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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO FRED FIELDING, RE: JOB SEARCH AND QUESTION REGARDING CONTRIBUTIONS TO THE REPUBLICAN PARTY	1	8/5/1985	B6	770
2	LETTER	FROM FRED FIELDING	1	8/5/1985	B6	771
3	MEMO	ROBERTS TO RICHARD HAUSER, RE: APPOINTMENT… OF MEMBERS TO THE JOHN F. KENNEDY CENTER FOR PERFORMING ARTS ADVISORY COUNCIL (PARTIAL)	1	8/19/1985	B6	772
4	MEMO	HAUSER TO ROBERT TUTTLE, RE: APPOINTMENT … OF MEMBERS OF THE JOHN F. KENNEDY CENTER FOR PERFORMING ARTS ADVISORY COUNCIL (PARTIAL)	1	8/19/1985	B6	773

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

E.O. 13233

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THE WHITE HOUSE

WASHINGTON

August 5, 1985

Dear Senator Grassley:

Thank you for your recent letter recommending Russell I. Brown for a staff position on the Commission on the Bicentennial of the United States Constitution.

Public Law 98-101, which established the Commission, provides that the Commission shall appoint a staff director, and that the Commission may appoint and pay from public funds up to five additional persons, as the Chairman finds necessary. The Chairman is also authorized to appoint up to forty additional staff members to be paid out of private donations.

The President has designated Chief Justice Warren E. Burger as Chairman of the Commission. Since it is the responsibility of the Commission and the Chairman under Public Law 98-101 to appoint the staff of the Commission, I have forwarded your correspondence to the Chief Justice.

Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Charles E. Grassley
United States Senate
Washington, D.C. 20510

FFF:JGR:aea 8/5/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

August 5, 1985

Dear Mr. Chief Justice:

Senator Grassley has written me with a recommendation for a staff position on the Commission on the Bicentennial of the United States Constitution. I have advised Senator Grassley that, pursuant to Public Law 98-101, appointing the staff is the responsibility of the Commission and the Chairman, and that I would accordingly refer his recommendation to you.

I do so without any views whatsoever on the Senator's candidate.

With best wishes,

Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Warren E. Burger
The Chief Justice
of the United States
Washington, D.C. 20543

FFF:JGR;aea 8/5/85
bcc: FFFielding
JGRoberts
Subj
Chron

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name
ROBERTS, JOHN: FILES

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E.O. 13233

C. Closed in accordance with restrictions contained in donor's deed of gift.

THE WHITE HOUSE

WASHINGTON

August 6, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Address by Secretary Bennett to Supreme Council Meeting of Knights of Columbus

David Chew has asked that comments on a proposed address by Secretary Bennett to the Knights of Columbus be sent directly to Rick Davis of Cabinet Affairs by 2:00 p.m. today. The original circulated draft prompted objections from the other John Roberts in Ed Rollins's office, as being too divisive. (I mention that at the outset to avoid confusion should you hear that "John Roberts" has concerns about the speech.) Our erstwhile colleague Wendell Willkie has sent Rick Davis and me a revised draft; my comments are addressed to that considerably toned down version.

The address begins by discussing the history of anti-Catholicism in America and then moves to a discussion of Supreme Court establishment clause cases as examples of a new sort of aversion to religion. Stone v. Graham, a decision holding unconstitutional the posting of the Ten Commandments in Kentucky schools, and last term's Felton decision, prohibiting public school teachers from teaching remedial classes in parochial schools, are singled out for criticism. There is general criticism of the chaotic state of establishment clause jurisprudence. Bennett's point is that such decisions betray a hostility to religion not demanded by the Constitution.

I have no quarrel with Bennett on the merits. (In the interests of full disclosure, I should note I worked for Justice Rehnquist when he filed the lone dissent in Stone v. Graham.) Nor am I bothered by the criticism of the Supreme Court decisions: Bennett is simply echoing the arguments in the Government briefs in the Felton case. Criticism of the Court's decisions in this area is not remarkable; indeed, it is practically universal, and even those who prevail before the Court do not claim that the Court's decisions are a model of clarity.

