THE WHITE HOUSE

WASHINGTON

July 23, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Report on S. 2604: "The Senate Re-Confirmation Act of 1984"

OMB has asked for our views by close of business today on a draft Department of Justice report on S. 2604, "The Senate Re-Confirmation Act of 1984." This bill would require reconfirmation of Cabinet officers and other high-level appointees at the end of a President's term, even if the President were re-elected. The Justice report opposes the bill on policy grounds as applied to officers appointed after its enactment, and on constitutional grounds as applied to officers incumbent at the time of its enactment.

At first blush there may appear to be constitutional as well as policy objections to even a prospective application of the reconfirmation requirement, but on reflection the Justice view that Congress can set terms of office for high-level officials -- which is all the reconfirmation requirement does -- seems sound. The constitutional problem arises with application of the requirement to incumbents when the bill is enacted, because then the bill operates to remove specific officials hitherto removable only by the President, in violation of the principles enunciated in Myers v. United States, 272 U.S. 52 (1926).

In remarks on the Senate floor, Senator Byrd argued that the bill was necessary to deal with problems such as Director Casey's allegedly less than candid testimony before Hill committees. The Justice report notes that there are a panoply of devices available to Congress for holding high-level officials accountable, and that the present bill would be an extreme over-reaction to a single incident. I have reviewed the draft report and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

July 23, 1984

MEMORANDUM FOR HILDA SCHREIBER
LEGISLATIVE REFERENCE DIVISION
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Report on S. 2604: "The Senate Re-Confirmation Act of 1984"

Counsel's Office has reviewed the above-referenced Department of Justice report, and finds no objection to it from a legal perspective.

FFF:JGR:aea 7/23/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

July 23, 1984

MEMORANDUM FOR HILDA SCHREIBER
LEGISLATIVE REFERENCE DIVISION
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ID # 239794 CU

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WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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Name of Correspondent: Hilda Schreiber

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Report on S. 2604 The Senate Re-Confirmation Act of 1984"

ROUTE TO: | **ACTION** | **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
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ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
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DISPOSITION CODES:
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

239794

TO Mr. Fred Fielding
White House Counsel

Take necessary action	☐
Approval or signature	☐
Comment	☐
Prepare reply	☐
Discuss with me	☐
For your information	☐
See remarks below	☐

FROM Hilda Schreiber, Legislative Reference Division
Ext. 4650

DATE June 28, 1984

REMARKS

The Department of Justice wishes to submit to the Senate Committee on Governmental Affairs the attached report on S. 2604, "The Senate Re-confirmation Act of 1984."

Please let me have your views on the Justice report by July 23, 1984.

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable William V. Roth, Jr.
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is to proffer the views of the Department of Justice on S. 2604, the Senate Re-confirmation Act of 1984. The Department of Justice strongly recommends against the enactment of this bill.

The bill would provide that the heads of the Executive and Military Departments, the United States Trade Representative, the Director of the Office of Management and Budget, the Director of the Central Intelligence Agency, and the Director of the Arms Control and Disarmament Agency who have served in that position during the last year of a presidential term may not serve in the same position during the succeeding presidential term unless reappointed by the President by and with the advice and consent of the Senate.

The Department Heads now serve at the pleasure of the President; their terms are not limited by the term of the President who appointed them. 36 Op. A. G. 12 (1929). Under the bill, those officers could not serve without reconfirmation after the expiration of the term for which the President who had appointed them had been elected. The bill does not facially distinguish between officers appointed after its enactment and officers who are incumbent at the time of the bill's enactment.1/

We shall discuss first the questions which would arise if the bill were limited to officers appointed after the enactment of the bill. The terms of such government officers are a matter within the discretion of Congress, and the choice

1/ A statement of Senator Byrd, the sponsor of the bill, indicates that it is to be applied retrospectively as well as prospectively. 130 Cong. Rec. S 6387-88 (daily ed. May 24, 1984).

of any particular term raises only questions of policy so long as Congress does not attempt to limit the President's power to remove such officers. Indeed, the Tenure of Office Act of 1867 furnishes a precedent for limiting the terms of the Heads of Departments. That example also demonstrates the undesirability of such legislation.

