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THE WHITE HOUSE

WASHINGTON

August 28, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Signing Statement for H.R. 5712

You will recall that our office advised Darman yesterday that the Department of Justice would be submitting new proposed language for the above-referenced signing statement. Justice has now done so. As we indicated in yesterday's memorandum would be the case, the Justice draft distinguishes more clearly between the two different constitutional concerns implicated by Section 510 of the bill -- the problem of Congressional interference in pending litigation and the problem of failing to fund an agency's responsibility to execute the laws. The draft Justice statement also includes language addressing the objectionable distinction in the bill between the authority of recess-appointed and Senate-confirmed directors of the Legal Services Corporation, as we suggested.

There are two minor problems with the draft. The third sentence of the third paragraph refers to the "inherent constitutional duty" of the FTC. Of course, the FTC can have no "inherent" constitutional duties, since the FTC is not mentioned in the Constitution nor, I daresay, was it envisioned by the Framers. Only the President has the inherent constitutional duty to execute the laws; the FTC can exercise this authority once the FTC has been created. I would change "its inherent" to "the."

In the last paragraph, Justice inadvertently omitted the words "during congressional recesses" in the second sentence, between "appointments" and "from."

I have reviewed both of these suggested changes with Ralph Tarr, and he agrees that they should be made. A memorandum for Darman is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

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

SUBJECT: H.R. 5712 -- Departments of Commerce,
Justice, State and Judiciary and Related
Agencies Appropriations Bill, 1985

Counsel's Office has reviewed the above-referenced enrolled bill and the accompanying proposed signing statement. I am advised by the Department of Justice that the Department has not in fact agreed to the draft signing statement. There are two distinct points to be made about Section 510 of the bill -- one focusing on Congressional interference in pending cases, the other on failure to fund a constitutional responsibility of the Executive -- and it is Justice's view that the points are not sufficiently distinguished in the current draft. Justice will submit alternative language as soon as possible. That language should be cleared by the Federal Trade Commission when submitted.

The proposed signing statement makes no mention of the constitutionally problematic distinction in the bill between the powers of Legal Services Corporation directors confirmed by the Senate and those appointed during a Congressional recess. This objectionable provision appeared in last year's Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Act, Public Law 98-166, and is incorporated by reference in the instant bill, see p. 19. Last year the President voiced his concerns about the provision on signing Public Law 98-166, and the concerns should be reiterated with respect to this bill, lest it appear that we are conceding the point or no longer concerned about it. I have alerted Justice to this problem, and that Department will include appropriate language in the new signing statement it is submitting.

cc: Michael Horowitz
Counsel to the Director
Office of Management and Budget

FFF:JGR:aea 8/27/84

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE
WASHINGTON

August 28, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

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

SUBJECT: Signing Statement for H.R. 5712

Counsel's Office has reviewed the signing statement for H.R. 5712 prepared by the Department of Justice. In line 11 of the third paragraph, "the" should be substituted for "its inherent." In line 9 of the last paragraph, "during congressional recesses" should be added between "appointments" and "from." The Department of Justice has agreed to these changes.

FFF:JGR:aea 8/28/84
cc: FFFielding/JGRoberts/SUbj/Chron

THE WHITE HOUSE

WASHINGTON

August 28, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Signing Statement for H.R. 5712

Counsel's Office has reviewed the signing statement for H.R. 5712 prepared by the Department of Justice. In line 11 of the third paragraph, "the" should be substituted for "its inherent." In line 9 of the last paragraph, "during congressional recesses" should be added between "appointments" and "from." The Department of Justice has agreed to these changes.

FFF:JGR:aea 8/28/84

cc: FFFielding/JGRoberts/SUbj/Chron

Memorandum



Subject

Enrolled Bill H.R. 5712

Date

AUG 27 1984

To

Fred F. Fielding
Counsel to the President

From

Ralph W. Tarr *RW*
Deputy Assistant Attorney
General
Office of Legal Counsel

Attached please find a copy of the Department's supplemental report on the above-referenced enrolled bill. It is being sent to you concurrently with the delivery of the original to the Office of Management and Budget.

We understand that John Roberts of your Office has been following this matter.



Office of the Assistant Attorney General

Washington, D.C. 20530

August 28, 1984

Honorable David A. Stockman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

We have received the proposed signing statement for H.R. 5712, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for Fiscal Year 1985, which you forwarded to the Department on Friday, August 24, 1984, for our review. Contrary to the inferences which we understand are contained in OMB's memorandum to the White House, this Department had not approved the language of the proposed signing statement. Rather, as Deputy Assistant Attorney General Tarr in the Department's Office of Legal Counsel indicated several days ago to Mr. Horowitz of your Office, the Department did not intend to approve that language until we had had an opportunity to read it, as opposed to having portions of it read to us over the telephone. After reviewing the proposed statement, we have suggested revisions of the statement we consider necessary to clarify that there are two distinct constitutional problems with regard to Section 510 of the bill rather than just one. We have attached a copy of the statement that we propose.