In sum, Bennett's remarks will stir up the debate, but I see no purely legal reason to object to them. You will, however, probably want to scan the remarks yourself.

THE WHITE HOUSE

WASHINGTON

August 6, 1985

MEMORANDUM FOR RICK DAVIS
ASSOCIATE DIRECTOR
OFFICE OF CABINET AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Address by Secretary Bennett to Supreme Council Meeting of Knights of Columbus

You have asked for my views on Secretary Bennett's proposed address to the Knights of Columbus. I have reviewed a revised draft forwarded to my office directly by Secretary Bennett. The Secretary's remarks will doubtless attract considerable attention, but I have no purely legal objections to them. The criticism of the Supreme Court decisions in this area is consistent with positions the Government has taken in litigation. Others more directly involved in policy in this area will have to decide if now is the time to raise this issue and if Secretary Bennett is the person to do so.

cc: David L. Chew

FFF:JGR:aea 8/6/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

August 6, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Enrolled Resolution S.J. Res. 108
Hotline Upgrade

David Chew has asked for comments by close of business today on the above-referenced enrolled resolution. This resolution implements a 1984 U.S. - U.S.S.R. agreement on improving the "hot line" by authorizing the Secretary of Defense to provide to the Soviet Union, on a reimbursable basis, the equipment necessary to update the hot line. OMB, Defense, State, and NSC recommend approval; I have reviewed the resolution and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

August 6, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Resolution S.J. Res. 108
Hotline Upgrade

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

FFF:JGR:aea 8/6/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

August 7, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Transfer of Ownership of Callaway's Nancy D

I have now received from the American Saddlebred Horse Association the necessary forms to effect a transfer of ownership of Callaway's Nancy D from the President to Mrs. Betty Weldon. Callaway's Nancy D is the first colt of Will's Fancy, the mare given to the President by Weldon in 1981. Will's Fancy has had a second colt, but we have no papers on it. The draft letter from the President to Weldon states that if ownership papers are not yet written on the second colt, they should be written in Weldon's name; if they are already prepared, they should be sent in so we can do another transfer.

As I explained previously, the President must sign the transfer papers, and return them with a check for $35, along with the registration papers, to the Association. The Association will then issue new registration papers in the new owner's name.

Attachment

THE WHITE HOUSE

WASHINGTON

August 7, 1985

MEMORANDUM FOR THE PRESIDENT

FROM: FRED F. FIELDING

SUBJECT: Transfer of Ownership of Callaway's Nancy D

Attached is the form you must sign to transfer ownership of Callaway's Nancy D to Mrs. Betty Weldon, as well as a letter to Mrs. Weldon explaining your action. The transfer form and the registration certificate for Nancy D will be sent to the American Saddlebred Horse Association. You must also include a personal check payable to the Association in the amount of $35.00, to cover transfer fees. Such fees are paid by the seller or donor.

The Association will then issue a new certificate showing Mrs. Weldon as the owner, and mail it directly to her. The letter to Mrs. Weldon notes that you also desire to transfer ownership of Will's Fancy's second foal.

Recommendations

That you sign the ownership transfer form attached at Tab A, and attach a personal check in the amount of $35.00.

That you sign the letter to Mrs. Betty Weldon attached at Tab B.

FFF:JGR:aea 8/7/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

August 8, 1985

Dear Betty:

I am writing to let you know that I have signed the papers to transfer ownership of Callaway's Nancy D to you, which I have wanted to do for some time. I am sending the papers to the American Saddlebred Horse Association, and I understand that the Association will send a new certificate directly to you.

I also want you to have ownership of Will's Fancy's second colt. If a certificate has not yet been prepared for the colt, it should be prepared listing you as owner. If papers have already been drawn up with me listed as owner, please send them to me and I will execute a transfer, as I have done with Callaway's Nancy D.

Thank you for all that you have done in caring for Will's Fancy and her offspring. I know the colts will bring you much pleasure.

