

Ronald Reagan Presidential Library Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Roberts, John G.: Files
Folder Title: JGR/Archives
Box: 4

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

MEMORANDUM

file - Archives

THE WHITE HOUSE

WASHINGTON

January 27, 1982

TO: FRED F. FIELDING

FROM: D. EDWARD WILSON, JR.

SUBJECT: S. 1421, a Bill Entitled the "National
Archives and Records Administration Act
of 1981"

Attached for your review and comment is a memorandum for your signature to Kenneth M. Duberstein setting forth objections to the above-referenced bill. For your information, the Office of Management and Budget opposes this bill becoming a law.

THE WHITE HOUSE

WASHINGTON

January 27, 1982

MEMORANDUM FOR KENNETH M. DUBERSTEIN

FROM: FRED F. FIELDING

SUBJECT: S. 1421, a Bill Entitled the "National
Archives and Records Administration Act
of 1981"

The above-referenced bill, currently lodged in the Senate Committee on Governmental Affairs, would establish an independent entity within the Executive Branch of Government to be called the "National Archives and Records Administration." My objections to this bill lie in two principal areas -- the power of the President and the organization of the Executive Branch of Government.

With regard to the power of the President, this bill would amend 44 U.S.C. § 2103 and create the National Archives and Records Administration as an independent agency, headed by the "Archivist of the United States," who shall be appointed by the President by and with the advice and consent of the Senate for a term of ten years. This Act would, therefore, establish an independent agency in the Government unlike any other independent agency heretofore created by Congress. Unlike such organizations as the Federal Trade Commission, the National Archives and Records Administration would not be charged with quasi judicial or quasi legislative functions; it would, by its terms, be directed to perform only ministerial tasks in creating and preserving the records of the United States Government.

This distinction in functions is important because, from the founding of our Republic to the present date, the power of the President to remove an appointee performing solely executive functions has been protected by precedents and, where not respected by Congress, enforced by the Courts. In the exhaustive opinion by Chief Justice Tate in Myers v. United States, 272 U.S. 52 (1926), the Court reviewed in great detail the debates at the Constitutional Convention and in early sessions of

Congress to illustrate just this point. The Court squarely held that the President has the unrestricted power to remove "executive officers engaged in the discharge of their . . . normal duties." 272 U.S. at 134. The Court elaborated on the type of official subject to unfettered Presidential control as follows:

The ordinary duties of officers prescribed by statute come under the general administrative control of the President by virtue of the general grant to him of the executive power [U.S. Constitution, Art. II, Sec. 3], and he may properly supervise and guide construction of the statutes under which they act in order to secure that unitary and uniform execution of the law which Article II of the Constitution evidently contemplated in vesting general executive power in the President alone. Laws are often passed with specific provision for the adoption of regulations by department or bureau head to make the law workable and effective. The ability and judgment manifested by the official thus empowered, as well as his energy and stimulation of his subordinates, are subjects which the President must consider and supervise in his administrative control. Finding such officers to be negligent and inefficient, the President should have the power to remove them.

Myers v. United States, supra, 272 U.S. at 135.

The Supreme Court had occasion to examine its decision in Myers in the later case of Humphrey's Executor v. United States, 295 U.S. 602 (1935). In this case, the Supreme Court explained

The actual decision in the Myers case finds support in the theory that such an officer */ is merely one of the units in the executive department and, hence, inherently subject to the exclusive and illimitable power of removal by the Chief Executive whose subordinate and aide he is . . . [T]he necessary reach of the decision goes far enough to include all purely executive officers.

295 U.S. at 627-28.

*/ The Court defined "such an officer" as one "restricted to the performance of executive functions. He is charged with no duty at all related to either the legislative or judicial power." Humphreys Executor v. U.S., 295 U.S. 602, 627 (1935).

The underlying rationale for the Court's decisions in Myers, supra, and Humphreys Executor, supra, is that of separation of powers; the "fundamental necessity" of keeping each of the three departments free from the direct or indirect control of either of the others. E.g., Humphreys Executor v. U.S., supra, 295 U.S. at 629-630. Protecting this principle is particularly important in view of the recognized rule of law that officers who perform duties of a "quasi judicial character" may not be removed at the pleasure of the President. E.g., Myers v. U.S., 272 U.S. at 135.

