Deportation; to the Committee on Immigration and Naturalization.

8911. Also, petition of the Ponca Tribe, No. 241, Improved Order of Red Men of Pennsylvania, located in the city of Philadelphia, endorsing House Joint Resolution No. 69, creating in the Department of Justice a Bureau of Alien Deportation; to the Committee on Immigration and Naturalization.

8912. By Mr. HEALEY: Resolution of the Board of Aldermen of the City Council of Everett, Mass., protesting against the action of the administration at Washington for the proposed 40-hour schedule on a $12-a-week basis, as living conditions in the metropolitan district are such as to make it prohibitive to support a family or even to provide a mere subsistence on $12 per week, and urging our United States Senators and our Congressman to use their best efforts to bring about a condition whereby the minimum wage for laborers may be placed at 50 cents per hour; to the Committee on Labor.

8913. Also, resolution of the New England Livestock Sanitary Officials, soliciting the United States Government to continue its present plan and to make additional appropriation to further the control work in connection with Bang abortion disease after January 1, 1936; to the Committee on Agriculture.

8914. By Mr. KRAMER: Resolution of the Merchant Plumbers' Association, Inc., of Los Angeles, adopted in regular session on June 10, 1935, relative to the extension of the National Recovery Act; to the Committee on Ways and Means.

8915. Also, resolution of the Assembly of the California Legislature, adopted on June 10, 1935, relative to House bill 1793, which has been passed by the Senate, and urging the House to pass same; to the Committee on Indian Affairs.

8916. Also, resolution of the Board of Supervisors of San Francisco, Calif., relative to House bill 6984 and endorsing same; to the Committee on Pensions.

8917. By Mr. LESINSKI: Assembly Joint Resolution No. 59 of the State of California, memorializing the President and the Congress of the United States to enact House bill 6628, providing remunerative employment for blind citizens; to the Committee on Labor:

8918. Also, resolution adopted by the Michigan State Association of Letter Carriers, urging the enactment of House bill 8002, introduced by the Honorable JOHN P. HIGGINS, providing for the relief of village letter carriers; to the Committee on the Post Office and Post Roads.

8919. By Mr. LUNDEEN: Petition of Clarkfield Boosters Club, Clarkfield, Minn., urging the enactment of the Agricultural Adjustment Administration amendments; to the Committee on Agriculture.

8920. Also, petition of the Minnesota Farm Bureau Federation, urging the enactment of the proposed Agricultural Adjustment Administration amendments; to the Committee on Agriculture.

8921. By Mr. PFEIFER: Petition of the American Federation of Labor, Washington, D. C., concerning the Wagner labor-disputes bill; to the Committee on Labor.

8922. By the SPEAKER: Petition of the National Conference of State Liquor Administrators; to the Committee on Ways and Means.

SENATE

THURSDAY, JUNE 20, 1935

(Legislative day of Monday, May 13, 1935)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

THE JOURNAL

On request of Mr. ROBINSON, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Wednesday, June 19, 1935, was dispensed with, and the Journal was approved.

SENATOR CARTER GLASS, OF VIRGINIA

Mr. TOWNSEND. Mr. President, I wish to take this opportunity of expressing the satisfaction I have felt in the recognition this year by leading American universities of the character and service of my dear friend and colleague the senior Senator from Virginia [Mr. GLASS].

Honorary degrees have been conferred on Senator GLASS by the College of William and Mary, the National Institute of Social Science, Princeton University, Tufts College, Wesleyan University, and Yale University.

The citation that was made yesterday at Yale was so deserved that I wish to incorporate it in the RECORD at this point. Professor Nettleton, as orator, said:

> Recognized officially as the senior Senator from Virginia, recognized throughout the Nation as a dauntless leader of the independent force of intelligent public opinion; a representative of the people, "who never sold the truth to serve the hour", or the party, or the populace. Representative at Washington in nine successive Congresses, Secretary of the Treasury under President Wilson, Senator of the United States, thrice confirmed by popular vote and public demand, he recalls the Roman courage and constancy, and the integrity of the ancient phrase, "Senatus, populusque Romanus." This year the National Institute of Social Science conferred upon him its gold medal "in recognition of distinguished services rendered to humanity as one of the leaders in the planning and creation of the Federal Reserve Banking System * * * and as one who has through a long life consistently and unsparingly devoted his abilities and energies to public service."
>
> 'Tis, finally, the man, who, lifted high,
> Conspicuous object in a nation's eye—
> Who, with a toward or untoward lot,
> Prosperous or adverse, to his wish or not—
> Plays, in the many games of life, that one
> Where what he most doth value must be won,
> Whom neither shape of danger can dismay,
> Nor thought of tender happiness betray;
> Who, not content that former worth stand fast,
> Looks forward, persevering to the last,
> From well to better, daily self-surpast
> Vir amplissimus.

President Angell, in conferring the degree, said:

> Statesman and patriot, instant in the defense of your country's welfare and honor, implacable foe of sham, dishonesty, and cowardice in public life, able and fearless leader whose sage counsel has for more than a quarter of a century contributed wisdom to our national policies. Yale University, in grateful recognition of your eminent service to the Nation, confers upon you the degree of doctor of laws and admits you to all its right and privileges.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its reading clerks, announced that the House had passed the bill (S. 1958) to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes, with amendments, in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (S. 1180) to amend section 4865 of the Revised Statutes, as amended, and it was signed by the Vice President.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate petitions of sundry citizens of the United States praying for an investigation of charges filed by the Women's Committee of Louisiana relative to the qualifications of the Senators from Louisiana (Mr. LONG and Mr. OVERTON), which were referred to the Committee on Privileges and Elections.

Mr. TYDINGS presented resolutions adopted by the annual meeting of the Archdiocesan Union of the Holy Name Society, Baltimore, Md., protesting against the alleged use of the franking privilege by Mexican officials in sending through the United States mails matter in the nature of propaganda denying that religious persecution exists in the Republic of Mexico, which were referred to the Committee on Foreign Relations.

He also presented a letter in the nature of a petition signed by officers and the executive board of Baltimore & Ohio Local Federation, No. 7, American Federation of Labor, Cumberland, Md., praying for the enactment of Senate bill 2862, providing a retirement system for aged railway employees, which was ordered to lie on the table.

Mr. WALSH presented a letter in the nature of a petition from the Franklin County (Mass.) Poultry Association,

praying for inclusion of a provision for the protection of poultry and its products in pending legislation pertaining to amendment of the Agricultural Adjustment Act, which was referred to the Committee on Agriculture and Forestry.

He also presented a resolution adopted by the City Council of Everett, Mass., protesting against the fixing of a 40-hour work schedule on a $12 per week pay basis in connection with the operation of the work-relief program, and favoring making the minimum wage for laborers on such work 50 cents per hour, which was referred to the Committee on Appropriations.

He also presented a letter from the Roxbury (Mass.) Board of Trade, enclosing copy of a letter by Samuel Hermanson, chairman of the improvement committee of the board, recently published in Boston newspapers, endorsing the adoption of a work-relief program to "wipe out the city slums", which, with the accompanying paper, was referred to the Committee on Appropriations.

He also presented resolutions adopted by St. Patrick's Holy Name Society, Lowell, Mass., favoring a congressional investigation of alleged religious persecution in the Republic of Mexico, and also favoring the withdrawal of the American Ambassador to that country, which were referred to the Committee on Foreign Relations.

He also presented a letter in the nature of a petition from Mrs. I. K. E. Prager, president League of Jewish Women's Organizations, Allston, Mass., praying for the enactment of the revised so-called "Kerr bill", pertaining to the deportation of aliens, which was referred to the Committee on Immigration.

He also presented a resolution adopted by United Council, No. 6, Sons and Daughters of Liberty, of Orleans, Mass., protesting against the enactment of the so-called "Kerr bill", pertaining to the deportation of aliens, which was referred to the Committee on Immigration.

REPORTS OF COMMITTEES

Mr. HARRISON, from the Committee on Finance, to which was referred the joint resolution (H. J. Res. 324) to provide revenue, and for other purposes, reported it with amendments and submitted a report (No. 920) thereon.

Mr. PITTMAN, from the Committee on Foreign Relations, to which was referred the bill (S. 2998) to control the trade in arms, ammunition, and implements of war, reported it with amendments and submitted a report (No. 915) thereon.

He also, from the same committee, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

S. 2879. A bill for the relief of Catherine Grace (Rept. No. 916);

H. R. 3574. A bill for the relief of Nellie T. Francis (Rept. No. 917); and

H. R. 7254. A bill for the relief of Lily M. Miller (Rept. No. 918).

Mr. SMITH, from the Committee on Agriculture and Forestry, to which was referred the bill (S. 491) for the relief of Fred Herrick, reported it without amendment and submitted a report (No. 919) thereon.

Mr. WHITE, from the Committee on Claims, to which was referred the bill (H. R. 4368) for the relief of E. C. West, reported it without amendment and submitted a report (No. 921) thereon.

SPECIAL COMMITTEE ON CONSERVATION OF WILDLIFE RESOURCES—EXPENSES

Mr. PITTMAN (for himself, Mr. McNARY, Mr. NORBECK, Mr. CLARK, Mr. BAILEY, Mr. BYRD, and Mr. WHITE), from the Special Committee on Conservation of Wildlife Resources, reported a resolution (S. Res. 157), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate, as follows:

Resolved, That the special committee authorized and directed by Senate Resolution No. 246 on April 17, 1930, to investigate the conservation of wild animal life, hereby is authorized to expend in furtherance of such purposes $15,000 in addition to the amounts heretofore authorized.

ENROLLED BILLS PRESENTED

Mrs. CARAWAY, from the Committee on Enrolled Bills, reported that on the 19th instant that committee presented to the President of the United States the following enrolled bills:

S. 1121. An act for the relief of Isidor Greenspan; and

S. 1863. An act for the relief of Trifune Korac.

BILLS AND JOINT RESOLUTION INTRODUCED

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. BYRD:

A bill (S. 3106) relating to the taxation of securities hereafter issued by or under the authority of the United States; to the Committee on Finance.

By Mr. BARKLEY:

A bill (S. 3107) to exempt publicly owned interstate highway bridges from State, municipal, and local taxation; to the Committee on Commerce.

By Mr. WHITE:

A bill (S. 3108) granting a pension to Mary Jane Blackman; to the Committee on Pensions.

By Mr. SHEPPARD:

A bill (S. 3109) for the relief of Hiram G. Hines; to the Committee on Claims.

By Mr. DAVIS:

A bill (S. 3110) granting a pension to Henrietta V. W. Owen; to the Committee on Pensions.

By Mr. OVERTON:

A bill (S. 3111) to authorize the Secretary of Commerce to grant to the State of Louisiana an easement over certain land of the United States in Natchitoches Parish, La., for highway purposes; to the Committee on Commerce.

By Mr. TYDINGS:

A bill (S. 3112) granting a pension to Beulah E. Coleman (with accompanying papers); to the Committee on Pensions.

A bill (S. 3113) to provide a government for American Samoa; to the Committee on Territories and Insular Affairs.

By Mr. BYRD:

A joint resolution (S. J. Res. 150) proposing an amendment to the Constitution of the United States relative to taxes on certain securities and the income derived therefrom; to the Committee on the Judiciary.

AGRICULTURAL ADJUSTMENT ACT—AMENDMENT RELATIVE TO POULTRY AND POULTRY PRODUCTS

Mr. ROBINSON (for Mr. POPE) submitted an amendment intended to be proposed by Mr. POPE to the bill (H. R. 8492) to amend the Agricultural Adjustment Act, and for other purposes, which was referred to the Committee on Agriculture and Forestry and ordered to be printed.

GENERAL SURVEY OF INDIAN CONDITIONS—EXPENSES

Mr. THOMAS of Oklahoma submitted the following resolution (S. Res. 156), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Committee on Indian Affairs, or any subcommittee thereof, authorized and directed by Senate resolutions to make a general survey of Indian conditions in the United States, is hereby authorized to expend $10,000 from the contingent fund of the Senate in addition to the sums heretofore authorized for said purpose.

TRIBUTE TO THE LATE SENATOR ROBERT M. LA FOLLETTE

Mr. NORRIS. Mr. President, I ask unanimous consent to have printed in the RECORD an address delivered on Sunday, June 16, 1935, by the Senator from North Dakota [Mr. NYE] at the grave of the late Robert Marion La Follette on the tenth anniversary of the late Senator's death.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

Ten years ago advocates of truly representative government were bewildered by the one, two, three call of death as it summoned in quick succession three men who had served so well the cause of the people against interests bent upon making government a mere instrument for their own enrichment. These three had played prominently on the stage of American political life, each in his own way but all to one cause. Though predatory interests would have paid well for knowledge enabling them to besmirch the names of these men, never once did their records permit successful attack. Their sincerity of purpose was never denied. To their States they brought honor and credit. Nebraska, North Dakota, and Wisconsin profited greatly by reason of them. Yet they were much more than representatives and servants of their States. Distinctly were they

unselfish statesmen serving their country as truly and as bravely as any soldier ever served. Within space of but few days these men were taken from the ranks, first La Follette, then Ladd, then Bryan.

Those were sad days for great numbers of Americans. These departures were to us all as deaths in our own homes. Each had come to seem so much a part of our everyday lives. Indeed, each had actually made his life a contribution to our lives, our comfort, and our hopes as believers in the cause of government by man rather than wealth. Here were men unafraid of organized greed and power, quite unmindful of personal reward, completely ignoring all storm signals when serving the people.

Today, on the tenth anniversary of his death, we gather at the grave of one of these men—at the final resting place of Robert Marion La Follette—here among the people he loved and so unselfishly served.

PILGRIMAGE FOR INSPIRATION

Why are we here today? As curious men and women wanting to hear what someone will have to say; as idle folks with nothing better to do? No; emphatically no! Then, why are we here? To honor the memory of one who played so largely in effort to make mankind happier? Perhaps; but not that alone! Methinks we are here largely because of the inspiration which a pilgrimage of this kind affords—a pilgrimage to the last earthly contact of a body which in life gave so freely of himself that we and unborn generations might profit in greater liberty and opportunity, who in life accomplished so greatly of safeguards against those selfish forces who would deny us that liberty and opportunity. Freedom has required many engagements in her defense. Few, if any, fought more valiantly in that defense than did this great leader we honor today. So courageously and against such terrifying odds at times did he give battle in the cause of freedom that with great justification we could dedicate Lowell's lines to him:

Men whose boast it is that ye
Come of fathers brave and free,
If there breathe on earth a slave,
Are ye truly free and brave?
If ye do not feel the chain
When it works a brother's pain,
Are ye not base slaves indeed,
Slaves unworthy to be freed?

Is true freedom but to break
Fetters for our own dear sake
And, with leathern hearts, forget
That we owe mankind a debt?
No! True freedom is to share
All the chains our brothers wear,
And, with heart and hand, to be
Earnest to make others free!

They are slaves who fear to speak
For the fallen and the weak;
They are slaves who will not choose
Hatred, scoffing, and abuse;
Rather than in silence shrink
From the truth they needs must think,
They are slaves who dare not be
In the right with two or three.

I am highly honored by the invitation which brings me here today. I can never hope for greater honor than in this opportunity to speak upon this occasion. But I find upon contemplation of the event not a desire to speak to you who gather about this grave, but instead, to speak to the spirit, the very actual spirit, of Robert Marion La Follette, and to speak to him of the renewed and enlarged confidence which the developments of each passing day instill in us who were and are his followers. Perhaps in thus addressing myself it shall fall to me to speak in some part what others would like to say at this very time. If that power is given me then can many of us honor his memory and pay our tribute to one who was never afraid to stand alone. And so, to that spirit I address myself.

SOUGHT TO PREVENT MADNESS

There is much I'd like to say to you today in praise of your generous contribution to me, to our country and to its people. I should like, could it but be more personal, to tell you of how great an inspiration was your life to me, then I should go on telling you how our increasing knowledge of truth is enlarging our respect and admiration of your leadership and your great courage. But of necessity, I must confine my remarks. So I speak quite alone of those days when you sought so strenuously to save your country and its people from a madness which cost so many heartaches, so many broken homes, so many wrecked lives, and such complete economic demoralization as finds us, 17 years after the armistice, still hopelessly struggling against frightful odds in the form of debt and tremendous concentration, just as you said would be the result of those hours of madness.

We all were told that though war was quite deplorable, it was equally quite necessary if we were to preserve elements of great merit. You wouldn't believe this. You said there were no possible compensations that could begin to offset the costs of war, and your life was made a round of misery because you dared to say so. You said in those hours:

"War is a terribly destructive force, even beyond the limits of the battle front and the war zones. Its influence involves the whole community. It warps men's judgment, distorts the true standard of patriotism, breeds distrust and suspicion among neighbors, inflames passions, encourages violence, develops abuse of power, tyrannizes over men and women even in the purely social relations of life, and terrifies whole communities into the most abject surrender of every right which is the heritage of free government."

What were the compensations of the last war to offset its destructive force?

Today there are millions asking that question. They thought war was going to "make the world safe for democracy", and now discover that democracy the world over has never been upon thinner ice than since the war. They thought the war was a "war to end war", and now awaken to the discovery that it but planted the seed for more war, and has been followed by the maddest race between nations in preparation for more war that civilization has ever witnessed in peace time. And your spirit rises up to ask, "Why didn't you listen to truth and reason before it was too late?" And our only answer to you is this, it will never be so easy to blind us to truth another time, thanks to you.

WAR FOR FAT PROFITS

In March of 1917 you wrote for your magazine lines which were to win for you first the curses of your fellowmen, but finally their praises. I must quote from those lines:

"Who shall then set limits of time or space upon its (war's) ravages! And for what? For commercial advantages and fat profits beneficial to a limited number of our dollar-scarred patriots, for neutral rights which were surrendered to the belligerents on one side during the first 3 months of the European war?"

What prophecy! Look to the facts of record now, 20 years after your declaration, 10 years after you left us.

What of your insistence that the war would be for commercial advantage and fat profits for the few?

Before me is a compilation from Moodie's Analysis showing the average annual profits of a group of American corporations during the four years of peace preceding the war alongside the annual average profit for the same corporations during the 4 war years. These speak for themselves of your wisdom:

	Average, 4 peace years	Average, 4 war years
United States Steel	$105,331,000	$239,653,000
Du Pont	6,902,000	58,076,000
Bethlehem Steel	6,840,000	49,427,000
Anaconda Copper	10,649,000	34,549,000
Utah Copper	5,776,000	21,622,000
American Smelting & Refining Co	11,566,000	18,602,000

	Peace years	Six war years
Republic Iron & Steel Co	$4,177,000	$17,548,000
International Mercantile Marine	6,690,000	14,229,000
Atlas Powder Co	485,000	2,374,000
American & British Manufacturing	172,000	325,000
Canadian Car & Foundry	1,335,000	2,201,000
Crocker Wheeler Co	206,000	666,000
Hercules Powder Co	1,271,000	7,430,000
Niles-Bement Pond	656,000	6,146,000
Scovill Manufacturing Co	655,000	7,678,000
General Motors	6,954,000	21,700,000

If further fulfillment of your prophecy were required, we would only need resort to the record revealing that in America alone the World War created 22,000 new millionaires—men and women who could not have had those millions except as millions were caused to bleed and die, except as homes and lives were broken, except as the masses were burdened with untold debt.

COMMERCE MORE IMPORTANT THAN NEUTRALITY

You said war would be for "commercial advantages." For this you were unmercifully flayed, often by the very forces that best knew that it was actually commercial advantage that was sought in our American declaration of war. But what does the record say of this today in your silence? Ah, could you but read and offer your comment upon that record!

It is the story of a titanic struggle in America for profit starting with the declaration of madness in Europe in 1914. It reveals the grab by Americans for profitable business which flowed steadily so long as the Morgans and other American bankers supplied the money with which the Allies could buy. The allied needs afforded Americans unlimited trade possibilities on a tremendously rising market. A great French leader, Andre Tardieu, wrote:

"Profits had swollen tenfold. The Allies had become the sole customer of the United States. Loans the Allies had obtained from New York banks swept the gold of Europe into American coffers. From that time on, whether desired or not, the victory of the Allies became essential to the United States."

It might have been added that this was sufficiently essential to drag us into the war, and that commercial advantage became at once of far greater importance than our neutrality.

Our trade with the Allies had increased between 1914 and 1916 to a point which found that business representing 88 percent of our total export trade. During the same period our bankers were financing this trade by loans of money and credit to the Allies. This easily carried to a point where America could not possibly remain neutral.

BANKERS' PROFITS DEMAND PROTECTION

Through all this ran the feeble and unintelligent effort of our Government to enforce an alleged strict neutrality. Our State Department was holding the trade in war supplies to the Allies a strictly neutral right. At the same time it was trying to establish that loans to the Allies was not a neutral act. But such an attitude could not long prevail. If the American gun and powder maker could get in on this blood money, why not the bankers, too? Morgan went to work financing the Allied trade through bank credits, until in 1915 they ceased to distinguish between credits and loans and floated great loans for the Allies until the total advanced reached into the billions.

In the early part of 1917 our bankers had exhausted their resources. Unless the great credit of the American people and the Nation could be tapped, the claims of the banks against the Allies could not be paid and the flow of business would have to stop! How well men succeeded in tapping this credit is too well known to need repeating. It is enough to remember that after we were into the war the bankers got what the Allies owed them, but the American Government never got back what it loaned the same Allies through the sale of Liberty bonds.

WAR TO AVERT PANIC

We didn't enter the war for the reasons we believe. We entered because of commercial interests, just as you so often insisted. If it was a war involving our honor, then it must be held that the credit and well-being of our bankers and our munitions makers is "our national honor."

Our Ambassador to England in those "neutrality" days, Walter Hines Page, dispatched a cablegram to his Government in Washington which most clearly reveals what it was that was moving us into war. Hear him:

"The financial inquiries made here reveal an international condition most alarming to the American financial and industrial outlook. * * * France and England must have a large enough credit in the United States to prevent the collapse of world trade and of the whole European finance.

"If we should go to war with Germany, the greatest help we could give the Allies would be such a credit. In this case our Government could, if it would, make a large investment in a Franco-British loan or might guarantee such a loan. * * *

"I think that the pressure of this approaching crisis has gone beyond the ability of the Morgan financial agency for the British and French Governments. * * *

"Perhaps our going to war is the only way in which our present preeminent trade position can be maintained and a panic averted. * * *"

You boldly criticized the thought of millions of bodies being thrown into the defense of these selfish commercial interests. For doing that, before and during the war, you were damned. Yet, after this same war, President Wilson said:

"Why, my fellow citizens, is there any man here or any woman, let me say is there any child here, who does not know that the seed of war in the modern world is industrial and commercial rivalry? The real reason that the war that we have just finished took place was that Germany was afraid her commercial rivals were going to get the better of her, and the reason why some nations went into the war against Germany was that they thought Germany would get the commercial advantage of them. The seed of jealousy, the seed of the deep-seated hatred was hot, successful commercial and industrial rivalry.

"This war, in its inception was a commercial and industrial war. It was not a political war."

FRANKNESS BEFORE WAR IS NEEDED

Ah, the rulers of the world, the foreign offices, the State Departments, the Presidents and Kings and Czars and Kaisers know what the war was about all the time. It was only afterward that the people were informed why they had been fighting. There was fraud perpetrated by governments in hiding from their people the true commercial, not political, causes for which they were fighting. And you, with truth your foundation, were heard only to be cursed.

Why can't we be as frank before another war as you were—as frank before that war comes as Wilson was frank after the last one was over? Why can't we learn that if we are dragged into the wars of other nations again it will be by false neutrality, the sales and shipments of contraband, and the lure of the profits in them? And while leaders talk about our national honor in those hours, why don't we call a spade a spade and know that to them national honor means the right to go on making money out of a war or preparation for it?

SELFISHNESS BETRAYS DEMOCRACY

Ah, if we could but have your leadership today in building safeguards against repetition of the waste and heartache of our last experience in defense of our "national honor". In September of 1917 you said:

"Who is it, abroad over this country now, waving the flags and crying out for democracy in the loudest possible tones? It is business that is making money out of existing conditions. That is what it is."

Were you to voice such sentiment now you would find a far finer reception than greeted you when you spoke then. Hardly would you be threatened with impeachment at least!

WEALTH AND PATRIOTISM

You were declared to be most unworthy when you spoke before and during the war of a partnership between patriotism and profits. We can still hear you crying out:

"Of course—of course, I know that the fellows who are waving the flags of today most frantically, the bloated representatives of wealth, who are shouting loudest for democracy today, are trying to invest this particular time with a new form of democracy, a democracy that has attached to it as a cardinal principle not liberty, not equality, but profits!"

Today we know what you seemed to know years ago. We know well now what was meant by "making the world safe for democracy."

Profiteers are the loudest of patriots, except at taxpaying time. Their patriotism is reflected by the profits they can win, not by a desire quickly to win a war at least cost. Today we know that French-made and German-made munitions were exchanged by the two countries while they were engaged in bitter strife. We know, too, that they guarded against destroying each other's sources of munitions' raw material. We know that men are shot down by guns sold to their opponents by manufacturers of their own lands, manufacturers who insist upon their patriotism.

And we know, as well, that great American merchants refused to respond to the needs of their Government in time of war until they could be guaranteed profits for their service. The New York Shipbuilding Co., for instance, refused in the midst of war to respond to the Government's request for additional shipbuilding capacity to be provided for with Government money, because there was uncertainty as to what their profit for doing this would be.

The Du Ponts cry out against criticism of their 400 percent profit on invested capital during the war and insist that but for them and their service to the Allies our country would today be a German colony. Yet it was the same Du Ponts who, for 3 long months, while our men were bleeding and dying in the trenches, refused to honor the request of their Government to build additional powder manufacturing capacity with money to be furnished by the Government. The explanation of this refusal is now a matter of record. There was failure to agree upon what the Du Pont margin of profit should be for constructing the new plant.

So we think we know what you meant when you said:

"Wealth has never yet sacrificed itself on the altar of patriotism in any war. On the contrary, it has ever shown itself eager to take advantage of the misfortune which war always brings to the masses of the people. That has been true of every war we have had in this country and of every war in Europe of which I have any knowledge, and it is certainly true of the present war."

COST OF WAR

Again you spoke of the burdens and risks of war and were called a coward. Today we battle with those burdens. We thought during the war that it was bringing a new day and era of prosperity, but since we have come to learn how war was only accomplishing concentration of wealth and burdening unborn generations with debt.

We wonder now at our difficulty in combating the depression which war gave us, as though war ever left other than economic wreckage in its wake. We wish for larger monetary means to meet that depression and are reminded that if we but had the cost of that 4 years of war we could go forth, build homes costing $2,500 each on 5-acre plots of ground costing $100 per acre, equip them with $1,000 worth of furniture, and give such a home to every family in Russia, Italy, France, Belgium, England, Wales, Scotland, Ireland, Australia, Canada, and the United States; then give every city of 20,000 or more people in those same lands a $2,000,000 library, a $3,000,000 hospital, and a $10,000,000 university; that after doing all this if we would invest part of the balance of the cost of that war so as to bring a return of 5 percent per year we could use it to pay salaries of $1,000 annually to 125,000 teachers and 125,000 nurses; that after doing all this there would still be enough left to buy all the property existing in Germany and Belgium.

So, good friend and prophet, we look to this cost of war and understand something of what you meant when you said:

"For my own part, I look upon Europe as cursed with a contagious, a deadly plague whose spread threatens to devastate the civilized world. If it were, indeed, the 'black death' that was mowing down its millions of victims, instead of this more ghastly war, we should not hesitate to quarantine against it; we should keep our ships in their ports and our people at home without any hesitation whatsoever; all personal consideration, all thought of material loss or commercial inconvenience would fall before the necessity of protecting our people from being stricken with the dread disease."

WARNINGS OF THEIR GOOD NOW

Oh, how courageously you warned your country and its people, how well and wisely you advised during those hours when unseen hands were at work moving us into a conflict which all but destroyed us. Would that America had listened, maintained a strict neutrality while others fought over matters which were none of our business. But most who did listen cried "treason" and charged you with cowardice and lack of patriotism.

But having failed to heed your warning then, would that America would pause long enough in these mad hours of insane preparation for more war and weigh what you then advised along with the experience which so completely substantiated your contentions.

Did war teach us anything? How many entertain thought today that we won the "war to end war"? Who will undertake to say who was the winner of the last war except those lovers of democracy whose sense of democracy is chance to profit? What of this talk we hear to the effect that what we need to get out

of this depression is another war? Does that signify that we learned anything from the World War?

DO NOTHING TO PREVENT REPETITION

Yet I am sure it can fairly be said that America is just as determined now to stay out of another war as it was determined to stay out 20 years ago. In spite of this determination, however, we have taken not one step to prevent repetition of that easy course pursued in dragging us into the last war.

Today there is as much danger of "neutrality" getting us into more war as it did get us into the World War, for not one step has been taken to strengthen our provisions of neutrality. Today finds not one thing done as yet to destroy the opportunity for profit from war which was such an irresistible temptation 20 years ago. Are we waiting for war to come before doing these things which experience dictates should be done if we care about our future? Then we but wait for hours when we will have neither time nor patience to do other than win the war.

PREPARE MEANS OF STAYING OUT OF WAR

We desperately need to change a dangerous habit of thought which is ours. From the cradle on through the years we are cautioned that in time of peace we should prepare for war. Why wouldn't it be much more advisable in time of peace to profit from experience and prepare means of staying out of more war? If we are to do this the call is first upon us to remove from every mind so far as we can the prospect of profit from more war, and to boldly face the issue of what we mean by neutral rights.

Of these issues you spoke to us and would speak again we are sure if you could. Of taking profit out of war you said:

"And there never was a time before in the history of the world when a war could be so justly and largely financed by taxation as this war. Why? Because never before in the history of the human race were great corporations making the enormous war profits that the corporations in this country have been making for the 3 years that the European war has been on and we have been at peace and those enormous profits warranted the assessment of the very highest rates, the very highest percentages of taxation against the war profiteers in order that this war should be properly financed."

Of such "neutrality" as is involved in letting Americans ride upon ships loaded with munitions for a belligerent nation, you said:

"I say this: That the comparatively small privilege of the right of an American citizen to ride on a munition-loaded ship, flying a foreign flag, is too small to involve this Government in the loss of millions and millions of lives."

And then, giving the lie to those who called you other than pro-American, you spoke clearly of the meaning of real neutrality when you said:

"I am opposed to the United States making war upon England for her ruthless violations of our neutral rights, just as I am opposed to making war upon Germany because of her relentless violation of our neutral rights."

I wonder if there might be cheer for your spirit in knowledge of the aggressive steps being taken now to cope with the problem of such neutrality as is to prevail in the event of more war and with the challenge which war profits afford. Would it mean anything to you to know that your words of 10 and 20 years ago were bearing fruit in the form of an awakening conscience to needs you so long urged?

Tremendous today is the response from all sections of the land to programs advanced to accomplish three definite purposes, namely, the accomplishment of stronger provisions of neutrality, of elimination of war profits, and of elimination of profit from programs of preparing for war.

NEUTRALITY PROGRAM

On Wednesday of this very week the Foreign Relations Committee of the Senate, which committee is honored by the able membership of your own son, will give consideration to three neutrality resolutions introduced as Senate Joint Resolutions 99, 100, and 120. These three make for a well-rounded-out program to afford security against such experience as our alleged neutrality of 20 years ago invited. Briefly these resolutions provide as follows:

First. A denial of American passports to Americans choosing to enter war zones in the ships of billigerents. This is virtual notice that Americans choosing to get into war zones shall do it without expectation that the American Army and Navy will follow with salve to spread upon their toes when they are stepped on.

Second. That there shall be no exportation of American munitions to nations at war and that no contraband shall be shipped in vessels carrying the American flag. This means that we cease wrapping the American flag about commerce intended for a nation at war and write finish to the game of making "national honor" mean the profits of men who seek gain from chiselling upon our neutrality.

Third. That there shall be no advance of loans or credits by Americans to any nation or the people of any nation engaged in war.

What might such neutrality save us if we had had it thus clearly defined back in 1914, 1915, and 1916?

TAKING PROFIT OUT OF WAR

The proposal to destroy the prospect of profit from more war and to provide the revenue with which to pay for the next war while it is being fought is in the form of a bill which was reported out by the Military Affairs Committee on Friday. This bill is the result of serious study by the Senate munitions committee. It provides drastic rates of taxation upon all incomes in time of war. It amounts to virtual confiscation of all individual incomes in excess of $10,000. Had the provisions of this bill been in effect during the World War they would have made the income of the Government exceed the outgo without borrowing one penny, just as you said it was possible to finance a war by taxing incomes during the war.

PROFIT OUT OF PREPARING FOR WAR

Today we see so mad an armament race on foot as cannot indicate other than grave consequences. We find merchants of preparation machinery and supplies resorting to the breeding of hates, fears, and suspicions to accomplish larger sales to afford larger profits. We find these merchants selling to their own countries as well as to those against whom those countries prepare for possible war. These merchants have made national defense a highly developed racket which in our own land has increased the annual bill of expense in its name during the years since the war by leaps and bounds to a point which finds America spending more money in preparation for more war than is being spent by any other nation on earth, and this only a few years after our "war to end war."

Clearly the call is upon the Government to produce more of its own national-defense machinery and to stop this game which finds American munitions makers selling their national-defense tools to all the world.

Success for this large program grows brighter each hour. Fulfillment of fondest hopes in this line could be had if only the American people would clearly voice their interest in and demand for such legislation as outlined.

ENCOURAGEMENT TO CARRY ON

It is you whom we honor today who gives us the inspiration to carry on in fields in which you pioneered, you who was called un-American, disloyal, traitor, trouble maker, underminer of democracy, pro-German, fool, knave, publicity hunter, liar, deceiver, for having dared to speak truth that one and all can know today to have been truth.

O Master, Lord and Ruler of all lands, give us this day the will, the desire, and the power to carry on where Robert Marion La Follette left off. Give us the light that will enable us to prevent for ourselves and our children another wasteful experience called war. Cause us to hear again this voice, now from the grave, urging us to those steps which will provide the necessary safeguards against men and interests whose knowledge of the profits from war and preparation for it blinds them to the desperate consequences of the satisfying of their appetites. Help us make truth even the words of those who idly and selfishly rallied a great public conscience to an alleged cause of making the world safe for democracy and of fighting to end war.

Here in this grave before us is one who gave much to the end that we might know the truth and prosper. Help us now to honor him by serving not only ourselves but our children and their children as builders like—

An old man, traveling a lone highway,
Came at the evening cold and gray,
To a chasm deep and wide.

The old man crossed in the twilight dim,
For the sullen stream held no fears for him.
But he turned when he reached the other side,
And builded a bridge to span the tide.

"Old man," cried a fellow pilgrim near,
"You are wasting your strength with building here;
Your journey will end with the ending day,
And you never again will pass this way.

"You have crossed the chasm deep and wide.
Why build you a bridge at eventide?"
And the builder raised his old gray head:
"Good friend, on the path I have come," he said,
"There followeth after me today
A youth whose feet will pass this way.

"This stream, which has been as naught to me,
To that fair-haired boy may a pitfall be:
He, too, must cross in the twilight dim—
Good friend, I am building this bridge for him."

AMENDMENT OF CONSTITUTION—SPEECH BY A. MITCHELL PALMER

Mr. GUFFEY. Mr. President, I ask unanimous consent to have printed in the CONGRESSIONAL RECORD a speech delivered by Hon. A. Mitchell Palmer, at Harrisburg, Pa., on June 18, 1935, on the subject of amending the Constitution.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

[From New York Times, June 19, 1935]

Shortly after the National Industrial Recovery Act was invalidated by the Supreme Court for constitutional reasons, President Roosevelt made some comment on the decision and its effect which has been widely quoted and much discussed.

The Court had found the act unconstitutional for two reasons: First, it was a delegation of legislative power to the Executive; and, second, it comprised within its bounds the regulation of intrastate commerce, whereas the Constitution expressly restricts the power of Congress to the regulation of interstate commerce.

The President, after declaring that the first of these reasons was not important, for there was no intention to delegate the law-making power to the Executive, went on to say that the "Court has practically gone back to the old Knight case of 1885, which limited interstate commerce to goods in transit. Since then the Court has made the interstate-commerce clause apply to a great many things not only in transit, but affecting interstate commerce. When the Constitution was written the country was in the horse-and-buggy stage. There was no interstate commerce to speak of * * * there was no problem of unemployment or buying power, no national social questions."

PRESIDENT'S CONCLUSION RECALLED

He concluded, therefore, that the people "have got to decide—not this autumn or this winter, but over a period of 5 or 10 years—if they are going to relegate to the States control of social, economic, and working conditions. They must decide whether to restore to the Government the powers that every other national government has. This is the biggest question before the country in years, as big as the choice between war and peace. * * * If the implications of the Supreme Court's decision are carried to their logical conclusion they would strip the Government of almost all its powers."

In all this he followed the declaration of a distinguished predecessor, Theodore Roosevelt, who said:

"It is the narrow construction of the powers of the National Government which in our democracy has proved the chief means of limiting the national power to cut out abuses, and which is now the chief bulwark of those great interests which oppose and dread any attempt to place them under efficient Government control."

REGRETS NARROW CONSTRUCTION

It is a nice question about which laymen will honestly differ whether the construction placed on interstate commerce by the Supreme Court was a necessary conclusion from either the words of the Constitution or past decisions.

Without questioning the decision, a great many good citizens believe that the Court might have given the clause the broad construction essential to our economic stability and prosperity. There is some foundation for the opinion which has been widely expressed that in the past where property rights have been in issue the Court seems to have been broad and liberal in its construction of the commerce clause, but where human rights are concerned it has been in the habit of giving interstate commerce the narrowest possible interpretation.

After the President's dramatic utterance many newspapers and political leaders who had always bitterly fought the traditional Jeffersonian and Democratic idea of local government and State rights suddenly became horrified at the possibility of their dreams coming true. They became followers of Jefferson overnight. They abandoned the theory of a strong Federal Government and professed the most solicitous consideration for the rights of States in managing their own affairs. They thought they saw the chance to accuse the President of all the errors of which they themselves had been guilty for generations.

ROOSEVELT'S VIEW COMMON SENSE

The two most notable contributions to this campaign so far are found in the radio address of Senator BORAH, of Idaho, and the speech of former Governor Lowden, of Illinois, before the "grass roots" Republican convention at Springfield. Both of them indulged in well-worn and time-honored methods of political argument, but neither was able to establish that the President did anything else than speak the average man's common-sense reaction to the Supreme Court's decision.

That the President was entirely sound in his fundamental idea nobody who has read the history of his country, even in the most desultory fashion, can deny. Economic and social conditions in this country have radically changed since the framers of the Constitution met in Philadelphia in 1787. This is too obvious to require proof.

There was practically no interstate commerce in those days; in fact, there was but very little communication between the States—certainly nothing approaching the present-day methods of commerce and communication.

When the colonists, living in sparsely settled communities, chiefly on farms, stretching along the Atlantic Coast from Massachusetts Bay to where Georgia touches the Atlantic, desired to test the sentiment of their associates relative to the cause of independence, they were obliged to resort to "committees of correspondence" and through the medium of letters which traveled by horseback, stage coach, or clipper ship, they were able after many months to exchange views.

They were unable, except at extraordinary expense, time and labor, to get together in person to discuss these views. Thomas Jefferson at Charlottesville and John Adams at Boston exchanged letters throughout all their lives, discussing all the public questions then pending. It took several weeks for Mr. Jefferson to get back Mr. Adams's reaction to one of his arguments. Today a Jefferson in Virginia and an Adams in Massachusetts may exchance their ideas almost instantaneously.

In those days the wheat from Mount Vernon was sent by ship whose only propelling power was a favorable wind, down the Potomac and up the Chesapeake to Baltimore. Some weeks later General Washington learned what his wheat had brought. Today the wheat farmer in the far West knows every day when he picks up his newspaper or tunes in on his radio what his wheat is worth at the moment in every market of the world.

Then it mattered not at all to Massachusetts and New York what the colonist farmers of the southland might do with the products of their fields, for they never came into active competition with those of the Northern States. Today the cost of labor and materials which enter into the finished product manufactured in Georgia or California is reflected in the price which the same or a similar product may sell for in New York or Boston.

INTERSTATE COMMERCE CHANGED

The advance of science and the progress of invention have made interstate commerce a thing as different from what it was in 1787 as the civilization of the savage tribes of darkest Africa is different from that of Paris, London, or Boston. It was to this only that the President called the attention of the country. If the commerce clause of the Constitution could speak in words today, it might well employ the striking language of the poem of Oliver Wendell Holmes:

"And if I should live to be,
The last leaf upon the tree
In the spring.
Let them laugh as I do now
At the old forsaken bough
Where I cling."

The President's suggestion was that this is a democracy, where the people rule, and all branches of the Government—legislative, executive, and judicial—are but the servants of the ruling power. The decisions of these servants may be overruled, as they have been time and again in the country's history, by the mandate of the people's will. This doctrine is neither an attack upon the Constitution nor criticism of any of the branches of the Government. It is pure straight constitutional doctrine, for the people wrote it into the fundamental law which they ordained and established at the beginning of our Union and the founding of our Nation.

SAYS BORAH BUILT STRAW MAN

Senator BORAH, in his self-appointed role of savior of the Constitution, framed the draft of an amendment which he said would be necessary to meet the President's idea. This amendment proposed to give legislative power to the Congress and to such executive commissions as should be created from time to time.

This is the familiar form of argument called by logicians the reducio ad absurdum. In more common parlance it may be said that the distinguished Senator carefully built a man of straw and then riddled the result of his handiwork with 10-inch guns. Nobody has ever suggested any amendment to the Constitution which would vest the Executive with legislative power, and, so far as I know, no man who has given the matter a moment's thought has ever considered such a proposition. It is a preposterous suggestion.

Governor Lowden, who emerged from a well-earned obscurity to sound the keynote for the 1936 Presidential campaign, springs to the defense of the menaced Constitution in more direct fashion. He fears the destruction of local self-government, the abolition of the Bill of Rights, and the end of liberty in the United States.

He says: "The preservation of the basic principles of the Constitution; this is the supreme issue of the hour. * * * Upon this great issue the Republican Party must take the lead. It would be false to its traditions and its history if it faltered now. Minor factional and sectional differences must disappear."

The desire to wipe out factional differences in the Republican Party in this sad hour of its deep submergence in the dark waters of defeat is readily understandable, but Mr. Lowden will find that when he bases it upon the purpose of preserving the Constitution there will be no differences within or without his party to combat him. All parties and all patriotic citizens desire and intend at all hazards to preserve our constitutional rights and liberties.

The question is not whether we shall preserve our Constitution. That is nowhere disputed. The question is whether the Constitution shall be pickled in its original liquor and stubbornly preserved in its pristine form, or whether it shall be preserved in the manner in which its framers intended to meet the changing demands of the new growth and development of a great country.

The framers plainly foresaw that the Constitution would have to be changed from time to time. The very Bill of Rights about which Governor Lowden is so much concerned is contained in the first 10 amendments to the Constitution, and other highly important amendments have been forced by the people's will to meet interpretations which did not satisfy them when uttered.

The people have not only changed the Constitution to meet the decisions reached in the arbitrament of war and to conform to new economic conditions growing out of the rapid progress of our changing civilization, but they once amended the Constitution to make "an experiment, noble in motive", and the experiment having failed they again changed the Constitution to write an acknowledgment of the failure into that instrument.

MOST FAR-SEEING STATESMAN

It is very likely true, as recently stated by one of the political wiseacres of the time, "that an amendment to turn over to the National Government omnipotent powers to regulate wages, hours, working conditions, trade practices and prices would not be ratified by 10 American States", but the straw-grasping politicians who ascribe such a purpose to the President forget what everybody else in the world recognizes, that is, not only is Franklin D. Roosevelt the most far-seeing statesman among all the leaders of the world's thought but also he is the wisest politician of his time.

Such a specific amendment has never been hinted at by him. But it may be that a restatement of the commerce clause of the Constitution in twentieth century language might become neces-

sary to effectuate the intent of the framers, who never designed that their work should be forever construed by the dim candlelight of the eighteenth century.

The fathers intended to protect every State in its right to achieve social, economic, and industrial progress, and only if that right is respected will the purpose of the Constitution be accomplished. If present-day interpretations violate that intent they will destroy the most sacred of State rights. No amendment will be considered which would not meet with the approval of the framers if they were here now to write it into their own instrument in the glare of the electric light of a modern civilization.

To suggest changes in the Constitution is not an attack upon the Constitution. To make changes is not unconstitutional. In the very instrument itself, perhaps the most carefully thought out and skillfully worded article is that which reserved to the people themselves, the makers of the Constitution, the sole right to alter it.

CRITICISM CALLED "FLAREBACK"

All this criticism of the liberty to suggest amendments and the right of the people to make them if they see fit is a flareback from the archaic, repudiated, and defeated theory argued strenuously on both sides in the early days of the Republic, that the Constitution is a compact between the States with which the people had naught to do and which, therefore, presumably the people have no right to alter.

This was the argument presented by Calhoun and Toombs and Stephens and personified by Jefferson Davis. We thought that argument was ended at Appomatox.

The Supreme Court has never said that the Constitution is a compact between the States. On the contrary, in every decision of that great Court from 1793 down to this hour, whenever the question has been raised, it has been specifically declared to be not a compact between the States but a covenant of the people with themselves for their own government.

Away back in 1793 Mr. Chief Justice Jay said:

"Here we see the people acting as sovereigns of the whole country; and in the language of sovereignty; establishing a Constitution by which it was their will that the State governments should be bound and to which the State constitutions should be made to conform. Every State constitution is a compact made by and between the citizens of a State to govern themselves in a certain manner, and the Constitution of the United States is likewise a compact made by the people of the United States to govern themselves as to general objects in a certain manner."

And again in 1816 the great Story said:

"The Constitution of the United States was ordained and established not by the States in their sovereign capacities, but emphatically, as the preamble of the Constitution declares, by 'the people of the United States.' There can be no doubt that it was competent for the people to invest the General Government with all the powers which they might deem proper and necessary, to extend or restrain these powers according to their own good pleasure, and to give them a paramount and supreme authority.

"As little doubt can there be that the people had a right to prohibit to the States the exercise of any powers which were in their judgment incompatible with the objects of the general compact; to make the powers of the State governments, in given cases, subordinate to those of the Nation; or to reserve to themselves those sovereign authorities which they might not choose to delegate to either.

"The Constitution was not, therefore, necessarily carved out of existing State sovereignties nor a surrender of powers already existing in State institutions, for the powers of the States depend upon their own constitutions, and the people of every State had the right to modify and restrain them according to their own views of policy or principle.

"The Constitution unavoidably deals in general language. It did not suit the purposes of the people in framing this great charter of our liberties to provide for minute specifications of its powers, or to declare the means by which those powers should be carried into execution. It was foreseen that this would be a perilous and difficult, if not an impracticable, task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence.

"It could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter; and restrictions and specifications which, at the present, might seem salutary might, in the end, prove the overthrow of the system itself."

BECK'S FORMER STATEMENTS CITED

And yet we find, despite the decision following the exercise of great national power by war and the repeated declarations of the highest court in the land, the old doctrine, long dead and buried, has been resurrected by no less a constitutional authority than Mr. James M. Beck, who, by the way, never allowed his veneration for the Constitution to prevent him, though a resident of New York, from representing a Philadelphia district in Congress. So late as in the year 1932, in an address before the House of Representatives at Washington, Mr. Beck said "that if every State of the Union were to assemble tomorrow and unanimously agree, without any action of Congress, that they would change the Constitution, they could change it by such unanimous consent. Who could object, if all agreed?" The answer is nobody—except the people.

And again he said:

"Therefore, bear in mind the legal metaphysics of this question that while the Supreme Court speaks of the source of ratifying power being in the Constitution, the power of the constituent States to determine whether they will or will not ratify an amendment is antecedent to the Constitution and grows out of their nature as sovereign States that created a compact by their own voluntary act."

And further:

"Remember, gentlemen, what I said before, that the power of the State to ratify an amendment to the Constitution, while as to the method of its exercising is a grant of constitutional power, yet it has by reason of its own reserved rights the ultimate right to determine whether the compact into which it entered shall be changed."

GOVERNMENT BY DEAD HANDS

This utterly false doctrine, that the Constitution is a compact between the States, is the major premise in every argument that has been made or ever can be made to support the theory that the Constitution is sacred and untouchable. The people who framed the Constitution meant it to be neither of those things. They meant it to be changed when necessary to conform to the will of the majority. The only condition necessary to a change was that it should be submitted to and passed upon by the people themselves. Thus, the right to change the Constitution is the very foundation of popular government. Without it the people do not rule.

Those who argue now that the Constitution is sacrosanct and, though times may change as the world goes on, must remain always as it was written, are insisting that this people of 130,000,000 souls, stretching its civilization over a territory undreamed of by the fathers, living under conditions which could by no human possibility have been visualized by the framers of the Constitution, wise and foreseeing as they were, shall be governed not by themselves but by a dead hand reaching out of the darkness of the eighteenth century.

In my judgment, the most significant thing about the Constitution is this: It framed a representative democracy by an instrument almost perfect in its structure; but it provided that any alterations of that instrument must be made by methods which the people devise, which amounted approximately to a pure democracy.

RIGHT TO CHANGE RESERVED

The people themselves ordained and established this representative democracy and the people themselves, without imposing any power or responsibility upon the machinery of representative democracy, reserved the right to alter it. Neither the Federal Government nor the States, jointly or separately, unanimously or by a majority, can change the Constitution of the United States. It is purely a popular function. Therefore, to suggest that the people should consider the alteration of the Constitution is merely the suggestion of a popular referendum on the question of what the fundamental law shall be. It raises the issue, Shall the people rule?

It is true that in article V of the Constitution, relating to amendments, the people gave to Congress the power to propose amendments, and by the same article they gave to the legislatures the power to ratify amendments. But the Congress is not the Federal Government. The legislatures are not the States. What the people did was to select one branch of the Federal Government as their agent for proposing amendments and one branch of the State governments as their agent for ratifying amendments. But they were only the people's agents. Even these they did not wholly trust, for by a skillful use of words, never since equaled in legislative enactments, they devised alternatives which would assure to them the right to alter the Constitution if these agents should prove recalcitrant to the popular will.

ALTERNATIVE METHODS FOR ACTION

As an alternative method of proposal of amendments they provided that upon the application of the legislatures of two-thirds of the States the Congress "shall call a national convention to propose amendments." This left the Congress without discretion in the matter, but required it to call a convention to propose an amendment if the people through their agents, the legislatures, so required. And as an alternative method of ratification, in case legislatures might not truly represent the popular thought, they provided that the Congress might submit the amendment for ratification to "convention in" the States.

The alternative of calling a national convention to propose an amendment has never been resorted to in the history of the Republic.

The alternative method of ratification, namely, by conventions in the States, has been employed but once, when in 1933 the Congress submitted the so-called "repeal amendment" to conventions in the States. Even then the Congress did not comply with the constitutional intent, which was to make the convention system entirely separate from and unassociated with the legislatures. The Congress permitted these conventions to be called by the States.

Although it is doubtless true that the popular will was carried out in respect to this amendment, it was not carried out in the carefully guarded manner which the framers of the Constitution had designed to make certain that the States should not interfere with the prerogative of the people themselves. The Congress should have called these conventions into being, exactly as it must call a national convention if it receives the application of the legislatures of two-thirds of the States for such national conventions to propose an amendment.

INTERPRETS INTENT OF FRAMERS

This intent of the framers clearly appears from the language of article V, which provides that proposed amendments "shall be valid to all intents and purposes as part of this Constitution when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress."

It has come to be generally accepted that the framers of the Constitution used no language without a definite purpose in mind. If they had intended that amendments should always be in the control of the legislators, why did they provide for conventions at all? For it is obvious that the constitutional method of ratification by conventions could be entirely nullified by the legislatures of the States either by refusing to call the convention, by delaying action, or by legislation which by a gerrymandering of districts or otherwise would make these conventions anything but representative of popular will. The net result would be that only one method of ratification, that by the legislatures, would have been provided.

In the Constitution every word must be given a meaning. Why did the framers of the Constitution say "legislatures of 'and' conventions in" the States? There is a vast difference between "of" and "in." "Of" denotes a possessive character as "belonging to", "organized by", or "chosen for" and is much larger in its scope than "in", which refers to location and nothing else.

STUDIED USE OF WORDS NOTED

The studied use of these two propositions plainly indicates a purpose that the two methods should be entirely distinct, neither dependent upon nor to be controlled by the other. The framers may have had in mind the very situation which is now generally (though mistakenly) believed to exist (as stated by a former Attorney General of the United States)—"ratification by State conventions obviously takes more time than ratification by State legislatures."

It seems clear that the chief purpose of the framers of the Constitution was that the will of the people should be promptly determined and that it should not be thwarted by legislative bodies of the States. They took care of this possibility by retaining the power in the Congress to employ the convention system, the only constitutional restriction upon the action of the Congress being that these conventions should be held in the several States.

One of these methods might be called the "slow" method, dependent for results entirely upon the will of the legislatures; the other the "quick" method, by which the Congress might put the matter directly up to the people by creating conventions without intervention of the legislatures.

POINTS TO POSSIBLE EMERGENCY

It is conceivable that a situation might arise when the very existence of the Government might depend upon the immediate amendment of the Constitution. Under such circumstances must the Government make its own life dependent upon the will of the legislatures elected by the people for other purposes, or can it submit the question directly to the people, by whom and for whom the Constitution was written to create and preserve the Federal Government?

A striking illustration of the wisdom of the fathers in providing this alternative method of ratification is presented by the situation in our own State of Pennsylvania today. In 1934, by a political revolution unprecedented in our history, the people of this State turned from the party of reaction to the new deal.

They sent to the Senate of the United States one of Pennsylvania's able and experienced sons with the express understanding that he would support the President's plans 100 percent, a pledge which he has so faithfully kept that he has already become a strong leader in that body.

They placed in the Governor's chair another loyal and progressive citizen, who, despite desperate opposition, had with consummate skill and undaunted courage, already made a reputation for fidelity to his trust unequaled in any State.

Yet, despite this plain mandate of the people and the popular acclaim for the public servants who have faithfully executed it, if a constitutional amendment, which might be demanded by a vast majority of our people, were now submitted to the legislature for ratification, it would immediately reach the electric chair of the hold-over Senate, which still listens to its old master's voice.

WAY TO EXPRESS POPULAR WILL

By no other system than a popular convention could the popular will in such case be translated into law. By such a system dilatory and obstructive tactics would be swept aside, for the Congress could call such a convention to meet in the near future on a fixed date.

From all this it seems plain that the wise men who framed the Constitution made certain that it should never die from disease or old age. They settled the means by which it should remain forever quick with life.

There is no thought in any responsible quarters of wiping out State lines or interfering with local government, except so far as it may be necessary in present conditions to make good the immortal language of the preamble, which declared that the people ordained and established it "in order to form a more perfect union, establish justice, insure domestic tranquillity, and secure the blessings of liberty to themselves and to their posterity."

Those who would amend the Constitution now to conform to that purpose are the real defenders and preservers of that great instrument, and those who would restrain the people from exercising their will are not only the would-be destroyers of popular government but they are also the real enemies of the Constitution, for they assert that the Constitution as written, including the power to alter it, shall no longer serve its God-given purpose. It is they who would tear down the structure of the fathers who builded for all time a framework of government which would answer the prayer of Lincoln, uttered on Pennsylvania soil, in the midst of the greatest trial our country has ever suffered, "that government of the people, by the people, and for the people shall not perish from the earth."

ATTITUDE OF HOLDING COMPANIES TOWARD REGULATION BILL

Mr. WHEELER. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial from the New York Daily News of this date entitled "Holding Companies Attack Roosevelt."

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the New York Daily News, June 20, 1935]

We see in various papers a striking advertisement, signed by the Associated Gas & Electric System and captioned "Last Chance for Utility Investors." The News didn't carry this ad, but we are glad to summarize it here.

The ad says millions of American citizens' investments in power companies are jeopardized by the Wheeler-Rayburn bill to rub out the intermediate holding company racket in 7 years. It accuses President Roosevelt of having used the $4,880,000,000 relief fund as a patronage club to jam the bill through the Senate, and implies that he will do the same when the bill comes before the House. It beseeches everybody to write his Congressman to vote against the bill, as a long step toward Government ownership and operation of all the electric and gas companies. And it contains an inset letter from an alleged 78-year-old lady in Pennsylvania to her Congressman, begging him to vote against House bill no. 5423 and not to let Uncle Sam take away her pitiful little utility dividends, which she claims to have earned, and much prefers to an old-age pension.

We question the wisdom of the utilities in thus attacking the President, in view of his popularity and of what the public has been learning these last few years about the utilities.

WORKINGS OF THE RACKET

Insull taught the public its first and biggest holding company lesson at a cost of some $110,000,000 to hundreds of thousands of investors, including some widows and orphans.

Locally, we've been learning things like these of late:

Consolidated Gas is 37 percent water.

Consolidated Gas has invested $29,300,000 since 1925 in its subsidiary, Westchester Lighting Co., and has taken out more than $27,000,000 in dividends, or more than 93 percent, in the same period. Hence, Westchester County's fantastic electricity rates.

Long Island Lighting, captained by Ellis L. Phillips, has performed numerous stock split-ups and inside sales which have made millionaires of its handful of stockholders—the net result being that the New York State Power Authority calls Long Island power rates at least 50 percent too high.

These are samples. The intermediate holding company game is a racket, as truly as the poultry, policy, and fish rackets are rackets. Insiders in the intermediate companies skim off $3 out of every $7 earned by the producing companies in the chain—and those insiders are not widows or orphans. The widow-orphan money is mainly in the producing power companies unaffected by this bill.

Because it is a rich, delightful racket, yielding yachts and grouse shooting in Scotland and vacations at Deauville to its practitioners, they will not let go without a terrific fight. The ad above digested is one sample of these men's efforts to drum up public opinion against the Wheeler-Rayburn bill, and against the President, who wants that bill made law.

These men and their forerunners in high finance have won every fight of this kind up to now. We'll see if they can win against President Roosevelt.

