

the following message from the President of the United States:

To the Senate of the United States:

In compliance with the request contained in the resolution of the Senate (the House of Representatives concurring therein), I return herewith S. 1892 entitled "An Act to authorize Secretary of the Interior to construct, operate, and maintain the Norman project, Oklahoma, and for other purposes."

DWIGHT D. EISENHOWER,
THE WHITE HOUSE,
June 11, 1960.

§ 16.9 The President returned to the House an enrolled bill pursuant to a request contained in a concurrent resolution passed by the two Houses.

On July 3, 1947,⁽¹⁹⁾ the Speaker⁽²⁰⁾ laid before the House the following message from the President of the United States:

To the House of Representatives:

In compliance with the request contained in the resolution of the Senate (the House of Representatives concurring therein), I return herewith H.R. 493, an act to amend section 4 of the act entitled "An act to control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia," approved July 8, 1932 (sec. 22, 3204 D.C. Code, 1940 ed.).

HARRY S TRUMAN,
THE WHITE HOUSE,
July 3, 1947.

C. VETO POWERS

§ 17. In General

The term "veto" is nowhere to be found in the Constitution. Rather, what is provided is a procedure, under article 1, section 7, whereby the President participates with the Congress in the enactment of laws. His power under article I to disapprove (veto) a bill presented to him was described by

adopted by the Senate on June 6, 1960, 106 CONG. REC. 11905, and concurred in by the House on June 7, 1960, 106 CONG. REC. 12009.

Alexander Hamilton as a "qualified negative" designed to provide a defense for the executive against the Congress and "to increase the chances in favour of the community against the passing of bad laws, through haste, inadvertence, or design."⁽¹⁾

Article I, section 7, paragraph 2 of the Constitution provides:

- 19.** 93 CONG. REC. 8260, 80th Cong. 1st Sess. See also § 16.7, *supra*.
20. Joseph W. Martin, Jr. (Mass.).
1. Alexander Hamilton, *The Federalist*, No. 73.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively.

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

Thus the President has a 10-day period (Sundays excepted), beginning at midnight on the day of presentation to him,⁽²⁾ in which to approve or disapprove a bill. He can sign the bill into law or he can return it to the House of its origination with a message detailing why he chooses not to sign. If he fails to act during that period,

2. See § 17.1, *infra*.

the bill will become law automatically, without his signature. However, if before the end of that 10-day period the Congress adjourns *sine die* and thereby prevents the return of the bill, the bill does not become law if the President has taken no action (i.e., approval or disapproval) regarding it. This latter procedure is commonly referred to as a "pocket veto." The authority to "pocket veto" during intrasession and intersession adjournments has been the subject of litigation, which is discussed in § 18, *infra*.

Collateral Reference

For a chronological list of Presidential vetoes and congressional action thereon, from 1789 to 1968, see Senate Library, *Presidential Vetoes*, U.S. Government Printing Office, Washington, D.C. 1969.

Ten-day Period

§ 17.1 The 10-day period given the President under the Constitution in which to approve or reject a bill may be considered as beginning at midnight of the day on which the bill is presented to him.

On Sept. 14, 1959,⁽³⁾ Mr. Kenneth B. Keating, of New York,

3. 105 CONG. REC. 19553, 86th Cong. 1st Sess.

propounded a parliamentary inquiry in the Senate concerning the veto message of the President delivered to the House on a private bill (H.R. 2717). He inquired whether more than 10 days had expired since the bill was presented to the President under the provisions of article I, section 7, of the Constitution.⁽⁴⁾

The Presiding Officer⁽⁵⁾ responded that the 10-day limitation begins to run as of midnight on the day on which a bill is presented to the President for his approval.

Parliamentarian's Note: The day on which the bill is presented to the President is not counted in the computation.

§ 17.2 A private bill sent to the White House on Aug. 31, 1959, but not presented to

4. H.R. 2717 was presented at the White House on Aug. 31, 1959. However, it was not presented to the President until after his return from Europe on Sept. 7. The enrolled bill, when returned to the House with the veto message, carried a stamped notation added at the White House, reading as follows: "Aug. 31, 1959. Held for presentation to the President upon his return to the United States." The issue of whether the veto message was beyond the 10-day period is discussed in §§ 17.3 and 17.4, *infra*.

5. Howard W. Cannon (Nev.).

the President until after his return from Europe on Sept. 7, was returned without the President's approval on Sept. 14, 1959.

On Sept. 14, 1959,⁽⁶⁾ the Speaker⁽⁷⁾ laid before the House the veto message of the President received on that day of a private bill (H.R. 2717). The bill had been sent to the President on Aug. 31.