In addition to the constitutional difficulties raised by section 510 which we previously have noted, there are separation of powers concerns implicated by the restrictions imposed by the bill on the powers which may be exercised by recess appointees to the Board of the Legal Services Corporation. Accordingly, we have included language in the signing statement expressing this concern.

This provision of the bill is of concern to the Department because it purports to mandate continued funding for current grantees of the Legal Services Corporation at effectively the same level of funding as in fiscal year 1984, unless action is taken prior to January 1, 1985 by directors of the Corporation who have been confirmed by the Senate. This provision apparently would permit directors confirmed by the Senate to exercise a degree of discretion in funding decisions, at least prior to January 1, 1985, that recess

appointees are unable to exercise. As a practical matter, this distinction between the powers of directors confirmed by the Senate and recess appointees has no apparent significance, because no current Board members have been confirmed by the Senate and we understand there is no realistic expectation that the Senate will act on any pending nominations prior to January 1, 1985. Whatever Congress's intentions, because we generally believe, as a constitutional matter, that recess appointees are intended and entitled to exercise the same powers and duties that directors confirmed by the Senate exercise, this provision raises troubling constitutional issues.

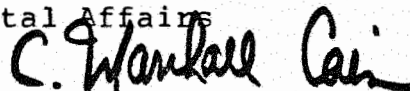
The President previously suggested that the Attorney General should determine whether the President's constitutional authority to make recess appointments is unduly infringed by such provisions. Because the fiscal year 1984 limitation on the power of recess appointees to the Board lasted only one month, the Attorney General never made a definitive finding on the constitutional issue. Nevertheless, we have included language in the attached suggested President's signing statement to accompany H.R. 5712 that reflects our concern with the described provision in this bill and reflecting the fact that the Attorney General is currently considering this issue.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative and
Intergovernmental Affairs

cc: Fred Fielding
Counsel to the President

BY:



C. Marshall Cain

Acting Assistant Attorney General
Pursuant to 28 C.F.R. §0.132

STATEMENT BY THE PRESIDENT

Today I am signing into law H.R. 5712, a bill to provide appropriations in 1985 for the Departments of Commerce, Justice, and State, the Judiciary and related agencies.

I am grateful for the successful efforts of the Senate and the House of Representatives in keeping the total level of spending in this bill at an acceptable level.

I am, however, concerned about Section 510 of the bill, which is intended to prohibit the Federal Trade Commission from spending appropriated funds to enforce certain provisions of the substantive antitrust laws. First, this provision raises questions pertaining to the separation of powers among the branches of government because it seeks to permit unwarranted intrusion by Congress into pending law enforcement proceedings brought by an administrative agency. Second, by including a rider on an appropriations bill rather than by amending substantive law, Congress has attempted to prevent the Federal Trade Commission from carrying out ~~its inherent~~ constitutional duty of executing the substantive antitrust laws. I am hopeful that, at the earliest possible date, appropriate legislative action will be taken to amend existing substantive law so as to specify the intention of Congress regarding the Federal Trade Commission's authority under the antitrust laws.

I am also concerned about the bill's provision relating to the Legal Services Corporation which purports to mandate continued funding for current grantees of the Corporation at essentially the same level of funding as in fiscal year 1984, unless action is taken prior to January 1, 1985, by directors of the Corporation who have been confirmed by the Senate. To the extent that this provision may be intended to disable persons appointed under the Constitution's provision governing presidential appointments) from performing functions that directors confirmed by the Senate are authorized to perform, it raises troubling constitutional issues with respect to my recess appointments power. At my request, the Attorney General is looking into the question whether this provision can, consistent with the Constitution, effect this intent.

during
congressional
recesses

the

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

August 28, 1984

The President today signed the following legislation:

S. 2085 which extends the authority of the Secretary of Agriculture to collect user fees for providing cotton classification services to cotton producers;

S. 2201 which authorizes the conveyance of approximately 11,000 acres in Arizona to be held in trust for the Zuni Tribe for religious purposes;

H.R. 1652 which (1) increases by \$650 million the authorization for dam safety repairs at Bureau of Reclamation dams and related facilities; (2) requires project beneficiaries to pay 15 percent of the costs of dam safety work; and (3) authorizes the Secretary of the Interior to perform safety modification work on eight dams that are not now covered by the Reclamation Safety of Dams Act;