Section 1 of the Tenure of Office Act of 1867, 14 Stat. 430, provided in pertinent part:

> "That the Secretaries of the Treasury, of War, of the Navy, and of the Interior, the Postmaster-General, and the Attorney-General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed and for one month thereafter, subject to removal by and with the advice and consent of the Senate."

This provision, enacted during the struggle between Congress and President Andrew Johnson, was repealed immediately after President Grant assumed the Presidency.2/ Act of April 5, 1864, 16 Stat. 9, § 1. Thus the limitation on the tenure of the Heads of Departments was repealed once the constitutional crisis of the Reconstruction Period had been resolved. We believe that this prompt repeal is itself strong evidence of the undesirability of that limitation. That consideration would be even more weighty under S. 2604 than under the Tenure of Office Act, since the latter at least provided for a transitional period of one month during which the Department Head's reconfirmation could be secured.

2/ The position of the Postmaster General was not covered by this repeal because the limitation of the Postmaster General's term had been incorporated in the legislation codifying the laws governing the Post Office Department. This limitation on the tenure of the Postmaster General lasted until the recent establishment of the U.S. Postal Service.

The corresponding surviving provision of the Tenure of Office Act pursuant to which the removal of postmasters of the first, second, and third classes required the advice and consent of the Senate was held unconstitutional in Myers v. United States, 272 U.S. 52 (1926).

This bill appears to have been occasioned by its sponsor's impression that one of the twenty officials who would be covered by it did not cooperate fully with a Committee. We believe that history demonstrates the efficacy of the panoply of congressional powers available to call high government officials to account for their conduct in office. If one means appears to fail, there are many others in reserve. The new mechanism contained in this bill appears to be an overreaction to a single incident, an overreaction that would substantially and unnecessarily add to the work load of the Senate by requiring it to go through the reconfirmation process with respect to a large number of noncontroversial members of the President's team.

We are also concerned about the disruption to the operations of the Government that would occur if the terms of the Department Heads expired every four years and they had to be reappointed by and with the advice and consent of the Senate, even if the President were reelected, or if a newly elected President wanted to continue in office one or more of the officials appointed by his predecessor. The present disruptions which occur when a new President takes office, selects a new "team" and secures its confirmation by the Senate, undesirable as they may be in the abstract, are adjunct to the President's constitutional responsibility for the execution of the laws. He must be able to select those who shall assist him in that task, and the disruptions are an acceptable price to pay when a new President comes into Office. There is, however, no corresponding constitutional justification for such interference with the smooth operations of the Government if a President seeks to retain officials who are in office. We therefore oppose, on policy grounds, the prospective application of the bill to future appointees.

2. The application of the reconfirmation requirement to persons in office on the effective date of the bill would raise a serious constitutional problem. As mentioned above, the officers to whom the bill would apply serve at the pleasure of the President and could therefore remain in office after the expiration of the term of the President who appointed them, if he were reelected, or if a newly elected President should wish to retain them.3/ Under the bill they could not serve during the next presidential term unless reappointed by

3/ The Opinion of the Attorney General in 36 Op. A.G. 12 (1929) dealt with that situation.

the President by and with the advice and consent of the Senate. The bill thus would purport to remove the officers affected by it from their offices. This attempt would be clearly unconstitutional. As the Supreme Court held in Myers v. United States, 272 U.S. 52, 122 (1926), the power to remove officers of the Executive Branch prior to the expiration of their terms is vested exclusively in the President with the exception of impeachment or the bona fide abolition of their office. Indeed, the exclusivity of the President's removal power cannot be circumvented by an attempt of the Senate to withdraw a confirmation, 36 Op. A.G. 382 (1931); United States v. Smith, 286 U.S. 6 (1932); by cutting off of the salaries of incumbent officials, United States v. Lovett, 328 U.S. 303 (1946); by making new, limiting qualifications for an office applicable to an incumbent, statement of Assistant Attorney General Schlei at 111 Cong. Rec. 17597-98 (1965); or by "ripper" legislation which purports to abolish an office and immediately recreates it. 9 Weekly Comp. Pres. Doc. 681 (1973), Veto Message, re S. 518, 93d Cong., 1st Sess.