SENATOR FROM WEST VIRGINIA

Mr. NEELY. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Adams	Capper	Glass	McCarran
Ashurst	Caraway	Gore	McGill
Austin	Chavez	Guffey	McKellar
Bachman	Clark	Hale	McNary
Bailey	Connally	Harrison	Maloney
Bankhead	Coolidge	Hastings	Metcalf
Barkley	Copeland	Hatch	Minton
Bilbo	Costigan	Hayden	Moore
Black	Davis	Johnson	Murphy
Bone	Dieterich	Keyes	Murray
Borah	Donahey	King	Neely
Brown	Duffy	La Follette	Norris
Bulkley	Fletcher	Lewis	Nye
Bulow	Frazier	Logan	O'Mahoney
Burke	George	Lonergan	Overton
Byrd	Gerry	Long	Pittman
Byrnes	Gibson	McAdoo	Radcliffe

Reynolds	Sheppard	Townsend	Van Nuys
Robinson	Shipstead	Trammell	Wagner
Russell	Smith	Truman	Walsh
Schall	Steiwer	Tydings	Wheeler
Schwellenbach	Thomas, Okla.	Vandenberg	White

Mr. VANDENBERG. I announce the absence of my colleague the senior Senator from Michigan [Mr. COUZENS] on account of illness, and I ask that the announcement stand for the day.

Mr. LEWIS. I announce the absence of the Senator from Idaho [Mr. POPE] and the Senator from Utah [Mr. THOMAS], caused by important public business.

Mr. AUSTIN. I wish to announce that the Senator from Wyoming [Mr. CAREY], the Senator from Iowa [Mr. DICKINSON], and the Senator from New Jersey [Mr. BARBOUR] are necessarily detained from the Senate.

The VICE PRESIDENT. Eighty-eight Senators have answered to their names. A quorum is present.

Senate bill 2367, the so-called "Bankhead farm-tenancy bill", is before the Senate.

Mr. NEELY. Mr. President, I call up the Holt election-contest case, and ask that the Senate proceed with that case until it shall have been concluded.

The VICE PRESIDENT. The Senator from West Virginia may present his colleague at the Vice President's desk to take the oath of office. From the parliamentary standpoint, that is all the Chair knows about it at the present time.

Mr. MCNARY. Mr. President, I think it was understood that the Senator from West Virginia would not present his colleague to take the oath until the matter had been discussed and settled.

Mr. ROBINSON. Then, Mr. President, in order that there may be something before the Senate, I move that the oath be administered to Senator-elect HOLT.

Mr. GEORGE. Mr. President, I was about to ask for the consideration of the formal resolution reported by me from the Committee on Privileges and Elections.

Mr. ROBINSON. Very well, then; I withdraw my motion.

The VICE PRESIDENT. The resolution reported by the Senator from Georgia from the Committee on Privileges and Elections will be read.

The Chief Clerk read the resolution (S. Res. 155), as follows:

Resolved, That RUSH D. HOLT is entitled to his seat in the Senate of the United States as a Senator from the State of West Virginia, it appearing that he was 30 years of age at the time when he presented himself to the Senate to take the oath and to assume the duties of the office.

Mr. HASTINGS. Mr. President——

The VICE PRESIDENT. Does the Senator from Georgia desire the floor?

Mr. GEORGE. Yes, Mr. President; I desire to speak on the resolution.

The VICE PRESIDENT. The Senator from Georgia is recognized, he having submitted the resolution.

Mr. GEORGE. I desire to proceed at this time, this being a highly privileged matter.

Mr. HASTINGS. Mr. President, will the Senator yield to me?

The VICE PRESIDENT. Does the Senator from Georgia yield to the Senator from Delaware?

Mr. GEORGE. I yield.

Mr. HASTINGS. I desire at some time to offer a substitute for the resolution of the Senator from Georgia, and I was wondering whether that may be done now or may be done later, depending upon what the Senator from Georgia desires.

Mr. GEORGE. I yield for the purpose of allowing the proposed substitute resolution to be offered.

Mr. HASTINGS. As a substitute for the resolution of the Senator from Georgia, I offer the resolution which I send to the desk.

The VICE PRESIDENT. The resolution in the nature of a substitute offered by the Senator from Delaware will be stated.

The Chief Clerk read as follows:

Resolved, That the election of RUSH D. HOLT to be a Senator of the United States was void, he not having attained the age of 30 years at the commencement of the term for which he was elected.

The VICE PRESIDENT. The Chair understands the parliamentary situation to be that the Senator from Georgia has submitted a resolution for which the Senator from Delaware has offered a substitute. So the question will come on agreeing to the resolution presented by the Senator from Delaware as a substitute for the resolution of the Senator from Georgia.

Mr. GEORGE. Mr. President, this is a highly privileged matter. The Committee on Privileges and Elections has submitted a majority report, which has been printed and is on the desk of each Senator. Minority views have also been submitted by certain members of the Privileges and Elections Committee. Those views also are printed and are before Senators.

Mr. President, this is a matter of very great importance; the issue raised is of primary importance. The principal issue, the one upon which the Senate unquestionably will pass directly, and the controlling issue, is one of first impression, so far as the Senate is concerned, upon the precise facts presented in this case.

In the West Virginia primary election of August 8, 1934, RUSH D. HOLT was declared the nominee of the Democratic Party and the then sitting Senator, Henry D. Hatfield, was declared to be the nominee of the Republican Party for the office of United States Senator from the State of West Virginia. In the general election on November 7, 1934, RUSH D. HOLT received 349,882 votes and Henry D. Hatfield 281,756 votes. The secretary of state of West Virginia duly certified the result of the election to the Governor, who in turn certified in due form the election of RUSH D. HOLT to the Senate of the United States for the term beginning January 3, 1935. The certificate of the Governor of West Virginia was duly transmitted to the Secretary of the Senate before the beginning of the Seventy-fourth Congress, which convened January 3, 1935.

In April 1935 Henry D. Hatfield presented a petition in the nature of a protest and contest, in which he alleged that the election of RUSH D. HOLT was void, and raised certain questions with respect to the regularity of the election. He also claimed that he should be seated as a Senator from West Virginia upon the ground that he received the next highest number of legal votes cast in the November election; that the election of HOLT being void, he was entitled to the seat.

Subsequently a large number of citizens of the State of West Virginia filed with the Senate a memorial, in which it was alleged that the election of RUSH D. HOLT was void, and in which other allegations were made, based upon alleged irregularities in the certificate filed by RUSH D. HOLT in the primary election of August 8, 1934.

Both the petition of Henry D. Hatfield and the memorial of the citizens of the State of West Virginia were referred to the Committee on Privileges and Elections.

Both the petition of Hatfield and the memorial of the citizens of the State of West Virginia raised primarily the question of the age qualification of RUSH D. HOLT. It was alleged in both the petition and the memorial that RUSH D. HOLT was born on June 19, 1905; that he was not, therefore, 30 years of age at the time of the election in November 1934, nor at the commencement of the term for which he was elected, to wit, January 3, 1935. It is therefore claimed that the election of HOLT was void because he failed to meet the constitutional age requirement as provided in clause 3, section 3, article I, of the Constitution.

It was also averred that the certificate required by the election laws of the State of West Virginia to be filed by every candidate for office in the primary election was not attested by or acknowledged before an officer of the county in which the certificate purported to have been executed. Upon that issue the evidence is not in dispute. It appears that the officer before whom the certificate was acknowledged was not in fact an officer of the particular county stated in the caption of the certificate. It also appears that he was an officer authorized under the laws of the State of West Virginia to administer oaths, and that he held a commission as notary public for the State at large.

This certificate was required to be filed as a prerequisite to becoming a candidate in the primary election of 1934.

Your committee are of the opinion, and upon that point I believe there is no difference of opinion, that the particular contention made regarding the attestation of RUSH D. HOLT'S signature is of no significance or consequence, for the reason that the certificate was in fact made or acknowledged, and for the additional reason that whether the officer who purported to have acknowledged it was in fact an officer of the county in which the certificate purported to have been made, he was an officer of the State at large. In fact, under the undisputed evidence, the certificate was not executed in the county stated in the caption of the certificate, but was executed in another county.

Moreover, no exception whatever was taken to the certificate or to its sufficiency, and the name of RUSH D. HOLT was placed upon the ticket of the Democratic Party in the primary election of August 1934, and no exception whatever was made to the appearance of the name of RUSH D. HOLT upon the ticket as a candidate of the Democratic Party for United States Senator from the State of West Virginia in the general election of November 11, 1934. Therefore, the objection here raised seems to be without substantial merit.

The certificate required of every candidate under the primary laws of the State of West Virginia contained the statement, "I am eligible for the office" for which the candidate offered himself, and the further statement in the certificate that "I am a candidate for the office in good faith." It is objected, inasmuch as he had not reached the age of 30 and could not attain the age of 30 prior to June 19, 1935, that Mr. HOLT made an untrue statement and that he could not in good conscience say that he was a candidate in good faith as the certificate required.

I believe upon this point there is no serious difference of opinion. Your committee are of the opinion that, on the undisputed evidence in the case, RUSH D. HOLT was merely stating his view, his view both of law and of fact, and that even if he had drawn an erroneous conclusion, no imputation of bad faith could be drawn in the case, and certainly no such implication of bad faith as would justify the Senate in saying that he should not for that reason be entitled to take his seat.

Your committee have been influenced in reaching its decision upon that question because it appeared from the undisputed evidence that RUSH D. HOLT from the opening of his primary campaign, on the platform, in public discussion, and in the press of the State, at no time denied the fact that he was born on the 19th day of June 1905, and that even if he had drawn an erroneous conclusion of law, or conclusion of law and of fact, it would be of no consequence as far as seating him in this present case is concerned.

The committee is also of the opinion—and upon that point in the case there is no division among the Members—that even if RUSH D. HOLT is held to be ineligible to take a seat in the Senate, and even if his election is void, nevertheless Henry D. Hatfield is not entitled to the seat, upon the broad, generally recognized principle that the ineligibility of a majority candidate does not entitle the candidate receiving the next highest number of legal votes cast in the election to the office.

So, Mr. President, the important issue before the Senate involves this question: As of what date is the age qualification for a Senator provided for in article I, section 3, paragraph 3, of the Constitution to be determined? That is, is it to be determined as of the date of the election, or is it to be determined as of the date of the beginning of the term of office for which the Senator was elected; or is it to be determined as of the date when the Senator-elect presents himself and demands the right to take the seat and assume the duties of his office?

Article I, section 3, paragraph 3, of the Constitution reads as follows:

> No person shall be a Senator who shall not have attained to the age of 30 years, and been 9 years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

There are other pertinent provisions in the Constitution to which attention will be directed.

It will be noted that this particular paragraph is really a paragraph of two sentences. The first sentence is complete within itself; that is—

> No person shall be a Senator who shall not have attained to the age of 30 years, and been 9 years a citizen of the United States.

The second sentence or clause is complete but for the subject:

> And who shall not—

That is to say, no person shall be a Senator who shall not—

> when elected, be an inhabitant of that State for which he shall be chosen.

It is the opinion of the majority of the committee that the words "when elected", appearing as they do in the middle of the second sentence or clause, must be held as a mere rule of grammar, as a mere rule of reason, to modify the word "person" which appears in the first clause or sentence; that the words "when elected" have no reference to the verbs used in the first sentence, or the first two clauses which compose a complete sentence in the particular paragraph.

It will be noted that this particular clause of the Constitution declares that "No person shall be a Senator." It is the view of your committee that the reference is to actual senatorship, and not to potential senatorship. It is the view of your committee that the invitation to the Senate, and the obligation resting upon the Senate, is to deal with the matter in the present tense.

It may be contended that RUSH D. HOLT became a Senator upon the date of his election. That position is hardly tenable; and I do not think it will be taken—certainly not by the members of the committee who have filed minority reports.

Mr. LONG. Mr. President, will the Senator yield?

Mr. GEORGE. I would rather not yield just at this point.

Mr. LONG. I simply desire to say that there is a decision of a United States court on that subject.

Mr. GEORGE. I would rather not yield just at this point. The majority of the committee believe that the clause itself negatives the idea, completely contradicts the theory, that a person is, when elected, on the date of his election, a Senator in the Congress of the United States.

It will be noted that in the middle of the second sentence or clause, dealing with the question of habitancy, the words "when elected" are used; that is to say, that—

> No person shall be a Senator * * * who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

There would be no purpose whatever in using the words "when elected" if a person who was a candidate for the Senate became a Senator on the date of his election.

Beyond all question, the person on the date when elected cannot be held to be a Senator within the meaning of this clause in the Constitution.

It may be said, Mr. President—and that is the view expressed by those who have filed minority reports, and by those who, through the history of the Senate itself, have taken a contrary view—that, nevertheless, a Senator-elect becomes a Senator at the commencement of the term of office to which he was elected. Upon that question I desire to say that it is not my view that the mere formality of an oath converts a Senator-elect into an actual Senator, or a Senator within the meaning of clause 3 of section 3 of article I of the Constitution. The Constitution does require that all Senators, Members of the Congress, and certain State officers, shall take an oath to support the Constitution. That is a constitutional requirement. As a matter of fact, until the First Congress met there was no prescribed form of oath, and there could not be until the Congress prescribed it.

As a matter of fact, if through inadvertence or misadventure a Senator-elect should be allowed to enter the Senate, should be enrolled, should take his seat, and should participate in the deliberations of the Senate, I do not believe it

could be contended with reason or force that the mere failure to take the oath interfered essentially with the character of the person as a Senator in the Congress of the United States. Upon that point I am expressing my own view. If the Senator-elect should willfully and intentionally refuse to take the oath, of course it is perfectly manifest that the Senate would have the right to deal with the Senator; and it might go so far as to say—indeed, I undertake to say that it should say—"You cannot be enrolled, nor can you take your seat, nor can you participate in the deliberations of the Senate."

That, however, is wholly a different question, as I view this important matter.

Mr. NEELY. Mr. President, will the Senator yield?

The PRESIDENT pro tempore. Does the Senator from Georgia yield to the Senator from West Virginia?

Mr. GEORGE. I do.

Mr. NEELY. I invite attention to the fact that the statement just made by the Senator from Georgia is explicitly supported by rule II of the Senate, which is as follows:

> The oaths or affirmations required by the Constitution and prescribed by law shall be taken and subscribed by each Senator, in open Senate, before entering upon his duties.

So, manifestly, under the rules of the Senate no Member of this body could enter upon the discharge of his duties, or become a Senator to all important intents and purposes, until he had subscribed to the oath of office required by the Constitution.

Mr. GEORGE. Mr. President, I am sure I agree with the statement made by the distinguished Senator from West Virginia. I am also certain that it was appropriate for the First Congress to provide the oath, because that Congress was simply carrying into execution a provision of the Constitution which was not, in the strict sense, self-executing; and, of course, it is appropriate that the oath be administered at the beginning of the session. But, Mr. President, I do not put my argument upon the single circumstance that a person elected to the Senate does not become a Senator in fact, or may not become a Senator in fact, until the oath has been taken. One cannot become a Senator in fact until the Senate is in session, until he has presented himself, until he has taken his seat, and in regular order under rules of the Senate he must have also taken the oath, and until he is free—indeed, until he has assumed the obligation—to participate in the deliberations of the Senate.

What burden or duty rests or can rest upon one merely elected to the Senate even after the beginning of the term of office but who has not in fact entered the Senate and who has not taken the oath, who has not claimed his seat, and who has not placed himself in position to meet as a matter of duty the responsibilities of the senatorial office?

The broad position the majority of the committee takes is that, giving to this clause of the Constitution a liberal, a common-sense, a logical construction, a person does not become a Senator in fact until he enters the Senate, until he takes his place in the body, and until he places himself under obligations to discharge the duties of the office of Senator. In my judgment, that view of it is justified under the Constitution.

Mr. President, what is the reason for this particular clause in the Constitution?

Mr. BORAH. Mr. President, will the Senator permit a question?

Mr. GEORGE. I am glad to yield.

Mr. BORAH. The Senator stated that a person did not become a Senator until he entered the Senate. I take it the Senator means by that the day when his term of office begins to run.

Mr. GEORGE. I am discussing that feature of it, and I have said, as the Senator from Idaho may have understood, that I did not believe it would be seriously contended that a person from the date of his election became a Senator.

What were the reasons which led to the inclusion in the Constitution of clause 3, section 3, of article I? First that clause provides three qualifications: Age, citizenship, and residence or habitancy.

Undoubtedly it was the view of those who framed the Constitution, the view of the Constitutional Convention, that no person should be a Senator who had not for some number of years been a citizen of the United States. After much debate and after several changes the Convention resolved that no person should be a Senator who had not been for 9 years a citizen of the United States.

The Convention rightly distrusted the placing of so great power as carried by the office of Senator in the hands of anyone who had but recently become a citizen of the United States. The fear of domination of foreign powers, particularly the fear of English influence, led to the inclusion of this particular provision in the clause to which I have referred. So it was resolved that no person should be a Senator who had not been for 9 years a citizen of the United States.

What is the reason for this qualification? Is it that he must have been a citizen on the day when he was elected? He could assume no responsibility then. He could do nothing by virtue of his election. He could participate in the making of no law nor could he vote upon any measure. He could formulate or shape no policy. He could not influence the action of the Government at all.

Was it that he must have been a citizen for 9 years at the date of the commencement of his term of office, unless actual as distinguished from potential senatorship was in contemplation? Let us look to the reason for it.

Until the person elected has come to the Senate, has entered the body, has taken his place as a member, he is not in position, nor does he have the power or responsibility to cast a single vote, to register a single official act, which could influence any policy of the Government. So, when the framers of the Constitution said that no person should be a Senator, it meant exactly what it said, that he should not be a Senator in fact unless he had been for 9 years a citizen of the United States.

So, with respect to age, the Convention undoubtedly meant and undoubtedly intended that no immature person should exercise the functions and discharge the duties of the office of Senator, and in determining where immaturity ended and maturity commenced they fixed on the arbitrary age of 30, and provided that no person should be a Senator who was not 30 years of age and who had not been 9 years a citizen of the United States.

Again, on the date of the election of a person, whatever his age, it must be admitted, I think, that he is not, by virtue of election alone, charged with any responsibility as a Senator.

Also, at the date of the commencement of the term the person elected to the Senate, without a further proceeding, assumes no duty as a Senator, certainly acquires no power to influence the course of legislation or policies of government.

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. GEORGE. I yield.

Mr. TYDINGS. I should like to ask the Senator what would be the legal effect if a man were elected to the United States Senate at the age of 23?

Mr. GEORGE. If the Senator will permit, I shall reach that point.

Mr. TYDINGS. I am inquiring solely for information, because the Senator from Georgia has made a study of this question, and I have not. When the Senator answers the question I have already asked, I should like to have him state, if he will, how far below the age limit one can be and how long he can wait before he will be without the provision of the Constitution.

Mr. GEORGE. I shall be very glad to discuss that point. I am trying to discuss now the language of the Constitution under which it is asserted that Mr. Holt is not entitled to take his seat at this time, under the facts as they now exist.

Let me repeat, it cannot be that the Constitution means that no person shall be elected to the Senate who is under 30 years of age, or who at the time of the election has not been a citizen of the United States for 9 years, because there would

be no reason for that. The person elected, whatever his age and whatever the length of his citizenship, would be in no position to take any action or to discharge any duty which in any wise could affect the affairs of the Nation. Equally I think he could not be in position to take any action or discharge any duty or obligation which would in any wise affect the affairs of the Nation until he had actually become a Senator.

A person elected to the Senate undoubtedly becomes a Senator-elect on the date of the beginning of his term of office. Whatever may be said by way of argument to the effect that he becomes such Senator-elect even from the date of the election, I will not stop to consider, because he certainly is in the position of Senator-elect from the date of the commencement of his term of office. It therefore becomes necessary to notice briefly other provisions of the Constitution.

I read now clause 1 of section 3 of article I:

The Senate of the United States shall be composed of two Senators from each State—

And since the seventeenth amendment—

chosen by the people thereof, for 6 years; and each Senator shall have one vote.

The clause immediately following—that is, clause 2 of section 3, article I—provides that—

Immediately after they—

The Senators—

shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year.

By the twentieth amendment to the Constitution it is provided that—

The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Undoubtedly, Mr. President, there are within the meaning of the Constitution senatorial terms. Unquestionably, every man elected to the Senate or appointed to the Senate is elected or appointed to a senatorial term, or to a part thereof. There is nowhere any provision in the Constitution—and, indeed, it cannot be asserted that it is required by the Constitution—that one must be elected before the beginning of the specific term to which he is elected. The records of the Senate will disclose that in case of elections by the legislature before the seventeenth amendment, and in cases of appointment by the Governors of the several States, the Senator has been elected or appointed for a term or a portion of a specific term. There is, therefore, such a thing as terms of Senators.

In the case of Andrew Jackson, who was elected months after the beginning of the term, the very commission which he brought to the Senate contained the language that he was elected for the term which began months before his actual election.

Therefore, Mr. President, it does not seem to the majority of your committee that it can with reason be asserted that a person elected to the Senate becomes an actual Senator within the meaning of clause 3, section 3, article I of the Constitution on the date of the commencement of the term for which he was elected.

There is a distinction and a difference between the Senator-elect from the date of the beginning of his term down to the time when he actually assumes the duties of the office of Senator and after that time. That is necessarily true, Mr. President, because the election of one to public office does not make him a public officer. Under our law he has the option of accepting or rejecting the office, and until he accepts the office he cannot be said to have become the officer in fact, although he may have been elected, and his returns may have been made, and his commission may have been issued.

We are, of course, well aware of the presumption which is raised that one elected to a public office, one who has been a candidate for it, one who has been successful in the election, is presumed to accept the office, if nothing more appears. On that general question, of course, there can hardly arise an issue. That one does not necessarily become a Senator within the meaning of the third clause, section 3, of article I of the Constitution on the date when the term to which he was elected begins, seems certain. He is not then a Senator in fact, and he cannot be made a Senator in fact until the Senate, as the Senate is convened, and until he enters upon the discharge of his duties, or at least assumes the obligation to discharge his duties as a Senator.

Mr. President, in dealing with the power of the Senate to judge of the qualifications of its Members it is, of course, well known that each House of the Congress—or, in this instance, the Senate—is the sole judge of the elections, the returns, and the qualifications of its own Members. It is also known that by the very explicit terms of the Constitution a majority of the Senators must be present before the Senate itself is authorized to do any business.

I shall read that provision of the Constitution, because it seems to have a very important bearing upon a proper construction of clause 3, section 3 of article I:

Each House shall be the judge of the elections, returns, and qualifications of its own Members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent Members.

Mr. President, we are discussing here not qualifications of a candidate for office. Bear in mind, the language of the Constitution is—

No person shall be a Senator.

The only reason that could have been in the minds of those who framed the Constitution was that an immature person, one not yet 30 years of age, could not sit here and make laws and shape policies; that a person not a citizen of the United States could not sit here until he had been a citizen of the United States for 9 years; but if and when he presents himself to this body he possesess the age qualifications, and he meets also the citizenship qualifications, he is entitled on reason, on the application of the rule of common sense, to sit in this body and to assume and discharge the duties and functions of a Senator.

In the case of habitancy the rule is different, because the second sentence of this particular clause says that—

No person shall be a Senator * * * who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The reason is again present when we consider that clause of this particular section. The reason is this: The Constitutional Convention knew very well that all during the period of the Revolution States had been represented, not by inhabitants of those States but by inhabitants of other States. A citizen from Pennsylvania represented the State of Rhode Island. Indeed, Rhode Island was represented by two citizens, inhabitants of other States. So the Constitutional Convention took into consideration that fact, and resolved:

No person shall be a Senator * * * who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

There then existed, as now, the feeling of jealousy on the part of the smaller States against the more powerful and larger States; and it was desired by the Convention and provided by the Constitution that no one should be a Senator who was not when elected an inhabitant of the State for which he was chosen, because a Senator should come from his own State; he should be living within that State; he should be familiar with the problems of that State; he should have an interest in the affairs of that State; he should have a loyalty to that State; hence the command of the Constitution.

Why should it be said in the very language of this article that no person shall be a Senator who is not 30 years of age, and who has not been 9 years a citizen, and then when

we pass to the habitancy qualification why should it be specifically declared, "nor shall he be a Senator"—for that is the effect of it, although the conjunction "and" here is used—unless when elected he was an inhabitant of that State for which he was chosen? The language is "when elected." The framers of the Constitution were not concerned about whether a man was 30 years old when he was elected; they were not concerned about whether a man had been 9 years a citizen of the United States when he was elected; but they said he cannot sit as a Senator, he cannot be a Senator, until he reaches 30 years of age, and until he has been 9 years a citizen.

So it seems to me, Mr. President, that if we apply the common-sense rule to this matter and examine the reasons for the three qualifications of clause 3, it must be concluded that a Senator is not, in fact, within the meaning of this clause of the Constitution, a Senator when the beginning of his term arrives or at the beginning of his term of office.

Mr. President, there is another provision of the Constitution which has a rather direct bearing upon the general question which we are discussing. It is provided that no person who holds an office under the United States shall, during his continuance in such office, be a member of either body of the legislative branch. I am not quoting the language exactly, but that is the sense of it. That section of the Constitution has been construed by the Attorney General, it has been construed by the House of Representatives in more than one case, to mean that the person elected to the House cannot take his seat until he shall have divested himself of any other office held by him under the United States.

In one case in which the question arose and was decided by a vote of the House, though by a narrow margin, it is true, the Member-elect was a United States district attorney on the date of his election. He did not resign that office on the date of the commencement of his term of office, but he waited rather until 3 or 4 days before the actual convening of the Congress to which he was elected to divest himself of that office. The question arose whether he was a Member of the House either on the date of his election or on the date of the commencement of his term or only when he appeared, subscribed to the oath, took his seat, and assumed his duties as a Member of the House. It was resolved by the House that he was entitled to retain his seat, although if he was a Representative from the beginning of the term to which he was elected he did continue to hold another office under the United States.

Indeed, Mr. President, the House has definitely gone on record, not only in that case but in subsequent cases, and in a case involving the citizenship clause of the Constitution has construed the identical clause, so far as language is concerned, which fixes the qualifications of Members of the House of Representatives as meaning that the person elected to the Congress must possess the qualifications of age and of citizenship at the time he becomes an actual Member of the legislative body.

In the case of John Young Brown, from Kentucky, I believe it appears that at the date of his election he was not 25 years old, which is the age qualification fixed by clause 2 of article I of the Constitution for membership in the House of Representatives. It also appears that he was not 25 years of age on the date of the commencement of his term. It moreover appears that he was not 25 years of age on the very day Congress itself assembled, because in Jefferson's Manual it is recited that a Member having appeared who was not 25 years of age he was not enrolled, but waited until he had reached the age of 25 and then was permitted to take the oath and become a Member of the House. To all those who are troubled, and to my brethren who take the opposite view of this matter as to the ill consequences that may flow from the seating of a man who, at the beginning of his term of office is not 30 years of age, let me say that the case of John Young Brown has stood in the House of Representatives for more than half the time since the organization of the Congress under the Constitution of the United States. In the Thirty-sixth Congress he appeared, stood aside, and waited until he was 25 years of age, and was then given the privilege of taking the oath; he took the oath and assumed his duties as a Member of the House.

The query is presented, if one who is 29 years old, or 29½ years old, as in this case, may be elected to the Senate and may wait 6 months after the beginning of the term to which he was elected has commenced to run to take his seat, a man who was only 27 years of age or 26 years of age or 25 years of age may do likewise; and it is suggested, by way of argument, that one-third of the Senate might be elected before they had reached the age of 25 or 26, and that even two-thirds of them might be elected at the immature age of 25 or 26; and it is asked what then becomes of government; how can it function? The answer, Mr. President, is in the reaction of the American people to the precedent set by the House of Representatives in the John Young Brown case more than 75 years ago. In that case the House, by its action, did exactly what we are asked to do here today and no more; and yet immature men under 25 years of age have not been elected in sufficient number to prevent the orderly functioning of government. The facts themselves answer the query. The American people are not going to extremes; their judgment may be relied upon, in most instances, except in extraordinary circumstances, in fact, to elect men who are beyond the age of 25 for the House and beyond the age of 30 for the Senate. We have no concern with that; but we have a just concern with a proper interpretation of this provision of the Constitution and a proper application of it to the facts in this case.

It may be said that a Senator may stand aside until he reaches 30 and thereby the State will not have its equal representation in the Senate. It must be borne in mind, Mr. President, that the constitutional provision is that no State, without its consent, may be deprived of its equal representation in the Senate; but whenever any State elects any man who cannot immediately qualify, it must be held to have given its consent that, for the time being and until a qualified person can come from that State to the Senate, the State itself has consented to be denied its equal representation in the Senate.

It may be said that, of course, if one under 30 years of age is sent here under a commission of the people of his State, acting and speaking through the Governor of the State, he cannot take his seat, and that embarrassments will follow. The same follows when any one of us here, whether we be 30 or 40 or 50 or 60 years of age, has received a commission from his State and yet does not elect to come here and qualify. In the one case he cannot qualify and in the other case he does not elect to qualify. Bear in mind we are not now concerned with what the rights and powers of the Senate may be to deal with a Senator who is 30 years of age and who yet does not appear at the beginning of the session of the Senate to which he was elected, or at sometime during it for that matter; nor are we concerned with the possible power and authority of the Senate to deal with a situation where one who was much below the age of 30 had been elected and where he, therefore, could not qualify. What the power of the Senate may be under such circumstances is altogether another matter. I do not think the Senate is without power to act appropriately in the premises.

Mr. President, I had not expected to present this matter at this time at this great length. I have added, I am conscious, little or nothing to the written report which is before all Senators. I am not discussing at this time two very important Senate precedents, but I think it would be fair that I should make reference to them.

I refer to the Gallatin case first because it came first in point of time. Every Member of the Senate knows that Mr. Gallatin was elected to the Senate of the United States from the State of Pennsylvania. Everyone knows that at that time he was not or had not been a citizen of the United States for 9 years, nor was he a citizen of the United States for 9 years at the beginning of his term of office, nor had he been a citizen of the United States for a period of 9

years when he came to the Senate, took the oath and assumed the duties of the office. Also he was not yet a citizen of the United States for 9 years when the Senate by adverse action declared that he could not retain or keep his seat in the Senate.

The next case, and the only other direct precedent which has a bearing—and it has a direct bearing, although it deals with the citizenship qualification, but so far as that goes the citizenship and age qualifications stand precisely on the same basis—is that of General Shields, who was elected by the Legislature of the State of Illinois to a seat in the United States Senate. At the time of his election he had not been, as it afterward developed, a citizen of the United States for 9 years. He had not been at the date of the commencement of the term to which he was elected a citizen of the United States for 9 years. He had not been, on the day when he came to the Senate and took the oath of office and assumed the responsibilities of his office, a citizen of the United States for 9 years. He had not been a citizen of the United States for 9 years on the day when the Senate by adverse action excluded him from further participation in the deliberations of the body.

True, in the Shields case, some of the friends of the general suggested and moved the postponement of the consideration of the resolution declaring his election void until the subsequent session, at which time he would have been a citizen of the United States for 9 years. The Senate declined that, and it seems to me properly declined it, and proceeded to the consideration of the resolution.

It is true also that General Shields, after he had been a citizen of the United States for 9 years, was returned to this body, having been again elected by the Legislature of the State of Illinois.

Mr. President, we must deal candidly with these precedents. In the Gallatin case the resolution of the Senate declared that Mr. Gallatin was not entitled to a seat in the Senate because at the time of his election—that is by fair inference, for I believe the word "election" is not used—he had not been a citizen of the United States for a period of 9 years or for the length of time required by the Constitution. From subsequent debate, as well as from a consideration of the resolution itself and of the matters which took place concurrently with it, it is clear that the Senate then assumed and then resolved that Mr. Gallatin was not entitled to a seat, that his election was void—because that was the language of the resolution—because he had not been a citizen for 9 years at the time of his election.

When the Shields case arose, identically the same resolution was offered, and upon the motion of Senator John C. Calhoun, from the State of South Carolina, it was amended, by attaching to the end of the resolution the language, to wit, "At the date of the commencement of his term of office." In the Gallatin case the Senate resolved the election void because Gallatin had not been a citizen of the United States for 9 years, if I correctly interpret the resolution. In the Shields case the Senate resolved that the election of General Shields was void because he had not been a citizen of the United States for a period of 9 years at the time of the commencement of the term of office for which he had been elected.

Mr. President, I wish to invite attention to another point. The Shields case expressly modifies and materially changes the precedent set in the Gallatin case because undoubtedly the precedent there was that the election was void because Gallatin had not been a citizen of the United States for 9 years on the date of his election. There was an express modification and change. The Senate, as it was constituted when General Shields appeared here, did not believe the resolution was in point of fact and of law correct, so it added to it the modification which I have just quoted.

It, of course, may be argued that the Shields case is a precedent directly in point in the instant case. The majority of your committee concede it. The majority of your committee concede that the resolution adopted in the Gallatin case and the resolution adopted in the Shields case cannot be harmonized with the resolution which we have offered in this case. But we point out that the instant case stands upon a different set of facts and that, under the admitted facts in both the Gallatin and the Shields cases, the same result would have followed, applying what we believe in this case to be the correct and proper rule, to wit, their exclusion from the Senate.

It is true that under the resolutions in the Shields and Gallatin cases, as I have already said, the finding of the Senate was that the election itself was void and in that respect the resolution which we recommend and present here is not identical. In the instant case, however, Rush D. Holt, while not 30 years of age at the time of the election, and not 30 years of age at the time of the commencement of the term to which he was elected, is nevertheless 30 years of age at this moment, when he stands at the bar of the Senate; and there is not in any circumstance which impelled the clause of the Constitution now invoked for his exclusion the remotest reason why he should now be prevented from becoming an actual Member of the Senate of the United States and actually entering upon the discharge of his duties as a Senator.

Mr. President, it no doubt will be argued, and with great plausibility, that Mr. Holt was more than a Senator-elect at the beginning of the term of office to which he was elected. I do not know how I can make the position of the majority of the committee plainer. Senators are elected to terms of office in this body; but, though they are elected, they may never accept. They may decline. They may pass away, by death or otherwise, before they actually become Members of the Senate. Can it be doubted that a Senate is never a Senate until a majority of those elected to it not only have passed the date of the commencement of the terms to which they were elected, but until they have assembled and are ready to do business? They cannot become a Senate, they cannot discharge the functions of a Senate, until a quorum is present; and the quorum itself is prescribed by the language of the Constitution.

So, Mr. President, the rule which the majority of your committee respectfully submits is one that it believes to be consonant with the real reasons underlying every qualification stated in clause 3 of section 3 of article I of the Constitution; and, moreover, it seems to us to be the commonsense application of the several qualifications fixed by the Constitution for one who seeks admission into this body as a Senator.

Mr. COPELAND. Mr. President, I should like to ask a question of the Senator.

The PRESIDENT pro tempore. Does the Senator from Georgia yield to the Senator from New York for a question?

Mr. GEORGE. I shall be very glad to answer any questions I can answer.

Mr. COPELAND. I do not wish to split hairs, but I am still concerned. Suppose Mr. Holt had been born in 1910 instead of 1905 and should present himself 5 years from today. Could he be seated?

I assume the answer of the Senator to the question will be that each case must be determined on its individual merits. I think that was the argument of the Senator, that it is difficult to specify directly at the moment what should be done. But I should like the able Senator's answer to the question.

What would be the attitude of the Senator from Georgia if a Senator today were presenting himself because on this day he became 30 years of age, but he was elected 5 years ago? What would be his attitude in a case like that?

Mr. GEORGE. So far as the constitutional provision is concerned the answer must be, it seems to me, that he would be entitled to take the oath and assume his duties. I do not say that the Senate would have been without power in the meantime to have dealt with a situation like that. In my judgment the Senate would have had power to proceed adversely to the interest or any future assertion of interest by a candidate who had withheld himself so long from the Senate, either voluntarily or because he could not have then qualified.

Mr. CONNALLY. Mr. President, will the Senator yield?

Mr. GEORGE. I shall be glad to yield.

Mr. CONNALLY. If that be true, the Senate could, of course, take action and exclude the gentleman; but under the theory of this case it ought not to do so if the majority of the committee are right, because they say, the State having elected him, knowing his age, that he is entitled to his seat whenever he appears. If that is sound reasoning in a case where 6 months are involved, it is equally sound in a case involving 5 years.

So while the Senate could, under the Senator's theory, have excluded the Senator-elect before the expiration of 5 years, yet if the contention of the majority of the committee is correct they ought not to do it, because they ought to wait the 5½ years for him to present himself, since he has been elected by the people of the State.

Mr. GEORGE. Let me say, in order to avoid any confusion upon that issue in principle, that it would make no difference when he appeared if he was then able to meet the constitutional qualifications.

Mr. CONNALLY. That is true.

Mr. GEORGE. But let me also say to the Senator from Texas and to the Senator from New York that cases of that kind are not likely to arise; and let me cite to them the instance of John Young Brown, who more than 75 years ago was permitted to do in the House what the Senator-elect from the State of West Virginia is now seeking to do, and the House has been troubled by no such embarrassing situations as have been imagined.

Mr. CONNALLY. Of course, he could not have waited 5 years in the House, because the term would have expired.

Mr. GEORGE. Of course, that is true.

Mr. JOHNSON obtained the floor.

Mr. McNARY. Mr. President, will the Senator yield?

Mr. JOHNSON. I yield to the Senator from Oregon.

Mr. McNARY. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Adams	Coolidge	King	Pittman
Ashurst	Copeland	La Follette	Radcliffe
Austin	Costigan	Lewis	Reynolds
Bachman	Davis	Logan	Robinson
Bailey	Dieterich	Lonergan	Russell
Bankhead	Donahey	Long	Schall
Barkley	Duffy	McAdoo	Schwellenbach
Bilbo	Fletcher	McCarran	Sheppard
Black	Frazier	McGill	Shipstead
Bone	George	McKellar	Smith
Borah	Gerry	McNary	Steiwer
Brown	Gibson	Maloney	Thomas, Okla.
Bulkley	Glass	Metcalf	Townsend
Bulow	Gore	Minton	Trammell
Burke	Guffey	Moore	Truman
Byrd	Hale	Murphy	Tydings
Byrnes	Harrison	Murray	Vandenberg
Capper	Hastings	Neely	Van Nuys
Caraway	Hatch	Norris	Wagner
Chavez	Hayden	Nye	Walsh
Clark	Johnson	O'Mahoney	Wheeler
Connally	Keyes	Overton	White

Mr. LEWIS. I reannounce the absence of the Senators named by me on previous roll calls, and assign the same reasons for their absence.

The PRESIDENT pro tempore. Eighty-eight Senators have answered to their names. A quorum is present.

Mr. JOHNSON. Mr. President, it is an unwelcome and a thankless task which I set myself this afternoon. I do the job that I am trying to do here now in the presentation of this matter solely because I believe that in this life of ours, and in the particular activity in which we engage in this Chamber, it is every man's responsibility, every man's duty, to do the thing which he thinks he ought to do, no matter whether it be popular, no matter whether something else may have been decreed by somebody else, and no matter what may be the vote that may be cast upon the one side or the other. And so today, while my predilections are all in favor of the course I do not pursue, and while I should have liked to reach a conclusion other than that which I have reached, after very mature and very careful consideration and study, I present from the standpoint of one who has sought the truth, and thinks he has found it, this particular case.

Mr. President, there are in reality no issues of fact here. The facts are conceded. I strip from the case all those intangible matters which have been presented by the briefs. I eliminate from discussion any of those questions which have arisen because of the oath or the representations or the statements which have been made by the applicant here. I do not stress in the slightest degree any other thing in this particular contest than the law as it stands and the facts that are absolutely conceded.

The gentleman from West Virginia is here asking to be sworn, sworn 5½ months after the beginning of his term. The gentlemen who sponsor him, including the very distinguished Senator who just presented the majority views, have conceded heretofore, and I presume they will concede again, that they would not have seated him between the 3d day of January 1935 and the 19th day of June 1935.

Mr. President, I appeal to those who have a rudimentary knowledge of the law that if that be so, and if Mr. Holt should not have been seated between the 3d day of January 1935 and the 19th day of June 1935, he cannot, with due regard to the Constitution and the laws and precedents, be seated now; and that is what I shall endeavor to demonstrate.

I am sorry that any demonstration should have to come from me. First, I am a believer in peoples. I believe that when the people have reached a choice concerning any candidate for office, that choice ought to be compelling and binding upon us. But, sir, when I am under an oath to determine what shall be my course and my duty in respect to a matter of this sort, I cannot permit any of those views which I may have concerning the popular will, and the intensity of my desire to enforce it, to interfere with the conclusion which I feel bound to reach under the law and the facts.

Two ways we may approach this case. We may approach it, first, as a case of first impression, without regard to any precedents which have occurred in the past. We may approach it from the reason of the thing, the provisions of the Constitution which are applicable to the particular matter; and then, if we reach a conclusion, we may pass to the precedents which have been established in days gone by and see whether or not they uphold that which our reason has told us is the appropriate thing to do under the circumstances.

Senators recall, of course, the provision of the Constitution:

> No person shall be a Senator who shall not have attained to the age of 30 years and been 9 years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

That is the plain provision of the Constitution. When the term of office of the gentleman from West Virginia began, on January 3, 1935, he saw fit, very appropriately, to stand aside and not present himself here to be sworn in as a Senator of the United States. Why did he do that, and why have the admissions been made in this case which have been made? Because on January 3, 1935, he was ineligible to become a Senator of the United States of America. No man denies that. There is not a lawyer in this body who will gainsay it. At that time, at the beginning of his term, he was ineligible to become a Senator of the United States.

The query presents itself, therefore, whether or not by lapse of time his ineligibility to become a Senator of the United States will be removed; and it is just that which I say the lapse of time cannot accomplish.

Mr. CLARK. Mr. President——

The PRESIDING OFFICER (Mr. NEELY in the chair). Does the Senator from California yield to the Senator from Missouri?

Mr. JOHNSON. I will yield for a query, but I do not want to yield for an argument.

Mr. CLARK. I will not make an argument. I simply desire to ask the Senator whether there was any ineligibility of any sort on January 3 except the question of time?

Mr. JOHNSON. There was ineligibility on account of the lack of qualifications under the Constitution. Of course, it was a question of time. The Senator is referring to the

30 years, I presume. Of course, that represents time, but it represents a qualification under the Constitution, and, representing a qualification under the Constitution, it must have been possessed, in the view I take of this matter, at the time when the term of office began to run.

There may be differences of opinion upon that point. We will proceed and see whether we can reconcile them. We will ascertain what has been the viewpoint in the past of men who have sat in the United States Senate and who have passed upon questions of this sort, and, if we cannot reconcile our views, if the view of the majority of the Senate shall be the view as presented by the Senator from Georgia, then, of course, the determination of this body will be in favor of the gentleman from West Virginia.

If we are bound, as some of us think, by the letter of the law, by the spirit of the law, by the determination that on January 3, 1935, there was but one Senator from West Virginia here, and that there was a vacancy in the office of Senator from that State, then there is nothing we can do, under our oaths, but to vote that way.

Mr. President, the original first paragraph of section 3 was as follows:

> The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for 6 years, and each Senator shall have 1 vote.

The seventeenth amendment, it will be remembered, changed the phraseology of that portion of section 3 by providing for popular election, but the seventeenth amendment retained the other provisions—that the Senate shall be composed of two Senators from each State, elected for 6 years.

It would serve no useful purpose for me to attempt to detail the reasons for that constitutional provision. All Senators who have read at all concerning the proceedings that were had by the Constitutional Convention long, long ago will remember with what jealousy the weaker States observed the stronger ones, and how finally the weaker States came together, formed a little coterie, and determined that there should be no Constitution unless they were put upon equality with their more populous and their more influential brethren. Ultimately the very convention itself was threatened with dissolution because of the activities of the representatives of smaller States, and finally, upon the appeal of Franklin himself, it was determined that all States would be put upon an equality, that all should have two Senators, and it was determined, as well, that the term of office of Senator should be for 6 years.

I pass on, merely suggesting the fact that the State of West Virginia in the last five and a half months has not really had two Senators here. The State of West Virginia has had one Senator qualified for a period of 6 years, and when Mr. Holt is seated here will have a second Senator for a period of five and a half years. I say that in passing merely, not as determinative of the case, not, indeed, as indicating that the decision ought to be one way or another, but I say it simply that Senators may have the entire picture before them, and that they may understand all of that picture instead of merely one small and limited part thereof.

In this contest we have presented, therefore, the provisions of the Constitution in relation to qualifications perfectly plain. We have the provisions of the Constitution in relation to term of office and number of Senators undoubted and unquestioned. We have, too, the ability to determine, from an examination of the various sections, what the purpose of the framers of the Constitution was, and, determining that purpose, our duty is to carry it out by the votes we cast.

The qualifications of a Senator are set forth in the Constitution:

First. No person shall be a Senator who has not been 9 years a citizen of the United States.

Second. No person shall be a Senator who has not attained to the age of 30 years.

Third. No person shall be a Senator who when elected is not an inhabitant of the State for which he shall be chosen.

It is admitted by the sponsors for Mr. Holt that if he could stay here five and a half months awaiting the time when he could be sworn in as a Senator, he could wait five and a half years. Of course, the answer of the Senator from Georgia to that is that it is an impossible instance. He may be entirely right, such a thing might never occur; but occasionally by an extravagant illustration we can better understand and better construe language which may be used.

Five and a half years he may stand aside, not a Senator of the United States, awaiting merely a qualification which will be given to him by the lapse of time. If he can stand aside 5½ years on the question of his age, he can stand aside 5 years and 11 months upon the question of his citizenship, and it is just that which the precedents in the Senate determined, as we shall hereafter see.

Do Senators believe that it was the intention of the framers of the Constitution that one could stand aside awaiting qualification and eligibility for 5½ years? Of course not. No man ought to claim that, because, of course, such a thought never was in the minds of the framers of the Constitution. Do Senators think it was in the minds of the framers of the Constitution that one could stand aside 5 years and 11 months upon the qualification of citizenship? Of course not. None would assert that. All that can be asserted is that those are extravagant illustrations; but they are the logical result of carrying to its conclusion the position which is taken by those who are here in behalf of the applicant today, and the logical result of what is claimed in his behalf.

Mr. BULKLEY. Mr. President——

The PRESIDING OFFICER (Mr. NEELY in the chair). Does the Senator from California yield to the Senator from Ohio?

Mr. JOHNSON. I yield for a question.

Mr. BULKLEY. Does the Senator think that anything in the resolution reported by the committee would establish the right of a Senator to withhold himself for an unreasonable time without taking the oath of office?

Mr. JOHNSON. There is nothing in the resolution which says that at all.

Mr. BULKLEY. The resolution simply presumes to decide——

Mr. JOHNSON. The Senator knows the resolution just as I do. The resolution does not say that a Senator-elect may stand aside for five and a half years. That is a rhetorical question of my friend from Ohio; and while I welcome that rhetorical question, it serves no real purpose. I readily concede, of course, that the resolution does not do that which has just been suggested, and it does not do what the Senator is inquiring about. However, no one here said that it did. I say, and I say it advisedly, that at the hearing on this matter in the committee the query was made: "If you can stand aside for five and a half months, can you not stand aside for five and a half years?" and the answer was, "Yes."

Mr. BULKLEY. The answer was that if anybody did stand aside that long, and presented himself at a time when he was qualified, then he ought to be sworn and be permitted to go ahead and do his duty; but we did not undertake to decide that a man could withhold himself for an unreasonable length of time.

Mr. JOHNSON. Certainly not; but that is the logical result of the position which the Senator takes, and that position was distinctly taken by the applicant himself before the Committee on Privileges and Elections. There is not any question on that score, sir. The Senator may not have been present during the hearing, or the meeting which was held, but that was exactly the position taken before the Committee on Privileges and Elections.

Mr. BULKLEY. It certainly was taken to the extent I have just stated, that if anyone should stand aside that long without any objection, and then present himself, he would then be eligible to be seated; but there was no suggestion made, so far as I ever heard, that we were justifying an unreasonable delay in the presentation of credentials.

Mr. JOHNSON. I do not recall that the particular language, "We are justifying an unreasonable delay," was used; but I do recall that it was asserted, and I state with positiveness, that if this applicant could stand aside for five and a half months, he could stand aside for five and a half years. So there is no difference between us, I think, in regard to the fact that the Senate might act some day, somewhere, at some

place. That, perhaps, is well conceded; but logically I insist that if one can stand aside five and a half months, waiting for time to cure his ineligibility and furnish him with the requisite qualifications, logically, he could stand aside for five and a half years; and I do not think there is any escape from that reasoning at all.

Mr. KING. Mr. President, will the Senator yield?

Mr. JOHNSON. I yield.

Mr. KING. I think it was conceded before the committee that if the committee had promptly acted upon the memorials which had been presented—when I say "promptly", I mean at any time before the date when Mr. Holt would attain the age of 30 years—and had rendered a decision, the committee would have been compelled to render a decision adverse to the right of Mr. Holt to take a seat in the Senate.

Mr. JOHNSON. I think that was stated, sir.

During the election last year in West Virginia, be it said to the credit of the applicant here, he made no concealment of the fact that he was under the requisite age. There is not any doubt in my mind, from the testimony which was adduced, that the people of West Virginia understood that Mr. Holt was under 30 years of age during the primary and during the election, and that his birthday was mentioned again and again during the campaign. I think there is no question on that score. However, I also think that he acted upon an erroneous assumption during the campaign that because Henry Clay had sat in this body when he was under age, therefore a precedent had been established under which he might reasonably act—forgetting that nobody knew of Clay's age, and forgetting that during that period Clay's right to a seat in the United States Senate was never challenged and the question never arose at all.

What is being sought here is, by a short cut, to amend the Constitution of the United States. We are amending the Constitution of the United States here by saying, not that a man shall be 30 years of age when he becomes a Member of the United States Senate but that if he may become, at any time during the period for which he is elected, 30 years of age, then he will possess the requisite qualifications, and then he may be seated.

I do not object in the slightest degree to amending the Constitution of the United States, but I desire to amend it in the mode which is prescribed, not by legislative or senatorial dictum.

Mr. MINTON. Mr. President, will the Senator yield?

Mr. JOHNSON. I yield.

Mr. MINTON. As I understand the position of the Senator from California, it is that Mr. Holt should have had the requisite age qualifications at the beginning of his term.

Mr. JOHNSON. Yes, sir.

Mr. MINTON. And the Senator says he does not favor short cuts in the amendment of the Constitution; but if that position were adopted by the Senate, would not the Constitution then read?—

No one shall be a Senator who shall not have attained to the age of 30 years at the time his term begins.

Mr. JOHNSON. I think not. I disagree with the Senator there. That is the disagreement which is in this case. I confess the question is not without opportunity for legitimate argument on both sides; but I insist that the qualifications of the applicant for a seat in the Senate must be those which present him as eligible at the time his term commences.

Let us now look for a moment or two at the only real precedents there are in the Senate. I eliminate the two or three which may be in the House, readily conceding that they may be of another character from those which the Senate presents. I eliminate the long list of cases which may be found upon the one side or upon the other in the digests and in our reports. I turn, so far as precedents are concerned, to the Senate itself. The precedents in the Senate are so clear and convincing that if we shall determine by precedent—which, of course, no good lawyer will do when the precedent is against him, and every bad lawyer will endeavor to do when it is for him—if we shall determine this case by precedent, the precedents of the United States Senate are so conclusive that no one can deny them or gainsay them.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. JOHNSON. I yield.

Mr. BARKLEY. Of course the Constitution means the same thing to both Houses. It cannot mean one thing to one House and another thing to the other House.

Mr. JOHNSON. Mr. President, I will yield for a question, not for an argument.

The PRESIDING OFFICER. The Senator yields contingently; he yields for a question.

Mr. JOHNSON. I understand the situation which exists here, I will say to my friend from Kentucky. I am presenting to him what I am presenting from the highest motives which can actuate a man, perfectly conscious of the set-up which there is here; and for that reason I do not want to get into long, perhaps even acrimonious, arguments with anyone. I recognize every man's right to decide this case as he sees fit. I question no one's motive; but I do not desire to enter into long arguments during the course of what I am saying.

Mr. BARKLEY. The statement I made was preparatory to a question which I desired to propound. If the Constitution means the same thing or should mean the same thing to both Houses, are we bound by a precedent set in the Senate merely because we are Members of the Senate, which may have been a bad precedent, in consideration of the fact that almost the universal rule in the other House on the same question has been the other way?

Mr. JOHNSON. Let me say to the Senator that I have never been bound by a bad precedent in my life, whether it was created by a court or by any other branch of Government, and I never shall be. But, of course, when a precedent meets with my views, and convinces my reason, then I reach the conclusion at once, without difficulty, that the precedent is an excellent one and ought to be followed; and I am sorry to say that most of us have the peculiar and singular quirk which enables us to look at precedents in just that fashion.

However, seriously speaking, I may say to the Senator that one of these precedents is of such character, the men who participated in it were of such high renown, the greatest there are in American history, they present their case in such fashion that aside from a matter of precedent at all, their arguments are convincing; and it is utterly impossible, in my opinion, lightly to brush by what they do and what they say.

The first of the precedents to which I call attention is that growing out of the case of Albert Gallatin which has been referred to here today. His name has been written large in American history. Senators know what his genesis was; they know the high offices he filled in the Government of this country, and the great patriotic services he rendered unto the Nation. He came into the United States Senate elected from the State of Pennsylvania. In February 1793 he was thus elected. The question of his citizenship arose. It was insisted that he had not been a citizen of the United States for the time required by the Constitution. He had been a citizen for a period of about 8 years. Because he had not been a citizen for the time prescribed by the Constitution, Mr. Gallatin's election was declared by the Senate to be void.

The most interesting feature of this precedent is that some of the men who sat in the United States Senate at the time when the case of Albert Gallatin was decided had sat in the constitutional convention; some of the men who rendered the decision against Gallatin because he had been a citizen for but 8 years and a fraction instead of 9 years had written into the very Constitution some of its important provisions. So at the very inception of the Constitution of the United States, at the very time it became the organic law of this land, the question that is before us today was construed and decided by men who wrote the Constitution, who struggled for it, and who had it adopted by our country.

Mr. ROBINSON. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Arkansas?

Mr. JOHNSON. I yield for a question.

Mr. ROBINSON. Unquestionably the precedent which the Senator from California has just cited, namely, that of the Gallatin case, is to the effect that a Senator must possess the requisite qualifications at the time he takes his seat.

Mr. JOHNSON. The qualification of citizenship.

Mr. ROBINSON. At the time he takes his seat.

Mr. JOHNSON. No, that decision did not so hold, if the Senator will excuse me; the decision in the other case held that. There is a question as to the Gallatin case, but I think the consensus of opinion is that the Gallatin case related back to the election, while the Shields case related to——

Mr. ROBINSON. But if the Senator will pardon me——

Mr. JOHNSON. I do not care to discuss the matter with the Senator. I am correct in my facts, and if the Senator will turn to the gentlemen behind him who sat upon the committee he will so find.

Mr. ROBINSON. Of course, if the Senator does not care to discuss it, I will refrain from attempting to do so in his time, but I think the election was held void by the resolution of the Senate, and that would seem to indicate that a Senator must possess the qualifications required at the time of his election.

Mr. JOHNSON. Exactly, that is what I said to the Senator.

Mr. ROBINSON. Is it the Senator's position that a Senator must be of the required age at the time of his election or at the time of taking his seat?

Mr. JOHNSON. At the time the Senator's term commences. That is my position in this case.

Mr. ROBINSON. But the Senator has just said that the Gallatin case is to the effect that a Senator must possess the qualifications at the time of his election.

Mr. JOHNSON. Of course.

Mr. ROBINSON. Then I will ask the Senator why does he insist that the Gallatin case is an unanswerable precedent when he himself admits that the Gallatin case is based on the principle that a Senator must possess the qualifications at the time of his election, and the Senator concedes that a Senator must possess them at the time of——

Mr. JOHNSON. I am sorry the Senator from Arkansas, I fear, is not so familiar with this question as are some of the Members who have been passing upon it.

Mr. ROBINSON. If the Senator from California cares to indulge in that assumption, I will say that I went into this subject very fully at the time the case first arose here at the beginning of the session.

Mr. JOHNSON. Well, if the Senator is familiar with it, very well; I will withdraw my statement.

Mr. ROBINSON. I will not again interrupt the Senator, in view of the spirit which he displays.

Mr. JOHNSON. There is not any "spirit" I am displaying. Of course, the Gallatin case is a precedent on the question of the possession of the qualification in relation to citizenship. It does not make any difference whether the Gallatin case decided that qualification must be possessed at the time of the election or at the time when the term commenced. The gist of the decision is that qualification of a 9-year period of citizenship must be possessed by the particular applicant or the particular Member sought to be seated. That was the point of the decision; and upon that point is where it is conclusive in this case.

Now, let me recall to the Senator that neither at the election or at the time of the decision did Mr. Gallatin possess the 9-year citizenship qualification required by the Constitution.

Mr. ROBINSON. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Arkansas?

Mr. JOHNSON. I yield.

Mr. ROBINSON. That was the very point I started to make when the Senator indicated he did not desire to discuss the matter. Gallatin was elected and took his seat on December 2, 1793; on February 23, 1794, the Senate adopted a resolution declaring his election void. Mr. Gallatin took his seat before he possessed the 9 years' citizenship qualification.

Mr. JOHNSON. Exactly.

Mr. ROBINSON. He would not have been a citizen for 9 years until October 1794. So, as I said a few moments ago, the doctrine of the Gallatin case is that a Senator must possess the qualification of citizenship at the time he takes his seat or at the time of the election.

Mr. JOHNSON. Yes.

Mr. ROBINSON. The Senator does not contend that the theory that he must possess the qualification at the time of the election is correct, as I understand him; he admits that, so far as the Gallatin case is a precedent requiring 9 years' residence at the time of the election, it is a bad precedent and is not to be followed.

Mr. JOHNSON. No, Mr. President, I do not admit anything of the sort. I will make that entirely plain; I admit nothing of the kind.

Mr. ROBINSON. I will modify my statement by saying that the Senator should admit it, in view of the statement he made a while ago.

