

Court Rules President Nixon Made Improper Pocket Veto

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By Timothy S. Robinson
Washington Post Staff Writer

The U.S. Court of Appeals upheld a lower court ruling yesterday that former President Nixon improperly invoked a pocket veto during a congressional Christmas recess in 1970.

The President's action had been challenged by Sen. Edward M. Kennedy (D-Mass.), who personally argued the case in the U.S. District Court and before the appeals court here. The bill involves a procedure to help hospitals and medical schools set up departments to encourage the practice of family medicine.

"The case is an appropriate one for disposition of the question of whether any intrasession adjournment (recess) can prevent the return of a bill by the President where appropriate arrangements have been made for the receipt of presidential messages during the adjournment—a question which must be answered in the negative," the appeals court said.

The bill in question had been approved by a 64-to-1 vote in the Senate and a 346-to-2 vote in the House and was presented to the President on Dec. 14, 1970. On Dec. 22, Congress adjourned for five days for the Christmas holiday. Two days later, Mr. Nixon issued a memorandum of disapproval, announcing that he was withholding his signature.

The appeals court ruled, as did U.S. District Judge Joseph C. Waddy, that then-President Nixon's actions did not fall within the bounds of Article I, Section 7, Clause 2 of the Constitution, which allows for a so-called pocket veto.

The pocket veto is intended to permit a President to reject a bill during an adjournment, when the normal veto provisions that call for the bill to be returned to Congress within 10 days cannot be invoked.

In addition to arguing that the President could invoke the pocket veto during a congressional recess, government attorneys also had argued that Sen. Kennedy did not have authority to file the suit.

The three-judge panel of Senior Circuit Judge Charles Fahy, Circuit Judge Edward A. Tamm and Chief Circuit Judge David L. Bazelon rejected both government claims, however.

In a 23-page opinion, Judge Tamm commented that Kennedy's "object in this lawsuit is to vindicate the effectiveness of his vote" which was nullified by the President's pocket veto of the bill.

"No more essential interest could be asserted by a legisla-

tor," Judge Tamm continued.

In a concurring opinion, Judge Fahy agreed.

"As a United States senator he represents a sovereign state whose people have a deep interest in the act and look to their senators to protect that interest; and he, as senator, it seems to me, has a legal right not only to seek judicial protection of those interests believed by him to be

threatened by an invalid veto, but also, in the circumstances, to protect his own interest as a national legislator in the bill for which he voted," Fahy said.

The effect of the ruling is to order the \$225 million Family Practice of Medicine Act into law. A token appropriation of \$100,000 for the act has been granted by the Senate during the pendency of the suit.