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# CONSTITUTIONALITY OF THE PRESIDENT'S "POCKET VETO" POWER

GOVERNMENT

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DOCUMENTS

## HEARING

BEFORE THE

SUBCOMMITTEE ON  
SEPARATION OF POWERS

OF THE

COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

CONSTITUTIONALITY OF THE PRESIDENT'S  
"POCKET VETO" POWER

The Family Practice of Medicine Bill  
and  
H.R. 3571

JANUARY 26, 1971

Printed for the use of the Committee on the Judiciary



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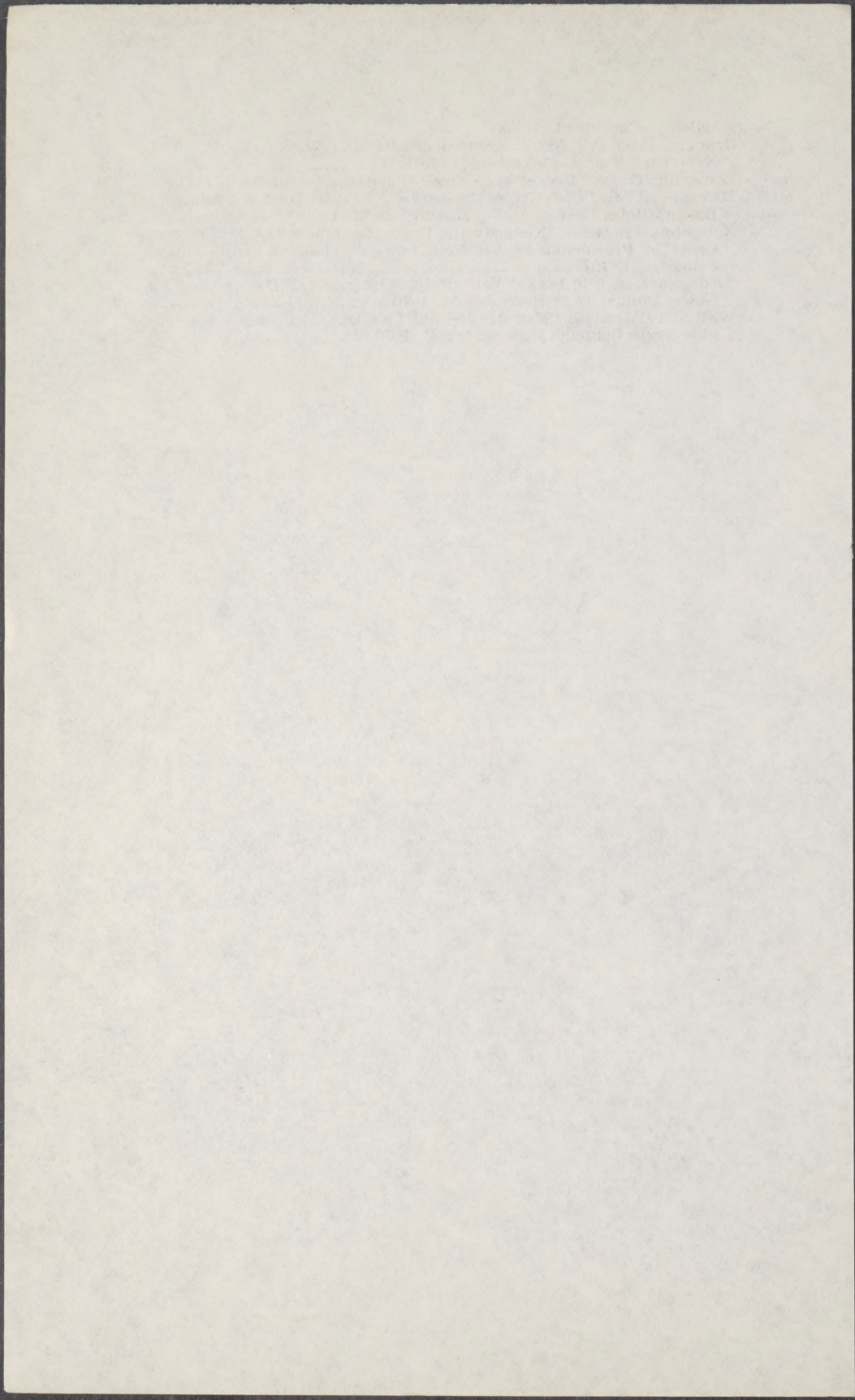
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# CONSTITUTIONALITY OF THE PRESIDENT'S "POCKET VETO" POWER

TUESDAY, JANUARY 26, 1971

U.S. SENATE,  
SUBCOMMITTEE ON SEPARATION OF POWERS  
OF THE COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:45 a.m. in room 1114, New Senate Office Building, Rufus L. Edmisten (chief counsel and staff director) presiding.

Present: Senators Kennedy and Mathias.

Also present: Representative Fred B. Rooney; William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, Department of Justice; Dr. Donald R. Matthews, Brookings Institution; Dr. Thomas E. Cronin, professor of political science, University of North Carolina, and Brookings Institution; Prof. Arthur S. Miller, the George Washington University Law School, consultant, Subcommittee on Separation of Powers.

Rufus L. Edmisten, chief counsel and staff director; Joel M. Abramson, minority counsel; Telma P. Moore, executive assistant, and W. P. Goodwin, Jr., editorial director.

Mr. EDMISTEN. Senator Ervin, the chairman, asked me to apologize for his absence at this time. As always in the Senate, there are many conflicts during the day. The Democratic caucus is meeting, and the Senator hopes to be here soon. Senator Mathias is on his way, too; and hopefully all of the other participants will be here shortly.

At this time I would like to insert in the record Chairman Ervin's statement.

(The statement follows:)

OPENING STATEMENT OF SENATOR SAM J. ERVIN, JR., CHAIRMAN, SUBCOMMITTEE ON SEPARATION OF POWERS OF THE COMMITTEE ON THE JUDICIARY, AT HEARINGS ON THE POCKET VETO CONCEPT, JANUARY 26, 1971

On December 14, 1970, the Congress sent to President Nixon the Family Practice of Medicine Act, which authorized \$225 million to be appropriated over the next three years for special grants to hospitals and medical schools to train general-practice physicians. The bill passed the Senate by a vote of 64 to 1, and the House of Representatives by 346 to 2.

In accordance with Senate Concurrent Resolution 87, the Senate—in which the Family Practice of Medicine Act originated—recessed from the close of business on Tuesday, December 22, 1970, until 12 o'clock noon on Monday, December 28, 1970. This was a recess of four days, the intervening Sunday, December 27, 1970, not counted. The Senate had given unanimous consent for the Secretary of the Senate to receive messages from the President during this Christmas recess.



Since the Senate was not in session on December 25, 1970, President Nixon announced that the Family Practice of Medicine Act has been "pocket" vetoed. This action involves construction of Article I, Section 7, clause 2 of the Constitution, which provides:

"Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve, he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. . . . If any Bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its return, in which Case it shall not be a law."

The last sentence of this provision is the determinative language in considering—as we shall this morning—whether or not President Nixon had the constitutional authority to "pocket" veto the Family Practice of Medicine Act, and whether or not the Act became law without his signature.

In the *Pocket Veto* case, 279 U.S. 655, the Supreme Court ruled in 1929 that an interim adjournment of a Congress at the end of a session prevented the return of a bill by the President to the Congress, and thus substantiated his pocket veto. In that case, a bill which originated in the Senate was presented to the President shortly before the adjournment at the end of the first session of the 69th Congress. President Coolidge did not sign the bill nor return it with his objections within the 10-day constitutional limitation, and it was not published as a law. While the Supreme Court drew no distinction between the types of adjournments—whether at the end of a Congress, *sine die*, at the end of a session, or within a session—the question at hand was the adjournment *at the end of a session*. The Court did not dwell on the relationship of the "pocket" veto concept to one short recess within a session.

In *Wright v. United States*, 302 U.S. 583, the Supreme Court in 1938 did deal with an adjournment within a session, and it considerably limited its opinion and dictum of the *Pocket Veto* case. In the *Wright* case, a bill which had originated in the Senate was vetoed by the President and returned with his objections to the Senate during a 3-day adjournment of that body. The House of Representatives was in session at that time. The bill with the President's message was received by the Secretary of the Senate, and submitted by him to the Senate when it reconvened. The issue presented was whether the veto was effective in view of the fact that the President's objection had not been received within the 10-day period by the originating House while in session. The Supreme Court held that an adjournment of the Congress, both House and Senate, prevents a return of the bill by the President within the period of 10 days allowed for that purpose; but that since the Senate alone had adjourned, the constitutional provision did not apply and the veto was effective.

In the *Pocket Veto* case, the Court stated that the House to which the bill is to be returned "is the House in session." However, in the *Wright* case, the Court said that this phrase cannot be narrowly considered and is not applicable during a temporary recess as opposed to the end of a session. The Court further stated, in apposition to the *Pocket Veto* holding, that the officers and agents of the House of Congress have great power and responsibilities and that they can be utilized to receive returned bills from the President.

The *Wright* opinion gives attention to the need to consider the realities and practicalities of returning bills, rather than relying on wholly unnecessary technicalities. The criteria set out in that opinion are, first, that the President shall have suitable opportunity to consider bills presented to him, and, second, that the Congress shall have suitable opportunity to reconsider the bill and pass it over his veto, provided there are the requisite votes.

In the *Pocket Veto* case, the Supreme Court also stated that the Constitution, in giving the President veto authority, imposes upon him not only the obligation to sign bills that he approves, but also to return bills that he disapproves, with his objections, in order that they be reconsidered by the Congress.

In the situation before us today, the President had ample time to consider his objections to the Family Practice of Medicine Act, yet the congressional opportunity to override his veto was frustrated by the attempted "pocket" veto, even though Congress had authorized the Secretary of the Senate to receive his messages.



It also seems to me that if the President is allowed to "pocket" veto legislation during short recesses of the Congress within a session, he will have established an *absolute* veto power during these brief periods. The Founding Fathers had no intention of granting the President such an absolute power. The veto they devised in 1787 is a qualified power, as opposed to the absolute power held by the King of England. Indeed, Alexander Hamilton observed in *The Federalist* No. 69:

"The King of England, on his part, has an absolute negative upon the acts of the two houses of Parliament. The disuse of that power for a considerable time past does not affect the reality of its existence and is to be ascribed wholly to the crown's having found the means of substituting influence to authority, or the art of gaining a majority in one or the other of the two houses, to the necessity of exerting a prerogative which could seldom be exerted without hazarding some degree of national agitation. The qualified negative of the President differs widely from this absolute negative of the British sovereign . . ."

In short, to my mind a "pocket" veto during a short recess of Congress within a session is tantamount to an absolute veto, which is contrary to the intent of the Framers of the Constitution.

I might also add that at the time the Constitution was written and for many years thereafter, it was the custom of the Congress to meet only during the first few months of each year and then to go home. The 10-day provision obviously was written into the Constitution to cover the adjournments at the end of a session, since Congress would be absent from the Capital for many months. It was designed not only to prevent delay on the part of the President in considering legislation, but to give him ample time to study bills passed by the Congress. At the same time, it placed the burden on Congress not to adjourn and go home before he had sufficient time either to sign or to return bills it had passed.

Today, of course, we have a different situation entirely. The Founding Fathers did not envision brief holiday trips to the ski slopes of Colorado or the sunny shores of the Bahamas. Surely they did not foresee that Congress would become a year-round operation, often straining to finish its business before the constitutional end of a Congress.

Therefore, we have these general questions before us today: Was the Senate adjourned in a constitutional and traditional sense on December 25, 1970? Did the Family Practice of Medicine Act become law? If it did not, then what can Congress do to protect its right to reconsider bills which the President has allegedly vetoed?

Mr. EDMISTEN. This is not the usual witness hearing. This is a panel discussion, and I think in the interest of time we will begin and I will introduce the panelists.

To my far right we have Dr. Donald R. Matthews of the Brookings Institution, to my far left Dr. Thomas E. Cronin, professor of political science at the University of North Carolina and presently at the Brookings Institution, and to my immediate right is Congressman Fred B. Rooney. Beside Dr. Matthews is Mr. William Rehnquist, the Assistant Attorney General, Office of Legal Counsel, Justice Department. Professor Arthur S. Miller of George Washington University Law School and consultant to the subcommittee is to my immediate left. W. P. Goodwin, Jr., editorial director of the subcommittee, is on the far right.

As I said, I hope that our other participants will be here in very short order.

Before we begin our panel discussion, I would like to read into the record the following statement of facts:

On December 14, 1970, Congress sent to President Nixon the Family Practice of Medicine Act, which authorized \$225 million to be appropriated over the next 3 years for special grants to hospitals and medical schools to train general practice physicians. The bill passed the Senate by a vote of 64 to 1, and the House of Representatives by a vote of 346 to 2.



In accordance with Senate Concurrent Resolution 87, the Senate—in which the Family Practice of Medicine Act originated—recessed from the close of business on Tuesday, December 22, 1970, until 12 o'clock noon on Monday, December 28, 1970, a recess of 4 days, the intervening Sunday, December 27, 1970, not counted. The Senate had given unanimous consent for the Secretary of the Senate to receive messages from the President during this Christmas recess. However, President Nixon did not return the bill to the Congress; rather, he announced that it had been pocket-vetoed because the Senate was not in session on December 25, 1970, when the 10-day provision of article I, section 7, clause 2, of the Constitution expired.

Simultaneously with his attempt to pocket-veto the Family Practice of Medicine Act (S. 3418), President Nixon took similar action on a private bill, H.R. 3571, for the relief of the family of the late Miloye Sokitch. That bill authorized the family of Mr. Sokitch to go to the Foreign Claims Settlement Commission to present its claim against the Government.

To start the discussion, I should like to call on the Honorable Fred B. Rooney to make any statement he may desire.

Mr. ROONEY. Thank you very much.

I have no statement. I am here this morning as chief House sponsor of this legislation, to listen to the discussion, and to find out whether or not the pocket veto was legal.

I might say as a little background, I introduced the bill in the House and Senator Yarborough introduced it in the Senate. We had several sponsors on each side.

The House had immediate hearings on the bill once it was sent over from the Senate, and it was reported out unanimously by both the subcommittee and the full committee.

I am speaking of the House Interstate and Foreign Commerce Committee, and the subcommittee dealing with public health legislation.

The day that the legislation came up for final discussion on the floor, I had word that the President was going to veto it. The bill was debated for an hour and passed by voice vote.

I made a point of order at that time that a quorum was not present, thereby forcing a rollcall vote. I wanted the President to get the consensus of the Congress, especially the Republican leadership, which also voted unanimously to support this legislation.

The bill was passed 346 to 2 by the House. The vote was 64 to 1 in the Senate. It then went to the White House, and since we were in adjournment for the purpose of a holiday, the President took advantage of the pocket veto, in my opinion, because he knew if he did send a veto message back to the Congress, the Congress would override his veto unanimously.

Mr. EDMISTEN. Thank you, Congressman. Mr. Rehnquist, would you like to make a reply to Congressman Rooney?

Mr. REHNQUIST. Well, I am not sure this is the appropriate time to do it.

Certainly we are here for a discussion, I take it, of the legal arguments pro and con as to whether the pocket veto should have been used, and almost by definition if a pocket veto is proper there is no



occasion for the Congress to override, and if it was not there should have been occasion for Congress to express its view by a two-thirds vote in each House.

On behalf of the administration in my letter to Senator Kennedy, I set forth in some detail the reasons I thought it was proper during a recess such as the one that you referred to, Congressman, for the President to exercise his pocket veto power.

I suppose somewhere during our discussion we probably would want to get into the details, the pros and cons of the thing.

Do you want me to lead off with that or would you rather have one of the numerous critics assembled here lead off?

Mr. EDMISTEN. I think it would be appropriate for you to outline the legalities of the "pocket veto" surrounding the immediate controversy.

Mr. REHNQUIST. OK.

You start with a provision of section 7 of article I of the Constitution that defines what bills that have passed the Houses of Congress shall become law, and omitting what I think to be the immaterial part it reads as follows:

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a Law . . .

Now, that is your traditional veto with the two-thirds override.

If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which case it shall not be a Law.

And I think everybody would probably agree that the critical language in this provision of the Constitution here is when does Congress by their adjournment prevent its return, and we are not writing on really a new slate. There has been practice between the Executive and the Legislative Branches for a long time.

There are two Supreme Court cases dealing with the question. The first is the so-called *Pocket Veto* case that was decided in 1929, based on President Coolidge's veto of an Indian claims bill, I think it was in 1926, and the question there was whether the language "by their Adjournment prevent its Return" meant the final adjournment of a Congress so that there was a legal prevention because the Congress had gone out of existence. And actually what had happened was that President Coolidge had vetoed a bill, pocket vetoed it in July at a time when the Senate had recessed until November for the purpose of an impeachment trial. The House had recessed—Rufus, what is the proper pronunciation of the words *sine die*, I would defer to the legislative branch at least on that.

Mr. EDMISTEN. Professor Miller is a law professor, and I will defer to him.

Professor MILLER. I will defer to Dr. Matthews.



Dr. MATTHEWS. I do not know.

Mr. EDMISTEN. In correct Latin I would say *sine die*.

Mr. REHNQUIST. May I use that?

Mr. EDMISTEN. Certainly.

Mr. REHNQUIST. The House had adjourned *sine die*. But it was just the first session that had adjourned, it was not the Congress itself, and the Supreme Court there held that the President's pocket veto power was not limited to a *sine die* adjournment of the Congress itself. The words the court used were that it extended to interim adjournments "such as" an adjournment of the session.

Now, there was another case called the *Wright* case decided in 1938 which held that where only one House had adjourned, it was not an adjournment of Congress such as was contemplated by the provision, and where the originating House had adjourned for 3 days but Congress itself had not adjourned, the President was not prevented by the adjournment of Congress from sending back the bill.

There has been a rather extensive practice by the Executive of using the pocket veto during short recesses, beginning with President Andrew Johnson and, you know, I would say probably 8 or 10 Presidents, including President Franklin Roosevelt, President Truman, President Eisenhower, President Lyndon Johnson, and President Nixon, have all used it in short recesses of—I think probably the one President Nixon used with the medical bill was the shortest number of days numerically, but several of them have used it in cases where it is a period of 10 days, 12 days, something like that.

I think my basic feeling on this thing is, once you get past the idea, it is not an adjournment of the Congress itself, there really is no stopping place short of a 3-day adjournment or less, which as it is indicated by other provisions in the Constitution is treated somewhat differently than other kinds of adjournments, and certainly there is an intimation in the *Wright* case that that kind of adjournment is different.

But I do not see any halfway house between the actual holding of the court in the *Pocket Veto* case and your adjournment for 3 days or less so far as the application of the pocket veto is concerned.

Mr. EDMISTEN. Would you, Mr. Rehnquist, contend that the Founding Fathers intended for these short recesses to provide an occasion for the use of the pocket veto? I know you have cited precedents going back to Andrew Jackson, but do you really contend that the Founding Fathers meant that a short recess was an adjournment? I find that difficult to believe.

Mr. REHNQUIST. Well, I think I have some authority from your boss, Mr. Edmisten, that the best way to know what the Founding Fathers meant is to look at the language they used, and looking at the language they used, if you say the *Pocket Veto* decision of the Court 40 years ago is wrong, you can say that the Founding Fathers did not contemplate this sort of thing.

If you apply the *Pocket Veto* decision of the Court to the language the Founding Fathers used, I think the conclusion is that they did mean that—there is nothing in the constitutional debate on it one way or the other.

Mr. EDMISTEN. Professor Miller.

Professor MILLER. Thank you, Mr. Edmisten.



I respect Mr. Rehnquist's legal judgment and analysis, but I must also disagree with his conclusions.

This seems to me to be a fairly clear case in which the Attorney General is wrong.

The constitutional provision, of course, is clear, but it is uncertain, as many provisions of the Constitution are, with respect to the intention of the Founding Fathers, which was just mentioned. I am willing to take Justice Sanford's language in the *Pocket Veto* case as determinative that the Founding Fathers did not think about this proposition. This is what he said, and it is a direct quote:

No light is thrown on the meaning of the constitutional provision in the proceedings and debates at the Constitutional Convention and there has been no decision of this Court dealing directly with its meaning and effect with respect to the precise question here involved.

So I do not think it is really useful to contemplate what might have been in the minds of the people who wrote the Constitution, since we have no records to show.

However, if we take the words in their ordinary meaning, and I think this might be one way to approach the matter, then the operative word, the key word, is not so much "adjournment" it seems to me, as it is "prevent its return," and here, is where the important emphasis should be and where I would respectfully dissent, I think, with the tenor of Mr. Rehnquist's letter to Senator Kennedy.

If you take the words, the word "adjournment" in its ordinary meaning, I would think most people would think that it is an adjournment at the end of a session of Congress, *sine die*.

The Congress adjourns every day to take up its sessions again the next day in that sense, so if you take the word "adjournment" in the Constitution, it certainly cannot contemplate the adjournment that Congress takes every day at the end of its daily session. So the ordinary meaning seemingly would be that.

But I would emphasize the notion that the real question is whether the fact that Congress, not being actually in session, prevented the return of a bill. I take it that the bill, the main bill under controversy here, the Family Practice of Medicine bill, was not so prevented, because the Congress made specific provision for an officer of the Senate to receive the message from the White House. So I would consider it to be a fairly clear case that the Congress did not prevent the return of the Family Practice of Medicine Act.

Provision was made for Congress to receive any messages or other communications from the President by either the Secretary of the Senate or the Clerk of the House. So I would, as I say, dissent.

I would go further and say this: I do not see how, under present law the Family Practice of Medicine bill could be tested in court as was the *Pocket Veto* case. I am unable to see how anyone would have a justifiable controversy to be able to get into court so as to present a case and to have the court accept it and rule on the merits.

However, the other bill that the President vetoed at the same time, which was a private bill introduced by Senator Jackson of Washington for the payment of a sum of \$200,000 or so to a Mrs. Sokitch, would seem to present the possibility for a justifiable controversy. I think that the case could be gotten into court to get a



judicial test of this matter should the person for whom Senator Jackson introduced the bill file a claim in the Court of Claims or the appropriate tribunal. He could then get a review ultimately by the Supreme Court of the United States.

Let me make one or two further points.

The fact that administrations may have acted similarly in the past seems to me to be irrelevant and immaterial. The books are full of cases in which long practices have been invalidated by the Supreme Court, either on the State level, such as reapportionment, criminal law situations, and prayers in public schools; and I think for that matter that the *Steel Seizure* case of 1952 is a clear example where the Supreme Court invalidated the seizure of the steel mills by President Truman, even though President Roosevelt had seized North American Aircraft in the early 1940's without challenge.

Similarly, the idea that the Congress, by silently acquiescing, has for some reason given the President power just does not seem to me to hold water. An analogous case might be this:

There is a long-running practice of at least 25 years of impounding funds by the Bureau of the Budget for other executive agencies. To my knowledge, there is no Supreme Court case on this. I would be reluctant to predict that the Supreme Court would validate an impoundment of funds after Congress had passed a bill mandating expenditures.

Now the two cases which Mr. Rehnquist has mentioned do not seem to be inconsistent with what I said so far. The *Pocket Veto* case is the only one really in point. That really is so different that it does not even bear much resemblance to what happened last month at the short recess for the Christmas period. The *Pocket Veto* case was a recess or an adjournment, if you will, for several months. One House adjourned completely. So I think it is a clearly distinguishable case.

The *Pocket Veto* case does not control the situation here at all.

Now, I do not find anything in Mr. Rehnquist's letter which is inconsistent with much of what I have said.

All of the instances he cites in his letter to Senator Kennedy actually prevented the President, the way I read it at least, under the terms of the *Pocket Veto* case, from operating under his constitutional authority. With all due deference and respect to Mr. Rehnquist, I think that this is an advocate's brief rather than what might be called judicial statement.

This is something which a lawyer might write for a client, rather than, say, a judge might write in evaluating a case.

Furthermore, the President did have 8 days to deal with this situation, as I understand the facts of the matter, until December 22, 1970. I would be reluctant to say that the present administration did not have sufficient time in 8 days to consider the merits of a bill, even though the Constitution does give him 10 days. So I do not see that the President was prevented from giving it his due consideration.

Finally, if Mr. Rehnquist's position is valid, any adjournment of Congress, it seems to me, becomes a subject of the same type of question.

Yesterday in the Senate, Senator Mansfield, announced a holiday recess schedule for 1971, seven recesses for 1971, some of which are



several days in length. Are we to understand that in every one of these the President will see fit to pocket veto a bill during this type of a recess?

If so, it seems to me to impose an intolerable burden on the Congress and to stretch the constitutional provisions far beyond anyone's rational evaluation.

In conclusion, let me emphasize that the *Pocket Veto* case does not control the situation. At most we have an original question here, an unanswered constitutional question.

The question was answered in this way by the Legislative Reference Service of the Library of Congress in their 1964 edition of the Annotated Constitution of the United States, at page 136 they say this and I quote:

"A brief recess by the House in which the bill originated while the Congress is still in session does not prevent return of a bill by delivery to one of the officers of the House who has implied authority to receive it," citing the 1938 case, *Wright v. United States*.

That is a statement, I think, that certainly I would agree with.

I think, furthermore, that there were people who were available to receive a message from the President and accordingly the pocket veto was not valid under the circumstances.

Mr. EDMISTEN. Senator Ervin asked me to request that Senator Mathias, the ranking minority member of the subcommittee, conduct the meeting in his absence. He hopes to be here shortly. Senator Mathias, will you proceed, please?

Senator MATHIAS. Thank you very much. Senator Ervin is very generous in constituting me as the only Republican chairman on Capitol Hill this morning.

[Laughter.]

I want to thank Professor Miller.

Here we confront a fundamental constitutional question which comes down to determining the meaning, spirit, and intent of a particular word, in this case the word "adjournment."

The President has taken certain action in accordance with legal advice and now that this action has been challenged, I think it is proper for the subcommittee to make an inquiry. The Separation of Power Subcommittee has a mandate from the Senate to oversee the proper and constitutionally intended separation between the three branches of the Government.

Here the question that is raised in its boldest form is whether the executive branch, through the vehicle of the pocket veto, has usurped the powers of the legislative branch, or perhaps even more boldly whether the President, by use of the pocket veto, has circumvented the orderly legislative process of sending a vetoed bill back to Congress for its final consideration.

While I agree with Professor Miller that this is a fundamental constitutional question, I do not think I would agree with the use of his word "original" because it is not the first time that the proper use of the pocket veto has been challenged and questioned. The question has been raised throughout many administrations.

But I do think the time is ripe to make a final determination of its proper limits and boundaries and settle this question once and for all.



I think we have to approach the problem with the wisdom and understanding that the Founding Fathers originally employed but also realizing—and without any reflection on them—no matter how perceptive and futuristic they were and how far ahead they thought, they could not contemplate every constitutional impediment and problem.

So it is up to us to apply logic and practicality to an area that demands it.

So I am again grateful to you, Professor Miller. I am sorry I did not get here for Mr. Rehnquist's testimony but I look forward to reading it.

Who is our next speaker?

Dr. EDMISTEN. Dr. Donald Matthews of the Brookings Institution.

Dr. MATTHEWS. I am not a lawyer—

Senator MATHIAS. Maybe that will be an advantage to you.

Dr. MATTHEWS (continuing). So I cannot untangle the legal problem which obviously is giving the very able lawyers here some difficulty. The law in this area would appear to be vague and susceptible to different interpretations.

Nor do I think we can find out what the Founding Fathers, the authors of the Constitution, had in mind. I think we agree that the record of the Constitutional convention is silent on this.

So perhaps the only contribution I can make is to try to look at this from a nonlegal viewpoint and ask: What would be good public policy? Of course my answer is a very arguable type of judgment, but I might as well put it forth for whatever it is worth.

It seems to me that in the specific case at hand, it was rather unfortunate that the President pocket vetoed this particular bill. This is said without any regard at all to the bill's merits or lack thereof. The pocket veto showed a gross lack of respect for congressional opinion. Here was a bill that was opposed by one Senator and two Members of the House. It was not a close thing; this is about as close to a consensus as you can get. Presumably the President and his aide, Mr. Rehnquist, could tell us why the administration was inactive during the early stages of this matter. I find it hard to believe that President Nixon could not find more than one supporter in the Senate or two in the House.

I assume the White House was silent while the bill was being considered. This is an inference and Mr. Rehnquist can maybe tell us about that.

But after the bill is passed so overwhelmingly in both Houses, then to veto it in a way which does not give the Congress an opportunity to override the veto seems to me to show some lack of respect. That may be too strong a word—"discourteous" might be better. At any rate I think this action was unfortunate.

It seems to me that the use of the pocket veto in similar situations by other presidents has been unfortunate, too. The Congress is now a 12-month operation, and never leaves town for very long. It is not like it was in the early years of the Republic when the Members were here for relatively few months a year, and there were long periods when they were not in Washington. So it seems to me—cutting through all



the legal ambiguities, uncertainties about what was intended in the Constitution, or what these court decisions "really" mean—we should just think of what is a good way of running the Government. It does not seem to me that this is a very good way to do it.

On the whole, the pocket veto probably ought to be used only when Congress finally adjourns and goes home for some period of time.

If the President does not like the legislation that the Congress sends up to him he can veto it in the regular way and return it to Congress for reconsideration. The only exception to this procedure should be when Congress adjourns for the year. How we get to that, acceptance of that as a general way of doing business, is another matter which perhaps we can take up at a later point.

Let me stop at this point. I may have more things to say later.

Senator MATHIAS. I would say, Dr. Matthews, you are not only not a lawyer, but you are going to scare lawyers to death in tossing all precedents out of the window. But let me probe a little bit into some of your conclusions.

Do you conclude then that the pocket veto should only be available—talking in optimum situations—after an adjournment *sine die* by both Houses of the Congress?

Dr. MATTHEWS. I would say yes, unless we have the unusual circumstances of—which is very hard for me to anticipate, given modern workloads of the Congress—Congress quitting work for several months and going home.

Senator MATHIAS. Well, we have, for instance, for this year projected a month off in August in an attempt to modernize the Congressional Calendar.

Dr. MATTHEWS. Right.

Senator MATHIAS. Would the pocket veto be available in that month?

Dr. MATTHEWS. Well, you know, you get into drawing lines—

Senator MATHIAS. But that is a real and practical question.

Dr. MATTHEWS. These lines you try to draw: Is 3 days a brief period? Is 4 days a brief period? Or a month a brief period?

Senator MATHIAS. If we are going to do something useful here, I think we have to shed some light on that.

Dr. MATTHEWS. I would stick with my general statement, that it seems to me that the pocket veto should be used only at the end of each session. One reason for this is the difficulty of drawing a clear and defensible line at any other point short of final adjournment.

Mr. ROONEY. If the gentleman will yield, I would like to quote from "The Veto Power of the President" by Charles J. Zinn. The appendix, section 401(b) under "Definitions",

As used in sections 403, 404, and 406 of this title, "adjournment" means an adjournment *sine die* by both the Senate and the House of Representatives terminating a session of the Congress.

Senator MATHIAS. Let me address a question to Congressman Rooney and perhaps ask Mr. Rehnquist to comment on it.

Do you know of any point in the Constitution where adjournment is used in any other sense or in any other way?

Mr. ROONEY. No. I agree with the explanation of the term adjournment as meaning *sine die*, I think our Founding Fathers gave this right



to the President to protect him, and I think the President took advantage of Congress. I might add, Dr. Matthews, that the White House was not silent while this bill was being proposed—they objected to it in both the Senate and House hearings. I think the only reason the President took advantage of the pocket veto was because of the overwhelming votes by both the House and Senate, and I think this was wrong.

Senator MATHIAS. Mr. Rehnquist, would you comment on the use of the word "adjournment"?

Mr. REHNQUIST. Senator Mathias, in two other places in Article I the term "adjournment" is used, and they are both in section 5 dealing with the organization of the House and Senate.

The first is in the first paragraph of section 5 where it says:

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller number may adjourn from day to day. . . .

Then in the last paragraph of the same section it says:

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days. . . .

Now to me that suggests the term "adjourn" as used in this same article later when you are talking about a pocket veto cannot be limited to include only a *sine die* adjournment or final adjournment.

Whatever limitation you want to find in the pocket veto section has to come from the modifying language, "Unless the Congress by their Adjournment prevents its Return." You have to find the modification in "prevents its Return" rather than some artificially narrow construction of adjournment.

Senator MATHIAS. You point to the provision of limiting one House from adjourning for not more than 3 days without the consent of the other House, which would imply that an adjournment of more than 3 days would have been considered by the Framers of the Constitution to have been a significant amount of time for a legislative body to rest on its oars.

Now, if there were an adjournment for 3 days or less, having in mind whatever precedents are available, Dr. Matthews notwithstanding, would you think it appropriate to use a pocket veto during an adjournment of 3 days or less?

Mr. REHNQUIST. That, to me, Senator, is very much of an open question.

Senator MATHIAS. And we are trying to close it.

Mr. REHNQUIST. Well, I am not the one to close it, obviously.

Senator MATHIAS. I am asking for your judgment.

Mr. REHNQUIST. Let me give you my judgment and recognizing the fact that it is simply my judgment and not that of anyone else or as a spokesman for the administration. It seems to me that the most serious criticism that can be made of the pocket veto usage of the Executive over a period of a hundred years is that which Professor Miller points out and what others have pointed out, that it could mean that the President is entitled to exercise a pocket veto in just the case of a weekend recess, and I do not think anybody thinks this is the right result.



Whether one is pushed to it by a construction of cases is another question, but I do not think anybody thinks this is a desirable result; and to me it seems that that result could be avoided without a constitutional amendment and without doing violence to any of the decided cases on the subject by picking up exactly the point you suggest, Senator. Section 5 of article I of the Constitution indicates that an adjournment of less than 3 days is somehow different in kind from an adjournment of more than 3 days and, applying the logic that the *Wright* case applies to the adjournment of one House for that period of time, saying if both Houses adjourn for 3 days or less the mechanisms of the House and the Senate are such, with their continuing officers, even during adjournment, that the President is not prevented during a recess of that kind from returning the bill.

Senator MATHIAS. Are there any precedents closer in facts than the *Pocket Veto* case to this situation—the situation in the Family Practice of Medicine bill—that give us any guidance at all, cases that may not have become the subject of either adjudication or any particular public controversy?

Mr. REHNQUIST. Well, there is example after example of Presidential action, I would say, by numerous Presidents who have exercised the pocket veto power during very short recesses, 10 days, 11 days, 12 days, and—

Senator MATHIAS. These have not been questioned.

Mr. REHNQUIST. They have not been questioned, and I pose a question of whether there is some element of acquiescence or whether the great difficulty in challenging a pocket veto in many situations prevents any effective litigation of the thing. But I think if ever there was a situation where you have got to strive for a clear rule, even though it may be arbitrary in some situations, it is this—you cannot have, I don't think, a rule of reason, where it is kind of like negligence in a personal injury case; it is up to the jury to decide on each set of facts whether it was negligent or not. You want to know at the time the President acts whether this was a pocket veto situation or a regular veto situation. I do not think you want to leave it to judicial interpretation a year or so later as to whether this was a reasonable exercise of power or unreasonable.

I think it has got to be a fairly clear description of just what the process is.

Senator MATHIAS. I think you are absolutely right; and that raises the question of what are the guidelines, what are the boundaries that are visible and available to a President, which would, for example, restrain him from an overnight veto.

Mr. REHNQUIST. Unfortunately, Senator, if one reads the *Pocket Veto* case, admittedly a lot of it was dicta; but if you take the dicta as well as the holding, it all points in the direction of getting right down to a very short period of time.

Once you depart from the notion of final adjournment, there is little sense you can make out of the word "adjournment" other than that it includes the almost routine adjournment. The one stopping point I see that is consistent with the cases is the 3-day period, and to me that would be a sensible and thoroughly justifiable solution to the problem.



Senator MATHIAS. Now, one final thought here. We indulge in a special form of adjournment from time to time, which we call a recess.

Congressman Rooney knows that both Houses will occasionally come to an agreement that no business be conducted, and this agreement can sometimes extend for a lengthy period of time or be of short duration.

I think the quickest session on record is something under 60 seconds, but it constitutes a session for the purpose of meeting that 3-day limitation.

Now, in a period of reduced activity of this sort which technically is called a recess, could the President properly exercise a pocket veto?

Mr. REHNQUIST. I think that probably is rather significantly bound up with Senate practice and House practice, with which I am not familiar. I would just be very reluctant to express an opinion on that point.

Senator MATHIAS. My recollection is that it is technically a recess. It never becomes anything other than a recess; isn't that correct?

Mr. ROONEY. Of course, the term in the Congressional Record for that day is "adjourn until one day notice." This is why, I would imagine, the President took advantage of the pocket veto.

Senator MATHIAS. Of course, the 3-day limitation, perhaps if you followed that rule, would take care of that particular problem.

Mr. ROONEY. I suppose that this very distinguished committee or panel could discuss this matter at great length and come up with no conclusion, but the thing I would like to know is why the President used the pocket veto. Why did he not send the bill back to Congress? He had the bill for 8 days and took advantage of the pocket veto. He could have sent the same veto message over as the memo on the bill to promote training of family medicine. In that memo he merely states that it is the wrong approach. If it were the wrong approach, why didn't he let Congress reconsider his veto and his veto message and vote on it accordingly? He was obviously opposed to this bill. He obviously knew that the Congress would override his veto. So, in my opinion, he took advantage of a very technical provision of the Constitution.

Mr. REHNQUIST. Well, if I might try, Congressman Rooney, to answer at least a part of your question, I do not think the President has any option when the day that he decides to veto falls during a recess where Congress has, by its adjournment, prevented its return. I do not think it is a situation there when he can say, "Well, I could use a pocket veto, but I am going to be a good guy and send a veto message and give Congress a chance to override it."

I think he has got to make a judgment; he may be wrong, but it is a question of law, really.

I do not mean in a sense it has got to be decided by lawyers; but it is a question of constitutional meaning, whether in a particular situation Congress has prevented the return of the bill by its adjournment. Now the President may be wrong in doing what he does; but I do not think that, as I read the Constitution, it contemplates giving him an option saying you can either pocket veto in a situation or you can send it back with a veto message.

Now certainly if he wanted to, if he had made his decision on the 6th day or 7th day, whatever it was, and Congress was still in session, then



he can certainly send it back, but that is something about which President Nixon is no different than any other number of other Presidents in the past; they generally take their 10 days.

Mr. EDMISTEN. I do think we have a little light here, Senator Mathias, from one of the Founding Fathers.

Alexander Hamilton said something about the veto power, in *The Federalist* papers, but not in the Convention debates. If the President, as he did in this particular instance, is allowed to veto legislation during short recesses, he will have an absolute veto power.

Now the writers of the Constitution did not provide for such power because they knew that the King of England had an absolute veto power. They did not want that to exist under our form of government; thus with the regular veto, they let the Congress have the final word by allowing it to override the President's veto by a two-thirds vote.

The Framers devised a qualified veto power quite limited in operation. If pocket veto situations such as the one here are allowed to continue, the executive branch will be able to expand the operations of its absolute veto power by using the pocket veto during the frequent short recesses of Congress. Such a development certainly would be contrary to Hamilton's concept of the pocket veto.

I think that sheds a little light on what the Founding Fathers meant.

Mr. REHNQUIST. Certainly neither Hamilton nor you, Mr. Edmisten, I take it, would dispute that while generally the rule is a qualified veto, in the case of the last clause of the veto provision, it is an absolute veto. The question is, under what circumstances is the veto absolute and under what circumstances does the general rule apply?

Certainly you are not contending that there is no such thing as a pocket veto.

Mr. EDMISTEN. No, but I would certainly contend that the Founding Fathers thought that it would be used only in rare instances, certainly not to the extent that it has been used.

Senator MATHIAS. Are we not coming to a pretty sharp divide here which illuminates this whole problem.

Mr. Rehnquist says that, in effect, it becomes a matter of policy for a President to exercise the veto in a manner which will prevent the bill's return to the Congress, and counsel here is really arguing that there is a constitutional limitation on the President's determination of such policy.

Do I misstate that?

Mr. REHNQUIST. I did not recognize your statement of my position, Senator. I may just be poor in the recognition department, but the policy aspect of the thing, I had not thought that I brought in any issue of policy in my statement.

Senator MATHIAS. I thought you just said it was up to a President to determine how he would or whether he would, accompany a veto with a message and send the message back to the Congress.

Mr. REHNQUIST. I probably used a poor, had a poor choice of words, because what I meant to say was that the President, based on whatever advice he can get, has to determine, "Is this a pocket veto situation or is it a regular veto situation?" and it is either one or the other—a court will ultimately hold it is either one or the other, so that he



does not have a choice in a sense of saying, "Would I rather pocket veto or would I rather give it a regular veto?" It is either a situation for one or for the other, in my opinion.

Senator MATHIAS. You do not think in the circumstance of this bill that the President might have accompanied the veto with a message to the Clerk of the House and the Secretary of the Senate with power to receive such message during the adjournment period?

Mr. REHNQUIST. No, I think not, Senator. If, in fact, that is a situation where Congress by their adjournment has prevented the return of the bill, then his failure to sign it means it is not a law; whether he accompanies it with a message or not does not make any difference. If, in fact, it is a regular veto situation, then if he has not sent it back with a veto message, it becomes a law.

Senator MATHIAS. Let me ask Mr. Rehnquist one question, and then Dr. Cronin is here and we will ask him to comment.

Were there any other vetoes exercised at the same time as the Family Practice of Medicine Bill?

Mr. REHNQUIST. During the same recess, Senator?

Senator MATHIAS. Yes.

Mr. REHNQUIST. My recollection is, although I did not know it at the time, that a claims bill that had been sponsored by Senator Jackson was likewise pocket-vetoed. This is simply on the basis of discussion here today and something I read in the newspapers earlier.

Senator MATHIAS. Would it be possible for you to ascertain that and advise the committee?

Dr. CRONIN. We have Presidential documents, Mr. Chairman, which indicate that this is the case. A claims bill "for the Relief of Miloye M. Sokitch" was vetoed on December 24, the same day on which the Family Practice of Medicine Bill was vetoed.

Senator MATHIAS. Regardless of the constitutional question, it is an unreasonable day to veto a private claim bill.

[Laughter.]

Mr. REHNQUIST. Like Scrooge.

[Laughter.]

Senator MATHIAS. Do you have that document, and can it be submitted for the record?

Dr. CRONIN. I have just given it to counsel.

Senator MATHIAS. We will admit that for the record and will relieve Mr. Rehnquist of following up on it.

(The document referred to follows:)

[From the Weekly Compilation of Presidential Documents, Dec. 28, 1970]

#### BILL FOR THE RELIEF OF MILOYE M. SOKITCH

THE PRESIDENT'S MEMORANDUM OF DISAPPROVAL, DECEMBER 24, 1970

I have withheld my approval from H.R. 3571, "Relief of Miloye M. Sokitch."

This bill would permit the Foreign Claims Settlement Commission to consider the claim of Miloye M. Sokitch under the Italian claims program administered by the Commission. The amount determined by the Commission to be due to Mr. Sokitch would be paid by the Secretary of the Treasury out of the Italian Claims Fund.

After World War II the Italian Government transferred funds to the United States for the payment of claims of Americans for the loss or damage of their property in Italy during the war. While the statutory authorization for this program originally limited the eligibility of claimants to those who were Ameri-



can nationals at the time their property was lost or damaged, the law was amended in 1958 to include persons, so-called late nationals, who had become nationals of the United States prior to August 9, 1955, and who had filed claims under the original statute prior to September 30, 1956.

Mr. Sokitch has a claim of \$215,200 for property losses he suffered in Italy during the war. He was not eligible to have his claim considered under the original legislation, however, because he did not become an American citizen until 1947, and he was not eligible to have his claim considered as a late national under the 1958 amendment because he had not filed a claim within the time prescribed in that amendment.

In 1967, the Executive Branch recommended general legislation which would have recognized the claims of Mr. Sokitch and approximately 50 other late nationals similarly situated but Congress refused to enact it. At the same time, since approximately \$1 million was still left in the Italian claims program, Congress did authorize the settlement of the claims of Americans who lost property in areas ceded by Italy after the war, primarily the Dodecanese Islands.

I can find no true equities to support approval of H.R. 3571. Mr. Sokitch's claim is no different from those of the 50 other late nationals whose claims for property losses in Italy are barred by existing law. Along with these other claimants, Mr. Sokitch was also denied relief when the general legislation that would have recognized their claims was rejected by Congress. Mr. Sokitch would thus be given special and preferential treatment over a number of other persons whose cases differ in no material respect from his.

Further, permitting Mr. Sokitch to have his claim adjudicated and paid, if otherwise found meritorious, would be unfair to those persons whose claims for property losses in the areas ceded by Italy are now under consideration. I am advised that asserted claims under this on-going program aggregate approximately \$24 million as compared with the \$1 million available for their payment. Any settlement paid Mr. Sokitch under the preferential provisions of H.R. 3571 will obviously reduce the settlements that can be paid to the persons already eligible for payment under the general provisions of the ceded areas program.

For the foregoing reasons, I feel compelled to withhold my approval from H.R. 3571.

RICHARD NIXON.

The White House  
December 24, 1970

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#### BILL TO PROMOTE TRAINING IN FAMILY MEDICINE

THE PRESIDENT'S MEMORANDUM OF DISAPPROVAL, DATED DECEMBER 24, 1970,  
RELEASED DECEMBER 26, 1970

I am withholding my signature from S. 3418, a bill designed to promote training in family medicine. The authority provided in this bill is unnecessary and represents the wrong approach to the solution of the nation's health problems.

In my press conference on December 10, I stated that a health program will be one of the highest priority proposals I will submit to the Congress next year. We will propose a broad pattern of reforms to deal with the nation's health problems and needs on a systematic and comprehensive basis. In contrast, the piecemeal bill I am rejecting today simply continues the traditional approach of adding more programs to the almost unmanageable current structure of Federal Government health efforts.

The Federal Government already has at least four programs on the books that provide funds which can be used to promote the training of family medicine practitioners. Moreover, the entire concept of American medicine is in an evolutionary stage. There are differing opinions on how best to organize and train personnel to provide comprehensive and continuing care to individuals and families.

Under these circumstances, I do not believe it wise to place heavy emphasis on the establishment of separate departments of family medicine in medical schools, as S. 3418 would do. This is only one—and not necessarily the most efficient—method of achieving our national health care objectives, and should not be fixed in law.

RICHARD NIXON.

The White House  
December 24, 1970



Senator MATHIAS. Now we will ask Dr. Cronin for his comments.

Dr. CRONIN. Mr. Chairman, I think, if I might, it would be useful to follow up Senator Mathias' question by asking Mr. Rehnquist to what extent could this whole notion, the quite confusing notion of an "officer" of one of the Houses of Congress, or the notion of the "agent" that is somewhat confusing here, to what extent could that be clarified if a suit were brought on behalf of this private claims bill which was vetoed the same day by President Nixon.

Could you comment on that?

Mr. REHNQUIST. I will certainly try.

I think that the definition of "adjournment" is pretty well fore-closed by the language of the *Pocket Veto* case. I think the question of "prevent its return" is a more open one since, although in the *Pocket Veto* case the Court said that if Congress were to appoint agents to receive messages, it still would be of no effect since the return must be to the House in session.

I think most people would concede that was what you might call dicta that was not necessary to the decision in the case so it is not as binding as it would be had it been necessary, and if you then add to the fact that in the *Wright* case the Supreme Court said that the return to the originating House was permissible during a recess of less than 3 days or 3 days or less, even though that House has adjourned, because it had appointed an agent to receive it.

Dr. CRONIN. That is correct.

Mr. REHNQUIST. I think that you would certainly raise the question if someone were to sue on this claims bill, claiming it had become a law, assuming it lends itself to such suit—I have not even seen the bill—that both the Senate and the House for a long period had appointed agents and in effect you would be asking the Court to overrule the dicta in the *Pocket Veto* case, and presumably say that for an indefinite adjournment the presence of agents would permit the return of the bill.

This does not commend itself to me as a legal argument when you go that far. I think there is a great deal of problem with it, but I think that could be raised in a case.

Dr. CRONIN. Would this help clarify the issue of the role of "agents," in your judgment?

Mr. REHNQUIST. I think people tend to put too much faith in a potential lawsuit as a basis for clarifying the law sometimes. You know people will call something a test case, lawyers will say it is a big deal because it is finally going to clarify something, and it turns out that the facts are not quite what you thought they were, or the judges feel that they want to make a narrow ruling rather than a broad one, and it turns out not to clarify it.

I do not think anyone can give a guarantee, but it certainly offers the possibility of clarification.

Professor MILLER. I wonder if I might ask a question of Bill Rehnquist, please.

In your letter to Senator Kennedy, Bill, on page 8 you mention, toward the end, about the eighth or ninth line, that:

The President very probably had no choice as to the form of veto.



Are you suggesting that he could not have vetoed this at, say, the first day it was presented to him and sent it back with his message to the Congress then?

Mr. REHNQUIST. No.

Professor MILLER. I just do not understand this language in your letter to Senator Kennedy.

Mr. REHNQUIST. No, I certainly am not suggesting that. I think what I am suggesting is that the veto decision on the tenth day or the ninth day, whatever it was, at that time the President is faced with a choice when Congress has adjourned, not a choice but, in other words, he has to decide or his lawyers have to decide, has Congress by its adjournment prevented the return of the bill. If it has, he pocket vetoes. If it has not, he sends a regular veto.

At that point there is no choice for him between types of veto.

Now certainly if he decided on the third day to veto and the whole Congress was still in session, there is no problem; he can send an ordinary veto and there is no occasion for a pocket veto. But I think the way these things tend to work, both in this administration and in other administrations, is that decisions in which you have 10 days to decide are generally not made on the third day.

Professor MILLER. It is my understanding that there is at least one case—I cannot give the instance now—where the bill was held 23 days after the Congress adjourned, before it was signed by the President. That would seem to me to be an automatic pocket veto but nevertheless he exercised his choice to sign the bill 23 days afterward.

I believe that appears in the Legislative Reference Service book on the Constitution. If that be true, then the President does have a choice, and if he has a choice, then it is a matter of policy, not Hornbook Law. If he has a choice of policy, then these legal opinions fuzz over into what Dr. Matthews was saying.

Mr. REHNQUIST. Well, to me that situation or that example would not prove that he has a choice between what type of veto he is to exercise. It might prove he has a choice between vetoing it at all or letting it become a law.

Professor MILLER. But he signed it, as I recall it, 23 days after, I do not have the exact facts but I can dig them out for this committee.

Mr. REHNQUIST. Thereby certainly deciding not to veto.

Mr. MILLER. That is right.

If you take the exact words in the Constitution, 10 days, as appearing in article I, section 7, "Congress by their adjournment prevent its return, in which case it shall not be a law", it seems to me that they prevent its return if they have a 23-day period.

Mr. REHNQUIST. But I think you have to relate that back to the first clause where it says "presented to the President of the United States; if he approve he shall sign it, but if not he shall return it." If he does not approve it he shall return it, and then you relate that to the last sentence "unless the Congress by their Adjournment prevent its return."

So that if he does not approve, he shall return it, unless Congress by their adjournment, prevent its return. If he decides to sign it, he approves it. So you never bring that train of process into action.

Mr. ROONEY. Here, if the gentleman will yield—



Professor MILLER. Certainly.

Mr. ROONEY. On the 22d day of December 1970, page S21089 of the Congressional Record:

Authority, for the Secretary of the Senate and President Pro Tempore, acting President Pro Tem, to take certain action during the adjournment.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that during the adjournment of the Senate following completion of business today, December 23, until noon, December 28, 1970, the Secretary of the Senate is authorized to receive messages from the President of the United States and the House of Representatives and the President Pro Tem or Acting President Pro Tem be authorized to sign duly enrolled bills.

PRESIDING OFFICER. Without objection, it is ordered.

And that same resolution, that same unanimous consent, was passed in the House. Why? Isn't the choice, "Can I send a message back or not?" Officers of the Senate, and officers of the House were available to receive the veto message, so isn't that the real choice?

Mr. REHNQUIST. I do not think so because of that language in the earlier Supreme Court case where they said even if the Senate and House were to appoint such officers, it would not change the result.

Now, you can always go back to the Supreme Court and say, you know, "This wasn't a good decision or it wasn't really necessary to the decision, you can change your mind." But so far as a lawyer advising the President, certainly one's inclination is to take, you know, what the Supreme Court has said is the law.

Mr. EDMISTEN. Yes.

Dr. CRONIN. I would like to add a nonlawyer point of view. I speak as a political scientist and as one who worked on the White House staff under the Johnson administration, and I am in favor of a strong Presidency, but it seems to me this act by President Nixon was an act not of strength but of weakness, an action of shortness, taking advantages of a decidedly pro-Presidential court decision (the *Pocket Veto case*), but also taking advantage of a reasonable 4- or 5-day Christmas break, and it seems to me this appears as a retaliatory type of almost angry interpretation by the President of pocket veto in one sense.

I see that on the one hand, there is a legal case that can be made but, on the other hand, there is a rather special political context here which raises some doubts about the legal precedents, and that because there is added confusion here. Although the *Pocket Veto* case said in dicta (language given less force in law because not pivotal to the issue decided) that the delivery of a bill to a clerk or agent of the Congress would not comply with the constitutional mandate, the *Wright* majority apparently thought this was acceptable in its special less-than-3-day limbo situation. The relevant but different political and calendar contexts here make the pocket veto of the Family Practice of Medicine Bill questionable and surely in need of clarification.

It seems to me that an alternative to President Nixon's choice of interpretation would have been to return a veto message to the "officer" of the Senate on Saturday, as Congressman Rooney suggested, and state, "I realize because of this Christmas break which is an unusual circumstance and because it is getting toward the end of a session, that clearly the intent of the Founding Fathers was not to use a pocket veto for this type of occasion or purpose. Hence, I would



hope that you would take up this legislation and my regular returned veto message on Monday." Monday was the day the Senate, I understand, was coming back, and Sunday being "excepted" Monday was essentially the next day for congressional business.

It seems to me that would have been the stronger act and that since it was toward the end of the congressional session this would have been sort of the just and the fair type of process that would have encouraged the equitable sharing of governmental responsibilities among the constitutionally separate branches of government.

Now I agree this is not a legal argument as much as a political argument about (1) the context in which it takes place now and (2) the context of the presidential-congressional relations ever since this Republic has existed. Both of those contexts I would argue have equal weight with some of the legal arguments put forth by the Justice Department.

Mr. REHNQUIST. Well, President Johnson pocket vetoed a bill during an 11-day recess. Wouldn't you feel the same way?

Dr. CRONIN. No; although part of this problem here has to do with the number of days involved. I think in many respects this Congress would probably have gone out for only 3 days perhaps had it not been for Christmas. It would be rather silly to come back on Saturday and then have to go out again until Monday and break up everyone's travel across the country, et cetera.

I think there is here, at least to some extent, a contextual factor that allows us perhaps the occasion and the opportunity to clarify the 3-day rule and to see to what extent in the modern contemporary era there may be more room for latitude here.

I am not altogether willing to say that this case in question today necessarily has bearing on the 11-day recess in President Johnson's case, and vice versa.

Mr. REHNQUIST. I can certainly see arguments, you know, pro and con from a point of view of a study of government saying that the pocket veto either should be sharply limited in its present constitutional form or it should be cemented in place the way it has been exercised in the past, but I certainly cannot see any basis for saying that a 5-day recess offers no basis for using this pocket veto, but an 11-day recess does.

Dr. CRONIN. I think there is ambiguity here and I think there is room for clarity, and I think this is the direction this committee ought to proceed rather than saying, "OK, we accept and defer to the Department of Justice in their decision in this particular matter."

I think there is room for measurably more clarification and agreement than now exists, and I trust that Senator Ervin will encourage action to this end.

Professor MILLER. I do not think one has to accept President Johnson's pocket veto to approve President Nixon's.

I would not accept his, either. I think that that is equally bad.

Really, the key question here is the one which Mr. Rehnquist cited in his long letter to Senator Kennedy in which he points out in the quotation from the leading case where the Court says explicitly that the question is one of whether the President is prevented from returning the bill to the House in which it had originated. If he is prevented, then it cannot be done.



If that is the question, it seems clear that President Nixon was not prevented in this situation. I do not see that there can be any argument on this question.

Now, I think also that, with Dr. Cronin, of course problems arise if you talk about the length of time. If you look at the *Pocket Veto* case, that went for 4 or 5 months; it was a type of an adjournment, an interim type of an adjournment, that was certainly a different situation from the Christmas holiday that the Congress took last month.

The only sensible thing to me would be to have a hard, flat rule that adjournment means the end of a session of Congress and it seems to me that makes it clear, everyone understands it, the President understands it, the Department of Justice does, the Congress does, and even law professors do and maybe political science professors.

So nobody misunderstands it and we do not have the type of bickering between branches of government which seem to me to be unfortunate.

Mr. EDMISTEN. I should like to welcome another one of our panel participants, Senator Kennedy. Senator Kennedy, I would like to introduce the other members of the panel to you. Dr. Donald Matthews of the Brookings Institution on the far right. Of course you know Mr. Rehnquist; Congressman Rooney, Professor Arthur Miller, a consultant; Joel Abramson, our minority counsel, and Dr. Thomas Cronin of the Brookings Institution.

We have had a panel discussion this morning. While we have not been picking on Mr. Rehnquist, he has supplied us with some answers. They have not solved the problem, I can assure the panel, and I would like to ask Mr. Rehnquist this:

Do you see any reason why Congress cannot by positive enactment of a concurrent resolution define what "adjournment" means?

Mr. REHNQUIST. Yes; I see a good deal of reason why it cannot. I think the term as used in the Constitution is not susceptible of definition other than by something that would have a constitutional effect, such as a constitutional amendment.

Mr. EDMISTEN. Yes; but the term "adjournment" in the Constitution refers to only one branch, the Congress. What body would be better able to determine what an adjournment is than Congress itself? It is the branch that does the adjourning or the taking of short or long recesses.

I do not follow your reasoning.

Professor MILLER. Excuse me, may I interrupt?

Mr. Rehnquist has just thrown 180 years of Constitutional law out of the window. After all, the terms of the Constitution have been interpreted by the Supreme Court since 1789, and meaning put into them.

Congress also put meaning into them as approved by the Supreme Court. The President does, as well.

So if you are suggesting, Bill, that the only way of putting meaning into the term "adjournment" is by an amendment, I would suggest that you have a good deal of history running against you.

Mr. REHNQUIST. I am not suggesting certainly that the practices of any of the branches of government are not relevant in defining a



constitutional term. But the notion that Congress now could, by defining "adjournment" in a particular way, conclusively resolve the meaning of that term as used in the Constitution, I do not buy that and I would not think you would either.

Mr. MILLER. I am not going to the point of actual congressional power because I am not prepared to speak on this point. I think that the question is at least an open one.

I would not be prepared at all to say that it would require an amendment. If every time we wanted to find meaning in a constitutional term we had to amend the Constitution, we might as well shut down Government. That is done every day by every branch of Government.

The Supreme Court does it routinely, they have cranked out 400 volumes of decisions. The President does it, the Congress does it. So we define in Government every day how Government operates, and we do not amend the Constitution. We only have 25 or 26 amendments, and most of them are insignificant.

