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THE WHITE HOUSE

WASHINGTON

February 7, 1984

2/7 : 4:30 - In response to call from Gest will, I said we had no objection JGR

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Legislative Veto and Regulatory Reform

Bob Bedell has provided me with a copy of the testimony Chris DeMuth proposes to deliver tomorrow before Senator Grassley's Subcommittee on Administrative Practice and Procedure. The testimony discusses Grassley's proposed amendment of S. 1080, the regulatory reform bill, which would require affirmative Congressional approval of major rules (while providing an opportunity for disapproval of minor rules).

You may recall that I mentioned at our February 2 staff meeting that DeMuth was trying to obtain Administration support for such an approach to regulatory accountability in the post-Chadha world. This testimony does not announce any Administration position, noting that the matter is still under review. The testimony simply discusses policy arguments pro and con on various forms of regulatory oversight.

I have no objections. There is no need for us to respond at this point, but I wanted to keep you abreast of developments on this issue.

Attachment

DRAFT (2/7/84)

STATEMENT OF CHRISTOPHER DeMUTH
ADMINISTRATOR FOR INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE
AND PROCEDURE
OF THE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ON LEGISLATIVE VETO

February 8, 1984

Chairman Grassley and members of the Subcommittee:

It is a pleasure to appear before you this morning to discuss legislative veto. During my last appearance before this Subcommittee in September, I only referred to it briefly: today I want to discuss legislative veto in more detail. I will start with a general discussion, and then narrow my comments to consider legislative veto of agency rulemakings, or "regulatory veto."

For many years Congress has adopted a wide variety of legislative vetos to provide oversight of Executive actions, and for other reasons. Since 1932, Congress has included over 200 versions of legislative veto in over 135 public laws, involving, e.g., war powers, budget deferrals, reorganizations of Federal agencies, and specific rulemakings.

Congress has not vetoed many Executive actions, however. In these 50 years, Congress has actually vetoed agency actions only 35 times. It also vetoed Presidential action 90 times--66 were veto rejections of Presidential spending deferrals; 24 were disapprovals of Presidential agency reorganization plans.

But when Congress did veto agency regulations, the regulations were highly controversial. For example, the Natural Gas Policy Act of 1978 (NGPA)1/ provides a phased deregulation of natural gas prices, with a system of incremental pricing to ease the transition. In effect, the statute provided for an initial experiment with incremental pricing for a small class of industrial users, while requiring the Federal Energy Regulatory Commission to promulgate "Phase II" rules to expand the coverage of incremental pricing to other industrial users. The statute permitted either House of Congress to disapprove the proposed expansion. When FERC submitted the proposed expansion to Congress, FERC itself recommended that the regulation be rejected. Congress vetoed the regulations; the Supreme Court declared the veto unconstitutional.2/

Another example, in 1975, Congress directed the Federal Trade Commission to "initiate ... a rulemaking proceeding dealing with

1/ P.L. 95-621.

2/ Process Gas v. Energy Council, 103 S.Ct. 3556 (1983).

the warranties and warranty practices in connection with the sale of used motor vehicles; ...". In 1980, the Congress provided that an FTC trade regulation rule should become effective unless both Houses of Congress (but not the President) disapproved it.3/ A concurrent resolution disapproving the rule passed both Houses of Congress in May 1982 by wide margins. The Supreme Court subsequently declared this veto legislative unconstitutional.4/

And finally, Chadha, an alien who remained in the United States after his student visa expired, was ordered by the Immigration and Naturalization Service to show cause why he should not be deported. The Attorney General ordered suspension of his deportation. But Congress had authorized either House of Congress to invalidate the Attorney General's decision to suspend. The House vetoed this suspension of deportation, and the Supreme Court, in INS v. Chadha, 103 S.Ct. 2764 (1983), declared this unconstitutional. Since that decision, Congress has enacted at least 16 provisions of law by which Appropriations Committees either need to approve the subsequent use of certain agency funds, or are authorized to waive certain time delays in agency action.

Nonetheless, efforts to apply a legislative veto to the rules of specific agencies continues unabated. Indeed, they have

3/ P.L. 96-252, sec. 21(a).

4/ Process Gas v. Energy Council, 103 S.Ct. 3556 (1983).

recently expanded in scope--at least on the regulatory front--since Chadha.

During this Administration, a large majority of both Houses have supported legislative veto of all agency rules in one form or another. In March 1982, Congressman Levitas had 252 cosponsors of a one-House veto proposal--144 Republicans, 108 Democrats. At the same time, the Senate adopted a two-House veto, 69 to 25, with support from 41 Republicans, 27 Democrats, and one Independent.

Until last year when the Supreme Court decided cases invalidating certain legislative vetos, a key characteristic of legislative veto provisions and proposals was that the Congressional resolution would not be presented to the President for his signature. In 1983, in Chadha and related decisions, the Supreme Court held this form of legislative veto unconstitutional in terms that appear to cover regulatory, spending, and foreign policy actions of both Executive and "independent" agencies. Congress has since considered what, if anything, should be done about the legislative vetoes contained in existing laws--and also whether a general regulatory veto provision, consistent with Chadha, would be good policy.

Mr. Chairman, you asked us today to discuss the Administration's position on regulatory veto, particularly your Amendment No. 2655 to S. 1080. We have yet to complete our

discussions of this amendment, and I cannot, therefore, express an Administration position concerning it at this time. But, as you are aware, this is an issue of great importance and broad impact on the basic roles of the three branches. We hope to soon have a position and will advise the Subcommittee when we do.

Supporters of regulatory veto focus on the need for Congress to constrain unelected bureaucracies which impose needlessly burdensome and confusing regulatory standards beyond what Congress intended. They argue that rulemaking is essentially lawmaking--and that Congress has granted too much authority for writing laws to Executive and "independent" agencies, and (derivitively) to the courts. Since the Congressional process of lawmaking is inherently one of consensus, negotiation, and compromise, they suggest a regulatory veto would return a share of the broad responsibility granted to others back to the Congress, where--they maintain--it belongs. Regulatory agencies, as they envision it, would continue to perform the technical work of designing rules, and would retain the initiative of drafting and proposing rules. But, the final say would rest with the Congress and President through the process of passage of a joint resolution.

Critics of regulatory veto argue on the other hand that the strength of Congress--as a voice of the people from each State and District--lies in its consideration and determination of broad public policy issues; that the role of Executive regulatory

agencies is to provide the technical expertise and scope of attention necessary to carry out the details of these broad policy decisions. They argue further that regulatory veto will undermine the finality of legislative--and therefore Executive--decisionmaking by a continuing process of second-guessing by one or both Houses. The resulting legal uncertainty will prevent the rules concerning statutory programs from becoming clear, thus hindering private efforts to comply with, or benefit from whatever regulatory standards a given Congress may adopt.

These popular arguments, however, mask more subtle, perhaps more important considerations. Since adoption of any new regulatory veto mechanism presents a very intricate set of new dynamics, it is essential to look first at the existing methods through which the President and Congress now oversee specific agency rulemakings, and then compare these with the proposal for additional forms of Congressional oversight. With this background of existing Presidential and Congressional oversight, we must then decide whether a new mechanism for oversight of agency regulations is really needed.

Clearly, there is a need for both the President and the Congress to oversee the issuance of agency regulations. The President is the Chief Executive, charged with seeing to the execution of the laws. Congress passes those laws. The courts review the actions of each. Oversight arises because the Congress, the President, and the Judiciary are both dependent

upon and independent of one another. Recognizing this, oversight is carried out, or not carried out as Chadha teaches, through various means.

The President's first responsibility, as Chief Executive, is to manage the government's administrative apparatus. Last September, I described two essential components of President Reagan's regulatory oversight program--that statutory discretion be exercised to ensure that rules are as cost-beneficial as possible, and that rules be reviewed to that end by the President and his designated agents, in this instance, the Heads of Departments and Agencies and the Office of Management and Budget. Four Presidents of both political parties have now established regulatory review programs, and it is now difficult to imagine that any President would discontinue the practice of centralized review so long as regulations are such an important part of the federal policy apparatus.

Most Congressional regulatory oversight is not lawmaking. There are constant oral communications leading to a readjustment of activity and positions, designed to accomodate mutual interests. These types of contacts, which are no different than most informal interagency negotiations, also avoid more formal confrontations. The President, Executive Office staff, Congressional Committee chairmen, Committee staff, other Members of Congress and their staff, agency heads, agency staff, constituent groups, and the public at large all talk with, meet

with, consult with, negotiate with, accommodate, litigate, and argue with each other and arrive at decisions.

Some Congressional regulatory oversight mechanisms are more formal. They involve Congressional Hearings, the enactment of statutes, or detailed budget justifications leading to appropriations; or, and often, in Appropriations Acts. The Congress has several large institutions to help it in these efforts, including its own staffs, the Congressional Budget Office, the General Accounting Office, and the Office of Technology Assessment.

