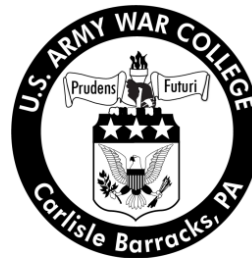


Strategy Research Project

The Future of the Army's Reserve Components

by

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United States Army



United States Army War College
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USAWC STRATEGY RESEARCH PROJECT

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Abstract

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Two separate components fulfill the Army's reserve requirements: the Army Reserve and the Army National Guard. Each of these components has very strong constituent support making any changes to its organization and structure politically challenging. However, the current confluence of budgetary and operational stresses creates a "perfect storm" of political pressure that provides the Army and the nation with an opportunity to revisit the structure of the Army's Reserve Components. This paper considers proposals for reducing inefficiencies between the Reserve Components and recommends that the most politically expedient, operationally focused, and fiscally efficient way to streamline the Reserve Components is to maintain each with clearly distinct missions and priorities.

The Future of the Army's Reserve Components

Now is an opportune time for the U.S. government to bridge the cultural, bureaucratic and budgetary gulf that still divides full-time active duty and reserve personnel.

—General (Ret.) Gordon R. Sullivan
Former Chief of Staff, United States Army, 1991-1995¹

After more than a decade at war, the U.S. government is looking to reduce the size and cost of its armed forces. Although this familiar situation has repeated itself after every major conflict since the founding of the nation, the current financial crisis and the continued need to defend against both state and non-state actors, especially violent extremist organizations, compound the challenges presented by this drawdown. The nation's mounting national debt and the sequestration law² Congress passed to deal with it add a layer of urgency that presents a unique political opportunity for Congress to achieve its objectives by eliminating inefficiencies within the Reserve Components without weakening the nation's military strength.

Currently, two separate components fulfill the Army's reserve requirements: the Army Reserve, organized under U.S. Code Title 10, and the Army National Guard, organized under Title 32 (together, the "Reserve Components"). Despite numerous calls to eliminate redundancies within the Reserve Components, each of the components has very strong constituent support, which makes changes to organization and structure politically untenable.

Naturally, modifications to existing organizational structures are difficult and substantial political pressures compound the difficulties in changing the structure of the Army National Guard and Army Reserve. Further, American politicians seldom see significant modifications to the structure of the Guard and Reserve as politically feasible.

However, clarifying the roles and eliminating the competitive nature of the Army Reserve and the Army National Guard is a necessary first step in the upcoming post-war downsizing and rebalancing of the force.

Unlike the political atmosphere surrounding previous Reserve Component reform attempts, there is now a greater willingness on the part of the Congress to consider alternate structures for the Army National Guard and Army Reserve. Today's post-war drawdown occurs simultaneously with efforts to deal with a spiraling out of control deficit, a troublesome national debt, and the pending threat of deep, across-the-board cuts to federal programs under sequestration. This combination creates a perfect storm that should enable significant reforms.

This paper recommends that the most politically expedient, operationally focused, and fiscally efficient way to streamline the Army National Guard and Army Reserve is to retain each with clearly distinct missions and priorities. In reaching this conclusion, three proposals for reducing inefficiencies between the Reserve Components are considered: 1) merging the Army Reserve into the Army National Guard; 2) merging the Army National Guard into the Army Reserve; and 3) retaining both while realigning the Army National Guard and Army Reserve. After tracing the development of our current National Guard, a thorough analysis of each scenario will demonstrate the superiority of the recommended third option.

Historical Federal – State Tensions

Natural tensions over access to the militia/National Guard have existed since the nation's founding. While the legal basis for these tensions has been resolved over the past 200 years, political tensions remain. These political tensions inhibit an efficient use of the Reserve Components and are exacerbated in times of fiscal constraint. An

effective solution requires reconciling state political posturing with current legal protections that adequately ensure state access to the National Guard.

The Constitution contains provisions for two distinct military land force organizations, an Army and a Militia, that serve as one in the defense of the nation. The Army Clause empowers Congress to "raise and support Armies," which provides us with a standing national army.³ Today's National Guard stems from two Militia Clauses contained in the Constitution. The first empowers Congress "to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions."⁴ The second Militia Clause authorizes Congress "to provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress."⁵

At the time of the Constitutional Convention, the state militia lacked any common organization among the thirteen states. Nonetheless, they were the mainstay of the new nation's defense.⁶ The Army and Militia Clauses reflected the Framers' and the nation's fear that a large standing Army "posed an intolerable threat to individual liberty and the sovereignty of the separate States."⁷ These clauses are consistent with the system of checks and balances found throughout the Constitution and should be considered through that lens. In theory, the Army and Militia Clauses would produce a limited standing army alongside a series of state militias that would be uniformly organized, armed and disciplined so that they would be effective fighting forces when called into federal service. However, as Alexander Hamilton argued in the Federalist Papers, there

was a danger that use of militia might require reliance on inadequately trained soldiers.⁸ To address this legitimate concern, a series of federal legislative acts brought the National Guard's current level of readiness into fruition.

