



UNITED STATES SENATOR

John Ensign

NEVADA

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To: Chromium Principi (Christine Hill)

From: Senator Ensign

Re: BRAC Concern

Date: 29 July 2005

Number of pages: 3

(703) 699-2725

NOTES:

Senator Ensign has tried to reach Mr. Principi today without success.

- J. Gensior

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WASHINGTON, DC 20510-6050

July 29, 2005

Honorable Anthony J. Principi
Chairman, Base Closure and Realignment Commission
2521 South Clark Street, Suite 600
Arlington, Virginia 22202-3920

Dear Chairman Principi:

Section 2902 of the Defense Base Closure and Realignment Act of 1990, as amended, provides that "All the proceedings, information, and deliberations of the [Base Realignment and Closure] Commission shall be open, upon request" to the Chairman of the Subcommittee on Readiness and Management Support of the Committee on Armed Services and other named persons. By including this provision in the BRAC statute, Congress authorized my subcommittee to provide oversight on the Commission's activities. It is in my capacity as Chairman of the Subcommittee on Readiness and Management Support that I write to you regarding the performance of the Commission in carrying out its statutory duties. I have been asked to specifically look at whether Department of Defense officials, who were personally or substantially involved in the preparation of information and recommendations concerning the closure or realignment of military installations, provided members of the BRAC Commission *ex parte* or uncertified information that has not been made part of the public record to date by the BRAC Commission.

The Congress, in enacting the BRAC statute, was aware that the process of base closure is a highly controversial one, and that the deliberations of the Commission must be open and transparent. Therefore, the Congress included a provision in BRAC law which requires that Department of Defense officials, in submitting information to the Commission, "shall certify that such information is accurate and complete to the best of that person's knowledge and belief." (Section 2903) Other provisions in the BRAC law direct that all testimony at public hearings of the Commission be under oath and establish the requirements for open hearings and deliberations, site visits, separation of the Commission's staff from the Department of Defense, and other protections.

Moreover, insofar as the Administrative Procedure Act applies to the deliberations of the Commission, private conversations would appear to violate that Act's limitations on *ex parte* communications, as well as its fundamental requirement that decisions of agencies be made on the basis of evidence of record. Any deviation from these legal requirements clearly gives rise to potential litigation that could delay or

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impede the BRAC process or result in a federal court taking action that could call into question the integrity of the entire process.

Apart from the potential legal ramifications is the risk of undermining the public's perception of the integrity and reliability of the BRAC process. We must remember that there inevitably will be the need for a future Secretary of Defense to initiate a BRAC process. We must simply have the support of the public and the Congress to enact that process.

Because of the vital importance of these matters, I therefore request that you allow my staff to meet with appropriate representatives of the 2005 BRAC Commission no later than August 3, 2005 and that all relevant documentation be produced by August 10, 2005, which will allow for examination of all records, materials, and other evidence relating to any *ex parte* communications and to assess, if in fact they occurred, whether these *ex parte* communications may have unduly or improperly influenced the Commission's actions to date.

I look forward to your prompt reply.

Sincerely,



John Ensign
Chairman
Subcommittee on Readiness and Management
Support

cc: The Honorable Donald Rumsfeld