Except in the Senate, where regulatory oversight is also tied to the confirmation process, Congressional regulatory oversight is tied to the legislative process--to authorizing legislation and appropriations. Much of the Congress' regulatory oversight is periodic, througn annual appropriations, and annual or other fixed terms for reauthorization. And because of the thousands of regulations issued each year, there is continual discussions with Congress and its staffs.

Given the large number and kinds of existing methods by which Congress now oversees agency rulemakings, we have identified specific considerations by which we are evaluating the various proposals for Congressional regulatory veto.

1. Historical. There are several reasons why legislative veto

procedures have been enacted in the past. While these may not be decisive now, they are instructive:

-- Presidents used it to induce broader grants of authority from Congress.

-- Congressmen used it as a counterbalance to deliberately broad statutory standards.

-- House Members used it to share in regulatory influence provided the Senate by the confirmation process.

-- Members of authorizing Committees used it to counterbalance existing Appropriations Committees line-item spending delays and other appropriations riders.

-- Junior Members have supported the expedited floor votes found in most legislative veto provisions to dilute power held by authorizing Committee Chairmen.

-- Program opponents have supported it to dilute power of program advocates, generally clustered in authorizing committees.

-- The House and the Senate have used it as a check upon the other Body.

Experience with prior legislative veto provisions is of limited value, however. We are not aware of any developed experience with statutory provisions which provides that rules do not take effect unless approved by a joint resolution. We don't have experience therefore as to the effect of rules approved by a joint resolution on subsequent agency action or on judicial review of that rule. Similarly, we do not have experience with joint resolutions of disapprovals of agency rules that are not signed by the President. Unfortunately, this absence of experience further compounds the difficulty of deciding with confidence the appropriate mechanism for a regulatory veto provision.

2. Efficiency. To be effective, a new regulatory veto mechanism should not swamp Congress with new legislative business. The mechanism selected is critical.

At one extreme, Congress could provide expedited procedures to disapprove any agency rule by joint resolution. However, Congress has demonstrated that it can act quickly when it is strongly against a rule--without any legislative veto procedures at all--e.g., the statutory override of the saccharin ban (P.L. 95-203) and the seatbelt-ignition interlock rule (P.L. 93-492). Therefore, some argues that no special provisions are needed or desirable.

At the other extreme, Congress could provide that no agency

ule could take effect for a pre-determined time period, and that the rule would go into effect only if it had been approved during this time by joint resolution. Expediting procedures could provide for floor consideration within designated time periods. This would involve moving thousands of additional regulatory matters through Congress and the White House each year, and most of them would be of little Congressional interest. On the other hand, giving Congress increased responsibility and accountability for regulations could have several desirable effects on regulatory policy and agency management.

3. Agency Efficiency. Just as the regulatory veto process should not stymie Congress in its other legislative work, nor should it stymie the ability of agencies to implement statutory obligations. Furthermore, any regulatory veto mechanism should contain emergency procedures allowing prompt and lasting agency regulatory action. Any provision authorizing legislative veto must also address how changes to rules approved by a joint resolution can be altered by subsequent agency action. Must minor changes to such a rule also be approved by a joint resolution?

4. Executive Accountability. Although the President and officials of the Executive Branch must be accountable to Congress and the public, there can be only one Executive.

5. A final issue is the effect of regulatory veto procedures on

judicial review of agency rules. A public law, unlike a regulation, is not subject to review under the APA. Unless constitutional considerations require otherwise, a law cannot be overturned by a court on the grounds of having been created in an "arbitrary and capricious" manner as agency rules are.

The effect upon subsequent judicial review of a joint resolution approving--or even disapproving--a regulation is a matter that must squarely be addressed. The statutes providing for a legislative veto could provide that this effect is to preclude further judicial consideration of the rule, except, of course, for constitutional challenges. This would treat an "approved" rule like a statute. On the other extreme, the statute providing for the regulatory veto could provide that the Congressional approval has no effect on subsequent judicial review. In this case, a rule could be overturned by a court for record inadequacies, procedural defects or any other ground provided by the APA or authorizing statute even though both Houses of Congress and the President have approved a joint resolution approving the rule. The provision authorizing the legislative veto must address the effect upon judicial review.

The regulatory veto proposals in Amendment No. 2655 to S. 1080, and in title II of H.R. 3939, offer a combination in procedures. "Major" rules would not take effect without Congressional approval; "non-major" rules would take effect unless disapproved by joint resolution.

Even this proposal, however, entails a substantial increase in Congressional workload. Under Executive Order 12291, OMB reviews 40 to 50 "major" (over $100 million in impact) final rules and about 1,500 "non-major" final rules a year. In addition, OMB does not review the rules of most "independent" regulatory agencies which might involve an additional dozen "major" rules each year.

To place this in context, over the past ten years, Congress has passed about 200 public laws in its first session; 400 public laws in the second. Adding to Congress' annual legislative calendar 60 or more joint resolutions to affirm major regulations, plus an unknown number of regulatory disapprovals, could increase the number of legislative transactions considered by Congress from 10% to more than 25%. However, Congress' workload might just shift in focus, not increase. Currently, Congress spends most of its time laying down new laws. Regulatory veto would demand "equal time" to ratifying or modifying the application of existing laws.

Mr. Chairman, thank you for the opportunity to present these views. I assure you we will transmit our views on your amendment to S. 1080 as soon as we can. We wish to commend you and thank you and your colleagues for working so diligently to improve the regulatory process.

STATEMENT OF CHRISTOPHER DeMUTH
ADMINISTRATOR FOR INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE
AND PROCEDURE
OF THE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ON LEGISLATIVE VETO

February 8, 1984

Chairman Grassley and members of the Subcommittee:

It is a pleasure to appear before you this morning to discuss the proposals for giving Congress a larger and more explicit role in the rulemaking process through one form or another of "regulatory veto." Before the Supreme Court's decisions last term in INS v. Chadha and related cases, the Administration had opposed on constitutional grounds many "legislative veto" provisions and proposals (many of them affecting Executive branch decisions other than rulemaking). At the same time, substantial majorities of both Houses of the previous Congress were on record as favoring some version of legislative veto over agency rules.

Now that the Court has definitively resolved the constitutional issue, we are faced with the more direct and difficult policy issue: Should the President and Congress agree, through legislation, to procedures that would approximate the defunct legislative vetoes over some or all agency rules, while avoiding their constitutional pitfalls? Recent proposals offered

by Members of both Houses and both political parties have answered this question in the affirmative--while differing significantly on what those procedures should be. Your own proposal, Mr. Chairman, of Amendment No. 2655 to S. 1080, is one of the most prominent of these proposals.

The Administration has yet to adopt a position on these proposals. Our hesitation regarding the various across-the-board regulatory veto proposals is not a result of a lack of interest. To the contrary, we believe these proposals are of profound importance, and therefore worthy of the most careful deliberation. We are following the Congressional debates on these proposals with great interest, and hope to have a fully developed position of our own in the near future. But, I do not want to leave the impression that we will ultimately conclude by supporting some provision. It may well be that given the existing forms of oversight and the complexities of adding new, constitutional ones, a universal regulatory veto provision is not the best approach. We shall see.

Supporters of regulatory veto focus on the need for Congress to constrain unelected bureaucracies which impose needlessly burdensome and confusing regulatory standards beyond what Congress intended. They argue that rulemaking is essentially lawmaking--and that Congress has granted too much authority for writing laws to Executive and "independent" agencies, and (derivatively) to the courts. Since the Congressional process of

lawmaking is inherently one of consensus, negotiation, and compromise, they suggest a regulatory veto would return a share of the broad responsibility granted to others back to the Congress, where--they maintain--it belongs. Regulatory agencies, as they envision it, would continue to perform the technical work of designing rules, and would retain the initiative of drafting and proposing rules. But the final say would rest with the Congress and President through the process of passage of a joint resolution that either approves or disapproves the proposed rules.

Critics of regulatory veto argue on the other hand that the strength of Congress lies in its consideration and determination of broad public policy issues; that the role of Executive regulatory agencies is to provide the technical knowledge and scope of attention necessary to carry out the details of these broad policy decisions. They argue further that regulatory veto will involve intolerable delays and undermine the finality of legislative--and therefore Executive--decisionmaking by a continuing process of second-guessing by one or both Houses. The resulting legal uncertainty will prevent the implementation of statutory programs from becoming clear, thus hindering private efforts to comply with, or benefit from, whatever regulatory standards a given Congress may adopt.

These popular arguments, however, mask more subtle, perhaps more important considerations. Since adoption of any new

regulatory veto mechanism presents a very intricate set of new dynamics, it is essential to look first at the existing methods through which the President and Congress now oversee specific agency rulemakings, and then compare these with the proposal for additional forms of Congressional oversight. With this background of existing Presidential and Congressional oversight, we must then decide whether a new mechanism for oversight of agency regulations is really needed.