Mr. EDMISTEN. Mr. Abramson.

Mr. ABRAMSON. If we say, for the purpose of argument, that the way you interpret the *Pocket Veto* case is correct—which would give the President the authority to do what he did in this current controversy, and if we look at the Congressional Record which clearly records the authority given representatives of both Houses of Congress to receive Presidential messages during the recess—thus making a congressional determination of adjournment, are we talking about a question of higher authority—a possible conflict between the decisions of the Supreme Court and the expressed authority of Congress?

Mr. REHNQUIST. I do not see why it is a conflict between the Supreme Court and the Congress. I mean the Supreme Court is traditionally under our system the body to which is confided the power to decide the meaning of constitutional terms. And I do not think either Congress or the Executive at least for many years, have said that, you know, they rather than the Supreme Court should hold that power.

Certainly the Supreme Court gives weight to acts of the Executive and of the Congress in making its determination, but traditionally I think its determination rather than that of either other branch has been final.

Professor MILLER. And you would say, would you not, Bill, that the *Pocket Veto* case can be distinguished easily from the present situation?

Mr. REHNQUIST. I think it can be distinguished, yes. How easily is a matter of interpretation.

Senator KENNEDY. May I make a brief statement at this point?

I regret that I was unable to be here earlier for the purposes of the discussion and the comments, and I look forward to reading the transcript and studying it closely.

I have just had the opportunity to talk with my staff and to hear about some of the areas which have been touched on this morning. I certainly do not want to be repetitive in this matter. But I do want to say that many in the Senate Labor Committee are distressed by the disregard the administration has shown for health issues generally. In the past 2 years, we have had three vetoes of health measures—the veto of the HEW appropriation's bill for fiscal 1970, and the veto



of the Hill-Burton Act, and now the pocket veto of the Family Practice bill.

There are few issues of greater importance than the quality of health care in the Nation. Many of us who have a great interest in this issue are heartened by the President's recent comments in the State of the Union message, and we are extremely hopeful that this concern will be expressed in both legislative and budgetary form.

So I want to commend Senator Ervin for the development of the pocket veto issue, and to mention the name of Senator Yarborough, who joined in our effort to raise this question last year. I also wish to commend the Separation of Powers Subcommittee for the work they have done, which has been extremely important. Senator Ervin has provided great leadership in what is obviously an important and difficult area.

It is my own belief that the family practice legislation that we passed so overwhelmingly last year—I think there were only three votes against the bill in the Senate and House combined—is law today. I think the basic question is how we are going to challenge the President's action in attempting to pocket veto the bill.

All of us realize that it is extremely difficult to get a final legal resolution of this question. As I understand it, there are a variety of ways in which a test case may be brought. First, we in the Congress can appropriate funds to implement the family practice bill, as a valid public law. Second, it may be possible to bring a mandamus action to compel the appropriate administration official to carry out the ministerial duty of enrolling the family practice bill as a public law.

The third and perhaps the best opportunity would be to seek a court test of the private bill that was similarly pocket-vetoed. I understand that representatives of the party, who is now deceased, are preparing to file a claim with the Foreign Claims Settlement Commission. There can be an immediate appeal of the Commission's decision, and eventually the issue will reach the Supreme Court.

So we really have a unique opportunity to reach a legal resolution of what is an extremely difficult and controversial constitutional issue.

I hope that such action will be expedited in every possible way. Obviously, the ruling in that case would apply to the family practice bill as well.

In addition, because there is an obvious divergence of the interest between Congress, which passed the legislation so overwhelmingly, and the administration, which attempted to kill the bill by the pocket veto, I think that we in the Congress should be represented in the test case by our own counsel.

I understand that Congress had its own counsel in the original *Pocket Veto* case in the Supreme Court in 1929, and I hope that we can follow the same procedure in the present case.

Before asking Mr. Rehnquist for his reaction to this, I would like to ask him a policy question. Why the President did not veto this measure under the usual procedures, and send Congress a detailed veto message to explain his position. Why did he take the rather extraordinary procedure of the pocket-veto in this case?



Mr. REHNQUIST. Well Senator, from what I know about it, obviously no adviser knows everything that is going on in the President's mind or for those outside the White House to know what goes on inside the White House. By the time the President determined to veto the measure, the Congress had adjourned.

Senator KENNEDY. Can you give use any idea as to the timing of the pocket-veto? There has been a good deal of speculation about when the Justice Department actually received the request for a memo on the pocket-veto.

Mr. REHNQUIST. I cannot pin it down as a matter of hours. It seems to me it was the Wednesday before Christmas.

Senator KENNEDY. That was the 23d of December I believe. Had the President actually decided to veto the bill prior to the adjournment?

Mr. REHNQUIST. No, I think not. I think one House went out on Monday and one House went out on Tuesday. I am not positive about that. But it seems to me that we were consulted on Wednesday.

Senator KENNEDY. And you have no idea why he decided to use the pocket-veto rather than sending us a veto message?

Mr. REHNQUIST. I think it was because I told him to. [Laughter.]

Senator KENNEDY. Would you tell us why you thought it was better to use the pocket-veto, rather than a regular veto.

Mr. REHNQUIST. I felt at this point he had no choice after Congress had adjourned. If it is an adjournment which under the constitutional language prevents the return of the bill, if he wishes to veto it he must pocket-veto it.

Senator KENNEDY. I know the panel has already discussed the point as to whether Congress had really adjourned within the meaning of the pocket-veto clause of the Constitution, earlier today. I would like to get back to the observations I made earlier on the various possibilities for test cases, and ask you from the point of view of a lawyer on the other side, do you see any additional methods that are available to us to test the pocket-veto?

Mr. REHNQUIST. It seems to me the ones you described, you have covered them very comprehensively.

Senator KENNEDY. Do you have any reaction as to which method would be the best?

Mr. REHNQUIST. I have been puzzled about the notion that the veto of the authorization bill would give rise to a mandamus, and this is just a completely off-the-cuff observation.

As long as you don't have an appropriation bill, you have nothing that anybody, any private person, can hang their hat on to sue, and if you were to pass an appropriation bill in this session appropriating the money, I do not know that anyone outside of Congress has standing to object to the fact that there is no authorization bill.

Now I am kind of playing the devil's advocate, I suppose, but I do not know, once an appropriation bill has been passed by both Houses of Congress, that someone outside of Congress has standing to say the appropriation bill is invalid even though the President has signed it because there was no authorization bill.

Senator KENNEDY. In either of the circumstances which we have described—the family practice bill or the private bill—would you give



us a commitment now that the Justice Department would work to expedite a test case in court?

Mr. REHNQUIST. I am not in position to do that. I think the Attorney General would probably do that, but I am not in position to say that.

Senator KENNEDY. Would you recommend such a step?

Mr. REHNQUIST. I think it is an appropriate opportunity to try to clarify the matter, and I would certainly recommend that it be done.

Senator KENNEDY. That it be expedited?

Mr. REHNQUIST. Yes.

Senator KENNEDY. So it is your recommendation, and I hope the Attorney General pays as much attention to you as the President does. [Laughter.]

Mr. REHNQUIST. It all depends on what I say.

Senator KENNEDY. I would be interested in some of the other panelists' observations, but perhaps we might request the Justice Department to expedite a test case, a case we could all agree on. At least, we might be able to move the case along somewhat more rapidly.

I would be interested in other comments by the panel.

Professor MILLER. May I make just one brief comment, Senator?

Senator KENNEDY. Yes.

Professor MILLER. I would agree with Mr. Rehnquist's statement about the Medical Act, that under present law no one probably has the requisite status to bring a suit.

Senator KENNEDY. Yes.

Professor MILLER. But with one caveat, I do not think that the law permits anyone in Congress to have that status at the present. I do not think that Congressmen, either as a body or as individual Senators or Members of Congress, now have standing to sue.<sup>1</sup> The best way to get a judicial test would be through this foreign claims settlement case, and I think that it would be very advisable for a test case to be brought. From my own reading of the *Pocket Veto* case which differs from Mr.

#### ADDENDUM

<sup>1</sup> Since January 26, I have become aware of the case of *Moss v. Civil Aeronautics Board*, decided by the Court of Appeals for the District of Columbia Circuit in the summer of 1970. In that case, a number of members of the House of Representatives contested a proposed rate increase by the CAB. The court permitted them to bring the action not, however, as Members of Congress but as citizens. This case fits in with a number of other recent Federal court decisions, including some in the Supreme Court, which have greatly expanded the concept of "standing" to sue in the Federal courts. Included are the following: *Flast v. Cohen* 392 U.S. 83 (1968); *Association of Data Processing Organizations v. Camp*, 397 U.S. 150 (1970); *Barlow v. Collins*, 397 U.S. 159 (1970); *Senic Hudson Preservation Conference v. Federal Power Commission*, 354 F.2d 608 (2d Circuit 1965), certiorari denied, 341 U.S. 941 (1966); *Office of Communication of United Church of Christ v. Federal Communications Commission*, 359 F.2d 994 (D.C. Circuit); *Scanwell Laboratories, Inc. v. Thomas*, 424 F.2d 859 (D.C. Circuit 1970).

The net result of these decisions is so to enlarge the category of those permitted to use the courts to challenge the actions of the Federal public administration that one may validly suggest that the time has come for judicial recognition of a right of action on the part of Members of Congress, acting individually or collectively. As officers of the legislative branch, they obviously have a direct and important interest in seeing that laws that Congress passes are enforced.

On reflection, then, following the statement in my testimony on January 26, I am of the opinion that a persuasive case can be made out for a Senator or Senators to test judicially the validity of the purported pocket veto of the Family Practice of Medicine bill. That bill, in my judgment, became law when the President failed to act upon it during the prescribed constitutional time. Should Congress, then, enact an appropriation—the amount is unimportant—to carry out the provisions of the Family Practice of Medicine bill, there is good reason to believe that the Federal courts would permit a Senator or Senators to have standing to sue. Of course, as said on January 26, the easiest way would be for a test case to be brought on the private bill introduced by Senator Jackson; but it might be desirable, and have wider ramifications, if an effort were made to test the purported veto of the Family Practice of Medicine bill as well.



Rehnquist's, the cases are substantially different. I think, as I said when you arrived, that the time has come for a flat rule. I would certainly advocate a flat rule that the article I, section 7, pocket veto provision apply only to a final adjournment of a session of Congress.

Senator KENNEDY. Yes.

Mr. EDMISTEN. I was reading a moment ago, Senator Kennedy, a proposal made by Dr. Zinn in his pamphlet, "The Veto Power of the President." He proposed that there be a legislative definition of "adjournment" as meaning an adjournment *sine die* by both the Senate and the House of Representatives, terminating a session of Congress.

Dr. Zinn saw no impediment whatsoever to Congress defining what adjournment means since Congress is the body which adjourns. Mr. Rehnquist, though, seems to think there is some constitutional problem.

Senator KENNEDY. I agree that the best test case seems to be through the private bill and the Foreign Claims Settlement Commission, but I think we should also pursue a test case by appropriating funds under the Family Practice bill. If we in the Congress appropriated the money, then the legal question, I suppose, would be whether there had been a valid authorization of the appropriation.

Professor MILLER. I do not know of any cases, Senator, offhand.

Senator KENNEDY. How much money should be appropriated?

Professor MILLER. I do not think it makes any difference how much money is appropriated. I just do not see, whether it is one dollar or \$200 million, that it makes any difference. We still have to find a person who is damaged in a legal sense.

You can find it, of course, under the private bill, Senator Jackson's, but that is a different matter.

Mr. EDMISTEN. Dr. Cronin?

Dr. CRONIN. I would just be interested in asking Senator Kennedy how long he felt a recess or an adjournment might exist within a regular session to satisfy some of his points at issue here. Do you feel that the pocket veto should be used only at the end of a complete session?

Senator KENNEDY. Yes, that would be my understanding.

Dr. CRONIN. No middle area?

Senator KENNEDY. I think the pocket veto is applicable only in cases involving a *sine die* adjournment. A proposal is now pending in the Senate to set aside 4 or 5 days every second month so that Members can return to their constituency on a planned schedule.

Are we going to run the risk of a pocket veto every time we adjourn for 4 or 5 days? Or even when we adjourn overnight?

Mr. EDMISTEN. I think if any of the panel members wish to give a short summary, it would be helpful. As I say, Mr. Rehnquist, we have not tried to pick on you, but more people here think you are wrong than right.

Senator KENNEDY. I think we ought to thank Mr. Rehnquist for coming up. I certainly appreciate the chance to discuss this issue with him. When I asked the Justice Department for its views in December, Mr. Rehnquist responded immediately, within a matter of a day or two. We may disagree on the issue, but he was extremely responsive;



and I think he and the Justice Department are to be commended for that.

Mr. REHNQUIST. Thank you.

Dr. MATTHEWS. I do not really have anything to add to what I said earlier. I think that the safest policy—which does not raise such difficulties as “Is 3 days a brief period?” “What about 10 or 15 days or 30 days in August?”—would be to restrict the pocket veto solely to the end of the session.

I really do not think the President has much to lose by following this course. Apparently in this instance he felt he did.

I am aware that the Supreme Court cases and historical precedents run contrary to this position, or can be interpreted to run contrary to it. I think Mr. Rehnquist has done a very persuasive job in interpreting the cases in this fashion. But legal precedents can be swept aside if they are in the way of sound government. It seems to me that it would be wisest to establish the notion clearly once and for all that the pocket veto is for the end of the session only.

Mr. REHNQUIST. I have had my share of the time, and I will pass.

Mr. EDMISTEN. Professor Miller?

Professor MILLER. Just a couple of quick comments.

One, I think Mr. Rehnquist has made a very adequate statement, but it is purely an advocate's brief statement, and I think it should be interpreted as such. It is the type of a brief that a lawyer might file in court.

The other is that at very best, at the very best, this is an unresolved constitutional question. There is no clear-cut constitutional doctrine or law upon this matter. I think it is high time, of course, as I said before, that the matter be resolved because it presents an intolerable situation.

Mr. EDMISTEN. Mr. Abramson?

Mr. ABRAMSON. Senator Mathias has left for an important meeting; however, I would like to simply speak for him in saying that he does feel, as he made evident in his own remarks, that the time is ripe to resolve this question and that he is looking forward to some resolution of this important matter.

Mr. EDMISTEN. Dr. Cronin?

Dr. CRONIN. I have no further statement.

Senator KENNEDY. May I just make one final comment?

I suppose that when this issue is finally resolved by the Supreme Court, we may wind up with some kind of rule of reason. Although my own legal view is that the pocket veto applies only in the case of a *sine die* adjournment of Congress, and not to an adjournment to a date certain, other views are certainly plausible. A court might hold, for example, that the pocket veto could be used during long adjournments of Congress, unlikely as such adjournments are under the present workload of Congress. Whatever the result for long adjournments, however—adjournments of the order of weeks or months—there really should not be any question with respect to the 3-day or 4-day adjournments. The pocket veto should not be valid in such cases.

Once again, I want to thank Senator Ervin and Senator Mathias and the panelists. I think the panelists have been of great value to Congress on this question. The roundtable discussion has been very



helpful in the development of the issue, and we are all in your debt. And as I mentioned, I want to give my special thanks to Mr. Rehnquist as well.

Mr. Chairman, I would like to include in the record my previous exchange of correspondence with Mr. Rehnquist, and some previous statements by Senator Yarborough and myself on the issue.

Mr. EDMISTEN. Thank you, Senator Kennedy. Senator Ervin was unable to be here because of the Democratic caucus. He has asked me to inform the members of the panel that we hope to have a meeting of the subcommittee members in the near future, and perhaps draw up recommendations on the pocket veto controversy.

The record will remain open for 5 days to anyone who would like to insert applicable material.

For fear of eliciting a "pocket veto," I will not say this hearing is "adjourned" today. We will take a "recess" subject to the call of the Chair.

(Whereupon, at 12:20 p.m., the subcommittee recessed, subject to call.)



91ST CONGRESS  
2D SESSION

# S. 3418

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 1970

Mr. YARBOROUGH (for himself, Mr. RANDOLPH, Mr. WILLIAMS of New Jersey, Mr. PELL, Mr. KENNEDY, Mr. NELSON, Mr. MONDALE, Mr. EAGLETON, Mr. CRANSTON, Mr. JAVITS, Mr. PRUTY, Mr. SCHWEIKER, Mr. ALLEN, Mr. BAYH, Mr. BROOKE, Mr. BURDICK, Mr. EASTLAND, Mr. ERVIN, Mr. FULBRIGHT, Mr. GOODELL, Mr. HART, Mr. HARTKE, Mr. INOUE, Mr. JORDAN of North Carolina, Mr. MCCARTHY, Mr. MCGOVERN, Mr. METCALF, Mr. MONTAYA, Mr. PASTORE, Mr. PERCY, Mr. RIBICOFF, Mr. SCOTT, and Mr. SPONG) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

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## A BILL

To amend the Public Health Service Act to provide for the making of grants to medical schools and hospitals to assist them in establishing special departments and programs in the field of family practice, and otherwise to encourage and promote the training of medical and paramedical personnel in the field of family medicine.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That part D of title VII of the Public Health Service Act
- 4 is amended to read as follows:

### II

★(Star Print)



1 "PART D—GRANTS TO PROVIDE PROFESSIONAL AND TECH-  
2 NICAL TRAINING IN THE FIELD OF FAMILY MEDICINE

3 "DECLARATION OF PURPOSE

4 "SEC. 761. It is the purpose of this part to provide for  
5 the making of grants to assist—

6 "(a) public and private nonprofit medical schools—

7 "(1) to operate, as an integral part of their  
8 medical education program, separate and distinct  
9 departments devoted to providing teaching and  
10 instruction in all phases of family practice;

11 "(2) to construct such facilities as may be ap-  
12 propriate to carry out a program of training in the  
13 field of family medicine whether as a part of a  
14 medical school or as separate outpatient or similar  
15 facility;

16 "(3) to operate, or participate in, special train-  
17 ing programs for paramedical personnel in the field  
18 of family medicine; and

19 "(4) to operate, or participate in, special train-  
20 ing programs to teach and train medical personnel  
21 to head departments of family practice or otherwise  
22 teach family practice in medical schools.

23 "(b) public and private nonprofit hospitals which  
24 provide training programs for medical students, interns,  
25 or residents—



1           “(1) to operate, as an integral part of their  
2           medical training programs, special professional  
3           training programs in the field of family medicine for  
4           medical students, interns, or residents;

5           “(2) to construct such facilities as may be ap-  
6           propriate to carry out a program of training in the  
7           field of family medicine whether as a part of a hospi-  
8           tal or as a separate outpatient or similar facility;

9           “(3) to provide financial assistance (in the  
10          form of scholarships, fellowships, or stipends) to  
11          interns, residents, or other medical personnel who  
12          are in need thereof, who are participants in a pro-  
13          gram of such hospital which provides special train-  
14          ing (accredited by a recognized body or bodies  
15          approved for such purpose by the Commissioner of  
16          Education) in the field of family medicine, and who  
17          plan to specialize or work in the practice of family  
18          medicine; and

19          “(4) to operate, or participate in, special train-  
20          ing programs for paramedical personnel in the field  
21          of family medicine.

22           “AUTHORIZATION OF APPROPRIATIONS

23          “SEC. 762. (a) For the purpose of making grants to carry  
24          out the purposes of this part, there are authorized to be ap-  
25          propriated \$50,000,000 or the fiscal year ending June 30,



1 1971, \$75,000,000 for the fiscal year ending June 30, 1972,  
2 and \$100,000,000 for the fiscal year ending June 30, 1973,  
3 and for each of the next two succeeding fiscal years.

4 “(b) Sums appropriated pursuant to subsection (a) for  
5 any fiscal year shall remain available for the purpose for  
6 which appropriated until the close of the fiscal year which  
7 immediately follows such year.

8 “GRANTS BY SECRETARY

9 “SEC. 763. (a) From the sums appropriated pursuant  
10 to section 762, the Secretary is authorized to make grants, in  
11 accordance with the provisions of this part, to carry out the  
12 purposes of section 761.

13 “(b) No grant shall be made under this part unless an  
14 application therefor has been submitted to, and approved  
15 by, the Secretary. Such application shall be in such form,  
16 submitted in such manner, and contain such information, as  
17 the Secretary shall have prescribed by regulations which  
18 have been promulgated by him and published in the Federal  
19 Register not later than six months after the date of enactment  
20 of this part.

21 “(c) Grants under this part shall be in such amounts  
22 and subject to such limitations and conditions as the Secre-  
23 tary may determine to be proper to carry out the purposes  
24 of this part.

25 “(d) In the case of any application for a grant any part



1 of which is to be used for major construction or remodeling  
2 of any facility, the Secretary shall not approve the part of  
3 the grant which is to be so used unless the recipient of such  
4 grants enters into appropriate arrangements with the Secre-  
5 tary which will equitably protect the financial interests of  
6 the United States in the event such facility ceases to be used  
7 for the purpose for which such grant or part thereof was  
8 made prior to the expiration of the ten-year period which  
9 commences on the date such construction or remodeling is  
10 completed.

11 “(e) Grants made under this part shall be used only  
12 for the purpose for which made and may be paid in advance  
13 or by way of reimbursement, and in such installments as the  
14 Secretary may determine.

15 “ELIGIBILITY FOR GRANTS

16 “SEC. 764. (a) In order for any medical school to be  
17 eligible for a grant under this part, such school—

18 “(1) must be a public or other nonprofit school  
19 of medicine; and

20 “(2) must be accredited as a school of medicine by  
21 a recognized body or bodies approved for such purpose  
22 by the Commissioner of Education, except that the re-  
23 quirement of this clause (2) shall be deemed to be  
24 satisfied if, (A) in the case of a school of medicine  
25 which by reason of no, or an insufficient, period of



1 operation is not, at the time of application for a grant  
2 under this part, eligible for such accreditation, the Com-  
3 missioner finds, after consultation with the appropriate  
4 accreditation body or bodies, that there is reasonable  
5 assurance that the school will meet the accreditation  
6 standards of such body or bodies prior to the beginning  
7 of the academic year following the normal graduation  
8 date of students who are in their first year of instruction  
9 at such school during the fiscal year in which the Secre-  
10 tary makes a final determination as to approval of the  
11 application.

12 “(b) In order for any hospital to be eligible for a grant  
13 under this part, such hospital—

14 “(1) must be a public or private nonprofit hospital;  
15 and

16 “(2) must conduct or be prepared to conduct in  
17 connection with its other activities (whether or not as  
18 an affiliate of a school of medicine) one or more pro-  
19 grams of medical training for medical students, interns,  
20 or residents, which is accredited by a recognized body  
21 or bodies, approved for such purpose by the Commis-  
22 sioner of Education.

23 “APPROVAL OF GRANTS

24 “SEC. 765. (a) A grant under this part may be made  
25 only if the application thereof is recommended for approval



1 by the Advisory Council on Family Medicine and is ap-  
2 proved by the Secretary upon his determination that—

3 “(1) the applicant meets the eligibility require-  
4 ments set forth in section 764;

5 “(2) the applicant has complied with the require-  
6 ments of section 763;

7 “(3) the grant is to be used for one or more of the  
8 purposes set forth in section 761;

9 “(4) it contains such information as the Secretary  
10 may require to make the determinations required of  
11 him under this section and such assurances as he may find  
12 necessary to carry out the purposes of this part;

13 “(5) it provides for such fiscal control and account-  
14 ing procedures and reports, and access to the records  
15 of the applicant, as the Secretary may require (pursu-  
16 ant to regulations which shall have been promulgated by  
17 him and published in the Federal Register) to assure  
18 proper disbursement of and accounting for all Federal  
19 funds paid to the applicant under this part; and

20 “(6) the application contains or is supported by  
21 adequate assurance that any laborer or mechanic em-  
22 ployed by any contractor or subcontractor in the per-  
23 formance of work on the construction of the facility  
24 will be paid wages at rates not less than those prevailing  
25 on similar construction in the locality as determined



1 by the Secretary of Labor in accordance with the Davis-  
2 Bacon Act, as amended (40 U.S.C. 276a-276a5). The  
3 Secretary of Labor shall have, with respect to the labor  
4 standards specified in this paragraph, the authority  
5 and functions set forth in Reorganization Plan Numbered  
6 14 of 1950 (15 F.R. 3176; 65 Stat. 1267), and section  
7 2 of the Act of June 13, 1934, as amended (40 U.S.C.  
8 276c).

9 “(b) The Secretary shall not approve any grant to—  
10 “(1) a school of medicine to establish or operate  
11 a separate department devoted to the teaching of family  
12 medicine unless the Secretary is satisfied that—

13 “(A) such department is (or will be, when  
14 established) of equal standing with the other depart-  
15 ments within such school which are devoted to the  
16 teaching of other medical specialty disciplines;

17 “(B) such department will, in terms of the sub-  
18 jects offered and the type and quality of instruction  
19 provided, be designed to prepare students thereof  
20 to meet the standards established for specialists in  
21 the specialty of family practice by a recognized body  
22 approved by the Commissioner of Education; or

23 “(2) a hospital to establish or operate a special pro-  
24 gram for medical students, interns, or residents in the  
25 field of family medicine unless the Secretary is satisfied



1       that such program will, in terms of the type of training  
2       provided, be designed to prepare participants therein to  
3       meet the standards established for specialists in the field  
4       of family medicine by a recognized body approved by  
5       the Commissioner of Education.

6       “(c) The Secretary shall not approve any grant under  
7       this part unless the applicant therefor provides assurances  
8       satisfactory to the Secretary that funds made available  
9       through such grant will be so used as to supplement and, to  
10      the extent practical, increase the level of non-Federal funds  
11      which would, in the absence of such grant, be made available  
12      for the purpose for which such grant is requested.

13                               “PLANNING GRANTS

14      “SEC. 766. (a) For the purpose of assisting medical  
15      schools and hospitals (referred to in section 761) to plan  
16      projects for the purpose of carrying out one or more of the  
17      purposes set forth in such section, the Secretary is author-  
18      ized for any fiscal year (prior to the fiscal year which ends  
19      June 30, 1975) to make planning grants in such amounts  
20      and subject to such conditions as the Secretary may deter-  
21      mine to be proper to carry out the purposes of this section.

22      “(b) From the amounts appropriated for any fiscal year  
23      (prior to the fiscal year ending June 30, 1975) pursuant to  
24      section 762 (a), the Secretary may utilize such amounts as



1 he deems necessary (but not in excess of \$5,000,000 for any  
2 fiscal year) to make the planning grants authorized by sub-  
3 section (a).

4 "ADVISORY COUNCIL ON FAMILY MEDICINE

5 "SEC. 767. (a) The Secretary shall appoint an Ad-  
6 visory Council on Family Medicine (hereinafter in this sec-  
7 tion referred to as the 'Council'). The Council shall consist of  
8 twelve members, four of whom shall be physicians engaged  
9 in the practice of family medicine, four of whom shall be  
10 physicians engaged in the teaching of family medicine, and  
11 four of whom shall be representatives of the general public.  
12 Members of the Council shall be individuals who are not  
13 otherwise in the regular full-time employ of the United  
14 States.

15 "(b) Each member of the Council shall hold office for a  
16 term of four years, except that any member appointed to  
17 fill a vacancy prior to the expiration of the term for which  
18 his predecessor was appointed shall be appointed for the  
19 remainder of such term, and except that the terms of office of  
20 the members first taking office shall expire, as designated by  
21 the Secretary at the time of appointment, three at the end  
22 of the first year, three at the end of the second year, three at  
23 the end of the third year, and three at the end of the fourth  
24 year, after the date of appointment. A member shall not be  
25 eligible to serve continuously for more than two terms.



1       “(c) Members of the Council shall be appointed by  
2 the Secretary without regard to the provisions of title 5,  
3 United States Code, governing appointments in the competi-  
4 tive service. Members of the Council, while attending meet-  
5 ings or conferences thereof or otherwise serving on business  
6 of the Council, shall be entitled to receive compensation at  
7 rates fixed by the Secretary, but not exceeding \$100 per  
8 day, including traveltime, and while so serving away from  
9 their homes or regular places of business they may be  
10 allowed travel expenses, including per diem in lieu of sub-  
11 sistence, as authorized by section 5703 of title 5, United  
12 States Code, for persons in Government service employed  
13 intermittently.

14       “(d ) The Council shall advise and assist the Secretary  
15 in the preparation of regulations for, and as to policy matters  
16 arising with respect to, the administration of this title. The  
17 Council shall consider all applications for grants under this  
18 part and shall make recommendations to the Secretary with  
19 respect to approval of applications for grants under this part.

20                               “DEFINITIONS

21       “SEC. 768. For purposes of this part—

22               “(1) the term ‘nonprofit’ as applied to any hospital  
23 or school of medicine, means a school of medicine or  
24 hospital which is owned and operated by one or more  
25 nonprofit corporations or associations, no part of the



1 net earnings of which inures, or may lawfully inure,  
2 to the benefit of any private shareholder or individual;

3 “(2) the term ‘family medicine’ means those cer-  
4 tain principles and techniques and that certain body of  
5 medical, scientific, administrative, and other knowledge  
6 and training, which especially equip and prepare a  
7 physician to engage in the practice of family medicine:

8 “(3) the term ‘practice of family medicine’ and  
9 the term ‘practice’, when used in connection with the  
10 term ‘family medicine’, mean the practice of medicine  
11 by a physician (licensed to practice medicine and sur-  
12 gery by the State in which he practices his profession)  
13 who specializes in providing to families (and members  
14 thereof) comprehensive, continuing, professional care  
15 and treatment of the type necessary or appropriate for  
16 their general health maintenance; and

17 “(4) the term ‘construction’ includes construction  
18 of new buildings, acquisition, expansion, remodeling, and  
19 alteration of existing buildings, and initial equipment of  
20 any such buildings, including architects’ fees, but ex-  
21 cluding the cost of acquisition of land or offsite improve-  
22 ments.”



91ST CONGRESS  
1ST SESSION

# H. R. 3571

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 1969

Mr. ROGERS of Colorado introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

For the relief of Miloye M. Sokitch.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That, notwithstanding any provisions of title III of the  
4       International Claims Settlement Act of 1949, as amended,  
5       limiting the period within which claims may be filed there-  
6       under, including section 316 of such Act (22 U.S.C.  
7       1641o), the Foreign Claims Settlement Commission of the  
8       United States is authorized and directed (1) to receive, con-  
9       sider, and act upon any claims of Miloye M. Sokitch, of  
10      Washington, District of Columbia, or his legal representa-  
11      tive, filed within six months after the date of enactment of

III



1 this Act, against the Government of Italy, as if such claims  
2 had been filed within the time and manner provided in the  
3 International Claims Settlement Act of 1949, and (2) to  
4 certify to the Secretary of the Treasury for payment out of  
5 remaining balances in the Italian claims fund any award is-  
6 sued pursuant to such claims. The Secretary of the Treasury  
7 is authorized and directed to pay to the said Miloye M.  
8 Sokitch or his legal representative out of such fund, in ac-  
9 cordance with the provisions of section 310 of such Act (22  
10 U.S.C. 1641i), the amount of any such award so certified  
11 by the Commission. Nothing in this Act shall constitute an  
12 admission of liability on the part of the United States.



91ST CONGRESS  
2D SESSION

Private Calendar No. 320  
**S. 2755**  
[Report No. 91-1515]

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IN THE HOUSE OF REPRESENTATIVES

JULY 20, 1970

Referred to the Committee on the Judiciary

SEPTEMBER 29, 1970

Reported with an amendment, committed to the Committee of the Whole House,  
and ordered to be printed

[Omit the part struck through]

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**AN ACT**

For the relief of Donal N. O'Callaghan.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That the Secretary of the Treasury is authorized and directed
- 4 to pay, out of any money in the Treasury not otherwise ap-
- 5 propriated, to Donal N. O'Callaghan of Carson City, Nevada
- 6 the sum to which he would be entitled under section 5724a
- 7 (a) (4), title 5 of the United States Code and the regula-
- 8 tions issued thereunder without regard to section 4.1d of
- 9 the Bureau of the Budget Circular Numbered A-56, Revised,
- 10 October 12, 1966. Such sum represents the amount of ex-
- 11 penses the said Donal N. O'Callaghan incurred in selling his



1 residence in Carson City, Nevada, incident to his transfer  
2 in June 1967, as an employee of the Office of Emergency  
3 Preparedness, from one location to another for the conven-  
4 ience of the Government, the said Donal N. O'Callaghan  
5 having been unable, due to circumstances beyond his control,  
6 to comply with a Government regulation permitting reim-  
7 bursement of such expenses only in the case of sales com-  
8 pleted within one year after transfer.

9       SEC. 2. No part of the amount appropriated in this Act  
10 ~~in excess of 20 per centum thereof~~ shall be paid or delivered  
11 to or received by any agent or attorney on account of serv-  
12 ices rendered in connection with this claim, and the same  
13 shall be unlawful, any contract to the contrary notwithstand-  
14 ing. Violation of this section is a misdemeanor punishable  
15 by a fine of not to exceed \$1,000.

Passed the Senate July 17, 1970.

Attest:

FRANCIS R. VALEO,

*Secretary.*



[Pocket Veto Case 279 U. S. 655 (1929)]

## SUPREME COURT OF THE UNITED STATES.

No. 565.—OCTOBER TERM, 1928.

|                                                                                                                                                                                                                      |   |                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|------------------------------------------------------|
| <p>The Okanogan, Methow, San Poelis (or San Poil), Nespelem, Colville, and Lake Indian Tribes or Bands of the State of Washington, Petitioners,</p> <p style="text-align: center;">vs.</p> <p>The United States.</p> | } | <p>On Writ of Certiorari to the Court of Claims.</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|------------------------------------------------------|

[May 27, 1929.]

Mr. Justice SANFORD delivered the opinion of the Court.

This case presents the question whether, under the second clause in Section 7 of Article 1 of the Constitution of the United States, a bill which is passed by both Houses of Congress during the first regular session of a particular Congress and presented to the President less than ten days (Sundays excepted) before the adjournment of that session, but is neither signed by the President nor returned by him to the House in which it originated, becomes a law in like manner as if he had signed it.

At the first session of the 69th Congress Senate Bill No. 3185, entitled "An Act authorizing certain Indian tribes and bands, or any of them, residing in the State of Washington, to present their claims to the Court of Claims," having been passed by both Houses of Congress and duly authenticated, was presented to the President on June 24, 1926. On July 3 the first session of the 69th Congress was adjourned, under a house concurrent resolution.<sup>1</sup> The Congress was not again in session until the commencement of the second session on the first Monday in December.<sup>2</sup> And neither House of Congress was in session on July 6—the tenth day after the bill had been presented to the President (Sundays excepted).

<sup>1</sup>67 Cong. Rec., pt. 11, pp. 12770, 12885, 13009, 13018, 13100. By the terms of this resolution the House of Representatives adjourned *sine die*; and the Senate adjourned to November 10—this being the date to which, sitting as a court of impeachment, it had previously adjourned for the trial of certain articles of impeachment. 67 Cong. Rec., pt. 8, pp. 8725, 8733. And on that date the Senate, sitting as a court of impeachment, met and adjourned *sine die*. 68 Cong. Rec., pt. 1, pp. 3, 4.

That the adjournment on July 3 was in effect an adjournment of the first session of the Congress is not questioned.

<sup>2</sup>68 Cong. Rec., pt. 1, p. 7; Constitution, Art. 1, Sec. 4, Cl. 2.



## 2 *Okanogan Indian Tribe et al. vs. United States.*

The President neither signed the bill nor returned it to the Senate. And it was not published as a law.

Taking the position that the bill had become a law without the signature of the President, the Okanogan and other Indian tribes residing in the State of Washington in March, 1927, filed a petition in the Court of Claims setting up certain claims in accordance with the terms of the bill. The United States demurred to the petition. The court sustained the demurrer and dismissed the petition, on the ground that under the provisions of the Constitution the bill had not become a law. 66 C. Cls. —.

In view of the public importance of the question presented we granted the petitioners a writ of certiorari. — U. S. —. And for like reason, at the request of the Committee on the Judiciary of the House of Representatives, we granted Mr. Sumners, a member of that Committee, leave to appear as *amicus curiae*. He has aided us by a comprehensive and forcible presentation of arguments against the conclusion of the court below.

The clause of the Constitution here in question reads as follows: "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered; and if approved by two thirds of that House, it shall become a Law. . . . *If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.*"

The specific question here presented is whether, within the meaning of the last sentence—which we have italicized—Congress by the

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\*The third clause reads as follows: "Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill."



adjournment on July 3 prevented the President from returning the bill within ten days, Sundays excepted, after it had been presented to him. If the adjournment did not prevent him from returning the bill within the prescribed time, it became a law without his signature; but, if the adjournment prevented him from so doing, it did not become a law. This is unquestioned.

In support of the position that the adjournment did not prevent the President from returning the bill within the prescribed time, counsel for the petitioners and the *amicus curiae* urge that the only "adjournment" which prevents the President from returning a bill within the prescribed time is the final adjournment of the Congress, terminating its legislative existence and making it impossible for the President to return the bill for its reconsideration; and that an adjournment of the first session of the Congress does not prevent the President from returning the bill within the prescribed time since the legislative existence of the Congress is not terminated, and he may within that time return the bill to the House in which it originated, although not then in session, by delivering it, with his objections, to the Secretary, Clerk, or other appropriate agent of that House; to be held by such agent and presented to the House when the Congress resumes its sitting at the next session—thereby enabling the Congress to proceed with the reconsideration of the bill as a part of the unfinished legislative business carried over from the first session. And it is also said, by counsel for the petitioners, that the "ten days" allowed for the return of the bill, may be construed as meaning "legislative days," that is, days on which the Congress is in legislative session, and not calendar days, thereby enabling the President to return the bill within ten days, Sundays excepted, exclusive of all days on which the Congress was not in legislative session, even although, by reason of an adjournment, this period does not expire until after the Congress has resumed its legislative sittings at the second session.

In support of the position that Congress by the adjournment on July 3 prevented the President from returning the bill within the prescribed time, the Attorney General maintains that the word "adjournment" includes an interim adjournment as well as the final adjournment at the end of a Congress; that the words "ten days" mean calendar days, and not legislative days; that the President cannot return a bill with his objections to the House in which it originated except by returning it to the House while in session; that if, by reason of an adjournment taken by Congress within the



#### 4 *Okanogan Indian Tribe et al. vs. United States.*

prescribed time, the House in which the bill originated be not in session on the last of such days and the bill cannot be thus returned, the President is thereby prevented from returning the bill within the prescribed time; and that this view is supported by the practical construction given to the constitutional provision by the President through a long course of years, in which Congress has acquiesced.

No light is thrown on the meaning of the constitutional provision in the proceedings and debates of the Constitutional Convention; and there has been no decision of this Court dealing directly with its meaning and effect in respect to the precise question here involved. And while we have been cited to various decisions of state courts construing similar provisions in state constitutions, an examination of them discloses such a conflict of opinion—due in some part to differences in phraseology or their application to the procedure of the state legislatures—that, viewed as a whole, they furnish no substantial aid in the determination of the question here presented and a detailed consideration of them here would not be helpful. For that reason we shall cite in this opinion only some that seem most apposite and persuasive in their reasoning.

1. It is earnestly insisted by counsel for the petitioners and by the *amicus curias*, as the underlying basis of their contentions, that since clause 2 gives the President merely a qualified negative over legislation and requires him, if he disapproves a bill, to return it with his objections to the House in which it originated so that Congress may have an opportunity to reconsider it in the light of such objections and pass it by a two-thirds vote of each House, the provision as to the return of a bill within a specified time is to be construed in a manner that will give effect to the reciprocal rights and duties of the President and of Congress and not enable him to defeat a bill of which he disapproves by a silent and "absolute veto," that is, a so-called "pocket veto", which neither discloses his objections nor gives Congress an opportunity to pass the bill over them. This argument involves a misconception of the reciprocal rights and duties of the President and of Congress and of the situation resulting from an adjournment of Congress which prevents the President from returning a bill with his objections within the specified time. This is illustrated in the use of the term "pocket veto", which does not accurately describe the situation, and is misleading in its implications in that it suggests that the



failure of the bill in such case is necessarily due to the disapproval of the President and the intentional withholding of the bill from reconsideration. The Constitution in giving the President a qualified negative over legislation—commonly called a veto—entrusts him with an authority and imposes upon him an obligation that are of the highest importance, in the execution of which it is made his duty not only to sign bills that he approves in order that they may become law, but to return bills that he disapproves, with his objections, in order that they may be reconsidered by Congress. The faithful and effective exercise of this momentous duty necessarily requires time in which the President may carefully examine and consider a bill and determine, after due deliberation, whether he should approve or disapprove it, and if he disapproves it, formulate his objections for the consideration of Congress. To that end a specified time is given, after the bill has been presented to him, in which he may examine its provisions and either approve it or return it, not approved, for reconsideration. See *La Abra Silver Mining Co. v. United States*, 175 U. S. 423, 455.\* The power thus conferred upon the President cannot be narrowed or cut down by Congress, nor the time within

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\*Compare *The People v. Bowen*, 30 Barb. (N. Y.) 24, 32, 34; *Lankford v. County Commrs. of Somerset County*, 73 Md. 105, 110, 111; *Tuttle v. Boston* 215 Mass. 57, 58, 60; and *The People v. Hatch*, 33 Ill. 9, 129, 135, 136, in which it was aptly said, in a concurring opinion: "The convention which framed our Constitution designed to provide for the enactment and enforcement of salutary laws in the mode best calculated to promote the general welfare. They supposed, as one of the means of best best attaining this end, that the executive of the State should not only be intrusted with the enforcement of all laws, but should also be vested with a voice in their adoption. In distributing the powers of government, they could, if they had chosen to do so, have authorized the general assembly to adopt laws independent of all executive action. But to prevent the evils of hasty, illy considered legislation, they conferred upon the governor the power to arrest the passage of a bill until his objections could be heard, and the bill be again considered and adopted. As the best means of accomplishing this, and of preventing the adoption of injurious measures, they gave to the governor ten days, exclusive of Sundays, in which to bestow that careful examination and consideration, so essentially necessary to determine the effects and consequences likely to flow from the adoption of a new measure. This is the duty imposed, and it is one that must be performed. And the time allowed for the purpose cannot be abridged, or the provision thwarted, by either accident or design. The use of the whole time given to the governor must be allowed. The Constitution has spoken and it must be obeyed."



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which it is to be exercised lessened, directly or indirectly.\* And it is just as essential a part of the constitutional provisions, guarding against ill-considered and unwise legislation, that the President, on his part, should have the full time allowed him for determining whether he should approve or disapprove a bill, and if disapproved, for adequately formulating the objections that should be considered by Congress, as it is that Congress, on its part, should have an opportunity to re-pass the bill over his objections.

It will frequently happen—especially when many bills are presented to the President near the close of a session, some of which are complicated or deal with questions of great moment—that when Congress adjourns before the time allowed for his consideration and action has expired, he will not have been able to determine whether some of them should be approved or disapproved, or, if disapproved, to formulate adequately the objections which should receive the consideration of Congress. And it is plain that when the adjournment of Congress prevents the return of a bill within the allotted time, the failure of the bill to become a law cannot properly be ascribed to the disapproval of the President—who presumably would have returned it before the adjournment if there had been sufficient time in which to complete his consideration and take such action—but is attributable solely to the action of Congress in adjourning before the time allowed the President for returning the bill had expired. Thus, in *La Abra Silver Mining Co. v. United States*, *supra*, 454, this Court said that “if by its action, after the presentation of a bill to the President during the time given him by the Constitution for an examination of its provisions and for approving it by his signature, Congress puts it out of his power to return it, not approved, within that time to the House in which it originated, then the bill falls, and does not become a law.”

2. There is plainly no warrant for adopting the suggestion of counsel for the petitioners—which is not urged by the *amicus curiae*—that the phrase “within ten Days (Sundays excepted)”, may be construed as meaning, not calendar days, but “legis-

\*Compare *Tuttle v. Boston*, *supra*, 60; *The People v. Hatch*, *supra*, 136.

•And if Congress so desires the same bill may be re-introduced and passed when Congress resumes its session, and after receiving the due consideration of the President, if returned with his objections, may be then passed by the requisite vote in both Houses.



lative days", that is, days during which Congress is in legislative session — thereby excluding all calendar days which are not also legislative days from the computation of the period allowed the President for returning a bill. The words used in the Constitution are to be taken in their natural and obvious sense, *Martin v. Hunter's Lessee*, 1 Wheat. 304, 326, and are to be given the meaning they have in common use unless there are very strong reasons to the contrary. *Tennessee v. Whitworth*, 117 U. S. 139, 147. The word "days", when not qualified, means in ordinary and common usage calendar days. This is obviously the meaning in which it is used in the constitutional provision, and is emphasized by the fact that "Sundays" are excepted. There is nothing whatever to justify changing this meaning by inserting the word "legislative" as a qualifying adjective. And no President or Congress has ever suggested that the President has ten "legislative days" in which to consider and return a bill, or proceeded upon that theory.

3. Nor can we agree with the argument that the word "adjournment" as used in the constitutional provision refers only to the final adjournment of the Congress. The word "adjournment" is not qualified by the word "final;" and there is nothing in the context which warrants the insertion of such a limitation. On the contrary, the fact that the word "adjournment" as used in the Constitution is not limited to a final adjournment, is shown by the first clause in section 5 of Article 1, which provides that a smaller number than a majority of each House may "adjourn" from day to day, and by the fourth clause of the same Article, which provides that neither House, during the session of Congress, shall, without the consent of the other, "adjourn" for more than three days. And the Standing Rules of the Senate refer specifically to motions to "adjourn to a day certain" (No. XXII); and the Rules of the House of Representatives, to an "adjournment" at the end of one session (No. XXVI).<sup>7</sup>

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<sup>7</sup>The view that the "adjournment" contemplated in the constitutional provision is the final adjournment of Congress, and not an interim adjournment, appears to have been expressed in behalf of Congress, for the first and only time, in a report made by the Judiciary Committee of the House of Representatives in 1927 (H. Rep't. No. 2054, 69th Cong., 2d sess.). This was followed by the Chairman of the Committee of the Whole in overruling a point of order made against a provision in an appropriation bill that presented this question; and no appeal was taken from this ruling. 68 Cong. Rec., pt. 5, pp. 4932-4937.



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4. We think that under the constitutional provision the determinative question in reference to an "adjournment" is not whether it is a final adjournment of Congress or an interim adjournment, such as an adjournment of the first session, but whether it is one that "prevents" the President from returning the bill to the House in which it originated within the time allowed. It is clear, and, as we understand, is not questioned, that since the President may return a bill at any time within the allotted period, he is prevented from returning it, within the meaning of the constitutional provision, if by reason of the adjournment it is impossible for him to return it to the House in which it originated on the last day of that period. It is also conceded, as we understand, that the President is necessarily prevented from returning a bill by a final adjournment of the Congress, since such adjournment terminates the legislative existence of the Congress and makes it impossible to return the bill to either House. And the crucial question here presented is whether an interim adjournment of Congress at the end of the first session, as the result of which, although the legislative existence of the House in which the bill originated has not been terminated, it is not in session on the last day of the period allowed the President for returning the bill, likewise prevents him from returning it to such House. This brings us to the specific question whether, in order to return the bill to the House in which it originated, within the meaning of the constitutional provision, it is necessary, as the Attorney General insists, that it be returned to the House itself while it is in session, or whether, as urged by counsel for the petitioners and by the *amicus curiae*, it may be returned to the House, although not in session, by delivering it to an officer or agent of the House, to be held by him and delivered to the House when it resumes its sittings at the next session.

Clause 2 specifically provides that if the President does not approve a bill "he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it." That is, it provides in the same phrase and with no change in definition, that the "House" to which the bill is to be returned is that which is to enter the objections on its journal and proceed to reconsider the bill.

From a consideration of the entire clause we think that the "House" to which the bill is to be returned, is the House in



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session. In *Missouri Pac. Ry. Co. v. Kansas*, 248 U. S. 276, 280, 281, 283, this Court, in holding that the provision in this clause requiring a vote of two-thirds of each House to pass a bill over the President's objections, means two-thirds of a quorum of each House and not two-thirds of all its members, said *arguendo*, that "the context leaves no doubt that the provision was dealing with the two houses as organized and entitled to exert legislative power", that is, the legislative bodies "organized conformably to law for the purpose of enacting legislation"; and, after stating that the identity between this provision and that in Article V of the Constitution, giving "two-thirds of both Houses" the power to submit amendments, makes the practice as to one applicable to the other, quoted with approval the "settled rule . . . clearly and aptly stated" by the Speaker, Mr. Reed, in the House, on the passage of the amendment to the Constitution providing for the election of Senators by the vote of the people, as follows: "What constitutes a House? A quorum of the membership, a majority, one-half and one more. That is all that is necessary to constitute a House to do all the business that comes before the House. Among the business that comes before the House is the reconsideration of a bill which has been vetoed by the President; another is a proposed amendment to the Constitution; and the practice is uniform in both cases that if a quorum of the House is present the House is constituted and two-thirds of those voting are sufficient in order to accomplish the object. . . ."

Since the bill is to be returned to the same "House," and none other, that is to enter the President's objections on its journal\* and proceed to reconsider the bill—there being only one and the same reference to such House—it follows, in our opinion, that under the constitutional mandate it is to be returned to the "House" when sitting in an organized capacity for the transaction of business, and having authority to receive the return, enter the President's objections on its journal, and proceed to reconsider the bill; and that no return can be made to the House when it is not in session as a collective body and its members are dispersed. This is the view expressed in 1 Curtis' Constitutional History of the United States, 486, n. 1, in which it is said: "This expression, a 'house', or 'each house,' is several times employed in the Constitution with reference to the faculties and powers of the two cham-

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\*The journal is the record that each House is required to keep of its own proceedings. Const., Art. I, sec. 5, cl. 3.



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bers respectively, and it always means, when so used, the constitutional quorum, assembled for the transaction of business, and capable of transacting business. This same expression was employed by the committee when they provided for the mode in which a bill, once rejected by the president, should be again brought before the legislative bodies. They directed it to be returned '*to that House in which it shall have originated*'—that is to say, to a constitutional quorum, a majority of which passed it in the first instance. . . ."

This accords with the long established practice of both Houses of Congress to receive messages from the President while they are in session. See Senate Standing Rule XXVIII. cl. 1; House Rule XL; 5 Hind's Precedents of the House of Representatives, ch. CXXXVIII, especially sec. 6591, p. 812.

We find no substantial basis for the suggestion that although the House in which the bill originated is not in session the bill may nevertheless be returned, consistently with the constitutional mandate, by delivering it, with the President's objections, to an officer or agent of the House, for subsequent delivery to the House when it resumes its sittings at the next session, with the same force and effect as if the bill had been returned to the House on the day when it was delivered to such officer or agent. Aside from the fact that Congress has never enacted any statute authorizing any officer or agent of either House to receive for it bills returned by the President during its adjournment, and that there is no rule to that effect in either House, the delivery of the bill to such officer or agent, even if authorized by Congress itself, would not comply with the constitutional mandate. The House, not having been in session when the bill was delivered to the officer or agent, could neither have received the bill and objections at that time, nor have entered the objections upon its journal, nor have proceeded to reconsider the bill, as the Constitution requires; and there is nothing in the Constitution which authorizes either House to make a *nunc pro tunc* record of the return of a bill as of a date on which it had not, in fact, been returned. Manifestly it was not intended that, instead of returning the bill to the House itself, as required by the constitutional provision, the President should be authorized to deliver it, during an adjournment of the House, to some individual officer or agent not authorized to make any legislative record of its delivery, who should hold it in his own



hands for days, weeks or perhaps months,—not only leaving open possible questions as to the date on which it had been delivered to him, or whether it had in fact been delivered to him at all, but keeping the bill in the meantime in a state of suspended animation until the House resumes its sittings, with no certain knowledge on the part of the public as to whether it had or had not been seasonably delivered, and necessarily causing delay in its reconsideration which the Constitution evidently intended to avoid. In short, it was plainly the object of the constitutional provision that there should be a timely return of the bill, which should not only be a matter of official record definitely shown by the journal of the House itself, giving public, certain and prompt knowledge as to the status of the bill, but should enable Congress to proceed immediately with its reconsideration; and that the return of the bill should be an actual and public return to the House itself, and not a fictitious return by a delivery of the bill to some individual which could be given a retroactive effect at a later date when the time for the return of the bill to the House had expired.

Thus Attorney General Devens in a memorandum to President Hayes, said: "All these provisions indicate that in order to enable the President to return a bill the Houses should be in session; and if by their own act they see fit to adjourn and deprive him of the opportunity to return the bill, with his objections, and are not present themselves to receive and record these objections and to act thereon, the bill can not become a law unless ten days shall have expired during which the President will have had the opportunity thus to return it. There is no suggestion that he may return it to the Speaker, or Clerk, or any officer of the House; but the return must be made to the House as an organized body."<sup>9</sup>

It is significant that only one attempt has ever been made in Congress to authorize the President to return a bill when the House in which it originated was not in session; and that this failed. In 1868 a bill was reported by the Senate Judiciary Committee for regulating the return of bills by the President.<sup>10</sup> While this specifically declared that the constitutional provision allowed the President ten calendar days (Sundays excepted) in which to return a bill not approved by him, and that the return of a bill would be prevented by "the final adjournment of a session" of Congress, although not by an adjournment to a particular day, it provided that if at any time within such ten days the President desired to return

<sup>9</sup>Quoted in an opinion of Attorney General Miller, 20 Op. 503, 506.

<sup>10</sup>S. 366, 40 Cong., 2d sess.



the bill to the house in which it originated when such house was not sitting, he might return it to the office of the Secretary of the Senate or Clerk of the House of Representatives, as the case might be, who should endorse thereon the day on which such return was made, and make an entry of the fact of such return in his journal of the proceedings, and that such return should be deemed a return of the bill to all intents and purposes. In the debate in the Senate strong opposition was expressed to this feature of the bill on constitutional grounds;<sup>11</sup> and although it passed the Senate by a majority vote, it was never reported from the Judiciary Committee of the House of Representatives, to which it was referred,

<sup>11</sup>In the debate in the Senate the constitutional objections to the provision authorizing the President to return a bill to an officer of the Senate or the House of Representatives when they were not sitting, were clearly and, as we think, convincingly expressed.

Thus Senator Davis said: "(The) Constitution requires that if the President does not approve a bill he shall return it with his objections to the House in which it originated; this bill provides a different mode of disposing of that bill in case Congress has temporarily taken a recess or an adjournment. It dispenses with the requisition of the Constitution that the bill shall be returned to the House, and directs that it be returned to the officer of the House, if the body is not in session. I do not believe it is competent for Congress to make any such change as that. . . . Of course, if (the President) is to return the bill to the House, the House must be in session, because it is not a House unless in session in the sense in which the Constitution requires the bill to be returned to the House by the President with his objections. . . . I think it is the duty of the President, in the plain language of the Constitution, to return the bill, not to the Secretary or Clerk of either House, but to the House itself. That is the unambiguous and plain language of the Constitution. . . . It is returning it to the Senate or the House of Representatives in session, because when it is returned it is to be at once considered again. The Constitution contemplates that simultaneously with the return of the bill to the House in which it originated the House may take up the matter for consideration. . . . I take the position that to return the bill to the Clerk of the House of Representatives, if it originated there, or to the Secretary of the Senate, if it originated in the Senate, when those bodies are not in session, is not a return of the bill to the House in which it originated. It is the duty and the right of the President to communicate to the House and not to a ministerial officer of the House. To enable him to communicate to the House it must necessarily be in session, because he can not communicate with either House when it is in any other situation than in actual session. It must be assembled and in actual session. . . . I think, sir, that the Executive may not only claim it as a right, but the House in which a bill originates may claim it as the performance of a duty by him to that House, and the people of the country may claim it as the performance of a duty by him, that he shall return the bill with his objections, not, in vacation, to the Clerk or to the Secretary of the Senate or House of Representatives, but



and thus failed to pass the Congress. It does not appear that this suggestion has ever been renewed in Congress.

5. The views which we have expressed as to the construction and effect of the constitutional provision here in question are confirmed

to the body itself, and to enable him to perform that duty that body must necessarily be in session." Cong. Globe, 40th Cong., 2d Sess., Pt. 2, pp. 1372, 1374, 1405.

Senator Bayard said: "But, Mr. President, there is an additional objection which to my mind is all powerful. The committee propose . . . that if Congress is not in session during the ten days or at the end of the ten days the President may send the bill to the office of the Secretary of the Senate or the Clerk of the House of Representatives, according to the House in which the bill may have originated. There is no such provision in the Constitution; and the settled usage of this Government, without a single exception from its foundation, is that no communication is made by the Executive to either House except to the House in session, and that usage ought to have a controlling influence to exclude the idea which is contained in the provision of the bill that I am now referring to. . . . But further, the very object of the clause looks to the fact that the bill should be returned during the session of the House in which it originated. It looks, if I may so speak, to immediate action on the part of Congress—at all events it looks to giving to Congress the right of immediate action as soon as the objections of the President are received. The Houses are to proceed to consider the objections; they are to spread them at large on the Journal; there is to be a reconsideration of the measure formerly under debate. The whole clause looks to speedy action, at all events, upon objections made by the President, and the language employed providing for a return to the House does not imply filing a document with the Clerk or the Secretary when the House is not in session, whether it be the Senate or the House of Representatives. . . . Here the usage of the Government of the United States, from its origin to the present day, is, that in no single case has a President of the United States, on the return of a bill to the Senate or House of Representatives, ever undertaken to file his message with the Clerk of the one or the Secretary of the other; but the action of the Executive has uniformly been by message sent to the House when in session. That is the settled usage; and when you look to the language of the Constitution, that the bill is to be returned to the House, it is certainly forcing language to say that a return to the House means filing a paper with the Secretary or Clerk when the House is not in session." Cong. Globe, 40th Cong., 2d Sess., Pt. 2, pp. 1941, 1942.

Senator Buckalew said: "I should like to know how the Secretary can make entries and make up a Journal when the Senate is not in session. I can understand that when the Senate reconvenes the Clerk may hand to the President of the Senate, just as any member might or any outsider might, the particular paper, and it may then be presented to the Senate, and it may be entered in the Journal. But this bill contemplates that our Secretary shall make and keep a Journal when the Senate is not here at all, when there can be no Journal of its proceedings. . . . (The) Constitution provides that the Senate shall keep a Journal of its proceedings, of what it does itself. In



by the practical construction that has been given to it by the Presidents through a long course of years, in which Congress has

another clause it is provided that when the President returns a bill with his objections that message thus containing his objections shall be entered upon the Journal of the Senate. The fact of receiving such a message and the entry of that message upon the Journal must, in the very nature of the case, be when the Senate itself is in session. . . . The Journal is to be kept by the Senate, and it is to be a Journal of what it does, a Journal of its proceedings. . . . The reception of a message from the President of the United States is a proceeding by the Senate; it is an act by the Senate itself. . . . I think, therefore, it is manifest that under the Constitution of the United States this Journal and the entries upon the Journal are matters which relate to a session of the Senate, an actual session, the personal presence of the body, and that it is not competent for the Senate to commit to one of its own officers, or to any officer of the Government, or to any citizen, the performance of a duty which is by the Constitution charged upon itself and to be performed by itself. . . . Now, one objection which applies to the bill . . . is that it is against the practice of the Government. From the time that Congress first convened together in 1789 down to this time it has been held, and held uniformly, that if the two Houses of Congress adjourned by a concurrent resolution before the expiration of ten days from the presentation of a bill to the President a bill which should then be left in his hands would fail. . . . They have failed upon repeated occasions, not only during recent years, but far back in former times. . . This bill proposes, in the absence of both Houses of Congress to provide a substitute for the House to which the bill is to be returned. Instead of being returned to the House in which it originated, as the Constitution says, this bill proposes to enact that it shall be returned to the Secretary here alone . . . and that upon the paper . . . being given to that particular person it shall be considered that it has been returned to the House in which it originated. . . . Can anything more flatly contradict common sense, deny the plain fact? Can we constitute our Secretary into the Senate, and can we make the Clerk of the House of Representatives the House for the purpose of doing any official act whatever? You propose that he shall receive the communication from the President as if he were the Senate or the House; that he, sitting anywhere, responsible to nobody, with no check upon him, shall make up a Journal as if he were the Senate or the House for the occasion." (Cong. Rec., 40th Cong., 2d Sess., Pt. 3, pp. 2076, 2077.

