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**Congress of the United States**  
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August 18, 2005

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

**Via Facsimile (703) 699-2735**

Dear Chairman Principi,

It was with interest that I read the recent August 10th legal memorandum offered to the Commission by the Department of Justice with regard to the DOD Air Guard recommendations. The Department of Justice noted that Congress **"has enumerated four 'military value' criteria, and four 'other' criteria, on which the Secretary must rely, and has provided that these, along with the plan and inventory, shall be the only criteria on which he relies."** (Excerpt from U.S. Department of Justice memorandum to Anthony J. Principi, 10 August 2005)

This legal opinion clearly supports the arguments that my colleagues and I presented to the Commission during the Atlanta regional BRAC hearing in June. By relying on "military judgment" instead of the "military value" criteria clearly set out in the BRAC statutes, the Department of Defense has deviated from the BRAC law and the intent of the Congress. Specifically with regard to Birmingham's 117th Air Refueling Wing, there are six Air Guard units throughout the country with lower 'military value' scores that, nonetheless, are slated to have their number of tankers either maintained or increased, while Birmingham's 117th is threatened with the removal of its aircraft.

In fact, BRAC Commissioner Gehman expressed similar concerns about this proposal at a July 18th BRAC hearing, once again noting that recommendations for the Air Guard substantially deviated from the BRAC law by using military judgment over the mandated 'military value' criteria. In that hearing, Commissioner Gehman noted that:

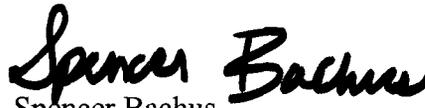
**"this recommendation...appears to substantially deviate from the BRAC legislation.** It appears to violate several standing regulations and laws. And it appears to have several hidden policy issues embedded in it -- policy issues like...not every state shall have a flying unit; policy issues like we want the active component to have better access to airframes so they can fly them more often, and therefore, we're going to use the other guy's airframes more often." Commissioner Gehman also noted in the recommendations "places where you've deviated from the BRAC legislation, where you have misapplied

military value; you've substituted military judgments when the numbers didn't work out right."

By law, the Department of Defense cannot arbitrarily ignore the parameters of the base closing process set down by Congress. With both the Department of Justice and members of the BRAC Commission acknowledging that the DOD's Air Guard recommendations deviate from the intent and letter of the BRAC legislation, it simply makes no sense to allow the 117<sup>th</sup> Air Refueling Wing in Birmingham to lose its fleet to locations that rate lower in 'military value' and possess a decreased capability in terms of runway length and hangar capacity.

The Commission has expressed its intent to follow the letter of the BRAC statute, which mandates the importance of "military value" criteria. Doing so would dictate that the KC-135 fleet would remain at the 117<sup>th</sup> Air Refueling Wing in Birmingham. I urge the Commission to continue to look thoroughly and skeptically at the DOD Air Guard recommendations.

Sincerely,

A handwritten signature in black ink that reads "Spencer Bachus". The signature is written in a cursive, slightly slanted style.

Spencer Bachus  
Member of Congress

cc: Commissioner Harold W. Gehman, Jr.  
Commissioner James V. Hansen

STB/jb