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APPROVED

OCT 20 1975

Signed  
10/20/75

THE WHITE HOUSE

ACTION

WASHINGTON

Last Day: October 20

October 20, 1975

Statement  
issued 10/21/75

TO ARCHIVES  
10/21/75

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

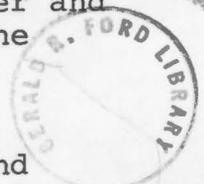
SUBJECT: Enrolled Bill S. 824 - Japan-United States Friendship Act

BACKGROUND

The enrolled bill would establish in the Treasury, a Japan-United States Friendship Trust Fund and would authorize the appropriation of approximately \$36 million to the fund for Fiscal Year 1976. The fund would be used to promote scholarly, cultural and artistic activities between Japan and the United States and would enable the United States to fulfill a 1962 Japan-United States agreement to expand such activities.

The Department of Justice and OMB recommended a veto of the measure at the time of the preparation of the OMB enrolled bill report (Tab A). The principal reason for recommending disapproval of the bill was the presence of a constitutional defect in the provisions governing composition of the Japan-United States Friendship Commission.

Section 4 of the bill provides that the Commission shall be composed of, among others: the current members of the U.S. Panel of the Joint Committee on U.S.-Japan Cultural and Educational Cooperation (an existing entity); two members of the House of Representatives appointed by the Speaker and two members of the United States Senate appointed by the President Pro Tempore. The Department of Justice took the position that these provisions violated (1) the constitutional requirement that officers of the United States be appointed by the President with the advice and consent of the Senate, or with Congressional authorization, by the President alone, or the courts of law, or heads of departments, and (2) the constitutional prohibition against members of Congress holding other offices of the United States.



The office of Counsel to the President saw no constitutional defect in the designation of members of the existing U.S. Panel as members of the new Commission, since the members of the U.S. Panel are appointees of the Secretary of State. The Counsel's office raised this view with the Department of Justice and, upon reconsideration, the Department of Justice has concurred.

With respect to the second constitutional defect, the inclusion of Congressional members on the Commission, both the Counsel's office and the Department of Justice would oppose the bill if the intent were to have such members serve in an active capacity (i.e. as voting members). Over the weekend, however, an exchange of letters between the State Department and the Senate and House conferees on the bill was arranged, clarifying an understanding to the effect that the Congressional members of the Commission will serve in an advisory capacity only (i.e. as non-voting members). This exchange of letters will be published in the Congressional Record this week, if the legislation is approved.

With this clarification, the concerns of Justice, OMB and the Counsel's office have been met. In addition, Max Friedersdorf and NSC recommend approval.

#### RECOMMENDATION

I recommend that you approve S. 824

#### DECISION

 Sign S. 824 (Tab C) and approve draft signing statement at Tab B.

\_\_\_\_\_ Veto S. 824  
Approve veto message at Tab D.

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THE WHITE HOUSE  
WASHINGTON

FOR: PHIL BUCHEN

FROM: KEN LAZARUS

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

APPROVED

OCT 20 1975

Statement Issued

10/21/75

OCT 15 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 824 - Japan-United States  
Friendship Act  
Sponsor - Sen. Javits (R) New York and 32 others

To Archives  
10/21/75

Last Day for Action

October 20, 1975 - Monday

Purpose

Establishes a Japan-United States Friendship Trust Fund and a Japan-United States Friendship Commission to develop and carry out programs to promote scholarly, cultural, and artistic activities between Japan and the United States.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto message attached)
Department of Justice	Disapproval (Veto message attached)
Department of State	Approval
National Endowment for the Arts	Approval
National Endowment for the Humanities	Approval
Civil Service Commission	Approval (insofar as the personnel provisions are concerned)
Department of the Treasury	No objection
National Security Council	No objection
U.S. Information Agency	No objection
General Services Administration	No objection (Informally)

Discussion

The enrolled bill would establish an income-earning trust fund in the Treasury called the Japan-United States Friendship Trust Fund. Amounts in the Fund would be used to assist a

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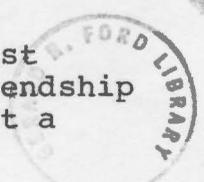
Establishes a Japan-United States Friendship Trust Fund and a Japan-United States Friendship Commission to develop and carry out programs to promote scholarly, cultural, and artistic activities between Japan and the United States.

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U.S. Information Agency	No objection
General Services Administration	No objection (Informally)

Discussion

The enrolled bill would establish an income-earning trust fund in the Treasury called the Japan-United States Friendship Trust Fund. Amounts in the Fund would be used to assist a



variety of activities consistent with the bill's purpose including support for: (1) studies and research in Japanese and U.S. institutions of higher education; (2) major book collections in Japanese and U.S. libraries; (3) programs in the arts in association with Japanese and U.S. institutions; (4) graduate and faculty-level fellowships and scholarships in Japan and the United States; and (5) visiting professors and lecturers in Japanese and U.S. universities and colleges.

S. 824 would authorize appropriation to the Fund for fiscal year 1976 of approximately \$36 million. This total consists of an amount equivalent to 7.5 percent of the funds payable by Japan to the United States under the terms of the 1971 Okinawa reversion agreement (\$24 million) and approximately \$12 million of Japanese currency remaining in certain U.S. accounts in Japan (G.A.R.I.O.A.) earmarked for educational exchange activities. The Fund could also accept gifts and donations. The bill provides for investment of monies in the Fund by Treasury with proceeds of the investments accruing to the Fund.

The G.A.R.I.O.A. currencies would have to be spent in Japan. Annual expenditures from the Fund could not exceed the Fund's income plus five percent of the Fund's principal. Payments from the Fund, other than amounts already appropriated and gifts and donations, would be subject to appropriation.

The Japan-United States Friendship Commission created by the bill would develop and carry out, through grants, the programs authorized by the bill. The 18-member Commission would be composed of the 12 U.S. members of the U.S. Panel of the Joint Committee on United States-Japan Cultural and Educational Cooperation (an existing advisory commission created to foster cultural and educational exchanges), two Senators appointed by the President pro tempore of the Senate and two Representatives appointed by the Speaker of the House, the Chairman of the National Endowment for the Arts, and the Chairman of the National Endowment for the Humanities. The Chairman of the current U.S. Panel would serve as Chairman of the new Commission.

In your 1976 Budget you requested an appropriation of \$15 million, the amount then remaining in the G.A.R.I.O.A. account, for educational and cultural exchange activities with Japan. This appropriation, to be administered by the

State Department, was intended to fulfill a 1962 Japan-U.S. agreement to expand such activities and to reciprocate the Japanese Government's gift of \$10 million in 1973 to several American educational institutions for Japanese studies. Subsequently, in order to obtain use of the G.A.R.I.O.A. funds to implement the 1962 agreement and in view of the fact that the Administration did not support many features of S. 824 as introduced, Dr. Kissinger, in a May 12, 1975, memorandum to the Deputy Secretary of State, stated that you authorized the State Department to attempt to work out a compromise bill. The principal elements of a compromise bill were to include:

- authority for a one-time appropriation of G.A.R.I.O.A. funds together with an amount equivalent to 5 percent of the Okinawan reversion monies, avoiding the establishment of any new trust fund;
- provisions for project-by-project grants to U.S. institutions and support for Japan-U.S. cultural exchange projects and for American studies programs in Japanese educational institutions, but no authority for open-ended grants to U.S. institutions; and
- use of the U.S. membership on the existing U.S.-Japan Conference on Educational and Cultural Interchange, thereby avoiding the need for any new commission.

The intent of this last element in a compromise was to use the U.S. Panel of the Joint Committee on United States-Japan Cultural and Educational Cooperation to provide advisory services with respect to development and implementation of the program, the authority for which would reside in the State Department. (The Joint Committee was established by an exchange of notes between Japan and the United States in 1968, pursuant to a recommendation of the Fourth Japan-United States Cultural and Educational Conference held that year.) This part of the compromise may have been misinterpreted in the Congress and by the State Department, with the result that S. 824 as enrolled creates a new commission (independent executive agency) whose membership in part is the U.S. Panel of the Joint Committee. This provision is constitutionally objectionable, as set forth below.

While the enrolled bill apparently is designed to meet purposes similar to those envisioned in the Administration's original request and subsequent compromise offer, it continues

to be contrary to the Administration's approach by exceeding the Administration's original request by \$24 million and the compromise offer by \$8 million, by establishing a trust fund, and by creating a new commission. In addition, the description of the kinds of programs eligible to receive support from the Fund is so broad that the bill could result in open-ended Federal support for educational and cultural institutions in the United States.

More importantly, Justice recommends you disapprove the enrolled bill because it violates two provisions of the Constitution. In its enrolled bill letter, Justice notes that eight of the twelve members of the United States Panel of the Joint Committee on United States-Japan Cultural and Educational Cooperation, who also are designated to serve on the new Commission established by S. 824, are not officers of the Government. Justice points out that because the Commission would have the function of administering a statute of the United States for an indefinite period, to direct the expenditure of appropriated funds, and to appoint at least one officer of the United States (the Executive Director of the Commission), its members therefore must be officers of the United States. Accordingly, Justice's enrolled bill letter states:

"It follows that the members of the Commission must be appointed as provided in Article II, section 2, clause 2 of the Constitution, i.e., by the President, by and with the advice and consent of the Senate, or with congressional authorization by the President, alone, or the courts of law, or heads of Departments.

\*\*\*\*\*

The provision designed to appoint the nongovernment members of the Panel as members of the Commission thus constitutes an attempt by Congress to appoint officers of the United States in violation of Article II, section 2, clause 2 of the Constitution."

Furthermore, Justice opposes the provision in the bill for appointment of four Members of Congress to serve on the Commission as contrary not only to the constitutional provision cited above, but also to Article I, section 6, clause 2 of the Constitution which precludes Members of Congress from holding any office under the United States.

