

OFFICE OF SENATOR JEFF BINGAMAN

FACSIMILE TRANSMITTAL SHEET

TO: Charmont Principi FROM: Stephen Ward
COMPANY: BRAC DATE: 7/15/05
FAX NUMBER: 703 699 2735 TOTAL NO. OF PAGES INCLUDING COVER: 3
PHONE NUMBER: 703 699 2974
RE: Recusal Issues

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY

NOTES/COMMENTS:

Please share w/ Commissioners
& Staff -

Please Contact me w/ any questions

Stephen
224-0175

United States Senate
WASHINGTON, DC 20510

July 15, 2005

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

Dear Tony:

We are writing to express our grave concern over how possible recusals of commissioners from votes, and the rules adopted by the Commission for dropping a base from the closure list, may result in unintended and grossly unfair outcomes.

As you are aware, rules adopted by this current commission stipulate that removing a base from the proposed closure list will require an affirmative vote of at least five of nine members. It is our understanding that current Commission policy also requires four specific members to recuse themselves from a vote if the text of a recommendation takes from or sends military resources to any of four states (CA, VA, NV, UT).

Air Force recommendations have deviated from past BRAC practices and the current approach taken by the Army and Navy, by including the movement of military resources within the recommendations to close facilities. That decision combined with the current rules of the Commission certainly will require recusals, resulting in a de facto requirement for a supermajority – five of the remaining members -- to remove a base from the list. There is even a scenario in which, if four members recuse themselves, there must be a unanimous, five out of five remaining votes of the Commission to remove a base from the list.

On the question of adding a base to the closure list, statute requires a vote of seven of nine commissioners to place a base on the list. Obviously, recusals could easily make such a move unachievable.

In the case of New Mexico the USAF has proposed, within one recommendation, to close Cannon AFB and to move aircraft to Utah and Nevada and other states. The above described rules would therefore require at least two commissioners to recuse themselves from votes related to Cannon AFB, effectively requiring a supermajority vote to remove Cannon from the closure list.

We do not believe it was the intent of Congress to impose such a high hurdle on removing a base from the list, particularly when other bases are not being subjected to such a high standard for removal.

With this correspondence, we are formally requesting that the Commission consider the impact recusals will have on the fairness of the voting process, and adopt new rules or procedures that would permit a more fair and efficient voting process.

One approach would be to change the rule that requires a vote of five of nine members to remove a base from the list, and replace it with a requirement of a simple majority of voting members. While this does not address the statutory problems posed by the seven of nine vote requirement to add a base to the list, it would solve the problem that recusals pose to dropping a base from the list.

Another approach, which we understand is also under consideration, could address recusals on votes to either add or drop a base from the list. This approach would separate closure votes from votes on the specific movement of military aircraft, by adopting a blanket motion to remove any specific mention of the movement of aircraft from all proposed base closure recommendations. In doing so, the Commission would avoid problems associated with recusals while retaining the integrity of the process.

It is our understanding that making these rule or procedural changes would be within the authority of the Commission. Further, we strongly believe that the Commission must act now to allow the BRAC process to function efficiently and in a fair manner.

Sincerely,



Pete Domenici
United States Senator



Jeff Bingaman
United States Senator