

E. PRELIMINARY HOUSE ACTION ON PRESIDENTIAL VETO, NOVEMBER 18, 1974; PP. H10705-H10706

FREEDOM OF INFORMATION ACT—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. Doc. No. 93-383)

The Speaker laid before the House the following veto message from the President of the United States:

To the House of Representatives:

I am returning herewith without my approval H.R. 12471, a bill to amend the public access to documents provisions of the Administrative Procedures Act. In August, I transmitted a letter to the conferees expressing my support for the direction of this legislation and presenting my concern with some of its provisions. Although I am gratified by the Congressional response in amending several of these provisions, significant problems have not been resolved.

First, I remain concerned that our military or intelligence secrets and diplomatic relations could be adversely affected by this bill. This provision remains unaltered following my earlier letter.

I am prepared to accept those aspects of the provision which would enable courts to inspect classified documents and review the justification for their classification. However, the courts should not be forced to make what amounts to the initial classification decision in sensitive and complex areas where they have no particular expertise. As the legislation now stands, a determination by the Secretary of Defense that disclosure of a document would endanger our national security would, even though reasonable, have to be overturned by a district judge who thought the plaintiff's position just as reasonable. Such a provision would violate constitutional principles, and give less weight before the courts to an executive determination involving the protection of our most vital national defense interests that is accorded deference in the courts.

I propose, therefore, that where classified documents are requested the courts could review the classification, but would have to uphold the classification if there is a reasonable basis to support it. In determining the reasonableness of the classification, the courts would consider all attendant evidence prior to resorting to an *in camera* examination of the document.

Second, I believe that confidentiality would not be maintained if many millions of pages of FBI and other investigatory law enforcement files would be subject to compulsory disclosure at the behest of any person unless the Government could prove to a court—separately for each paragraph of each document—that disclosure "would" cause a type of harm specified in the amendment. Our law enforcement agencies do not have, and could not obtain, the large number of trained and knowledgeable personnel that would be needed to make such a line-by-line examination of information requests that sometimes involve hundreds of thousands of documents, within the time constraints added to current law by this bill.

Therefore, I propose that more flexible criteria govern the responses to requests for particularly lengthy investigatory records to mitigate the burden which these amendments would otherwise impose, in order not to dilute the primary responsibilities of these law enforcement activities.

Finally, the ten days afforded an agency to determine whether to furnish a requested document and the twenty days afforded for determination on appeal are, despite the provision concerning unusual circumstances, simply unrealistic in some cases. It is essential that additional latitude be provided.

I shall submit shortly language which would dispel my concerns regarding the manner of judicial review of classified material and for mitigating the administrative burden placed on the agencies, especially our law enforcement agencies, by the bill as presently enrolled. It is only my conviction that the bill as enrolled is unconstitutional and unworkable that would cause me to return the bill without my approval. I sincerely hope that this legislation, which has come so far toward realizing its laudable goals, will be reenacted with the changes I propose and returned to me for signature during this session of Congress.

THE WHITE HOUSE, October 17, 1974.

GERALD R. FORD.

The Speaker. The objections of the President will be spread at large upon the Journal, and the message and bill will be printed as a House document.

The question is: Will the House, on reconsideration, pass the bill H.R. 12471, the objections of the President to the contrary notwithstanding?

MOTION OFFERED BY MR. MOORHEAD OF PENNSYLVANIA

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I move to postpone further consideration of the bill and veto message from the President on H.R. 12471, to amend the Freedom of Information Act, until Wednesday, November 20, and before moving the previous question on my motion I would like to address myself briefly to the President's veto action.

(Mr. Moorhead of Pennsylvania asked and was given permission to revise and extend his remarks and include extraneous matter.) Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I was shocked and dismayed by the President's unfortunate and ill-advised action on October 17 in vetoing H.R. 12471; the bill makes a series of strengthening amendments to plug loopholes in the Freedom of Information Act of 1966.

This bipartisan legislation, overwhelmingly approved in both the House and Senate after more than 3 years of oversight and legislative hearings, will help restore the confidence of the American public in their Federal Government by providing greater access to Government records. As we have dramatically witnessed during the Watergate tragedy, unnecessary secrecy and an almost paranoid desire to hide the business of Government from the people and their elected representatives brought about the most grave constitutional crisis in our Nation in more than 100 years.

