EXTENSIONS OF REMARKS

POCKET-VETO POWERS

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 26, 2010

Ms. PELOSI. Madam Speaker, I submit for the RECORD a copy of a letter signed jointly by myself and the Republican Leader, Mr. BOEHNER. It is addressed to President Obama. In it, we express our views on the limits of the "pocket-veto" power. I also submit a copy of the letters referenced therein.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
May 24, 2010.

Hon. BARACK OBAMA,
The President, The White House, Washington, DC.

DEAR MR. PRESIDENT: This is in response to your actions of December 30, 2009, on House Joint Resolution 64, a short-term continuing resolution of appropriations that was presented to you on December 19, 2009. That measure was intended to accommodate your review and approval of the regular appropriations but was rendered unnecessary when you were able to act swiftly on the regular appropriations. You therefore decided not to approve the joint resolution. Although you cited The Pocket Veto Case, 279 U.S. 655 (1929), you returned the parchment to the House with a memorandum of disapproval stating that you wanted to leave no doubt that the joint resolution was being vetoed as unnecessary.

You acted on the joint resolution on the ninth day of the 10-day period during which you could approve it. The standing rules of the House made the Clerk available to receive your message. The House and Senate stood adjourned sine die but with provision for reassembly of the first session and with the certainty of reassembly for the second session of the instant Congress. Thus, each body was in a position to reconsider the vetoed measure in light of your objections, either in the second session or even in the first session.

The circumstances surrounding the presentment and return of House Joint Resolution 64 and the readiness of Congress to reconsider the joint resolution in light of Presidential objections compel us to question the assertion that a pocket veto did or could have occurred. We think you agree that the pocket veto and the return veto are available on mutually exclusive bases and, therefore, during mutually exclusive periods. We think you also should agree that the constitutional concern that a measure not become law without the President's signature when an adjournment prevents a return veto does not arise when the President is able to return the parchment to the originating House with a statement of his objections. Accordingly, we believe that your return of House Joint Resolution 64 with your objections is absolutely inconsistent with this most essential characteristic of a pocket veto, to wit: retention of the parchment by the President for lack of a legislative body to whom he might return it with his objections. Your successful return of House Joint Resolution 64 establishes that you were not prevented from returning it.

After an enrolled measure is presented for Presidential approval, the parchment ultimately meets one of four ends. It might be tendered to the Archivist by the President because he signed it or allowed it to become law without his signature. It might be referred to committee by the first house to sustain a veto. It might be tendered to the Archivist by the second house to override a veto. Or it might be retained by the President because he ''pocketed'' it. If the President returns a parchment to the Congress, then he has not pocketed it, and it therefore is subject to reconsideration. Either the Congress has prevented the President from returning the parchment with a statement of his objections or it has not. By returning the parchment a President is admitting that he is not prevented from returning it.

The House has treated your message of December 30, 2009, on House Joint Resolution 64 as a return veto. On January 12, 2010, the message—comprising the parchment and your memorandum of disapproval—was laid before the House. After the memorandum was read, your objections were entered in the Journal and the House obeyed the command of the Constitution to ''proceed to reconsider'' the joint resolution. Rather than immediately considering the ultimate question of overriding or sustaining the veto, the House chose as its first mode of reconsideration a postponement until January 13, 2010. On that day the House reconsidered the joint resolution in light of your objections and voted by the yeas and nays on the question of overriding or sustaining the veto. The House sustained your return veto.

We enclose for your consideration copies of previous letters to President George H. W. Bush, to President Clinton, and to President George W. Bush, respectively dated November 21, 1989, September 7, 2000, and April 14, 2008. Those letters from Speaker Foley and Leader Michel, from Speaker Hastert and Leader Gephardt, and from the two undersigned, respectively, expressed the profound concern of the bipartisan leaderships over similar assertions of pocket vetoes. We echo those concerns and urge you to give appropriate deference to such judicial resolutions of this question as have been possible.