It is therefore our conclusion that S. 2604 would be unwise if applied prospectively and unconstitutional if applied to persons holding any of the offices covered by it on the effective date of the bill. For these reasons the Department of Justice strongly recommends against enactment of the legislation.

The Office of Management and Budget has advised this Department that the submission of this report is in accord with the Administration's program.

Sincerely,

Robert A. McConnell
Assistant Attorney General

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 98th CONGRESS, SECOND SESSION

Vol. 130 WASHINGTON, THURSDAY, MAY 24, 1984 No. 70

Senate

(Legislative day of Monday, May 21, 1984)

The Senate met at 10 a.m., on the expiration of the recess, in executive session, and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Gracious Father in Heaven, may Thy presence grace the Senate today. We face that familiar situation where the clock seems almost an adversary—much to be done and recess bearing down upon us. As the frustrating combination of too much to do and too little time presses in upon Senator BAKER and Senator BYRD, as well as every Member of the Senate, we ask for Thy special intervention. Thou art not a God far off and indifferent to Thy servants, but One who knoweth all things and doest all things well. If a sparrow does not fall without Thy knowledge, certainly there is no detail of our lives, personally or corporately, about which Thou art uncaring. We pray that Thou wilt intervene in our midst today as God alone is able and help bring these closing hours to satisfactory resolution. For the sake of the personal and family needs of Senators and Senate staffs and for Thy good pleasure. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SENATE SCHEDULE

Mr. BAKER. Mr. President, I hope this is the last day before our recess for Memorial Day begins. It is probably an ill-kept secret. Most Members have already assumed that the leadership would like to get us out tonight instead of tomorrow night. But let me tell Senators in all earnestness that I am not at all sure we can do that. We have yet to do the Wilkinson nomination, we have debt limit, we have the bankruptcy bill, and perhaps we will have the supplemental conference report, if the House acts on it today or tomorrow.

Rather than shrinking, our agenda is growing. I cannot honestly say to the Members that we will get out tonight. There is still that possibility. But it is by no means certain.

Mr. President, today, after the recognition of the two leaders, there will be a special order for Senator PROXMIRE to be followed by a period for the transaction of routine morning business until 11 a.m. At 11 a.m. the Senator from Massachusetts (Mr. KENNEDY) will be recognized for the purpose of making a motion to recommit the Wilkinson nomination to the Judiciary Committee, or, in the alternative, a Senator as designated by the minority leader to make such a motion.

There will be an hour of debate on that motion, Mr. President, and at no later than 12 o'clock the Senate will vote either on the motion to recommit or on the tabling motion against the motion to recommit. If the nomination is recommitted, it is anticipated that the Senate will resume consideration of the bankruptcy bill. If the nomination is not recommitted, then the debate on the nomination presumably will continue; "presumable" meaning I suppose that there is a glimmer of hope that we might vote on the nomination itself without much debate. That would be my preference. But I must assume that there would be some debate, if the motion to recommit fails. But in any event, I hope, I expect, and I will urgently try to complete action on that nomination today.

Mr. President, Senators know that the leadership on this side has from time to time indicated that we would go to a Senate debt limit bill this week. At first, the leadership on this side had thought we would go to a Senate bill on Monday. Our friends in the House of Representatives always get nervous when we start originating revenue measures. So we approach that gingerly. And to make a long story short, as a result of several contacts with the House, the Speaker, the chairman of the Ways and Means Committee, our own chairman of the Finance Committee, and of course the usual consultation between the two leaders—I do not mean to imply that the minority leader has agreed to this, but I advise him of this—the leadership on this side decided to wait until the House sends us a debt limit bill. To have done otherwise I think would have been at least idle, perhaps futile, and possibly destructive. So we are going to wait until the House acts. I hope that will be early today.

Once again, Mr. President, as the situation clarifies during the day, I will attempt to have other announcements to make for the guidance of Senators.

Mr. President, I believe that completes my announcements.

I thank the Chair. I thank the minority leader.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. SYMMS). Under the previous order, the Democratic leader is recognized.

Mr. BYRD. I thank the Chair.