H.R. 3787 which (1) amends the National Trails System Act by authorizing the Secretary of the Interior to study the Pony Express Trail and the California Trail for possible inclusion in the National Trails System, and (2) authorizes the Secretary of the Interior to accept markers for placement on Federal property to commemorate significant routes and sites associated with Daniel Boone;

H.R. 4596 which permits the Secretary of the Interior to acquire fee simple title to McClintock House in Waterloo, New York;

H.R. 4707 which (1) designates some 1,063,360 acres of Federal land in Arizona as wilderness; (2) requires the Secretary of Agriculture to study three areas for possible future designation as wilderness; (3) releases for multiple use management other Federal lands studied but not designated as wilderness; and (4) designates 40.5 miles of the Verde River in Arizona as part of the National Wild and Scenic Rivers System; and

H.R. 5604 which authorizes fiscal year 1985 appropriations totaling \$9,133,908,000 for construction and family housing for the Department of Defense, and authorizes supplemental fiscal year 1984 appropriations of \$30 million for military construction in Keflavik, Iceland.

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

August 29, 1984

TO THE SENATE OF THE UNITED STATES:

Since the adjournment of the Congress has prevented my return of S. 2436 within the meaning of Article I, section 7, clause 2 of the Constitution, my withholding of approval from the bill precludes its becoming a law. Notwithstanding what I believe to be my constitutional power regarding the use of the "pocket veto" during an adjournment of Congress, however, I am sending S. 2436 to the Senate with my objections, consistent with the Court of Appeals decision in Kennedy v. Sampson, 511 F.2d 430 (D.C. Cir. 1974).

Public broadcasting constitutes an important national resource and contributes to the diversity of news, information, and entertainment choices available to the American public. Under S. 2436, however, Federal funding for public broadcasting would be increased by too much too fast. The Fiscal Year 1987 authorization of \$238 million for the Corporation for Public Broadcasting represents a 49 percent increase over the already enacted funding level for 1986. Likewise, next year's spending on new public broadcasting facilities grants would be authorized at \$50 million or four times this year's appropriation.

When all of the demands on the Federal budget are taken into account, increases in spending on public broadcasting of the magnitude contemplated by this legislation cannot be justified. They are incompatible with the clear and urgent need to reduce Federal spending. Moreover, this view is clearly shared by a large portion of the House of Representatives as indicated by the 176 votes in favor of the Oxley amendment to reduce the three-year authorizations by 25 percent.

In disapproving this bill, therefore, I urge the Congress to consider a revised bill providing more reasonable and moderate increases for the Board for Public Broadcasting along the lines of the Oxley amendment. I also reiterate my strong opposition to the huge increases for public facilities grants contained in S. 2436 and the unjustified expansion of this program to include repair and replacement of existing equipment.

I must also stress that my firm insistence on scaling this bill back to more fiscally responsible levels in no way jeopardizes the continued operations of public broadcasting stations across the Nation. Under the established funding mechanism, ample appropriations have already been enacted into law for all of Fiscal Years 1985 and 1986. Funding for another 25 months is already guaranteed.

Thus, the issue regarding S. 2436 is really one of long-range fiscal prudence. Given the magnitude of the deficit cuts that will be needed in the years ahead, I do not believe we can justify locking-in public broadcasting funding levels for 1987-1989 that are so obviously excessive. To do so would be wholly inconsistent with our pledge to slow the growth of spending and reduce the size of the deficit.

Accordingly, I am disapproving S. 2436.

RONALD REAGAN

THE WHITE HOUSE,
August 29, 1984.

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THE WHITE HOUSE

WASHINGTON

August 29, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Revised Signing Statement for H.R. 5712

Richard Darman has asked for our views as soon as possible on what I hope is the final revision of the above-referenced signing statement. This version embodies our earlier comments, and has been cleared by all affected agencies. (Securing the simultaneous concurrence of Justice and the FTC was no mean feat.) The only change you have not seen is the suggested addition of a sentence to the Legal Services discussion, noting that the problem raised by the bill's distinction between recess-appointed and confirmed LSC directors could be avoided if the Senate would confirm our nominees for the LSC board. All affected agencies agree that the suggested addition is desirable, and so do I.