The foundation for the modern National Guard is the Dick Act, which in 1903 created the "organized militia" (known as the National Guard of the various states) and the "reserve militia," later termed the "unorganized militia."⁹ Still in effect today, the National Guard comprises all able-bodied male citizens between 17 and 45 years of age who have enlisted in their state National Guard and those female citizens who are commissioned officers of their state National Guard. The unorganized militia comprises all other male citizens of such age who have not enlisted in their state National Guard.¹⁰

Congress strengthened its ties to the militias with the National Defense Act of 1916. Although partially negated by future legislation, in 1916 Congress "federalized" the National Guard of the various states, or organized militia, by requiring every member of a state's National Guard to pledge support to the nation and to the state, as well as to obey the President and the governor.¹¹ Through this act, the Army now included both the original regular standing army and the National Guard, while it was in the service of the United States. Under this law, National Guard members drafted into federal service were permanently discharged from their state National Guard.¹² When it examined the constitutionality of this law two years later, the U.S. Supreme Court ruled that the Militia Clauses do not constrain Congress's powers to providing for the common defense, raising and support armies, making rules for the governance of the armed forces, and enacting necessary and proper laws for executing those powers. Rather, the

Court concluded that the Militia Clauses provide additional grants of power to Congress.¹³

The current “dual enlistment” program stems from the National Defense Act Amendments of 1933.¹⁴ Under this enlistment scheme, everyone who enlists in a state National Guard concurrently enlists in the National Guard of the United States (NGUS), one of the two components currently comprising the Reserve Components.¹⁵ Under these new provisions, state National Guard members retain their state identities until ordered into federal active duty in the NGUS.¹⁶ Once their federal service is completed, their status reverts to membership in the state National Guard.¹⁷ This provision of the 1933 Act overcame the irreversible federal status mandated by the 1916 Act. Significantly, the 1933 Act permitted the federal government to order state National Guard units or members to federal active duty only during periods of national emergency.

In 1952, Congress extended federal control over the National Guard beyond national emergencies by authorizing the Defense Department to order any state National Guard unit or member into federal active duty in the NGUS for training during peacetime, provided the state governor consents.¹⁸ This gubernatorial consent requirement satisfied critics who questioned the constitutionality of initial drafts of the bill that omitted the requirement.¹⁹

Until the Central American training missions of the mid-1980s, obtaining gubernatorial consent for peacetime training was routine. In 1986, however, Governor Joseph Brennan of Maine cancelled a deployment of two of his Army National Guard units to Central America. The Montgomery Amendment resulted. The amendment,

included in the FY87 Department of Defense Authorization Act, withdrew from governors the authority to forbid overseas deployments of their National Guard units because of location, purpose, type or schedule of such training. The governor of Minnesota, Rudy Perpich, subsequently sued to have the Montgomery Amendment ruled unconstitutional as a violation of the Militia Clause to the U.S. Constitution, but in *Perpich v. Department of Defense*, the Supreme Court ruled that the Constitution did not require the gubernatorial consent granted in the 1952 Act. Therefore, its partial repeal by the Montgomery Amendment was constitutionally valid, and governors' veto power is somewhat limited.²⁰

In *Perpich*, the Court recognized that the dual enlistment system means that when members of the National Guard are ordered into federal service with the NGUS, they lose their status as members of the state militia during their period of federal service. The Court explained that "[i]f that duty is a training mission, the training is performed by the Army in which the trainee is serving, not by the militia from which the member has been temporarily disassociated."²¹ When the state National Guard member is ordered to put on his or her federal hat, the Court concluded, "the Militia Clause is no longer applicable."²² Therefore, the requirement of the first Militia Clause, allowing federal service in three extraordinary situations is nonexclusive.²³ This means that the federal government can access the National Guard for situations other than "to execute the Laws of the Union, suppress Insurrections and repel Invasions."²⁴ Much of the Court's reasoning reflects this view of the dual enlistment system.

The Court also observed that the authority of the states to train the militia is limited in the second Militia Clause by "the discipline prescribed by the Congress."²⁵ The

Court interpreted this to mean that "[i]f the discipline required for effective service in the Armed Forces of a global power requires training in distant lands, or distant skies, Congress has the authority to provide it."²⁶ Accordingly, once a state National Guard member becomes a National Guard member on active duty in the NGUS, both training and discipline are entirely in federal hands.