SENATE RECONFIRMATION ACT OF 1984 (S. 2604)

Mr. BYRD. Mr. President, a subcommittee of the House of Representatives which has been investigating the so-called briefing book case, yesterday issued its report. That report raises questions about statements which were made to the subcommittee by CIA Director William Casey concerning his alleged involvement in the case.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

The subcommittee's findings, insofar as they relate to Mr. Casey, raise issues which far surpass the facts of the briefing book controversy. They go to the very heart of the congressional oversight process with respect to the operations of the CIA. The House and Senate Intelligence Committees were established and the intelligence oversight law was enacted, to insure that the Congress would be fully and currently informed about significant intelligence activities.

In order for the mechanisms to be effective, the Congress must depend upon information which is provided by the Director of Central Intelligence. Today, that Director is Mr. Casey. If that information is not full and accurate, the relationship of trust which must exist between the Congress and the Central Intelligence Agency is substantially affected. If President Reagan were to be reelected for a second term, and Mr. Casey were to continue to serve in his present capacity, we could be faced with an awkward situation, especially if the kinds of questions raised by the House subcommittee's report continue to go unresolved.

I have noted in the newspaper that the President apparently has not made a personal effort to get to the bottom of this matter. If it were I, and there were these conflicting statements appearing in newspapers and reports, and so on, I would call the two persons in and ask, "What are the facts?" The two persons I am talking about are Mr. Jim Baker at the White House and Mr. Casey.

It has been indicated in the press that Mr. Baker has indicated that the material in question went to Mr. Casey, or somehow Mr. Casey was in possession of it. Mr. Casey has indicated that he does not recall seeing it, and that he does not recall having passed it on to others.

It would seem to me that a President ought to realize that what we are dealing with here is the integrity of an agency, of an agency's director, in particular, and that that integrity is being called into question.

I am in no position to say whether or not the House subcommittee report is correct. It certainly seems to me that it is about time the President called these two persons in and asked, "What is the truth here? What do you know?"

Conflicting statements need to be reconciled, but that apparently is not going to happen. In any event, a district court, I believe, has ordered the Attorney General to proceed with the appointment of independent counsel. The Attorney General is apparently resisting that order and has appealed.

So it is a matter which the circuit court will deal with, hopefully soon, and it will make an appropriate decision.

Legislation which I recently introduced would greatly assist the Senate in dealing with this kind of problem. Under the provisions of S. 2604, the "Senate Re-Confirmation Act of 1984", legislation which I introduced, the top 20 officials of any administration would have to be reconfirmed by the Senate, if they were to remain in office during a President's second term. One of the officials who would be covered by my legislation would be the Director of Central Intelligence.

At a second confirmation hearing, any outstanding issues about Mr. Casey, for example, could be fully explored. And, based upon the record of such hearings, the Senate would be in an informed position to decide whether or not the CIA Director in this administration, or any other administration, should again be confirmed. That would be a meaningful exercise by the Senate of our responsibility to advise and consent to nominations under article II of the U.S. Constitution.

This legislation which I introduced applies not only to the CIA Director, but also to 19 other top officials of Government as well, including all members of the President's Cabinet. And of course, my bill would apply not only to this administration, but also to any other administration when any President is reelected to a second term. This is a matter which involves this administration and future administrations.

My legislation on this subject was referred to the Committee on Governmental Affairs. I have twice written to the chairman of that committee to schedule hearings on the bill in hopes that it may be processed during this session of the Congress.

Yesterday's report by the House subcommittee is an example of why it is essential that this legislation be enacted.

Also I think, Mr. President, I have to say that I am concerned about the attitude of some of the witnesses who come before subcommittees during the hearings process. I am talking at this moment with respect to my own observations as witnesses have come before the appropriations subcommittees in the Senate, subcommittees of which I am a member. I get the very clear impression in dealing with some of these witnesses that they are dancing on the head of a pin. They are flippant. They beat around the bush. They are evasive. It leads me to believe that they either do not know the subject matter which they have come to testify about, or that their intention is to avoid answering questions, especially, by minority members of the subcommittees. I am struck by either what appears to be a gross lack of knowledge, gross ineptitude on the part of some of the witnesses—not all, by any means—or by a deliberate effort to avoid answering the questions. That is not what the people of this country expect. The people who send us here expect Congress to legislate and to legislate wisely and to fulfill our constitutional responsibilities of oversight and do it well. Yet, we cannot do that unless the witnesses representing the administration come before the subcommittees and, in good faith, respond to the questions that are asked.