Sincerely,

Mrs. William H. Weldon
Post Office Box 420
Jefferson City, MO 65102

RR:JGR:aea 8/7/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

August 7, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft Article for Scholastic Magazine

David Chew has asked that comments on draft responses by the President to written questions submitted by Scholastic Magazine be sent directly to Russell Mack by August 9. The questions are general ones about the Presidency and the functioning of the Executive Branch, and the answers present no serious problems. The only response I would change is that to question 16, concerning the President's efforts to achieve tax reform. As written, the response is susceptible to criticism under the Anti-Lobbying Act. The changes suggested in the attached draft memorandum for your signature cure this problem.

Attachment

THE WHITE HOUSE

WASHINGTON

August 7, 1985

MEMORANDUM FOR RUSSELL MACK
DIRECTOR, PUBLIC AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Article for Scholastic Magazine

Counsel's Office has reviewed the draft responses by the President to written questions submitted by Scholastic Magazine. As drafted, the response to question 16 raises concerns under the Anti-Lobbying Act. I recommend changing "lobbying" to "working" in the first line, and deleting the last sentence, to avoid any possible objections.

cc: David L. Chew

FFF:JGR:aea 8/7/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

August 7, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Reader's Digest Interview With the President

David Chew has asked that you send any comments on the above-referenced interview directly to Agnes Waldron by 5:00 p.m. today. The answers cover the President's health, the Soviet Union, Beirut, Grenada, the President's experience as a labor leader, the economy, the Strategic Defense Initiative, Nicaragua, Poland, and tax reform.

On page 13, in response to a Grenada question, the President states: "So, with George Bush, the emergency group decided that we were going to do what the Caribbean states had asked." That sort of decision, however, rests with the President alone. I would change to "So, with George Bush, the emergency group recommended that we do what the Caribbean states had asked."

On page 26, in response to a question on the irritant posed to diplomatic relations by Lech Walesa and Solidarity, the President states: "What profit is there in working diplomatically with a totalitarian government that will not respond to the demands of its citizens?". This seems particularly vulnerable to being thrown back at us on South Africa. I would delete the sentence.

Finally, on page 31, to correct a common error, "volunteerism" should be changed to "voluntarism."

Attachment

THE WHITE HOUSE

WASHINGTON

August 7, 1985

MEMORANDUM FOR AGNES WALDRON
OFFICE OF COMMUNICATIONS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Reader's Digest Interview
With the President

Counsel's Office has reviewed the Reader's Digest interview with the President. Assuming that answers may be edited for clarification, we recommend the following:

° Page 13: Change "So, with George Bush, the emergency group decided that we were going to do what the Caribbean states had asked" to "So, with George Bush, the emergency group recommended that we do what the Caribbean states had asked." Only the President can decide to undertake actions such as the Grenada mission.

° Page 26: Delete "What profit is there in working diplomatically with a totalitarian government that will not respond to the demands of its citizens?" This sentence could readily be thrown back at us with respect to South Africa.

° Page 31: "volunteerism" should be "voluntarism."

cc: David L. Chew

FFF:JGR:aea 8/7/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

August 8, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: American Prosecutors Research Institute Dinner Honoring Attorney General Meese: Proposed Presidential Message

Anne Higgins has asked you to review a proposed Presidential message to be read at an American Prosecutors Research Institute (APRI) dinner benefitting the National Center for the Prosecution of Child Abuse. The dinner will honor Attorney General Meese.

The proposed letter praises Mr. Meese, and stresses the difficulty and importance of sensitive prosecution in cases in which the victim is a child. APRI is a 501(c)(3) organization. I have no objection.