Mr. Speaker, President Ford's pledge of "open government" made to the American people soon after he took the oath of office had indicated a recognition of the destructive effects of the "government secrecy mania" that helped bring about his predecessor's resignation. Less than 2 months ago, President Ford expressed to me, as chairman of the House-Senate conference committee on H.R. 12471, his commitment to "open government" and the Freedom of Information Act. In a letter dated August 20, 1974, he stated:

I share your concerns for improving the Freedom of Information Act and agree that now, after eight years in existence, the time is ripe to reassess this profound and worthwhile legislation. Certainly, no other recent legislation more closely encompasses my objectives for open government than the philosophy underlying the Freedom of Information Act.

In that letter, Mr. Speaker, he raised certain questions about specific provisions of H.R. 12471, most of which had already been tentatively agreed to by the House-Senate conferees during earlier sessions of the conference committee. Nevertheless, we carefully studied President Ford's arguments, discussed them in subsequent meetings of the conference committee and did make a number of changes he requested in both the bill language and in the conference report to help allay his concerns. As I told the House when the conference version of the bill was finally acted upon and sent to the White House on October 7—

We have gone "more than half-way" to accommodate his views.

But 10 days later, he vetoed the freedom of information bill. It is now clear, Mr. Speaker, that congressional cooperation is not sufficient for the President, and only total capitulation to the White House viewpoint will suffice. I refuse to abdicate my duties as a Member of this House and hope that an overwhelming vote by our colleagues to override this senseless veto will make it clear to the President that cooperation is a two-way street.

As in the Watergate debacle, the umbrella of "national security" is now being raised in the veto message to cover the real reasons for itself: the bureaucrat's opposition to the public's right to know. The message itself is filled with macerate statements, misconceptions, and warped interpretations of the bill language that raised questions as to whether anyone really knowledgeable about the law even took the trouble to read and analyze the provisions of H.R. 12471. Contrary to the President's expressed view, the bill would not in any way bare our Nation's secrets, nor would it jeopardize the security of sensitive national defense or foreign policy information.

Mr. Speaker, 8 years ago when Congress passed the original freedom of information bill, President Johnson was urged to veto the measure by every single Federal agency. Bureaucrats said that it was unconstitutional; some said it would bring the business of Government to a halt; others foolishly claimed that it would give away our vital defense secrets to foreign powers. But Lyndon Johnson was well versed in the ways of the Federal bureaucracy. He was not fooled by their rantings and ravings. He courageously rejected their silly arguments and signed the bill into law. In his statement he reaffirmed the people's right to know when he said:

No one should be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest.

This year the House and Senate approved the conference version of H.R. 12471 to add needed teeth to the original 1966 freedom of information law to plug loopholes used by Federal bureaucrats to hide information from the public. The House rollcall vote was 349 to 2 and the Senate approved it by voice vote. During our hearings, every executive branch witness opposed any strengthening changes to the present law. The Nixon White House and Justice Department operatives lobbied vigorously in the other body in a vain attempt to kill the freedom of information legislation.

When H.R. 12471 was cleared by Congress and sent to the White House, the Federal bureaucracy predictably geared up an all out effort to persuade President Ford to veto it. As in 1966, almost every Federal agency recommended a veto. Many of the same old discredited arguments which President Johnson had rejected were dusted off and fed into the White House. Such overused cliches as "administrative burden," "flexible criteria," "compulsory disclosure," and the old reliable bureaucratic standby "national security" were all sprinkled throughout the veto message. Thus, President Ford succumbed to the old scare slogans of the bureaucrats, who apparently have so much to hide from the public.

But the obvious public need for truly "open government" must not be sacrificed on the altar of bureaucratic secrecy, suspicion, and meaningless slogans. The hard lessons learned from the tragic Watergate coverup must certainly result in some positive achievement and responsive to the American people that Congress—at least—is sensitive to the conduct of our public business.

Mr. Speaker, our colleagues in the House will have the opportunity to vote to override this misguided Presidential veto of the Freedom of Information Act amendments on Wednesday, November 20 by the motion I have just offered. I stress the fact that this is not partisan issue that divides us along party lines. Our effort to override this veto is being led by both Republicans and Democrats on our Government Operations Committee, as shown by the "dear colleague" letter sent to all Members today and signed by: Chairman Chet Holifield; the ranking minority member of the full committee, the gentleman from New York (Mr. Horton); by the ranking minority member of our subcommittee, the gentleman from Illinois (Mr. Erlenborn); and by myself, as chairman of the Foreign Operations and Government Information Subcommittee. With our letter we enclosed a reprint containing a representative selection of editorials from across the Nation urging that Congress override this veto. Every Member should have in his office, a copy of this reprint and our letter.