Mr. JOHNSON. I should admit it because the Senator from Arkansas has delivered his dictum upon it, but I do not admit it.

Mr. ROBINSON. Oh, no; I made my statement based upon what I understood the argument to be. I ask the Senator now to say whether he contends that the 9-year qualification of residence must be possessed at the time of the election?

Mr. JOHNSON. I have told the Senator once, no; that is not my view.

Mr. ROBINSON. Then I repeat——

Mr. JOHNSON. Wait a moment, while I answer the Senator. But when in the Gallatin case neither at the time of election nor at the time he took his seat did he possess the requisite qualification, the precedent, of course, is clear.

Mr. ROBINSON. Of course, the precedent, insofar as the requirement of 9 years' residence at the time of election is concerned, is, as I said a few moments ago, a bad precedent, in the opinion of the Senator from California.

Mr. JOHNSON. Mr. President, my friend from Arkansas is like that distinguished lady who always had the last word; we will let it pass at that. I am not attempting to utilize this particular occasion for saying that everything that may have occurred in the Gallatin case is applicable here. I am saying that, on the reasoning in the Gallatin case, upon the facts there presented, it is a precedent, and a controlling one, in this case, and if all the facts will be taken into consideration by the Senate, if all the circumstances will be considered by the Senate, if the time of the election and the time when he took his seat, and the time when the decision was made, will all be considered, the fact that it is a precedent in this case will not be denied, I am sure, by the Senator from Arkansas or any other Senator upon this floor.

Now, let us turn to the second precedent. That was the case of General Shields. I respectfully submit that this precedent must be overturned by the United States Senate in order that the applicant here may be seated. There is no other logical conclusion to which I can come than that if we seat Mr. HOLT upon the argument that has been presented here, we do it in the very teeth of one of the most momentous decisions that was ever made by the Senate upon a question of eligibility or a question of admission to this body.

Shields was elected by the Legislature of the State of Illinois, as will be recalled, for the term of 6 years, beginning March 3, 1849. On March 6 the oath of office was administered to him and his credentials were referred to a special committee of the Senate. It appeared from the committee's report that General Shields was naturalized on the 21st day of October 1840, and therefore the full term of citizenship required by the Constitution he lacked by about

7 months. The committee of the Senate presented a resolution, as follows:

That the election of James Shields to be a Senator of the United States was void, he not having been a citizen of the United States for the term of years required as a qualification to be a Senator of the United States.

The action finally taken by the Senate—taken upon the motion of John C. Calhoun—in reality, was this:

Resolved, That the election of James Shields to be a Senator of the United States was void, he not having been a citizen of the United States for the term of years required as a qualification to be a Senator of the United States at the commencement of the term for which he was elected.

In that addition, "at the commencement of the term for which he was elected", it may be is the difference between the Gallatin case and the Shields case. In the former it seems to have been determined that the crucial date would be the date of election. In the latter it was determined positively and unequivocally that the crucial date was the date of the commencement of the term for which he was elected.

In the Shields case we have everything that is presented here, only, of course, in different fashion and by different motions. In the Shields case all the Members of the Senate were friendly, as I trust all the Members of the Senate here are friendly to the gentleman who comes from West Virginia and knocks at our doors. All of them treated him with utmost consideration, and most of them expressed a desire to seat him if it were possible.

The brilliance of the galaxy of men who participated in the discussion, I warrant you, sir, has never been exceeded in the history of the United States. Not only did they discuss the question from a constitutional standpoint, not only did they discuss it in its every phase, but they discussed the question of whether or not they should postpone the case for 7 months in order to enable General Shields by the lapse of time to gain the qualification which he lacked when the case came before the United States Senate. One of the most illuminating debates which have occurred is that which then ensued upon the question of postponement in order to make one who was ineligible at the time finally eligible by the lapse of time.

I shall not attempt to read all of that debate. Some of it, though, I want the Senate to hear. Now and then I know the gentlemen who sit above us, now and then I know some who sit here in the Senate, are accustomed to say, "Oh, that is old stuff." Now and then I know, when we quote from the great of the past, there are those who scoff a little and talk a little that their greatness might not have been so great after all. But I cannot read the debate in which Mr. Webster, Mr. Calhoun, Mr. Seward, and others participated without feeling that at some time, some place, in this great country of ours we had men of ability, we had men of courage, we had men who, whatever might be their predilections in a particular case, were willing to stand up and be counted for the course which they deemed to be right. They set us an example. "Old stuff" it is, and "old men" are these, but they set us an example which sometimes, somehow, somewhere, some American may follow.

Let me proceed just a moment now with this debate. Mr. Butler replied to Mr. Foote, when he asked a postponement of the case:

My judgment on the subject is that if General Shields had not taken his seat at all, perhaps at that time he might have claimed it; * * *.

I do not say that I have any opinion upon the subject one way or the other, as to whether under the circumstances he will then be entitled to take his seat; but I am fully of opinion that there is no absolute necessity for eligibility to exist at the time of the election—

Taking exception to what was assumed to have been decided in the Gallatin case—

I merely wish to support the constitutional view of the question. If I thought he could not constitutionally take his seat, and that it must be considered vacant, I should be bound to vote for the resolution reported by the committee; * * *.

That there may be no mistake about the position I take in this case, let me say that perhaps I am just one man with one vote who takes this position. I take the position that on the 3d day of January 1935 there was no Senator here from the State of West Virginia to answer to the call, and that when it was then conceded that the gentleman who had been elected did not possess the requisite qualifications, then there was a vacancy in the office, and no dictum of the United States Senate can subsequently fill that vacancy.

Mr. Berrien, of Georgia, said:

* * * Sir, I cannot entertain a doubt myself of the correctness of the report of the committee. I cannot conceive that the Legislature of Illinois exercises the power conferred upon it by the Constitution of the United States, when that legislature elects one who is ineligible; and I cannot reconcile to myself the idea that, since by the Constitution the term of office is limited to 6 years, that term of office may be made to commence at a time posterior to the time when the individual is elected. * * * It will be, therefore, impracticable, in my judgment, for the Legislature of Illinois, when they meet again, to proceed to nullify their own act by electing a Senator again to fill the same office. Until the election be declared void, there is nothing upon which they can act. * * *

Then Mr. Webster came into the debate and, referring to General Shields, said:

* * * He must prove that he has been a citizen of the United States for 9 years, in my judgment, on the 4th day of March. * * *

Why, it appears to me to be plain as a turnpike road. The State of Illinois has sent a gentlemen here as her Senator, upon whose qualifications it has been our duty to pass at large; and when it is stated, as a compliment and mark of respect to the honorable Senator, that no remonstrance has come here from the State of Illinois, I agree to it all; but, sir, if every citizen of Illinois were here today in his own proper person, and desired the confirmation of the Senator's claim, since the matter has been brought to our notice, and since it is before us, we must decide it according to the Constitution, and our oaths. * * * Sir, our duty to the State of Illinois is to decide this question in a reasonable time, that she may have her own reasonable time to fill the vacancy. She has the right to expect it at our hands. I hope we shall follow it out at once. We should remember the responsible part we are performing in the discharge of high functions. If we are of opinion that the gentleman sent here is not eligible, we should say so, and signify that to the State that sent him here. I shall therefore vote against postponement. * * *

Mr. Hale said:

* * * But until such an avowal shall be made by General Shields or somebody for him, that he does expect to alter the state of the facts, it is the duty of the Senate to vote upon it. Permit me to say, sir, that I respect that provision (sec. 3, art. I) more than anyone in it, for when I looked at the Constitution and the history of the country for the past few years, I found very few provisions of the Constitution over which the party in power has not trampled rough-shod. This, sir, is a green spot on which the heel of party has not trod, and I desire to preserve it. I appeal to the Senate, too, to guard and preserve it.

Mr. Calhoun, of South Carolina, said:

I hold that nothing is more certain than that if General Shields is not now a Senator of the United States he never can become such by postponement. The Constitution is explicit in requiring that no person shall be a Senator unless he has been 9 years a citizen of the United States. If, then, he is not a Senator now there is a vacancy, for Illinois would have but one vote here, and that vacancy must be filled according to law. That he is not a Senator is clear, because he cannot perform one duty belonging to the senatorial office unless he has been naturalized 9 years previous to the commencement of his senatorial term. Thinking thus, I deem it due to the State of Illinois that the question should be now settled, unless General Shields shall allege that he has evidence which will in all probability be satisfactory to the Senate that the term of 9 years had expired before the 4th of March. If such an allegation shall be made by General Shields, it will be the duty of the Senate to postpone it, but not otherwise. * * *

And now, sir—

And this was the point that was made by Mr. Calhoun upon the crucial time of the disqualification—

And now, sir, I come to a point of some little importance, and it is that the question here involved should be clearly settled, not only for the present, but for all future time. My opinion is that the resolution is not entirely correct. It would seem to conclude that all kinds of elections are void unless 9 years shall have expired on the day of election. I think that is not according to the Constitution. My opinion is, that if the 9 years are consummated previous to the 4th day of March the election is good and is not void. I propose, therefore, to add to the resolution the following words: "At the commencement of the term for which he was elected."

Mr. HASTINGS. Mr. President, will the Senator yield?
Mr. JOHNSON. I yield.

Mr. HASTINGS. May I inquire whether, in the opinion of the Senator, there is any difference between that case and the Gallatin case, except that in the Gallatin case, he not being qualified on the day of election or on the day the term began, it was not of any great importance to determine whether the disqualification was on the day of election or on the day the term began; but when the Senate came to the Shields case, and gave more careful consideration to it, the Members of the Senate at that time, as was just read by the Senator, desired to be more careful about the matter, and to set a precedent for all time, and they added those additional words. That, it seems to me, is the only difference between the decisions in the two cases.

Mr. JOHNSON. Yes, sir. Excuse me; I thought the Senator wished to ask a question.

Mr. ROBINSON. Mr. President, will the Senator yield?

Mr. JOHNSON. I do.

Mr. ROBINSON. If it will not interrupt the course of his argument, I desire to say that the Senator has quoted two very eminent authorities in support of the theory that the qualification must be possessed at the beginning of the term. The Senator, I assume, is aware that other almost equally if not equally eminent authorities, consisting of renowned Members of the Senate at that time, in the Shields case asserted with great forcefulness the doctrine that the true test of eligibility was its application at the time the Senator presented himself for qualification, or for the performance of his duties.

The Senator from California has quoted Senators Webster and Calhoun. In the same debate, in what seems to me to be unanswerable argument, Senator Stephen A. Douglas, Senator Turney, and Senator Butler, among others, took the position that the test applied neither at the time of the election nor at the beginning of the term, but only when the Senator presented himself for qualification, or when he sought to begin the performance of the duties of the office. They held that he could be a Senator if, when he offered to perform the duties of a Senator, he was eligible under the Constitution. The statements, I assume, are well known to the Senator from California who, without doubt, has studied this case, and I felt it appropriate to call attention to the fact.

Mr. JOHNSON. Mr. Douglas' argument the Senator has stated with correctness, I think. He made a very eloquent speech in behalf of his colleague. He was making a glorious fight for Shields.

Mr. ROBINSON. And so did Senators Butler and Turney.

Mr. JOHNSON. No; I think the Senator is mistaken about Butler, but he may not be.

Mr. ROBINSON. No; I have the speech here.

Mr. JOHNSON. All right. I am going to read it.

Mr. ROBINSON. Very well.

Mr. STEIWER. Mr. President, will the Senator from California yield to me?

Mr. JOHNSON. I yield.

Mr. STEIWER. My recollection, which I refreshed some time last winter upon this subject, is in accordance with that of the Senator from Arkansas. I am quite certain, as he is certain, that Senator Douglas urged that the qualifications of General Shields should be determined as of the time when he appeared to take his oath. But, Mr. President, I think the fact that so great an advocate as Senator Douglas raised that issue at that time and in that way is itself the most convincing kind of support for the position taken by the Senator from California.

This is true because Senator Douglas presented his suggestion with the greatest possible force, and then the Senate, with full understanding of both sides of the question, deliberately rejected his theory. So, whatever else may be said of the excellence of his presentation, the fact is that the action taken, after full debate, and most thorough understanding of the matter, was against his position, and in support of the position maintained here by the Senator from California.

Mr. JOHNSON. On the particular occasion, Mr. Butler said, if the Senator will follow me in his notes there:

> I maintained yesterday, and still maintain, that although General Shields was not eligible at the time of his election, yet if he could have taken his seat on the 4th day of March with his qualications complete, his previous ineligibility would not vitiate his election. But, inasmuch as it is represented that he could not at the time of taking his seat show that his qualifications were complete, I must be permitted to say that I am clearly of opinion that it cannot be maintained that he ever had valid title to his seat at all. The question resolves itself to this: Did his election confer upon him a valid title to the seat on the 4th of March? If it did not, it is not a title at all. You may qualify it by calling the election voidable, or void, if you please. He had prima-facie evidence of title to the seat in the credentials which were presented. But the moment it was ascertained that the title conferred upon him no right at all to take his seat here on the 4th of March, you cannot say that any title had been conferred upon him at all. * * *
>
> But it is represented here that General Shields, having no title to his seat, must go back for reelection or appointment by the Governor and that it is the duty of this body to throw no obstacle in the way, but to act in such a manner as to render this practicable. Sir, we cannot construe the Constitution of the United States for the accommodation of individuals. That is out of the question. My own inclinations are in favor of the sitting Member. I concur in the opinion that it is due to the State of Illinois that this question should be settled. I know it has been stated that General Shields has offered to resign. But if there is nothing which he can resign, the act would be a nullity. To determine this, we must go back to the distinct inquiry as to whether the election conveyed a valid title at the time when he was called upon to discharge the duties of the office. If the election never has been valid, I presume it will be admitted that the Governor cannot fill the vacancy, and the sooner the facts are ascertained the better, in order to enable the Governor of Illinois to take measures to have the State represented by Senators upon this floor.

Again, in the course of the general discussion, Mr. Webster said:

> * * * I hold, most unquestionably, that the election was void, because the person upon whom the election fell was not competent to discharge the functions of the office that are intended to be conferred upon him; that is to say, to be a Senator from the 3d of March 1849 for 6 years. Now, if he could not be a Senator from the 3d of March for 6 years, then he was not eligible for the senatorial term, and it might just as well be said that he might be elected when he had been a citizen 6 years, and await the lapse of 3 years before commencing his period of service, as it may be said that he may be elected and await the lapse of 9 months. The proposition is so clear that I think a little reflection will satisfy every gentleman on the subject.

What closer reasoning to the case pending before us could we have than that which was given by Webster, concerning whom I need not indulge in panegyrics; but what greater precedent could be established in any case than this case of General Shields presents unto us and unto the Senate?

Of course, there have been, doubtless, other precedents in the other House. That is all right. Where do we find the better reasoning? Where do we find the precedent that is ours here in the United States Senate? And if those precedents answer the query which was put in the preliminary of this discussion, they should be all-controlling and all-compelling.

Mr. President, if we decide this case upon the plain meaning of the Constitution, it seems to me there can be no doubt of the decision. If we decide this case upon the senatorial precedents that have gone before, equally so, I think, there can be no doubt of the decision.

Mr. BULKLEY. Mr. President——

Mr. JOHNSON. I yield. I am about to yield the floor, if the Senator would prefer it.

Mr. BULKLEY. No; I would rather ask the Senator two or three questions, if he is willing to have me do so.

Mr. JOHNSON. Go ahead; I am glad to have the Senator do so.

Mr. BULKLEY. Does the Senator contend that the committee resolution comes to a conclusion which is inconsistent with the conclusion arrived at in the Gallatin and Shields cases, holding those Senators ineligible to retain their seats?

Mr. JOHNSON. I think so.

Mr. BULKLEY. The committee will wish to differ from that view.

Mr. JOHNSON. Oh, naturally we differ upon it.

Mr. BULKLEY. Of course, we concede that we are undertaking to overrule the language of the resolutions adopted in those cases; but we do not concede that we are undertaking

to say that the result disqualifying those Members from sitting was wrong.

Mr. JOHNSON. The majority of the committee may be able, in adopting what the Senator says, to say the result of the cases is not different, but disagree with the particular printed resolution which was adopted.

Mr. BULKLEY. That is our position.

Mr. JOHNSON. Well, the Senator remembers, in "Hudibras", how—

> He could distinguish, and divide
> A hair 'twixt south and southwest side.

I will not concede that the position stated by the Senator is reasonable.

Mr. BULKLEY. I shall discuss that question later, but I should like to ask the Senator from California whether he believes that an elected candidate becomes a Senator at the date of the beginning of the term.

Mr. JOHNSON. I am not making that contention, sir. Was that question asked in view of the contention which has been made by my brethren upon the committee? Let them speak for themselves on that subject.

Mr. BULKLEY. I wished to make sure that the Senator did not approve that contention.

Mr. JOHNSON. I have presented here certain observations of my own. Those I stand upon. I have not signed the minority views presented by my brethren upon the committee, and so I am making no such contention as the Senator suggests.

Mr. BULKLEY. Just one more question. Does the Senator believe that the resolution finally adopted in the Shields case does in fact set a precedent for all time and is correct under all circumstances?

Mr. JOHNSON. Mr. President, I am not going to say anything with which under all circumstances, under every conceivable condition, and every circumstance of which one can conceive, one might not at some time disagree. But I say that the Shields case is a precedent. It is a precedent much more nearly like the instant case and much more nearly in point than the ordinary precedent we find in legal cases. The Shields case is a precedent which ought to be controlling and compelling here if we follow precedent. But beyond that, the Shields case, on the question debated, and in the debate itself, is most persuasive, and it seems to me, in regard to the pending case is conclusive.

Mr. BULKLEY. That answers my question.

Mr. MINTON and Mr. LONG addressed the Chair.

The PRESIDING OFFICER. Does the Senator from California yield; and if so, to whom?

Mr. JOHNSON. I yield to the Senator from Indiana, who rose first.

Mr. MINTON. I should like to ask the Senator whether he does not believe that in the Shields case the resolution which was adopted by the Senate decided more than was actually before the Senate?

Mr. JOHNSON. I think that may be so; that one might reasonably say it did.

Mr. MINTON. The resolution offered by the majority report in the pending case would not overrule the Shields case as a precedent but simply would refuse to follow what we might call the dictum in that case.

Mr. JOHNSON. It seems to me we cannot distinguish between the reasoning of the case and what might ultimately have been decided, and the reasoning in the Shields case is such that it affords a precedent which, as lawyers love to say, is on all fours with the case at bar.

Mr. MINTON. What I was going to point out was that the Senate decided something more in the Shields case than was actually before it.

Mr. JOHNSON. The Senator is speaking of that because of the fact that Shields resigned?

Mr. MINTON. No. As I understand, the only question before the Senate at that time was whether Shields was then entitled to his seat, and the Senate decided not only that question but that he had to have the qualifications on the day his term began, and they thus decided something that was not before the Senate, and to that extent it was dictum and would be so considered in any law case.

Mr. JOHNSON. I will not say the Senator is not right in that regard—I think not—but it does not alter the fact of the precedent.

Mr. LONG. Mr. President, will the Senator yield?

Mr. JOHNSON. I will yield if the Senator desires to ask a question.

Mr. LONG. I hope it will be a question. I will undertake to ask it as a question.

I understand it to be pretty generally argued that one must be eligible to take his seat when his term begins. Of course, that means that if he is ineligible by reason of age, or for other causes, he should not be permitted to take his seat.

In that connection I call the attention of the Senator from California to the fact that the courts have held that one holding another office, such as Governor of a State, cannot become a Senator, that he is ineligible because his office is incompatible with the office of United States Senator. Now I come to the point——

Mr. JOHNSON. Let me say to the Senator, if he is going to ask me a question, ask the question; otherwise I will not yield. If the Senator does not want to ask a question, if he wants to be funny, let him go ahead and be funny in his own time, not in my time.

The PRESIDING OFFICER. Does the Senator from California decline to yield?

Mr. JOHNSON. Let us have no mistake about that. I decline to yield.

The PRESIDING OFFICER. The Senator declines to yield.

Mr. LONG. Mr. President, has the Senator yielded the floor?

Mr. JOHNSON. No; I have not yielded the floor.

Mr. LONG. The Senator declines to yield to a question. I did not want to be funny.

Mr. JOHNSON. Let the Senator go ahead if he has a question. I yield for a question.

Mr. LONG. I was just going to ask the Senator this question: Would not the case of the elder Robert La Follette, and of Senator Dieterich, and of myself——

Mr. JOHNSON. And of myself.

Mr. LONG. And of the Senator, and many other Senators who were Governors, who failed to come here and take their oath of office when their terms began, and who, therefore, enforced upon themselves ineligibility—would not that have disqualified them from later on——

Mr. JOHNSON. I answer: "No." That is the answer, and it is conclusive; No!

Mr. President, just a word in conclusion. I said in beginning that very reluctantly I had come to the conclusion I have reached in this case. I say that in closing. Personally, I said in beginning, personally, I say at the close, I would rather have reached another conclusion and I would have preferred that I might have rendered another verdict here. But I say again in closing, as I said in beginning, I am under an oath, other Senators are under an oath, and I take it that they perform their duty under their oaths as the Lord gives them the light to see their duty, and I perform mine in just that fashion. It is not a matter of how many or how few are with us. It is a matter of no consequence that there shall be a determination rendered one way or another, but we do the best that we can, and act accordingly to the lights that are ours. I am acting that way today, and I do not give a rap whether there is one vote or two votes or three votes, whether there are four votes or none the way I vote. I am voting upon this case reluctantly, but voting because I have taken my oath as a United States Senator, and the day that I violate that oath as I see it, may I be taken from this floor never to return.

Mr. CONNALLY. Mr. President, I desire to address the Senate on this subject. If there are any Senators who wish to speak in support of the majority report, I shall be glad to yield.

Mr. LONG. Mr. President, I want to take a few minutes, if the Senator is going to speak against the committee report. I desire to put just one observation into the RECORD.

The Senator from Arkansas [Mr. ROBINSON], I take it, at least agreed with the Senator from California [Mr. JOHNSON],

or the Senator from California has agreed with the Senator from Arkansas, that the disability of age is not one which applies at the time of the election. That has been admitted. Therefore we have only one other thing to consider: Does the disability apply, if there is ineligibility, at the time the term begins? That would be the only other matter to discuss.

Having conceded that the disability at the time of the election does not make one ineligible, the only point left is this: If one is ineligible at the time the term begins, does that bar him from later on becoming eligible?

It has been held in a decision rendered by Justice Van Devanter, now on the United States Supreme Court, and it has been held by many other courts that one holding the office of Governor of a State is ineligbile to be a Senator. He must divest himself of the office of Governor before he can become a Member of the United States Senate.

Therefore, if I were today given the right to become a Senator, and my term began, and I none the less continued as Governor, I would be ineligible to become a Member of the United States Senate.

Which is the worse in eligibility? Is it worse to have this technical ineligibility because of a few days of age, or is it worse to be ineligible by reason of the fact that one persists in doing the overt act of continuing as Governor when he knows that makes him ineligible to be a United States Senator? If that is to be the criterion to govern in the pending case, then the Senate has seated a dozen men who never should have been allowed to take their oaths of office as United States Senators.

The elder Robert M. La Follette waited 1 year before he surrendered the office of Governor of Wisconsin and made himself eligible to become a United States Senator.

Mr. Hoke Smith, of Georgia, waited, I think, from 8 to 10 months before he surrendered the office of Governor to become a Member of the United States Senate.

I waited a period of 1 year and 3 months after I was elected to this body before I gave up the office of Governor to become a Member of the United States Senate.

A Senator from New Jersey waited 1 year and 1 day before he gave up the office of Governor to become a Member of the United States Senate.

There was a gentleman by the name of Dietrich, a former Member of this body, not the present Senator from Illinois, but a Senator from Nebraska, who was Governor of Nebraska, I believe, or if he was not Governor, he held some other office, and he was elected to the United States Senate. He took a fee for appearing before a public board, and he was indicted and tried in a United States court, and, I think, convicted, on the ground that, having been elected to the Senate and his term having begun, he was a United States Senator, and, therefore, could not accept a fee for appearing before a public board.

It was proven that after this man had finally taken the oath of office he went back and drew his salary for all those days from the time when he would have been entitled to take the oath of office.

What did the court say? Judge Van Devanter, now on the Supreme Court of the United States, decided in that case that a man did not become in any respect a Member of the United States Senate for any purpose whatever until he had taken the oath of office as a United States Senator, and that no disability, no disqualification, and no other thing of any kind or character applied to that man until he presented himself at the bar to take the oath of office as a Member of the United States Senate.

To such an extent was that recognized to be the law that Congress amended the statute so as to provide that a Member-elect of the United States Senate could not accept a fee for appearing before a public board, so that those who had been elected would be in the same category after their election, and until they took the oath of office in open session of the United States Senate, with those who were Members.

In the case now before us what is the contention? The only contention left, in view of what the Senator from California [Mr. JOHNSON] admits and the Senator from Arkansas [Mr. ROBINSON] admits, is that if there is any disability of any kind or character which exists on the very day that a man presents himself here he is forever barred. Even the slightest kind of a natural technical disability would bar him. If that be true, then the Senator from California [Mr. JOHNSON] and myself and perhaps other Members who serve in this body have come to the Senate and have been permitted to take the oath of office after having removed a disability which disqualified us all the way from 19 days to a year and 4 months after our terms began.

Mr. MINTON. Mr. President, will the Senator yield?

Mr. LONG. I yield.

Mr. MINTON. And nothing but the expiration of time removed that disability.

Mr. LONG. That is all. I am very sorry my friend from California thought I meant to make his case personal. If he thought that, I will say that I had no such intention. I believe my friend from Arkansas [Mr. ROBINSON], who was Governor of the State of Arkansas, might have come here a few days late. He announced that he did. A number of us, Mr. President, have come here to this body a few months—and in my case a year and 3 months—after our terms began. To argue that the lack of 5 months of requisite age is such a terrific disability that one would be disqualified is so contrary to what we have done in these other cases that I do not understand how it can have much application.

Mr. ROBINSON. Mr. President, will the Senator yield?

Mr. LONG. I yield.

Mr. ROBINSON. In none of the cases where the disqualification was alleged to have attached because the Senator-elect was holding another office incompatible with that of United States Senator was the question, so far as I recall, ever raised in the United States Senate to the effect that he must have divested himself of the other office at the beginning of the term for which he was elected Senator. Of course, there is no logic in distinguishing between one requirement for eligibility and another.

Mr. LONG. That is correct.

Mr. ROBINSON. If a Senator in order to be eligible must have the qualifications at the time of the beginning of his term, and if it is necessary in order to be eligible that he shall not hold another office incompatible with that of a Senator, then it follows irresistibly that the Senator was disqualified if at the beginning of his term he held another office incompatible with that of Senator of the United States.

Mr. LONG. That is just what I have been trying to state. [Laughter in the galleries.]

Mr. ROBINSON. The Senator has stated it clearly.

The question in this case is not the question which actually arose in the Shields case or in the Gallatin case, for the reason that in both those cases at the time the Senators presented themselves and began to attempt to perform the duties of their office they were ineligible by reason of the fact that they did not possess 9 years' citizenship. It is, therefore, clear that, as stated by the Senator from Indiana [Mr. MINTON], the Senate decided something more than it was required to decide in order to reach a conclusion in the Shields case and in the Gallatin case. Those cases, therefore, are not precedents in a case where the issue is whether the Senator at the time he presents himself and attempts to perform the duties of his office is rendered ineligible by the fact that at some previous time he had not reached the age of 30 years.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. LONG. I yield.

Mr. BARKLEY. In those cases, if I understand, not only was the Senator involved ineligible at the beginning of his term, but he was ineligible at the time he presented himself to begin his term.

Mr. ROBINSON. Yes.

Mr. LONG. Yes; in both cases.

Mr. GEORGE. Mr. President, will the Senator yield?

Mr. LONG. I yield.

Mr. GEORGE. Not only is that true, but he was ineligible at the time of the election, at the time of the beginning of the term, at the time he presented himself and was sworn, and ineligible on the very day when the Senate passed the resolution in both cases.

Mr. ROBINSON. Yes. He had never acquired eligibility as to citizenship, and, therefore, it was a different case from the one now at the bar of the Senate.

Mr. LONG. Mr. President, I wish to say a word further along the line of what the Senator from Arkansas [Mr. ROBINSON] has said. The only time the Senate takes cognizance of a disability is when a man comes here to become a Member.

Mr. ROBINSON. That is the only time we can do it.

Mr. LONG. That is the only time we can do it. We have no business to go back and see if a year and a half before he was not a justice of the peace, or whether 4 months before he was not old enough. The only time the Senate is concerned with a man's qualifications is when he steps to the desk of the Vice President to take the oath of office to become a Member of this body. We have no jurisdiction beyond that point. The only jurisdiction which is vested in any body is in the sovereign State which the man represents.

One more point. If the sovereign State which the man represents thinks it is a better thing to have him wait a few months before he comes here and takes his seat, as was thought in the case of the Senator from Arkansas, in the case of the Senator from California, in the case of the Senator from Wisconsin, in the case of the Senator from New Jersey, in the case of the Senator from Nebraska, in the case of the Senator from Louisiana, and in the case of the Senator from Georgia, if the people of those sovereign States think that they would rather have him wait a few days in order that they can get, perhaps, what they think to be better talent, that is the right of those States.

The State is the only body which has any right to judge these qualifications prior to the man coming here to take his oath of office; and when a man presents himself here, having satisfied the sovereign State from which he comes, then if he comes here and has the prescribed qualifications, we have nothing except to ask, "Does this man standing here now possess the qualifications to entitle him to take the oath of office?" It is not for us to ask, "Did he possess them last year?" or "Did he possess them last month?" or "Did he possess them last week?" or "Did he possess them yesterday?" but, "Does he now possess them?"

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. LONG. I yield.

Mr. BARKLEY. Prior to the recent amendment of the Constitution, theoretically the term of every Member of the Congress began on the 4th of March, but, unless the President called an extraordinary session of Congress, the Member did not take the oath until the first Monday in December. If some man had been elected to either House who was not of the required age on the 4th of March, but could not take the oath of office until the following December, and had become eligible by reason of age in the meantime, does anyone suppose that either branch of Congress would have denied him the right to take his oath of office if he were old enough at the time he presented himself to take the oath, which would have been at the beginning of the first term after his election?

Mr. LONG. I do not believe anyone would have urged that that man was not eligible. For the same reason no one can urge that the Senator-elect from the State of West Virginia is not eligible.

Let me make only one further observation, because I have spoken longer than I had expected to speak. The Senator from California [Mr. JOHNSON] read from the Constitution wherein it said that every State has the right to two Members in the United States Senate. However, the Senator from California forgets that that article of the Constitution did not apply in all of these other cases to such an extent, or under such an interpretation so it could be said that any day on which the Senate did not have the two representatives here from the State the Constitution was being violated. I think the Senator from California overlooked that point.

There is only one other point raised on the floor of the Senate which I wish to answer. Some ask, "How long can a man wait? Can he wait 5½ years?" That is a matter which I think I can answer; here is the rule which Congress has always followed; here is the rule which the United States always has followed, and here is the rule that I think is a safe rule: If one presents himself within the first congressional term to which he has been elected, he has never been denied the right to take the oath of office. I do not know that the Congress would extend that time—I doubt it—but when one presents himself to the Seventy-fourth Congress, to which he has been elected, 1 day late, 2 days late, 1 year late, he will nonetheless be allowed to serve in the Congress to which he is elected.

It might be that the State—and I say that States are reasonable—might say that inasmuch as this man has not appeared in the Seventy-fourth Congress, it will proceed to elect someone else. That is the right and the function of the State. It might be that the Senate itself would say that the rule did not apply when one failed to appear at the Congress to which he was elected. However, in this particular case, and in all the other cases which I have cited, when the man elected presented himself to the Congress to which he was elected there has never been any question about his right to take his seat.

The PRESIDING OFFICER. The question is on agreeing to the resolution offered by the Senator from Delaware [Mr. HASTINGS] in the nature of a substitute for the resolution submitted by the Senator from Georgia [Mr. GEORGE].

Mr. CONNALLY. Mr. President, if there is any other Senator who desires to address the Senate in behalf of the majority report, I shall be glad to give way.

Mr. ROBINSON. Mr. President, I may desire to submit some remarks after the Senator from Texas shall have concluded. I do not understand that there is any order of procedure here which requires one to speak prior to the remarks of the Senator from Texas.

Mr. GEORGE. Not at all.

Mr. CONNALLY. Mr. President, I did not mean to suggest that there was any order. I merely indicated that I should be glad to give way to any other Senator if he desired to speak now. I am ready to proceed.

Mr. DUFFY. Mr. President, will the Senator yield for a short statement?

Mr. CONNALLY. I yield.

Mr. DUFFY. As a member of the committee who fully agrees with the majority report, I think I should make a brief statement. After careful study I believe that we cannot differentiate from the decision in the Shields case. I think it is true that the Senate in its resolution went further than it needed to go in that particular case, but judging from the debate which was had at that time, and the decision which the Senate reached, I think the decision in the Shields case cannot be distinguished.

I for one am perfectly willing and glad to overrule the decision in the Shields case, based entirely upon the very logical statement made by the Senator from Georgia [Mr. GEORGE] in presenting the majority opinion.

So while I am very happy to vote for the seating of the Senator-elect from West Virginia, in my opinion, we are overruling the precedent established by the Shields case; and I think we ought to be glad to do so, because, although there may be a close question as to which side we should take, in a case where a sovereign State by such a splendid majority has registered its choice, I think everything should be resolved in favor of the choice of that State; but I for one, as a member of the committee, regard such action now as overruling the Shields case.

Mr. BULKLEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Wisconsin yield to the Senator from Ohio?

Mr. DUFFY. I yield.

Mr. BULKLEY. I wish to make sure that the Senator does not understand that the rule now suggested by the committee would have brought a different result in the Shields case so far as seating the Member is concerned.

Mr. DUFFY. That perhaps is so, but I think we cannot read the debate that took place at the time the Shields case was before the Senate, granting that the resolution went

further than it needed to go, without coming to the conclusion that if this case had been pending it would have been held that the Senator from West Virginia was not entitled to his seat.

Mr. BULKLEY. The point is that is not what they were voting on at the time. They were voting on a different state of facts.

Mr. DUFFY. I understand that, but I state that I cannot come to any other conclusion.

Mr. HATCH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Wisconsin yield to the Senator from New Mexico?

Mr. DUFFY. I yield.

Mr. HATCH. When it is considered that the debate did go into the question of the postponement in order that General Shields might be qualified later on, is it not true that the Shields case is exactly in point?

Mr. DUFFY. That is my opinion, after a fair discussion as to whether it would not be advisable for Senator Shields to step aside and to wait for the lapse of time when he would be eligible, I concede that it is a precedent, but I, for one, am very happy to overrule that precedent, because I think the side of logic and the side of justice demand that course.

Mr. BULKLEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Wisconsin yield further to the Senator from Ohio?

Mr. DUFFY. I yield.

Mr. BULKLEY. May I just suggest that all the debate occurred after General Shields had taken the oath, so that even if he had stepped aside at that time it would have presented a different state of facts from that which is now before us. Of course, I agree with the Senator that we do presume to overrule the resolution which was adopted in the Shields case, and I want to go with the Senator on that, but I do not think that we are overruling the result in the Shields case.

Mr. CONNALLY. Mr. President, I would not address the Senate except for the fact that, not having joined in either one of the minority views and yet having voted in the committee against seating Mr. HOLT, I feel it somewhat incumbent upon me to set forth my views.

As a member of the committee, I could not agree to the majority views, and I shall vote for the resolution presented by the Senator from Delaware [Mr. HASTINGS] as a substitute, holding that Mr. HOLT is not entitled to take the oath of office. I desire to say that I have reached this conclusion with a great deal of reluctance. My every impulse, of course, is to vote for the seating of those who come to the Senate with credentials from their States evidencing that they have been elected by the people, and in this particular case I have the utmost regard for Mr. HOLT whose credentials are now under discussion.

As a Member of the majority side of the Chamber, I regret that I have to part company with my colleagues of the majority; but, Mr. President, in election cases it has always been my purpose to pass upon the legal questions without any passion and without any of those extraneous considerations which frequently operate upon our minds with regard to legislative questions.

I hope that I shall not be tedious, but I shall naturally have to repeat some of the things so well said by the Senator from California [Mr. JOHNSON] in his very able and informing address.

When the makers of the Constitution set up this form of government they provided for a Senate and a House of Representatives. I read now from the seventeenth amendment.

> The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for 6 years, and each Senator shall have one vote.

Mr. President, I cite that particular section of the Constitution for the reason that it is important to bear in mind when the people are voting for Senators that they are electing them for a definite fixed period, beginning at a certain time and expiring at a certain time. The Constitution requires that when the people elect a Senator they shall elect him for 6 years, not for 5½ years or 3 years or 2 years, unless in case of an unexpired term.

The twentieth amendment, which is the so-called "lame duck" amendment, further makes clear what was in the minds of the makers of the Constitution and those who amended the Constitution. It provides as follows:

> The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

That amendment had been adopted and was in effect when Mr. HOLT was elected by the people of West Virginia. At that time the people of West Virginia and Mr. HOLT knew that the term for which he was elected began on the third day of January 1935. I quote now again from amendment XX:

> The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

That constitutional provision was in effect when Mr. HOLT was elected, and so he knew and the people of West Virginia knew that the term for which he was elected began on the 3d day of January 1935 and the Congress itself met on that very day.

What is the other provision in regard to qualifications? As has already been quoted, section 3 of article I reads:

> No person shall be a Senator who shall not have attained to the age of 30 years, and been 9 years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

I wish in my remarks to stress the question of the election itself. Under the contention of some of us supporting the minority view we hold that the election of an ineligible candidate is a void election. If the election is void and no one was elected the title to the office cannot be acquired by the expiration of time, because that which is void is just as if it had never occurred. The precedents that have been cited here, I am sure, are all well known now to Senators.

Mr. MINTON. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from Indiana?

Mr. CONNALLY. I yield.

Mr. MINTON. Does the Senator have some authority to the effect that the ineligibility of a candidate makes the election void?

Mr. CONNALLY. I think so.

Mr. MINTON. Is the Senator going to cite some authorities to that effect?

Mr. CONNALLY. I have not any available court decisions here, but I have the precedents by which the Senate so held. The Senator is familiar, of course, with them. Let me ask the Senator what happens at an election when a man is elected who is absolutely ineligible and who never can become eligible? In that case is not his election void? What happens to it?

Mr. MINTON. I think it may be voidable, but it is certainly not void. The election is valid in every respect; but it might be voided by some action taken subsequent to the election.

Mr. CONNALLY. Then it would become void.

Mr. MINTON. Oh, yes; it is voidable.

Mr. GEORGE. Mr. President, may I say that is true when it appears that a candidate was ineligible in fact?

Mr. MINTON. Yes.

Mr. CONNALLY. If it is determined that a candidate was ineligible in fact, then the election was void from the start, was it not, under the statement of the Senator from Georgia? When it is void it is void from the beginning?

Mr. GEORGE. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. GEORGE. I do not think it is void from the start. It is voidable as any other act may be voidable.

Mr. CONNALLY. Suppose a man was elected who the Constitution said was absolutely incapable of ever holding the office?

Mr. GEORGE. Suppose they elected one who was ineligible, nevertheless the election was not void.

Mr. CONNALLY. Oh, no; they might have elected other officers, but his election is void; the election of that man is bound to be void.

Mr. GEORGE. I take a different view. That man was ineligible—that is all—to hold the office to which he was elected.

Mr. CONNALLY. We are just quibbling over words evidently. Let us see what would happen. Senators contend that a man who is absolutely constitutionally ineligible and who can never become eligible may be elected because, they say, his election is legal. Then why not give him the office? It seems to me it is absurdity itself.

Mr. MINTON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from Indiana?

Mr. CONNALLY. I yield.

Mr. MINTON. I think the question of election lies in one jurisdiction and the question of determining eligibility in another.

Mr. CONNALLY. That is true, too, but the powers who elect must respect the power of the Federal Government or the Congress to see that the election powers observe the rules of eligibility.

Let us see what the precedents are, not what I say, not what I think, but what the precedents say. In the Gallatin case and in the Shields case are found precedents, not by the House of Representatives, not by some court, but by the Senate of the United States, this identical body. What did the Senate hold?

It was held in the case of Albert Gallatin, who had not been 9 years a citizen of the United States at the time of his election and who had not been 9 years a citizen of the United States at the beginning of his term, that his election was void. Here is the resolution the Senate adopted. I shall not repeat the facts, because there is no dispute about the facts. What did the Senate do? After a number of postponements—

Friday, February 28, 1794.

This is a precedent which has been here a long while.

The Senate resumed the consideration of the 22d instant, on the report of the committee on the petition of Conrad Laub, and others, respecting the election of Mr. Gallatin to be a Senator of the United States,

On the question to agree to the motion, as follows:

Resolved, That Albert Gallatin, returned to this House as a Member for the State of Pennsylvania, is duly qualified for, and elected to, a seat in the Senate of the United States.

That resolution was defeated, there being 12 yeas and 14 nays. They then had the following proceedings:

On motion that it should be,

Resolved, That the election of Albert Gallatin to be a Senator of the United States was void, he not having been a citizen of the United States the term of years required as a qualification to be a Senator of the United States.

A motion was made to divide the question at the word "void"; and on motion to agree to the first paragraph of the motion so divided, it passed in the affirmative, there being 14 yeas and 12 nays. So the Senate in that case passed directly upon the question of whether the election was void or not. On a division of the question, the Senate said that his election was void because at the time of his election he had not been 9 years a citizen of the United States. As has already been pointed out, he was not 9 years a citizen of the United States either at the time of election or at the beginning of his term, so it is not an authority as to which date shall control.

In the later case of General Shields the resolution was amended and it was there determined that General Shields' election was void because he was not 9 years a citizen of the United States at the beginning of his term.

When do we expect one elected to office to begin his term? Shall it be at the beginning of the term which the Constitution fixes and for which the people elected the candidate, or shall it be some other time? It seems to me very clear what the men who sat in Philadelphia and were writing the Constitution meant—and that is what we have to determine. What did they mean when they said a man must be 30 years old to be a Senator? Did they mean that part of the Senators might be 30 years old and part of them 29 years old and some of them might come here next year and some the year after that? The makers of the Constitution, we all know in our hearts, meant that the Senate should be composed of men 30 years of age, capable of discharging the duties of United States Senator the first day of their term.

Mr. GORE. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. GORE. The Senator's argument has suggested this question to my mind: What would happen if we should now elect an alien to the Presidency? Would that be a valid election or not?

Mr. CONNALLY. Certainly not. It would be absolutely void, and the Constitution so provides.

Mr. GEORGE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from Georgia?

Mr. CONNALLY. Certainly.

Mr. GEORGE. May I say that the Constitution not only provides for that situation, but the Constitution declares that anyone who is not a natural-born citizen of the United States is ineligible for the office of President. There is quite a difference between eligibility and the question we are here discussing now. In other words, the clause of the Constitution, which is here involved, simply says that "no person shall be a Senator." The provision of the Constitution which deals with the Presidency in express language declares him to be ineligible—that is, incapable of being chosen.

Mr. GORE. Mr. President, will the Senator yield further?

Mr. CONNALLY. Certainly.

Mr. GORE. The Constitution also requires that a person in order to be eligible for President shall have resided in the United States 14 years prior to the election. Suppose he is a natural-born citizen and has returned from abroad and has lived here 11 years and then should be elected. The point is, could he then live out the 3 years and qualify for the remaining year? It raises an interesting question.

Mr. CONNALLY. I shall be very glad to discuss these questions, if the Senator desires, after we get a little further along on the senatorial matter, because, frankly, I am not as much interested in the Presidential term as I am in the particular question now before us.

Mr. TYDINGS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from Maryland?

Mr. CONNALLY. I yield.

Mr. TYDINGS. Referring to the section of the Constitution which the Senator read, which reads—

No person shall be a Senator who has not been for 9 years a citizen of the United States—

Did the committee consider that if a man was in excess of 30 years of age and qualified in all other respects, but would not be a citizen of the United States until the 19th of June 1935, which was yesterday, that in that case the prohibition of the Constitution would be cured by the passage of time, as the age prohibition has been cured?

Mr. CONNALLY. The report of the committee states just what we did, but I will say to the Senator that I am of the opinion that it could not cure it; that age and alienage are both on the same level because in the Constitution they are both contained in the same clause, but when it comes to habitancy it is put in another clause which says, "shall not when elected be an inhabitant of the State."

Mr. TYDINGS. It is the contention of the Senator from Texas, as I understand, that if we can cure the defect in age by the passage of time until June 19, 1935, we could likewise, and would have to, in order to be consistent, cure the defect in citizenship of the United States likewise by the passage of time to June 19, 1935, if that were the point at issue rather than the question of age. Is that correct?

Mr. CONNALLY. That is correct.

Mr. TYDINGS. May I ask, in the time of the Senator from Texas, if the Senator from Georgia agrees that the same

philosophy which would cure a defect in age would likewise cure a defect in citizenship?

Mr. GEORGE. Entirely; and I rose for that purpose. In the case of Ellenbogen, who was elected to the Seventy-second Congress from Pennsylvania, exactly that point was raised and exactly that situation was passed upon, because Mr. ELLENBOGEN, who was born in Austria, had not been a citizen of the United States 7 years when he was elected to the Seventy-second Congress. He had not been a citizen for 7 years when the term of office to which he was elected commenced. He passed by the first session of the Congress, and at the second session appeared, when he had been a citizen more than 7 years, and was admitted. Not only was he admitted but during the first session of the Congress objection was raised upon the ground that on the date of his election and on the date of the commencement of his term and at the first session of the Congress he had not been a citizen of the United States for 7 years.

The question was distinctly raised, and was passed upon by Elections Committee No. 2 of the House, and he was permitted to retain his seat in the House.

Mr. TYDINGS. Mr. President, will the Senator from Texas yield?

Mr. CONNALLY. If I may answer that——

Mr. TYDINGS. I wish to ask only one question, which I think will bring a "yes" or "no" answer.

Mr. CONNALLY. Very well.

Mr. TYDINGS. As I understand the Senator from Georgia, however, the defect, if it related to inhabitancy of the State, could not be corrected by the passage of time, because the words "when elected" are used preceding that clause.

Mr. GEORGE. There is an express requirement in that case.

Mr. CONNALLY. The Senator from Georgia cites a case in the House—the Ellenbogen case. That really is not any precedent in the Senate, for the simple reason that each House is the judge of the elections and qualifications of its own Members; so that a House precedent could not have in the Senate the dignity or the prestige that a senatorial precedent has at all. It is our peculiar function to pass on these questions as to Senators. We are a continuing body; and there are other considerations, probably, which operate to the decision of those questions.

Mr. ROBINSON. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from Arkansas?

Mr. CONNALLY. I yield.

Mr. ROBINSON. The Constitution, of course, applies equally to both Houses.

Mr. CONNALLY. Oh, yes; sometimes.

Mr. ROBINSON. There can be no distinction in principle or in theory of law between a constitutional provision as applied to the House of Representatives and as applied to the Senate of the United States. The words are the same, and therefore logically the application should be the same. For that reason, I think the case of John Young Brown in the House of Representatives is an exact precedent in this case; and, for other reasons which have already been discussed here in part, I do not think either the Shields case or the Gallatin case is a precedent for this case.

Mr. CONNALLY. I am somewhat astonished to hear the Senator from Arkansas say that he does not regard the Shields case or the Gallatin case a precedent for this case.

Mr. ROBINSON. I will tell the Senator in just a few words why I do not regard it as a precedent.

Mr. CONNALLY. All right.

Mr. ROBINSON. In the Shields case, at the time the Senator-elect took the oath of office and attempted to perform his duties he had not been a citizen of the United States for 9 years. In this case, when the Senator-elect from West Virginia proposes to take the oath of office and to begin the performance of his duties, he is 30 years of age. The distinction is so clear that I am astonished that so great a lawyer as the Senator from Texas should not see it without its having to be impressed upon him.

Mr. BARKLEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from Kentucky?

Mr. CONNALLY. I will yield, but I should like to answer the Senator from Arkansas. I yield to the Senator, however.

Mr. BARKLEY. In other words, if the Senator will yield, if the Senator-elect from West Virginia had presented himself here in January, or at any other time prior to his arrival at the age of 30 years, we should have had a parallel case with the Shields case.

Mr. ROBINSON. Yes.

Mr. BARKLEY. Because he would not have been eligible.

Mr. ROBINSON. That is entirely true; and in the Shields case, one question upon which the debate hinged was whether, after Shields had qualified and after he had assumed to be a Senator and perform the functions of his office, the Senate could postpone the resolution until the time when he had acquired the age of eligibility. That question was discussed at great length by some of the Senators, who insisted that even after Shields had presented himself, and after he had assumed to perform the duties of his office and to be a Senator, they might still postpone the determination of the question of his eligibility until after he had in fact become eligible.

I do not think that is sound doctrine. It seems to me the true rule is, giving to the words of the Constitution their natural effect—namely:

> No person shall be a Senator who shall not have attained to the age of 30 years—

Giving to those words their natural and logical effect, when a Senator-elect attempts to perform the functions of his office, when he offers to qualify, if he possesses the age required by the Constitution, he is eligible, because he is 30 years of age when he assumes to be a Senator. In other words, the eligibility attaches to the service, and not to the election or to the term.

That is the position I take.

Mr. CONNALLY. Mr. President, I should like to answer the two questions which have been asked.

The Senator from Kentucky [Mr. BARKLEY] observed that if Mr. HOLT had come here last January and presented his credentials the Senate would have rejected him. Is that correct?

Mr. BARKLEY. I have no way to assume that it would, but I say——

Mr. CONNALLY. Would the Senator have voted that way?

Mr. BARKLEY. I will say frankly that I should have voted to reject him.

Mr. CONNALLY. Yes; that is the point.

Mr. BARKLEY. And I think, if I may express my own opinion, that the Senate would have done so; but the point I made was that if Mr. HOLT had presented himself at any time prior to his arrival at the age of 30 years we should have had a parallel case with the Shields case.

Mr. ROBINSON. That is correct.

Mr. BARKLEY. But, as he did not, the Senate can pass on the eligibility of any man only when he presents himself for admission.

Mr. CONNALLY. Here is the attitude we would be in: According to the Senator from Kentucky, the Senate would have had to reject him if he had come here in January. If he had presented his credentials then, the Senate would have rejected him, and thereby would have created a vacancy in the office of United States Senator. What right would we have had to do that if the people of West Virginia, under this broad doctrine, had the right to elect anybody they pleased to elect?

Mr. TYDINGS. Mr. President, will the Senator from Texas yield right there?

Mr. CONNALLY. I yield.

Mr. TYDINGS. With the permission of the Senator from Texas, I should like to ask the Senator from Kentucky a question.

If we had rejected Mr. HOLT before he became 30 years old, and he had applied later when he had become 30 years old, could we then have seated him?

Mr. BARKLEY. Mr. President, that is not a question which we are called upon to pass on. Very likely we would not have seated him, because in the meantime, if the Senate had rejected him, probably the Governor of West Virginia would have appointed somebody to fill the vacancy, and that question would not have arisen. That is only the expression of a hasty opinion. I have not looked into that feature of the matter; but if the Senate took such action as to create a vacancy in the Senate, I doubt whether it could later revive the senatorship by any action it might take.

Mr. CONNALLY. Mr. President, if the Senator from Kentucky will permit me, the issue would have arisen, because if the Governor had appointed someone, Mr. Holt then would have appeared here and would have said, "No; you cannot seat him. I am the legally elected Senator from West Virginia", and we should have had to face that issue.

Mr. President and Senators, I cannot conceive of the Senate ousting or refusing to seat a man, thereby creating a vacancy in the representation from that State, and then that that vacancy could be filled, not by a new election, not by appointment of the Governor, but simply by the lapse of time.

Senators have said a great deal about "be a Senator"—"be a Senator." How do men get to be Senators? They do not just grow. They have to be elected. They have to be elected for definite terms. They can be elected only from the particular class of individuals that the Constitution says are eligible; and if the electing power does not select that character of individual, the election is void.

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. TYDINGS. According to the reasoning of those who advocate the seating of Mr. HOLT, they could not declare that the seat was vacant as a permanent matter. If their argument is sound, they could only declare that at that time Mr. HOLT had not arrived at the requisite age, and therefore he could not take the oath of office. They could not declare the office vacant, if their reasoning is sound, because now, at this late date, they say he can qualify; and obviously it is necessary to take one horn or the other of the dilemma.

Mr. CONNALLY. The Senator is correct about that.

Mr. LONG. Mr. President, will the Senator yield?

Mr. CONNALLY. Let me answer the Senator from Arkansas and then I will yield to the Senator from Louisiana. It has been so long since the Senator from Arkansas raised the question that I have almost forgotten it.

The Senator from Arkansas expressed great amazement that the Senator from Texas should cite the Shields case on the issue as to whether——

Mr. ROBINSON. Oh, no; the Senator——

Mr. CONNALLY. If the Senator will wait a minute——

Mr. ROBINSON. I did not express amazement that the Senator should cite the Shields case, because everybody is citing it. My amazement was that the Senator did not make a distinction between the Shields case and the Holt case.

Mr. CONNALLY. Exactly. That is what I was trying to say, but the Senator would not let me.

Mr. ROBINSON. Very well.

Mr. CONNALLY. What I desire to say to the Senator from Arkansas is that the Shields case does go into the matters on which he says it is not authority. Let us see about that. There were several motions on that subject. In the Shields case Senator Foote, of Mississippi, rose in the Senate and said that he was anxious to vote to seat General Shields, but that General Shields not having been at that time for 9 years a citizen he could not do it; but he said: "I shall favor postponing this issue until next December, by which time General Shields will have been a citizen 9 years, if by so doing General Shields can become entitled to the seat." He offered a motion to that effect, and there was so much dissent, so much opposition, that he withdrew it.

Mr. ROBINSON. But the point is that Shields had not taken his seat at all.

Mr. CONNALLY. He was trying to take it.

Mr. ROBINSON. He was offering to take the seat.

Mr. CONNALLY. The same as in the case of Mr. HOLT.

Mr. ROBINSON. And the question was whether, after he had presented himself and his disqualification had appeared, the matter could be postponed until he might acquire the qualification. Plainly, as a matter of law, I think the decision in that particular was correct. The question of eligibility arises at the time the Senator presents himself to assume the duties of his office. If he is not eligible then, he cannot assume the duties of his office. If he waits until he does become eligible, then he is entitled to serve as a Senator.

Mr. CONNALLY. Let me ask the Senator from Arkansas a question.

Mr. ROBINSON. Certainly.

Mr. CONNALLY. Had Mr. HOLT come here in January, and had the Senate refused to seat him, what would have been his status?

Mr. ROBINSON. He would have been out.

Mr. CONNALLY. He could not come back now and claim the seat?

Mr. ROBINSON. Certainly not. I do not think there is any question about that.

Mr. CONNALLY. I am glad to hear the Senator admit that, because it destroys his case.

Mr. ROBINSON. After he had presented himself for service and had been found ineligible by the Senate, of course, he could not acquire eligibility.

Mr. CONNALLY. Let me say this: You cannot stick your head in the sand——

Mr. ROBINSON. I am not trying to do that, the Senator knows.

Mr. CONNALLY. I am not referring to the Senator; I am trying to use an illustration in an argument. I do not see why the Senator wants to be so peppery this afternoon.

Mr. LOGAN. Mr. President, will the Senator yield?

Mr. CONNALLY. No; I will yield to the Senator from Arkansas, if he desires to have me yield.

What does the Senator from Arkansas say? He challenges the legal ability of the rest of us——

Mr. ROBINSON. Oh, no; I have not done that.

Mr. CONNALLY. I beg the Senator's pardon.

Mr. ROBINSON. I do not know whether the Senator is trying to be witty or offensive.

Mr. CONNALLY. Oh, I am not trying to be either.

Mr. ROBINSON. I have not challenged the intelligence of anyone. I have differed from the Senator from Texas.

Mr. CONNALLY. I have certainly no disposition to treat this matter flippantly at all. I am trying to be serious. This is the situation in which the Senator from Arkansas by his argument puts this case. He says that if Mr. HOLT had appeared here in January and presented these credentials the Senate would have rejected him and he would have been through.

Mr. LOGAN. Mr. President, will the Senator yield?

Mr. CONNALLY. In just a moment. He was the same age then that he is now. [Laughter.]

Mr. ROBINSON. Oh, no! The Senator has made another amazing mistake. The Senator was not 30 years old then, and if he had insisted on taking his oath then, he could not have qualified; but he is 30 years old now, and he is entitled to take the oath. The Senator has not only forgotten his law, he has forgotten his arithmetic. [Laughter in the galleries.]

The PRESIDING OFFICER. The Chair is obliged to admonish the occupants of the galleries that there must be no demonstrations of approval or disapproval. It is a violation of the rules of the Senate, and no such expressions will be tolerated. They interrupt the proceedings of the Senate.

Mr. CONNALLY. Of course, everyone knew that the Senator from Texas did not mean literally what he said when he stated Mr. HOLT was the same age then that he is now. What I mean is, on the issue of age his status was the same in January that it is now, if age is the determining factor. What I am trying to say is that if in January he was not entitled to his seat, and if the Senate would have ousted him, he would have been out, according to the Senator from Arkansas.

Mr. ROBINSON. Mr. President, will the Senator yield?

Mr. CONNALLY. Yet nothing has ocurred since then——

Mr. ROBINSON. Will the Senator yield?

Mr. CONNALLY. I should like to answer the question.

Mr. ROBINSON. Very well.

Mr. CONNALLY. Nothing has happened since then; he has continued to grow older each day.

Mr. LOGAN. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. LOGAN. I desire to say to the Senator that the argument he is advancing is entirely fallacious. The certificate of election which Mr. HOLT held was only an evidence of title. The title to the office was in nubibus.

Mr. CONNALLY. Where? [Laughter.]

Mr. LOGAN. In the clouds. If he had presented that title here and it had vested in him in January, when he was ineligible to receive it, then his right to hold the office would have depended on the title which he had when it was vested in him; but he did not present it then. He did not present it until he was eligible to have the title vested in him.