And Senator Morton said: "The Constitution . . . contemplates that the bill shall pass from the custody of the House in which it shall have originated; and we have no power, in my judgment, to say that it shall be sufficient to return it to the President of the Senate or the Speaker of the House or to the Secretary or Clerk. . . . What has become of the bill? The Constitution does not contemplate such a condition of things. . . . It would be just as good for the private Secretary of the President to retain a bill as for the Secretary of the Senate; just as much a compliance with the provision of the Constitution; and it would be just as satisfactory to my mind for the President to retain it during the odd days as for the Secretary of the Senate to do so." Cong. Globe, 40th Cong., 2d Sess., Pt. 3, pp. 2077, 2078.



acquiesced. Long settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions of this character. Compare *Missouri Pac. Ry. Co. v. Kansas*, *supra*, 284; *Myers v. United States*, 272 U. S. 52, 119, 136; and *State v. South Norwalk*, 77 Conn. 257, 264, in which the court said that a practice of at least twenty years duration "on the part of the executive department, acquiesced in by the legislative department, while not absolutely binding on the judicial department, is entitled to great regard in determining the true construction of a constitutional provision the phraseology of which is in any respect of doubtful meaning."

A memorandum prepared in the office of the Attorney General showing the results of an exhaustive research of governmental archives for the purpose of disclosing the practical construction placed upon the constitutional provision here involved in reference to so-called "pocket vetoes," was transmitted by the President to Congress in December 1928.<sup>12</sup> This memorandum—the accuracy of which is not questioned—cites more than 400 bills and resolutions which were passed by Congress and submitted to the President less than ten days before a final or interim adjournment of Congress, which were not signed by the President nor returned with his disapproval. Of these, 119 were instances in which the adjournment was that at the end of a session of Congress, as distinguished from the final adjournment of the Congress. None of these bills or resolutions were placed upon the statute books or treated as having become a law; nor does it appear that there was any attempt to enforce them in the courts until the present suit was brought. Of these instances 11 occurred before the end of President Lincoln's administration, and the remainder from the end of that administration to the present time. They arose under the administration of all the Presidents except ten. These 119 bills and resolutions are thus classified in the brief of the *amicus curiae*: Private relief bills, 36; pension bills, 19; obsolete purposes, 10; relating to District of Columbia, 9; relating to personal status, 8; right of way over Indian and government land, 8; river and harbor bills, 7; disposition of war stores and government property, 5; reduction of national debts, 3; and general legislation, 14. It does not appear that in any of these instances either House of Congress in any official manner questioned the validity and effect

<sup>12</sup>Ho. Doc. No. 493, 70 Cong., 2d sess.



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of the President's action in not returning the bill after the adjournment of the session, or proceeded on the theory that it had become a law, although neither signed nor returned, until the action was taken in the House Committee of the Whole in 1927 to which we have referred.<sup>13</sup> And in some instances new bills were introduced in place of those that had not been returned. Without analyzing these 119 instances in detail, we think they show that for a long series of years, commencing with President Madison's administration and continuing until the action of the House Committee of the Whole in 1927, all the Presidents who have had occasion to deal with this question have adopted and carried into effect the construction of the constitutional provision that they were prevented from returning the bill to the House in which it originated by the adjournment of the session of Congress; and that this construction has been acquiesced in by both Houses of Congress until 1927.

6. For these reasons we conclude that the adjournment of the first session of the 69th Congress on July 3, 1926, prevented the President, within the meaning of the constitutional provision, from returning Senate Bill No. 3185 within ten days, Sundays excepted, after it had been presented to him, and that it did not become a law.

The judgment of the Court of Claims is

*Affirmed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*

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<sup>13</sup>Note 7, *supra*.



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In the Supreme Court of the United States.

OCTOBER TERM, 1928

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No. 565

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THE OKANOGAN, METHOW, SAN POEILS (OR SAN POIL),  
NESPELEM, COLVILLE AND LAKE INDIAN TRIBES OR  
BANDS OF THE STATE OF WASHINGTON

*Petitioners.*

VS.

THE UNITED STATES

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MOTION OF HATTON W. SUMNERS FOR  
LEAVE TO FILE BRIEF AS AMICUS CURIAE,  
AND BRIEF OF AMICUS CURIAE.

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HATTON W. SUMNERS,  
*As amicus curiae.*

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# In the Supreme Court of the United States

OCTOBER TERM, 1928

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No. 565

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THE OKANOGAN, METHOW, SAN POEILS (OR SAN POIL),  
NESPELEM, COLVILLE AND LAKE INDIAN TRIBES OR  
BANDS OF THE STATE OF WASHINGTON

vs.

THE UNITED STATES

---

## MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

May it please the Court:

The undersigned, a member of the Committee on the Judiciary of the House of Representatives of the United States, pursuant to a resolution of said Committee, respectfully moves this Honorable Court for leave to file the accompanying brief as *amicus curiae* in the above entitled cause.

HATTON W. SUMNERS,  
*As amicus curiae.*



BRIEF OF HATTON W. SUMNERS AS  
AMICUS CURIAE

PRELIMINARY STATEMENT

Due to the fact that there is involved in the above entitled cause the question of the effect of adjournment of the first session of a Congress upon bills passed by the Congress which had been delivered to the President less than ten days (Sundays excepted) prior to the adjournment of such session, and not acted upon at the time of such adjournment, the determination of the above entitled cause is a matter of the greatest importance and concern to the Congress, and particularly to the House of Representatives, who have had the matter under consideration and have reached the conclusion that such bills have become law. Some Presidents holding a contrary view, conflict of attitude and confusion are inevitable. The question is important to the Congress since upon its determination depends whether such bills expire, necessitating their re-introduction and the expenditure of time and the delay incident to proceeding with them *de novo*. For these reasons it is thought proper that a brief should be presented to this Honorable Court in the above entitled cause by a Member of the House of Representatives.

Article 1, Section 7, Clause 2 of the Constitution of the United States provides in part the following:

If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.



The petitioners contend that the words in the above quoted clause, "by their adjournment prevent its return," refer only to the final adjournment, or to the adjournment of the last session of the Congress, and with this contention the *amicus curiae* agrees.

It is contended for the Government that the words "by their adjournment" refer also to the adjournment of the first or intermediate session of the Congress, and with this contention the *amicus curiae* does not agree.

It is contended for the Government that the words "by their adjournment prevent its return" in the above clause refer in the present case to an adjournment of the first session of the Congress, and in support of this contention Executive precedents have been cited on behalf of the Government which would indicate that they further contend that any interim adjournment within a session of the Congress would be such an adjournment as would prevent the return of a bill by the President to the Congress.

### QUESTION STATED

The broad question is whether a bill, which, during the first session of a Congress has regularly passed both Houses of the Congress and has been presented to the President as the Constitution requires, less than ten days before the adjournment of such session, Sundays excepted, and is neither signed by the President, nor returned by him with his objections to the House of its origin within ten days, either legislative days or calendar days (Sundays excepted), becomes a law.

### SUMMARY OF ARGUMENT

The construction allowing a pocket veto allows an absolute veto which was not intended by the framers of the Constitution.



The construction allowing a pocket veto allows a silent veto contrary to the express provisions sought to be construed which provides that the reasons for objections to a bill shall be of record.

The construction allowing a pocket veto ignores the fact that a Congress has an uninterrupted existence from its organization until it is ended by the limitations imposed by the Constitution.

The construction allowing a pocket veto denies the Congress the right to act through authorized agents of the Congress, in receiving Executive communications, while according the right to the Executive to send and receive communications to the Congress through agents.

The construction allowing the pocket veto ignores the Constitutional mandate that the President must return a bill with his objections to the House in which its originated if possible to do so, otherwise the bill becomes law.

The exercise of the pocket veto arises from no necessity or expediency in government resulting from an adjournment of the first session of a Congress, or limitation upon the constitutional power of the President incident to that adjournment affecting his ability to carry out the provisions of the Constitution generally applicable to the return to Congress of objections to bills.

## ARGUMENT

### Provision Under Discussion Analyzed

When resort is had to those provisions of the Constitution which fix the powers and duties out of the exercise of which this question has arisen, it is disclosed that the determination of the main question depends upon whether



it is fixed by the Constitution that the return of a bill with the objections of the President must be made to the House of its origin in actual session, or whether, prior to the final adjournment of a Congress, the return of a bill, in the absence of such House in session may be made constructively, through acceptance by an appropriate agency of that House, and whether the ten days specified in the Constitution are calendar days or legislative days.

Article 1, Section 7 of the Constitution directs that every bill before it becomes a law be presented to the President. If the President approves the bill, he shall sign it. If he does not approve it, he shall formulate his objections, and return the bill, together with his objections to "that House in which it shall have originated." That is the plan.

Then follow two provisions: The first, that if the President does not return the bill with objections within ten days, Sundays excepted, it becomes a law in like manner as if he had signed it; and the second, unless the Congress by their adjournment prevent its return, in which case it shall not be a law. Both of these provisions were clearly intended to safeguard the general plan already set up with regard to legislative enactments, and more particularly Article 1, Section 1 of the Constitution, which provides that: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives". The construction contended for by the Government in the instant case, under which it is insisted that Article 1, Section 7 supports the practice of the pocket veto, puts this provision at variance with every detail of the general legislative plan, and at variance with the general scheme of government embodied in the Constitution.



## CONSTRUCTION SUPPORTING POCKET VETO AT VARIANCE WITH GENERAL PLAN OF THE CONSTITUTION

To have the President examine bills and indicate his opinion as to them was deemed important, but not so important as delay beyond the ten days specified in the Constitution as the maximum time allowed for the completion of his duties. So it is provided that if a bill is not returned by the President to the House of origin within ten days, Sundays excepted, after it is presented to him, it becomes a law, the same as if he had signed it. That is a very significant provision in the Constitution as bearing upon the question here under consideration, indicating the importance of avoiding delay.

The language of the Constitution referred to is followed by a single specific qualification, "unless the Congress by their adjournment prevent its return, in which case it shall not be a law." Out of that language the question here under consideration arises. The construction insisted upon by the Government in effect would eliminate the word "prevent" and construe the language in its effect to be "unless the Congress in the meantime adjourns, in which case if not returned it shall not be a law." That construction does not meet the test of any recognized rule. "Prevent" is the heart and substance of that provision. If the Constitution does not limit, as it does not, delivery of a bill with the President's objections to the House of its origin when in actual session the provision of the Constitution under consideration harmonizes with and safeguards, and makes workable in every situation the general plan of the Constitution, leaving to both the President and to the Legislative bodies an opportunity to utilize appropriate and necessary agencies in the discharge of their respective duties



with regard to bills, and to proceed without friction or uncertainty, and with the minimum of interference with the discharge of their general duties. But if the above provision is construed arbitrarily to prevent the delivery of a bill to the House of its origin, except in actual session when Congress is in session, that provision is in direct conflict with the entire general plan governing legislative processes, and with the reciprocal duties of Congress and the President with regard to the acts of Congress.

#### CONSTRUCTION SUPPORTING POCKET VETO VIOLATES ACCEPTED RULES OF CONSTRUCTION

If the words "unless the Congress by their adjournment prevent its return" in the provision under consideration had not been incorporated, the ordinary rules of construction would probably have excused the President from returning a bill to the House of its origin within the time fixed by the Constitution if prevented from so doing, not only by this act specified, but by any act of the Congress or of that House to which return must be made. These words become therefore under the ordinary rules of construction, not words of addition, but words of limitation, and of exclusion, and make definite that only an act of Congress and what act of Congress would prevent an unreturned bill from becoming law without regard to Presidential approval.

Under the clear wording of the clause quoted mere adjournment of Congress would not of itself be sufficient to prevent an unreturned bill from becoming law. Giving to the words of that clause the meaning which they would ordinarily imply, the Congress must not only adjourn, but their adjournment must be of such a character as makes impossible as a natural consequence the return of the bill



by the President with his objections. That is submitted as the plain meaning and intent of the language. The construction contended for by the Government is not only at variance with the meaning of the language used, but is at variance with the substantive provisions of the Constitution of which this provision is adjective.

If delivery of the bill with the President's objections can only be made to the House of its origin in actual session, when Congress is in session, as is contended in support of the pocket veto, the President is limited where he ought not to be limited, and the Congress is limited where it ought not to be limited, in each instance interfering with the discharge of their constitutional duties under the general plan. To say that Congress by any act other than final adjournment of the Congress may prevent the delivery of a bill, and thereby without a reconsideration make law an act to which the President objects, would be utterly unreasonable. But under the rule of construction invoked to support the pocket veto, if the President's messenger, commissioned to make the return, should arrive after the adjournment of the House in which the bill returned had originated, upon the last of the ten days allowed, the other House being still in session, the bill could not be returned and yet the Congress not being adjourned, the bill would become a law contrary to the general plan. Clearly no such consequence was intended.

If the Senate should happen to be the House of origin, and on the last day in which return could be made the messenger of the President should arrive at the Senate chamber, and find that body in Executive session considering a matter of urgent and vital importance, with its doors closed, as it has a constitutional right to close them until the adjournment of that day's session, the messenger could not make the return if it is fixed in the Constitution that return



can only be made in that case to the Senate in session. In neither of these cases would the Congress be in adjournment, and in the case of the Senate, assuming the House to be in session, neither House would be adjourned. Thus under the rule of construction invoked to support the practice of the pocket veto, which construction would exclude the utilization of an appropriate agency of the Senate to effect the delivery, a situation would develop under which the bill would become a law despite the President's objections and without the reconsideration of the Houses of Congress, notwithstanding the fact that the President had formulated his objections and within the limit of time fixed by the Constitution had attempted to return the bill to the House of its origin. In that case, with the President endeavoring fully to comply with the Constitution with regard to objected to bills, with neither the Congress nor the Senate at fault, the plan provided in the Constitution would fail.

There is another test to which we may submit this proposed rule of construction. Under the construction urged in support of the pocket veto the purely ministerial service of returning a bill to the jurisdiction of Congress cannot be effected except by the interruption and suspension of all other business of the House to which the bill is returned. The claim is that it is thus fixed by the Constitution.

There is another test. If the Congress should not be in session for ten days after the delivery of bills to the President, all those bills would fall under the possibility of what would amount to an absolute veto, even though Congress had adjourned for only eleven days, and notwithstanding the fact that the Constitutional Convention had unanimously decided against the wisdom of permitting the President to have such a power.



## CONSTRUCTION OF PROVISION SUPPORTING POCKET VETO VIOLATES THE OBVIOUS PURPOSE AND INTENT OF THE PROVI- SION UNDER CONSIDERATION

There is no reason obvious or which can be conjured up which might have caused the Constitutional Convention to have imposed with regard to the final act in the interchange of bills between the President and Congress limitations and restrictions imposed nowhere else with regard to such interchange and imposed nowhere else in the whole scheme of government. There is no language in the provision governing this passing of bills between the President and Congress, or any recognized rule of construction which, while permitting the Congress in the first instance to send bills to the President by a messenger, as is done without question, and the President to receive such bills through an appropriate agent even when himself absent from his office; and the President, though he may be away from the Capital, at the time returning the bill by messenger to the Congress, though the Constitution declares "he," the President, shall return it, which would prevent the House of origin from receiving these same bills through a proper agent if that House were engaged in other business or temporarily absent from their Chambers. It is against all reason and every recognized rule of construction, when the avoidance of unnecessary delay is so clearly manifest in the provision sought to be construed, that a construction should be superimposed which would make for delay regardless of every desire and of every effort of the President and of the Congress in the situation indicated. The general plan of the provision sought to be construed, is to afford the Congress the benefit of the President's objec-



tions to an unapproved bill, when the subject matter comes up for a second consideration. It is a legitimate question to ask, why abandon the recognized rules of construction, the rule of construction recognized in every other act of the transfer of bills between the President and the Congress in order to deprive Congress of the certainty of that benefit, and of the opportunity to carry on to completion the work imposed by the Constitution? Or why, after the States, by a unanimous vote, had refused to vest the President with an absolute veto, a construction of this provision should be adopted contrary to its language which would give to the President, under certain circumstances, an absolute veto in effect, when there is a recognized rule of construction recognized alike by the Courts and common sense which would avoid these consequences?

There is no reason why in view of the provision directing the writing and recording of the President's objection to a bill, a construction should be sustained, or can be maintained, adding in effect a provision which would permit the President during the life of a Congress to kill a bill by his silence, by the pocket veto, and thus keep his reasons and his motives for so doing from the Congress and from the country. In a document which is remarkable for its strict economy in the use of words, and in which it is rare to find surplus or unnecessary words of any description, we find set forth with the most exact care a description of the steps necessary to be taken in the event the executive and legislative branches disagree on the advisability of enacting legislation. It is provided that before a bill becomes law it shall be presented to the President for his approval. If the President does not approve of the bill he shall return it to the House of origin with his objections. The House of origin is directed to enter the adjourn for a recess during the last three of the ten days



tions on their journal, and proceed to reconsider the bill. Upon that vote the same shall be by yeas and nays and the names of the persons voting for and against the passage of the bill must be entered on the journal of the House. It then provides that the bill, if the House of origin agree to pass it, shall go to the other House, who in turn shall reconsider it. The vote in the other House is likewise by yeas and nays, and the names of those voting for and against the enactment of the bill over the President's objections are entered upon the journal. It is expressly provided that every essential step in this procedure shall be of record, and only where the President fails to make return, only where he is silent, is it provided that a bill shall become law the same as if he had signed it. The construction of this provision, therefore, which gives the President's silence and inaction the power and effect of an absolute veto, is clearly out of harmony and at variance with the expressed terms of the provisions under construction, both in letter and in spirit. Clearly such a result is not necessary during the life of the Congress which originated the bill, or intended by the framers of the Constitution. The sole exception in the provision which prevents a bill from becoming law when the President refuses to take any action on it for ten days, is where the Congress prevents, that is to say renders impossible, its return by their adjournment. There is but one adjournment, the final adjournment, which marks the death and dissolution of a Congress which can have that effect.

There is another viewpoint. This construction insisted upon in support of the pocket veto also hampers unnecessarily the President in the discharge of his constitutional duties. Clearly the framers of the Constitution must have had in mind that the House in which a bill originated might



specified in the Constitution as the limit within which return might be made to it by the President.

Article V, Section 1, last paragraph, of the Constitution provides: "Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days \* \* \*."

In such a situation what is to occur? Is the bill to become a law despite the objections of the President? The Congress has not adjourned, and yet the President cannot make return of the bill to the House of its origin in session because it is not in session. Is the bill to die with the Congress in existence, possibly the House of origin only having adjourned earlier than usual on the last day permitted for the return of the bill? Is there no rational construction of the Constitution possible which will make effective all the safeguards with regard to legislation established in the Constitution, and yet make operative under every circumstance, the general plan set up by the Constitution? Did the framers of the Constitution fix it so that there is nothing that can be done to avoid during the life of a Congress the delay which they so clearly sought to avoid in the physical exchange of bills between the President and the Congress and in the completion of legislative processes? Did they fix it so that there is nothing which can be done to give to the Congress, when it comes to a reconsideration of a measure the benefit of the President's reasons for non-approval, a thing which the Constitution so clearly intended.

That construction insisted upon by the Government in its support of the pocket veto answers all these questions in the negative; nothing can be done about it, it is said. That construction is challenged, as unsound and its application in its effect as being contrary to the interest of the government; and contrary to the specific language of the Constitution under consideration, and contrary to all recognized rules of construction.



## CONSTRUCTION OF PROVISION SUPPORTING THE POCKET VETO IS NOT IN HARMONY WITH THE CONSTITUTION

Where choice may be had between two constructions, that construction is to be adopted which is most in harmony with the whole instrument of which the provision under construction is a part. Further, it is the substantive and not the adjective provisions which control. If the construction is adopted that "adjournment" as used in the provision under consideration means that final adjournment at the end of the last session of the Congress, which in fact terminates the Congress, and all unfinished business before them, harmony between that provision, and that of which it is a part is established. The recognition of the right to accept by constructive receipt a bill of which the President may be making return by constructive delivery of course follows.

Under such construction instead of having a constitutional arrangement under which Congress might not only defeat the return of a bill by adjournment for that purpose, but might defeat return by developments natural and possible in the course of ordinary procedure, we would have a procedure whereby no act of Congress short of final adjournment, short of its death and dissolution, could defeat the return, and no act of the President could delay or hamper Congress in the completion of legislative processes, and nothing could interfere with the ordinary uniform operation of the law-making machinery as devised by the Constitution. Such construction puts the provision under discussion not only in helpful accord with the general plan of the Constitution, but in harmony with the mechanical processes of handling legislation as they exist in fact and operate under the general plan.



A final adjournment of the Congress, and only that one, by its nature prevents the return of bills. Such an adjournment terminates and dissolves the Congress, and ends all matters pending before them. The Constitutional Convention recognized that fact and by the provision under consideration made provision for that contingency. That was the sensible, practical, necessary thing to do. It is the thing which it is insisted was done.

Under such a construction, whereby final adjournment is considered as the only adjournment which will prevent the return of a bill, this provision ceases to be arbitrary, inharmonious, pulling in a contrary direction from and putting out of order the general plan and mechanism of the Constitution, and becomes a helpful, rational and workable addition to the Constitution. Such adjournment is the only adjournment which of itself of necessity does prevent such return. Certainly the Constitutional Convention did not intend a construction which would result in an unnecessary hindrance and confusion to agencies of Government in the discharge of duties assigned.

It seems perfectly evident when the language of the provision under discussion is examined, having in mind what it is manifest the Constitution was trying to accomplish, that adjournment of the Congress as related to the discharge of the President's duties was considered only in the light of its unavoidable consequences. It was the act of preventing delivery, of making delivery impossible, and its consequences, to which the Convention gave consideration, and not the act of adjournment *per se*. It was that only, which, by its nature was a proper matter for a Constitutional Convention to consider. That Convention was not engaged in the business of fixing forms of procedure, or of placing upon



future generations details of procedure, which might be suited to the conditions then existing but unsuited at some future time. They were conscious of the fact that they were assembling the greatest Constitution of all ages and they hoped for all time, suitable for the Government of a great territory; they were not writing petty statutes. They did not fix it in the Constitution that for all time, in order for the Congress to receive from the President the most insignificant bill to which he had found objections, both Houses must be in Congress assembled, and at least the House of the bill's origin in formal session. They did not fix it for all time that in order for the ministerial act of the return of a bill to be effected the business of the House of the bill's origin must be interrupted, however important and pressing the business which then engaged their consideration, while the President's messenger is received and delivers the bill: the same bill which when it was sent to the President had been entrusted by the Congress to a messenger to send to the President, and which had been entrusted by the President to a messenger to carry back to Congress. The genius of the men who composed the Constitutional Convention did not desert them when they came to frame this provision.

### **THE POCKET VETO CLAIMED AS A PRESIDENTIAL POWER**

The construction insisted upon as sustaining the claim of right and power, vested in the President to kill a bill by the pocket veto, introduces another anomaly into our system, not in harmony even with the provision sought to be construed. Such construction unnecessarily gives to the President a greater power



during the life of a Congress over bills presented to him near the end of a session of Congress, or near temporary adjournment during a session, than at other times possessed.

Looking at the plan established by the Constitution, when the Congress has delivered to the President a bill which has passed both Houses, and the President has had ten days, legislative or calendar as construction may determine, to examine the bill and evidence his approval or disapproval of the same in the manner fixed in the Constitution, that is the end of his responsibility. There may be those who question the wisdom of that arrangement, but the framers of the Constitution did not question it. When the President has made up his mind to object to a bill, it then becomes his clear duty to rid himself of its possession by getting it back into the possession of the House of its origin for reconsideration. The right of possession by the President of bills being temporary, and given for a definite, specific purpose, any unnecessary retention of them is not in harmony with the intent and purpose of the Constitution. If the unnecessary detention of the bill be made deliberately for the purpose of denying to the Congress an opportunity to pass the bill, notwithstanding the President's objections, it is an abuse of the discretion with which the Constitution has entrusted him, amounting to usurpation of power. (See Appendix B.)

There is another matter worthy of consideration; if such a practice should become fixed, it will inevitably operate against that accord, mutual respect, and cooperation in service essential for the proper functioning of two departments of the government which must work together. This alone would have been sufficient consideration to have pre-



vented the incorporation of language in the Constitution which would support the development and practice of the pocket veto.

### **THE POCKET VETO ADVERSE TO THE BROADER PUBLIC INTEREST**

This is not a matter of controversy merely between the legislative branches of the government and the President. They are agents of the Government, their common principal, for which principal they jointly have duties to perform.

Under a rule everywhere recognized, where two agencies of a common principal are assigned to different parts of a single undertaking, and the one to whom a part of the work falls, knowing that the undertaking may fail because of lack of time of the other agent to finish his work unless he proceed with expedition, is bound by duty so to proceed. Unnecessary delay, unnecessary detention from the other agent who must finish the work, is not in accord with efficiency. In this direction the pocket veto offends against the public interest.

### **POCKET VETO GIVES PRESIDENT RIGHT ABSOLUTELY TO VETO DURING LIFE OF CONGRESS**

The construction contended for by the Government supporting the pocket veto would make it possible for the delay and silence of the President to be more powerful in its effect upon legislation than his most energetic



effort or forceful statement of reasons for disapproval of a bill returned by him to Congress, and that during the life of the Congress from which he had received the bill. Such a thing was never intended by the Constitution. The Constitution does recognize that the final adjournment of a Congress works a natural, unavoidable limitation upon the power to return bills to a Congress. That is all it does. That is all it could do without marring the symmetry of the Constitution. When the Congress ends nothing further can be done about returning bills. They cannot be returned and ought not to become law without further action. The Constitution, in the provision under consideration makes that clear. That is the only construction permitted by the language of the Constitution and the general plan for legislative enactments which it established.

That is a very different result from that which is claimed with reference to the pocket veto. The framers of the Constitution were not unmindful or negligent of the fact that it is not in keeping with the public interest that any individual, however high his station, should have the sole power by action or inaction to kill important legislation and hide his reasons therefor under a blanket of secrecy. Every reasonable construction should be invoked to minimize such a possibility. Nothing is more calculated to prevent unwarranted suspicion, and to promote efficiency and integrity in official conduct than publicity given to the reasons for official action. The framers of the Constitution could not have been unmindful of the fact that many of the greatest struggles in the history of free government have been to attain this end. Courts are now open, and their opinions are printed, either through the medium of their reports, or in the public



press. The sessions of legislative bodies are open, and their proceedings are printed.

The framers of the Constitution were too well informed as to the dangers of secret determinative proceedings with regard to important governmental matters not to have gone to the limit to protect the person, the office and the people against the inevitable consequences sooner or later to arise from the possibility of such a practice. Even with the conditional, or qualified veto authorized by the Constitution, which gives only the power to suspend, and to send back to Congress for reconsideration, with possibility of reenactment, notwithstanding the President's objections, the President is commanded to put his reasons in writing, and the House to which the return is made is commanded to record those reasons, in their entirety, upon their permanent record books. It was inevitable that unfinished bills at the end of the last session should die with the Congress whose bills they are. But there is no inherent necessity for them to die short of the death of the Congress which originated them. It is not conceivable that the framers of the Constitution incorporated any language susceptible of a construction which would arbitrarily make them die, unfinished, short of the point fixed by unavoidable necessity.

#### **NO INHERENT NECESSITY FOR BILLS TO DIE SHORT OF FINAL ADJOURNMENT.**

When the Congress adjourns one day, and reconvenes the next, it begins its work, and all of its agencies and committees begin their work where they left off the preceding day. When Congress adjourns at the end of the



first session they adjourn to a day certain, fixed in the Constitution. When they begin at the beginning of the second session, they begin exactly as if they had adjourned on the calendar day preceding; their committees, and all their agencies begin exactly where they were at the end of the last day of the preceding session. All legislative business before them has exactly the same status at the opening of the second or succeeding sessions as if the adjournment had been on the day preceding.

If, for instance, when the Congress adjourns the first session the House of Representatives should be in that parliamentary situation in which the first legislative business on the next day would have been to take a ye and nay vote upon a given bill, the first legislative business, upon its return for the second session would be to take a ye and nay vote upon that bill. On the first day of the reconvening of a second, or succeeding session it would not be possible to determine from anything observed in the operation of the legislative machinery that a longer period than one intervening night had elapsed since the last legislative day. This is true not only of the legislative business of each House, and their respective agencies, but it is also true as to the Congress as an entity, and as to all of their agencies as a Congress.

The only exception, the only interference, with this procedure arises from the practice indulged in and the right asserted or limitation claimed which has come to be designated as the "pocket veto."

The language of the Constitution does not justify, and every consideration of the general plan, and of the public interest drives judgment away from the conclusion that any power was given to one agency of the government thus to hinder Congress, another agency of the government, their



common principal, in the orderly and usual processes by which their constitutional duties are discharged.

It is a significant fact that it is not unusual now, shortly before or after any adjournment of Congress, or even recess of Congress, for it to be published through the public press that a given bill, known to be disapproved by the President, is being held by him and would become the victim of the pocket veto. That is the present development, stated with no purpose to criticize but to state a fact which is a matter of public knowledge, and by that fact to test the soundness of the construction upon which the claim of that constitutional power depends. In such a case it would not be a failure of legislation by reason of lack of time on the part of the President to make up his mind, but a failure because the President had made up his mind; not a failure because the bill was returned as the Constitution directs and had not received the necessary two-thirds vote to overcome the President's objections, but a failure because the President, with his mind already made up in opposition to the bill, had taken advantage of a situation and for the purpose of depriving Congress of an opportunity to complete the discharge of their constitutional duty had delayed the discharge of his constitutional duty.

It is not meant to impute any conscious neglect of constitutional duty. Exactly to the contrary, and that is the point made. It is a natural development for the pocket veto to come to be exercised as a power to kill legislation, a power of absolute veto, which it is regarded as the duty of the President to exercise upon bills to which he objects. It is such a use as the framers of the Constitution, fully considered, and by action most definite in the Convention, and by the clearest conceivable language in the Constitution, denied to the President.



## THE TENDENCY OF THE PRACTICE UNDER THE CLAIM OF POCKET VETO POWER IS TO GIVE THE PRESIDENT AN ABSOLUTE VETO

As a practical matter, public officials as they come to office have transmitted to them not only all rightful power belonging to their office, but also any power which consent or usurpation may have attached to their office. We have gone so far in the direction of absolute veto power in this practice of the pocket veto which has arisen, that any given President would have great difficulty in turning back against the current of the movement. With such claim of power attached to an office there comes much insistence that it be not surrendered, that it be exercised, and there is also a disposition in human nature not to surrender power. It may also be stated without reflection, that any power in government acquired by any method akin to usurpation, using that term here in the sense of gradual accretion, continues to grow and to add danger both to the Government and to the possessor of that power. If the President exercises the power to kill a bill during the life of a Congress which originated it, as distinguished from consequences over which he has no control, that power was not given by the Constitution. The framers of the Constitution could have had no uncertainty as to the inevitable consequences of the exercise of such a power. The fact that it can be exercised only with reference to bills received during the last ten days of a session or presented within ten days of a recess or interim adjournment is immaterial. This character of power vested in a single human being had been responsible for the downfall of too many governments and had been responsible for too much governmental oppression and corruption for the framers of the Constitution not to



have been effectively warned against its non-exclusion from our system of government. When the Constitution was framed, in all the world where enlightened judgment had impressed itself, this sort of power had been excluded. Not since the reign of Queen Anne had the absolute veto power been exercised in England. Today such a power is not to be found in exercise in the Constitution of any of the nations whose culture and governmental institutions are akin to ours. Actual tests have convinced statesmen everywhere that it has no place in the structure of democratic government. There is no difference between a constitutional power to kill a bill by writing "veto" across its face and a constitutional limitation upon the ability of the President to return to Congress a bill to which he objects with the result predetermined and fixed that if not returned it dies. Powers are tested and classified by their effect.

Against the current of world movement in this particular, against the agreed judgment of statesmen everywhere and against the warnings of history we have been moving, until we have reached the point at which the claim is actually made in this case, and in this Court, that a single individual has the power in a given situation to do that which in effect amounts to an absolute veto of an act of the National Legislature, and to hold as a constitutional privilege his reasons and his motives undisclosed, and that, too, with regard to matters of first magnitude.

There is another test bearing upon whether this is a limitation or a power claimed. There is no insistence on the part of those supporting the pocket veto for a broader or a more liberal construction making possible a greater and more diversified opportunity to get an objected-to bill back to Congress in order that they may have an opportunity to reconsider the bill, as is the constitutional plan, and pass



it as the Constitution provides, regardless of the President's objections if that be the legislative judgment. The entire conception of that power is at variance with the Constitution. The tenacity with which it is held, the broadening of the field in which it is used attest the wisdom of the framers of the Constitution, when upon full consideration they unanimously determined to protect the President against its possession and the people against its exercise. Heretofore, with few exceptions, Presidents have used this power with moderation, but experience has proven that this sort of power entrusted to an individual cannot be held in proper bounds by the maximum of restraint and virtue which human nature may be expected to supply. That is why the Constitutional Convention refused to bestow it.

This claim of the pocket veto power lodged in the President is an entirely different proposition from that of the unavoidable termination of an unfinished bill incident to the expiration of the Congress which had passed the bill. The latter contingency is not out of harmony with the Constitution and with the plan and the philosophy of government established, and with the governmental instincts of the people out of which instincts, necessities and experience that Constitution through many centuries was evolved. The clear trend of constitutional development which the positive declarations of the Constitutional Convention recognized and fixed in our system is that legislative responsibility rests with the legislative branch; that unnecessary delay in legislative processes should be avoided; that an absolute veto power is not vested with the President; that the duty to make public the reasons for his objections to a bill are inseparably associated with the qualified veto power given to the President; and that nothing short of the natural, unavoidable results from the termination of the



Congress shall end their opportunity to complete the discharge of their constitutional duties with regard to a given measure.

The termination of bills unfinished at the end of the Congress is unavoidable. There is nothing in the recognition of that fact out of harmony with the plan of our Constitution. There is nothing in the theory of the pocket veto in harmony with that plan, not one single detail, either as to its conception or its operation.

**PRESIDENT'S OBJECTIONS MAY BE RECEIVED BY HOUSE OF ORIGIN THROUGH AN AGENT EVEN THOUGH THAT HOUSE BE NOT SITTING**

It is asserted that the President cannot make return of bills to which he is unable to agree, except to the Members of Congress assembled in their respective Houses as a Congress. The Houses of Congress have officers and agents of great power and responsibility who act in their stead, and who are constantly in their places when the Houses are in session, and when they are not in session. From the organization of a Congress until the end of its existence this is true.

There is nothing in the Constitution which denies the right to the use of these agents in effecting the return of objected-to bills. Such a right is acknowledged, and is practiced everywhere in governments, in business and in all human relationships. Chief Justice Marshall in his opinion rendered in *McCulloch v. Maryland* (4 Wheat. 316, 407, 409, 421) announced the law, which in-



heres in the very nature and necessities of human relationships, the law which neither legislatures, constitutional conventions nor courts can ignore; which is part of every grant of power, and a part of every duty imposed by the Constitution.

This is the language of Chief Justice Marshall:

"A Constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the perplexity of a legal code, and could scarcely be embraced within the human mind. \* \* \* The Government which has a right to do an act, and has imposed upon it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means; that one particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception \* \* \*. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the spirit and letter of the Constitution, are constitutional."

Applying the law as announced by this great jurist which has been the law for all time, and will forever be the law, to the question at issue in the instant case, let us test the position of the Government: "Let the end be legitimate." Certainly returning an objected-to bill to the House of its origin that its legislative processes may be completed is legitimate. "Let it be within the scope of the Constitution." The return of the bill is specifically authorized and commanded by the Constitution. "\* \* \* and all means which are appropriate, which are plainly adapted to that end \* \* \*"



What agency for receipt of the bill could be more "appropriate," or more "plainly adapted to that end," than the Clerk of the House for instance, a high officer of the House of Representatives, elected by its ballot, and in custody of all of its bills from the time of introduction through every stage of development until the end of the jurisdiction of that House, placing upon them as the final act the certificate and seal attesting their authenticity. Such a means is "not prohibited," but is "consistent with the spirit and letter of the Constitution." Such a means Chief Justice Marshall declares is constitutional.

That decision is recognized as sound and applied in practice both by the Houses of Congress and by the President in transactions identical to that with regard to which this question has arisen. It is recognized when the Congress is presenting a bill to the President by an agent. It is recognized by the President when he receives the bill by an agent. It is recognized when the President sends the bill back to Congress by an agent. (But that rule is challenged at the precise point at which if followed one step further it would rid the President of jurisdiction over the bill and place it in the custody of the House of its origin so that the legislative plan fixed by the Constitution could be fully consummated. At this point for the first time in the interchange of bills between the President and the Congress the absence of the right to use appropriate agencies is asserted. Testing that which has preceded, by the claim of limitation at this point asserted, the conclusion is inescapable that a rule of construction or of official action which would require in every instance the persons who constitute the Houses of Congress to be in formal session in order to receive bills from the President would also require



the person who is President personally to return such bills. Under such rule, the one urged in support of the pocket veto, the person who is President must himself, assuming the Congress to be in session, take each bill to which he objects and in person make physical delivery to the House of origin, otherwise these bills under the rule of construction supporting the pocket veto become law because not returned by the President as the Constitution requires.

On the other hand the construction which would permit the President to deliver bills together with his objections to the House of origin through an appropriate agent, would of necessity permit the House to which delivery is made to receive such bills and objections through an appropriate agency. The language expressing this equality of right and similarity of duty makes up a subdivision of a single sentence: "Every bill \* \* \* shall, before it becomes a law, be presented to the President of the United States; if he approves he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated." It is not conceivable how a rule of construction allowing the use of appropriate agencies can be operative at one end of this subdivision of this sentence, and a rule of construction operative at the other end denying the use of such agencies; or how one rule of construction operates at one end of Pennsylvania Avenue upon the interchange of a bill between the President and the Congress, and another rule of construction operates at the other end of Pennsylvania Avenue in connection with the return of the same bill by the same President to the same Congress.

Under the rule of construction sought to be invoked in support of the pocket veto the Congress would be



required to go in a body to the President, because the command is clearly to the Congress, to present each bill, not to some appropriate agent of the President, but to the President in person. And it becomes the duty of the President, under such construction, regardless of the press of important duties to receive the bill in person. Otherwise, according to this rule of construction the bills would not be presented to the President of the United States.

Up to the very point where the necessities to support the claim of the power of the pocket veto intervene the rule laid down by Chief Justice Marshall is applied by the President in the receipt and return of bills. At that point it is abandoned. This abandonment is necessary in order to support the pocket veto. At this point the Court is being asked to abandon it, and for the first time in our history deny to a department of the Government the right to use an appropriate agency in the discharge of its constitutional duty.

### THE CONGRESS HAS AUTHORIZED AGENTS IN CONTEMPLATION OF LAW CAPABLE OF RECEIVING RETURNED BILLS

Insofar as the question under consideration is concerned it may be regarded that the organization of the two Houses of the Congress, and the agencies by them employed, are identical. For the sake of convenience of consideration and economy of time the question of appropriate agencies will be considered as it relates to the House of Representatives.

In the beginning of each Congress the House is organized and equips itself with five officers, who are elected by the House: the Speaker, Clerk, Sergeant at Arms,



Doorkeeper, and Chaplain. The Speaker, Clerk, Sergeant at Arms and Doorkeeper each maintain at all times an office in that part of the Capitol under the control of the House of Representatives, which offices are regularly open each week day from the organization of the House until the end of its existence as fixed by the Constitution, namely, when the tenure of its membership ceases "every second year", as provided in Article 1, Section 2, of the Constitution.

The above named officers of the House of Representatives each perform duties of great importance to the House and to the public interest. Aside from their other duties, which are of the highest order of importance and trust, they constitute the agencies through which the House of Representatives transacts its business and maintains contact with the other departments and agencies of the Government. Most of these services are performed under general delegation of authority, as distinguished from specific direction or commission.

Suppose the President's messenger should arrive at the Capitol to perform for the President the duty of getting an objected to bill back to the House, and should find on that day that the House had adjourned earlier than its accustomed time for adjournment, or had adjourned for three days, as the Constitution permits, or that the Congress had adjourned at the end of its first session, could the messenger question, could the President, or any court or jury or person of intelligence in any station question, in good faith, that the Speaker or the Clerk of the House of Representatives has authority to receive the bill? This is a practical question touching the completion of a purely ministerial act, but one of great importance in the consequences which flow from its completion or non-completion. Can there be any doubt as to how the opinion referred to



of Chief Justice Marshall, which is unquestionably the law, answers that question?

As a matter of fact when the President returns to the House of Representatives during its sessions a bill to which he has objected it is not returned to the House directly. It is sent in an envelope sealed with the seal of the President of the United States, addressed, not to the House of Representatives but to: "THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES". It is delivered to the Speaker of the House. Not until he opens the envelope and lays the message before the House do they have any information as to its contents. The delivery of the message to the Speaker by a messenger is all the President does as compliance with the provision of the Constitution that he (The President) shall return the bill to that House in which the same shall have originated.

The receipt by the Speaker is correctly regarded as receipt by the House, but only upon the theory that he is an appropriate agent of the House to receive it. It is in a sealed envelope addressed to the Speaker and delivered to the Speaker. That ends the President's contact with the matter. He has no control over what the Speaker may do with the bill and message. The President's messenger goes back to the White House, leaving the message with the Speaker.

When a Congress has adjourned at the expiration of the first session, the Speaker is just as much the Speaker of the House as when the Congress is in session, just as much trusted, not a single power curtailed. If delivery to the Speaker when Congress is in session is delivery to the House, delivery to the Speaker when the House is in adjournment would be a delivery to the House. The difference in the length of time between the receipt of the



President's message in the two cases has no bearing upon the question of the power to receive the message for the House, which is the question involved. What is done with the message after its receipt is neither of the President's responsibility or his concern. That is a matter for the Agent, and his principal. The President is through with the matter. His constitutional duties have been fully and properly performed. It is not contended that the Speaker's authority to receive an objected to bill in behalf of the House is dependent upon this recognition of his authority, but that the return is made to the Speaker for the House because of the obvious fact of his authority and the appropriateness of his agency. How can it be sustained that an adjournment of Congress would prevent a return of a bill to the House through this same agent with the same authority constantly on duty

Near the House Chamber is the office of the Clerk, who is custodian of the bills of the House from the time of their introduction until their final disposition. Upon an adjournment of Congress, Committees, under a rule of the House, deliver all unfinished bills and other documents to the Clerk to be preserved by him for the House until the reconvening of the House. He is the keeper of all the archives of the House. He is entrusted with the enrolling of all bills and other legislative action. He certifies bills. Upon his selection by the House his name is sent to the President so that the President may recognize him as their agent, and give due weight to acts certified by him. The Clerk is the disbursing officer of the contingent fund, salaries of the House employees, and of the Members' Secretaries. He makes up the roll of the incoming House, passing in the first instance upon the regularity of credentials, and pre-



sides over the meeting of the Members of the incoming House before and during the election of a Speaker.

If the President with constitutional warrant and with safety to the public interest can send a bill with his objections by the hand of a messenger, notwithstanding the fact that the Constitution says "he," that is the President, shall return the bill to that House in which it shall have originated, can it be questioned that this high officer of the House from whose office the identical bill was enrolled and certified on behalf of the House is an appropriate agency for the receipt of such returned bill and objections? The problems of government are practical. Common sense has a right to sit in judgment upon this question. Suppose this question should arise in any other relationship where reciprocal duties involve the duty to deliver and the duty to receive? Suppose the agent of the principal whose duty it is to return to the place from which he had gotten it, a thing of which he has had temporary possession, and upon arrival at the point where the return was to be made should find the other principal temporarily absent but his agents present and particularly the agent present who had formerly had custody for his principal of the identical thing sought to be returned, and who at the moment had custody for his principal of all other things of the same sort as that sought to be returned, whose general duties and relationships with his principal left no doubt as to the confidence and trust reposed in him by his principal, and no doubt in the mind of the returning agent or of his principal that he would be a safe and proper person to entrust for his principal the custody of the thing sought to be returned, can it be held under these circumstances that return is impossible?



To make the analogy complete, what would be the position of the one obligated to make return if he should refuse to deliver to this agent on the premises and go away with the thing he had, knowing if he did so it would immediately die? In a suit for damages could he defend on the ground that he was excused because the temporary absence of the principal made delivery impossible?

When the President's messenger arrives at the Capitol it is still "within the scope of the Constitution" to return the bill. It is still the plain mandate of the Constitution to return it. Either the Clerk of the House or the Speaker afford an appropriate means through which to discharge this constitutional duty, and a means "plainly adapted to that end." By the character of duties performed these officers holding positions of such high trust and responsibility meet every test laid down by Chief Justice Marshall in the opinion hitherto cited.

Should the Senate be the House of origin the same holds true with equal force and effect with regard to the corresponding officers of that body.

### **THE RIGHT AND DUTY TO USE APPROPRIATE AGENCIES IN THE DELIVERY AND RECEIPT OF OBJECTED TO BILLS IS NECESSARY IN ORDER TO HOLD CONGRESS WITHIN CONSTITUTIONAL BOUNDS**

The use of appropriate agencies in the ministerial acts of delivery and receipt of objected-to bills is required by the very nature of the Principals, the character of their duties and the character of the thing to be done. When it is considered that what the Constitution intends is to make certain that the President shall have ten days in which to discharge his constitutional duties, that the



Congress shall have an opportunity to reconsider objected-to bills, and that there shall be no unnecessary delay in legislative processes and that the grounds of the President's objection to bills shall be stated in writing it seems almost unbelievable that the question here presented ever should have arisen.

The right of constructive delivery is necessary not only to facilitate legislative procedure, prevent delay, and to hold the President's powers within the limits imposed by the Constitution, but it is also necessary in order to hold the Congress within proper bounds by preventing bills to which the President may object from becoming law without reconsideration by the Congress.

The adjournment of a House for not more than three days, without the consent of the other House is not an adjournment of Congress.

If the Senate should be in executive session, on a matter of the highest public importance, refusing to be interrupted, on the last day of the period in which return may be made, that would not even be an adjournment of one House of the Congress; and yet return could not be made if constructive delivery is not permitted.

It could not be held that Congress was adjourned when the Senate was in executive session performing its constitutional duty, and the other House in actual session. The sensible thing to do in such a case, would be for the messenger of the President, finding himself unable to make delivery to the Senate, to make the delivery to the Secretary of the Senate. There is nothing in the Constitution to prohibit that being done. If it would be proper under the Constitution for the President's messenger to make such a delivery under the circumstances above outlined, it would be proper to make such



delivery at any other time without regard to whether the House of origin is in session, or both Houses are in adjournment, provided only that the delivery be made to a proper officer of the House of origin during the life of the Congress which enacted the bill returned. That ought to be the practice in every instance. Suppose in the instance considered that the Senate should open its doors to receive the messenger of the President. The business of the Senate would be unnecessarily interrupted while a messenger of the President does a purely ministerial act of returning a bill, possibly authorizing the construction of a bridge across some creek, or raising someone's pension fifteen dollars a month. This actual return to the Senate in session is the only method so it is claimed by the supporters of the pocket veto, permissible under the Constitution. Necessity forces them to this contention, because once it is allowed that return may be made in any situation to an agent of the House of origin, no adjournment, other than the final adjournment of the Congress is sufficient to prevent the return. Their authority is not impaired by the fact that the Congress are not actually in their chambers.

Under the construction which is urged against the practice of the pocket veto it would be possible in the situation just described instead of interrupting the Senate, or if the Senate, or the Congress be adjourned, for the messenger of the President to deliver his papers to the Secretary of the Senate who would call the matter to the attention of the Presiding Officer of the Senate for appropriate action. This course of procedure would eliminate every complication and every question as to the President's having the full ten days in which to discharge his duty with regard to bills; it would eliminate every question as to a bill becoming a law without the completion with re-



gard to it of the usual legislative processes applicable to objected-to bills; it would eliminate every question as to a bill being kept alive until finally acted on. And the Congress would have the usual opportunity in the usual way to consider the President's objections. It would also make it possible to avoid the interruption of the entire business of one House while a message from the President is being delivered. To sustain the pocket veto would make it impossible for all time to avoid the ridiculous interruption of a nation's business, while the President's messenger performs on the floor of the Senate or the House, a purely ministerial act with regard to matters, many of which are of small importance. Neither here nor anywhere else did the Constitutional Convention consider the fixing of such details of procedure, much less permanently fixing them.

#### **POCKET VETO IF SUSTAINED PREVENTS RETURN BY THE PRESIDENT OF HIS OBJECTIONS TO AN EXISTING CONGRESS**

Testing this matter from the other direction, suppose the President within the ten days allowed him, had formulated his objections to a bill, and upon the arrival of his messenger at the House of Representatives, he should find the House for some reason adjourned at an earlier hour than was contemplated, and the messenger should deliver the bill with the objections to the Speaker or Clerk of the House, and upon that state of facts the contention should be made that the bill had not been returned.

Having in mind the character of the duties performed by the Speaker and the Clerk, can it be contended with reason, or with any support of law, that in such a situation a delivery



to the Speaker or Clerk had not, in full compliance, ended the constitutional duty of the President to return the bill? If returned to the Clerk, he would have delivered it to the agent of the House, who is the custodian of all bills of the House from their introduction, through every stage of their development. If returned to the Speaker, he would have delivered it to the same agent to whom delivery would have been made had the House been in session. As bearing further upon the question of agency, suitable to the duty to be performed, when the House adjourns at the end of a session the Clerk receives from the various committees of the House all bills and all records, and keeps them in his custody until the Congress reconvenes, and makes proper redistribution of all bills when Congress reconvenes, so that nothing will be confused or overlooked in giving proper consideration in due order to matters which have been left pending during the adjournment.

When that bill left the Congress it was entrusted to an agent of Congress. When it arrived at the White House it was entrusted to an agent of the President. When it was sent back to the Congress it was entrusted to an agent of the President with identically the same character of constitutional direction acting upon it in its entire round-trip journey from the custody of Congress back into the custody of Congress. Certainly that which can be delivered by an agent can be received by an agent.

Under such circumstances a court would certainly hold that not only had the President fully discharged his constitutional duty within proper time, but that he had acted in harmony with the general plan of the Constitution governing legislative processes. That what he had done had prevented unnecessary delay, which the Constitution seeks to avoid; that such action had preserved to the President the full ten days allowed to complete his duties, which the



Constitution is careful to guard and preserve; and had afforded Congress an opportunity to pass the bill, notwithstanding the President's objections, which the Constitution deems important; that the President had afforded Congress and the country the benefit of his objections, which is an important part of the general plan.

#### **POCKET VETO OF GRADUAL DEVELOPMENT AND UNKNOWN IN THE EARLY HISTORY OF THE GOVERNMENT**

The pocket veto as now exercised was unknown during the first half of the existence of the Government. The legislative department of the government is as much responsible as the Presidents for our having taken the wrong direction which brought us to our present position. In the sense of responsibility for its origin neither is responsible. Only in a limited and qualified sense did the Philadelphia Convention formulate the Federal Constitution. It had been in process of development for centuries. The very difficulties under which the Convention labored were in no small degree responsible for the excellence of that which was agreed to. The conflicts between the Northern and the Southern States, between the larger and the smaller States, between those who had some faith yet in the people, and those who utterly distrusted the people, between the republican and monarchist sentiments of individual members were much in evidence throughout the Convention. Individuals had novel ideas which they sought to incorporate, but from every excursion seeking new material to be builded into the Constitution, and there were many such, the delegates either returned empty handed, or that which they brought back from the quest, almost without exception, was rejected, in substantial degree at least, because of these conflicts and because it was feared the people would



not exchange for a new theory that which had become a fact of government rooted in their governmental concept, and in accord with their existing governmental institutions. Fortunately, the things that had been tested were the only bases upon which differences could be sufficiently composed to command a majority of votes upon the most important provisions of the Constitution.

In many instances after long debate in which much learning of a human sort was displayed compromise was effected by accepting a provision which had theretofore been incorporated in a State Constitution. The entire provision under consideration in the instant case was taken from the Constitution of the States of Massachusetts and New York, principally from the Constitution of Massachusetts. Thus our Constitution was assembled, made up almost in its entirety of provisions which had been tested, many of them through centuries. Under that test it had been demonstrated that they embody the philosophy of free government and provide the functioning machinery suited for such a government. It is not to be expected that the framers of the Constitution thought through into the details of application.

It was neither the task nor the opportunity of the great statesmen who composed the Constitutional Convention to originate a Constitution. That Constitution was a fact, and those who sat in that Convention were its agents. Their business was to allocate to the embryonic nation and to the States the duties and powers of constitutional government. They did that with great genius. Every necessity, every opportunity, every limitation, every experience, every tradition, which could guide and compel human genius toward the greatest achievement of its sort was present conspiring in complete harmony on that occasion. It was a great event. The Constitution had developed under the most favorable



circumstances. It had been unwritten. Nature had had free course among a people whose governmental instincts had become fixed and whose governmental capacity had reached a high development.

To permit practices, especially practices originating out of a misconception of the Constitution to fasten erroneous interpretations upon our written Constitution, we respectfully submit, would be a fatal policy. It would seem a sound doctrine that no generation or number of generations by a disregard of the plan of the Constitution or confusion as to it, can deprive those who come after them of the full benefit of its provisions. The practical difficulty of inaugurating a reverse practice once it is recognized that a given practice has crystallized itself into a controlling constitutional construction warns with compelling persuasion against such a recognition.

It would seem a sound proposition that in the construction of a written Constitution it should never be held that practice can effect that which practice cannot change. These considerations, it is respectfully urged, bear with determinative force against any suggestion on the part of the Government that the length of time during which the pocket veto has been practiced has a bearing upon the constitutionality of the pocket veto.

Attention is further directed to the fact that the instant case presents a question similar to a boundary question between two States, with regard to which this Court has exclusive jurisdiction. This is a boundary question between two departments of the government, in many respects similar to a boundary conflict between two States. In the determination of a boundary dispute between States no length of acquiescence or practical recognition by either or both States of an erroneous boundary influences the determination of the true boundary. The effect upon land titles and



other private interests are not considered. In the case recently decided by this Court with reference to the Texas-Oklahoma boundary, the Court ascertained the true boundary, leaving private persons and other agencies of government to deal with the consequences incident to a correct discharge of a constitutional duty. While not recognizing its relevancy, it is a fact, as will be shown by an examination of that part of the appendix hereto attached having reference to pocket vetoed bills and from the record in the boundary case referred to, that more private and public interest was disturbed by the determination of the Texas-Oklahoma boundary question than would be disturbed by a holding against the pocket veto. As a rule the bills affected were of small importance. In many instances their subject matter has been covered into subsequent legislation. The operation of laches and limitation, the necessity for appropriation to make effective, and the exercise of the power of repeal, all together, would leave no substantial private right affected or public interest disturbed.

But what is respectfully urged is a judicial construction which will so determine the boundary line between the Congress and the President, with reference to this question that the President in every instance may have the time allowed by the Constitution to examine, approve, or disapprove bills, and return them, and so that the bills of the Congress at the White House at the adjournment of any session short of the final adjournment of a Congress, which may be unfinished because of objection, may be assembled at the Capitol with the other unfinished bills of that Congress and the ordinary procedure fixed by the Constitution had with reference to them upon the reconvening of the Congress. This is the true boundary line fixed by the language of the provision directly under examination and fixed in the general plan established by the Constitution.



In this connection, it is interesting to note a decision of the Massachusetts court, in construing at an early date the word "adjournment" in the provision engrafted in the Federal Constitution, as an example of construction, almost contemporary to the adoption of our Constitution. In the Opinion of the Justices (1791), (3 Mass. 567), upon questions submitted by the Senate of Massachusetts to the Justices of the Supreme Judicial Court, the following among other matters was decided:

"First, whether a bill or resolve, having passed both branches of the Legislature, and being laid before the Governor for his approbation, less than five days before the recess of the general court next preceding the last Wednesday in May, and five days before the period when the Constitution requires the general court shall be dissolved, but not acted upon by him, has by the Constitution the force of law. If by 'recess' in this question is meant a recess after a prorogation, or recess after an adjournment, where there is no subsequent meeting of the same general court on that adjournment, we are clearly of opinion that such bill or resolve has not the force of law.

"Second. Whether a bill or resolve, having passed both branches of the Legislature, and being laid before the Governor for his approbation, less than five days [the provision was five days in the Massachusetts Constitution] before any recess of the general court, other than such as is stated in the preceding question, and not acted upon by him, has the force of law.

"If the term 'recess,' in the second, is intended a recess upon an adjournment, and such a bill or resolve lays more than five days before the adjournment, and so many days of the court's sitting upon the adjournment, as will make up the full term of five days, without the Governor's returning the same, with his reasons for not approving it, we conceive such bill or resolve has the force of law; for all the days of the



court's sitting are but one session, although an adjournment intervenes. When a prorogation takes place, the session is ended, and a bill or resolve, after the session is ended, cannot acquire the force of law."

It is also of interest and of persuasive effect that each of the decisions, discovered after careful examination, by the courts of last resort of States, construing identical or practically identical language in their respective State Constitutions to that of Article 1, Section 7, under discussion, have held to the same effect as in the Massachusetts determination.

- 1864 Soldiers Voting Bill, 45 N. H., 607.
- 1870 Harpending v. Height, 39 Calif., 189.
- 1875 Corwin v. Comptroller, 6 So. Car., 390.
- 1881 Miller v. Murford, 11 Nebr., 377.
- 1882 Wolf v. McCaull, 76 Va., 876.
- 1886 Heyquembourg v. Dunkirk 49 Hun. (N. Y.), 550.
- 1890 Crawford v. Summerset, 73 Md., 105.
- 1912 State v. Joseph, 175 Ala., 579.
- 1913 Tuttle v. Boston, 215 Mass., 57.
- 1916 Johnson City v. Electric Co., 133 Tenn., 637.

In *State v. Joseph*, cited *supra*, the Court said: "The authorities are unanimous in holding that the adjournment of the Legislature contemplated in the quoted clause of the Constitution is a final adjournment."

#### BRITISH PRECEDENTS FOLLOWED IN THE BEGINNING

In the beginning the Houses of Congress were without rules and precedents of their own, and adopted the rules of procedure of the British Parliament. Under the operation of the British Parliament upon reconvening after having been prorogued, it was necessary to



begin anew all unfinished business, that business having died with the prorogation.

