

S. 518

Ninety-third Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Wednesday, the third day of January,
one thousand nine hundred and seventy-three*

An Act

To abolish the offices of Director and Deputy Director of the Office of Management and Budget, to establish the Office of Director, Office of Management and Budget, and transfer certain functions thereto, and to establish the Office of Deputy Director, Office of Management and Budget.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the offices of Director of the Office of Management and Budget, and Deputy Director of the Office of Management and Budget, established in section 207 of the Budget and Accounting Act, 1921 (31 U.S.C. 16), and as designated in section 102(b) of Reorganization Plan Numbered 2 of 1970, are abolished.

SEC. 2. The offices of Director, Office of Management and Budget, and Deputy Director, Office of Management and Budget, are established in the Office of Management and Budget and shall be filled by appointment by the President, by and with the advice and consent of the Senate.

SEC. 3. (a) The functions transferred to the President by section 101 of Reorganization Plan Numbered 2 of 1970, and all functions vested by law in the Office of Management and Budget or the Director of the Office of Management and Budget are transferred to the office of Director, Office of Management and Budget. The President may, from time to time, assign to such office such additional functions as he may deem necessary.

(b) The Director may, from time to time, assign to the office of Deputy Director, such functions as he may deem necessary.

SEC. 4. Nothing in this Act shall impair the power of the President to remove the occupants of the offices of Director, Office of Management and Budget, and Deputy Director, Office of Management and Budget.

SEC. 5. (a) Subchapter II (relating to Executive Schedule pay rates) of chapter 53 of title 5, United States Code, is amended as follows:

(1) Paragraph (11) of section 5313 is amended by striking out "of the Bureau of the Budget." and inserting in lieu thereof ", Office of Management and Budget."

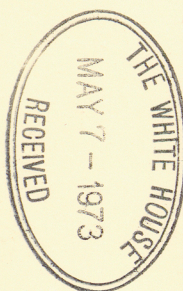
(2) Paragraph (34) of section 5314 is amended by striking out "of the Bureau of the Budget." and inserting in lieu thereof ", Office of Management and Budget."

SEC. 6. This Act shall take effect upon the expiration of the thirty-day period which begins on the date of its enactment.

Carl Albert

Speaker of the House of Representatives.

Robert C. Byrd
Vice President of the United States and
acting President of the Senate. *pro tempore*



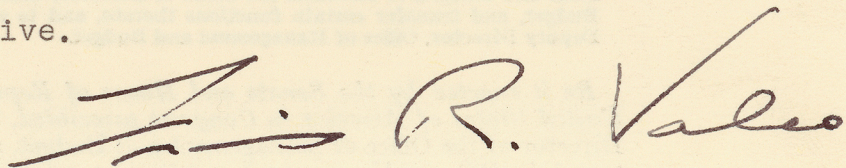
IN THE SENATE OF THE UNITED STATES,

May 22, 1973

The Senate having proceeded to reconsider the bill (S. 518) entitled "An Act to abolish the offices of Director and Deputy Director of the Office of Management and Budget, to establish the Office of Director, Office of Management and Budget, and transfer certain functions thereto, and to establish the Office of Deputy Director, Office of Management and Budget", returned by the President of the United States with his objections, to the Senate, in which it originated, it was

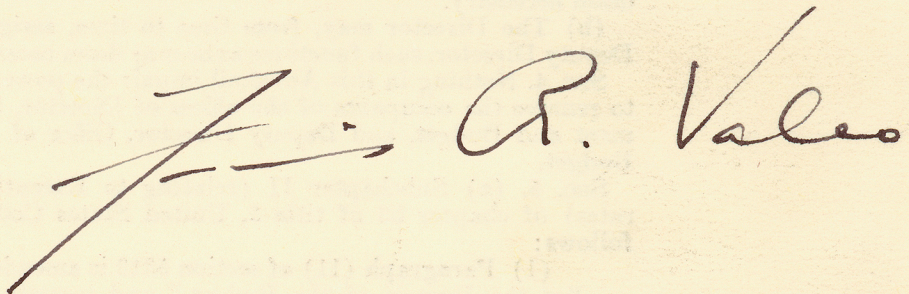
Resolved, That the said bill pass, two-thirds of the Senators present having voted in the affirmative.

