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THE WHITE HOUSE
WASHINGTON

February 29, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: War Powers Problem

The difficulty with the attached is that it recognizes a role for Congress in terminating the Lebanon operation, by granting veterans preference to those serving in Lebanon between August 20, 1982 and the date the operation ends, set either by Presidential proclamation or concurrent resolution of Congress. As drafted the bill is unconstitutional, since giving legal effect to a concurrent resolution of Congress would violate INS v. Chadha. Changing "concurrent" to "joint" would solve the legislative veto problem but not the broader war powers issue, since I do not think we would want to concede any definitive role for Congress in terminating the Lebanon operation, even by joint resolution presented to the President. (A veto of such a resolution could be overridden.)

In light of the imminence of the submission of this bill, I telephoned John Cooney with the above concerns. Cooney is waiting to hear from Justice, and will keep us posted. I noted that I saw no reason to fix beginning and termination dates in the bill at all. Conditioning the preference on the award of a campaign badge should suffice, since the badge will only be awarded for service within the pertinent time frames. Cooney will keep us posted.

WH-5431