



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 24, 2017

The Honorable Paul D. Ryan
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

The Department of Justice takes no position on enactment of H.R. 654, the Pacific Northwest Earthquake Preparedness Act of 2017. The Department wishes to notify Congress, however, that it would advise the Administration to treat as advisory and non-binding one provision in the bill that would require the Administrator of the Federal Emergency Management Agency ("FEMA") and a presidentially appointed task force to recommend legislative measures to Congress in violation of the Recommendations Clause.

The Recommendations Clause gives the President the constitutional responsibility to "recommend to [Congress's] Consideration such Measures *as he shall judge necessary and expedient.*" U.S. Const. art. II, § 3 (emphasis added). That provision precludes Congress from requiring the President or his subordinates to recommend legislation without regard to whether the President deems the legislation necessary and expedient. *See Application of the Recommendations Clause to Section 802 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, 40 Op. O.L.C. __, *19 (Aug. 25, 2016) (advising that "section 802 of the Medicare Modernization Act contravene[d] the Recommendations Clause" and that the President could therefore treat the provision "as advisory and non-binding"), <https://www.justice.gov/opinion/file/929881/download>.

Section 3(d) of H.R. 654 violates that principle. That provision would require the President to appoint an Earthquake and Tsunami Task Force, chaired by the FEMA Administrator, comprising a "cross section of subject matter experts" from federal agencies; state, local, and tribal governments; private enterprises; and academic and research institutions. *Id.* § 3(b)(1), (2). The Task Force would develop "a comprehensive strategy and recommendations on how the Nation should prepare and plan for, mitigate against, respond to, recover from, and more successfully adapt to a covered event in the Cascadia Subduction Zone," *id.* § 3(a), which the FEMA Administrator would then be required to transmit to Congress, *id.* § 3(f). The comprehensive strategy would have to meet certain goals, *id.* §§ 3(a), (c), and would have to be accompanied by "recommendations on . . . potential administrative or legislative changes required to implement the comprehensive strategy," *id.* § 3(d)(1), as well as "recommendations on . . . the funding required to implement the comprehensive strategy and the recommendations," *id.* § 3(d)(2). If legislative changes and additional funding were required to implement the comprehensive strategy fully, subsections (d)(1) and (2) would violate the

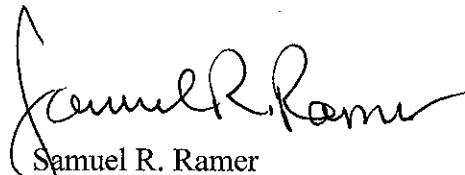
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Recommendations Clause, because they would require the Task Force and ultimately the FEMA Administrator to recommend those legislative changes, even if the President did not believe new legislation necessary and expedient.

If section 3 were enacted without change, we would advise the FEMA Administrator to implement it constitutionally. We would be happy to suggest drafting changes that would eliminate the constitutional problem. The Office of Management and Budget has advised us that, from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely

A handwritten signature in black ink that reads "Samuel R. Ramer". The signature is written in a cursive style with a large initial 'S'.

Samuel R. Ramer
Acting Assistant Attorney General
Office of Legislative Affairs

CC: The Honorable Nancy Pelosi
Minority Leader