Influencing the Court's textual and statutory analysis in *Perpich* was the presumption that federal control over the armed forces is exclusive under the Constitution. Drawing upon "the supremacy of federal power in the area of military affairs,"²⁷ the Court noted that the federal Government "provides virtually all of the funding, the materiel, and the leadership for the state Guard units."²⁸

Significantly, however, the Court found that a state governor retains the power, in spite of the Montgomery Amendment, to veto state guard participation in a proposed federal training mission if it were to interfere with the state National Guard's capacity to respond to local emergencies.²⁹ This state veto power remains the law of the land today.³⁰

This historical analysis demonstrates that our current military structure is the result of changing political needs and evolving legal doctrine. The National Guard is not a static institution that has remained unchanged for 200 years. Rather, it has evolved over time to meet the needs of a changing nation. Although federal ties have been strengthened to ensure our forces are adequately trained to operate in an evolving international arena, state Governors have retained the primary power to ensure that the National Guard is available to handle local emergencies.

Where We Stand Today

Army Reserve forces are organized under U.S. Code Title 10 and are, therefore, federal assets with a primary mission to support the Title 10 Active Army. Army Reserve forces are available for mobilization under Title 10 United States Code for specifically enumerated reasons. Army Reserve forces fall under the day-to-day command and control of the President and Secretary of Defense. This direct and permanent control of the Army Reserve by the President enables assured access to Army Reserve forces for military operations, domestic response, preplanned missions, training and exercises, and operational support irrespective of the needs of the State in which they are located.³¹ This guaranteed access is an essential advantage for the Army Reserve, especially for low-density capabilities that are critical to the Army in the early days of combat operations. Examples of these unique capabilities include units focused on theater opening and seaport operations and port management. In addition, the Army Reserve is responsible for many unique capabilities not present in either the Active Army or National Guard. The Army Reserve is the sole owner of 37 different types of Army units and maintains 75% or more of another 15 different type of units. Managing career development for officers and Soldiers in high demand, low density, and geographically dispersed units is efficiently managed as part of a federal force and not limited by the authority and confine of a single state.

The Army Reserve is highly responsive to the needs of the Army. Unlike with the Army National Guard, activation and mobilization of Army Reserve forces as individuals, derivative units or whole units is routine. Army Reserve units and individuals can also reinforce and be assigned to Active Component organizations on a permanent basis.

Army Reserve operational forces are not constrained by state boundaries or the need to maintain forces to respond to domestic emergencies.

By contrast, Army National Guard units are organized, within their respective States, under Title 32 of the United States Code and are responsible to both the Army and the state in which they are organized. State governors or territorial commanding generals can call their Army National Guard units to both state active duty and active duty under the provisions of Title 32 for various reasons such as response to domestic emergencies. Because of this, the Army National Guard is less responsive to the immediate needs of the Nation. By virtue of state control, they are less flexible and often their ability to maintain their strength and recruiting is dependent upon the population and skills of their regions. However, since the Army National Guard can perform active duty under Title 10, it can essentially perform all tasks and missions assigned to the Army Reserve with the same equipping and training.

Getting to the operational reserve of today was not easy and did not follow a straight path. The result is a mix of legislation and policies that hamper the effort to get the most effective military possible. Many of the *legal* issues involved in accessing the National Guard for federal purposes are gone, but the *political* tensions of the federal-state relationship are not.

Restructuring the Reserve Components is Necessary

In 1948, the Department of Defense noted that the dual-status nature of the National Guard “produces a constant turmoil of bickering, recrimination, factionalism and stalemate.”³² It further warned:

Constructive planning cannot be directed toward national security as the sole objective. It is constantly running into political or partisan stalemates. Both the Congress and the services must first consider whether desirable

action will offend either party. If it does, balance of forces, adaption to required missions, questions of equipping, fiscal outlay, and fixing strengths must all follow expediency. A divided program results, which compromises security and satisfies neither party.³³

Sixty-five years later, the chaos resulting from this “constant turmoil” continues.

While the early problems associated with accessing the National Guard were resolved over the past 100 years through various legislative changes and Supreme Court rulings, the political tensions between the state and federal government continue to play out in the relationship between the Department of Defense and the National Guard.

One example is the Army’s recent proposal to convert four of the Army National Guard’s 28 brigade combat teams to Advise and Assist Brigades. This proposed move is consistent with “the Army’s thinking to lean on the Reserve Component[s] for certain missions.”³⁴ For the same reason that the vast majority of Civil Affairs units are in the Army Reserve, creating Advise and Assist Brigades in the National Guard enables the Army to take advantage of the “civilian careers Guard soldiers often have [in] the kinds of non-warfighting and leadership skills crucial to liaising with foreign forces.”³⁵ In response to this proposal, the adjutants general of seven U.S. states rejected this idea and wrote a direct letter to Army Chief of Staff, General Raymond Odierno saying that Advise and Assist Brigades are “not a viable force structure. Creating a unique force structure that does not mirror AC formations, just to perform Advise and Assist missions, does not appear to be a realistic option.”³⁶ This situation is yet to be resolved but is a reminder of the federal-state tensions and the sometimes-conflicting objectives of these two stakeholders.