Attachment

THE WHITE HOUSE

WASHINGTON

August 29, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

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

SUBJECT: Revised Signing Statement for H.R. 5712

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

FFF:JGR:aea 8/29/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 29, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

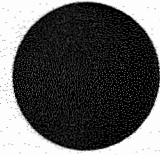
SUBJECT: Revised Signing Statement for H.R. 5712

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

FFF:JGR:aea 8/29/84
cc: FFFielding/JGRoberts/Subj/Chron

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- H - INTERNAL
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Date Correspondence Received (YY/MM/DD) 1 / 1 /



Name of Correspondent: Mike Horowitz

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

Subject: Revised Signing Statement for H.R. 5712

ROUTE TO:	ACTION	DISPOSITION	
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code Completion Date YY/MM/DD
<u>CUHOU</u>	ORIGINATOR	<u>84 08 29</u>	<u> 1 / 1 / </u>
<u>CUAT</u>	Referral Note: <u>Response to Darman</u>	<u>D 84 08 29</u>	<u>5 84 08 29</u>
	Referral Note:		<u>ASAP</u>
		<u> 1 / 1 / </u>	<u> 1 / 1 / </u>
	Referral Note:		
		<u> 1 / 1 / </u>	<u> 1 / 1 / </u>
	Referral Note:		
		<u> 1 / 1 / </u>	<u> 1 / 1 / </u>
	Referral Note:		

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

DISPOSITION CODES:

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- C - Completed
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Comments: _____

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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MEMORANDUM

August 29, 1984

To: Richard Darman
From: Mike Horowitz *MH*
Subject: Revised Signing Statement for H.R. 5712

Subject to any possible concerns of the FTC, OMB has no objection to the revised paragraph dealing with Section 540 of the bill. (John Roberts of the White House Counsel's Office will be calling Jim Miller on this matter this morning.)

With regard to the Legal Services Corporation paragraph, an additional concluding sentence is in order to bolster Howard Baker's commitment to Hatch and others that our LSC nominees will be voted on during the September session:

"In this regard, I urge the Senate to avoid any constitutional issues by acting promptly on the confirmation of the Board members I have nominated, who have been the subject of extensive hearings and action by the Senate Judiciary Committee."

Justice concurs in the above addition. (N.B. Nine of our eleven nominees were unanimously reported by the Senate Judiciary Committee.)

cc: David Gerson

STATEMENT BY THE PRESIDENT

Today I am signing into law H.R. 5712, a bill to provide appropriations in 1985 for the Departments of Commerce, Justice, and State, the Judiciary and related agencies.

I am grateful for the successful efforts of the Senate and the House of Representatives in keeping the total level of spending in this bill at an acceptable level.

I am, however, concerned about Section 510 of the bill, which is intended to prohibit the Federal Trade Commission from spending appropriated funds to enforce certain provisions of the substantive antitrust laws. First, this provision raises questions pertaining to the separation of powers among the branches of government because it seeks to permit unwarranted intrusion by Congress into pending law enforcement proceedings brought by an administrative agency. Second, by including a rider on an appropriations bill rather than by amending substantive law, Congress has attempted to prevent the Federal Trade Commission from carrying out the constitutional duty of executing the substantive antitrust laws. I am hopeful that, at the earliest possible date, appropriate legislative action will be taken to amend existing substantive law so as to specify the intention of Congress regarding the Federal Trade Commission's authority under the antitrust laws.

I am also concerned about the bill's provision relating to the Legal Services Corporation which purports to mandate continued funding for current grantees of the Corporation at essentially the same level of funding as in fiscal year 1984, unless action is taken prior to January 1, 1985, by directors

the extent that this provision may be intended to disable persons appointed under the Constitution's provision governing presidential appointments during Congressional recesses from performing functions that directors confirmed by the Senate are authorized to perform, it raises troubling constitutional issues with respect to my recess appointments power. At my request, the Attorney General is looking into the question whether this provision can, consistent with the Constitution, effect this intent.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

August 30, 1984

STATEMENT BY THE PRESIDENT

Today I am signing into law H.R. 5712, a bill to provide appropriations in 1985 for the Departments of Commerce, Justice, and State, the Judiciary and related agencies.

I am grateful for the successful efforts of the Senate and the House of Representatives in keeping the total level of spending in this bill at an acceptable level.

I am, however, concerned about Section 510 of the bill, which is intended to prohibit the Federal Trade Commission from spending appropriated funds to enforce certain provisions of the substantive antitrust laws. First, this provision raises questions pertaining to the separation of powers among the branches of government because it seeks to permit unwarranted intrusion by Congress into pending law enforcement proceedings brought by an administrative agency. Second, by including a rider on an appropriations bill rather than by amending substantive law, Congress has attempted to prevent the Federal Trade Commission from carrying out the constitutional duty of executing the substantive antitrust laws. I am hopeful that, at the earliest possible date, appropriate legislative action will be taken to amend existing substantive law so as to specify the intention of Congress regarding the Federal Trade Commission's authority under the antitrust laws.

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In this regard, I urge the Senate to avoid any constitutional issues by acting promptly on the confirmation of the Board members I have nominated, who have been the subject of extensive hearings and action by the Senate Labor and Human Resources Committee.

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