After the veto message had been read the Speaker declared:

The objections of the President will be spread at large upon the Journal, and, without objection, the bill and message will be referred to the Committee on the Judiciary and ordered to be printed.

There was no objection.

§ 17.3 Whether a bill has been acted on by the President within the 10 days allowed him by the Constitution is a legal question and not open to determination by the Presiding Officer of the Senate.

On Sept. 14, 1959,⁽⁸⁾ Senator Kenneth B. Keating, of New York, raised several parliamentary inquiries in the Senate regarding the purported veto by President

6. 105 CONG. REC. 19697, 86th Cong. 1st Sess.

7. Sam Rayburn (Tex.).

8. 105 CONG. REC. 19553, 19554, 86th Cong. 1st Sess.

Eisenhower of a private bill (H.R. 2717):

Mr. President, I rise to propound a parliamentary inquiry: On March 17, 1959, the House of Representatives passed, and on August 27, 1959, the Senate passed, House bill 2717, for the relief of Eber Bros. Wine & Liquor Corp.

The bill was sent to the White House on August 31, 1959. However, I am informed that it was not brought to the President's personal attention, by his staff, until approximately 5 days ago. The President has today disapproved the bill and returned it here. . . .

My question is whether the status of a bill passed by the Congress is affected in any way by the President's purported veto of the bill this morning, more than 10 days after it was delivered at the White House.

THE PRESIDING OFFICER:⁽⁹⁾ The Chair states that if the President has vetoed the bill, it being a House bill, it will go back to the House for further action. If the House overrides the veto, it will be submitted to the Senate, and there will be an opportunity to act upon it. . . .

MR. KEATING: My inquiry, which the Chair may be unwilling or should refrain from responding to, is this: Is any action by the Congress necessary if the President retains a bill for more than 10 days before he acts on it?

THE PRESIDING OFFICER: According to the Constitution, the bill should become a law if it has not been acted upon within 10 days after it has been presented to the President. The matter of whether 10 days have elapsed is a

question for legal determination, and not for the Chair to determine.

§ 17.4 The Court of Claims has ruled that where the President was on a trip abroad and, with congressional acquiescence, had requested that bills from Congress were to be received at the White House for presentation to him only upon his return to the United States, the President's veto of a bill more than 10 days after delivery to the White House but less than 10 days from his return to the country was timely.

On Oct. 16, 1964, the U.S. Court of Claims took up the question of the effectiveness of a Presidential veto in *Eber Brothers Wine & Liquor Corporation v U.S.*⁽¹⁰⁾ On Aug. 31, 1959, the Congress had delivered at the White House a private bill (H.R. 2717) for the relief of the Eber Brothers Wine and Liquor Corporation. The President was not in the country at the time. He returned on Sept. 7, and on Sept. 14, he vetoed the bill and sent his veto message to the House of Representatives. The House did not reconsider the bill.

The Eber Bros. Corp. filed suit in the Court of Claims asking for

9. Howard W. Cannon (Nev.).

10. 337 F2d 624 (Ct. Cl.); cert. denied, 380 U.S. 950 (1964).

the relief provided in H.R. 2717, claiming that the bill had become law since the President had taken no action regarding it within 10 days of its presentation to him on Aug. 31.

The Court denied the plaintiff's contention. It ruled that the "presentation" to the President contemplated in article I, section 7 of the Constitution took place in this case on Sept. 7, when the President had properly vetoed the bill within 10 days after that date.

To reach this conclusion the Court reasoned that article I section 7 contemplates two important duties to be performed by the President and the Congress respectively: the President must consider a bill, and the Congress must reconsider it in the event it is vetoed by the President. The President has 10 days (Sundays excepted) to consider the bill after it is "presented" to him, and the Congress has an indefinite time to reconsider a veto provided it has not by its adjournment prevented its return.

"It is also important," the Court said, "that under the careful words of the Constitution, the President's limited time for considering a bill does not begin until the measure is *presented* to him. That period does not mechanically commence at the end of the pas-

sage of the bill through the Congress. A further step is necessary, and the initiation of that step—presentation to the President—lies with the Congress."⁽¹¹⁾

The Court went on to say that the manner of presentation is a matter two sides are free to agree on between themselves. "[T]hough personal presentation to the President is not mandatory, either the Congress or the President can insist on such delivery [.]" in order to protect the duties of consideration and reconsideration assigned them by the Constitution. However, and most importantly, ". . . If personal delivery is not demanded by either side, presentation can be made in any agreed manner or in a form established by one party in which the other acquiesces [.]"⁽¹²⁾

The Court found that in this case, and in light of the practice during previous administrations regarding Presidential trips abroad, the Congress had acquiesced in President Eisenhower's wish that bills delivered to the White House not be "presented" to him until his return from abroad.⁽¹³⁾

§ 17.5 The 10 days provided in the Constitution during

11. *Id.* at p. 629.