Mr. Speaker, we urge our colleagues of both parties to join us in this fight for more responsible "open government." We trust that we can—by an overwhelming vote to override this veto—show the American people the sincerity of our pledge of truly "open government" and the willingness of Members of Congress to stand up and be counted on this vital issue.

Mr. Speaker, the "dear colleague" letter is as follows:

WASHINGTON, D.C.
November 18, 1974.

DEAR CONGRESS: A vote will be taken in the House on Wednesday, November 20, on overriding the veto of H.R. 12471, the Freedom of Information Amendments of 1974.

We will vote "Aye"—to override—and hope you will join with us.

We have worked for more than 3 years in the bipartisan development of these amendments to the Freedom of Information Act. We received much detailed testimony about the issues raised in the veto message—both pro and con—and carefully worked to make certain our bill would protect the people's right to know without infringing upon the need for government secrecy in some areas.

The objections cited by the President in his veto message, therefore, were not new to us. They had also been called to our attention in the course of our conference sessions. We took them seriously and made changes, both in the language of the bill and in the conference report. We believe the President's objections were accommodated by these changes.

H.R. 12471 passed the House March 14 by a vote of 383 to 8, and the conference report won approval by a 349 to 2 roll call vote.

We believe the American people will have more confidence in their Federal government if we can enact these Freedom of Information Amendments into law over the President's veto. This legislation will help to restrain our civil servants and will help to make them more responsive to the people who pay their salaries. The attached reprint of some of the representative newspaper editorials over the past several weeks—from all parts of the country—indicates the broad support for overriding the veto.

We suggest that President Ford must have listened more carefully to the bureaucracy than to the Congress and the people when he decided on his veto.

I hope you will join in voting to override the Freedom of Information Act veto on Wednesday, November 20.
Sincerely,

CHARF HORTON,
Chairman, House Government Operations Committee.

WILLIAM S. MOORHEAD,

Ranking Member, Foreign Operations and Government Information Subcommittee.

FRANK HORTON,

Ranking Member, Foreign Operations and Government Information Subcommittee.

JOHN N. ERLIENBORN,

Ranking Minority Member, Foreign Operations and Government Information Subcommittee.

Mr. Speaker, I reserve the balance of my time.

Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

The motion was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I ask unanimous consent that the gentleman from Illinois (Mr. Erlenborn) be permitted to revise and extend his remarks at this point in the Record and that all Members may have permission to revise and extend their remarks on this subject.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

F. HOUSE ACTION AND VOTE ON PRESIDENTIAL VETO, NOVEMBER 20, 1974; PP. H10864-H10875

FREEDOM OF INFORMATION ACT AMENDMENTS—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER. The unfinished business is the further consideration of the veto message of the President on H.R. 12471, an act to amend section 552 of title 5, United States Code, known as the Freedom of Information Act.

The question is: Will the House on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding?

The Chair recognizes the gentleman from Pennsylvania (Mr. Moorhead) for 1 hour.

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I yield myself 5 minutes.

(Mr. Moorhead of Pennsylvania asked and was given permission to revise and extend his remarks, and include extraneous matter.)

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, it is a rare experience for any Member of this distinguished body to lead off the debate in an effort to override a Presidential veto. In my almost 16 years of service here, it has never before been my responsibility to handle a legislative measure in this situation, under the procedures prescribed in section 7 of article I of the Constitution. It is an awe-insome task for any Member and one that requires the deepest reflection and most careful consideration of such a course of action.

A little more than 6 weeks ago when I stood here in the Chamber and urged approval of the conference report on H.R. 12471, the Freedom of Information Act amendments, it never occurred to me that a Presidential veto might be forthcoming. I explained in detail on that October 7 the changes agreed to by the House-Senate conferees, how they differed from the bill originally passed by the House on March 14 of this year, and the sincere efforts which the House on both parties made to accommodate the specific concerns raised by President Ford. I included at pages H10002-H10004 of the Record the full text of the President's letter outlining these concerns and the text of our letter to the President detailing each of the significant modifications which we made to allay his concerns.

Other distinguished members of the conference committee, including the ranking minority member of the full Government Operations Committee, the gentleman from New York (Mr. Horton), and the ranking minority member on our subcommittee, the gentleman from Illinois (Mr. Erlenborn), spoke in strong support of the bipartisan compromise legislation which we had produced in almost 2 months of conference committee deliberations.

Every single House member of our conference committee had signed the conference report. Congress certainly went "more than halfway" to accommodate the President's views. We had been led to