S. 1421 is a bill that blurs the distinction which must be maintained between officials who perform an executive function and those who perform one of a quasi judicial nature. In the first instance, the official is appointed by the President, with or without the advice and consent of the Senate, and serves at the pleasure of the President. This is the case even though the official may serve for a term of years. In the second case, the official serves a term of years and is subject to removal only for good cause shown, such as good conduct. The instant bill, however, seeks to create an executive officer who serves a term of years and is not accountable to the President. In my opinion, this is an unconstitutional structure and should be opposed by the Administration.

Even if it were Constitutional, sound principles of governmental structure alone should cause the Administration to oppose S. 1421. As an initial matter, in a time when we are seeking to reduce the size of government, this bill would require a separate Archival Administration and concomitant financing. It would necessarily, therefore, add many more dollars to the budget.

At a more basic level, however, almost uniformly texts and studies on government emphasize that a President should have strong control over the departments and agencies under him. These treatises suggest that it is important to have fewer independent agencies, not more.

This conclusion was strongly supported by the Hoover Commission which, many years ago, combined a group of independent and autonomous agencies into the General Services Administration.

Finally, the most important function performed by the "Archives" is not historical, but is the management of the entire records system of the Federal government.

Certainly creating and preserving the records of our country is important. However, the much greater day-to-day responsibility is concerned with managing record control. For this reason, it is of utmost importance that the head of the Archives be accountable to the then-current Administration. The historical functions of the Archives can, as they are now, be properly and competently handled by professional historians under the control of this accountable official.

If you would like any additional information on this topic, please do not hesitate to contact me.

Robert L. Runaig

Judge

Chambers

United States Court of Claims

717 Madison Place, N. W.

Washington, D. C. 20005

December 4, 1981

Honorable Ted Stevens
Chairman, Committee on Governmental Affairs
Subcommittee on Civil Service, Post Office,
and General Services
Washington, D.C. 20510

Dear Senator Stevens:

I am in receipt of your letter of recent date concerning S. 1421, a bill to establish an independent National Archives Administration and to provide for Presidential appointment of the archivist for a ten-year term. You ask me because of my professional interest in the Archives and my past experience as Administrator of General Services of the United States to comment on the current organizational arrangement and the new bill.

As you know, I have discussed the matter in some detail with your assistant, Wayne Schley. My written comments are listed below in numerical order, in an effort to be brief:

1. The new bill would be extremely expensive and require separate archival administration and financing. It would necessarily add many more dollars to the budget.
2. All studies and texts on good government emphasize that a President should have strong control over all departments and agencies under him. The studies suggest that it is important to have less dangling, independent agencies, not more.
3. The Hoover Commission, many years ago, put together a whole group of independent agencies and called them the General Services Administration. We would not gain by reversing the work of one of the most outstanding, highly respected commissions in our nation's history.
4. Virtually the most important work done by the so-called "Archives" is the management of the entire records of our federal government. The control of these records requires

great expertise and administrative abilities. It has almost nothing to do with the historical archival functions. I'm very much afraid that the more exciting and interesting archival features would be stressed and records would easily be ignored under the proposed bill.

5. The libraries of ex-Presidents come under the Archivist. Any current President always has a close, private relationship with an ex-President, and the library aides given by the current President to the ex-President are an extremely important phase of this relationship. These libraries now come under the direct control of the current President and his personal appointees. They should remain that way. Control of Presidential libraries and relationships between presidents should not come solely under historical specialists, no matter how outstanding the specialist might be.
6. The President has the right to control all departments and agencies of our executive branch of government. The less control the President has over management, the worse shape our government will be in.
7. The entire problem of the Archives admittedly has a relationship with historians and has to do with history, but the entire idea of a separate Archives has far more to do with management. It cannot possibly injure or hurt the Archives to have just one person over the Archivist (as we do today). This one person is an appointee of the current President, is usually close to that President, and brings management and executive control to the National Archives.

As you can see, I feel that the present system established by former President Hoover and President Truman should be kept in place. I strongly recommend that S. 1421, setting up an independent National Archives Administration fail of passage.

Thank you very much for inviting me to add my comments to the record.

Sincerely,

Robert L. Kunyig