

**UNITED STATES SENATE
COMMITTEE ON RULES AND ADMINISTRATION**

**SUPPLEMENTAL STATEMENT OF JONATHAN BAND
ON REGISTER OF COPYRIGHTS SELECTION AND ACCOUNTABILITY ACT
OF 2017**

This supplemental statement responds to Senator King's questions concerning the constitutionality of S. 1010. Mr. Kupferschmid, in support of his contention that the process proposed in S. 1010 did not violate principles of separation of powers, stated in his testimony that the process in S. 1010 was similar to the selection process of the Comptroller General. Likewise, Chairman Blunt mentioned that S. 1010 was modeled on the selection process for the Architect of the Capitol. Both of these processes, however, differ fundamentally from the process proposed in S.1010.

Under 31 U.S.C. § 703(a)(2), when a vacancy occurs in the office of the Comptroller General or Deputy Comptroller General, a commission composed of specified members of Congress must be established to recommend individuals to the President for appointment to the office. The President, however, is not required to select one of the individuals recommended by the commission.

Similarly, under 2 U.S.C. § 1801, a commission composed of specified members of Congress must be established to recommend individuals to the President for appointment as Architect of the Capitol. Once again, the President is not required to select one of the individuals recommended by the commission.

17 U.S.C. § 701 as amended by S. 1010 would establish a panel consisting of specified members of Congress and the Librarian of Congress to recommend individuals to the President for appointment as Register of Copyrights. But in contrast to the statutes relating to the selection of the Comptroller General or the Architect of the Capitol, S. 1010 provides that the Register "shall be appointed by the President from the individuals" recommended by the panel. Thus, under S. 1010, the President would not have the discretion to select someone not on the list of individuals recommended by the panel. This restriction on the discretion of the President most likely renders S. 1010 unconstitutional.

Another difference between S. 1010 and the statutory framework relating to the Comptroller General underscores the "administrative awkwardness" of the structure created by S. 1010 recognized by Senator King. S. 1010 empowers only the President to remove the Register. Conversely, the Comptroller General (and the Deputy Comptroller General) may be removed by impeachment or a joint resolution of Congress. By granting the power to remove the Register only to the President, S. 1010 would prevent both the Librarian of Congress and Congress itself from exercising any control over the Register. Thus, the Register would be less accountable to Congress than currently.