A second example of problems associated with the current dual system is illustrated by the President’s FY 2013 budget submission, which included cuts to both

National Guard personnel and equipment. In February 2012, 49 Governors signed a letter to Secretary of Defense Leon Panetta strongly opposing the disproportionate cuts in the Air National Guard's FY 2013 budget.³⁷ Iowa Governor Terry Branstadt said, "these cuts will dramatically alter the ability of the National Guard to respond to emergencies and protect citizens, such as the levee monitoring activities last summer along the Missouri River."³⁸ In response to the pressure, Secretary Panetta met several times with the recently created Council of Governors.³⁹ Originally conceived as an advisory body, the Council of Governors, as evidenced by these meetings, now appears to function as an additional check on the National Guard Bureau, which, through the offices of the Director, Army National Guard and the Director, Air National Guard have direct input and participate in the programming and budget process as primary staff organizations. In essence, the states have multiple opportunities for input into the structure, budget, roles and missions of the military. When Governors or State Adjutant Generals see their National Guard forces cut, they resort to the political process.

When attempts to resolve the conflict over the FY13 budget submission failed, the National Governor's Association⁴⁰ sent a letter to the Chairmen and Ranking Members of both the Senate and House Armed Services Committee. The letter requested that the committees freeze levels of Air Force National Guard manpower and aircraft, pending an agreement on the FY 2013 budget and a consultative process for future years.⁴¹ Although this second example is taking place in another service, its lesson is no less applicable to the Army.

There is a natural politicization of military budgets and other decisions regarding National Guard interests, but as the system is set-up and currently evolving there is a

great inefficiency inserted into the Department of Defense policy, programming and budgetary process for secondary and tertiary missions (such as support to state missions and support to civil authorities). In response to these issues, Congressional Quarterly reported that:

[m]any at the Defense Department worry about the long-term consequences if the governors prompt a revision of the budget request. How, they ask, could this affect changes the Army wants to make to its own Guard units? And what kind of control would the governors hope to exert over the two base-closure rounds the Pentagon wants to launch in 2013 and 2015?⁴²

Over the past 100 years, Congress passed legislation with the goals of ensuring that the National Guard was trained, ready and accessible for federal missions. However, political challenges, because of natural federal-state tensions, still exist and complicate the planning, budgeting, and execution processes designed to ensure our nation has the best defense forces possible.

Changes to the Reserve Components are Imminent

Since the creation of the “modern” Reserve Components after World War II, several attempts to reorganize the Reserve Components met with limited success. The two most serious proposals “failed because of strong congressional opposition, fueled by the effective lobbying of associations affiliated with the National Guard and Reserves and other interest groups.”⁴³ The first of these reform efforts came in 1948 when Secretary of Defense James V. Forrestal convened the “Gray Board,”⁴⁴ to examine the status of reserve forces. When the board recommended the abolition of the National Guard, “the National Guard and the National Guard Association of the United States successfully lobbied Congress against the Gray Board’s recommendations.”⁴⁵ The second major reform attempt occurred in 1964, when Secretary of Defense Robert S.

McNamara recommended merging the Reserve Components of the Army under the management of the National Guard. This proposal met with a similar fate.

Due to the current confluence of budgetary and operational pressures, current calls for change are not likely to be so easily defeated. In February of 2012, Representative Mike Coffman, Republican from Colorado and a member of the House Armed Services Committee, stated that the nation no longer needs an Army Reserve and a National Guard and therefore, he recommended merging the two into a single Army Reserve Component.⁴⁶ He stated,

[t]he two separate organizations -- National Guard and Reserves -- were created at different times to fill separate and distinct needs of the nation. As the nation evolved, those needs dramatically changed. Today both organizations, requiring duplicative headquarters, provide essentially identical services and capabilities while competing with each other for missions and resources - a wasteful and inefficient business model. It is time to combine the National Guard and the Reserves into one organization and save billions of dollars by eliminating redundancies and wasteful competition.⁴⁷

He, along with Representative Jim Cooper, a Democrat on the House Armed Services Committee, sent a bipartisan request to the U.S. Government Accountability Office (GAO) requesting that the GAO look into possible efficiencies gained through alternate structures for the National Guard and Reserves. In early June 2012, the GAO notified the Secretary of Defense that it would be “examining the extent to which alternative organizational structures for the National Guard and Reserves would achieve organizational efficiencies and meet defense strategy needs.”⁴⁸ Justifiably, as we enter a post-war drawdown and an era of declining budgets and increasing competition for resources, the GAO is taking another well-deserved look at the Army’s Reserve Components to identify redundancies and opportunities for monetary savings by eliminating areas of overlap and consolidating functions.⁴⁹