Attachment

THE WHITE HOUSE

WASHINGTON

August 8, 1985

MEMORANDUM FOR ANNE HIGGINS
SPECIAL ASSISTANT TO THE PRESIDENT
DIRECTOR OF CORRESPONDENCE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: American Prosecutors Research Institute
Dinner Honoring Attorney General Meese:
Proposed Presidential Message

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

cc: David L. Chew

FFF:JGR:aea 8/8/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

August 7, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Tax Treatment of Presidential Travel

You have asked me to gather Office of Legal Counsel material touching on the tax treatment of Presidential travel. The issue first surfaced in a report published by the Joint Committee on Internal Revenue Taxation, concerning travel on Air Force planes by family and friends of former President Nixon. H.R. Rep. No. 93-966, 93d Cong., 2d Sess. 157-68 (1974) (Tab A). The report noted that it was the view of committee staff that President Nixon realized taxable income when members of his family or friends were provided free Government transportation for personal excursions, whether or not they were accompanying the President. The staff recognized that family and friends may on occasion accompany the President to assist him in his official duties, and did not attribute income to the President on those occasions, but did attribute income when the travel by family and friends was purely personal. A distinction between "official" and "personal" travel by family and friends was prompted in part by President Nixon's own decision to reimburse the Government for personal travel of family members, effective April 1, 1971. The committee concluded income should be attributed to the President when he did not reimburse the Government for personal travel of family members, i.e., prior to April 1, 1971, and on several disputed occasions thereafter.

The report discussed whether income should be attributed to the President for his own personal travel, "a matter on which there has been no clear policy in the past." Id., at 163. The report noted that travel to locations primarily used for vacation could be viewed as "personal" travel by the President, but

> it is also pointed out that the President, by the nature of the office, must hold himself available for work at virtually any time. In part because of this characteristic of the Presidency and in part because of the uncertain status of such items in the past, the staff is not recommending that any amounts be included in income with respect to personal

> transportation of the President. In making this recommendation, the staff is not suggesting that this be foreclosed as a possible issue in the future. Id.

The Committee Report prompted a November 27, 1974 note from Assistant Attorney General Antonin Scalia to Counsel to the President Phillip Areeda, enclosing a list of questions on tax liability and an OLC summary of the Committee Report (Tab B). Scalia simply raised questions but provided no answers.

A March 15, 1977 memorandum for Counsel to the President Robert J. Lipshutz from Acting Assistant Attorney General John Harmon on "Political Trips" (Tab C) directly discussed the question of "personal" travel by the President. This memorandum noted that President Nixon's attorneys concluded in a letter to the Joint Committee that "no trips by the President could properly be characterized as purely personal or for vacation purposes," and that the President should therefore never have income attributed to him for his own travel. The memorandum then cited the ambiguous conclusion of the Committee Report, quoted above.

The memorandum went on to note that former President Ford, in apparent contradiction of the Nixon view, arranged to reimburse the Government for his own travel to Colorado on vacation. The reimbursement was actually paid by the Republican National Committee.

Harmon concluded that reimbursement for travel by the President "is a question of policy rather than law":

> The President might well decide that his own personal travel should be included in a uniform policy of providing reimbursement for all non-official uses of aircraft available to him. Or he may elect as a matter of policy to follow the position taken by his predecessors that the duties of the office are so entangled even with the President's personal time that all Presidential travel, other than for political purposes, is official and need not be reimbursed. He might even choose to draw the line as did President Ford between vacation travel which was reimbursed and weekend travel to Camp David or other retreats which presumably was not.

Harmon also noted that the President should follow the same rule for family travel as he adopts for his own: "should the President elect to consider all non-political travel as official, then it would be consistent with that policy for his family to accompany him without reimbursement."

I have located and reviewed copies of President and Mrs. Carter's tax returns for 1976, 1977, and 1979. An audit report was filed on the 1976 return on June 7, 1978 (Tab D). That audit attributed additional income ($487.28) to the Carters for travel on Government planes during the transition period by family members and friends not on transition business. The audit cited the analysis of the Joint Committee on Internal Revenue Taxation, discussed above.

THE WHITE HOUSE

WASHINGTON

August 8, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Continuation of "Plan for Protecting the Natural Gas Resources"

Secretary Herrington has asked the President to consent formally to an operating agreement and four "communitization" agreements governing the drilling of natural gas wells on land jointly owned by the Government and private parties. The Government owns land in Colorado known as Naval Oil Shale Reserve No. 3, over natural gas reserves. Adjacent private landowners have been drilling and plan to continue drilling for the natural gas, in such a fashion that migration of the gas from the Government land to the wells on private land is possible, resulting in the loss of the reserves to the Government. The Department of Energy has accordingly adopted a plan to drill for the natural gas to protect the Government's interests.

