

30 Box 4 - JGR/Appointments Clause (1) - Roberts, John G.: Files  
SERIES I: Subject File

February 1, 1984

1992, resulting in a total appropriation of \$2,000,000.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### UNANIMOUS-CONSENT AGREEMENT

Mr. BAKER. Mr. President, since the budget waiver has been accomplished, I am prepared to ask the Senate to go to S. 500. Before I do, I want to propound a unanimous-consent request that I understand has been cleared all around.

Mr. President, I ask unanimous consent that when the Senate proceeds to the consideration of Calendar Order No. 316, S. 500, only one amendment will be in order and that is an amendment by the distinguished Senator from Maryland (Mr. MATHIAS), which amendment is at the desk.

I further ask unanimous consent that there be a limitation on debate of 40 minutes, equally divided, on the bill as amended, to include the debate on the amendment which will be in order.

I further ask unanimous consent that after the adoption of the amendment, it be in order to proceed to the consideration of the companion House bill, H.R. 1492, Calendar No. 256, and that only one amendment be in order, and that is an amendment to strike all after the enacting clause and insert in lieu thereof the text of S. 500 as amended, if amended, and that no debate be in order on that motion.

Mr. President, I ask that the control of the time be in the usual form. The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

#### CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE ACT

Mr. BAKER. Mr. President, I ask the Chair to lay before the Senate Calendar No. 316, S. 500.

The PRESIDING OFFICER. The bill will be stated by title.

The assistance legislative clerk read as follows:

A bill (S. 500) entitled the "Christopher Columbus Quincentenary Jubilee Act."

The Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment to strike out all after the enacting clause and insert.

That this Act may be cited as the "Christopher Columbus Quincentenary Jubilee Act."

#### FINDINGS AND DECLARATIONS

Sec. 2. The Congress finds and declares that—

(1) October 12, 1992, marks the five hundredth anniversary of the voyages of discovery of Christopher Columbus;

(2) the governments and people of Spain and Italy should be recognized and com-

mended for their historic role and contribution to those voyages;

(3) all persons in this country should look with pride on the achievements and contributions of their ancestors with respect to those historic voyages; and

(4) as the Nation approaches the quincentennial of the voyages of discovery of Christopher Columbus, it is appropriate to celebrate and commemorate this anniversary through local, national, and international observances and activities planned, encouraged, coordinated, and conducted by a national commission representative of appropriate individuals and public and private authorities and organizations.

#### ESTABLISHMENT, COMPOSITION

Sec. 3. (a) There is established a commission to be known as the Christopher Columbus Quincentenary Jubilee Commission (hereinafter in this Act referred to as the "Commission") to plan, encourage, coordinate, and conduct the commemoration of the voyages of discovery of Christopher Columbus.

(b) The Commission shall be composed of thirty members as follows:

(1) seven members appointed by the President upon the recommendation of the majority leader of the Senate in consultation with the minority leader of the Senate;

(2) seven members appointed by the President upon the recommendation of the Speaker of the House of Representatives in consultation with the minority leader of the House of Representatives;

(3) ten members appointed by the President, which members shall be broadly representative of the people of the United States, and not otherwise officers or employees of the United States;

(4) the Secretary of State;

(5) the Archivist of the United States;

(6) the Librarian of Congress;

(7) the Secretary of the Smithsonian Institution;

(8) the Chairman of the Federal Council on the Arts and Humanities; and

(9) the Secretary of Commerce.

(c) The President is hereby authorized and requested to invite the governments of Spain and Italy each to appoint, before October 1, 1983, one individual to serve as a nonvoting participant in the activities of the Commission.

(d) The Secretary of State shall call the first meeting for the purposes of electing a Chairman and Vice Chairman, both of whom shall be from among the members of the Commission appointed under subsection (b)(3). The Commission may appoint honorary members, and may establish an Advisory Council to assist the Commission in its work.

(e) Appointments under subsection (b) shall be made within a reasonable time after the date of the enactment of this Act, but not later than October 1, 1983. Vacancies shall be filled in the same manner in which the original appointments were made.

#### DUTIES

Sec. 4. (a) It shall be the duty of the Commission to prepare a comprehensive program for commemorating the quincentennial of the voyages of discovery of Christopher Columbus, and to plan, encourage, coordinate, and conduct observances and activities commemorating the historic events associated with those voyages. In carrying out this subsection, the Commission shall particularly examine the historic role of the government and people of Spain in order to promote a greater public awareness, understanding, and appreciation of the contributions made by Spain with respect to those voyages.

(b) Not later than October 1, 1985, the Commission shall submit to Congress a com-

prehensive report incorporating its recommendations for the commemoration of the quincentennial of the voyages of discovery of Christopher Columbus. The report required by this subsection shall include—

(1) recommendations for appropriate activities for the commemoration, including—

(A) the production, publication, and distribution of books, pamphlets, films, and other educational materials focusing on the history, culture, and political thought of the lands Christopher Columbus traveled from and to during the voyages of discovery;

(B) bibliographical and documentary projects and publications;

(C) conferences, convocations, lectures, seminars, and other similar programs;

(D) the development of libraries, museums, and exhibits, including mobile exhibits;

(E) ceremonies and celebrations commemorating specific events;

(F) programs focusing on the international significance of the voyages of discovery of Christopher Columbus; and

(G) the design, inscriptions, and other specifications relating to the issuance of commemorative coins, medals, and stamps, by the United States;

(2) recommendations for the allocation of financial and administrative responsibility among the public agencies and private organizations recommended for participation by the Commission; and

(3) recommendations for such legislation and administrative actions as the Commission deems necessary to carry out the commemoration of the voyages of discovery.

The President shall transmit the Commission's report to the Congress together with such comments and additional recommendations for legislation and administrative actions as the President deems appropriate.

(c) The Commission shall prepare and submit to the Congress an annual report on the activities of the Commission, including an accounting of funds received and expended.

(d) In preparing its plans and programs, the Commission shall consider any related plans and programs developed by State and local, and foreign governments, and private groups, including the 1992 World's Fair to be held in Chicago, Illinois, and in Seville, Spain. The Commission shall endeavor to plan and conduct its activities in such manner as to ensure that activities conducted pursuant to this Act do not duplicate activities of the 1992 World's Fair.

(e) The Commission may designate special committees and invite representatives from such public agencies and private organizations to assist the Commission in carrying out this section as the Commission deems appropriate.

#### ADDITIONAL FUNCTIONS

Sec. 5. In carrying out the purposes of this Act, the Commission is authorized to provide for—

(1) the preparation, distribution, dissemination, exhibition, and sale of historical, commemorative, and informational materials and objects which will contribute to public awareness of, and interest in, the quincentennial, except that any commemorative coins, medals, or stamps issued by the United States shall be sold only by an agency of the United States;

(2) competitions, commissions, and awards for historical, scholarly, artistic, literary, musical, and other works, programs, and projects relating to the quincentennial; and

(3) a quincentennial calendar or register of programs and projects, and in other ways provide a central clearinghouse for information and coordination regarding dates.