The pressure on the Army to get restructuring right is building. In addition to the GAO study, the Fiscal Year 2013 National Defense Authorization Act (FY13 NDAA) included a reporting requirement for the Army to submit a comprehensive report on its force structure to Congress. The FY13 NDAA mandated that the report include “[a] description of the planning assumptions and scenarios used to determine the size and force structure of the United States Army, including the reserve component, for the Future Years Defense Program for fiscal years 2014 through 2018.”⁵⁰

Momentum to restructure the Reserve Component is strong and the pressure to change is great. Despite the urgency posed by the looming threat of sequestration, however, our national security demands a thorough and comprehensive look at several options for the future of the Reserve Components.

Possible Solutions Considered

The first two options considered here leave the Army with only one Reserve Component. The third option retains both the Army Reserve and Army National Guard as Reserve Components of the Army reorganized and optimized to better serve its two stakeholders with often-times conflicting interests: the federal government and the state government.

Merge the Army National Guard into the Army Reserve

In 1948, the Gray Board recommended merging the Army National Guard into a federal reserve force. As was the case then, merging the Army National Guard into the Army Reserve requires significant legislative change or judicial challenge and is highly unlikely. A merger of the Army National Guard into the Army Reserve is a monumental hurdle to overcome given the requirements for a militia embodied in Article 1 of the Constitution.⁵¹ Statutory recognition that the Army National Guard fulfills this

requirement further complicates this option.⁵² Repeal of this statute or a constitutional challenge in the courts is not politically feasible and therefore the merger of the Army National Guard into the Army Reserve is not a viable option.

Merge the Army Reserve into the Army National Guard

In 1997, the Congressional Budget Office (CBO) recommended the merger of the Army National Guard and the Army Reserve. The option presented merged the Army National Guard and the Army Reserve into one entity that would retain the dual state and federal status of the National Guard. The CBO estimated that the government would save over \$500 million annually by eliminating approximately 43,000 personnel and administrative organizations that now exist within the Army Reserve but would be redundant after the merger.⁵³ The current GAO investigation will validate and or clarify where possible savings can come from.

In addition to budgetary and personnel savings, the 1997 CBO report also argued that such a merger would place a larger number and greater diversity of resources to deal with domestic crises at the disposal of each governor. With recent changes to Section 12304 of Title 10 that permit the involuntary activation of federal reserve forces to respond to major domestic emergencies or disasters, this argument is now moot.⁵⁴

It is unwise to place the nation's entire reserve force in the National Guard because such an action would multiply the inefficiencies inherent in the command structure of the National Guard. The National Guard, by virtue of having to maintain headquarters in each state and territory and a National Guard Bureau and Readiness Center, is naturally inefficient and costly from a federal defense viewpoint. In fiscal year 2012, the Army Reserve maintained 24,656 full-time support members (active duty

military and civilian) while the Army National Guard required almost three-times as many (59,270) while being only 50% larger.⁵⁵

Placing all of the Army's reserve forces into the National Guard also compounds the problem of a lack of federal oversight. Despite funding under Title 32 representing federal dollars administered by the states, there is very little to no federal oversight on State National Guard spending. This makes the system ripe for abuse. It is not difficult to find abuse. In November 2005, a GAO look into the National Guard Youth Challenge Program (for which the federal government provides more than 60% of the funding) found that:

Although NGB uses various oversight mechanisms, it lacks a complete oversight framework, making it difficult to measure program effectiveness and to adequately address audit and review findings. Also, some audits have not been performed as required. The Government Performance and Results Act suggests a complete oversight framework including goals and measures against which to objectively evaluate performance. While NGB requires states to report certain performance outcomes, it does not require states to establish performance goals in these areas, and therefore does not have a firm basis for evaluating program outcomes and DOD's return on investment. Existing agreements require state programs to be audited at least every three years. However these audits have not been conducted as required and no provisions exist for submitting audit results to NGB.⁵⁶

In May of 2012, the GAO looked into the management of the State Partnership Program (fully funded by the federal government) and found a similar situation. Nine years after the initiation of the program:

[m]any State Partnership Program stakeholders, including State Partnership Program Coordinators, Bilateral Affairs Officers, and combatant command officials, cited benefits to the program, but the program lacks a comprehensive oversight framework that includes clear program goals, objectives, and metrics to measure progress against those goals, which limits the Department of Defense's (DOD) and Congress' ability to assess whether the program is an effective and efficient use of resources.⁵⁷

In addition to magnifying oversight problems, merging the Army Reserve into the Army National Guard increases a substantial amount of risk to short-term, and possibly long-term, readiness. A merger would invalidate every Army Reserve Soldier enlistment and Officer commission. After a decade of war, the risk to the force of breaking every contract is significant. In joining the Army National Guard, many of these Soldiers and Officers would see their careers limited by state boundaries and fewer occupation specific jobs.