Wells have already been drilled on Government land. Energy now plans to drill on jointly-owned Government/private land. This requires the execution of detailed agreements between the Government and the private owners. The Secretary of Energy is authorized to enter into such agreements under 10 U.S.C. § 7427, "with the consent of the President." Herrington's present submission seeks that consent.

I have no objection to the President signing the form at Attachment 1, indicating his consent. I have not, of course, reviewed the agreements themselves, nor would I know how to begin to do so. Our clearance memorandum for Chew should note that we are not opining in any way on the substance of the agreements, for which we must rely on Energy.

Attachment

THE WHITE HOUSE

WASHINGTON

August 8, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Continuation of "Plan for Protecting the Natural Gas Resources"

I have reviewed the request from the Secretary of Energy that the President consent to an operating agreement and four communitization agreements pursuant to 10 U.S.C. § 7427. The proposed action by the President appears to comply with the requirements of 10 U.S.C. § 7427. I have not, of course, reviewed the substance of the agreements themselves, with respect to which we must rely on the Department of Energy.

FFF:JGR:aea 8/8/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

August 13, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: JOHN G. ROBERTS, JR.
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 1147 - Orphan Drug Amendments of 1985

Counsel's office has reviewed the above-referenced enrolled bill, and finds no objection to it from a legal perspective.

THE WHITE HOUSE

WASHINGTON

August 14, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Meador Correspondence

Professor Meador has written asking for any public documents on the transfer of authority pursuant to the 25th Amendment, and any suggestions you might have concerning the White Burkett Miller Center study on Presidential disability. The study commences this fall.

Attached is a brief reply, transmitting the transfer and resumption letters, the only public documents on the invocation of the 25th Amendment. The letter also takes issue with the assertion in the Charlottesville Daily Progress article on the disability study that the Amendment "was not invoked" when the President underwent surgery for cancer.

THE WHITE HOUSE

WASHINGTON

August 14, 1985

Dear Dan:

Thank you for your letter of August 8 requesting copies of the President's letters and any other public documents prepared in connection with the recent transfer of authority during the President's surgery. The only public documents are the letters, copies of which are attached.

Our views on the issues are explained in the transfer letter itself. My office had undertaken a review of the legislative history of the 25th Amendment some time prior to the President's surgery, and I concluded on the basis of that review that the Amendment was not intended to cover brief periods of disability, in the sense that the drafters expected the Amendment to be routinely invoked in such instances. The Amendment is always available at the discretion of the President, however, and in light of all the circumstances, the President decided that a transfer of authority to Vice President Bush was appropriate. The letter transferring authority pursuant to Section 3 was drafted in such a manner as to avoid establishing a precedent with respect to any future brief periods of disability, when the surrounding circumstances may compel this or future Presidents to reach a different conclusion on invocation of the Amendment.

I remember the Daily Progress from my student days, and so should not be surprised, but I do not see how it can report, in the article you enclosed, that the 25th Amendment "was not invoked when Reagan underwent surgery . . . for cancer."

In any event, the Miller Center now has considerably more grist for its mill on this question. I certainly hope not to be compelled to confront these issues again, but I am confident that the work of the Center will be of value to whomever must do so in the future.

Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Daniel J. Meador
James Monroe Professor of Law
University of Virginia School of Law
Charlottesville, Virginia 22901

THE WHITE HOUSE

WASHINGTON

August 15, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Impoundment Authority

You have requested general guidance on the President's authority to impound funds appropriated by Congress. What follows provides basic background on such authority as exists. It should be evident from the following that impoundment is not a promising avenue for resolving budget disputes with Congress on any significant scale.