So clearly he is entitled to receive the office at this time, and that is the distinction between this and the other cases which have been cited here. That is the reason why the Senator from Arkansas is absolutely right when he says that if he had presented the credentials in January, when they could not have vested title in him because he was ineligible, he would have been out. But now he is 30 years of age, and he presents the credentials, and when he presents the credentials the title vests, and he is never a Senator until the title does vest, and when he asks that it vest in him, he is eligible to receive the title.

If the Senator can answer that or overturn that suggestion, he will overturn the great body of the law that has been in existence and which constitutes the jurisprudence of the United States on nearly all questions similar to this. It is a question of when the title vests, when it ripens.

When the credentials are tendered here there is a color of title, as it were. He holds the office, but under a mere color of title. Now the question is, Is he eligible to receive the title when he asks that it be vested in him? I have stated the reasons which have led me to support the report of the majority of the committee.

Mr. HASTINGS. Mr. President, will the Senator from Texas yield?

Mr. CONNALLY. I should like to answer this question.

Mr. HASTINGS. I merely call the attention of the Senator from Texas to the fact, which I assume he already knows, that the credentials were presented on January 3, and that Mr. HOLT went on the pay roll under a statute enacted by the Congress.

Mr. LOGAN. The title did not vest. He was not sworn. The title cannot vest until he takes the oath of office; then the title vests. The question is whether or not he is eligible when the title vests in him.

Mr. HASTINGS. The Senator was talking about the credentials.

Mr. LOGAN. The Senator is talking about the color of title.

Mr. CONNALLY. I thank the Senator from Delaware for his suggestion. In answer to the Senator from Kentucky, the Senator from Kentucky holds, then, that a Senator is never a Senator until Congress meets and he takes the oath.

Mr. LOGAN. Absolutely; that is correct. I do not suppose any Senator would dispute that proposition.

Mr. CONNALLY. I thought I might state something to which the Senator would agree.

Mr. McKELLAR. Mr. President, does not the Senator from Texas agree that no man is a Senator until he is sworn in?

Mr. CONNALLY. No; I do not agree to that fully.

Mr. McKELLAR. Could he perform any of the duties?

Mr. CONNALLY. Certainly he could.

Mr. McKELLAR. Could he perform any duties within the body, within the Senate Chamber, until he was sworn in?

Mr. CONNALLY. No.

Mr. McKELLAR. Then he is not a Senator until he is sworn in.

Mr. CONNALLY. Let me ask the Senator a question. The Senator went to the Philippines last year.

Mr. McKELLAR. Yes.

Mr. CONNALLY. When Congress met the Senator had been reelected, but the Senator was not here and could not be here and did not take the oath for a month or so.

Mr. McKELLAR. I was a Senator-elect.

Mr. CONNALLY. You were a Senator.

Mr. McKELLAR. No; I was a Senator-elect, and under a law which was enacted just a year or two ago, under a specific statute, my salary was paid.

Mr. CONNALLY. I am not criticizing the Senator; I think he was right.

Mr. McKELLAR. The gentleman from West Virginia has been only a Senator-elect. He has not been a Senator within the terms of the constitutional provisions, and will not be until he takes the last step necessary, namely, to be sworn in as a Senator.

Mr. STEIWER. Mr. President, will the Senator yield?

Mr. CONNALLY. Let me proceed a moment or two, and then I will yield. I have done nothing but hold an experience meeting.

Mr. McKELLAR. Mr. President, may I further explain, just a moment——

Mr. CONNALLY. Please let me say this, that I was not criticizing the Senator. I think he was a Senator during all the time he was away.

Mr. McKELLAR. No; I want to explain the actual difference between a Senator and a Senator-elect.

Mr. CONNALLY. I think I know the difference.

Mr. McKELLAR. I was on the sea, and I was intensely interested in a vote here in the Senate. I telegraphed the Secretary of the Senate to have me paired, and that was declined by the Senate, on the ground that I was not a Senator but a Senator-elect. That is the difference.

Mr. CONNALLY. It is perfectly apparent why that happened. It was because the Constitution provides that Senators and Representatives shall take an oath. It does not provide when the oath shall be taken, and there is no penalty attached, but Congress, acting under the authority of that provision, prescribed an oath which Senators must take before they begin their legislative duties.

Will anyone say that a Senator cannot draw his pay from the beginning of his term? What does the Constitution say the term shall be? It says the term of a Senator shall be for 6 years. If he is Senator for only 4 years or 5 years or 5½ years, what does it mean? What gives a Senator the right to draw his pay? If one is not a Senator, he is not entitled to it.

Mr. McKELLAR. It is only because of a statute recently enacted. In my own case, for instance, where I was out of the country and did not return until February 8, I would have received no salary from the beginning of the session up until February 8, when I was sworn in, if that statute had not been enacted.

Mr. STEIWER. Mr. President, will the Senator yield?

Mr. CONNALLY. In just a moment. I referred to the oath. In 1789 the First Congress provided for the taking of an oath by Senators and Representatives, and this was provided:

> The said oath or affirmation shall be administered within 3 days after the passing of this act, by any one Member of the Senate, to the President of the Senate, and by him to all the Members and to the secretary. * * * In case of the absence of any Member from the service of either House, at the time prescribed for taking the said oath or affirmation, the same shall be administered to such Member, when he shall appear to take his seat.

The statute recognized that they were Members before they appeared and before they took their seats.

Who is it who takes an oath of office? It is a Senator. Who is it that takes an oath of office? It is a Member of the House of Representatives.

Mr. MINTON. It is a Senator-elect, is it not?

Mr. CONNALLY. No; we do not say anything about Senators-elect. The Constitution says Senators and Representatives shall take a certain oath. What is a Senator-

elect? A Senator-elect is a man elected in November. Of course, he is a Senator-elect until his term begins. He is either a Senator or he is not a Senator from the first day of that term. When he appears to take the oath, if he is seated, his term has been confirmed back to its beginning. If he is ousted or rejected, he never was a Senator at all—theoretically, at least.

Mr. President, I do not care to pursue that line of argument. I desire to answer the Senator from Arkansas [Mr. ROBINSON] on the Shields case.

In the Shields case the question was decided as to whether or not the election was void. I wish Members of the Senate to remember this. Our contention is that in the present case the election was void. If it was void, no one can derive from it any title, either suspended title, or title in abeyance, or any other title. If the election is void, it is just as though there never was an election.

Mr. McKELLAR. Mr. President, will the Senator yield?

Mr. CONNALLY. Will the Senator permit me to complete my answer to the question? Then I will yield.

Mr. ROBINSON. Mr. President, will the Senator yield for a question in that connection?

Mr. CONNALLY. I will yield to the Senator from Arkansas with the consent of the Senator from Tennessee.

Mr. McKELLAR. I am glad to yield to the Senator from Arkansas.

Mr. ROBINSON. Assuming that the question as to the eligibility or right of the Senator-elect to serve as a Senator had never been raised, how could the Senator from Texas say that the election was void? Under those circumstances he would have served out his full term. Clearly, the election was only voidable.

Mr. CONNALLY. The point I am trying to make is that whether it is void or not void is not dependent on what Mr. HOLT does. He cannot by anything he does make vital and alive something that is void. If the election is void, it is as though it were never held. The two senatorial precedents which I am trying to call to the attention of the Senate both held that the elections in question were void.

Mr. McKELLAR. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. McKELLAR. The Senator from Texas seems to lay a great deal of stress upon these precedents. Does the Senator think that a vote of the Senate, 14 to 12—that vote was, of course, when the Senate was a small body—is binding?

Mr. CONNALLY. I will answer that we do not have to pay any attention to anything. Under the Constitution we have the right to pass upon the qualifications of Senators; and if a 15-year-old boy came up here with a certificate of election, and we seated him, he would be a United States Senator, and there is no power on earth which could take him out except the people at the next election.

Mr. McKELLAR. To show that such a decision by the Senate is not binding, I wish to call the Senator's attention to the case of Mr. Lorimer, of Illinois.

Mr. CONNALLY. I do not argue that point, Mr. President. I know it is not binding.

Mr. McKELLAR. The Senator will remember the case of the former Senator from Illinois, Mr. Lorimer. On March 1, 1911, by a vote of 46 to 40, he was held to be a duly qualified and properly elected Senator. Nearly 2 years later——

Mr. CONNALLY. We unseated him.

Mr. McKELLAR. Yes; nearly 2 years later this body by a vote of 55 to 28 held that he was not entitled to be a Senator, and removed him from the Senate by that vote. So I say that a case which seems to me to have been misapprehended, at least in part—a case which was decided away back yonder in 1793—is not binding on this body.

Mr. CONNALLY. The Senator can go further back than that. The Constitution was adopted 3 or 4 years before that.

Mr. McKELLAR. Yes; and if the Senator will permit me to read from the Constitution I will show the difference between the two cases which the Senator cites and the case at bar. I read:

> No person shall be a Senator who shall not have attained to the age of 30 years.

When it comes to the authority which the Senator cites, let us read it:

> No person shall be a Senator * * * who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

There is a great deal of difference between the qualifications in the Gallatin and Shields cases and in the present case. In both the Gallatin case and the Shields case the Senators-elect were not citizens when elected. The only question in the present case arises under the first sentence in clause 3 of section 3 of article I of the Constitution, that the Member must be 30 years old before he can be a Senator—in other words, before he can take the oath, which is the last step to be taken in order to become a Senator.

Mr. CONNALLY. I thank the Senator. Of course, I do not raise any issue that we are bound to follow those precedents. A precedent, however, ought to be persuasive. It is said that the vote was only 14 to 12. Well, 14 to 12 is just a little stronger than 12 to 14.

Mr. McKELLAR. But it is not always right.

Mr. CONNALLY. Oh, no; not if the Senator disagrees with it. The Senator says, "Away back yonder in 1793." He says, "Shall we pay attention to a precedent in 1793?" Mr. President, the reason why I give so much deference to it is that the very men who were seated in the Congress when the question arose had been in Philadelphia and had an opportunity, in ratifying the Constitution, to discuss its provisions and knew what they wanted to put in the Constitution.

The Senator pokes fun at the Shields case. Who were these people who decided the Shields case?

Mr. O'MAHONEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from Wyoming?

Mr. CONNALLY. I will yield in a moment.

Who were the Senators who participated in the Shields case? There was an old fellow who used to live down in South Carolina; let me see—what was his name?

Mr. SMITH. John C. Calhoun.

Mr. CONNALLY. John C. Calhoun. Calhoun took part in the debate. He argued on this question. He agreed that the election of Shields was void from the beginning. But Senators say, "Why, Calhoun has been dead since 1850!" Yes; he has been. He has been dead since that time and the enthusiasm of many of his followers is also dead.

Mr. SMITH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from South Carolina?

Mr. CONNALLY. I yield.

Mr. SMITH. I should like to ask the Senator a question. I have followed this case, and I have also read the cases of Gallatin and Shields. In those two cases Gallatin and Shield were ousted on the ground that they had not been citizens of this country for a sufficient length of time when elected. Suppose they had not appeared before this body until after the 7 or 9 months which they lacked of being of the proper citizenship age; what would have occurred had they presented themselves after they had been here a sufficient length of time to have qualified under the citizenship qualification?

Mr. CONNALLY. I shall be glad to answer the Senator. Of course, I assume what would have happened, but I should hate to divulge my assumption. I do not know what would have happened, but I shall state what I assume would have happened.

Mr. SMITH. The point I make is this: They would have been of the proper age when they appeared before the Senate. The only prohibition prior to that time would have been that at the time of their election they were not eligible by reason of not having been citizens for a sufficient length of time, but when they appeared here in the Senate they would have been eligible. In that respect the present case would have been parallel to theirs.

I maintain that the State of West Virginia knew, at the time it elected this young man, that he was not of eligible age. So far as the State is concerned, it has the right in almost all particulars to determine what it sees fit to do.

Mr. CONNALLY. If that is the Senator's attitude, there is no use of my arguing with him. I cannot argue with any view such as that.

Mr. SMITH. However, when the Senator-elect comes here we have a right to determine his qualifications.

Mr. CONNALLY. Yes; and we are now trying to do it. That is what we are trying to do at the present moment.

Mr. SMITH. The Senator does not pretend to say that the State has not a right to determine the qualifications of the man it sends here?

Mr. CONNALLY. I certainly do. That is exactly what I say. The State has nothing on earth to say about his qualifications. The State ought to pick one who is qualified, but under the Constitution there is no tribunal on earth except the Senate itself which has any jurisdiction to determine the qualifications and the eligibility of a Senator.

Mr. SMITH. That is precisely the point I am making; but the State of West Virginia saw fit to send a certain individual here. We have no right to deny a man entry into the Senate. We can, however, pass upon his qualifications after he becomes Senator. We have departed from that rule and have passed upon the qualifications of two men before they were sworn in, a procedure against which I protested. Now we who are settling this question have to determine whether or not the present case is on all fours with the cases of Gallatin and Shields.

Mr. CONNALLY. That is what I am trying to do. I have the Gallatin case here, and I have been trying all afternoon to read from it.

Mr. SMITH. This young man is qualified with respect to age. We have nothing to do with anything except his qualifications when he comes here to be sworn in.

Mr. CONNALLY. I wish to answer the Senator. The Senator asks me what would have happened in the case of Shields had he waited until after he had become a Senator. Here is what Mr. Calhoun said—and, of course, I assume that Calhoun would have said in December just what he said in January. That is the kind of man Calhoun was. When he had views, he stuck to them. Mr. Calhoun in January, I believe, or was it in February?——

Mr. BULKLEY. In March.

Mr. CONNALLY. No, Mr. President; it was the 28th of February, was it not?

Mr. SMITH. Will the Senator go on and read what Mr. Calhoun said? It does not make any difference when he said it. Let us know what he said.

Mr. CONNALLY. I shall try to oblige the Senator. Mr. Calhoun said that the election was void. That means that the election, which had transpired a considerable period before that, was void. If it was void in March, it was still void in December.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. BARKLEY. In other words, in the use of that language Mr. Calhoun was putting into the Constitution words which are not there. He was saying that the election was void because, when elected, the man had not been a citizen for 9 years.

Mr. CONNALLY. No; when his term began.

Mr. BARKLEY. No; if the election was void, it was void on the day it was held.

Mr. ROBINSON. Mr. President, may I ask the Senator a question?

Mr. CONNALLY. I have not yet answered the Senator's first question, but I will yield.

Mr. ROBINSON. Is it the Senator's position that the candidate must be 30 years of age at the time of the election?

Mr. CONNALLY. No; that is not my position.

Mr. ROBINSON. Or at the beginning of the term?

Mr. CONNALLY. Yes; at the beginning of the term. My idea is that he must be 30 years of age at the beginning of the term for which he was elected, and not when he was elected.

Mr. O'MAHONEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from Wyoming?

Mr. CONNALLY. I yield.

Mr. O'MAHONEY. The Senator has been very courteous in yielding to a great many interruptions, but he has been talking all the time toward the other end of the Chamber.

Mr. CONNALLY. That is because the interruptions all came from that direction.

Mr. O'MAHONEY. Will the Senator turn this way for a moment?

Mr. CONNALLY. Gladly.

Mr. O'MAHONEY. I was prompted to rise by the statement the Senator made with reference to his great respect for the framers of the Constitution. It occurred to me, on reading the very provision, that the Senator is now seeking to amend the provision which we are called upon to interpret. I understood the Senator to state that in his judgment the provision means that no person shall be a Senator who shall not, at the beginning of the term of office for which he is elected, have attained the age of 30 years. The provision which we are called upon to determine reads:

> No person shall be a Senator who shall not have attained the age of 30 years.

And there is no phrase fixing the time there. Then the next clause refers to citizenship for 9 years, and there is no clause there fixing the time.

Then we come to the third clause, which reads:

> Or who shall not, when elected, be an inhabitant of the State from which he shall be chosen.

Does it not appear to the Senator that since there are 3 separate clauses, 2 of which are not modified by a time clause and 1 of which is modified, then the Senator's argument necessarily leads to the conclusion that he is seeking to interpolate into the first 2 clauses language that is not there?

Mr. CONNALLY. I shall be glad to answer the Senator. Of course, every time we come to discuss the construction of a statute or the Constitution or anything like that, if we could then go back and rewrite it there would never be any question, because we would simply rewrite it. The Senator from Wyoming suggests that because the Constitution does not provide he shall be 30 years of age at the beginning of his term it is to be assumed that "beginning of his term" does not apply.

In the debates in the Constitutional Convention there was nothing said about it. I take it it was such an obvious thing that no one raised the question. But what is the language? He cannot be a Senator of the United States unless he is 30 years of age—when? When his term begins. When do we become Senators of the United States? Men are elected to the Senate of the United States, but when do they become Senators? They become Senators when their terms begin and they assume the duties of the office except taking the oath. But at the time of this election in the State of West Virginia the Constitution required that Congress should meet on the first day of the term.

I might suggest to the Senator from Wyoming and to other Senators that they themselves are trying to amend the Constitution.

Mr. O'MAHONEY. Mr. President, will the Senator yield further?

Mr. CONNALLY. Certainly.

Mr. O'MAHONEY. According to the Senator's idea a Governor who is elected to the United States Senate becomes a Senator at the beginning of his senatorial term, whether or not he resigns as Governor.

Mr. CONNALLY. No; I do not contend that.

Mr. O'MAHONEY. That must follow from what the Senator said.

Mr. CONNALLY. I do not contend that. There is a lot of confusion about this Governor business. I hope Senators will bear in mind that my contention is that the election was

void. If they will do that, they will realize there is no question about the governorship involved, because when a man is Governor he is eligible to be Senator.

The moment he leaves the Governor's office he can assume the Senatorship. He is eligible. He is qualified by law. Whether he comes at the beginning of the term and takes his seat or not is a question for the Senate to determine. My position is that anybody who continues to serve as Governor after his term as Senator begins is in such position that if the Senate should so desire we could declare the office of Senator vacant and call for another election.

Mr. LONG. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. LONG. That has never been done, has it?

Mr. CONNALLY. I do not think it has been done.

Mr. LONG. That is the same case that we have here today, and we ought to act on that basis in this case.

Mr. CONNALLY. That is only the logic of the Senator from Louisiana. Nobody ever challenged a Governor in that respect.

Mr. BANKHEAD. Mr. President——

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from Alabama?

Mr. CONNALLY. I yield.

Mr. BANKHEAD. As I understand the Senator's argument he is basing his conclusion on two propositions, one that the election was void because of eligibility.

Mr. CONNALLY. That is correct. The Senate has held twice in similar cases that the election was void.

Mr. BANKHEAD. The Senate held it was void if the Senator has placed a proper construction on the Gallatin and Shields cases. The order, as I understand, as made by the Senate in each case, in the Gallatin case said he was not a citizen of the United States for 9 years and in the Shields case that he was not a citizen at the time of his election.

Mr. CONNALLY. The Senator has the two reversed.

Mr. BANKHEAD. Very well; one case held one way and the other case held the other way. I invite the attention of the Senator, that if the Senate at that time had held the views entertained by him, that the candidates did not possess the necessary qualifications at the time of the election, they would have said the election was void; but instead of that they went into the question of time, and that was the time of election, and said that he did not possess the necessary qualifications. If it had been the view of the Senate, and if it was to be a precedent in this case, that the election was void ab initio, then we would have disposed of the case readily and the discussion in the Senate would not have been involved at all.

Mr. CONNALLY. I wish to read the resolutions which were adopted in the Shields case. I want to call the attention of the Senator to this, too. In the Shields case, Shields offered to resign and expressed a desire to resign his seat. The Senate declined to let him resign, because to have done so would have been to admit that he was a Senator. They voted on that issue. I read:

On motion by Mr. Turney that the Senate proceed to the consideration of the resolution submitted by Mr. Hale on the 14th instant, requesting the Vice President to inform the executive of the State of Illinois that James Shields has this day resigned his seat in the Senate of the United States,

After debate * * * on motion by Mr. Davis, of Mississippi, that the motion lie on the table, it was determined in the affirmative.

On motion by Mr. Douglas, the yeas and nays being desired by one-fifth of the Senate, the roll was called.

Mr. BANKHEAD. Read the resolution.

Mr. CONNALLY. I am trying to turn to it.

Mr. BANKHEAD. I have it here. I will read it if the Senator will permit me.

Mr. CONNALLY. I shall be glad to have the Senator proceed to read it.

Mr. BANKHEAD. All right. It is as follows:

Resolved, That the election of James Shields to be a Senator of the United States was void, he not having been a citizen of the United States the term of years required as a qualification to be a Senator of the United States at the commencement of the term for which he was elected.

Mr. CONNALLY. That is correct.

Mr. BANKHEAD. Now, he did not possess the qualifications at the time.

Mr. CONNALLY. No; he did not.

Mr. BANKHEAD. All right. Then why did they not put it on that ground?

Mr. CONNALLY. Because he did not possess the qualifications either at the beginning of his term or when he was elected. If the Senator will permit me, I will read Senator Calhoun's motion to him. Senator Calhoun moved to amend the resolution by striking out the words "when elected" and inserting "at the beginning of his term", and that amendment was adopted.

Mr. BANKHEAD. So that they recognized a difference between the time of his election and the beginning of his term.

Mr. CONNALLY. To be sure. We all recognize that.

Mr. BANKHEAD. The Senator from Texas does not recognize that. He says the election was void at the time of the election.

Mr. CONNALLY. It was. The election was void. I do not mean, of course, the whole election for other offices.

Mr. BANKHEAD. No; I mean the election of the candidate for the Senate.

Mr. CONNALLY. The election was void because the man could not become eligible at the beginning of his term.

Mr. BANKHEAD. Why did not the Senate distinguish in the Shields resolution by striking out the statement that he was not eligible at the time of the election, and putting in, in lieu thereof, "at the time of the beginning of the term of office", is he was ineligible at both times?

Mr. CONNALLY. Because it was quite important to lay down the rule.

Mr. LEWIS and Mr. ROBINSON addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Texas yield; and if so, to whom?

Mr. CONNALLY. I yield first to the Senator from Illinois if the Senator from Arkansas will pardon me.

Mr. LEWIS. Mr. President, just one second. I did not rise particularly to justify my distinguished predecessor, or to advocate the rights concerning General Shields or Mr. Douglas; but I think an important matter in history has been wholly overlooked.

General Shields was assailed on the ground, not that he was not eligible for election as Senator, but that he was not an American citizen. He sought to be given an opportunity to return to be reelected or again chosen by the Legislature of the State of Illinois, assuming that he would be a citizen by that time, having ripened into citizenship. I make bold to say to the able Senator from Texas that the question there, as I see it, was not as to his ineligibility to be a Senator, but that he was ineligible to be any kind of an officer of any nature whatever in the United States, because he was not a citizen of the United States.

Mr. CONNALLY. No; I will say to the Senator from Illinois that he was a citizen, and had been a citizen for nearly 9 years.

Mr. LEWIS. He had assumed to be.

Mr. CONNALLY. The Senate held that he was a citizen.

Mr. LEWIS. Examination developed that his naturalization was not legal, and therefore that he was not a citizen.

Mr. CONNALLY. The issue did not turn on that question in that case.

Mr. LEWIS. I will say to my able friend that we have discussed the matter so much, to and fro, that I fear he will discover in the written history of Illinois that that was the sole issue on which the whole question did turn, although there may be a difference of opinion between my able friend and myself as to the construction of the language which he reads.

Mr. CONNALLY. I thank the Senator. This is a Senate document.

Mr. LEWIS. And as usual very unreliable.

Mr. CONNALLY. My information is confined to the debates in the Senate and to the documents relating to this particular contest. I do not doubt the Senator's construc-

tion of the literature of Illinois, because, of course, he is much better qualified to speak with regard to any literature than is the Senator from Texas.

Now, I desire to say to the Senator from Alabama [Mr. BANKHEAD] that when this resolution was pending in the Senate—

On motion by Mr. Underwood further to amend the resolution, by striking out the words "was void" and inserting in lieu thereof the following: "does not entitle him to a seat as such in this body", it was determined in the negative.

That motion was defeated. Why? Because it had been suggested in the debate by Senator Foote that if the matter could be postponed until December, by which time General Shields would have been for 9 years a citizen, they would try to seat him. So, for that reason, they were trying to meet the same question that Senators are urging here: "Postpone this matter. Let him wait"; and, when it was proposed, the Senate voted it down.

Mr. BANKHEAD. But it is true that on further reflection they took that clause out of the resolution.

Mr. CONNALLY. No; they did not take out the word "void." The resolution says, "the election was void."

Mr. BANKHEAD. At a fixed time; not at the time of his election.

Mr. CONNALLY. At the time his term started.

Mr. BANKHEAD. Yes.

Mr. President, let me submit another question, and then I will let the Senator proceed.

As I gather from the report of the majority of the committee, in both cases at the time of the election, at the commencement of the term of office, at the time the Senator-elect appeared here to begin his duties, and at the time of final action by the Senate both candidates were confessedly disqualified.

Mr. CONNALLY. The Senator is right.

Mr. BANKHEAD. Then, it not being necessary to a decision in the case, but the judgment being confessedly correct because of the disqualification at the time the Senate acted, does the Senator think the decision fixing the time when a Senator must be qualified was directly involved; or is it mere obiter dictum, constituting no necessary precedent?

Mr. CONNALLY. The Senator from Texas contends that under the constitutional power which the Senate possessed at that time, as it possesses it now, it had a right to determine the election of Shields and the election of Gallatin. It had complete jurisdiction of every matter which related in any wise to their election; and the Senator from Texas contends that under that power it had the right to make a finding that their elections were void, and it did make a finding in both cases holding the elections to have been void. If an election was void, no right could be derived from it. It could not ripen into a title. A thing that is void is just as though it had never happened.

I want Senators to know what the Senate did. Here is the resolution. They then sought to amend it by permitting General Shields to resign.

On motion by Mr. Douglas to amend the resolution by striking out all after the word "*Resolved*" and inserting the following in lieu thereof:

"That the Vice President be requested to notify the executive of the State of Illinois that the Honorable James Shields has resigned his seat in this body."

It was determined in the negative—yeas 12, nays 32.

On motion by Mr. Douglas—

The yeas and nays were called.

Here is what they held in that case. Listen to it, Senators:

Resolved, That the election of James Shields—

"The election"; nothing about his age; nothing about his citizenship or when he would become a citizen—

Resolved, That the election of James Shields to be a Senator of the United States was void, he not having been a citizen of the United States the term of years required as a qualification to be a Senator of the United States at the commencement of the term for which he was elected.

We may indulge in all the quibbles that we please over language and over the construction of statutes; but is there anything more plain, is there anything clearer, is there anything more free from doubt than the language of the resolution in the James Shields case? That case is an absolute precedent for this case, because age and alienage are in the same clause, and everyone admits that the same provisions apply as to having attained the age of 30 years and having been for 9 years a citizen of the United States.

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. TYDINGS. While I do not altogether agree with the deduction drawn by the Senator from Texas, I am forced to do so to a large extent. I rise to ask him if he does not agree with this construction:

If Congress should say, when someone appeared who was not eligible at the time he presented himself to be sworn in, that he could not take his seat at that time because he was ineligible, but that its unfavorable action would not preclude it from taking favorable action at another time, then the argument that the claimant might come at a later time, having presented himself not when he was ineligible but when he was eligible, and be sworn in, would be sound. One of the precedents, however, must be wrong. Either at the time Mr. Shields came the resolution should have read that at that time he was not eligible, and the Senate could not seat him at that time, leaving the door open for him to come back later; or, if he was not eligible then, and the Senate declared the office vacant, then the precedent that he could have waited and come in later and been sworn in is not sound.

It strikes me that what we are confronted with here is a choice between two alternatives, and that if Mr. Holt should be seated today, hereafter when someone is elected who is below the age limit, if he presents himself when the term begins, we should declare in the subsequent case, where the man presents himself at the beginning of the term and is not of age, that the seat is not vacant but that he is not eligible at that time only; because if he can come in later, we certainly ought not to declare the seat vacant simply because he comes a week before he becomes eligible and, using that as a pretext, say that he can never come again.

My dilemma is as to which one of these two precedents is a sound one. Certainly, if we are to vote to seat Mr. Holt today, if he had come last January the appropriate action then would have been to say that he could not be seated at that time but to leave the door open and not to declare the office vacant.

Mr. CONNALLY. The Senator from Arkansas says that if that had happened he would have been out, and that he never could have come again.

Mr. TYDINGS. That is the difficulty. There are two philosophies in conflict.

Mr. CONNALLY. The reason why they are in conflict is that one of them is absolutely erroneous.

Mr. TYDINGS. They cannot be consistent.

Mr. CONNALLY. We have to adopt one theory or the other, either that he was legally elected or that he was illegally elected.

Mr. TYDINGS. May I say to the Senator from Texas, if Mr. Holt is to be seated today because he is now eligible—and I see good argument to support that point of view—had Mr. Holt come here at the beginning of his term, on the 3d or 4th of January, we would have made a mistake in declaring that he was ineligible and that the office was vacant.

What we should have done in January, had he then presented himself, in order to be consistent with the action about to be taken today, would simply have been to say that he was not eligible at that time, and let the time transpire until he was eligible.

Mr. CONNALLY. That is what has happened, in effect.

Mr. TYDINGS. Yes; but we have two policies here which conflict, and if Mr. Holt is seated today, and in the future some person is elected who is not eligible when his term begins, on account of his age, I shall not vote to declare the office vacant, but will vote to say that at the time he is not eligible, but that if he presents himself later he may be seated, because we must be consistent; we cannot blow hot and cold in this matter.

Mr. CONNALLY. That will be the effect if the Senator is seated; it will be a precedent, and others similiarly situated will wait and not present themselves until they attain the constitutional age.

Mr. TYDINGS. Will the Senator yield for one more observation?

Mr. CONNALLY. I am very glad to yield.

Mr. TYDINGS. Suppose Mr. Holt had come on the 18th day of June, the day before he became eligible; according to the argument offered by those who back up the Shields case, then we would have declared not only that Mr. Holt was ineligible but that the seat was vacant; but if he had come on the next day we would have held that he was eligible.

It strikes me that had Mr. Holt come on the 18th the proper action, in view of what we seem about to do, would have been to declare on the 18th that Mr. Holt was not then eligible, and that he could not be sworn in then, but to say nothing about the seat being vacant. That would have made our position consistent with swearing him in the next day.

I think the real contention here arises from the fact that we are arguing from two different precedents, both of which have good reasons behind them, but which are in conflict, and there is no consistency to that kind of an argument as it relates to the dates I have given as an example, the 18th and 19th of June.

Mr. CONNALLY. Those difficulties are difficulties into which we will continually run if we adopt the theory of those who are standing for the majority report.

Let me explain to the Senator from Maryland, if he is interested——

Mr. TYDINGS. I am interested.

Mr. CONNALLY. That the situation which he represents, according to the admissions of the Senator from Arkansas and other proponents of the majority report, is that if on one day at 12 o'clock noon the gentleman from West Virginia, not a Senator, should come to this door and present his credentials, the Senate would say, "No; you are ineligible, and your seat in the Senate is vacant"—but if he takes his watch and waits until the following day at noon and comes up the Senate says, "Come right in. You are a Senator. You were duly elected, and there is no reason why you cannot take the seat."

Mr. TYDINGS. Mr. President, does not the Senator from Texas think that that very strange phenomenon results from the fact that if on the 18th the sole reason why Mr. Holt cannot take his seat is that he is then ineligible but will subsequently become eligible, the proper action for the Senate to take on the 18th would be to hold that for that day he could not be sworn in?

Mr. CONNALLY. The Senate could do that.

Mr. TYDINGS. If I may continue for just a moment, what we have done has been to declare that the seat would be vacant because he comes 24 hours before the date when he might have come and had his eligibility passed upon favorably. Certainly those two philosophies are in violent conflict, and if Mr. Holt is seated today, as I believe he will be, and I probably will vote to seat him, in the future if any Senator-elect presents himself at the bar at the beginning of his term and he is ineligible on account of age, I would not vote to declare him ineligible permanently, or his seat vacant, but would vote only that he must stand aside until he becomes eligible. Otherwise, there would be no consistency in voting that Mr. Holt is eligible today.

Mr. LEWIS. Mr. President, will the Senator from Texas yield to me?

Mr. CONNALLY. I yield.

Mr. LEWIS. May I ask the able Senator from Texas, along the line of the argument he presents in regard to the Shields case, where it is insisted that the election was void, and the able Senator insists that it was void on the facts there shown, does the Senator draw the deduction, and express it as his judgment, that the election of a gentleman who was not 30 years of age at the time of his election would be void?

Mr. CONNALLY. No; I think he must be 30 years of age at the beginning of his term.

Mr. LEWIS. So there is no parallel between the Shields case and this case as to the election being void?

Mr. CONNALLY. I think there is. Age and alienage are covered in the Constitution in the same clause, and the same rule applies to age as to alienage. If a man is not 30 years of age at the beginning of his term, my contention is that his election was void.

Mr. LEWIS. The Senator does not draw a distinction between the provision that one must be 30 years of age to be a Senator and the provision in the last clause that he shall have been an inhabitant of the State when elected, the distinction being in one instance that they make the basis of the eligibility that he shall be an inhabitant and in the other instance that he must be 30 years of age?

Mr. CONNALLY. The Senator recognizes the distinction, and I will say to the Senator from Illinois that the inhabitancy clause is not involved in any of these cases. This is the language:

> No person shall be a Senator who shall not have attained to the age of 30 years and been 9 years a citizen of the United States.

Those are the two clauses which are involved in these cases. In the Shields case and in the Gallatin case the question was not whether the person was an alien, but whether he had been a citizen for 9 years. The case here is whether the person is 30 years of age. Both of those provisions are in the same clause, and both have the same binding effect.

Mr. LEWIS. But the Senator will observe one still could not be a Senator even if he had both qualifications, if he was 30 years of age and had been a citizen for 9 years, if he were not an inhabitant of the State, he could not be elected.

Mr. CONNALLY. Certainly not; but the question of being an inhaibtant of the State was not involved in any of these cases.

Mr. WALSH. Mr. President, will the Senator yield to me?

Mr. CONNALLY. I yield.

Mr. WALSH. It seems to me the rights of the people of a sovereign State ought to be considered in connection with a case of this kind. Therefore I inquire of the Senator, if in testing whether or not a man is entitled to take his seat on the date and time of the convening of Congress the right of the people of a sovereign State to be represented is not to be considered?

Mr. CONNALLY. That is exactly the contention of the Senator from Texas. The Senator from Texas contends that under the twentieth amendment to the Constitution Congress had to meet on the 3d day of January 1935. The term of the person who was to be elected Senator from West Virginia by constitutional requirement began on the 3d day of January 1935.

Mr. WALSH. And the people of that State had a right to have a man appear here and to be sworn as Senator who was eligible under the Constitution.

Mr. CONNALLY. Exactly. Of course they had. Therefore, I contend that not being so qualified his election was void, and he can derive from it no rights whatever.

Mr. McKELLAR. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. McKELLAR. The Senator admits that the distinguished gentleman from West Virginia is not now a Senator; does he not?

Mr. CONNALLY. Of course, I admit that he is not now a Senator. My contention is that he cannot be a Senator until he is again elected.

Mr. McKELLAR. The Senator admits that Mr. Holt is not now a Senator. Here is the wording of the Constitution:

> No person shall be a Senator who shall not have attained to the age of 30 years.

Mr. Holt has attained the age of 30 years, and offers himself to be sworn in as a Member of the Senate. Why does not that comply with the very letter of the Constitution? What the Senator from Texas is undertaking to do here is to

put in the Constitution something which the Constitution does not contain. He is amending the Constitution by inserting the words "when elected."

Mr. CONNALLY. No; "at the beginning of his term."

Mr. McKELLAR. Yes; "at the beginning of his term."

Mr. CONNALLY. I will answer the Senator. The Senator quotes the language of the Constitution:

No person shall be a Senator who shall not have attained the age of 30 years.

Then he turns dramatically and says—

The gentleman from West Virginia is 30 years old!

But in order to be a Senator he must be something else besides 30 years old. In order to be a Senator one must have been elected in an election at the time when he was eligible to accept the office when the term began.

Mr. McKELLAR. There is no such requirement in the Constitution. The Senator is interpolating into the Constitution words and language which it does not contain.

Mr. CONNALLY. I do not expect to convince the Senator from Tennessee. I get no pleasure out of taking the position which I take here today. I should much prefer to vote to seat the gentleman from West Virginia. I wish to seat every man who has a right to a seat in this body. He belongs to my party. He sits on this side of the aisle. I have a warm and an abiding affection for his colleague [Mr. NEELY], who graces the chair at this moment, and every impulse of my carnal nature calls for a vote for Mr. Holt. On the other hand, every impulse of my intellectual nature tells me that I cannot do it.

Mr. HASTINGS. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. HASTINGS. I should like to call the Senator's attention to this provision in the Constitution:

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time.

The language is:

No Senator or Representative shall, during the time for which he was elected—

I suppose the Senator from Tennessee would say that that does not apply to Mr. Holt, who is applying to be seated here; and in order to apply to him, we would have to change that language as follows:

During the time that he was a Senator.

But the language in the Constitution is—

During the time for which he was elected.

Showing that the intention of the framers of the Constitution was to apply all those things to the beginning of the term.

Mr. BULKLEY. Mr. President, I suggest that that shows exactly the opposite intention. When the framers of the Constitution intended it to apply for the term for which he was elected, they said so very plainly. When they intended it to apply only to the time when he should be a Senator, they said that very plainly.

Mr. CONNALLY. I think both Senators are wrong. What that clause was intended to do was to prevent a Senator or a Member of the House of Representatives from vacating his seat in the Senate or in the House and accepting more lucrative employment in an office which had been created while he was serving in the Senate or in the House. That is the object of that provision; so it has nothing on earth to do with the immediate question which we are trying to discuss, as I see it.

I now desire to do something which I have been endeavoring for an hour and a half to do, which is to read the resolution of the Senate in the Gallatin case, and see just what the Senate decided.

On motion to adopt the resolution, as follows:

Resolved, That the election of Albert Gallatin to be a Senator of the United States—

That is what they were electing him for—to be a Senator of the United States when his term started—

was void, he not having been a citizen of the United States the term of years required as a qualification to be a Senator of the United States.

Mr. President, that is the decision in the Gallatin case. In the Shields case practically the same resolution was adopted, except that it was provided that Shields was not eligible at the beginning of his term. That is the attitude of the Senator from Texas—that he must have been eligible to hold the office when the office began. Why? Because the Constitution requires that Senators be elected for a term of 6 years. The Constitution says when their term begins and when their term ends.

Mr. President, if this were a case in which the incumbent continued to serve until his successor was qualified, we should have a different situation; but that is not true. In the case of Senators and Representatives their terms are definite, and when the term expires there is a vacancy created unless the people who have the power of election shall have in the meantime elected someone to be the successor. The Constitution intended that the people should have the successor provided, so that when the period of the predecessor should come to an end there would be a qualified Senator or a qualified Member of the House of Representatives ready to take the place of the one who had gone out of office.

Let me say in this case that it developed in the hearings that Mr. Holt, in the campaign in West Virginia, had said that he was eligible. I do not mean to intimate that he deceived anyone. He told them frankly how old he was. He told the people of West Virginia that he was under 30 years of age at that time. He told them when he would become 30 years of age, but he did argue to the people of West Virginia that he was eligible notwithstanding that fact. I understand he cited the case of Henry Clay. The people of West Virginia no doubt thought he would be seated when he came here in January. That probably had an influence on his election, because he said he was eligible for the office, and the term began in January.

I do not wish the Senate to draw any unfavorable deductions from my statements regarding that, because much to the credit of Mr. Holt, he did frankly and openly state the fact to the people of the State of West Virginia, and openly admitted that he was not 30 years of age; but he added that he was eligible, arguing that notwithstanding the fact that he was not 30 years of age, no doubt he would be seated when he came to the Senate.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. HATCH. I think it was developed in the committee that the argument on his part that he was eligible was an erroneous legal conclusion; that there was no intentional misstatement of fact, but that it was an erroneous legal conclusion.

Mr. CONNALLY. Oh, no. I have just said that he stated frankly his age, but he did argue as a legal conclusion, as suggested by the Senator from New Mexico, that he was eligible, and he probably thought he would be seated had he appeared here in January. He chose not to appear, and consequently did not present his credentials.

If a person elected a United States Senator can be ineligible for 6 months and then appear and qualify, he could wait 5 years and 6 months, or, if we pursue the logic of that statement to its final conclusion, a candidate might wait until the last month of his term and then present himself to take the oath of office. He might not come at all, for that matter, but this is a case in which, in order to have a precedent, he must come.

If the people can elect a man under 30 years of age to the Senate, they can elect one 25 years of age, and he could come to the Senate after reaching 30 years of age and serve only a portion of the last year of his term.

Mr. ADAMS. Mr. President, will the Senator yield?

Mr. CONNALLY. Certainly.

Mr. ADAMS. Could the Governor have made an appointment to fill the office in the meantime?

Mr. CONNALLY. It would depend on the laws of the State. The Constitution says if there is a vacancy in the

Senate the Governor may appoint provided the legislature of the State has enacted a law making provision for appointment by the Governor in case of a vacancy. If the Governor undertook to make an appointment, of course the Senate would finally have to pass on the matter.

Mr. ADAMS. How would the Senator from Texas vote on that question? Suppose the Governor of West Virginia had sent an appointment declaring West Virginia entitled to another Senator?

Mr. CONNALLY. If he had sent an appointment valid under the laws of West Virginia, the Senator from Texas would have voted to seat the appointee.

Mr. TYDINGS. Mr. President, I do not believe the Governor could appoint any one until the Senate declared the seat vacant.

Mr. CONNALLY. I do not think we would have to wait until the Senate declared a vacancy. If the Governor had authority under the laws of West Virginia to make an appointment, he could at least try to make the appointment and when the appointee presented his credentials the issue would arise at once and we could decide it either way under our plenary authority, and no one could question it. We could seat whomever we saw fit to seat, because this is the final supreme court on questions of eligibility to membership in the body.

Mr. ADAMS. Could the Governor of West Virginia have appointed a Senator to serve until the time Mr. Holt was 30 years of age?

Mr. CONNALLY. And then let Mr. Holt come in and take the oath of office?

Mr. ADAMS. Yes.

Mr. CONNALLY. No; I do not believe so.

Mr. ADAMS. Had there been a vacancy in the office?

Mr. CONNALLY. I think so.

Mr. ADAMS. Why could not the Governor appoint, then?

Mr. CONNALLY. If the Governor could appoint at all, he could appoint until the next general election. I assume it is the law in West Virginia, as it is in most other States, that the Governor can appoint only until the following general election. Mr. Holt could, of course, enter that general election. Tomorrow, if Mr. Holt should not be seated, the Governor of West Virginia could call an election and Mr. Holt could become a candidate and, if elected, get legal title to his seat, and come back to the Senate. Of course, that is what I think he should have done, and come here without any tarnish, without any doubt, without any cloud on his title.

Mr. President, much has been said about the rights of a sovereign State and the rights of the people of a sovereign State. The people of the State have a perfect right to choose whomsoever they see fit to sit in the Senate to represent them, provided the one so chosen possesses the constitutional qualifications. But a United States Senator, while selected by a State, serves not simply the State but he serves the United States as well. The other 47 States of the Union have an interest in all the States being properly represented in the Senate of the United States.

It was the conception of the founders of the Government, those who shaped and molded the Constitution, and it was their expectation and their hope that every State should have two Senators here at all times. Why?

Because the Constitution specifically provides that the Senate shall be composed of two from each State chosen by the people for a term of 6 years. That is the term for which they are chosen. Could we choose a Senator for part of a term? We must choose him for the whole term and not for less than 6 years. If he is not eligible when that term begins, his title is not sufficient. He cannot be elected for 5½ years or for 4 years, but he must be elected for 6 years.

I say the whole Nation has an interest in every State being represented in the United States Senate, and the people of West Virginia have a right to have two Senators on the floor of the Senate at all times. Of course, sometimes it is physically impossible by reason of death or illness, to have them here each moment, but the people still have the representation, though the Senator may not be able to be physically present in the Chamber every moment.

Let me ask the Senator from Tennessee [Mr. McKELLAR] a question. There are other duties which a Senator performs besides sitting in the Chamber. He appoints candidates for West Point and candidates for Annapolis. Could not a Senator appoint those candidates before he takes the oath of office? Would he have to wait until he was sworn in before he could appoint to Annapolis or West Point?

Mr. McKELLAR. Mr. President, I do not know whether that could be done, but if it is done, it is permitted as a matter of courtesy. The Senator-elect would take his oath of office later and then his appointments would relate back, as we used to say in the law, nunc pro tunc. That is about the only justification for such an appointment.

I agree with the Senator entirely when he says that the Senator-elect is not a Senator until he complies with the terms of the Constitution. He will have to take the oath of office before he can become a Senator within the meaning of the Constitution.

Mr. CONNALLY. If the gentleman from West Virginia had presented himself a month ago, would not the Senator from Tennessee have had to vote against seating him?

Mr. McKELLAR. I think I would have voted to defer the matter until he should have reached the age of 30 years.

Mr. CONNALLY. The Senator would have voted to defer?

Mr. McKELLAR. That is my judgment.

Mr. CONNALLY. But if the question had come directly on the issue of whether he should be seated, how would the Senator have voted?

Mr. McKELLAR. I do not know. That question is not before us. The question comes now in this clear way. The Senator-elect has all the qualifications and he has been duly elected by a large majority.

Mr. CONNALLY. He has all of the qualifications except one.

Mr. McKELLAR. He is now 30 years of age. He is now applying to us to be allowed to complete his election by being sworn in. Regardless of the precedents I think he is entitled to be sworn in.

The Senator having asked me a question, I want to say that I believe in precedents, but here we have one where there was no record vote and we have another where there was a vote of 12 to 14. The 12 were just as likely to be right as the 14. We are the sole judges of the qualifications of the Members of this body. This body is the sole judge of the qualifications of the Senator-elect from West Virginia. I believe he is entitled to his seat. I think the Senate ought to vote for the resolution of the Senator from Georgia directing that the Senator from West Virginia be sworn in.

In the first place, I do not believe these precedents apply to this particular case. I think they both arose under different facts, in different situations from the case of the Senator from West Virginia. I think we ought to decide the application of the Senator from West Virginia on the facts as they appear here. I think he comes directly within the very wording of the Constitution, and I think we ought to uphold the Constitution by giving him his seat.

Mr. CONNALLY. The Senator from Tennessee says the gentleman from West Virginia has all the requisite qualifications. He has all of them except one, and that is that he was not legally elected at a time when he was eligible to be a Member of the Senate at the beginning of his term.

Mr. McKELLAR. I do not agree with that at all.

Mr. CONNALLY. I know the Senator does not.

Mr. McKELLAR. The Senator-elect from West Virginia was elected, as I recall, by something like fifty or sixty thousand majority. He was overwhelmingly elected.

Mr. CONNALLY. What has that to do with the question before us?

Mr. McKELLAR. There is not a charge against the fairness or justice of his election. He has been elected, and he is entitled to take his seat at this time.

Mr. CONNALLY. Mr. President, what difference does it make whether he was elected by 50,000,000 votes or by 50 votes? If he was elected, of course, he has a right to his seat. The Senator from Tennessee is making an argument in favor of seating the gentleman from West Virginia be-

cause he was elected by 50,000 majority. I assume from that that if the gentleman from West Virginia had been elected by a majority of only 10,000, the Senator from Tennessee would not have been nearly so enthusiastic about his election.

Mr. McKELLAR. I should not be quite so enthusiastic, because there might have been some reason for a slip-up.

Mr. CONNALLY. The Senator from Tennessee then would not have been so anxious to seat him. Mr. President, if I thought the gentleman from West Virginia was eligible at the beginning of his term, if he came here with a margin of 1 vote, I should fight just as hard to see that he was seated as I should if he came here with a certificate showing that he had a million majority. What difference does the size of the vote make in this case?

Mr. McKELLAR. It makes a lot of difference with the Senator-elect himself, and it makes a lot of difference with all of us, as to the size of the majority.

There has not been a question raised as to the absolute fairness and the absolute integrity of the election. The opponent of the Senator-elect has not charged that there was any wrongdoing in the election. The people of West Virginia knew when they voted that the Senator-elect would not be 30 years old until the 19th of June; so I say there can be no charge of wrongdoing in connection with his election.

Mr. CONNALLY. Oh, nobody is accusing him of wrongdoing.

Mr. McKELLAR. The Senator-elect now being eligible in every sense to take the oath of office and complete the election, I think he ought to be allowed to do so.

Mr. CONNALLY. Mr. President, of course, there is no use trying to reply to the Senator from Tennessee, because when a Senator does so he merely provokes another eloquent speech from him.

I have undertaken in this very disordered and somewhat disorganized fashion to point out to the Senate the reasons why I cannot vote to seat Mr. Holt from West Virginia. I desire to say that in the main I agree with the minority views of the Senator from California [Mr. JOHNSON], which are set forth in a report filed in the RECORD, and appearing this morning.

Mr. BULKLEY. Mr. President, since the Senator from Texas has admitted that one does not become a Senator merely by the commencement of the term, I should like to have him point out where he finds in the Constitution anything about qualification relating to the commencement of a term.

Mr. CONNALLY. Mr. President, the Constitution does not say anything about the beginning of the term or the end of the term.

Mr. BULKLEY. It simply says, "be a Senator."

Mr. CONNALLY. Yes; "be a Senator"; when? When? Why, when his term begins. When are you a Senator, if you are ever one? It is when you are elected and your term begins.

Mr. BULKLEY. The Senator has just admitted that the claimant from West Virginia is not yet a Senator.

Mr. CONNALLY. He is not; and he never ought to be until he is again elected.

Mr. McKELLAR. Mr. President——

Mr. CONNALLY. Let me answer. Be fair to me. The Senators are rather Ku-Kluxing me. [Laughter.]

Mr. McKELLAR. I beg the Senator's pardon; I did not intend to do that.

Mr. CONNALLY. Let me answer the Senator from Ohio before the Senator from Tennessee interrupts me.

We are now talking about the Senate. The Constitution says:

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.

All right. Let us see what it says about the Senate.

The Senate of the United States—

What is the Senate? It is a continuing body. It does not die every 2 years or every 6 months. It is a continuing body.

The Senate of the United States shall be composed of two Senators—

Why not say "two Senators-elect"? We keep on talking about "Senators-elect." The Constitution does not say anything about "Senators-elect"; it says "Senators."

The Senate of the United States shall be composed of two Senators from each State—

Not from some of the States. It does not say that the Senate of the United States shall be composed of two Senators from 47 States, and, in the case of the forty-eighth State, one Senator for 6 years, and one for 5½ years. It says:

The Senate of the United States shall be composed of two Senators from each State—

Well, now, let us see. How do they get to be Senators?—

elected by the people thereof—

Elected for what?—

for 6 years.

Not 5½ years. If the people can elect a Senator for 5½ years under these circumstances, when does the 5½-year term start? Does it begin in January; and when he has served 5½ years, does he have to get out; or can he, at his convenience, wait 6 months and then take his seat, or wait 2 years, or 3 years, or 4 years, or 5 years?

Our duty is to ascertain what the Constitution means. The Constitution means what the writers of the Constitution meant at the time they wrote it, under a reasonable construction. Is there any Senator here who can believe that the Constitution makers ever intended that the Senate should be composed of men who were not eligible to meet at any moment and to discharge their functions? I cannot believe it.

Mr. WALSH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from Massachusetts?

Mr. CONNALLY. I do.

Mr. WALSH. Suppose there were two vacancies in the representation from a State, and there were two Senators-elect, and both of them were under 30 years of age: Would that State be represented in the Senate?

Mr. CONNALLY. It would not be represented at all. The Senator from Massachusetts puts a very striking case. Suppose in the case of the State of West Virginia or any other State, at the same election, because of death or resignation, two Senators were to be elected, and the voters were to elect two men under 30 years of age at the beginning of the term: That State, of course, would be unrepresented.

Mr. WALSH. Or suppose there were two Senators-elect who had not been naturalized for a sufficient number of years.

Mr. CONNALLY. The same rule would apply. According to the contention of Senators who favor the majority report, the Senate might be composed of 32 Senators under 30 years of age, and of 32 other Senators who had not been for 9 years citizens of the United States.

Mr. WALSH. If the Senator will pardon me, if that situation should exist in 48 States, we should have no Senate.

Mr. CONNALLY. We should have no Senate, of course. That is possible. Every Senator-elect could either be under 30 years of age, or he could be a man who had not been for 9 years a citizen of the United States; and so, instead of the clerk and the pair clerk and the other assistants keeping tab on us, and where we were, they would have to keep tab on the new classes, as is done in military conscription—the class of 1933, the class of 1934, and so on. The roll would be called to see who was going to become of age next year, who was going to become of age the following year, and the Senate would have to keep track of the naturalization records, and have the Attorney General report when every Senator had been naturalized for 9 years, and send us that list, and then we should know just who was going to be here and who was not going to be here.

Now, Mr. President, since there seem to be no other questions, for which I am very happy, I desire to conclude. I wish to have Senators bear in mind all the time, though, that our position is that the election itself was void if the person elected was not eligible at the beginning of his term. If that is true, he never can take his seat. Other Senators

contend, "He was legally elected, he is a Senator, but if he had come up in January I would have voted to kick him out", and had we turned him aside in January he never would have returned, he could never have come back to take his seat.

If he was legally elected, if he is ever to be eligible, why should they kick him out in January? He could come back and present himself again if he had title to the seat. But when we adopt the theory that the title falls because he was never legally elected, we are not faced with the difficulties which will rise to confront us if we adopt any other doctrine and any other theory in this case.

I submit, therefore, that Mr. Holt should not be seated for the reason that his election was void because he was not 30 years of age on the 3d day of January 1935, when his term of office began in accordance with the provision of the Constitution.

The PRESIDING OFFICER. The question is on agreeing to the resolution of the Senator from Delaware [Mr. HASTINGS] in the nature of a substitute for the resolution of the Senator from Georgia [Mr. GEORGE].

Mr. GEORGE. Mr. President, it is obvious that we cannot reach a vote today on the pending matter, and I understand there is a desire for an executive session. Therefore I think we should go into executive session at this time and let the pending matter go over until tomorrow.

NATIONAL LABOR RELATIONS BOARD

The PRESIDING OFFICER. Will the Senator withhold his motion for a moment to enable the Chair to lay before the Senate the amendments of the House to a Senate bill?

Mr. GEORGE. Certainly.

The PRESIDING OFFICER. The Chair lays before the Senate the amendments of the House of Representatives to the bill (S. 1958) to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a national labor relations board, and for other purposes.

Mr. WALSH. I move that the Senate disagree to the amendments of the House, request a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. WALSH, Mr. MURPHY, Mr. MURRAY, Mr. BORAH, and Mr. LA FOLLETTE conferees on the part of the Senate.

EXECUTIVE SESSION

Mr. GEORGE. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

EXECUTIVE REPORTS OF COMMITTEES

Mr. HARRISON, from the Committee on Finance, reported favorably the following nominations:

Frank C. Walker, of New York, to be executive director of the National Emergency Council;

Jerome F. Sears to be State director, National Emergency Council, for California;

Sveinbjorn Johnson to be State director, National Emergency Council, for Illinois;

Charles J. Hardy to be State director, National Emergency Council, for New York; and

Dr. John W. Cronin to be assistant surgeon in the United States Public Health Service, to take effect from date of oath.

Mr. WALSH, from the Committee on Finance, reported favorably the nomination of Frank H. Foy to be State director, National Emergency Council, for Massachusetts.

He also, from the Committee on Education and Labor, reported favorably the following nominations:

Howard W. Oxley, of New York, to be director of Civilian Conservation Corps camp education; and

Silas M. Ransopher, of New York, to be assistant director of Civilian Conservation Corps camp education.

Mr. McKELLAR, from the Committee on Post Offices and Post Roads, reported favorably the nominations of sundry postmasters.

The PRESIDING OFFICER (Mr. NEELY in the chair). The reports will be placed on the Executive Calendar.

If there be no further reports of committees, the calendar is in order.

POSTMASTER

The legislative clerk read the nomination of Alice L. Woolman to be postmaster at Coweta, Okla.

Mr. McKELLAR. Mr. President, at the request of the junior Senator from Oklahoma [Mr. GORE], I ask that this nomination go over.

The PRESIDING OFFICER. The nomination will go over.

DEPARTMENT OF COMMERCE

The legislative clerk read the nomination of John Monroe Johnson, of South Carolina, to be Assistant Secretary of Commerce.

Mr. VANDENBERG. Mr. President, I wish to make a brief statement regarding Mr. Johnson's nomination.

Mr. NORRIS. Mr. President, will the Senator yield for an interruption?

Mr. VANDENBERG. I yield.

Mr. NORRIS. I had intended to ask that the nomination go over. Would the Senator rather make his statement now?

Mr. VANDENBERG. I told the Senator from South Carolina [Mr. BYRNES] that I would withdraw my objection today, and I desire to make a statement for the RECORD as to why the objection is withdrawn.

When the nomination came in last Saturday, the Committee on Commerce was polled, and the nomination was favorably reported to the Senate. On Monday Mr. Ewing Y. Mitchell, whom Mr. Johnson succeeded, made a public statement, including many charges respecting the Department of Commerce. Thereupon Mr. Johnson's nomination was recommitted to the Committee on Commerce. In the Committee on Commerce on the following day five members of the committee voted against reporting Mr. Johnson's nomination to the Senate.

Our reasons—perhaps I should content myself by speaking of my own reasons—my reasons for voting against reporting the nomination were that inasmuch as the position to which Mr. Johnson had been appointed was involved in the controversy which had been stirred up by Mr. Mitchell's charges, I felt that nothing should be done respecting the vacancy until the committee had concluded an investigation of Mr. Mitchell's charges. The committee have for 2 days investigated the charges. We have not yet concluded that hearing. However, in this morning's hearing before the committee I undertook to obtain all possible information respecting any possible question of Mr. Johnson's eligibility. Mr. Mitchell, the retiring Assistant Secretary, who has made the various charges against the Department, was specifically asked if he knew of any reason why Mr. Johnson should not be confirmed, and he said he knew of none. Thereupon we put the Secretary himself upon the stand, and the Secretary made a completely satisfactory statement respecting Mr. Johnson's credentials.