State's enrolled bill letter, the substance of which has been forwarded to you separately as a memorandum from Deputy Secretary Ingersoll, urges approval of S. 824 because it will fulfill the 13-year old commitment to Japan to make available G.A.R.I.O.A. monies for expanded Japan-United States cultural programs, enable the U.S. to provide support for American studies at Japanese universities, reciprocate Japan's 1973 gift of \$10 million to certain American universities for Japanese studies, and offer you the opportunity to make a particularly effective gesture to Japan. The State Department's memorandum does not address the constitutionally objectionable provisions of the bill.

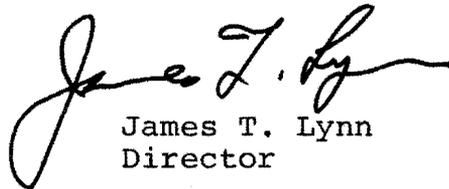
Although the bill falls far short of the elements of the compromise you authorized be sought, those defects alone-- a new agency, a trust fund, somewhat higher program levels, and overly broad authorization of assistance to American universities--would not, in our view, warrant a veto. However, we believe that Justice's objections on constitutional grounds outweigh the temporary advantages of approval. As Justice points out in its enrolled bill letter:

"Though the particular governmental function established by the bill may be of minor practical importance, the constitutional principles which prevent Congress from appointing, or Members of Congress from serving as, Executive officers are of major consequence, and must not be impaired. If the President accepts congressional designation and congressional membership with respect to the present Commission, his objections with respect to a similarly structured Commission with more important functions will lose some force--with the Congress, the public, and possibly even with the courts."

Accordingly, we join Justice in recommending your disapproval of the bill. Justice has prepared a proposed veto message which is attached. With a view to avoiding any misunderstanding or embarrassment of the Japanese in the wake of the visit of the Emperor and Empress, we have prepared an alternative draft of a message, also attached, which places greater stress on the importance with which you view our relations with Japan, on the fact that you have made a constructive proposal to further those relations, and on your willingness to sign a measure that does not contain the objectionable features of S. 824.

If you decide to disapprove the bill, you may wish to consider appropriate diplomatic notification and explanation by the State Department to the Japanese Government so as to avoid any misunderstanding as to the reasons for your action.

Finally, because of the possibility of misunderstanding in the Congress over the interpretation of the acceptable organizational arrangements in the May 12 outline of a legislative compromise, you may wish to direct the State Department provide clarification to Senator Javits and Representative Wayne Hays, the sponsor of the House version of the bill, in advance of announcement of a veto.



James T. Lynn  
Director

Enclosures





*D*

## STATEMENT BY THE PRESIDENT

Almost a year ago, I had the great honor and pleasure to be the first American President in office to visit Japan. My trip convinced me more than ever that we Americans can learn much from Japan's culture which will enrich the quality of our lives.

One week ago today, the Emperor and Empress of Japan completed a visit to the United States, the first such visit in history.

This exchange of State visits not only symbolizes the importance of our relations but also the value of the exchange of people and ideas between the two countries.

Several years ago, the Government of Japan established a Foundation to expand understanding of Japan among universities and other institutions in the United States and elsewhere in the world. Through the Foundation, the Government of Japan made a generous gift to ten American universities to strengthen the study of Japanese history and culture. And this year, the Government of Japan announced the gift of an Experimental Theater to the Kennedy Center for the Performing Arts, as a Bicentennial present to the people of the United States.

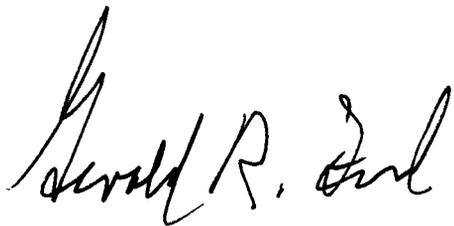
Today is our turn. The people of America genuinely desire to build closer relations with the people of Japan. This requires that we understand each other's arts, society and history more widely and more deeply.

It is my pleasure today to sign into law an Act which will effectively further this important goal. Through the distinguished leadership of Senator Jacob Javits and Congressman Wayne Hays and many others in both Houses, the Japan-United States Friendship Act is now the law of the land.

The Act provides for the creation of a Japan-United States Friendship Commission to administer a program of expanded scholarly, cultural, and artistic ventures between our two countries. The Commission will be composed of the 12 members of the United States Panel of the Joint Committee on United States-Japan Cultural and Educational Cooperation; the Chairman of the National Endowment for the Arts; the Chairman of the National Endowment for the Humanities; two members of the House of Representatives to be appointed by the Speaker; and two members of the Senate to be appointed by the President pro tempore.

Because of the Constitutional provision against Members of the Congress serving in any other office of the United States, the Congressional Members of the Commission will serve in an advisory capacity, as non-voting members.

I am confident that the support made available under the Act for expanded cultural relations will contribute importantly to the strengthening of understanding between the people of the United States and the people of Japan.

A handwritten signature in cursive script, reading "Gerald R. Ford". The signature is written in dark ink and is positioned in the lower right quadrant of the page.

TO THE SENATE OF THE UNITED STATES:

I am returning without my approval S. 824, the "Japan-United States Friendship Act".

I do so with great regret, for I am in full agreement with the essential purpose of the act: "To support the close friendship and mutuality of interests between the United States and Japan." The recent visit of the Emperor and Empress was a profound expression of the growth and deepening of our friendship and interests over the past thirty years. A strengthening of our educational and cultural exchange activities would contribute in a practical and significant way to the friendship, cooperation and understanding between the people of our two countries.

It is my painful duty, however, to disapprove this bill because the method of appointing twelve of the eighteen members of the Japan-United States Friendship Commission would be in conflict with fundamental provisions of the Constitution, namely, Article II, section 2, clause 2, providing for the appointment of officers of the United States, and Article I, section 6, clause 2, which precludes Members of the Congress from holding any office under the United States.

The Commission would administer a statute of the United States, direct the expenditure of appropriated funds and appoint an Executive Director who would be an officer of the United States. It would thus not be merely of an advisory character or perform a single function of a limited duration, but would carry out sovereign functions of the United States for an indefinite period of time. The members of the Commission therefore would be officers of the United States who must be appointed, as provided for in Article II, section 2, clause 2 of the Constitution, by the President by and with the advice and consent of the Senate, or, with statutory authorization, by the President alone, the Courts of Law or the Heads of Departments.

The bill does not comply with that constitutional requirement. It would by legislative fiat constitute as officers of the United States eight members of an advisory panel, appointed from private life, who are not now officers of the United States, and would provide for the appointment of four of the Commissioners by the Speaker of the House and the President pro tempore of the Senate, respectively. Moreover, since the last mentioned four commissioners are to be Members of the Congress, the bill violates Article I, section 6, clause 2 of the Constitution, which precludes Members of the Congress from holding any office under the United States.

For those constitutional reasons I am unable to give my consent to the bill.

In my Budget for fiscal year 1976, I requested a special appropriation to fulfill a 1962 cultural and educational agreement with Japan and to reciprocate the Japanese Government's gift in 1973 to several American educational institutions for Japanese studies. I continue to believe this to be a sound and constructive proposal to enhance our vital relations with Japan. Nevertheless, I am willing to approve alternative legislation which is unencumbered with constitutionally objectionable provisions and which authorizes strengthened programs of cultural and educational exchange with Japan, administered by the Department of State using existing advisory groups as needed.

THE WHITE HOUSE,

MEMORANDUM

NATIONAL SECURITY COUNCIL

October 9, 1975

MEMORANDUM FOR: Mr. George Gilbert  
FROM: Jeanne W. Davis   
SUBJECT: Japan - US Friendship Act

The NSC Staff has no objection to the Japan-US Friendship Act.

**USIA**  
UNITED STATES  
INFORMATION AGENCY  
WASHINGTON 20547

October 9, 1975

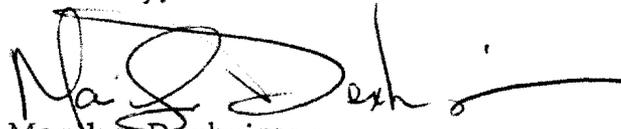
Mr. James M. Frey  
Assistant Director  
for Legislative Reference  
Office of Management and Budget  
Washington, D. C.

Dear Mr. Frey:

This will reply to your request for the views of the  
U. S. Information Agency on enrolled bill S. 824, the  
"Japan - United States Friendship Act."

USIA welcomes the passage of this Act by the Congress,  
and has no objection to any of its provisions.

Sincerely,

A handwritten signature in black ink, appearing to read "Marilyn Dexheimer", with a long horizontal flourish extending to the right.

Marilyn Dexheimer  
Congressional Liaison Officer



**NATIONAL ENDOWMENT FOR THE HUMANITIES**

WASHINGTON, D. C. 20506

**THE CHAIRMAN**

October 9, 1975

Mr. James M. Frey  
Assistant Director for Legislative  
Reference  
Room 7201 New Executive Office  
Building  
Office of Management and Budget  
Washington, D.C.

Dear Mr. Frey:

This is in response to your request of October 8th for the views of the National Endowment for the Humanities on S. 824 the "Japan United States Friendship Act".

This legislation is intended to provide for the use of certain sums payable by Japan to the United States for educational and cultural scholarship with Japan to aid education and culture at the highest level. The National Endowment for the Humanities recommends approval by the President.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Berman", written in a cursive style.

Ronald Berman  
Chairman

NATIONAL  
ENDOWMENT  
FOR  
THE ARTS

WASHINGTON  
D.C. 20506



A Federal agency advised by the  
National Council on the Arts

October 9, 1975

Mr. James M. Frey  
Assistant Director for  
Legislative Reference  
Office of Management and Budget  
Washington, D. C. 20503

Dear Mr. Frey:

This is in response to your request for our views and recommendations on enrolled bill S. 824, to provide for the use of certain funds to promote scholarly, cultural, and artistic activities between Japan and the United States, and for other purposes.

