

DCN: 4913



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

THE GOVERNOR

July 18, 2005

BRAC Commission

JUL 19 2005

Received

The Honorable Anthony J. Principi
Chairman
Defense Base Closure and Realignment Commission
2521 S. Clark St., Ste. 600
Arlington, VA 22202

Re: Rendell et al. v. Rumsfeld, Case 2:05-cv-03563-JP (E.D. Pa. 2005)

Dear Chairman Principi:

On July 11, 2005, Senators Arlen Specter and Rick Santorum and I filed a lawsuit against Secretary of Defense Donald Rumsfeld to challenge the failure of the Department of Defense (DoD) to obtain my consent or approval to the proposed deactivation of the 111th Fighter Wing, Pennsylvania Air National Guard, NAS JRB Willow Grove. Secretary Rumsfeld did not seek or obtain my consent; nor did anyone from DoD ever consult with me, my staff, my adjutant general, or her staff about this action. I have attached a copy of the complaint filed by Attorney General Tom Corbett and our legal team.

The National Guard is a unique example of federalism in action where both the state and federal governments are full partners with clear statutory and constitutional responsibilities. As Governor, I am the commander-in-chief of the Guard when it is not in active federal service. The 111th Fighter Wing provides about one-fourth of the Air Guard's strength in Pennsylvania. This Pennsylvania National Guard unit is an essential military asset available to me to address state emergencies (floods, blizzards, and other disasters), and more importantly in today's environment, homeland security missions.

As you know, provisions of both Title 10 and Title 32 of the United States Code require the consent or approval of the Governors with regard to major changes in National Guard organizations in their states. Congress was clearly right when it established a balanced approach requiring the DoD to obtain the consent of the Governors before eliminating National Guard units in their states, just as I would have to obtain the President's consent in the event that I wished to disband Pennsylvania Guard units. DoD was clearly wrong to ignore this mandate.

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Pennsylvania is not seeking judicial review of the BRAC process or of BRAC decisions. We filed suit not to challenge your Commission or the BRAC process but to preserve the careful balance between the states and the federal government in managing the National Guard.

I firmly believe there is ample justification for the BRAC Commission to overturn in their entirety DoD's recommendations for closure of Naval Air Station Joint Reserve Base Willow Grove and the 911th Airlift Wing at Pittsburgh International Airport. I also believe that the presentations from both Willow Grove and Pittsburgh were compelling, and I urge you to reject DoD's recommended actions for these installations because of the substantial deviations from BRAC criteria. Our lawsuit in no way detracts from Pennsylvania's case on the merits with regard to these installations.

Based on my interactions with Commissioners and staff during base visits and the Washington hearing, as well as from watching Commission proceedings on C-SPAN, I understand the fiscal and operational realities which mandate that the BRAC process occur. I also believe that the Commission is doing a fair and thorough job in wrestling with these complex issues.

Thank you again for your courtesy and attentiveness when Pennsylvania made its presentation on July 7, 2005. We are committed to continuing to work with the Commission and hope to be in Washington soon to meet with your staff and reinforce the points we made at our regional hearing.

Sincerely,



Edward G. Rendell
Governor

cc: The Honorable James H. Bilbray
The Honorable Philip Coyle
Admiral Harold W. Gehman, Jr. (USN, Ret)
The Honorable James V. Hansen
General James T. Hill (USA, Ret)
General Lloyd W. Newton (USAF, Ret)
The Honorable Samuel K. Skinner
Brigadier General Sue E. Turner (USAF, Ret)
The Honorable Arlen Specter
The Honorable Rick Santorum
The Honorable Thomas Corbett
Adjutant General Jessica Wright

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWARD G. RENDELL, in his official	:	
capacity as Governor of the Commonwealth	:	
of Pennsylvania, ARLEN SPECTER, in his	:	
official capacity as United States Senator,	:	
and RICK SANTORUM, in his official	:	CIVIL ACTION
capacity as United States Senator,	:	
	:	No. 05-
Plaintiffs,	:	
	:	
v.	:	
	:	
DONALD H. RUMSFELD, in his official	:	
capacity as Secretary of Defense of	:	
the United States,	:	
	:	
Defendant.	:	

COMPLAINT

Plaintiffs Edward G. Rendell, in his official capacity as the Governor of the Commonwealth of Pennsylvania, Arlen Specter, in his official capacity as United States Senator for the Commonwealth of Pennsylvania, and Rick Santorum, in his official capacity as United States Senator for the Commonwealth of Pennsylvania, by and through their counsel, file the following Complaint against Donald H. Rumsfeld, in his official capacity as the Secretary of Defense of the United States, as follows:

