

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

GOVERNOR M. JODI RELL, in her	:	CIVIL ACTION NO.
official capacity as Governor of the	:	
State of Connecticut, CHRISTOPHER	:	
J. DODD, in his official capacity as	:	
United States Senator, JOSEPH I.	:	
LIEBERMAN in his official capacity as	:	
United States Senator, JOHN B.	:	
LARSON, in his official capacity as	:	
United States Representative, and	:	
STATE OF CONNECTICUT,	:	
<i>Plaintiffs,</i>	:	
	:	
v.	:	
	:	
DONALD RUMSFELD,	:	
in his official capacity as	:	
Secretary of Defense,	:	
THE DEFENSE BASE CLOSURE	:	
AND REALIGNMENT COMMISSION,	:	
and ANTHONY J. PRINCIPI, in his	:	
official capacity as Chairman of the	:	
the Defense Base Closure and	:	
Realignment and Commission, and	:	
JAMES H. BILBRAY, PHILIP COYLE,	:	
HAROLD W. GEHMAN, JR.,	:	
JAMES V. VINSON, JAMES T. HILL,	:	
LLOYD W. NEWTON, SAMUEL K.	:	
SKINNER, and SUE E. TURNER,	:	
in their official capacities as members	:	
of the Defense Base Closure and	:	
Realignment Commission,	:	
<i>Defendants.</i>	:	August 29, 2005

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The Plaintiff State of Connecticut has a fundamental, long-standing duty to ensure the security of its citizens, including through the maintenance of a state militia.

The State's right to maintain and direct its own militia is deeply rooted in both the U.S. Constitution and its State Constitution. See U.S. Constitution Article I, Section 8, clauses 15 & 16 and Connecticut Constitution, Article Fourth, sec. 8.

2. The National Guard system is the successor to the original state militias. The National Guard and Air National Guard are dual federal and state organizations, with dual enlistments, whereby the National Guard military personnel swear allegiance to both the federal and state governments, and are simultaneously enlisted or commissioned with both the state and federal governments.

3. The plaintiff, M. Jodi Rell, Governor of the State of Connecticut, is the "captain general of the militia of the state, except when called into the service of the United States." See Connecticut Constitution, Article Fourth, sec. 8. As "commander-in-chief" of both the National Guard and Air National Guard in Connecticut, Governor Rell directs the National Guard and Air National Guard unless the Guard units are called into active federal military service. See Conn. Gen. Stat. § 27-14.

4. Plaintiff Christopher J. Dodd is a duly elected United States Senator for the State of Connecticut.

5. Plaintiff Joseph I. Lieberman is a duly elected United States Senator for the State of Connecticut.

6. Plaintiff John B. Larson is a duly elected United States Representative for the First Congressional District of Connecticut. The First Congressional District encompasses the town of Windsor Locks, Connecticut, in which the Bradley Air National Guard Station is located.

7. A unit of the Connecticut National Guard or Air National Guard may not be relocated or withdrawn without the consent of Governor Rell. See 10 U.S.C. § 18238.

8. No change in the branch, organization, or allotment of a National Guard or Air National Guard unit located entirely within a state may be made without the approval of its governor. See 32 U.S.C. § 104.

9. Defendant Secretary Donald Rumsfeld (the "Secretary" or "Secretary Rumsfeld") is the Secretary of Defense of the United States Department of Defense ("DOD"). Secretary Rumsfeld is sued in his official capacity.

10. The Base Closure and Realignment Act of 1990, 104 Stat. 1808, as amended, note following 10 U.S.C. § 2687 (the "BRAC Act"), sets forth the process by which military bases in the United States and its territories are identified for closure or realignment.

11. Pursuant to the BRAC Act, as amended, Secretary Rumsfeld is authorized to make recommendations for the closure and realignment of military bases in the United States to the defendant Defense Base Closure and Realignment Commission (the "BRAC Commission").

12. Defendant Anthony J. Principi is the Chairman of the BRAC Commission. Chairman Principi is sued in his official capacity.

