



Released

May 25, 1978

B-114839

The Honorable James A. McClure  
United States Senate

Dear Senator McClure:

I am writing in response to your letter of February 8, 1978, in which you asked whether or not the House of Representatives must play a role in the ratification process of the proposed Panama Canal Treaty, specifically in the disposal of American property in the Canal Zone.

The issue which you presented was the subject of a recent Federal court decision. On April 6, 1978, a three-judge panel of the Court of Appeals for the District of Columbia Circuit ruled in a per curiam decision in *\_\_\_\_\_ v. \_\_\_\_\_*, (Docket No. 78-1166, 201 decision, dissent by Judge MacKinnon), that the congressional power to dispose of U.S. property under Article IV is concurrent with the power to the President, with the concurrence of two-thirds of the Senate, to make treaties. The plaintiffs' petition for Supreme Court review was denied on May 15, 1978. Docket No. 77-1471. In this case the plaintiffs, 60 Members of the House of Representatives, appealed a District Court decision dismissing (on grounds of lack of standing) their suit for declaratory judgment that the Constitution requires the approval of both Houses of Congress for the disposal of U.S. property, thereby prohibiting the return of the Canal Zone to Panama by treaty. The Court of Appeals chose to set aside the jurisdictional issue and to decide this case on the merits.

In its holding, the Court endorsed the theory of concurrent power with regard to the Property Clause:

"It is important to the correct resolution of the legal issue now before us not to confuse what the Constitution permits with what it prohibits. In deciding that Article IV, Section 3, Clause 2 is not the exclusive method contemplated by the Constitution for disposing of Federal property, we hold that the United States is not prohibited from employing an alternative means constitutionally

authorized. Our judicial function in deciding this lawsuit is confined to assessing the merits of the claim of appellants [Rep. Edwards and the other plaintiffs] that in the conduct of foreign relations in this matter, involving, inter alia, the transfer of property of the United States, the treaty power as contained in Article II, Section 2, Clause 2, was not legally available to the President. We hold, contrarily, that this choice of procedure was clearly consonant with the Constitution." Edwards v. Carter, slip op. at 25-27, footnotes omitted.

The Court's holding makes any opinion by the General Accounting Office unnecessary, as discussed with your Administrative Assistant, Mr. Richard Thompson, on May 19, 1978. Mr. Thompson did, however, ask for a letter to close out the file.

Sincerely yours,



T. Vincent Griffith  
Legislative Attorney  
Office of Congressional  
Relations