Clearly, there is a need for both the President and the Congress to oversee the issuance of agency regulations. The President is the Chief Executive, charged with seeing to the execution of the laws. Congress passes those laws. The courts review the actions of each. Mutual oversight exists because the Congress, the President, and the Judiciary are both dependent upon and independent of one another. And this oversight is carried out through a variety of means.

The President has the responsibility, as Chief Executive, to manage the government's administrative apparatus. Last September, I described the essential components of President Reagan's regulatory oversight program--that statutory discretion be exercised to ensure that rules are as cost-beneficial as possible, and that individual rules be reviewed to that end before they are issued. Four Presidents of both political parties have required similar regulatory review procedures, and it is difficult to imagine that any President would discontinue

the practice of centralized review so long as regulations are such an important part of the federal policy apparatus.

Most Congressional regulatory oversight is not lawmaking. There are constant oral communications between the Legislative and Executive branches leading to a readjustment of activity and positions, designed to accommodate mutual interests. These types of contacts, which are no different than most informal interagency negotiations, also avoid more formal confrontations. The President, Executive Office staff, Congressional committee chairmen, committee staff, other Members of Congress and their staff, agency heads, agency staff, constituent groups, and the public at large all talk with, meet with, consult with, negotiate with, and accommodate or sometimes litigate against each other to arrive at decisions.

Some Congressional regulatory oversight mechanisms are more formal. They involve Congressional hearings, the enactment of statutes, or detailed budget justifications leading to appropriations. The Congress has several large institutions to help it in these efforts, including its own staffs, the Congressional Budget Office, the General Accounting Office, and the Office of Technology Assessment.

Except in the Senate, where regulatory oversight is also tied to the confirmation process, Congressional regulatory oversight is often tied to the legislative process--to authorizing

legislation and appropriations--although strictly oversight hearings are by no means uncommon. Much of the Congress' regulatory oversight is periodic, through annual appropriations, and annual or other fixed terms for reauthorization. And because of the thousands of regulations issued each year, there are frequent discussions between Congress and Executive agencies.

Given the large number and kinds of existing methods by which Congress now oversees agency rulemakings, we have identified specific considerations by which we are evaluating the various proposals for Congressional regulatory veto.

1. Historical. There are several reasons why legislative veto procedures have been enacted in the past. While these may not be decisive now, they are instructive.

Presidents have accepted broad grants of authority from Congress coupled with a legislative veto. Congressmen have used it as a counterbalance to deliberately broad statutory standards, as a means to exert strong influence on Executive interpretation and implementation. House Members have used it to share in regulatory influence provided the Senate by the confirmation process. Authorizing committees have used it to counterbalance the power of appropriations committees. Junior Members have supported the expedited floor votes found in most legislative veto provisions to equalize power held by authorizing committee chairmen. Program opponents have supported it to dilute power of

program advocates. The House and the Senate have used it as a check upon the other body.

Experience with prior legislative veto provisions is of limited value, however. We are not aware of any experience with requirements that rules do not take effect unless approved by a joint resolution. Therefore, we do not know the effect on judicial review of rules approved by a joint resolution, for example. Similarly, we do not have experience with joint resolutions of disapprovals of agency rules that are passed by Congress but are not signed by the President. Both of these possibilities are presented by the regulatory veto provisions under discussion. Unfortunately, this absence of experience further compounds the difficulty of deciding with confidence the appropriate mechanism for a regulatory veto.

2. Efficiency. To be effective, a new regulatory veto mechanism should not swamp Congress with new legislative business. The mechanism selected is critical.

At one extreme, Congress could provide expedited procedures to disapprove any agency rule by joint resolution. However, Congress has demonstrated that it can act quickly when it is strongly against a rule--without any legislative veto procedures at all--e.g., the statutory override of the saccharin ban (P.L. 95-203) and the seatbelt-ignition interlock rule (P.L. 93-492). Therefore, some argue that no special provisions are needed or

desirable.

At the other extreme, Congress could provide that no agency rule could take effect for a pre-determined time period, and that the rule would go into effect only if it had been approved during this time by joint resolution. Expediting procedures could provide for floor consideration within designated time periods. This would involve moving thousands of additional regulatory matters through Congress and the White House each year, and most of them would be of little Congressional interest. On the other hand, giving Congress increased responsibility and accountability for regulations could have some desirable effects on regulatory policy and agency management.

3. Agency Efficiency. Just as the regulatory veto process should not stymie Congress in its other legislative work, nor should it stymie the ability of agencies to implement statutory obligations. Furthermore, any regulatory veto mechanism should contain emergency procedures allowing prompt and lasting agency regulatory action. Any provision authorizing legislative veto must also address how changes to rules approved by a joint resolution can be altered by subsequent agency action. Must minor changes to such a rule also be approved by a joint resolution?

4. Executive Accountability. Although the President and officials of the Executive Branch must be accountable to Congress

and the public, there can be only one Executive. With so much execution of federal law taking place through regulatory fiats--where large social and economic issues are at stake, statutes often grant wide discretion to agencies and are sometimes downright vague or contradictory, and traditional budget and accounting controls may have little bearing. Strong Executive oversight is essential.

5. Judicial Review. A public law, unlike a regulation, is not subject to review under the Administrative Procedure Act. Unless constitutional considerations require otherwise, a law cannot be overturned by a court on the grounds of having been created in an "arbitrary and capricious" manner as agency rules are.

The effect upon subsequent judicial review of a joint resolution approving--or even disapproving--a regulation is a matter that must squarely be addressed. The statutes providing for a legislative veto could provide that this effect is to preclude further judicial consideration of the rule, except, of course, for constitutional challenges. This would treat an "approved" rule like a statute. On the other extreme, the statute providing for the regulatory veto could purport to provide that the Congressional approval has no effect on subsequent judicial review. In this case, a rule could be overturned by a court for record inadequacies, procedural defects or on any other ground provided by the APA or authorizing statute even though both Houses of Congress and the President have

approved a joint resolution supporting the rule. Any law authorizing a regulatory veto must address the effect upon judicial review.

The regulatory veto proposals in Amendment No. 2655 to S. 1080, and in title II of H.R. 3939, offer a combination in procedures. "Major" rules would not take effect without Congressional approval; "non-major" rules would take effect unless disapproved by joint resolution.

Even this proposal, however, entails a substantial increase in Congressional workload. Under Executive Order 12291, OMB reviews 40 to 50 "major" (over $100 million in impact) final rules and about 1,500 "non-major" final rules a year. In addition, OMB does not review the rules of most "independent" regulatory agencies which might involve an additional dozen "major" final rules each year.

To place this in context, over the past ten years, Congress has passed about 200 public laws in its first session; 400 public laws in the second. Adding to Congress' annual legislative calendar 60 or more joint resolutions to affirm major regulations, plus an unknown number of regulatory disapprovals, could increase the number of legislative transactions considered by Congress from 10% to more than 25%. However, Congress' workload might just shift in focus, not increase. Currently, Congress spends most of its time laying down new laws.

Regulatory veto would demand "equal time" to ratifying or modifying the application of existing laws--and this, judging from my own experience in reviewing agency rules, would be a healthy development.

Mr. Chairman, thank you for the opportunity to present these views. I assure you we will transmit our views on your amendment to S. 1080 as soon as we can. We wish to commend you and thank you and your colleagues for working so diligently to improve the regulatory process.

THE WHITE HOUSE

WASHINGTON

December 5, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: Brookings Institution Remarks

The following responds to your inquiries of December 3:

1. Quotations on judicial self-restraint:

> "[W]hile unconstitutional exercise of power by the executive or legislative branches of government is subject to judicial restraint, the only check upon our own exercise of power is our own sense of self-restraint."
>
> - Justice Stone dissenting in United States v. Butler, 297 U.S. 1, 78-79 (1936)

> "[J]udicial self-limitation may be the most significant aspect of judicial action in the American constitutional scheme. Such self-limitation is not abnegation; it is the expression of an energizing philosophy of the distribution of governmental powers."
>
> Felix Frankfurter, The Commerce Clause (1937)

2. Examples of legislative vetoes: There are some 207 separate legislative veto provisions in over 126 different public laws. These ubiquitous legislative vetoes range from the momentous, such as those in the War Powers Resolution and the Foreign Assistance Act, to the picayune, such as those in the Dwight D. Eisenhower Memorial Bicentennial Civic Center Act and the Conveyance of Submerged Lands to Guam, Virgin Islands, and American Samoa Act. In your remarks I would begin by pointing out both the large number of legislative vetoes and the range of areas in which they appear. I would then cite the following examples which may be of particular interest to your audience:

- INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT ("IEEPA") (broad power to regulate economic transactions is triggered by declaration of emergency by President based on "unusual and extraordinary threat" from outside the United States, but emergency may be terminated by concurrent resolution procedure contained in National Emergencies Act)

- NATURAL GAS POLICY ACT OF 1978 (presidential reimposition of natural gas price controls may be disapproved by concurrent resolution) (Congress may reimpose natural gas price controls by concurrent resolution) (Federal Energy Regulatory Commission amendment to pass through incremental costs of natural gas, and exemptions therefrom, may be disapproved by resolution of either House) (procedure for congressional review established)

- FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1980 (Federal Trade Commission rules may be disapproved by concurrent resolution)

3. Examples of instances in which the Administration has refused to interpret statutes in a broad manner beyond the discernable intent of the enacting Congress:

- Bob Jones case: Even though we opposed on policy grounds granting tax exemptions to discriminatory schools, we did not feel Congress had given the IRS the authority to withhold exemptions on that basis. We did not distort our reading of the legislation to fit our policy preferences.