Following this custom when the Congress reconvened for the second session all bills were reintroduced. Nothing was considered as having survived the adjournment of the first session. There was then little inconvenience from this custom. The territorial limits of the country and more particularly the very limited governmental jurisdiction, then as to subjects, compared with its present jurisdiction, doubtless made this custom of no great legislative or administrative importance. Besides during this period it was the practice of the Presidents when unable to agree to bills passed by the Congress and presented less than ten days before an adjournment (Sundays excepted) to return them to the Congress with a written statement of objections. This continued to be the custom for about seventy years, or until near the period of the war between the States.

In 1816, however, the question as to the fundamental constitutional difference between the Congress and the British Parliament, and the resultant difference of effect upon pending bills of the adjournment of the first session of the Congress and the proroguing of the British Parliament came under consideration. That question was referred to a Committee of the House of Representatives. As a result, in 1818 the practice was established in the House of resuming business unfinished at the adjournment of a preceding session of a Congress at the point where it was left off. This rule, however, did not cover the bills which had gone to the Senate. It was not until 1848 that the present practice was fully established of considering all matters with which Congress and the Houses thereof as separate entities have



to do, as remaining in *statu quo* during the adjournment between sessions of the same Congress.

During the administration of President Johnson the "pocket veto" began to be used as an executive power to defeat legislation. Its use in that manner aroused bitter protest, and became a part of the general controversy between the Congress and the President which reached its climax in the attempted impeachment of the President.

Following the Johnson administration the Presidents have exercised the pocket veto with reference to bills passed by Congress at the first session with very rare exceptions, only upon relatively unimportant measures where the reasons for non-approval were obvious and generally understood.

However, the abolition of the assignment of reasons for non-approval of bills; the growing tendency to use the pocket veto as an additional power over legislation; the increase of the duties of the Congress which makes the retracing of legislative steps necessary to get a bill back to the stage of completion that it had before it was subjected to the pocket veto; a correspondingly increasing need to know in the beginning of the reconsideration of such legislation the ground for Presidential disapproval; and the inevitable strain upon the relationship of the President and Congress occasioned by the practice of the pocket veto, makes this a question of major importance. Associated with this question is another one of almost equal importance; that of preserving the liberty of the co-ordinate branches of the government to develop and to change the agencies through which their respective constitutional duties, such as are properly assignable to agencies, may be performed.



## CHANGES IN AGENCIES AND IN PROCEDURE NECESSARY AND PERMITTED UNDER THE CONSTITUTION

As the duties of government increase, the whole tendency is toward the removal of handicaps and the creation of helpful agencies which may safely be entrusted to perform duties which formerly it was feasible for the responsible heads of the departments of the government to perform, thus affording them more time properly to discharge the duties which by their nature and importance cannot be delegated.

The opportunity to preserve, within proper limits, this necessary development is involved in the question here presented. It cannot be accepted that practices, under different conditions, can limit the liberty which the Constitution gives. Erroneous conceptions of the Constitution however long held cannot affect the rights of those who follow in responsibility to discharge their duties as the Constitution itself allows. Contrary to the opinion formerly held by Presidents generally as to their power under the Constitution Presidents now sign bills while the Congress is in adjournment. The former attitude of Presidents was on the theory that approval of a bill was in its nature a legislative function and could only be exercised in conjunction with the active legislative sittings of the Congress from which the bill emanated. That conception is akin to that supporting the pocket veto under which it is even now contended that the President cannot return a bill to Congress unless it is in session, a sort of fossil now which attached itself to our Constitution in times of its ritualistic conception when a Congress then as now, sovereign within the limits fixed by the Constitution, continuous from its organization to final adjournment, was trying to follow



in the footsteps of the British Parliament, an agency of government called into being by the King's will and ending by the King's dismissal.

The authority of Presidents to sign bills after Congress had adjourned was not finally established until the opinion of this Court in the case of *La Abra Silver Mining Company vs. U. S.* (1899) 175 U. S. 446. In that case the Court held that "the Constitution places the approval and disapproval of bills, as to their becoming laws, upon a different basis," and in consequence the President could sign a bill during a recess of Congress, within the ten-day limitation period. If the President can approve a bill during the adjournment of Congress he can disapprove it, the only question remaining is can he return it to the Congress. Is it physically and legally possible?

But a short distance away is the Clerk of the House in custody of hundreds of incompleted bills of the House every one of them alive awaiting the return of the Congress. An objected-to bill is an incompleted bill of the Congress. The business of the President is finished. The bill naturally belongs with the other unfinished business of the Congress. The plan of the Constitution is to have it gotten back to the Congress where it may be completed. If it can be gotten back with the other unfinished bills while it is still alive and not yet a law it will be alive as a bill when the Congress reconvenes. The Constitution does not fix any method by which the President is to get the bill back. He can return it in person to the Clerk or Speaker, send it by an agent, or if he wants to risk the bill becoming a law because not returned in time, he can send it by mail.

The President cannot keep it in his pocket. With the Clerk willing, ready, and able to receive the bill the



President cannot kill the bill. The Constitution is its protector. He can burn the paper in his possession, but he cannot kill the bill. The President must get the bill back to the House of origin within the ten days allowed or the Constitution makes it a law.

The real question as to whether the ten days specified in the Constitution are calendar or legislative days are not very important. If it should be determined that the ten days specified in the Constitution are calendar days, but that delivery can only be made to the House of origin when the Congress is in session, assuming that the Congress has been in adjournment for a sufficient length of time for the total of days adjourned, plus the days of the preceding session after the delivery of a bill objected to, exceeds the ten days allowed for the return of such a bill, the delivery would have to be made on the first day of the reconvened Congress or it would be law. If legislative days are meant, the days of adjournment would have no bearing upon the computation of time allowed, but in neither case does any pocket veto power rest with the President. The Constitution does not read "in which case it shall cease to be" a bill. The statement is that it shall not become a law. That provision merely withdraws such bill from the operation of the previous provision and leaves it in *statu quo*. Nothing has happened to such bill. The President cannot kill it. All legislative power of every sort is vested solely in the Congress, which includes the power to enact, to defeat bills, to amend and to repeal laws. If it should be held that the framers of the Constitution had so bungled at this point as to thrust the prohibitory powers of the Constitution across the President's path, and prevent him from using in the discharge of a constitutional mandate an agency available, to the last degree appropriate, consistent with the letter and spirit of the Constitution and as perfectly adapted



to the end sought to be attained as if provided for that purpose alone, the only effect would be to postpone delivery. Regardless of what may be the conclusion as to the right to make constructive delivery, and regardless of all intervening questions when the ten days shall have expired which marks the end of the longest period of time which under either construction is allowed and the bill has not been returned, it is a law.

### PERIOD OF EXERCISE IMMATERIAL

It is immaterial how long the pocket veto has been practiced. Subsequent construction can never alter the text of the Constitution or enlarge or narrow its boundaries. It cannot be allowed that practices which were not burdensome when the business of the government was small, must be perpetuated or that precedents which arose under the misconception now abandoned shall in effect fasten themselves upon the Constitution to remain a perpetual hindrance and limitation upon future generations compelled to deal with ever-increasing responsibilities.

Acquiescence or sufferance for no length of time can legalize a clear usurpation of power or a power exercised under a mistaken conception. Cooley states what seems to be the consensus of judicial opinion thus:

A claim of power is frequently permitted or yielded to merely because it is claimed, and it may be exercised for a long period in absence of any constitutional right or power, or even in violation of constitutional prohibition without special occasion arising for its interpretation by a court, or anyone being sufficiently interested in the subject to raise the question, but these circumstances cannot be allowed to sanction a clear infraction of the Constitution, or the neglect to discharge constitutional duties or the disregard of the clear right of the Congress. See Cooley's Constitutional Law, pp. 85-86.



It is a matter of the greatest importance and one which justifies faith in the perpetuity of our Constitution that the Courts when called to the decision of a constitutional question deem it their duty to lead back those who have wandered however long or however far and direct them again into the ways of the Constitution. That time will not come short of the end when the reverse will be true; when instead of the Courts by their opinions guiding people and public officials back into the ways of the Constitution, by their opinions they establish barriers which prevent their return. These observations we understand to be in harmony with the decisions of this Court, and are offered in opposition to what seems to have been the position of the Government in the court below.

### CONCLUSION

The pocket veto violates the expressed purpose of the Constitution. The Constitution does not give to the President an absolute veto. The pocket veto does give to the President an absolute veto. The Constitution seeks to expedite legislation by the ten-day provision. The pocket veto delays legislation. The Constitution seeks to make the processes of legislation continuous and certain. The pocket veto makes possible the interruption of legislative processes short of their completion during the life of a Congress. The Constitution imposes on the President the duty of returning a bill to which he objects, and secures to the Congress which originates it the benefit of his objections upon the second consideration of the bill. The pocket veto relieves the President of this duty and deprives the Congress of the advantage of the reasons for the President's objections. The Constitution demands that Congress shall enter the President's objections to legislation to which



he objects upon their journal. The pocket veto makes this impossible.. The Constitution requires that the President's objections be made known to the Congress and the country. The pocket veto violates this mandate. The Constitution demands that Congress be afforded opportunity to reconsider, and act upon the President's objections to legislation of which he does not approve, if they see fit to do so. The pocket veto denies them this opportunity. The pocket veto gives to the President a power over legislation denied to the President by the Constitutional Convention.

For these reasons it is submitted that the construction of Article 1, Section 7 of the Constitution permitting the pocket veto of bills prior to final adjournment of the Congress is erroneous.

Respectfully submitted,

HATTON W. SUMNERS,  
*Amicus Curiae.*



## APPENDIX A.

A Memorandum of Bills of the Congress "pocket vetoed" or retained by the President at the close of a first or intermediate session of the Congress, or during adjournment falling within such session.

It may be generally stated that through passage of other subsequent legislation on the same subject, laches and non-user, limitations, and non-authorization, and the requirements of subsequent legislation only a few of the bills are of present force, and most of these are subject to further legislative action of the Congress.

Summary of Bills pocket vetoed (Bills unapproved at the end of the final session not included) as shown by the memorandum of the Attorney General's office regarding Bills presented to the President less than ten days before adjournment of Congress (Sundays excepted) and not approved, under date of October 10, 1928, and on December 22, 1928, submitted by the President to the Congress.

There are shown by this memorandum to have been subject to the pocket veto at the end of sessions other than final ..... 129

Of these from Washington, 1789, to the end of Lincoln's administration, 1865, there were..... 11

From the end of Lincoln's administration to the present ..... 118

Of these bills one President was responsible for nearly half, or..... 53

Ten Presidents..... 0



## CLASSIFICATION

The bills and resolutions of Congress which the President has not returned may be roughly classified into the following:

|                                                       |     |
|-------------------------------------------------------|-----|
| Private Relief bills.....                             | 36  |
| Pension bills .....                                   | 19  |
| Obsolete purposes .....                               | 10  |
| Relating to District of Columbia.....                 | 9   |
| Relating to personal status.....                      | 8   |
| Rights of way over Indian and Government land.....    | 8   |
| River and Harbor bills.....                           | 7   |
| Disposition of war stores and Government property.... | 5   |
| Reduction of National debts.....                      | 3   |
| General legislation .....                             | 14  |
| <hr/>                                                 |     |
| Total .....                                           | 119 |
| Bills returned with objections.....                   | 10  |

**Chronological—Congress, Session, Date, and Designation of Bill**

- |     |                                                                                                                                                                                                |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| No. |                                                                                                                                                                                                |
| 1.  | 12th Cong. 1st Sess. Adjournment of July 6, 1812.<br>H. R. 170. Naturalization bill returned to Congress Nov. 5, 1812, with veto message. House Journ. vol. vii, p. 144.                       |
| 2.  | 14th Cong. 1st Sess. Adjournment of April 30, 1816.<br>—Free importation of stereotype plates, etc.                                                                                            |
| 3.  | 21st Cong. 1st Sess. Adjournment of May 31, 1830.<br>H. R. 304. Appropriation for lighthouses and beacons. Returned to Congress Dec. 6, 1830, with veto message. House Journ. 2nd Sess. p. 15. |
| 4.  | S. 74. Authorizing subscriptions to stock Louisville and Portland Canal. Returned Dec. 6, 1830, with veto message to Congress; Senate Journ., p. 13.                                           |



5. 22nd Cong. 1st Sess. Adjournment of July 16, 1832.  
S. 5. Interest on State claims. Returned Dec. 6, 1832, with veto message to Congress. Senate Journ. 2nd Sess. p. 19.
6. H. R. 516. River and Harbor bill. Returned Dec. 6, 1832, with veto message to Congress. House Journ. 2nd Sess. p. 24.
7. 23rd Cong. 1st Sess. Adjournment of June 30, 1834.  
S. 97. Improvement Wabash river. Returned Dec. 1, 1834, with veto message to Congress. Senate Journ. 2nd Sess. p. 23.
8. 27th Cong. 2nd Sess. Adjournment of August 31, 1842.  
H. R. 604. Re proceeds public land sales.
9. H. R. 210. Re testimony on contested elections. Both bills returned Dec. 14, 1842, to Congress with veto message. House Journ. 3rd Sess. p. 57.
10. 35th Cong. 1st Sess. Adjournment of June 14, 1858.  
H. R. 57. Overland mail to California. Returned January 7, 1859, to Congress with veto message. House Journ. 2nd Sess. p. 151.
11. 38th Cong. 1st Sess. Adjournment of July 4, 1864.  
H. R. 123. For correction of clerical errors. Returned Jan. 5, 1865, with veto message. House Journ. 2nd Sess. p. 80.
12. 39th Cong. 1st Sess. Adjournment of July 28, 1866.  
—Joint Resolution regarding buildings of national fair. Withheld from Congress without return or communication.
13. S. 456. For admission of Nebraska. Withheld from Congress without return or communication.



- 14      40th Cong. 1st Sess. Adjournment of March 13, 1867.  
         — Res. regarding troops of Missouri. Filed with Secretary of State with reasons for non-approval Apr. 10, 1867. No return to Congress or communication.
15.      40th Cong. 1st Sess. Adjournment of July 20, 1867.  
         S. 137. Equal rights in Dist. of Columbia. No return or communication to Congress.
16.      40th Cong. 2nd Sess. Adjournment of Dec. 3, 1867.  
         S. 141. Equal rights in Dist. of Columbia. No return. President subsequently communicated to Congress in response to resolution of enquiry on the bill.
17.      40th Cong. 2nd Sess. Adjournment of July 27, 1868.  
         — Act providing for payment of national debt and reduction of interest.  
         — Act to provide for appointment of Recorder of Deeds, District of Columbia.
18.      40th Cong. 2nd Sess. Adjournment of Dec. 21, 1868.  
         — Bill to incorporate First Presbyterian Church of Washington.
19.      41st Cong. 1st Sess. Adjournment of April 9, 1869.  
         — Res. for relief of Blanton Duncan.
20.      42nd Cong. 1st Sess. Adjournment of April 20, 1871.  
         S. 294. Act for relief of inhabitants of town of Arcata, Calif.
21.      42nd Cong. 2nd Sess. Adjournment of June 10, 1872.  
         H. R. 1424. Act to reimburse John E. Woodward for moneys paid by him.
22.      H. R. 2622, Act for relief of James De Long.



23. 43rd Cong. 1st Sess. Adjournment of June 23, 1874.  
H. R. 921. Act to prevent useless slaughter of buffalo.
24. H. R. 1313. Act for relief of Alexander Burtch.
25. 44th Cong. 1st Sess. Adjournment of August 15, 1876.  
S. 990. Act to remove political disability of Ruben Davis of Mississippi.
26. 48th Cong. 1st Sess. Adjournment of July 7, 1884.  
S. 42. Act for relief of Joseph F. Wilson.
27. S. 28. Act to confirm status of John H. Quackenbush as Commander, U. S. N.
28. S. 81. Act for relief of Benjamin F. Pope.
29. S. 472, Act for relief of George F. Webster.
30. H. R. 2487. Act for relief of Bvt. Major General William A. Averell.
31. H. R. Joint Res. 17. Authorizing appointment of Samuel Kramer as chaplain, U. S. N.
32. 49th Cong. 1st Sess. Adjournment of August 5, 1886.  
H. R. 5872, Act for relief of R. D. Beckley and Lee Howard granting add. pay of \$280 per annum.
33. H. R. 658. Appropriating \$200 for Francis W. Holdeman.
34. H. R. 822. Appropriating \$633.50 for relief of Wm. H. Wheeler for Qm. stores furnished.
35. H. R. 2060. Pension to Margaret D. Marchand.
36. H. R. Res. 126. Directing payment to treasury surplus on public debt.
37. H. R. Res. 89. Providing for distribution of Official Registers.
38. S. 201. For public building in Annapolis.
39. S. 224. Relief of Chas. F. Bowers, and directing credit of \$230.00 on his apcs.
40. S. 289. Relief of J. A. Henry et al, for rental of quarters occupied by Qm.



41. S. 972. Relief of Thomas P. Morgan, waiving forfeiture of \$4,898.04 on breach of contract.
42. 50th Cong. 1st Sess. Adjournment of Oct. 20, 1888.  
S. 664. Relief of William R. Wheaton and Charles W. Chamberlin of California.
43. S. 869. Relief of sufferers of wrecked steamer Tallapoosa.
44. S. 889. Granting pension to Marcy A. Cutts.
45. S. 1614. Granting pension to Phillippe Ray.
46. S. 1926. Granting pension to William Smith.
47. S. 2567. Granting pension to Nancy Polock.
48. S. 3080. Granting pension to Mary J. Foster.
49. S. 3083. Restoring to pension roll Florina Lischewsky.
50. S. 3254. To provide for writs of error to district court of U. S. for western district of Arkansas in certain cases.
51. S. 3241. Pension to Ester A. Jackson.
52. S. 3390. To create Lincoln Land District in Territory of New Mexico.
53. S. 3559. To amend sec. 2304 Rev. Stat. to permit honorably discharged soldiers and sailors who had abandoned homesteads in 6 mo. to make another entry.
54. S. 3573. Granting right of way to Pensacola and Memphis Railway over public lands in Florida, Alabama, Mississippi and Tennessee.
55. H. R. 1239. To extend jurisdiction of Lighthouse Board to Sacramento and San Joaquin rivers in Calif.
56. H. R. 3300. To enable City of Denver to purchase certain land for cemetery use.
57. H. R. 7547. Granting right of way to the Yankton and Missouri River Ry. through Yankton Indian Res. in Dakota.
58. H. R. 7964. Granting Aberdeen, Bismark and Northwestern Ry. right of way through Sioux Reservation in Dakota.



59. H. R. 8074. Providing for allotments of land to United Peorias and Miamies in Indian Territory.
60. H. R. 8674. For relief of Sterling H. Tucket and others.
61. H. R. 8855. To establish light ship, with a steam fog signal at Sandy Hook, New York harbor.
62. H. R. (7) 9447. To restore certain money to fund for erection of building at Detroit.
63. H. R. 10183. To establish light ship at Great Round Shoal near Nantucket, Mass.
64. H. R. 11107. To amend an act entitled "To authorize the Fort Smith, Choctaw Bridge Company to construct a bridge across the Poteau river near Fort Smith, Arkansas."
65. 51st Cong. 1st Sess. Adjournment of October 1, 1890.  
S. 117. Relief of Edward H. Lieb.
66. S. 125. Relief of Reany, Son and Archibald.
67. S. 145. Relief legal representatives Henry S. French.
68. S. 968. Relief Larrabee and Allen, Bath, Me.
69. S. 1187. Relief Washington Iron Works.
70. S. 1552. Pension to Louise Seldon.
71. S. 2531. Increased pension to Benjamin T. Baker.
72. S. 270. Relief assignees John Roach, deceased.
73. S. 3414. Pension to James Melvin.
74. S. 3721. Relief A. J. McCreary, Admr. Est. J. M. Heatt.
75. H. R. 4367. Relief of D. H. Mitchell.
76. 51st Cong. 2nd Sess. Adjournment of Dec. 22, 1892.  
S. 2275. Relief of purchasers under stone and timber act of June 3, 1878.
77. 53rd Cong. 2nd Sess. Adjournment of August 28, 1894.  
S. Res. 99. To compile and publish laws of street railway franchises of District of Columbia.
78. S. 2263. To amend sec. 553 Rev. Stat. relating to District of Columbia.



79. H. R. 198. Granting Birmingham, Sheffield and Tennessee River Ry. right of way over public lands traversed by it.
80. H. R. 3005. Relief of George Isenstein.
81. H. R. 7685. Relief of L. H. Hathaway & Co.
82. H. R. 6122. Authorizing Kansas City, Oklahoma & Pacific Ry. Co. to construct railway through Indian Territory.
83. 54th Cong. 1st Sess. Adjournment of June 11, 1896.  
S. Res. 27. Granting permission to erect monument in honor of Samuel Helmemann.
84. S. 807. Pension to Charles Williamson.
85. S. 819. Pension to Catherine O'Leary.
86. S. 997. Pension to Ella S. Cross.
87. S. 1342. Pension to Lena D. Smith.
88. H. Res. 201. Extending time of payments due from settlers and purchasers on ceded Indian Reservations.
89. H. R. 6607. Relief of Helen Larned.
90. H. R. 6739. Relief of John N. Quackenbush, late Commander, U. S. N.
91. H. R. 7919. For erection and maintenance of charity hospital at Biloxi, Miss.
92. H. R. 7171. Authorizing Secretary of Navy to donate condemned cannon, etc., to certain G. A. R. posts.
93. H. R. 2708. Creating a new division in Eastern Judicial district of Texas, with terms at Beaumont.
94. H. R. 5280. Relief of George W. Freeman.
95. H. R. 6221. Increased pension to Mary E. Chamberlin.
96. H. R. 9275. Approving act of Legislature Territory of New Mexico, authorizing issuance of certain bonds.
97. 54th Cong. 2nd Sess. Adjournment of Dec. —, 1897.  
H. R. 2604. Granting increased pension to Caroline A. Haugh.



98. H. R. 4354. Granting increased pension to Mary Gould Carr.
99. 55th Cong. 2nd Sess. Adjournment of July 8, 1898.  
S. 847. Providing for American register for steamer Titania.
100. 56th Cong. 1st Sess. Adjournment of June 7, 1898.  
S. 2581. To incorporate The National White Cross of America.
101. H. R. 8815. To amend Chap. 4, Title XIII, Rev. Stats.
102. 59th Cong. 1st Sess. Adjournment of June 30, 1906.  
S. 1812. Relief of James M. Pickerell, U. S. N. retired.
103. S. 2188. Granting town Durango, Col., land for water reservoir.
104. S. 4197. Authorizing Treasurer to enter name Hezekiah Davis on lists Oregon Volunteers.
105. S. 4774. Relating to movement and anchorage of vessels in Hampton Roads and adjacent waters.
106. S. 4965. Authorizing appointment of Harold L. Jackson, U. S. A., retired, as major on retired list.
107. S. 6355. Concerning licensed officers of vessels.
108. H. R. 7226. Relief of Patrick Conlin.
109. H. R. 12080. Granting Siletz Power & Mfg. Co. a right of way across Indian lands for canal.
110. H. R. 15873. Increased pension to Harley Morley.
111. 61st Cong. 2nd Sess. Adjournment of June 25, 1910.  
H. R. 3346. Relief of Frank E. Lyman, Jr.
112. H. R. 18376. Directing that patents issue to certain settlers within the former Siletz Indian Res.
113. H. R. 20644. Relief of Frederick A. Neilson.
114. 62nd Cong. 2nd Sess. Adjournment of August 26, 1912.  
S. 2534. To extend time for completion of Alaska Northern Railroad.



115. H. R. 21708. Authorizing the lighting of Piney Branch Road from Georgia Ave. to Butternut St.
116. 64th Cong. 1st Sess. Adjournment of Sept. 8, 1916.  
S. 708. To make immediately available for the State of Georgia in payment of expenses of encampment funds appropriated for arming and equipping Georgia militia.
117. 65th Cong. 1st Sess. Adjournment of Oct. 6, 1917.  
H. R. 116. For promoting of efficiency, for utilization of resources and industries of the United States, etc.
118. 66th Cong. 2nd Sess. Adjournment of June 5, 1920.  
H. Res. 373. Declaring certain acts, joint resolutions, and proclamations to be considered as though the war was ended and the emergency expired.
119. S. Res. 152. Appointing a Commission to confer with the Canadian Provincial Governments in re importing wood pulp.
120. H. R. 13329. Authorizing the Secretary of War to transfer surplus materials to Department of Agriculture.
121. 67th Cong. 2nd Sess. Adjournment of Sept. 22, 1922.  
H. R. 10672. Appropriation for Agricultural Department for year ending June 30, 1920.
122. 69th Cong. 1st Sess. Adjournment of July 3, 1926.  
S. 3185. Jurisdiction act relief Okanogan et al Indians now before the Court.
123. S. 2999. Providing for parole commission for District of Columbia.
124. H. R. 534. Removing charge of desertion from record of Benjamin I. McHenry.
125. H. R. 6087. To reinstate Joe Burton Coursney in West Point Military Academy.
126. H. R. 5218. To carry into effect Article 12 of treaty with the Shawnee Indians.



- 127. 70th Cong. 1st Sess. Adjournment of May 29, 1928.  
S. Res. 46. Muscle Shoals bill, for dam No. 2 and steam nitrate plant for manufacture and distribution of fertilizers.
- 128. H. Res. 238. Granting veterans preference in civil service examinations.
- 129. H. R. 13383. Five-year program construction and maintenance U. S. Bureau of Fisheries.



## APPENDIX B.

President Madison's views on the Executive's duty to return bills to the Congress.

"TO HENRY CLAY.

Mad. Mss.

June, 1833.

Dear Sir, Your letter of May 28, was duly received. In it you ask my opinion on the retention of the Land bill by the President.

It is obvious that the Constitution meant to allow the President an adequate time to consider the Bills &c presented to him, and to make his objections to them; and on the other hand that Cong. should have time to consider and overrule the objections. A disregard on either side of what it owes to the other, must be an abuse, for which it would be responsible under the forms of the Constitution. An abuse on the part of the President, with a view sufficiently manifest, in a case of sufficient magnitude to deprive Cong. of the opportunity of overruling objections to their bills, might doubtless be a ground for impeachment. But nothing short of the signature of the President, or a lapse of ten days without a return of his objections, or an overruling of the objections by two-thirds of each House of Cong., can give legal validity to a Bill. In order to qualify (in the French sense of the term) the retention of the Land bill by the President, the first inquiry is, whether a sufficient time was allowed him to decide on its merits; the next whether with a sufficient time to prepare his objections, he unnecessarily put it out of the power of Cong. to decide on them. How far an anticipated passage of the Bill ought to enter into the sufficiency of the time for Executive deliberation, is another point for consideration. A minor one may be whether a silent retention or an assignment to Cong. of the reasons for it, be the mode most suitable, to such occasions. . . ."

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(Writings of James Madison, Gaillard Hunt (Vol. ix, p. 515), G. P. Putnam's Sons, New York and London, 1910.)



70TH CONGRESS } HOUSE OF REPRESENTATIVES { DOCUMENT  
2d Session } { No. 493

# No. 565

## REPORT ON POCKET VETO

### MESSAGE

FROM

## THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A MEMORANDUM PREPARED IN THE OFFICE OF THE ATTORNEY GENERAL REGARDING BILLS PRESENTED TO THE PRESIDENT LESS THAN 10 DAYS BEFORE THE ADJOURNMENT OF CONGRESS AND NOT SIGNED BY HIM

DECEMBER 22, 1928.—Referred to the Committee on the Judiciary and ordered to be printed

THE WHITE HOUSE, December 22, 1928.

To the Congress of the United States:

I am transmitting herewith for the information of the Congress a memorandum prepared in the office of the Attorney General regarding bills presented to the President less than ten days before the adjournment of Congress and not signed by him.

CALVIN COOLIDGE.

DEPARTMENT OF JUSTICE,  
Washington, October 10, 1928.

#### MEMORANDUM FOR THE ATTORNEY GENERAL

In re bills presented to the President less than ten days before the adjournment of Congress and not signed by him. In the case of each such bill, what was done with the engrossed copy of the bill, and what communication or memorandum was made in connection with such disposition?

Such unsigned bills are found in four places: in the custody of the Secretary of the Senate; in the custody of the Manuscript Division of the Library of Congress (where Presidential messages to the House of Representatives prior to the Civil War have been deposited); in the



archives of the State Department; and in the White House office building. The unsigned bills before the Civil War may be found in one or the other of the first three places. From the beginning of the administration of President Lincoln to the end of the first session of the first Congress in the administration of President Cleveland they were sent to the State Department. Since then, with but three exceptions, no such unsigned bills have been sent away from the White House. Those three exceptions are one bill sent to the State Department by President Benjamin Harrison during a Christmas recess in 1892 and two bills sent to the State Department by President Cleveland during a Christmas recess in 1896.

A bill relating to naturalization was passed by the House of Representatives on July 2, 1812 (Annals of Congress, 12th Cong., 1st sess., 1574) and by the Senate on July 4. (Annals, 318) Congress adjourned on July 6. (Annals, 322, 1586) The President did not sign this bill, but at the next session he sent a message to Congress explaining his unwillingness to do so. The message was dated Nov. 5 and was sent to Congress on the following day. There is no message or vetoed bill of that session in the custody of the Secretary of the Senate. The suggestion is made that any such documents may have been burned when the British destroyed the capitol in 1814. The Library of Congress has a bound volume containing several messages sent to Congress in that session. I have seen the Annual Message, dated Nov. 4, 1812, and a letter of transmittal from the President dated Nov. 5, but no copy of a message of Nov. 5, and no copy of the bill involved. I quote from the proceedings of Congress for Nov. 6, as given in Annals of Congress, 12th Cong., 2d sess., 17:

*To the Senate and House of  
Representatives of the United States:*

The bill, entitled "An act supplementary to the acts heretofore passed on the subject of an uniform rule of naturalization," which passed the two Houses at the last session of Congress, having appeared to me liable to abuse by aliens having no real purpose of effectuating a naturalization, and therefore not been signed; and having been presented at an hour too near the end of the session to be returned with objections for reconsideration, the bill failed to become a law. I also recommend that provision be now made in favor of aliens entitled to the contemplated benefit, under such regulations as will prevent advantage being taken of it for improper purposes.

J. MADISON.

NOVEMBER 5, 1812.

This message is printed in Richardson, Messages of the Presidents, I, 523.

In the archives of the State Department is a volume labeled "Pocketed Laws 1815-1878." It contains engrossed bills of that period. The first one in the volume was passed in the 14th Congress, first session, to provide for the free importation of stereotype plates and to encourage the printing and gratuitous distribution of the Scriptures by the Bible societies throughout the United States. The session adjourned April 30, 1816. (Annals of Congress, 14th Cong., 1st sess., 371, 1466) In the margin of the bill are the words:

34 bills Presented to the President by Mr. Roberts of the Senate on Saturday Apl. 27, 1816. 34 do. do. on Monday Apl. 29: others afterwards. See the Laws. The adjournment of Congress took place on the 30th of April.



This memorandum is unsigned but seems to be in President Madison's handwriting. Attached to the bill is a slip reading:

"An act for the free importation of Stereotype plates, and to encourage the printing and gratuitous distribution of the Scriptures by the Bible societies within the United States." Not approved.

This memorandum also is unsigned. It was not written by the person who wrote the memorandum on the bill itself.

The 21st Congress, first session, adjourned on May 31, 1830. (Congressional Debates, vol. 6, pp. 457, 1148) At the commencement of the second session President Jackson sent an annual message dated December 6, 1830. The message is in the Senate files. According to a memorandum on the back of it, it was read on the following day. The manuscript is 165 pages long. In Richardson, Messages of the Presidents, II, it covers pages 500 to 529. The following passage relates to his refusal to sign two bills. I quote from the manuscript, where the punctuation differs from that given in Richardson:

Almost at the moment of the adjournment of your last Session, two Bills; the one entitled "An Act for making appropriations for building light-houses, light-boats, beacons and monuments, placing buoys, and for improving harbors and directing surveys"; and the other "An Act to authorize a subscription for Stock in the Louisville and Portland Canal Company," were submitted for my approval. It was not possible within the time allowed me, before the close of the Session, to give to these Bills the consideration which was due to their character and importance; and I was compelled to retain them for that purpose. I now avail myself of this early opportunity to return them to the Houses in which they respectively originated, with the reasons which, after mature deliberation, compel me to withhold my approval.

The President then set forth his reasons at length. With the message in the Senate files is the bill passed at the first session of the 21st Congress "to authorize a subscription for stock, on the part of the United States, in the Louisville and Portland Canal Company." There is another copy of the annual message in the Library of Congress and with it is the light house bill, which has no marks on it.

The 22d Congress, first session, adjourned on July 16, 1832. (Cong. Debates, vol. 8, pp. 1298, 3915.) On December 6, 1832, at the commencement of the second session, President Jackson returned to the Senate an engrossed bill of the first session of that Congress and a message. The message, the bill and a printed copy of the bill are now in the Senate files. The message, in full, copied from the manuscript, is as follows:

WASHINGTON December 6th 1832

*To the Senate of the United States:*

I avail myself of this early opportunity to return to the Senate in which it originated the bill entitled "An act providing for the final settlement of the claims of States for interests on advances to the United States made during the last war," with the reasons which induced me to withhold my approbation, in consequence of which it has failed to become a law.

This bill was presented to me for my signature on the last day of your session and when I was compelled to consider a variety of other bills of greater urgency to the public service. It obviously embraced a principle in the allowance of interest, different from that which had been sanctioned by the practice of the accounting officers or by the previous legislation of Congress in regard to advances by the States, and without any apparent grounds for the change.

Previously to giving my sanction to so great an extension of the practice of allowing interest upon accounts with the Government, and which in its consequences and from analogy might not only call for large payments from the Treasury but disturb the great mass of individual accounts long since finally settled,



I deemed it my duty to make a more thorough investigation of the subject than it was possible for me to do previously to the close of your last session. I adopted this course the more readily, from the consideration that, as the bill contained no appropriation, the states which would have been entitled to claim its benefits could not have received them without the fuller Legislation of Congress.

The principle which this bill authorizes varies not only from the practice uniformly adopted by many of the accounting officers in the case of individual accounts and in those of the States finally settled and closed previously to your last session, but also from that pursued under the act of your last session for the adjustment and settlement of the claims of the State of South Carolina. This last act prescribed no particular mode for the allowance of interest, which therefore, in conformity with the directions of Congress in previous cases, and with the uniform practice of the Auditor by whom the account was settled, was computed on the sums expended by the State of South Carolina for the use and benefit of the United States, and which had been repaid to the State, and the payments made by the United States were deducted from the principal sums, exclusive of the interest; thereby stopping future interest on so much of the principal as had been reimbursed by the payment.

I deem it proper, moreover, to observe that, both under the act of the 5th of August 1790, and that of the 12th of February 1793 authorizing the settlement of the accounts between the United States and the individual States, arising out of the war of the revolution, the interest on those accounts was computed in conformity with the practice already adverted to and from which the bill now returned is a departure.

With these reasons and considerations I return the bill to the Senate.

ANDREW JACKSON

DECEMBER 6TH 1832

On the same day, President Jackson sent to the House of Representatives a message and a bill, both of which are in the Library of Congress. The message, copied in full from the manuscript, is as follows:

*To the House of Representatives*

In addition to the general views I have heretofore expressed to Congress on the subject of Internal improvement, it is my duty to advert to it again in stating my objections to the bill entitled "an act for the improvement of certain harbours and the navigation of certain rivers", which was not received a sufficient time before the close of the last session to enable me to examine it before the adjournment.

Having maturely considered that bill within the time allowed me by the Constitution, and being convinced that some of its provisions conflict with the rule adopted for my guide on this subject of Legislation, I have been compelled to withhold from it my signature; and it has therefore failed to become a law.

To facilitate as far as I can the intelligent action of Congress upon the subjects embraced in this bill, I transmit herewith a report from the Engineer Department distinguishing, as far as the information within its possession would enable it, between those appropriations which do, and those which do not, conflict with the rules by which my conduct in this respect has hitherto been governed. By that report it will be seen that there is a class of appropriations in the bill for the improvement of streams that are not navigable, that are not channels of commerce, and that do not pertain to the harbours or ports of entry designated by law, or have any ascertained connection with the usual establishments for the security of commerce external or internal. It is obvious that such appropriations involve the sanction of a principle that concedes to the General Government an unlimited power over the subject of internal improvements, and that I could not therefore approve a bill containing them without receding from the positions taken in my veto of the Maysville road bill and afterwards in my annual message of December 7, 1830.

It is to be regretted that the rules by which the classification of the improvements in this bill has been made by the Engineer Department, are not more definite and certain, and that embarrassments may not always be avoided by the observance of them; but as neither my own reflection, nor the lights derived from other sources, have furnished me with a better guide, I shall continue to apply my best exertions to their application and enforcement. In thus employing my best faculties to exercise the powers with which I am invested to avoid evils



and to effect the greatest attainable good for our common country, I feel that I may trust to your cordial cooperation; and the experience of the past leaves me no room to doubt the liberal indulgence and favorable consideration of those for whom we act.

The grounds upon which I have given my assent to appropriations for the construction of light-houses, beacons, buoys, public piers and the removal of sand-bars, sawyers, and other temporary or partial impediments in our navigable rivers and harbours,—and with which many of the provisions of this bill correspond, have been so fully stated that I trust a repetition of them is unnecessary. Had there been incorporated in the bill no provisions for works of a different description, depending on principles which extend the power of making appropriations to every object which the discretion of the Government may select, and losing sight of the distinctions between national and local character which I had stated would be my future guide on the subject, I should have cheerfully signed the bill.

ANDREW JACKSON

DECEMBER 6th 1832

With this message is the bill, which was passed by the 22d Congress at its first session. On it is an unsigned certificate that it originated in the House of Representatives.

The 22d Congress at its second session passed a bill relating to the proceeds of the sales of the public lands of the United States. The bill originated in the Senate. The House of Representatives amended it. The Senate concurred in those amendments on March 1, 1833. (Cong. Debates, vol. 9, 809.) Congress adjourned on the legislative day of March 2. (Cong. Debates, vol. 9, 814, 1939.) The term of Congress expired on March 4. On December 5, 1833, at the commencement of the 23d Congress, first session, President Jackson sent to the Senate a message concerning this bill. Both the message and the unsigned bill are now in the custody of the Secretary of the Senate.

The message is a long one. In Richardson, Messages of the Presidents, III, it covers pages 56 to 69. The first paragraph is the only one dealing with the circumstances under which the bill came to the President. In the manuscript that paragraph is as follows:

*To the Senate of the United States:*

At the close of the last session of Congress I received from that body a bill entitled "An act to appropriate for a limited time the proceeds of the sales of the public lands of the United States and for granting lands to certain States." The brief period then remaining before the rising of Congress, and the extreme pressure of official duties, unavoidable on such occasions, did not leave me sufficient time for that full consideration of the subject which was due to its great importance. Subsequent consideration and reflection have, however, confirmed the objections to the bill which presented themselves to my mind upon its first perusal, and have satisfied me that it ought not to become a law. I felt myself, therefore, constrained to withhold from it my approval and now return it to the Senate in which it originated with the reasons on which my dissent is founded.

ANDREW JACKSON

DECEMBER 4TH 1833

The 22d Congress, first session, adjourned June 30, 1834. (Cong. Globe, vol. 1, p. 480.) On the last day of the session the following reports were made (pp. 479, 480):

Mr. GRUNDY, from the [Senate] committee appointed to wait on the President of the United States, reported that the committee had discharged that duty and that they had been informed by the President that he had signed all the bills presented to him with the exception of the bill for the improvement of the Wabash river, and that he should hold that bill up for future advisement, and if constitutional objections did not intervene, he should sign the bill within the time allowed by law, and that he had no further communication to make.



Mr. FULTON, from the Committee appointed on the part of the House, reported that the committee had, in pursuance of the resolution, waited on the President, who had informed them that he had signed all the bills presented to him, excepting that for the improvement of the Wabash river; respecting which he made the following statement:

The bill entitled an act to improve the navigation of the Wabash river has been presented to me at so late a period of the session, with so many others that call for immediate action, that I have not been able to give to it the full consideration which its importance merits. I have strong doubts whether I can approve this bill consistently with the opinions I entertain as to the power of this Government on subjects of this description; but my respect for the decision of the two Houses of Congress, and for the large body of my fellow-citizens who are interested in this improvement, induces me to hold the bill for the present, that I may, during the period allowed to me by the Constitution for that purpose, give to it the most careful and deliberate consideration; and that he had no further communications to make during the present session.

At the commencement of the second session of this Congress, President Jackson sent to Congress a message which is now in the custody of the Secretary of the Senate. It is dated December 1, 1834, and is endorsed "1834, Decr 2d recd." With this message in the Senate files is the engrossed bill of the first session of the 23d Congress "to improve the navigation of the Wabash river." Written in ink upon the bill itself where the President would sign if he approved are the words "Not Approved." About four other words were written after those two but were obliterated in ink. The message is given in full in Richardson, Messages of the Presidents, III, 97 to 123. It contains this passage (Richardson, III, 118) which I have copied from the manuscript message:

I have not been able to satisfy myself that the bill entitled "An act to improve the navigation of the Wabash River," which was sent to me at the close of your last session, ought to pass, and I have, therefore, withheld from it my approval, and now return it to the Senate, the body in which it originated.

There can be no question connected with the administration of public affairs, more important or more difficult to be satisfactorily dealt with, than that which relates to the rightful authority and proper action of the federal government upon the subject of Internal Improvements. To inherent embarrassments have been added others resulting from the course of our legislation concerning it.

I have therefore communicated freely with Congress upon this subject, and in adverting to it again I can not refrain from expressing my increasing conviction of its extreme importance, as well in regard to its bearing upon the maintenance of the Constitution and the prudent management of the public revenue, as on account of its disturbing effect upon the harmony of the Union.

In the State Department is a bill of the 24th Congress, second session, which was passed very shortly before the expiration of the term for which that Congress was elected. It was passed for the purpose of "designating and limiting the funds receivable for the revenues of the United States." Attached to it is a memorandum in the handwriting of President Jackson. It is as follows:

The bill from the Senate entitled "An act designating and limiting the funds receivable for the revenues of the United States," came to my hands yesterday at 2 o'clock P. M. On perusing it, I found its provisions so complex and uncertain, that I deemed it necessary to obtain the opinion of the Atto' Genl. of the U. States, on several important questions, touching the construction and effect, before I could decide on the disposition to be made of it. The Atto' Genl. took up the subject immediately, and his reply was reported to me this day at 5 o'clock P. M. and is hereunto annexed. As this officer, after a careful and laborious examination of the bill, and a distinct expression of his opinion on the points proposed to him, still came to the conclusion that the construction of the bill, should it become a law, would yet be a subject of much perplexity and doubt, (a view of the bill coincident with my own,) and as I cannot think it proper, in a matter of such vital interest, and of such constant application, to



approve a bill so liable to diversity of interpretations, and more especially as I have not had time, amid the duties constantly pressing on me, to give the subject that deliberate consideration which its importance demands, I am constrained to retain the bill, without acting definitively thereon. And to the end, that my reasons for this step may be fully understood, I shall cause this paper, with the opinion of the Atto' Genl. and the bill in question, to be deposited in the Dept. of State.

Washington March 3d 1837.  
1/4 before 12 P. M.

ANDREW JACKSON

Attached to this bill is also the opinion of the Attorney General, referred to in the President's memorandum. On the back of the bill itself appears the notation:

Recd at the Dept of State March 10, 1837.

Attached to these papers is a memorandum saying:

An Act designating and limiting the funds receivable for the revenues of the United States.

Not approved,

March 3d, 1837.

Next to this, in the bound collection in the State Department, is a joint resolution of the 25th Congress, third session, for the distribution, in part, of the Madison papers. Attached to it is a memorandum which appears to be in the handwriting of President Van Buren, which reads as follows:

The annexed joint resolution was presented to me by Messrs. Foster & Merrick of the Senate, on the 4th of March at half past three o'clock A. M. at the President's House, after a joint committee had informed me, at the capitol, that the two Houses had completed their business and were ready to adjourn, and had communicated my answer that I had no further communication to make to them. The committee of the Senate on presenting the joint resolution for my signature, stated, in explanation of the circumstance that they were not attended by the Committee on enrolled Bills of the Ho. of Rep's. (as is required by the joint rules of the two Houses) that that body had adjourned about two hours before.

The joint resolution is not certified by the Clerk of the House in which it originated, as is likewise required by the joint rules; under these circumstances, and without reference to its provisions, I withheld my approval from the joint resolution.

March 5th 1839

M. VAN BUREN

This memorandum is accompanied by a paper reading:

To be placed on file in the State Department

M. V. B.

On the memorandum itself are the words:

Recd at the Dept of State 11th March 1838

—Dickins

(The first part of the name is covered in binding.)

On the memorandum is a slip reading:

A Resolution for the distribution of the Madison Papers

Not approved.

March 5th, 1839

The 27th Congress, second session, adjourned August 31, 1842. (Cong. Globe, vol. 11, pp. 978, 980.) Early in the third session, on December 14, President Tyler sent to the House of Representatives



the following message, which is now in the Library of Congress. There is no bill with it.

*To the House of Representatives—*

Two Bills were presented to me at the last session of Congress, which originated in the House of Representatives, neither of which was signed by me, and both having been presented within ten days of the close of the session, neither has become a Law.

The first of these was a Bill entitled "An act to repeal the proviso of the sixth section of the act entitled 'An act to appropriate the proceeds of the Sales of the Public Lands, and to grant preemption rights,' approved September fourth, one thousand eight hundred and forty-one."

The Bill was presented to me on Tuesday the 30th August, at twenty-four minutes after four o'clock in the afternoon. For my opinions relative to the provisions contained in this Bill, it is only necessary that I should refer to previous communications made by me to the House of Representatives.

The other Bill was entitled "An act regulating the taking of the testimony in cases of contested elections, and for other purposes." This bill was presented to me at a quarter past one o'clock on Wednesday the thirty-first day of August. The two Houses by concurrent vote, had already agreed to terminate the Session by adjournment at two o'clock on that day; that is to say within three-quarters of an hour from the time the bill was placed in my hands. It was a bill containing twenty-seven sections, and I need not say of an important nature.

On its presentment to me, its reading was immediately commenced, but was interrupted by so many communications from the Senate, and so many other causes operating at the last hour of the Session, that it was impossible to read the bill understandingly and with proper deliberation, before the hour fixed for the adjournment of the two Houses; and this I presume, is a sufficient reason for neither signing the bill, nor returning it with my objections.

The 17th joint rule of the two Houses of Congress declares that "no bill or resolution that shall have passed the House of Representatives and the Senate, shall be presented to the President of the United States for his approbation on the last day of the session."

This rule was evidently designed to give to the President a reasonable opportunity of perusing important acts of Congress, and giving them some degree of consideration, before signing or returning the same.

It is true that the two Houses have been in the habit of suspending this rule, toward the close of the session, in relation to particular bills; and it appears by the printed journal that by concurrent votes of the two Houses, passed on the last day of the session, the rule was agreed to be suspended so far as the same should relate to all such bills as should have been passed by the two houses at one o'clock on that day. It is exceedingly to be regretted that a necessity should ever exist for such suspension, in the case of bills of great importance, and therefore demanding careful consideration.

As the Bill has failed under the provisions of the Constitution to become a Law, I abstain from expressing any opinions upon its several provisions, keeping myself wholly uncommitted as to my ultimate action on any similar measure, should the House think proper to originate it *de novo*, except so far as my opinion of the unqualified power of each House to decide for itself upon the election returns and qualifications of its own members, has been expressed by me in a paper lodged in the Department of State at the time of signing an act entitled "An act for the apportionment of Representatives among the several states, according to the sixth census, approved June the twenty second eighteen hundred and forty two," a copy of which is in possession of the House.

JOHN TYLER

WASHINGTON  
Dec. 14, 1842

In the archives of the State Department, bound in the volume of unsigned bills, is a joint resolution of the 27th Congress, third session, presenting the thanks of Congress to Samuel T. Washington for the service sword of George Washington and the staff of Benjamin Franklin, presented by him to Congress. On this is simply the penciled memorandum

Jt. Reso 35.



The joint resolution was adopted unanimously by both Houses on February 8, 1843 (Congressional Globe, vol. 12, pp. 255, 256) and Congress adjourned on the legislative day of March 3d. (Same volume, pp. 394, 400)

Among the manuscripts at the Library of Congress is the following message and with it a copy of a letter:

*To the House of Representatives:-*

The two Houses of Congress, at their last Session, passed a joint resolution, which originated in the House of Representatives "presenting the thanks of Congress to Samuel T. Washington for the service sword of George Washington, and the staff of Benjamin Franklin presented by him to Congress." This resolution in consequence doubtless of a merely accidental omission, did not reach me until after the adjournment of Congress, and therefore did not receive my approval and signature, which it would otherwise promptly have received. I nevertheless felt myself at liberty, and deemed it entirely proper to communicate a copy of the resolution to Mr. Washington as is manifested by the accompanying copy of the letter which I addressed to him. The joint resolution, together with a copy of the letter, is deposited in the Department of State, and can be withdrawn and communicated to the House, if it see cause to require them.

JOHN TYLER

WASHINGTON Dec 16. 1843

(Copy)

WASHINGTON April 27th. 1843.

DEAR SIR,

I send you a copy of a joint resolution of the two Houses of Congress, as expressive of the estimate which they place upon the presents which you recently made to the United States of the sword used by your illustrious relative, George Washington, in the Military Career of his early youth in the seven years' war, and throughout the War of our National Independence; and of the staff bequeathed by the Patriot, Statesman and Sage, Benjamin Franklin, to the same leader of the Armies of Freedom in the Revolutionary War, George Washington.

These precious relics have been accepted in the name of the Nation, and have been deposited among its Archives.

I avail myself of the opportunity afforded me in the performance of this pleasing task, to tender your assurances of my high respect and esteem.

(Signed)

JOHN TYLER

SAMUEL T. WASHINGTON, Esqr

Among the manuscripts in the Library of Congress is the following message concerning another resolution of the 27th Congress, third session. There is no resolution with the message. I quote the manuscript.

*To the House of Representatives*

I received within a few hours of the adjournment of the last Congress, a resolution "directing payment of the Certificates or awards issued by the Commissioners under the Treaty with the Cherokee Indians." Its provisions involved principles of great importance, in reference to which, it required more time to obtain the necessary information than was allowed.

The balance of the fund provided by Congress for satisfying claims under the 17th article of the Cherokee Treaty, referred to in the resolution, is wholly insufficient to meet the claims still pending. To direct the payment, therefore, of the whole amount of those claims which happened to be first adjudicated, would prevent a ratable distribution of the fund among those equally entitled to its benefits. Such a violation of the individual rights of the claimants, would impose upon the government the obligation of making further appropriations to indemnify them—and thus Congress would be obliged to enlarge a provision, liberal and equitable, which it had made for the satisfaction of all the demands of the Cherokees. I was unwilling to sanction a measure which would thus indirectly overturn the adjustment of our differences with the Cherokees, accomplished with so much difficulty, and to which time is reconciling those Indians.

If no such indemnity should be provided, then a palpable and very gross wrong would be inflicted upon the claimants who had not been so fortunate as to have their claims taken up in preference to others. Besides, the fund having



appropriated by law to a specific purpose, in fulfilment of the Treaty, it belongs to the Cherokees, and the authority of this government to direct its application to particular claims is more than questionable.

The direction in the joint resolution, therefore, to pay the awards of the Commissioners to the amount of one hundred thousand dollars, seemed to me quite objectionable, and could not be approved.

The further direction that the certificates required to be issued by the Treaty, and in conformity with the practice of the Board heretofore, shall be proper and sufficient vouchers upon which payments shall be made at the Treasury is a departure from the system established soon after the adoption of the Constitution, and maintained ever since. That system requires that payments under the authority of any Department shall be made upon its requisition, countersigned by the proper Auditor and Comptroller. The greatest irregularity would ensue from the mode of payment prescribed by the resolution.

I have deemed it respectful and proper to lay before the House of Representatives these reasons for having withheld my approval of the above-mentioned joint resolution.

JOHN TYLER

WASHINGTON December 18th 1843

As to the engrossed bill itself, the following passage in Van Tyne and Leland, Guide to the Archives of the Government of the United States in Washington, p. 1, may furnish an explanation:

The custom which has prevailed for retiring Presidents to take with them as personal property all the letters, papers, and other records of their respective administrations, has resulted in scattering abroad much historical material of the utmost value.

In the volume of unsigned bills at the State Department is a bill of the 28th Congress, second session, "Making appropriations for the improvement of certain harbors and rivers." There are no marks on the bill; simply an attached slip reading:

Acts and Resolutions of Congress that have not been approved by the President.

But there is no other act or resolution of this session in this volume of unsigned bills. The bill passed the House of Representatives on February 28, 1845 (Cong. Globe, vol. 14, p. 369) and the Senate on March 3. (Same volume, p. 393) Both Houses adjourned on the legislative day of March 3. (Same volume, 393, 397)

The 29th Congress, second session, adjourned on March 3, 1847. (Cong. Globe, vol. 17, pp. 572, 574) Early in the 30th Congress, first session, President Polk sent to the House of Representatives a message which is now in the manuscript room of the Library of Congress. With the message is a bill of the 29th Congress, second session, "to provide for continuing a certain public work in the Territory of Wisconsin, and for other purposes." There is no mark on the bill itself except "47." The message is as follows:

To the House of Representatives:

On the last day of the last session of Congress a Bill, entitled "An act to provide for continuing certain works in the Territory of Wisconsin and for other purposes," which had passed both houses, was presented to me for my approval. I entertained insuperable objections to its becoming a law; but the short period of the session, which remained, afforded me no sufficient opportunity, to prepare my objections and communicate them, with the Bill, to the House of Representatives, in which it originated. For this reason the Bill was retained, and I deem it proper now to state my objections to it.



Although from the title of the Bill, it would seem that its main object was to make provision for continuing certain works, already commenced, in the Territory of Wisconsin, it appears on examination of its provisions, that it contains only a single appropriation of six thousand dollars, to be applied within that Territory, while it appropriates more than half a million of dollars for the improvement of numerous harbours and rivers lying within the limits and jurisdiction of several of the states of the Union.

At the preceding session of Congress it became my duty to return, with my objections, to the House in which it originated, a Bill making similar appropriations and involving like principles, and the views then expressed remain unchanged.

JAMES K. POLK

WASHINGTON, December 15th, 1847:—

In the manuscript, which I have followed, the message covers forty-six pages. In Richardson, Messages of the Presidents, IV, it covers pages 610 to 626.

The 35th Congress, first session, adjourned June 14, 1858. (Cong. Globe, vol. 36, pt. 3, pp. 3044, 3050) In January, 1859, President Buchanan sent to the House of Representatives the following message which I am not able to find in manuscript anywhere. It appears in the Journal of the House of Representatives, 35th Congress, second session, p. 151, as follows:

*To the House of Representatives:*

On the last day of the last session of Congress, as appears in the Journal of the House of Representatives, "a joint resolution in regard to the carrying of the United States mails from Saint Joseph, Missouri, to Placerville, California," was presented to me for my approval. This resolution authorized and directed the Postmaster-General "to order an increase of speed upon said route, requiring the mails to be carried through in thirty days, instead of thirty-eight days, according to the existing contract: *Provided*, The same can be done upon a *pro rata* increase of compensation to the contractors."

I did not approve this joint resolution: First, because it was presented to me at so late a period that I had not the time necessary, on the day of the adjournment of the last session, for an investigation of the subject. Besides, no injury could result to the public, as the Postmaster-General already possessed the discretionary power, under existing laws, to increase the speed upon this as well as all other mail routes.

Second. Because the Postmaster General, at the moment in the Capitol, informed me that the contractors themselves had offered to increase the speed on this route to thirty instead of thirty-eight days, at a less cost than that authorized by the joint resolution. Upon subsequent examination, it has been ascertained at the Post-Office Department that their bid, which is still pending, proposes to perform this service for a sum less by \$49,000 than that authorized by the resolution.

JAMES BUCHANAN.

WASHINGTON, January 7, 1859.

The 35th Congress, second session, adjourned on March 3, 1859. (Cong. Globe of that session, part 2, pp. 1663, 1684) In February, 1860, during the following Congress, President Buchanan sent to the Senate a message which is now in its files. There is no bill with it. The message is printed in the Journal of the Senate for the 36th Congress, first session, page 114. (It was read February 2.) It is printed in Richardson, Messages of the Presidents, V, 599-607. Quoting the manuscript, it reads thus:

*To the Senate of the United States:*

On the last day of the last Congress a Bill which had passed both Houses entitled "An act making an appropriation for deepening the channel over the Saint Clair flats in the State of Michigan" was presented to me for approval.

It is scarcely necessary to observe that during the closing hours of a Session it is impossible for the President on the instant to examine into the merits or demerits of an important Bill, involving as this does grave questions both of



expediency and of Constitutional power, with that care and deliberation demanded by his public duty as well as by the best interests of the country. For this reason the Constitution has in all cases allowed him ten days for deliberation; because, if a Bill be presented to him within the last ten days of the Session, he is not required to return it, either with an approval or a veto; but may retain it, "in which case it shall not be a law." Whilst an occasion can rarely occur when so long a period as ten days would be required to enable the President to decide whether he should approve or veto a Bill; yet, to deny him even two days on important questions before the adjournment of each session for this purpose, as recommended by a former annual message, would not only be unjust to him, but a violation of the spirit of the Constitution. To require him to approve a Bill when it is impossible he could examine into its merits, would be to deprive him of the exercise of his Constitutional discretion and convert him into a mere register of the decrees of Congress. I therefore deem it a sufficient reason for having retained the Bill in question that it was not presented to me until the last day of the Session. \* \* \*

[He then discusses the bill on its merits.]

JAMES BUCHANAN.

WASHINGTON CITY, February 1, 1860.

A few days later he sent to the Senate another message, which is now in its files. There is no bill with it. The message was read on February 7th and appears in the Journal of the Senate for the 36th Congress, first session, page 129. Quoting from the manuscript, it is as follows:

*To the Senate of the United States:*

On the last day of the last Session of Congress a Resolution which had passed both Houses, "in relation to removal of obstructions to Navigation in the mouth of the Mississippi River," was presented to me for approval. I have retained this Resolution because it was presented to me at a period when it was impossible to give the subject that examination to which it appeared to be entitled. I need not repeat the views on this point presented in the introductory portion of my message to the Senate of the 2nd Instant.

In addition, I would merely observe that although at different periods sums amounting in the aggregate to six hundred and ninety thousand dollars, have been appropriated by Congress for the purpose of removing the bar and obstructions at the mouth of the Mississippi, yet it is now acknowledged that this money has been expended with but little if any practical benefit to its navigation.

JAMES BUCHANAN

WASHINGTON, 6 February, 1860.

The next bill which was retained unsigned is now in the volume of "Pocketed Bills" at the State Department. It is a bill of the 37th Congress, third session, and is entitled "An act to amend the act entitled 'An act to establish and equalize the grades of line officers of the United States Navy, approved July sixteenth, eighteen hundred and sixty-two.'" The enrolled bill, having been signed by the Speaker of the House, was signed by the President *pro tempore* of the Senate on March 3, 1863. (Cong. Globe, vol. 62, p. 1524.) That was at the end not only of the session but of the Congress. On this bill in pencil is written:

S. 424.

T. O. H.

B. F. G.

On it in ink are the words:

Recd at the D. of S. 17 April, 1865, from the President's.