It is our understanding that the basic purpose of the bill is to create a "Japan-United States Friendship Trust Fund," employing: (a) seven and one-half percent (7½%) of the proceeds payable to the United States pursuant to the Agreement Between the United States of America Concerning the Ryukyu Islands and the Daito Islands, signed at Washington and Tokyo, June 17, 1971; and (b) those funds (approximately \$14 million) available in U. S. accounts in Japan under the G.A.R.I.O.A. (Government and Relief in Occupied Areas) settlement of 1962. Possibly up to five percent (5%) of the principal annually from the proposed Fund would be used to support a variety of mutual educational and cultural studies, facilities, exchanges, and other activities between Japan and the United States.

The National Endowment for the Arts heartily supports the promotion of scholarly, cultural, and artistic activities between Japan and the United States in order that the peoples of each nation may gain a greater understanding and appreciation of the other's cultural and artistic heritage.

Accordingly, the National Endowment for the Arts strongly recommends approval of S. 824 by the President.

Sincerely,

Nancy Hanks  
Chairman



DEPARTMENT OF STATE

Washington, D.C. 20520

OCT 9 - 1975

The Honorable  
James T. Lynn  
Director, Office of  
Management and Budget

Dear Mr. Lynn:

In response to Mr. Frey's communication of October 8 requesting the Department's views and recommendations on S 824, I am enclosing a copy of a letter dated October 4 from Deputy Secretary Ingersoll to the President, which contains the Department's views on this matter.

Sincerely,

A handwritten signature in black ink that reads "Robert J. McCloskey".

Robert J. McCloskey  
Assistant Secretary  
for Congressional Relations

Enclosure:  
Copy of Memorandum for the  
President dated October 4

## THE DEPUTY SECRETARY OF STATE

WASHINGTON

October 4, 1975

MEMORANDUM FOR: THE PRESIDENT

From: Robert S. Ingersoll *RSI*Subject: New Japan-U.S. Friendship Fund and  
Farewell Message to the Emperor

Congress is about to give final approval to establishment of a Japan-U.S. Friendship Fund to expand cultural activities. We fully approve of this legislation which will:

- fulfill a 13-year old commitment to Japan;
- enable the U.S. to provide support for American Studies at Japanese universities;
- reciprocate a 1973 Japanese government gift to ten American universities (including Michigan) for Japanese Studies;
- and offer you the opportunity to make a particularly effective gesture to Japan before the Emperor's departure.

Various Administrations have sought Congressional approval to carry out a 1962 agreement with Japan which set aside a portion of Japanese occupation ("GARIOA") payments to the U.S. for expanded cultural programs. President Nixon stated his intention to obtain these funds (about \$12 million in yen) in the 1973 Communique with Prime Minister Tanaka; and you supported expansion of cultural exchanges in the Communique after your Japan visit.

Senator Javits and 32 co-sponsors introduced a bill this year with similar purposes using \$32 million (10%) of Japanese Okinawa Reversion Agreement payments in place of GARIOA funds. The Javits bill contained several provisions not supported by the Administration.

Last May, you authorized us to work out a compromise. Congressman Hays piloted a bill through the House which substantially achieved this objective.

The Conference Report:

- accepts the Administration's request that the existing membership of the government-sponsored U.S.-Japan Cultural Conference supervise the Friendship Fund (instead of a new body);
- combines CARIOA and Okinawa funding which the Administration supports;
- authorizes \$24 million (7½%) of the Okinawa money instead of the 5% which the Administration and Hays wanted;
- modifies the trust fund provision the Administration opposed, by making earned interest subject to the appropriation process, thus assuring the annual Congressional and Executive review which the Administration wanted.

In its final form, the Friendship Act is entirely acceptable to the Department of State. Your approval would effectively support U.S. foreign policy objectives. Announcement that you have signed the Act could be usefully contained in a "Farewell Message" from you to the Emperor just before he departs for home. This gesture on your part would mean much to Their Majesties and to the people of Japan. In a single stroke, a 13-year old agreement with Japan is fulfilled and an era of closer cultural and educational ties initiated.

Recommendation

That you sign the Friendship Act and that you send a Farewell Message (draft attached) to the Emperor informing him of your action.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

Attachment:

Farewell Message to the Emperor.

Proposed Farewell Message to the  
Emperor and Empress of Japan

Your Majesties, on behalf of all Americans I wish you Godspeed on your journey home. We all shall remember your historic visit as a profound expression of the strong ties between our countries. I am highly pleased to inform you that I have just signed into law the Japan-United States Friendship Act to further strengthen our cultural relations.

The American people have a great affection and admiration for the people of Japan. I know they join me in wishing you a pleasant voyage. Please rest assured, Your Majesties, of my continuing highest personal regard.

Gerald R. Ford



THE GENERAL COUNSEL OF THE TREASURY

WASHINGTON, D.C. 20220

OCT 10 1975

Director, Office of Management and Budget  
Executive Office of the President  
Washington, D. C. 20503

Attention: Assistant Director for Legislative  
Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of S. 824, "To provide for the use of certain funds to promote scholarly, cultural, and artistic activities between Japan and the United States, and for other purposes."

The enrolled bill would authorize to be appropriated, for fiscal year 1976, to the Japan-United States Friendship Trust Fund to be established in the Treasury, an amount equal to 7.5 per centum of the total funds payable to the United States pursuant to the Agreement Between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands, signed June 17, 1971, plus those funds available in United States accounts in Japan and transferred by the Government of Japan to the United States pursuant to the United States' request made under the United States-Japan agreement regarding Postwar Economic Assistance to Japan, signed January 9, 1962 including accrued interest. The enrolled enactment also authorizes donations to the Fund, and such donations would be exempt from Federal income, State, or gift tax. The Fund would be used for the promotion of scholarly, cultural, and artistic activities between Japan and the United States. The Secretary of the Treasury would be directed to invest such portions of the Fund as are not required to meet current withdrawals. The Secretary would also be directed to pay out all income of the Fund annually and up to 5 percent of the principal for the purposes specified in the enrolled enactment pursuant to the directions of the Japanese-American Friendship Commission which would be created by the enrolled enactment.

The Department opposed similar proposals in a report to your office dated November 15, 1972 on S. 3872, 92nd Congress, S. 649, 93rd Congress. There is no apparent relationship between the receipts proposed to be earmarked and any needs for Federal assistance for the scholarly, cultural, and artistic activities proposed to be supported by the enrolled enactment. Also, there is no apparent trust relationship; thus use of the trust fund mechanism seems inappropriate. Providing for investment of the earmarked Federal receipts would result in backdoor spending to the extent of interest earnings.

However, the Department has not presented its views on this legislation to the Congress and we are advised by the Department of State that the enrolled enactment reflects the results of negotiations between that Department and the Congress and is supported by them. Furthermore, it would be a particularly inopportune time to veto this legislation during Emperor Hirohito's visit to the United States.

Under these circumstances, the Department would have no objection to a recommendation that the enrolled enactment be approved by the President.

Sincerely yours,

  
General Counsel



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

October 10, 1975

Honorable James T. Lynn  
Director, Office of Management and Budget  
Washington, D.C. 20503

Attention: Assistant Director for  
Legislative Reference

Dear Mr. Lynn:

This is in response to your request for the Commission's views on enrolled S. 824, an act "to provide for the use of certain funds to promote scholarly, cultural, and artistic activities between Japan and the United States, and for other purposes."

We are limiting our comments to the personnel provisions of this bill.

Section 4 would establish a Commission to be known as the Japan-United States Friendship Commission, composed of the members of the United States Panel of the Joint Committee on United States-Japan Cultural and Educational Cooperation, two representatives from both the House and Senate, and the Chairman of the National Endowment for the Arts and the National Endowment for the Humanities.

Among other things, the newly established Commission would be empowered to appoint an Executive Director, at the pay rate for GS-18, without regard to the provisions of title 5, United States Code, governing appointments in the competitive civil service. We see nothing, either in the bill itself or in the Committee report, that would justify the statutory exception of this position from title 5. The Commission is strongly opposed to such exceptions since we have ample authority to except a position administratively--if warranted.

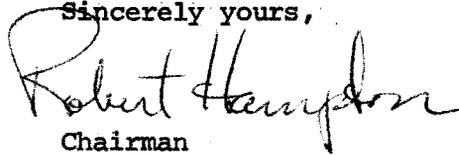
The provision authorizing the appointment of experts and consultants under 5 U.S.C. 3109 at rates not to exceed grade GS-18 is appropriate.

We would have preferred that the provision authorizing the use of voluntary and noncompensated personnel specify that such personnel are not to be considered Federal employees for any purpose except coverage under the tort claims and injury compensation laws.

Although we object to the above two provisions, our objections are not sufficiently overriding to warrant a veto recommendation. We therefore recommend--insofar as the personnel provisions are concerned--that the President sign the bill into law.

By direction of the Commission:

Sincerely yours,

A handwritten signature in cursive script that reads "Robert Hampton". The signature is written in dark ink and is positioned above the printed name "Robert Hampton".

Chairman

Department of Justice  
Washington, D.C. 20530

October 10, 1975

Honorable James T. Lynn  
Director, Office of Management  
and Budget  
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request I have examined a facsimile of the enrolled bill S. 824, "To provide for the use of certain funds to promote scholarly, cultural, and artistic activities between Japan and the United States, and for other purposes."

Section 4 of the bill would establish a commission to be known as the Japan-United States Friendship Commission, which would be of unlimited duration, and would have the power to direct the expenditure of appropriated funds and appoint officials, including an Executive Director. The Commission would consist of:

The Chairman of the National Endowment for the Arts;

The Chairman of the National Endowment for the Humanities;

Two members of the House of Representatives appointed by the Speaker of the House of Representatives;

Two members of the Senate appointed by the President pro tempore of the Senate; and

The members of the United States Panel of the Joint Committee on United States-Japan Cultural and Educational Cooperation.

