

**Combined Statement of**

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**Before the**

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Chairman Punaro and members of the Commission, thank you for the invitation to offer our perspectives on the “National Defense Enhancement and National Guard Empowerment Act of 2006;” as entertained by both the House and Senate. The two bills, H. R. 5200 and S. 2658, were identical. An amendment offered by Senator Leahy to the Senate-passed version of the 2007 National Defense Authorization Act included many of the same provisions contained in the two stand-alone bills. Starting with Section 2, we would like to take each section in turn and provide you our views.

The “Expanded Authority” section would eliminate the National Guard Bureau (NGB) as a joint bureau of the Department of Army and Air Force and make it a “joint activity of the Department of Defense.” Further, this section would insert the NGB as the channel of communication on all matters regarding the National Guard between the Secretary of Defense, the Joint Chiefs of Staff, the combatant commanders, the Army, and the Air Force and the several States.

This section prescribes that the NGB is a “joint activity of DoD.” Under the current definition of “joint activity” in Joint Staff publication CJCSI 1001.1, it is unclear for whom the Chief of the National Guard Bureau would work—directly for the Secretary of Defense, or for the Secretaries of the Army and Air Force? And what effect would this have on the title 10 responsibilities of the Secretaries of the Army and Air Force? These questions have not been answered. Further, it is counter to one of the Secretary's tenets in his July 30, 2003, memo to the Chief of the National Guard Bureau, which was to “...strengthen that statutory link with the Army and Air Force...” This provision appears to weaken that link. Most important, neither the Secretary of Defense nor the Chairman of the Joint Chiefs of Staff has identified a need for additional authority

to communicate with the Chief of the National Guard Bureau, or the need to specify in law that they and the combatant commanders must use his office to communicate with the governors of the several States. In fact, there are strong links in place and functioning between both offices and the National Guard Bureau, and with the Governors.

The section “Enhancements of Position of Chief of the National Guard Bureau” would make the Chief of the National Guard Bureau the “principal advisor” to the Secretary of Defense and the Chairman, JCS, on all matters related to the National Guard, whether in federal status or federally funded state status. However, there can only be one principal military advisor to the Secretary of Defense, and it is the Chairman, JCS. This provision would effectively remove the Chairman as the principal advisor to the Secretary on any matters related to the National Guard—an unacceptable outcome. It would also intrude on the authority of other officers of the Department. For example, under section 138 of title 10, the principal duty of the Assistant Secretary of Defense for Reserve Affairs is the overall supervision of reserve component affairs of the Department of Defense. This provision would undercut his role.

The provision would expand the role of the Chief of the National Guard Bureau to make him the equivalent of a Chief of Staff of a Service, but without forces under his jurisdiction. But unlike the Chiefs of Staff of the Services, the Chief of the National Guard Bureau is not responsible for training, equipping and providing forces. Rather, he is responsible for monitoring those functions as they are carried out by the several states, in partnership with the Secretaries of the Army and Air Force, as specified in title 10. Notwithstanding the proposal, the Chief of the Guard Bureau would still have no

command authority or control over National Guard forces. When performing State active duty or State duty funded by DoD under title 32, the Army and Air National Guard are under the command and control of the respective governor. When ordered to active duty, the Army and Air National Guard of the U. S. are Reserve components of the Army and Air Force, respectively, and, as such, are under the supervision of the Secretary of the respective Military Department, as provided under 10 USC 3013 and 10 USC 8013.

Placing the Chief of the National Guard Bureau as a member of the Joint Chiefs of Staff would create friction and conflict between the role of the Chief of the National Guard Bureau and the advisory role of the respective Secretary of the Military Department and Chief of Staff where overall responsibility for all uniformed components of the respective Service resides.

The Chairman of the Joint Chiefs of Staff has neither identified a need to expand the Joint Chiefs of Staff to include National Guard representation, nor found that the current advisor to him on National Guard matters has been ineffective or needs to be replaced. As stated by the Chairman of the Joint Chiefs of Staff, in testimony earlier this year, there should be one Army, one Navy, one Air Force and one Marine Corps, and we see no reason to challenge him. It has taken us a long time to get to where we are with our Services, and we see no advantage in taking a step backwards.

The section “Enhancement of Functions of National Guard Bureau,” would make the Secretary of Defense responsible for certain force management functions that title 10 clearly placed with the Secretaries of the respective Military Department, such as prescribing training discipline and training requirements, monitoring organizations,

maintenance and operations, and planning and administering budgets for the Army and Air National Guard of the United States.