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events, places, documents, artifacts, and personalities of quincennial historical and commemorative significance.

COORDINATION OF EFFORTS

SEC. 6. (a) In carrying out the purposes of this Act, the Commission shall consult, cooperate with, and seek advice and assistance from appropriate Federal departments and agencies, State and local public bodies, foreign governments, learned societies, and historical, patriotic, philanthropic, civic, professional, and related organizations. Such Federal departments and agencies are authorized and requested to cooperate with the Commission in planning, encouraging, coordinating, and conducting appropriate commemorative activities.

(b) The Secretary of State shall undertake a study of appropriate cooperative actions which might be taken with foreign governments to preserve and develop historic sites related to the voyages of discovery of Christopher Columbus, at such time and in such manner as will ensure that fitting observances and exhibits may be held at each such site during the commemoration. (In particular, the Secretary may consult with the governments of the nations of the Western Hemisphere which share the Columbian heritage and with the governments of Spain and Italy with respect to joint participation in events in the United States and in such nations.) The Secretary shall submit the results of the study to the Commission, together with his recommendations, affording the Commission an opportunity to review the study, and to incorporate such of its findings and recommendations as the Commission may deem appropriate in the report required by section 4 of this Act.

(c) The Chairman of the Federal Council on the Arts and Humanities, the Chairman of the National Endowment for the Arts, and the Chairman of the National Endowment for the Humanities shall cooperate with the Commission, especially in the encouragement and coordination of scholarly works and presentations focusing on the history, culture, and political thought of the period surrounding the voyages of discovery.

(d) The Librarian of Congress, the Secretary of the Smithsonian Institution, and the Archivist of the United States shall cooperate with the Commission, especially in the development and display of exhibits and collections, and in the development and distribution of bibliographies, catalogs, and other materials relevant to the period.

(e) Nothing in this Act shall be construed to restrict, abridge, or otherwise limit the planning, development, conduct, operations, or activities of the 1992 World's Fair to be held in Chicago, Illinois, and in Seville, Spain, nor shall any provision of this Act be construed to vest in the Commission any right or responsibility to regulate or otherwise oversee the planning, development, conduct, operations, or activities of such Fair.

DONATIONS

SEC. 7. (a) The Commission may accept donations of money, property, or personal services, except that the Commission may not accept donations—

(1) the aggregate value of which exceeds \$25,000, in the case of donations from an individual; or

(2) the aggregate of which exceeds \$50,000, in the case of donations from a foreign government, a corporation, a partnership, or any other person.

(b) All books, manuscripts, miscellaneous printed matter, memorabilia, relics, and other materials relating to the period and donated to the Commission may be deposited for preservation in national, State, or

local libraries or museums or be otherwise disposed of by the Commission after consultation with the Librarian of Congress, the Secretary of the Smithsonian Institution, the Archivist of the United States, or the Administrator of General Services, as the case may be.

ADMINISTRATION

SEC. 8. (a)(1) The Chairman, with the advice of the Commission, shall appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, a Director who may be compensated at a rate not to exceed the rate of basic pay payable for level IV of the Executive Schedule established under section 5315 of such title and a Deputy Director who may be compensated at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule established under section 5316 of such title. Such officers shall serve at the pleasure of the Chairman.

(2) The Commission shall delegate such powers and duties to the Director as may be necessary for the efficient operation and management of the Commission.

(b) Subject to such rules and regulations as may be adopted by the Commission, the Commission may—

(1) appoint and fix the compensation of such additional personnel, not to exceed twenty staff members, as it deems advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at such rates not in excess of the maximum rate for grade GS-18 of the General Schedule under section 5332 of such title;

(2) appoint such advisory committees as it deems necessary;

(3) procure supplies, services, and property; make contracts; expend in furtherance of this Act funds appropriated, donated, or received in pursuance of contracts hereunder;

(4) enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of the General Services Administration; and

(5) use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(c)(1) Upon request of the Commission, the head of any Federal agency may detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Act. Details under this subsection shall be without reimbursement by the Commission to the agency from which the employee concerned was detailed.

(2) The Commission may accept the services of not to exceed twenty employees under this subsection at any time.

COMPENSATION

SEC. 9. (a) Members of the Commission appointed under section 3(b) of this Act shall serve without compensation, but may be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(b) Persons appointed, designated, or invited to assist the Commission under section 3(c), the second sentence of section 3(d), section 4(e), or section 8(b)(2) of this Act shall serve without compensation, and shall not be entitled to reimbursement for travel, sub-

sistence, or other expenses incurred by them in the performance of their duties.

PENALTY

SEC. 10. (a) The Commission shall prescribe rules and regulations regarding the use of any logos, symbols, or marks originated under authority of and certified by the Commission for use in connection with the commemoration of the quincennial, or any facsimile thereof. Under the rules and regulations, the Commission may not sell, lease, or otherwise grant to any person the right to use any such logo, symbol, or mark in connection with the production or manufacture of any commercial goods, as part of an advertisement promoting any commercial goods or services, or as part of an endorsement for any such goods or services.

(b) Any person who, except as authorized under rules and regulations issued by the Commission, knowingly manufactures, reproduces, or uses any such logos, symbols, or marks, or any facsimile thereof, or in such a manner as suggests any such logos, symbols, or marks, shall be fined not more than \$10,000, or imprisoned not more than one year, or both. This section shall only apply in the case of such logos, symbols, and marks for which the Commission has published in the Federal Register a notification of certification.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 11. (a) There are authorized to be appropriated to carry out the provisions of this Act, \$220,000 per fiscal year for each of the fiscal years beginning after September 30, 1983, and ending before October 1, 1992; and \$20,000 for the period beginning on October 1, 1992, and ending on November 15, 1992.

(b) Amounts appropriated under this section for any fiscal year shall remain available until November 15, 1992.

(c) The total appropriations authorized under this or any other Act for the purposes of this Act shall not exceed \$2,000,000.

TERMINATION

SEC. 12. (a) A final report shall be made to the Congress no later than November 15, 1992, upon which date the Commission shall terminate.

(b) Any property acquired by the Commission remaining upon its termination may be used by the Secretary of the Interior for purposes of the National Park Service, or may be disposed of in accordance with the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

Mr. BAKER. Mr. President, I designate the distinguished Senator from Maryland (Mr. MATHIAS) to manage the time on this side.

I say to Senators that I understand that there will be a rollcall vote on this measure.

I yield the floor, Mr. President.

Mr. MATHIAS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATHIAS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is S. 500.

[Report No. 98-150]

To establish the Christopher Columbus Quincentenary Jubilee Commission.