I particularly asked a question which the Senator from Alabama [Mr. BLACK] had raised, namely, whether or not Mr. Johnson had any investments in transportation companies or similar investments which might represent conflicting interests in respect to the responsibilities which he must administer. The Secretary gave us the assurance that there is no such conflict of interest.

The situation now stands entirely clear so far as I am concerned. We have every assurance that Colonel Johnson is fully qualified for the position to which he has been appointed. I desire to make this public statement and to withdraw my objection.

Mr. NORRIS. Mr. President, I ask that the nomination go over until tomorrow. The Senator from South Carolina [Mr. BYRNES] has no objection to its going over until tomorrow.

Mr. BYRNES. The Senator from Nebraska has said he would like to have the nomination go over, and I have no objection.

The PRESIDING OFFICER. Without objection, the nomination will go over.

POSTMASTERS

The legislative clerk proceeded to read sundry nominations of postmasters.

Mr. McKELLAR. I ask that the nominations of postmasters on the calendar be confirmed en bloc, with the exception of the nomination of the postmaster at Coweta, Okla., which has been previously passed over.

The PRESIDING OFFICER. Without objection, the nominations of postmasters on the calendar, with the exception noted, will be confirmed en bloc.

IN THE NAVY

The legislative clerk proceeded to read sundry nominations in the Navy.

Mr. WALSH. I ask that the nominations in the Navy be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations will be confirmed en bloc.

IN THE MARINE CORPS

The legislative clerk proceeded to read sundry nominations in the Marine Corps.

Mr. WALSH. I ask that the nominations in the Marine Corps be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations will be confirmed en bloc.

That completes the calendar.

RECESS

Mr. GEORGE. As in legislative session, I move that the Senate take a recess until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 5 o'clock and 13 minutes p. m.) the Senate took a recess until tomorrow, Friday, June 21, 1935, at 12 o'clock meridian.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 20 (legislative day of May 13), 1935

PROMOTIONS IN THE NAVY

To be commander

Robert W. Hayler.

To be lieutenant commanders

George P. Kraker
Frederick C. Sachse
John B. Longstaff

To be lieutenants

Elijah W. Irish
Richard H. Gingras
Ernest S. L. Goodwin
Lermond H. Miller
Clement R. Criddle
John D. Reppy
Arthur H. Graubart
Charles E. Tolman, Jr.

To be lieutenants (junior grade)

Robert B. Farquharson, Jr.
Gilbert H. Mitchell
Charles L. Fraser
Harold E. Baker
Odale D. Waters, Jr.
Alfred G. Ward
Lloyd M. Mustin
William W. Brown
Henry G. Munson
Porter Lewis
John S. Horner
Harry Hull
George W. Bailey
Sidney A. Ernst
David D. Scott
Frank H. Brumby, Jr.
Ernest D. Hodge
Harry L. Reiter, Jr.
Morton Sunderland
Ernest P. Abrahamson
Ronald L. Wilson
Richard H. Lambert
Burl L. Bailey
Robert H. Weeks
Spencer L. Shaw
Paul G. Osler
George L. Raring
William J. Dimitrijevic
Robert B. Fulton, 2d
John M. Lietwiler
Herbert M. Coleman
Selden C. Small
Joel C. Ford, Jr.
William R. Franklin
Clayton R. Simmers
Howard R. Prince
Jacob A. Lark
Paul H. Grouleff
Joseph C. Wylie, Jr.
Francis M. Douglass
Scott K. Gibson
William I. Bull
Levering Smith
John R. Leeds
Thomas M. Fleck
Stephen M. Archer
Theodore H. White
John M. Grider
Earl P. Finney, Jr.
Richard C. Williams, Jr.
Harold L. Sargent
Edwin C. Woodward
Robert E. Vandling
Jack I. Bandy
Norman E. Blaisdell
George R. Beardslee
William B. Perkins
Ernest M. Snowden
Hugh L. Hendrick, Jr.
Maximilian G. Schmidt
Alvin W. Slayden
George W. Kehl
Barry K. Atkins
John Corry
Ralph M. Wilson
Jacob C. Myers
Robert O. Beer
Daniel L. Carroll, Jr.
Frank M. Parker
Henry I. Allen, Jr.
Allen M. Shinn
John L. Counihan, Jr.
Lucien E. Wagnon
Rex B. Little
William L. Tagg
Robert C. Young
Bruce McCandless
William R. Cox
Allen B. Adams, Jr.
Mason J. Hamilton
Henry C. DeLong
George R. Luker
Samuel F. Quarles
George C. Hunter
William H. Groverman, Jr.
William W. Vanous
John S. Lewis
Thomas D. F. Langen
George W. Pressey
Robert P. Walker
George O. Hobbs
Max C. Mather
Jack W. Wintle
Alton E. Parker
Arthur H. Vorpahl
Malcolm E. Garrison
Mark E. Dennett
Reynolds C. Smith
Robert D. Roblin
Bernard W. Freund
DeWitt C. McIver, Jr.
John W. Ramey
Norman J. Sampson
John B. Smith
James G. Marshall
Lindsey Williamson
William Winter, Jr.
John S. Fahy
Richard D. Harwood
Ennis W. Taylor
Allan A. Ovrom
Clare B. Smiley
John C. DeWitt, Jr.
Malcolm T. Munger
Howard E. Shelton, Jr.
Harry W. Seely
Albert S. Major, Jr.
James A. Thomas
Philip W. Cann
Jack Roudebush
William C. F. Robards
Garry W. Jewett, Jr.
John F. Fairbanks, Jr.
Nathaniel M. Dial
James D. Collett
John H. Hooper
Adolphe Wildner
Charles M. Lyons, Jr.
Herbert L. Jukes
Joseph A. McGoldrick
Roland O. Lucier
Harvey H. Head
Hinton A. Owens
Charles C. Gold
Nicholas J. Nicholas
Paul D. Williams
Michael B. O'Connor
Samuel P. Moncure
Victor B. McCrea
Otto A. Scherini
John J. Sutton
John G. Tennent, 3d
Charles Keene, Jr.
George R. Wilson
Juan P. Domenech
George E. Porter, Jr.

To be ensign

Dermott V. Hickey

To be medical inspector

Earl C. Carr

To be assistant dental surgeons

Alvin H. Grunewald
Lewis M. Smylie
Richard F. Redden

To be pay inspector

George C. Simmons

To be passed assistant paymaster

William L. Patten

MARINE CORPS

Ross E. Rowell to be colonel.
Joseph W. Knighton to be major.
James A. Mixson to be major.
Lawrence T. Burke to be captain.
Thomas B. White to be captain.
Thomas J. Walker, Jr., to be captain.
Maxwell H. Mizell to be captain.
Ellsworth N. Murray to be first lieutenant.
Alpha L. Bowser, Jr., to be first lieutenant.
James G. Smith to be first lieutenant.
Forest C. Thompson to be first lieutenant.
Michael S. Currin to be second lieutenant.
Lewis J. Fields to be second lieutenant.
Henry B. Cain to be second lieutenant.

POSTMASTERS

ALABAMA

Otis B. Hunter, Boaz.
Gordon G. Stimpson, Daphne.
Ludwig Lindoerfer, Elberta.
Chalmers W. Hyatt, Guntersville.
Byron F. Watson, Lincoln.
Blanche Hendon, Townley.
David G. Pearce, Vina.
Maurice W. Holmes, Vinemont.
Jesse B. Robinson, Jr., Waverly.

CONNECTICUT

John W. Morris, Canaan.
Frederick C. Flynn, Thomaston.

FLORIDA

Frank W. Dole, Fellsmere.
John W. Watson, Fort Meade.
Bernice Parham, Lacoochee.
R. Aline Fraser, Macclenny.
Oscar C. McDaniel, Sneads.
Amanda H. Richards, Wewahitchka.

GEORGIA

Andrew J. Trulock, Climax.
Leila W. Maxwell, Danville.
Afley M. Cherry, Donalsonville.
Bennie Leviton, Fargo.
Augustus B. Mitcham, Jr., Hampton.
Edward A. Barnett, Leary.
Elizabeth S. Maxwell, Lexington.
George H. Ray, Norwood.
Sara W. Bulloch, Ochlochnee.
George S. Thompson, Odum.
Isaac F. Arnow, Saint Marys.

INDIANA

Stanley P. Nelson, Auburn.
William H. Bradshaw, Carbon.
Samuel O. McCarty, Carthage.
Philip L. Macklin, Decatur.
Clarence T. Custer, Dupont.
Elnora Root, Hagerstown.
Evan G. Moreland, Hymera.
Anna M. Records, Lawrence.
Iva S. Turmail, Vallonia.
Thomas E. Christman, Wabash.
Joel G. Barnes, Waldron.

KANSAS

David Earl Moore, Dexter.
James H. Sandifer, Eldorado.
John L. A. Wainscott, Hazelton.
Helen M. Collins, Lenexa.
Erwin E. Lewerenz, Lincolnville.
John E. Hartsell, Oxford.
Clyde Williams, Preston.
Henry F. Dodson, South Haven.
Milo R. Housh, Winchester.

NEW MEXICO

Filiberto E. Lucero, Espanola.
John C. Leonard, Raton.

RHODE ISLAND

William H. Seifert, Chepachet.

TEXAS

Gertrude E. Berger, Boling.
Claud A. Howard, Bronson.
Harry McDonald Thomson, Coleman.
Nadyne Goodman, Collinsville.
Roy B. Miller, Crawford.
William H. Wheeler, Eustace.
Cleo K. Hinton, Forney.
Juanita M. Thomas, Gause.
Vera G. Kirkpatrick, High Island.
James A. Greer, Kopperl.
Augustus S. Hightower, Millsap.
Clarence O. Bruce, Seagoville.
Henry E. Cannon, Shelbyville.
Louise McElroy, Shepherd.
Helen A. Milhan, Terrell Wells.
John M. Strawn, Trent.

UTAH

Mattie S. Larsen, Castle Dale.
Lydia R. Strong, Huntington.
George T. Williams, Kamas.

VIRGINIA

Howard C. O'Bryan, Austinville.
Isaac C. Taylor, Big Stone Gap.
Nannie A. Chisholm, Clover.
Bernard E. Young, Dayton.
Beatrice B. Higginbotham, Forest.
George K. Fielder, Fries.
Frank B. Rice, Halifax.
Alfred Prentiss Bull, Hallwood.
William B. Owen, Jarratt.
James E. Thomas, Marion.
Allan A. Lanford, Palmyra.
Howard F. Gilliam, Phenix.
Edgar W. Sims, Rapidan.
John E. Pace, Ridgeway.
Pauline H. Duncan, Riverton.
Frank D. Coleman, Rose Hill.
Zuleime H. Sealock, Sperryville.
Haller M. Bowman, Timberville.

WEST VIRGINIA

Irvin J. Richardson, Bartley.
Olga O. Baughman, Belington.
Robert Y. Henley, Caretta.
Hugh A. Christie, Everettville.
Thomas O. Wash, Kayford.
Esta B. Combs, Man.
Okey K. Burdette, Point Pleasant.
William E. Simpson, Power.
Lewis H. M. Christie, Renick.
Charles Dillard, Walton.
James H. Trail, Winding Gulf.

HOUSE OF REPRESENTATIVES

THURSDAY, JUNE 20, 1935

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Almighty God, we rejoice that the wide open spaces are full of sunlight and underneath are the everlasting arms.

Whither shall I go from Thy Spirit? Or whither shall I flee from Thy presence? If I take the wings of the morning, and dwell in the uttermost parts of the sea, even there shall Thy hand lead me, and Thy right hand shall hold me.

O Father of mercy, forgive our sins, cleanse us from all secret faults, and inspire us with humility. Make us rich in love that we may lose ourselves. Fill us with hope that we may endure hardness as loyal servants of the Republic. We pray Thee to consecrate all the relations of family life. May the hearts of fathers, mothers, and children meet together and the old and new be joined in one golden circle. Through Christ our Savior. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Horne, its enrolling clerk, announced that the Senate had passed with amendments, in which the concurrence of the House is requested, a bill of the House of the following title:

H. R. 7260. An act to provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the ad-

ministration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes.

The message also announced that the Senate insists upon its amendments to the foregoing bill, requests a conference with the House thereon, and appoints Mr. HARRISON, Mr. KING, Mr. GEORGE, Mr. KEYES, and Mr. LA FOLLETTE to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2917. An act authorizing an appropriation to the American Legion for its use in effecting a settlement of the remainder due on, and the reorganization of, Pershing Hall, a memorial already erected in Paris, France, to the commander in chief, officers, and men of the expeditionary forces.

The message also announced that the Senate agrees to the amendments of the House to bills of the Senate of the following titles:

S. 314. An act for the relief of Vito Valentino; and

S. 1052. An act for the relief of the Washington Post Co.

SECOND DEFICIENCY BILL, 1935

Mr. O'CONNOR. Mr. Speaker, I call up House Resolution 266.

The Clerk read the resolution, as follows:

House Resolution 266

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of H. R. 8554, a bill making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1935, and for prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1935, and June 30, 1936, and for other purposes, and all points of order against said bill are hereby waived. That after general debate, which shall be confined to the bill and shall continue not to exceed 2 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and the amendments thereto to final passage without intervening motion, except one motion to recommit, with or without instructions.

Mr. O'CONNOR. Mr. Speaker, I yield 30 minutes to the gentleman from Pennsylvania [Mr. RANSLEY].

Mr. Speaker, this is a rule for the consideration of the deficiency appropriation bill, an open rule providing for 2 hours of general debate. For the moment, that is all I care to say about the rule.

Mr. RANSLEY. Mr. Speaker, on this side of the aisle we are desirous to have the rule explained by the gentleman from New York. If he will not do so now probably he will do it later. I yield such time as he may desire to the gentleman from New York [Mr. SNELL].

Mr. SNELL. Mr. Speaker, I desire briefly to discuss the rule, but not quite so briefly as the chairman of the committee in his opening statement. I am somewhat familiar with the general rules of the House and the intent and purposes of the rules. I am and always have been in favor of special rules. I believe the majority should use special rules whenever necessary to put through its program.

But, with the strength of the majority, there are certain moral obligations that go with it for the protection of the minority. The rules of the House, as everyone knows, are for the protection of the minority. The majority does not need any protection, as far as the rules are concerned, because they have the votes; and that is really the important question.

This is the first time, as far as I know—and I think it is practically the first time in a great many years—when we have had a general appropriation bill before the House and general debate has been denied.

That is entirely a new custom, and I certainly should have been glad to have had the gentleman from New York explain why he did this at this time.

Of course, it is not a question of time. In a discussion with the majority leader and the Chairman of the Rules Committee last evening they both admitted that there was no special important program for the balance of the week.

That being the situation, I cannot understand why we should be cut off from some general debate at this time, considering that that has been the custom of the House for a great many years.

The only conclusion to which I can come is the fact you yourselves to a certain extent are ashamed of the legislation that you are putting through. You have not the courage to get up here and defend the legislation. On the other hand you have not the nerve to sit here and have someone else criticize it, so you have adopted the easiest way and by mere force of numbers cut off general debate. That is a pretty fair and frank statement relative to the position 10 or 15 minutes time for debate. I have said to them what that you have taken in denying general debate.

Several Members upon our side have asked me to get them 10 or 15 minutes time for debate. I have said to them what the Speaker has often said, that he preferred not to have them come in with general debate in the House early in the daily sessions, and that it was better to have general debate during the regular time, which has always heretofore been in order, namely, on appropriation bills.

Mr. BUCHANAN. Mr. Speaker, will the gentleman yield?

Mr. SNELL. Yes.

Mr. BUCHANAN. As Chairman of the Committee on Appropriations, I discussed with the ranking minority member on the committee, the gentleman from New York [Mr. TABER] relative to confining this debate to the bill, and he urged absolutely no objection. I stated that to the Rules Committee, and, therefore, the Rules Committee is not to blame. If Mr. TABER had urged objection at that time it might have been another story.

Mr. SNELL. Mr. Speaker, I have not discussed this matter with the gentleman from New York [Mr. TABER], but I have discussed it with a great many Members on our side who have asked for time. I have tried to protect the program of the House, and have them take their time on general appropriation bills.

Mr. BUCHANAN. But I was justified in relying on the conversation with the ranking member of the minority on my committee.

Mr. SNELL. I have not heard about any such agreement as that.

Mr. BUCHANAN. It was not an agreement, but there was no objection made to it.

Mr. SNELL. I know that it is not satisfactory and is not the desire of a majority of the Members upon our side to not have general debate on appropriation bills, which is the proper time for general debate. During the entire session I have been very generous in yielding to unanimous-consent requests. I have never intended to interpose an objection merely for the sake of making the objection. The majority has to get unanimous consent and to ask courtesies of the minority much more than the minority has of the majority, because the responsibility is on the side of the majority. Therefore I feel that it is taking an unfair advantage, after the courteous treatment accorded the majority, to refuse us at this time, opportunity for general debate, and I ask now whether that is to be the policy of the majority from now on, that there shall be no more general debate during the present session. If that be so, then I doubt if you will adjourn any earlier or it will in any way shorten the session. I am just as anxious as anyone else here to adjourn and go home, but there are certain rights that I feel we have, and at least one of them is the right of debate. Some gentlemen on the Democratic side may think that they will always have just as large a majority as they have at the present time. I have been here when we had almost as large a majority as there is on the Democratic side at the present time, and as far as I know we never once took advantage of the minority, because of that fact. My position always was that it is perfectly harmless to let the

other fellow talk, as long as we have the votes, but gentlemen on the Democratic side seem to go a great deal further, and the only conclusion that we can draw—and I have tried to be fair about it—is that they are not willing to publicly debate and discuss questions brought before the House, and let the people know the real issues that are before Congress. I am appealing to the common sense and fairness of gentlemen on the Democratic side, who claim to be so fair, that this be not made a permanent policy on the part of the majority. [Applause on the Republican side.]

Mr. O'CONNOR. Mr. Speaker, the minority leader has very calmly expressed a complaint about a situation which in fact does not exist. This is not a general appropriation bill. It is a deficiency appropriation bill, containing a number of items which may be controversial.

Mr. MARTIN of Massachusetts. Mr. Speaker, will the gentleman yield?

Mr. O'CONNOR. Yes.

Mr. MARTIN of Massachusetts. It has always been the custom in the past, however, to have general debate go along with the consideration of a deficiency appropriation bill.

Mr. O'CONNOR. I do not know. Probably that is true; I do not know whether there have been any exceptions to that custom or not, but why do we need a rule for this bill? In the first place, we did not start this. This deficiency bill came in here and could have been taken up in the usual way. It is a privileged bill. It contains certain items of legislation as in most appropriation bills, and when that was called to the attention of the House the gentleman from New York [Mr. TABER], the ranking minority member of the Committee on Appropriations, took an arbitrary position on the matter, and it was he who made the necessity for the rule. He arbitrarily insisted on points of order, and he knew at the time he did it that we would be compelled to bring in a rule, the prime purpose of which is to waive points of order.

What else could we have done? We could have let the general debate go on, and when points of order were made we would have had to postpone the general debate until we could bring in a rule to make those matters in the bill in order. That has been done heretofore, but knowing the position the minority was going to take, and I call it an arbitrary position, as to the matters in this bill, principally because they refer to some controversial or political subjects, we had to bring in a rule.

Mr. TABER. Will the gentleman yield?

Mr. O'CONNOR. I yield.

Mr. TABER. My position in objecting to the request yesterday was based upon my belief that some of these legislative matters contained in the bill ought not to be passed.

Mr. O'CONNOR. The gentleman could have thrashed that out in the House and he could convince the majority of the House that they should not be passed. The gentleman did not have to express his opposition by making points of order.

Mr. MARTIN of Massachusetts. Will the gentleman yield?

Mr. O'CONNOR. I yield.

Mr. MARTIN of Massachusetts. Does not the gentleman think that these legislative matters should go to the legislative committee? Why should the Appropriations Committee set itself up as the one determining committee in this House?

Mr. O'CONNOR. I cannot answer that. I do not know enough about it. The Chairman of the Committee on Appropriations can probably answer the gentleman.

Mr. BUCHANAN. Will the gentleman yield?

Mr. O'CONNOR. I yield.

Mr. BUCHANAN. It was because the chairman of the legislative committee waived it and agreed that it go in this bill.

Mr. MARTIN of Massachusetts. Did all the members of the legislative committees agree to that?

Mr. BUCHANAN. All except one that I remember of, and I forgot to ask him.

Mr. MARTIN of Massachusetts. But there is more than one committee involved.

Mr. BUCHANAN. I said all but one committee, and I forgot to ask him.

Mr. MARTIN of Massachusetts. The gentleman probably misunderstood my question. Did every member of the legislative committee agree to it?

Mr. BUCHANAN. No. I only conferred with the chairman.

Mr. MARTIN of Massachusetts. Well, the chairman has no right to run the legislative committee.

Mr. O'CONNOR. Now, Mr. Speaker, what is all this tempest in a teapot about? The majority is accused of using its vast majority to stifle general debate. General debate! It might better be called "general abuse." That is what it usually is from the minority side. [Laughter and applause.]

This Congress has been in session for 6 months. We have heard countless political speeches. Under the guise of general debate we have heard the "opening guns" of the next campaign, which is still 15 months away. Further opportunity for such speeches is sought by the minority under the guise of general debate. They want to get up here and talk about everything under the sun except the measure immediately before the House.

Mr. BUCHANAN. Will the gentleman yield?

Mr. O'CONNOR. I yield.

Mr. BUCHANAN. Is it not a fact that this is the last appropriation bill, and that on all others that were passed in this House they have been given all the time they asked for in general debate?

Mr. O'CONNOR. And there let me further say more time than has been granted ordinarily in the past. On the last bill which came in, for instance, the legislative appropriation bill, to accommodate the minority, we let them blow off, you might say, for a whole week.

Mr. SNELL. Now, Mr. Speaker, the gentleman ought to be a little more careful about his language.

Mr. TABER. Mr. Speaker, some of the time yielded to the minority was yielded back to the majority so that the majority could exercise its lungs.

Mr. O'CONNOR. That may be so.

Mr. SNELL. Will the gentleman yield for a question?

Mr. O'CONNOR. I yield.

Mr. SNELL. I think the gentleman ought to be a little more temperate in his language. The gentleman says that we are always abusing and blowing off. I think we have been as temperate in debate at this session as the average Democratic Member of the House has been at this time or during any previous administration.

Mr. O'CONNOR. Well, those comparisons are always invidious, anyway.

Mr. LUDLOW. Will the gentleman yield?

Mr. O'CONNOR. I yield.

Mr. LUDLOW. I rather resent that opprobious term, "blowing off", as applied to the magnificent, though somewhat prolonged, burst of oratory that occurred on the legislative appropriation bill when it was under my direction as chairman of the subcommittee. [Laughter.]

Mr. O'CONNOR. I think we have had enough general debate for this session. There is enough meat in this particular bill to have some real serious discussion of it on both sides. I think at this late date we ought to be through with what is commonly and sometimes vulgarly called "general debate." [Applause and laughter.]

Mr. Speaker, I yield 7 minutes to the gentleman from Ohio [Mr. HARLAN].

Mr. HARLAN. Mr. Speaker, apropos of the subject of general debate and the use to which it is put, in the RECORD of June 17 appeared a speech by the gentleman from Massachusetts [Mr. MARTIN], in which this statement was made:

> The progress of the rest of the world along the road of recovery in comparison with our record shows the folly of many of the Roosevelt experiments. Fifteen countries have started back on the recovery trail.

I shall not read all of the statement, but I will put it in my remarks. But it states that almost all countries have advanced——

Mr. SNELL. Mr. Speaker, reserving the right to object——

Mr. HARLAN. Mr. Speaker, I do not want this reservation taken out of my time.

Mr. SNELL. Mr. Speaker, I make the point of order that the gentleman is indulging in general debate at this time, which is against the order in the special rule. I am sorry to have to make that point of order, and I ask the Speaker to rule.

The SPEAKER. The Chair hopes the gentleman will proceed in order.

Mr. HARLAN. I am discussing the futility of general debate as a method of disseminating false propaganda.

Mr. SNELL. False propaganda! That is general debate. That is exactly what I asked for on this bill and it was denied. I object, and I ask the Speaker to rule.

The SPEAKER. The gentleman will proceed in order.

Mr. HARLAN. We are discussing an appropriation bill. An appropriation bill is connected with the general economic welfare of the country. The gentleman from Massachusetts says that the economic condition of the country——

Mr. MARTIN of Massachusetts. Mr. Speaker, I insist that the gentleman proceed in order.

Mr. SNELL. What is sauce for the goose is going to be sauce for the gander. If we are not going to have general debate on the bill, we will not have it here.

The SPEAKER. The gentleman has not proceeded sufficiently for the Chair to understand whether he is in order or out of order.

Mr. HARLAN. I asked the gentleman from Massachusetts when he was making this very startling statement about the economic conditions of the country——

Mr. SNELL. Mr. Speaker, I make the point of order that the gentleman is indulging in general debate when he speaks about a specific debate between himself and the gentleman from Massachusetts [Mr. MARTIN].

Mr. MICHENER. Mr. Speaker, what we are now considering is the rule. It is just a question of whether or not we are going to adopt this rule.

Mr. HARLAN. That is exactly it.

Mr. MICHENER. This does not include general debate on reciprocity treaties, on the tariff, or on other subjects. It is a matter of procedure only, if we are going to be technical. We are considering the adoption of a rule the purpose of which is to make the consideration of a particular bill in order.

Mr. BLANTON. Mr. Speaker, I make the point of order that where the rule under consideration changes the general rules of debate on an appropriation bill, anything that is pertinent to any part of that rule is legitimate in debate in consideration of the rule.

The SPEAKER. The Chair thinks the gentleman from Texas is correct, but the gentleman must confine himself to the resolution before the House and not discuss extraneous matters.

Mr. O'CONNOR. Mr. Speaker, in this connection, not only the resolution but the bill referred to in the resolution can be discussed, I maintain.

Mr. SNELL. The Speaker has ruled on the question.

Mr. MICHENER. In that connection I may say that while sometimes we permit such discussion, it is subject to a point of order.

Mr. O'CONNOR. Mr. Speaker, I maintain that when a rule is brought in for the consideration of a bill that in discussing the rule it is permissible also to discuss the subject matter of the bill referred to in the rule.

The SPEAKER. The Chair thinks that the question now under debate is whether there shall or shall not be general debate on the bill. While this debate may involve certain features or provisions of the bill, the Chair does not think it would justify a Member discussing extraneous matter. Discussion on the resolution now before the House applies only to the question of whether there shall be general debate on the bill. This would not authorize a Member to discuss matters which are not germane to the resolution.

Mr. HARLAN. Mr. Speaker, the gentleman from New York, in discussing this rule, said we were limiting justifiable debate, which ought to take place at this time. I am taking the reverse of the argument and contending that debate ought to be limited, because at this particular time debate is being used to disseminate false propaganda and political bunk in the RECORD for propaganda purposes.

The SPEAKER. The gentleman from Ohio is clearly in order if that is the line of discussion.

Mr. EKWALL. Mr. Speaker, the gentleman has just admitted he is disseminating bunk. I think the gentleman is out of order.

Mr. HARLAN. I said I am trying to eradicate that and was proceeding to illustrate how general debate has been abused in this House.

Mr. EKWALL. I misunderstood the gentleman.

Mr. SNELL. Mr. Speaker, I renew my point of order that the question of how general debate has been abused in this House is not proper debate on the rule.

The SPEAKER. The Chair thinks that is a legitimate part of the discussion if the gentleman confines himself to the question of whether or not there shall be general debate on the bill.

Mr. SNELL. That is all right.

The SPEAKER. The Chair thinks that is a perfectly legitimate argument.

Mr. SNELL. The gentleman said he was going to show it was bunk and propaganda, which is another proposition entirely.

The SPEAKER. The question of whether or not it is bunk is for the Members to decide for themselves.

The Chair cannot undertake to dictate to the gentleman the language he shall use so long as he keeps within the scope he has indicated.

Mr. HARLAN. Mr. Speaker, we have had so much false propaganda spread in the RECORD by the minority for the purpose of destroying confidence in this country that in the consideration of these bills we do not need any longer discussion than is provided in the rule, and I cite the argument of the gentleman from Massachusetts [Mr. MARTIN] as an example of the evil we now face.

I asked the gentleman, after he had made the startling statement that the United States had gone back in business recovery nine points——

Mr. SNELL. Mr. Speaker, I make the point of order that the gentleman from Ohio is not discussing the proposition before the House.

The SPEAKER. The Chair is unable to determine that at this stage of the gentleman's argument.

The gentleman from Ohio will proceed in order.

Mr. MICHENER. Mr. Speaker, would it help the Chair if we had the gentleman's words taken down so the Speaker could read his argument?

Mr. GREENWOOD. Mr. Speaker, the gentleman from New York complained that the rule was a departure from the usual custom with regard to general debate and the gentleman from Ohio is answering the very point raised by the minority leader by saying that one of his colleagues in the consideration of another rule took advantage of the discussion of the rule by placing in the RECORD facts that did not pertain to the rule. The gentleman from Ohio is answering the very point raised by the gentleman from New York.

Mr. MARTIN of Massachusetts. Mr. Speaker, may I be heard a moment?

The statement the gentleman is discussing I never used in general debate as the term is being considered here.

I was speaking properly on the A. A. A. bill.

Mr. HARLAN. If the gentleman will admit on the floor that the statement he formerly made concerning recovery in the United States is not true, that is sufficient for me.

Mr. MARTIN of Massachusetts. I will not admit the statement was not true, because it is true. I do not think that has anything to do with this resolution, however.

Mr. TABER. Mr. Speaker, the meat of this situation is that if this gentleman is permitted to discuss these things the gentleman from Massachusetts must be permitted to discuss the same thing.

The SPEAKER. The gentleman from Massachusetts will be permitted to discuss the rule if the gentleman is granted time by the gentleman from Pennsylvania, but the gentle-

man from Massachusetts, as the gentleman from Ohio, must confine himself to the subject before the House, and that question is as to the advisability of the passage of this resolution which confines discussion to the bill itself and prohibits general debate.

Mr. HARLAN. Mr. Speaker, I asked the gentleman from Massachusetts the authority for making this most sensational statement that, if true, would have been emblazoned across the front page of every newspaper in the country.

Mr. SNELL. Mr. Speaker, I make the point of order that the gentleman is not discussing the matter under consideration.

The SPEAKER. The Chair cannot say at this time whether the gentleman is or is not proceeding in order.

Mr. BLANTON. Mr. Speaker, I make the point of order that when debating a rule that would do away with general debate, which but for the rule would be in order, and general debate means discussion of every subject on the face of the globe, all reasons for eliminating general debate are pertinent and in order, and takes in a subject as broad as the universe, and the gentleman certainly can discuss all such reasons.

The SPEAKER. The Chair thinks that any discussion which undertakes to justify or otherwise the question as to whether or not general debate shall be confined to the bill is legitimate, and the Chair so rules, and hopes that the gentleman from Ohio will proceed in order, as the Chair believes he will.

Mr. HARLAN. Mr. Speaker, following the statement of the gentleman from Massachusetts to the effect that the United States had gone in retrograde nine points in the last 2 years, I asked the gentleman his authority for the statement. He said he saw it in the newspapers some place.

Mr. SNELL. Mr. Speaker, I make the point of order that the gentleman from Ohio is not following the decision of the Chair, and I respectfully submit the question to the Chair.

Mr. HARLAN. Mr. Speaker, I am tracing this propaganda down to its source to show that the time of general debate in this particular instance was used for no other purpose than to start rumors, propaganda, and shake confidence.

The SPEAKER. The Chair does not think that propaganda has anything to do with the discussion of the rule under consideration. The Chair may say to the gentleman from Ohio that he should confine himself—and the Chair hopes he will—to a discussion of whether or not it is proper for the House to confine general debate to the bill or whether general debate should be opened to a discussion of all subjects.

Mr. SABATH. Mr. Speaker, as I understand it, the gentleman is trying to justify the resolution by pointing out that if general debate is permitted very little information will be given to the House with reference to the bill and that the time for general debate is used generally for the purpose of giving out statements that are absolutely false and misleading to the country. The gentleman feels that the House should have information on the bill, and for this reason he is arguing in favor of the resolution which restricts general debate to the bill.

Mr. HARLAN. If the Chair has ruled, and no appeal taken from that decision, I should like to proceed.

I asked the gentleman from Massachusetts his authority and he said he saw it in the newspapers. I asked him what newspaper. He said he did not know.

Mr. SNELL. Mr. Speaker, I make the point of order that the gentleman is not complying with the ruling of the Chair.

Mr. GREENWOOD. Mr. Speaker, I should like to be heard in opposition to the point of order. This rule restricts debate to the bill. The gentleman from Ohio is showing that this is a better rule than a rule which allows general debate on any subject.

The SPEAKER. The gentleman will proceed in order.

Mr. SNELL. Mr. Speaker, I make the point of no quorum.

The SPEAKER. The Chair will count. [After counting.] One hundred and forty-seven Members present; not a quorum.

Mr. TAYLOR of Colorado. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 98]

Bankhead	Ellenbogen	McClellan	Smith, Conn.
Biermann	Fish	McGroarty	Snyder
Brooks	Frey	Mitchell, Ill.	South
Buck	Gasque	Montague	Stack
Bulwinkle	Gassaway	Murdock	Steagall
Cannon, Wis.	Goldsborough	Oliver	Stefan
Casey	Greever	Patman	Tinkham
Clark, Idaho	Haines	Patton	Tobey
Cochran	Hart	Perkins	Tolan
Connery	Hartley	Peyser	Underwood
Cross, Tex.	Hennings	Rankin	Wearin
Dear	Higgins, Conn.	Robinson, Utah	Whelchel
DeRouen	Higgins, Mass.	Rogers, Okla.	White
Disney	Kennedy, Md.	Russell	Wilson, La.
Dorsey	Lamneck	Scrugham	Withrow
Doutrich	Larrabee	Shannon	
Eaton	Lemke	Sisson	

The SPEAKER. Three hundred and sixty-two Members have answered to their names, a quorum.

On motion of Mr. TAYLOR of Colorado, further proceedings under the call were dispensed with.

The SPEAKER. The gentleman from Ohio [Mr. HARLAN] will please suspend while the Chair makes this statement: It has always been the custom heretofore in discussing resolutions making in order matters of legislation for Members to be rather liberal in their discussions and not necessarily to confine themselves to the pending resolution.

The Chair thinks that discussion on these rules should not be too narrowly restricted. Of course, under the precedents, a Member must confine himself to the subject of debate when objection is raised. The pending resolution is one which undertakes to limit general debate upon the deficiency bill to 2 hours and to confine the debate to the bill itself. The Chair thinks it is entirely too narrow a construction to undertake to hold a Member, in discussing the resolution either pro or con, to the simple question of whether or not the rule should be adopted, and that it is entirely legitimate discussion for a Member who is undertaking to uphold the rule and to justify confining debate to the bill to cite as illustrations what has occurred in previous discussions. The Chair does not think a Member, in using such illustrations, is justified in answering a speech that has been made upon a previous occasion. However, the Chair repeats that the Chair does think it is perfectly legitimate for a Member who is undertaking to justify the rule to refer to experiences on previous occasions where the debate was not limited to the bill, and the Chair hopes that the gentleman from Ohio will proceed in order.

Mr. KNUTSON. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. KNUTSON. Would a discussion of the new soak-the-rich plan come within the Speaker's rule?

The SPEAKER. Certainly not.

Mr. KNUTSON. I am asking for information.

Mr. HARLAN. Mr. Speaker, I believe we have already taken up too much time with this discussion, and in the interest of expediting the business of the House I ask unanimous consent to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. HARLAN. Mr. Speaker, the question before the House is the advisability of having prolonged general debate at this time in our legislative program. I submit that that is not advisable, for the reason that general debate is now being used by the minority in the House of Representatives to foment discontent, to shake the confidence of the country, and to disseminate false political propaganda.

It has very little, if any, value so far as one can see or hear in instructing the Members of Congress on the facts back of any of the bills under consideration. For example, on June 17, when we were on general debate on the resolution to bring the agriculture adjustment bill before the House for consideration, the gentleman from Massachusetts [Mr. MARTIN] made the following statement:

The progress of the rest of the world along the road to recovery in comparison to our record shows the folly of many of the Roosevelt experiments. Fifteen countries have started back on the

recovery trail, Sweden leading with a 41-percent margin; Hungary is 33 percent ahead of 2 years ago; Italy, 31 percent; Germany, 26 percent; Japan, 17 percent; Canada, 17 percent. Only four countries are worse off than they were 2 years ago: Norway, 1 percent; Belgium, 3 percent; United States, 9 percent; and France, 16 percent.

The utter silliness and absurdity of that statement with reference to the United States ought not to require any refutation at all to any group of men who have lived in this country for the last 2 years. If such a startling condition did exist, it would be six-column, front-page news on every newspaper in the United States.

Some time after the gentleman made the remark, I addressed this question to him:

The gentleman in the early part of his speech gave out some figures; I should like to ask him where he got those figures?

Mr. MARTIN of Massachusetts. They were printed in yesterday's Sunday newspaper in a report quoted from the League of Nations.

I subsequently asked him the name of the newspaper, to which he said that he did not know; and I then asked him if it were the Hearst papers, and he said that it was not. These last two questions and answers are not apparent in the record.

I did not, however, believe at the time, nor do I believe now for one moment, that the gentleman from Massachusetts made any intentional misstatements concerning facts which he no doubt had read somewhere and forgot where he read them.

My point in this whole matter is that when one takes the floor of the House of Representatives in debate of any kind there is a serious responsibility on his shoulders as to the authority of the statements made. Particularly at this time of stress in our country, when everyone is still suffering from the nervous strain brought about by the depression, and is constantly fearful that we are going to be precipitated back into the conditions prior to 1933. Many people look upon the CONGRESSIONAL RECORD as a very authoritative source, and any statement such as the one quoted above would be fluently quoted throughout the country and no questions asked.

Following the lead of the gentleman from Massachusetts, that he got this from a Sunday newspaper, quoting the League of Nations, I examined a number of Sunday newspapers, but could find no such statement. I did see in the New York Times, which is about as authoritative a paper as we have in the country, an article commenting upon a compilation by the National Industrial Conference Board. I understand that this Board is in close association with the League of Nations and would naturally speak for that organization.

That article, which appeared on Monday, June 17, states as follows:

World production in industry showed a gain in April over the average in the first quarter of the year, according to a compilation of the National Industrial Conference Board. In all the principal countries except France, Belgium, Switzerland, and Holland the output was substantially larger than a year ago.

The United States is clearly listed among the nations showing improvement. I also procured a copy of the June edition of the Survey of Current Business, compiled by the United States Department of Commerce, and found that the index for production in April of 1933 was 66, in April of 1934 was 85, and in April of 1935 was 86. I noticed in the copy of today's Washington News a United Press dispatch from Pittsburgh, quoting an address before the National Association of Credit Men, which says:

The United States is now 40 percent out of the depression.

For the sake of the gentlemen on the minority side of the House, who are apparently uninformed, I may say that the depression period referred to ran from 1929 to 1933.

The Department of Commerce issued a statement under date of June 5, reading as follows:

To summarize some of the important changes, it may be noted that farm income in the first 4 months of 1935 was 61 percent above that for the same period of 1933 and 12 percent in excess of that for early 1934. Industrial production was up 41 and 7 percent, respectively, while the increase in employment, retail sales, and foreign trade have also been substantial. Gains in such individual lines as automobiles, electric refrigerators, and rayon have been especially large, and it is interesting to note that a number of commodities are being manufactured and sold in greater quantities than in 1929.

The improvement in purchasing power in rural areas has been much more rapid than in industrial centers so that the farmer has again assumed a more normal position as a consumer. Similarly, the general price rise and the improvement in profits has lightened the debt burden of industry. Further, the problem of the surplus of agricultural commodities has been largely resolved during the past 2 years. While stocks of cotton are still high, other important surpluses have been removed and the present concern is the production of adequate supplies rather than the elimination of existing stocks.

With the enhancement of profits, the distribution of dividends has turned upward, shrinking to about a third of the 1929 volume. The national income as a whole has expanded substantially in the past 2 years and is currently running above the level of a year ago. One of the hopeful signs of recent months has been the resumption of capital financing. While new issues have been largely for refunding purposes they afford evidence of a demand for desirable securities and of the ability of business concerns to meet regulations governing such issuance.

I am taking this time to show the absurd inaccuracy of the statement put into the CONGRESSIONAL RECORD by the gentleman from Massachusetts, based on an authority which he had misplaced. But if there were no such authority, the conduct of the gentlemen who are now gloating over the temporary defeat of the national industrial recovery movement would be arguments louder than any word.

During 1932, with the markets of the country constantly shrinking and production being constantly ahead of distribution, the industrial interests of this country realized that they were committing suicide by cutting each others throats, and they could see no way out of the difficulty. Individually, they were most of them honorable, high-class men; but they felt that they must keep their factories going, they must keep in production, and to do so they had to beat their competitors' price. They chiseled and cut; they exploited childhood; they reduced wages to the pauper level; and bankruptcy faced industry everywhere.

In desperation their representatives conceived and planned the National Industrial Recovery Act. They presented it to President Hoover and were unable to get cooperation. After the election of President Roosevelt they did get cooperation, because there was no other way out. Members of this Congress will remember the enthusiastic letters of endorsement that came from leaders of industry all over the United States urging us to pass this act, as well as the Agricultural Adjustment Act.

It is true that they did not want section 7 (a). They wanted the privilege of organizing, controlling prices, and running the show generally; but they did not want their employees to have anything to say. However, in spite of a flood of propaganda sent to us by the Manufacturers Association and the different chambers of commerce throughout the country, 7 (a) was put in; and the thing started off in high hope, the only fly in the ointment being that the same group that realized their own helplessness against their own inherent dishonesty began immediately to chisel and cheat by building up their inventories to mountain heights prior to the effective date of the N. R. A. They wanted to use cheap labor to beat competitors who tried to pay N. R. A. wages. However, that second effort of industry to commit suicide was frustrated, and things started on the upgrade.

Within the last year, we have again begun to operate on an expanding market. That is, distribution has been keeping slightly ahead of production; and as long as that condition exists there is no need of industry trying to protect itself from its own destruction, because factories can be kept open and business obtained without killing competition.

Therefore, just now the system of honesty and fair play, set forth in the Industrial Recovery Act, is no longer needed, and the restraint is somewhat hampering. Consequently a great wave of sentiment came over the country to wipe out the N. R. A., and when the Supreme Court accomplished that fact, at least temporarily, great was the rejoicing therefor.

In 1933 there would have been no rejoicing over the destruction of N. R. A. It was the salvation of industry at that time, and they all knew it because they were on a contract-

ing market; but in 1935 there is great rejoicing. We do not need any more arguments to show our business recovery than the fact that industry realizes that it is again on an expanding market.

All of this detail is pertinent to show the utter absurdity of the statement of the gentleman from Massachusetts. Whoever was the original author of that statement designed it purely as propaganda, to create a canard to go out over the country to give industry and business and banking one more chill in order to try to stop the upward march of commerce.

These gentlemen who talk about the Roosevelt policies shaking the confidence of the Nation, and with the next breath manufacture and disseminate all of the false rumors possible, certainly do not need a very expanded privilege of general debate in the House of Representatives to continue their activities.

I do not say that the remarks of the gentleman from Massachusetts were intentional in this regard, but he was certainly a most subtle agent in the hands of someone who did have an intention to throw one more scare into our people.

On yesterday's mail I received a letter from a man, otherwise sane, containing the following paragraph:

I am given to understand that in our industry—the heavy machinery—with a present total tax load of $187,110,000, on the basis of 1933 pay rolls, taxes would be increased if the social-securities bill is passed, 8 percent in 1936, 23 percent in 1937, and gradually stepped upward to 46 percent in 1949 and after.

And in that letter he enclosed a circular containing most sensational statements about the expenditures of the United States Government during the last 3 years, statements that are so absurd on their face that any normal man ought to be able to see their falsehoods; but the trouble is the people of the United States are not in a nervous condition right now to be normal, and the antiadministration forces, who apparently have very little regard for the truth in their efforts to gain control of the Government in 1936, are willing to say or do anything, regardless of a shadow of truth, to frighten and cajole the electorate.

Their main purpose seems to be to manufacture and spread fertilizer to bring some life to the dead grass roots which they raked over in Illinois the other day. They have no regard as to the poison they may be disseminating to healthy industrial verdure in the process. What they desire is to resurrect the dead.

Therefore, Mr. Speaker, it ought to be apparent to anyone that continued and prolonged debate in this House, where opportunity is not given to question and produce the authorities of the statements made, can be of little benefit to anyone; and therefore I submit that we ought not have more than 2 hours on this appropriation bill.

Mr. O'CONNOR. Mr. Speaker, I move the previous question on the rule.

The previous question was ordered.

The SPEAKER. The question is on the passage of the resolution.

Mr. SNELL. Mr. Speaker, on the passage of the resolution I ask for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 269, nays 95, not voting 65, as follows:

[Roll No. 99]

YEAS—269

Adair	Brennan	Colden	Dempsey
Amlie	Brown, Ga.	Cole, Md.	Dickstein
Arnold	Brown, Mich.	Colmer	Dies
Ashbrook	Brunner	Cooley	Dietrich
Ayers	Buchanan	Cooper, Tenn.	Dingell
Barden	Buckler, Minn.	Corning	Dobbins
Beam	Burch	Costello	Dockweiler
Beiter	Cannon, Mo.	Cox	Dorsey
Bell	Cannon, Wis.	Cravens	Doughton
Berlin	Carmichael	Crosby	Doxey
Biermann	Carpenter	Cross, Tex.	Drewry
Binderup	Cartwright	Crosser, Ohio	Driscoll
Bland	Cary	Crowe	Driver
Blanton	Castellow	Cullen	Duffey, Ohio
Bloom	Chandler	Cummings	Duffy, N. Y.
Boehne	Chapman	Daly	Duncan
Boileau	Citron	Darden	Dunn, Miss.
Boland	Claiborne	Deen	Dunn, Pa.
Boylan	Coffee	Delaney	Eagle
Eckert	Jenckes, Ind.	Miller	Schuetz
Edmiston	Johnson, Okla.	Mitchell, Tenn.	Schulte
Eicher	Johnson, Tex.	Monaghan	Scott
Ellenbogen	Johnson, W. Va.	Montet	Sears
Evans	Jones	Moran	Secrest
Farley	Kee	Moritz	Shanley
Ferguson	Keller	Murdock	Sirovich
Fernandez	Kelly	Nelson	Smith, Va.
Fiesinger	Kennedy, N. Y.	Nichols	Smith, Wash.
Fitzpatrick	Kenney	Norton	Smith, W. Va.
Flannagan	Kerr	O'Brien	Somers, N. Y.
Fletcher	Kleberg	O'Connell	South
Ford, Calif.	Kloeb	O'Connor	Spence
Ford, Miss.	Kniffin	O'Day	Starnes
Frey	Kocialkowski	O'Leary	Stubbs
Fuller	Kopplemann	O'Neal	Sullivan
Fulmer	Kramer	Owen	Sumners, Tex.
Gambrill	Kvale	Palmisano	Sutphin
Gasque	Lanham	Parks	Tarver
Gehrmann	Lea, Calif.	Parsons	Taylor, Colo.
Gildea	Lee, Okla.	Patterson	Taylor, S. C.
Gillette	Lesinski	Patton	Terry
Gingery	Lewis, Colo.	Pearson	Thom
Goldsborough	Lewis, Md.	Peterson, Fla.	Thomason
Granfield	Lloyd	Peterson, Ga.	Thompson
Gray, Ind.	Lucas	Pettengill	Tonry
Green	Luckey	Pfeifer	Turner
Greenway	Ludlow	Polk	Umstead
Greenwood	McAndrews	Quinn	Utterback
Greever	McCormack	Rabaut	Vinson, Ga.
Gregory	McFarlane	Ramsay	Vinson, Ky.
Griswold	McGehee	Ramspeck	Wallgren
Gwynne	McGrath	Randolph	Walter
Haines	McKeough	Rankin	Warren
Hancock, N. C.	McLaughlin	Rayburn	Weaver
Harlan	McMillan	Reilly	Werner
Harter	McReynolds	Richards	West
Healey	McSwain	Richardson	Whittington
Hildebrandt	Mahon	Robertson	Wilcox
Hill, Ala.	Maloney	Romjue	Williams
Hill, Knute	Mansfield	Rudd	Wilson, La.
Hill, Samuel B.	Martin, Colo.	Ryan	Wood
Hobbs	Mason	Sabath	Woodrum
Hoeppel	Massingale	Sadowski	Young
Hook	Maverick	Sanders, La.	Zimmerman
Houston	May	Sanders, Tex.	Zioncheck
Huddleston	Mead	Sandlin	
Imhoff	Meeks	Schaefer	
Jacobsen	Merritt, N. Y.	Schneider	

NAYS—95

Allen	Dirksen	Kinzer	Reed, N. Y.
Andresen	Ditter	Knutson	Rich
Andrew, Mass.	Dondero	Lambertson	Robsion, Ky.
Andrews, N. Y.	Ekwall	Lehlbach	Rogers, Mass.
Arends	Engel	Lord	Sauthoff
Bacharach	Englebright	Lundeen	Seger
Bacon	Fenerty	McLean	Short
Blackney	Gavagan	McLeod	Snell
Bolton	Gearhart	Maas	Stefan
Brewster	Gifford	Mapes	Stewart
Buckbee	Gilchrist	Marcantonio	Taber
Burdick	Goodwin	Marshall	Taylor, Tenn.
Burnham	Guyer	Martin, Mass.	Thomas
Carlson	Halleck	Merritt, Conn.	Thurston
Carter	Hancock, N. Y.	Michener	Treadway
Cavicchia	Hartley	Millard	Turpin
Church	Hess	Mott	Wadsworth
Cole, N. Y.	Hollister	O'Malley	Wigglesworth
Collins	Holmes	Pittenger	Wilson, Pa.
Cooper, Ohio	Hope	Plumley	Wolcott
Crawford	Hull	Powers	Wolfenden
Crowther	Jenkins, Ohio	Ransley	Wolverton
Culkin	Kahn	Reece	Woodruff
Darrow	Kimball	Reed, Ill.	

NOT VOTING—65

Bankhead	Eaton	Lemke	Sisson
Brooks	Faddis	McClellan	Smith, Conn.
Buck	Fish	McGroarty	Snyder
Buckley, N. Y.	Focht	Mitchell, Ill.	Stack
Bulwinkle	Gassaway	Montague	Steagall
Caldwell	Gray, Pa.	Oliver	Sweeney
Casey	Hamlin	Patman	Tinkham
Celler	Hart	Perkins	Tobey
Christianson	Hennings	Peyser	Tolan
Clark, Idaho	Higgins, Conn.	Pierce	Truax
Clark, N. C.	Higgins, Mass.	Robinson, Utah	Underwood
Cochran	Hoffman	Rogers, N. H.	Wearin
Connery	Kennedy, Md.	Rogers, Okla.	Welch
Dear	Lambeth	Russell	Whelchel
DeRouen	Lamneck	Scrugham	White
Disney	Larrabee	Shannon	Withrow
Doutrich			

So the resolution was agreed to.

The following pairs were announced:

On this vote:

Mr. Higgins of Massachusetts (for) with Mr. Eaton (against).
Mr. Russell (for) with Mr. Christianson (against).
Mr. Oliver (for) with Mr. Fish (against).
Mr. Dear (for) with Mr. Perkins (against).
Mr. Patman (for) with Mr. Tinkham (against).
Mr. Scrugham (for) with Mr. Hoffman (against).
Mr. Hennings (for) with Mr. Focht (against).

Mr. Gassaway (for) with Mr. Tobey (against).
Mr. Disney (for) with Mr. Higgins of Connecticut (against).
Mr. Buck (for) with Mr. Doutrich (against).

Until further notice:

Mr. Montague with Mr. Welch.
Mr. Cochran with Mr. Lemke.
Mr. Truax with Mr. Withrow.
Mr. Bankhead with Mr. McClellan.
Mr. Pierce with Mr. Brooks.
Mr. DeRouen with Mr. Snyder.
Mr. Connery with Mr. Lambeth.
Mr. Kennedy of Maryland with Mr. Eckert.
Mr. Casey with Mr. Larrabee.
Mr. Steagall with Mr. Faddis.
Mr. Sisson with Mr. Robinson of Utah.
Mr. Hamlin with Mr. White.
Mr. Stack with Mr. Whelchel.
Mr. Hart with Mr. Tolan.
Mr. Rogers of New Hampshire with Mr. Gray of Pennsylvania.
Mr. Bulwinkle with Mr. Peyser.
Mr. Lamneck with Mr. Caldwell.
Mr. Sweeney with Mr. Wearin.
Mr. Underwood with Mr. Clark of North Carolina.
Mr. Buckley of New York with Mr. Clark of Idaho.
Mr. Celler with Mr. McGroarty.

Mr. McCORMACK. Mr. Speaker, my colleague, Mr. HIGGINS of Massachusetts, is unavoidably absent. If present, he would vote "aye."

IS THE "DEATH SENTENCE" IN THE SENATE PUBLIC-UTILITY HOLDING COMPANY BILL CONSTITUTIONAL?

Mr. PETTENGILL. Mr. Speaker, I ask unanimous consent to extend my remarks on the constitutional question involved in the public-utilities bill.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. PETTENGILL. Mr. Speaker, except for the Constitution of the United States no one of us would be here. We hold office under it. We have sworn to support it. It is the measure of our powers. Beyond those powers we cannot go, and should not try to go, until and unless "We, the people of the United States", who created the Constitution, see fit to extend our powers. It is not our law. It is the people's law. It is our authority to act for the people and their limitation upon our authority.

Because the people can change the Constitution no one can respect the people and representative government if he does not respect the supreme law of the people as interpreted by the people's highest Court.

In the volume and rush of our work, and especially in such a crisis as confronted us in 1933, there is a human tendency to "let the courts" decide the questions of law. In cases where one does not have a clear conviction on the matter one may forgive himself if he decides to leave those questions to the judiciary before whom the case will be carefully briefed and critically examined by opposing counsel and the court.

When, however, one conscientiously comes to a clear conviction that the bill before him is one which he does not have the power to pass, his duty is as clear as his conviction.

I have such a conviction about the pending bill (S. 2796). I refer to that bill because the House bill is not yet reported. It is my conviction that if the Senate bill becomes "law" it will meet with another devastating rebuke from the Supreme Court.

My belief means nothing to you unless the reasons which led me to that belief are reasons that appeal to you. I shall state those reasons. I shall state them in the simplest possible terms because many of my colleagues are not lawyers and yet are without doubt as much concerned about their oaths of office as the best lawyers on the hill.

The question deserves our careful attention for the following reasons; the importance of the legislation with respect to the industry concerned; the number of our constituents affected; the effect of the bill on national recovery, which I consider of major if not supreme importance; the rights and powers of the 48 States; the responsibility of government itself for the existing situation; the fact that this bill is advertised by some of its sponsors as a prelude to other legislation with respect to all other holding companies in industry, newspapers, and so forth; recent Supreme Court history; the fact that parliamentary government the world over is at the bar of current discussion and, last, while not making this in any wise a party matter, because the bill is supported by both Republicans and Democrats, I hope I may be excused for mentioning the prestige of the party in power which is primarily responsible for legislation.

On the latter point I refer to the "hot oil" case held unconstitutional by a vote of 8 to 1; the "gold-clause" case, held valid as to private contracts by a vote of 5 to 4 and unconstitutional as to Government bonds by a vote of 9 to 0; the railroad pension bill held unconstitutional by 5 to 4; the N. R. A. case held unconstitutional by 9 to 0; the Frazier-Lemke bill held unconstitutional by 9 to 0; the Humphrey dismissal held unconstitutional by 9 to 0. Surely the time has now come when we must carefully study the legal as well as social problems presented by proposed bills. Otherwise we "sin against the light" and will be held responsible for our carelessness by our constituents.

THE IMPORTANCE OF THE INDUSTRY

The industry concerned is a business representing twelve and one-half billion dollars of actual investment. It reaches into nearly every home in the Nation. It is affected with a public interest. It has made in recent years, and is capable of again making, the largest expenditure of money for extensions and additions to plant and the purchase of durable goods, where our greatest unemployment lies, of any industry in America with the possible exception of railroads and residence construction. It pays taxes for the support of government in the amount of $245,000,000. The bill involves the most delicate questions with respect to the rights and powers of the 48 States and the Central Government. In fact, Dr. Splawn, who conducted the investigation of the industry for the Federal Trade Commission, stated his opinion that the pending bill "is the most important bill which has been before the Congress within a decade" (House hearings, p. 2187).

THE NUMBER OF PEOPLE AFFECTED

It serves nearly 25,000,000 customers, all of whom are entitled to the best service at the lowest cost consistent with a fair return to capital invested. In this connection it may be said that its rates are today lower by comparison with pre-war, 1913, prices than any other group of prices, even those of the farm. In competition with steam, diesel engines, gas, gasoline, and direct water power, it furnishes probably 80 percent of our industrial power. In serving the public the industry employs some 300,000 men and women directly, to say nothing of indirect employment in copper, glass, coal, switchboards, heavy machinery, and so forth.

The money invested, $12,600,000,000, is owned directly by from five to ten million investors. At four to a family, there are from twenty to forty million people who derive a part of their support from this industry. This is an average of from 46,000 to 92,000 people in the home districts of the Members of this House.

In addition to direct owners let us consider those who are indirectly the owners of the industry. Among them are those whose savings have gone into life insurance. Counting ordinary, industrial, group, and fraternal insurance, it is estimated that there are 65,000,000 separate individuals whose lives are insured to provide for their old age, or for wife and children when they are gone. This is nearly twice as many as ever voted in a Presidential election. Total insurance on these lives exceeds $105,000,000,000, an average per life insured of $1,600. Nine percent of the assets of the companies to pay these policies when they mature is invested in utility securities. In other words, for every $10 paid in premiums 90 cents is invested in this industry.