The last mentioned Panel consists of 12 members drawn from the following fields (19 U.S.T. 7557, 7558):



- |                                 |           |
|---------------------------------|-----------|
| (1) Government offices          | 4 persons |
| (2) Foundations                 | 2 persons |
| (3) Academic circles            | 1 person  |
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| (5) Business circles            | 1 person  |
| (6) Mass media circles          | 1 person  |
| (7) Artistic circles            | 1 person  |
| (8) Experts on Japanese studies | 1 person  |

The Chairman of that Panel, who is to be appointed from among the Panel members other than those representing government agencies, would be the Chairman of the Commission.

The Department of Justice recommends against Executive approval of the bill because its provisions violate Article I, section 6, clause 2 and Article II, section 2, clause 2 of the Constitution.

The Commission would have the function of administering a statute of the United States for an indefinite period, to direct the expenditure of appropriated funds, and to appoint at least one officer of the United States (the Executive Director). Its members therefore must be officers of the United States. The Commission differs from Commissions which have only advisory functions, or whose task is restricted to a single task of limited duration and whose members are thus "ad hoc officers." See The Constitution of the United States, Analysis and Interpretation, Sen. Doc. 92-82, p. 523 (1973).

It follows that the members of the Commission must be appointed as provided in Article II, section 2, clause 2 of the Constitution, i.e., by the President, by and with the advice and consent of the Senate, or with congressional authorization by the President alone, or the courts of law, or heads of Departments.

There is no objection to the designation to the Commission of the Chairmen of the National Endowment for the Arts and the National Endowment for the Humanities, and of the government members of the Panel. It is well established that Congress by statute can give additional functions to persons who already are officers of the United States. This consideration, however, does not apply to the nongovernment members

of the Panel, who are not already officers of the United States by reason of such membership, since the Panel has only advisory functions. The provision designed to appoint the nongovernment members of the Panel as members of the Commission thus constitutes an attempt by Congress to appoint officers of the United States in violation of Article II, section 2, clause 2 of the Constitution.

The provision relating to appointment of four members of the Commission by the Speaker of the House and the President pro tempore of the Senate is contrary to the same constitutional prohibition. It also violates Article I, section 6, clause 2 of the Constitution which precludes members of Congress from holding any office under the United States.

Though the particular governmental function established by the bill may be of minor practical importance, the constitutional principles which prevent Congress from appointing, or Members of Congress from serving as, Executive officers are of major consequence, and must not be impaired. If the President accepts congressional designation and congressional membership with respect to the present Commission, his objections with respect to a similarly structured Commission with more important functions will lose some force--with the Congress, the public, and possibly even the courts.

It may be mentioned that President Franklin D. Roosevelt vetoed H.J. Res. 304, 75th Cong., 1st Sess., which would have established a New York World's Fair Commission, in part on the ground that the provision establishing Members of Congress as a majority of its membership was unconstitutional. 81 Cong. Rec. 4779; see also 39 Op. A.G. 61 (1937). A large majority of the present Commission would be Members of Congress and officers appointed (as officers) by the Congress.

Sincerely,



Michael M. Uhlmann  
Assistant Attorney General  
Office of Legislative Affairs

To the Senate of the United States:

I am returning herewith, without my approval, S. 824, "the Japan-United States Friendship Act."

While I fully agree with the purposes of the bill, it is my painful duty to disapprove it because the method of appointing twelve of the eighteen members of the Japan-United States Friendship Commission would be in conflict with fundamental provisions of the Constitution, namely, Article II, section 2, clause 2, providing for the appointment of officers of the United States, and Article I, section 6, clause 2, which precludes Members of Congress from holding any office under the United States.

The Commission would administer a statute of the United States, direct the expenditure of appropriated funds, and appoint an Executive Director who would be an officer of the United States. It would thus not be merely of an advisory character or perform a single function of a limited duration, but would carry out sovereign functions of the United States for an indefinite period of time. The members of the Commission therefore would be officers of the United States who have to be appointed, as provided for in Article II, section 2, clause 2 of the Constitution, by the President by and with the advice and consent of the Senate, or, with statutory authorization, by the President alone, the courts of law, or the heads of Departments.

The bill does not comply with that constitutional requirement. It would by legislative fiat constitute as officers

of the United States eight members of an advisory panel, appointed from private life, who are not now officers of the United States, and would provide for the appointment of four of the Commissioners by the Speaker of the House and the President pro tempore of the Senate, respectively. Moreover, since the last mentioned four Commissioners are to be Members of Congress, the bill violates Article I, section 6, clause 2 of the Constitution, which precludes Members of Congress from holding any office under the United States.

For those constitutional reasons I am unable to give my consent to the bill. Since I fully agree with its purpose, it is my sincere hope that Congress in the near future will pass substitute legislation avoiding those constitutional proscriptions.

GERALD R. FORD

THE WHITE HOUSE.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 602

Date: October 15

Time: noon

FOR ACTION: NSC/S  
Kathy Ryan  
Dick Parsons  
Max Friedersdorf *sign*  
*Paul Meis*

cc (for information): Jack Marsh  
Jim Cavanaugh  
Warren Hendriks

FROM THE STAFF SECRETARY

DUE: Date: October 16

Time: 300pm

SUBJECT:

S. 824 - Japan-United States Friendship Act

ACTION REQUESTED:

- |   |   |
|---|---|
| <input type="checkbox"/> For Necessary Action         | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief     | <input type="checkbox"/> Draft Reply              |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks            |

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

\_\_\_\_\_  
K. R. COLE, JR.  
For the President

THE WHITE HOUSE  
WASHINGTON

October 16, 1975

MEMORANDUM FOR: JIM CAVANAUGH  
FROM: MAX L. FRIEDERSDORF *M. L.*  
SUBJECT: S. 824 - Japan-United States Friendship Act

The Office of Legislative Affairs concurs with the agencies  
that the subject bill be signed.

Attachments

TRR

Date: October 15

Time: noon

FOR ACTION: NSC/S  
Kathy Ryan  
Dick Parsons  
Max Friedersdorf

cc (for information): Jack Marsh  
Jim Cavanaugh  
Warren Hendriks

*Paul Theris*

FROM THE STAFF SECRETARY

DUE: Date: October 16

Time: 300pm

SUBJECT:

S. 824 - Japan-United States Friendship Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

**RETURN TO RESEARCH  
ROOM 128**

*Jim*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Cavanaugh

Date: October 15

Time: noon

FOR ACTION: NSC/S  
 Kathy Ryan  
 Dick Parsons  
 Max Friedersdorf  
 Paul Theis

cc (for information): Robert Hartmann  
 Jack Marsh  
 Jim Cavanaugh  
 Warren Hendriks

FROM THE STAFF SECRETARY

DUE: Date: October 16

Time: 300pm

SUBJECT:

*Rec. 12:28 pm  
 10/15/75*

S. 824 - Japan-United States Friendship Act

## ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

## REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*I concur this must be vetoed on Constitutional grounds, and agree to the pre-notifying of the Japanese Govt and its Congressional sponsors; in addition, thought should be given to the reaction of the Japanese American community in Hawaii, Calif, etc. who are voting U.S. citizens x*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

*Jim Cavanaugh*

NATIONAL SECURITY COUNCIL

To: Mr Parsons km 234  
From: Jay Taylor

suggested language  
for approval statement  
Jagan - US Friendship  
Act

Almost a year ago, I had the great honor and pleasure to be the first American President in office to visit Japan. My trip convinced me more than ever that we Americans can learn much from Japan's culture which will enrich the quality of our lives.

One week ago today, the Emperor and Empress of Japan completed a visit to the United States, the first such visit in history.

This exchange of State Visits not only symbolizes the importance of our relations but also the value of the exchange of people and ideas between the two countries.

Several years ago, the Government of Japan established a Foundation to expand understanding of Japan among universities and other institutions in the United States and elsewhere in the world. Through the Foundation, the Government of Japan, made a generous gift to ten American universities to strengthen the study of Japanese history and culture. And this year, the Government of

Japan announced the gift of an Experimental Theater to the Kennedy Center for the Performing Arts, as a Bicentennial present to the people of the United States.

Today is our turn. The people of America genuinely desire to build closer relations with the people of Japan. This requires that we understand each other's arts, society and history more widely and more deeply.

It is my pleasure today to sign into law an Act which will effectively further this important goal. Through the distinguished leadership of Senator Jacob Javits and Congressman Wayne Hays and many others in both Houses, the Japan-United States Friendship Act is now the law of the land. I am confident that the support made available under this Act for expanded cultural relations will contribute importantly to the strengthening of understanding between our two peoples.

Clearance:EA/J

*Did Jm CK*

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 602

Date: October 15

Time: noon

FOR ACTION: NSC/S  
Kathy Ryan  
Dick Parsons  
Max Friedersdorf

cc (for information): Jack Marsh  
Jim Cavanaugh  
Warren Hendriks

*Ken Hagans*

FROM THE STAFF SECRETARY

DUE: Date: October 16

Time: 300pm

SUBJECT:

S. 824 - Japan-United States Friendship Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

*Jim Cavanaugh*



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 15 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 824 - Japan-United States  
Friendship Act  
Sponsor - Sen. Javits (R) New York and 32 others

Last Day for Action

October 20, 1975 - Monday

Purpose

Establishes a Japan-United States Friendship Trust Fund and a Japan-United States Friendship Commission to develop and carry out programs to promote scholarly, cultural, and artistic activities between Japan and the United States.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto message attached)
Department of Justice	Disapproval (Veto message attached)
Department of State	Approval
National Endowment for the Arts	Approval
National Endowment for the Humanities	Approval
Civil Service Commission	Approval (insofar as the personnel provisions are concerned)
Department of the Treasury	No objection
National Security Council	No objection
U.S. Information Agency	No objection
General Services Administration	No objection (Informally)

Discussion

The enrolled bill would establish an income-earning trust fund in the Treasury called the Japan-United States Friendship Trust Fund. Amounts in the Fund would be used to assist a

variety of activities consistent with the bill's purpose including support for: (1) studies and research in Japanese and U.S. institutions of higher education; (2) major book collections in Japanese and U.S. libraries; (3) programs in the arts in association with Japanese and U.S. institutions; (4) graduate and faculty-level fellowships and scholarships in Japan and the United States; and (5) visiting professors and lecturers in Japanese and U.S. universities and colleges.

