

MEMORANDUM

TO: Members of the Senate Armed Services Committee
FR: The Senate National Guard Caucus
RE: Adding the Chief of the National Guard Bureau to the Joint Chiefs of Staff
DA: November 7, 2011

This memo and the attached talking points are for your information on the matter of adding the Chief of the National Guard Bureau to the Joint Chiefs of Staff.

Why change the status quo? Over the past decade, the National Guard has undergone a profound and historic change. Once a hollow force considered only a “strategic reserve” for nightmare contingencies, the National Guard has become an “operational reserve” that deploys in regular rotation with the Active and Federal Reserve components. As a matter of policy and reality, Army and Air National Guard troops from states around the country shoulder their load overseas and carry a disproportionate share of the domestic response and disaster relief mission at home, including response to CBRNE contingencies. Yet institutional support for the National Guard still lags behind its operational role. Today’s National Guard is a superb 21st century force trapped inside the 20th century Pentagon bureaucracy. Without raising the profile of the Chief of the National Guard Bureau (CNGB) in the supreme military decision making forum of the Department of Defense—the Joint Chiefs of Staff (JCS)—the United States will miss an opportunity to capitalize on positive changes begun in response to the post-9/11 operations tempo. Particularly in this period of flat-lining or even declining Pentagon budgets, DoD will need to increase the role of the Guard and Federal Reserve as an element of the overall active/reserve force mix. Without the CNGB on the JCS, the unique experience of nearly half a million members of the National Guard will continue to be largely unknown, and their voices, interests, and concerns will go unheard for the most part.

What is the legislative picture? Senator Rockefeller introduced S. 242, the Guardians of Freedom Act, in early 2012, the sole provision of which would add the CNGB to the JCS. In May, Senator Leahy and Senator Graham introduced S. 1025, the National Guard Empowerment Act, which has as one of its 10 provisions a provision which would add the CNGB to the JCS. So far 66 senators have co-sponsored S. 1025 and even more have committed to co-sponsor or support its corresponding amendment to the National Defense Authorization Act. **A section-by-section summary of S. 1025 is included at the third tab, and a full version of the NDAA amendment is included at the fourth tab.**

How has the Pentagon responded? The Department has not produced an official response to S. 1025. However, DoD responded to S. 242 regarding its provision adding the CNGB to the JCS in S. 1025. General Dempsey, the Chairman of the Joint Chiefs of Staff, also offered testimony on the matter during his confirmation hearing in July. **The S. 242 letter and General Dempsey’s testimony are at the fifth tab.** The S. 242 letter recognizes that since the CNGB received his fourth star in 2009, he has attended many JCS meetings, but argues that the CNGB’s statutory inclusion on the JCS would create the misperception of a separate service. In his testimony, General Dempsey repeated the assertion of the S. 242 letter and added that the CNGB does not have budgetary authority (however, as noted below, that point is factually inaccurate).

What does the CNGB think? In August, in response to General Dempsey's testimony, Senator Leahy and Senator Graham wrote to General McKinley, the CNGB, asking him if General Dempsey's arguments had merit. General McKinley replied that his participation as a statutory member of the JCS would not impede in any way the relationship of the Army or Air Guard to their parent services. He pointed out that only the CNGB can share military advice reflective of state forces. He identified the factual inaccuracies of General Dempsey's claim that the CNGB has no budgetary responsibilities, and then he clarified the distinction between the managerial responsibility central to the role of a Service Chief and the advisory responsibility central to the role of a member of the JCS. He noted that his role on the JCS would be substantially similar to the role of the Marine Corps with regard to budgetary authorities and that the relationship of the Navy and the Marine Corps is not confused in any way by the Commandant having his own vote on the JCS. **The CNGB's letter and its solicitation are at the sixth tab.**

What do the Adjutants General (TAGs) think? In response to this hearing, the Adjutants General prepared a letter, signed by Major General Michael Dubie, the President of the Adjutants General Association of the United States, which makes several strong cases for adding the CNGB to the JCS. The TAGs note that none of the other military components of the DoD have the unique federal/state mission of the National Guard and that the CNGB must be given a full voice on the JCS to make sure that the Chairman, Secretary of Defense, and President receive the best and most accurate military advice possible on the domestic mission of the DoD as well as its overseas mission. The TAGs also refute the assertion that adding the CNGB to the JCS will somehow divide the Army and Air Force. The TAGs go so far as to say, "The Chief of the National Guard Bureau can no longer fully perform the duties of his office without being a member of the Joint Chiefs of Staff."