In addition to life insurance there are fire, windstorm, accident, health, automobile, and casualty companies; savings banks, with millions of depositors; hospitals, colleges, churches, charities, and so forth, whose assets are invested in this industry.

The bill, therefore, affects the welfare and property of at least 65,000,000 people, directly or indirectly, and the millions more of persons dependent upon them. This is an average of at least 150,000 in every congressional district.

THE RESPONSIBILITY OF GOVERNMENT FOR THE EXISTING SITUATION

Government, State and Federal, is itself directly responsible for holding companies. This seems to me to be an additional reason for giving this bill the most conscientious examination possible. The crooks in the industry are not alone at fault. Government is itself at fault. Because of that fact we should be particularly careful with respect to rights of innocent people who invested their savings not only with the consent, but almost at the invitation of their own Government. Why do I say that?

First. What is a holding company? It is a corporation that owns stock in another corporation. At common law this was not permitted. But by action of the State legislatures of all or nearly every State in the Union the rule was changed. The States therefore created the situation in which the investment was made. If holding companies are inimical to our institutions (and many of them are)—the States and Nation, in fairness, should have discovered that fact many years ago. We do not have, therefore, a white sheet of paper to write upon. We have instead a tangled skein, woven in part by Government itself.

Second. Many States have expressly authorized, and, therefore, invited investments in utility securities to be made by banks, insurance companies, and trustees.

Third. Many States forbid a corporation chartered in another State from exercising in the first State the right of eminent domain to acquire land for corporate purposes. As an example, a natural-gas pipe line running from the Texas Panhandle to St. Paul or Chicago. Although the pipe line is an economic unit, several local State corporations are required to be created, whose stock in turn must be held by a holding company in order to have unified management and to attract investment. The legal situation in such case makes a holding company inevitable if the people of Texas are to have a market for their gas and the people of Chicago are to have cheap fuel.

Fourth. Many States exempt their own citizens from taxation on stocks and bonds of corporations chartered by such State. This again invites the creation of holding companies in order to get the advantages of low-cost capital by local investors in local companies which may be part of a holding company system, such as the pipe line referred to.

Fifth. When the Federal Government permitted consolidated corporation income-tax returns to be made it encouraged the creation and growth of holding companies. This has been corrected, in part at least, by recent legislation.

Sixth. The Federal Government is again responsible by reason of its action, following the World War, in repealing the income-tax law on intercorporate dividends; that is, tax on dividends received by one corporation from another. This again encouraged the development of holding companies, direct and intermediate.

We have therefore a situation which Government has itself permitted and encouraged. In that situation the rights of millions of innocent people have become inextricably interwoven. Because of that fact it weighs upon my conscience to be far more careful in dealing with this situation than if Government, State and Federal, were in no way responsible. Our people ought not, by our action, to feel that they have been unjustly dealt with by their own Government. Or, as Justice Oliver Wendell Holmes once said, "We have to choose, and, for my part, I think it a less evil that some criminals should escape than that the Government should play an ignoble part."

I do not, of course, contend that the action or nonaction of former legislatures or Congresses should estop a later Congress from dealing with serious abuses which have grown up under the aegis and protection of Government. I merely contend that in such case one should be especially vigilant to be just.

This is a long preface to an examination of the constitutional questions involved. It is made only to justify the care with which that examination should be made.

In this discussion I confine myself to title 1 of the Senate bill, and particularly the "death sentence", to be found in section 11. Important questions are involved in other titles of the bill, but I have not had time to examine them.

THE POWER OF CONGRESS TO DEAL WITH THE SUBJECT MATTER OF THE BILL

The power of Congress to act in this matter in any way whatever is to be found in only three sentences of the Constitution, the power "to establish post offices and post roads", the power "to regulate commerce among the several States", and to "make all laws which shall be *necessary* and *proper* for carrying into execution the foregoing powers." Assuming that the holding companies are solvent the constitutional power "on the subject of bankruptcies" does not seem to be involved.

The express limitations upon those powers are two paragraphs in the Bill of Rights, the fifth amendment:

> No person shall be * * * deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

And the tenth amendment:

> The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people.

WHAT WE HAVE TO DEAL WITH

As a typical situation, we have a corporation lawfully organized and deriving its powers from one of the sovereign States of the Union to which—

> Powers not delegated to the United States * * * are reserved.

The company has bought stock in another company as it is legally authorized to do. The company is solvent. Its securities have been sold in interstate commerce. It uses the mail, telegraphy, telephone, and express across State lines in the conduct of its business. Its business is management. It is not itself engaged in generating, transmitting, distributing, or selling electric current or gas. That business is done by the company whose stock it owns. It sells nothing to the public except its securities. Its management of the company it owns consists in furnishing it with legal, insurance, purchasing, financing, engineering, and managerial service. When these charges are excessive the lower company is "milked." Sometime it owns a subsidiary which engages in constructing power plants, transmission lines, and so forth.

The company which it owns produces and sells electric current to the public. Some of that current crosses State lines. The rates charged to the public by the owned company are regulated by a commission in the State in which it sells. Its securities are often subject to State "blue sky" laws.

Sometimes the holding company owns many such operating companies in its own or other States. Sometimes this ownership by the "top" company of the operating companies is through a chain of intermediate holding companies, perhaps as much as 10 "stories high." This permits "pyramiding" of control, with a minimum of investment at the top, through such devices as no-par voting stock sold at $1 or $5 or nothing a share.

The evils which have grown up in this situation have no defender in me. On another occasion I shall discuss them and what I think can and should be done by Congress to prevent their future occurrence. For the present I limit myself to the constitutional question.

QUERIES

In such typical situation we have first to ask these simple questions:

First. Is the holding company engaged in interstate commerce?

Second. If so, does the bill go beyond the regulation of the holding company's interstate business and into other matters "reserved to the States"?

Third. Can Congress require the holding company to divest itself of the ownership of the stock of some or all of its operating companies?

Fourth. Can Congress permit the company to continue to own those stocks but require that it shall not vote the stock it owns?

Fifth. Can Congress force the company to go out of business, force it into receivership, and require it to pay its debts, distribute its assets to its security holders, and surrender its charter? This is the "death sentence."

Sixth. Does the bill attempt to confer upon the Commission an unlawful delegation of congressional power, as in the Schechter "sick chicken" case?

Seventh. What is the force of the fact that the company uses the instrumentalities of interstate commerce and the United States mail? Can Congress forbid such use or grant it only on condition that the company agrees to do as Congress says?

Eighth. If Congress can regulate such company in some respects, does the bill go beyond what is "necessary and proper for carrying into execution" the power to regulate, and thus enter the jurisdiction "reserved to the States, respectively"?

Ninth. In regulating the company, does the bill go so far as to be unreasonable and arbitrary and thus amount to a deprivation of liberty or property to the company or to its stockholders, in violation of the fifth amendment, which provides that such property cannot be taken except on due process of law or without just compensation?

Tenth. Does the ownership of stock in a corporation chartered in another State make the owner one who is engaged in interstate commerce?

No hedgehog bristles with more spines than this bill does with law questions, but the above are the principal ones.

All these questions are answered in favor of the bill by the two young gentlemen who wrote the bill, Mr. Ben Cohen and Mr. Tom Corcoran. Their brief will be found at page 807 of the Senate hearings. It is also to be found in the CONGRESSIONAL RECORD of May 29, page 8402. I invite your attention to it. It is an exceedingly able, though attenuated, argument. I disagree with it in toto.

A STAR TO STEER BY

It is clear that in regulating commerce Congress cannot go beyond what is *necessary* and *proper* for carrying into execution the power to regulate. Congress can regulate the shipment interstate commerce of diceased chickens. But can it regulate the number of hours the chicken shall scratch? No; because the power to regulate hours of work is not necessary and proper to regulate the shipment of the chickens, and also because that power is reserved to the States. The fifth and tenth amendments did not overlook the hen that lays the egg.

When the law plays its last card, it is plain common sense. It is not common sense to burn the barn to kill the rats. It is also the law that government cannot burn the barn unless "necessary and proper" to kill the rats. If potassium cyanide will do the job, that is as far as the law can go.

All this is "elementary, my dear Watson; elementary." From now on we cannot avoid a more technical discussion.

In *Railroad Retirement Board* v. *Alton Railroad Co.*, decided last month, the Supreme Court said:

> When the question is whether legislative action transcends the limits of due process guaranteed by the Constitution, decision is guided by the principle that the law should not be *unreasonable*, arbitrary, or capricious, and that the means selected shall have a *real* and *substantial* relation to the object sought to be attained (i. e., the *regulation* of interstate commerce).

Throughout the consideration of the question one cannot go wrong if he keeps constantly in mind the language of the Supreme Court in the *Employers' Liability cases* (207 U. S. 463), as follows:

> It remains only to consider the contention which we have previously quoted, that the act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, *because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress.* To state the proposition is to refute it. It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution, in other words, with the right to legislate concerning matters of purely State concern. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the States as to all conceivable matters which from the beginning have been and must continue to be under their control so long as the Constitution endures.
>
> * * * * * * *
>
> Concluding, as we do, that the statute, whilst it embraces subjects within the authority of Congress to regulate commerce, also includes subjects not within its constitutional power, and that the two are so interblended in the statute that they are incapable of separation, we are of the opinion that the courts below rightly held the statute to be repugnant to the Constitution and nonenforceable.

WHAT THE DEATH SENTENCE DOES

The "death sentence", section 11 of Senate bill, requires—

> each registered holding company and each *subsidiary company* (sic) thereof to divest itself of any interest in or control over property or persons (which includes corporations) to such an extent or the Commission (Securities Exchange Commission) *finds necessary* * * * to limit the operations of the holding-company system, of which such company is a part, to a single *geographically and economically integrated public-utility system.*

It further provides that each such company—

> be *reorganized* or *dissolved*, whenever the Commission finds that the *corporate structure* or *continued existence* of such company *unduly* or *unnecessarily* complicates the structure of the holding-company system of which it is a part, or *unfairly* or *inequitably* distributes voting power among the holders of securities, or is *detrimental* to the *proper* functioning of a single *geographically and economically integrated public-utility system.*

[NOTE.—The words which I have placed in italics are not defined in the bill. They raise the whole question of legislative standards to guide administrative action. What does Congress mean by "a single geographically and economically integrated system"? When is a corporate structure "unduly" or "unnecessarily" complicated? Under what circumstances is voting power "unfairly" or "inequitably" distributed? What is the "proper" functioning of a utility system?]

After January 1, 1940, *all* registered holding companies beyond the "first degree" must cease to be such by giving up their assets or control, or by dissolution and winding up their affairs. Holding companies in the first degree shall be permitted to continue upon "such terms and conditions as the Commission—Securities Exchange Commission—may find *necessary* or appropriate in the public interest or for the protection of investors or consumers", and second, "*if*" the Federal Power Commission certifies that the "continuance of the holding company relation is *necessary*, under the applicable State or foreign law, for the operations of a geographically and economically integrated system serving an *economic region* in a single State or extending into two or more contiguous States or into a contiguous foreign country."

That is the "death sentence." It is *mandatory* upon *all* holding companies beyond the first degree.

It is broadly stated that holding companies in the first degree are to survive the date of execution. But it is manifest that before its fate is known it must *first* come within the "terms and conditions"—whatever they may be—of the Securities Exchange Commission, and *second*, secure a commutation of sentence from the Federal Power Commission which decides how much of its property must be whittled off to come within the Commission's ideas of a "geographically and economically integrated system serving an *economic area*"—whatever that is.

It can be plainly stated, therefore, that no utility holding company in the United States, even in the first degree, can know whether it will be permitted to live after 1940, or how much of its property it must surrender as a condition to live.

Such is the sentence under which this great business must live for the next 5 years.

OPERATING COMPANIES ALSO UNDER DEATH SENTENCE

It is commonly supposed that the "death sentence" may be imposed only on holding companies. *This is an error.* It may be imposed also on "subsidiary companies" which are defined as companies 10 percent or more of whose voting securities are owned or controlled by a holding company. In fact, a company less than 10 percent of whose voting stock is controlled by a holding company, *may* be declared to be a "subsidiary company" if found "necessary

or appropriate in the public interest or for the protection of investors or consumers." See section 2 (8).

It is plain, therefore, that in addition to holding companies any operating company in the United States (if 10 percent of its stock is owned by a holding company) may be directed to divest itself of part or all of its property or be dissolved and its affairs wound up, if such action is found "necessary or appropriate" to limit the operations of the system of which it is a part to a single geographically and economically integrated public-utility system, or if such operating company "unduly or unnecessarily complicates the structure of the system of which it is a part", or "unfairly and inequitably distributes voting power", and so forth.

The bill therefore is directed against practically every operating company in the Nation as well as holding companies. As to the *wisdom* of this it may be said that seldom, if ever, would the act be directed against operating companies. But I am not now speaking of its wisdom. I am speaking of the power. And if this be a "permitted object of Federal control, the extent of the regulation * * * would be a question of discretion and not of power" (Hughes, Chief Justice, in the Schechter case).

The operating company may be guilty of none of the evils set forth in the preamble of the bill. Nevertheless, it may be required to part with its property or go into liquidation. Its voting power may be redistributed. It is no avail that such voting power is distributed among its security holders as provided by the law of the sovereign State which created it. If, in the judgment of the Commission, such voting power is "unfairly or inequitably" distributed the company shall be reorganized or dissolved. *The Commission may thus veto the act of the legislature of the State of its creation, and may deprive a security holder of the operating company* of the right to vote his stock in accordance with State law, and *thus deprive him, in part, of the power to determine the management of the company in which he has invested his money in reliance upon State law.* The only offense of the operating company may be that it "unduly or unnecessarily" complicates the system of which it is a part, or is not a part of a geographically integrated system. But that offense is nevertheless punishable by dismemberment or dissolution.

One does not need to be long out of law school to recognize that all this raises questions of profound importance.

Let us suppose a simple case. An operating company is lawfully organized under State law. It is locally owned, operated, and managed. It is not physically connected with another electric system. It has a charter life of say 100 years. John Citizen buys some of its voting stock. He knows his investment is subject to the hazards of business. But except for those hazards he believes his investment is good for 100 years, the life of the charter.

But the company grows. It buys other properties. And worst of all, some of John Citizen's wicked neighbors, even against his will, sell *their* stock to *another* company. That company acquires 10 percent of the voting stock of the first. John Citizen's company is now through no fault of his a subsidiary company which unnecessarily complicates the system of which it is a part. Or it is found that John Citizen must give up some of his voting power to bondholders who had no such right when John Citizen made his investment, or when they made theirs.

For all or any of these sundry and heinous offenses John Citizen may be compelled to accept a stock different from the one he purchased, may see its voting control pass into other hands, or see his company compelled to sell property in which he as stockholder has an interest, or, finally, see his company completely reorganized or dissolved, although neither he nor it has committed any offense under the laws of the State of its creation or operation.

This is an extreme example of the powers conferred by the bill. *One must be deeply concerned upon the effect of all these many uncertainties upon investments not only in holding companies but operating companies as well.*

All this is brought under the interstate-commerce clause of the Federal Constitution on the theory, as maintained by Senator WHEELER, that the operating company is engaged in interstate commerce—although its operations are entirely intrastate—because, and only because, it is controlled by a holding company which in turn is engaged (?) in interstate commerce. This is the house that Jack built.

HOW FAR CAN CONGRESS GO?

Does the Constitution of the United States grant Congress the power to do these things as "*necessary* and *proper* for carrying into execution" its power to "regulate commerce * * * among the several States"? Again let me say I am discussing power, not evils. I am personally persuaded that "competitive charter mongering" by the States, notably Delaware, when the race has been one of laxity, not of diligence, has grown to be a great evil. I am persuaded that the concentration of control and dilution of investment under these charters has become a great evil. Still the question remains to what extent the Federal Government has the power to correct these evils, and if so, how far, and in what way, the power should be exercised.

First, the question of the delegation of legislative power, without adequate standards, to the Commission as set forth in section 11 of the Senate bill.

When does the "corporate structure" or "continued existence" of one company "unduly or unnecessarily complicate the structure" of another company which owns 10 percent of the stock of the first? Who can say? When is voting power "unfairly or inequitably distributed"? One would think that *the determination of that question by the legislature of the State of the company's charter,* as adopted by the organizers and investors in the company so organized would be final and conclusive. But no, the Commission may compel some other arrangement on the theory that what a sovereign State has authorized to be done is "unfair" and "inequitable." It may *change the contract* between the investor and the company. It may *rewrite the charter* to fit its own conception of equity. What will that be? No one knows and Congress does not tell.

Shall bondholders vote equally with common stock? If so, the bondholders might determine that with their senior position they would come out whole and vote to dissolve or sell the corporation at a price that would yield the common-stock holders nothing, even though the company is solvent and not in default in interest or dividends. Shall the preferred vote equally with the common stock? If so, shall that equality be share for share or dollar for dollar of original investment? Shall a common stock issued at $5 have an equal voice with a preferred stock issued at $100, or shall it have only one-twentieth of a vote? What is "equity" here? Congress does not say. If preferred stock originally issued at $100 is resold for $50, does the last buyer have a whole vote or a half vote? Congress does not say.

What is a "geographically and economically integrated public-utility system"? Take the geographical concept first. Take New England or Florida or Michigan. Does it mean a system in that geographical area entirely owned by one company, or would it be "geographically integrated" if there were several systems in the territory, all interconnected and exchanging power with each other? Would railroads, differently owned, be "geographically integrated" in that territory if they all exchanged their services to serve the people who lived there?

What is an "economically integrated system"? Economically for whom—the consumer or the investor, the buyer or the seller? Their interests are opposite. One wants cheap rates. The other wants dividends and security. To the consumer the system is economically integrated if it is well managed and produces cheaply, whether the system has other properties in other States or not. To the investor it may be "economically integrated" if there are many properties, widely scattered but centrally managed. To him diversification of risk may be a prime objective, and he might prefer to own stock in a system with properties widely separated, so that his dollar will not be entirely at the hazard of Florida hurricane, San Francisco earthquake, T. V. A. or economic depression in our locality.

It seems clear that section 11 over and over again runs foul of the principle laid down by the Supreme Court in

the Schechter and Panama—"hot oil"—cases. There the Court discussed "fair competition" as we are here concerned, among other questions, with an "unfair" distribution of voting power. The Court asked whether "fair competition" is a category established in the law" or whether it was a "convenient designation" of whatever may be deemed to be "wise and beneficent" in which one "*may roam at will.*" Or, as Justice Cardozo said, "Here, in effect, is a roving commission to inquire into evils and upon discovery correct them."

Other difficulties suggest themselves. Suppose an "unfair" distribution of voting power, if you can define it, or an "unnecessary complication" of corporate structure. Does it "directly" or "indirectly" affect commerce?

> Where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of State power" (Schechter case).

Does the distribution of voting power directly affect—indeed, can it have any effect upon the free flow of electric energy across State lines? *Can you impede voltage with an "unfair" stock certificate?*

Another question is this: The bill assumes that "service management, construction, and other contracts involve the allocation of charges among subsidiary companies" and may result in "*excessive charges*" to operating companies. I believe this is often true. I believe that in many cases such charges have been grossly excessive and difficult to run down. Still the question remains whether this is a matter for State or Federal action.

The charges made by holding companies for management, and so forth, is one of the bases for action to "make such company cease to be a holding company." How does this square with the Schechter case? There it was argued by the Government that "hours and wages affect prices." The court said, "If the Federal Government may determine the wages and hours of employees in the internal commerce of a State, because of their relation to *cost* and *prices* and their *indirect* effect upon interstate commerce, it would seem that a similar control might be exerted over other elements of cost, also affecting prices, such as the number of employees, rents, advertising, methods of doing business, etc." And Justice Cardozo said, "Activities local in their immediacy do not become interstate and national because of distant repercussions."

The quoted language refers to a situation by no means the same as that involved here. But let us analyze it. Here is an operating company wholly within one State, Texas, for example. It does not transmit electrical energy across State lines, either as buyers or sellers. Ten percent or more of its stock is owned by a holding company located in New York. The latter performs engineering or tax or legal services for the former. Let us say the charge is too much. It is "milking" the operating company. In the first place the utility commission of the State where the operating company is located ought to disallow the excess charge, as the Supreme Court says it may do. But suppose the State fails in its duty and the excess charge affects the price paid by the consumers, none of whom live outside the State. Is the service charge in such case a burden on interstate commerce merely because the holding company is located in New York, and all that crosses State lines are letters, a legal opinion, for example, by which the service is rendered by one company to the other?

Is it not clear that these matters only indirectly affect interstate commerce, if at all, and are as certain to be held unconstitutional as hours of wages in the Schechter case or railroad pensions in the Railroad Retirement Act case, both decided within the past month as *beyond* the power of Congress and *within* the reserved power of the States? And yet the destruction of the property rights of American citizens and the dissolution of *both holding and operating companies* are predicated upon these ingenious attenuations.

To the law officers of the Government who may be called upon to defend this bill before the United States Supreme Court, I extend my sympathy and condolences. As they march by the Halls of Congress on their way to the Supreme Court I can hear them mutter the despairing words of the Roman arena, "Morituri, salutamus te"—"We who are about to die, salute thee."

In passing it may be pointed out that if the Senate bill becomes law, it will be the first time in the constitutional history of this Republic where Congress has, by legislative fiat, presumed to order the dissolution of a corporation created under the authority of the laws of a sovereign State.

BRIEF

The foregoing only scratches the surface of the subject. I have stated it in the simplest possible terms. I know lawyer colleagues will wish to examine the question more critically, and I therefore attach a study of the cases.

SUPPORTING MEMORANDUM

Is the holding company engaged in interstate commerce? If so, it must be because (a) it owns stock in other companies, or (b) its business of management by United States mail, and so forth, is interstate commerce, or (c) it sells its securities in interstate commerce. Granting that any or all of these constitute commerce, the question still remains whether this fact warrants Congress in governing other of its activities as the bill attempts to do, or in destroying the company.

DOES OWNERSHIP OF STOCK CONSTITUTE COMMERCE?

Mere ownership of a mathematical percentage of voting stock is supposed to furnish a basis for Federal control. In fact, ownership is not required. Any person, an individual, may be held to be a "holding company" if he is found to "exercise a controlling influence." This is the first time the "regulation of commerce among the States" has been predicated on such a base. Even companies "*not so engaged*" (in interstate commerce) are brought within the bill. See section 15 (b).

Ownership of stock, even by a holding company, does not *per se* constitute the owner as engaged in the business of the corporation whose stock is owned (*Cannon Mfg. Co.* v. *Cudahy Co.*, 267 U. S. 333; *Peterson* v. *Chicago, Rock Island & Pacific Ry. Co.*, 205 U. S. 364).

The *Northern Securities case* (193 U. S. 197), both in the majority and minority opinions, shows that the rule of nonidentity between stockholder and corporation is fully recognized. In the dissenting opinion Mr. Chief Justice White, pages 369 and 370, wrote:

> Does the delegation of authority to Congress to regulate commerce among the States embrace the power to regulate the ownership of stock in State corporations, because such corporations may be in part engaged in interstate commerce? Certainly not, if such question is to be governed by the definition of commerce just quoted from *Gibbons* v. *Ogden*. Let me analyze the definition. "Commerce undoubtedly is traffic, but it is something more; it is intercourse"; that is, traffic between the States and intercourse between the States. *I think the ownership of stock in a State corporation cannot be said to be in any sense traffic between the States or intercourse between them.*
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> * * * * * * *
>
> *But the principle that the ownership of property is embraced within the power of Congress to regulate commerce* whenever that body deems that a particular character of ownership, if allowed to continue, may restrain commerce between the States or create a monopoly thereof, is in my opinion in conflict with the most elementary conceptions of rights of property.

The majority opinion did not controvert this statement by the Chief Justice. It held that the question was not involved. The Court said—page 334:

> In this connection it is suggested that the contention of the Government is that the acquisition and *ownership* of stock in a State railroad corporation is itself interstate commerce, if that corporation be engaged in interstate commerce. * * * Such statements as to the issues in this case are, we think, wholly unwarranted and are very wide of the mark; it is the setting up of mere men of straw to be easily stricken down. We do not understand that the Government makes any such contentions or takes any such positions as those statements imply. It does not contend *that Congress may control the mere acquisition or the mere ownership of stock* in a State corporation engaged in interstate commerce. *Nor does it contend that Congress can control the organization of State corporations authorized by their charters to engage in interstate and international commerce.*

In *Pullman Car Co.* v. *Missouri Pacific Co.* (115 U. S. 587), the Court held that ownership by the Missouri Pacific of substantially all of the stock in another company did not constitute control of the latter.

Stock ownership does not constitute interstate commerce, nor does it justify the treatment of the owner as if he were engaged in the activities of the company whose stock it owns (*United States* v. *Delaware & Hudson Co.* (213 U. S. 366); *United States* v. *Lehigh R. R. Co.* (220 U. S. 357); *United States* v. *Reading Co.* (253 U. S. 56); *New Hampshire Gas, Steam & Electric Co.* v. *Morse* (42 Fed. (2d) 490); *Toledo Traction, Light & Power Co.* v. *Smith* (205 Fed. 643); *United States* v. *Union Stockyard & Transit Co.* (192 Fed. 330); *Smith* v. *Illinois Bell Telephone Co.* (282 U. S. 133)).

A negative answer must therefore be given to the question whether stock ownership constitutes the owner as engaging in the business—interstate or intrastate—of the corporation whose stock is owned. Only a tortuous ratiocination could conceive of a person in the District of Columbia who owns 10 percent of the stock of a public utility in San Francisco as engaged in interstate commerce.

DOES THE BUSINESS OF A HOLDING COMPANY CONSTITUTE INTERSTATE COMMERCE?

Service, sales, and construction contracts are not interstate commerce, per se, even when the parties to them live in different States—which the bill does not demand—or when communication between them is maintained " by use of the mails or any means or instrumentality of interstate commerce, or otherwise "—as the bill recites. Contracts for advisory and other services are not interstate commerce (*Diamond Glue Co.* v. *United States Glue Co.*, 187 U. S. 611; *United States Fidelity & Guaranty Co. of Baltimore* v. *Commonwealth of Kentucky*, 231 U. S. 394). Nor are contracts for construction (*Kansas City Steel Co.* v. *Arkansas*, 269 U. S. 148; *General Railway Signal Co.* v. *Virginia*, 246 U. S. 500; *Browning* v. *Waycross*, 233 U. S. 16); and sales may or may not involve interstate commerce, according as they do or do not involve the transmission from State to State of the articles sold (*Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282; *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50; *Moore* v. *New York Cotton Exchange*, 270 U. S. 593). Borrowing and lending even between a principal and a subsidiary certainly do not constitute interstate commerce between them, and, if subject to regulation, it can only be on some theory apart from the nature of the acts themselves. (See *Graniteville Mfg. Co.* v. *Query*, 283 U. S. 376; *Engel* v. *O'Malley*, 219 U. S. 128.)

Insurance, the buying and selling of bills of exchange, the operation of an advertising agency, the reporting of credit standing, the buying and selling of cotton-future contracts, the dealing in negotiable notes have all been held not to constitute commerce (*Paul* v. *Virginia* (8 Wall. 168), *New York Life Insurance Co.* v. *Cravens* (178 U. S. 389), *New York Life Insurance Co.* v. *Deer Lodge County* (231 U. S. 495), *Nathan* v. *Louisiana* (8 How. 73), *Engel* v. *O'Malley* (219 U. S. 128), *Blumenstock Bros.* v. *Curtis Publishing Co.* (252 U. S. 436), *United States Fidelity Co.* v. *Kentucky* (231 U. S. 394), *Hemphill* v. *Orloff* (277 U. S. 537), *Moore* v. *New York Cotton Exchange* (270 U. S. 593), *Ware & Leland* v. *Mobile County* (209 U. S. 405)).

As against this formidable array of decision, Messrs. Cohen and Corcoran rely on practically one case on the point in question, *Federal Trade Commission* v. *Smith* (1 Fed. Sup. 247). A careful reading of that opinion shows that it does not support them. In fact it leads very clearly to an opposite conclusion in harmony with the rule laid down by the cases cited above.

To begin with, the case involved investigation, not regulation nor destruction. The Federal Trade Commission was seeking information. The case must be read in the light, first, of the fact that the respondent Electric Bond & Share Co., was engaged in the business of purchasing and selling to its subsidiary companies in interstate shipment of materials, apparatus, and supplies, that is, *physical property*, and, second, in the light of the well-established rule that charges made by a holding company to a subsidiary public utility company are relevant to an investigation into the reasonableness of rates charged by the subsidiary utilities, as laid down by the Supreme Court in *Smith* v. *Illinois Bell Telephone Co.* (282 U. S. 133) and *Western Distributing Co.* v. *Public Service Commission* (285 U. S. 119). In such case the company subject to Federal *regulation* is the utility company (if it transmits power over State lines) and not the holding company. The latter may be *investigated* as a corollary of the *regulation* of the former.

Except, therefore, as the Electric Bond & Share Co. engaged in shipping physical goods, the case is not authority to the proposition that its business of management was interstate commerce. The Court very clearly held the contrary in these words:

> From what has been made to appear to the Court, it is plain that the services performed by respondent on behalf of the holding and subsidiary operating companies, and which, broadly speaking, relate to legal, engineering, secretarial, fiscal, investigatory, and general advisory matters *are not such as will here avail the petitioner*. Without analyzing the services rendered by respondent within the foregoing classifications I shall content myself by concluding that they have to do with activities which, under authoritative decisions, are *not recognized as constituting interstate commerce*.

EFFECT, IF ANY, OF USE OF MAILS

The contention is made that because the holding company uses the United States mails the Federal Government may regulate *all* of its business, not simply its *mail* business. In other words, it is argued that as a condition to the right to use the mails a company may be required to subject all its business to Federal regulation, and failing to agree to Uncle Sam's terms, may be denied the use of the mails.

The answer to the startling contention is " No."

In *Lewis Publishing Co.* v. *Morgan* (229 U. S. 288) the Court upheld the power of Congress to classify mail matter, but referring to a contention of the Government that the postal power included an absolute right of selection of matters to be carried in the mails the Court said:

> We do not wish even by the remotest implication to be regarded as assenting to the broad contentions concerning the existence of arbitrary power through the classification of the mails.

In *New York Life Insurance Co.* v. *Deer Lodge County* (231 U. S. 495), the Court held that the mere use of the mails did not convert a local business into interstate commerce, saying " that they may live in different States and hence use the mails for their communications does not give character to what they do; * * *."

The postal power is circumscribed not only by its inherent limitations but by all other limitations in the Constitution (*Public Clearing House* v. *Coyne* (194 U. S. 497), *Burton* v. *United States* (202 U. S. 344), *Lewis Publishing Co.* v. *Morgan* (229 U. S. 288).

Among those limitations are the right to engage in lawful business which is a property right under the fifth amendment, the guaranty against unreasonable searches and seizures and the protection of the freedom of the press.

In *Ex parte Jackson* (96 U. S. 727), the leading case on the power of Congress to regulate mails, the Court said:

> The difficulty attending the subject arises, not from the want of power in Congress to prescribe regulations as to what shall constitute mail matter, but from the necessity of enforcing them consistently with rights reserved to the people, of far greater importance than the transportation of the mail.

It is apparent that if the power of Congress with respect to the mails is of the absolute and arbitrary character used as a foundation for Federal jurisdiction in the writing of this bill then the same device can be used to bring *all business whatsoever under congressional* control and thus use the Great Charter of our liberties as the warrant for their destruction.

> Oh, judgment, thou art fled to brutish beasts, and men have lost their reason!

Congress thus could do by indirection what it is forbidden to do directly, and all other guarantees of freedom would be " writ on water and carved on sand." The fifth and the tenth amendments reserving all powers not granted to the central Government to the " States, respectively, or to the people " would be as though they had never been.

We are asked to believe such balderdash in the very teeth of the language of the Supreme Court in *Lewis Publishing*

Co. v. *Morgan* (229 U. S. 288), cited above, where Chief Justice White denied the assumption—

> * * * That there was a right to compel obedience to the command of legislation having that object in view, to deprive one who refused to obey of all right to use the mail service.

We are asked to believe it, also, in the teeth of the unanimous decision in the Schechter case, where the Court said:

> If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all the activities of the people, and the authority of the State over its domestic concerns would exist only by sufferance of the Federal Government.

Mr. Justice Cardozo, in his concurring opinion, expressed the same view, as follows:

> What is near and what is distant may at times be uncertain. Compare *Board of Trade* v. *Olsen* (262 U. S. 1). There is no penumbra of uncertainty obscuring judgment here. To find immediacy or directness here is to find it almost everywhere. If centripetal forces are to be isolated to the exclusion of the forces that oppose and counteract them, there will be an end to our Federal system.

Reference has been made to *International Textbook Co.* v. *Pigg* (217 U. S. 91), where it was held that a correspondence school in Pennsylvania was engaged in interstate commerce and could not be required by Kansas to take out a license to do business in that State. But, as stated in *N. Y. Life Ins. Co.* v. *Deer Lodge County* (231 U. S. 495), the Pigg case involved the transportation of *property*, books, and so forth, and not the rendition of services.

Even the use of instrumentalities of interstate commerce for the transportation of persons and paraphernalia does not turn a business, essentially local in character, into interstate commerce (*Federal Baseball Club* v. *National League*, 259 U. S. 200).

Having demonstrated that neither ownership of corporate stock nor the use of the mails or other instrumentalities of interstate commerce in the *rendition of services* gives Congress power—except investigatory, as apparently held in Federal Trade Commission against Smith—over holding companies in the typical case we have left for consideration, the cases relied on by the proponents of the bill with respect to congressional power over trusts and monopolies in restraint of trade.

CASES RELIED ON BY THE PROPONENTS

These are principally the cases of *Standard Oil* (221 U. S. 1), *American Tobacco* (221 U. S. 106), *Northern Securities* (193 U. S. 197), *U. S.* v. *Reading Co.* (253 U. S. 26; *U. S.* v. *Delaware & Hudson* (213 U. S. 366).

These cases involved either direct combinations or monopolies in restraint of trade or in violation of the "commodities clause" in the Hepburn Act of 1906, forbidding a railroad to carry coal in interstate commerce except for its own use. In none of those cases was there a congressional ukase to a State corporation to *go out of business entirely or cease to exercise lawful powers.* Congress simply forbade the doing of *unlawful* things; that is, restrain commerce or engage in monopoly. The dissolution and dismemberment of the corporations were enjoined to be done by the courts, and not by Congress, and only then as *inevitably necessary* to effect a discontinuance of the unlawful acts, because the offending corporations were created for the express purpose of doing under corporate power the things which Congress forbade which *did directly affect* interstate commerce.

At the very threshold, therefore, it is seen that this bill *goes far beyond* these cases in that the bill calls for the destruction of corporations and property rights enjoyed by their stockholders, even *with respect to lawful matters.*

In passing it may be noted that so far as the hearings have disclosed, none of the corporations against whom the bill is directed have ever been prosecuted by the United States as being unlawful trusts or monopolies. They are now to be destroyed *ex post facto.*

If the United States has been negligent and if the corporations are engaged in monopoly or restraint of trade, the convincing and conclusive answer is that power to stop such unlawful practices is already possessed by the Department of Justice, and has been in its possession during the entire 45 years since the Sherman Antitrust Act was passed. The failure of the proponents to invoke the antitrust act is a tacit admission that the corporations have not violated it, and instead have been and are doing other acts which should be stopped, even by destroying the corporation.

But where does such power reside in Congress unless such other acts *directly affect* interstate commerce?

Cases involving the Sherman Antitrust Act are cases of *direct interference* with interstate commerce through the creation of a monopoly and the suppression of competition. Neither the legislation of Congress nor the decisions of the courts go beyond what is necessary to free interstate commerce from unlawful interference with free competition. There is no justification in the decisions under the Sherman Antitrust Act—or, in fact, elsewhere—for the proposition that Congress may regulate the *entire business* of an individual or corporation, both interstate and intrastate, because it may have entered into a contract in restraint of interstate commerce.

In *Northern Securities Co.* v. *United States* (193 U. S. 197) Mr. Justice Harlan, writing the opinion of the Court, pointed out, at page 334, that the Government did not contend that Congress might control the acquisition or ownership of stock in a State corporation engaged in interstate commerce. The Northern Securities Co. was ordered to dispose of the stocks of the Northern Pacific Railway Co. and the Great Northern Railway Co. not on the ground that the Northern Securities Co. was itself engaged in interstate commerce, but on the ground that it was a device to eliminate competition between the two railway companies in violation of the Sherman Antitrust Act. Likewise, in *United States* v. *Reading Co.* (253 U. S. 26), the holding company was organized and used as a means of suppressing competition. These decisions have no relevancy to the proposed bill.

The Supreme Court has repeatedly, consistently, and unequivocally held that Congress may not regulate the intrastate activities of corporations or persons engaged in interstate commerce which do not "directly affect" interstate commerce (*United States* v. *Chicago, M., St. P. & Pac. R. R. Co.*, 282 U. S. 311; *Railroad Retirement Board et al.* v. *Alton Railroad Co.*, 79 L. Ed. 803); and that an act, which attempts to regulate both interstate and intrastate activities without distinction is invalid (Employers Liability Cases, 207 U. S. 463; *Schechter Poultry Corp.* v. *United States*).

The Antitrust Acts were passed in pursuance of the constitutional purpose that interstate commerce should be free. Thus the Sherman Act denounces every contract combination in the form of trust or otherwise or conspiracy in restraint of trade and commerce among the several States or with foreign nations as well as monopolies or attempts to create a monopoly therein and precludes every device resorted to for that purpose—whether a "loose" combination in the form of contract or a "tight" combination such as a merger or a holding company. But in each case the subject matter of the restraint or monopoly must be interstate commerce, and there must be a showing of an intent to restrain it or, lacking express proof of intent, facts so clearly tending toward a restraint or monopoly as to make the inference of intent irresistible.

So much being established, where the proceeding is one in equity and not at law, the courts having jurisdiction of the parties will mold their remedy to fit the facts, as by compelling the parent company to divorce its subsidiaries and distribute their shares—as in the *Standard Oil case* (221 U. S. 1); or by forcing the creation of new corporations and a distribution of assets—as in the *American Tobacco case* (221 U. S. 108); or by restraining the voting of stock or receiving dividends on shares illegally held—as in the *Northern Securities case* (193 U. S. 197). These and like decrees, however, infinitely various as they are in form, do not furnish any rule by which the general power of Congress to regulate interstate commerce can be measured. They demonstrate only the flexibility and remedial scope of equity jurisdiction acting on the parties brought before it in the light of the instant facts. It by no means follows that general statutes to the same effect if passed by Congress would

be found to be within its power. Indeed, it is probably true that but few of these decrees, if adopted as a statute of universal application, could stand the constitutional test.

As to the railroads, their regulation is bottomed in part upon the fact that they are post roads; but even more upon the fact that they are not only themselves engaged in commerce between the States but are the very instrumentalities by which that commerce is chiefly carried on. Control over them, as all men know, has broadened steadily, its principal objective at all times having been improved service at reasonable rates. Yet even this Federal control has its bounds. It cannot invade the intrastate field except to make effective its interstate regulation (*The Shreveport case* (234 U. S. 342), *Minnesota Rate cases* (230 U. S. 352)); it cannot under the guise of regulation usurp the powers of management (*Interstate Comm. Comm.* v. *Chicago G. W. Ry. Co.* (209 U. S. 108, 119), *South Western Bell Telephone Co.* v. *Public Service Com.* (262 U. S. 276)). It cannot supervise contracts made by railroad security holders (*U. S.* v. *Chicago, Milwaukee, St. P. & P. R. R. Co.* (282 U. S. 311); nor can it deal directly with wages and hours (*Railroad Retirement Board* v. *Alton R. R. Co.* (79 L. Ed. 803)). Whatever the outer limitations of this regulatory power may be, no one would argue that whatever Congress could impose upon an interstate railroad it could also impose upon manufacturing or trading or mining companies, or even upon holding companies and their subsidiary public-service companies doing business inside a State.

If it be urged that acts which are not interstate commerce in themselves can nevertheless be controlled by Congress where they have an effect upon such commerce, the answer is that in every such case the alleged effect must be direct and not indirect, proximate and not remote.

It has been so repeatedly held that neither the generation nor local distribution of electric energy is interstate commerce that it would seem, as day follows night, that the business of the typical company holding the stock of the local utility and in part managing its business is also not interstate commerce.

As to generation, see *Utah Power & Light Co.* v. *Pfost* (286 U. S. 163), where the court said:

> We are satisfied, upon a consideration of the whole case, that the process of generation is as essentially local as though electrical energy were a physical thing; and to that situation we must apply, as controlling, the general rule that commerce does not begin until manufacture is finished, and hence the commerce clause of the Constitution does not prevent the State from exercising *exclusive control* over the manufacture (*Cornell* v. *Coyne*, 192 U. S. 418, 428–429). Commerce succeeds to manufacture, and is not a part of it (*United States* v. *E. C. Knight Co.*, 156 U. S. 1, 12).

As to distribution of natural gas, see *East Ohio Gas Co.* v. *Tax Commission* (283 U. S. 465), where the Supreme Court held that this was a "purely local concern exclusively within the jurisdiction of the State" and expressly overruled *Pennsylvania Gas Co.* v. *Public Service Commission* (252 U. S. 23).

As to distribution of electric energy, a statutory court of three judges in *South Carolina Power Co.* v. *Tax Commission* (60 Fed. (2d) 528 (affirmed without opinion in 288 U. S. 178), held that when electric energy is brought in from without State boundaries for distribution and sale on a system of lines within the State, the interstate character ends. (See also *P. U. C.* v. *London*, 249 U. S. 236; *Missouri* v. *Kansas Natural Gas Co.*, 265 U. S. 298; *East Ohio Gas Co.* v. *Tax Commission*, 283 U. S. 465.)

Transmission across State lines by a local utility is of course interstate commerce (*Public Utilities Consumers* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83).

In the latter case, assuming that the local company is controlled by a holding company in another State, the question whether a service fee charged by the holding company *directly affects* the interstate transmission seems to be in serious doubt under the decision in the Schechter and other cases with reference to prices. It is the rate charged *to the consumer* which is regulated, not the price charged to the utility, although the *price* may be looked into to determine the fairness of the *rate*. The Supreme Court has never shown any hunger and thirst to control *prices* until and unless they are in the form of *rates* charged *to the final consumer* of a business invested with a public interest. And in any event the power is to regulate, not to destroy.

We cannot pass over the further thought that because *some* holding companies and *some* operating companies have sold worthless stocks, charged excessive fees, and so forth, that therefore *all* companies should be proscribed for the dereliction of the few. This is not intelligent. It is not constitutional. "The life of the law is reason, and what is not reason is not law." Put all bank cashiers in prison because some embezzle!

The evidence has shown that many holding companies perform useful and lawful functions. And it is as clear as crystal that rights granted by the Federal Constitution cannot be infringed to prevent violations of law by another person. (See *Schlesinger* v. *Wisconsin*, 270 U. S. 230.)

Whatever one may think generally of holding companies and particularly of holding companies beyond "the first degree", it is certain that the Senate bill lays down no standard, guide, reason, or public policy why all holding companies beyond the first degree, regardless of any proof of wrongdoing or antisocial conduct, are to be summarily legislated out of existence, while other companies may be allowed to exist.

This is so arbitrary and capricious as to constitute a denial of due process of law under the fifth amendment. As to the companies selected for destruction the death sentence is mandatory and absolute. Not even the courts, nor uncontradicted proof that they have not engaged in any of the practices condemned in the bill's preamble, can save them. Second cousins must die; first cousins may live.

> When the question is whether legislative action transcends the limits of due process guaranteed by the fifth amendment, decision is guided by the principle that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained (*Nebbia* v. *New York* (291 U. S. 502, 525)).

Another quaint and curious thing about section 11 is the fact that holding companies in the first degree may be permitted to live if "necessary under the applicable State law", even though such company *may have committed all the crimes recited in the preamble of the bill*. Congress in effect says to the Commission, "Here is a criminal corporation. Let it live if you find its continued existence *necessary*. Here is another corporation. Kill it, however innocent."

What lawyer can believe that this casual disposition of the property rights of innocent investors can endure for 24 hours in the Supreme Court of the United States? It ought not to endure for 1 hour in the Congress of the United States. Nor should we overlook the tenth amendment and the rights of the States.

The Supreme Court has repeatedly held that under the Constitution the Federal Government cannot, through taxation or otherwise, sap the sovereignty of the States, and, conversely, that the sovereignty of the Federal Government cannot be whittled away by State action. The creation and continued existence of corporations created by the several States involve the continued exercise of sovereignty. The powers and privileges granted to corporations and their continuance, their right to hold and dispose of property in accordance with their charters, depend upon this continued exercise of sovereignty. When the United States undertakes to dissolve a corporation maintained through the sovereign power of a State, there is a *denial of State sovereignty* and an interference with it quite as great as if the United States should undertake through taxation to destroy the right of States to create and continue the life of corporations. There is, thus, the gravest doubt whether, assuming the existence of a limited Federal jurisdiction over holding companies, *their continued existence or summary destruction is within the power of Congress to control.*

Under the fifth amendment private property may not be taken without due process of law, and a pertinent question is whether Congress should not pay utility owners for any loss of values if it is deemed necessary—and found constitutional—in the public interest to require solvent State corporations to wind up their affairs. This seems to have been the view of the Court in the recent case of *Louisville Joint*

Stock Land Bank v. *Radford* (Frazier-Lemke Act), where that great liberal, Justice Brandeis, wrote:

If the public interest requires and permits the taking of property of individual mortgagees in order to relieve the necessities of individual mortgagors, resort must be had to proceedings by eminent domain, so that, through taxation, the burden of the relief afforded in the public interest may be borne by the public.

Even property dedicated to a public use remains the property of its owners, subject to their management, and may not be taken without just compensation (*Interstate Commerce Commission* v. *Oregon-Washington Railway Co.*, 288 U. S. 14). Compare section 3 (4) of the Interstate Commerce Act requiring reasonable compensation to be paid for the use of railroad terminal facilities (49 U. S. C., sec. 3 (4), with section 11 of this bill.

This all sums up in the words of the Supreme Court:

The power to *regulate* is not the power to *destroy*, and *limitation* is not *confiscation* (*40 Railroad Commission cases*, 116 U. S. 307–331).

Regulation is not prohibition. See *Adams* v. *Turner* (224 U. S. 590, 593), where the Court said:

"Because abuses may, and probably do, grow up in connection with this business is adequate reason for hedging it about by proper regulations. But *this is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way*. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them no doubt some can be found quite ready earnestly to maintain that *its suppression would be in the public interest*. Skillfully directed agitation might also bring about apparent condemnation of any of them by the public. Happily for all, the fundamental guaranties of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked."

The conclusion is that the "death sentence" in the Senate bill is an unconstitutional exercise of congressional power for the following reasons, among others:

First. It is arbitrary and capricious.

Second. It is a delegation of legislative power without adequate standards.

Third. It invades the reserved power of the States.

Fourth. It is doubtful if the typical holding company is engaged in interstate commerce through ownership and the exercise of business management in utility companies, and especially so if the local utilities do not transmit electrical energy over State lines.

Fifth. Granting fourth above, the power of Congress over such holding companies is the power to regulate and not the power to destroy.

Sixth. It takes private property without compensation and without due process of law.

Even if constitutional, it is not "necessary or proper" to execute the death sentence. The remedy is to be found in other appropriate methods. Among them are (a) the Sherman Antitrust Act; (b) the right to inquire as to charges made by holding companies to utility companies, as clearly laid down in Smith against Illinois Bell Telephone Co.; and (c) stringent regulations of the sale and pitiless publicity of company affairs underlying the sale of utility securities in interstate commerce. I also advocate the return to a small income tax on intercorporate dividends, such as we had during the World War; and, in addition, exemptions from stock transfer and other taxes, so that reorganization and simplification of "sausage string" holding companies can go forward without being penalized for doing something admittedly in the public interest.

I intended to limit this discussion to the legal phases only of the bill. I cannot, however, close without a brief reference to the wisdom of the bill. I cannot do this better than by giving these two quotations from a man trained in the law, a great statesman who exhausted his life in the service of his country, and one whose leadership in difficult days gave luster to the party of which I am a humble member. I refer to Woodrow Wilson.

Before the American Bar Association at Chattanooga, Tenn., he said in 1910:

Corporations do not do wrong. Individuals do wrong. You cannot punish corporations. Fines fall upon the wrong persons; more heavily upon the innocent than upon the guilty * * * upon the stockholders and the customers rather than upon the men who direct the business. If you dissolve the offending corporations, you throw great undertakings out of gear. You merely drive what you are seeking to check into other forms * * * to the infinite loss of thousands of entirely innocent persons and to the great inconvenience of society as a whole. Law can never accomplish its objects in that way. It can never bring peace or command respect by such futilities.

And in a message to Congress on January 20, 1914, as President of the United States, he uttered these words, which are fraught with meaning even now:

Nothing hampers business like uncertainty. Nothing daunts or discourages it like the necessity to take chances, to run the risk of falling under the condemnation of the law before it can make sure just what the law is.

For five long years, under the Senate bill, no holding company and few operating companies "can make sure just what the law is."

No bill could be better calculated to impede recovery, deflate values, and freeze uncertainty. Business cannot go forward—men cannot go back to work with a death sentence over their heads.

DEDICATION OF JAMES RUSSELL LOWELL SCHOOL AT TEANECK, N. J.

Mr. KENNEY. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD by publishing an address that I made at the dedication of the new James Russell Lowell School at Teaneck, N. J.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. KENNEY. Mr. Speaker, under the leave to extend my remarks in the RECORD, I include the following address which I delivered on June 14, 1935, at the dedication of the new James Russell Lowell School at Teaneck, N. J.:

It is my first and very pleasant duty to thank the board of education and you of Teaneck for the privilege of participating in the dedication exercises of this new edifice—the James Russell Lowell School.

A word of commendation is now justly appropriate. All credit is due your board of education, township officials, and your local organizations and public-spirited citizens. To your many achievements in Teaneck you have added this accomplishment.

When you were prompted to undertake the building of this school, you were confronted with a decidedly practical problem. You could not go into the market to sell your school bonds. There was no market for them. The usual method of financing a school project was not available to you. Finances necessary for the purpose were lacking.

Yet there seems always to be a practical way of doing things. I might relate an incident in the career of the great Lincoln. He was in the military service of the United States during the Black Hawk war. Although in rank a captain his military training was circumscribed, his knowledge of military terms exceedingly limited. In line of duty he found himself at the head of his troops leading his company over the country side. Suddenly he sighted a high fence directly ahead of them. He thought hard and he thought fast, but he could not, try as he did, recall any command for scaling a fence. However, he did remember the fundamentals and called them into play. Turning to his men, he gave the command "Company halt." He remembered that. And he recalled another well-known command which he gave, "Company rest." Then, while his men were resting he used his characteristic common, practical sense. Beckoning his lieutenant to him he whispered, "When you form the company again do it on the other side of the fence."

In that way Lincoln overcame his immediate problem. Like him, in your dilemma you mastered your situation.

Calling upon the Public Works Administrator for cooperation in overcoming the obstacles you encountered, you succeeded in having him deal with the matter in such a way as to gain your objective. Your good judgment in contacting the Government, with your faith in yourselves and the future, fortified by the stability of your community, resulted in a solution of your school problem.

By an act of the Seventy-third Congress, President Roosevelt was authorized to create the Administration of Public Works for the purpose, among other things, of constructing, financing, or aiding in the constructing or financing of any public-works project, including the building of schools. The Public Works Administration, of which Hon. Harold L. Ickes is the Administrator, by virtue of that act, became possessed of public-works funds made available by the Congress upon the recommendation of the President. Out of these funds came the financing of this school erected to the greater glory of education.

It is the proper function of government to lend its aid in times of stress and economic crises; to give aid to all weakening or tottering props of the economic structure. So it was that the Government set up agencies to loan to the banks and even to purchase preferred stocks in our banking and other financial and insurance institutions for their preservation; to protect the surplus and, in some cases, life earnings of our people by providing for the guaranty of their bank deposits; to refinance the homes of our home owners, giving stability to the home, which was disappearing rap-

idly through ever-increasing foreclosures in every section of the country; to save the farm to the farmer by extending credit where credit was due; to furnish financial aid to the railroads, agriculture, and industry; and to revive housing by guaranteeing construction and mortgage loans. All these things and others the Government did in an endeavor to solve our problems, and while there are problems still to be met, they are only problems which can and will be solved; and there was, of course, brought into being the comprehensive program of public works designed to furnish a large measure of reemployment so vital to economic recovery.

You were the very first to obtain the benefit of public-works financing for school purposes in the State of New Jersey. On November 23, 1933, the Public Works Administration allotted to your board of education to construct this school the sum of $215,000, loan and grant.

As a consequence you have constructed this new fireproof, two-story, elementary school building, with a combined auditorium and gymnasium, consisting of approximately 600,000 cubic feet. The construction, including the installation of equipment, amounted to $187,000. The number of men employed during the 11 months of construction was between 50 and 60, or a total of 56,000 man-hours at 30 hours a week. The labor expenditure amounted to $68,599, and the cost of material, involving other labor, was estimated at $108,658.

This school, a public necessity, was constructed to relieve the serious congested condition at the two elementary schools which had an enrollment in one school of 468 pupils with a normal seating capacity of 315 and in the other school an enrollment of 342 pupils with a normal seating capacity of 196. This new school has a capacity of 455 pupils, and will provide school facilities for the 300 excess enrollment of the overcrowded elementary school.

In the public-works program for the increase of educational facilities a total allotment of $5,472,000 has been made to the State of New Jersey for the construction and remodeling of 26 schools and colleges. Of this total amount there are 2 projects completed at a total cost of $311,000, 18 projects under construction at a cost of $3,722,200, and 6 projects to be placed under construction in the near future at a cost of $1,438,800. Among the latter is the new wing to the Teaneck High School, for which an allotment of $635,000, loan and grant, has been made. The bids for the construction of this high-school addition will be received during the coming week. The building of the wing will then quickly proceed for the early elimination of the overcrowded condition in the high school.

The township of Teaneck has grown by leaps and bounds. From a population of 2,082 in 1910 there has been a growth, increasing with the years, until now there is a population in excess of 20,000. There is a reason. You have created an ideal community. You have builded well. Your homes, your schools, your churches reflect the character of your people. Teaneck is becoming more and more sought by homemakers. While there was a stoppage of home building everywhere else, homes were being erected here, and are still being built and occupied.

With the increase in population, educational facilities, at first adequate, failed to meet the needs of your children. Each year brought an additional enrollment of pupils in your schools. Additional school room had to be provided if you were to discharge the duty good citizenship placed upon you. You have selected good teachers for your children—which is all important—and now you are assured of proper and ample classrooms. In effecting these things, you have not missed the aim of education, which, to me, is nothing more nor less than an endeavor to bring up the new generation according to our ideals, equipping them as well or better than we are equipped to live lives of useful occupation, of honor and integrity and of progress, partaking of and preserving the benefits of American principles and institutions.

You are to be commended, too, in so fittingly naming this school in honor of James Russell Lowell, author, poet, lawyer, diplomat, man of letters. The influence of his genius permeates every classroom of the schools of America. His works are known to every school boy and girl. A great American, he was a leader of sound political thought for which the citizens of Teaneck are noted—an attribute which you evidently desire to have imparted to your children by the very choice for this school of the name of Lowell, whose life, character, and works offer, in and of themselves, an ideal American education.

Despite the difficulties which beset us, we cannot help but feel contented in the thought that our God in Heaven looks down approvingly upon this noble undertaking for our children, and on this occasion, this June evening, we must experience a keen sense of the feeling expressed by Lowell in the Vision of Sir Launfal, in these words:

"And what is so rare as a day in June?
Then, if ever, come perfect days;
Then Heaven tries the earth if it be in tune
And over it softly her warm ear lays."

Mr. TRUAX. Mr. Speaker, on the last roll call I was listening and failed to hear my name called. If I had heard it, I would have voted "aye" for the rule.

Mr. BUCHANAN. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 8554) making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1935, and for prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1935, and June 30, 1936, and for other purposes.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union, with Mr. HANCOCK of North Carolina in the chair.

The Clerk read the title of the bill.

Mr. BUCHANAN. Mr. Chairman, I yield 5 minutes to the gentleman from Mississippi [Mr. RANKIN]. I ask that the first reading of the bill be dispensed with.

The CHAIRMAN. Is there objection?

Mr. MILLARD. I object. The face of the eagle on the mace is turned to the wall.

Mr. RANKIN. Mr. Chairman, there is so much confusion on this side I did not hear what the gentleman said.

Mr. MILLARD. I said I objected to dispensing with reading of the bill. The face of the eagle on the mace is bowed down and turned to the wall, ashamed of what the Democrats are doing.

Mr. RANKIN. I ask unanimous consent that the eagle be turned around. [Laughter.]

The CHAIRMAN. The Clerk will read the bill.

The Clerk read the bill.

During the reading the following occurred:

Mr. RANKIN. Mr. Chairman, I move that the further reading of the bill be dispensed with.

Mr. MICHENER. I make the point of order that that is not in order.

The CHAIRMAN. The point of order is well taken. The Clerk will read.

The Clerk continued reading the bill.

Mr. PARSONS. Mr. Chairman, I ask unanimous consent to dispense with the further reading of the bill.

Mr. MILLARD. I object.

Mr. EKWALL. Mr. Chairman, I make the point of order that under the rules the Clerk must read slowly in well-measured tones.

The CHAIRMAN. The Chair overrules the point of order and the Clerk will read.

The Clerk continued reading the bill.

Mr. PARSONS. A parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. PARSONS. Is it not within the province of the Chair to compel Members who want to hear the bill read to stay in the Chamber and listen to every word that is read?

The CHAIRMAN. The Chair presumes that those who desire to hear the bill read will remain here.

The Clerk proceeded with the reading of the bill.

Mr. RICH. Mr. Chairman, I make the point of order that there is no quorum present.

The CHAIRMAN. The Chair will count. [After counting.] One hundred and eleven Members present, a quorum.

The Clerk resumed the reading of the bill.