A separate unsigned slip says:

Act passed at 3d sess. 37th Cong. not approved.

rel. to line officers of the Navy.

recd. April 17, '65 after  
death of President.



In January, 1865, President Lincoln sent to the House of Representatives a message concerning a joint resolution of the previous session which he had not signed. It will be observed that the resolution was unlike the other resolutions and bills which have been considered for it had not been properly authenticated. I have not been able to find the message or the resolution in the Library of Congress. The message is printed in the House Journal, 38th Congress, second session, page 80. It is as follows:

*To the House of Representatives of the United States:*

I herewith return to your honorable body, in which it originated, a "joint resolution to correct certain clerical errors in the internal revenue act," without my approval.

My reason for so doing is, that I am informed that this joint resolution was prepared during the last moments of the last session of Congress for the purpose of correcting certain errors of reference in the internal revenue act, which were discovered on an examination of an official copy procured from the State Department a few hours only before the adjournment. It passed the House and went to the Senate where a vote was taken upon it, but by some accident it was not presented to the President of the Senate for his signature.

Since the adjournment of the last session of Congress, other errors of a kind similar to those which this resolution was designed to correct have been discovered in the law, and it is now thought most expedient to include all the necessary corrections in one act or resolution.

The attention of the proper committee of the House has, I am informed, been already directed to the preparation of a bill for this purpose.

ABRAHAM LINCOLN.

EXECUTIVE MANSION, January 5, 1865.

Except for a message of President Johnson to the Senate in the 40th Congress, second session, I have no record of any further message to Congress or to either House of Congress concerning such unsigned bills. Such bills for a number of years are in a volume in the State Department marked "Pocketed Bills 1815-1878" and in a supplementary portfolio which holds loosely a number of such unsigned bills from 1878 into President Cleveland's first administration and also three later bills.

In the bound volume is a bill of the 38th Congress, second session, entitled "An act to repeal the eighth section of an act entitled, 'An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of frauds in States declared in insurrection,' approved July second, eighteen hundred and sixty-four, and for other purposes." The bill passed the Senate on March 1, 1865 (Cong. Globe, vol. 68, p. 1258) and the House on March 3. (Same volume, p. 1411) This was at the end not only of the session but of the Congress. On the bill is the notation "Recd 6 Mar." On a separate slip of paper are the words:

Act and Resolution not approved by the President recd in March 1865.

Next to this is a joint resolution of the 38th Congress, second session, entitled "Joint Resolution in relation to certain railroads." On it is the notation, "Recd 6 Mar." The Vice President signed the enrolled resolution on March 4, after it had been signed by the Speaker of the House. (Cong. Globe, vol. 68, p. 1389)

Then follows a joint resolution of the 39th Congress, first session, entitled, "Joint Resolution Relating to the building lately occupied for a national fair in aid of the orphans of the soldiers and sailors of



the United States." At the bottom of the bill in pencil are the words:

Received July 28, 1866.

Above this in ink are these words, signed by the President:

Received July 28, 1866—the day of adjournment of the First Session of the Thirty-ninth Congress.

ANDREW JOHNSON

At the same session Congress also passed a bill for the admission of Nebraska into the Union. On the back are the following words, signed by the President:

Received July 28, 1866—the day of adjournment of the First Session of the Thirty-ninth Congress.

ANDREW JOHNSON

On the back of a joint resolution passed by the 40th Congress, first session, for the placing of certain troops of Missouri on an equal footing with others as to bounties is the following memorandum:

The First Session of the Fortieth Congress adjourned on the thirtieth day of March, 1867. This bill, which was passed during that session, was not presented for my approval by the Honorable Edmund G. Ross of the Senate of the United States and a member of the Committee on Enrolled Bills, until Monday, the first day of April, 1867, two days after the adjournment. It is not believed that the approval of any bill after the adjournment of Congress, whether presented before or after such adjournment, is authorized by the Constitution of the United States—that instrument expressly declaring that no bill shall become a law, the return of which may have been prevented by the adjournment of Congress. To concede that, under the Constitution, the President, after the adjournment of Congress, may, without limitation in respect to time, exercise the power of approval, and thus determine, at his discretion, whether or not bills shall become laws, might subject the Executive and Legislative Departments of the Government to influence most pernicious to correct legislation and sound public morals, and—with a single exception—occurring during the prevalence of civil war—would be contrary to the established practice of the Government from its inauguration to the present time. This bill will therefore be filed in the office of the Secretary of State without my approval.

ANDREW JOHNSON

WASHINGTON D. C.

April 10th 1867.

Upon a bill passed by the 40th Congress, first session, for the securing of equal rights in the District of Columbia, are the penciled words:

Received July 20th (Saturday) half after three o'clock.

Above this note are these words, in ink:

Received July 20, 1867, the day upon which the two Houses of Congress adjourned until the 21st day of November, 1867.

ANDREW JOHNSON

On the bill are these notations:

S. 137

E. G. R.

M. W. July 26, 1867

It is stamped Feb. 14, 1868. In pencil are these words:

Returned by President. See letter from Col. Wm E. Moore of 10th Jany. 1868.

There is also attached a slip of paper with this statement:

Act and Resolution passed at the first session of the 39th Congress, and

Act passed at the first session of the 40th Congress which have not been approved by the President.

Received December 6, 1867,  
from the Executive Mansion.



Then follow several bills preceded by a slip of paper reading:

By direction of the Secretary of State, communicated through Mr. Chew, Chief Clerk, these bills are not to be promulgated, but are to be filed as bills which have failed to become laws.—See Message of the President herewith.

F. J.

FEB. 15, 1868.

One of them is a bill of the 40th Congress, second session, for the further security of equal rights in the District of Columbia. At the top of the sheet is this notation:

Received February 14th, 1868 by the Chief Clerk of the Department of State from the President's orderly.

At the bottom of the bill is the notation:

Received Wednesday Dec. 11th 10-40 A. M.

Above this notation is the following, signed by the President:

Received 10:40 A. M. Wednesday, December 11, 1867, nine days after the adjournment of Congress.

ANDREW JOHNSON

Attached to this bill is a printed copy of a message from President Johnson to the Senate. (40th Congress, 2d session. Ex. Doc. No. 23.)

Message of the President of the United States, communicating, in compliance with a resolution of the Senate of the 8th instant, information in relation to bill (S. 141) entitled "An act for the further security of equal rights in the District of Columbia," presented to him on the 11th day of December, 1867.

JANUARY 24, 1868.—Read referred to the Committee on the Judiciary, and ordered to be printed.

*To the Senate of the United States:*

I have received the following preamble and resolution, adopted by the Senate on the 8th instant:

Whereas Senate bill numbered one hundred and forty-one, and entitled "An act for the further security of equal rights in the District of Columbia," having, at this present session, passed both houses of Congress, was afterwards, on the eleventh day of December, eighteen hundred and sixty-seven, duly presented to the President of the United States for his approval and signature; and whereas, more than ten days, exclusive of Sundays, have since elapsed in this session without said bill having been returned either approved or disapproved: Therefore—

*Resolved*, That the President of the United States be requested to inform the Senate whether said bill has been delivered to and received by the Secretary of State, as provided by the second section of the act of the twenty-seventh day of July, seventeen hundred and eighty-nine.

As the act which the resolution mentions has no relevancy to the subject-matter of the inquiry, it is presumed that it was the intention of the Senate to refer to the law of the 15th September, 1789, the second section of which prescribes—

That whenever a bill, order, resolution, or vote of the Senate and House of Representatives, having been approved and signed by the President of the United States, or not having been returned by him with his objections, shall become a law, or take effect, it shall forthwith thereafter be received by said Secretary from the President; and whenever a bill, order, resolution, or vote, shall be returned by the President with his objections, and shall, on being reconsidered, be agreed to be passed, and be approved by two-thirds of both houses of Congress, and thereby become a law or take effect, it shall in such case be received by the said Secretary from the President of the Senate, or the Speaker



of the House of Representatives, in whichsoever house it shall last have been so approved.

Inasmuch as the bill "for the further security of equal rights in the District of Columbia" has not become a law in either of the modes designated in the section above quoted, it has not been delivered to the Secretary of State for record and promulgation. The Constitution expressly declares that "if any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress by their adjournment, prevent its return, in which case it shall not be a law." As stated in the preamble to the resolution, the bill to which it refers was presented for my approval on the 11th day of December, 1867. On the 20th of the same month, and before the expiration of ten days after the presentation of the bill to the President, the two houses, in accordance with a concurrent resolution adopted on the 13th of December, adjourned until the 6th of January, 1868. Congress, by their adjournment, thus prevented the return of the bill within the time prescribed by the Constitution, and it was therefore left in the precise condition in which that instrument positively declares a bill "shall not be a law."

If the adjournment in December did not cause the failure of this bill because not such an adjournment as is contemplated by the Constitution in the clause which I have cited, it must follow that such was the nature of the adjournments during the past year, on the 30th of March until the first Wednesday of July, and from the 20th of July until the 21st of November. Other bills will therefore be affected by the decision which may be rendered in this case—among them one having the same title as that named in the resolution, and containing similar provisions, which, passed by both houses in the month of July last, failed to become a law by reason of the adjournment of Congress before ten days for its consideration had been allowed the executive.

ANDREW JOHNSON.

WASHINGTON, D. C., January 23, 1867.

The date last given is clearly a misprint. The message was read in the Senate January 24, 1868. It was then discussed by several Senators. (Cong. Globe, 40th Cong., 2d sess., pt. 1, p. 720) I looked for the original copy of the message in the Senate files, but could not find it.

Then follows another bill passed by the 40th Congress, second session. It was to provide for the appointment of recorder of deeds in the District of Columbia. At the end of the bill appears the following memorandum:

Received July 27, 1868, on which day, at 12 o'clock M., the two Houses of Congress adjourned until the third Monday in September, 1868.

ANDREW JOHNSON

On the bill is a stamp reading "Received Feb. 4, 1869." With the bill is an unsigned paper saying:

"Act providing for the payment of the national debt & for the reduction of the rate of interest thereon," &

"Act to provide for the appointment of recorder of deeds in the District of Columbia and for other purposes," presented to the President July 27, 1868, not approved and received at Department of State, February 4, 1869.

With the bill is also a letter stamped "Received Feb. 4, 1869," reading:

EXECUTIVE MANSION,  
Washington, D. C., Feby 4 1869.

Sir

I am directed by the President to transmit to the Department of State bills of the following titles, which were presented to him for approval July 27, 1868, the day on which the two Houses of Congress adjourned until the third Monday in September, 1868, and which were not approved by the President, viz:

A Bill providing for the payment of the national debt, and for the reduction of the rate of interest thereon, and



A Bill to provide for the appointment of Recorder of Deeds in the District of Columbia and for other purposes.

I have the honor to be,  
Very respectfully,  
Your obedient servant,

WM. G. MOORE,  
*Secretary.*

To the Honorable  
WILLIAM K. SEWARD,  
*Secretary of State.*

Then follows a bill of the 40th Congress, second session, "providing for the payment of the national debt, and for the reduction of the rate of interest thereon." At the end of it the following memorandum is written on the parchment itself:

Received 11.50 A. M. July 27th, 1868, on which day, at 12 o'clock M. the two Houses of Congress adjourned until the third Monday in September, 1868.

ANDREW JOHNSON

The bill is stamped "Received Feb. 4, 1869."

At the same session Congress passed a bill to incorporate the congregation of the First Presbyterian Church of Washington. The bill is stamped "Received Feb. 14, 1868." Across the top is written:

Received February 14th 1868 by the Chief Clerk of the Department of State from the President's orderly.

At the end of the bill is written in pencil:

Received Saturday 21st of Dec. half after one o'clock the day after adjournment.

This is apparently in the President's handwriting. On the preceding page, after the signature of the presiding officers of the two Houses of Congress is the following notation written by another hand, but signed by the President:

Received at half-past one o'clock P. M. on the twenty-first day of December, 1867—the day after the adjournment of Congress.

ANDREW JOHNSON

The next parchment is a joint resolution of the 41st Congress, first session, for the relief of Blanton Duncan. It passed Congress on April 9, 1869. (Cong. Globe, vol. 87, p. 700) The session came to an end on the following day. (Same volume, pp. 715, 722) The resolution bears a stamp reading "Received April 12, 1869." On the margin is written in pencil "Received on the morning of April 10, 1869—not signed." Attached to the resolution is a paper reading:

Joint Resolution for the relief of Blanton Duncan, passed at first session of 41st Congress, but not signed by the President. Recd. April 12, 1869.

Then follows a bill of the 41st Congress, third session, entitled "An act relating to telegraph communication between the United States and foreign countries." The bill was signed by the presiding officers of the two Houses on March 3, 1871. (Cong. Globe, vol. 97, pp. 1920, 1985) That Congress expired on March 4th.

Then follows a paper endorsed:

Bills pocketed  
March 3d, 1871  
3d Session  
41st Congress



The paper is written in pencil and reads:

Pocketed  
March 3d, 1871

- S. 799—An Act for the relief of Anna M. Howard—  
H. R. 2334—An Act granting a pension to Adam Correll—  
S. 762. An Act for the relief of Joseph Ormiston—  
S. 943—An Act for the relief of George Wright  
S. 1213—An Act for the relief of Mary M. Clark, widow of Leonard Clark, deceased—  
S. 995—An Act for the relief of purchasers of lands sold for direct taxes in the insurrectionary States—  
S. 109—An Act in relation to the Selma, Rome & Dalton Railroad Company, Alabama.  
H. R. 2591—An Act relating to telegraphic communication between the United States & foreign countries—  
S. R. 295. A Resolution relating to rights of actual settlers upon certain lands—  
H. R. 1831—An Act to confirm the title to the Rancho del Rio Grande, in New Mexico, to the heirs & legal representatives of the original grantees thereof—

With the paper is this letter:

EXECUTIVE MANSION  
Washington April 12, 1877.

MY DEAR Mr. BROWN:

In making some changes in this office the accompanying bills—marked "Pocketed March 3d 1871"—came to light.

I forward them for such disposition as you think best.

Very truly

O. L. PRUDEN  
Asst. Secty

Mr. S. A. BROWN  
Chief Clerk  
Dept. of State

Then follow all the bills in the above list except "H. R. 2591, An act relating to telegraph communication between the United States and foreign countries," the position of which is stated above.

The 42d Congress, second session, which adjourned on June 10, 1872, the legislative day of June 8 (Cong. Globe, vol. 104, pp. 4461, 4504) passed a bill "to reimburse John E. Woodward for certain moneys paid by him." It is stamped "Department of State Received Jun. 11, 1872." Attached to it is a slip of paper reading:

Bills H. R. 1424) Presented to the President June 10, 1872, which he de-  
H. R. 2622) clined to approve.  
Woodward Recd. at Dept. of State June 11, 1872.  
De Long

At the same Congress and same session was a bill for the relief of James De Long. It is stamped:

Department of State Received Jun. 11, 1872. Attached to it is a slip reading:

H. R. 1424  
H. R. 2622

Presented to the President June 10th, 1872, and which he declined to approve.

The 42d Congress, third session, which ended on March 4, 1873, the legislative day of March 3 (Cong. Globe, vol. 109, pp. 2138, 2211) passed a bill for the relief of W. W. Elliott. In pencil are "S. 1480. Pocket." In ink appears "W. W." It is stamped

Department of State  
Received Mar. 12, 1873.



Under this stamp is written in ink "at 2.50 P. M." On the left margin in red penciling is the word "War." At the bottom is written in pencil:

Pocketed 3857

1480

See War

There are fifteen other unsigned bills of the same session in this volume at the State Department and each of them bears the same stamp of the State Department as on the bill for the relief of W. W. Elliott and the same addition in ink: "at 2.50 P. M."

The next bill of the same session is for the relief of Samuel S. Potter. On it is penciled:

H. R. 2803 Pocket

Another bill of that session is for the relief of Edward Berry, John McFall and William H. Judd. In ink are the letters "W. W." In pencil on the bill are the notations "S. 1109" and

This bill should *not* be signed

G. S. B.

Another bill of that session is for the relief of J. George Harris. On the top margin is written in pencil:

H. R. 3857. C. W. B. Pocket.

The word "War" was also on the margin.

There is a bill for the relief of David Braden, marked "S. 166."

There is a bill for the relief of Mrs. Louisa Eldis. It is marked:

H. R. 3878. C. W. B. War

On the back in blue pencil is written faintly the word

Pocketed.

The same session also passed "An act amendatory of an act authorizing the construction of a bridge across the Arkansas River." In ink on the margin are

S. 245. J. K. K.

The next bill in the book is one for the relief of Elias C. Boudinot. It is marked in pencil "H. R. 1868" and in ink "C. W. B." On the back, in pencil, are the words:

Not to be signed H. R. 1868

JUDGE RICHARDSON

The same session passed "An act to confirm certain land-titles in the State of Missouri." The margin contains the marks

H. R. #3731 C. W. B.

On the back of the bill in red pencil is the notation:

H. R. 3731

Pocket.

Then follows "An act for the relief of George S. Custin." In pencil on the margin is the notation "H. R. 3369."

There is also this stamp:

War  
1896 3 1878  
Dept



At the bottom of the bill in pencil are the initials "W. I. F." And the bill contains a stamp which is indistinct in part but appears to be

Executive Mansion, Feb. 21, 1873.

The same session passed a bill granting a pension to Asenath Stephenson. It is marked:

H. R. 3484. C. W. B.

Next follows "An Act to amend an act entitled 'An act to remove the charge of desertion from certain soldiers.'" In pencil is "S. 1168." Then this stamp:

War  
1911 3 1873  
Dep't

Then in ink are the initials "J. K. K." There is also the stamp:  
Recd. Executive Mansion, Washington, D. C., Feb. 22, 1873.

Congress also passed a bill to authorize the Cattaraugus and Allegeny Indians in New York to lease lands. On the margin are the markings:

H. R. 2264. C. W. B.

On the back in pencil are the following:

H. R. 2264

Not to be signed

INT.

At the same session was a bill for the relief of Cowan and Dickinson, of Knoxville, Tennessee. It is marked:

War  
S. 96. W. W. 1911 1 1873  
Dep't

There is a stamp too faint to be read, with the number 413 written in a blank. At the bottom is written:

1950 G. M. G. O. 1873

At the same session was passed an act to establish an assay office at Helena, in the Territory of Montana. It is marked:

S. 809 W. W.

On the side is the word "Treas." On the back is penciled:

Not to be signed

G. S. B.

The last of such unsigned bills of the 42d Congress, third session, which are bound in this volume is one for the relief of the estate of Abel Gilbert and William Gerrish. A penciled slip says:

3rd Sess. 42nd Congress  
No date on the Law.

The blanks on the enrolled bill for the number and session of the Congress and the date on which the session began are not filled in. Written and stamped on the bill are the following notations:

War  
H. R. 2902 C. W. B. 2210 2 1873  
Dep't



The 43d Congress, first session, adjourned on June 23, 1874. (Cong. Rec., vol. 2, pt. 6, pp. 5430, 5447) On June 25 the President's secretary sent to the Secretary of State the following letter:

EXECUTIVE MANSION,  
Washington, D. C., June 25th, 1874.

MR. SECRETARY: The President directs me to forward the two accompanying bills which were "pocketed" June 23d, 1874.

H. R. 921—"An Act to prevent the useless slaughter of Buffaloes within the Territories of the United States."

and

H. R. 1313—"An Act for the relief of Alexander Burtch."

I am Sir

Your Obedt. Svt.

O. E. BABCOCK, Secretary.

To the SECRETARY OF STATE.

The bill relating to the buffaloes is stamped

Rec'd. Executive Mansion Washington D. C. Jun 23 1874  
Department of State received Jun 25 1874

The bill relating to Alexander Burtch is stamped:

Rec'd. Executive Mansion Washington D. C. Jun 17 1874  
Department of State received Jun 25 1874

The 43d Congress, second session, which adjourned on March 4, 1875, the legislative day of March 3 (Cong. Rec., vol. 3, pt. 3, pp. 2210, 2276) passed a bill to provide for the selection of grand and petit jurors in the District of Columbia. The bill is marked:

Rec'd. Executive Mansion Washington D. C. Mar 1 1875  
Department of State received Mar 10 1875

On the back in pencil is written:

Pocket 3/2

J. G. B.

James G. Blaine was Speaker of the House of Representatives.

Then follows a joint resolution of the same session "in relation to civil service examinations." It is stamped:

Rec'd. Executive Mansion Washington D. C. Mar 1 1875  
Department of State received Mar 10 1875

In pencil is written:

Recd Mch 1st 75

Pocket

On the back, near margin, is written "Pocket."

Another bill of that session, one approving "an act of the legislative assembly of Colorado Territory," is marked:

Department of State received Mar 10 1875

On the margin, in pencil, is the word "Pocket," followed by a signature which I cannot make out.

A bill for the relief of John W. March is marked:

Department of State received Mar 10 1875

A bill for the relief of Rosa Vertner Jeffreys is marked:

Department of State received Mar 10 1875

On the left margin in pencil is

O. K.



On the back in the inner margin is penciled "Pocket."

A bill for the relief of John Montgomery and Thomas E. Williams is marked:

Department of State received Mar 10 1875

On the back in the inner margin is penciled "Pocket."

The same session also passed a bill "to equalize the bounties of soldiers who served in the late war for the Union." It is marked on its face:

Department of State received Mar 10 1875

Pocket

Then appears this letter:

EXECUTIVE MANSION,  
Washington, March 11th 75.

DEAR SIR: The accompanying bills are those which failed to receive the approval of the President in the closing hours of the 2d Session of the 43d Congress.

I am, Sir,

Your obdt. svt.,

C. C. SNIFFEN,  
Asst. Secty.

Mr. S. A. BROWN,  
C. C. Dept. of State.

On this letter is the stamp:

Department of State received Mar 10 1875

Then follows a bill for the relief of Frances A. Robinson. It is stamped:

Department of State received Mar 10 1875

Across the bottom in pencil is the word "Pocket."

The same session passed a bill to provide "for writs of error in certain criminal causes, for hearings therein and in cases of habeas corpus." It is marked:

Department of State received Mar 10 1875

Rec'd. Executive Mansion Washington D. C. Mar 2 1875

The 44th Congress, first session, which adjourned on August 15, 1876 (Cong. Rec., vol. 4, pt. 6, pp. 5676, 5699) passed a bill to remove the political disabilities of Reuben Davis, of Mississippi. It is marked:

Recd. Aug 14

Department of State received Aug 17 1876

With the bill is a letter from the President's Secretary:

EXECUTIVE MANSION,  
Washington Aug. 17th, 1876.

Sir: The President directs that the accompanying bill—S. 990—be forwarded to your Department, the same having failed to receive his approval during the last hours of the session.

Very resptly. yrs.,

C. C. SNIFFEN,  
Secretary.

To the SECRETARY OF STATE  
Present

There is also a letter from James Redpath to Hon. U. S. Grant, Jr., recommending that the President veto the bill. And there is a slip of paper reading:

Bill (S. 990) to remove the political disabilities of Reuben Davis, of Mississippi, passed near the close of the 1st session of the 44th Congress but failing to receive the approval of the President did not become a law.



On the back of the bill in the left margin in pencil is the word "Pocket." And at the bottom of the back of the bill is the notation:

Pocket  
2 bills.

Then in this bound volume appears this letter:

EXECUTIVE MANSION,  
Washington, D. C., Mch 7th 1877

SIR: The President directs that the accompanying bills be forwarded to your department with the following information:

These bills were received by the President during the closing hours of the 2d Session, 44th Congress, and not having received his signature have failed to become laws.

The numbers and titles of the bills are annexed hereto.

I am, Sir,

Very resptly. yrs.,

C. C. SNIFFEN,  
Secretary

To the SECRETARY of STATE

Present.

At the upper right corner of this letter is the penciled notation:

Let this go as it is.

It is stamped:

Department of State received Mar 8 1877

Then follows a sheet of paper bearing this list:

S. 973. An act for the relief of Elizabeth Carson.

S. 1284. An act for the relief of William L. Hickam, of Missouri.

S. 974. An act for the relief of Francis Guilbeau, of San Antonio, Texas.

S. 407. An act to authorize the restoration of George A. Armes to the rank of Captain.

S. 780. An act for the relief of the Richmond Female Institute of Richmond, Virginia.

H. R. 2833. An act for the relief of Susan P. Vance.

The bills of the 44th Congress, second session, named above, then appear.

The one for the relief of Elizabeth Carson bears these marks: "S. 973." A signature which seems to be "S. F. S. Cunver." And on the left margin is:

3/3

War

Pocket

The bill for the relief of Susan P. Vance is marked:

H. R. 2833 1213 A. G. O. 1877

War

1810 1 1877 A. H. Hamilton

Dept

1834 Q. M. Gen's office 1877

Received Mar 2

Rec'd Executive Mansion Washington D. C. Mar 2 1877

3/2

Pocket

War

The bill to authorize the restoration of George A. Armes to the rank of captain is marked "S. 407" and apparently "S. F. S. Cunver." On the left margin is the word "Pocket."



The bill for the relief of William L. Hickam, of Missouri, is marked "S. 1284" and apparently "S. F. S. Cunver." On the left margin is:

3/3  
Int  
Pocket

The bill for the relief of Francis Guilbeau, of San Antonio, Texas, is marked "S. 974. James K. Kelly." On the left margin is:

3/3  
Treas  
Pocket

Then appears a printed copy of H. R. 4776, a bill to provide for the appointment of a short hand reporter for United States courts in California. With this is the following letter:

EXECUTIVE MANSION,  
Washington, D. C., Apl. 2 1877

MY DEAR MR. BROWN: I found that the act—H. R. 4476—was "amended in the Senate; House disagreed to amendment & asked a Conference. Both Houses agreed to conference report."

The above is all I have, except that the bill was not placed before the President for signature.

Very truly yrs.

O. L. PRUDEN

This is followed by a paper giving this list of acts:

List of the Acts of the Second Session of the Forty-fourth Congress which passed both Houses, but not having received in due time the President's signature failed to become laws.

|                            |             |
|----------------------------|-------------|
| Armes, George A.           | Senate #407 |
| Carson, Elizabeth.         | " 973       |
| Guilbeau, Francis.         | " 974       |
| Hickham, Wm. L.            | " 1284      |
| Richmond Female Institute. | " 780       |
| Vance, Susan P.            | " 2833      |

Then follows a bill for the relief of the Richmond Female Institute of Richmond, Virginia. It is marked:

S. 780 James K. Kelly  
3/3  
War  
Pocket

The last bill which appears in this bound volume is one passed by the 45th Congress in its third session, which adjourned on March 4, 1879, the legislative day of March 3. (Cong. Rec., vol. 8, pt. 3, pp. 2346, 2410.) It is for the relief of certain settlers on the public lands. It is marked:

S. 989 and apparently "S. F. S. Cunver."  
Rec'd Executive Mansion Washington, D. C., Mar 3 1879

With it is bound this letter:

EXECUTIVE MANSION,  
Washington Mch. 10, 1879

MY DEAR MR. BROWN: The accompanying Bill—S. 989—was received by the President March 3d 1879.

It was not approved.

Very resptly,

O. L. PRUDEN, Secty.

Mr. S. A. BROWN  
Chief Clerk  
Dept. of State.



This letter is stamped:

Department of State received Mar 10 1879

There is also a supplementary portfolio in the archives of the Department of State. It holds in unbound form a number of unsigned bills.

One of these is a bill of the 42d Congress, first session, which adjourned April 20, 1871. (Cong. Globe, vol. 99, pp. 832, 842) The bill is for the relief of the inhabitants of the town of Arcata in Humboldt County, California. It is marked:

S. 294. J. F. L.

There are no other marks on it.

Then comes this letter:

EXECUTIVE MANSION,

Washington,

July 9, 1884

SIR: The accompanying bills—S. 81—472—42—28 and H. R. 2487 and H. Res. No. 17, not having been in the hands of the President ten days prior to the adjournment of the First Session of the 48th Congress, and not having been approved by him, they have failed to become laws.

Very respectfully

O. L. PRUDEN,

Asst. Secty.

To the SECRETARY OF STATE.

The letter is stamped:

Department of State

Jul 9 1884

received

With this letter are the following bills of the 48th Congress, first session, which adjourned July 7, 1884 (Cong. Rec., vol. 15, pt. 6, pp. 6170, 6182):

A bill for the relief of Joseph F. Wilson. It is marked:

S. 42. H. H. R.

Executive Mansion Jun 30 1884 received

Department of State Jul 9 1884 received

A bill to confirm the status of John N. Quackenbush as a commander in the United States Navy. It is marked:

S. 28. W. J. S.

A bill for the relief of Benjamin F. Pope. It is marked:

S. 81. W. J. S.

Executive Mansion Jun 27 1884 received

Department of State Jul 9 1884 received

A bill for the relief of George P. Webster is marked:

S. 472 W. J. S.

War

Executive Mansion Jun 27 1884 received

Department of State Jul 9 1884 received

A bill for the relief of Brevet Major General William W. Averell, United States Army, is marked:

H. R. 2487 Neell

Executive Mansion Jul 5 1884 received

Department of State Jul 9 1884 received



A joint resolution authorizing the appointment and retirement of Samuel Kramer as a chaplain in the Navy of the United States is marked:

B. W. Perkins H. Res. No. 17.  
Executive Mansion Jul 5 1884 received  
Department of State Jul 9 1884 received

Then follows this letter:

EXECUTIVE MANSION,  
Washington, March 5, 1885.

SIR: I have the honor to inform you that the accompanying bills (H. R. 78 and H. Res. 170) were presented to the President March 3d instant, and not having received his approval they have failed to become laws.

Very respectfully

O. L. PRUDEN,  
Asst. Secty.

The Honorable FREDK T. FREYLINGHUYSEN,  
Secretary of State.

The joint resolution is in relation to a claim made by Doctor John B. Read against the United States. It is marked:

Department of State Mar 6 1885 received  
B. W. P. H. Res. No. 170

It purports to have been made at the 48th Congress, first session; but this is apparently a mistake.

The bill referred to in the above letter is one of the 48th Congress, which adjourned on March 4, 1885, the legislative day of March 3. (Cong. Rec., vol. 16, pt. 3, pp. 2504, 2573) It is one to provide for the retirement of Colonel Henry J. Hunt as major general of the United States Army. It is marked:

B. W. P. H. R. 78  
Department of State Mar 6 1885 received

These bills are followed by a letter transmitting a number of unsigned bills and resolutions of the 49th Congress, first session, which adjourned August 5, 1886. (Cong. Rec., vol. 17, pt. 8, pp. 8023, 8040.)

EXECUTIVE MANSION,  
Washington, Aug. 17, 1886

DEAR SIR: The President directs me to transmit to you the accompanying bills and joint resolutions which failed to become laws at the close of the late session of Congress—being unsigned, and not having been presented to him ten days prior to adjournment—

I may add that the printed copy of memo. (without signature) is by the President, and is attached to each bill and resolution by his direction.

Very respectfully,

O. L. PRUDEN,  
Asst. Secty.

The Honorable THOS F. BAYARD  
Secretary of State

(over)

With the letter is this memorandum:

Numbers of bills &c.

|        |      |    |     |
|--------|------|----|-----|
| H. R.  | 5872 | S. | 972 |
| " "    | 658  | "  | 224 |
| " "    | 822  | "  | 201 |
| " "    | 2060 | "  | 289 |
| H. Res | 126  |    |     |
| " "    | 89   |    |     |



The letter is stamped:

Department of State Aug 18 1886 received

The bill for the relief of Francis W. Holdeman is marked on its face:

War  
3507 1 1886 1  
Dep't. 3771 a. g. o. 1886  
Neell H. R. 658  
War Executive Mansion Jul 28 1886 received

On its back are these marks:

7865 Adj't General's  
a Office (E. B. Rec'd) 1886  
Jul. 30  
(E. B.)

Attached to the bill is the following printed memorandum, stamped:

Department of State Aug 18 1886 received

An act for the relief of Francis W. Holdeman

[Received July 28, 1886]

This bill appropriates two hundred dollars to the party named therein "as compensation for services performed and money expended for the benefit of the United States Army."

It appears from a report of the House Committee on War Claims that in the fall of 1863 Holdeman, a lad twelve years of age, purchased a uniform and armed himself, and attached himself to various Ohio regiments, and, as it is said, performed various duties connected with Army service until the end of the year 1864, and for this it is proposed to give him two hundred dollars.

Of course he never enlisted and never was regularly attached to any regiment. What kinds of arms this boy twelve years of age armed himself with is not stated and it is quite evident that his military service could not have amounted to much more than the indulgence of a boyish freak and his being made a pet of the soldiers with whom he was associated.

There is a pleasant sentiment connected with this display of patriotism and childish military ardor, and it is not a matter of surprise that he should, as stated by the committee, have "received honorable mention by name in the history of his regiment;" but when it is proposed twenty-two years after his one year's experience with troops, to pay him a sum nearly if not quite equal to the pay of a soldier who fought and suffered all the dangers and privations of a soldier's life, I am constrained to dissent.

The bill for the relief of William H. Wheeler is marked on its face:

War Claims Qr. Mr. General's Office 1886  
9121 Received Aug 4

War  
3594 1 1886 Fisher H. R. No. 822  
a Dep't.  
Executive Mansion Aug 3 1886 received

Attached to it, stamped "Department of State Aug 18 1886 received," is this printed memorandum:

An act for the relief of William H. Wheeler.

[Received August 3, 1886.]

This bill directs the payment of the sum of six hundred and thirty-three dollars and fifty cents to William H. Wheeler for quartermaster's stores furnished the Army in the year 1862.

From the data furnished me by the Quartermaster-General, I am quite certain that this claim has been once paid. The circumstances presented to prove this are so strong that they should be explained before the relief provided by this bill is afforded the claimant.

The bill to grant a pension to Margaret D. Marchand is marked:

Parkins H. R. No. 2060



Attached to it, stamped "Department of State Aug 18 1886 received," is this printed memorandum:

An act granting a pension to Margaret D. Marchand.

[Received August 5, 1886.]

MEMORANDUM.

A bill previously presented to me for approval, granting a pension of fifty dollars per month to the beneficiary named, was disapproved upon the ground that the death of her husband did not appear go be in any way related to any incident of his military service.

This bill differs from the prior one simply in granting a pension subject to the provisions and limitations of the pension laws instead of fixing the rate of pension at a specified sum.

I am still unable to see how the objection to the first bill has been obviated.

The bill for the relief of R. D. Beckley and Lem Howard is marked "H. R. No. 5872. Executive Mansion Jul 28. 1886 received." Attached to it, stamped "Department of State Aug 18 1886 received," is this printed memorandum:

An act for the relief of R. D. Beckley and Lem Howard

[Received July 28, 1886.]

These two men were employed by the Doorkeeper of the Forty-eighth Congress as laborers at the rate of seven hundred and twenty dollars per annum.

They claim that in both sessions of that Congress they not only performed the duties appertaining to their positions as laborers, but also performed the full duties of messengers. Having received their pay as laborers, this bill proposes to appropriate for them the difference between their compensation as laborers and twelve hundred dollars, the pay allowed messengers.

Congress in appropriation bills covering the period in which these men claimed to have performed these dual duties provided for a certain specified number of messengers and a fixed number of laborers. They both accepted the latter position. If they actually performed the duties of both places, their ability to do so is evidence that the labor of either place was very light. In any case they owed their time and services to the Government, and while they were performing the duties of messengers they were not engaged in the harder tasks which might have been required of them as laborers. They ought not to complain if they have received the amount for which they agreed to work and which was allowed for as the wages of a place which they were glad enough to secure. If they really did the work of both places, I don't see why they should not be paid both compensations. This proposition of course would not be entertained for a moment.

I am of the opinion that claims for extra compensation such as these should be firmly discountenanced; and I am sure no injustice will be done by my declining to approve this bill.

The joint resolution for the distribution of the Official Register contains in the corner a penciled memorandum in writing very much like that of President Cleveland "Received at 4.05 P. M. August 5, 1886." There is also the notation "H. Res. No. 89" and the stamp "Executive Mansion Aug 5 1886 received." Attached to it, stamped "Department of State Aug 18 1886 received," is this printed memorandum:

Joint resolution providing for the distribution of the Official Register of the United States.

[Received August 5, 1886.]

MEMORANDUM.

This resolution reached me five minutes after the adjournment of the two Houses of Congress, and is the only enactment of the session which came to me too late for official action.



I do not understand this resolution, nor the purposes sought to be accomplished by its passage, and while in that frame of mind should have been constrained to withhold my approval from the same, even if it had reached me in time for consideration.

The joint resolution on the surplus in the Treasury bears these marks:

Neell H. Res. No. 126  
Executive Mansion Aug 5 1886 received

Attached to it, stamped "Department of State Aug 18, 1886" is this printed memorandum:

Joint resolution directing payment of the surplus in the Treasury on the public debt.

[Received August 5, 1886.]

MEMORANDUM

This resolution involves so much and is of such serious import that I do not deem it best to discuss it at this time. It is not approved because I believe it to be unnecessary and because I am by no means convinced that its mere passage and approval at this time may not endanger and embarrass the successful and useful operations of the Treasury Department and impair the confidence which the people should have in the management of the finances of the Government.

The bill for a public building in Annapolis is marked:

S. 201 T. W. P. Fisher  
Treasury Executive Mansion Aug 3 1886 received

Attached to it, stamped "Department of State Aug 18 1886 received" is this printed memorandum:

An act to provide for the erection of a public building in the city of Annapolis, Maryland.

[Received August 3, 1886.]

MEMORANDUM

The post-office at Annapolis is now accommodated in quarters for which the Government pays rent at the rate of five hundred dollars per annum, and the office occupied by the collector of customs is rented for seventy-five dollars per annum.

The Government has no other use for a public building at Annapolis than is above indicated, and the chief argument urged why a building should be constructed there is based upon the fact that this city is the capital of the State of Maryland, and should have a Government building because most if not all the other capitals of States have such edifices.

There seems to be so little necessity for the building proposed for the transaction of Government business, and if there is anything in the argument last referred to it seems so well answered by the maintenance of the Naval Academy at Annapolis, this bill is allowed to remain inoperative.

The bill for the relief of Charles F. Bowers is marked:

S. 224 Fisher  
Treasury Executive Mansion Aug 2 1886 received

Attached to it, stamped "Department of State Aug 18 1886 received," is this printed memorandum:

An act for the relief of Charles F. Bowers.

[Received August 2, 1886.]

It appears that Charles F. Bowers, while acting as regimental quartermaster in 1862, received of John Weeks, assistant quartermaster of volunteers, the sum of



two hundred and thirty dollars, for which he gave a receipt. On the settlement of his accounts he was unable to account for said sum for the reason, as he alleges, that certain of his papers were lost and destroyed. Thus, in the statement of his account he is represented as a debtor of the Government in that amount.

This bill directs that a credit be allowed to him of the said sum of two hundred and thirty dollars.

But since his account was adjusted as above stated, showing him in debt to the Government in the amount last stated, he has paid the sum of seventy-five dollars and has been allowed a credit of one hundred and twenty-five dollars for the value of a horse; so that whatever may be said of the merits of his claim, that he should not be charged with the sum of two hundred and thirty dollars, if he should now be credited with that sum the Government would owe him upon its books the sum of thirty dollars.

The bill is therefore not approved.

The bill for the relief of J. A. Henry and others is marked:

S. 289 T. B. P. Neell

Treasy Executive Mansion Aug 3 1886 received

Attached to it, stamped "Department of State Aug 18 1886 received," is this printed memorandum:

An act for the relief of J. A. Henry and others.

[Received August 3, 1886.]

MEMORANDUM.

This bill appropriates various sums to the parties named therein, being claims for rent of quarters occupied during the war by the Quartermaster Department of the Army.

Among the appropriations there proposed to be made is one of the sum of fifty-one dollars to L. F. Green. This account has been once paid, a special act directing such payment having been approved February 12, 1885. The fact of this payment and important information bearing upon the validity of some of the other claims mentioned in the bill could have been easily obtained by application to the Third Auditor.

The bill for the relief of Thomas P. Morgan, Jr., is marked:

S. 972 Fisher

War

3556 1 1886

Dep't.

War Executive Mansion Jul 31 1886 received

Engr. Dept.  
1012 IV 1886

Attached to it, stamped "Department of State Aug 18 1886 received," is this printed memorandum:

An act for the relief of Thomas P. Morgan, jr.

[Received July 31, 1886.]

MEMORANDUM.

Thomas P. Morgan, jr., in the year 1881 entered into a contract with the Government to do certain excavating in the harbor of Norfolk.

He performed considerable of the work, but though the time limited by the contract for the completion was extended by the Government, he failed to complete the work, which necessitated other arrangements, to the damage of the Government in quite a large sum. His contract was forfeited by the Government because the progress he made was so slow and unsatisfactory. It seems that a certain percentage of the money earned by him in the progress of the work was, under the terms of the contract, retained by the Government to insure its completion, and when work was terminated the sum thus retained amounted to \$4,898.04, which sum was justly forfeited to the Government.

The object of this bill is to waive this forfeiture and pay this sum to the derelict contractor.

Inasmuch as I am unable to see any equities in this case that should overcome the fact that the amount of loss to the Government through the contractor is



greater than the sum thus sought to be released to him, I am not willing to agree to his release from the consequences of his failure to perform his contract.

I do not find unsigned bills in the archives of the State Department bearing any date between August, 1886, and December, 1892. Three bills of a later period were sent to that Department. With those three exceptions, all such unsigned bills after August, 1886, were retained by the President and are now at the Executive Offices.

The 49th Congress, second session, adjourned March 4, 1887. President Cleveland retained unsigned seven Senate and forty House bills. These bills have on them no markings except such as were made by the enrolling and comparing clerks of Congress, notations showing to what Department each bill was referred, the stamp showing when the bill was received at the Executive Mansion and in some instances an X in blue pencil. I shall give the number of the bill and the date on which it was received at the Executive Mansion.

H. R. 2208—Feb. 22, 1887

H. R. 7819—Feb. 22

H. R. 9119—Feb. 22

S. 1326—Feb. 23

S. 1930—Feb. 23

H. R. 306—Feb. 26

H. R. 6188—Feb. 26

H. R. 7504—Feb. 26

H. R. 9377—Feb. 26

H. R. 5541—Mar. 1

H. R. 7479—Mar. 1

H. Res. 125—Mar. 2

H. R. 731—Mar. 2

H. R. 942—Mar. 2

H. R. 2889—Mar. 2

H. R. 3930—Mar. 2

H. R. 3931—Mar. 2

H. R. 4585—Mar. 2

H. R. 4678—Mar. 2

H. R. 4745—Mar. 2

H. R. 7221—Mar. 2

H. R. 7643—Mar. 2

H. R. 8067—Mar. 2

H. R. 8384—Mar. 2

H. R. 8437—Mar. 2

H. R. 8828—Mar. 2

H. R. 9170—Mar. 2

H. R. 9213—Mar. 2

H. R. 9301—Mar. 2

H. R. 10419—Mar. 2

H. R. 10421—Mar. 2

S. 130—Mar. 3

S. 175—Mar. 3

S. 929—Mar. 3

S. 1033—Mar. 3

S. 2725—Mar. 3

H. R. 38—Mar. 3

H. Res. 82—Mar. 3

H. Res. 222—Mar. 3

H. Res. 243—Mar. 3

H. R. 679—Mar. 3

H. R. 1753—Mar. 3

H. R. 3642—Mar. 3

H. R. 9860—Mar. 3

H. R. 9921—Mar. 3

H. R. 10040—Mar. 3

H. R. 10514—Mar. 3

The 50th Congress, first session, adjourned October 20, 1888. (Cong. Rec., vol. 19, pt. 10, pp. 9614, 9616) President Cleveland retained unsigned 13 Senate and 10 House bills. They are now at the Executive Offices. The following bills are stamped as received at the Executive Mansion on the dates given below:

S. 664—Oct. 10, 1888

S. 869—Oct. 9

S. 889—Oct. 10

S. 1614—Oct. 10

S. 1926—Oct. 10

S. 2567—Oct. 10

S. 3030—Oct. 10

S. 3083—Oct. 10

S. 3234—Oct. 9

S. 3241—Oct. 10

S. 3390—Oct. 9

S. 3559—Oct. 17

S. 3573—Oct. 9

H. R. 7547—Oct. 17

H. R. 1239—Oct. 17

H. R. 3300—Oct. 10

H. R. 7964—Oct. 19

H. R. 8074—Oct. 17

H. R. 8674—Oct. 17

H. R. 8855—Oct. 17

H. R. 9447—Oct. 12

H. R. 10183—Oct. 17

H. R. 11107—Oct. 17

The 50th Congress, second session, adjourned March 4, 1889. President Cleveland retained at the White House 12 Senate and 19 House bills. Committee reports are usually attached to the bills.



The President made no marks on bills or on committee reports except as noted. I give the number of the bill and the date stamped on the bill as the date on which it was received at the Executive Mansion.

S. 28—Feb. 23, 1889  
S. 1488—Feb. 27  
S. 1719—Mar. 2  
S. 2008—Feb. 26

S. 2310—Feb. 26  
S. 2344—Feb. 26  
S. 2683—Mar. 2  
2690—Feb. 26

S. 3132—date not marked. Attached to it is a printed report of a committee of the House of Representatives, and on it, written in pencil in the handwriting of President Cleveland but unsigned, are the words:

This bill is inconsistent with the recent law passed in regard to juries in District and it refers to Sections of the Rev. Stat. improperly and that have been repealed or modified by a law passed at this Session.

S. 3137—Mar. 2

S. 3198—Feb. 26. Attached to it is a printed copy of a report of a committee to the Senate, on which in President Cleveland's handwriting but unsigned are the words:

No cause of death shown.

S. 3309—Feb. 26

H. R. 483—Feb. 28. Attached to bill is a printed committee report on which is this penciled notation:

It seems this man is already on the rolls

G. C.

H. R. 717—Mar. 1, 1889

H. R. 2157—Mar. 2

H. R. 2896—Mar. 2

H. R. 3829—Feb. 28. On the attached committee report is written:

This legislation seems to be unnecessary.

G. C.

H. R. 4624—Mar. 2

H. R. 4856—Mar. 2

H. R. 5398—Mar. 2

H. R. 5758—Mar. 2

H. R. 6612—Feb. 27

H. R. 6763—Mar. 2

H. R. 6896—Feb. 28

H. R. 7186—Feb. 26

H. R. 7924—Feb. 27. On attached committee report is the President's penciled unsigned comment:

Was not the payment under the law of 1886 after adjustment by the Secretary of Interior a settlement in full? (See act p. 8.)

H. R. 8580—stamped date illegible.

H. R. 9159—Mar. 2

H. R. 10721—Mar. 1, 1889. On attached committee report, in writing which appears to be that of the President:

This is a duplicate of bill passed 1st Session 50th Congress.

H. R. 11627—Mar. 2

H. R. 12542—Mar. 2. President Cleveland wrote on sheets of paper now attached to the bill these comments:

These children ought to have a pension on the ground that their father really died from the effect of his wounds, and I would gladly sign a bill granting them a pension on that ground. I have signed many with not half the merits and



where the death was I am afraid much more remotely connected with army disability.

But I do not feel that I can sign a bill directing a pension be awarded only and expressly upon the theory that death was not chargeable to military service. This would not only make what is called a pension an admitted granting of gifts but would set a precedent of the most dangerous kind and fraught with deplorable results.

G. C.

MCH 2/89

The 51st Congress, first session, adjourned October 1, 1890. (Cong. Rec., vol. 21, pt. 11, pp. 10773, 10799) President Harrison retained unsigned 10 Senate bills and 1 House bill. They are now at the Executive Offices.

S. 117 was stamped as received at Executive Mansion Sept. 24, 1890. The President made no marks on the bill nor on any attached memoranda.

S. 125 was stamped as received Sept. 30. On a printed committee report which is attached to the bill is the penciled notation in handwriting which appears to be that of the President:

Let it die—for reasons given in Portland Co. case.

S. 145. No date stamped on bill. On bill itself in pencil are the words "Let it die." This appears to be in the President's handwriting.

S. 968. Stamped Sep. 30, 1890. Attached to it is a committee report and on it in pencil in writing which is apparently that of President Harrison are the words "Let this die for reasons given in Portland Co. veto."

S. 1187. Received September 29. On the committee report which is attached are written the words "Let it die—Veto in Portland case"

S. 1552. Received September 26. On a typewritten report which is attached is written in ink in President's handwriting "Let this bill die"

S. 2531. Received September 29. A typewritten report is attached. On it in pencil in writing which appears to be that of the President are the words "Claimant dead—Let the bill die"

S. 270. Received September 30. A committee report is attached. On it in pencil is written "Let Die—see Portland veto—"

S. 3414. Received September 26. There is a typewritten report attached. On it in pencil is written "Let this case die—"

S. 3721. There is no date stamped on the bill; and no writing on bill or on any attached paper.

H. R. 4367. Received September 29. This was approved and signed in ink by the President. Then approval and signature were erased.

The 51st Congress, second session, adjourned March 4, 1891. Three Senate and eight House bills are unsigned and are now at the Executive Offices.

S. 395—received Feb. 28, 1891.

S. 712—received Feb. 23.

S. 4749—received Feb. 23.

H. R. 174—received Mar. 3.

H. R. 2001—received Mar. 3. Attached to it is a typewritten report on which is written in pencil "Let it die"



H. R. 3308—received Mar. 2. On the bill itself is penciled "Die"

H. R. 4187—received Mar. 2.

H. R. 9313—undated. On bill itself is penciled "Die"

H. R. 6170—received Mar. 2. On bill itself is penciled "Let it die"

In the archives of the State Department is a bill passed by the 52d Congress, second session, and unsigned by President Harrison. The bill is for the relief of purchasers of timber and stone lands under the act of June 3, 1878. It is S. 2275 and is stamped "Executive Mansion Dec. 15 1892 received." On the face of the bill is the following memorandum, signed by the President:

This bill was presented to me on the 15th day of December 1892. Congress, pursuant to a concurrent resolution adopted on the 21st day of December 1892, adjourned from the 22d day of December 1892 to January 4, 1893. I have not approved the bill.

DECEMBER 30th 1892

BENJ HARRISON

The 52d Congress, second session, adjourned on March 4, 1893, the legislative day of March 3. (Cong. Rec., vol. 24, pt. 3, pp. 2551, 2618) H. R. 9956, a bill to incorporate the Washington, Burnt Mills and Sandy Spring Railway Co., was signed by the presiding officers of the two Houses of Congress on the last day of the session. (Cong. Rec., vol. 24, pt. 3, pp. 2550, 2618) President Harrison did not sign the bill. It is now at the Executive Offices.

The 53d Congress, second session, adjourned August 28, 1894. (Cong. Rec. vol. 26, pt. 8, pp. 8665, 8667) There are now at the Executive Offices the following unsigned bills of that session.

S. R. 99 is stamped as received at the Executive Mansion Aug. 24, 1894.

S. 2263 is stamped as received August 24. Attached to the bill is a typewritten recommendation on which President Cleveland made the following penciled unsigned memorandum:

I do not think this amendment is put in the best place and the renewed corporations should be in express terms made subject to all the provisions applicable to the original corporations. There should be a limit to the number of renewals to avoid perpetuity & it would be better to have the proposed renewal approved by the Chief Judge of the District or other Judicial officers rather than the Com'rs.

Aug. 25/94.

H. Res. 198—received Aug. 28.

H. R. 3005—received Aug. 20.

H. R. 7685—received Aug. 28. Attached to the bill is a typewritten memorandum on which President Cleveland wrote in pencil:

This bill was not presented to the President until after the adjournment of Congress.

H. R. 6122—Aug. 28. Attached to the bill is a typewritten memorandum on which the President wrote in pencil:

This bill was not presented to the President until after adjournment—at 3.55 P. M.

G. C.

The 53d Congress, third session, adjourned March 4, 1895. There are now at the Executive Offices, unsigned by President Cleveland, the following 18 Senate and 38 House bills:



S. 305—stamped received at the Executive Mansion Feb. 23, 1895. On an attached typewritten memorandum is penciled in the President's handwriting:

Soldier's application for pension under general disability laws was rejected on ground injury not result of service. Widow's claim now pending and awaiting proof. Entitled under law of 1890 but no proof of his death.

Senate bills 333, 707, 1009, 1066 have no dates of receipt stamped on them and no marks by President on bills or attached papers.

S. 1189 is stamped as received Mar. 2, 1895. S. 1252 is undated. So is S. 1483. On an attached committee report is penciled in President's handwriting, "Hold."

S. 1535 is stamped Mar. 1. On an attached letter from the Secretary of the Navy the President has penciled this unsigned memorandum:

I do not see why the records of the Navy should state that this doctor was honorably discharged for the evident purpose of giving him a pension to which he is not entitled. There seems to have been no excuse for his desertion and he says himself he would not have complained of the harshness of his punishment if he had not lost his fingers in 1866.

S. 1639 and S. 1692 are stamped as received Mar. 2. On a committee report attached to the latter the President penciled:

Not in the service and no satisfactory proof that his present condition has any relation to his employment in aid of military operations 30 years ago.

No dates of receipt are stamped on the following bills: S. 2362; S. 2721; H. R. 995; H. R. 1310; H. R. 4162; H. R. 4704; H. R. 6565; H. R. 6816; H. R. 6831; H. R. 7603; H. R. 7645; H. R. 8659; H. R. 8873.

S. 2243 is stamped as received Feb. 28; S. 2351, Mar. 1; S. 2275, S. 2364, S. 2799 and H. R. 684, Mar. 2. Attached to H. R. 684 is a committee report on which the President penciled:

This bill is not in the form recommended by the Senate Comm. I don't think there is much merit in it in any view.

H. R. 840 was received Mar. 2. On an attached report the President penciled:

He w'd be 2d Lieut. from Aug 29, 1863, to June 14, 1864.

H. R. 3150 and H. R. 4479 were stamped as received Feb. 27; H. R. 952, H. R. 1581, H. R. 1819, H. R. 2130, H. R. 3128, H. R. 3147, H. R. 3194, H. R. 4724 were stamped as received Mar. 2.

H. R. 4935—received Feb. 27. On attached typewritten memorandum the President penciled:

Pension was granted to widow Sept. 10, 1892.

It is now alleged that she married Aug 1 or Aug. 6 (See report) 1892.

There is no proof that her pension has been stopped. How could it have been granted to her after her marriage?

H. R. 5062—received Mar. 1. On attached report the President penciled:

1. No approval of route by Secretary of Interior.

2. Courts of Texas, Arkansas & Kansas given jurisdiction of controversies. (Courts in Indian Territory are soon to be organized.)

3. No consent of Indians to be obtained except as to allottees.

H. R. 5224, is stamped as received Feb. 23, 1895.

H. R. 7259 was received Feb. 27.



H. R. 5260, H. R. 8391—received Feb. 28.  
 H. R. 5062, H. R. 5580, H. R. 6956, H. R. 7177—received Mar. 1.  
 H. R. 5206, H. R. 6585, H. R. 6659, H. R. 6923, H. R. 6928,  
 H. R. 8097—received Mar. 2.

The 54th Congress, first session, adjourned June 11, 1896. (Cong. Rec., vol. 28, pt. 7, pp. 6447, 6461) There are now at the Executive Offices five Senate bills and ten House bills of that session which were not signed by President Cleveland.

S. 27 has no date of receipt stamped on it.

S. 807, S. 819 and S. 997 were stamped as received on June 2. On S. 997 there is fastened a committee report on which President Cleveland wrote in pencil:

In view of the positive testimony of the physician who saw the deceased just before his death this is a proper case under the law of 1890.

S. 1342 was received June 4. A committee report is attached. On that report the President penciled:

This legislation should await the result of pending application in the pension bureau.

H. Res. 201. On an attached slip the President penciled:

Certain indian lands have been sold under treaty and the proceeds were to go to the indians. Purchasers have delayed payment a long time and this provides for another part payment without regard to the wishes or wants of the indians. So far as homesteaders are concerned this provided for in the Indian Appropriations bill.

H. R. 6607, H. R. 6739, H. R. 7919, H. R. 7171—were stamped as received June 6.

H. R. 2708, H. R. 5280—were stamped as received June 8.

H. R. 4580 is undated. On a letter which is attached to it is penciled:

This bill makes more difficult the punishment of those who remove liquors under false brands for the purpose of defrauding the revenues while under the decision of Judge P—— at St. Louis the public cannot be protected any more effectively. So far as it affects the protection of purchasers & consumers it is unconstitutional.

H. R. 6221 is stamped Jun 4. On an attached report is penciled:

The beneficiary has no minor children to provide for and I see no reason why under the general laws she is not being justly treated.

H. R. 9275 is stamped Jun 6. On a printed copy of the bill which is attached to it President Cleveland wrote:

This bill as passed seems to validate the bonds which should not be validated and ignore those which it was intended to save.

Two bills passed at the 54th Congress, second session, were sent to the State Department unsigned by President Cleveland. On each of them is the following memorandum signed by the President:

This bill was presented to me on the 16th day of December 1896. Congress, pursuant to a concurrent resolution, adopted by both Houses of Congress, adjourned from the 22d day of December 1896 to January 5th 1897. I have not approved the bill.

DECEMBER 30, 1896.

GROVER CLEVELAND.

H. R. 2604 is "to increase the pension of Caroline A. Hough"; and H. R. 4354 is for the purpose of "granting a pension to Mrs. Mary Gould Carr." Each is stamped

Executive Mansion, received Dec 16 1896

Dept. of State Dec 31, 3.48 P. M. 1896 Chf. Clks. Office received.



At the end of the 54th Congress, second session, which adjourned March 4, 1897, three Senate and forty-two House bills were retained unsigned. They are now at the Executive Offices.

S. 824—stamped as received at the Executive Mansion Mar 3, 1897.

S. 3328—received Feb. 26, 1897. On an attached committee report is penciled the word "Pass." This is apparently in the handwriting of President Cleveland.

S. 2986—received Mar. 2. On an attached committee report are the penciled words:

This bill seems to be exactly what is not needed—Pass.

H. R. 1353, H. R. 2815, H. R. 4058, H. R. 4193, H. R. 4930, H. R. 6352, H. R. 9099, H. R. 9571, H. R. 9704, H. R. 10002, H. R. 10292 and H. R. 10331 have no date stamped on them.

H. R. 948—received Feb. 26. On an attached committee report is penciled the word "Pass."

H. R. 4424—received Feb. 25; H. R. 8706, H. R. 9961,—received Feb. 26; H. R. 5473, H. R. 9762—received Feb. 27. To each of these bills a letter is attached and on each letter there is penciled the word "Pass."

H. R. 3402, H. R. 3605, H. R. 5128, H. R. 5183, H. R. 6159, H. R. 6268, H. R. 6417, H. R. 6560, H. R. 6765, H. R. 6845, H. R. 6915, H. R. 7317, H. R. 7451, H. R. 8633, H. R. 10290 were each stamped as received Mar. 1. To each is attached a committee report and on each committee report is penciled the word "Pass."