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 1983

Mr. RODINO (for himself, Mr. CONTE, Mr. GARCIA, and Mr. COUFER) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

MAY 16, 1983

Additional sponsor: Mrs. SCHROEDER

MAY 16, 1983

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in *italic*]

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**A BILL**

To establish the Christopher Columbus Quincentenary Jubilee Commission.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Christopher Columbus
- 4 Quincentenary Jubilee Act"

## FINDINGS AND DECLARATIONS

Sec. 2. The Congress finds and declares that—

(1) October 12, 1992, marks the five-hundredth anniversary of the voyages of discovery of Christopher Columbus;

(2) the governments and people of Spain and Italy should be recognized and commended for their historic role and contribution to those voyages;

(3) all persons of ~~Hispanic or Italian~~ heritage in this country should look with pride on the achievements and contributions of their ancestors with respect to those historic voyages; and

(4) as the Nation approaches the quincentennial of the voyages of discovery of Christopher Columbus, it is appropriate to celebrate and commemorate this anniversary through local, national, and international observances and activities planned, encouraged, coordinated, and conducted by a national commission representative of appropriate individuals and public and private authorities and organizations.

## ESTABLISHMENT; COMPOSITION

Sec. 3. (a) There is established a commission to be known as the Christopher Columbus Quincentenary Jubilee Commission (hereinafter in this Act referred to as the "Commission") to plan, encourage, coordinate, and conduct the

1 commemoration of the voyages of discovery of Christopher  
2 Columbus.

(b) The Commission shall be composed of thirty-one  
4 members as follows:

(1) eight members appointed by the majority  
6 leader of the Senate in consultation with the minority  
7 leader of the Senate;

(2) eight members appointed by the Speaker of  
9 the House of Representatives in consultation with the  
10 minority leader of the House of Representatives;

(3) ten members appointed by the President,  
12 which members shall be broadly representative of the  
13 people of the United States, and not otherwise officers  
14 or employees of the United States;

(4) the Secretary of State;

(5) the Archivist of the United States;

(6) the Librarian of Congress;

(7) the Secretary of the Smithsonian Institution,  
19 and

(8) the Chairman of the Federal Council on the  
21 Arts and Humanities.

(c) The President is hereby authorized and requested to  
23 invite the governments of Spain and Italy each to appoint,  
24 before October 1, 1988, one individual to serve as a nonvot-  
25 ing participant in the activities of the Commission.

1 (d) The Secretary of State shall call the first meeting for  
 2 the purpose of electing a Chairman and Vice Chairman, both  
 3 of whom shall be from among the members of the Commis-  
 4 sion appointed under subsection (b)(3). The Commission may  
 5 appoint honorary members, and may establish an Advisory  
 6 Council to assist the Commission in its work.

7 (e) Appointments under subsection (b) shall be made  
 8 within a reasonable time after the date of the enactment of  
 9 this Act, but not later than October 1, 1983. Vacancies shall  
 10 be filled in the same manner in which the original appoint-  
 11 ments were made.

#### 12 DUTIES

13 Sec. 4. (a) It shall be the duty of the Commission to  
 14 prepare a comprehensive program for commemorating the  
 15 quincentennial of the the voyages of discovery of Christopher  
 16 Columbus, and to plan, encourage, coordinate, and conduct  
 17 observances and activities commemorating the historic events  
 18 associated with those voyages. In carrying out this subsec-  
 19 tion, the Commission shall particularly examine the historic  
 20 role of the government and people of Spain in order to pro-  
 21 mote a greater public awareness, understanding, and appre-  
 22 ciation of the contributions made by Spain with respect to  
 23 those voyages.

24 (b) Not later than October 1, 1985, the Commission  
 25 shall submit to Congress a comprehensive report incorpo-

1 rating its recommendations for the commemoration of the  
 2 quincentennial of the voyages of discovery of Christopher  
 3 Columbus. The report required by this subsection shall in-  
 4 clude—

5 (1) recommendations for appropriate activities for  
 6 the commemoration, including—

7 (A) the production, publication, and distribu-  
 8 tion of books, pamphlets, films, and other educa-  
 9 tional materials focusing on the history, culture,  
 10 and political thought of the lands Christopher Co-  
 11 lumbus traveled from and to during the voyages  
 12 of discovery;

13 (B) bibliographical and documentary projects  
 14 and publications;

15 (C) conferences, convocations, lectures, semi-  
 16 nars, and other similar programs;

17 (D) the development of libraries, museums,  
 18 and exhibits, including mobile exhibits;

19 (E) ceremonies and celebrations commemo-  
 20 rating specific events;

21 (F) programs focusing on the international  
 22 significance of the voyages of discovery of Chris-  
 23 topher Columbus; and

(G) the design, inscriptions, and other specifications relating to the issuance of commemorative coins, medals, and stamps, by the United States;

(2) recommendations for the allocation of financial and administrative responsibility among the public agencies and private organizations recommended for participation by the Commission; and

(3) recommendations for such legislation and administrative actions as the Commission deems necessary to carry out the commemoration of the voyages of discovery.

The President shall transmit the Commission's report to the Congress together with such comments and additional recommendations for legislation and administrative actions as the President deems appropriate.

(c) The Commission shall prepare and submit to the Congress an annual report on the activities of the Commission, including an accounting of funds received and expended.

(d) In preparing its plans and programs, the Commission shall consider any related plans and programs developed by State and local, and foreign governments, and private groups.

(e) The Commission may designate special committees and invite representatives from such public agencies and private organizations to assist the Commission in carrying out this section as the Commission deems appropriate.

ADDITIONAL FUNCTIONS

SEC. 5. In carrying out the purposes of this Act, the Commission is authorized to provide for—

(1) the preparation, distribution, dissemination, exhibition, and sale of historical, commemorative, and informational materials and objects which will contribute to public awareness of, and interest in, the quincentennial, except that any commemorative coins, medals, or stamps issued by the United States shall be sold only by an agency of the United States;

(2) competitions, commissions, and awards for historical, scholarly, artistic, literary, musical, and other works, programs, and projects relating to the quincentennial; and

(3) a. quincentennial calendar or register of programs and projects, and in other ways provide a central clearinghouse for information and coordination regarding dates, events, places, documents, artifacts, and personalities of quincentennial historical and commemorative significance.

COORDINATION OF EFFORTS

SEC. 6. (a) In carrying out the purposes of this Act, the Commission shall consult, cooperate with, and seek advice and assistance from appropriate Federal departments and agencies, State and local public bodies, foreign governments,

1 learned societies, and historical, patriotic, philanthropic,  
 2 civic, professional, and related organizations. Such Federal  
 3 departments and agencies are authorized and requested to  
 4 cooperate with the Commission in planning, encouraging, co-  
 5 ordinating, and conducting appropriate commemorative activ-  
 6 ities.