S. 824 would authorize appropriation to the Fund for fiscal year 1976 of approximately \$36 million. This total consists of an amount equivalent to 7.5 percent of the funds payable by Japan to the United States under the terms of the 1971 Okinawa reversion agreement (\$24 million) and approximately \$12 million of Japanese currency remaining in certain U.S. accounts in Japan (G.A.R.I.O.A.) earmarked for educational exchange activities. The Fund could also accept gifts and donations. The bill provides for investment of monies in the Fund by Treasury with proceeds of the investments accruing to the Fund.

The G.A.R.I.O.A. currencies would have to be spent in Japan. Annual expenditures from the Fund could not exceed the Fund's income plus five percent of the Fund's principal. Payments from the Fund, other than amounts already appropriated and gifts and donations, would be subject to appropriation.

The Japan-United States Friendship Commission created by the bill would develop and carry out, through grants, the programs authorized by the bill. The 18-member Commission would be composed of the 12 U.S. members of the U.S. Panel of the Joint Committee on United States-Japan Cultural and Educational Cooperation (an existing advisory commission created to foster cultural and educational exchanges), two Senators appointed by the President pro tempore of the Senate and two Representatives appointed by the Speaker of the House, the Chairman of the National Endowment for the Arts, and the Chairman of the National Endowment for the Humanities. The Chairman of the current U.S. Panel would serve as Chairman of the new Commission.

In your 1976 Budget you requested an appropriation of \$15 million, the amount then remaining in the G.A.R.I.O.A. account, for educational and cultural exchange activities with Japan. This appropriation, to be administered by the

Widening  
- P. 20  
1/11

State Department, was intended to fulfill a 1962 Japan-U.S. agreement to expand such activities and to reciprocate the Japanese Government's gift of \$10 million in 1973 to several American educational institutions for Japanese studies. Subsequently, in order to obtain use of the G.A.R.I.O.A. funds to implement the 1962 agreement and in view of the fact that the Administration did not support many features of S. 824 as introduced, Dr. Kissinger, in a May 12, 1975, memorandum to the Deputy Secretary of State, stated that you authorized the State Department to attempt to work out a compromise bill. The principal elements of a compromise bill were to include:

- authority for a one-time appropriation of G.A.R.I.O.A. funds together with an amount equivalent to 5 percent of the Okinawan reversion monies, avoiding the establishment of any new trust fund;
- provisions for project-by-project grants to U.S. institutions and support for Japan-U.S. cultural exchange projects and for American studies programs in Japanese educational institutions, but no authority for open-ended grants to U.S. institutions; and
- use of the U.S. membership on the existing U.S.-Japan Conference on Educational and Cultural Interchange, thereby avoiding the need for any new commission.

The intent of this last element in a compromise was to use the U.S. Panel of the Joint Committee on United States-Japan Cultural and Educational Cooperation to provide advisory services with respect to development and implementation of the program, the authority for which would reside in the State Department. (The Joint Committee was established by an exchange of notes between Japan and the United States in 1968, pursuant to a recommendation of the Fourth Japan-United States Cultural and Educational Conference held that year.) This part of the compromise may have been misinterpreted in the Congress and by the State Department, with the result that S. 824 as enrolled creates a new commission (independent executive agency) whose membership in part is the U.S. Panel of the Joint Committee. This provision is constitutionally objectionable, as set forth below.

While the enrolled bill apparently is designed to meet purposes similar to those envisioned in the Administration's original request and subsequent compromise offer, it continues

to be contrary to the Administration's approach by exceeding the Administration's original request by \$24 million and the compromise offer by \$8 million, by establishing a trust fund, and by creating a new commission. In addition, the description of the kinds of programs eligible to receive support from the Fund is so broad that the bill could result in open-ended Federal support for educational and cultural institutions in the United States.

More importantly, Justice recommends you disapprove the enrolled bill because it violates two provisions of the Constitution. In its enrolled bill letter, Justice notes that eight of the twelve members of the United States Panel of the Joint Committee on United States-Japan Cultural and Educational Cooperation, who also are designated to serve on the new Commission established by S. 824, are not officers of the Government. Justice points out that because the Commission would have the function of administering a statute of the United States for an indefinite period, to direct the expenditure of appropriated funds, and to appoint at least one officer of the United States (the Executive Director of the Commission), its members therefore must be officers of the United States. Accordingly, Justice's enrolled bill letter states:

"It follows that the members of the Commission must be appointed as provided in Article II, section 2, clause 2 of the Constitution, i.e., by the President, by and with the advice and consent of the Senate, or with congressional authorization by the President, alone, or the courts of law, or heads of Departments.

\*\*\*\*\*

The provision designed to appoint the nongovernment members of the Panel as members of the Commission thus constitutes an attempt by Congress to appoint officers of the United States in violation of Article II, section 2, clause 2 of the Constitution."

Furthermore, Justice opposes the provision in the bill for appointment of four Members of Congress to serve on the Commission as contrary not only to the constitutional provision cited above, but also to Article I, section 6, clause 2 of the Constitution which precludes Members of Congress from holding any office under the United States.

State's enrolled bill letter, the substance of which has been forwarded to you separately as a memorandum from Deputy Secretary Ingersoll, urges approval of S. 824 because it will fulfill the 13-year old commitment to Japan to make available G.A.R.I.O.A. monies for expanded Japan-United States cultural programs, enable the U.S. to provide support for American studies at Japanese universities, reciprocate Japan's 1973 gift of \$10 million to certain American universities for Japanese studies, and offer you the opportunity to make a particularly effective gesture to Japan. The State Department's memorandum does not address the constitutionally objectionable provisions of the bill.

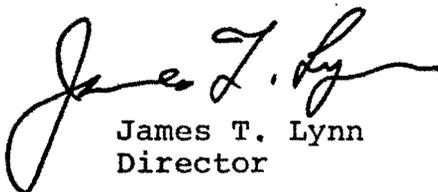
Although the bill falls far short of the elements of the compromise you authorized be sought, those defects alone-- a new agency, a trust fund, somewhat higher program levels, and overly broad authorization of assistance to American universities--would not, in our view, warrant a veto. However, we believe that Justice's objections on constitutional grounds outweigh the temporary advantages of approval. As Justice points out in its enrolled bill letter:

"Though the particular governmental function established by the bill may be of minor practical importance, the constitutional principles which prevent Congress from appointing, or Members of Congress from serving as, Executive officers are of major consequence, and must not be impaired. If the President accepts congressional designation and congressional membership with respect to the present Commission, his objections with respect to a similarly structured Commission with more important functions will lose some force--with the Congress, the public, and possibly even with the courts."

Accordingly, we join Justice in recommending your disapproval of the bill. Justice has prepared a proposed veto message which is attached. With a view to avoiding any misunderstanding or embarrassment of the Japanese in the wake of the visit of the Emperor and Empress, we have prepared an alternative draft of a message, also attached, which places greater stress on the importance with which you view our relations with Japan, on the fact that you have made a constructive proposal to further those relations, and on your willingness to sign a measure that does not contain the objectionable features of S. 824.

If you decide to disapprove the bill, you may wish to consider appropriate diplomatic notification and explanation by the State Department to the Japanese Government so as to avoid any misunderstanding as to the reasons for your action.

Finally, because of the possibility of misunderstanding in the Congress over the interpretation of the acceptable organizational arrangements in the May 12 outline of a legislative compromise, you may wish to direct the State Department provide clarification to Senator Javits and Representative Wayne Hays, the sponsor of the House version of the bill, in advance of announcement of a veto.

A handwritten signature in cursive script, appearing to read "James T. Lynn".

James T. Lynn  
Director

Enclosures

TO THE SENATE OF THE UNITED STATES:

I am returning herewith, without my approval, S. 824, the "Japan-United States Friendship Act".

I do so with great regret, for I am in full agreement with the essential purpose of the Act: "To support the close friendship and mutuality of interests between the United States and Japan." The recent visit of the Emperor and Empress was a profound expression of the growth and deepening of our friendship and interests over the past thirty years, and a strengthening of our educational and cultural exchange activities would contribute in a practical and significant way to the friendship, cooperation, and understanding between the people of our two countries.

It is my painful duty, however, to disapprove this bill because the method of appointing twelve of the eighteen members of the Japan-United States Friendship Commission would be in conflict with fundamental provisions of the Constitution, namely, Article II, section 2, clause 2, providing for the appointment of officers of the United States, and Article I, section 6, clause 2, which precludes Members of Congress from holding any office under the United States.

The Commission would administer a statute of the United States, direct the expenditure of appropriated funds, and appoint an Executive Director who would be an officer of the United States. It would thus not be merely of an advisory character or perform a single function of a limited duration, but would carry out sovereign functions of the United States for an indefinite period of time. The members of the Commission therefore would be officers of the United States who

have to be appointed, as provided for in Article II, section 2, clause 2 of the Constitution, by the President by and with the advice and consent of the Senate, or, with statutory authorization, by the President alone, the courts of law, or the heads of Departments.