H. Res. 261—received Mar. 2. On attached note is penciled "Pass."

H. R. 459, H. R. 2974, H. R. 6634, H. R. 9607 and H. R. 10178 were stamped March 3.

H. R. 2962—received Mar. 1. On attached committee report is penciled:

Death not connected with service

Pass

H. R. 4310—received Mar. 2. On attached report was penciled "Pass." On this bill had been written in ink:

Approved March 3, 1897

GROVER CLEVELAND

Then the approval and signature had been erased.

H. R. 7205—received Mar. 2. On attached committee report is penciled:

Pass—Beneficiary is already in receipt of pension of \$12 per month the same rate provided in this bill.

At the close of the 55th Congress, second session, which adjourned July 8, 1898 (Cong. Rec., vol. 31, pt. 7, pp. 6794, 6807), President McKinley retained unsigned S. 4847, "to provide an American register for the steamer *Titania*," which was stamped as received at the Executive Mansion July 7.

At the close of the 55th Congress, third session, which adjourned March 4, 1899, the President retained unsigned H. R. 8897, which was stamped as received Feb. 24, 1899, and H. R. 8578 and H. R. 9344, both of which are unstamped. To H. R. 8578 there is attached a letter on which there is the unsigned penciled word "pocket." To



H. R. 9344 there is attached a letter calling attention to the fact that the beneficiary has died. On this letter is penciled "Pocket" in the same handwriting as used on H. R. 8578.

At the close of the 56th Congress, first session, which adjourned June 7, 1900 (Cong. Rec., vol. 33, pt. 8, pp. 6875, 6892), President McKinley retained unsigned S. 2581, which is unstamped, and H. R. 8815, which is stamped as received June 5, 1900.

The 56th Congress, second session, adjourned March 4, 1901, the Senate legislative day of March 2 and the House legislative day of March 1. (Cong. Rec., vol. 34, pt. 4, pp. 3562, 3605) President McKinley retained unsigned four Senate and twenty-five House bills—all of which are now at the Executive Offices.

H. R. 427, H. R. 628, H. R. 636, H. R. 1959, H. R. 2294, H. R. 2472, H. R. 2619, H. R. 4204, H. R. 4853, H. R. 6591, H. R. 7603, H. R. 8270 and H. R. 11828 have no marks to show when they were received by the President.

H. R. 2617 is undated. On margin is penciled

Atty Genl says No.

H. R. 2464 and H. R. 7243 are stamped Feb. 20; H. R. 7602 is stamped Feb. 21; H. R. 2430 and H. R. 3825 are stamped Feb. 22; H. R. 5553 and H. R. 12860 were received Feb. 26; S. 1673 and S. 3554 were received Feb. 27; and S. 4956 was received March 3.

S. 76 was received Feb. 27, 1901. An attached memorandum says:

Mch 2

The President says he "wants this to fail—" (Pocket)

LOEFFLER

S. 76

University of Kansas.

H. R. 1136 was received Feb. 28. On margin is penciled:

Hold

H. R. 1860 was received Mar. 2. On margin is penciled:

Atty Genl Disapproves (at capitol)

H. R. 5559 was received Feb. 20. On margin is penciled:

Hold

H. R. 6146 was received Feb. 28. On margin is penciled:

Atty Gen P

The 57th Congress, second session, adjourned March 4, 1903, the Senate legislative day of March 3 and the House legislative day of February 26. (Cong. Rec., vol. 36, pt. 3, pp. 3070, 3078) President Roosevelt retained unsigned one Senate and five House bills. They are now at the Executive Offices.

S. 4641 is stamped:

White House Mar 3 1903 received

On the bill itself is written in ink, apparently in the President's handwriting:

Veto

H. R. 2199 was stamped as received Feb. 28, 1903.

H. R. 5907—received Feb. 28. On the bill itself is written in ink, apparently in the President's handwriting:

Don't sign



H. R. 15573—received Feb. 28. On bill is written in ink:

Veto

H. R. 16361—received Feb. 28. On bill is written in ink:

Not sign

H. R. 16445—received Feb. 28. No marks by the President, but attached to the bill is a report of the Commissioner of Pensions that the beneficiary had died.

The 58th Congress, third session, adjourned March 4, 1905, the Senate legislative day of March 4 and the House legislative day of March 2. (Cong. Rec., vol. 39, pt. 4, pp. 4028, 4041) President Roosevelt retained unsigned S. 5108, which is stamped:

White House received Mar 3, 1905

and H. R. 11204, which has no date of receipt stamped on it. Both bills are now at the Executive Offices.

The 59th Congress, first session, adjourned June 30, 1906. (Cong. Rec., vol. 40, pt. 10, pp. 9802, 9817) President Roosevelt retained unsigned six Senate and three House bills. They are now at the Executive Offices.

S. 1812, S. 2188, S. 4774, H. R. 12080 and H. R. 15673 are undated. S. 4197 is stamped:

The White House received Jun. 29, 1906

On the bill is penciled:

Pocket Veto.

S. 4965 is undated. Attached to the bill is a slip on which is written:

Pocket Veto.

S. 6355 was received June 29. Attached to it is a slip of paper on which is written:

Let it die.

H. R. 7226 was received June 28. Attached to it is a slip of paper on which is written:

Pocket Veto.

The 59th Congress, second session, adjourned March 4, 1907, the Senate and House legislative day of March 2. (Cong. Rec., vol. 41, pt. 5, pp. 4658, 4672) President Roosevelt retained unsigned two Senate and four House bills, which are now at the Executive Offices.

S. 4964 was received Mar. 2. On the bill itself, in ink, in the President's handwriting, is word "Veto."

S. 8540 was received Mar. 2. On the bill, in ink, in the President's handwriting, are the words "Pocket veto."

H. R. 3498 was received February 28, 1907.

H. R. 17415 is not stamped with date of receipt. On the bill itself, in ink, in the President's handwriting, are the words "Pocket veto."

H. R. 18854 was received February 22.

H. R. 19500 is undated.

The 60th Congress, second session, adjourned March 4, 1909, the Senate legislative day of March 3 and the House legislative day of February 23. (Cong. Rec., vol. 43, pt. 4, pp. 3825, 3837) President Roosevelt retained unsigned ten Senate and seven House bills. They



are now at the Executive Offices. Very few of them bear marks showing when they were received.

S. 2544—undated. On bill is written:

All wrong.

R

S. 3164—undated. On bill is written:

Bad

R

S. 3526, S. 6852, S. 8588 and S. 8839 are undated and on each is written:

Bad

S. 4426 and S. 8429 are undated and on each bill is a large question mark.

S. 7859—undated. On bill is written:

Bad?

R

S. 9402 and H. R. 1072 are undated. There are no marks on them. H. R. 4521 was stamped as received Mar. 2. On it some comment was written in ink and afterwards erased.

H. R. 6183—undated. On it is written:

All wrong

T. R.

H. R. 16696—undated. On it is written:

Know nothing about it.

H. R. 12499 was received Feb. 27, 1909. Attached to it is a slip of paper on which is written:

Pocket veto

W. L. Jr.

H. R. 13712 was received Feb. 22. Attached to it is a slip of paper on which is written:

Pocket veto

W. L. Jr.

H. R. 13928 was received March 2. Attached to it is a slip of paper on which is written in same handwriting as on slips of paper attached to H. R. 12499 and H. R. 13712:

Pocket veto.

The 61st Congress, second session, adjourned June 25, 1910. (Cong. Rec., vol. 45, pt. 8, pp. 9080, 9119) President Taft retained unsigned three House bills which are now at the Executive Offices. H. R. 3346, H. R. 18376 and H. R. 20644 are all stamped as received at the White House on June 24, 1910. To each of the last two bills a letter is attached and on each letter is written in pencil the word "Pocket."

The 61st Congress, third session, adjourned March 4, 1911, the Senate legislative day of March 4 and the House legislative day of March 2. (Cong. Rec., vol. 46, pt. 5, pp. 4323, 4339) President Taft retained unsigned two House bills, which are now at the Executive Offices.

H. R. 30273 was received March 3.



H. R. 32531 was received March 4. On the bill itself is penciled "Pocket."

The 62d Congress, second session, adjourned August 26, 1912. (Cong. Rec., vol. 48, pt. 11, pp. 11881, 11903) President Taft retained unsigned S. 2534, on which no date was stamped; and H. R. 21708, which was stamped as received on August 20, and to which is attached a memorandum reading:

Put on cabinet table tomorrow

W H T

The 62d Congress, third session, adjourned March 4, 1913, the Senate legislative day of March 3 and the House legislative day of March 1. (Cong. Rec., vol. 49, pt. 5, pp. 4842, 4856) President Taft retained unsigned two House bills.

H. R. 18213—received March 1, 1913. On a memorandum which is attached to the bill is the word "Pocket."

H. R. 23673—undated. Attached to the bill is the following type-written memorandum:

Memorandum to accompany H. R. 23673. An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea.

This bill is so important and conflicts in its operation with the treaty obligations of the United States and in its possible friction with the commerce of foreign countries that in the short time that I have had since it has been presented to me, I do not feel justified in assuming the responsibility of allowing it to become a law.

WM H TAFT

THE WHITE HOUSE

March 4, 1913.

At the end of the 64th Congress, first session, which adjourned September 8, 1916 (Cong. Rec., vol. 53, pt. 13, pp. 14154, 14173) President Wilson retained S. 708 without signing it. It is now at the Executive Offices. It bears a stamp-mark showing that it was received September 5, 1916.

At the end of the 64th Congress, second session, which adjourned March 4, 1917, the Senate legislative day, of March 2 and the House legislative day of March 3, (Cong. Rec., vol. 54, pt. 5, pp. 5020, 5033) President Wilson retained unsigned H. R. 20414. On the margin where the date of White House receipt is usually stamped are the figures 2/28/17. A slip of paper attached to the bill bears this penciled notation:

DEAR FORSTER.

I let this bill die. Please do what is usual with it.

W. W.

At the end of the 65th Congress, first session, which adjourned October 6, 1917 (Cong. Rec., vol. 55, pt. 8, pp. 7897, 7918) President Wilson retained unsigned H. J. Res. 116. No date of receipt is marked on it, and there are no marks on the resolution or on any attached memorandum.

At the end of the 66th Congress, second session, which adjourned June 5, 1920 (Cong. Rec., vol. 59, pt. 8, pp. 8644, 8679) President Wilson retained unsigned H. J. R. 373. It is stamped as received June 5. It is now at the Executive Offices. Memoranda at those offices say that the President also retained S. J. Res. 152 and H. R.



13329. They are not in the files at those offices and I am unable to find them. The memoranda are as follows:

| Number         | Received | Referred      | Returned | Action                |
|----------------|----------|---------------|----------|-----------------------|
| S. J. Res. 152 | 6/4/20   | State, 6/5/20 | 6/5/20   | POCKETED—June 5, 1920 |

S. J. Res. 152. Joint Resolution authorizing the appointment of a commission to confer with the Dominion or the Provincial Governments of Quebec, Ontario, and New Brunswick as to certain restrictive orders in council of the said Provinces relative to the exportation of wood pulp therefrom to the United States.

66th Congress, 2nd Session.

| Number      | Received | Referred    | Returned | Action                |
|-------------|----------|-------------|----------|-----------------------|
| H. R. 13329 | 6/4/20   | War, 6/4/20 | 6/5/20   | POCKETED—June 5, 1920 |

H. R. 13329, An Act to authorize the Secretary of War to transfer certain surplus material, machinery, and equipment to the Department of Agriculture, and for other purposes.

66th Congress, 2nd Session.

At the end of the 66th Congress, third session, which adjourned March 4, 1921, the Senate legislative day of March 2 and the House legislative day of March 3 (Cong. Rec., vol. 60, pt. 4, pp. 4532, 4546) President Wilson retained unsigned one Senate and four House bills. All of these bills are now at the Executive Offices. The only marks on the bills or on attached memoranda are as follows:

- S. 3695 and H. R. 13558 are unstamped.
- H. R. 1856 is stamped as received Feb. 26, 1921.
- H. R. 14461—received Feb. 28, 1921.
- H. R. 15943—received March 3, 1921.

At the end of the 67th Congress, second session, which adjourned September 22, 1922 (Cong. Rec., vol. 62, pt. 12, pp. 13142, 13183) President Harding retained unsigned H. R. 10672. It is stamped as received at the White House September 15, 1922. It is now at the Executive Offices.

At the end of the 68th Congress, second session, which adjourned March 4, 1925, the Senate legislative day of February 26 and the House legislative day of March 3, (Cong. Rec., vol. 66, pt. 5, pp. 5521, 5623) President Coolidge retained unsigned one Senate and three House bills. S. 4301 and H. R. 6442 are stamped as received March 2. H. R. 9160 is stamped February 21. H. R. 9343 is stamped February 24. These bills are now at the Executive Offices. There are no marks on any of them except the stamps. To H. R. 9343 is attached a slip which says "Veto Recommended."

At the end of the 69th Congress, first session, which adjourned July 3, 1926 (Cong. Rec., vol. 67, pt. 11, pp. 13009, 13100) President Coolidge retained unsigned two Senate and three House bills.

S. 3185 is marked as received Jun 34 1926.

S. 3999—received July 3. An attached slip says:

S. 3999  
No  
Recommend veto  
J. G. S.

H. R. 534—received July 3. An attached slip says:

Secretary of War recommends  
Veto

H. R. 6087—received June 30.



H. R. 5218. On margin is written in pencil:

Received at the Capitol  
July 3, 1926

All of the bills cited above are now at the Executive Offices.

At the end of the 69th Congress, second session, which adjourned March 4, 1927, the Senate legislative day of March 2 and the House legislative day of March 3, (Cong. Rec., vol. 68, pt. 5, pp. 5922, 5967) President Coolidge retained unsigned H. R. 2849, stamped as received March 3, and H. R. 13450, on which no date is stamped. There are no other marks on the bills. On a letter attached to H. R. 13450 is written:

Recommends disapproval.

The bills are now at the Executive Offices.

At the end of the 70th Congress, first session, which adjourned May 29, 1928, (Cong. Rec., vol. 69, pt. 10, pp. 10678, 10889) President Coolidge retained unsigned S. J. Res. 46, stamped as received May 26, H. J. Res. 238, on which no date is stamped, and H. R. 13383, stamped as received on May 26. The resolutions and bill are now at the Executive Offices. There are no marks on any of them except the stamps. Memoranda attached to each resolution and bill are marked in pencil:

Pocketed  
5/29/28

Respectfully submitted,

ROBERT P. REEDER.

○



302 U. S. 583 (1938)

## SUPREME COURT OF THE UNITED STATES.

No. 37.—OCTOBER TERM, 1937.

David A. Wright, Petitioner,  
*vs.*  
 The United States.

} On Writ of Certiorari to  
 the Court of Claims.

[January 17, 1938.]

Mr. Chief Justice HUGHES delivered the opinion of the Court.

The question is whether Senate Bill 713, 74th Congress, 1st session, which was passed by both Houses of Congress, became a law.

The bill was presented to the President of the United States on Friday, April 24, 1936. It had originated in the Senate. On Monday, May 4, 1936, the Senate took a recess until noon, Thursday, May 7, 1936. The House of Representatives remained in session. On May 5, 1936, the President returned the bill with a message addressed to the Senate setting forth his objections. The bill and message were delivered to the Secretary of the Senate. When the Senate reconvened on May 7, 1936, the Secretary advised the Senate of the return of the bill and the delivery of the President's message.<sup>1</sup> On the same day the President of the Senate laid before

<sup>1</sup> This communication was as follows:

"United States Senate,  
 Washington, May 7, 1936.

Hon. John N. Garner,  
 President of the Senate.

My dear Mr. President:

On Friday, April 24, 1936, the Committee on Enrolled Bills of the Senate presented to the President of the United States the enrolled bills (S. 713) granting jurisdiction of the Court of Claims to hear the case of David A. Wright, and (S. 929) for the relief of the Southern Products Co., which had passed both Houses of Congress and been signed by the Speaker of the House of Representatives and the President of the Senate.

The Senate, at 3:25 p. m. Monday, May 4, 1936, took a recess until 12 noon on Thursday, May 7, 1936.

During the interim the President of the United States sent by messenger two messages addressed to the Senate, each dated May 5, 1936, giving his reasons for not approving, respectively, Senate bill 713 and Senate bill 929. The Senate not being in session on the last day which the President had for the return of these bills under the provisions of the Constitution of the United States, in order to protect the interests of the Senate, so that it might have the opportunity to reconsider the bills, I accepted the messages, and I now present to you the President's veto messages, with the accompanying papers, for disposition by the Senate.

Sincerely yours,  
 EDWIN A. HALSETT,  
 Secretary of the Senate".



it the Secretary's letter and the message of the President of the United States. The message was read and with the bill was referred to the Senate Committee on Claims. No further action was taken.

The bill granted jurisdiction to the Court of Claims to rehear and adjudicate petitioner's claim against the United States. Accordingly on September 14, 1936, petitioner presented his petition to the Court of Claims. The Government opposed the petition upon the ground that the bill had never become a law and the Court of Claims denied the petition. In view of the importance of the question certiorari was granted. 301 U. S. 681.

The applicable provisions of the Constitution are found in Article I, Section 7, Paragraph 2, which provides:

"Every Bill which shall have passed the House of Representatives and the Senate, shall before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law".

1. The first question is whether "the Congress by their adjournment" prevented the return of the bill by the President within the period of ten days allowed for that purpose.

"The Congress" did not adjourn. The Senate alone was in recess. The Constitution creates and defines "the Congress". It consists "of a Senate and House of Representatives". Art. I, Sec. 1. The Senate is not "the Congress".

The context of the clause itself points the distinction. It speaks of the "House of Representatives" and of the "Senate", respectively. It speaks of the return of the bill, if the President does not approve it, "to that House in which it shall have originated"; of



reconsideration by "that House", and, in case two thirds of "that House" agree to pass the bill, of sending it together with the President's objections to the "other House" and, if approved by two thirds of "that House", the bill is to become a law. Provision is made for the taking of the votes of "both Houses" and for the recording of the names of those voting for and against the bill on the Journal "of each House respectively".

Then, after this precise use of terms and careful differentiation, the concluding clause describes not an adjournment of either House as a separate body, or an adjournment of the House in which the bill shall have originated, but the adjournment of "the Congress". It cannot be supposed that the framers of the Constitution did not use this expression with deliberation or failed to appreciate its plain significance. The reference to the Congress is manifestly to the entire legislative body consisting of both Houses. Nowhere in the Constitution are the words "the Congress" used to describe a single House.

To disregard such a deliberate choice of words and their natural meaning would be a departure from the first principle of constitutional interpretation. "In expounding the Constitution of the United States", said Chief Justice Taney in *Holmes v. Jennison*, 14 Pet. 540, 570, 571, "every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added. The many discussions which have taken place upon the construction of the Constitution, have proved the correctness of this proposition; and shown the high talent, the caution, and the foresight of the illustrious men who framed it. Every word appears to have been weighed with the utmost deliberation, and its force and effect to have been fully understood". See, also, *Martin v. Hunter's Lessee*, 1 Wheat. 304, 333, 334; *Ogden v. Saunders*, 12 Wheat. 213, 316; *Myers v. United States*, 272 U. S. 52, 151; *Williams v. United States*, 289 U. S. 553, 572, 573.

The argument addressed to the word "their" in the phrase "the Congress by their adjournment", is futile. The argument is that the use of the plural would not be unusual or inappropriate if the reference were to a single House. There is no question that both singular and plural forms are used in the Constitution with reference to each House separately. See Article I, Section 3, Paragraphs 2, 4, 5, 6; Article I, Section 5, Paragraphs 1, 2, 3. The plural is



used in the phrase "their Journal" in the paragraph under consideration. But the question is not whether the use of the plural is inappropriate in referring to a single House or its members. It is sufficient to say that there is certainly no inappropriateness in the use of the plural in relation to "the Congress" as composed of both Houses, and that use in no way changes the significance of that term.

The phrasing of the concluding clause is entirely free from ambiguity and there is no occasion for construction.

2. The argument to the contrary rests upon the premise that a bill cannot be returned by the President to the House in which it originated when that House during the session of Congress is in recess, and hence that the concluding clause of Paragraph 2 of Section 7 of Article I, referring to an adjournment by the Congress, should be rephrased by judicial construction in order to deal with that situation. We think that the premise is faulty and the rephrasing inadmissible.

Paragraph 4 of Section 5 of Article I provides:

"Neither House, during the Session of Congress shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting".

It will be observed that this provision is for a short recess by one House without the consent of the other "during the Session of Congress". Plainly the taking of such a recess is not an adjournment by the Congress. The "Session of Congress" continues.

Here, the recess of the Senate from May 4th to May 7th was during the session of Congress and under that provision. In returning the bill to the Senate by delivery to its Secretary during the recess there was no violation of any express requirement of the Constitution. The Constitution does not define what shall constitute a return of a bill or deny the use of appropriate agencies in effecting the return.

Nor was there any practical difficulty in making the return of the bill during the recess. The organization of the Senate continued and was intact. The Secretary of the Senate was functioning and was able to receive, and did receive, the bill. Under the constitutional provision the Senate was required to reconvene in not more than three days and thus would be able to act with reasonable promptitude upon the President's objections. There is no greater difficulty in returning a bill to one of the two Houses when



it is in recess during the session of Congress than in presenting a bill to the President by sending it to the White House in his temporary absence. Such a presentation is familiar practice. The bill is sent by a messenger and is received by the President. It is returned by a messenger, and why may it not be received by the accredited agent of the legislative body? To say that the President cannot return a bill when the House in which it originated is in recess during the session of Congress, and thus afford an opportunity for the passing of the bill over the President's objections, is to ignore the plainest practical considerations and by implying a requirement of an artificial formality to erect a barrier to the exercise of a constitutional right.

These practical considerations were well put by Mr. Hatton W. Sumners in his argument as *amicus curiae* on behalf of the Committee on the Judiciary of the House of Representatives in the *Pocket Veto Case*, 279 U. S. 655. He said:

"There is no language in the provision governing this passing of bills between the President and Congress, or any recognized rule of construction which, while permitting the Congress in the first instance to send bills to the President by a messenger, as is done without question, and the President to receive such bills through an appropriate agent even when himself absent from his office; and the President, though he may be away from the Capital, at the time returning the bill by messenger to the Congress, though the Constitution declares 'he', the President, shall return it, which would prevent the House of origin from receiving these same bills through a proper agent if that House were engaged in other business or temporarily absent from their Chambers. It is against all reason and every recognized rule of construction, when the avoidance of unnecessary delay is so clearly manifest in the provision sought to be construed, that a construction should be superimposed which would make for delay regardless of every desire and of every effort of the President and of the Congress in the situation indicated".

And referring to the provision of the Constitution above quoted as to adjournments by either House for not more than three days during the session of Congress, he said:

"In such a situation what is to occur? Is the bill to become a law despite the objections of the President? The Congress has not adjourned, and yet the President cannot make return of the bill to the House of its origin in session because it is not in session. Is the bill to die with the Congress in existence, possibly the House of origin only having adjourned earlier than usual on the last day



permitted for the return of the bill? Is there no rational construction of the Constitution possible which will make effective all the safeguards with regard to legislation established in the Constitution, and yet make operative under every circumstance, the general plan set up by the Constitution?"

And, again, with respect to the agencies of the Houses of Congress, Mr. Sumners observed that "The Houses of Congress have officers and agents of great power and responsibility who act in their stead, and who are constantly in their places when the Houses are in session, and when they are not in session". He found "nothing in the Constitution which denies the right to the use of these agents in effecting the return of objected-to bills". He added that

"a rule of construction or of official action which would require in every instance the persons who constitute the Houses of Congress to be in formal session in order to receive bills from the President would also require the person who is President personally to return such bills.

"The right of constructive delivery is necessarily not only to facilitate legislative procedure, prevent delay, and to hold the President's powers within the limits imposed by the Constitution, but it is also necessary in order to hold the Congress within proper bounds by preventing bills to which the President may object from becoming law without reconsideration by the Congress.

"The adjournment of a House for not more than three days, without the consent of the other House is not an adjournment of Congress.

"If the Senate should be in executive session, on a matter of the highest public importance, refusing to be interrupted, on the last day of the period in which return may be made, that would not even be an adjournment of one House of the Congress; and yet return could not be made if constructive delivery is not permitted.

"It could not be held that Congress was adjourned when the Senate was in executive session performing its constitutional duty, and the other House in actual session. The sensible thing to do in such a case, would be for the messenger of the President, finding himself unable to make delivery to the Senate, to make the delivery to the Secretary of the Senate. There is nothing in the Constitution to prohibit that being done".

The absence of any practical obstacle to the return of a bill when a House is in temporary recess during the session of the Congress is illustrated by what was done in this instance. The Senate was in recess from May 4th to noon of May 7th. The President's time for consideration expired on May 6th. He delivered the bill with his objections to the Secretary of the Senate on May 5th. The



Secretary presented the bill with the President's objections to the President of the Senate on May 7th and on that day the bill and the objections were laid before the Senate and were referred to the appropriate committee. The fact that Mr. Sumners' contention in the *Pocket Veto Case* was unavailing with respect to the effect of an adjournment of the Congress at the close of its first regular session, in no way detracts from the pertinence and cogency of these observations as addressed to the situation which is now presented.

3. The chief, if not the sole, reliance for the argument that the bill could not be returned by the President during the Senate's recess is our decision in the *Pocket Veto Case*, *supra*. We do not regard that decision as applicable for two reasons: (1) the present question was not involved, and (2) the reasoning of the decision is inapposite to the circumstances of this case.

In the *Pocket Veto Case*, the Congress had adjourned. The question was whether the concluding clause of Paragraph 2 of Section 7 of Article I was limited to a *final* adjournment of the Congress or embraced an adjournment of the Congress at the close of the first regular session. The Court held that the clause was not so limited and applied to the latter. In interpreting the word "adjournment", and in referring to other provisions of the Constitution using the word "adjourn", the Court was still addressing itself to a case where there had been an adjournment by the Congress. The Court did not decide, and there was no occasion for ruling, that the clause applies where the Congress has not adjourned and a temporary recess has been taken by one House during the session of Congress. Any observations which could be regarded as having a bearing upon the question now before us would be taken out of their proper relation. The oft-repeated admonition of Chief Justice Marshall "that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used", and that if they go "beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision", has special force in this instance. *Cohens v. Virginia*, 6 Wheat. 264, 399.

In the *Pocket Veto Case* the Court expressed the view that the House to which the bill is to be returned "is the House in session", and that no return can be made to the House when it is not in



session as a collective body and its members are dispersed. But that expression should not be construed so narrowly as to demand that the President must select a precise moment when the House is within the walls of its Chambers and that a return is absolutely impossible during a recess however temporary. Such a conclusion, as we shall presently endeavor to show, would frustrate the fundamental purposes of the constitutional provision as to action upon bills. The Court in the *Pocket Veto Case* was impressed with the impropriety of a delivery of the bill by the President during a period of adjournment "to some individual officer or agent not authorized to make any legislative record of its delivery, who should hold it in his own hands for days, weeks or perhaps months,—not only leaving open possible questions as to the day on which it had been delivered to him, or whether it had in fact been delivered to him at all, but keeping the bill in the meantime in a state of suspended animation until the House resumes its sittings, with no certain knowledge on the part of the public as to whether it had or had not been seasonably delivered, and necessarily causing delay in its reconsideration which the Constitution evidently intended to avoid". "In short", said the Court, "it was plainly the object of the constitutional provision that there should be a timely return of the bill, which should not only be a matter of official record definitely shown on the journal of the House itself, giving public, certain and prompt knowledge as to the status of the bill, but should enable Congress to proceed immediately with its reconsideration; and that the return of the bill should be an actual and public return to the House itself, not a fictitious return by a delivery of the bill to some individual which could be given a retroactive effect at a later date when the time for the return to the House had expired". *Id.*, pp. 684, 685.

These statements show clearly the sort of dangers which the Court envisaged. However real these dangers may be when Congress has adjourned and the members of its Houses have dispersed at the end of a session—the situation with which the Court was dealing—they appear to be illusory when there is a mere temporary recess. Each House for its convenience, and during its session and the session of Congress, may take, and frequently does take, a brief recess limited, as we have seen, in the absence of the consent of the other House, to a period of three days. In such case there is



no withholding of the bill from appropriate legislative record for weeks or perhaps months, no keeping of the bill in a state of suspended animation with no certain knowledge on the part of the public whether it was seasonably delivered, no causing of any undue delay in its reconsideration. When there is nothing but such a temporary recess the organization of the House and its appropriate officers continue to function without interruption, the bill is properly safeguarded for a very limited time and is promptly reported and may be reconsidered immediately after the short recess is over. The prospect that in such a case the public may not be promptly and properly informed of the return of the bill with the President's objections, or that the bill will not be properly safeguarded or duly recorded upon the journal of the House, or that it will not be subject to reasonably prompt action by the House, is we think wholly chimerical. If we regard the manifest realities of the situation, we cannot fail to see that a brief recess by one House, such as is permitted by the Constitution without the consent of the other House, during the session of Congress, does not constitute such an interruption of the session of the House as to give rise to the dangers which, as the Court apprehended, might develop after the Congress has adjourned.

4. The constitutional provisions have two fundamental purposes; (1) that the President shall have suitable opportunity to consider the bills presented to him, and (2) that the Congress shall have suitable opportunity to consider his objections to bills and on such consideration to pass them over his veto provided there are the requisite votes. *Edwards v. United States*, 286 U. S. 482, 486. We should not adopt a construction which would frustrate either of these purposes.

As to the President's opportunity for consideration, we have held that he may still approve bills and that they will become laws, if he acts within the time allotted for that purpose, although Congress meanwhile has adjourned. *La Abra Silver Mining Co. v. United States*, 175 U. S. 423; *Edwards v. United States*, *supra*. It is to safeguard the President's opportunity that Paragraph 2 of Section 7 of Article I provides that bills which he does not approve shall not become laws if the adjournment of the Congress prevents their return. *Edwards v. United States*, *supra*.

Where the President does not approve a bill, the plan of the Constitution is to give to the Congress the opportunity to consider



his objections and to pass the bill despite his disapproval. It is for this purpose that the time limit for return is fixed. This opportunity is as important as that of the President. But if the return of a bill is impossible during a temporary recess of a House while Congress is in session, either the President may be obliged to cut short the time for his consideration so as to be sure to get his objections before the House while it is within the walls of its Chambers, or, if the President takes the allotted time and attempts to return the bill during the recess, his objections will either be unavailing or the Congress will be denied opportunity to pass upon them. If, as we think, the concluding words of Paragraph 2 of Section 7 are inapplicable then, as Congress has not adjourned, the bill, if not deemed to have been returned, will become a law despite the President's disapproval. Or, if that clause were deemed applicable and the return of the bill be considered to have been prevented by the recess, the bill would not become a law and Congress, although in session, would not be able to pass the bill over the President's objections.

The extremely technical character of the argument which would make impossible the return of a bill because a House has taken a temporary recess is manifest. Suppose the President, who is clearly entitled to his ten days for consideration, sends the bill to the House in which it originated with his objections on the afternoon of the tenth day, but that House has adjourned at noon on that day until the following morning. Then, on the argument now advanced as to the construction of the concluding clause of Paragraph 2 of Section 7, the bill would not become a law and the objections of the President would operate practically as an absolute veto although the Congress was in session and ready to consider his objections. Or if that result does not follow, in the view that the clause does not apply because Congress has not adjourned, then, if the bill is not regarded as returned, it becomes a law although the President has shown his disapproval within the ten days. These difficulties disappear if we dispense with wholly unnecessary technicalities as to the method of return and give effect to realities.

We agree with the Government that the precedents of executive action which have been cited are not persuasive. The question now raised has not been the subject of judicial decision and must be resolved not by past uncertainties, assumptions or arguments, but by the application of the controlling principles of constitutional interpretation.



*Wright vs. United States.*

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We are not impressed by the argument that while a recess of one House is limited to three days without the consent of the other House, cases may arise in which the other House consents to an adjournment and a long period of adjournment may result. We have no such case before us and we are not called upon to conjecture as to the nature of the action which might be taken by the Congress in such a case or what would be its effect.

We hold that where the Congress has not adjourned and the House in which the bill originated is in recess for not more than three days under the constitutional permission while Congress is in session, the bill does not become a law if the President has delivered the bill with his objections to the appropriate officer of the House within the prescribed ten days and the Congress does not pass the bill over his objections by the requisite votes. In this instance the bill was properly returned by the President, it was open to reconsideration in Congress, and it did not become a law.

The judgment is

*Affirmed.*

Mr. Justice CARDOZO took no part in the decision of this case.

A true copy.

Test:

*Clerk, Supreme Court, U. S.*



# SUPREME COURT OF THE UNITED STATES.

No. 37.—OCTOBER TERM, 1937.

David A. Wright, Petitioner,  
 vs.  
 The United States.

} On Writ of Certiorari to  
 the Court of Claims.

[January 17, 1938.]

Mr. Justice STONE.

I agree that the legislation now in question did not become a law, not, as the Court holds, because the bill vetoed by the President was returned to the Senate within the ten-day period or to any person authorized to receive the bill in its behalf, but because the Senate by its adjournment prevented the return and thus called into operation the provision that the bill "shall not be a Law" where adjournment prevents its return to the house in which it originated, within the ten days allowed to the President to sign or disapprove it.<sup>1</sup>

The reasons assigned by the Court for its conclusion seem to me to have no application to the case now before us, and leave in confusion and doubt the meaning and effect of the veto provisions of the Constitution, the certainty of whose application is of supreme importance.

Notwithstanding the cogently reasoned ruling of a unanimous court in *The Pocket Veto Case*, 279 U. S. 655, 682, that the

<sup>1</sup> Article I, § 7, Cl. 2, of the Constitution reads as follows:

"Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law."



"House" to which a bill is to be returned by the President means a house in session, we may assume for present purposes that each house of Congress, by appropriate action, may constitutionally confer upon its secretary, clerk, or some other officer, authority to receive a bill returned to it by the President. But it does not appear that any such authority has ever been conferred on the secretary of the Senate, or that he has hitherto assumed to act in that capacity. In *The Pocket Veto Case* this Court held that in 1926 it had not; and the Senate has since taken no step in that direction, perhaps because of our dictum in that case that such action would be unconstitutional.

The houses of Congress, being collective bodies, transacting their routine business by majority action, are capable of acting only when in session and by formal action recorded in their respective journals, or by recognition, through such action, of an established practice. Since the foundation of the government it has been the settled usage of both houses of Congress to receive messages from the President and bills disapproved and returned by him, when in session. It does not appear that in the past the secretary of the Senate or any other person has assumed to act for either house in receiving a bill returned by the President, and in one recorded instance the secretary of the Senate and its President declined so to act.<sup>2</sup> There has been no action and no usage of either house recognizing the existence of such authority in any one. *The Pocket Veto Case, supra*, 682 *et seq.*

The secretary of the Senate is appointed by that body to serve at its pleasure, and his duties are prescribed by the Senate rules. They give no hint that among these duties is the important function of acting as the Senate in the receipt of bills returned to it by the President during the ten-day period, or retaining them in custody pending its reassembly when the return is during an adjournment. Not only have both houses of Congress failed to designate any person to receive bills returned to them by the President, but

<sup>2</sup> On May 19, 1888, President Cleveland attempted to return a bill to the Senate during an adjournment, by tendering it to the secretary and to the President of the Senate. Both officers rejected the tender, "claiming that the return of said bill and the delivery of said message could only properly be made to the Senate when in actual session." President Cleveland's message, Senate Journal, 50th Cong., 1st Sess.



in one instance they explicitly refused to take such action when it was proposed.<sup>3</sup>

The conclusion seems inescapable that whatever constitutional power the Senate and House may possess to designate an officer to receive in their behalf bills returned by the President, they have not exercised it; the Constitution, which directs that bills shall be returned to the house in which they originate, has made no such designation, and neither the Constitution nor any statute, rule or usage has indicated any person who could so act, or prescribed for any one duties embracing such a function.

In such circumstances delivery of a bill to the secretary of the Senate during its adjournment would seem to be no more a compliance with the constitutional requirement than would its deposit by the President's messenger with the sergeant-at-arms, a door-keeper, or any other person not clothed with authority or charged with official duty in the premises, who might be induced to receive the bill and undertake to bring it to the attention of the Senate upon reassembly.<sup>4</sup>

Doubts as to the scope and effect of the rule now announced by the Court are multiplied by the intimation that a different rule may be applied in the case of adjournment of either house of Congress, with the consent of the other, for more than three days, and that the present decision can, in some way not disclosed, be distinguished from our ruling in *The Pocket Veto Case*, where the return of a bill to the Senate was held to have been prevented by the adjournment of the Senate, pursuant to concurrent resolution, from July 3rd to November 10th, the House having at the same time adjourned *sine die*. But such an intimation can rest on nothing more substantial than our unwillingness to face the obvious consequences of what is now decided. If it be said that an essen-

<sup>3</sup> In 1868 a bill reported by the Senate Judiciary Committee and passed by majority vote of the Senate, provided for a return of a bill to a house not sitting by delivery of it at the office of the secretary of the Senate or of the clerk of the House, as the case might be. Strong opposition to the bill developed in Senate debate, the bill was not reported out of the Judiciary Committee of the House, and failed of passage. *The Pocket Veto Case*, *supra*, 686 *et seq.*

<sup>4</sup> The fact that the Senate has taken pains to confer express authority in some instances, by formal resolution, Gilfry, *Precedents*, 226, 462, by rule, *Senate Manual*, 1936, 5, 8, 12, 36, or by standing order, *id.* at 128 *et seq.*, persuades that the important power to receive a bill would not be conferred *sub silentio*.



tial difference between the present case and *The Pocket Veto Case* lies in the fact that here the President delivered the bill with his veto message to the secretary of the Senate, and that there he retained it without signing, then the rule which is now announced will, for all practical purposes, expire with its birth. We can hardly assume that a President would invite further Congressional action by a return of a bill with his veto to a secretary or other officer of the house concerned, during its adjournment, if by retention of the bill without signing, he could make the veto absolute.

Again, if it be said that a distinction is to be drawn between adjournment of one house for three days and longer adjournments taken with the concurrence of the other house, no plausible reason can be advanced for saying that the secretary or any other officer of the Senate possesses authority to receive returned bills during a three-day adjournment which he does not possess during a four-day or longer adjournment during a session of Congress. In *The Pocket Veto Case* the Senate adjourned during a session of Congress for four months, the House consenting, but the ten days allowed for consideration of the bill by the President expired the day after adjournment. If the decision in that case is to stand with this it can only be because the secretary in the former lost on the day after adjournment an authority which he retained for a day after adjournment in the latter. If lost, it was either because the adjournment was for longer than three days and was thus one which could not be effected without a concurrent resolution, or because the other house had not remained in session. Such distinctions find as little support in Constitution, laws and Congressional practice, and in reason, as does the proposition that the secretary of the Senate is, by virtue of his appointment as such, clothed with authority to receive in its behalf bills returned by the President.

If in *The Pocket Veto Case* the secretary of the Senate, where the bill originated, had authority after adjournment during the session, to receive it in behalf of the Senate, the adjournment did not prevent the return by the President, and the bill, upon his failure to sign or return it, became law by virtue of the constitutional provision just as did some 173 other bills which, until this moment, have been regarded as dead letters, as they were declared



to be in *The Pocket Veto Case*, *supra*, 691.<sup>5</sup> If the Court was wrong on that point, its decision was wrong, and in the interests of a definite and precise constitutional procedure in a field where definiteness and precision are of paramount importance, it should now be frankly overruled.

If I am wrong in my conclusion that the President did not in this case return the bill to the Senate by returning it to its secretary during adjournment, then adjournment did not prevent its return, the President's veto became effective, and there is no occasion for the Court to indulge in an academic discussion of what may in other circumstances be the effect of an adjournment alone of the house in which a bill originates, which actually prevents such a return. The pronouncement now made that the President may be so deprived of the veto power ought to be avoided not only because, in my opinion, it is an erroneous interpretation of the Constitution which may have grave consequences, but because it is unnecessary to the decision. If the experience of one hundred and fifty years of constitutional interpretation has taught any lesson, it is the un wisdom of making solemn declarations as to the meaning of that instrument which are unnecessary to decision. They can serve no useful purpose and their only effect may be to embarrass the Court when decision becomes necessary. *O'Donoghue v. United States*, 289 U. S. 516, 550; *Humphrey's Executor v. United States*, 295 U. S. 602, 626-627. The declaration now made, for the first time,

<sup>5</sup> A memorandum prepared in the office of the Attorney General and transmitted by the President to Congress in 1927, H. Doc. No. 493, 70th Cong., 2d Sess., cites more than 400 bills and resolutions which were passed by Congress and submitted to the President less than ten days before final or interim adjournment of Congress, which were not signed by the President or returned with his disapproval. Of these, 119 were instances in which the adjournment was for a session of Congress as distinguished from its final adjournment. None of these bills or resolutions were placed upon the statute books or treated as having become a law. No attempt appears to have been made to enforce them in the courts, except the law involved in *The Pocket Veto Case*. It does not appear that in any of these instances either house of Congress has taken any official action indicating that in its judgment any of these bills became laws. See *The Pocket Veto Case*, *supra*, 690, 691. Examination of the House Calendars shows that in the period since that covered by the Attorney General's memorandum, 54 bills have been pocketed before the end of a Congress with no attempt to return them. This was done twice in the Seventy-first Congress, once in the Seventy-second Congress, twenty-eight times in the Seventy-fourth Congress, and twenty-three times in the First Session of the Seventy-fifth Congress. See also *Veto Messages: Record of Bills Vetoes and Action Taken Thereon by the Senate and House of Representatives, Fifty-first Congress to Seventy-fourth Congress, Inclusive, 1889-1936*, compiled under the direction of Edwin A. Halsey, Secretary of the Senate (1936).



that the Constitution has left an undefined area in which the veto power cannot be exercised, is the more unfortunate since, in the circumstances, it seems almost certain that the Court will be called upon to reexamine it.

If, on the other hand, I am right in my view that the President was here prevented from returning the bill, we are brought unavoidably to the decision of the question presented by the petition for certiorari and argued at the Bar as the controlling question, whether the President is deprived of the veto power whenever return of a bill within the prescribed ten days is prevented by the adjournment alone of the house in which the bill originated.

The framers, in seeking to establish and preserve the presidential veto, were aware that the originating house, unlike the President who is without incentive to avoid receipt of a bill which he is free to veto, might have the strongest motives to avoid the veto of a bill, if that were possible, by preventing its return or by challenging the fact of its return. They accordingly took care to provide for the return of a bill to the originating house by an act of public notoriety—its delivery to the house in session; and recognizing that return might be prevented by adjournment, they declared that in that case it should not become a law.

The possibility that a return may be prevented by the adjournment of a single house during a session of Congress is not removed by deciding that a secretary or some other officer of the originating house may receive a returned bill during the period of a three-day adjournment. Either house may and does on occasion adjourn for longer periods, with the consent of the other.\* An adjournment coincident with death or absence of the officer may prevent the return. Whatever authority in the premises the Senate or the House may give to its officer, it may withhold or withdraw. If the dictum now pronounced correctly states the fundamental law, the originating house may shorten the period for the exercise of the veto power or thwart it altogether by the simple expedient of adjournment after withdrawing the supposed authority of any officer to receive the vetoed bill.

This Court has emphasized, as does the language of the Constitution, the great importance of the veto power and the dominating purpose expressed in the constitutional provision that the power shall

\* Cannon, *Precedents*, Vol. 8, p. 816.



not be curtailed or the ten days, allowed for its exercise, shortened. *Edwards v. United States*, 286 U. S. 482, 486, 493-494; *The Pocket Veto Case*, *supra*, p. 678. The words make it certain that the only adjournment which can prevent return of a bill by the President is that of the house in which the bill originates and to which, if vetoed, it is to be returned. Continuance in session of the other house does not facilitate return. No more can its adjournment obstruct return. Adjournment by the originating house can alone have the consequence to be guarded against, prevention of return. Hence, it was adjournment of the originating house with which the framers were concerned. There is no reason of which we are aware, and none has been suggested, for supposing that in creating and protecting the veto power they regarded the adjournment *vel non* of the non-originating house as of any consequence, or that they had any thought of leaving the President stripped of the veto power, either by chance or by design, whenever the originating house adjourned without the other. The men who created the framework of our government are not lightly to be charged with such an omission. The charge now made finds its only support in a punctilio of grammar.

" . . . we must never forget, that it is a constitution we are expounding." *McCulloch v. Maryland*, 4 Wheat. 316, 407. Its provisions are not to be interpreted like those of a municipal code or of a penal statute, though even the latter is to be read so as not to defeat its obvious purpose, *United States v. Raynor*, Nos. 146, 147, decided January 3, 1938, or lead to absurd consequences. *United States v. Katz*, 271 U. S. 354, 362. In defining their scope something more is involved than consultation of the dictionary and the rules of English grammar. They are to be read as a vital part of an organic whole so that the high purpose which illumines every sentence and phrase of the instrument may be given effect in a consistent and harmonious framework of government.

The Court has hitherto consistently held that a literal reading of a provision of the Constitution which defeats a purpose evident when the instrument is read as a whole, is not to be favored. The phrase "due process" in the Fifth and Fourteenth Amendments has long since been expanded beyond its literal meaning of due procedure. See *Davidson v. New Orleans*, 96 U. S. 97; cf. *Brandeis, J.*, concurring in *Whitney v. California*, 274 U. S. 357,



373. The term "contract" in the contract clause is not confined literally to the contracts of the law dictionary. *Dartmouth College v. Woodward*, 4 Wheat. 518. The prohibition against their impairment has never been taken to be inexorable. *Home Building & Loan Ass'n v. Blaisdell*, 290 U. S. 398, and cases cited at 430 *et seq.* The injunction that no person "shall be compelled in any Criminal Case to be a witness against himself" is not literally applied. *Brown v. Walker*, 161 U. S. 591, 595. "From whatever source derived", as it is written in the Sixteenth Amendment, does not mean from whatever source derived. *Evans v. Gore*, 253 U. S. 245. See, also, *Robertson v. Baldwin*, 165 U. S. 275, 281, 282; *Gompers v. United States*, 233 U. S. 604, 610; *Bain Peanut Co. v. Pinson*, 282 U. S. 499, 501; *United States v. Lefkowitz*, 285 U. S. 452, 467.

But here, regardless of the constitutional purpose and the larger considerations which have usually guided our interpretation of the Constitution as an instrument of government, it is insisted that the phrase "unless the Congress by their Adjournment prevent its Return" cannot be taken to include the adjournment alone of the single house whose adjournment is in every case the only effective means of preventing a return. It is said that the word "Congress" used to describe the body whose adjournment occasions the pocket veto, followed as it is by the plural possessive pronoun "their" can refer only to the two houses comprised in "the Congress" and hence cannot refer to adjournment of a single house. This subordination of the framers' main objective to a meticulously grammatical interpretation of their words is unwarranted. It would hardly be suggested that the command, "Each House shall keep a Journal of its Proceedings, and from time to time publish the same excepting such Parts as may in their Judgment require Secrecy" (Art. I, § 5, cl. 3) calls for the concurrence of the judgment of all the members of a house, in order to ban publication of a journal "their Judgment" is obviously that of the controlling part of the membership—that part whose opinion, under applicable rules of congressional procedure, is decisive of the question. A similar analysis based on the purpose and context of the clause now before us demands recognition that the draftsmen were concerned with the adjournment only of that part of the Congress to which return was to be made and whose absence would thus prevent return of a bill to the President. In the light of these dominant facts it seems plain



that in using the words "their Adjournment" the framers referred to any action taken by the members of Congress of either house or both houses, which was effective to prevent return of a bill by the President to the originating house. The very force of the circumstances to which the words are applied gives emphasis to "Adjournment" as that which prevents return, and to "their" as referring to the action of those members of Congress which effects the adjournment. This usage parallels that in the clause requiring the publication of the journals of both houses "excepting such Parts as may in their Judgment require Secrecy." In both instances the significant action, adjournment or the exercise of judgment as the case may be, is that of those members whose action is effective to accomplish the contemplated result—there, prohibition of publication; here, prevention of return to the originating house. Thus read, no word is without appropriate meaning and the clause is consistent both with the obvious purpose and with the grammatical usage appearing elsewhere in the Constitution.

I cannot ignore that purpose and say that for no discernible reason other than our present-day notions of grammatical construction we are compelled to read the words as excluding from the operation of the clauses designed to protect the veto power, every case where the return of a bill is prevented by adjournment of a single house.

Mr. Justice BRANDEIS concurs in this opinion.



DEPARTMENT OF JUSTICE,  
Washington, D.C., December 30, 1970.

HON. EDWARD M. KENNEDY,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR KENNEDY: The Attorney General has asked me to reply to your letter to him of December 29 relating to the pocket veto of S. 3418, inasmuch as I had given the advice to the White House that under the circumstances a pocket veto by the President would be appropriate.

In your letter you state that the pocket veto "was intended to apply only in circumstances involving an adjournment *sine die* at the end of a Congress or at the end of a session of Congress, and was not intended to apply to brief adjournments of Congress during a session such as the recent Christmas period." You also state that "in *Wright v. United States*, the Supreme Court expressly suggested that the pocket veto provision might not be applicable in a case involving a brief adjournment within a session." Suggesting a "discrepancy between the theory and practice involving the pocket veto provision", you have requested a clarification of the Administration's position on this issue.

The position of this Administration on the "pocket veto" issue is, as nearly as I can determine, entirely consistent with that of preceding Administrations which have considered the question. The two decided Supreme Court cases, both of which are cited in your letter, have, with one exception, pretty well marked out the boundaries of the pocket veto power, and in my opinion the President's exercise of that power in declining to sign S. 3418 conforms both to these judicial precedents and to the consistent practice of other Presidents during the last quarter century.

The *Pocket Veto Case*, 279 U.S. 655 (1929), decided by a unanimous Court, seems to me to have expressly rejected your contention that the pocket veto provision was intended to apply only in circumstances involving an adjournment *sine die* at the end of a Congress or at the end of a session of Congress. Although the adjournment of Congress there involved was for a period of several months, it was neither an adjournment at the end of the session nor at the end of the Congress, since the Senate adjourned on July 3rd until November 10th, while the House adjourned on July 3rd *sine die*. Notwithstanding the difference in length of time of adjournment between that case and the situation respecting S. 3418, the Court in the *Pocket Veto Case* was required to interpret the following language from the constitutional provision authorizing the "pocket veto":

"... if any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law." Art. I, § 7, United States Constitution.

The bill which was pocket-vetoed by President Coolidge in the *Pocket Veto Case* had been presented to him on June 24, 1926, and the adjournment of Congress took place on July 3rd. The Court said:

"The specific question here presented is whether, within the meaning of the last sentence—which we have italicized—Congress by the adjournment on July 3rd prevented the President from returning the bill within ten days. Sundays excepted, after it had been presented to him. If the adjournment did not prevent him from returning the bill within the prescribed time, it became a law without his signature; but, if the adjournment prevented him from so doing, it did not become a law. This is unquestioned." 279 U.S. at 674.

The Court went on to say that the term "adjournment" as used in the constitutional provision authorizing pocket vetoes did not refer only to the final adjournment of Congress. It pointed out in support of this conclusion that the word "adjournment" is used both in section 5 of Article I in reference to the power of a smaller number than the majority of each House to "adjourn" from day to day, and in the fourth clause of the same article, in reference to the prohibition that neither House during the session of Congress shall, without the consent of the other, "adjourn" for more than three days.

The Court then stated:

"We think that under the constitutional provision that the determinative question in reference to an 'adjournment' is not whether it is a final adjournment of Congress or an interim adjournment, such as an adjournment of the



first session, but whether it is one that 'prevents' the President from returning the bill to the House in which it originated within the time allowed. It is clear, and as we understand, it is not questioned, that since the President may return a bill at any time within the allotted period, he is prevented from returning it, within the meaning of the constitutional provision, if by reason of the adjournment it is impossible for him to return it to the House in which it originated on the last day of that period." 279 U.S. at 680.

The Court then concluded that since Congress had adjourned prior to the expiration of the ten day period given President Coolidge by the Constitution in which to decide whether or not to veto the particular bill there involved, the pocket veto provision became operative. It seems clear to me that the Court's decision did not turn on the length of the adjournment, any more than on its finality, but that it turned instead on the fact that the adjournment commenced within the ten day period allotted the President by the Constitution to decide whether or not to veto the measure in question.<sup>1</sup>

The most recent formal expression on the pocket veto provision appears in the opinion of Attorney General Biddle of July 16, 1943. 40 Op. A.G. 274. The Attorney General, after reviewing the cases and the historical practice, advised President Roosevelt that an adjournment of Congress within a session was an occasion for a pocket veto.

In a memorandum on the same subject transmitted to the White House in November, 1968, by my predecessor in this office, the precedents then existing were summarized in this language:

"The experience of the past quarter of the century discloses the following practice. If the tenth day (Sundays excluded) after the presentation of the bill fell into a period in which neither House was in session, Presidents uniformly exercised their pocket veto power, even if the period of adjournment were short, or if Congress reconvened on the day following expiration of the constitutional period."

The following instances were relied upon in support of this statement:

(1) In the spring of 1944, the Congress adjourned from April 1st to April 12th. A private bill had been presented to the President on March 30, 1944, 90 Cong. Rec. 3380. The tenth day (Sundays excepted) following the day of presentation was April 11, 1944, *i.e.*, the day preceding the reconvening of the Congress. On that day, President Roosevelt signed a memorandum of disapproval. The bill was considered to have been pocket-vetoed. 90 Cong. Rec. 3408.

(2) In the spring of 1956, both Houses of Congress adjourned from March 29th to April 9th. A private bill had been presented to the President on March 22nd, and the tenth day following the day of presentation was therefore April 3, 1956. President Eisenhower withheld his approval from the bill, and it was considered to have been thereby pocket-vetoed as of April 3, 1956. 102 Cong. Rec. Index 732.

(3) In the summer of 1964, both Houses of Congress adjourned from August 21 to August 31 during the Democratic presidential nominating convention. A private bill had been presented to the President on August 14, 1964, and the tenth day following the day of presentation was August 26, 1964. President Johnson signed a memorandum of disapproval on August 24, 1964, which was communicated to the House of Representatives on September 2, 1964. 110 Cong. Rec. 21409.

Most recently, in the summer of 1968, President Johnson pocket-vetoed a bill relating to cotton importation during an adjournment of both Houses of Congress of approximately one month. 4 Weekly Comp. Pres. Docs. 1222.

Similar precedents may be found going back a good deal further than the quarter century period covered in the memorandum described above. Those which occurred prior to 1928 are collected in House Doc. No. 493, 70th Cong., 2d Session. They include pocket vetoes during Christmas adjournment of Congress by Presidents Andrew Johnson, Benjamin Harrison, and Grover Cleveland.

<sup>1</sup> The Court in that case also said (though the statement does not appear to have been necessary to its holding) that even though one or both Houses of Congress were to authorize an agent to receive messages from the President, "the delivery of the bill to such officer or agent . . . would not comply with the constitutional mandate." 279 U.S. at 684. While *dicta* is not entitled to the same weight as is a holding, the fact that the language is subscribed to by a unanimous Supreme Court, and the fact that it is found in one of the only two cases from that Court dealing with the question, make it the best available authority on the point.



In *Wright v. United States*, 302 U.S. 583 (1938), a majority of the Court held that where only one House had adjourned, and the adjournment of that House was for a period of only three days, "Congress" as that term is used in the constitutional provision authorizing pocket vetoes, had not adjourned, and therefore a pocket veto was not available to the President in that situation. The Court's majority declined to speculate on the result if one House had adjourned for a period of more than three days.<sup>2</sup>

The Court in *Wright* summarized its ruling in these words:

"We hold that where the Congress has not adjourned and the House in which the bill originated is in recess for not more than three days under the constitutional permission while Congress is in session, the bill does not become a law if the President has delivered the bill with his objections to the appropriate officer of that House within the prescribed ten days and the Congress does not pass the bill over his objections by the requisite votes." 302 U.S. at 598.

In the situation confronting President Nixon with respect to his disapproval of S. 3418, both Houses of Congress had adjourned for a period of longer than three days—the Senate from December 22nd to December 28th, and the House from December 22nd to December 29th—and by their adjournment had prevented the President from having the full ten day period allotted him under the Constitution to decide whether or not to veto in the ordinary manner the bill in question. In my opinion, therefore, on these facts the general rule of the *Pocket Veto Case*, rather than the exception to that general rule carved out in the *Wright* case, governed, and the President was not only authorized to exercise a pocket veto, but if he wished to disapprove it at all, he very probably had no choice as to the form of veto.<sup>3</sup>

You state in your letter that the President's action raises extremely serious questions that far transcend the bill itself and that go to the "heart of the distribution of power under the Constitution between the Congress and the Executive branch with respect to the enactment of federal legislation." While I believe that the President was on very firm legal ground in taking the action he did, there is no doubt that the use of the pocket veto power has been a bone of contention between the President and the Congress throughout the years. Indeed, the *Pocket Veto Case*, *supra*, apparently resulted from an effort on the part of the House of Representatives to repudiate the traditional interpretation of the pocket veto clause—by then more than a century old—and to limit the exercise of that form of veto to the final adjournment of Congress. This effort on the part of the House was, of course, unsuccessful. Again in 1940, Congress passed a bill, H.R. 3233, 76th Congress, which purported to repeal as of the date of their "enactment" all bills and joint resolutions which prior to the beginning of the 76th Congress had been pocket-vetoes, during an adjournment of the Congress other than a final adjournment. President Roosevelt vetoed the bill on the ground that it was inconsistent with the constitutional practices going back to President Adams, as well as with the Supreme Court's interpretation of the Constitution in the *Pocket Veto Case*. 86 Cong. Rec. 8024. The veto was sustained.

Thus, while the Administration's position with respect to presidential use of the pocket veto provision is largely at odds with the position taken in your letter, I believe it is consistent both with the decided cases and with quite well established historical practice.

Yours very truly,

WILLIAM H. REHNQUIST,  
Assistant Attorney General,  
Office of Legal Counsel.

<sup>2</sup> The Court majority in *Wright* rejected the argument that because the originating House was the one which had adjourned for three days, the President was prevented from returning the bill within the meaning of the constitutional language. While some of its reasoning, in so doing, if lifted out of context, could be said to undercut the reasoning in the *Pocket Veto Case*, the fact that the *Wright* Court reserved the question of the effect of an adjournment of even one House alone for more than three days would indicate that its language is to be confined to the fact situation there presented.

<sup>3</sup> There is undoubtedly a legal "gray area" with respect to the question reserved in the *Wright* case—whether a pocket veto is appropriate during an adjournment for more than three days by one House of Congress. Advice from this office in the past has been to the effect that in this situation, without any controlling judicial decision to guide him, the President ought to disapprove a bill by the normal veto message and return, rather than by the pocket veto.



THE WHITE HOUSE,  
Washington, D.C., February 18, 1971.

HON. SAM J. ERVIN, JR.

Chairman, Subcommittee on Separation of Powers, Committee on the Judiciary,  
U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: This is in response to your letter of February 1, 1971 to Mr. Tom Jones, concerning the White House procedure governing the presentation to the President of enrolled bills.