7 (b) The Secretary of State shall undertake a study of  
 8 appropriate cooperative actions which might be taken with  
 9 foreign governments to preserve and develop historic sites  
 10 related to the voyages of discovery of Christopher Columbus,  
 11 at such time and in such manner as will insure that fitting  
 12 observances and exhibits may be held at each such site  
 13 during the commemoration. (In particular, the Secretary  
 14 shall consult with the governments of the nations of the  
 15 Western Hemisphere which share the Columbian heritage  
 16 and with the governments of Spain and Italy with respect to  
 17 joint participation in events in the United States and in such  
 18 nations.) The Secretary shall submit the results of the study  
 19 to the Commission, together with his recommendations, af-  
 20 fording the Commission an opportunity to review the study,  
 21 and to incorporate such of its findings and recommendations  
 22 as the Commission may deem appropriate in the report re-  
 23 quired by section 4 of this Act.

24 (c) The Chairman of the Federal Council on the Arts  
 25 and Humanities, the Chairman of the National Endowment

1 for the Arts, and the Chairman of the National Endowment  
 2 for the Humanities shall cooperate with the Commission, es-  
 3 pecially in the encouragement and coordination of scholarly  
 4 works and presentations focusing on the history, culture, and  
 5 political thought of the period surrounding the voyages of  
 6 discovery.

7 (d) The Librarian of Congress, the Secretary of the  
 8 Smithsonian Institution, and the Archivist of the United  
 9 States shall cooperate with the Commission, especially in the  
 10 development and display of exhibits and collections, and in  
 11 the development and distribution of bibliographies, catalogs,  
 12 and other materials relevant to the period.

#### DONATIONS

13  
 14 Sec. 7. (a) The Commission may accept donations of  
 15 money, property, or personal services, except that the Com-  
 16 mission may not accept donations—

17 (1) the aggregate value of which exceeds  
 18 \$25,000, in the case of donations from an individual;  
 19 or

20 (2) the aggregate of which exceeds \$50,000, in  
 21 the case of donations from a foreign government, a  
 22 corporation, a partnership, or any other person.

23 (b) All books, manuscripts, miscellaneous printed  
 24 matter, memorabilia, relics, and other materials relating to  
 25 the period and donated to the Commission may be deposited

1 for preservation in national, State, or local libraries or muse-  
 2 ums or be otherwise disposed of by the Commission after  
 3 consultation with the Librarian of Congress, the Secretary of  
 4 the Smithsonian Institution, the Archivist of the United  
 5 States, or the Administrator of General Services, as the case  
 6 may be.

#### 7 ADMINISTRATION

8 SEC. 8. (a)(1) The Chairman, with the advice of the  
 9 Commission, shall appoint, without regard to the provisions  
 10 of title 5, United States Code, governing appointments in the  
 11 competitive service, a Director who ~~will~~ *may* be compensated  
 12 at a rate ~~equal to~~ *not to exceed* the rate of basic pay payable  
 13 for level IV of the Executive Schedule established under sec-  
 14 tion 5315 of such title and a Deputy Director who ~~will~~ *may*  
 15 be compensated at a rate ~~equal to~~ *not to exceed* the rate of  
 16 basic pay payable for level V of the Executive Schedule es-  
 17 tablished under section 5316 of such title. Such officers shall  
 18 serve at the pleasure of the Chairman.

19 (2) The Commission shall delegate such powers and  
 20 duties to the Director as may be necessary for the efficient  
 21 operation and management of the Commission.

22 (b) Subject to such rules and regulations as may be  
 23 adopted by the Commission, the Commission may—

24 (1) appoint and fix the compensation of such addi-  
 25 tional personnel, not to exceed twenty staff members,

1 as it deems advisable, without regard to the provisions  
 2 of title 5, United States Code, governing appointments  
 3 in the competitive service, and without regard to chap-  
 4 ter 51 and subchapter III of chapter 53 of such title  
 5 relating to classification and General Schedule pay  
 6 rates, but at such rates not in excess of the maximum  
 7 rate for grade GS-18 of the General Schedule under  
 8 section 5332 of such title;

9 (2) appoint such advisory committees as it deems  
 10 necessary;

11 (3) procure supplies, services, and property; make  
 12 contracts; expend in furtherance of this Act funds ap-  
 13 propriated, donated, or received in pursuance of con-  
 14 tracts hereunder;

15 (4) enter into agreements with the General Serv-  
 16 ices Administration for procurement of necessary finan-  
 17 cial and administrative services, for which payment  
 18 shall be made by reimbursement from funds of the  
 19 Commission in such amounts as may be agreed upon  
 20 by the Chairman and the Administrator of the General  
 21 Services Administration; and

22 (5) use the United States mails in the same  
 23 manner and upon the same conditions as other depart-  
 24 ments and agencies of the United States.

1 (c)(1) Upon request of the Commission, the head of any  
 2 Federal agency may detail any of the personnel of such  
 3 agency to the Commission to assist the Commission in carry-  
 4 ing out its duties under this Act. Details under this subsec-  
 5 tion shall be without reimbursement by the Commission to  
 6 the agency from which the employee concerned was detailed.  
 7 (2) The Commission may accept the services of not to  
 8 exceed twenty employees under this subsection at any time.

9 COMPENSATION

10 SEC. 9. (a) Members of the Commission appointed under  
 11 section 3(b) of this Act shall serve without compensation, but  
 12 shall *may* be reimbursed for travel, subsistence, and other  
 13 necessary expenses incurred by them in the performance of  
 14 their duties.  
 15 (b) Persons appointed, designated, or invited to assist  
 16 the Commission under the second sentence of section 3(d),  
 17 section 4(e), or section 8(b)(2) of this Act shall serve without  
 18 compensation, and shall not be entitled to reimbursement for  
 19 travel, subsistence, or other expenses incurred by them in the  
 20 performance of their duties.

21 PENALTY

22 SEC. 10. (a) The Commission shall prescribe rules and  
 23 regulations regarding the use of any logos, symbols, or marks  
 24 originated under authority of and certified by the Commission  
 25 for use in connection with the ~~Commemorative~~ *commemora-*

1 tion of the quinquennial, or any facsimile thereof. Under the  
 2 rules and regulations, the Commission may not sell, lease, or  
 3 otherwise grant to any person the right to use any such logo,  
 4 symbol, or mark in connection with the production or manu-  
 5 facture of any commercial goods, as part of an advertisement  
 6 promoting any commercial goods or services, or as part of an  
 7 endorsement for any such goods or services.

8 (b) Any person who, except as authorized under rules  
 9 and regulations issued by the Commission, knowingly manu-  
 10 factures, reproduces, or uses any such logos, symbols, or  
 11 marks, or any facsimile thereof, or in such a manner as sug-  
 12 gests any such logos, symbols, or marks, shall be fined not  
 13 more than \$10,000, or imprisoned not more than one year, or  
 14 both. This section shall only apply in the case of such logos,  
 15 symbols, and marks for which the Commission has published  
 16 in the Federal Register a notification of certification.