Thank you for your attention to this matter.

Best regards,

NANCY PELOSI,
Speaker of the House.
JOHN A. BOEHNER,
Republican Leader.

CONGRESS OF THE UNITED STATES,
Washington, DC, April 14, 2008.

Hon. GEORGE W. BUSH,
The President, The White House, Washington, DC.

DEAR MR. PRESIDENT: This is in response to your actions of December 28, 2007, on H.R. 1585, the National Defense Authorization Act for Fiscal Year 2008, which you returned to the House of Representatives without your approval. In returning the parchment you transmitted a memorandum of disapproval stating your objections to enactment of the bill. This memorandum of disapproval included the following paragraph:

''The adjournment of the Congress has prevented my return of H.R. 1585 within the meaning of Article I, section 7, clause 2 of the Constitution. Accordingly, my withholding of approval from the bill precludes its becoming law. The Pocket Veto Case, 279 U.S. 655 (1929). In addition to withholding my signature and thereby invoking my constitutional power to 'pocket veto' bills during an adjournment of the Congress, I am also sending H.R. 1585 to the Clerk of the House of Representatives, along with this memorandum setting forth my objections, to avoid unnecessary litigation about the non-enactment of the bill that results from my withholding approval and to leave no doubt that the bill is being vetoed.''

The circumstances surrounding the presentment and return of H.R. 1585 and the readiness of Congress to reconsider the bill in light of Presidential objections compel us to question the assertion that a pocket veto did or could have occurred. We think you agree that the pocket veto and the return veto are available on mutually exclusive bases and, therefore, during mutually exclusive periods. We think you should also agree that the constitutional concern that a bill not become law without the President's signature when an adjournment prevents a return veto does not arise when the President is able to return the parchment to the originating House with a statement of his objections. Accordingly, we believe that your return of H.R. 1585 with your objections is absolutely inconsistent with this most essential characteristic of a pocket veto, to wit: retention of the parchment by the President for lack of any body to whom he might return it with his objections. Your successful return of H.R. 1585 establishes that you were not prevented from returning it.

H.R. 1585 was presented to you on December 19, 2007. You returned the bill on December 28, 2007—the eighth of the ten days allowed under the Constitution. The Clerk was available pursuant to the standing rules of the House to receive your message. The Congress was in a position to reconsider the bill in light of Presidential objections, even in the first session of the instant Congress. Although the House had adjourned sine die (without specifying a day of return), it did so with provision for its reassembly. Moreover, both houses were to reassemble in due course for a second session of the instant Congress.

After an enrolled bill is presented for Presidential approval, the parchment ultimately meets one of four ends. It might be tendered to the Archivist by the President because he signed it or allowed it to become law without his signature. It might be referred to committee by the first house to sustain a veto. It might be tendered to the Archivist by the second house to override a veto. Or it might be retained by the President because he ''pocketed'' it. If the President returns a parchment to the Congress, then he has not pocketed it, and it therefore is subject to reconsideration. Either the Congress has prevented the President from returning the parchment with a statement of his objections or it has not. By returning the parchment a President is admitting that he is not prevented from returning it.

The House has treated your message of December 28, 2007, on H.R. 1585 as a return veto. On January 15, 2008, the message—comprising the parchment and your memorandum of disapproval—was laid before the House. After the memorandum was read, your objections were entered in the Journal and the House obeyed the command of the

Constitution to ''proceed to reconsider'' the bill. Rather than immediately considering the ultimate question on overriding or sustaining the veto, the House chose as its first mode of reconsideration a referral to committee.

We enclose for your consideration copies of previous letters to President George H. W. Bush and President Clinton, respectively dated November 21, 1989, and September 7, 2000. Those letters from Speaker Foley and Leader Michel and from Speaker Hastert and Leader Gephardt expressed the profound concern of the bipartisan leaderships over similar assertions of pocket vetoes. We echo those concerns and urge you to give appropriate deference to such judicial resolutions of this question as have been possible.