Prior to Monday's TAG letter, MG Vadnais, the TAG of Michigan, had offered the most complete set of arguments in favor of adding the CNGB to the JCS in correspondence to Senator Levin and his fellow TAGs. In his first letter, he points out that the National Guard comprises nearly half a million uniformed service members—larger than the active duty Air Force, Navy, and Marine Corps—and yet still does not have a vote on the JCS. He notes that the same arguments against adding the CNGB to the JCS were employed to keep the Commandant off the JCS in the 1947 National Security Act, a decision that was later corrected by the Senate in 1978. In his second letter to Senator Levin, MG Vadnais disputes General Dempsey's confirmation testimony. He writes that the CNGB is a joint position and cannot, by role, create a situation of dual oversight of the Army or Air Force. He also states that General Dempsey's argument about budgetary authority of the CNGB confuses the managerial role of a service chief with the advisory role of a joint chief. MG Vadnais thoroughly expands on those two points, and others, in a follow up letter to his fellow TAGs. **The TAG letter and MG Vadnais' letters are at the seventh tab.**

What statements has the President made? During the 2008 Presidential campaign, Vice President Biden committed the Obama Administration to adding the CNGB to the JCS. This campaign promise was also included *The Blueprint for Change: Barack Obama's Plan for America*. In a letter, the National Guard Association of the United States (NGAUS) asked the President to renew his commitment to this promise. President Obama delegated the response to then-Chairman Mullen, who wrote that the CNGB is often included in JCS meetings but that his

formal addition to the JCS would disrupt the Service lines of authority and diminish the stature of the Federal Reserves as the only component not represented on the JCS after the inclusion of the CNGB. **The NGAUS letter and the Mullen response are at the eighth tab.**

What are the positions of the Chairman, the Army, and the Air Force? In early October, Senator McCain sent a letter soliciting the opinions of the Chairman and the Service Chiefs on the matter of including the CNGB on the JCS. General Dempsey recommended against the change along "with the full concurrence of the Joint Chiefs," saying that although he is an admirer and strong supporter of the Guard, he opposed any change that would appear to divide up the unity of authority of the Service Chiefs of Staff. Secretary McHugh and General Odierno add in their letter that the addition of the CNGB on the JCS would create an imbalance among the Reserve Components, that adding the CNGB would weaken civilian control of the military, and that the change would "creat[e] a de facto separate domestic military service..." The Air Force response largely reprises the "unity of the service" argument found in other letters. **The McCain, Dempsey, Army and Air Force letters are at the ninth tab.**

Have any interest groups spoken out in favor of Guard empowerment? Numerous defense and veterans interest groups have come out in favor of S. 1025. The Veterans of Foreign Wars, the American Legion, the National Governors Association, and the National Guard Coalition have all written letters of support. In particular, the VFW letter challenges the assertions of the Service Chiefs in claiming that adding the CNGB to the JCS will somehow harm the unity of the military services. **The interest group letters are included at the tenth tab.**

A summary of arguments for adding the CNGB to the JCS. The Guard has performed incredibly well over the last 10 years and has shouldered more than its share of the war fight. Guardsmen and women across the nation are looking to this change as recognition of their sacrifice at a time when our country is asking them to do more than ever.

The CNGB understands his role is as the joint Guard representative and not a Service representative. Neither he nor future Chiefs of the NGB will encroach on the roles, responsibilities, or authorities of the Service Chiefs.

