installations. The result was that the latter, naturally, were scored higher in military value than Air National Guard facilities, which, on average, are smaller and share runways, air traffic control, and other airport services with civilian airports.

Maj. Gen. Frank Vavala, the adjutant general of Delaware—which, like West Virginia, will lose its only flying contingent of eight C-130s—testified that the Air Force originally planned to close altogether, up to two dozen Air National Guard bases. Instead, it decided to shut down the flying missions, leaving support units in place as “enclaves,” without defining an enclave. “We believe that an enclave is nothing more than the result of a closure gone bad,” Vavala said. “BRAC data indicates that Delaware and many other enclaves were originally stamped ‘closed.’ ”



EIRNS/Stuart Lewis

*Senate Armed Services Committee Chairman John Warner (R-Va.) at a regional hearing on base-closings in Arlington, Virginia, on July 7. Senator Warner threatened to file a lawsuit challenging the Pentagon’s violation of the base-closing law.*