- Grove City: We read the nondiscrimination and reporting provisions of Title IX as applying only to the particular program receiving federal financial assistance, and not more broadly to the entire school. This narrower view is consistent with the language and history of the statute, regardless of policy preferences.

- Attorneys fees litigation: We successfully challenged the award of attorneys fees to nonprevailing parties on the ground that the statute did not contemplate such awards. The previous Administration was very "soft" on these issues, accommodating the desires of "public interest" litigants to recover large fees even when they did not clearly prevail.

THE WHITE HOUSE

WASHINGTON

Date 9.21.83

Suspense Date _____

MEMORANDUM FOR: John

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

_____

_____

_____

_____

U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

September 20, 1983

Honorable Elliott H. Levitas
Congress of the United States
House of Representatives
2416 Rayburn House Office Building
Washington, D.C. 20515

+ file

Dear Elliott:

The President has asked me to respond to your letter of July 19, 1983 regarding the aftermath of the Supreme Court's legislative veto decisions.

We enthusiastically share your view that the Legislative and Executive Branches should address the issues created by the legislative veto decisions in a constructive and cooperative way. We applaud your initiative in this approach. The Administration looks forward to productive deliberations with you and other interested Members of Congress on this subject.

As you know, the Administration provided testimony concerning the Supreme Court's legislative veto decisions on July 18, 1983. At that time, I was a witness before the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary of the House of Representatives. The positions which the Administration expressed to Congress through my testimony included our analysis of the Supreme Court decisions and our observations regarding potential future actions to enhance the accountability of government decisionmaking, particularly by "independent" agencies. I provided, along with my testimony, a comprehensive inventory of all of the statutes which we had identified which contained legislative veto provisions. I am enclosing herewith a copy of my testimony and our inventory.

✓cc: Fred Fielding
Counsel to the President

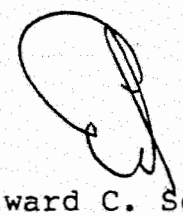
We have some reservations, at least at this time, regarding the need for a formal conference or commission to discuss legislative vetoes or the appropriate Executive or Legislative Branch response to the Supreme Court decisions. Since there are so many forms of vetoes connected with so many different substantive laws which are designed to operate in such diverse ways, we are concerned with treating the situation in a manner which may assume that one "solution" or "response" is desirable or even possible. I believe it will be useful to hear from various scholars and commentators in the form of articles and speeches and to otherwise listen to the marketplace of ideas before formalizing any commission or conference structure. A premature and structured forum for attempts to resolve these questions may simply lead to solutions for the sake of solutions before all of the alternatives are analyzed.

Perhaps we should consider the extent to which the Administrative Conference of the United States might be an appropriate forum for the discussion of matters such as this. As you know, that is a permanent agency established by Congress for the purpose of providing a medium through which federal agencies, assisted by outside experts, can cooperatively study mutual problems, exchange information and develop recommendations on matters of administrative law. The Conference membership includes, in addition to its governmental membership, thirty-six private lawyers, university faculty members and others specially informed in law and government. Of course, Members of Congress would participate fully, as experts or otherwise, in any consideration by the Conference of issues raised by the legislative veto decisions.

I believe we should be reluctant to support the creation of new entities for the examination of problems which can be as easily considered by existing institutions. Ad hoc committees and commissions, once created, seem to develop perpetual life. Institutions created by the Constitution and staffed by the dedicated people placed in them by the electorate and the President's appointees presumptively ought to be capable of addressing these difficult issues. I would hope that this might be an instance in which we could respond to this important subject without creating another government entity.

Please let me know if you wish to discuss this in greater detail.

With best regards,



Edward C. Schmults
Deputy Attorney General

Enclosures

cc: Honorable Thomas P. O'Neill, Jr.
The Speaker

Honorable Howard Baker
Senate Majority Leader

THE WHITE HOUSE

WASHINGTON

September 19, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Levitas Note Concerning His Power Sharing Letter

Congressman Levitas has written a curt note to you inquiring why it has taken so long to respond to his July 19 letter suggesting the convocation of a Conference on Power Sharing to assess the aftermath of INS v. Chadha. You will recall that we referred the letter to Justice on August 4, and Justice responded on August 23 with a draft reply for the Deputy Attorney General's signature. On August 24, I sent a memorandum to you, along with a draft memorandum to Schmults, agreeing with the bulk of the draft response but suggesting deletion of the paragraph on the Administrative Conference. You signed and sent that memorandum on September 8.

I called Deputy Assistant Attorney General Marshall Cain, and confirmed that the Schmults reply with the Administrative Conference paragraph deleted should be sent posthaste. Cain stated this would be done. I have prepared a draft reply to Levitas' note. I have also prepared a memorandum to Schmults to ensure that Justice does not tarry further.

Attachment

THE WHITE HOUSE

WASHINGTON

August 24, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Proposed Response to Congressman Levitas' Letter of July 19, 1983, to the President Concerning Legislative Vetoes

Robert McConnell has now responded to our memorandum of August 4, which requested prompt guidance from the Justice Department concerning a response to Congressman Levitas' proposal to convene a Conference on Power Sharing to explore the ramifications of the legislative veto decisions. Justice suggests that the Deputy Attorney General reply to Levitas, and that the reply generally reject the call for such a conference.

I agree with Justice's view that there is no need to involve the President personally in this dispute (particularly in light of the President's position as a candidate in favor of the legislative veto, an irony Levitas noted in his letter). I also agree with the substance of Justice's response, although I question the need to suggest the availability of the Administrative Conference as an alternative to Levitas' proposal.

Attachments

THE WHITE HOUSE

WASHINGTON

August 24, 1983

MEMORANDUM FOR ROBERT MCCONNELL
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGISLATIVE AFFAIRS
U.S. DEPARTMENT OF JUSTICE

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

SUBJECT: Proposed Response to Congressman Levitas' Letter of July 19, 1983, to the President Concerning Legislative Vetoes

I agree that it would be appropriate for the Deputy Attorney General to reply to Congressman Levitas' letter to the President suggesting the convocation of a Conference on Power Sharing to discuss the impact of the legislative veto decisions. I am also in general agreement with the substance of the draft reply, although I question the need to include the second paragraph on page two, suggesting that the Administrative Conference would be an appropriate forum for consideration of the concerns raised by Levitas. This suggestion is mildly inconsistent with the rest of the letter, and perhaps should be held in reserve in case Levitas continues to press his proposal.

FFF:JGR:aea 8/24/83

cc: FFFielding
✓JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

September 19, 1983

MEMORANDUM FOR EDWARD C. SCHMULTS
DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Levitas Note Concerning His Power Sharing Letter

As you will see from the attached, Congressman Levitas is anxiously awaiting our reply. Pursuant to a discussion between John Roberts of my staff and Marshall Cain of your Office of Legislative Affairs, it is my understanding that your draft reply - minus the Administrative Conference paragraph - will be sent without further delay.

Attachments

FFF:JGR:aea 9/19/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

September 19, 1983

Dear Elliott:

Thank you for your note of September 15, inquiring into the status of the Administration's response to your proposal that a "Conference on Power Sharing" be convened to consider the effects of the Supreme Court's decision in Immigration and Naturalization Service v. Chadha. It is my understanding that you will soon be receiving a reply over the signature of the Deputy Attorney General. I am sorry if the delay has caused any inconvenience.

Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable
Elliott H. Levitas
United States House of
Representatives
Washington, D.C. 20515

FFF:JGR:aea 9/19/83
bcc: FFFielding/JGRoberts/Subj./Chron

ID # [redacted]

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

John R
Reed

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Elliott H. Levitas

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

Subject: Suggests the establishment of a conference on power sharing to address the new legislative veto concept

ROUTE TO:	ACTION		DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CU 011	ORIGINATOR	831081 03		C	831081 04
	Referral Note:				
CUAT 18	D	831081 03		C	831081 04
	Referral Note:				
CUFIEL	S	831081 04	FI	A	831081 04
	Referral Note:				
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		/ /			/ /
	Referral Note:				

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

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: memo to Edward Schmults for reply

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

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15422

AUG -3 1983

JL00403

D: 154422 CORRESPONDENCE TRACKING WORKSHEET PAGE D01

INCOMING CORRESPONDENCE DATE 830719 RECEIVED DATE 830721

(PREFIX)	(FIRST)	(LAST)	(SUFFIX)
HE HONORABLE	ELLIOTT H.	LEVITAS	

TITLE:

RGANIZATION: U. S. HOUSE OF REPRESENTATIVES

STREET:

CITY: WASHINGTON STATE: DC ZIP: 20515

COUNTRY:

UBJECT: SUGGESTS THE ESTABLISHEMENT OF A CONFERENCE ON POWER SHARING TO ADDRESS THE NEW LEGISLATIVE VETO CONCEPT

GY/OFF	ACTION CODE	TRACKING DATE
ADUBE	ORG	830721

KD A 830801 DD

TAFF NAME: PRESIDENT REAGAN MEDIA: L OPID: LW TYPE: IBA

OMMENTS:

ODES: REPORT INDIV: 1230 USER:

CU Fiel R DD 830802 C 830804

Aug 4 83 FFF memo to Edward Schmult

THE WHITE HOUSE

WASHINGTON

August 4, 1983

MEMORANDUM FOR EDWARD C. SCHMULTS
DEPUTY ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

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

SUBJECT: Levitas Proposal Concerning Legislative Veto

Congressman Levitas has written the President, suggesting that a "Conference on Power Sharing" be convened to assess power sharing and accountability in the wake of the Chadha decision. We would like the views of the Justice Department on this proposal. In light of the importance of the issue, I think we should respond to Levitas promptly.

Thank you.

Attachment

FFF:JGR:aw 8/4/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 4, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Levitas Proposal Concerning Legislative Veto

Ken Duberstein has referred to us a letter from Congressman Levitas to the President, and has so advised Levitas. In his letter Levitas proposes a "Conference on Power Sharing" to determine "the manner of power sharing and accountability within the federal government" in the wake of the Chadha decision. The Conference would be composed of executive branch representatives, Congressional leaders, academics, business and labor representatives, and so on. Levitas suggests that such a Conference would be better than years of uncertainty and wasteful confrontation.

There already has, of course, been a "Conference on Power Sharing" to determine "the manner of power sharing and accountability within the federal government." It took place in Philadelphia's Constitution Hall in 1787, and someone should tell Levitas about it and the "report" it issued. After Chadha the Administration has been proceeding in a very low-key fashion, and thus far Congress has generally avoided any precipitous action. I do not think Levitas can back up his veiled threats broadly to revoke excutive or agency power or impose myriad appropriations restrictions if we do not agree to his conference proposal. Those alternatives are simply unworkable. It is not in our interest to convene or participate in a grandiose convocation on power sharing. At the very least we should wait to see if we do face any serious Congressional reaction.

Since the legislative veto problem has been broadly staffed, however, I recommend consulting with Justice before issuing a response. Justice representatives chair both the working group convened immediately after Chadha and the Cabinet Council task force looking at long range responses. A draft memorandum to Schmults, asking for Justice's views, is attached for your review.

Attachment

August 1, 1983

Dear Elliott:

On behalf of the President, I would like to thank you for your letter proposing a Conference on Power Sharing in response to the recent Supreme Court decision relating to the legislative veto.

The President appreciates your thoughtful comments on this important issue. Rest assured that your proposal is now being shared with White House Counsel for careful study and consideration.

With best wishes,

Sincerely,

Kenneth M. Duberstein
Assistant to the President

The Honorable Elliott H. Levitas
House of Representatives
Washington, D.C. 20515

KMD/CMP/las --

cc: w/copy of inc, Fred Fielding - for DIRECT follow-up response

THE WHITE HOUSE

WASHINGTON

August 1, 1983

John is looking for a response — it may already be in your briefcase

AUG 3 1983

Dear Elliott:

On behalf of the President, I would like to thank you for your letter proposing a Conference on Power Sharing in response to the recent Supreme Court decision relating to the legislative veto.

The President appreciates your thoughtful comments on this important issue. Rest assured that your proposal is now being shared with White House Counsel for careful study and consideration.

With best wishes,

Sincerely,

Ken D.

Kenneth M. Duberstein
Assistant to the President

The Honorable Elliott H. Levitas
House of Representatives
Washington, D.C. 20515

ATLANTA JOURNAL AUGUST 2, 1983

Durwood McAlister

President should accept Rep. Levitas' invitation

President Reagan hasn't had much time to read his domestic mail lately. He's been preoccupied with moving warships and troops around and dealing with diplomatic initiatives aimed at resolving the crisis in Central America.

But there's a letter on his desk (if it hasn't been shuffled off into some bureaucratic limbo) that deserves his attention.

It was written by Georgia Rep. Elliott Levitas. In it, Levitas proposes a "National Conference on Power Sharing" to seek a peaceful, harmonious resolution of a growing conflict between the legislative and executive branches of government.

Levitas has urged the president to join with other officials in the executive branch, leaders of Congress, representatives of the academic community and others to deal with the dilemma raised by the Supreme Court's decision nullifying the legislative veto.

It would be a mistake for President Reagan to ignore Levitas' letter.

The court's decision has, as Levitas noted in his letter, put the executive and legislative branches on "a collision course in the operation of the federal government." Deprived of the legislative veto, Congress is now looking for other ways to maintain its constitutional authority.

"Some of the potential congressional responses to the court's decision are more intrusive, restrictive and unwieldy than others," he wrote, "But all manner of means will be utilized to reassert an accountability to the Congress over actions previously covered by the legislative veto.

"So long as this uncertainty exists I foresee the potential for years of wasteful and bitter confrontation and even chaos in our government. . . . I truly believe we are at a new crossroads in the course of our governmental development, and I believe we need to deal with it as responsibly and objectively as possible, not just for the present but for the future as well."

President Reagan should realize by n that Levitas must be taken seriously. He is t bulldog responsible for most of the legislati vetoes which have been imposed in rece years. He has devoted most of his congressior career to assuring that the lawmaking functi is not taken over by executive branch burea crats.

Levitas has offered the president a grac ful, reasonable way to avoid a drawn-out, tra matic confrontation with Congress. If it rejected there can be little doubt that Congr will move decisively to try to reassert its a thority over the lawmaking process.

If it is accepted, there is the potential f the beginning of a new, cooperative relatic ship between the president and Congress; a not only in matters of domestic policy.

President Reagan would have found such relationship very useful during the last tv weeks. He will find it just as useful in the f ture if he has the good sense to respond favor bly to Levitas' proposal.

#154432

ELLIOTT H. LEVITAS
4TH DISTRICT, GEORGIA

WASHINGTON OFFICE:
2416 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-4272

HOME OFFICE:
141 EAST TRINITY PLACE
DECATUR, GEORGIA 30030
(404) 377-1717

MOBILE OFFICE:
TRAVELS THE DISTRICT SERVING YOU

Congress of the United States
House of Representatives
Washington, D.C. 20515

PUBLIC WORKS AND TRANSPORTATION COMMITTEE

SUBCOMMITTEES:
CHAIRMAN, INVESTIGATIONS AND OVERSIGHT
AVIATION
PUBLIC BUILDINGS AND GROUNDS

GOVERNMENT OPERATIONS COMMITTEE

SUBCOMMITTEES:
LEGISLATION AND NATIONAL SECURITY
INTERGOVERNMENTAL RELATIONS AND HUMAN RESOURCES

ZONE WHIP

July 19, 1983

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The Supreme Court's decision relating to the legislative veto has created a situation of uncertainty and the potential for disruption and serious confrontation within our government. I would hope that the Executive and Legislative Branches can address this new circumstance in a constructive and cooperative way so that the manner of power sharing and accountability within the federal government can be resolved in a meaningful and harmonious context.

I will not address the merits or demerits of the Court's decision nor relate the historical and pragmatic and evolutionary constitutional development of the legislative veto concept. You are well aware of the rationale and importance of the legislative veto, having editorially supported it as a commentator and a columnist, having specifically endorsed it as a candidate for President (Youngstown, Ohio, October 8, 1980) and having embraced it as part of the 1980 Republican Party Platform. Therefore, I will address myself to the vital question of where we go from here.

Obviously, Congress can devise a host of mechanisms within the scope of the Court's decision that will reassert the Congressional authority over decisions of the President, executive agencies, and independent agencies. These mechanisms could range from stripping away all, or most, of the delegated discretionary powers to the use of appropriation restrictions to the structuring of procedural devices to requiring affirmative Congressional approval for all major actions or regulations to proposing a Constitutional Amendment -- to name a few. Indeed, both the House and Senate have already taken actions in the Court decision's aftermath to do some of these things.

Some of the potential Congressional responses to the Court's decision are more intrusive, restrictive, and unwieldy than others, but all manner of means will be utilized to reassert an accountability to the Congress over actions previously covered by the legislative veto.