12. *Id.*

13. *Id.* at pp. 630–34.

which the President may hold a bill without action runs from the day it is presented to him and not from the day noted in the Record as delivered at the White House.

On Dec. 1, 1943,⁽¹⁴⁾ the Speaker⁽¹⁵⁾ laid before the House the veto message of the President on the bill (H.R. 1155) for the relief of two military officers, where it appeared that, although the bill had been at the White House for more than 10 days, the President acted on the bill within 10 days of its presentation to him. In the veto message the President stated that the bill was presented to him on Nov. 25, 1943. The *Congressional Record* of Nov. 12, 1943, records that this bill was presented to the President for his approval on that date. The enrolled copy of the bill returned by the President along with his veto message bore a White House stamp dated Nov. 12, 1943, along with the handwritten notation "for forwarding."

The House did not vote on the returned bill but, by unanimous consent, referred the bill and message to the Committee on Claims.

14. 89 CONG. REC. 10190, 78th Cong. 1st Sess.

15. Sam Rayburn (Tex.).

Bill Signed in Prior Capacity as Presiding Officer of Senate

§ 17.6 The President has vetoed a bill he had previously signed as Presiding Officer of the Senate.

On Apr. 19, 1945,⁽¹⁶⁾ the Speaker⁽¹⁷⁾ laid before the House the veto message of President Harry Truman relating to a private bill (H.R. 2055).

Parliamentarian's Note: After Vice President Truman had signed the enrolled bill as President of the Senate, and after the enrolled bill had been sent to the White House, President Franklin D. Roosevelt died. The Vice President became President and the bill was presented to him for approval as President.

Approval of Bill Similar to One Previously Vetoed

§ 17.7 The President vetoed a Senate joint resolution but subsequently signed a similar House joint resolution modified by an amendment.

On May 22, 1935,⁽¹⁸⁾ Mr. William M. Citron, of Connecticut, ob-

16. 91 CONG. REC. 3577, 79th Cong. 1st Sess.

17. Sam Rayburn (Tex.).

18. 79 CONG. REC. 8026, 74th Cong. 1st Sess.

tained unanimous consent to take from the table House Joint Resolution 107, authorizing the President of the United States to proclaim Oct. 11, of each year, General Pulaski's Memorial Day. The resolution was agreed to with a committee amendment limiting the memorial day to Oct. 11, 1935, rather than Oct. 11, of each year. The Senate on May 28 passed the House joint resolution and the President signed it on June 6.

Parliamentarian's Note: This resolution was similar to Senate joint resolution (S.J. Res. 21) which had previously passed both Houses and which provided for an annual commemorative day, each October, without limitation. The Senate joint resolution was vetoed by the President on Apr. 11, 1935.

§ 18. Effect of Adjournment; The Pocket Veto

The President is not restricted to signing a bill on a day when Congress is in session. He may sign within 10 days (Sundays excepted) after the bill is presented to him, even if that period extends beyond the date of the final adjournment of Congress. The President is said to "pocket veto" a bill where he takes no action on the bill during the 10-day period and

where the Congress adjourns before the expiration of that time in such a manner as to prevent the return of the bill to the originating House.

The Supreme Court first considered the question of the pocket veto in 1929 in what is commonly referred to as the Pocket Veto Case.⁽¹⁹⁾ In this case a Senate bill (S. 3185) authorizing certain Indian tribes to offer their claims to the Court of Claims was presented to the President on June 24, 1926. On July 3 of that year the first session of the 69th Congress adjourned *sine die*. The 10-day period for Presidential approval expired on July 6, by which time the President had neither signed the bill nor returned it to the Senate with his reasons for disapproval.

Taking the position that the bill had become law, the Indian tribes affected sought adjudication of their claims in the Court of Claims in accordance with the terms of the bill. The United States demurred to their petition on the ground that the bill had not become law. The Court of Claims sustained the demurrer and dismissed the petition. The Supreme Court granted certiorari in the case⁽²⁰⁾ to determine

19. *Okanogan, et al. v U.S.*, 279 U.S. 655 (1929).

20. 278 U.S. 597.