Merging the Army Reserve into the Army National Guard is not a viable option at this time. The risks involved to strength, readiness, and responsiveness are high. Mitigating these risks involves the investment of a substantial amount of time and money, neither of which are available at the current time.

Retain Both Reserve Components with Clarified Missions

To meet the needs and desires of both federal and state stakeholders, the Army should strongly reconsider the recommendation of the independent Commission on the National Guard and Reserves (CNGR) that the:

DOD should determine existing capabilities from all components that could fulfill civil support requirements and rebalance them where appropriate (consistent with their other obligations), shifting capabilities determined to be required for state-controlled response to domestic emergencies to the National Guard, and shifting capabilities currently resident in the National Guard that are not required for its state missions but are required for its federal missions either to the federal reserve components or to the active duty military, as appropriate.⁵⁸

This recommendation (recommendation number five) most effectively balances the needs of the Army, for an operational reserve, and of the states, for a state controlled and optimized response force. The Army National Guard should be recommitted as the Department of Defense's lead force for Homeland Defense,

Homeland Security and Defense Support to Civil Authorities. Its primary mission should be to support its respective Governor's need to supplement local law enforcement and provide emergency response to natural and manmade disasters. The National Guard should also serve as the strategic reserve force for the Army. The Army Reserve would maintain and expand its role as the Army's operational reserve force and would have a secondary mission to support the National Guard for missions of homeland security and defense support to civil authorities.

By clarifying roles and responsibilities in this manner, the Department of the Army could eliminate duplication and reduce direct competition between the Army Reserve and the Army National Guard for recruits and missions. A clear delineation provides the Nation, State Governors, Units, and Soldiers with a clear order of battle for both federal and state missions. It assures Governors that they have a National Guard force that is ready and available for state missions and it affords Soldiers with greater options for true continuum of service.

This result is a natural evolution of our military from its founding, through the Constitution and legislative enactments to today. Redefining the National Guard to a strategic reserve force is not a demotion or relegation of duties but rather a reflection of the nation's priorities.

Retaining both the Army National Guard and the Army Reserve with clear lines of responsibility and increased efficiencies supports both the Army and the state Governors. It also affords servicemembers with opportunities enabling a true continuum of service in an active Army, operational reserve (Army Reserve), or a strategic reserve force (the National Guard), in addition to the inactive reserve opportunities. This option

takes advantages of the strengths of each component while avoiding the weaknesses of combining all of the reserve forces into one component.

Recommendations

In order to meet the national security challenges for the next decade and beyond, now is the right time to reorganize the Army's Reserve Components. Absent a wholesale revision to the military sections of the United States Code, restructuring the roles, responsibilities and missions of the Army's Reserve Components enables the Army to reach a feasible transformation of the Reserve Components that supports an efficient drawdown of the active Army.

This clarification of roles and responsibilities is consistent with recommendations of the most recent review of the nation's Reserve Components. Congress should enact language in the next National Defense Authorization Act similar to recommendation number five of the CNGR final report. The Department of Defense, in turn, should give direction for the next Total Army Analysis that the National Guard should be transformed with direct input by the Governors so that it is organized primarily for the needs of the nation's defense and then optimized based on the needs of the states and appropriate risk analysis. The National Guard would conceivably end up with combat units located in border and coastal states and predominance of combat support and combat service support in the interior states. Military Police and Chemical units might only exist in the National Guard and a portion of Civil Affairs could move into the National Guard as well.

Reducing inefficiencies between the Reserve Components by clarifying priorities and missions is the most politically expedient, operationally focused, and fiscally efficient way to streamline the Reserve Components. These restructured Reserve

Components will be better able to absorb and support the national security requirements created during the drawdown of the active Army.

Endnotes

¹ John Nagl and Travis Sharp, *An Indispensable Force: Investing in America's National Guard and Reserves*, Center for New American Security (Washington, D.C.: September 2010), 6-7.

² *The Budget Control Act of 2011*, Pub. L. No. 112–25, 112th Cong., 1st sess. (August 2, 2011).

³ U.S. Constitution, art. I, sec. 8, cl. 12.

⁴ *Ibid.*, cls 15.

⁵ *Ibid.*, cls. 16.

⁶ See Alan Hirsch, *The Militia Clauses of the Constitution and the National Guard*, *University of Cincinnati Law Review*, Vol. 28, 919 (1988).