So long as this uncertainty exists I foresee the potential for years of wasteful and bitter confrontation and even chaos in our government. It is for this reason that, as one first step, I urge the early convening

of a Conference on Power Sharing to address this new situation and consider solutions. I truly believe we are at a new crossroads in the course of our governmental development, and I believe we need to deal with it as responsibly and objectively as possible, not just for the present but for the future as well.

The Conference I propose would involve assembling representatives of the Executive Branch, leaders in the Congress, people from the academic community, representatives from "think tanks" (e.g. American Enterprise Institute, the Brookings Institution, etc.), organized labor, the business community, public interest groups and the like. This Conference would not be a Commission expected to propose by consensus or vote specific solutions, but rather would be a means for laying out the problem, defining it, and exploring directions that could lead to solutions in a free and open and thorough dialogue. I believe this Conference could meet for a relatively short period in early Fall and provide a focus for the cooperative consideration of this matter. It would take the joint efforts of yourself and the Congress to call and provide for such a Conference, but I think the benefits would be enormous and the failure to take such action will leave the consideration of this issue to years of disruptive, haphazard and confrontational resolution.

The Conference could result in some short term or long term specific proposals, or it could lead to a subsequent more formally structured Commission but surely it would go a long way to defining the dimensions of this problem and outlining areas of concern that need to be addressed. It would provide a forum for providing a common data base and avoid having all of the different points of view speaking to each other from a distance in press releases and legislative or administrative actions. It would surely lead to a better and clearer understanding of both differences and common ground.

I hope you will favorably consider this proposal so that you and the leadership in Congress can proceed without delay in its implementation to provide for the convening, preparation, background work, and staffing of the Conference.

With best wishes, I am

Very truly yours,

ELLIOTT H. LEVITAS
Member of Congress

EHL:r

cc: Honorable Thomas P. O'Neill, Jr.
The Speaker
Honorable Howard Baker
Senate Majority Leader

Elliott H. Levitas
Member of Congress
4th District, Georgia
Washington, D.C. 20515

I thought you might be interested in this.

Elliott Levitas

THE WHITE HOUSE

WASHINGTON

August 24, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Proposed Response to Congressman Levitas' Letter of July 19, 1983, to the President Concerning Legislative Vetoes

Robert McConnell has now responded to our memorandum of August 4, which requested prompt guidance from the Justice Department concerning a response to Congressman Levitas' proposal to convene a Conference on Power Sharing to explore the ramifications of the legislative veto decisions. Justice suggests that the Deputy Attorney General reply to Levitas, and that the reply generally reject the call for such a conference.

I agree with Justice's view that there is no need to involve the President personally in this dispute (particularly in light of the President's position as a candidate in favor of the legislative veto, an irony Levitas noted in his letter). I also agree with the substance of Justice's response, although I question the need to suggest the availability of the Administrative Conference as an alternative to Levitas' proposal.

Attachments

THE WHITE HOUSE

WASHINGTON

August 24, 1983

MEMORANDUM FOR ROBERT MCCONNELL
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGISLATIVE AFFAIRS
U.S. DEPARTMENT OF JUSTICE

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

SUBJECT: Proposed Response to Congressman Levitas' Letter of July 19, 1983, to the President Concerning Legislative Vetoes

I agree that it would be appropriate for the Deputy Attorney General to reply to Congressman Levitas' letter to the President suggesting the convocation of a Conference on Power Sharing to discuss the impact of the legislative veto decisions. I am also in general agreement with the substance of the draft reply, although I question the need to include the second paragraph on page two, suggesting that the Administrative Conference would be an appropriate forum for consideration of the concerns raised by Levitas. This suggestion is mildly inconsistent with the rest of the letter, and perhaps should be held in reserve in case Levitas continues to press his proposal.

FFF:JGR:aea 8/24/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

August 24, 1983

MEMORANDUM FOR ROBERT MCCONNELL
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGISLATIVE AFFAIRS
U.S. DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Response to Congressman Levitas' Letter of July 19, 1983, to the President Concerning Legislative Vetoes

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FFF:JGR:aea 8/24/83

cc: FFFielding
JGRoberts
Subj.
Chron

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

JSR

Name of Correspondent: Robert A. McConnell

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

Subject: Proposed Response to Congressman Levitas' Letter of July 19, 1983 to President Concerning Legislative Vetoes

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUHOU	ORIGINATOR	83/08/23			/ /
	Referral Note:				
CUAT18	D	83/08/23			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				
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	Referral Note:				
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Comments: _____

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Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 23 1983

MEMORANDUM TO FRED F. FIELDING
COUNSEL TO THE PRESIDENT

Re: Proposed Response to Congressman Levitas' Letter of July 19, 1983 to the President Concerning Legislative Vetoes

Your memorandum of August 4, 1983 asked for our views regarding a response to the above-referenced letter to the President from Congressman Levitas. We believe that the response should be sent by the Deputy Attorney General. It seems to us that it would be advisable to maintain, at least for the time being, the President's distance from this subject and particularly this proposal. We believe that the same logic suggests that the White House as a whole stay in the background, a least for now, relative to Mr. Levitas' proposal.

On the other hand, Mr. Schmults is fully familiar with the legal issues surrounding the legislative veto issue and was the Administration's first congressional witness after the Chadha decision. We believe Mr. Levitas would appreciate that a response from Mr. Schmults would signify that the issue and Mr. Levitas' letter is being handled at a high level by the Administration.

As to the substance of the response, we believe that it should be cordial and cooperative and invite further dialogue, but that another commission or formal conference at this time seems ill-advised. We believe that such an entity would serve only to elevate the tensions in this area when we feel that a cooler environment is in the best interest of the President. Furthermore, commissions and formal conferences have a natural tendency to affirmatively recommend some "corrective" measures. We are not persuaded that any specific proposal would be in the President's interest at this time.

We have drafted a letter to Congressman Levitas for Mr. Schmults' signature which we believe is the appropriate response. Please let us know whether you would like us to proceed on this basis.

for C. Harlan Cain

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

Enclosure

U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

Honorable Elliott H. Levitas
Congress of the United States
House of Representatives
2416 Rayburn House Office Building
Washington, D.C. 20515

Dear Elliott:

The President has asked me to respond to your letter of July 19, 1983 regarding the aftermath of the Supreme Court's legislative veto decisions.

We enthusiastically share your view that the Legislative and Executive Branches should address the issues created by the legislative veto decisions in a constructive and cooperative way. We applaud your initiative in this approach. The Administration looks forward to productive deliberations with you and other interested Members of Congress on this subject.

As you know, the Administration provided testimony concerning the Supreme Court's legislative veto decisions on July 18, 1983. At that time, I was a witness before the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary of the House of Representatives. The positions which the Administration expressed to Congress through my testimony included our analysis of the Supreme Court decisions and our observations regarding potential future actions to enhance the accountability of government decisionmaking, particularly by "independent" agencies. I provided, along with my testimony, a comprehensive inventory of all of the statutes which we had identified which contained legislative veto provisions. I am enclosing herewith a copy of my testimony and our inventory.

We have some reservations, at least at this time, regarding the need for a formal conference or commission to discuss legislative vetoes or the appropriate Executive or Legislative Branch response to the Supreme Court decisions. Since there are so many forms of vetoes connected with so many different substantive laws which are designed to operate in such diverse ways, we are concerned with treating the situation in a manner which may assume that one "solution" or "response" is desireable or even possible. I believe it will be useful to hear from various scholars and commentators in the form of articles and speeches and to otherwise listen to the marketplace of ideas before formalizing any commission or conference structure. A premature and structured forum for attempts to resolve these questions may simply lead to solutions for the sake of solutions before all of the alternatives are analyzed.

Perhaps we should consider the extent to which the Administrative Conference of the United States might be an appropriate forum for the discussion of matters such as this. As you know, that is a permanent agency established by Congress for the purpose of providing a medium through which federal agencies, assisted by outside experts, can cooperatively study mutual problems, exchange information and develop recommendations on matters of administrative law. The Conference membership includes, in addition to its governmental membership, thirty-six private lawyers, university faculty members and others specially informed in law and government. Of course, Members of Congress would participate fully, as experts or otherwise, in any consideration by the Conference of issues raised by the legislative veto decisions.

I believe we should be reluctant to support the creation of new entities for the examination of problems which can be as easily considered by existing institutions. Ad hoc committees and commissions, once created, seem to develop perpetual life. Institutions created by the Constitution and staffed by the dedicated people placed in them by the electorate and the President's appointees presumptively ought to be capable of addressing these difficult issues. I would hope that this might be an instance in which we could respond to this important subject without creating another government entity.

Please let me know if you wish to discuss this in greater detail.

With best regards,

Edward C. Schmults
Deputy Attorney General

cc: Honorable Thomas P. O'Neill, Jr.
The Speaker

Honorable Howard Baker
Senate Majority Leader

U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

September 20, 1983

Honorable Elliott H. Levitas
Congress of the United States
House of Representatives
2416 Rayburn House Office Building
Washington, D.C. 20515

Dear Elliott:

The President has asked me to respond to your letter of July 19, 1983 regarding the aftermath of the Supreme Court's legislative veto decisions.