Presidential authority to impound funds appropriated by Congress is granted and regulated by the Impoundment Control Act of 1974, 2 U.S.C. §§ 681-688. An impoundment is classified as either a deferral or a rescission. A rescission involves a decision not to spend money appropriated by Congress. A deferral involves the temporary withholding of or delay in obligating appropriated funds. A proposal to "defer" funds from one fiscal year to the next, when the funds are appropriated only for the first fiscal year, is in effect a rescission. For this reason, Congress has specified that a "deferral may not be proposed for any period of time extending beyond the end of the fiscal year" in which the deferral is proposed. 2 U.S.C. § 684. Both rescissions and deferrals are proposed with respect to particular items in a spending bill, not the entire bill.

When the President decides to rescind a particular item of budget authority, he is required to transmit a special message to Congress detailing the rescission proposal. The funds in question must be spent unless, within 45 days, Congress has passed a rescission bill agreeing to all or part of the proposed rescission. 2 U.S.C. § 683.

Proposals to defer budget authority must also be transmitted to Congress. A single message may contain several proposed deferrals. Pursuant to 2 U.S.C. § 684(b), funds proposed to be deferred must be obligated if either House passes a resolution disapproving the proposed deferral. This provision is an unconstitutional legislative veto under Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983). The critical question is whether the unconstitutional legislative veto is severable from the grant of authority to defer appropriated funds. If yes, the President would have the authority to defer funds, despite the objections of

Congress, and Congress would be required to pass a bill (over the President's veto) to compel the obligation of deferred funds. If a court rules that the legislative veto is not severable, the Presidential authority to defer would fall with the veto, and the funds would be required to be obligated.

The severability question is very close. To rule that the legislative veto is severable, a court must conclude that Congress would have granted deferral authority without the veto. This is a difficult conclusion, particularly since the President's "authority" to defer is phrased in terms of proposals, not actual deferrals. The end result of a court test in this area could well be the loss of Presidential deferral power. Even if a court were to rule in the President's favor on severability, Congress could be expected to act promptly to amend the Act to remove such unfettered Presidential authority.

The Office of Management and Budget and the appropriations committees on the Hill have reached an informal understanding to avoid the Chadha problem with respect to deferrals. Under this understanding, Congress uses the appropriations process -- or any other bill about to be presented to the President -- to disapprove proposed deferrals, rather than the unconstitutional procedure of 2 U.S.C. § 684(b).

The issue has been the subject of constitutional confrontation in the past, but, as a general matter, the President has no independent constitutional authority to impound funds. As then Assistant Attorney General William Rehnquist concluded in 1969:

> With respect to the suggestion that the President has a constitutional power to decline to spend appropriated funds, we must conclude that existence of such a broad power is supported by neither reason nor precedent.... It is in our view extremely difficult to formulate a constitutional theory to justify a refusal by the President to comply with a Congressional directive to spend. It may be argued that the spending of money is inherently an executive function, but the execution of any law is, by definition, an executive function, and it seems an anomalous proposition that because the Executive branch is bound to execute the laws, it is free to decline to execute them....

The foregoing is true with respect to normal spending questions. A different situation may be presented with respect to spending directives in areas reserved to the President by the Constitution, such as his authority as Commander-in-Chief, or his authority over foreign affairs. In such areas an argument could be mounted for inherent authority to defer or rescind, if spending would conflict with a constitutional obligation vested in the President. Another situation that might be considered to involve inherent impoundment authority would be one in which the President was faced with conflicting statutory commands, with one statute directing that

funds be obligated and another forbidding the expenditure. Such a situation may arise in the event of a debt ceiling crisis, but the question of the President's authority to impound funds in such an event is far from clear.

Attachment

RAH/JGR:jmk
cc: RAHauser
JGRoberts
subject
chron.

Chron

THE WHITE HOUSE

WASHINGTON

August 16, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY AND
DEPUTY ASSISTANT TO THE PRESIDENT

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: USITC Determination re
Certain Flexible Drill Shafts

Counsel's Office has reviewed the Memorandum for the President from Ambassador Yeutter on the above-referenced International Trade Commission decision, and finds no objection to it from a legal perspective. We have no objection to the recommendation that the President not disapprove this determination, rendering it effective on August 19, 1985.