Attest:



Secretary.

I certify that this Act originated in the Senate.



Secretary.

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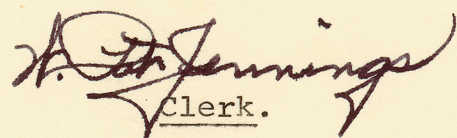
IN THE HOUSE OF REPRESENTATIVES, U.S.,

May 23, 1973.

The House of Representatives having proceeded to reconsider the bill (S. 518) entitled "An Act to abolish the offices of Director and Deputy Director of the Office of Management and Budget, to establish the Office of Director, Office of Management and Budget, and transfer certain functions thereto, and to establish the Office of Deputy Director, Office of Management and Budget", returned by the President of the United States with his objections, to the Senate, in which it originated, it was

Resolved, That the said bill do not pass, two-thirds of the House of Representatives not agreeing to pass the same.

Attest:


Clerk.

TO THE SENATE OF THE UNITED STATES:

I am today returning without my approval S. 518, a bill which would require Senate confirmation of those who serve as Director and Deputy Director of the Office of Management and Budget.

This legislation would require the forced removal by an unconstitutional procedure of two officers now serving in the executive branch. This step would be a grave violation of the fundamental doctrine of separation of powers. In view of my responsibilities, it is my firm duty to veto this bill.

Under present law, the Director and Deputy Director of the Office of Management and Budget are appointed by the President and serve at his pleasure. S. 518 would abolish these two positions effective thirty days after enactment and then provide for their immediate reestablishment. If the officers now lawfully occupying these Office of Management and Budget positions were to continue to serve, they would have to be reappointed by the President, subject to the advice and consent of the Senate.

The constitutional principle involved in this removal is not equivocal; it is deeply rooted in our system of government. The President has the power and authority to remove, or retain, executive officers appointed by the President. The Supreme Court of the United States in a leading decision, Myers v. United States, 272 U.S. 52, 122 (1926), has held that this authority is incident to the power of appointment and is an exclusive power that cannot be infringed upon by the Congress.

I do not dispute Congressional authority to abolish an office or to specify appropriate standards by which the officers may serve. When an office is abolished, the

tenure of the incumbent in that office ends. But the power of the Congress to terminate an office cannot be used as a back-door method of circumventing the President's power to remove. With its abolition and immediate re-creation of two offices, S. 518 is a device -- in effect and perhaps in intent -- to accomplish Congressional removal of the incumbents who lawfully hold those offices.

Disapproval of this legislation is also required because of the nature of the positions it would subject to Senate confirmation. For over 50 years the Office of Management and Budget and its predecessor agency, the Bureau of the Budget, has been headed by a Director appointed by the President without Senate confirmation.

The positions of Director and Deputy Director of the Office of Management and Budget were established in the Executive Office of the President to provide the President with advice and staff support in the performance of his budgetary and management responsibilities. These positions cannot reasonably be equated with cabinet and sub-cabinet posts for which confirmation is appropriate.

The responsible exercise of the separate legislative and executive powers is a demonstration of the workability of the American system. But, if it is to remain workable, I must continue to insist on a strong delineation of power and authority, the basis of which is too fundamental to allow to be undermined by S. 518.

The point was made most succinctly by James Madison in 1789:

"If there is a principle in our Constitution, indeed in any free constitution more sacred than another, it is that which separates the legislative, executive and judicial powers. If there is any point in which the separation of the legislative and executive powers ought to be maintained with great caution, it is that which relates to officers and offices."

THE WHITE HOUSE,

May 18, 1973.