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As you know, the Administration provided testimony concerning the Supreme Court's legislative veto decisions on July 18, 1983. At that time, I was a witness before the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary of the House of Representatives. The positions which the Administration expressed to Congress through my testimony included our analysis of the Supreme Court decisions and our observations regarding potential future actions to enhance the accountability of government decisionmaking, particularly by "independent" agencies. I provided, along with my testimony, a comprehensive inventory of all of the statutes which we had identified which contained legislative veto provisions. I am enclosing herewith a copy of my testimony and our inventory.

cc: John Roberts
Associate Counsel to the President

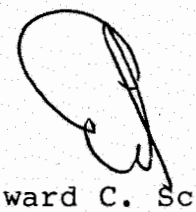
We have some reservations, at least at this time, regarding the need for a formal conference or commission to discuss legislative vetoes or the appropriate Executive or Legislative Branch response to the Supreme Court decisions. Since there are so many forms of vetoes connected with so many different substantive laws which are designed to operate in such diverse ways, we are concerned with treating the situation in a manner which may assume that one "solution" or "response" is desirable or even possible. I believe it will be useful to hear from various scholars and commentators in the form of articles and speeches and to otherwise listen to the marketplace of ideas before formalizing any commission or conference structure. A premature and structured forum for attempts to resolve these questions may simply lead to solutions for the sake of solutions before all of the alternatives are analyzed.

Perhaps we should consider the extent to which the Administrative Conference of the United States might be an appropriate forum for the discussion of matters such as this. As you know, that is a permanent agency established by Congress for the purpose of providing a medium through which federal agencies, assisted by outside experts, can cooperatively study mutual problems, exchange information and develop recommendations on matters of administrative law. The Conference membership includes, in addition to its governmental membership, thirty-six private lawyers, university faculty members and others specially informed in law and government. Of course, Members of Congress would participate fully, as experts or otherwise, in any consideration by the Conference of issues raised by the legislative veto decisions.

I believe we should be reluctant to support the creation of new entities for the examination of problems which can be as easily considered by existing institutions. Ad hoc committees and commissions, once created, seem to develop perpetual life. Institutions created by the Constitution and staffed by the dedicated people placed in them by the electorate and the President's appointees presumptively ought to be capable of addressing these difficult issues. I would hope that this might be an instance in which we could respond to this important subject without creating another government entity.

Please let me know if you wish to discuss this in greater detail.

With best regards,



Edward C. Schmults
Deputy Attorney General

Enclosures

cc: Honorable Thomas P. O'Neill, Jr.
The Speaker

Honorable Howard Baker
Senate Majority Leader

THE WHITE HOUSE

WASHINGTON

September 19, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Levitas Note Concerning His Power Sharing Letter

Congressman Levitas has written a curt note to you inquiring why it has taken so long to respond to his July 19 letter suggesting the convocation of a Conference on Power Sharing to assess the aftermath of INS v. Chadha. You will recall that we referred the letter to Justice on August 4, and Justice responded on August 23 with a draft reply for the Deputy Attorney General's signature. On August 24, I sent a memorandum to you, along with a draft memorandum to Schmults, agreeing with the bulk of the draft response but suggesting deletion of the paragraph on the Administrative Conference. You signed and sent that memorandum on September 8.

— after discussion, in my meeting with Dipuse!

I called Deputy Assistant Attorney General Marshall Cain, and confirmed that the Schmults reply with the Administrative Conference paragraph deleted should be sent posthaste. Cain stated this would be done. I have prepared a draft reply to Levitas' note. I have also prepared a memorandum to Schmults to ensure that Justice does not tarry further.

Attachment

THE WHITE HOUSE

WASHINGTON

September 19, 1983

Dear Elliott:

Thank you for your note of September 15, inquiring into the status of the Administration's response to your proposal that a "Conference on Power Sharing" be convened to consider the effects of the Supreme Court's decision in Immigration and Naturalization Service v. Chadha. It is my understanding that you will soon be receiving a reply over the signature of the Deputy Attorney General. I am sorry if the delay has caused any inconvenience.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

P.S. It was good to see you recently, Sally, & the dog — too.

The Honorable
Elliott H. Levitas
United States House of
Representatives
Washington, D.C. 20515

FFF:JGR:aea 9/19/83
bcc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

September 19, 1983

MEMORANDUM FOR EDWARD C. SCHMULTS
DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

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

SUBJECT: Levitas Note Concerning His Power Sharing Letter

As you will see from the attached, Congressman Levitas is anxiously awaiting our reply. Pursuant to a discussion between John Roberts of my staff and Marshall Cain of your Office of Legislative Affairs, it is my understanding that your draft reply - minus the Administrative Conference paragraph - will be sent without further delay.

Attachments

FFF:JGR:aea 9/19/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 24, 1983

TO: JOHN COONEY
GENERAL COUNSEL
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS

SUBJECT: Levitas proposal

As we discussed. I would like to let Justice know that we agree by close of business, so let me know as soon as possible if you have any comments or edits.

Many thanks!

Attachment

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

JSR

Name of Correspondent: Robert A. McConnell

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

Subject: Proposed Response to Congressman Levitas' Letter of July 19, 1983 to President Concerning Legislative Vetoes

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CWHO11		ORIGINATOR	83/08/23			/ /
		Referral Note:				
CWAT18		D	83/08/23			/ /
		Referral Note:				
			/ /			/ /
		Referral Note:				
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		Referral Note:				

ACTION CODES:
A - Appropriate Action
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FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 2 3 1983

MEMORANDUM TO FRED F. FIELDING
COUNSEL TO THE PRESIDENT

Re: Proposed Response to Congressman Levitas' Letter of July 19, 1983 to the President Concerning Legislative Vetoes

Your memorandum of August 4, 1983 asked for our views regarding a response to the above-referenced letter to the President from Congressman Levitas. We believe that the response should be sent by the Deputy Attorney General. It seems to us that it would be advisable to maintain, at least for the time being, the President's distance from this subject and particularly this proposal. We believe that the same logic suggests that the White House as a whole stay in the background, a least for now, relative to Mr. Levitas' proposal.

On the other hand, Mr. Schmults is fully familiar with the legal issues surrounding the legislative veto issue and was the Administration's first congressional witness after the Chadha decision. We believe Mr. Levitas would appreciate that a response from Mr. Schmults would signify that the issue and Mr. Levitas' letter is being handled at a high level by the Administration.

As to the substance of the response, we believe that it should be cordial and cooperative and invite further dialogue, but that another commission or formal conference at this time seems ill-advised. We believe that such an entity would serve only to elevate the tensions in this area when we feel that a cooler environment is in the best interest of the President. Furthermore, commissions and formal conferences have a natural tendency to affirmatively recommend some "corrective" measures. We are not persuaded that any specific proposal would be in the President's interest at this time.

We have drafted a letter to Congressman Levitas for Mr. Schmults' signature which we believe is the appropriate response. Please let us know whether you would like us to proceed on this basis.

for C. Harlan Cain

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

Enclosure

U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

Honorable Elliott H. Levitas
Congress of the United States
House of Representatives
2416 Rayburn House Office Building
Washington, D.C. 20515

Dear Elliott:

The President has asked me to respond to your letter of July 19, 1983 regarding the aftermath of the Supreme Court's legislative veto decisions.

We enthusiastically share your view that the Legislative and Executive Branches should address the issues created by the legislative veto decisions in a constructive and cooperative way. We applaud your initiative in this approach. The Administration looks forward to productive deliberations with you and other interested Members of Congress on this subject.

As you know, the Administration provided testimony concerning the Supreme Court's legislative veto decisions on July 18, 1983. At that time, I was a witness before the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary of the House of Representatives. The positions which the Administration expressed to Congress through my testimony included our analysis of the Supreme Court decisions and our observations regarding potential future actions to enhance the accountability of government decisionmaking, particularly by "independent" agencies. I provided, along with my testimony, a comprehensive inventory of all of the statutes which we had identified which contained legislative veto provisions. I am enclosing herewith a copy of my testimony and our inventory.

We have some reservations, at least at this time, regarding the need for a formal conference or commission to discuss legislative vetoes or the appropriate Executive or Legislative Branch response to the Supreme Court decisions. Since there are so many forms of vetoes connected with so many different substantive laws which are designed to operate in such diverse ways, we are concerned with treating the situation in a manner which may assume that one "solution" or "response" is desireable or even possible. I believe it will be useful to hear from various scholars and commentators in the form of articles and speeches and to otherwise listen to the marketplace of ideas before formalizing any commission or conference structure. A premature and structured forum for attempts to resolve these questions may simply lead to solutions for the sake of solutions before all of the alternatives are analyzed.