Mr. PARSONS. Mr. Chairman, I ask unanimous consent that the further reading of the first reading of the bill be dispensed with.

The CHAIRMAN. Is there objection?

Mr. McLEAN. Mr. Chairman, I object.

The Clerk resumed the reading of the bill.

Mr. TREADWAY. Mr. Chairman, I make the point of order that there is no quorum present.

The CHAIRMAN. The Chair will count.

Mr. HOOK. Mr. Chairman, I make the point of order that that is dilatory.

Mr. TREADWAY. I object to any remarks being made while the Chair is counting.

The CHAIRMAN. The gentleman from Michigan is not in order. The Chair will count. [After counting.] One hundred and one Members present, a quorum.

The Clerk concluded the reading of the bill.

The CHAIRMAN. Under the rule the gentleman from Texas [Mr. BUCHANAN] is entitled to 1 hour and the gentleman from New York [Mr. TABER] is entitled to 1 hour.

Mr. BUCHANAN. Mr. Chairman, I yield 5 minutes to the gentleman from Mississippi [Mr. RANKIN].

Mr. RANKIN. Mr. Chairman, I take this time for the purpose of calling attention to the provision in the bill for

the extensions and replacements in veterans' hospitals. It is found on page 48 of the bill and page 13 of the report. The Veterans' Committee held hearings some time ago, and we had before us representatives from the veterans' organizations, and also the Director of the Veterans' Administration, General Hines.

They submitted their programs, we got them together, and the Federal Board of Hospitalization has worked out these extensions. With the exception of 1 or 2 or 3 new units, that will be necessary which are now being worked out by the Federal Board of Hospitalization, this will virtually complete our veterans' hospital program and will furnish sufficient beds to take care of the present load. This legislation was particularly necessary because of the fact that the mental cases were not only overcrowding our hospitals but many of them were without beds or room in these hospitals. I make this statement as Chairman of the Committee on World War Veterans' Legislation to let Members know what the situation is.

Mr. THURSTON. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. THURSTON. This increases the capacity from approximately 20,000 beds to 30,000 beds.

Mr. RANKIN. Yes.

Mr. DONDERO. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. DONDERO. I notice one provision in the State of Michigan is a matter of 164 beds at Camp Custer. We have a hospital in Detroit with 150 beds, and we have 8 more patients than beds.

Mr. RANKIN. We went into that proposition and the Federal Board of Hospitalization is working now on the Detroit proposition.

Mr. DONDERO. So that matter will still be taken care of in some way?

Mr. RANKIN. We hope so.

Mr. DONDERO. We have to send these patients out of the State of Michigan, either to Chicago or to Dayton, away from their homes for hospitalization, and we do not think it is the right thing to do.

Mr. RANKIN. I agree with the gentleman from Michigan, and I called these facts to the attention of the Federal Board of Hospitalization. I have asked them to work out something to take care of the situation in Detroit.

Mr. HARLAN. The gentleman is not indicating that it is in any way a hardship on the veterans to be sent to Dayton, is he?

Mr. DONDERO. I do think it is a hardship on the veterans and upon their families. That is a very fine hospital at Dayton, but these patients have to be sent there away from home.

Mr. LLOYD. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. LLOYD. I introduced at the request of the American Legion a bill providing for 160 beds at American Lake Hospital. I do not find it here, and I am wondering if it received the approval of General Hines.

Mr. RANKIN. If it is not in list, it did not.

Mr. LLOYD. Does the gentleman know whether or not any other provision outside of this is being made for it?

Mr. RANKIN. I do not, unless it is going to be a new unit. There are some things that could not be included in this bill, but will probably be taken care of later.

Mr. HOOK. May I say in regard to the question asked by the gentleman from Michigan [Mr. DONDERO], I have taken that matter up with the Hospitalization Board and with General Hines.

A subcommittee has been appointed with Surgeon General Cumming as chairman. They will have hearings on the Michigan situation, and I feel satisfied that the Michigan hospital situation will be taken care of.

The CHAIRMAN. The time of the gentleman from Mississippi [Mr. RANKIN] has expired.

Mr. BUCHANAN. Mr. Chairman, I yield the gentleman 2 or 3 additional minutes.

Mr. PARSONS. Will the gentleman yield?

Mr. RANKIN. I yield.

Mr. PARSONS. The gentleman will remember that the gentleman from Illinois [Mr. ARNOLD] introduced a bill for a new veterans' hospital in southern Illinois to take care of southern Illinois, western Kentucky, and southeastern Missouri. Does the gentleman know if any action has been taken on that matter?

Mr. RANKIN. That matter is before the Federal Board of Hospitalization now.

Mr. STEFAN. Will the gentleman yield?

Mr. RANKIN. I yield.

Mr. STEFAN. Would this bill take up a question like the Nebraska hospital, where it is necessary to send some of the veterans in those hospitals in Iowa on account of overcrowding? Is there anything taken up with regard to the veterans' hospital at Lincoln, for instance, in this bill?

Mr. RANKIN. Is that a neuropsychiatric hospital?

Mr. STEFAN. I think it is.

Mr. RANKIN. If it is, these allocations are supposed to provide for that load.

Mr. STEFAN. They are not sending these men any great distance, are they?

Mr. RANKIN. I think not.

Mr. THOM. Will the gentleman yield?

Mr. RANKIN. I yield.

Mr. THOM. These new units that are in contemplation are intended for mental cases, are they not?

Mr. RANKIN. I think possibly there are one or two of them contemplated that are general hospitals. For instance, there is one colored hospital to be constructed. The colored hospitals are overcrowded, and we are asking for an additional hospital for negro patients.

Mr. BUCHANAN. Will the gentleman yield?

Mr. RANKIN. I yield.

Mr. BUCHANAN. I will state for the information of the gentleman that 7,000 of 11,000 beds are intended for mental cases.

Mr. RANKIN. That is true. These mental cases must be provided for.

The CHAIRMAN. The time of the gentleman from Mississippi [Mr. RANKIN] has again expired.

Mr. BUCHANAN. Mr. Chairman, I yield myself 15 minutes.

Manifestly it is not possible to review this bill in 15 minutes, so I am going to touch the high spots only.

The total Budget estimates before the committee for consideration amounted to $356,665,601.80. Your committee conducted a searching investigation into every item with a view to applying the pruning knife wherever efficient administration could be procured with a less amount. As a result, we allowed $224,477,561.80 of that amount, or a reduction of $132,188,040.13. In other words, we have reduced these estimates more than one-third.

I wish to refer to this reduction. I told you we cut the estimates $132,188,040.13. These items of reduction consist first of $23,862,750.78 supposed to be due the Philippine Islands by reason of the action of our President in reducing the gold content of the gold dollar. In the last session of Congress we passed an act authorizing this appropriation. At that time I probably did vote for that act. I have since investigated more fully the facts and now I believe that nothing is due the Philippine government. We will discuss that later, however, under the 5-minute rule.

The next reduction is $20,000,000 from the $40,000,000 for the paid-in surplus of the land banks. The representatives of the Farm Credit Administration conceded this reduction.

We have made a general reduction in various items of $1,839,481.25, items too numerous to mention, many of them small, but they total up to this figure.

General public works decreased $86,490,808.

You will recall that when Congress convened last January the President sent up an estimate in the 1936 Budget for $300,000,000 for public works in a lump sum. After we passed the $4,880,000,000 appropriation for relief and work relief, and after a transfer which Congress made from this

$300,000,000 to the $4,880,000,000, I requested the Bureau of the Budget to review the remainder of that estimate of $300,000,000, which had been sent up, with a view to seeing how much more could be transferred from it to the work and work-relief appropriation. In other words, every dollar transferred from the $300,000,000 appropriation to the work and work-relief appropriation would be that much saved in expenditure to the taxpayers. He took it up and conferred with the President and sent in several revisions. As the result of this transfer made by Congress and the revisions suggested by the President, there was a total decrease to start with in this $300,000,000 of $76,000,000, of which $45,000,000 was a net decrease made by the transfer effected by Congress, and $31,000,000 resulted by the revisions made by the Executive. So we cooperated in bringing about this economy.

In addition to this, there are further reductions by the committee of a net amount of $10,490,808, making the total of $86,490,808 to which I have referred.

The amount we allowed, $224,477,561.80, was divided into three parts. Title I, $50,370,899.81, which are the deficiencies for 1935 and prior years, and the regular supplemental appropriations for the years 1935 and 1936. Only $5,000,000 of that $50,000,000 is the ordinary and usual deficiencies that happen every year, and the supplemental amounts for 1935 are a little over $3,000,000. There is no use discussing them. They are fully explained in the report.

The sum of $38,000,000 of that $50,000,000 is a 1936 supplemental to enable the Federal land banks to pay their obligations that arose because the Congress passed two acts reducing the interest rate from an average of 5¼ to 4½ percent on farm mortgages and postponing for 5 years the installments due on the principal borrowed. It was necessary to appropriate that to let them meet those obligations.

There is also a total of about $4,000,000 under title I for other supplemental items for the fiscal year 1936, including $1,000,000 for the projected Air Mail Service from the United States to Asia, $700,000 for payments to contractors with the United States on account of increased costs due to the N. I. R. A., and other justifiable amounts which are fully set forth and explained in the report on the bill. I shall be glad to answer any inquiries about them under the 5-minute rule.

Title III is judgments and authorized claims. It will not be necessary to discuss the third title, because every appropriation under it is made to pay the final judgment of a court or to pay claims that have been audited or settled under the general law. The amount for that is $592,469.99.

The other title, title III, which carries a total of $173,509,192 for general public works, is divided into several subjects and activities. First, the Tennessee Valley Authority. That is allowed $34,675,192. Veterans' hospital improvement, $20,000,000.

Boulder Canyon project, $14,000,000.

Public works, Bureau of Yards and Docks, Navy Department, $13,874,000; increase of Navy, reserve supplies of armament and ammunition, $6,110,000.

Foreign Service buildings, $1,000,000.

Public buildings outside the District of Columbia, $58,000,000.

Public buildings within the District of Columbia, $6,000,000.

Buildings, utilities, and so forth, West Point Military Academy, and the new airdrome in Hawaii, $9,850,000.

Rivers and harbors, $10,000,000.

This makes a total of $173,909,192.

First, the Tennessee Valley Authority: $34,675,192 has been allowed. To begin with, let me state that the Muscle Shoals project started during the war cost the Government $163,000,000. Since we created the Tennessee Valley Authority we appropriated $50,000,000 and $25,000,000, respectively, last fiscal year and this fiscal year, which makes a total of $75,000,000 they have had for expenditure. They have spent or obligated, or will have spent or obligated all of this sum except a little over $10,000,000 by July 1 next.

The first estimate that came to the committee on that project for next year was $60,000,000. I requested the Bureau of the Budget to review it. They reviewed it and reduced it to $50,000,000. Those who control the Tennessee Valley Authority came before the committee and voluntarily reduced the estimate to $42,000,000. Your committee considered it and further reduced it to between $34,000,000 and $35,000,000. So the amount asked to be appropriated has come down from an original estimate of $60,000,000 to an amount allowed of between $34,000,000 and $35,000,000.

Mr. BOLTON. Mr. Chairman, will the gentleman yield?

Mr. BUCHANAN. I yield.

Mr. BOLTON. Was not authority given in the act creating the Tennessee Valley Authority to issue bonds to the extent of $50,000,000?

Mr. BUCHANAN. Yes; authority was given for them to issue bonds to the extent of $50,000,000 for construction purposes, but this power has never been utilized and not one bond has ever been issued.

Mr. BOLTON. Is any of the $34,000,000 appropriated in this bill to be used for construction purposes?

Mr. BUCHANAN. Yes; all but about $2,000,000 is to be used for construction purposes.

Mr. BOLTON. Why should not bond issues be utilized first?

Mr. BUCHANAN. To be perfectly frank with the gentleman, I doubt if you could sell those bonds unless the Government guaranteed them. Is not this a good answer?

Mr. BOLTON. I think that is a very fair answer.

Mr. BUCHANAN. The next item I shall discuss is the provision for veterans' hospitals, $20,000,000. The facts show that the veterans' hospitals have now in round numbers 23,500 beds for neuropsychiatric cases against an immediate load of 30,247 patients of that type. This money will provide 11,466 new beds, of which 6,835 are for these mental cases. Many of them are now confined in non-Federal institutions, where they are not receiving adequate treatment in some instances. By all means this appropriation should be allowed and these hospital facilities extended. This appropriation is not for new hospitals but is for additions to various existing hospitals, which are strategically situated so as to be in close proximity to a great number of those who stand in need of beds. There is no occasion to discuss this item further. Everyone understands it.

For Boulder Canyon $14,000,000 is carried in this bill, to be used principally for power machinery. Another $14,000,000 will complete the project. They will be producing power at Boulder Canyon by the end of this year, and selling power if the transmission lines are in shape.

For public buildings outside the District of Columbia the original estimate was $45,000,000. I requested the Bureau of the Budget to reconsider it, and they increased it to $53,000,000. I found that that was not enough, because I believed that every Member of Congress should stand upon an equal footing in a general public-buildings program. I was determined that because the building or construction industry has suffered so much by reason of private enterprise not putting up buildings and because so many people were out of employment that it should be scattered or equitably spread throughout the Nation. So I requested Admiral Peoples to submit a figure showing how much it would cost to put one public building in every congressional district in the United States. He submitted an estimate of $58,000,000. Your committee increased the Budget estimate to meet this figure, and I believe it was the right thing to do.

Every congressional district, in order to be eligible, must have a city or town where the postal receipts are $10,000 a year or more. If the receipts are less than that, the general law prohibits the construction of a Government building. There is one exception, and that is if there are other Government activities that need and demand space in that town, then the postal receipts may go below $10,000.

The CHAIRMAN. The gentleman from Texas has consumed 15 minutes.

Mr. BUCHANAN. I yield myself 5 additional minutes.

Mr. SNELL. Will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from New York.

Mr. SNELL. In connection with the building of post offices, is the list that was published here 2 or 3 years ago by the Treasury Department followed?

Mr. BUCHANAN. There will be found in our hearings two lists; one called "No. 1" and one "No. 2." No 1 takes into account all of the balance of the buildings that have not been selected under the first appropriation made under House Report 1879, Seventy-third Congress. No. 2 is a list of buildings in other places. The number of buildings in both lists is 1153 and all are upon an equal footing, and a building may be selected out of either list or it may be chosen under certain conditions if not on the list.

Mr. SNELL. And we do not have to follow either one particularly?

Mr. BUCHANAN. Not either one particularly.

Mr. SHORT. Will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from Missouri.

Mr. SHORT. Will each Member of Congress be given a chance to recommend the replacement of buildings in his district?

Mr. BUCHANAN. Does the gentleman know Admiral Peoples personally?

Mr. SHORT. I do not know him personally.

Mr. BUCHANAN. Well, there is not a finer man in the Government service today, or one who is more anxious to cooperate with the Members of Congress in every way than Admiral Peoples.

Mr. TAYLOR of Tennessee. Will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from Tennessee.

Mr. TAYLOR of Tennessee. Will the gentleman suggest a remedy whereby a Congressman may extricate himself from the embarrassment of selecting a particular town in his district where five or six towns may be eligible?

Mr. BUCHANAN. Just whisper to Admiral Peoples, and he will take the whole blame.

Mr. SHORT. I hope he will allow us to use the marble that we quarry down in Missouri to construct some of these buildings.

Mr. BUCHANAN. There is provided $6,000,000 for buildings in the District of Columbia with an authorization carried in the bill to make a contract for a greater amount.

One of these is the Government Printing Office. Every Member of Congress who has been down to that plant knows that improvements are needed. Some of the present buildings are fire traps and inefficient. We would save close to $400,000 a year if these new buildings are constructed.

Another building is provided for the Comptroller General's office. The bill provides for remodeling the exterior and interior of the old Pension Office Building and adding two wings to increase the space by 389,000 square feet.

Another matter is the improvements at West Point. Of course, when we increased the number of cadets at West Point we were told it would not be necessary to make additional appropriations for buildings by reason of this increase. We were told they could put three cadets in a room if necessary and that is what they will have to do temporarily, but it is not good permanent housing or for the best interest of the boys or the school. Barrack accommodations there are barely sufficient for the average of 1,300 cadets now, and we cannot increase the membership by 600 and not provide for more housing. This provision is necessary if we are suitably to maintain 1,900 cadets at West Point.

Mr. Chairman, that is all I have time to say. If there are any questions, I will be glad to answer them.

Mr. BOLTON. Will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from Ohio.

Mr. BOLTON. With reference to West Point, may I ask who testified it would be necessary to appropriate additional money in order to house these additional cadets?

Mr. BUCHANAN. I do not recall the officer's name.

Mr. BOLTON. I happen to be a member of the War Department Appropriations Committee, and it was testified before our subcommittee concerning West Point that no additional money was necessary to be appropriated in order to house these cadets.

Mr. BUCHANAN. The gentleman asks, Who was it that gave this testimony before the deficiency subcommittee?

Mr. BOLTON. Yes.

Mr. BUCHANAN. I do not recall.

Mr. TABER. Colonel Chaffee.

Mr. BUCHANAN. That is his name and in the hearings on this bill he acknowledged such a statement was made and was very fair in his explanation of it.

Mr. SHORT. It is now certain that we are going to have the appointment of these additional cadets?

Mr. BUCHANAN. Yes. The gentleman and other Members of Congress have been notified to hold examinations.

[Here the gavel fell.]

Mr. TABER. Mr. Chairman, I yield 10 minutes to the gentleman from New Jersey [Mr. McLEAN].

Mr. McLEAN. Mr. Chairman, I desire to address my remarks particularly to the item in this measure making appropriation for the Tennessee Valley Authority. It is my contention that this appropriation is premature and wholly out of time.

The scheme of the Tennessee Valley Act, adopted in May 1933, was to provide an Authority to take control of the Government facilities at Muscle Shoals and operate them, as well as build the Norris Dam, and beyond that to be a planning board, which was to make a survey and examination of the territory and report to Congress a plan for the development of the Tennessee Valley.

This provision is particularly set forth in sections 22 and 23 of the act—and I ask unanimous consent to print them as a part of my remarks—wherein the Authority was specifically authorized to make such survey, report to the President, to enable the President to report to Congress, in order that the Congress could control and guide the extent, the sequence, and the nature of the development that was to be determined and developed in the Tennessee Valley:

SEC. 22. To aid further the proper use, conservation, and development of the natural resources of the Tennessee River drainage basin and of such adjoining territory as may be related to or materially affected by the development consequent to this act, and to provide for the general welfare of the citizens of said areas, the President is hereby authorized, by such means or methods as he may deem proper within the limits of appropriations made therefor by Congress, to make such surveys of and general plans for said Tennessee Basin and adjoining territory as may be useful to the Congress and to the several States in guiding and controlling the extent, sequence, and nature of development that may be equitably and economically advanced through the expenditure of public funds, or through the guidance or control of public authority, all for the general purpose of fostering an orderly and proper physical, economic, and social development of said areas; and the President is further authorized in making said surveys and plans to cooperate with the States affected thereby, or subdivisions or agencies of such States, or with cooperative or other organizations, and to make such studies, experiments, or demonstrations as may be necessary and suitable to that end.

SEC. 23. The President shall, from time to time, as the work provided for in the preceding section progresses, recommend to Congress such legislation as he deems proper to carry out the general purposes stated in said section, and for the especial purpose of bringing about in said Tennessee Drainage Basin and adjoining territory in conformity with said general purposes (1) the maximum amount of flood control; (2) the maximum development of said Tennessee River for navigation purposes; (3) the maximum generation of electric power consistent with flood control and navigation; (4) the proper use of marginal lands; (5) the proper method of reforestation of all lands in said drainage basin suitable for reforestation; and (6) the economic and social well-being of the people living in said river basin.

Section 23 provides specifically that the President shall, from time to time, as the work provided in section 22 progresses, report to the Congress, who shall determine upon the nature of the development according to the subheads and divisions laid down by section 23.

The Tennessee Valley Authority, in order to carry these operations into effect, was given authority to issue $50,000,000 in bonds, and this bond issue was to be its working capital, together with the income that might come from the sale of electricity, which they had the right to use until such time as Congress should determine upon the extent, the sequence, and the nature of the development to be carried on in that valley.

Now, what has happened? The bonds have not been issued. This may be because they could not sell them, as Chairman BUCHANAN has said, but the fact remains that Dr. Arthur E. Morgan, the president of the Tennessee Valley Authority, testified before the Committee on Appropriations

of the House of Representatives, and when asked why the bonds had not been sold, stated, "It seems to us that that is not the right way to do it."

This is characteristic of this Authority which has been put in charge of the Tennessee Valley. They have arrogated to themselves legislative privileges and prerogatives. They have said to the country, "We have no respect for the mandate of Congress. The way Congress has prescribed for the development of the Tennessee Valley is not the way we think it ought to be done." So they go to the Public Works authority, behind the back of Congress, which illustrates the danger of Congress delegating power and handing $3,300,000,000 to the Public Works Administration—and out of that amount they get $25,000,000 to begin their operations. Then they come in and deceive the committees of Congress and get $50,000,000 more. Then they organize, under the laws of the State of Delaware, a corporation known as the "Electric Home & Farm Authority", a wholly illegal procedure for creatures of Congress, when Congress itself has the right to create corporations and would have given them authority to exercise the functions of a Delaware corporation if we had intended they should do so, but they got from the emergency relief organization another $1,000,000 for the Delaware corporation, which is its invested capital. Then they go to the Reconstruction Finance Corporation, as an independent business organization, a Delaware corporation, and make a contract whereby the Reconstruction Finance Corporation agrees to advance them $10,000,000 of the money of the United States to buy chattel mortgages on electrical equipment. They go to the Conservation Corps and have assigned to their operations between 5,000 and 6,000 men, the cost of which comes out of the appropriations for the Conservation Corps. Then they have a large army of workers assigned to them to help them in their operations from the civil works appropriations and the relief organizations in and around Knoxville and Chattanooga. The number of men engaged in this operation I do not know, but it is considerable.

Then they appropriate for their purposes the sum of $548,650, the receipts from the sale of electricity, so that up to this point they have $86,848,000 to expend exclusive of the cost of C. C. C. and C. W. A. workers, and they have not yet issued the bonds.

We are asked by this bill to add $34,675,000, which will make their expenditure $121,523,000 for their operations up to the present time, and what are they spending it on? Are they spending it upon a program laid out by Congress? Have they reported to Congress what their plan of operation is? Does Congress know where these dams are to be constructed and whether they are a part of a general program for the development of the Tennessee Valley for the public welfare and upon a sensible scale? The report provided for in sections 22 and 23 of the act has not been made to Congress. The survey has not been made, and Congress knows nothing at all about what they have in mind. Nowhere, in all the literature there is on this subject, has anything been told Congress about what the program of the Authority is, how long it will take to complete, or what it will cost. Nowhere, in the annual report of the Tennessee Valley Authority to Congress is there any reference to the scheme of development which they have as to how many dams they ultimately intend to build, and a Member of Congress has to go elsewhere to get the information. I have read some 30 or 40 articles in various publications by, and interviews with, members of the Tennessee Valley Authority. Members will agree with me that the Fortune Magazine is a publication worthy of belief, and there I get this information about what they intend to do.

They intend to complete the Norris Dam, which is one-third completed, at an expense of $34,000,000.

Mr. TABER. Mr Chairman, will the gentleman yield there for a suggestion?

Mr. McLEAN. I will.

Mr. TABER. According to the hearings we had and the figures they submitted to us, the Norris Dam is to cost $36,000,000.

Mr. McLEAN. I thank the gentleman. That adds $2,000,000 more to my calculation.

The Wheeler Dam, which is one-half completed, is to cost $38,000,000.

The Pickwick Dam, just started, will cost $22,000,000.

The Hiawassee Dam will cose $13,000,000.

The French Broad Dam will cost $30,000,000.

The Aurora Dam will cost $42,000,000.

The total for dam construction, with the suggestion of the gentleman from New York [Mr. TABER], will be $181,000,000, to which they have committed the Government of the United States, and this article goes on to state that in addition to these, it is their purpose to construct 20 or 30 additional dams.

I asked Dr. Morgan if this were a true statement, and he said, "No; it is wrong in some respects", and I asked him wherein and he said to the extent of the 20 or 30 additional dams, stating, "We do not intend to build that many additional dams." However, there was no denial of the obligation of $179,000,000.

Mr. BOLTON. Mr. Chairman, will the gentleman yield?

Mr. McLEAN. I yield.

Mr. BOLTON. Are the various dams which the gentleman has mentioned to be built for power purposes or for navigation purposes as well?

Mr. McLEAN. I may say to the gentleman from Ohio I am not informed, Congress is not informed, no program has been submitted to Congress in accordance with sections 22 and 23 of the act. If they had properly regarded the mandate of that act, we would have before us the information that the gentleman wants.

[Here the gavel fell.]

Mr. TABER. Mr. Chairman, I yield the gentleman 10 additional minutes.

Mr. BOLTON. My idea was that matters of navigation had to be passed upon by the Engineer Corps of the Army.

Mr. McLEAN. I think the Tennessee Valley Authority has taken charge of the entire neighborhood and driven the Army engineers out. This is supposed to be for national defense.

Mr. TABER. Will the gentleman yield?

Mr. McLEAN. I yield.

Mr. TABER. According to the figures submitted to our committee, this is going to cost $192,900,000.

Mr. McLEAN. I will say to the gentleman from New York that this whole situation is so involved that every time we examine one of these witnesses, one of the directors of the T. V. A., you get an entirely different picture.

Mr. MILLARD. The gentleman stated that he had data that he wished to put in, but he has not had the consent of the committee.

Mr. McLEAN. Mr. Chairman, I ask unanimous consent to insert sections 22 and 23 of the Tennessee Valley Authority Act.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

Mr. McLEAN. This whole proposition is predicated upon national defense. It must have some justification that will bring it within the right of Congress to spend money. So an attempt is made to justify it on the grounds of national defense.

Mr. SHORT. Will the gentleman yield?

Mr. McLEAN. I yield.

Mr. SHORT. Is that why they purchased 25 dairy cows at a cost of $372 per head?

Mr. McLEAN. We cannot inquire into the mental processes of the directors of the T. V. A. I am not familiar with that type of men, for I have not had much experience with them, those who hold Congress in contempt, but they were authorized to dispose of surplus power being generated at Muscle Shoals. They were to use the power to generate and manufacture fertilizer. When the T. V. A. Act of May 13, 1933, was on the floor, many southern gentlemen enthusiastically voted for it because they looked forward to the time when all the farmers of the Tennessee Valley would have cheaper and better fertilizer. Last year they estimated the income from the sale of fertilizer at $507,000. When Dr. Morgan was before the Committee on Military Affairs, I asked him how much fertilizer they had sold. He said they

had sold no fertilizer and did not intend to sell any, that they were only experimenting in a better grade.

So they have abandoned the possibility of getting $507,000 out of the sale of fertilizer, and the wonder to me is why they put it in their budget as anticipated revenue. But having put it in the budget and being engaged in the manufacture of fertilizer, why did they ever abandon it before the end of the fiscal year?

Mr. SHORT. Is it not a fact that their expenditures have far exceeded their estimates, and that their revenues are pitifully below their estimates?

Mr. McLEAN. There is no doubt of it. When you have $75,000,000 allowed to you and you expend $101,000,000, you are exceeding your authorized appropriation and you are liable to indictment in New Jersey, and should be under the Federal law. Let us see what the Authority intends in the matter of national defense. As a matter of fact, it is so much of a subterfuge that when witnesses and directors of the Authority were before the committee and were asked their object and purposes and reasons for it all, after the witness had finished his statement of flood control and reforestation, a member of the committee had to inject the words "national defense" to remind the witness that he is engaged in a national-defense enterprise.

Mr. BOLTON. Mr. Chairman, will the gentleman yield?

Mr. McLEAN. Yes.

Mr. BOLTON. Would the gentleman explain where national defense comes in on the present operation?

Mr. McLEAN. This is all we know, and I shall give you the substance of what Mr. David E. Lilienthal testified to before the committee on that subject.

Mr. BOLTON. My understanding is that the national-defense purpose was to manufacture nitrates. Nitrates are made all over the country, are they not, and not at Muscle Shoals alone?

Mr. McLEAN. I know that we can make most of the nitrates necessary in New Jersey.

The basis of the development is national defense. The production of fertilizer, both as to price and quality, was the primary purpose of many of those who voted for the Tennessee Valley Authority—not only for the benefit of the farmers but because it placed the Government in a position where its fertilizer plants could be immediately turned into war-time production of munitions.

It does not appear that there is any plan or program of the General Staff of the War Department that is being worked out. The chief chemist of the T. V. A. consulted with the Chemical Warfare Division on one or two occasions, but the real idea of national defense has been considered of secondary importance. The attitude of the T. V. A. in this regard can best be gathered from the testimony of Director Lilienthal on that subject before the Committee on Military Affairs—pages 398 to 400—wherein he states that the Authority is obviously not a part of the War Department and has no policy authorization with respect to war; that they know nothing about it; and that they have a physical plant in their custody—in a sense as trustee of the War Department—whenever they call for it. They have no duty to initiate national-defense policies but to carry them out when they have been initiated by the proper officers of the General Staff; the Board has had no conference with the War Department or Navy Department as to what part the Tennessee Valley Authority would play in time of war, and all of its proposed development of power is not related to any war-time activity resulting from any scheme or plan. In spite of the fact that this whole project is predicated upon being useful as a part of the national defense, they have taken no steps to coordinate the resources at their command with other agencies of the Government with which they would be required to cooperate in the event of an emergency.

According to the statement filed by Dr. Morgan with the Committee on Appropriations, the cost of this kind of national defense to the Government of the United States has been $9,854,227, as per the following table which I take from the hearings before the Committee on Appropriations, page 475:

National defense and fertilizer program

	Actual, fiscal year 1934	Allotment, fiscal year 1935	Estimate, fiscal year 1936
A. Muscle Shoals general properties	$513,588	$929,325	$250,000
B. Fertilizer projects, nitrate plant no. 2	560,512	3,064,455	3,508,000
C. Fertilizer demonstrations, Valley States		266,407	762,000
Total, national-defense program	1,074,100	4,260,187	4,520,000

They frankly say that the farmers of the South will get no benefit from this cheap fertilizer unless perhaps the processes which they initiate can be successfully used by private industry, and private industry will cooperate, using T. V. A. methods instead of their own.

Mr. THURSTON. And should it not be made to appear to the House that no fertilizer whatever is being manufactured for the farmer? They are making it for experimental purposes.

Mr. McLEAN. They manufactured it in large amounts and are putting it in storage.

Mr. THURSTON. And just one other matter that I want to have cleared up. When it was stated that the completed project would cost $192,000,000, on page 489 of the hearings, Dr. Arthur E. Morgan states it would cost $250,000,000 when the power plant is completed, so that with the way in which Government matters are handled it will probably aggregate $300,000,000.

Mr. McLEAN. Dr. Morgan has said this is a continuing program. It will never be finished. It will always be a drain on the Treasury. It cannot be self-liquidating. I have said there ought to be a plan and that the board of directors of the Tennessee Valley Authority have no plan. Here is an illustration of the way that they operate in the Tennessee Valley. They built a town called "Norris" to house the employees at the dam. The building of this town illustrates the manner in which the project has been carried on and how little attention is given to estimated cost and expenditure of public funds. Here is an extract from the annual report of the Authority. I preface my remarks by saying that they anticipated this town was going to cost $2,000,000, and when they got through it cost $3,500,000.

The CHAIRMAN. The time of the gentleman from New Jersey has again expired.

Mr. TABER. I yield to the gentleman 5 minutes more.

Mr. McLEAN. I am reading from the annual report of the Tennessee Valley Authority.

Mr. DUNN of Mississippi. Mr. Chairman, will the gentleman yield?

Mr. McLEAN. Yes.

Mr. DUNN of Mississippi. Is the gentleman a member of the firm of Whittemore & McLean, of Elizabeth, N. J.?

Mr. McLEAN. I am.

Mr. DUNN of Mississippi. As a member of that firm the gentleman has long since been connected with a considerable number of public utilities.

Mr. McLEAN. Yes; and many of the banks in the place.

Mr. DUNN of Mississippi. The Electric and Power Trusts.

Mr. McLEAN. I never had a job from any electric company. I never have been connected with any electric corporation; and if I had it would make no difference to me. I am an American before I am an individual.

Mr. DUNN of Mississippi. I just asked the gentleman a question.

Mr. McLEAN. I will answer the question. I do not care anything about that book the gentleman from Mississippi has. I am talking on the merits of the question before the House. Whatever there is there concerns my partners and myself, and if it says that we ever got a dollar out of a power company it is wrong.

Mr. DUNN of Mississippi. But your partners did. Read this.

Mr. McLEAN. No; nor my partners. I do not have to read this. I will tell you something if you want to know what I am.

Mr. DUNN of Mississippi. Will the gentleman read that? I hope the gentleman will not get angry. Will the gentleman just read that?

Mr. McLEAN. I will tell the gentleman something if he wants to know what I am. When I was elected to Congress my name was on the court list as attorney for the Baltimore & Ohio Railroad in my district. It has been quite generally known that I have been attorney for many of the banks in the county, and what my affiliations are.

Mr. DUNN of Mississippi. How about the electric company?

Mr. McLEAN. I never had anything to do with any electric company. That is my misfortune.

Mr. DUNN of Mississippi. Will the gentleman read this?

Mr. McLEAN. The building of the town of Norris is another illustration of the manner in which the project is being carried on and how little attention is given to estimating costs. This is illustrated by the following excerpt from the annual report of the Authority to Congress:

> The camp and town were originally planned to cost about $2,000,000, and to include dormitories for 700 men, cottages for 250 families, buildings for the operation of a training program for workmen, community buildings, and other necessary incidental facilities. Prices of materials and prevailing rates of wages advanced sharply while the town was under construction, and the construction schedule of the dam was advanced, requiring more housing, both in dormitories and dwellings. It appeared at the end of the fiscal year that the total cost of the camp and town, including all overhead, would be about $3,500,000.

Speaking of the first group of houses, the report says:

> Experience in the construction of these Houses indicated costs considerably in excess of estimates, due to advancing material prices, wage rates, and the pressure for rapid completion. The direct cost of construction for labor and materials averaged about $5,200 per house, including direct cost in connection with electrical heating and major electrical equipment of about $750. All overhead items will eventually be allocated and the basis of allocation to be used is being studied. In view of the depression level of rent in surrounding areas, monthly rents were set initially to average about $31 per house.

In other words, in the building of the town of Norris we find the actual cost was 75 percent in excess of that estimated, that rentals were based on depression levels in surrounding areas and not on the cost of construction or a reasonable charge for the accommodations provided, and the Authority states that the allocation of overhead is being studied. Any reasonable business man would have determined the overhead and allocated it to the proper account before the project was started. Furthermore, this town was built with full knowledge of the fact that, upon completion of the Cove Creek-Norris Dam, but 20 or 30 men would be required to carry on operations there and would be all the people available to occupy the houses unless the Government supplied other families with the necessary means. A comparable city to house 3,000 people employed at the Grand Coulee Dam in Washington was built for $1,000,000, and is described in the April 1935 issue of the Reclamation Era, published by the Department of the Interior.

Great stress has been laid upon attracting industries to the Tennessee Valley. The act provides that for 1 year after its enactment liberal terms might be made to attract industries or manufacturing establishments to the neighborhood (section 24). The Authority have had agents going about the country to "sell" the town of Norris to those who might be attracted to the neighborhood. Thus they have entered into competition with the boards of trade of every progressive community in the country, and it is not of record that their expensive bureau maintained for this purpose has brought a single industry to the locality. The limitation provided in the act has expired, but the activity continues.

At a meeting of the Authority on October 13, 1933, the thought was advanced that the Authority must work toward an increase in the use of electricity, and that increased use of current would benefit both the utility companies and the Authority, and attention was directed to the possibility of marketing electrical appliances. It was suggested that the Authority get permission from Congress to do this. Notwithstanding this conviction of the limitation upon their powers without the consent of Congress, the three directors organized the corporation under the laws of the State of Delaware, to which I have referred. The purpose of this corporation is to encourage people to purchase electrical appliances on the installment plan, one of the practices which experts say helped to bring on the depression. The corporation discounts the notes, chattel mortgages, or conditional sales agreements for the manufacturer. The corporation is financed with Government funds and the Government must take the loss of all unpaid installments. The invested capital of the corporation is $1,000,000, made available from Emergency Relief funds, and a credit of $10,000,000 has been set up by the Reconstruction Finance Corporation for its use. In this matter they have flagrantly exceeded their authority, because, had Congress intended that they should undertake any such enterprise, that authority would have been given them. Congress has the power to create corporations and designate their activities and exercise control of expenditures. The wisdom of men who are themselves the agents of Congress undertaking quasi public and private activities by the creation of a corporation under State law and financed with Government funds, is doubtful, and under some circumstances reprehensible. It would seem particularly reprehensible in this instance because of the conviction of the directors that authority for this activity should be obtained from Congress. This activity is wholly illegal, and yet, if I understand the purpose of the Authority correctly, they intend to extend it throughout the country in competition with established manufacturing and financing companies. It appears that this corporation has 22 employees, and that its annual pay roll is $58,900 per year. Two of its executives receive $6,000 each, one receives $4,500, and the others range from $3,200 to $1,440.

The Authority has also organized a Corporation under the laws of the State of Tennessee, known as the "Tennessee Valley Associated Cooperatives, Inc.", the invested capital of which, $300,000, was contributed by the Emergency Relief Administrator. The salary of the Administrator is $6,800 per year. The annual report of the Authority refers to their activities as members of this Corporation as follows:

> The activities of this Corporation were designed primarily to improve the winter diet of as many persons in need of relief as possible. The prevalence of tuberculosis and pellagra showed the necessity for a more correct diet, particularly the use of more green vegetables and dairy products. The cooperative projects aided during the initial period, therefore, included 1 cannery, 2 existing canneries, and a creamery. A regional farmers' cooperative was established in a group of four western North Carolina counties to promote the development and marketing of crops especially suited to the high altitudes of these counties, and began activities with the production of certified seed potatoes for the lowland market. Studies are under way of the possibilities of cooperatives as a way to increase the degree of economic self-support of the region.

This is all that is said on this subject, and it is, therefore, fair to assume that it is all they have to show for an investment of $300,000.

The CHAIRMAN. The time of the gentleman from New Jersey [Mr. McLEAN] has again expired.

Mr. TABER. Mr. Chairman, I yield the gentleman 1 additional minute.

Mr. McLEAN. Mr. Chairman, I repeat what was thought to be a solution of the Muscle Shoals situation is rapidly creating other and more serious problems. At the moment the situation is involved in indefiniteness and uncertainty, and if allowed to continue will become more difficult to unravel. Already there has made its appearance a bill by Representative TAYLOR of Tennessee, seeking a contribution by Congress, pointing to the fact that the taking of lands for this development has impaired the value of the bonds of several counties and has placed the burden of the payment of these bonds upon the remaining land owners. In Union County 42 percent of the taxable values of the county have been taken by the Authority, leaving the bonds to be paid by 58 percent of the valuations which were taxable at the time of the bond issue. In Campbell and Anderson Counties 20 percent of the assessable values have been taken out of the tax budgets, in Claiborne County 25 percent, and in Hancock and Grainger Counties 5 percent. This is one of the matters

that will involve the United States in controversy and expense, and should have been thought out with other preliminary matters as a part of a plan of orderly and businesslike procedure. The only thought that the Authority seems to have given this phase of the situation is referred to in its annual report, on page 5, as follows:

> The construction of the Norris Dam will result in cutting one county in two, school districts carrying bonded indebtedness will be submerged, and other changes will bring about a need for adjustments. Studies are under way to work out the necessary adjustments and to produce, if possible, an improvement in social and economic status.

Congress has reason to be anxious because of a lack of knowledge of the objectives of the Authority, and because it has no way of knowing to what extent it is to be involved in contracts or financial outlay. The mandate of Congress providing for an orderly program of development is being ignored by those whom Congress thought would respect its wishes. The Authority has appropriated to itself legislative as well as administrative functions. What was thought to be the solution of the Muscle Shoals situation is rapidly creating other and more serious problems. There are grave dangers in allowing this situation to continue as at present, not the least of which is the attitude of those who constitute the Authority toward the law under which they are acting. Ours is a Government of laws, not of individuals. We cannot hope to exist without respect for law and constituted authority, especially on the part of those who are representatives of the Government.

The Authority has disregarded the mandate of the law, and has seen fit to construe it to suit its own purposes.

All will agree that the way for the Government to fail is by disregard of law and orderly procedure, and by the usurpation of power by those who are placed in a position of authority and who seek to interpret the law to suit their own devices and to carry out purposes far beyond the intent of the Congress or any power which Congress had the right to confer. The procedure of Congress, insofar as I am informed, and the procedure of all law-making bodies has been to enact laws establishing policies to be supplemented by the necessary appropriations to make those policies effective. With meticulous care we plan for the Army, the Navy, and the activities of all administrative governmental departments, and for guidance in all their undertakings they look to the law for the mandate of Congress.

The principle behind this is that we are a free people acting through our accredited Representatives in the Congress of the United States. Those intrusted with any of the functions of government are but the servants of Congress, to which they are accountable. The Tennessee Valley Authority has disregarded this fundamental principle of government. The Congress is not required to reserve any of its prerogatives. Such reservations are inherent. There is only one power that can supplant it and that is the sovereign will of the people. It is a new kind of government when a board or body created by the Congress can ignore it, hold it in contempt, establish policies, and create indebtedness on the assumption that Congress would not even dare to repudiate its acts. Such is the attitude of the T. V. A. They have resolved all doubts in favor of themselves. They have embarked upon a program which Congress never contemplated, and left Congress in ignorance thereof. If this program should fail, the responsibility must fall upon the Congress which created and let run free the instrumentality of government which put it in motion.

The Authority should be required to put its house in order, to comply with sections 22 and 23, to the end that an orderly program may be determined upon and that Congress may have full knowledge of the purposes and intentions of the Authority and act intelligently when occasion arises.

I want to say to the gentleman who is interested in my private career that the people of Union County, N. J., know my standing, they know my affiliations, and they know with whom I have been associated. I have never obscured it from any of them. Furthermore, whenever I have an opponent who is engaged in a meritorious proposition, honestly convinced of the cause which he is advocating, trying to lay before the people the true facts of the situation, trying to even make the President of the United States know how he is being imposed upon, I hope never to use the kind of tactics that have been advanced here today. [Applause.]

The CHAIRMAN. The time of the gentleman from New Jersey has again expired.

Mr. LUDLOW. Mr. Chairman, I yield 20 minutes to the gentleman from Iowa [Mr. BIERMANN].

Mr. BIERMANN. Mr. Chairman, this bill contains some appropriations for public buildings in the city of Washington and some appropriations for the Army and the Navy. I think it is not inappropriate to call the attention of the Committee to some of the figures regarding the costs of public buildings in Washington and regarding the Army and Navy appropriations up to date.

I want to read the costs of some of the main public buildings in this city. I shall leave out the odd figures in order to not confuse the reading.

The Archives Building cost $8,500,000, the Commerce Building cost $17,000,000, the connecting wing between the Department of Labor and the Interstate Commerce Commission cost approximately $2,000,000, the Internal Revenue Building cost $8,000,000, the Interstate Commerce Commission Building cost approximately $4,500,000, the Department of Justice cost $10,000,000, the Department of Labor cost approximately $5,000,000, the Post Office Department cost a little over $9,000,000. All the magnificent buildings within the triangle cost $65,951,433.64. The total cost of the Treasury Building up to date is a little more than $8,000,000. The total cost of this magnificent building—the Capitol—is approximately $15,000,000. The total cost of the Library Building, including the book stacks, an addition to the library, and the auditorium, something over $9,000,000. The total cost of all buildings in the triangle, the Treasury Department, the Capitol, and the Library is ninety-eight and one-half million dollars. These figures on the triangle buildings and the Treasury Department are secured from the Procurement Division of the Treasury Department. The other figures are secured from the Architect of the Capitol.

Some of those buildings are luxuriously magnificent. Some of them are equipped with a magnificence to which many people have objected, and I think rather rightfully, but the spending on our public buildings is not a drop in the bucket compared to the spending we have already authorized on the Army and Navy this year and that we probably are going to continue to authorize in the future.

The War Department appropriation for the 1936 year is $401,998,000. That figure is an increase of $50,000,000 over the current year.

Mr. LUNDEEN. Will the gentleman yield?

Mr. BIERMANN. I yield.

Mr. LUNDEEN. It seems to me that just a few years ago, under another administration, the ship *George Washington*, costing $40,000,000, was towed out into the Atlantic Ocean and sunk. That is about half the value of all the buildings the gentleman has mentioned. Just a moment ago we heard a speech about the huge sums of money invested in the Tennessee Valley Authority. After all, this is a development of resources within the United States and for the American people.

Mr. BIERMANN. I thank the gentleman for his observation.

This appropriation of $401,000,000 does not include P. W. A. allotments, which, as set forth on page 6 of the report on the Army appropriations bill by the gentleman from Arkansas [Mr. PARKS], run into hundreds of millions of dollars.

The Navy appropriation bill passed this House carrying appropriations of approximately $459,000,000, an increase of $172,000,000 over the current fiscal year. If no increase is made in the Navy appropriation bill in conference the total appropriation for war preparedness for the next fiscal year will be more than $860,000,000. The P. W. A. allotments will surely bring our expenditures on the Army and Navy above $1,000,000,000 for 1936.

It is interesting to me to note what it costs the people of this country to run its Army and Navy by the day and by

the month. It costs the American people in appropriations made by this Congress, aside from the P. W. A. allotments, $71,720,000 to run our Army and Navy Departments 1 month. It costs more than $2,350,000 to run these departments 1 day. Every month we spend on our Army and our Navy, exclusive of the P. W. A. moneys, more than the total cost of all the magnificent buildings in the Triangle. In a month and 12 days we spend on our Army and our Navy more money than the Government has spent to erect all the public buildings in the Triangle, plus the cost of the Treasury Building, plus the cost of this magnificent Capitol Building, plus the cost of the Congressional Library and its annex.

I am well aware of the fact that it does no good at this time to talk about Army and Navy expenditures. I am well aware of the fact that this body is obsessed with the idea that we have to "prepare" ourselves against some foreign foe; but I want to leave this thought in the minds of those who are listening to me, that you cannot get any Army or Navy officer, I do not care how low or how high his rank, to sign his name to a statement setting out any plan under which any foreign nation or combination of foreign nations could land soldiers on the continental United States.

Mr. LUNDEEN. Mr. Chairman, will the gentleman yield?

Mr. BIERMANN. I yield.

Mr. LUNDEEN. I think the gentleman is absolutely correct in his statement. If we would only listen to the Father of his Country, George Washington, and read his Farewell Address instead of simply giving it lip service, and follow his policy of being friends with all and trading with all, but keeping out of the quarrels of other nations, we could save a lot of this money.

Mr. BIERMANN. I am sure we could. It is well to remember that in the World War the Allies had the two largest navies in the world, besides the Navy of France and several other powers, yet these navies of the Allies failed to take any land fortification, failed to take a single German port, and, so far as I know, they never fired a hostile shot onto German soil from the water. All the navies of the Allies that massed at Gallipoli were unable to maintain their foothold. Yet we are making these appropriations for battleships, some costing $29,000,000, and airplane carriers costing $40,000,000 under the theory that some foreign foe or combination of foreign foes can transport soldiers over 3,000 miles of Atlantic or 5,000 miles of Pacific water and land them on our shores in sufficient numbers to make them a menace to our country. I repeat, that I venture the assertion that you cannot get an Army officer or a Navy officer of any rank whatsoever to sign his name to any statement that will show how any foreign foe or combination of foreign forces can successfully attack the continental United States; yet we are making these appropriations in the name of preparation to defend our own shores. Admiral Stirling recently urged that we use our Navy to combine with other countries in an attack on Russia. But I venture to say that neither this warlike gentleman nor any other navy man is willing to endanger his reputation by saying that all the other navies of the world combined could successfully attack the continental United States.

I agree that we may see the time that airplanes will be able to fly across the ocean and drop poison gas or disease germs on the other shore. But I am sure that no Army or Navy officer of repute will say that battleships or cruisers are a defense against them. [Applause.]

Mr. Chairman, I yield back the balance of my time.

Mr. TABER. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. MILLARD].

Mr. MILLARD. Mr. Chairman, it seems appropriate, at a time when the Congress is making appropriations to cover money deficiencies in the governmental departments, to point out what to me are deficiencies in other directions, not monetary, but in policies with their possible results.

We are spending vast sums to combat an economic situation from which the United States, with the rest of the world, has suffered during the past 6 years. It is appalling what this has cost us. The actual and estimated Federal exenditures for 1934, 1935, and 1936 amount to $24,206,533,000. From 1789 to 1913, according to the last annual report of the Secretary of the Treasury, a period of 124 years, the expenses of the Federal Government amounted to $24,521,845,000, only $300,000,000 more spent in 124 years than during the last 3 for the operation of the Federal Government. And it was the President himself who, during his campaign for election, accused the Hoover administration "of being the greatest spending administration in peace time in all history, one which piled bureau on bureau, commission on commission, and has failed to anticipate the dire needs of reduced earning power of the people." In the month following this acquisition in another campaign speech the President said:

> I regard reduction in Federal spending as one of the most important issues in this campaign. In my opinion, it is the most direct and effective contribution that Government can make to business.

This is now forgotten, however. Even those charged with directing the present policies have to admit, and do so privately, that we are no further on the road to a normal recovery than we were before the American people became saddled with the tremendous burden of public debt it carries today.

The public-works program, operated at immense cost, has failed because it has not primed the pump. Other nations have tried similar policies and have likewise met with failure. While the P. W. A. made jobs, they were only temporary. There is nothing to replace the projects when they are completed. Billions of the people's money have been appropriated for expenditure under direction of the Public Works Administration. Allotments of these funds in frequent instances furnish examples of action by administrative authority in direct contravention of prior determination of Congress. Reclamation projects, river and harbor improvements, public buildings, and other governmental proposals, denied by Congress after investigation, have been financed by the P. W. A. without reference to the congressional attitude.

When the present administration took office in Washington I was literally swamped with pleas from my constituents to give the new President and his policies my support, to aid him in the fulfillment of his promise to reduce governmental expenditures and balance the Budget, and make it possible for him to test his theories and effect his campaign pledges. Insofar as I was able, I did give the administration my support, but, looking back upon the events of the last 2 years, I am convinced that if we had not been swept along on the hysterical tide, if we had not agreed without due consideration and study to untried visionary proposals, the United States would today be on the road to economic recovery instead of immersed in debt and confusion which will bequeath to future generations intolerable burdens of taxation.

When we took office at this session and at the beginning of the preceding Congress, each of us pledged himself to uphold the Constitution. Notwithstanding this, there have been enacted measures which were known to be unconstitutional and have since been declared so by the Supreme Court, namely, the oil code and the legislation purporting to authorize it, the Railroad Retirement Act, the Frazier-Lemke Act, and the National Industrial Recovery Act. There are others which have not yet reached that Court which will undoubtedly suffer the same fate when their turn comes. It is high time for the Congress to learn that a change may not be made in the Constitution of the United States by a mere wish of the Chief Executive. We have been entirely too complacent and docile in surrendering our function as lawmakers and by doing so have turned the country over to experimenters, making of it a laboratory of experimentation. We have stood by long enough while the press has pointed the finger of scorn at the Congress. We have too far accepted emergency bills of which we had little understanding from the authors of the new deal—those impractical theorists who have been given first consideration while the help of men and women of more than average ability, capable of advising the administration through previous accomplishment in business and the professions, have been distrusted and their advice thrust into the background,

if it was heard at all. Bills were drafted not in accordance with the usual practice but outside of our own committees, presented as drawn and then referred to those committees, and as promptly reported. Time and again the sponsors of the measures, when they reached the floor, were reluctant or unable adequately to explain their meaning or effect. We accepted from the executive departments bills so broad in their scope as to touch every economic activity in America, drawn by persons entirely unfamiliar with the intricacies of legislative drafting, so badly phrased in many cases as to make it impossible for a normal mind to fathom. Though we know the importance of and the necessity for the writing by the Congress of all laws which touch economic operations in unequivocal terms instead of leaving such a function to bureaucrats to do with as they please by means of so-called "regulations", but we are guilty of doing just that. The Congress literally abdicated its constitutional function and created, in the Chief Executive and the heads of the Government departments, such dictatorships as had never been dreamed of even in war time, regardless of a warning by the Supreme Court that the legislative body should be specific in its grants of authority to the Executive. By this means there were enacted, in unprecedented time, a bewildering succession of temporary, unsystematic, self-contradictory, and experimental measures for the control of credit; the control of business; the control of agriculture; the control of transportation; the control of the freedom of the air; and the control of liberty, thereby debasing the currency and the obligations of the United States; terrorizing the banking system; increasing the cost of business in every enterprise; plunging industry into labor warfare; taxing one section of the people for the benefit of another; destroying food and clothing materials in a hungry world; increasing costs of relief and squandering the people's money.

In short, the measures which we have enacted have concentrated an enormous power in the hands of the Chief Executive and thereby subjected the life of every American citizen to detailed regulation by a central authority. One of the results is a condition in our currency and banking that may lead to a ruinous inflation, and the succession of mounting Treasury deficits must be met either by crushing taxation or by inflation. We have built up a universal fear which prevents the creation of credit by the banks and dries up the springs of investment upon which recovery depends. Of equal seriousness is the much larger volume of unemployment than we had a year ago, with 22,000,000 people—1 in every 6 of our population—dependent for subsistence on public relief. That is our record of accomplishment.

Running crisscross through the fabric of our governmental system we find active competition with private enterprise. Business, during this period, has not only had to submit to a bureaucratic control which has no precedent, but has had also to face active competition from its Government.

In its examination into Government competition with private enterprise the special committee appointed by the Congress for that purpose, found that there were not less than 225 items of trade, industry, and professional service affected. The committee found that the Navy Department, in addition to plants for the construction of war vessels and submarines and the manufacturing of munitions, had developed facilities for the production of binoculars and optical goods, anchor chains, rope, cans and drums, paint, varnish, polish, furniture, mattresses, hammocks, propellers, engines, fire extinguishers; that the War and Navy Departments manufacture uniforms, clothing of all kinds, leather and harness goods and saddles; that the War Department at its posts and reservations operates laundries, dry-cleaning and dyeing establishments and commissaries at which all kinds and descriptions of articles are sold, including gasoline; and that similar stores are operated at docks and aboard vessels by the Navy Department; that the War and Navy Departments operate transport services, including the Government-owned Panama Railroad Co.; that Army, Navy, and Marine Bands supplant private bands and orchestras at other than official gatherings and on commercial tours; that the Government Printing Office engages in the manufacture of ink, paste, mucilage, blankbooks, and similar articles; that the manufacture and merchandising of stamped envelopes by the Post Office Department is another example of the encroachment of the Government upon private enterprise; that the Parcel Post Service of the Post Office Department competes with the express companies and the operation of the Postal Savings System with banking. The Federal prisons manufacture shoes, brushes, cotton cloth, tents, and automobile tags which are sold in competition with private enterprise; the Census Bureau engages in the manufacture and repair of computing and tabulating machines; through a so-called "welfare service" restaurants and cafeterias are maintained in Government buildings; the Treasury Department is competing with private architects in the execution of plans for public buildings.

The Government as it now exists was conceived and organized for political and social control and activity. It was not vested with any economic function beyond those essential to the proper exercise of its own functions in coining money, collecting and disbursing revenue, emitting credit, operating post offices and carrying mails, and in developing and maintaining military establishments for the protection of the lives and property of its citizens. It was primarily designed "to promote the general welfare and to conserve to its citizens the rights of 'life, liberty, and the pursuit of happiness.'" The entrance of the Government into commercial and industrial undertakings, backed by public credit and resources and its military and civilian personnel, for the purpose of competing with the business establishments and the opportunities of livelihood of its citizens is, therefore, in general, repugnant to our fundamental democratic institutions and aspirations. Our people, if they so elect, might decide to own and operate their own utilities, or might declare any branch of industry or business to be affected with a public interest, and through proper legal measures might acquire and operate such economic institutions. Even such extreme action, however, under our Constitution would have to be carried out without any confiscation or impairment of private property or property rights, but no constitutional authority exists whatsoever which would permit the Government deliberately to engage in business in any form which competes with and impairs the private business of its citizens except for reasons of economy or fiscal and military expediency.

Notwithstanding this, we are confronted with a proposal to widen the scope of Government competition and control by the operation of electric and gas utility companies and the complete abolition of the holding company, though I am informed that the House will not contain this provision, but in its stead provides for strict regulation of the holding companies. To eliminate the holding companies means the confiscation of private property belonging to approximately 5,000,000 investors throughout the United States who have placed hard-earned life savings in utility stocks. The great majority fall in the low-salary brackets and include men and women in all walks of life, charitable organizations, hospitals, educational institutions, fraternal groups, churches, and church societies, and neighborhood groups.

I have no quarrel with proper regulation. On the contrary, in my opinion, there should be proper regulation, and I should gladly give my support to such a measure; but I would be unwilling to vote for any bill which does not set forth the provisions by which such companies are to be governed. Human frailties being what they are, I think it is unsafe, unsound, and, most of all, unconstitutional, to allow a board of men and women to entirely regulate any industry. We have just passed through an experiment by which the law governing all industries was written by the heads of the N. R. A. as they thought the need arose, and I for one have no intention of harassing any industry with a similar situation again.

Let us grant, then, that we have need for regulation and control. Knowing this, we should carefully study that need and as carefully prepare in unequivocal terms a law which will adequately regulate the industry insofar as the Federal Government constitutionally can.

In considering the holding companies we must not lose sight of the fact that they have their advantages as well

as their disadvantages; by furnishing centralized managerial control to operating companies in the form of highly specialized, highly trained, and highly paid legal, engineering, and accounting talent; aid in financing, combined purchasing power, equipment held under holding company patents, or manufactured by the subsidiaries of the holding company, and means of expansion. These are of inestimable value to the small operating plant and thereby to the community each serves.

