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 capacity as United States Senator,	:	CIVIL ACTION
	:	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,

By: Thomas W. Corbett Jr. (ARS)

Thomas W. Corbett, Jr.
Attorney General of Pennsylvania
Daniel J. Doyle
Senior Deputy Attorney General
PA ID No. 54855
Susan J. Forney
Chief Deputy Attorney General
Office of Attorney General
Commonwealth of Pennsylvania
15th Floor, Strawberry Square
Harrisburg, PA 17120
Phone: (717) 787-2944
Facsimile: (717) 772-4526

By: Barbara Adams (ARS)

Barbara Adams
PA ID No. 27226
General Counsel
Governor's Office of General Counsel
333 Market Street, 7th Floor
Harrisburg, PA 17101
Phone: (717) 783-6563
Facsimile: (717) 787-1788

Attorneys for Plaintiff, Edward G. Rendell

By: [signature]

Antoinette R. Stone
PA ID No. 23464
Mary Kay Brown
PA ID No. 54327
BUCHANAN INGERSOLL PC
1835 Market Street, 14th Floor
Philadelphia, PA 19103-2985
Phone: (215) 665-8700
Facsimile: (215) 776-8760

David J. Porter
PA ID No. 66125
BUCHANAN INGERSOLL PC
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, PA 15219
Phone: (412) 562-1318
Facsimile: (412) 562-1041

Attorneys for Plaintiffs,
Edward G. Rendell, Arlen Specter and
Rick Santorum, in their official capacities

Of Counsel:

Peter M. Murphy
Steven D. Gordon
Michael Galano
HOLLAND & KNIGHT LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
Phone: (202) 955-3000
Facsimile: (202) 955-5564