THE WHITE HOUSE

WASHINGTON

August 19, 1985

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: USTR Memorandum Regarding Decision on Import Relief for the Footwear Industry

David Chew has asked for comments by noon August 20 on the attached materials for the President concerning the nonrubber footwear import relief case. As you know, this is a very high-profile trade policy issue that has split the Administration. Our review should be limited to ensuring compliance with the statutory requirements and ensuring the legality of the various options presented to the President.

The present case is the result of a petition filed before the International Trade Commission (ITC) under Section 201 of the Trade Act of 1974, 19 U.S.C. § 2251, by the nonrubber footwear industry. On July 1, 1985, the ITC submitted its report to the President, recommending that quotas be imposed on shoe imports. Pursuant to 19 U.S.C. § 2252, the President has 60 days to determine whether to provide relief, and to publish his determination in the Federal Register. The President "shall provide import relief...unless he determines that provision of such relief is not in the national economic interest." 19 U.S.C. § 2252(a)(1)(A). The President, in reaching his decision, is to consider the nine factors listed in 19 U.S.C. § 2252(c). On the day the President makes a decision under 19 U.S.C. § 2252, he must transmit a report to the Congress detailing the action he has taken, 19 U.S.C. § 2253(b).

Three options have been presented to the President. The first, supported by Treasury, State, Transportation, OMB, CEA, NSC, and OPD, is to grant no import relief, but to announce a commitment to the initiation of Section 301 cases against unfair trade practices in the shoe industry. Option 2, supported by no agency in the Administration, is to adopt the ITC decision and impose import quotas. Option 3, supported by Agriculture, Commerce, Labor, and USTR, is to increase tariffs on shoe imports.

Option 1 -- provide no import relief -- is clearly within the President's prerogatives. See 19 U.S.C. § 2252(a)(1)(A). The implementing documents at Tab A, for publication in the Federal Register and transmittal to Congress, contain the

requisite determination that import relief "is not in the national economic interest." An announcement that the President will pursue Section 301 cases is also within his powers, see 19 U.S.C. § 2411.

Option 3 -- increase tariffs -- is also within the President's statutory powers, see 19 U.S.C. § 2253(a)(1). The implementing documents at Tab B comply with the statutory requirements, including an explanation of the reasons the action taken differs from that recommended by the ITC, 19 U.S.C. § 2253(b)(1).

The attached memorandum for Chew notes no objection to the decision package, reminds Chew of the statutory requirements once a decision is made, and expresses no view on the merits.

Attachments

THE WHITE HOUSE

WASHINGTON

August 19, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: USTR Memorandum Regarding Decision on Import Relief for the Footwear Industry

Counsel's Office has reviewed the memorandum for the President and the accompanying materials on the International Trade Commission decision on import relief for the nonrubber footwear industry. We have no legal objection to the decision package. All of the options presented to the President are within his statutory prerogatives, and the implementing materials satisfy the statutory reporting requirements. As a reminder, the letters to Congress must be transmitted on the day the President makes his decision. 19 U.S.C. § 2253(b). That decision not only must be made by August 30, but the decision must also be published in the Federal Register by August 30. 19 U.S.C. § 2252(b). Our office expresses no view on the merits.

RAH:JGR:aea 8/19/85
cc: FFFielding
RAHauser
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

August 19, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: DOJ Draft Report on S. 1108, a Bill to Amend the Immigration and Nationality Act to Provide for the Temporary Admission to the United States of Bus Drivers

OMB has asked for our views by August 26 on a draft Justice report on S. 1108, a bill to provide for the temporary admission into the United States of bus drivers. Apparently some bus drivers on established routes crossing the Canadian border in New York and Vermont have experienced some difficulty in gaining entry into the country for the American portion of their routes. This bill would extend the benefits of "crewman" status under the immigration laws to bus drivers.

Justice opposes the bill, noting that it is open-ended and that "crewman" is a term of art in immigration law properly restricted to ship and air crew. Justice alsc notes that the affected bus drivers should be subject to the normal labor certification procedures. I see no reason to object to the draft report.

