virtue of the difficulty of defining "children's television programming" in a manner consistent with the Supreme Court's proscription of either overinclusive or underinclusive regulation of speech and by virtue of the manifest incongruence between the stated purpose of the provision and the means chosen to effectuate it. *See Posadas de Puerto Rico Associates* v. *Tourism Company of Puerto Rico,* 106 S. Ct. 2968, 2977 (1986).

The bill simply cannot be reconciled with the freedom of expression secured by our Constitution. Moreover, despite its laudable goals, it is likely to be counterproductive. Accordingly, I am compelled to disapprove this measure.

No policy concerns can override the requirements of the First Amendment.

RONALD REAGAN.

THE WHITE HOUSE, *November 5, 1988.*

H.R. 4833

MEMORANDUM OF DISAPPROVAL

I am withholding my approval of H.R. 4833, the "Nursing Shortage Reduction and Education Extension Act of 1988," because I signed its provisions into law on Friday, November 4, 1988, as Title VII of S. 2889, the "Health Omnibus Programs Extension of 1988".

RONALD REAGAN.

THE WHITE HOUSE, *November 5, 1988.*

H.R. 4432

MEMORANDUM OF DISAPPROVAL

I am withholding my approval of H.R. 4432, a bill "to amend title 13, United States Code, to require certain detailed tabulations relating to Asian Americans and Pacific Islanders in the decennial censuses of population". This bill would also require certain housing-related questions in the 1990 decennial census.

My decision not to approve this bill is based on the following reasons. First, the bill would unnecessarily restrict the form of the race question in future censuses. Second, it would require the Census Bureau to use a form of race question that the Bureau has tested and found to be less accurate than the one it plans to use in 1990. Third, it would specifically require questions relating to plumbing facilities and heating and cooling equipment in housing units that would not produce data sufficiently useful to justify their inclusion. Adequate data on plumbing and heating will continue to be available through the census and other sources. Finally, these changes would increase administrative costs and add to the paperwork burden imposed on the public by the census.

There are always more questions proposed for the census than can be accommodated. The Administration has proposed a questionnaire that represents a careful and reasonable balancing between the Nation's need for information and the reporting burden the census places on respondents.

RONALD REAGAN.

THE WHITE HOUSE, *November 8, 1988.*

H.R. 5043

MEMORANDUM OF DISAPPROVAL

Public service is a public trust. It requires a high and exacting standard of conduct, and we should go forward with more clear, far-reaching restrictions to ensure that this standard of conduct is always met. But the final provisions of this bill were poorly drafted, would have applied unevenly, and would discourage from Government service America's best talent because of the unfair burdens it would impose. This bill would not have affected anyone who leaves office with my Administration, but my concern is to secure good government for our country's future. This bill has good provisions, which I support, but on the whole it is flawed, excessive, and discriminatory. I asked 20 Cabinet Members and agency heads to review this bill. Not one recommended approval; 16, including the Director of the Office of Government Ethics, specifically advised that it be vetoed. Therefore, I am withholding my approval from H.R. 5043, the "Post-Employment Restrictions Act of 1988".

The 100th Congress cobbled together the final version of H.R. 5043 in its closing moments. Post-employment restrictions are needed if the Nation is to govern itself effectively. They deserve careful and thoughtful consideration, but this bill reflected the political and other pressures that mount in the closing days of a Congress. In December, we will have the recommendations of the nonpartisan Quadrennial Commission on Executive, Legislative, and Judicial Salaries, which is currently considering Federal salaries and related issues. The President-elect also has indicated that he will have his own initiative next year, and I have encouraged him to do so. This bill would not have taken effect until August of next year, and this interval should be used to craft balanced and comprehensible post-employment legislation.

Fair and impartial governance is the hallmark of our constitutional democracy. Current laws concerning the conduct of current and former Federal employees were designed to secure that fairness and impartiality. They prohibit conduct that produces conflicts of interest between Federal employees' official duties and their personal interests. Specifically, current law is designed to prevent two primary abuses—the misuse of confidential information or the exercise of improper influence over Government action by former Federal employees and less-than-faithful performance of official functions by current Federal employees to favor a future employer.

