

AUG 10 1972

NYTimes

## KENNEDY IS SUING OVER POCKET VETO

Calls Move by Nixon at the  
Christmas Break Illegal

By JAMES M. NAUGHTON

Special to The New York Times

WASHINGTON, Aug. 9—Senator Edward M. Kennedy, initiating a test of a President's pocket veto powers, asked a United States district court here today to order the Nixon Administration to implement a \$225-million program to educate family doctors.

President Nixon used a pocket veto to kill the Family Practice of Medicine Act on Dec. 24, 1970, while Congress was on a four-day Christmas break. The bill had been approved by the Senate, 64 to 1, and the House, 846 to 2.

The Massachusetts Democrat said that he filed the lawsuit this morning because Mr. Nixon's veto was "a transparent but unconstitutional attempt to prevent an embarrassing vote by Congress to override a regular veto," which would have required a two-thirds vote in each House.

At issue is whether a President may properly exercise pocket veto authority when Congress is out of session for only a few days.

The Constitution provides that a bill will become law if it is not signed or formally vetoed by a President within 10 days after he receives it from Congress, but that a measure will die—by what is called a "pocket veto"—if Congress is adjourned when the 10-day period elapses. The Constitution is ambiguous about whether a short holiday represents an adjournment.

Senator Kennedy and Senator Sam J. Ervin Jr. of North Carolina objected in early 1971 to Mr. Nixon's use of the pocket veto to kill the three-year program of grants to medical schools and hospitals to train general practitioners.

But William H. Rehnquist, who was then an assistant attorney general and who has subsequently been appointed to the Supreme Court by President Nixon, contended that there was no precedent for a President to say, "I'm going to be a good guy," and send a veto message to Congress when it was not in session.

Senators Kennedy and Ervin persuaded Congress to appropriate \$100,000 to fund the family practice of medicine program, but the Department of Health, Education and Welfare declined to spend the funds.

An aide to Mr. Kennedy said today that the Senator had grown tired of the inaction on the issue and "decided to take the bull by the horns" with the lawsuit, naming himself as the complainant.

The civil action asked for an order requiring Arthur F. Sampson, acting administrator of the General Services Administration, and Thomas M. Jones, chief of White House records, to publish the medical training act as "a validly enacted law."

The expectation is that the district court's decision will be appealed, by Mr. Kennedy or the Department of Justice on behalf of Mr. Sampson and Mr. Jones, and that, eventually, the Supreme Court will settle the issue.