



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 07 2018

The Honorable John Barrasso
Chairman
Committee on the Environment and Public Works
United States Senate
Washington, D.C. 20510

The Honorable Thomas R. Carper
Ranking Member
Committee on the Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Chairman Barrasso and Congressman Carper:

This letter presents the views of the Department of Justice (the Department) on H.R. 66, the "Route 66 Centennial Commission Act." This bill establishes the Route 66 Centennial Commission to honor Route 66 on the occasion of its centennial anniversary. However, as we explain below, the bill raises a constitutional concern.

H.R. 66 would establish a Route 66 Centennial Commission, which would study and recommend ways to honor the hundredth anniversary of Route 66 and oversee a conference about the U.S. Numbered Highway System. H.R. 66, secs. 3–4. Six of the Commission's nineteen members would be "appointed by the President on the recommendation of" congressional leadership. *Id.* sec. 5(a)(11)–(12). We have previously recognized in connection with similar provisions that this appointment mechanism raises separation-of-powers concerns.

"While Congress may inform itself of how legislation is being implemented through the ordinary means of legislative oversight and investigation, the anti-aggrandizement principle forbids Congress . . . from intervening in the decision making necessary to execute the law." *The Constitutional Separation of Powers Between the President and Congress*, 20 Op. O.L.C. 124, 131 (1996) (footnote omitted). As the Supreme Court has observed, "once Congress makes its choice in enacting legislation, its participation ends. Congress can thereafter control the execution of its enactment only indirectly—by passing new legislation." *Bowsher v. Synar*, 478 U.S. 714, 733–34 (1986).

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H.R. 66 raises aggrandizement concerns by conditioning the appointment of six Commission members on congressional recommendations. At least one of the Commission's responsibilities, planning and hosting a conference on the U.S. Numbered Highway System, sec. 4(3), would likely constitute an executive function. See *Constitutionality of the Ronald Reagan Centennial Commission Act of 2009*, 33 Op. O.L.C. ___, at *4 (Apr. 21, 2009) (“‘carrying out a limited number of commemorative events and projects’ is a ‘clearly executive’ function”). For this reason, we recommend that section 5(a)(11)–(12) be revised so that congressional recommendations are not required for the appointment of these members of the Commission.

Thanks you for the opportunity to present our views. The Office of Management and Budget has advised us that, from the standpoint of the Administration's program, there is no objection to the submission of this letter.

Sincerely,

A handwritten signature in black ink that reads "Prim Escalona". The signature is written in a cursive, flowing style.

Prim F. Escalona
Principal Deputy Assistant Attorney General