17 AUTHORIZATION FOR APPROPRIATIONS

18 SEC. 11. (a) There are authorized to be appropriated to  
 19 carry out the provisions of this Act, \$200,000 for the fiscal  
 20 year ending September 30, 1984, \$250,000 per fiscal year  
 21 for each of the fiscal years ending before October 1, 1992,  
 22 and \$50,000 for the period beginning on October 1, 1992,  
 23 and ending on November 15, 1992.

24 (b) Amounts appropriated under this section for any  
 25 fiscal year shall remain available until November 15, 1992.

## TERMINATION

1

2       SEC. 12. (a) A final report shall be made to the Con-  
3 gress no later than November 15, 1992, upon which date the  
4 Commission shall terminate.

5       (b) Any property acquired by the Commission remaining  
6 upon its termination may be used by the Secretary of the  
7 Interior for purposes of the National Park Service, or may be  
8 disposed of in accordance with the Federal Property and Ad-  
9 ministrative Services Act of 1949 (40 U.S.C. 471 et seq.).

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
ROUTE SLIP

To Ed Wilson  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

FROM Bill Maxwell *WMA*

DATE 6/17/83

REMARKS

Attached per your request is the draft position statement and a copy of H.R. 1492 as reported -- which is now irrelevant for reasons set out in the position statement.

Attachment

**DRAFT**

June 17, 1983

(House)

H.R. 1492 - Christopher Columbus Quincentenary Jubilee Act  
(Rodino (D) New Jersey and 3 others)

The Administration would favor House passage of H.R. 1492 if Committee amendments are adopted that give the President the authority to appoint the members of the Christopher Columbus Quincentenary Commission and insure that work of the Commission does not conflict with or have a negative effect on the work of the organizers of the 1992 World's Fair to be held in both Chicago and Seville, Spain.

\* \* \* \* \*

(Not to be Distributed Outside Executive Office of the President)

H.R. 1492 as reported would establish the above Commission, with 31 members, to plan, encourage, coordinate and conduct the commemoration of the 500th anniversary of the voyage of Christopher Columbus leading to the discovery of America. The bill authorizes appropriations for the Commission totaling \$2.25

*Handwritten note:*  
1983  
6/17  
1492  
Columbus  
Quincentenary  
Jubilee Act

million during 1984-1992, and limits the contributions that individuals and corporations can make to the Commission to \$25,000 and \$50,000, respectively.

Reports sent to the Hill by Justice (6/3/82) and Commerce (6/7/83) express the Administration's position that H.R. 1492 should be amended to (1) eliminate provisions authorizing Commission activities that would compete or conflict with the 1992 World's Fair, which will be held in both Chicago and Seville, Spain;

*This amendment will be procedural of form*

(2) limit the Commission's activities to planning, encouraging, and coordinating the commemoration of Columbus' voyage, thereby avoiding the constitutional appointment problem -- that is, having Members of Congress serving on a Commission with Executive branch responsibilities; (3) provide that an equal number of members from each of the Executive and Legislative branches (15 from each branch, subject to the same limitations on appointments, would serve on the Commission; and (4) delete authorizations for consultations with foreign nations regarding joint participation in events in the United States or other nations, since this could contravene United States obligations under the Paris Convention of 1928 governing international expositions. Commerce and Justice have been working with committee staff to resolve differences.

*W. B. Phillips*

George Omas (Minority Staff, House Post Office and Civil Service Committee) advises informally that the Committee amendments described in the statement to be sent to the Hill will be offered

in a revised bill when H.R. 1492 comes up for a vote. Omas further advises that a floor colloquy will clarify the intent of the bill to meet Administration concerns not specifically covered by the bill -- most especially that the Commission will not exercise "significant executive functions" so as to raise an appointments clause problem. Commerce (Zarin/Staff of the General Counsel for Legislation) and Justice (Logan/Staff, Office of Legislative Counsel) confirm Omas' statements.

This draft of a position was prepared by LR in consultation with TCH (Ryder), WH-OPD (Uhlmann), WH Counsel (Wilson), Justice (Logan), and State (Maurer/Assistant Legal Adviser/Office of Legal Affairs). Commerce (Zarin) advises that because of political considerations, related primarily to Senator Percy's concerns about Columbus Jubilee legislation conflicting with the Chicago World's Fair, a call needs to be made at the Department's political level as to whether the position should be "would not object to passage ...." or "favor House passage....." Such a decision has not yet been made.

LRD DRAFT

June 17, 1983

THE WHITE HOUSE  
WASHINGTON

June 17, 1983

*TSW*  
*L.H. DISTRICT*  
*RMD*

MEMORANDUM FOR RICHARD A. HAUSER

FROM: D. EDWARD WILSON, JR. *D.E.W. jr.*

SUBJECT: H.R. 1492, A Bill to Establish the Christopher Columbus Quincentenary Jubilee Commission

After our discussion at approximately 11:30 am on Friday, June 17, 1983, concerning this bill, I reviewed a draft OMB position paper. In its current form, this bill would create an operational, Executive branch body, to celebrate the quincentenary of Christopher Columbus' "discovery" of America. Members would be appointed by the President pro tempore, the Speaker of the House of Representatives, and the President.

After I received the attached memorandum (and bill) from OMB, I discussed it briefly with Peter before Bill Maxwell of OMB called me for our comments. He explained to me that an agreement had been reached on a substitute bill that would be offered on the floor and adopted. That bill would make the Commission an advisory body, reserve the appointment power to the President and, in either the legislation itself, or in floor statements, make clear that the President had the right to appoint from among a list of recommended members submitted by the Speaker and President pro tempore, respectively.

I explained to him that, absent seeing such draft language, I was reluctant to sign off on the OMB memorandum but, in view of the fact that the bill is scheduled to come up on the House floor on Monday, June 20, 1983, I agreed to the memorandum, with certain changes. The first change is on the first page, in the paragraph that will be made public as the Administration's position. I explained to him that a clause should be added after the word "adopted" in the second line to read "setting forth the advisory role of the committee and giving" and deleting the words "that give" in that line.

The next change is on page two of the memorandum, in that part of it that is the internal position paper. I asked for two changes in the paragraph on page two, both in the second point made there. The request was that this language be made to state the advisory nature of the committee's activities more explicitly and to make clear that there are two constitutional problems, not one. The first is an appointments clause problem; the current

legislation has persons other than the President appointing people to the Executive branch. The second is an Article I, Section 6 problem that will be cured only if the Commission is made into an advisory one.

After talking with Bill Maxwell, I called John Logan, Office of Legislative Affairs, DOJ, and explained to him my concerns. He shares them and said he has been working with George Omas, Minority Staff, House Post Office and Civil Service Committee, on this matter. He did not have as much confidence as Bill that the amendments would accomplish the desired result, particularly as he has not seen draft substitute language. Nor did he share Bill's belief that the proper statements concerning the President's appointment power would be made on the floor of the House. He said he would call Mr. Omas and work with him on this.