13. Defendants James H. Bilbray, Philip Coyle, Harold W. Gehman, Jr., James V. Vinson, James T. Hill, Lloyd Newton, Samuel K. Skinner and Sue E. Turner are members of the BRAC Commission (collectively "the BRAC Commissioners"). The BRAC Commissioners are sued in their official capacities.

14. Secretary Rumsfeld is responsible for overseeing, directing and/or implementing the closure or realignment of military bases pursuant to the BRAC process.

15. On or about May 13, 2005, Secretary Rumsfeld transmitted the DOD Base Closure and Realignment Report ("DOD Report") to the BRAC Commission.

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

17. The DOD Report recommends the realignment of the Connecticut 103rd Fighter Wing located at Bradley Air National Guard Station in Windsor Locks, Connecticut. In particular, the Secretary has recommended that "[t]he A-10s assigned to the 103d Fighter Wing will be distributed to the 104th Fighter Wing, Barnes Municipal Airport Air Guard Station, MA (nine aircraft) and retirement (six aircraft)," and realigning the flying unit into the Massachusetts Air Guard. See DOD Recommendations, Sec. 3 (Air Force) at 14.

18. On August 26, 2005, the BRAC Commission adopted and approved the DOD's recommendation to realign the 103rd Fighter Wing.

19. The decision to adopt the DOD's recommendation to realign the 103rd Fighter Wing is not subject to any further review by the BRAC Commission and becomes part of its final report and recommendations to be transmitted to the President of the United States by September 8, 2005.

20. Pursuant to the BRAC Act, the President of the United States must approve or disapprove the BRAC Commission's recommendations in their entirety. He

may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing.

21. In each of the four previous BRAC processes – occurring in 1988, 1991, 1993 and 1995 – the President approved the BRAC Commission's recommendations in their entirety.

22. The President has stated publicly that he will approve the BRAC Commission's recommendations in their entirety and forward them to Congress.

23. The deadline for the President to forward to the Congress his approval of the BRAC Commission's recommendations is September 23, 2005. Congress's authority is limited to disapproving the entire slate of closures and realignments. Congress may not reject any individual recommendation, including the recommendation to realign the 103rd Fighter Wing. If Congress does not affirmatively act to disapprove the recommendations in their entirety within 45 legislative days of their transmittal from the President, they become law. Thereafter, Secretary Rumsfeld would be responsible for implementing all final closure and realignment decisions.

24. Congress has never disapproved the President's base closure and realignment decisions.

25. The 103rd Fighter Wing is an operational flying National Guard Unit located entirely within the State of Connecticut and is not currently activated to federal service. Initially formed in 1917, the 103rd Fighter Wing, also known as the "Flying Yankees," is made up the 103rd Operations Group, 103rd Mission Support Group, 103rd Maintenance Group and the 103rd Medical Group. Within each group are squadrons

and flights that come together to make up the more than 900 men and women of the 103rd Fighter Wing.

26. Transferring and/or retiring all of the 103rd Fighter Wing's aircraft would eliminate Connecticut's only Air National Guard fighter squadron. Transfer of these aircraft out of Connecticut would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command.

27. According to published reports, the Secretary's and BRAC Commission's recommendations would leave Connecticut as one of only two states without a single Air National Guard aircraft assigned within its borders.

28. The elimination of Connecticut's only Air National Guard Fighter Wing would have an immediate negative affect on enlistment and reenlistment in the Air National Guard in Connecticut.

29. The 103rd Fighter Wing is one of the world's premier A-10 flying units. Its members have demonstrated their excellence during missions over Bosnia and Iraq, including in Operation Iraqi Freedom, Operation Southern Watch and Operation Deny Flight.

30. The 103rd Fighter Wing is not activated to federal service. Thus, the 103rd Fighter Wing is under the command of the Governor of Connecticut. Responding to state or community emergencies is co-equal, and in no way subordinate, to the 103rd Fighter wing's federal responsibilities.

