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Executive Correspondence



STATE OF DELAWARE

WASHINGTON OFFICE
444 North Capitol Street, NW, Suite 230
Washington, DC 20001
Phone: (202) 624-7724
Fax: (202) 624-5495

Ruth Ann Minner
Governor

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To: Chairman Principi	From: Governor Minner
Fax: 703-699-2735	Pages: Three
Phone:	Date: 6/29/2005
Re: BRAC Letter	CC:

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STATE OF DELAWARE
OFFICE OF THE GOVERNOR

RUTH ANN MINNER
GOVERNOR

June 29, 2005

The Honorable Anthony J. Principi
Chairman
BRAC 2005 Independent Commission
2521 South Clark Street, Suite 600
Arlington, VA 22202

Dear Chairman Principi:

On May 25, 2005, I sent a letter to Secretary Rumsfeld advising him that, as Governor of the State of Delaware, I do not consent to the Department of Defense's (DoD) BRAC recommendation to realign the Delaware Air National Guard's New Castle County Air Base. I am writing to you today to provide legal documentation supporting the Governor's role as Commander in Chief of the Delaware National Guard and the requiring the DoD to confer with the Governor on matters pertaining to the National Guard. I hope you consider these factors as you continue an open and transparent review of the DoD's recommendations.

The DoD's BRAC process that led to the recommendation to realign the Delaware Air National Guard's New Castle County Air Base violates both the specific language and intent of the U.S. Constitution, several federal statutes, Delaware state law, and the direction of the U.S. Supreme Court. The process also ignored the dual mission of the National Guard in homeland defense as well as homeland security, both of which are clear missions of the Guard, as provided under federal and state statutes.

Following the creation of state militias in the U.S. Constitution, Congress passed several statutes that demonstrate the dual responsibility the National Guard has to both the federal government and state government. The most commonly cited statutes are Title 10 and Title 32, both of which uphold the authority of the Governor to consent to relocation or alteration of a National Guard unit. Title 10 further provides the National Guard Bureau as the conduit for cooperation between the DoD and the Governors. However, the DoD provided no information on the BRAC process to the Governors during the BRAC recommendation process, thus prohibiting me and my Adjutant General from being

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Chairman Principi
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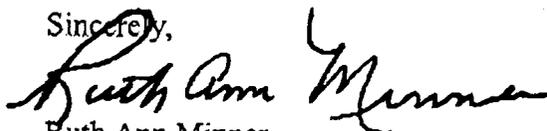
actively involved in the DoD process and negated my right to approve or reject the realignment of the Delaware Air National Guard. Title 20 of the Delaware Code confirms that state law conforms to federal statute, thus reinforcing Delaware's compliance with the federal directives to provide authority and consent to the Governor.

In the 21st Century, homeland security and homeland defense must supplement each other in order to adequately protect our nation and its citizens. Title 32 recognizes the importance of maintaining the strength of the National Guard as an integral part of the first line of defense. In the National Guard's federal-state role, the Secretary of Defense can call upon the National Guard to protect the nation and I can utilize the National Guard to protect the citizens of Delaware during a natural or manmade emergency. The Governor's ability to respond to local emergencies by drawing upon the resources of the National Guard were upheld in the U.S. Supreme Court case *Perpich v. Department of Defense*. Title 20 of the Delaware Code further grants me state authority to call up members of the Delaware National Guard on state duty status to prepare for or respond to a local emergency. The Delaware National Guard has proven a vital resource during severe weather events and heightened terror alerts. Their personnel, resources, and training are included in the Delaware Emergency Operations Plan. DoD's recommendation is void of any consultation with the Department of Homeland Security and thus eliminates one of Delaware's vital response resources.

The National Guard is, by design of our Forefathers, a federal-state organization. By focusing solely on federal duties and ignoring state missions, the DoD failed to acknowledge the unique role of a critical group of citizen-soldiers that make up the Delaware National Guard and failed to uphold a long-standing partnership between the Governors and the federal government to provide for the security of our nation and its citizens.

Thank you for your continued diligence in reviewing the DoD's recommendations. I hope you seriously consider legal statutes and precedents as you continue your deliberations. If you require further information, please do not hesitate to contact me directly, the Adjutant General of the Delaware National Guard, General Frank Vavala (302-326-7001), or my Washington DC director, Kate Finnerty (202-624-7724).

Sincerely,



Ruth Ann Minner
Governor