The bill does not comply with that constitutional requirement. It would by legislative fiat constitute as officers of the United States eight members of an advisory panel, appointed from private life, who are not now officers of the United States, and would provide for the appointment of four of the Commissioners by the Speaker of the House and the President pro tempore of the Senate, respectively. Moreover, since the last mentioned four Commissioners are to be Members of Congress, the bill violates Article I, section 6, clause 2 of the Constitution, which precludes Members of Congress from holding any office under the United States.

For those constitutional reasons I am unable to give my consent to the bill.

In my Budget for fiscal year 1976 I requested a special appropriation to fulfill a 1962 cultural and educational agreement with Japan and to reciprocate the Japanese Government's gift in 1973 to several American educational institutions for Japanese studies. I continue to believe this to be a sound and constructive proposal to enhance our vital relations with Japan. Nevertheless, I am willing to approve alternative legislation which is unencumbered with constitutionally objectionable provisions and which authorizes strengthened

programs of cultural and educational exchange with Japan,  
administered by the Department of State using existing  
advisory groups as needed.

THE WHITE HOUSE

October , 1975

Department of Justice

Washington, D.C. 20530

October 10, 1975

Honorable James T. Lynn  
Director, Office of Management  
and Budget  
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request I have examined a facsimile of the enrolled bill S. 824, "To provide for the use of certain funds to promote scholarly, cultural, and artistic activities between Japan and the United States, and for other purposes."

Section 4 of the bill would establish a commission to be known as the Japan-United States Friendship Commission, which would be of unlimited duration, and would have the power to direct the expenditure of appropriated funds and appoint officials, including an Executive Director. The Commission would consist of:

The Chairman of the National Endowment for the Arts;

The Chairman of the National Endowment for the Humanities;

Two members of the House of Representatives appointed by the Speaker of the House of Representatives;

Two members of the Senate appointed by the President pro tempore of the Senate; and

The members of the United States Panel of the Joint Committee on United States-Japan Cultural and Educational Cooperation.

The last mentioned Panel consists of 12 members drawn from the following fields (19 U.S.T. 7557, 7558):



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| (6) Mass media circles          | 1 person  |
| (7) Artistic circles            | 1 person  |
| (8) Experts on Japanese studies | 1 person  |

The Chairman of that Panel, who is to be appointed from among the Panel members other than those representing government agencies, would be the Chairman of the Commission.

The Department of Justice recommends against Executive approval of the bill because its provisions violate Article I, section 6, clause 2 and Article II, section 2, clause 2 of the Constitution.

The Commission would have the function of administering a statute of the United States for an indefinite period, to direct the expenditure of appropriated funds, and to appoint at least one officer of the United States (the Executive Director). Its members therefore must be officers of the United States. The Commission differs from Commissions which have only advisory functions, or whose task is restricted to a single task of limited duration and whose members are thus "ad hoc officers." See The Constitution of the United States, Analysis and Interpretation, Sen. Doc. 92-82, p. 523 (1973).

It follows that the members of the Commission must be appointed as provided in Article II, section 2, clause 2 of the Constitution, i.e., by the President, by and with the advice and consent of the Senate, or with congressional authorization by the President alone, or the courts of law, or heads of Departments.

There is no objection to the designation to the Commission of the Chairmen of the National Endowment for the Arts and the National Endowment for the Humanities, and of the government members of the Panel. It is well established that Congress by statute can give additional functions to persons who already are officers of the United States. This consideration, however, does not apply to the nongovernment members

of the Panel, who are not already officers of the United States by reason of such membership, since the Panel has only advisory functions. The provision designed to appoint the nongovernment members of the Panel as members of the Commission thus constitutes an attempt by Congress to appoint officers of the United States in violation of Article II, section 2, clause 2 of the Constitution.

The provision relating to appointment of four members of the Commission by the Speaker of the House and the President pro tempore of the Senate is contrary to the same constitutional prohibition. It also violates Article I, section 6, clause 2 of the Constitution which precludes members of Congress from holding any office under the United States.

Though the particular governmental function established by the bill may be of minor practical importance, the constitutional principles which prevent Congress from appointing, or Members of Congress from serving as, Executive officers are of major consequence, and must not be impaired. If the President accepts congressional designation and congressional membership with respect to the present Commission, his objections with respect to a similarly structured Commission with more important functions will lose some force--with the Congress, the public, and possibly even the courts.

It may be mentioned that President Franklin D. Roosevelt vetoed H.J. Res. 304, 75th Cong., 1st Sess., which would have established a New York World's Fair Commission, in part on the ground that the provision establishing Members of Congress as a majority of its membership was unconstitutional. 81 Cong. Rec. 4779; see also 39 Op. A.G. 61 (1937). A large majority of the present Commission would be Members of Congress and officers appointed (as officers) by the Congress.

Sincerely,



Michael M. Uhlmann  
Assistant Attorney General  
Office of Legislative Affairs



DEPARTMENT OF STATE

Washington, D.C. 20520

OCT 9 - 1975

The Honorable  
James T. Lynn  
Director, Office of  
Management and Budget

Dear Mr. Lynn:

In response to Mr. Frey's communication of October 8 requesting the Department's views and recommendations on S 824, I am enclosing a copy of a letter dated October 4 from Deputy Secretary Ingersoll to the President, which contains the Department's views on this matter.

Sincerely,

A handwritten signature in black ink that reads "Robert J. McCloskey". The signature is written in a cursive style with a large initial "R".

Robert J. McCloskey  
Assistant Secretary  
for Congressional Relations

Enclosure:  
Copy of Memorandum for the  
President dated October 4

THE DEPUTY SECRETARY OF STATE  
WASHINGTON

October 4, 1975

MEMORANDUM FOR: THE PRESIDENT

From: Robert S. Ingersoll *RSI*

Subject: New Japan-U.S. Friendship Fund and  
Farewell Message to the Emperor

Congress is about to give final approval to establishment of a Japan-U.S. Friendship Fund to expand cultural activities. We fully approve of this legislation which will:

- fulfill a 13-year old commitment to Japan;
- enable the U.S. to provide support for American Studies at Japanese universities;
- reciprocate a 1973 Japanese government gift to ten American universities (including Michigan) for Japanese Studies;
- and offer you the opportunity to make a particularly effective gesture to Japan before the Emperor's departure.

Various Administrations have sought Congressional approval to carry out a 1962 agreement with Japan which set aside a portion of Japanese occupation ("GARIOA") payments to the U.S. for expanded cultural programs. President Nixon stated his intention to obtain these funds (about \$12 million in yen) in the 1973 Communique with Prime Minister Tanaka; and you supported expansion of cultural exchanges in the Communique after your Japan visit.

Senator Javits and 32 co-sponsors introduced a bill this year with similar purposes using \$32 million (10%) of Japanese Okinawa Reversion Agreement payments in place of GARIOA funds. The Javits bill contained several provisions not supported by the Administration.

Last May, you authorized us to work out a compromise. Congressman Hays piloted a bill through the House which substantially achieved this objective.

The Conference Report:

- accepts the Administration's request that the existing membership of the government-sponsored U.S.-Japan Cultural Conference supervise the Friendship Fund (instead of a new body);
- combines CARIOA and Okinawa funding which the Administration supports;
- authorizes \$24 million (7½%) of the Okinawa money instead of the 5% which the Administration and Hays wanted;
- modifies the trust fund provision the Administration opposed, by making earned interest subject to the appropriation process, thus assuring the annual Congressional and Executive review which the Administration wanted.

In its final form, the Friendship Act is entirely acceptable to the Department of State. Your approval would effectively support U.S. foreign policy objectives. Announcement that you have signed the Act could be usefully contained in a "Farewell Message" from you to the Emperor just before he departs for home. This gesture on your part would mean much to Their Majesties and to the people of Japan. In a single stroke, a 13-year old agreement with Japan is fulfilled and an era of closer cultural and educational ties initiated.

Recommendation

That you sign the Friendship Act and that you send a Farewell Message (draft attached) to the Emperor informing him of your action.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

Attachment:

Farewell Message to the Emperor.

Proposed Farewell Message to the  
Emperor and Empress of Japan

Your Majesties, on behalf of all Americans I wish you Godspeed on your journey home. We all shall remember your historic visit as a profound expression of the strong ties between our countries. I am highly pleased to inform you that I have just signed into law the Japan-United States Friendship Act to further strengthen our cultural relations.

The American people have a great affection and admiration for the people of Japan. I know they join me in wishing you a pleasant voyage. Please rest assured, Your Majesties, of my continuing highest personal regard.

Gerald R. Ford

NATIONAL  
ENDOWMENT  
FOR  
THE ARTS

WASHINGTON  
D.C. 20506



A Federal agency advised by the  
National Council on the Arts

October 9, 1975

Mr. James M. Frey  
Assistant Director for  
Legislative Reference  
Office of Management and Budget  
Washington, D. C. 20503

Dear Mr. Frey:

This is in response to your request for our views and recommendations on enrolled bill S. 824, to provide for the use of certain funds to promote scholarly, cultural, and artistic activities between Japan and the United States, and for other purposes.

It is our understanding that the basic purpose of the bill is to create a "Japan-United States Friendship Trust Fund," employing: (a) seven and one-half percent (7½%) of the proceeds payable to the United States pursuant to the Agreement Between the United States of America Concerning the Ryukyu Islands and the Daito Islands, signed at Washington and Tokyo, June 17, 1971; and (b) those funds (approximately \$14 million) available in U. S. accounts in Japan under the G.A.R.I.O.A. (Government and Relief in Occupied Areas) settlement of 1962. Possibly up to five percent (5%) of the principal annually from the proposed Fund would be used to support a variety of mutual educational and cultural studies, facilities, exchanges, and other activities between Japan and the United States.

The National Endowment for the Arts heartily supports the promotion of scholarly, cultural, and artistic activities between Japan and the United States in order that the peoples of each nation may gain a greater understanding and appreciation of the other's cultural and artistic heritage.

Accordingly, the National Endowment for the Arts strongly recommends approval of S. 824 by the President.