31. The proposed realignment of the 103rd Fighter Wing is a change in the branch, organization or allotment of the unit.

32. The proposed realignment of the 103rd Fighter Wing is a relocation or withdrawal of a unit of the Air National Guard.

33. In recommending the realignment of the 103rd Fighter Wing, the BRAC Commission contravened the law and the legal advice of its own counsel. By memorandum dated July 14, 2005, legal counsel to the BRAC Commission correctly recognized that the BRAC Act did not authorize the DOD or its Secretary to change the organization of or withdraw or disband a National Guard unit unless the DOD obtained the consent of the governor where the unit was located. In particular, the BRAC Commission's staff's legal analysis, which was approved by its General Counsel, concluded that

[w]here the practical result of an Air Force Recommendation would be to withdraw, disband, or change the organization of an Air National Guard Unit, the Commission may not approve such a recommendation without the consent of the Governor Concerned.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 15.

34. The recommendations by the BRAC Commission and Secretary Rumsfeld to transfer and/or retire aircraft currently assigned to the Bradley Air Guard Unit are also unlawful in that they call for action beyond the Commission's authority as delineated by the BRAC Act. The BRAC Commission's legal staff concluded that:

The Base Closure Act does not grant the Commission the authority to change how a unit is equipped or organized. Recommendations that

serve primarily to transfer aircraft from one unit to another, to retire aircraft, or to address an imbalance in the active-reserve force mix are outside the authority granted by the Act. The Commission must act to remove such provisions from its recommendations.

See Discussion of Legal and Policy Considerations Related to Certain Base Closure and Realignment Recommendations, July 14, 2005 at 10.

35. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to change the branch, organization or allotment of the 103rd Fighter Wing, or any portion thereof.

36. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to relocate or withdraw the 103rd Fighter Wing or any portion thereof.

37. At no time during the 2005 BRAC process did Secretary Rumsfeld, the BRAC Commission, or any other person or entity request or obtain the approval of Governor Rell or her authorized representative to deactivate the 103rd Fighter Wing or any portion thereof.

38. In her letter of June 14, 2005, Governor Rell informed the Secretary that she does not consent to the realignment, relocation, withdrawal, deactivation or change in the branch, organization or allotment of the 103rd Fighter Wing.

JURISDICTION

39. This is a lawsuit for declaratory and injunctive relief based upon 10 U.S.C. § 18238 and 32 U.S.C. § 104.

40. Pursuant to 28 U.S.C. §§ 1331, 1346, 2201, and 2202, this Court has jurisdiction over the parties and claims in this lawsuit.

41. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

42. Pursuant to the 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. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

43. The BRAC Commission voted on August 26, 2005 to accept the Secretary's recommendation with regard to the 103rd Fighter Wing. The BRAC Commission is preparing to transmit this and its other recommendations to the President on or before September 8, 2005.

44. By voting to eliminate the 103rd Fighter Wing and transmit this recommendation to the President, the BRAC Commission, Chairman Principi and the BRAC Commissioners have finally and completely fulfilled their responsibilities under the BRAC Act with respect to the 103rd Fighter Wing. The legality of the Secretary's and the BRAC Commission's recommendations with regard to the 103rd Fighter Wing can be fully and effectively adjudicated at this time.

45. The harm as detailed herein is neither speculative nor conjectural, but rather is already complete as the Governor's right to disapprove changes to the branch, organization or allotment of the 103rd Fighter Wing has been nullified by the Secretary's and BRAC Commission's recommendations.

46. Additional harm is imminent as neither the President nor Congress may remove the 103rd Fighter Wing from the list of recommended closures and realignments unless they reject the BRAC Commission's recommendations in their entirety. The President has stated publicly that he will accept the BRAC Commission's recommendations in their entirety. Furthermore, it would be historically unprecedented for the President or Congress to reject an entire slate of closure and realignment recommendations. Moreover, as described above, the closure and realignment recommendations will become law within 45 legislative days after the President approves them and the President must act by September 23, 2005.