While there are some positive aspects of the bill, the Post-Employment Restrictions Act would have prohibited conduct of former Federal employees unrelated to genuine ethical concerns. In effect it would have punished them for their service to the Nation. For example, in certain circumstances, the bill would have prohibited a senior former employee of an agency from communicating with a senior current employee of a different agency with whom he is not personally acquainted to seek assistance his employer or client needs on a matter with which the former employee had absolutely nothing to do while in Federal employment. The bill would make that communication a Federal crime punishable by imprisonment and fines.

The law already precludes a former Federal official from representing private parties in specific matters in which that official was involved while in Government and also imposes a 1-year cooling-off period during which a former official generally cannot contact his agency on any matter. It is excessive and unjustifiable also to insist, as this bill would, that former officials not represent any client before any senior Executive official wherever located and no matter how unrelated to the former officials' Government service.

That kind of unnecessary and drastic criminal prohibition is unfair to those who have served their country. It is already difficult to recruit talented people into the senior ranks of Government. This bill would have begun to make former senior Federal employees unemployable in the private sector after their Government service. Many of the most talented might never sign up to serve their country, and the country would be the worse for it.

The bill also unreasonably favors the Congress with restrictions lighter than those that would apply to the Executive branch. Under the bill, all Executive branch employees would have been subject to certain prohibitions, but most congressional employees would have been subject to none. Even for senior congressional personnel, the restrictions would have been substantially less rigorous than the restrictions placed on Executive branch employees of equivalent responsibility. Members of Congress and senior staff would be subject only to 1-year cooling-off periods of very modest scope and would not be subject to the lifetime and 2-year particular matter bans currently imposed on all Executive branch officials. The Congress' relatively favorable treatment of itself in imposing restrictions in comparison with its treatment of the Executive branch may indicate some congressional recognition that a number of the bill's restrictions are overboard and, to the extent of that overbreadth, unfair. In future consideration of post-employment restrictions legislation, the Congress should determine what restrictions are reasonable and necessary to protect the integrity of Government and then apply them equally

to both the Congress and the Executive branch.

The limitation of offenses under H.R. 5043 to acts done for compensation also is of concern. There may be circumstances in which a current employee who misuses official authority or a former employee who misuses influence should be subject to penalties even though no compensation is involved. In that respect, the provisions of H.R. 5043 would have failed to reach conduct that should be prohibited and thus would have significantly weakened current law. The Attorney General and the Director of the Office of Government Ethics find this provision to be particularly objectionable.

I support several positive aspects of H.R. 5043 that would substantially improve the effectiveness of Federal post-employment restriction laws. The bill would have granted the Attorney General the power to seek civil penalties for violations of the post-employment restrictions and to obtain injunctions from Federal courts to prevent impending violations. The bill also would have permitted the Attorney General to distinguish between misdemeanor and felony violations of the restrictions in charging individuals. The bill also would have adjusted the 1-year ban on certain contacts with a former employee's former agency to make clear that it applies to matters in which the United States has a direct interest, even if that particular agency does not have a direct interest. Finally, the bill would have eliminated the compartmentalization of the Executive Office of the President for purposes of post-employment restrictions. I urge that future legislation on post-employment restrictions incorporate these positive aspects of H.R. 5043.

Above all, in considering future post-employment restrictions legislation, the Congress should focus on drafting legislation that will be clear and understandable to current, former, and future Federal employees. The bill would create a confusing patchwork of different requirements for seven categories of covered officials: "senior", "other senior", "very senior", all Executive branch, Members of Congress, congressional employees, and former Presidents and Vice Presidents. The law should be clear so that employees joining the Government will understand what will be expected of them when they leave, former employees will know reliably the limits on their conduct, and Federal officials charged with enforcing the law and providing advice can discharge their duties effectively.

In withholding my approval of H.R. 5043, I am well aware that there will be criticisms. But I must act on this bill according to my judgment of what is best for the country. While this bill would not have affected me or my Administration, it is fundamentally flawed and would have made securing good government for America substantially more difficult. I urge the Congress and the new Administration to address effectively and fairly the standards of conduct for Federal employees when the Congress convenes.

RONALD REAGAN.