I would say I have never seen such apparent ineptitude—either ineptitude or callous disregard of the responsibilities of Congress and the right of the people to have their elected representatives told the truth and the whole truth.

On the other hand, I must say that I am favorably impressed by the chairmen of these subcommittees, the chairmen being members of the Republican majority in the Senate. I am impressed by their refusal to be led down the rosy path by some of these witnesses.

I am very impressed by members—MARK ANDREWS, and I could cite others—who bore in, who do not accept this flippancy and who express concern about the answers, the half answers, or the non-answers, whatever the case may be. They are not happy with the responses. I have spent a half hour questioning the witness without getting an answer to my question. They must be damn fools to think that some of us have not been here long enough to know when we have gotten an answer to our question and when we have not.

They cannot be made to answer the questions and they are not put under oath, but they certainly are not fooling anybody with this kind of response.

We are confronted by a lack of information or we are led to feel that we cannot trust those witnesses, and we can have no faith in what they are saying. We are disappointed at their apparent lack of knowledge or their unwillingness to focus on a question and answer the question. Yesterday, it was refreshing to have one of the witnesses at least candidly say, "I don't know the answer."

Again I say I hope the Committee on Governmental Affairs will have a hearing on the legislation that I have introduced. I think it is a good bill. It has been offered for a serious purpose, and I hope the committee will give me the hearing I have asked for.

Mr. President, I yield the floor.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin (Mr. PROXMIRE) is recognized for not to exceed 15 minutes.

Mr. PROXMIRE. I thank the Chair.

DETERRENCE IS NOT ENOUGH—WE NEED THE NUCLEAR FREEZE

Mr. PROXMIRE. Mr. President, in a recent article, Charles Krauthammer, senior editor of the New Republic, takes on and rejects the nuclear freeze. Krauthammer argues:

THE WHITE HOUSE

WASHINGTON

July 23, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft State Report on H.R. 5728

OMB has asked for our views by close of business July 24 on the above-referenced draft report. The draft report supports H.R. 5728, which would permit permanent resident aliens to accept employment at the American University in Beirut without fear that their absence from the United States would adversely affect their immigrant status. The report points out that situations may arise in which permanent resident aliens employed by the American University do not qualify for readmission because of reasons other than their absence from the United States, but that the bill appears to fulfill its stated purpose of ensuring that the mere absence from the United States to teach at the University does not disqualify a permanent resident alien from readmission.

I previously commented upon a draft Justice report on this same bill. This draft State report is consistent with the previously-cleared Justice report.

Attachment

THE WHITE HOUSE

WASHINGTON

July 23, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Draft State Report on H.R. 5728

Counsel's Office has reviewed the above-referenced draft report, and finds no objection to it from a legal perspective.

FFF:JGR:aea 7/23/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

July 23, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft State Report on H.R. 5728

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cc: FFFielding/JGRoberts/Subj/Chron

ID # 241716 CU

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CORRESPONDENCE TRACKING WORKSHEET

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Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: James C. Murr

John

☐ MI Mail Report **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Draft State report on H.R. 5728, a bill to permit aliens lawfully admitted for permanent residence who are employed by the American U. in Beirut to return to the U.S. as special immigrants after completion of such employment

ROUTE TO: Office/Agency (Staff Name)	ACTION Action Code	Tracking Date YY/MM/DD	DISPOSITION Type of Response	Code	Completion Date YY/MM/DD
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5/81

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

July 12, 1984

LEGISLATIVE REFERRAL MEMORANDUM

241716

TO: LEGISLATIVE LIAISON OFFICER

Department of Justice

National Security Council

Department of Education

SUBJECT: Draft State report on H.R. 5728, a bill "to permit aliens lawfully admitted for permanent residence who are employed by the American University in Beirut to return to the United States as special immigrants after completion of such employment."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than COB, Tuesday July 24, 1984. (NOTE: A Justice draft report on this bill has been previously circulated for comment.)