It would also add a function to the charter making the National Guard Bureau responsible for facilitating and coordinating with other Federal agencies, and with the several States, the use of National Guard personnel and resources in contingency operations and military operations other than war. We do not believe that it is appropriate for the Chief of the National Guard Bureau to coordinate the use of Federal military personnel for contingency operations and military operations other than war with other Federal agencies. This is the responsibility, if required, of the Secretary of Defense and the combatant commanders—not an officer representing only two Reserve components, particularly when the Chief of the National Guard Bureau has no command authority over forces of the Army or Air Force. The Chief of the National Guard Bureau should continue to serve in his chartered function as the channel of communications with the several States when members of the National Guard are to perform title 10 or title 32 functions.

Further, this change to the Guard Bureau Charter would infringe on the authority of the Assistant Secretary of Defense for Homeland Defense over the homeland defense activities of the Department of Defense (10 U.S.C. 138(b)(3)). It would also infringe on the Assistant Secretary of Defense for Homeland Defense's responsibility to represent the Department of Defense on homeland matters, including defense support to civil authorities, in dealings with the Executive Office of the President, the Department of

Homeland Security and other Federal departments and agencies, and State and local authorities.

If National Guard forces are used to respond to a natural disaster or provide support to civil authorities in a Federal status, the National Guard Bureau should continue to be the channel of communications as currently prescribed in its charter. This is working well and need not be changed. If National Guard forces are used in a State duty status, the coordination of the use of those forces would be the responsibility of the governor of the State, not the Chief of the National Guard Bureau, and the governor could coordinate with the Department of Homeland Security, if other federal agencies are involved.

Two sections of the proposal would also establish new functions and responsibilities for the Chief of the National Guard Bureau—“§10503a. Functions of National Guard Bureau: military assistance to civil authorities” and “§10544. National Guard training and equipment: budget for military assistance to civil authorities and for other domestic operations.” By law, the responsibility for overall supervision of Homeland Defense activities within the Department of Defense resides with Assistant Secretary of Defense for Homeland Defense. As written, the proposal would infringe upon the Assistant Secretary of Defense for Homeland Defense's responsibility regarding defense support to civil authorities. This function should remain with a civilian official rather than a military officer, especially here at home. The Chief of the National Guard Bureau already coordinates with the Assistant Secretary of Defense for Homeland Defense as the Assistant Secretary carries out his responsibilities.

These provisions suggest that the use of military personnel to conduct missions and requirements should be expanded to support civil authorities. Many of these functions are more appropriately under the purview of other Federal departments and agencies. The Department of Defense should not become the default manpower resource for other Federal agencies or State or local governments. That would strain our military forces, particularly the National Guard.

Providing defense support to civil authorities during the recovery efforts following Hurricane Katrina involved not only the National Guard, but also Federal military forces from all Services. These provisions would either make the Chief of the National Guard Bureau responsible for determining the military assistance that could be provided from the active and reserve forces of the Army, Navy, Air Force and Marine Corps—forces and capabilities over which he has no visibility—or for providing a limited view of force capabilities that reside only within the Army National Guard and Air National Guard.

These provisions would also give the Chief of the National Guard Bureau certain title 10 responsibilities currently under the purview of the Secretaries of the Military Departments. These are functions that should remain with the Assistant Secretary of Defense for Homeland Defense, and the Secretary of the respective Military Department, in consultation with the Chief of the National Guard Bureau.

While the two bills suggest that there is to be no growth in the size of the National Guard Bureau staff, the proposed expansion of roles and responsibilities would inevitably lead to headquarters growth. More important, the growth is the result of duplicating functions that are already the responsibility of other headquarters staffs—specifically, the

Assistant Secretary of Defense for Homeland Defense and the Departments of the Army and Air Force.

Section 3 of the proposal provides a sense of Congress that all eligible Reserve component major generals or rear admirals be considered for promotion along with active duty personnel. The Department already has procedures in place that provide for the consideration of qualified Reserve component officers for positions of importance and responsibility (10 USC § 601). The consideration of appropriately qualified Reserve Officers for nomination to the President for Positions of Importance and Responsibility only requires that they be nominated by the Secretary of the Military Department concerned or by the CJCS for consideration by the Secretary of Defense. Such nominations can occur, when warranted. To mandate consideration of all Reserve component officers, regardless of qualification, would degrade the timeliness of the nomination process without an increase in the number in Reserve component officers selected for such positions.