Thank you for your attention to this matter.

Best regards,

NANCY PELOSI,
Speaker of the House.
JOHN A. BOEHNER,
Republican Leader.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, September 7, 2000.

Hon. WILLIAM J. CLINTON,
The President, The White House, Washington, DC.

DEAR MR. PRESIDENT: This is in response to your actions on H.R. 4810, the Marriage Tax Relief Reconciliation Act of 2000, and H.R. 8, the Death Tax Elimination Act of 2000. On August 5, 2000, you returned H.R. 4810 to the House of Representatives without your approval and with a message stating your objections to its enactment. On August 31, 2000, you returned H.R. 8 to the House of Representatives without your approval and with a message stating your objections to its enactment. In addition, however, in both cases you included near the end of your message the following:

Since the adjournment of the Congress has prevented my return of [the respective bill] within the meaning of Article I, section 7, clause 2 of the Constitution, my withholding of approval from the bill precludes its becoming law. The Pocket Veto Case, 279 U.S. 655 (1929). In addition to withholding my signature and thereby invoking my constitutional power to ''pocket veto'' bills during an adjournment of the Congress, to avoid litigation, I am also sending [the respective bill] to the House of Representatives with my objections, to leave no possible doubt that I have vetoed the measure.

President Bush similarly asserted a pocket-veto authority during an intersession adjournment with respect to H.R. 2712 of the 101st Congress but, by nevertheless returning the enrollment, similarly permitted the Congress to reconsider it in light of his objections, as contemplated by the Constitution. Your allusion to the existence of a pocket-veto power during even an intrasession adjournment continues to be most troubling. We find that assertion to be inconsistent with the return-veto that it accompanies. We also find that assertion to be inconsistent with your previous use of the return-veto under similar circumstances but without similar dictum concerning the pocket-veto. On January 9, 1996, you stated your disapproval of H.R. 4 of the 104th Congress and, on January 10, 1996—the tenth Constitutional day after its presentment—returned the bill to the Clerk of the House. At the time, the House stood adjourned to a date certain 12 days hence. Your message included no dictum concerning the pocket-veto.

We enclose a copy of a letter dated November 21, 1989, from Speaker Foley and Minority Leader Michel to President Bush. That letter expressed the profound concern of the bipartisan leaderships over the assertion of a pocket veto during an intrasession adjournment. That letter states in pertinent part that ''[s]uccessive Presidential administrations since 1974 have, in accommodation of Kennedy v. Sampson, exercised the veto power during intrasession adjournments only by messages returning measures to the Congress.'' It also states our belief that it is not ''constructive to resurrect constitutional controversies long considered as settled, especially without notice or consultation.'' The Congress, on numerous occasions, has reinforced the stance taken in that letter by including in certain resolutions of adjournment language affirming to the President the absence of ''pocket veto'' authority during adjournments between its first and second sessions. The House and the Senate continue to designate the Clerk of the House and the Secretary of the Senate, respectively, as their agents to receive messages from the President during periods of adjournment. Clause 2(h) of rule II, Rules of the House of Representatives; House Resolution 5, 106th Congress, January 6, 1999; the standing order of the Senate of January 6, 1999. In Kennedy v. Sampson, 511 F.2d 430 (D.C. Cir. 1974), the court held that the ''pocket veto'' is not constitutionally available during an intrasession adjournment of the Congress if a congressional agent is appointed to receive veto messages from the President during such adjournment.

On these premises we find your assertion of a pocket veto power during an intrasession adjournment extremely troublesome. Such assertions should be avoided, in appropriate deference to such judicial resolution of the question as has been possible within the bounds of justifiability.