It has been the practice for many years for enrolled bills (i.e., bills which have passed both Houses of Congress) to be hand carried to the White House Records Office by an agent of the Senate Clerk of Enrolled Bills, or of the House Administration Committee, depending on the House in which the bill originated. Those delivering agents bring with themselves a receipt for the bill which is signed by a representative of the White House Records Office with a notation of the date and time of receipt.

Immediately upon delivery of the bill, the date and time of receipt at the White House are stamped on it and it is entered upon a record which lists all enrolled bills sent to the White House.

Delivery to the White House Records Office is considered presentation to the President, unless the President has advised the Congress that he has withdrawn the authority of the officials of the White House Records Office to receive enrolled bills, as has been done at times in connection with Presidential trips outside the country. In this regard, I would call to your attention the opinion and findings of fact in *Eber Bros. Wine & Liquor Corporation v. United States*, 167 Ct. Cls. 665 (1964), *certiorari denied*, 380 U.S. 950.

I trust that this information will be of assistance to you.

Sincerely,

WILLIAM E. TIMMONS,  
Assistant to the President.

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STATEMENT OF DR. WILLIAM LOTTERHOS, PRESIDENT, THE AMERICAN ACADEMY OF  
GENERAL PRACTICE, SUBMITTED TO THE SENATE SUBCOMMITTEE ON SEPARATION  
OF POWERS, COMMITTEE ON THE JUDICIARY, JANUARY 26, 1971

The American Academy of General Practice is very pleased that the Subcommittee on Separation of Powers is looking into the President's "pocket veto" of S. 3418. We believe the constitutional issue should be resolved promptly because of the dire need for family physicians.

We hope that Congress will use the authorization contained in S. 3418 as the basis for an appropriation of \$225 million to hospitals and medical schools to train family doctors. The President's action was ill-advised, in our judgment, whether or not it was a proper use of the pocket veto.

The Chairman of the Subcommittee, Senator Sam Ervin, and some of his colleagues have eloquently pointed out the serious nature of the constitutional question as well as the tragic problem arising from the need for more family doctors. As an organization concerned with health care for millions of Americans, we hope the Congress will move ahead quickly with a program to provide more family physicians.

Right now there is only one family doctor in America for every 3,000 persons. Many communities do not even have one family physician. In all, we are 50,000 doctors short in the United States, and the shortage is growing every day.

The need was clearly recognized when S. 3418 was before the Congress. Only one Senator and two Congressmen opposed its passage. This makes it all the more tragic that the questionable pocket veto may have held up the needed authorization. We hope the Subcommittee will be able to resolve this problem promptly.

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[From the Congressional Record—Senate, Vol. 116, No. 207, Dec. 22, 1970]

AUTHORITY FOR THE SECRETARY OF THE SENATE AND THE PRESIDENT PRO TEMPORE  
OR ACTING PRESIDENT PRO TEMPORE TO TAKE CERTAIN ACTION DURING THE  
ADJOURNMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that during the adjournment of the Senate following completion of business today, December 22,



until noon December 28, 1970, the Secretary of the Senate be authorized to receive messages from the President of the United States and the House of Representatives, and that the President pro tempore or Acting President pro tempore be authorized to sign duly enrolled bills.

The PRESIDING OFFICER. Without objection, it is so ordered.

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THE CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLE I.

Section 5

(Clause 1) Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

(Clause 4) Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 7

(Clause 2) Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

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[From the Congressional Record—Senate, vol. 117, No. 10, Feb. 3, 1971]

LATEST PRESIDENTIAL USE OF "POCKET VETO" VIOLATES THE SEPARATION OF POWERS DOCTRINE

Mr. ERVIN. Mr. President, as chairman of the Judiciary Subcommittee on Separation of Powers, I called hearings on January 26, 1971, in the form of a round-table discussion, to examine a serious breach of the doctrine of separation of powers—President Nixon's recent attempt to "pocket veto" two bills passed by Congress.

This latest conflict of executive-legislative powers and prerogatives took place on Christmas Day when the President failed to return the two bills and claimed that they had been "pocket vetoed" because Congress had "adjourned," thereby preventing their return.

The two bills involved were S. 3418, the Family Practice of Medicine Act which authorized the appropriation of \$225 million over the next 3 years to help train family-practice doctors, and H.R. 3471, a private bill granting jurisdiction to the Foreign Claims Settlement Commission to hear a claim of the heirs of Miloye Sokitch.

In the *Pocket Veto* case 279 U.S. 655 (1929), the Court ruled that a congressional recess of several months constituted an "adjournment" and was sufficient to support a "pocket veto." In that case, the House had adjourned *sine die*, and the Senate had recessed for several months until reconvening to sit as a court of impeachment. Prof. Arthur S. Miller of the George Washington University National Law Center and a consultant to the Subcommittee on Separation of Powers, said at the subcommittee's hearings that the Pocket Veto case "really is so different that it does not even bear much resemblance to what happened last month at the short recess for Christmas."



The other Supreme Court decision was in *Wright v. U.S.*, 302 U.S. 583 (1938). The facts in that case are that the Senate had adjourned for 3 days while the House was still in session. This case is not in point either because the facts differ greatly from the recent Christmas break when both Houses of Congress recessed for 4 days. In the *Wright* case, the Court simply declared that the Congress is not adjourned in the constitutional sense when one House is adjourned for 3 days or less.

Mr. President, I discussed both these cases and the specific facts of the Christmas "pocket veto" in my opening statement at the subcommittee's hearings. I ask unanimous consent to insert my opening remarks in the RECORD at this point.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

"POCKET VETO CONCEPT"

(Statement of Senator SAM J. ERVIN, Jr.)

"On December 14, 1970, the Congress sent to President Nixon the Family Practice of Medicine Act, which authorized \$225 million to be appropriated over the next three years for special grants to hospitals and medical schools to train general practice physicians. The bill passed the Senate by a vote of 64 to 1, and the House of Representatives by 364 to 2.

"In accordance with Senate Concurrent Resolution 87, the Senate—in which the Family Practice of Medicine Act originated—recessed from the close of business on Tuesday, December 22, 1970, until 12 o'clock noon on Monday, December 28, 1970. This was a recess of four days, the intervening Sunday, December 27, 1970, not counted. The Senate had given unanimous consent for the Secretary of the Senate to receive messages from the President during this Christmas recess.

"Since the Senate was not in session on December 25, 1970, President Nixon announced that the Family Practice of Medicine Act has been 'pocket vetoed.' This action involves construction of Article I, Section 7, Clause 2 of the Constitution, Which provides:

"Every Bill which shall have passed the House of Representatives and the Senate shall, before it becomes a Law, be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. . . . If any Bill shall not be returned by the President within ten days (Sunday excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its return, in which Case it shall not be a law."

"The last sentence of this provision is the determinative language in considering—as we shall this morning—whether or not President Nixon had the constitutional authority to 'pocket veto' the Family Practice of Medicine Act, and whether or not the Act became law without his signature.

"In the *Pocket Veto* case, 279 U.S. 655, the Supreme Court ruled in 1929 that an interim adjournment of a Congress at the end of a session prevented the return of a bill by the President to the Congress, and thus substantiated his pocket veto. In that case, a bill which originated in the Senate was presented shortly before the adjournment at the end of the first session of the 69th Congress. President Coolidge did not sign the bill nor return it with his objections within the 10-day constitutional limitation, and it was not published as a law. While the Supreme Court drew no distinction between the types of adjournments—whether at the end of a Congress, sine die, at the end of a session, or within a session—the question at hand was the adjournment at the end of a session. The Court did not dwell on the relationship of the 'pocket veto' concept to one short recess within a session.

"In *Wright v. United States*, 302, U.S. 583, the Supreme Court in 1938 did deal with an adjournment within a session, and it considerably limited its opinion and dictum of the *Pocket Veto* case. In the *Wright* case, a bill which had originated in the Senate was vetoed by the President and returned with his objections to the Senate during a 3-day adjournment of that body. The House of Representatives was in session at that time. The bill with the President's message was received by the Secretary of the Senate, and submitted by him to the Senate when it reconvened. The issue presented was whether the veto was



effective in view of the fact that the President's objection had not been received within the 10-day period by the originating House while in session. The Supreme Court held that an adjournment of the Congress, both House and Senate, prevents a return of the bill by the President within the period of 10 days allowed for that purpose; but that since the Senate alone had adjourned, the constitutional provision did not apply and the veto was effective.

"In the *Pocket Veto* case, the Court stated that the House to which the bill is to be returned 'is the House in session'. However, in the *Wright* case, the Court said that this phrase cannot be narrowly considered and is not applicable during a temporary recess as opposed to the end of a session. The Court further stated, in apposition to the *Pocket Veto* holding, that the officers and agents of the Houses of Congress have great power and responsibilities and that they can be utilized to received returned bills from the President.

"The *Wright* opinion gives attention to the need to consider the realities and practicalities of returning bills, rather than relying on wholly unnecessary technicalities. The criteria set out in that opinion are, first, that the President shall have suitable opportunity to consider bills presented to him, and, second, that the Congress shall have suitable opportunity to reconsider the bill and pass it over his veto, provided there are the requisite votes.

"In the *Pocket Veto* case, the Supreme Court also stated that the Constitution, in giving the President veto authority, imposes upon him not only the obligation to sign bills that he approves, but also to return bills that he disapproves, with his objections, in order that they be reconsidered by the Congress.

"In the situation before us today, the President had ample time to consider his objections to the Family Practice of Medicine Act, yet the congressional opportunity to override his veto was frustrated by the attempted 'pocket veto,' even though Congress had authorized the Secretary of the Senate to receive his messages.

"It also seems to me that if the President is allowed to 'pocket veto' legislation during short recesses of the Congress within a session, he will have established an *absolute* veto power during these brief periods. The Founding Fathers had no intention of granting the President such an absolute power. The veto they devised in 1787 is a qualified power, as opposed to the absolute power held by the King of England. Indeed, Alexander Hamilton observed in *The Federalist* No. 69:

"The King of England, on his part, has an absolute negative upon the acts of the two houses of Parliament. The disuse of that power for a considerable time past does not affect the reality of its existence and is to be ascribed wholly to the crown's having found the means of substituting influence to authority, or the art of gaining a majority in one or the other of the two houses, to the necessity of exerting a prerogative which could seldom be exerted without hazarding some degree of national agitation. The qualified negative of the President differs widely from this absolute negative of the British sovereign. . . ."

"In short, to my mind a 'pocket veto' during a short recess of Congress within a session is tantamount to an absolute veto, which is contrary to the intent of the Framers of the Constitution.

"I might also add that at the time the Constitution was written and for many years thereafter, it was the custom of the Congress to meet only during the first few months of each year and then go home. The 10-days provision obviously was written into the Constitution to cover the adjournments at the end of a session, since Congress would be absent from the Capital for many months. It was designed not only to prevent delay on the part of the President in considering legislation, but to give him ample time to study bills passed by the Congress. At the same time, it placed upon the Congress the burden not to adjourn and go home before he had sufficient time either to sign or to return bills it has passed.

"Today of course, we have a different situation entirely. The Founding Fathers did not envision brief holiday trips to the ski slopes of Colorado or the sunny shores of the Bahamas. Surely they did not foresee that legislative sessions would become a year-round operation, often straining to finish its business before the constitutional end of a Congress.

"Therefore, we have these general questions before us today: Was the Senate adjourned in a constitutional and traditional sense on December 25, 1970? Did the Family Practice of Medicine Act become law? If it did not, then what can Congress do to protect its right to reconsider bills which the President has allegedly vetoed?"



Mr. President, in order to shed some light on the questions outlined in my opening statement, the Subcommittee conducted a round-table discussion among several distinguished participants. I should like to briefly summarize the testimony adduced.

William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, spoke on behalf of the President's position and maintained that, under the *Pocket Veto* Case, Congress was adjourned in a constitutional sense on Christmas Day. Therefore, he argued, the President was prevented from returning the bills to the Senate and the House at the expiration of the 10-day period and had no choice but to exercise a "pocket veto." Thus, the two bills did not become law, according to the President's argument.

Mr. Rehnquist contended that the ruling in the *Pocket Veto* case defines "adjournment" as any recess of more than three days. A recess of three days or less, he said, is not considered an "adjournment" under the holding in the *Wright* case.

While the administration placed emphasis on the word "adjournment," Professor Miller contended that:

"The operative part [of Article I, Section 7, Clause 2], is not so much "Adjournment," it seems to me, as it is "prevent its Return." . . . If you take the word "adjournment" in its ordinary meaning, I would think most people would think that it means an adjournment at the end of a session of Congress, *sine die*.

"I would emphasize the notion that the real question is whether Congress, not being actually in session, prevented return of the bill. I take it that the bill . . . was not prevented [from being returned] because the Congress made specific provision for an officer of the Senate to receive the message from the White House. So I would consider it to be a fairly clear case that the Congress did not prevent the return of the Family Practice of Medicine Act."

In addition to the legal questions, participants in the Subcommittee's round-table discussion also explored the political and policy implications involved. Representative Fred B. Rooney of Pennsylvania, sponsor of the Family Practice of Medicine Act in the House, said that he had word on the day the bill came up for debate in the House that President Nixon was going to exercise his veto power if Congress enacted the measure. Therefore, Representative Rooney said, he called for a roll-call vote "because I wanted the President to get the consensus of the Congress, especially the Republican leadership, which voted unanimously to support the legislation."

Dr. Donald R. Matthews of the Brookings Institution, a political scientist, reflected on the political implications of President Nixon's "pocket veto" action in the context of his relations with the Congress:

"It seems to me that . . . it was rather unfortunate that the President pocket vetoed this particular bill without any regard at all to its merits or lack thereof. It showed a gross lack of respect for Congressional opinion. Here was a bill that was opposed by one Senator and two members of the House and was not a close thing. This was about as close to a consensus as you could get . . . [A]fter it passed so overwhelmingly in both Houses, to veto it in a way which does not give the Congress an opportunity to override the veto seems to me to show some lack of respect, or at least discourteousness. I think it was unfortunate.

"On the whole, the pocket veto probably ought to be used only when Congress finally adjourns . . . and goes home for some period of time; otherwise, this would not be a good way of orderly running the government."

Dr. Thomas E. Cronin of the University of North Carolina and the Brookings Institution, who served in the White House under President Johnson, also spoke of the political aspects of the pocket veto:

" . . . I am in favor of a strong presidency, but it seems to me this act by President Nixon was an act not of strength but of weakness, an action of shortness, taking advantage of a very pro-presidential court decision [and] a reasonable four or five day Christmas break. It seems to me this appears as a retaliatory, almost angry act by the President; his was seemingly an act of weakness, to go this route. It seems to me that an alternative to President Nixon would have been to return on Saturday a message . . . saying, 'I realize that this is a Christmas break, which is not at the end of a session, that clearly the intent of the Founding Fathers was not to use a pocket veto for this type of recess, and I would hope that you would take up this legislation and my repair veto on Monday', which was the day the Senate, I understand, was coming back."

Having discussed the legal and political aspects of President Nixon's action, the panel turned its attention briefly to methods by which the Congress can



protect its power against such "pocket veto" attempts in the future. Specifically, discussion was directed at what action can be taken in the case of S. 3418 and H.R. 3471. Of the Family Practice of Medicine Act, Senator Kennedy said:

"It is my own belief that the legislation that was passed so overwhelmingly . . . is law today, and I think really the basic question . . . is how we are going to get the appropriate resolution of this question.

"As I understand, there are some variety of ways in which this might be done. We in the Congress can appropriate money to implement the Family Practice bill as though it were a valid public law. It is possible, although, as I understand, it is extremely difficult to begin a mandamus action to compel the Administration officials to carry out a ministerial duty to enroll the Family Practice Law. . . . The third and perhaps the best opportunity would be in court testing, involving the private bill that was similarly pocket vetoed."

Mr. President, it is time for the Congress to move positively to resolve the question presented by the "pocket veto" of S. 3418 and H.R. 3471. Congress should either appropriate the funds to carry out the purposes of S. 3418 as though it has become positive public law, initiate a mandamus action to require enrollment of the Act by the Executive, or join in a court test of the private claims bill, H.R. 3471, as Senator Kennedy has suggested.

I agree with Senator Mathias, who said during the round-table discussion:

" . . . The question that is raised in its baldest form is whether the Executive Branch, through the vehicle of the pocket veto, has usurped the powers of the Legislative Branch or perhaps even more baldly, that the President is accused of using the pocket veto to circumvent the orderly legislative process of sending a vetoed bill back to Congress for final consideration . . . (T)he time is ripe at which we should attempt to make a determination of the proper limits and boundaries and settle this question."

Mr. President, almost daily, the Members who are honored to sit in this body express outrage over the usurpation of congressional authority by the Executive Branch of the Government. Much of this outrage is, no doubt, justified. In the instant controversy, there is no doubt in my mind that President Nixon violated the doctrine of separation of powers. The Founding Fathers, in order to fragmentize political power, allocated Federal legislative power to the Congress, Federal executive power to the President, and Federal judicial power to the Supreme Court and "such inferior courts as the Congress may from time to time ordain and establish."

In other words, the Founding Fathers, to make government by law secure, ordain that the Constitution and the laws enacted by Congress pursuant to it should be the supreme law of the land, and imposed upon all public officials the duty to obey them. This includes, of course, the President of the United States.

Mr. President, in the instant "Pocket Veto" controversy, I am dismayed to hear a representative of the Executive Branch of the Government declare that the use of the "pocket veto" surrounding the bills under discussion is justified because Presidents throughout the history of this nation have followed the same course of action. All mankind knows that citing instances of murder and rape does not make those crimes legal. Likewise, just because Congress over the years has acquiesced in unconstitutional "pocket vetoes", does not make President Nixon's recent action constitutional.

I think this controversy boils down to a very simple question: Will the Congress demand that the Executive Branch of the Government respect its rights, duties, and obligations as set out by the Constitution?

Mr. President, in the very near future, I hope to discuss at length possible methods by which the Congress may protect its rights, duties, and obligations under the Constitution in circumstances involving an illegal use of the "pocket veto" power.

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[From the Congressional Record—Senate vol. 117, No. 3, Jan. 25, 1971]

#### HOLIDAY RECESS SCHEDULE—1971

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD at this point a recess schedule for the first session of the 92d Congress.

There being no objection, the recess schedule was ordered to be printed in the Record as follows:



## "RECESS SCHEDULE 1971"

"Lincoln's-Washington's Birthdays—From conclusion of business Thursday, February 11, until Noon, Wednesday, February 17.

"Easter (Sunday, April 11)—From conclusion of business Wednesday, April 7, until Noon, Wednesday, April 14.

"Memorial Day (Monday, May 31)—From conclusion of business Thursday, May 27, until Noon, Tuesday, June 1.

"July 4 (Sunday)—From conclusion of business Thursday, July 1, until Noon, Tuesday, July 6.

"August-September recess (P.L. 91-510)—From conclusion of business Friday, August 6, until Noon, Wednesday, September 8.

"Veterans' Day (Monday, October 25)—From conclusion of business, October 21, until Noon, Tuesday, October 26.

"Thanksgiving (Thursday, November 25)—From conclusion of business Wednesday, November 24, until Noon, Monday, November 29."

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[From the Congressional Record—Senate, vol. 116, No. 208, Dec. 28, 1970]

PRESIDENT NIXON'S VETO OF THE FAMILY PRACTICE OF MEDICINE ACT

Mr. KENNEDY. Mr. President, President Nixon's veto of the Family Practice of Medicine Act shows a shocking disregard for the serious health needs faced by millions of Americans in all sections of the Nation. Because of the veto, hundreds of thousands of families in the United States over the next few years will be denied access to general practitioners. A constructive solution to one of our most pressing health needs—the shortage of family doctors—will be postponed.

President Nixon has now vetoed nine bills passed by Congress since he took office 23 months ago. Tragically, most of the bills vetoed by the President have been in areas of the greatest social and domestic need—health, education, urban renewal, and manpower training and job development.

The American people have a right to know where the obstruction lies to the solution of many of these domestic problems. Congress has acted time and again. The President—and the President alone—has thwarted the will of Congress and vetoed many of the necessary programs.

The family practice bill which he vetoed over the weekend authorized \$225 million over the next 3 years for special grants to hospitals and medical schools to train general practitioners and help ease the family doctor shortage.

The need is overwhelming. There is an estimated shortage of 50,000 doctors in the United States today—and the problem is getting worse.

As almost any family knows from personal experience, the most serious health manpower shortage is the shortage of family doctors. In 1931, three of every four doctors were general practitioners. Today, the figure is only one in five.

On the average, there is only one family doctor in the United States for every 3,000 persons in the population. We rank far behind many European and other countries in this regard—and in the quality of health care generally.

Despite the shortage of doctors—and especially family doctors—the President has vetoed the bill as being "unnecessary." Doctors, health and medical care experts, spokesmen for the American Medical Association and others who strongly supported the bill certainly thought it was necessary. The Senate, which passed the bill by a vote of 64 to 1, certainly thought it was necessary. The House of Representatives, which passed the bill by a vote of 346 to 2, certainly thought it was necessary.

Yet the President has taken a "wait 'til next year" attitude on the problem of family doctors—just as he has taken a "wait 'til next year" attitude for almost 2 years now on the overwhelming health needs which this Nation so desperately faces. It is regrettable indeed that the administration has not only failed to take any initiative on health problems, but has also vetoed the will of Congress when Congress has taken the initiative in moving to alleviate the crisis.

I have already stated some of the reasons why I consider the President's action on this legislation to be tragic and unjustified. But the importance of his action extends far beyond the need for family doctors. By choosing to pocket veto this legislation, rather than to return it to the Senate with his objections,



the President has attempted to employ the pocket veto in a manner that the Constitution clearly does not intend, even if—as the President is apparently arguing—the Constitution permits it. This effort by the President to stretch the pocket veto to its constitutional limit has grave implications for the balance of power between the legislative and executive branches of our Government.

The sole purpose of the pocket veto provision in the Constitution is to cover the situation in which an adjournment of Congress makes it impossible for the President to return vetoed bills to Congress for reconsideration. Clearly in the case of the family practice bill, nothing prevents the President from returning the vetoed bill to Congress for reconsideration in the closing days of this session. If the family practice bill had been held at the desk of the Senate for a longer period before it was sent to the President, instead of being sent to him when it was, the President could not have pocket vetoed the bill, since the 10th day of the constitutional period would have fallen on a day when Congress was in session.

Thus, the President's attempt to use the pocket veto during the short recess at Christmas introduces an arbitrary element into the legislative process—an element never contemplated when the pocket veto provision was written into the Constitution by the Founding Fathers. The President's action is a clear challenge to the prerogatives of Congress under the Constitution. No Member of the Senate, whatever his views on the merit of the bill in question, can fail to be concerned about this latest effort by the President to undermine congressional power.

The promiscuous use of the pocket veto in this situation was obviously designed to avoid an embarrassing vote in Congress on a veto that would surely have been overridden. The President's action raises the possibility of similar arbitrary vetoes every time Congress takes a brief recess. The pocket veto authority of the President should have been clarified long ago, even if a constitutional amendment is required. I hope that every Member of Congress will give a serious consideration to the important principle that is at stake. The clarification of the pocket veto provision should be one of the first priorities of the 92d Congress.

Mr. YARBOROUGH subsequently said: Mr. President, the Presidential veto of the meritorious family practice of medicine bill (S. 3418) is very disconcerting for two reasons: First, this administration's apparent disregard for the state of health care in this country is deplorable, and second, the use of the pocket veto under questionable authority to thwart the intent of Congress is deserving only of reproach.

While Congress has demonstrated extreme concern over the present state of health care and the need for future improvement of health care by exercising its legislative authority, the executive branch of this country has responded with promises and obstruction.

Last year in a press conference President Richard Nixon said:

"We face a massive crisis in this area (health care) and unless action is taken both administratively and legislatively to meet that crisis within the next two or three years, we will have a breakdown in our medical care system which could have consequences affecting millions of people throughout the country."

Armed with this knowledge, the President vetoed the Hill-Burton hospital construction bill and Congress overrode the veto by an overwhelming majority. Armed with the same knowledge of a health care crisis, the President has now vetoed the family practice of medicine bill which would have created more general practitioners of medicine in the face of this country's tremendous shortage of doctors.

Yet, what justifications are used? The administration says that next year, probably in February, they are going to send to Congress a health message, accompanied by proposed legislation.

Mr. President, I fail to comprehend the reasoning behind a policy that says we are facing a health crisis, that something must be done within 2 years, and then over a year goes by before attention is even focused on the problem. Even if Congress receives a health message early next year, the lapsed time before enactment and appropriation will most likely approximate another year.

I deeply regret that the President did not find the fortitude to veto this bill with a message to Congress, so we would have the opportunity to override the veto. I think all of the people who have suffered from ill health while this admin-



istration gave promises of "next year we will do something" deserve to have their views felt through their elected representatives.

Despite the shortage of 50,000 doctors; despite the fact that in 1931 we had one family doctor for every 1,000 persons, and now it is one for every 3,000; despite the fact that this bill would have remedied this situation, the President vetoed the bill and again gave promises of next year.

It should be made clear that the stakes in this delay of health care are very high—we are dealing with the lives and the health of American people. While we cannot estimate the lives lost, or the preventable severe illnesses that may be caused by the constant obstacles and vetoes of health measures by this administration, I do not believe that the American people will tolerate disregard for their health care.

The family practice of medicine bill would have authorized \$225 million over the next 3 years to create separate departments of family medicine in our medical schools so that we might give emphasis and prestige to the general practice of medicine, where we face a grave shortage of doctors. This was a needed measure of which the American people are now deprived.

It is also very disappointing that the President chose to pocket veto this bill while Congress was in a 4-day congressional recess for Christmas—a device which I consider an obvious abuse of the pocket veto.

The President's response to the health care crisis in this country is to veto two health bills and hide behind the pocket veto—a lack of leadership which our country cannot afford.

Even the procedure used—the pocket veto—is questionable. The question involves a construction of article I, section 7, clause 2, of the Constitution, which provides:

"Every Bill which shall have passed the House of Representatives and the Senate shall, before it becomes a Law, be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. \* \* \* If any Bill shall not be returned by the President within ten days (Sunday excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law."

The last sentence of this provision is the determinative language in considering whether or not President Nixon had the constitutional authority to pocket veto the Family Practice of Medicine Act during the adjournment, in accordance with Senate Concurrent Resolution 87, from the close of business on Tuesday, December 22, 1970, until 12 o'clock noon on Monday, December 28, 1970.

Since the bill was sent and received by the President on December 14, 1970, the 10 days provided for in the Constitution would have ended on December 25, 1970. The question then arises as to whether the act became law on that date, as if the President had signed it, or whether it was pocket vetoed because Congress by their adjournment prevented its return.

In the Pocket Veto case (1929), 279 U.S. 655, the Supreme Court ruled that an interim adjournment of a Congress at the end of a session operated to prevent the return of a bill. In the first session of the 69th Congress, the House had adjourned sine die and the Senate, by terms of the joint resolution authorizing the adjournment, had adjourned until a definite date prior to the commencement of the second session to sit as a court of impeachment. The Supreme Court treated the adjournment as occurring at the end of the first session of Congress. A bill which originated in the Senate was presented to the President shortly before the adjournment which he did not sign nor return it with his objections. Petitioners argued that only a final adjournment of Congress terminating its existence would prevent the return of the bill. The Court rejected this argument and by dictum stated that adjournment as used in the Constitution was not limited to a final adjournment. The Court intimated that in the absence of Congress the resident could not veto a bill by affirmative action since Congress, by its adjournment, had prevented the return of the vetoed bill.

In the course of its opinion, the Court referred to a memorandum prepared in the Office of the Attorney General, dated October 10, 1928, analyzing all bills which had not been returned by the various Presidents during adjournments of Congress (H. Doc. No. 493, 70th Cong., 2d sess.). Many of these bills had



been retained after final adjournment, a large number after adjournment at the end of a session, and a few after adjournment within a session. While the Court drew no distinction between the various kinds of adjournments, the issue at hand was the adjournment at the end of a session and it did not dwell on the specifics of an adjournment within a session.

The Court did state that the Constitution, in giving the President veto authority, imposes upon him not only the obligation to sign bills that he approves but also to return bills that he disapproves, with his obligations, in order that they may be reconsidered by Congress.

It is disappointing in the case of the family practice of medicine bill that the President did not see fit to fulfill his Constitutional obligation to return this bill with his objections, since the distinguished majority leader (Mr. MANSFIELD) and also the junior Senator from Maine (Mr. MUSKIE) secured unanimous consent that the Secretary of the Senate receive messages from the President of the United States during the adjournment. This sets our situation apart from the pocket veto case in which the President was prevented from such action. In our case, I would contend that the President was not prevented from returning the bill and his refusal to do so may very well have caused the family practice bill to become law.

In *La Abra Silver Mining Co. against United States*, Congress presented a bill to the President on December 20, 1892, and 2 days later took a recess until January 4, 1893. The bill was signed by the President on December 28, 1892. The case held that the exercise of the President's authority was not restricted by the days that Congress was in session, and that the President could sign bills when Congress has adjourned for a short recess, *Edwards v. United States* (1932), 236 U.S. 482 held similarly that the President could sign a bill into law after final adjournment.

In *Wright v. United States* (1938), 302 U.S. 583, a bill which had originated in the Senate was vetoed by the President and returned with his objections to the Senate during a 3-day adjournment of that body. The House of Representatives was in session at the time. The bill with the President's message was received by the Secretary of the Senate, and submitted by him to the Senate when it reconvened. The issue presented was whether the veto was effective in view of the fact that the President's objection had not been received within the 10-day period by the originating House while in session. The Court held that an adjournment of the Congress prevents a return of the bill by the President within the period of 10 days allowed for that purpose; but that since the Senate alone had adjourned, the constitutional provision did not apply and the veto was effective.

In the opinion, *Wright against United States*, the pocket veto case, *supra*, was considerably limited and its dictum moderated. The Court states that the view of the pocket veto case that the House to which the bill is to be returned "is the House in session" cannot be considered narrowly and is not applicable during a temporary recess as opposed to the end of a session. The Court further states, in opposition to the pocket veto case that the officers and agents of the Houses of Congress have great power and responsibilities and that they can be utilized to receive returned bills from the President.

The opinion gives great attention to the need to consider the realities and practicalities of returning bills, rather than relying on wholly unnecessary technicalities. The criteria are first, that the President shall have suitable opportunity to consider the bills presented to him, and second, that the Congress shall have suitable opportunity to consider his objections to bills and on such consideration to pass them over his veto provided there are requisite votes.

In the case before us of the family practice bill, the President had ample time to consider his objections to the bill, yet the congressional opportunity to override his veto was frustrated, even though Congress authorized a representative to receive his veto message.

If we follow the Court's view to not ignore the plainest practical considerations and that we not require an artificial formality to erect a barrier to the exercise of a constitutional right, then we must take note that the President knew that Congress would be in session today, that we could consider his message, and that there was someone authorized to receive the message.

Mr. President, apart from the merits of this bill affecting the health care of Americans, and, therefore, the health of our Nation, I think an effective case can be made for the obvious abuse of the veto authority by the President, which deprived Congress of its constitutional right to reconsider this bill.



[From the Congressional Record—Senate, vol. 116, No. 211, Dec. 31, 1970]

#### THE POCKET VETO

Mr. KENNEDY. Mr. President, 2 days ago, I wrote to Attorney General Mitchell requesting clarification of the administration's interpretation of the pocket veto clause of the Constitution. The President sought to use the pocket veto power last week to disapprove S. 3418, the Family Practice of Medicine Act, thereby preventing Congress from having the opportunity to override the veto. This action by the President has raised extremely serious questions about the distribution of power under the Constitution between Congress and the executive branch in the enactment of Federal legislation, and it was for this reason that I sought clarification of the administration's position.

Today, I have received a reply from Assistant Attorney General William H. Rehnquist, of the Office of Legal Counsel in the Department of Justice, explaining the position of the administration on this issue. Although a substantial area of disagreement continues to exist over Mr. Rehnquist's interpretation of the clause and my own interpretation, I am delighted by both the thoughtfulness and the promptness of his reply, and I commend the Attorney General, the Assistant Attorney General, and the Department of Justice for their constructive approach to the legal questions raised by the controversy that has erupted over the pocket veto.

The principal difference between us is over the interpretation of the Supreme Court's precedents on the pocket veto clause of the Constitution. The Assistant Attorney General relies heavily on the *Pocket Veto* case, 279 U.S. 655, which was decided in 1929 and which contains dicta apparently giving extremely broad leeway to the President in the exercise of the pocket veto power.

It is clear, however, that these dicta of the Supreme Court were not essential to the holding of the case, which involved an adjournment sine die at the end of a session of Congress. I believe that sine die adjournments—either at the end of a Congress or at the end of a session of Congress—are the only situations in which the pocket veto clause of the Constitution was intended to apply. I also believe that this is all that the Supreme Court's decision in the pocket veto case holds on this issue. As Mr. Rehnquist's letter expressly recognizes, the pocket veto case did in fact involve a sine die adjournment at the end of a session of Congress—albeit a sine die adjournment of only one House. In the circumstances of that case, the House of Representatives had adjourned sine die, and the Senate had adjourned for several months to a date certain.

It is difficult, therefore, to understand the logic of Mr. Rehnquist's assertion that the Supreme Court's decision in the pocket veto case has expressly rejected my view that the pocket veto provision is intended only to apply in sine die adjournment situations.

Indeed, the specific holding of the pocket veto case is clearly in accord with my view. The House of Representatives had adjourned sine die. Therefore, it was impossible for Congress to act to override the veto. Under the Constitution, a two-thirds majority in both the Senate and the House is required to override a veto. Since the House had adjourned sine die, it was clear that the House could not act to override the veto, and the fact that the Senate's adjournment was not sine die was irrelevant. This is the precise situation in which the Founding Fathers intended the pocket veto clause of the Constitution to apply. Where there is no opportunity for Congress to override a veto by the President, the Constitution resolves the question of the status of legislation enacted within the 10-day period before adjournment by specifying, in effect, that the bill does not become law unless approved by the President. In other circumstances, of course, where a sine die adjournment of Congress does not intervene, a bill becomes law even without the approval of the President, unless the President acts positively to veto it, and thereby triggers the opportunity for Congress to override the veto.

Strong additional support for my view is contained in *Wright v. United States*, 302 U.S. 583 (1938), which was decided almost a decade after the pocket veto case, and which substantially clarified the Supreme Court's earlier decision. In the *Wright* case, which was decided 6-2 by the Court, the majority opinion by Chief Justice Charles Evans Hughes discusses the holding in the pocket veto case as turning on the question of whether there has been a sine die adjournment. As the opinion states:

In the *Pocket Veto Case*, the Congress had adjourned. The question was whether the concluding clause of paragraph 2 of § 7 of article I was limited to a



*final adjournment of the Congress or embraced an adjournment of the Congress at the close of the first regular session. The Court held that the clause was not so limited and applied to the latter. [Emphasis in original.] 302 U.S. 583, at 593.*

The Court's holding in the Wright case appears to be two-pronged. First, the Court clearly held that—since the House of Representatives was still in session, even though the Senate had adjourned for a brief period—there was no “adjournment” of Congress within the meaning of the pocket veto clause of the Constitution. Therefore, the Court held, the pocket veto clause was completely inapplicable.

Second, the Supreme Court appears to have held in the Wright case that, even though the Senate itself was in a brief 3-day recess, the President was not “prevented” from returning the vetoed bill with his objections to the Senate, within the meaning of the pocket veto clause, since the Secretary of the Senate was available to receive the President's veto message. In other words, it may be argued, there are two requirements before the pocket veto clause comes into play—first, Congress must be in adjournment, and, second, the adjournment must prevent the return of the vetoed bill to Congress.

If a 3-day recess of the Senate did not prevent the return of a vetoed bill in the Wright case, it is difficult to believe that the 5-day adjournment of the Senate in the present case prevented the return of the vetoed Family Practice of Medicine Act.

One additional point is worth noting. In his letter, Mr. Rehnquist states that not only was the President authorized to exercise a pocket veto on the present legislation, “but if he wished to disapprove it at all, he very probably had no choice as to the form of veto.”

Surely, if the President wishes to disapprove a bill in such a situation, he can return it to Congress with his veto message in the usual fashion. Even if such a return of the legislation is invalid because Congress is in adjournment, as Mr. Rehnquist appears to be arguing, the President will still be in the position of not having signed the bill. In other words, even if a formal veto is invalid, a pocket veto can still apply, since the bill has not been signed. Moreover, the language of the Wright case may be easily read as implying that the court will sustain the validity of a return of legislation when Congress is in a brief adjournment within a session.

To be sure, as Mr. Rehnquist's letter shows, there is a sporadic practice of pocket vetoes by the President during relatively brief adjournments of Congress. In large part, however, the practice is a tribute to the difficulty of challenging a pocket veto in the courts, rather than a tribute to the validity of administration's reasoning. Now that a substantial legal controversy has begun, it is my hope that this difficulty in mounting an appropriate challenge can be overcome. It is my understanding that a private bill was also subject to a pocket veto by the president during the Christmas recess. Since questions of standing are less likely to thwart the jurisdiction of the courts in cases involving private bills, it may be possible for the claimant under the recent private bill to challenge the pocket veto of his bill, and thereby obtain a court test that would be squarely applicable to the vetoed Family Practice of Medicine Act.

Finally, it is worth pondering the implications of the administration's position. Nothing in the Constitution suggests any stopping point for the administration's logic. In the present case, involving the brief 5-day Christmas adjournment by Congress, the President is already close to pushing the pocket veto power to the limit of its logic. If the pocket veto clause applies to a 5-day adjournment, why should it not also apply to an adjournment of 3 days, or 1 day, or even overnight?

The 10-day constitutional period for the President's consideration of legislation presented by Congress expires on midnight of the 10th day. Since Congress is virtually always in adjournment at midnight, the *reductio ad absurdum* of the administration's logic is that virtually every piece of legislation is subject to a pocket veto, in spite of the clear contrary language of the Constitution.

Conceivably, the Supreme Court might attempt to establish a “rule of reason” to resolve the pocket veto controversy, under which the pocket veto clause might be applicable in cases involving relatively long adjournments during a session of Congress. In addition to cases involving *sine die* adjournments. Even by this standard, however, it seems clear that the 5-day adjournment involved in the present case would be far too short to trigger a pocket veto.

To me, it is much more likely that the Court will decline to be drawn into any effort to set an arbitrary time period for adjournments during a session, beyond



which a pocket veto would be valid. By drawing a clean dividing line at adjournment *sine die*, the Court can avoid the ambiguities inherent in a "rule of reason" approach and clear up the controversy entirely.

In closing, let me emphasize again the importance of the issue raised by the President's recent exercise of the pocket veto. The President has challenged one of the most basic prerogatives of Congress. His action has vital implications for the checks and balances in our constitutional form of government between the legislative branch and the executive branch, and I hope that we will make a thorough exploration of this area in the 92d Congress.

Mr. President, I believe that my exchange of correspondence with Mr. Rehnquist will be of interest to all Members of Congress, and I ask unanimous consent to have it printed in the RECORD.

There being no objection, the correspondence was ordered to be printed in the RECORD, as follows:

(The following is inserted as quoted matter.)

WASHINGTON, D.C.  
December 29, 1970.

HON. JOHN N. MITCHELL,  
*Attorney General, Department of Justice,*  
*Washington, D.C.*

DEAR MR. ATTORNEY GENERAL: As you know, on December 26 it was announced that the President would not sign S. 3418, the "Family Practice of Medicine Act," and that the bill would therefore be subject to a "pocket veto," under which Congress would have no opportunity to reconsider the legislation in light of the President's objections.

Whatever the merits of this particular bill—and I strongly supported it in the Senate—the President's action raises extremely serious questions that far transcend the bill itself and that go to the heart of the distribution of power under the Constitution between Congress and the Executive Branch with respect to the enactment of Federal legislation. Surely, contrary sporadic practice notwithstanding, the Pocket Veto provision of the Constitution—Article I, Section 7, Clause 2—was intended to apply only in circumstances involving an adjournment *sine die* at the end of a Congress or at the end of a session of Congress, and was not intended to apply to brief adjournments of Congress during a session such as the recent Christmas period. This is all that the leading decisions of the Supreme Court appear to have held. See *Wright v. United States*, 302 U.S. 583 (1938); *Pocket Veto Case*, 279 U.S. 655 (1929). Indeed, in *Wright v. United States*, the Supreme Court expressly suggested that the Pocket Veto provision might not be applicable in a case involving a brief adjournment within a session.

In light of the discrepancy between the theory and practice involving the Pocket Veto provision, I would be grateful to receive a clarification of the Administration's position on this issue.

Sincerely,

EDWARD M. KENNEDY.

DEPARTMENT OF JUSTICE,  
*Washington, D.C., December 30, 1970.*

HON. EDWARD M. KENNEDY,  
*U.S. Senate,*  
*Washington, D.C.*

DEAR SENATOR KENNEDY: The Attorney General has asked me to reply to your letter to him of December 29 relating to the pocket veto of S. 3418, inasmuch as I had given the advice to the White House that under the circumstances a pocket veto by the President would be appropriate.

In your letter you state that the pocket veto "was intended to apply only in circumstances involving an adjournment *sine die* at the end of a Congress or at the end of a session of Congress, and was not intended to apply to brief adjournments of Congress during a session such as the recent Christmas period. You also state that "in *Wright v. United States*, the Supreme Court expressly suggested that the pocket veto provision might not be applicable in a case involving a brief adjournment within a session." Suggesting a "discrepancy between the theory and practice involving the pocket veto provision", you have requested a clarification of the Administration's position on this issue.

The position of this Administration on the "pocket veto" issue is, as nearly as I can determine, entirely consistent with that of preceding Administrations



which have considered the question. The two decided Supreme Court cases, both of which are cited in your letter, have, with one exception, pretty well marked out the boundaries of the pocket veto power, and in my opinion the President's exercise of that power in declining to sign S. 3418 conforms both to these judicial precedents and to the consistent practice of other Presidents during the last quarter century.

*The Pocket Veto Case*, 279 U.S. 655 (1929), decided by a unanimous Court, seems to me to have expressly rejected your contention that the pocket veto provision was intended to apply only in circumstances involving an adjournment *sine die* at the end of a Congress or at the end of a session of Congress. Although the adjournment of Congress there involved was for a period of several months, it was neither an adjournment at the end of the session nor at the end of the Congress, since the Senate adjourned on July 3rd until November 10th, while the House adjourned on July 3rd *sine die*. Notwithstanding the difference in length of time of adjournment between that case and the situation respecting S. 3418, the Court in the *Pocket Veto Case* was required to interpret the following language from the constitutional provision authorizing the "pocket veto": "... if any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law." (Art. I, § 7, United States Constitution.)

The bill which was pocket-vetoeed by President Coolidge in the *Pocket Veto Case* had been presented to him on June 24, 1926, and the adjournment of Congress took place on July 3rd. The Court said:

"The specific question here presented is whether, within the meaning of the last sentence—which we have italicized—Congress by the adjournment on July 3rd prevented the President from returning the bill within ten days, Sundays excepted, after it had been presented to him. If the adjournment did not prevent him from returning the bill within the prescribed time, it became a law without his signature; but, if the adjournment prevented him from doing it, it did not become a law. This is unquestioned." 279 U.S. at 674.

The Court went on to say that the term "adjournment" as used in the constitutional provision authorizing pocket vetoes did not refer only to the final adjournment of Congress. It pointed out in support of this conclusion that the word "adjournment" is used both in section 5 of Article I in reference to the power of a smaller number than the majority of each House to "adjourn" from day to day, and in the fourth clause of the same article, in reference to the prohibition that neither House during the session of Congress shall, without the consent of the other, "adjourn" for more than three days.

The Court then stated:

"We think that under the constitutional provision that the determinative question in reference to an 'adjournment' is not whether it is a final adjournment of Congress or an interim adjournment, such as an adjournment of the first session, but whether it is one that 'prevents' the President from returning the bill to the House in which it originated within the time allowed. It is clear, and as we understand it, it is not questioned, that since the President may return a bill at any time within the allotted period, he is prevented from returning it, within the meaning of the constitutional provision, if by reason of the adjournment it is impossible for him to return it to the House in which it originated on the last day of that period." 279 U.S. at 680.

The Court then concluded that since Congress had adjourned prior to the expiration of the ten day period given President Coolidge by the Constitution in which to decide whether or not to veto the particular bill there involved, the pocket veto provision became operative. It seems clear to me that the Court's decision did not turn on the length of the adjournment, any more than on its finality, but that it turned instead on the fact that the adjournment commenced within the ten day period allotted to the President by the Constitution to decide whether or not to veto the measure in question.<sup>1</sup>

<sup>1</sup> The Court in that case also said (though the statement does not appear to have been necessary to its holding) that even though one or both Houses of Congress were to authorize an agent to receive messages from the President, "the delivery of the bill to such officer or agent . . . would not comply with the constitutional mandate." 279 U.S. at 684. While *dicta* is not entitled to the same weight as is a holding, the fact that the language is subscribed to by a unanimous Supreme Court, and the fact that it is found in one of the only two cases from that Court dealing with the question, make it the best available authority on the point.



The most recent formal expression on the pocket veto provision appears in the opinion of Attorney General Biddle of July 16, 1943. 40 Op. A.G. 274. The Attorney General after reviewing the cases and the historical practice, advised President Roosevelt that an adjournment of Congress within a session was an occasion for a pocket veto.

In the memorandum on the same subject transmitted to the White House in November, 1968, by my predecessor in this office, the precedents then existing were summarized in this language:

"The experience of the past quarter of the century discloses the following practice. If the tenth day (Sundays excluded) after the presentation of the bill fell into a period in which neither House was in session, Presidents uniformly exercised their pocket veto power, even if the period of adjournment were short, or if Congress reconvened on the day following expiration of the constitutional period."

The following instances were relied upon in support of this statement:

(1) In the spring of 1944, the Congress adjourned from April 1st to April 12th. A private bill had been presented to the President on March 30, 1944. 90 Cong. Rec. 3380. The tenth day (Sundays excepted) following the day of presentation was April 11, 1944, i.e., the day preceding the reconvening of the Congress. On that day, President Roosevelt signed a memorandum of disapproval. The bill was considered to have been pocket-vetoed. 90 Cong. Rec. 3408.

(2) In the spring of 1956, both Houses of Congress adjourned from March 29th to April 9th. A private bill had been presented to the President on March 22nd, and the tenth day following the day of presentation was therefore April 3, 1956. President Eisenhower withheld his approval from the bill, and it was considered to have been thereby pocket-vetoed as of April 3, 1956. 108 Cong. Rec. Index 732.

(3) In the summer of 1964, both Houses of Congress adjourned from August 21 to August 31 during the Democratic presidential nominating convention. A private bill had been presented to the President on August 14, 1964, and the tenth day following the day of presentation was August 26, 1964. President Johnson signed a memorandum of disapproval on August 24, 1964, which was communicated to the House of Representatives on September 2, 1964. 110 Cong. Rec. 21409.

Most recently, in the summer of 1968, President Johnson pocket-vetoed a bill relating to cotton importation during an adjournment of both Houses of Congress of approximately one month. 4 Weekly Comp. Pres. Docs. 1222.

Similar precedents may be found going back a good deal further than the quarter century period covered in the memorandum described above. Those which occurred prior to 1928 are collected in House Doc. No. 493, 70th Cong., 2d Session. They include pocket vetoes during Christmas adjournment of Congress by Presidents Andrew Johnson, Benjamin Harrison, and Grover Cleveland.

In *Wright v. United States*, 302 U.S. 583 (1938), a majority of the Court held that where only one House had adjourned, and the adjournment of that House was for a period of only three days, "Congress" as that term is used in the constitutional provision authorizing pocket vetoes, had not adjourned, and therefore a pocket veto was not available to the President in that situation. The Court's majority declined to speculate on the result if one House had adjourned for more than three days.<sup>2</sup>

The Court in *Wright* summarized its ruling in these words:

"We hold that where the Congress has not adjourned and the House in which the bill originated is in recess for not more than three days under the constitutional permission while Congress is in session, the bill does not become a law if the President has delivered the bill with his objections to the appropriate officer of that House within the prescribed ten days and the Congress does not pass the bill over his objections by the requisite votes." 302 U.S. at 598.

In the situation confronting President Nixon with respect to his disapproval of S. 3418, both Houses of Congress had adjourned for a period of longer than three days—the Senate from December 22nd to December 28th, and the House

<sup>2</sup> The Court majority in *Wright* rejected the argument that because the originating House was the one which had adjourned for three days, the President was prevented from returning the bill within the meaning of the constitutional language. While some of its reasoning, in so doing, if lifted out of context, could be said to undercut the reasoning in the *Pocket Veto Case*, the fact that the *Wright Court* reserved the question of the effect of an adjournment of even one House alone for more than three days would indicate that its language is to be confined to the fact situation there presented.



from December 22nd to December 29th—and by their adjournment had prevented the President from having the full ten day period allotted him under the Constitution to decide whether or not to veto in the ordinary manner the bill in question. In my opinion, therefore, on these facts the general rule of the *Pocket Veto Case*, rather than the exception to that general rule carved out in the *Wright Case*, governed, and the President was not only authorized to exercise a pocket veto, but if he wished to disapprove it at all, he very probably had no choice as to the form of veto.<sup>3</sup>

You state in your letter that the President's action raises extremely serious questions far transcend the bill itself and that go to the "heart of the distribution of power under the Constitution between the Congress and the Executive branch with respect to the enactment of federal legislation". While I believe that the President was on very firm legal ground in taking the action he did, there is no doubt that the use of the pocket veto power has been a bone of contention between the President and the Congress throughout the years. Indeed, the *Pocket Veto Case*, *supra*, apparently resulted from an effort on the part of the House of Representatives to repudiate the traditional interpretation of the pocket veto clause—by then more than a century old—and to limit the exercise of that form of veto to the final adjournment of Congress. This effort on the part of the House was, of course, unsuccessful. Again in 1940, Congress passed a bill, H.R. 3233, 76th Congress, which purported to repeal as of the date of their "enactment" all bills and joint resolutions which prior to the beginning of the 76th Congress had been pocket-vetoed, during an adjournment of the Congress other than a final adjournment. President Roosevelt vetoed the bill on the ground that it was inconsistent with the constitutional practices going back to President Adams, as well as with the Supreme Court's interpretation of the Constitution in the *Pocket Veto Case*, 88 Cong. Rec. 8024. The veto was sustained.

Thus, while the Administration's position with respect to presidential use of the pocket veto provision is largely at odds with the position taken in your letter, I believe it is consistent both with the decided cases and with quite well established historical practice.

Yours very truly,

WILLIAM H. REHNQUIST,  
Assistant Attorney General, Office of Legal Counsel.

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CONGRESSIONAL RESEARCH SERVICE.  
Washington, D.C., February 1, 1971.

To Senate Separation of Powers Subcommittee  
From American Law Division  
Subject Power of Congress to Define "Adjournment" as Used in Article I, Section 7

In reference to your request for a memorandum in support of the power of Congress to define "adjournment" as used in Article I, Section 7, Clause 2 of the United States Constitution the following is submitted:

Article I, Section 7, Clause 2 provides in the pertinent portion that:

"If any Bill shall not be returned by the President within ten Days (Sunday excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a law."

The purpose of defining the word adjournment as used above would be to prevent measures that have passed both Houses of the Congress from being subject to what has become known as "the pocket veto". The specific proposal is to define by legislation the term as meaning an adjournment *sine die* only and not interim adjournments to day certain taken during a session. Such a proposal would appear to be in accord with the spirit of Article I, Section 7, Clause 2 in that it would insure that measures not approved by the President within a session of Congress would be available for Congressional action even though the

<sup>3</sup> There is undoubtedly a legal "gray area" with respect to the question reserved in the *Wright Case*—whether a pocket veto is appropriate during an adjournment for more than three days by one House of Congress. Advice from this office in the past has been to the effect that in this situation, without any controlling judicial decision to guide him, the President ought to disapprove a bill by the normal veto message and return, rather than by the pocket veto.



end of the President's ten day period for consideration of measures might occur while the Congress is out on an interim adjournment.

The entire thrust of the veto clause revolves around two points. First, the President is assured of an adequate amount of time within which to consider bills presented to him by the Congress before having to either approve or disapprove. As the Court noted in the *Pocket Veto Case*, 279 U.S.C. 655, 677, 678 (1928). The power thus conferred (to approve or disapprove) upon the President cannot be narrowed or cut down by Congress, nor the time within which it is to be exercised lessened, directly or indirectly. And it is just as essential a part of the constitutional provisions, guarding against ill-considered and unwise legislation, that the President, on his part, should have the full time allowed him for determining whether he should approve or disapprove a bill, and if disapproved, for adequately formulating the objections that should be considered by Congress, as it is that Congress, on its part, should have an opportunity to repass the bill over his objections.

The final statement of the Court in the above quotation describes the second point with which the veto clause is concerned, i.e., that "... Congress, on its part, should have an opportunity to repass the bill over his (the President's) objections."

By legislating to provide that the pocket veto will only be available in situations wherein Congress has adjourned *sine die* Congress will be furthering the spirit of the Constitution as well as laying to rest an anomaly that has found its way into constitutional interpretation, an absolute veto by the President while the session of Congress continues. Such action would not only be perfectly proper but would conform to the requirements of constitutional interpretation as set forth in *Fairbanks v. United States*, 181 U.S. 283: The true spirit of constitutional interpretation both as to grants of powers and in respect to prohibitions and limitations is to give full, liberal construction to the language, aiming ever to show fidelity to the spirit and purpose.

Constitutional justification for such a definition can be found in Article I, Section 8, Clause 18, the "necessary and proper" clause of the constitution, which provides that Congress shall have the power to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

The Courts have given to Congress great latitude in acting under the power conferred by this clause: By the settled construction and the only reasonable interpretation of this clause, the words "necessary and proper" are not limited to such measures as are absolutely and indispensably necessary, without which the powers granted must fail of execution; but they include all appropriate means which are conducive or adapted to the end to be accomplished, and which in the judgment of Congress will most advantageously effect it. *Legal Tender Case*, 110 U.S. 440 (1884).

Surely the defining of the word adjournment to ensure that legislation enacted during a session will be available for reconsideration by that session if the President disapproves is an "appropriate means which (is) conducive (and) adapted to the end to be accomplished." The power of the President to approve or disapprove would not be disturbed or lessened in any degree whatsoever and neither would the ten day period which the Constitution grants him be affected.

The fact that the Supreme Court in the *Pocket Veto Case*, *supra*, 680, found, in the absence of legislation, a definition of the word "adjournment" as used in Article I, Section 7, Clause 2 embodied within the Constitution that was broader than the one proposed should not act as a deterrent to such legislation construing this constitutional provision. The decision of the Supreme Court in *Veazie Bank v. Fenno*, 8 Wall 533, wherein the Court held that: "A practical construction by Congress of a provision of the Constitution is entitled to great weight, especially in the absence of anything adverse to it in the discussions of the Conventions which framed and ratified the Constitution," is particularly applicable here because the Court noted in the *Pocket Veto Case*, *supra*, 675, that, "No light is thrown on the meaning of the constitutional provision (veto power) in the proceedings and debates of the Constitutional Convention;". Therefore, since there is nothing "adverse to it" in the record of the Convention it would appear that it is within the power of Congress to provide the President and the Court with its construction of what an adjournment, within the meaning of Article I, Section 7, is.

ROBERT L. THORNTON,  
Legislative Attorney.



THE LIBRARY OF CONGRESS,  
CONGRESSIONAL RESEARCH SERVICE,  
Washington, D.C., January 28, 1971.

To Separation of Powers Subcommittee.  
From American Law Division.

Subject Delaying presentation of legislation to the President as a method of avoiding the use of a pocket veto.

In reference to your request for a memorandum regarding the feasibility of the proposal to delay delivery of Senate and House passed measures to the President in order to circumvent application of the pocket veto, the following is submitted:

The pocket veto, as it has developed, becomes available to the President when, within ten (10) days after he receives the measure in question, Congress adjourns, thereby preventing the return of the measure to the House in which it originated at the end of the ten day period. In the *Pocket Veto Case*, 279 U.S. 655 (1928), The Supreme Court held that where such a return with objections was prevented by the adjournment of Congress, the measure, if not signed by the President within the ten day period, did not become law and if it was to be considered by Congress at a later date could be reintroduced during the same session, *Pocket Veto Case*, *supra*, footnote 6, p. 679.

It appears that the problem of the pocket veto may be obviated particularly as it relates to interim adjournments, simply by delaying delivery of the measure to the President until such time as the Congress will have returned from its adjournment at the end of the ten day period, Sundays excepted, allowed the President by Article I, Section 7.

Article I, Section 7 of the Constitution contains two time limitations. The first applies to the President and gives him ten days, Sundays excepted, within which to consider the measure and either approve or disapprove. The second time limit, if it can be so described, in Section 7 requires that the House that has received a measure from the President with his objections "... proceed to reconsider it."

However, with regard to presenting the measure to the President after it has passed both Houses of the Congress, the Constitution is silent as to when after such passage the measure is to be so presented.

Presently, the Rules of both Houses of the Congress provide that measures which have achieved passage of both Houses be delivered "forthwith." Rule 11, clause 9(N) (2) of the Rules of the House of Representatives provides that the House Committee on Administration has the duty of:

"(2) examining all bills, amendments, and joint resolutions after passage by the House; and in cooperation with the Senate, of examining all bills and joint resolutions which shall have passed both Houses, to see that they are correctly enrolled; and when signed by the Speaker of the House and the President of the Senate, shall *forthwith* present the same, when they shall have originated in the House, to the President of the United States in person, and report the fact and date of such presentation to the House;"

(emphasis added)

The Standing Rules of the Senate, Rule 14, Section 5 provides that:

"(5) The Secretary of the Senate shall examine all bills, amendments, and joint resolutions before they go out of the possession of the Senate, and shall examine all bills and joint resolutions which shall have passed both Houses, to see that the same are correctly enrolled, and, when signed by the Speaker of the House and the President of the Senate, shall *forthwith* present the same, when they have originated in the Senate to the President of the United States and report the fact and date of such presentation to the Senate."

(emphasis added)

It is possible by the Amendment of the Rules of both Houses by simple resolution to provide that those responsible for presenting legislation to the President delay such action when an adjournment is imminent until a time, even after the adjournment if necessary, that after the President has his constitutional ten days the Congress will have returned from their adjournment. Because there is no constitutional mandate in regard to presentation of legislation to the President, delaying such presentation will be perfectly proper and constitutional but at the same time it will insure that no pocket vetoes will occur while Congress is out on an interim adjournment.



This approach has much to recommend it in that it avoids a constitutional confrontation between the Executive and the Legislative branches and can be accomplished without Presidential approval as would be necessary in any attempt to arrive at a statutory solution to the problem of the pocket veto.

This method of delaying delivery was successfully employed during the 39th Congress, Second Session. A bill to regulate the elective franchise in the District of Columbia passed the Senate on December 13, 1866 and the House on December 14. Congress adjourned for Christmas from December 20 until January 3, 1867. The bill was not presented to the President until December 26, twelve days after passage by both Houses and six days after Congress had adjourned but less than ten days, Sundays excepted, before Congress reconvened. On January 7, 1867, the bill was returned by President Johnson with his objections and subsequently passed over his veto.

This precedent coupled with the previously indicated lack of a constitutional mandate in regard to a time within which bills must be presented to the President would appear to substantiate the feasibility of such an approach to the pocket veto problem.