Sincerely,

Nancy Hanks  
Chairman



**NATIONAL ENDOWMENT FOR THE HUMANITIES**

WASHINGTON, D. C. 20506

THE CHAIRMAN

October 9, 1975

Mr. James M. Frey  
Assistant Director for Legislative  
Reference  
Room 7201 New Executive Office  
Building  
Office of Management and Budget  
Washington, D.C.

Dear Mr. Frey:

This is in response to your request of October 8th for the views of the National Endowment for the Humanities on S. 824 the "Japan United States Friendship Act".

This legislation is intended to provide for the use of certain sums payable by Japan to the United States for educational and cultural scholarship with Japan to aid education and culture at the highest level. The National Endowment for the Humanities recommends approval by the President.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Berman", written in a cursive style.

Ronald Berman  
Chairman



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

October 10, 1975

Honorable James T. Lynn  
Director, Office of Management and Budget  
Washington, D.C. 20503

Attention: Assistant Director for  
Legislative Reference

Dear Mr. Lynn:

This is in response to your request for the Commission's views on enrolled S. 824, an act "to provide for the use of certain funds to promote scholarly, cultural, and artistic activities between Japan and the United States, and for other purposes."

We are limiting our comments to the personnel provisions of this bill.

Section 4 would establish a Commission to be known as the Japan-United States Friendship Commission, composed of the members of the United States Panel of the Joint Committee on United States-Japan Cultural and Educational Cooperation, two representatives from both the House and Senate, and the Chairman of the National Endowment for the Arts and the National Endowment for the Humanities.

Among other things, the newly established Commission would be empowered to appoint an Executive Director, at the pay rate for GS-18, without regard to the provisions of title 5, United States Code, governing appointments in the competitive civil service. We see nothing, either in the bill itself or in the Committee report, that would justify the statutory exception of this position from title 5. The Commission is strongly opposed to such exceptions since we have ample authority to except a position administratively--if warranted.

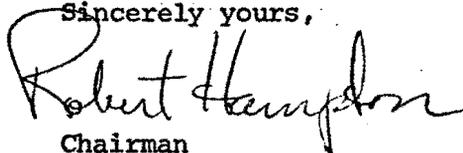
The provision authorizing the appointment of experts and consultants under 5 U.S.C. 3109 at rates not to exceed grade GS-18 is appropriate.

We would have preferred that the provision authorizing the use of voluntary and noncompensated personnel specify that such personnel are not to be considered Federal employees for any purpose except coverage under the tort claims and injury compensation laws.

Although we object to the above two provisions, our objections are not sufficiently overriding to warrant a veto recommendation. We therefore recommend--insofar as the personnel provisions are concerned--that the President sign the bill into law.

By direction of the Commission:

Sincerely yours,

Handwritten signature of Robert Hampton in cursive script.

Chairman



THE GENERAL COUNSEL OF THE TREASURY  
WASHINGTON, D.C. 20220

OCT 10 1975

Director, Office of Management and Budget  
Executive Office of the President  
Washington, D. C. 20503

Attention: Assistant Director for Legislative  
Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of S. 824, "To provide for the use of certain funds to promote scholarly, cultural, and artistic activities between Japan and the United States, and for other purposes."

The enrolled bill would authorize to be appropriated, for fiscal year 1976, to the Japan-United States Friendship Trust Fund to be established in the Treasury, an amount equal to 7.5 per centum of the total funds payable to the United States pursuant to the Agreement Between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands, signed June 17, 1971, plus those funds available in United States accounts in Japan and transferred by the Government of Japan to the United States pursuant to the United States' request made under the United States-Japan agreement regarding Postwar Economic Assistance to Japan, signed January 9, 1962 including accrued interest. The enrolled enactment also authorizes donations to the Fund, and such donations would be exempt from Federal income, State, or gift tax. The Fund would be used for the promotion of scholarly, cultural, and artistic activities between Japan and the United States. The Secretary of the Treasury would be directed to invest such portions of the Fund as are not required to meet current withdrawals. The Secretary would also be directed to pay out all income of the Fund annually and up to 5 percent of the principal for the purposes specified in the enrolled enactment pursuant to the directions of the Japanese-American Friendship Commission which would be created by the enrolled enactment.

The Department opposed similar proposals in a report to your office dated November 15, 1972 on S. 3872, 92nd Congress, S. 649, 93rd Congress. There is no apparent relationship between the receipts proposed to be earmarked and any needs for Federal assistance for the scholarly, cultural, and artistic activities proposed to be supported by the enrolled enactment. Also, there is no apparent trust relationship; thus use of the trust fund mechanism seems inappropriate. Providing for investment of the earmarked Federal receipts would result in backdoor spending to the extent of interest earnings.

However, the Department has not presented its views on this legislation to the Congress and we are advised by the Department of State that the enrolled enactment reflects the results of negotiations between that Department and the Congress and is supported by them. Furthermore, it would be a particularly inopportune time to veto this legislation during Emperor Hirohito's visit to the United States.

Under these circumstances, the Department would have no objection to a recommendation that the enrolled enactment be approved by the President.

Sincerely yours,



General Counsel

MEMORANDUM

NATIONAL SECURITY COUNCIL

October 9, 1975

MEMORANDUM FOR: Mr. George Gilbert  
FROM: Jeanne W. Davis *JWD*  
SUBJECT: Japan - US Friendship Act

The NSC Staff has no objection to the Japan-US Friendship Act.

**USIA**  
UNITED STATES  
INFORMATION AGENCY  
WASHINGTON 20547

October 9, 1975

Mr. James M. Frey  
Assistant Director  
for Legislative Reference  
Office of Management and Budget  
Washington, D. C.

Dear Mr. Frey:

This will reply to your request for the views of the  
U. S. Information Agency on enrolled bill S. 824, the  
"Japan - United States Friendship Act."

USIA welcomes the passage of this Act by the Congress,  
and has no objection to any of its provisions.

Sincerely,

A handwritten signature in black ink, appearing to read "Marilyn Dexheimer", with a long horizontal flourish extending to the right.

Marilyn Dexheimer  
Congressional Liaison Officer

THE WHITE HOUSE

WASHINGTON

October 16, 1975

MEMORANDUM FOR: JIM CAVANAUGH  
FROM: KEN LAZARUS *KL*  
SUBJECT: S. 824 - Japan-United States Friendship Act

In the event the President decides to veto the subject bill, attached is a draft veto message (Tab A) which modifies the OMB draft in order to meet two concerns:

- (1) The only feature of the bill which raises an issue of constitutional dimension is the provision providing for active Congressional membership. Thus, OMB's characterization of the constitutional infirmities is inaccurate.
- (2) Given the fact that there is substantial support for this measure, it is my opinion that any veto message should only call for a cure of the constitutional problems.

More importantly, there is simply no need to veto this measure assuming that a clarification can be obtained from the Congress prior to the expiration of the last date for action. Specifically, were the State Department to make formal inquiry to the managers of the bill in care of Senator Javits' office with respect to the nature of the offices of Congressional members, they could receive a formal response to the effect that the intent of the managers was to create solely advisory (non-voting) positions for Congressional members. This exchange of letters could be placed in the Congressional Record when the Congress reconvenes. This would eliminate the necessity of a veto. Attached is a very rough draft signing statement which could be used in this regard (Tab B).

A

TO THE SENATE OF THE UNITED STATES:

I am returning herewith, without my approval, S. 824, the "Japan-United States Friendship Act."

I do so with great regret, for I am in full agreement with the essential purpose of the Act: "To support the close friendship and mutuality of interests between the United States and Japan." The recent visit of the Emperor and Empress was a profound expression of the growth and deepening of our friendship and interests over the past thirty years, and a strengthening of our educational and cultural exchange activities which contribute in a practical and significant way to the friendship, cooperation, and understanding between the people of our two countries.

It is my painful duty, however, to disapprove this bill due to the fact that Section 4 of the measure, governing the composition of the Japan-United States Friendship Commission, contains a defect of constitutional dimension.

The Commission would have the function of administering a statute of the United States which establishes a program for the continuing promotion of scholarly, cultural and artistic activities between Japan and the United States. The Commission is also authorized to make grants to carry out such programs. These functions are within the sphere of Executive responsibility under our constitutional system.

Section 4 of S. 824 would conflict with this cardinal principle of the Constitution by including in the Commission's active membership two members of the House of Representatives to be appointed by the Speaker and two members of the Senate to be appointed by the President pro tempore.

Article I, Section 6, Clause 2 of the Constitution precludes members of Congress from holding any office under the United States. Article II, Section 2, Clause 2 of the Constitution prohibits Congress from appointing Executive officers. If I were to accept congressional designation and congressional membership on the Commission, these constitutional principles would be seriously impaired.

For these constitutional reasons, I am unable to give my consent to the bill. I am hopeful, however, that the Congress will see fit to cure this defect and return the bill for my approval as soon as possible.

B

TO THE SENATE OF THE UNITED STATES:

I am pleased to lend my signature to S. 824, a bill to provide for the use of certain funds to promote scholarly, cultural, and artistic activities between Japan and the United States.

This legislation marks the end of the visit of the Emperor and Empress of Japan and the beginning of a period of expanded cultural ventures between our two nations.

Recognizing the assistance of members of Congress in processing this legislation and in subsequently clarifying the advisory nature of the offices of Congressional appointees to the Commission, I am gratified to enact this measure into law.

THE WHITE HOUSE  
WASHINGTON

October 18, 1975

Dick Parsons:

Attached is a draft memo to the President on Enrolled bill S. 824, which should go in on Monday. Also attached is a draft signing statement on the bill.

(Ken Lazarus gave this to me on Saturday and has not read it. He will contact you.)

A handwritten signature in cursive script, appearing to read "Spar".

## MEMORANDUM TO THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Enrolled Bill S. 824 -- Japan-United  
States Friendship Act

For the reasons set forth below, we recommend your approval of the subject bill on Monday, October 20.