I then talked with Mike Uhlmann and explained to him the situation while awaiting a return call from Bob Shanks. He agreed that Bob should work with John in seeing that our concerns are addressed on the Hill. Bob and I then talked and he will work with John.

Bob also agrees that you, Ted and Bob McConnell should discuss this type of problem as it appears to arising more and more frequently and attempt to address our concerns in a generic way with representatives from the House and Senate leadership. Bob thought this should be done early next week, if possible, as there are approximately three more similarly drafted bills in the works.

THE WHITE HOUSE  
WASHINGTON

September 15, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: D. EDWARD WILSON, JR. *D.E.W. jr*

SUBJECT: Department of Justice Proposed Report on  
H.R. 1492, Christopher Columbus Quincentenary  
Jubilee Commission

Attached for your review and comment or signature with the incoming and an earlier memorandum I prepared for RAH is a memorandum for James C. Murr expressing your comments on the above-referenced draft report. I have discussed it with John Logan, Office of Legislative Affairs, Department of Justice, as we have discussed this matter on previous occasions. John's and my agreement that the position occupied by the Secretary of the Smithsonian Institution as a source of problem with regard to the draft legislation should be explained in greater detail is reflected in the draft memorandum.

This item is due by COB Thursday, September 15, 1983.

THE WHITE HOUSE

WASHINGTON

September 15, 1983

MEMORANDUM FOR JAMES C. MURR

Chief, Economics-Science-General Government Branch  
Office of Management and Budget

FROM: FRED F. FIELDING  
Counsel to the President

SUBJECT: Justice Proposed Report on H.R. 1492, Christopher  
Columbus Quicentenary Jubilee Commission

At your request, we have reviewed the above-referenced proposed report and recommend that the report be expanded to explain why the Secretary of the Smithsonian Institution poses a problem with regard to the draft legislation. We have discussed the suggestion with the Office of Legislative Affairs, Department of Justice, and that office is in general agreement with it.



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

**SPECIAL**

September 14, 1983

*Rec'd  
DWH  
4 pm 9/14/83*

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer  
Smithsonian Institution

SUBJECT: Justice proposed report on H.R. 1492, Christopher  
Columbus Quincentenary Jubilee Commission.

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.

A response to this request for your views is needed no later than Thursday, September 15, 1983. Oral comments acceptable.

Questions should be referred to William A. Maxwell (395-3890), the legislative analyst in this office.

  
James C. Murr for  
Assistant Director for  
Legislative Reference

Enclosures

cc: John Cooney  
Ed Wilson  
John Dyer  
Mike Uhlmann



DRAFT

E 1-4/83.1  
Mafine

Office of the Assistant Attorney General

Washington, D.C. 20530

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

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on H.R. 1492, a bill "To establish the Christopher Columbus Quincentenary Jubilee Commission," as passed by the House of Representatives on June 21, 1983 and supplements our views set forth in our letter to you on S. 500, a similar bill. We believe that H.R. 1492 should be amended consistent with the discussion set forth below.

H.R. 1492 would establish a Commission "to plan, encourage, coordinate and conduct the commemoration of the voyages of discovery of Christopher Columbus. . . ." §3(a). The Commission will be comprised of thirty (30) members, 24 appointed by the President and six ex-officio members. §3(b). The Secretary of the Smithsonian Institution is one of the ex-officio members. §3(b)(7).

If the Commission performs duties which can be characterized as "Executive," its members are "Officers of the United States" and therefore must be appointed pursuant to the Appointments Clause of the Constitution. See Art. II, Section 2, cl. 2; Buckley v. Valeo, 424 U.S. 1 (1976). The Appointments Clause requires that "any appointee exercising significant authority pursuant to the laws of the United States" must be appointed by the President, with the advice and consent of the Senate, or if authorized by Congress, by the President alone, the courts or the heads of Departments. Buckley v. Valeo, 424 U.S. at 126.

The presence of the Secretary of the Smithsonian Institution, an individual who is not appointed consistent with the Appointments Clause, raises the question as to whether any of the Commissioners perform Executive functions and therefore are "Officers" within the meaning of the Constitution. In addition to preparing a comprehensive program for commemorating the anniversary, the Commission is also authorized to "plan, encourage, coordinate and conduct observances and activities . . ." to commemorate Columbus's voyages. Given this language, it is arguable that the Commission will perform certain Executive functions.

Accordingly, if Congress desires the Commission to have operational functions, we urge that H.R. 1492 be amended to remove the Secretary of the Smithsonian Institution as a member of the Commission. Alternatively, if such is not Congress's intent, we urge that an amendment or unambiguous legislative history establish clearly that the functions of the Commission will be limited to planning, advice and voluntary coordination and that it shall not have operational functions.

In summary, the Department of Justice recommends that H.R. 1492 be amended consistent with the alternatives discussed above.

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

September 16, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: D. EDWARD WILSON, JR. *D.E.W. Jr.*

SUBJECT: Department of Justice Proposed Report on  
H.R. 1492, Christopher Columbus Quincentenary  
Jubilee Commission

This memorandum responds to your question marks on mine of September 15 (copy attached) as well as provide you with a redrafted memorandum for James C. Murr in accordance with your comments.

Your question marks appear ask for an explanation of why I have discussed this matter with John Logan, Office of Legislative Affairs, Department of Justice, on previous occasions. These discussions grew out of a meeting at the Department of Justice on June 22, 1983 which RAH requested I attend with him. Also in attendance were Bob McConnell, Ted Olson, John Logan, Bob Shanks, Mike Fitts (OLC) and John Cooney (OMB) to discuss legislation involving appointments clause problems. Ted Olson's August memorandum to All Agency General Counsel concerning this topic, (copy attached) resulted from this meeting. During the preparation of Ted's memorandum, John, Bob Shanks and I discussed this matter (and related issues such as H.R. 1492 and S. 118 (Commission for the Bicentennial of the Constitution)) on several occasions.

Please let me know if I should not have called John in this instance so that I might be guided in similar situations in the future.

*My marks were because your memo was very difficult to follow —, well the above*

*→ 9/16*

THE WHITE HOUSE  
WASHINGTON

September 16, 1983

MEMORANDUM FOR JAMES C. MURR  
Chief, Economics-Science-General Government Branch  
Office of Management and Budget  
Orig. signed by FFF

FROM: FRED F. FIELDING  
Counsel to the President

SUBJECT: Justice Proposed Report on H.R. 1492, Christopher  
Columbus Quicentenary Jubilee Commission

At your request, we have reviewed the above-referenced proposed report and recommend that the report be expanded to explain more fully why the participation of the Secretary of the Smithsonian Institution poses a problem with regard to the draft legislation.