ROBERT L. THORNTON,  
*Legislative Attorney.*

[From *The Veto Power of the President*, by Charles. J. Zinn, law revision counsel, Committee on the Judiciary, House of Representatives Committee Print, 1951]

### IX. THE POCKET VETO

There are several aspects of the so-called pocket veto which present problems calling for legislative action. The opinion of the Supreme Court in the Pocket Veto case<sup>1</sup> implies that it is not a true veto. But has the practice on the part of a President, in submitting to Congress his reason for not approving a bill so vetoed, limited this view? Exactly what is meant by "adjournment," and by the expression "House" in the constitutional provision for returning a bill with the reasons for disapproval thereof? There seems to be some conflict in the judicial opinions on this subject. Further, is the Congress, upon reconvening during the same session after an adjournment, either sine die or to a date specified in the resolution of adjournment, precluded from reconsidering the bill?

#### IS IT A TRUE VETO?

In the *La Abra Silver Mining Company*<sup>2</sup> case and in the Pocket Veto case<sup>3</sup> the Supreme Court held it is plain that when the adjournment of Congress prevents the return of a bill within the allotted time—"the failure of the bill to become a law cannot properly be ascribed to the disapproval of the President—who presumably would have returned it before the adjournment if there had been sufficient time in which to complete his consideration and take such action—but is attributable solely to the action of Congress in adjourning before the time allowed the President for returning the bill had expired."

This view would seem to set apart pocket vetoes as being in an entirely different category from the ordinary veto. The Court in a footnote to the Pocket Veto case<sup>4</sup> suggested that, if Congress so desires, the same bill may be reintroduced and passed when Congress resumes its session, and after receiving the due consideration of the President, if returned with his objections, may be then passed by the requisite vote in both Houses.

Where the Congress by their final adjournment prevent the return of the bill with the President's objections, that suggested course is undoubtedly the only one available. However, a situation arose during the second session of the Eighty-first Congress which raises two other possible alternatives.

On September 23, 1950, pursuant to a concurrent resolution,<sup>5</sup> the House and Senate adjourned to November 27, 1950. Among the bills awaiting the President's signature on that day were the Merchant Ship Sales Act amendment<sup>6</sup> and several private claims bills.<sup>7</sup> These bills were not signed by the President and

<sup>1</sup> 279 U.S. 655.

<sup>2</sup> 175 U.S. 423.

<sup>3</sup> 279 U.S. 655.

<sup>4</sup> 279 U.S. 655, 679.

<sup>5</sup> H. Con. Res. 287, 81st Cong., 2d sess.

<sup>6</sup> H.R. 3419.

<sup>7</sup> H.R. 1601, H.R. 1799, H.R. 3012, H.R. 6489, and H.R. 7854.



were thereafter listed in the House Calendar as the subjects of a pocket veto<sup>8</sup> in accordance with the general view, no question having been raised on the subject in either House. However, when the Congress reconvened on November 27, 1950, matters which had been pending on September 23, 1950, were taken up as though no adjournment had intervened. Moreover, the final edition of the House Calendar bears the legend—"Second session convened January 3, 1950—adjourned January 2, 1951," without indicating the interim adjournment. If that interim adjournment was not such adjournment as prevented the return of the bills, the bills became law without the President's signature because they were not returned with his objections within the constitutional time limit.

The rigid view of the Supreme Court in the Pocket Veto case was subsequently moderated by that Court to a certain extent, evidencing a trend of reasoning which may ultimately recognize that an interim adjournment does not prevent the return of the bill.

#### TREND IN JUDICIAL INTERPRETATION

In the Pocket Veto case the Supreme Court was of the opinion that the House to which the bill is to be returned "is the House in session" and no return can be made to an officer or employee when it is not in session. However, the Court modified that view in *Wright v. United States*,<sup>9</sup> pointing out that the dangers envisaged by it in the former case were illusory when there was a temporary recess rather than an adjournment, particularly noting that the "session of Congress" continues.

So, too, during the interim "adjournment", during the last Congress the session of Congress continued.

Mr. Justice Stone remarked<sup>10</sup> that the reasons assigned by the Court for its conclusion leave in confusion and doubt the meaning and effect of the veto provisions of the Constitution, "the certainty of whose application is of supreme importance," and that if the earlier decision of the Court was in error it should be overruled.<sup>11</sup>

In the light of such sentiments expressed by the late Chief Justice it would appear that the Congress should avail itself of its power to enact regulatory legislation in this field. Legislation defining the term "adjournment" would be a worth-while contribution toward eliminating confusion with regard to the application of the constitutional provision.

#### MEMORANDUM OF REASONS FOR WITHHOLDING SIGNATURE

In connection with those bills which were considered the subjects of a pocket veto during the second session of the Eighty-first Congress, the President inaugurated a practice which may require a reconsideration of the views expressed by the Supreme Court regarding the nature of a pocket veto.

Upon withholding his signature to those bills the President prepared memorandums expounding his reasons therefor which were transmitted to the Congress and thereafter incorporated in the Journal of the House of Representatives.<sup>12</sup> He did not, however, return the bills to the House where they had originated. This action by the President discounts the theory advanced in the Pocket Veto case that the failure of the bill to become a law cannot properly be ascribed to the disapproval of the President. Certainly the use of such a memorandum is inconsistent with the theory that the President has not been afforded an opportunity to consider the bill. If the memorandum is transmitted to the Congress during the same session while that body is still organized to complete its functions, there is no logical reason why the bill should not be eligible for reconsideration in the light of the President's reasons for withholding his approval.

All legislation pending in either House remains the subject of action by the Congress until the final adjournment sine die at the end of a Congress. If the Congress is informed of the President's reasons for withholding approval, there

<sup>8</sup> House Calendar, final edition, 81st Cong., p. 111.

<sup>9</sup> 302 U.S. 583, 595.

<sup>10</sup> 302 U.S. 599.

<sup>11</sup> Id. at p. 604.

<sup>12</sup> House of Representatives Journal, 81st Cong., 2d sess., pp. 1204.



does not seem to be any reason to require the introduction of a new bill on the same subject matter during the life of the Congress until its last constitutional opportunity to reconsider the pending bill has been exercised. In the incident referred to in the Eighty-first Congress, inasmuch as the President, as has been stated, did not return the bills, the Congress could not act upon them but the President might have acceded to a formal request for its return. On a number of occasions such requests have been made and complied with for the purpose of correcting the enrolled bill.<sup>13</sup>

It is quite clear that the reconsideration of bills under such circumstances would be possible only during the same Congress as in the case of regular vetoes. Furthermore, this situation would be avoided if legislation were enacted defining "adjournment" so that the question of pocket vetoes during an interim adjournment would not arise.

[From *The Veto Power of the President*, by Charles J. Zinn, law revision counsel, Committee on the Judiciary, House of Representatives Committee Print, 1951]

## APPENDIX

### A LEGISLATIVE PROPOSAL

#### A BILL To implement article I, section 7, of the Constitution

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled*, That Title I of the United States Code be amended by adding the following chapter :

#### CHAPTER 5. APPROVAL OF ACTS

##### Sec.

##### 401. Definitions

##### 402. Presentation to President.

##### 403. Approval by President.

##### 404. Disapproval by President.

##### 405. Reconsideration.

##### 406. Enactment without signature ; pocket veto.

#### Sec. 401. Definitions

(a) As used in this chapter, "bill" means a legislative proposal embracing one subject, and matters properly connected therewith, which shall be expressed in the title. Each separate subject not embraced in the title shall constitute a separate bill. It includes orders, resolutions, and votes, to which the concurrence of the Senate and House of Representatives is necessary, except on a question of adjournment.

(b) As used in sections 403, 404, and 406, of this title, "adjournment" means an adjournment sine die by both the Senate and the House of Representatives terminating a session of the Congress.

#### Sec. 402. Presentation to President

Every bill that passes the Senate and the House of Representatives shall, before it becomes a law, be presented to the President of the United States or to a person in the Executive office of the President previously designated and authorized in writing by the President to receive it.

#### Sec. 403. Approval by President

(a) If the President approve a bill presented as provided in section 402 of this title, he shall sign it at the end thereof.

(b) Where a legislative instrument so presented, contains two or more bills, as defined in section 401 of this title, he may approve one or more by signing at the end of the instrument and indicating his disapproval of the balance as provided in section 404 of this title.

(c) The President shall not make any notation on a bill, so presented, other than his signature and, if he desires, the word "approved" and the date.

(d) The President's authority to sign a bill shall not be affected by the adjournment of the Congress.

<sup>13</sup> Hinds' Precedents of the House of Representatives, vol. IV, secs. 3506-3518.



(e) The authority to sign a bill, so presented, shall devolve to the President's successor in office.

#### **Sec. 404. Disapproved by President**

If the President does not approve a bill presented as provided in section 402 of this title he shall return it with his objections to the House in which it originated. His objections may be on any basis without limitation.

Where a legislative instrument, so presented, contains two or more bills as defined in section 401 of this title he may disapprove one or more by stating in writing specifically the bill or bills to which he objects and his objections thereto. He shall return the entire legislative instrument with his written statement to the House in which it originated.

Return to an officer designated and authority by the House of Representatives or the Senate respectively, to receive bills so returned prior to adjournment while the body is not actually in session shall constitute a return to that House. Such officer shall call the matter to the attention of that House, through its Presiding officer, on the next succeeding day on which it is in session.

#### **Sec. 405. Reconsideration**

The House to which a bill is returned shall enter the President's objections at large on their Journal and proceed to reconsider it. If after such reconsideration two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall be likewise reconsidered, and if approved by two-thirds of the members present, it shall become a law. The votes of both Houses shall be determined by the yeas and nays, and the names of the persons voting for and against the bill shall be entered on the Journal of each House respectively.

#### **Sec. 406. Enactment without signature; pocket veto**

If any bill is not returned by the President or his successor in office within ten days, Sundays excepted, after it is presented as provided in section 402 of this title, it shall be a law in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

### **EXPLANATORY NOTES**

#### **SECTION 401**

(a) The definition of the "bill" is intended to protect the President's veto power which may otherwise be infringed by incorporating several subjects of legislation in one legislative instrument. It is also designed to include concurrent resolutions of a legislative nature in the requirements of section 402.

(b) The definition of the term "adjournment" is intended to clear up the confusion arising from the Pocket Veto and the Wright cases and is in keeping with reasonable interpretation of the constitutional intent that the adjournment be of such nature as to preclude reconsideration of the bill by the Congress.

#### **SECTION 402**

This section authorizing presentation to an employee on the part of the President is intended to obviate any confusion or doubt as to the date and validity of presentations according to the existing custom. Both are essential in determining the commencement of the 10-day constitutional limitation.

#### **SECTION 403**

Subsection (a) is intended as a restatement of existing law.

Subsection (b) is intended to provide a *modus operandi* in connection with the first paragraph of section 404 to protect the President's veto power where several subjects of legislation are incorporated in one legislative instrument.

Subsection (c) is intended to prevent the practice indulged in by Presidents Jackson and Tyler which was severely criticized as not consistent with the spirit of the constitutional provisions.

Subsection (d) is intended to state legislatively what the Supreme Court held in the Edwards case overcoming the custom which had existed for almost 150 years.



Subsection (e) is intended to state legislatively the practice originated by President Truman in signing bills presented to his predecessor in office. This practice was not challenged.

## SECTION 404

The purpose of the first paragraph of this section is to provide a *modus operandi* in connection with section 403 (b) to protect the President's veto power where several subjects of legislation are incorporated in one legislative instrument. It is also intended to clarify the confusion which has at times existed regarding the basis for nonapproval.

The purpose of the second paragraph of this section is to clear up the confusion and doubt arising from the Pocket Veto and the Wright cases and to provide a *modus operandi*.

## SECTION 405

The principal purpose of this section is to state legislatively what the Supreme Court held in the Missouri Pacific case regarding the vote of two-thirds of the members present.

## SECTION 406

The principal purpose of this section is, in conjunction with the definition of adjournment in section 401, to clear up the confusion arising out of the Pocket Veto and Wright cases regarding the status of bills not signed during an interim adjournment or recess of the Congress.

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[From the Washington Post, Jan. 1, 1971]

## JUSTICE DEPARTMENT CITES POCKET VETO PRECEDENTS

(By Ken W. Clawson)

The Justice Department contends that President Nixon followed "well established historical practice" in exercising a pocket veto of a \$225 million doctor-training bill that some Democrats claim is already law.

William H. Rehnquist, an assistant attorney general, said in a letter to Sen. Edward M. Kennedy (D-Mass.) that, on the basis of past Supreme Court decisions, Mr. Nixon's veto was appropriate and "entirely consistent with that of preceding administrations which have considered the question."

Kennedy, Sen. Ralph Yarborough (D-Tex.) and Sen. Sam Ervin (D-N.C.) contend that a pocket veto is valid only if Congress is in adjournment.

They argue that Congress was only in "temporary recess" last Saturday when President Nixon announced he was refusing to sign the Family Practice of Medicine Act, which was intended to promote training of more family doctors. The White House said it was a veto because Congress was not meeting when the 10th day had passed after the President received the bill from the Capitol.

The Constitution provides that a bill becomes law without the President's signature after 10 days plus Sundays if Congress is still in session. But Congress was in the midst of a six-day Christmas vacation when Mr. Nixon announced the pocket veto of the doctor bill.

Kennedy argued in his letter to the Justice Department that the pocket veto was intended to apply at adjournment at the end of a Congress, or at the end of a session of Congress, and did not apply during a brief recess within a session.

But Rehnquist cited a unanimous 1929 Supreme Court decision that upheld a pocket veto by President Coolidge exercised during a mid-session adjournment.

In that case, the court said, "We think . . . the determinative question in reference to an 'adjournment' is not whether it is a final adjournment of Congress or an interim adjournment, such as an adjournment of the first session, but whether it is one that 'prevents' the President from returning the bill to the House in which it originated within the time allowed . . ."

Senate critics of the veto have threatened to appropriate funds for the doctor bill in the new Congress and get the issue into court. And the American Academy of General Practice has threatened to go directly into court to test the veto.



(From the Houston Chronicle, Houston, Tex., Jan. 31, 1971)

# CONSTITUTIONALITY OF POCKET VETO IS QUESTIONED

(By Jack Cleland)

WASHINGTON.—President Nixon's pocket veto last month of former Sen. Ralph Yarborough's Family Practice of Medicine Act has raised a storm of protest on Capitol Hill over the constitutionality of the chief executive's action.

The issue appears to be headed for a showdown in the U.S. Supreme Court only, ironically, it apparently won't be Yarborough's ill-fated measure that will be put to the court test.

When the White House announced on Christmas Day that the Family Practice of Medicine Act had been pocket vetoed, it also announced a similar fate for a private relief measure. It's the latter legislation which could result in a new Supreme Court definition of the President's veto power over Congress.

The private bill was directly aimed at affording relief to an individual seeking a payment claim from the Foreign Claims Settlement Commission. Yarborough's bill merely established a new federal medical assistance program.

## LEGAL STANDING

Legal experts believe it is virtually impossible for anyone to establish a standing in a federal court suit challenging the veto of the Yarborough Act. They think the would-be beneficiary of the pocket vetoed private bill should be a better position to prove a legal standing in such litigation.

The issue, whichever vetoed act is used as the vehicle for the court challenge, will hinge on whether President Nixon was physically able to send the legislation back to Congress under the normal veto procedure.

Under Article I, Section 7, Clause 2 of the Constitution the President must either veto a bill in writing or sign it into law within 10 days of its receipt, otherwise it becomes law automatically without his signature.

The exception is, and herein lies the dispute, if Congress is adjourned and the President is unable to send a vetoed measure back to the House it originated in, then it does not become law.

On Dec. 14 the Family Practice of Medicine bill cleared Congress and was sent to the President. It passed the Senate by a vote of 64 to 1 and in the House by 364 to 2.

Had President Nixon vetoed the bill upon its receipt it would surely have been overridden and the measure made law. The legislation's backers content this is the reason he used the pocket veto.

Congress was not in session when the 10-day period expired. The Senate, where the bill originated and where it would have been sent back, had taken a four-day Christmas recess from the close of business Dec. 22 to noon, Dec. 28. The intervening Sunday not counted.

Theoretically the Congress was in adjournment although in this case the Senate, before quitting, authorized the secretary of the Senate to receive messages from the President during the recess.

In any event, there's little court precedent on this issue and the reason why the Supreme Court will be called upon to break new ground and decide whether the President usurped Congress' power to override vetoes.

## LEGAL SCHOLAR

The Senate judiciary subcommittee on the separation of powers held a panel discussion last week in an attempt to reach a consensus on what action Congress should take.

Subcommittee members were joined by government attorneys and legal scholars in the discussions. They failed to resolve anything and agreed only that the Supreme Court would have to make a final determination.

Sen. Sam Ervin, Jr., D-N.C., subcommittee chairman, and others are inclined to try and have Congress appropriate funds for the Family Practice of Medicine Act as though the bill were actually law.

Presumably a would-be recipient of those funds could then go to court and try to make a case that he was being deprived the federal assistance by the President's illegal action.



Prof. Arthur S. Miller of the George Washington University here, a consultant to the subcommittee, thought the private bill was a better vehicle to make a court test. He conceded there was little precedent for the Supreme Court to go on except for two decisions, neither of which address themselves squarely to the issues involved now.

In a 1929 case involving a pocket veto Indian Claims Bill, the court ruled that President Coolidge was prevented from returning a bill during an interim adjournment of Congress.

The House had gone home for the session but the Senate was due to come back to meet as a court of impeachment. In that case the court did not draw a distinction between types of adjournment or on the relationship of the pocket veto to a short recess within a session.

#### COURT DECISION

A 1938 Supreme Court decision did deal with an adjournment within a session but not a pocket veto. In this case, President Roosevelt vetoed a bill and returned it to the Senate, where it originated, during a three-day recess of the Senate but not the House.

When the Senate returned, the veto message was presented to it but by this time the 10-day period had expired. The Supreme Court held that an adjournment of Congress, both the House and Senate, prevents the return of a bill by the President.

In this case, however, the court held that since the Senate alone had adjourned, the constitutional provision did not apply.

Asst. Atty. Gen. William H. Rehnquist, a member of the panel, said the 1929 case upholds the President's action in that it extended the President's pocket veto authority to interim adjournments.

He added that President Nixon had no option but to pocket veto the Yarborough Bill because neither body was in session. According to Rehnquist, had the President sent the bill back with his veto during the recess he would have run the risk of being overturned by the Supreme Court under its findings in the 1938 case.

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[From Congressional Quarterly, Feb. 5, 1971]

#### POCKET VETO CHALLENGE

The Senate Judiciary Subcommittee on Separation of Powers held a hearing Jan. 26 on the constitutionality of President Nixon's pocket veto Dec. 26 of the Family Practice of Medicine bill (S 3418).

References. *Background on pocket veto*, p. 103; *veto message* p. 3; *final action and provisions*, 1970 *Weekly Report* p. 2997.

#### TESTIMONY

Sam J. Ervin, Jr. (D N.C.), subcommittee chairman:

The President had ample time to consider his objections to the Family Practice of Medicine Act, yet the congressional opportunity to override his veto was frustrated by the "pocket veto," even though Congress had authorized the Secretary of the Senate to receive his veto message.

If the President is allowed to pocket veto legislation during short recesses of the Congress within a session, he will have established an absolute veto power during these brief periods. The Founding Fathers had no intention of granting the President such absolute power. The veto they devised is a qualified power.

Congress must determine what the framers of the Constitution meant when they wrote in Article 1, Section 7 that a bill passed by Congress shall become law unless the President vetoes it within 10 days after it is presented to him or "unless the Congress by their adjournment prevent its return, in which case it shall not be a law."

Donald R. Matthews, Brookings Institution:

To veto a bill in a way that prevents the Congress from overriding it shows gross lack of respect for congressional opinion. The pocket veto should only be used at final adjournment.



William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel:

At least 15 Presidents have used the pocket veto during short recesses, thus there is ample precedent for Mr. Nixon's action. Since Congress was in adjournment, there was no way he could return the bill with a formal veto message. Had Mr. Nixon returned the bill during the Christmas recess to Congressional clerks designated to receive messages from the President, he would have been risking a possible Supreme Court decision contending the veto was illegal because Congress was out of session.

A possible definition of adjournment might be construed from Article 1, Section 5 of the Constitution which makes mention of adjournments of more than three days. "An adjournment of fewer than three days might in some way be a different kind of recess," and therefore might be subject to differing interpretations by the courts.

Thomas E. Cronin, professor of political science, University of North Carolina and Brookings Institution:

"I am in favor of a strong presidency, but this pocket veto by Mr. Nixon was not an act of strength, but of weakness. It seemed a retaliatory act. A regular veto and message would have been more just and fair.

"This is a political question, and some attempt by Congress must be made to clarify the issue and eliminate the ambiguity on this question."

Related Development. Sen. Edward M. Kennedy (D Mass.) disclosed Jan. 26 he would seek court tests of the pocket veto question.

Kennedy and Ervin said they would seek a first-year appropriation for the Family Practice of Medicine program, with a provision requiring that the Administration spend the money. If the Administration refuses, the Senators believe it will pave the way for an "aggrieved" party, most likely a medical student who could have sought training under the program, to file a lawsuit.

A private bill denied by pocket veto the same day as the Family Practice of Medicine bill may offer another vehicle for a court test. The measure, sponsored by Sen. Henry M. Jackson (D Wash.), involved a settlement for wartime losses suffered by a widow seeking payment from the Foreign Claims Settlement Commission.

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[From Winston-Salem Journal, Winston-Salem, N.C., Jan. 27, 1971]

## 7 QUESTION VETO'S LEGALITY

(By Bill Connelly)

WASHINGTON—President Nixon's pocket veto of the "family doctor bill" was described yesterday as constitutionally and politically unsound by four members of Congress, a constitutional scholar and two political scientists.

But William H. Rehnquist, an assistant U.S. attorney general who advised Nixon on the matter, argued that the President acted "legally and in a tradition established by many other presidents."

Rehnquist was the only administration spokesman in a round-table discussion sponsored yesterday by Sen. Sam J. Ervin Jr.'s subcommittee on separation of powers, which is studying the constitutionality of the veto.

The family doctor bill authorized \$225 million for a three-year program to help medical schools and hospitals encourage students to become general practitioners.

Congress sent the measure to Nixon on Dec. 14 after it had passed by votes of 64 to 1 in the Senate and 364 to 2 in the House.

On Dec. 26, Nixon announced that the bill had died by pocket veto because Congress, on a four-day Christmas recess, was not present to receive the usual veto message within the 10 days required by the Constitution.

If Congress is in "adjournment," the Constitution provides that a bill dies at the end of 10 days if the President does not sign it. If Congress is in session, the bill becomes law after 10 days unless the President returns it with a veto.

Rehnquist argued yesterday that since Congress was out of town for Christmas, Nixon "had no choice" but to let the family doctor bill die by pocket veto. He said all recent presidents of both parties have taken similar actions, though none during such a brief congressional recess.

But Ervin and other members of Congress contend that the term "adjournment" in the Constitution refers to the end of a session, not to a brief recess.



Ervin, who missed yesterday's discussion while attending the Senate Democratic caucus, said in a statement that if the President is allowed to use a pocket veto during short recesses "he will have established an absolute veto power during these brief periods."

Ervin said the Constitution's 10-day veto provision was obviously designed for a time when Congress met only a few months each year.

"Today we have a different situation entirely," Ervin said "The Founding Fathers did not envision brief holiday trips to the ski slopes of Colorado or the sunny shores of the Bahamas. Surely they did not foresee that Congress would become a year-round operation . . ."

Arthur S. Miller, a law professor and constitutional scholar at George Washington University, said Nixon's veto does not meet the constitutional test because the congressional recess did not "prevent" the return of the bill to Capitol Hill.

Miller said records show that the secretary of the Senate and the clerk of the House had specifically been authorized to receive communications from the President and others during the recess.

Sen. Charles McC. Mathias, R-Md., agreed, saying it was clearly the meaning, "spirit and intent" of the Constitution that the president return bills to Congress for reconsideration if at all possible.

Others questioning the veto's legality were Dr. Donald R. Matthews of the Brookings Institution and Dr. Thomas E. Cronin of the University of North Carolina at Chapel Hill, political scientists, and Rep. Fred B. Rooney, D-Pa., and Sen. Edward M. Kennedy, D-Mass.

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[From Winston-Salem Journal, Winston-Salem, N.C., Jan. 31, 1971]

#### CONGRESS MAY TRY TO LIMIT POCKET VETO

(By Bill Connelly)

WASHINGTON.—Since 1787, presidents of the United States have used "pocket vetoes" more than 400 times to kill legislation passed by Congress. Each of these has caused great distress and anger on Capitol Hill.

Most recently, President Nixon employed a pocket veto in December to kill a measure authorizing \$225 million over three years to promote the training of family doctors (general practitioners).

A pocket veto derives from Article I, Section 7, Clause 2 of the Constitution, which requires the president to sign bills passed by Congress within 10 days or return them to Congress with a veto message stating his objections.

If Congress is in session and the president does not either sign or return the bill in 10 days, the measure becomes law. But if Congress is in "adjournment," preventing return of the bill, the president can kill it in 10 days by doing nothing.

When the founding fathers drafted the Constitution at Philadelphia in 1787, they envisaged a Congress that would meet only a few months each year. The 10-day veto provision obviously had two purposes:

(1) To assure that the President acted promptly at the end of a session on bills approved by Congress. (2) To assure that Congress would not adjourn without giving the President time to study and return bills.

Today, however, Congress meets year-round. Early adjournments, in summer or fall, are becoming rare. And because of this, Congress is taking more brief recesses during the year.

When President Nixon pocket-vetoed the family doctor bill in late December, Congress was recessed for four days and a Sunday for Christmas holidays. Nixon viewed this as an "adjournment" in the constitutional sense and pocketed the bill.

But the outraged congressional sponsors of the measure disagree. They contend that "adjournment" means *sine die* adjournment at the end of a session, not a brief recess.

Before Congress went on its Christmas recess, the secretary of the Senate and the clerk of the House were authorized to accept "messages from the President" during the break. Thus, it is argued that Nixon was not "prevented" from returning the bill, as specified by the Constitution.



But if Nixon was not on entirely firm legal ground, neither are his critics. There are two Supreme Court rulings involving pocket vetoes by Calvin Coolidge and Franklin D. Roosevelt. Both decisions upheld the vetoes, yet both were narrow in scope and failed to settle the main question of what constitutes an adjournment.

Over the years, neither Congress nor the courts has been willing to decide the question. All recent presidents have used pocket vetoes, but Nixon is the first to use this power during a recess as short as four days. He can point out, however, that Lyndon Johnson pocket-vetoed a bill during an 11-day recess without being successfully challenged.

Many members of Congress and of the American Academy of General Practice want to challenge Nixon, but it is uncertain how they will do it. Because the family doctor bill did not appropriate funds—it only authorized a program—it is doubtful that any taxpayer or group would have legal standing to sue.

But whatever comes of the legal test, there may be a movement in Congress to define the term "adjournment" as meaning the end of a session—or meaning, as some prefer, any recess of more than three of four days. Some think a constitutional amendment would be required.

No one wants to eliminate the pocket veto provision from the Constitution, but there is near-unanimous agreement that the boundaries of this power should be defined more clearly.

The family doctor bill, whatever its merits, had full hearings and passed by 364 to 2 in the House and by 64 to 1 in the Senate. Had the President returned it to the bill with a regular veto, Congress likely would have overridden him with a two-thirds vote.

But the vague pocket veto provision gave Nixon, like many of his predecessors, a powerful weapon to override Congress instead. It is doubtful that this is what the founding fathers had in mind.

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[From The EVENING Star, Washington, D.C., Jan. 22, 1971]

#### THE 'POCKET VETO' CONTROVERSY

(By Lyle Denniston)

A favor that Sen. Henry M. Jackson, D-Wash., did for the manager of his apartment house could become a part of the annals of American constitutional history.

The gesture involved a bill he introduced because he wanted to help Mrs. Zdenka Sokitch, who ran the apartment house where the Senator lived at the time.

The bill, in the name of Mrs. Sokitch's now-deceased husband, Miloye, was a "private relief bill" like thousands offered each year to aid someone who has problems with the bureaucracy. This one almost became law. Passed by both houses of Congress in December, it was sent to the White House for presidential approval.

But President Nixon vetoed it, lifting the measure out of obscurity and—perhaps—into history.

He used what is called a "pocket veto." Rather than disapproving the bill and sending it back to Congress with his objections, Nixon simply refused to act and the bill expired at midnight Dec. 23.

Congress was in recess for the holidays. The Constitution says that if a President does not act on a bill 10 days after he gets it, and Congress is adjourned at the time, the measure dies. The pocket veto is absolute; the bill never is returned to Capitol Hill, and thus Congress never has a chance even to try to override it and make it law.

Nixon's use of the pocket veto during the holidays—on two bills—has now provoked a basic constitutional dispute with Congress. Some senators, in particular, say it was an affront to Congress' right to take a holiday during a session without having to worry that a favored bill would be killed with no chance of revival.

Of course other presidents have used the pocket veto. Lyndon Johnson used it just two-and-a-half years ago on a cotton bill. But the fact that Congress is Democratic and Nixon is a Republican makes it easier to get a dispute over prerogatives.



No one in Congress, to be sure, thinks of the "Miloye Sokitch bill" as a favorite item of legislative business. But it could be the handiest item available to turn the constitutional dispute into a test case for the courts.

The other bill that the President pocket-vetoed, letting it expire at midnight on Christmas, is the real focus of attention. That was the bill to authorize \$225 million for a three-year program to train general practitioners, the aim being to help relieve the shortage of "family doctors."

That is the kind of social legislation Congress has favored and that President Nixon has chosen—not infrequently—to veto. Until the "family practice of medicine act" came along, however, Congress has had a chance to try to override these vetoes.

Only three members of Congress—one senator and two representatives—voted against that bill. That's a fair indication it could have won the necessary two-thirds vote to override a regular veto.

Aside from the popularity of that measure, though, there is another reason for congressional interest in testing the "pocket veto" issue. Not in 33 years has the Supreme Court ruled on the question, and that decision left a possible constitutional loophole to accommodate the "rights" some members of Congress see at issue now. If Congress is in recess, but a staff member is left in town to receive presidential messages, the 1938 decision hinted, there may be no reason why the president could not send a disapproved bill back.

To get the Supreme Court to rule anew, however, there has to be a test case. Some thought is being directly on the family doctor legislation, along one of these lines:

1. About mid-February when a bill to provide miscellaneous appropriations for this fiscal year comes along, an attempt could be made to include funds to carry out the doctor measure just as if it had become law. Sooner or later, the validity of the spending would get to court.

2. Some officer of Congress might be instructed to sue the President to try to force him to send the doctor measure to the Public Printer to be put on the nation's statute books.

3. Or one of the lobbying organizations that fought for the doctor measure—the American Academy of General Practice, for example—might be recruited to sue for implementation of the bill.

But not one of those approaches is a "sure thing" to get into the courts, because of procedural difficulties. But the very real claims of Sen. Jackson's doorstep constituents very likely could get into court—promptly—and stay there through a final Supreme Court decision.

For years, Miloye Sokitch, a refugee from Yugoslavia, had been trying to get a U.S. government agency to approve his claim of \$215,200. After the Germans occupied Yugoslavia in World War II, they handed over a manganese mine owned by the Sokitch family to the Italians. The family's loss of ore from the mine is the basis of Sokitch's claim. If he could get that claim before a U.S. agency (the Foreign Claims Settlement Commission), he might qualify for funds Italy set aside to pay for wartime losses to people living in America.

Sen. Jackson's bill would have put the Sokitch claim before the agency. Although Mr. Sokitch is dead, his wife is living. She is now Mrs. Jess Larson, the wife of a lawyer here.

The estate's attorney, Samuel Herman, is now pondering the formal filing of the claim before the commission—the first step toward a challenge of the pocket veto.

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(From The Evening Star, Washington, D.C., Dec. 30, 1970)

#### 'POCKET VETO' BY NIXON BRINGS HILL CHALLENGE

(By James Doyle)

President Nixon may have acted illegally when he used the "pocket veto" on a medical education bill during Congress' Christmas recess.

That is the opinion of Senate and House proponents of the bill, who promise a move in the next Congress to defy the President's action and to define the limits of the power of "pocket veto."

The opinion is shared by doctors who sponsored the legislation. They were holding a news conference today to announce legal moves intended to force a Supreme Court test of the President's action.



## 1938 RULING CITED

Parliamentarians in the Senate declined to judge the case, but pointed to a 1938 Supreme Court ruling which held that a brief House recess did not prevent the President from returning a formal veto message to Congress—instead of a pocket veto—on a piece of legislation he would not sign.

According to the parliamentarians, past presidents have used the pocket veto during congressional recesses. But they could not find a case where it was used when Congress was out of town and due back immediately after the veto action.

The bill in question authorized the administration to spend up to \$225 million over three years to help medical schools and hospitals establish new departments for the teaching of "family practice medicine," designed to encourage more general practitioners.

The President announced Saturday that he was withholding his signature from the legislation because, he said, it would add to "the almost unmanageable current structure of federal government health efforts." He said his own health proposals would receive high priority in his 1971 legislative program.

He acted under a provision of the Constitution which requires the President to sign or return all legislation to Congress within 10 days.

## WHAT CONSTITUTION SAYS

"If any bill shall not be returned by the President within 10 days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law," the Constitution says.

Congress adjourned for a Christmas recess on Dec. 22, eight days after sending the legislation, the "Family Practice of Medicine Act," to the White House. The Senate returned from recess two days ago and the House yesterday.

Before adjourning, the secretary of the Senate and the clerk of the House were instructed to receive any communications from the White House or the opposite branch of Congress.

Under the Constitution, the President is required to return to Congress with his objections any bill that he disapproves. Then a two-thirds vote of both houses is required to override the veto.

## PASSED OVERWHELMINGLY

In the case of the "family practice of medicine" bill, it is uncertain that the President's formal veto could have been overcome, despite the fact that the bill passed the Senate 64 to 1 and the House by 346 to 2.

Congress is in a rush to finish its business before the legal deadline of noon Sunday, and the bill might have been allowed to die without coming to a fresh vote.

But, by using the pocket veto, Nixon made his rejection impossible to override at the present session, since he did not return the legislation to Congress.

Sen. Edward M. Kennedy, D-Mass., Democratic whip accused Nixon of a "promiscuous use of the pocket veto" which he said threatened an important constitutional principle.

Clarification of the President's power "should be one of the first priorities of the 92nd Congress," Kennedy said. The same view was taken by several other legislators, including the bill's House sponsor, Rep. Fred B. Rooney, D-Pa.

Sen. Sam Ervin, D-N.C., suggested that Congress should challenge the President's action by appropriating the \$225 million authorized under the measure which Nixon did not sign.

This would, in effect, ignore the President's action on the authorization bill and confront him with either accepting and spending the medical school subsidies, or vetoing the money bill next year.

Dr. Amos Johnson of Garland, N.C., past president of the American Academy of Family Practice, said academy members, sponsors of the legislation, "are going to attempt to give the Supreme Court an opportunity to settle this issue between the President and Congress."

He added, "If Mr. Nixon has his way, Congress will be afraid to take off for the July Fourth weekend ever again."

Rooney said Nixon "by his action has challenged the Congress to spell out in terms which cannot be distorted by whim the precise role of the pocket veto in our legislative process."



Kennedy said the pocket veto during a brief congressional recess "has grave implications for the balance of power between the legislative and executive branches." He called it "this latest effort by the President to undermine congressional power."

Senate parliamentarians noted that President Johnson used the pocket veto on an agricultural act amendment in August 1968, when Congress adjourned for the national political conventions. But the members did not return to Capitol Hill until several weeks after the veto that time.

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[From Chicago Tribune, Dec. 31, 1970]

## NIXON'S POCKET VETO OF DOCTOR BILL IS HIT

(By Glen Elsasser)

WASHINGTON, Dec. 30—Congressmen and a doctors' organization today challenged the constitutionality of President Nixon's recent veto of a bill promoting training in family medicine.

At issue was the use of a "pocket veto," a constitutional device whereby a President can kill a bill by refusing to sign it after 10 days have passed and when Congress is not in session.

The normal veto procedure is for the President to send the rejected measure back to Congress with a message spelling out his objections. Congress then can override or sustain the veto.

### INTERPRETATION OF ERVIN

Sen. Sam Ervin [D., N.C.], a leading constitutional authority in the Senate, contended at a press conference that the bill in fact had been passed since his interpretation of the Constitution would bar such a veto.

Ervin's argument was that a pocket veto could be used only following the close of a Congress or the end of a congressional session. Nixon's pocket veto of the disputed bill was made on Dec. 26 while Congress had adjourned for the Christmas holiday.

### WANTS COURT TEST

The Family Practice of Medicine bill passed the Senate by a vote of 64 to 1, and the House by a vote of 346 to 2. The bill would have authorized the spending of \$225 million in the next three years as grants to hospitals and medical schools to train family doctors.

Dr. Amos Johnson of Garland, N.C., a former president of the 32,000-member American Academy of General Practice, said that the organization wanted a Supreme Court test of the pocket veto. However, he declined to spell out specific legal actions being considered.

Dr. Johnson, Ervin and several other senators appeared at the press conference to discuss possible actions on the veto. Ervin indicated that the new Congress might make the funds available for the training program thru an appropriations bill.

The Justice Department, which advised the President on the veto, disputed the argument presented by Ervin and other Democratic congressmen.

### REFERS TO DECISION

William H. Rehnquist, head of the department's Office of Legal Counsel, said that in past administrations when the 10th day fell during an adjournment of Congress, Presidents had been advised they had the right as well as a duty to "pocket veto" a measure.

He referred to a 1929 Supreme Court decision in which the court said that the word "adjournment" used in the veto clause of the Constitution referred to any adjournment, regardless of the period of time.

Nixon vetoed the bill on the ground it was "unnecessary" and the "wrong approach to the solution of the nation's health problems." He plans to propose broad health reforms to the new Congress early next year.



[From The Greenville News, South Carolina, Dec. 30, 1970]

# FAMILY DOCTOR BILL—CONGRESS TO CHALLENGE PRESIDENT'S 'POCKET VETO'

(By Gene Goldenberg, News Washington Bureau)

WASHINGTON.—The constitutionality of President Nixon's "pocket veto" of the Family Doctor Bill will be challenged in the courts and in Congress, it was learned Tuesday.

The American Academy of General Practice, a national organization of family doctors which ardently backed the bill to provide federal funds to train general practitioners, will announce Wednesday its intention to take President Nixon to the Supreme Court over the veto.

And Sen. Sam J. Ervin Jr., D-N. C., a respected constitutional scholar, promised to fight the Nixon veto in Congress next year through a tactic that would produce a direct confrontation with the White House.

Ervin, as well as the Academy of General Practice, feels the President abused the "pocket veto" for political purposes.

Normally, the President is required by the Constitution to send a veto message to Congress and thus provide the opportunity for Congress to override his decision by a two-thirds vote of both the House and Senate.

However, the President is allowed 10 days from the time he receives a bill to either sign or veto it. If he does neither, the bill becomes law unless Congress is adjourned at the end of 10 days, in which case his lack of action becomes a veto. This is the so-called "pocket-veto."

Nixon argued that since the 10-day period expired during a four-day Christmas recess, the Congress was adjourned, and he was unable to send a veto message. Thus, he said he was justified in using the "pocket veto," which is irreversible by Congress.

Congressional backers of the Family Doctor Bill, which passed with a total of only three dissenting votes in both the House and Senate, immediately argued, that the President was playing politics with the "pocket veto." They noted that the recess specifically authorized officers of the House and Senate to receive messages from the President while Congress was out for the holiday.

The original sponsors of the bill, Sen. Ralph Yarborough, D-Tex., and Rep. Fred B. Rooney, D-Pa., pointed to Supreme Court rulings that upheld the power of officers of Congress to receive messages from the white house. The President knew this full well, They said, and also knew the Congress was returning within 48 hours of his "pocket veto."

In addition, the President had the bill in his hands for seven days while the Congress was in session but had failed to act.

Ervin said the simplest way to test the President's veto would be to fund the family doctor program next year just as if the authorization for the program had never been vetoed. This would hand the ball to the President and force him to justify his veto, or face a court challenge for refusing to fund the program.

Ervin said he "wouldn't hesitate" to introduce such an appropriation next year and said he would work to get a funding measure approved by the Senate Appropriation Committee.

Such a strategy may become necessary even in light of the Academy of General Practice resolve to take the issue to the Supreme Court.

The Academy, and anyone else who wants to challenge the veto, would have difficulty establishing "standing" before the courts because without an appropriation for the program, it would be hard to prove damage in court. Technically, there is no program until it is funded by Congress.

Ervin noted the dangerous precedent that would be established if the President's "pocket veto" is allowed to stand, pointing out that the President could then irreversibly veto almost any bill that came to him at the beginning of a ten-day period ending on a Saturday, when Congress is rarely in session.

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[From The New York Times, Dec. 31, 1970]

## NIXON ACCUSED OF MISUSING 'POCKET VETO'

(By Fred P. Graham, Special to The New York Times)

WASHINGTON.—Six Democratic lawmakers charged today that President Nixon misused his "pocket veto" power last week when he announced he had killed a



\$225-million medical education bill without giving Congress an opportunity to override his action.

They asserted that the bill had in fact become law, and they threatened to introduce a bill early next year to appropriate funds to carry out its program to create new departments of family medicine in medical schools around the country.

One purpose of such a move would be to force a Supreme Court test of the President's power to use the pocket veto during brief adjournments within a session of Congress, a procedure that has been used sporadically but has never been tested in court.

The three Senators and three House members who protested Mr. Nixon's action today conceded that there were serious procedural problems in getting such a suit into court. They implied that the constitutional dispute might be permitted to lapse in the effort to enact a bigger medical aid program next year.

#### PLANS TO URGE REFORMS

Senator Ralph W. Yarborough of Texas, the chief sponsor of the bill in the Senate, said, "It's a law, in my opinion." But he said the need for new programs to remedy the national shortage of 50,000 doctors should not be overshadowed by the constitutional issue raised by the President's action.

President Nixon announced last Saturday that he had employed a pocket veto to kill the bill, which had passed the Senate, 64 to 1, and the House, 346 to 2. Mr. Nixon called the bill a piecemeal approach and pledged to introduce a broad program of medical reforms early next year.

The constitutional issue arose from an ambiguity in Article 1, Section 7 of the Constitution. It says that when Congress passes a bill the President may either sign it into law or veto it and send it back to Congress, where a two-thirds vote of both houses is then required to override his veto.

But Section 7 adds:

"If any bill shall not be returned by the President within 10 days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law."

#### KENNEDY BACKS PROTEST

Senators Sam J. Ervin Jr. of North Carolina and Edward M. Kennedy of Massachusetts joined Mr. Yarborough in insisting at a news conference today that "adjournment" was intended to apply only when Congress quit at the end of a session or at the termination of a two-year term of Congress, and thus was not available to consider the President's veto.

Otherwise, Senator Yarborough charged, "we'd be risking vetoes any time we adjourned from Friday night until Monday morning."

The challengers reasoned that, since the bill was sent to Mr. Nixon on Dec. 14, it became law on Dec. 26, the day the White House announced it had been pocket vetoed. Congress adjourned on Tuesday evening, Dec. 22, and was to return at noon on Dec. 28.

Assistant Attorney General William H. Rehnquist replied in an interview today that the President had the constitutional power to use the pocket veto whenever the adjournment of Congress prevents him from returning a bill within a 10-day period. He said that such "recess" pocket vetoes were not usual but that several Presidents, going back to Andrew Johnson, were known to have used them.

#### SHORTEST ON RECORD

Mr. Rehnquist said that the five-day adjournment involved in this pocket veto was the shortest his research had turned up. The second shortest was a pocket veto by President Lyndon B. Johnson in a 10-day recess in 1964.

The Supreme Court declared in a 1938 case that the term "adjournment" did not apply when one house had recessed for less than three days and its officers were available to receive the President's veto and hold it for the members' imminent return. But it was never decided whether the pocket veto can be used when both houses pass a concurrent resolution formally agreeing to adjourn for a period within a session.

Despite the Democrats' insisting that the measure was valid law, it will not be printed in the lawbooks. Federal statutes give the administrator of the



General Services Administration, a subordinate of the President, the authority to publish the laws. Mr. Rehnquist said this bill would not be published.

The House members who joined in the news conference were Paul G. Rogers of Florida, Fred B. Rooney of Pennsylvania, and Richardson Preyer of North Carolina.

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[From Louisville Times, Louisville, Ky., Jan. 4, 1971]

#### POCKET VETO NEEDS CLARIFYING

A hassle has developed over President Nixon's use of his pocket-veto power to kill a \$225 million medical education bill while Congress was taking a brief Christmas recess. This denied the lawmakers an opportunity to override the veto, and it is on that account that three Democratic senators have challenged the action.

The three—Ervin of North Carolina, Kennedy of Massachusetts, and Yarborough of Texas—contend that a pocket veto is proper only when Congress has ended its session and is no longer available to consider a presidential veto. There are hints that the issue may be taken to the Supreme Court for decision.

The dispute hinges upon interpretation of the word "adjournment." The constitution (Article I, Section 7) gives the President 10 days to sign a congressional enactment or return it with a veto message. It further provides that, "If any bill shall not be returned by the President within 10 days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he signed it, *unless Congress by their adjournment prevent its return, in which case it shall not be a law.*"

What is known as the power of pocket veto resides, of course, in the words we have italicized. There can be no doubt that the device is valid when Congress has in fact adjourned. The question in the case at hand is whether or not taking a few days off for a holiday recess constitutes an "adjournment." The protesting senators contend that it does not.

The medical education bill reached the President's desk while the lawmakers were still in session. Not until late Tuesday, Dec. 22, did they recess, with the announced intention of getting back on the job the following Monday. But on Saturday—four days after the recess began—the White House announced that Mr. Nixon had exercised the only means of veto available to him in the circumstances.

Whether he misused the power of pocket veto in a deliberate move to circumvent Congress or merely availed himself of a fair advantage created by circumstances is something that legal minds might argue endlessly. Only the Supreme Court can provide a definitive answer, and we hope it gets the opportunity. The cloud of confusion that has been raised extends beyond the present dispute, casting a long shadow over the future of White House rights and obligations. It needs to be cleared away.

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[From Boston Globe, Boston, Mass., Jan. 28, 1971]

#### DID NIXON POCKET-VETO FAMILY DOCTOR TRAINING

(By S. J. Micciche, Globe Washington Bureau)

WASHINGTON.—On Christmas Day, President Nixon announced that he was pocket vetoing a bill while Congress was out of town on a five-day holiday.

He's been in trouble over it ever since.

A symposium of senators, legal scholars and political scientists agrees Mr. Nixon was constitutionally out of line.

Some go so far as to suggest that the bill, a \$225 million program to spur the training of family doctors, is actually law, having become so without the President's signature while Congress was still in session.

The only member of the panel to insist the President did the right thing was the man who advised him to pocket the enacted bill, Asst. Atty. Gen. William H. Rehnquist of the Justice Department's office of legal counsel.

In Rehnquist's view, Mr. Nixon had "no option" but to pocket veto the bill in the time sequence of his decision against signing it.



## MEDICINE ACT

On Dec. 14, Congress sent the Family Practice of Medicine Act to the White House. The three year program had won massive congressional support, clearing the House by a 364-2 vote and the Senate by 64-1, despite Administration opposition during its hearings.

Under the Constitution, the President has 10 days in which to sign or veto a bill. If Congress is in session, the Constitution requires the President to return a vetoed bill with a message stating his reasons and allowing Congress to reconsider it. Congress can override the veto with a two-third vote of each branch.

However, if the President chooses neither to sign nor return it to Congress with a veto message, the enacted bill becomes law—"unless the Congress by their adjournment prevent its return, in which case, it shall not be a law," so state the Constitution.

Therein lies the hangup.

Was the Christmas holiday taken by Congress an "adjournment" within the meaning of the Constitution? And if it was technically so, did it "prevent" the return of a vetoed bill from the President?

Rehnquist insists it was. He received a call for advice from the White House on Dec. 23. Congress had left for its holiday on the night of Dec. 22, and in Rehnquist's view Congress was in a state of "adjournment." And in this circumstance, the President had no choice but to pocket veto the bill he did not choose to sign.

## KENNEDY VIEW

But U.S. Sen. Edward M. Kennedy believes the Christmas recess was not of the duration conceived by the framers of the Constitution as to permit a pocket veto.

"Our own belief is that the legislation is law today," said Kennedy. "The only time the pocket veto provision applies is upon a final adjournment of Congress. There is no middle ground."

In his belief, Kennedy is joined by the Senate's foremost constitutional authority, U.S. Sen. Sam J. Ervin, (D-North Carolina).

Ervin, chairman of the Senate Judiciary Subcommittee on the separation of powers, maintains that the veto authority of the President imposes the corollary "obligation" to return to Congress those bills that he disapproves.

In the 10-day time interval, Ervin reasons, Mr. Nixon had "ample time" to consider his objections and still return the medical education bill to Congress for an opportunity to override.

Since the Christmas pocket veto, the merits of the bill have become almost wholly submerged to the larger constitutional question of executive "usurpation" of the legislative powers.

## OVERNIGHT?

If the pocket veto clause is allowed to apply to the brief Christmas holiday taken by Congress, "then why should it not also apply to an adjournment of three days, or one day or even overnight," challenges Kennedy.

The President, Kennedy said has "pushed the pocket veto power to the limit of its logic."

Ervin sees this incident as a threat to what the drafters of the Constitution deliberately sought to avoid, that of vesting the regal power of an "absolute veto in the hands of the President.

"The founding fathers had no intention of granting the President such an absolute power," said Ervin. "The veto they devised in 1787 is a qualified power, as opposed to the absolute power held by the King of England."

Kennedy further fortifies the position of Congress by emphasizing that prior to its Christmas holiday, both branches designated by unanimously adopted resolutions that the Secretary of the Senate and the Clerk of the House would be available to receive messages from the President.

This, Kennedy noted, met a requirement laid down by a 1938 decision of the US Supreme Court, and consequently the Christmas "adjournment" of Congress did not prevent the receipt of veto messages from the White House.

Prof. Arthur S. Miller, of George Washington University Law School and a consultant to the Ervin subcommittee, maintained that the key word in the constitutional provision is "prevent," and in this instance the President was "in no way prevented from returning the bill with a veto message."



Dr. Donald R. Matthews of the Brookings Institute, said that from a "non-lawyer's viewpoint, but from good public policy, it was unfortunate that the President" took the course of a pocket veto on this bill. "It showed a gross lack of respect for Congress," said Matthews, adding that "this is not a good way of running the government."

[From The New York Times, Jan. 27, 1971]

# KENNEDY AND ERVIN PLANNING A TEST IN SUPREME COURT OF PRESIDENT'S POCKET VETO POWER

(By James M. Naughton, Special to The New York Times)

WASHINGTON, Jan. 26—Senators Edward M. Kennedy of Massachusetts and Sam J. Ervin Jr. of North Carolina, hoping to force a Supreme Court test of a President's pocket veto powers, are preparing to seek an appropriation for a medical training program that was vetoed last December by President Nixon.

The plans of the two Democrats were disclosed today by an aide to Senator Kennedy following a panel discussion sponsored by the Senate Judiciary Subcommittee on the Separation of Powers.

William H. Rehnquist, an Assistant Attorney General, told the panel of Congressmen and legal experts that Mr. Nixon had "no option" but to use a pocket veto to kill the Family Practice of Medicine Act on December 24 because Congress had adjourned for the Christmas holidays.

The Constitution does not allow the President under such circumstances to say "I'm going to be a good guy" and send Congress a veto message, Mr. Rehnquist contended.

The Constitution provides that a bill will become law if it is not signed by the President within 10 days after he receives it from Congress, but that it will die—by what is called a "pocket veto"—if Congress is adjourned when the 10-day period elapses. It is ambiguous about whether a short holiday break constitutes adjournment.

Representative Fred B. Rooney, Democrat of Pennsylvania, charged that Mr. Nixon could have interpreted the Constitution to allow a formal veto message of the medical training bill but used a pocket veto to avoid having his action overturned by two-thirds' votes of the Senate and House.

The measure, authorizing \$225-million for a three-year program of grants to hospitals and medical schools to train general practitioners, had passed the Senate, 64 to 1, and the House, 346 to 2.

At issue is whether the Constitution authorized a President to exercise a pocket veto when Congress has adjourned only temporarily, as in the case of the four-day Christmas holiday.

Mr. Nixon is not the first President to use a pocket veto during a brief adjournment, but Senator Charles McC. Mathias Jr., Republican of Maryland, said that the action in the medical training bill had brought the issue to a head.

"The time is ripe," he said, "to settle this question."

The panelists, including Mr. Rehnquist, agreed it would take a Supreme Court decision to settle the matter but appeared uncertain whether the medical training bill could be a vehicle for the test.

Senator Kennedy and Prof. Arthur S. Miller of the George Washington University Law School contended that the bill automatically became law because of Mr. Nixon's refusal to submit a formal veto message to Congress.

Accordingly, Senators Kennedy and Ervin plan to seek a first-year appropriation for the program, with a provision requiring that the Administration spend the money. If the Administration refuses, they believe it will pave the way for an "aggrieved" party, most likely a medical student who could have sought training under the program, to file a lawsuit.

Other panelists, however, said they believed a more promising vehicle for the Court test was a private relief bill vetoed by Mr. Nixon the same day.

That measure, sponsored by Senator Henry M. Jackson, Democrat of Washington, would have extended the statute of limitations on claims against wartime losses to permit the widow of a World War II refugee from Yugoslavia to seek a \$215,200 payment from the Foreign Claims Settlement Commission.

Lawyers for the estate of the late Miloye Sokitch are considering proceeding with the claim as if the private bill also seek to have congress represented as a



friend of the court by independent counsel, rather than the Justice Department. Thomas E. Cronin, professor of political science at the University of North Carolina, noted that Congress had provided for officers of the Senate and House to receive messages—in his view, including vetoes—from the President during the holiday adjournment.

Mr. Nixon's pocket veto was "an act not of strength, but of weakness," he told the panel.

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[From Dallas Morning News, Dallas, Tex., Dec. 31, 1970]

#### NO POCKET VETO, RALPH, OTHERS SAY

(By Saralee Tiede, Washington Bureau of the News)

WASHINGTON.—Sen. Ralph Yarborough and a group of senators, congressmen and doctors Wednesday questioned the legality of President Nixon's pocket veto of the family practice bill.

The bill, which Yarborough introduced, would have authorized \$225 million in aid to medical schools which train family doctors. Nixon used the pocket veto to kill the bill, which had only three votes against it in the house and senate.

Sen. Sam Ervin, D-N.C., the Senate's leading constitutional scholar, said in his judgment the bill has become law regardless of the President's action.

The pocket veto can be used to kill a bill only if the president has no opportunity to return the bill to the house where it originated with his veto message, Ervin said.

The President vetoed the bill, by not signing it within 10 days, while Congress was in Christmas adjournment.

The American Academy of General Practice, which represents 32,000 family doctors, promised to take the question to the Supreme Court.

"I think we've got a law," Yarborough said in a press conference. "If this is legal, then the President could pocket veto a bill every time congress adjourned for the weekend."

The Texas senator charged Nixon with "callous disregard" for the health needs of the American people, at a time when the nation is short 50,000 physicians and many medical schools are on the edge of bankruptcy.

In his memorandum, Nixon called the family practice bill unnecessary and the wrong approach to the nation's health problems. He said the bill would only add one more program to the training of family doctors, he said.

Nixon has promised to make health his top priority in 1971 and to present a package of health legislation to congress in February.

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[From the Wall Street Journal, Dec. 31, 1970]

#### MEASURE BECAME LAW DESPITE POCKET VETO, SEN. ERVIN CONTENTS

CONSTITUTIONAL AUTHORITY BACKS GROUP DISPUTING WAY NIXON DISAPPROVED OF MEDICAL BILL

(By a Wall Street Journal Staff Reporter)

WASHINGTON—A bill that President Nixon thinks he killed with a pocket veto has become a law, according to one of the Senate's authorities on the Constitution.

Sen. Ervin (D., N.C.) joined a group of liberal House members and Senators in contending that Mr. Nixon incorrectly used the pocket veto in disapproving a bill authorizing funds to train more general-practice doctors.

"This bill has become a part of the law of the United States and was not killed by a pocket veto," Sen. Ervin told reporters. The Senator regards himself as a strict constructionist of the Constitution, and his views carry weight on Capitol Hill.

The dispute could develop into one of the more interesting constitutional arguments in recent years. Sen. Ervin and his allies propose that the new Congress next year proceed on the assumption that the doctor-training measure is law, and appropriate money to carry it out. That course could land the case before



the Supreme Court. Meanwhile, an independent court challenge of the disputed veto is being promised by the American Academy of General Practice, a group of 32,000 member doctors, which strongly favors the training bill.

However, the litigation starts, the legal argument could produce a more refined Supreme Court definition of the circumstances in which a President can use a pocket veto.

The Constitution says the President must decide what to do about a Congressionally passed bill 10 days after he receives it, not counting Sundays. A bill becomes law if he signs it, which is what usually happens, and it also becomes a law if he lets the 10 days go by without doing anything. If he officially disapproves it he must send the bill back to Congress, where lawmakers have a chance to override the veto by a two-thirds vote.

Those procedures apply while Congress is in normal session. If it has adjourned after passing a bill, the measure becomes law only if the President signs it. If he doesn't, the bill figuratively dies in his "pocket," and Congress hasn't any chance to override this form of veto because on the definition of "adjournment," and earlier Supreme Court decisions don't precisely cover the present circumstances.

Mr. Nixon received the doctor-training bill on Dec. 14. The 10 days were up on Christmas Day. Congress meanwhile had given itself the Christmas weekend off, quitting from Dec. 22 to Dec. 28.

That weekend Mr. Nixon issued a "memorandum of disapproval," traditionally used for pocket vetoes, objecting that the bill duplicates existing Federal medical training programs and promising an administration package of health proposals next year. Since Congress wasn't in town, the White House didn't send it a regular veto message and assumed the bill was permanently dead.

The complaining lawmakers argue this was a sneaky way of avoiding an almost certain override in the post-Christmas session, because the measure originally passed by overwhelming votes of 64 to one in the Senate and 346 to two in the House. Rep. Rooney (D., Pa.) charged that "the President couldn't muster the fortitude to place his position formally before the Congress to be sustained or overridden."

Sen. Ervin contends that Congress hadn't adjourned in the Constitutional sense during its Christmas break, that the President knew the Senate was coming back on the 28th and that routine arrangements had been made for Senate staff officials to receive White House messages over the weekend. Thus, by letting 10 days go by without signing the bill or returning it with a regular veto, Mr. Nixon actually let it become law, according to the Senator. "I don't see how anyone could conclude that there has been a pocket veto of this bill," he said.

Sen. Yarborough (D, Texas) another objector, said the President isn't being accused of doing anything unconstitutional; "He didn't do anything, and because he didn't do anything it (the bill) became a law."

Sen. Kennedy (D., Mass.) said in a letter to Attorney General Mitchell that the pocket-veto rule "wasn't intended to apply to brief adjournments of Congress during a session such as the recent Christmas period." He asked the Justice Department to give the Administration's side of the argument.