The arguments being used to keep the CNGB off of the JCS are the same that were used to keep the Commandant of the Marine Corps off of the JCS prior to 1978. But the Commandant is a valued member of the JCS, and no one today would argue that he should be removed or that his advice has not been valued and valuable for the last 30 years.

General Dempsey has already committed to inviting the CNGB to all meetings of the JCS. So clearly there is no hesitation about having the CNGB in the room, and his opinion is considered valuable. But whether the CNGB is a participant on the JCS cannot be a matter of the personal preferences of the particular Chairman in question. Given his current inclusion in the JCS, this change is mostly a symbolic assent to 450,000 Guardsmen across the country that they are no longer second-class citizens or "weekend warriors." Fighting this change—especially in the face of so much momentum in Congress—will be a slap in the face to the Guard.

The Chief has budgetary authorities and responsibilities that will be important to the deliberations of the JCS in the future. Without the Chief having a formal vote on the JCS, the active component-heavy service staffs may put forward recommendations to the Service Chiefs that will illogically slash the Guard and Federal Reserve budgets at a time when we need them more than ever as our most cost-effective fighting forces. Without a formal say, the Chief will not be able to have his own staff evaluate those recommendations and either affirm them or point out their flaws. He also will not have an opportunity to put forward his own programmatic and cost-saving recommendations.

No other group of almost half a million uniformed service members have been denied a voice or their own representation in the JCS.

This change is overdue. Like most change, the bureaucracy is resisting it, but in reality this change only updates the institutions of the CNGB and the JCS to reflect the operational reality on the ground in the wars overseas and in homeland defense and security operations.

A summary of arguments against adding the CNGB to the JCS and responses to them.

1. Having the CNGB on the JCS would disrupt the military service lines of authority, introduce redundancies, or create the impression that the National Guard is a separate military service.

Response: The CNGB is a joint, not a service-specific, position. As a practical matter, the CNGB does not and cannot represent his own service perspective. His presence on the JCS is simply to note those unique aspects of National Guard service that the military service chiefs cannot convey, as all of them have served only in the active component. Moreover, DoD Directive 5105.77 paragraph 5.1.8. specifies that the CNGB shall: "*Implement DoD, Department of the Army and Department of the Air Force guidance on the structure, strength authorizations, and other resources of the Army National Guard of the United States and Air National Guard of the United States.*" Therefore, by charter role, to the extent that the CNGB does comment on any service-specific matter, he does so only in support and as a component of the Army and Air Force. For reference to the delineated roles and responsibilities of the CNBG, the rest of the NGB Charter can be found at: <http://www.dtic.mil/whs/directives/corres/pdf/510577p.pdf>

By this argument the Pentagon should seek to disestablish the Chairman and Vice Chairman of the JCS. General Dempsey and General Odierno are both Army four star generals, yet they both offer their own independent military advice without confusing the fact that General Odierno, and only General Odierno, speaks for the Army. Likewise for Admiral Winnefeld and Admiral Greenert. The same fact is true about the CNGB—his presence on the JCS will not impinge on the roles of the Chiefs of Staff of the Air Force or the Army.

This argument was also used before 1978 to oppose adding the Commandant of the USMC to the JCS as a voting member. Opponents said such a move would give the Navy two votes, or that it would split up the unity of the Department of the Navy. Neither point has proven true.

In the January 31, 2008, Commission on the National Guard and Reserves Final Report, the Commission found that "*The Service Secretaries do not have senior representation on their staffs from the Army and Air National Guard. By law, the only advisor to the Army and Air*

Force on National Guard matters is the Chief of the National Guard Bureau, and the Chief of the National Guard Bureau is not a member of the Army or Air Force staffs.” The Commission went on to indicate that, *“The current approach to managing the reserve components was created and evolved during an era when the reserve components were intended to be used as a strategic reserve. If the use of the reserve components as an operational force continues, then it will be necessary to reform the reserve components’ leadership structures to sustain that force.”*

2. Adding the CNGB to the JCS is inconsistent with current JCS membership.

Response: Statutorily, the CNGB is the principal advisor to the Secretary of Defense through the Chairman of the JCS involving “non-federalized” National Guard matters that are not under the authority and direction of the Secretaries or the Chiefs of Staff of the Army and the Air Force. The CNGB is the most current and knowledgeable source of information within the federal government regarding the National Guard in its non-federalized roles and is the best single source of advice for leaders concerning unique Guard-related matters, particularly those which are critical to homeland security and defense.