Nature of This Action

1. This action arises out of the Department of Defense's (the "Department") attempt, unilaterally and without seeking or obtaining the approval of the Governor of the Commonwealth of Pennsylvania, to deactivate the 111th Fighter Wing of the Pennsylvania Air National Guard stationed at Naval Air Station Joint Reserve Base, Willow Grove, Pennsylvania (the "111th Fighter Wing"). The Department's attempt to deactivate the 111th Fighter Wing without first obtaining Governor Rendell's approval violates federal law, which expressly grants

rights to the Commonwealth of Pennsylvania and its Governor, as commander-in-chief of the Pennsylvania National Guard. While this action arises in the context of the 2005 Base Realignment and Closing process, Plaintiffs do not challenge The Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note (the "BRAC Act") or allege that Secretary Rumsfeld has violated any provision of the BRAC Act. To the extent that Plaintiffs object to the Department's procedure and substantive judgments in the current Base Realignment and Closing process, they have raised those objections in other, appropriate forums. Instead, 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.

The Parties, Jurisdiction and Venue

2. Plaintiff Edward G. Rendell ("Governor Rendell") is a resident of Harrisburg, Pennsylvania and the duly elected Governor of the Commonwealth of Pennsylvania.
3. Governor Rendell is the commander-in-chief of the Pennsylvania National Guard.
4. Plaintiff Arlen Specter is a resident of Philadelphia, Pennsylvania and a duly elected United States Senator for the Commonwealth of Pennsylvania.
5. Plaintiff Rick Santorum is a resident of Penn Hills, Pennsylvania and a duly elected United States Senator for the Commonwealth of Pennsylvania.
6. Defendant Donald H. Rumsfeld ("Secretary Rumsfeld") is the Secretary of Defense of the United States of America.
7. This action arises under the "militia clause" of the United States Constitution, art. I, sec. 8, cl. 16, 10 U.S.C. § 18238 and 32 U.S.C. § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.

8. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

9. On May 13, 2005, Secretary Rumsfeld transmitted to the Defense Base Closure and Realignment Commission ("BRAC Commission") the Department of Defense Base Closure and Realignment Report ("BRAC Report").

10. The BRAC Report was prepared by the Department pursuant to the BRAC Act.

11. The BRAC Report contains the Department's recommendations to realign or close military installations within the United States and its territories.

12. While preparing the BRAC Report, the Department considered, *inter alia*, the installation needs of the Reserve Components of the armed forces, including the Air National Guard of the United States and the Air Force Reserve.

13. The BRAC Report recommends deactivation of the Pennsylvania Air National Guard's 111th Fighter Wing at the Naval Air Station Joint Reserve Base at Willow Grove, Pennsylvania and relocation of assigned A-10 aircraft to different Air National Guard units based in Boise, Idaho, Baltimore, Maryland, and Mount Clemens, Michigan.

14. The 111th Fighter Wing is an operational flying National Guard unit located entirely within the Commonwealth of Pennsylvania.

15. One thousand twenty-three (1,023) military positions are allotted to the 111th Fighter Wing.

16. The 111th Fighter Wing's strength currently stands at about 99% of the authorized positions.

17. 111th Fighter Wing personnel consist of two hundred seventy-four (274) full-time support personnel (205 military technicians and 69 Active Guard and Reserve) and seven hundred forty-nine (749) traditional (part-time) Guard members.

18. The more than 1,000 men and women assigned to the 111th Fighter Wing constitute a well-trained, mission-ready state military force available to Governor Rendell to perform state active duty missions dealing with homeland security, natural disasters and other state missions.

19. Over 75% of the members of the 111th Fighter Wing have combat experience.

20. The 111th Fighter Wing was the first unit in the Air National Guard to deploy to Kuwait and Afghanistan.

21. The 111th Fighter Wing has been intensely involved in combat operations since September 11, 2001. While deployed to Afghanistan for Operation Enduring Freedom, A-10 aircraft from the 111th flew nearly 225 combat missions. In Operation Iraqi Freedom, the 111th has flown 450 missions, dropped 125 tons of explosives and expended more than 42,000 rounds of 30mm ammunition.

22. Deactivation of the 111th Fighter Wing will deprive the Governor of nearly one-fourth of the total strength of the Pennsylvania Air National Guard and will reduce the strength of Pennsylvania military forces in the Southeastern Pennsylvania region.