Meanwhile, citing the precedent of January 23, 1990, relating to H.R. 2712 of the 101st Congress, the House yesterday treated both H.R. 4810 and H.R. 8 as having been returned to the originating House, their respective returns not having been prevented by an adjournment within the meaning of article I, section 7, clause 2 of the Constitution.

Sincerely,

J. DENNIS HASTERT,
Speaker.
RICHARD A. GEPHARDT,
Democratic Leader.

CONGRESS OF THE UNITED STATES,
Washington, DC, November 21, 1989.

Hon. GEORGE BUSH,
President of the United States, The White House, Washington, DC.

DEAR MR. PRESIDENT: This is in response to your action on House Joint Resolution 390. On August 16, 1989, you issued a memorandum of disapproval asserting that you would ''prevent H.J. Res. 390 from becoming a law by withholding (your) signature from it.'' You did not return the bill to the House of Representatives.

House Joint Resolution 390 authorized a ''hand enrollment'' of H.R. 1278, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, by waiving the requirement that the bill be printed on parchment. The hand enrollment option was requested by the Department of the Treasury to insure that the mounting daily costs of the savings-and-loan crisis could be stemmed by the earliest practicable enactment of H.R. 1278. In the end, a hand enrollment was not necessary since the bill was printed on parchment in time to be presented to you in that form.

We appreciate your judgment that House Joint Resolution 390 was, in the end, unnecessary. We believe, however, that you should communicate any such veto by a message returning the resolution to the Congress since the intrasession pocket veto is constitutionally infirm.

In Kennedy v. Sampson, the United States Court of Appeals held that ''pocket veto'' is not constitutionally available during an intrasession adjournment of the Congress if a congressional agent is appointed to receive veto messages from the President during such adjournment. 511 F.2d 430 (D.C. Cir. 1974). In the standing rules of the House, the Clerk is duly authorized to receive messages from the President at any time that the House is not in session. (Clause 5, Rule III, Rules of the House of Representatives; House Resolution 5, 101st Congress, January 3, 1989.)

Successive Presidential administrations since 1974 have, in accommodation of Kennedy v. Sampson, exercised the veto power during intrasession adjournments only by messages returning measures to the Congress.

We therefore find your assertion of a pocket veto power during an intrasession adjournment extremely troublesome. We do not think it constructive to resurrect constitutional controversies long considered as settled, especially without notice of consultation. It is our hope that you might join us in urging the Archivist to assign a public law number to House Joint Resolution 390, and that you might eschew the notion of an intrasession pocket veto power, in appropriate deference to the judicial resolution of that question.

Sincerely,

THOMAS S. FOLEY,
Speaker.
ROBERT H. MICHEL,
Republican Leader.

HONORING THE AMBASSADOR OF UKRAINE OLEH SHAMSHUR

HON. JIM GERLACH

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 26, 2010

Mr. GERLACH. Madam Speaker, I rise today to honor Oleh Shamshur for his distinguished service as Ambassador Extraordinary and Plenipotentiary of Ukraine to the United States.

Since his appointment in December 2005, Ambassador Shamshur has worked tirelessly and effectively to strengthen the strategic partnership between Ukraine and the United States. As Co-Chairman of the Congressional Ukrainian Caucus, I have had the honor of partnering with him on issues affecting Ukraine as well as the Ukrainian American community in Southeastern Pennsylvania.

Specifically, Ambassador Shamshur played an important role in the lifting the Jackson-Vanick trade restrictions, which has benefitted the U.S. and Ukraine by opening new markets and expanded opportunities for entrepreneurs and job creators in both nations.

This month, Ambassador Shamshur will be leaving his post to pursue new opportunities of his own. Friends and colleagues will honor his accomplishments during a dinner on May 26, 2010 at the Metropolitan Club of the City of Washington.

Madam Speaker, I ask that my colleagues join me today in recognizing Ambassador Oleh Shamshur for his exemplary service and valuable contributions to strengthening the ties between the United States and Ukraine and in extending best wishes for continued success in his future endeavors.