⁷ *Perpich v. Department of Defense*, 496 U.S. 340 (1990). Justice Stevens referring to comments at the Virginia ratification convention by Edmund Randolph who stated that "there was not a member in the federal Convention, who did not feel indignation" at the idea of a standing Army.

⁸ Alexander Hamilton, "Federalist 29: Concerning the Militia," *The Federalist Papers*, January 10, 1788, http://thomas.loc.gov/home/histdox/fed_29.html (accessed January 2, 2013).

⁹ *The Militia Act of Jan. 21, 1903*, 32 Stat. 775, ch. 196.

¹⁰ *Militia: Composition and Classes*, 10 U.S. Code § 311 (1988).

¹¹ *Enlistment Oath*, 32 U.S. Code § 304 (1988).

¹² 39 Stat. at 211, Sec. 111.

¹³ *Selective Draft Law Cases*, 245 U.S. 366, 377 (1918); see also *Cox v. Wood*, 247 U.S. 3, 6 (1918) (the plenary power to raise armies was "not qualified or restricted by the provisions of the militia clause").

¹⁴ *The National Guard Act of 1933*, 73 Pub. L. No. 64, 73rd Congress, 1st sess. (June 15, 1933).

¹⁵ *Appointments as Reserve Officers*, 10 U.S.C. §§ 591(a), 3261, 8261 (1988).

¹⁶ *Army National Guard of the United States: Status when not in Federal Service*, 10 U.S.C. § 10107 (1994).

¹⁷ *Relief from National Guard Duty when Ordered to Active Duty*, 32 U.S.C. § 325 (2008).

¹⁸ *Armed Forces Reserve Act of 1952*, § 233(c), (d), 66 Stat. 481, 490 (codified as amended at 10 U.S.C. § 672(b), (d) (1988)).

¹⁹ See Rudy Perpich, Governor of the State of Minnesota; State of Minnesota, by its Attorney General Hubert H. Humphrey, III, Appellants, v. United States Department of Defense, United States Department of Air Force, United States Department of Army, National Guard Bureau, Caspar W. Weinberger, Secretary of Defense; John O. Marsh, Jr., Secretary of the Army; Edward C. Aldridge, Secretary of the Air Force; Lt. Gen. Herbert R. Temple, Jr., National Guard Bureau, Appellees. Commonwealth of Massachusetts, Amicus Curiae, U.S. National Guard Assn., Amicus Curiae. *Perpich*, 880 F.2d 11, 33 (8th Cir. 1989).

²⁰ *Perpich*, 347.

²¹ *Ibid.*

²² *Ibid.*, 348.

²³ Article I, Section 8; Clause 15 provides that there are three constitutional grounds for calling up the militia -- "to execute the laws of the Union, suppress insurrection and repel invasions." Absent the holding in this case (which says that this clause does not apply once federalized), a strict reading of this clause suggests that all three standards appear to be applicable only to the territory of the United States.

²⁴ U.S. Constitution, art. I, sec. 8, cl. 15.

²⁵ *Ibid.*, cls. 16.

²⁶ *Perpich*, 351.

²⁷ *Ibid.*, 352.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Reserve Components Generally*, 10 U.S.C. §§12301(b) and (d).

³¹ *Ibid.*, 10 U.S.C. §12301.

³² United States Department of Defense Committee on Civilian Components, Reserve forces for national security, report to the Secretary of Defense (Washington, U.S. Govt. Print. Off., 1948), 12.

³³ *Ibid.*

³⁴ Sebastian Springer, "Advise and Assist Formations at Issue: State Guard Leaders Oppose Army Chief's Brigade-Design Proposal," *insidedefense.com*, <http://insidedefense.com/Inside-the-Army/Inside-the-Army-08/20/2012/state-guard-leaders-oppose-army-chiefs-brigade-design-proposal/menu-id-78.html> (accessed December 26, 2012).

³⁵ Ibid.

³⁶ Major Generals Wesley E. Craig, Terry M. Haston, Patrick A. Murphy, John F. Nichols, Raymond F. Rees, Roy Martin Umbarger, and William D. Wofford, Letter to General Raymond T. Odierno, Chief of Staff, dated 28 June 2012, http://insidedefense.com//index.php?option=com_iwpfile&file=pdf12/08172012_tag.pdf (accessed December 26, 2012).

³⁷ National Governors Association, Letter to the Secretary of Defense Opposing the FY 2013 Budget Cuts to the Air National Guard, <https://governor.iowa.gov/wp-content/uploads/2012/03/Guard-Letter.pdf> (accessed December 26, 2012).

³⁸ Iowa Governor Terry Branstadt, Branstadt Vows to fight Cuts to Iowa Air National Guard, March 6, 2012, <https://governor.iowa.gov/2012/03/branstad-vows-to-fight-cuts-to-iowa-air-national-guard-2> (accessed December 26, 2012).