Direct your questions to Branden Blum (395-3802), the legislative attorney in this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: S. Gates A. Curtis B. White M. Uhlmann J. Cooney
F. Fielding

United States Department of State

Washington, D.C. 20520

Dear Mr. Chairman:

The Secretary has asked me to reply to your letter of May 31, 1984, enclosing for the Department's study and report a copy of H.R. 5728, "A bill to permit aliens lawfully admitted for permanent residence who are employed by the American University of Beirut to return to the United States as special immigrants after completion of such employment."

The bill would, if enacted, provide that any periods of absence from the United States by an alien lawfully admitted for permanent residence resulting from employment by the American University of Beirut shall be considered to be temporary visits abroad within the meaning of section 101(a)(27)(A) of the Immigration and Nationality Act, as amended. Section 101(a)(27)(A) defines as a "special immigrant" an alien "lawfully admitted for permanent residence, who is returning from a temporary visit abroad." An alien entitled to status as a "special immigrant" is not subject to the numerical limitations on immigration and is not subject to the provisions of section 212(a)(14) -- the labor certification requirement -- of the Act, but is subject to the other grounds of exclusion set forth in section 212(a).

The Department's implementing regulations -- 22 CFR 42.23 -- set forth three tests to be met by an alien claiming to be entitled to status as a special immigrant within the meaning of section 101(a)(27)(A) of the Act. The alien must have been lawfully admitted for permanent residence; the alien must have had, at the time of departure from the United States, an intent to return and must not have abandoned that intent during the period of absence; and the absence must have been a temporary one, or, if protracted, been caused by reasons beyond the alien's control.

The Department assumes that the purpose of H.R. 5728 is to remove any questions which might otherwise arise about whether the

The Honorable
Peter W. Rodino, Jr., Chairman,
Committee on the Judiciary,
House of Representatives.

protracted absence of a permanent resident alien resulting from employment by the American University of Beirut was caused by reasons beyond his control. It appears that enactment of H.R. 5728 would accomplish this objective. The Department would note, however, that, in an individual case, a question could still arise concerning the intent of the alien to return to the United States, if the alien had made statements or taken actions inconsistent with such an intent. The Department has no reason to believe that such questions will actually arise in any particular case but wishes merely to point out the possibility.

The Department supports the proposal because of AUB's prominent role in maintaining deep cultural and educational ties between the United States and the Middle East. The ability of AUB to provide an American-style education, aided by faculty members trained in the U.S., is an important interest of the foreign policy of the United States in Lebanon and the entire area.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the enactment of this legislation.

Sincerely,

W. Tapley Bennett, Jr.
Assistant Secretary
Legislative and Intergovernmental Affairs

THE WHITE HOUSE

WASHINGTON

July 10, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Justice Report on H.R. 5728, a Bill "to permit aliens lawfully admitted for permanent residence who are employed by the American University of Beirut to return to the U.S. as special immigrants after completion of such employment."

Counsel's Office has reviewed the above-referenced draft report. The reference to the codification of Section 101(a)(27)(A) of the Immigration and Nationality Act in the second paragraph is inaccurate. The correct reference is 8 U.S.C. § 1101(a)(27)(A). In addition, there should be another parentheses at the end of the sentence.

ID # 240484 CU

JV

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

DM

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) / /

Name of Correspondent: Brandeis Blum

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Justice report on H.R 5728 a bill "to permit aliens lawfully admitted for permanent residence who are employed by the American Univ. of Beirut to return to the U.S. as special immigrants after completion of such employment."

ROUTE TO: Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Code	Completion Date YY/MM/DD
CU HRC	ORIGINATOR	DD 84/07/06			/ /
	Referral Note:				
CU AT 18	R	84/07/06		S	84/07/20
	Referral Note:	DD			CJB
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: Brandeis Blum DD

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Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
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5/81

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 3, 1984

LEGISLATIVE REFERRAL MEMORANDUM

240484

TO: LEGISLATIVE LIAISON OFFICER

Department of State
National Security Council
Department of Education

SUBJECT: Draft Justice report on H.R. 5728, a bill "to permit aliens lawfully admitted for permanent residence who are employed by the American University of Beirut to return to the United States as special immigrants after completion of such employment."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than

COB Friday, July 20, 1984

Direct your questions to Branden Blum (395-3802), the legislative attorney in this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: K. Collins S. Gates M. Uhlmann B. White F. Fielding
J. Cooney

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

JSW:it

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your request for the views of the Department of Justice on H.R. 5728, a bill to permit aliens lawfully admitted for permanent residence who are employed by the American University of Beirut to return to the United States as special immigrants after completion of such employment. The Department of Justice recommends enactment of this legislation.