FFF:DEW:jlk  
FFFfielding  
DEWilson ✓  
Subject  
Chron

THE WHITE HOUSE

WASHINGTON

September 16, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: D. EDWARD WILSON, JR. *D.E.W. Jr.*

SUBJECT: Department of Justice Proposed Report on  
H.R. 1492, Christopher Columbus Quincentenary  
Jubilee Commission

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Please let me know if I should not have called John in this instance so that I might be guided in similar situations in the future.

THE WHITE HOUSE  
WASHINGTON

September 16, 1983

MEMORANDUM FOR JAMES C. MURR  
Chief, Economics-Science-General Government Branch  
Office of Management and Budget

FROM: FRED F. FIELDING  
Counsel to the President

SUBJECT: Justice Proposed Report on H.R. 1492, Christopher  
Columbus Quicentenary Jubilee Commission

At your request, we have reviewed the above-referenced proposed report and recommend that the report be expanded to explain more fully why the participation of the Secretary of the Smithsonian Institution poses a problem with regard to the draft legislation.



U.S. Department of Justice

1148

Office of Legal Counsel

Office of the  
Assistant Attorney General

Washington, D.C. 20530

AUG 24 1983

FROM:

Theodore B. Olson  
Assistant Attorney General  
Office of Legal Counsel

TO:

ALL AGENCY GENERAL COUNSEL

RE:

Recent Legislation Raising Appointments  
Clause and Related Problems.

In recent months, an increasing number of bills have come to our attention raising issues under the Appointments and Incompatibility Clauses of the Constitution, Article II, § 2, Cl. 2 and Article I, § 6, Cl. 2, respectively. The purpose of this memorandum is to draw your attention to this matter and to ask your assistance in identifying legislation containing the types of constitutional problems outlined below. In general, these bills seek to create new entities in, or associated with, the Federal Government structure, such as foundations, boards, agencies, commissions, committees and corporations. The problems arise with regard to the manner in which the entities' members are appointed and the categories of persons designated by Congress for membership.

The Appointments and Incompatibility Clauses represent important, related constitutional checks on Congress' authority that are necessary to preserve the separation of powers. As the Supreme Court recently stated in invalidating legislative veto provisions, "The hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power, even to accomplish desirable objectives, must be resisted." Immigration and Naturalization Service v. Chadha, No. 80-1832, slip op. at 31 (Sup. Ct. June 23, 1983). In Chadha, the Court reiterated its earlier holdings that, while the powers of the three Branches are not "hermetically sealed" from one another, they are "functionally identifiable" and

must be kept distinct. Id. 1/ The Appointments and Incompatibility Clauses help to preserve this functional identity of legislative and executive powers.

The Appointments Clause provides that the President shall nominate all "Officers of the United States" whose appointment is not otherwise provided for in the Constitution. 2/ The Supreme Court has stated that the term "Officers" includes all persons authorized to perform any "significant governmental duty exercised pursuant to a public law." Buckley v. Valeo, 424 U.S. 1, 126, 140-141. Persons who are not Officers may perform functions that are basically "investigative and informative," which are removed from the administration and enforcement of public law, such as advisory functions. Id. at 137-139. The Court has explicitly stated, however, that certain functions must be performed by properly appointed Officers of the United States. Id. at 140-141. These include, for example, the power (1) to make "determinations of eligibility for [public] funds," (2) to promulgate rules and regulations, (3) to issue advisory opinions, and (4) to conduct litigation to vindicate public rights. Id.

Similarly, the Court specifically held in Springer v. Phillipine Islands, 277 U.S. 189 (1928), that the power to appoint persons, such as directors of corporations, to manage government property rests with the President, not with

1/ Justice Powell succinctly stated the Court's holdings in his concurring opinion in Chadha as follows:

Where, as here, Congress has exercised a power "that cannot possibly be regarded as merely in aid of the legislative functions of Congress," Buckely v. Valeo, 424 U.S., at 138, the decisions of this Court have held that Congress impermissibly assumed a function that the Constitution entrusted to another branch, see id., at 138-141; cf. Springer v. Phillipine Islands, 277 U.S., at 202.

Id. (Powell, J., concurring) at 8.

2/ Congress may vest the appointment of certain inferior Officers in the President alone, in the Courts, or in the Heads of Departments, Art. II, § 2, cl. 2.

Congress. In invalidating a legislative attempt to charter a corporation and control it through appointment of its directors, the Court stated:

Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint agents charged with the duty of such enforcement. The latter are executive functions . . . .

Not having the power to appoint, unless expressly granted or incidental to its powers, the legislature cannot engraft executive duties upon a legislative office, since that would be usurping the power of appointment by indirection . . . .

Id. at 202. The Court went on to state that

The appointment of managers (in this instance corporate directors) of property or a business is essentially an executive act which the legislature is without capacity to perform directly or through any of its members.

Id. at 203.

A related constitutional issue arises where the Legislative Branch seeks to place Congressmen or Senators on various boards or commissions that perform other than investigative or informative functions. Article I, § 6, cl. 2 of the Constitution, the so-called Incompatibility Clause, provides:

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Thus no Congressman or Senator is permitted to serve as an officer or director of any governmentally-created entity whose functions extends beyond conducting investigations and providing information -- in other words, whose duties extend beyond those "only in aid of those functions that Congress may carry out itself, or in an area sufficiently removed from the administration and enforcement of the public law as to permit their being performed by persons not Officers of the United States." Buckley v. Valeo, supra, 424 U.S. at 139.

In addition to these specific constitutional concerns regarding the Appointments and Incompatibility Clauses, some recent bills have raised more generalized separation of powers concerns because they purport to create entities that are not clearly located in, or responsible to, any of the three Branches of government. For example, one bill would have provided for appointment of members of a commission by the head of an agency. This method of appointment and the duties given the commission indicated it was to be part of the Executive Branch. At the same time, however, the bill would have authorized the Attorney General to sue the commission to recover any funds spent other than according to its statutory mandate. This authorization of action against the commission by the Attorney General is inconsistent with placement of the commission within the Executive Branch for the simple reason that since the President controls the Executive Branch, he, not the courts, has the responsibility for resolving internal Executive Branch disputes. Moreover, such litigation would seem unnecessary, since the commissioners would be subject to removal by the agency head who appointed them.

Similar problems exist when the Legislative Branch seeks to place a member of the Judicial Branch on other than an advisory body, or attempts to vest the appointment powers to such an entity in the Judiciary.

It is important that the Administration take a consistent principled position with respect to proposed legislation which would blur the distinction between legislative and executive entities and, consequently, dilute the authority of the Executive. As the Supreme Court recognized recently in Chadha, supra (slip op. at 37), it is essential to preserving and maintaining the separation of powers that "the carefully defined limits on the power of each Branch must not be eroded."