23. Deactivation of the 111th Fighter Wing and accompanying action to cease flying operations at the Naval Air Station Joint Reserve Base at Willow Grove will deprive the Governor and the Commonwealth of a key unit and joint base of operations possessing current

and future military capabilities to address homeland security missions in the Southeastern Pennsylvania region.

24. The 111th Fighter Wing is organized as a unit of the Pennsylvania Air National Guard (state) and Air Combat Command (federal). Deactivation of the 111th Fighter Wing is a change in the branch, organization or allotment of the unit.

25. In May 2005 and at all times subsequent to Secretary Rumsfeld's transmittal of the BRAC Report to the BRAC Commission, an overwhelming majority of the 111th Fighter Wing was not and currently is not in active federal service.

26. At no time during the 2005 BRAC process did Secretary Rumsfeld request or obtain the approval of Governor Rendell or his authorized representatives to change the branch, organization or allotment of the 111th Fighter Wing.

27. At no time during the 2005 BRAC process did any authorized representative of the Department request or obtain the approval of Governor Rendell or his authorized representatives to change the branch, organization or allotment of the 111th Fighter Wing.

28. At no time during the 2005 BRAC process did Secretary Rumsfeld request or obtain the consent of Governor Rendell or his authorized representatives to relocate or withdraw the 111th Fighter Wing.

29. At no time during the 2005 BRAC process did any authorized representative of the Department request or obtain the consent of Governor Rendell or his authorized representatives to relocate or withdraw the 111th Fighter Wing.

30. If requested, Governor Rendell would not give his approval to relocate, withdraw, deactivate or change the branch, organization or allotment of the 111th Fighter Wing.

31. By letter dated May 26, 2005, Governor Rendell wrote to Secretary Rumsfeld in pertinent part: "I am writing to advise you officially that, as Governor of the Commonwealth of Pennsylvania, I do not consent to the deactivation, relocation, or withdrawal of the 111th Fighter Wing."

32. To date, neither Secretary Rumsfeld nor any authorized representative of the Department has responded to Governor Rendell's letter dated May 26, 2005.

Ripeness for Judicial Review

33. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of realignments and closures of military installations, and no further actions are required of the Department before the 111th Fighter Wing is deactivated.

First Claim for Relief

(Declaratory Relief Regarding the Secretary's Failure to Obtain the Governor's Consent)

34. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 33, inclusive, as though fully set forth herein.

35. Pursuant to 32 U.S.C. § 104, no change in the branch, organization or allotment of a National Guard unit located entirely within a State may be made without the approval of that State's governor.

36. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not, without first obtaining Governor Rendell's approval, deactivate the 111th Fighter Wing .

37. Pursuant to 28 U.S.C. § 2202, Plaintiffs request such further relief as necessary to protect and enforce Governor Rendell's rights as governor of the Commonwealth of Pennsylvania and as commander-in-chief of the Pennsylvania National Guard.

Second Claim for Relief

(Declaratory Relief Regarding the Secretary's Failure to Obtain the Governor's Consent)

38. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 37, inclusive, as though fully set forth herein.

39. Pursuant to 10 U.S.C. § 18238, a unit of the Army National Guard or the Air National Guard of the United States may not be relocated or withdrawn without the consent of the governor of the State in which the National Guard unit is located.

40. Pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not, without first obtaining Governor Rendell's consent, deactivate the 111th Fighter Wing.

41. Pursuant to 28 U.S.C. § 2202, Plaintiffs request such further relief as necessary to protect and enforce Governor Rendell's rights as governor of the Commonwealth of Pennsylvania and as commander-in-chief of the Pennsylvania National Guard.

WHEREFORE, Plaintiffs pray that judgment be entered in their favor and against Secretary Rumsfeld and that the Court grant the following relief:

a. An Order declaring that Secretary Rumsfeld, by designating the 111th Fighter Wing for deactivation without first obtaining the approval of Governor Rendell, has violated the "militia clause" of the United States Constitution, art I, sec. 8, cl. 16, 32 U.S.C. § 104 and/or 10 U.S.C. § 18238;

b. An Order declaring that Secretary Rumsfeld did not and does not now have the power, without first obtaining Governor Rendell's approval, to deactivate or recommend deactivation of the 111th Fighter Wing;

c. An Order declaring that the portion of the BRAC Report that recommends deactivation of the 111th Fighter Wing of the Pennsylvania Air National Guard is null and void; and

d. Such other and further relief as the Court deems appropriate.

Dated: July 11, 2005

Respectfully submitted,

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