Finally, Section 4 of the proposal makes the assumption that only a National Guard general officer (in a title 10 status) can effectively communicate with the National Guard Bureau (a title 10 entity) about the National Guard activities of the States (which are not a title 10 entity) and that, via this communication, State activities can better integrate into USNORTHCOM plans and operations (which has no authority over State activities).

Mandating in law the component from which the deputy commander must be selected limits the ability of the President to ensure the best suited officer serves in that

position. The Commander, U.S. Northern Command should have the most qualified officer, regardless of component or Service, to serve in the deputy position. He reviews candidates and recommends the officer he believes is best suited for that position to the Chairman of the Joint Chiefs of Staff and the Secretary of Defense.

After reviewing the list of potential officers to fill the position of deputy commander, U.S. Northern Command, and considering the recommendation of the Combatant Commander and Chairman, the Secretary forwards his recommendation to the President. The President selects the best qualified officer and sends his nomination to the Senate for confirmation. If the Secretary determines that a National Guard officer is best suited to serve as the deputy commander, U.S. Northern Command, he will make that recommendation to the President.

The John Warner National Defense Authorization Act for fiscal year 2007 also requires the commission to consider the advisability and feasibility of providing that the Chief of the National Guard Bureau hold the grade of general in the performance of the current duties of that office. Serving in the grade of general should only be considered when the responsibilities of the office held by the officer warrant such a grade. Even given the increased prominence of the National Guard in homeland defense activities, the duties of the Chief of the National Guard do not warrant elevating the chief to the grade of general. He has responsibilities for allocating certain resources, prescribing training disciplines and monitoring compliance, planning and administering budgets for the Army National Guard of the United States and the Air National Guard of the United States, supervising acquisition and supply functions and ensuring accountability, and performing

certain personnel functions. Elevating the chief to the grade of general will have no material effect on the performance of these functions.

The commission was also asked to evaluate the provision of the House-passed 2007 NDAA that would clarify the command authority of National Guard officers. This is a provision that was submitted by the Department to primarily clarify that a National Guard officer serving in a title 10 status, and who has been authorized to retain his state commission, may exercise command authority over title 10 forces as well as title 32 forces. It further provides for an orderly succession of command, if needed, by allowing the President and governor concerned to grant authorization and required consent in advance. Finally the provision would clarify that an officer who is not relieved of his duties in the National Guard while serving on active duty may perform National Guard duties without the limitations imposed under 18 USC 1385 (Use of Army and Air Force as posse comitatus). The Department believes these amendments are necessary and supports their enactment.

Finally, the commission was asked to assess the adequacy of the Department's processes for defining equipment and funding needs of the National Guard. The National Guard's needs and requirements are presented, debated, validated and prioritized right along with all organizations in the Department. All of the Reserve components (RCs), including the National Guard, are integrated into their respective parent Service's Planning Programming and Budgeting process. The Services all utilize a layered resource review process, with various boards and panels that rigorously prioritize funding requirements from the lower to the higher levels, so that in the end, those requirements

deemed highest priority are funded above those deemed of lesser priority. At the start of the process, each RC is given a portion of the parent Service's top-line to fund their programs; such as, pay and allowances, recruiting, training, and equipping. Many requirements compete for funding within each RC's budget, and when the RC's estimates are completed, they are forwarded to their parent Service for review and integration with Service-wide priorities.

The Services' proposals, including the RCs, are then provided to OSD for analysis and balancing across the Defense Department. During this phase, OSD reviews each Service's estimates, prioritizes with other DoD requirements to ensure that the Defense Department's highest priorities are resourced, and coordinates with OMB. The end product presented to the Congress is one that specifically integrates the Reserve components, has been reviewed at many levels, usually multiple times, and represents the Department's best judgment of the resources needed to accomplish DoD's assigned overall mission.

In conclusion, while the ideas in this proposal are certainly worth discussing, the discussion might best begin by identifying the problems the proposed legislation seeks to solve. In our efforts to improve, we should look for simple, straightforward solutions. We should ensure those solutions improve the process while safeguarding the chain of command. They should not duplicate the effort. If we adhere to these tenets, we should arrive at an outcome that satisfies the needs of all concerned.