3. Adding the CNGB to the JCS is unnecessary because the CNGB is not accountable for budget submissions.

Response: The NGB Charter, DoD Directive 5105.77, specifies that the CNGB shall “*plan, program, and administer the budgets of the Army and Air National Guard of the U.S.*” The CNGB is directly responsible for nearly \$25 billion annually, and is the appropriations sponsor for National Guard Military Personnel, Operations & Maintenance, Military Construction, and Procurement (via the National Guard and Reserve Equipment Account). He is responsible for producing input to the President’s Budget submission to Congress for six of these appropriations accounts. The CNGB also supervises the acquisition and supply of federal property through the U.S. Property and Fiscal Officers (USPFO) appointed under Section 708 of Title 32. Although the CNGB clearly has delineated budgetary authority, this authority and responsibility are not necessary to perform JCS statutory duties which include: “*providing military advice to the President, National Security Council, Secretary of Defense, and the Homeland Security Council.*” This advisory role is separate and distinct from the roles the Service Chiefs fulfill in leading and administering their respective Services, whose budgets are ultimately the responsibility of the Service Secretaries.

Even if the CNGB did not have budgetary responsibility, which he clearly does, budgetary responsibility is not a key requirement for members of the JCS. Neither the Chairman nor the Vice Chairman has budgetary or service managerial responsibilities, yet they are both obviously full and needed members of the JCS. This argument fundamentally confuses the management responsibilities of a Service Chief with the advisory responsibilities of a member of the JCS.

4. Adding the CNGB to the JCS will give the National Guard primacy over the Federal Reserves.

Response: Noting that one of the reserve components is disempowered and underrepresented is not a good reason to keep both of them disempowered and underrepresented. In fact, noting that the Department has disempowered and underrepresented its reserve components is a good reason to empower both of them and give them a role commensurate with their size and responsibilities.

At the present time, the Federal Reserve, unlike the National Guard, does not have a joint activity that administers and represents all four service reserve components. Unlike the CNGB, there is no single joint representative that speaks for the entire Federal Reserve. Therefore, at least in the interim, the Congress has no simple solution for providing the Federal Reserve a single joint representative on the JCS. But empowering the National Guard should not wait for other needed changes, and in fact Guard empowerment can serve as an impetus for the Department to correct deficiencies it perceives in the management of the Federal Reserve.

The Federal Reserve numbers nearly 400,000 uniformed service members. If the Federal Reserve was organized differently, under a joint activity, the Chief of that joint activity should probably also be included on the JCS. And while the CNGB cannot officially represent the position of the Federal Reserve on a given question, the lifestyle of the men and women of the Guard and Federal Reserve, and the implications of a given national security decision on these two components, may be sufficiently similar so that the CNGB can provide some degree of insight into the impact of a matter on the Federal Reserve in the absence of a joint Federal Reserve counterpart.

5. Adding the CNGB to the JCS harms civilian control of the military.

Response: The CNGB, like the Chairman and Vice Chairman of the JCS, reports directly to the Secretary of Defense. While the CNGB does not report to a civilian service secretary, the same reporting relationship does not inhibit the Chairman or Vice Chairman from offering their best military advice, nor does their participation on the JCS impinge on civilian control of the military.

Moreover, as an advisory body, the JCS does not command any forces. "Civilian control of the military" typically refers to civilian restraint on military command whereby a civilian is the final and ultimate command authority, or the "Commander in Chief" of military forces. It has not been historically or doctrinally applied to advisory relationships, particularly advisory relationships where the final recipient of military advice is a civilian authority. Such is the case with the JCS, where the President and the Secretary of Defense are the civilian recipients of the advice provided by the uniformed JCS.