We therefore ask your assistance in identifying legislation that raises the kinds of constitutional concerns we have described. Experience has demonstrated that early awareness of proposed legislation creating such entities maximizes our ability to avoid constitutional problems through cooperation with Congress. Because such problems can arise in myriad forms and in a variety of contexts, we request that proposed legislation that creates a new, or materially alters the structure of an existing, foundation, board, agency, commission, committee, or other entity should be referred, for advisory purposes, to this Office. Please address your referrals and any inquiries to the attention of Deputy Assistant Attorney General Robert B. Shanks.

Thank you for your cooperation and assistance.

cc: ~~Fred F. Fielding~~  
Counsel to the President

Michael J. Horowitz  
Counsel to the Director, OMB

*file -*  
*Appointments*  
*Case* *JR*

THE WHITE HOUSE  
WASHINGTON

Date 8/25/83

Suspense Date \_\_\_\_\_

MEMORANDUM FOR: COUNSEL'S OFFICE ATTORNEYS

FROM: **DIANNA G. HOLLAND**

ACTION

- Approved
- Please handle/review
- For your information
- For your recommendation
- For the files
- Please see me
- Please prepare response for \_\_\_\_\_ signature
- As we discussed
- Return to me for filing

COMMENT

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THE WHITE HOUSE

WASHINGTON

October 4, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: U.N. Delegation and the  
Incompatibility Clause

Dianna has relayed to me your concern over the nomination of Congressmen to serve on the U.S. delegation to the U.N. General Assembly. The President is authorized by 22 U.S.C. § 287(c) to designate, by and with the advice and consent of the Senate, up to five representatives and an indeterminate number of alternates to attend sessions of the General Assembly of the United Nations. No provision is made for appointment of members of Congress, but since 1950 every United States delegation appointed pursuant to 22 U.S.C. § 287(c) has included two Congressmen, one from each party, chosen in alternating years from the Senate and House. An information sheet prepared by the State Department (attached) notes that the Congressmen are appointed as representatives, not alternates, "and serve as full regular members of the 'U.S. Delegation', representing the Government and not as Congressional advisers per se." On September 20, we announced our intention to nominate two Congressmen as representatives.

The Incompatibility Clause, Article I, § 6, cl. 2, provides in part that "no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office." The critical question is whether a Representative of the United States to the U.N. General Assembly is an officer of the United States. The question would seem to answer itself. The above-quoted language from the State Department information sheet also describes the Congressional members as "full regular members" of the delegation, so it seems difficult to argue that they serve in only a ceremonial or advisory role. I have no desire to rock this particular boat, but I see no honest way to defend the practice of appointing Congressmen to serve as our representatives to the General Assembly. In the future, if we are unwilling to depart from the 33-year practice, we should at least have the State Department redefine its view of the Congressional members, limiting their role to ceremonial and advisory matters.

Attachment

# INFO SHEET PREPARED BY STATE

## FORMING A DELEGATION TO THE UN GENERAL ASSEMBLY

*\* Convenes in mid-September*

UNGA Rules of Procedure limit delegations of Member States to five Representatives and five Alternate Representatives. There is no limitation on the number of advisers or staff that can be accredited. Although there is no requirement that we accredit the full complement of ten, this has been the custom for virtually all of the regular UNGA sessions. Special or resumed sessions have often had fewer than ten.

In practice, in the recent past, the ten Representatives and Alternates have included all five Ambassadorial level officials at USUN, headed by the U.S. Permanent Representative to the UN. (The Secretary of State is always listed as Chairman of Delegation ex officio for the period he is present at the General Assembly; however, he need not be counted among those ten.) The remaining five Representatives and Alternate Representatives include three Public Members and two Congressional members. This mix of Congressional and public members is not written into the UN Participation Act or other statutes but first appeared in the U.S. Delegation to the 5th UNGA (1950) and has been observed at every subsequent regular session. All Representatives and Alternates are appointed by the President with the advice and consent of the Senate.

The U.S. Ambassador to the UN is always listed first, as Chairman of the Delegation. While there is no hard and fast rule about the place of the Public Members on the delegation (Representative or Alternate), it has been the practice in recent years for the President to designate one of the Public Members to serve as a Representative. The two Congressional members are also appointed as Representatives, along with the Deputy U.S. Representative to the UN. The other three USUN Ambassadors serve as Alternates together with the other two Public Members.

### Congressional Delegates

The two Congressional delegates have traditionally alternated between the Senate and the House, in each case one Democrat and one Republican. For the 36th Session, it will be the turn of the House. As noted above, these two delegates are appointed by the President and serve as full regular members of the "U.S. Delegation", representing the Government and not as Congressional advisers per se. Normally, they are selected directly by the White House in consultation with Congressional leadership. The standard letter from the Department to the Vice President and Speaker normally used to solicit Congressional participation at international conferences is not employed for the UNGA.

Public Members X

The three Public Members are usually distinguished citizens who are not necessarily concerned professionally with foreign policy matters but bring to the delegation a first-hand experience and knowledge of the concerns and hopes of the American people. Nominations for public members have been traditionally handled by the White House personnel office. Public members, after their appointment, go on the USUN payroll and are paid on a "When Actually Employed" basis; that is, for the duration of the Session.

Because of the time required to process these appointments, including conflict of interest and security clearances and confirmation by the Senate, it is important to initiate action several months in advance of the opening of the General Assembly. From the time the nominations are announced, it is best to count on at least four weeks for the process to be completed. Of course, if the Senate goes out of session, the process can take longer.

Advisers on the Delegation

AS As stated above, there is no limit imposed by the General Assembly itself on the number of advisers that may be accredited. The number last year, for the 35th UNGA, totaled 64. In view of our efforts to reduce delegation size, it may be desirable to reduce that number somewhat this year.

There are two major categories of advisers: Special Advisers and Advisers. The former usually includes high ranking officials from Washington (e.g. the Under Secretary for Political Affairs, Assistant Secretary for International Organization Affairs, the Director of ACDA, etc.), and the U.S. Representatives to the various United Nations Commissions (e.g. Human Rights, Status of Women, Social Development). Delegation advisers are chosen primarily from USUN itself; virtually the entire substantive staff is accredited. Other advisers are detailed from Washington either for the full session or for limited periods to deal with specific issues as they come up on the agenda of the various Committees or in Plenary.

Regional Advisers

In addition to these advisers, it is customary to accredit five FSO political officers representing the five Geographic Bureaus in the Department. These officers work closely with

the political section of USUN, primarily on lobbying and analytical reporting. Sometime in July IO will solicit nominations from the Bureaus for these adviser positions.

Congressional Staff Adviser

In recent years it has been the practice to accredit one member from the staff of the Senate or House Committee on Foreign Relations. (Personal staff of Congressional members sometimes attend part of a session, but are not accredited as members of the Delegation.)

Note Takers

Finally, the Department provides three junior officers for three months TDY to assist the delegation with note taking. The three are not accredited as members of the delegation. IO looks to Personnel to fill these positions.