IRREPARABLE HARM

47. Absent a preliminary injunction, the harm as alleged herein would be irreparable. In addition to nullifying the Governor's right to disapprove changes to the organization or allotment of Connecticut's Air National Guard, the Secretary's and BRAC Commission's recommendation would deprive the Governor of a vital homeland security asset, degrade her ability to defend the security of Connecticut's citizenry, and leave Connecticut without a single Air National Guard aircraft assigned within its borders or under the Governor's command. The proposed elimination of Connecticut's only Air National Guard Fighter Wing would immediately and negatively affect

enlistments and reenlistments in Connecticut's Air National Guard. In addition, once the BRAC Commission transmits its recommendations to the President, the ability to obtain effective judicial relief is severely diminished or eliminated.

FIRST CAUSE OF ACTION
[Declaratory and Injunctive Relief]

48. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

49. 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.

50. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut.

51. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

52. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

53. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

SECOND CAUSE OF ACTION
[Declaratory and Injunctive Relief]

54. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

55. Pursuant to 10 U.S.C. § 18238, a unit of the National Guard or 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.

56. The Plaintiffs request a Declaratory Judgment declaring that Secretary Rumsfeld may not realign the 103rd Fighter Wing without first obtaining the consent of the Governor of Connecticut;

57. The Plaintiffs request a Declaratory Judgment declaring that the portions of the DOD Report to the BRAC Commission and the BRAC Commission's Report to the President that recommend realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void; and

58. The Plaintiffs request that the Court enjoin the Defendant Rumsfeld from mandating, overseeing, implementing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

59. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

THIRD CAUSE OF ACTION
[Declaratory and Injunctive Relief]

60. The allegations in Paragraphs 1-47 are alleged and incorporated herein by reference.

61. The Secretary and the BRAC Commission have recommended that the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard be transferred or retired.

62. The BRAC Act does not grant the BRAC Commission the authority to change how a unit is equipped or organized.

63. Any recommendation by the BRAC Commission to transfer aircraft from one unit to another or to retire aircraft unlawfully exceeds its authority as granted and delineated by the BRAC Act.

64. The Plaintiffs request a Declaratory Judgment declaring that any recommendation by the BRAC Commission to transfer or retire aircraft assigned to the 103rd Fighter Wing of the Bradley is null and void.

65. The Plaintiffs request that the Court enjoin the defendants from recommending, mandating, directing, implementing, or controlling the transfer or

retirement of the aircraft assigned to the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports.

66. The Plaintiffs request that the Court enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in their final report and recommendations to be transmitted to the President on or before September 8, 2005.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

(1) Issue an order declaring that the realignment of the 103rd Fighter Wing of the Bradley Air National Guard as proposed by Secretary Rumsfeld and the BRAC Commission without the consent of the Governor of the State of Connecticut is prohibited by federal law;

(2) Issue an order declaring that portions of the DOD and BRAC Commission Reports that recommends realignment of the 103rd Fighter Wing of the Bradley Air National Guard are null and void;

(3) Enjoin Defendant Rumsfeld and any other officer or employee of DOD from mandating, implementing, overseeing or directing the realignment of the 103rd Fighter Wing of the Bradley Air National Guard in the manner proposed in the DOD and BRAC Commission Reports;

(4) Enjoin the BRAC Commission, Chairman Principi, and the BRAC Commissioners from including the recommendation to realign the 103rd Fighter Wing in

their final report and recommendations to be transmitted to the President on or before September 8, 2005.

(5) Award to the Plaintiffs, pursuant to 28 U.S.C. § 2412 and any other applicable statute, the costs, fees, and other expenses incurred in prosecuting this lawsuit; and

(6) Order such other and further relief as this Court may deem appropriate.

PLAINTIFFS,
M. JODI RELL, GOVERNOR OF
CONNECTICUT, CHRISTOPHER J.
DODD, JOSEPH I. LIEBERMAN, JOHN B.
LARSON, and
THE STATE OF CONNECTICUT

BY: _____

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