Attachment

THE WHITE HOUSE

WASHINGTON

August 19, 1985

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: DOJ Draft Report on S. 1108, a Bill to Amend the Immigration and Nationality Act to Provide for the Temporary Admission to the United States of Bus Drivers

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

FFF:JGR:aea 8/19/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

August 19, 1985

Dear Dan:

Thank you for your letter of August 8 requesting copies of the President's letters and any other public documents prepared in connection with the recent transfer of authority during the President's surgery. The only public documents are the letters, copies of which are enclosed.

As you and I discussed previously, my office had undertaken a review of the legislative history of the 25th Amendment some time prior to the President's surgery. Despite uncertainties as to its applicability, the Amendment is always available at the discretion of the President; in light of all the circumstances, the President decided that a transfer of authority to Vice President Bush was appropriate in this instance. The letter transferring authority pursuant to Section 3 was drafted in such a manner as to avoid establishing or at least question a precedent with respect to any future brief periods of disability, when the surrounding circumstances may compel this or future Presidents to reach a different conclusion on invocation of the Amendment.

In any event, the Miller Center now has considerably more grist for its mill on this question. I certainly hope not to be compelled to confront these issues again, but I am confident that the work of the Center will be of value to whomever must do so in the future. I will be pleased to provide any information or recollection to the Project's participants.

Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Daniel J. Meador
James Monroe Professor of Law
University of Virginia School of Law
Charlottesville, Virginia 22901

FFF;JGR:aea 8/19/85
bcc: FFFielding/JGRoberts/Subj/Chron

772

THE WHITE HOUSE

WASHINGTON

August 19, 1985

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: Appointment of John Pappajohn and Kay Orr as Members of the John F. Kennedy Center for the Performing Arts Advisory Committee

I have reviewed the Personal Data Statements submitted by the above-referenced individuals for appointment as members of the John F. Kennedy Center Advisory Committee.

An unlimited number of appointments to the Kennedy Center Advisory Committee are authorized by 20 U.S.C. § 76h(c). Appointees "shall be persons who are recognized for their knowledge of, or experience or interest in, one or more of the arts in the fields covered by the John F. Kennedy Center for the Performing Arts." Id.

Mr. Pappajohn is a venture capitalist from Iowa. He has been active in the arts in Iowa, serving as Chairman of Iowa Citizens for the Arts and Honorary Trustee of the Des Moines Art Center. I see no reason to object to his appointment.

Mrs. Orr is the Nebraska state treasurer. [redacted]

b6

Attachment

773

THE WHITE HOUSE

WASHINGTON

August 19, 1985

MEMORANDUM FOR ROBERT H. TUTTLE
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, PRESIDENTIAL PERSONNEL

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Appointment of John Pappajohn and Kay Orr as Members of the John F. Kennedy Center for the Performing Arts Advisory Committee

Your office recently forwarded the names of John Pappajohn and Kay Orr for clearance for appointment to the Kennedy Center Advisory Committee on the Arts. The President is authorized to make appointments to this Committee by 20 U.S.C. § 76h(c). Pursuant to that statute, appointees "shall be persons who are recognized for their knowledge of, or experience or interest in, one or more of the arts in the fields covered by the John F. Kennedy Center for the Performing Arts."

Mr. Pappajohn, as Chairman of Iowa Citizens for the Arts and Honorary Trustee of the Des Moines Art Center, satisfies the statutory criteria. We have completed all the necessary clearances and have no objection to proceeding with his appointment.

With respect to Mrs. Orr, [redacted]

b6

RAH:JGR:aea 8/19/85
cc: FFFielding
RAHauser
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

August 19, 1985

MEMORANDUM FOR PAT GLEASON
STAFF ASSISTANT
OFFICE OF CORRESPONDENCE

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Request for Presidential Message for Helicopter Annual

You have asked for our views on a request that the President submit a message on the advantages of helicopter travel to appear in the 1986 Helicopter Annual, published by the Helicopter Association International. As you know, the President generally avoids such commercial messages, and accordingly this request should be denied.

Thank you for raising this matter with us.