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THE WHITE HOUSE  
WASHINGTON

August 29, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

JAMES LYNN  
ROD HILLS

FROM:

JAMES CONNOR 

SUBJECT:

Pay Comparability Act:  
Legislative Veto

The President has reviewed your memorandum of August 28 on the above subject and approved the following option:

Option 1

Announce the alternative pay plan without any public comment with respect to the constitutional concern that has been expressed by the Attorney General and others.

Please follow-up with appropriate action.

cc: Don Rumsfeld

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

August 28, 1975

MR PRESIDENT -

The attached memo was  
staffed to Jack Marsh who recommends  
Option 2.

Jim Connor

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

August 28, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES LYNN  
RODERICK HILLS R U

SUBJECT: Pay Comparability Act: Legislative Veto

In the meeting held August 27, 1975, you stated that you do intend to institute an "alternative pay adjustment plan" and put that plan into effect if it is not vetoed by either house.

Having made the above decision, the remaining question is whether you should express concern over the constitutionality of the alternative pay plan procedure and ask Congress to take action to eliminate that concern.

OPTION 1. Announce the alternative pay plan without any public comment with respect to the constitutional concern that has been expressed by the Attorney General and others.

- Pros:
1. Avoids a charge by the Congress that you and the Director of OMB were not candid with them about your constitutional concern at your earlier discussions concerning this pay raise.
  2. Avoids an "invitation to sue" to all lawyers and individuals who might otherwise not be so inclined.
  3. Avoids public confusion over the constitutional question at a time when you would like to focus on the economic consequences of your action.
  4. An announcement of your constitutional concern about the alternative pay plan may give individual Congressmen and Senators an excuse to vote to override on the grounds that they voted to avoid a

constitutional crisis rather than to impose a further economic burden.

- Cons:
1. You have expressed constitutional concern in signing other bills that incorporate a one-house veto. Your failure to do so in this instance may cause adverse comment.
  2. By failing to tell Congress about the constitutional problem, they do not have the opportunity to cure that deficiency by October 1st. Accordingly, legislators who vote to uphold your veto because of the desire to impose a 5 percent ceiling may feel they have been misled when they later learn that the White House is aware of the constitutional deficiencies of the alternative pay plan.

In the event that you choose Option 1 we, nevertheless, recommend that a representative of yours meet with Congressional leaders privately to tell them of the constitutional concern with the legislative veto that has been expressed by the Attorney General and others. Such a contact is necessary, we believe, in order to avoid a later charge that the White House concealed the constitutional concern for its own political advantage.

OPTION 2. Publicly announce at the time that the alternative pay plan is disclosed that you do have constitutional concern about the legislative veto and ask Congress to lessen that concern either by amending the law to provide for only a two-house veto or by enacting a pay increase at a lesser figure.

- Pros:
1. Provides another opportunity to point out the constitutional defects of the one-house veto.
  2. Requires Congress to face up to the legal issue presented by the White House veto.
  3. If Congress does act, the action would eliminate the constitutional problem.

- Cons:
1. An announcement of the constitutional problem may give legislators a chance to vote against your alternative pay plan when they would otherwise be reluctant to vote for the full 8.6 percent increase.
  2. The announcement could put considerable pressure on labor unions to file suit for the full 8.6 percent and to challenge the one-house veto concept, even though they may otherwise be content to leave the one-house veto mechanism alone.
  3. See pros and cons for Option 1.

DECISION:

Option 1: Announce the alternative pay plan without any public comment with respect to the constitutional concern that has been expressed by the Attorney General and others.

Approve HR7

Disapprove \_\_\_\_\_

Comment \_\_\_\_\_

Recommended by Lynn, Hills

Option 2: Publicly announce at the time that the alternative pay plan is disclosed that you do have constitutional concern about the legislative veto and ask Congress to lessen that concern either by amending the law to provide for only a two-house veto or by enacting a pay increase at a lesser figure.

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

Comment \_\_\_\_\_

OBSERVATION: If your alternative pay plan is vetoed, then the constitutional problem is eliminated for the moment.