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The Honorable Paul Stockton
Assistant Secretary of Defense for Homeland Defense
and Americas' Security Affairs
The Pentagon
Washington, D.C. 20301

Dear Assistant Secretary Stockton:

On behalf of the nation's governors, we would like to thank you for your letter regarding the legislative proposal to provide the Secretary of Defense with expanded authorities to assist in the response to domestic disasters. While we appreciate the outreach, governors remain cautious about changes to the military's authority to engage independently in domestic emergency response situations. The proposal you suggest may have merit, but its consideration must be preceded by a discussion regarding the tactical control of forces serving inside a state in response to a disaster or emergency.

It is our position that to carry out our homeland defense and homeland security responsibilities, governors must retain command and control over the domestic use of their own National Guard forces (Title 32 or State Active Duty status), supporting National Guard forces from other states, and Title 10 forces operating within the supported governor's state or territory. Consequently, when a dual status command has not been established under 32 United States Code 325, governors, acting through their Adjutants General and Joint Force Headquarters-State, must have tactical control over all Title 10 active duty and reserve military forces engaged in domestic operations within the governor's state or territory.

We are concerned that the legislative proposal you discuss in your letter would invite confusion on critical command and control issues, complicate interagency planning, establish stove-piped response efforts, and interfere with governors' constitutional responsibilities to ensure the safety and security of their citizens. One of the key lessons learned from the response to the terrorist attacks on September 11, 2001, and to Hurricanes Katrina and Rita in 2005 was the need for clear chains of command to avoid duplication of effort and to ensure the most effective use of response resources. Without assigning a governor tactical control of Title 10 forces assisting in a response, and without the use of a dual-hatted National Guard commander to ensure coordination between Title 32 and Title 10 forces, strong potential exists for confusion in mission execution and the dilution of governors' control over situations with which they are more familiar and better capable of handling than a federal military commander.

We look forward to discussing potential tactical control solutions. For example, current military doctrine explicitly allows members of the United States armed forces to serve under the operational direction of foreign commanders, with the President retaining ultimate command over U.S. forces. If the command relationship with the President can be maintained while American active duty personnel are operating under the control of foreign commanders, we see no convincing reason why it cannot be maintained while active duty personnel are under the control of a state governor acting through the Adjutant General. The Commission on the National Guard and Reserves' Second Report to Congress dated March 1, 2007, specifically recommends governor direction of state and federal military assets to synchronize the military response to disasters:

“Recommendation 8. As part of Department of Defense efforts to develop plans for consequence management and support to civil authorities that account for state-level activities and incorporate the use of National Guard and Reserve forces as first military responders (see Recommendation 19), the Department of Defense should develop protocols that allow governors to direct the efforts of federal military assets responding to an emergency such as a natural disaster.”

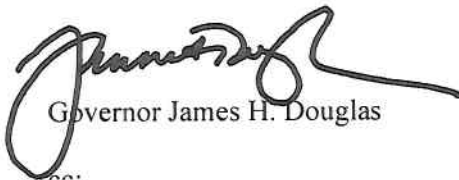
We do not yet understand how the legislative proposal would increase the number of DoD personnel available to assist disaster victims. Under existing legislation, DoD has the authority to order members of the Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve to active duty to assist in responses to major disasters and emergencies in the United States. Further, we are not yet convinced the proposed legislative changes would increase the responsiveness of DoD personnel. Under existing legislation, when emergency conditions dictate, local military commanders and responsible DoD component officials are authorized to respond to requests from local authorities and to initiate immediate response actions to save lives, prevent human suffering, or mitigate great property damage under imminently serious conditions.

As you know, a similar proposal was contained in the House of Representatives’ version of the National Defense Authorization Act for Fiscal Year 2009, but was removed during conference because of governors’ concerns. In the Joint Explanatory Statement that accompanied the bill, Congress made clear that DoD should engage governors to address their concerns before moving the proposal forward:

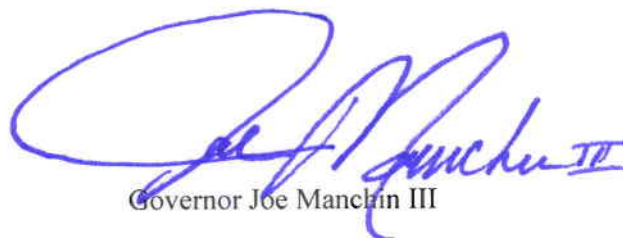
“The Department of Defense should engage with the community of governors to work out an understanding of unity of effort during domestic terrorist events and public emergencies. This key underlying issue must be addressed to allow this and other promising proposals to be enacted.”

Governors and their Adjutants General would welcome the opportunity to work with you and others at DoD and the National Guard Bureau to discuss tactical control during disasters and to identify legislative and operational opportunities to improve our response to such events. The best way to facilitate such consultation and communication is for DoD to quickly establish the Council of Governors as required by the National Defense Authorization Act for Fiscal Year 2008. Doing so will provide an appropriate forum to address these issues and other aspects of defense support to civilian authorities.

Sincerely,



Governor James H. Douglas



Governor Joe Manchin III

cc:

The Honorable Robert M. Gates, Secretary of Defense
The Honorable William J. Lynn, III, Deputy Secretary of Defense
Admiral Michael Mullen, Chairman, Joint Chiefs of Staff
The Honorable Michèle Flournoy, Under Secretary of Defense for Policy
General Victor E. Renuart, Commander, U.S. Northern Command and North American Aerospace Defense Command
General Craig R. McKinley, Chief, National Guard Bureau