In the Supreme Court of the United States.

October Term, 1928

No. 565

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

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

Hatton W. Sumners,
As amicus curiae.

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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 reintroduction 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 PROVISION 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 objec-
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 yea and nay vote upon a given bill, the first legislative business, upon its return for the second session would be to take a yea 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 enlighted 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 moderattion, 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 Heyquembourgh 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 concensus 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
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.
   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.
   ——Free importation of stereotype plates, etc.
3. 21st Cong. 1st Sess. Adjournment of May 31, 1830.
   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 permsision 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. . . ."

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