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Please let me know if you wish to discuss this in greater detail.

With best regards,

Edward C. Schmults
Deputy Attorney General

cc: Honorable Thomas P. O'Neill, Jr.
The Speaker

Honorable Howard Baker
Senate Majority Leader

Chadha

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 4, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Levitas Proposal Concerning Legislative Veto

Ken Duberstein has referred to us a letter from Congressman Levitas to the President, and has so advised Levitas. In his letter Levitas proposes a "Conference on Power Sharing" to determine "the manner of power sharing and accountability within the federal government" in the wake of the Chadha decision. The Conference would be composed of executive branch representatives, Congressional leaders, academics, business and labor representatives, and so on. Levitas suggests that such a Conference would be better than years of uncertainty and wasteful confrontation.

There already has, of course, been a "Conference on Power Sharing" to determine "the manner of power sharing and accountability within the federal government." It took place in Philadelphia's Constitution Hall in 1787, and someone should tell Levitas about it and the "report" it issued. After Chadha the Administration has been proceeding in a very low-key fashion, and thus far Congress has generally avoided any precipitous action. I do not think Levitas can back up his veiled threats broadly to revoke excutive or agency power or impose myriad appropriations restrictions if we do not agree to his conference proposal. Those alternatives are simply unworkable. It is not in our interest to convene or participate in a grandiose convocation on power sharing. At the very least we should wait to see if we do face any serious Congressional reaction.

Since the legislative veto problem has been broadly staffed, however, I recommend consulting with Justice before issuing a response. Justice representatives chair both the working group convened immediately after Chadha and the Cabinet Council task force looking at long range responses. A draft memorandum to Schmults, asking for Justice's views, is attached for your review.

Attachment

THE WHITE HOUSE

WASHINGTON

August 4, 1983

MEMORANDUM FOR EDWARD C. SCHMULTS
DEPUTY ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

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

SUBJECT: Levitas Proposal Concerning Legislative Veto

Congressman Levitas has written the President, suggesting that a "Conference on Power Sharing" be convened to assess power sharing and accountability in the wake of the Chadha decision. We would like the views of the Justice Department on this proposal. In light of the importance of the issue, I think we should respond to Levitas promptly.

Thank you.

Attachment

FFF:JGR:aw 8/4/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

August 4, 1983

MEMORANDUM FOR EDWARD C. SCHMULTS
DEPUTY ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Levitas Proposal Concerning Legislative Veto

Congressman Levitas has written the President, suggesting that a "Conference on Power Sharing" be convened to assess power sharing and accountability in the wake of the Chadha decision. We would like the views of the Justice Department on this proposal. In light of the importance of the issue, I think we should respond to Levitas promptly.

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Subj.
Chron

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

John R
Reed

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Elliott H. Levitas

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

Subject: Suggests the establishment of a conference on power sharing to address the new legislative veto concept

ROUTE TO: Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CU H011	ORIGINATOR	83/08/03			/ /
	Referral Note:				
CU AT 18	D	83/08/03		S	83/08/05
	Referral Note:				
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		/ /			/ /
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5/81

ID: 154422 CORRESPONDENCE TRACKING WORKSHEET PAGE D01

INCOMING CORRESPONDENCE DATE 830719 RECEIVED DATE 830721

(PREFIX)	(FIRST)	(LAST)	(SUFFIX)
THE HONORABLE	ELLIOTT H.	LEVITAS	

TITLE:

ORGANIZATION: U. S. HOUSE OF REPRESENTATIVES

STREET:

CITY: WASHINGTON STATE: DC ZIP: 20515

COUNTRY:

SUBJECT: SUGGESTS THE ESTABLISHEMENT OF A CONFERENCE ON POWER SHARING TO ADDRESS THE NEW LEGISLATIVE VETO CONCEPT

AGY/OFF	ACTION CODE	TRACKING DATE
LADUBE	ORG	830721

KD A 830801 DD

STAFF NAME: PRESIDENT REAGAN MEDIA: L OPID: LW TYPE: IBA

COMMENTS:

CODES: REPORT INDIV: 1230 USER:

✓CU Fiel R DD 830802

August 1, 1983

Dear Elliott:

On behalf of the President, I would like to thank you for your letter proposing a Conference on Power Sharing in response to the recent Supreme Court decision relating to the legislative veto.

The President appreciates your thoughtful comments on this important issue. Rest assured that your proposal is now being shared with White House Counsel for careful study and consideration.

With best wishes,

Sincerely,

Kenneth M. Duberstein
Assistant to the President

The Honorable Elliott H. Levitas
House of Representatives
Washington, D.C. 20515

KMD/CMP/las --

cc: W/copy of inc, Fred Fielding - for DIRECT follow-up response

ELLIOTT H. LEVITAS
4TH DISTRICT, GEORGIA

WASHINGTON OFFICE:
2416 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-4272

HOME OFFICE:
141 EAST TRINITY PLACE
DECATUR, GEORGIA 30030
(404) 377-1717

MOBILE OFFICE:
TRAVELS THE DISTRICT SERVING YOU

Congress of the United States
House of Representatives
Washington, D.C. 20515

PUBLIC WORKS AND TRANSPORTATION COMMITTEE

SUBCOMMITTEES:
CHAIRMAN, INVESTIGATIONS AND OVERSIGHT
AVIATION
PUBLIC BUILDINGS AND GROUNDS

GOVERNMENT OPERATIONS COMMITTEE

SUBCOMMITTEES:
LEGISLATION AND NATIONAL SECURITY
INTERGOVERNMENTAL RELATIONS AND HUMAN RESOURCES

ZONE WHIP

July 19, 1983

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The Supreme Court's decision relating to the legislative veto has created a situation of uncertainty and the potential for disruption and serious confrontation within our government. I would hope that the Executive and Legislative Branches can address this new circumstance in a constructive and cooperative way so that the manner of power sharing and accountability within the federal government can be resolved in a meaningful and harmonious context.

I will not address the merits or demerits of the Court's decision nor relate the historical and pragmatic and evolutionary constitutional development of the legislative veto concept. You are well aware of the rationale and importance of the legislative veto, having editorially supported it as a commentator and a columnist, having specifically endorsed it as a candidate for President (Youngstown, Ohio, October 8, 1980) and having embraced it as part of the 1980 Republican Party Platform. Therefore, I will address myself to the vital question of where we go from here.

Obviously, Congress can devise a host of mechanisms within the scope of the Court's decision that will reassert the Congressional authority over decisions of the President, executive agencies, and independent agencies. These mechanisms could range from stripping away all, or most, of the delegated discretionary powers to the use of appropriation restrictions to the structuring of procedural devices to requiring affirmative Congressional approval for all major actions or regulations to proposing a Constitutional Amendment -- to name a few. Indeed, both the House and Senate have already taken actions in the Court decision's aftermath to do some of these things.

Some of the potential Congressional responses to the Court's decision are more intrusive, restrictive, and unwieldy than others, but all manner of means will be utilized to reassert an accountability to the Congress over actions previously covered by the legislative veto.

So long as this uncertainty exists I foresee the potential for years of wasteful and bitter confrontation and even chaos in our government. It is for this reason that, as one first step, I urge the early convening

of a Conference on Power Sharing to address this new situation and consider solutions. I truly believe we are at a new crossroads in the course of our governmental development, and I believe we need to deal with it as responsibly and objectively as possible, not just for the present but for the future as well.

The Conference I propose would involve assembling representatives of the Executive Branch, leaders in the Congress, people from the academic community, representatives from "think tanks" (e.g. American Enterprise Institute, the Brookings Institution, etc.), organized labor, the business community, public interest groups and the like. This Conference would not be a Commission expected to propose by consensus or vote specific solutions, but rather would be a means for laying out the problem, defining it, and exploring directions that could lead to solutions in a free and open and thorough dialogue. I believe this Conference could meet for a relatively short period in early Fall and provide a focus for the cooperative consideration of this matter. It would take the joint efforts of yourself and the Congress to call and provide for such a Conference, but I think the benefits would be enormous and the failure to take such action will leave the consideration of this issue to years of disruptive, haphazard and confrontational resolution.

The Conference could result in some short term or long term specific proposals, or it could lead to a subsequent more formally structured Commission but surely it would go a long way to defining the dimensions of this problem and outlining areas of concern that need to be addressed. It would provide a forum for providing a common data base and avoid having all of the different points of view speaking to each other from a distance in press releases and legislative or administrative actions. It would surely lead to a better and clearer understanding of both differences and common ground.

I hope you will favorably consider this proposal so that you and the leadership in Congress can proceed without delay in its implementation to provide for the convening, preparation, background work, and staffing of the Conference.

With best wishes, I am

Very truly yours,

ELLIOTT H. LEVITAS
Member of Congress

EHL:r

cc: Honorable Thomas P. O'Neill, Jr.
The Speaker
Honorable Howard Baker
Senate Majority Leader