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THE WHITE HOUSE

WASHINGTON

November 8, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Legislative Agenda

You have asked for our views on a legislative agenda for the second term. The following list of suggestions is limited to problems that have arisen in the course of the past years within the scope of my official duties.

1. Portal-to-Portal. As you know, the 1983 GAO opinion construed the existing portal-to-portal statute very narrowly, in a manner that prohibited much of what has been accepted portal-to-portal practice. The Comptroller General recommended corrective legislation and granted a "grace period" during which he would refrain from enforcing his restrictive view of the statute. You have discussed this matter with Joe Wright; action will need to be taken very soon to avoid embarrassing application of the existing statute against Administration officials, including members of the White House staff. If possible the legislation should also address another problem that arose in the first term, the use of official transportation by Cabinet spouses.

2. Judges' Pay. We have also discussed the upcoming report of the Quadrennial Commission and the anticipated recommendation that the mechanism for determining judicial compensation be altered. Possibilities include an automatic cost-of-living increase and/or an annual increment for each year of continued service, up to a set number of years. In any event, there is strong sentiment that the current linkage of judicial salaries with Congressional and executive salaries is ill-advised.

3. Federal Advisory Committee Act. This Act is perhaps the single piece of legislation most frequently criticized in judicial opinions. It not only imposes considerable costs on executive branch decision-making but also provides easy opportunities for vexatious litigation (as in the case of the President's Private Sector Survey on Cost Control). The problems with FACA have been so extensively documented in court opinions that there may be an opportunity to amend the Act without being accused of favoring "government in the shadows."

4. Enhanced Impoundment Authority. The President continues to call for line-item veto authority. I do not think sufficient attention was given last term to the possibility of gaining the substance of a line-item veto through enhanced impoundment authority. Justice recommended this approach, which OMB declined to push for what I believe were unpersuasive reasons. I think it deserves a second look, particularly since the chances for a constitutional amendment are remote.

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There are three items that do not, strictly speaking, fall within the "legislative agenda" category but nonetheless merit the attention of this office at this time. I raise them now simply because they occurred to me in the course of reflection in response to your request.

1. Civil Aeronautics Board Matters. The imminent demise of the CAB will necessitate some changes, perhaps only formal, in the manner in which we review what were formerly CAB decisions. Executive Order 11920 will have to be amended, and new procedures instituted consistent with the transfer of the CAB's authority.

2. Presidential Records Act. Sooner rather than later we should address the fate of the Reagan Administration records under this Act. In the course of the Nixon Archives matter Mr. Hauser and I identified possible constitutional infirmities in the Act of significance to the doctrine of executive privilege. How we intend to comply with the Act should be made clear to all concerned some time before November of 1988 (when our ability to implement our intentions will be far more limited).

3. Constitutional Convention. The President's continued call for a balanced budget amendment, and the likely prominence of deficit and revenue issues, can be expected to highlight the issues surrounding an Article V constitutional convention. By one count, 32 of the needed 34 states have called for a constitutional convention to propose a balanced budget amendment. Some have suggested that the President should join in calling for such a convention to increase his leverage with Congress on deficit reduction negotiations. This office, working with the Department of Justice, should be prepared to give advice concerning the unprecedented legal questions surrounding an Article V convention.