³⁹ The Council of Governors was created by Executive Order 13528 Establishing the Council of Governors (http://www.whitehouse.gov/sites/default/files/2010executive_order.pdf) (accessed December 26, 2012) pursuant to Section 1822 of the Fiscal Year 2008 National Defense Authorization Act (Publ. Law 110-181, 122 STAT. 3 at <http://www.dod.gov/dodgc/olc/docs/pl110-181.pdf>) (accessed December 26, 2012) which stated, "The President shall establish a bipartisan Council of Governors to advise the Secretary of Defense, the Secretary of Homeland Security, and the White House Homeland Security Council on matters related to the National Guard and civil support missions."

⁴⁰ The National Governors Association is a bi-partisan organization made up of the nation's governors. National Governors Association, "About Page," <http://www.nga.org/cms/about> (accessed December 26, 2012).

⁴¹ National Governors Association, Letter to the Chairmen and Ranking Members of the Senate and House Armed Services Committees opposing the FY2013 Air Force Budget Proposal, December 10, 2012, <http://www.nga.org/cms/home/federal-relations/nga-letters/col2-content/december-10-2012-letter--fy2013.html> (accessed December 26, 2012).

⁴² Megan Scully, "States Fight Back Against National Guard Cuts," in CQ Weekly, April 14, 2012, <http://public.cq.com/docs/weeklyreport/weeklyreport-000004061794.html> (accessed December 26, 2012).

⁴³ Alice R. Buchalter and Seth Elan, *Historical Attempts to Reorganize the Reserve Components - Reports Prepared for the Commission on the National Guard and Reserves*, (Washington, DC: U.S. Library of Congress, Federal Research Division, October- 2007), 1.

⁴⁴ The "Gray Board" was named after its chairman, Assistant Secretary of the Army Gordon Gray.

⁴⁵ Buchalter and Elan, 2.

⁴⁶ Mike Coffman, "We must get restructuring our military right," *The Examiner* (Washington, D.C.: Feb. 2, 2012), http://washingtonexaminer.com/we-must-get-restructuring-our-military-right/article/217951#.UO71vOTC2_k (accessed January 2, 2013).

⁴⁷ Ibid.

⁴⁸ Letter from the United States Government Accountability Office to the Secretary of Defense dated June 7, 2012.

⁴⁹ At the request of the House Committee on Armed Services, the General Accountability Office is looking at “Alternative Organizational Structures for the National Guard, Army Reserve and Air Force Reserve.” Engagement Code: 351746. Findings are expected in May-2013.

⁵⁰ *National Defense Authorization Act for Fiscal Year 2013*, Public Law 112-239, 112th Cong., 2d sess. (January 2, 2013) §1066.

⁵¹ However, this hurdle does not exist for a merger of the Air Guard into the Air Force Reserve.

⁵² *Militia: Composition and Classes*, 10 U.S. Code § 311 (1988).

⁵³ United States Congress Congressional Budget Office, *Reducing the Deficit: Spending and Revenue Options*, (Washington, D.C.: The Congress of the United States Congressional Budget Office, March, 1997), 66.

⁵⁴ *National Defense Authorization Act for Fiscal Year 2012*, Public Law 112-81, 112th Cong., 1st sess. (December 31, 2011) §515. Section 515 amends Title X, Chapter 1209 by adding a new section: §12304(a) *Authority to Order Army Reserve, Navy Reserve, Marine Corps Reserve and Air Force Reserve to Active Duty to Provide Assistance in Response to a Major Disaster or Emergency*.

⁵⁵ This is an oversimplification because it is impossible to compare the Army Reserve and Army National Guard because they are not structured identically. FY 2012 End Strengths: Army Reserve – 205,000; Army National Guard – 358,200.

⁵⁶ United States Government Accountability Office, “Actions Are Needed to Improve the Management and Oversight of the National Guard Youth Challenge Program,” (Washington, D.C.: November, 2005), <http://www.gpo.gov/fdsys/pkg/GAOREPORTS-GAO-06-140/pdf/GAOREPORTS-GAO-06-140.pdf> (accessed December 26, 2012).

⁵⁷ United States Government Accountability Office, “State Partnership Program: Improved Oversight, guidance, and Training Needed for National Guard’s Efforts with Foreign Partners,” (Washington, D.C.: May, 2012), <http://www.gao.gov/assets/600/590840.pdf> (accessed December 26, 2012), Highlights Page.

⁵⁸ Commission on National Guard and Reserves, *Transforming the National Guard and Reserves into a 21st-Century Operational Force*, Final Report to Congress and the Secretary of Defense (January 31, 2008), http://www.loc.gov/rr/frd/pdf-files/CNGR_final-report.pdf (accessed January 2, 2013).

