

Pocket Veto In Recess Ruled Illegal

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A pocket veto by President Nixon during a congressional Christmas recess in 1970 was ruled unconstitutional yesterday by U.S. District Court Judge Joseph C. Waddy.

The President's action had been challenged by Sen. Edward M. Kennedy (D-Mass.), who personally argued the case before Judge Waddy last Feb. 28.

Waddy ruled on the narrow question of whether the President has the right to pocket-veto (refuse to sign) a measure during a brief congressional recess. Kennedy successfully argued that the President's action deprived Congress of a chance to override the veto when it returned from the holiday.

"I'm delighted with Judge Waddy's ruling, and I see it as a strong new example of the vindication of the rights of Congress against the encroachment of the Executive Branch," Kennedy said last night.

The bill in question authorized Congress to appropriate \$225 million during Fiscal Years 1971, 1972 and 1973 for grants to help hospitals and medical schools set up depart-

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ments to encourage the practice of family medicine.

It was approved in the Senate by a vote of 64 to 1 and in the House by 346 to 2 and 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.

Waddy ruled that the President's action did not fall within the bounds of Article I, Section 7, Clause 2 of the Constitution, which provides for a so-called pocket veto. The pocket veto is intended to permit a President to reject a bill during an adjournment of Congress, when he is "prevented" from using the normal veto which calls for the bill to be returned to Congress with his objections within 10 days of its passage.

The effect of Waddy's ruling was to order the Family Practice of Medicine Act into law, by requiring the General Services Administration to publish it.

Because of the presidential action, Congress appropriated only a token \$100,000 for the measure, but a spokesman for Sen. Kennedy said last night that he will seek to get the full amount included in the next Senate appropriations bill.

Waddy gave the Executive Branch until Sept. 19 to comply with the order, during which time the ruling also could be appealed.

Kennedy, chairman of the

Senate Subcommittee on Health and a co-sponsor of the bill, had indicated earlier that he was prepared to carry his argument to the Supreme Court if necessary.

He had called the bill "the most important piece of legislation" ever to be pocket-vetoed, and the five-day recess the shortest in which a pocket veto had been used.

In arguing his own case, Kennedy said Presidents have exercised their pocket veto authority approximately 70 times, and that 90 per cent of them have occurred since World War II, and then primarily for private or minor bills.

Waddy, saying his court "declines to swim in waters that the Supreme Court pointedly avoided" in two previous rulings that overturned pocket vetoes, did not address the question of how long a recess must be before a President may invoke a pocket veto.

The judge rejected the government's arguments concerning Kennedy's right to pursue the matter through the courts.

Justice Department attorneys had contended that Kennedy, who was the plaintiff, had no legal basis for bringing the suit.

But Waddy agreed with Kennedy's contention that as a senator he had been deprived of his constitutional right to vote to override a presidential veto.

The government also sought to make the President an "indispensable party" to the suit, and thereby challenge the court's jurisdiction, under the separation-of-powers doctrine, over the President. But

Waddy also rejected that, saying the order sought by Kennedy "requires no action by the President."

Named as defendants in the action were Arthur F. Sampson, acting administration of the GSA, and Thomas M. Jones, chief of White House records. The court's order requires Jones to turn over to Sampson the papers necessary for GSA to publish the bill as law.