The subject bill provides that lawful permanent residents employed by the American University of Beirut be deemed to be returning from a temporary visit abroad for the purposes of Section 101(a)(27)(A) of the Immigration and Nationality Act (8 U.S.C. 101(a)(27)(A). It applies retrospectively and prospectively.

We believe this bill will be helpful in respect to professors who must travel back and forth between the U.S. and the American University of Beirut, an institution of critical importance in the Middle East.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell
Assistant Attorney General

THE WHITE HOUSE

WASHINGTON

July 31, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

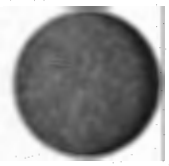
FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Draft Commerce Report on S. 2770, a Bill to Protect Franchised Automobile Dealers From Unfair Price Discrimination in Manufacturer Sale of New Vehicles

Counsel's Office has reviewed the above-referenced draft report, and finds no objection to it from a legal perspective.

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET



☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 84/1/1

Name of Correspondent: James Murr

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Draft Commerce report on S. 2770, a bill to protect franchised automobile dealers from unfair price discrimination in the sale by the manufacturer of new vehicles

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CLTHOR	ORIGINATOR	84/07/31			/ /
	Referral Note:				
CLIAT 18	R	84/07/31		S	84/08/03
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				

ACTION CODES:
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Completion Date = Date of Outgoing

Comments: _____

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5/81

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

July 30, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: LEGISLATIVE LIAISON OFFICER

Department of Justice
Department of Defense
Federal Trade Commission
Department of Transportation
General Services Administration

SUBJECT: Draft Commerce report on S. 2770, a bill to protect franchised automobile dealers from unfair price discrimination in the sale by the manufacturer of new vehicles

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than Friday, August 3, 1984.
(NOTE: agency reports opposing similar legislation (i.e., H.R. 5305 & H.R. 1415) have been previously cleared.)

Direct your questions to Branden Blum (395-3802), the legislative attorney in this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: K. Wilson
K. Newman
R. Howard
S. Galebach
J. Cooney
K. Schwartz
L. Li
F. Fielding

GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

Honorable Strom Thurmond
Chairman, Committee on the
Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Commerce concerning S. 2770, a bill

> "To protect consumers and franchised automobile dealers from unfair price discrimination in the sale by the manufacturer of new motor vehicles, and for other purposes."

S. 2770 would prohibit an automobile manufacturer from selling or leasing any new automobile, or offering to sell or lease any new automobile, to any person (including an automobile dealer) at a price that is higher than the lowest price for which any other new automobile of the same model is sold or offered during a particular sales period. The bill would provide exceptions for sales to automobile manufacturers, employees of an automobile manufacturer, agencies of the United States or any state or local government, the American Red Cross, and sales under regional sales incentive programs. The prohibitions in the bill would be enforceable by private action.

The Department of Commerce opposes enactment of S. 2770. The legislation effectively would prohibit marketing practices that vehicle manufacturers and their fleet customers have found highly efficient and mutually beneficial. By requiring that the "lowest price" be the only selling price for a vehicle, S. 2770 would, despite its avowed intention to protect consumers and automobile dealers against "unfair price competition," be anti-competitive.

S. 2770 would eliminate or reduce competition in the fleet sales market by prohibiting large volume fleet purchase discounts. We believe that large volume fleet purchasers should be allowed to negotiate with manufacturers for lower prices. Fleet sales are an important factor in automobile manufacturing. Automobile companies can offer discounts on direct volume sales because such sales help reduce the per vehicle cost of manufacturing and thereby increase overall profits without raising prices to dealers. Fleet sales are often made in advance of initial vehicle production and thereby encourage the marketing of new products.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this letter to the Congress from the standpoint of the Administration's position.

Sincerely,

Irving P. Margulies
General Counsel