THE WHITE HOUSE, *November 23, 1988.*

H.R. 5560

MEMORANDUM OF DISAPPROVAL

I am withholding my approval of H.R. 5560, a bill making technical corrections relating to the "Health Omnibus Programs Extension of 1988," which I approved on November 4, 1988 (Public Law 100-607).

My approval of H.R. 5560 is unnecessary, because its provisions are identical to Title II, Subtitle G of H.R. 5210, the "Anti-Drug Abuse Act of 1988," which I was pleased to approve on November 18, 1988. Accordingly, and in order to avoid creating further technical problems, I am withholding my approval of H.R. 5560.

RONALD REAGAN.

THE WHITE HOUSE, *November 23, 1988.*

S. 508

MEMORANDUM OF DISAPPROVAL

I am withholding my approval of S. 508, the "Whistleblower Protection Act of 1988." I regret that the Congress did not present me with constitutional and effective legislation to expand the protections and procedural rights afforded to Federal employees who report fraud, waste, and abuse they discover in Federal programs.

Reporting of mismanagement and violations of the law, often called whistleblowing, contributes to efficient use of taxpayers' dollars and effective government. Such reporting is to be encouraged, and those who make the reports must be protected. At the same time, we must ensure that heads of departments and agencies can manage their personnel effectively. Enactment of S. 508 would have redesigned the whistleblower protection process so that employees who are not genuine whistleblowers could manipulate the process to their advantage simply to delay or avoid appropriate adverse personnel actions.

To ensure that Federal employees who report mismanagement are protected from reprisal, while ensuring that Federal personnel managers are not saddled with routinely defending appropriate decisions they make, I have directed the Attorney General, working with the Director of the Office of Management and Budget and the Director of the Office of Personnel Management, to prepare constitutional and effective whistleblower protection legislation for me to submit at the beginning of the next session of the Congress.

A major objection to S. 508 is its change of the factual showings required of employees in making their cases in whistleblower proceedings. Section 1221(e) of Title 5 of the United States Code, as contained in S. 508, would have interfered substantially with personnel management in Federal departments and agencies. Current law strikes a proper balance between the showings required of employees and agencies in making their cases before the Merit Systems Protection Board. Section 1221(e) would have removed the requirement that employees demonstrate in Merit Systems Protection Board proceedings that whistleblowing by the employee was a substantial factor in the agency's personnel action decision about which the employee complains. Moreover, that Section would have imposed the heavier burden upon the department or agency of proving by clear and convincing evidence—which is a much higher legal standard than proof by a preponderance of the evidence that applies in most civil matters in American courts—that the same decision would have occurred in the absence of any whistleblowing. The substantially reduced factual showing required of the employee and the substantially increased burden on agencies essentially rigs the Board's process against agency personnel managers in favor of employees. The interests of both employees and managers should be fully protected.

The provisions of S. 508 also raised serious constitutional concerns. Section 3 of the bill amends chapter 12 in Title 5 of the United States Code substituting new Sections 1201 through 1222. Section 1211 creates an Office of Special Counsel and purports to insulate the Office from presidential supervision and to limit the power of the President to remove his subordinates from office. Section 1217 purports to prohibit review within the Executive branch of views of the Office of Special Counsel proposed to be transmitted in response to congressional committee requests.

Section 1212(d)(3)(A) of Title 5, as contained in the bill, purports to authorize the Special Counsel to obtain judicial review of most decisions of the Merit Systems Protection Board in proceedings to which the Special Counsel is a party. Implementation of this provision would place two Executive branch agencies before a Federal court to resolve a dispute between them. The litigation of intra-Executive branch disputes conflicts with the constitutional grant of the Executive power to the President, which includes the authority to supervise and resolve disputes between his subordinates. In addition, permitting the Executive branch to litigate against itself conflicts with constitutional limitations on the exercise of the judicial power of the United States to actual cases or controversies between parties with concretely adverse interests.

These provisions could not have been implemented to the extent that they are inconsistent with the President's constitutional authority and duty to faithfully execute the laws, supervise his subordinates in the Executive branch, and recommend such measures to the Congress as he judges necessary and expedient, and Article