OMB and the Department of Justice recommended a veto of the measure at the time of the preparation of the OMB enrolled bill memorandum. The sole basis for this recommendation was the presence of a constitutional defect in Section 4 of the bill which governs the composition of the Japan-United States Friendship Commission.

Section 4 provides, inter alia, that the Commission would include:

(1) the members of the existing United States Panel of the Joint Committee on United States-Japan Cultural and Educational Cooperation; and (2) two Members of the House of Representatives to be appointed by the Speaker and two Members of the Senate to be appointed by the President pro tempore. Since the Japan-United States Friendship Commission is authorized to carry out certain functions, i.e. grant-making, which are within the exclusive province of the Executive Branch, the Constitution prohibits: (1) the active, i.e. voting, membership of Members of Congress (Art. I, Sec. 6, Cl. 2); or (2) the appointment of such active Members of Congress (Art. II, Sec. 2, Cl. 2).

The Office of Counsel to the President saw no constitutional defect in the inclusion of members of the existing United States Panel, as these appointments are currently made by the Secretary of State pursuant to law. Upon reconsideration, the Department of Justice is in agreement.

With respect to the inclusion of Congressional Members, both the Counsel's Office and the Department of Justice would oppose the bill, assuming the intent were to have such members serve in an active capacity, i.e. as voting members. However, over the weekend, Counsel's Office arranged for an exchange of letters between the State Department and Senate and House conferees on the bill. These letters which are consistent with relevant legislative history, clarify an understanding to the effect that the Congressional members of the Commission will serve only in an advisory, non-voting capacity. This exchange of letters will be published in the Congressional Record upon the return of Congress next week.

With this clarification, the concerns of Justice, OMB and Counsel's Office have been met. Thus, there is now unanimity within your Administration on the acceptability of the bill. Attached is a draft signing statement incorporating a clarification of the discussed above.

Statement by the President  
Upon Signing S. 824,  
The Japan-United States  
Friendship Act

I am pleased to lend my signature to S. 824, a bill to provide for the use of certain funds to promote scholarly, cultural, and artistic activities between Japan and the United States.

I am in full agreement with the essential purpose of the Act: "To support the close friendship and mutuality of interests between the United States and Japan." The recent visit of the Emperor and Empress was a profound expression of the growth and deepening of our friendship and interests over the past thirty years, and a strengthening of our educational and cultural exchange activities which contribute in a practical and significant way to the friendship, cooperation, and understanding between the people of our two countries.

The Japan-United States Friendship Commission, established by S. 824, will administer a program of expanded scholarly, cultural and artistic ventures between our two countries. The Commission will be composed of: (1) the twelve members of the United States Panel of the Joint Committee on United States-Japan Cultural and Educational Cooperation, appointed by the Secretary of State; (2) the Chairman of the National Endowment for the Arts; (3) the Chairman of the National Endowment for the Humanities; (4) two advisory, non-voting Members of the House of Representatives to be appointed by the Speaker; and (5) two advisory, non-voting Members of the Senate to be appointed by the President pro tempore.

The Commission is authorized to develop and carry out programs and make grants for the promotion of scholarly, cultural and artistic activities in Japan and the United States .

Recognizing the assistance of Members of Congress, I am gratified to enact this measure into law .

THE WHITE HOUSE  
WASHINGTON

10.21.75

TO: Tom Jones

For Your Information: \_\_\_\_\_

For Appropriate Handling: ✓

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*RDL*

Robert D. Linder

Bob:

file:

exchange 3

letters included  
Judy

**THE WHITE HOUSE**  
**WASHINGTON**

Sarah:

Pls sign and return to  
me.

Judy

## NATIONAL SECURITY COUNCIL

October 18, 1975

MEMORANDUM FOR: JAMES CAVANAUGH  
FROM: Jeanne W. Davis   
SUBJECT: Japan - U. S. Friendship Act

The basic provisions of S. 824 have been pending for some 13 years. A veto would entail another indefinite delay. No matter how we explained the action, coming as it would on the heels of the visit of the Emperor and Empress, it would be inexplicable to the Japanese.

Fortunately, there now appears to be a viable alternative to the veto that would satisfactorily meet the Constitutional objections highlighted by Justice. (OMB acknowledges that other shortcomings in the Act would not in themselves warrant a veto.)

In the proposed alternative, the President would sign the bill but indicate in his signing message two understandings:

-- That in approving the bill he was doing so in light of the fact -- as stated in the Conference report -- that the Secretary of State will be appointing the members of the U. S. panel of the Joint Committee who will serve as members of the Commission.

-- That in approving the bill he was doing so with the understanding that, in light of the Constitutional proscription against appointment of members of Congress to an office under the United States, the members of Congress appointed to the Commission to administer the Act would not vote and would serve only in an advisory capacity. The President would note that letters of clarification on this subject had been provided by the Chairmen of the Senate and House Foreign Relations and International Relations Committees respectively would be incorporated in the Congressional record. (Copies of letters from Senators Sparkman and Javits are attached; a similar letter from Congressman Morgan is to be delivered on Monday morning. Congressmen Morgan and Hayes -- the latter sponsored the bill in the house -- have both agreed to this approach.)

Mr. Buchen's office is in agreement with this approach and, we understand, on the basis of the letters of clarification from Congress on the subject of Congressional membership, has gained the acquiescence of both Justice and OMB.

Concurrence: Ken Lazarus *kl*

JOHN SPARKMAN, ALA., CHAIRMAN

MIKE MANSFIELD, MONT.  
FRANK CHURCH, IDAHO  
STUART SYMINGTON, MO.  
CLAIBORNE PELL, R.I.  
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GEORGE MC GOVERN, S. DAK.  
HUBERT H. HUMPHREY, MINN.  
DICK CLARK, IOWA  
JOSEPH R. BIDEN, JR., DEL.

CLIFFORD P. CASE, N.J.  
JACOB K. JAVITS, N.Y.  
HUGH SCOTT, PA.  
JAMES S. PEARSON, KANS.  
CHARLES M. PERCY, ILL.  
ROBERT P. GRIFFIN, MICH.  
HOWARD H. BAKER, JR., TENN.

## United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, D.C. 20510

October 17, 1975

PAT M. HOLY, CHIEF OF STAFF  
ARTHUR M. KUHL, CHIEF CLERK

Mr. Kempton Jenkins  
Acting Assistant Secretary  
for Congressional Relations  
Department of State  
Washington, D.C. 20520

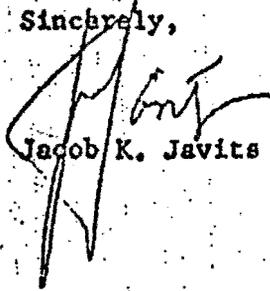
Dear Mr. Jenkins:

This letter will acknowledge your undated letter to me enclosing your letter to Senator Sparkman concerning the Japan-United States Friendship Act.

As you know, the version of the Japan-United States Friendship Act as passed by the House of Representatives provided in section 4(a) that the Members of Congress serving on the Japan United States Friendship Commission would have no vote on the Commission. In deciding to delete this wording from the Conference Report of the Japan United States Friendship Act, it was the view of the House Senate Conferees that the mandate of the Constitution would be binding and the staff was directed to act accordingly in filing the Conference Report. As it is now clear that Members of Congress cannot vote on such a commission, the Members of Congress serving on the Japan United States Friendship Commission shall act in a non-voting, advisory capacity.

With best wishes,

Sincerely,

  
Jacob K. Javits

BOB CHURCH, IDAHO  
JARY STAMINGTON, MO.  
ALBORN PELL, R.I.  
LE W. MC OER, WYO.  
GEORGE MC GOVERN, S. CAR.  
HUBERT H. HUMPHREY, MINN.  
DICK CLARK, IOWA  
JOSEPH R. BIDEN, JR., DEL.

CLIFFORD P. CASE, N.J.  
JACOB K. JAVITS, N.Y.  
HUGH SCOTT, PA.  
JAMES B. PARSON, KANS.  
CHARLES H. PERCY, ILL.  
ROBERT P. GRIFFIN, MICH.

# United States Senate

COMMITTEE ON FOREIGN RELATIONS  
WASHINGTON, D.C. 20510

PAT M. HOLT, CHIEF OF STAFF  
ARTHUR M. KUNL, CHIEF CLERK

October 17, 1975

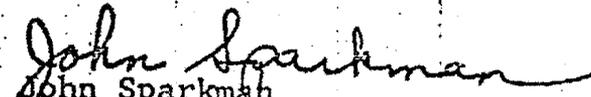
Mr. Kempton B. Jenkins  
Acting Assistant Secretary for  
Congressional Relations  
Department of State  
Washington, D. C.

Dear Mr. Jenkins:

This will acknowledge your undated letter received on October 16 concerning the Japan-United States Friendship Act and specifically Section 4(a).

The bill as passed does not deal with the question of whether Congressional members of the Commission are to be voting or non-voting members, but it seems clear that under the Constitution they would be non-voting.

Sincerely,

  
John Sparkman  
Chairman



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

DATE: 11-3-75

TO: Bob Linder

FROM: Jim Frey

Attached is the GSA views letter on  
S. 824. Please have it included in  
the enrolled bill file. Thanks.

*Tom Jones -  
For file  
RDL.*

UNITED STATES OF AMERICA  
GENERAL SERVICES ADMINISTRATION  
WASHINGTON, DC 20405



OCT 31 1975

Honorable James T. Lynn  
Director, Office of  
Management and Budget  
Washington, DC 20503

Dear Mr. Lynn:

On October 8, 1975, you requested the General Services Administration, GSA, to review and comment upon Enrolled Bill S. 824.

GSA has reviewed this bill and has no objection to its approval by the President.

Sincerely,

A large, stylized handwritten signature in black ink that reads "Dwight Ink".

Dwight A. Ink  
Acting Administrator