Electric energy is essentially a local commodity. It is local as to service, generation, and distribution. Acquaintance with local conditions and valuations is necessary for efficient, economical, and satisfactory regulation. I am informed that only about 17 percent of the energy generated is transmitted in interstate commerce and that not more than 1 to 2 percent of this is actually sold at wholesale for resale, the remaining portion being merely passed by the same company or companies across State lines without any wholesale sales. Production, therefore, is wholly with the States.

During its consideration in the Senate, the sponsors of the so-called "public-utility bill" repeatedly asserted that there is nothing in it which will tend to control intrastate commerce; only interstate commerce. The Senator from Delaware, in an effort to obtain a plain statement on this point, said:

I merely wish to make it clear to the Senate that his (Senator WHEELER'S) theory is that the mere exchange of correspondence between the holding company and the public utility which is operating in a single State, constitutes interstate commerce.

The Senator from Montana replied:

I now cite a case in which the Supreme Court held that by correspondence the operating company was engaged in interstate commerce.

While there has been repeated explanation by those sponsoring the bill in the Senate that it will affect only interstate and will not deal with intrastate commerce, we should not be misled as to just what constitutes interstate commerce, since an operating company, operating in a single State, is transacting business in interstate commerce when it merely writes letters to a holding company.

In the light of our experience with Government operation, we know that it has always been more costly than operation by private enterprise, and it does not take another costly experiment to teach us. No project for the generation, distribution, and sale of power operated by the Government can possibly be as efficient as the same project under private operation.

For an example of Government operation, remember the railroads under Federal control. History shows us that the Government management of the railroads was inefficient, and all of us remember that the railroads were wretchedly conducted; that money was spent and wasted with a prodigality which nothing can defend. During the time in which the Government undertook to manage the railroads, they sustained, despite a generous increase in freight rates, a loss of over a million dollars a day, and the total payments out of the Treasury to support the railroads reached the enormous sum of one and three-quarters billions of dollars. There was universal dissatisfaction with the Government management, and it was a just dissatisfaction. The experiment failed.

The importance of the Wheeler-Rayburn bill does not rest alone with the abolition of the holding company or with the operation of the electric and gas utility companies by the Federal Government. This is the first step on the part of the Federal Government toward the control of all public utilities. If, without due consideration of the result of this step, we place in the hands of the board or commission established with congressional authority to write the law and enforce it, or its equivalent, the operation of gas and electric utilities throughout the United States, we will be called upon at the not too far distant time to bring under Government control all public-utility operations. When we vote on this bill, therefore, we must decide, not only for the present but for the future of all utilities.

When the National Industrial Recovery Act was passed, the Congress agreed to the most extensive transfer of congressional power to an administrative agency ever made. With the N. R. A. the administration hoped to advance recovery by raising wages and thereby the purchasing power of employees and to prevent cutthroat price competition. This is the basis upon which most of the "recovery" program was founded. It was expected that wages would be raised in advance of prices, but the N. R. A. failed to control price advances. By the time the codes had raised wage rates prices had soared so as to offset the pay-roll gains. This promoted scarcity rather than abundance, and aggravated, instead of corrected, many of the worst internal maladjustments, which materially retarded the revival of the construction and capital goods industries. The experiment, as we all know, proved an utter failure and was struggling to draw its last gasps when the Supreme Court branded it unconstitutional. The evils which grew up under the N. R. A. are without number. By the passage of the act the President of the United States was made a dictator over industry. The law governing industry was written within the administration and not by the Congress, but that again was the fault of the Congress in delegating its power.

Altogether the N. R. A. regimented the American people and violated their liberties; it increased production costs and reduced consumption; it retarded rather than fostered recovery; it encouraged industrial strife but failed to improve the lot of labor and it was as casually and frequently disregarded as the prohibition law. The codes resulted in injustice, particularly to the small manufacturer or businessman, favoritism, oppression of small businesses and the growth of monopolies. If the Federal Government is going to supervise industry there must be power to define the jurisdictional limits of industries and trades, just as there is a definiteness in the jurisdictional lines of States.

What I am endeavoring to point out is the injustice we have done the American people by the enactment of this and other laws which are not only unconstitutional but which retard rather than foster recovery. It is high time that the Congress should give deep study to the laws, it passes and think seriously of the constitutionality of their provisions. The passage of unconstitutional laws leads to endless litigation and confusion and great expense to all litigants concerned. What we need is recovery not reform. Reform must come slowly, carefully, cautiously. We owe the electors who sent us here the best that we can give them and we should be able to go before them at election and at all other times and tell them that we gave our support to only those measures which after careful consideration we were assured for the public good. Are we going to continue to pass Federal laws which, socialistic in their character, take from the man who had struggled and put aside for his old age, his life earnings, his security? I know of no human right which is dearer to civilized man than the right to work for, acquire and keep for his own, property. Have we in a republic any constitutional authority to take from our citizens that which they have earned by energy, intelligence, thrift, tenacity of purpose and enterprise? By doing so we stifle initiative and creative energies. In days gone by man worked for the love of work alone. That is not true today. The majority labor for the monetary remuneration and the job is valued by the salary or the power it commands. We can bring about recovery only when governmental measures supplement and not compete with private enterprise. We cannot bring about a normal or abnormal recovery by the smothering of creative energy by the inflexible might of bureaucracy. [Applause.]

Mr. BUCHANAN. Mr. Chairman, I yield 10 minutes to the gentleman from New York [Mr. MEAD].

Mr. MEAD. Mr. Chairman, in the first place I want to compliment the Appropriations Committee for an item contained in this bill which I believe is of vast interest to the Congress and to the country. Some time ago on the floor of the House in connection with a bill which came over from the Senate we heard a very interesting debate on the possibilities of a round-the-world mail service. An item was

included in that Senate bill calling for the appropriation of $2,000,000 for the inauguration of a service between San Francisco, Calif., and Canton, China. At that time the Appropriations Committee informed us that they were not in position to approve such an item because it had never been brought before them by the Post Office Department or by anyone else in the Government service.

At the committee's suggestion the House very wisely rejected the item and it was ultimately stricken from the bill. In the bill we are considering there is contained an item of $1,000,000 for the creation of this trans-Pacific air-mail transportation service. The Department asked for an appropriation of not to exceed $1,800,000 annually, the contract to be let by competitive bidding and the service to be inaugurated with an understanding that it be conducted at regular intervals. The committee reduced the appropriation to $1,000,000, which I feel is enough for the initiation of this service. It is not necessary that the service be increased right away, but it is necessary that the service be instituted.

Mr. Chairman, this service will connect San Francisco, Hawaii, Wake Island, Guam, Manila, and Canton, China. In China it will connect with another service operated by an American company and also a second service operated by a Chinese company which is partly owned by American interests. These two companies in turn will connect up with other lines, which will give the United States virtually a round-the-world service. This is the beginning of a service that will give us a rapid round-the-world air mail transportation system in a short time. Not only that but it offers the United States an opportunity to cultivate a very promising field in China and the other nations of Asia before that field is overdeveloped by competing air-minded nations. Already there is a German line in China. There are English lines in Asia, and it is high time for America to realize that much of the future commerce, mail, passenger, and express business of the world will be carried by airplane. It is time for us to enter this field, to develop its trade possibilities. This is a very important item, and I congratulate the committee for recommending it.

Mr. Chairman, there is another item in this bill that is of interest to those of us who are on the Post Office Committee and that is the item pertaining to the Rural Delivery Service, calling for an increased appropriation of $2,685,000. The reason I mention this appropriation is that there is a possibility that Members of this House will charge this item to the increased equipment allowance which we granted the personnel of the Rural Service when we passed a measure reclassifying salaries in that Service during the last Congress. It is true that the hearings, and perhaps the report on this bill, indicate that this increased appropriation is due to the fact that we increased the equipment pay of the carrier from 4 to 5 cents a mile. It would be true if that was all we did, but that is not exactly the case.

When we passed the bill reclassifying the salaries in the Rural Service we saved the Department approximately $9,200,000 by reducing the wages of the employees of the Rural Service. We did this by extending the standard route from 24 miles to 30 miles and paying the carrier the same wage for carrying the mail over the 30-mile route that we paid him for carrying the mail over the 24-mile route. In addition to that, we reduced the per mile wage of the carrier for all miles in excess of 30 miles from what it was, $30 a mile, to what it has been since the passage of that bill—$20 a mile.

In view of the fact that we have more miles per day than ever before in excess of 30 miles, we are delivering much of our rural mail for $20 per mile, whereas we formerly delivered it for $30 a mile. The record therefore indicates that the bill passed by Congress a year ago permitted the Department to effect a saving of approximately $9,200,000. The equipment allowance was increased from 4 to 5 cents, but by reason of the fact that the Economy Act permitted an additional reduction from 4 cents to 1 cent, there was of necessity an increased appropriation needed. The elimination of the cut in the equipment pay made possible by the Economy Act and the subsequent increase in the equipment allowance from 1 cent to 4 cents and subsequently to 5 cents called for increased appropriations. I want the RECORD to show that the bill which passed the Congress a year ago increased the equipment allowance, and it also effected a saving by reclassifying the salaries and rearranging the method of pay in the rural letter carrier service. Its decreases more than offset its increases.

Mr. SCHNEIDER. Will the gentleman yield?

Mr. MEAD. I yield to the gentleman from Wisconsin.

Mr. SCHNEIDER. Is it the opinion of the gentleman from New York that the routes are rather long and that these consolidations and extensions make the routes longer than is necessary or wise?

Mr. MEAD. May I say to the gentleman that our committee on a number of occasions considered the matter of limiting the length of rural routes to 60 miles. The present administration of the Post Office Department has indicated a desire to hold all rural routes to 60 miles, but because of difficulties encountered in rearranging routes that are now in excess of 60 miles it was the desire of the Department that no legislation of that kind be reported by our committee. I may say to the gentleman, however, that the rural letter carrier service, by reason of the constantly increasing mileage and the consolidation of routes, the elimination of fourth-class post offices, and the elimination of star routes has saved many millions of dollars.

We are serving more patrons at less cost to the Department than ever before.

[Here the gavel fell.]

Mr. TABER. Mr. Chairman, I yield 10 minutes to the gentleman from Massachusetts [Mr. TREADWAY].

Mr. TREADWAY. Mr. Chairman, I wish to call attention to the deficiency appropriation carried in this bill on page 9, under the title of the Tariff Commission, and in this connection I call attention to the testimony of the Secretary and the administrative officer of the Tariff Commission in testifying before the Committee on Appropriations. I desire to read several brief extracts, in order not to take up the time of the committee, from their statement found on page 150 of the hearings:

> Surpassing in importance and in volume all other work of the Commission combined has been the Tariff Commission's activities under the Trade Agreements Act of June 12, 1934.

Then, again—

> Some 31 different committees are dealing with the reciprocal trade negotiation program, special functions, or fields being assigned to each committee.

And, again—

> The highly industrialized and highly competitive European countries present problems far more intricate and difficult, and the staff of the Tariff Commission anticipates a long, busy period as the reciprocal trade negotiation program moves forward.

And, again—

> In effect, the American tariff is today under revision.

I want to repeat this sentence from the administrative officer of the Tariff Commission:

> In effect, the American tariff is today under revision.

May I ask, Mr. Chairman, by what authority is the tariff under revision? Is there any legislation pending in Congress that warrants this statement from an administrative officer? Is there any tariff bill before this House? Is there any tariff measure being considered in the Ways and Means Committee? Not to my knowledge. But the interesting part of this effort, illegally and unconstitutionally to revise the tariff, is in the expense of this revision to the taxpayers.

Mr. LUNDEEN. Mr. Chairman, will the gentleman yield?

Mr. TREADWAY. Let me finish this expense item and then I shall yield to the gentleman.

The Tariff Commission for the year 1936 asked for the sum of $970,000 and in the breakdown of these figures we find that the estimate for 1935 under item 1, the reciprocal trade agreements amendment of June 12, 1934, to the Tariff Act of 1930, is $374,527, and the estimate for 1936 is $426,753. In other words, nearly 50 percent of the entire cost of

the Tariff Commission, in my opinion, is contrary to the Constitution of the United States.

By what authority can the officials of the Tariff Commission say, in effect, that the American tariff is today under revision? The Commission has no right to inaugurate any such revision without reporting to Congress or upon congressional request for information. The reciprocal tariff law is questioned as to its constitutionality, and this question is supported by language in the celebrated decision of the Supreme Court rendered only a few weeks ago.

I now yield to the gentleman from Minnesota.

Mr. LUNDEEN. May I inquire if this is not under the reciprocal tariff paragraph referred to?

Mr. TREADWAY. Oh, certainly.

Mr. LUNDEEN. And in that connection may I say that I voted against that reciprocal tariff act?

Mr. TREADWAY. Yes; and I appreciate the gentleman's good judgment in doing so, because he voted to support the Constitution, while those who put the reciprocal tariff act on the statute books did just the reverse. I put this entire proposition up to our distinguished former colleague here, the present Secretary of State, Cordell Hull, as to the constitutionality of that act when he advocated adoption of his hobby before the Ways and Means Committee. I admire a man with a hobby, and a hobby is a splendid thing to ride, but it is mighty expensive to the taxpayers of the country when, in order to carry out the provisions of such an act, they have to put up $426,000 in order to get estimates that they have no constitutional right to ask for. Further than this, this hobby of the Secretary of State means injury and damage to the industries of this country. I contend this is a hobby he should keep off of, and the voters of this country will aid him next year in getting off of this hobby.

Mr. MOTT. Mr. Chairman, will the gentleman yield?

Mr. TREADWAY. I yield to the gentleman from Oregon.

Mr. MOTT. Does the gentleman know of any way the constitutionality of the reciprocal trade agreements law may be tested in the courts?

Mr. TREADWAY. Of course, that is a matter of procedure that must be put up to the individuals involved. As I understand it, the Supreme Court takes up cases from the lower courts where an injury, financial or otherwise, has been shown against an industry or against a firm. This was exactly the basis of the "chicken" decision of a few weeks ago; and in the gentleman's own case, if an agreement is entered into with Canada, with respect to the tariff rate on lumber which affects the industries of the Pacific coast, I hope some of the gentleman's good manufacturers of shingles and lumber out there will bring the matter to the Court here and test out this constitutional question.

Mr. MOTT. If the tariff is interfered with, it will probably ruin the lumber industry of the Pacific coast.

Mr. TREADWAY. The gentleman and his friends and his constituents are entitled to the protection of the Court.

Mr. MOTT. The trouble is to get the question before the Court.

Mr. TREADWAY. I hope they will pursue the policy followed by the chicken man in Brooklyn in bringing the case into the courts and in getting a decision that will be beneficial to everyone concerned.

Mr. MOTT. Many people interested in the lumber industry have inquired about the matter. In case a tariff agreement is negotiated with Canada and the tariff on lumber taken off, they know of no way at present whereby they can get the matter into the courts. I am looking into the question now and I was wondering if the gentleman had any information on the subject.

Mr. TREADWAY. I am pleased the gentleman is interested in the matter.

Mr. FITZPATRICK. Mr. Chairman, will the gentleman yield?

Mr. TREADWAY. I yield.

Mr. FITZPATRICK. What would the gentleman think of taking the tariff entirely out of politics by having a permanent Tariff Commission with the members appointed for life and removable only on charges, and paying them $40,000 a year, so that we may regulate the matter of a tariff on its merits?

Mr. TREADWAY. I should like to know who is going to have the selection of the members of the board before I would agree to that program.

Mr. FITZPATRICK. In this way we would take it out of politics so that it would no longer be a football of politics.

Mr. TREADWAY. It is not in politics now and this kind of procedure is destroying the industries of this country in a manner which I believe is unconstitutional, and the Secretary of State should not have come before the Congress and urged this reciprocal-tariff proposition.

Mr. MILLARD. Would the gentleman from New York approve of a nonpartisan Tariff Commission?

Mr. FITZPATRICK. Positively.

Mr. TREADWAY. We had one once and the Democrats threw it out the window.

Mr. FITZPATRICK. I would favor a nonpartisan commission with full power to act on each individual item on its merits, and until we do provide for this method, the tariff will never be taken out of politics and we will never get the right kind of a tariff.

[Here the gavel fell.]

Mr. TABER. Mr. Chairman, I yield the gentleman from Massachusetts 5 additional minutes.

Mr. TREADWAY. I have introduced a bill to repeal the Reciprocal Tariff Act, and so has my good friend from Nevada, Mr. SCRUGHAM. That confirms the statement that my friend from New York, Mr. FITZPATRICK, made, that it is nonpartisan. It is a nonpartisan matter or a bipartisan matter. This particular subject of reciprocal tariffs has not been a political football, as it has only been on the statute books for a short time.

Mr. CONNERY. Will the gentleman yield?

Mr. TREADWAY. I yield.

Mr. CONNERY. Does my colleague know that on the ocean rates from Boston, Baltimore, and New York shipping to Europe costs three times as much as the shipping from Europe here on the same ship. These are the rates that the North Atlantic has established, and we cannot make such restrictions.

Mr. TREADWAY. Certainly such discrimination against American shipping is very injurious.

Mr. MILLARD. The gentleman from Massachusetts has had trouble with Japan, and he is very sensitive on the tariff question.

Mr. TREADWAY. We are all having trouble with Japan and some other countries, for they are making goods so cheaply they are putting us out of business. Reciprocal tariff will do the part.

Mr. FITZPATRICK. The gentleman knows that I am for protection.

Mr. TREADWAY. I know that. The gentleman was born in a section where brains count. The gentleman from New York was born in the next town to the one where I first saw the light.

Mr. ARNOLD. Does the gentleman mean to say that the question of man's being born with brains is sectional?

Mr. TREADWAY. Oh, no. We are glad to spare some for the gentleman from Illinois.

Now, as to the statement I have made about reciprocal tariffs, I want to read a few lines from the decision in the Poultry case:

> The Constitution 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" (art. I, sec. 1). And the Congress is authorized "to make all laws which shall be necessary and proper for carrying into execution" its general powers (art. I, sec. 8, par. 18). The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested.

That is exactly what we have done in the Reciprocal Tariff Act. We have transferred and abdicated our powers to the executive branch to do with as it sees fit. Further the Court said:

> But Congress cannot delegate legislative powers to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and expansion of trade or industry.

Could there be anything more direct and positive in statement than that reference in the decision of the Supreme Court about this very subject matter about which I am speaking? Then Mr. Justice Cardozo in his separate opinion said:

This is delegation running riot.

Mr. Chairman, I say that while we are obliged to vote these excessive appropriations and deficiencies carried in this bill, it is time our people knew something about the way the expenditures of the Tariff Commission are practically doubled in order to make investigations that are illegal and unconstitutional. [Applause.]

The CHAIRMAN. The time of the gentleman from Massachusetts has again expired.

Mr. TABER. Mr. Chairman, I yield myself 15 minutes. This bill calls for about $225,000,000. The chairman of the committee, Mr. BUCHANAN, has, I think, done a very good job in cutting down the estimates that were sent here from the President, because he tells us today that he has reduced them approximately $132,000,000. There are still some items in the bill where we are appropriating more money than we should, and where I believe Congress should exercise its proper function of cutting them down.

I am going to talk for a moment or two about the Tennessee Valley Authority. That item, to my mind, is still out of line and should be cut more than it has been. The Tennessee Valley Authority is in the hands of three Commissioners and, frankly, I think I can say without much fear of successful contradiction that that Tennessee Valley Authority degenerated from an institution that was supposed to promote flood control and navigation on the Tennessee River to an institution designed for the relief of millionaire gentlemen farmers down in Tennessee. Without any one who had anything to do with the passage of this act knowing anything about it, they have gone ahead and bought a great lot of fancy, high-priced cattle. They went to one auction held by a millionaire farmer named Farrell in Nashville, Tenn., and bought full-blooded, registered Jersey cows, one for $400, one for $900, one for $750, one for $950, one for $600, another one for $600, and a great lot of them for other prices.

Mr. SNELL. Mr. Chairman, will the gentleman yield?

Mr. TABER. Yes.

Mr. SNELL. By what authority did they spend money for the purchase of that kind of cattle?

Mr. TABER. I do not think they had any authority.

Mr. SNELL. Then why does the committee appropriate for it?

Mr. TABER. It is not appropriated for here. It is an item that is now under discussion, as I understand it, with the Comptroller General.

Mr. THURSTON. Mr. Chairman, will the gentleman yield?

Mr. TABER. In a moment. The bill for cattle, as I understand it, came to about $5,000, and their business methods were so advanced that they did not pay for them until they were sued for it. They wanted the sheriff's receipt. I yield now to the gentleman from Iowa.

Mr. THURSTON. Was it not a part of the relief program to relieve millionaires who have fine herds of cattle around Nashville, Tenn.?

Mr. TABER. It seems to have degenerated into that.

Mr. GRAY of Pennsylvania. I offer the suggestion to the gentleman that maybe it is good business and it is intended for practice in learning how to milk the country.

Mr. TABER. Oh, they are milking the country all right. Their program runs to $300,000,000, if the country is silly enough to go along with it; but I think the country ought to know the way they are doing business.

Mr. FITZPATRICK. What is the reasonable price for a milch cow? Is it not about $75?

Mr. TABER. I know where they could buy first-class registered Jersey cows for $125, and a milch cow for anywhere around $50 to $60. They had some other operations that indicates the capacity of a superbusiness mind.

For instance, they bought a team of mules for $250 and a little while later they sold that team for $170. They bought a team of horses for $325 and in a little while they sold the team of horses for $191, a profitable transaction. They bought a team of brood mares for $425. One died, and they sold the other for $110. They bought three riding horses, and what riding horses have to do with building dams I do not know and you do not know, but they paid $175 apiece for them. One of them was injured and they killed it, and the other two they sold for $100 apiece. They only lost $75 apiece on those two horses.

Mr. MOTT. Riding horses would have just as much to do with the building of a dam as a milch cow, would they not?

Mr. TABER. Well, it is pretty close running. Then, I have here the aircraft yearbook for 1935. Turning to page 105, we see a picture of the T. V. A. Bellanca transport. Below it says:

One of the six planes operated by the United States Tennessee Valley Authority.

In that same yearbook I find on page 108:

Tennessee Valley Authority of Emergency Relief Administration acquired its own planes and used them extensively for transportation during 1934.

Fairchild Aerial Surveys received contracts for aerial photographic mapping of 50,000 square miles in the areas under development. This work was done with the Fairchild 5-lens camera. It is to be completed early in 1935.

They told us that they did not have 6 airplanes, but they only had 3. They told us that they had 1 that was surplus, transferred from the Department of Commerce; 1 that they paid $18,895.58 for, the Bellanca, and $3,665.60 for the Stearman. They spend a good deal of time riding around the country in airplanes at the expense of the T. V. A.

Mr. EKWALL. Will the gentleman yield?

Mr. TABER. I yield.

Mr. EKWALL. Does the gentleman suspect they were delivering the milk from the milch cows by airplanes?

Mr. TABER. It may have been, or perhaps they were delivering fertilizer. [Laughter.]

Mr. COSTELLO. Will the gentleman yield?

Mr. TABER. I yield.

Mr. COSTELLO. Did they use those airplanes in transportation from the Tennessee Valley to other parts of the country or were they used only in traveling from one part of the valley to another?

Mr. TABER. I understand they go outside the range of the valley when they have an errand on which to go.

Mr. COSTELLO. Were they not largely used for photographing the valley itself, in order to have topographical maps of that valley?

Mr. TABER. I do not know but what perhaps I ought to read a word or two of the gentleman's operations. He said he used it for air mapping, but principally transportation. I cannot turn to it just this minute, but he told us of numerous trips he had taken in an airplane because he could save time and do it much quicker.

Of course, it costs a great deal more money to travel that way. When they have facilities like that they do a lot more traveling than they need to.

Mr. COSTELLO. It may be true that they might travel more than they would if the planes were not available, but due to the tremendous distances in the valley it is necessary to cover the space in a short period of time.

Mr. TABER. I think perhaps that is so. Then they told us they had a great lot of automobiles. As I remember it, they spent about $450,000 on automobiles. Then they also hired automobiles to the tune of $90,000. We were interested in the extent into which they were going into industrial development. Mr. BACON asked the question on page 557 of the hearings:

Do you want industry to come in at all?

Dr. MORGAN. This is a part of a national policy and not a local matter. If the State were doing this, it would be perfectly proper or legal anyway to go out and get industries to come in here. It is our policy not to violate old-line methods of chambers of commerce in stealing industries from other localities.

I have before me a letter from the Cleveland Chamber of Commerce, dated March 22, 1935, which says:

In late June or early July of 1934 Mr. F. Woods Beekman, who described himself as the assistant personnel director of the Tennessee Valley Authority, called on me to secure the names of local persons to act either as industrial commissioner for the T. V. A. or assistants to the industrial commissioner, whose duties were to be the solicitation of industries for the T. V. A. The implication was that while the T. V. A. had no expectation that a large factory would move bodily to Tennessee, as it expanded its facilities it would expand the power zone of the T. V. A.

Now, it is perfectly apparent that those people have been sending out solicitors to get people to move down there. To my mind, that is not the proper function of that organization.

Mr. SHORT. Will the gentleman yield?

Mr. TABER. I yield.

Mr. SHORT. Whether the T. V. A. sends out invitations for industry to come there, will not the effect be, if cheap power is developed with the taxpayers' money, that it will attract industries there?

Mr. TABER. It would be, of course, as long as they go ahead with the program in mind. As I understand it, the immediate program that they have in mind, representing $192,900,000, according to their own testimony on page 587, will only yield in gross revenue from the sale of power $5,000,000. That would be, without charging any depreciation, about 2½ percent on the money that has been invested by the taxpayers of this country.

Mr. SHORT. If the Tennessee Valley Authority can take Federal funds out of the Treasury in Washington—that is, taxes paid by the people in the gentleman's district in New York and people in my district in Missouri—and generate hydroelectric power in the Tennessee Valley to put out of existence existing companies already there, what is there to prevent the Federal Government from going out to St. Louis and building many shoe factories to put out of existence the Hamilton Brown Shoe Co., the International Shoe Co., and other companies?

Mr. TABER. Nothing, unless the Supreme Court shall stop it or this Congress shall have sense enough to put the brakes on and stop that kind of doings.

Mr. FOCHT. Will the gentleman yield?

Mr. TABER. I yield.

Mr. FOCHT. For many years we were all appealed to to favor this proposition. In the ramifications of expenditures, does the gentleman not find anything in the shape of compensation in the shape of nitrates that are to be produced there?

Mr. TABER. They claim that we are developing a type of nitrate which is requiring for its development 50 percent of the power of the Wilson Dam. The Wilson Dam a year ago produced net revenue, according to the tables that they gave us, of $713,000. They tell us that this year it is only going to produce revenue of $136,000.

[Here the gavel fell.]

Mr. TABER. Mr. Chairman, I yield myself the balance of the time.

Mr. CRAWFORD. Mr. Chairman, will the gentleman yield?

Mr. TABER. I yield.

Mr. CRAWFORD. The gentleman states they are developing a new type of fertilizer. Is it the idea that after the method of processing is perfected that it will be passed on to some private concern?

Mr. TABER. That is what was said by Dr. Morgan, the agricultural doctor—there are two Dr. Morgans. I do not know anything about the program, but that is what he told us.

Mr. CRAWFORD. That the process will be passed on to private concerns?

Mr. TABER. It will be made public for anybody in the United States to use in the manufacture of fertilizer.

Mr. CRAWFORD. Will there be any method whereby the Government will control the capitalization of the process worked out by the taxpayers' money?

Mr. TABER. I know nothing about that.

Mr. LUNDEEN. Mr. Chairman, will the gentleman yield?

Mr. TABER. I yield.

Mr. LUNDEEN. I take it the gentleman is opposed to the development of the Tennessee Valley.

Mr. TABER. I am opposed to the entire performance that has been going on there. I am opposed to going ahead with any more dams than are now built until we see what happens. As I understand it, the dams that have already been built will stop most of the damage from floods. There is no market for the power at present and there is very little market at any time. These people with the "highfalutin" ideas have not even considered power construction along with the dam construction on the last two dams they are building. I think we ought to stop right where we are and not go further until we see what happens.

I do not believe in the Government paying 2 cents to produce electricity and selling it for 1 cent. I think if we are going to do any business, we ought to do it in the right way; and, anyway, I do not believe in the Government engaging in private business.

Mr. LUNDEEN. If the gentleman will yield further, does not the gentleman think that when we need to create jobs it is a good thing to develop the resources of America?

Mr. TABER. This does not create any jobs to speak of. The cost of creating one job runs into $4,000 or $5,000, as I remember the figures, but I will put the exact figures in the RECORD. If we want to create jobs, the proper way is by giving private industry a chance to recover. [Applause.] Then there will be plenty of jobs.

[Here the gavel fell.]

The CHAIRMAN. All time has expired. The Clerk will read the bill for amendment.

Mr. GRAY of Pennsylvania. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. GRAY of Pennsylvania. At what stage of the reading of the bill will it be proper to offer amendments?

The CHAIRMAN. This being an appropriation bill, it will be read by paragraphs and not by sections. It will be in order to offer an amendment at the end of the reading of any paragraph.

The Clerk read as follows:

House Office Building: For an additional amount for maintenance, including the same objects specified under this head in the Legislative Branch Appropriation Act, 1935, $5,000.

Mr. FOCHT. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I shall speak as closely as I can to the amendment. I know you will be interested, and I hope you always are when I speak, because I am not like the man who made a speech and introduced himself by saying, "One good thing about this speech, I am the last man on the program, and there won't be anything worse to follow." I cannot tell what is going to happen later this afternoon.

Just to illustrate how small the world is, on yesterday afternoon we heard read in this House a message in which the President gave us some notice of what is going to happen to those of us who happen to be millionaires. As an indication of how universal such thoughts may be, my friend FLETCHER, from Ohio, is a very close friend of an author in my home county, a man also well known to former Speaker Rainey and the late William Jennings Bryan, all four being Chautauqua lecturers of national note. The author, Lee Francis Lybarger, of Union County, Pa., I refer to, has written a book entitled "The Big National Gamble." I say to you now that the system proposed by the President yesterday was drawn from this book, first printed last January. This shows how universal the question is, and also that even the White House may draw knowledge from my own county, from this Chautauqua lecturer, Professor Lybarger, brilliant orator, scholar, and philosopher. The President did well in selecting the theories of Professor Lybarger as his guide, although I am in hearty disagreement with most of the heresy enunciated by both.

The Clerk read as follows:

GOVERNMENT PRINTING OFFICE

For payment to Samuel Robinson, William Madden, Preston L. George, and William S. Houston, messengers on night duty during the first session of the Seventy-fourth Congress, $900 each; in all, $3,600, to be paid from the appropriation for printing and binding for Congress for the fiscal year 1935.

Mr. GRAY of Pennsylvania. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GRAY of Pennsylvania: Page 4, line 13, after the word "Houston", insert "Oscar W. Eady, Michael Kostick, Vincent G. Andrews, Daniel O'Connell, Walter Stewart, Philip A. McCall, and William S. Smith, messengers on duty during the first session of the Seventy-fourth Congress, $900 each; in all, $9,900."

Mr. TABER. Mr. Chairman, I make the point of order against the amendment that it is not authorized by law.

The CHAIRMAN. Does the gentleman desire to be heard on the point of order?

Mr. GRAY of Pennsylvania. Is this not an appropriation bill?

The CHAIRMAN. Yes; this is an appropriation bill.

Mr. GRAY of Pennsylvania. Is it not proper, then, to offer this amendment?

The CHAIRMAN. The gentleman from New York makes the point of order against the amendment that there is no authorization for it. The Chair sustains the point of order.

The Clerk read as follows:

EMPLOYEES' COMPENSATION COMMISSION

Salaries and expenses: For an additional amount for salaries and expenses for the United States Employees' Compensation Commission, including the same objects specified under this head in the Independent Offices Appropriation Act, 1928, $1.25.

Mr. CARLSON. Mr. Chairman, I offer an amendment, which I send to the desk.

The Clerk read as follows:

Mr. CARLSON moves to amend H. R. 8554, page 6, by inserting a new paragraph following line 6, entitled "Federal Trade Commission":

"For payment to Mrs. William E. Humphrey, or executor of the estate of William E. Humphrey, $3,017 amount due as salary at time of his death as member of Federal Trade Commission."

Mr. BUCHANAN. Mr. Chairman, I make the point of order that the amendment is new legislation in that the judgment has not been certified according to law.

Mr. CARLSON. Mr. Chairman, I wish to be heard on the point of order. This is a judgment against our Government which is at present pending in the Court of Claims, and the amendment, in my opinion, is not subject to a point of order.

The CHAIRMAN. Has the judgment been certified to Congress?

Mr. CARLSON. It has not, but it will be in a short time. Will the gentleman reserve his point of order?

Mr. BUCHANAN. No; I insist upon the point of order. I think all appropriations of money out of the Federal Treasury should be by regular, systematic methods. When a final judgment has been rendered against the Government by any court, it should be certified to the Congress so that we will have the certified record of the judgment and not depend on what this man says or what that man says, and, as a matter of fact, that is what the law requires. I insist that all money be appropriated out of the Treasury of the United States according to law.

The CHAIRMAN. The Chair is ready to rule.

Mr. CARLSON. Mr. Chairman, we are all familiar with the Supreme Court decision in this matter, and there is no question what the outcome will be. This appropriation will be allowed in the next session of Congress without doubt, and I believe it should be made at this time.

Mr. BUCHANAN. I would suggest to the gentleman that he get the certification of the judgment in the regular way sent to the Senate when this bill comes up for consideration over there.

The CHAIRMAN. The Chair is ready to rule. Under the law, judgments have to be certified to the Congress before an appropriation is made; therefore the Chair sustains the point of order.

The Clerk read as follows:

National Training School for Boys, contract: For an additional amount of care and maintenance of boys committed to the National Training School for Boys by the courts of the District of Columbia under a contract made by the Board of Public Welfare with the authorities of such school for the following fiscal years:
For 1934, $12,590.19;
1935, $60,000.

Mr. BUCHANAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BUCHANAN: On page 15, line 14, strike out the word "of" and insert in lieu thereof the word "for."

Mr. TABER. Mr. Chairman, there are two "ofs" in that line.

Mr. BUCHANAN. I refer to the first one.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. BUCHANAN].

The amendment was agreed to.

The Clerk read as follows:

Contingent expenses: For an additional amount for contingent expenses of the Department of the Interior, fiscal year 1935, including the same objects specified under this head in the Department of the Interior Appropriation Act, fiscal year 1935, fiscal years 1935 and 1936, $5,000.

Mr. BUCHANAN. Mr. Chairman, I offer an amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. BUCHANAN: On page 24, line 15, after the word "Interior", strike out the word "fiscal", and in line 16 strike out the words "year 1935."

The amendment was agreed to.

The Clerk read as follows:

Printing and binding: For an additional amount for printing and binding for the Bureau of Mines, fiscal years 1935 and 1936, $8,000.

Mr. BOILEAU. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, there has been a good deal of time consumed this afternoon in what I assumed at the time was a well-organized filibuster. I should like to know what happened to the filibuster.

Mr. SNELL. Will the gentleman yield?

Mr. BOILEAU. I yield to the gentleman from New York.

Mr. SNELL. The gentleman made reference to me. I have not filibustered. I thought earlier this afternoon we on this side were not being used properly, and I resented it then and I will resent it again, but that had nothing to do with a filibuster.

Mr. BOILEAU. I did not refer to the gentleman himself.

Mr. BLANTON. Mr. Speaker, have we a mediator whom we could send over to the other side of the aisle to conciliate and get this domestic trouble over there adjusted?

Mr. BOILEAU. Mr. Chairman, as I stated, a good deal of time was consumed needlessly this afternoon in what I thought was a well-organized filibuster. I cast no reflection upon any gentleman in making this statement. In view of the fact we have wasted a good deal of time, and in view of the fact that apparently there are no controversial matters in this bill, as it is being read scientifically page after page so rapidly that no Member can possibly know what is being read, and I do not reflect on the Clerk, I ask unanimous consent at this time, in the hope of being able to reclaim some of the wasted time, that the bill may be considered as read, and that amendments may be offered to any part of the bill at this time.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

Mr. BUCHANAN and Mr. MARTIN of Massachusetts objected.

Mr. BOILEAU. Mr. Chairman, I do not see the necessity for reading the bill in this manner. If it is the desire that we adequately consider the bill, I assume it would be possible to put the matter over until some other day or else have a quorum here for the consideration of the bill. I hope the

gentleman from Massachusetts will reconsider his objection to the request which I made, because I assure him that the request was made in order to expedite matters and with no thought of depriving any Member of the right to offer amendments.

Mr. MARTIN of Massachusetts. Will the gentleman yield?

Mr. BOILEAU. I yield to the gentleman from Massachusetts.

Mr. MARTIN of Massachusetts. The gentleman from Wisconsin knows that there were several others objected in addition to myself. May I ask the gentleman if he does not think that Members of the House have a right to offer amendments, or would he deprive them of that privilege?

Mr. BOILEAU. The gentleman did not understand my request. This is not a personal matter with me. I simply asked that the bill be considered as read and that all Members may have the opportunity to offer amendments to any part of the bill, thus doing away with the reading of the same. It is being read in such a way that we certainly cannot hope to follow its reading, and I admit that this is a practice that has been well established in the House.

Mr. MARTIN of Massachusetts. If it has been well established, then the gentleman does not approve of it, if he is a progressive.

Mr. BOILEAU. I am perfectly willing that the Members should have adequate opportunity to offer amendments.

Mr. BLANTON. During this time we could have finished reading the bill by reading it scientifically. [Laughter.]

Mr. BOILEAU. Perhaps we could, but we have not been going as rapidly as I should like.

Mr. SHORT. The gentleman from Wisconsin certainly is not filibustering.

Mr. BOILEAU. Not at all. In view of the fact there are apparent differences between the majority party and the Republican Party in which the Progressives and Farmer-Laborites have no part, I thought it perhaps would not be inadvisable for us to show some disapproval of this general procedure. As a matter of fact, I may state that some of us who are neither Republicans nor Democrats, have been considering the advisability of voicing our protest by continuing the procedure a little longer, but I shall not make any such effort now.

Mr. BLANTON. Mr. Chairman, a point of order. If we are operating under a rule cutting off general debate, what is the use of having such a rule if we are going to continue to allow general debate?

[Here the gavel fell.]

The Clerk read as follows:

For an additional amount for the maintenance and operation of Freedmen's Hospital, fiscal year 1935, including the same objects specified under this head in the Department of the Interior Appropriation Act for the fiscal year 1935, fiscal years 1935 and 1936, $4,000, of which amount one-half shall be chargeable to the District of Columbia and paid in like manner as other appropriations of the District of Columbia are paid.

Mr. BUCHANAN. Mr. Chairman, I offer an amendment to correct the text of the bill.

The Clerk read as follows:

Amendment offered by Mr. BUCHANAN: On page 26, line 25, strike out the words "fiscal year 1935."

The amendment was agreed to.

The Clerk read as follows:

United States penitentiary, Leavenworth, Kans., $22,000.

Mr. FOCHT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FOCHT: On page 31, after line 2, insert: "Northeastern Penitentiary, Lewisburg, Pa., $200,000 for the erection of suitable homes for the accommodation of the officials and associate directing heads of that institution, the sites to be selected by the Director of the Bureau of Prisons, United States Department of Justice."

Mr. BUCHANAN. Mr. Chairman, I make the point of order against the amendment that it is not authorized by law and is legislation on an appropriation bill.

Mr. FOCHT. I may say, Mr. Chairman, the amendment is similar in character and exactly in line with the other appropriations for the other penitentiaries.

Mr. BLANTON. But there is no law authorizing it.

The CHAIRMAN. The point of order is sustained.

The Clerk read as follows:

Expenses, Emergency Banking, Gold Reserve, and Silver Purchase Acts: The unobligated balance of the appropriation of $2,000,000 for "National Banking Emergency, Act March 9, 1933", contained in the Emergency Banking Act, approved March 9, 1933, and the unobligated balance of the appropriation of $4,500,000 for "Expenses, Emergency Banking, Gold Reserve, and Silver Purchase Acts, 1934 and 1935", contained in the Emergency Appropriation Act, fiscal year 1935, approved June 19, 1934, are hereby consolidated, effective July 1, 1936, into an appropriation account, "Expenses, Emergency Banking, Gold Reserve, and Silver Purchase Acts", to remain available until June 30, 1936, and to be expended under the direction of the Secretary of the Treasury for any purpose in connection with the carrying out of the provisions of the Emergency Banking Act, approved March 9, 1933 (48 Stat. 1), the Gold Reserve Act of 1934, approved January 30, 1934 (48 Stat. 337), the Silver Purchase Act of 1934, approved June 19, 1934 (48 Stat. 1178), any Executive orders, proclamations, and regulations issued under the foregoing acts, and section 3653 of the Revised Statutes, including costs of transportation, insurance, and protection of gold coin, gold bullion, and gold certificates transferred to Federal Reserve banks and branches, United States mints and assay offices, and the Treasury, after March 9, 1933, losses sustained by Federal Reserve banks due to abrasion of gold coin, and reimbursement to Federal Reserve banks and branches for expenses incurred by them in carrying out instructions issued by the Secretary of the Treasury after March 4, 1933.

Mr. BUCHANAN. Mr. Chairman, I offer an amendment to correct the language of the bill.

The Clerk read as follows:

Amendment offered by Mr. BUCHANAN: On page 41, line 14, strike out "1936" and insert in lieu thereof "1935."

The amendment was agreed to.

The Clerk read down to and including line 12, on page 47.

Mr. BUCHANAN. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. HANCOCK of North Carolina, Chairman of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill H. R. 8554, the deficiency appropriation bill, had come to no resolution thereon.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows:

To Mr. BUCK, today, on account of important business.

To Mr. POLK, for 1 week, on account of important business.

To Mr. OLIVER, for the rest of the week, on account of illness.

To Mr. STEAGALL, account of death in family.

MONUMENT TO GROVER CLEVELAND

Mr. CELLER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table House Joint Resolution 147, authorizing the erection of a monument to Grover Cleveland in Washington, D. C., with a Senate amendment thereto, and concur in the Senate amendment.

The SPEAKER. The Clerk will report the Senate amendment.

The Clerk read as follows:

Page 2, lines 6 and 7, strike out "Public Buildings and Public Parks of the National Capital" and insert "The National Park Service, Department of the Interior."

The SPEAKER. Is there objection?

There was no objection.

The SPEAKER. The question is on concurring in the Senate amendment.

The Senate amendment was concurred in.

A motion to reconsider the vote by which the Senate amendment was concurred in was laid on the table.

SOCIAL-SECURITY BILL

Mr. DOUGHTON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H. R. 7260) to provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child

welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection?

There was no objection.

The SPEAKER appointed the following conferees: Mr. DOUGHTON, Mr. SAMUEL B. HILL, Mr. CULLEN, Mr. TREADWAY, and Mr. BACHARACH.

WHAT I WOULD DO IF I WERE PRESIDENT

Mr. CARTWRIGHT. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and to include a small quotation.

The SPEAKER. Is there objection?

There was no objection.

Mr. CARTWRIGHT. Mr. Speaker, Young America, a news weekly for youth, some time ago offered a free trip and a week's stay in Washington, D. C., to the winners in a contest for writing the two best essays on What I Would Do If I Were President. Thousands of entries poured in for this competition, which was opened to all boys and girls under 16 years of age. The 10 essays from each division of the United States which were considered the most meritorious by the editors were submitted to a final jury consisting of Arthur Brisbane, Walter Lippmann, and Henry R. Luce for final judgment. The winners in the final contest were Master Gordon B. McLendon, 14, of Idabel, Okla., and Margy Lazarus, 12, of Brooklyn, N. Y. I am proud to say that Gordon McLendon comes from my district and his prize-winning essay is as follows:

If I were President, I would encourage Congress to conclude its labors and return home. Business hardly knows what to expect while the legislative mills are grinding.

I would not worry about balancing the National Budget. This is impossible in the face of such heavy Federal expenditures. This can be taken care of when the recovery program is more advanced.

I would secure the bonus bill enactment with a provision for $1,000,000,000 for its financing to be paid by issuance of silver certificates, thus causing slight but controlled inflation. This would add impetus to national recovery.

I would encourage foreign trade with the United States through permanent representatives stationed abroad.

Stamp out the dole as it is un-American.

Stay out of the World Court, League of Nations, and avoid foreign entanglements.

Stop squandering public moneys on dredging unnavigable rivers and useless attempts to grow forests on barren plains.

Stop making Federal laws that encroach upon State rights.

Would not require taxes on incomes of less than $5,000 but would increase taxes on incomes and inheritances in the higher brackets.

Grant loans to infant aircraft manufacturers and transport companies, slightly increase our standing Army, and encouragement of National Guard training.

Maintain navy comparable to the navies of other great powers.

With these things accomplished the United States would gain the admiration of the civilized world and result in a happy, prosperous, and contented people.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 314. An act for the relief of Vito Valentino; and

S. 1052. An act for the relief of the Washington Post Co.

BILLS PRESENTED TO THE PRESIDENT

Mr. PARSONS, from the Committee on Enrolled Bills, reported that that committee did on this day present to the President, for his approval, bills of the House of the following titles:

H. R. 59. An act to create a national memorial military park at and in the vicinity of Kennesaw Mountain in the State of Georgia, and for other purposes; and

H. R. 2739. An act to extend further time for naturalization to alien veterans of the World War under the act approved May 25, 1932 (47 Stat. 165), to extend the same privileges to certain veterans of countries allied with the United States during the World War, and for other purposes.

ADJOURNMENT

Mr. TAYLOR of Colorado. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 33 minutes p. m.) the House adjourned until tomorrow, Friday, June 21, 1935, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

387. A letter from the Chairman of the Federal Power Commission, transmitting, pursuant to Public Resolution No. 18, Seventy-third Congress (S. J. Res. 74), three copies of the domestic and residential electric energy rates in the State of New Mexico on January 1, 1935; to the Committee on Interstate and Foreign Commerce.

388. A letter from the Chairman of the Federal Power Commission, transmitting, pursuant to Public Resolution No. 18, Seventy-third Congress (S. J. Res. 74), three copies of the domestic and residential electric energy rates in the State of Oregon on January 1, 1935; to the Committee on Interstate and Foreign Commerce.

389. A letter from the Chairman of the Federal Power Commission, transmitting, pursuant to Public Resolution No. 18, Seventy-third Congress (S. J. Res. 74), three copies of the domestic and residential electric energy rates in the State of Utah on January 1, 1935; to the Committee on Interstate and Foreign Commerce.

390. A letter from the Chairman of the Federal Power Commission, transmitting, pursuant to Public Resolution No. 18, Seventy-third Congress (S. J. Res. 74), three copies of the domestic and residential electric energy rates in the State of New Hampshire on January 1, 1935; to the Committee on Interstate and Foreign Commerce.

391. A letter from the Secretary of War, transmitting pursuant to section 10 of the Flood Control Act, approved May 15, 1928, a letter from the Chief of Engineers, United States Army, dated June 17, 1935, submitting a report, together with accompanying papers and illustrations, containing a general plan for the improvement of Little Miami River, Ohio, for the purposes of navigation and efficient development of its water power, the control of floods, and the needs of irrigation; to the Committee on Flood Control.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII,

Mr. MAVERICK: Committee on Military Affairs. H. R. 3419. A bill to repeal a portion of section 12 of the act approved May 18, 1917 (40 Stat. 82); without amendment (Rept. No. 1274). Referred to the House Calendar.

Mr. GAMBRILL: Committee on Naval Affairs. H. R. 8140. A bill to provide for the retirement and retirement annuities of civilian members of the teaching staffs at the United States Naval Academy and the Postgraduate School, the United States Naval Academy; without amendment (Rept. No. 1275). Referred to the Committee of the Whole House on the state of the Union.

Mr. LESINSKI: Committee on Immigration and Naturalization. H. R. 4340. A bill to restrict habitual commuting of aliens from foreign contiguous territory to engage in skilled or unskilled labor or employment in continental United States; with amendment (Rept. No. 1276). Referred to the Committee of the Whole House on the state of the Union.

Mr. BLAND: Committee on Merchant Marine and Fisheries. H. R. 8555. A bill to develop a strong American merchant marine, to promote the commerce of the United States, to aid national defense, and for other purposes; without amendment (Rept. No. 1277). Referred to the Committee of the Whole House on the state of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII,

Mr. ROGERS of New Hampshire: Committee on Military Affairs. S. 457. An act for the relief of John W. Beck; without amendment (Rept. No. 1272). Referred to the Committee of the Whole House.

Mr. ROGERS of New Hampshire: Committee on Military Affairs. S. 886. An act for the relief of Marino Ambrogi; without amendment (Rept. No. 1273). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. KENNEY: A bill (H. R. 8585) to authorize the purchase of the bust of Abraham Lincoln by Charles Henry Niehaus; to the Committee on the Library.

By Mr. McREYNOLDS: A bill (H. R. 8586) granting the consent of Congress to the State of Tennessee and certain of its political subdivisions to construct, maintain, and operate a toll bridge across the Tennessee River at or near a point between Dayton and Decatur, Tenn.; to the Committee on Interstate and Foreign Commerce.

By Mr. SUMNERS of Texas: A bill (H. R. 8587) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and acts amendatory thereof and supplementary thereto; to the Committee on the Judiciary.

By Mr. ROGERS of Oklahoma (by departmental request): A bill (H. R. 8588) to authorize the deposit and investment of Indian funds; to the Committee on Indian Affairs.

By Mr. BLAND: Resolution (H. Res. 268) for the consideration of H. R. 8555; to the Committee on Rules.

By Mr. NICHOLS: Resolution (H. Res. 269) authorizing the Committee on Territories to hold hearings on H. R. 3034; to the Committee on Rules.

Also, resolution (H. Res. 270) providing expenses for hearings authorized by House Resolution 269; to the Committee on Accounts.

MEMORIALS

Under clause 3 of rule XXII, memorials were presented and referred as follows:

By the SPEAKER: Memorial of the Legislature of the State of California, supporting Senate bill 1793; to the Committee on Indian Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. FIESINGER: A bill (H. R. 8589) granting an increase of pension to Rachael M. Kuhn; to the Committee on Invalid Pensions.

By Mr. HOBBS: A bill (H. R. 8590) for the relief of Mrs. Willie McNelly Todd; to the Committee on Claims.

By Mr. KOPPLEMANN: A bill (H. R. 8591) granting a pension to Rose D. Carleton; to the Committee on Pensions.

By Mr. MASON: A bill (H. R. 8592) granting a pension to Charles E. Waters; to the Committee on Pensions.

Also, a bill (H. R. 8593) for the relief of William H. Harris; to the Committee on Military Affairs.

Also, a bill (H. R. 8594) granting a pension to Jimmie Robert Walsh; to the Committee on Pensions.

By Mr. QUINN: A bill (H. R. 8595) to correct the naval record of Emanuel R. McCusker; to the Committee on Naval Affairs.

By Mr. SHORT: A bill (H. R. 8596) granting a pension to Mary Jane Patterson; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

8923. By Mr. ANDREWS of New York: Petition of the Legislature of the State of New York, urging allocation of funds by Secretary Ickes for slum clearance in borough of Brooklyn, N. Y.; to the Committee on Ways and Means.

8924. Also, petition of the Legislature of the State of New York, urging enactment of legislation to humanize immigration laws for reuniting of persons and families; to the Committee on Immigration and Naturalization.

8925. Also, petition of the Legislature of the State of New York, urging legislation for the relief of George S. Ward, a citizen of New York; to the Committee on Claims.

8926. Also, petition of the Legislature of the State of New York, urging repeal of current taxes on sales of gasoline; to the Committee on Ways and Means.

8927. Also, petition of the Legislature of the State of New York, favoring legislation to commemorate General Pulaski's birthday; to the Committee on the Judiciary.

8928. Also, petition of the Legislature of the State of New York, referring to legislation for regulation in interstate commerce by motor carriers; to the Committee on Interstate and Foreign Commerce.

8929. Also, petition of the Legislature of the State of New York, recommending public works for the benefit of the city of Cohoes, N. Y.; to the Committee on Ways and Means.

8930. Also, petition of the Legislature of the State of New York, favoring passage of the social-security bill; to the Committee on Ways and Means.

8931. Also, petition of the Legislature of the State of New York, urging legislation to prevent lynching; to the Committee on the Judiciary.

8932. By Mr. FORD of California: Joint Resolution No. 22, of the California Assembly, requesting the President and the Congress to cause an invitation to be extended to the peoples of the world to participate in the Pacific Exposition at Los Angeles during 1937–38; to the Committee on Foreign Affairs.

8933. Also, resolution of the California Legislature, memorializing Congress to repeal the act entitled "An act to amend the Tariff Act of 1930", by which reciprocal trading pacts are being secretly negotiated; also, California Assembly resolution, asking that military training and service be accorded to all citizens alike without consideration of race or color; and California Assembly resolution petitioning the President to give favorable consideration to Senate bill 1793, which provides relief for the Indians of California; to the Committee on Ways and Means.

8934. Also, resolution of the California Assembly, memorializing Congress to pass a bill restoring pensions to Spanish-American War veterans; also, a resolution memorializing the President and Congress to provide remunerative employment for the blind citizens of the United States and its possessions; and memorializing the President and Congress to make amends to those disabled war veterans who have been deprived of their just and lawful compensation; to the Committee on Pensions.

8935. By Mr. JOHNSON of Texas: Petition of David Murphy, vice president City National Bank; C. A. Chambers, manager Munger Cotton Oil Co.; J. Sandford Smith, president Prendergast Smith National Bank; Mexia Chamber of Commerce, all of Mexia, Tex., opposing the Dockweiler bill, eliminating inedible Philippine coconut oil from excise tax; to the Committee on Ways and Means.

8936. By Mr. KRAMER: Resolution of the Assembly of the California Legislature, relative to memorializing the President and Congress of the United States to make amends to those disabled war veterans who have been deprived of their just and lawful compensation; to the Committee on Pensions.

8937. Also, resolution of the Assembly of the California Legislature, relative to memorializing Congress to pass a bill restoring pensions to Spanish-American War veterans; to the Committee on Pensions.

8938. Also, resolution of the Assembly of the California Legislature, relative to memorializing the President and the Congress of the United States to enact House bill 6628, which proposes to provide remunerative employment for the blind citizens of the United States and its possessions, and urging the Committee on Labor of the House of Representatives

to expedite consideration favorable to said bill; to the Committee on Labor.

8939. By Mr. PFEIFER: Petition of Branch Y, Local 4, National Federation Federal Employees, Stapleton, Staten Island, N. Y., favoring House bills 8458 and 8459; to the Committee on the Civil Service.

8940. By Mr. RUDD: Petition of Branch Y, Local 4, National Federation Federal Employees' St. George, Staten Island, N. Y., favoring the 30-day annual cumulative leave bill (H. R. 8458) and 15-day cumulative sick leave bill (H. R. 8459); to the Committee on the Civil Service.

8941. By the SPEAKER: Petition of the city and county of Honolulu, Hawaii; to the Committee on the Territories.

SENATE

FRIDAY, JUNE 21, 1935

(Legislative day of Monday, May 13, 1935)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

THE JOURNAL

On request of Mr. ROBINSON, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Thursday, June 20, 1935, was dispensed with, and the Journal was approved.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Haltigan, one of its reading clerks, announced that the House had agreed to the amendment of the Senate to the joint resolution (H. J. Res. 147) authorizing the erection of a monument to Grover Cleveland in Washington, D. C.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 7260) to provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. DOUGHTON, Mr. SAMUEL B. HILL, Mr. CULLEN, Mr. TREADWAY, and Mr. BACHARACH were appointed managers on the part of the House at the conference.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The message further announced that the Speaker had affixed his signature to the following enrolled bills and joint resolution, and they were signed by the Vice President:

S. 314. An act for the relief of Vito Valentino;

S. 1052. An act for the relief of The Washington Post Co.; and

H. J. Res. 147. Joint resolution authorizing the erection of a monument to Grover Cleveland in Washington, D. C.

SUPPLEMENTAL ESTIMATE, LIBRARY OF CONGRESS (S. DOC. NO. 74)

The VICE PRESIDENT laid before the Senate a communication from the President of the United States, transmitting a supplemental estimate of appropriation (relative to books for the adult blind) for the legislative establishment, and pertaining to the Library of Congress, fiscal year 1936, in the sum of $75,000, which, with the accompanying papers, was referred to the Committee on Appropriations and ordered to be printed.

SUPPLEMENTAL ESTIMATE, NATIONAL CAPITAL PARK AND PLANNING COMMISSION (S. DOC. NO. 73)

The VICE PRESIDENT laid before the Senate a communication from the President of the United States, transmitting a supplemental estimate of appropriation for the National Capital Park and Planning Commission, to be immediately available and to remain available until expended, amounting to $800,000, which, with the accompanying paper, was referred to the Committee on Appropriations and ordered to be printed.

SUPPLEMENTAL ESTIMATES, DEPARTMENT OF THE INTERIOR (S. DOC. NO. 72)

The VICE PRESIDENT laid before the Senate a communication from the President of the United States, transmitting two supplemental estimates of appropriations (pertaining to legislative expenses, Territory of Alaska, 1935, and the temporary government for the Virgin Islands, 1936) for the Department of the Interior, fiscal year 1935, $3,050, and for the fiscal year 1936, $40,000; in all, $43,500, which, with the accompanying papers, was referred to the Committee on Appropriations and ordered to be printed.

SUPPLEMENTAL ESTIMATE, PETROLEUM ADMINISTRATION (S. DOC. NO. 75)

The VICE PRESIDENT laid before the Senate a communication from the President of the United States, transmitting a supplemental (revised) estimate of appropriation for the Department of the Interior, fiscal year 1936, in the amount of $600,000 (being a substitute for the estimate transmitted to Congress under date of May 15, 1935, and printed in H. Doc. No. 186, 74th Cong.), to carry out the provisions of law to regulate interstate and foreign commerce in petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of State law, etc., which, with the accompanying paper, was referred to the Committee on Appropriations and ordered to be printed.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate the following concurrent resolutions of the Legislature of the State of New York, which were referred to the Committee on Commerce:

Whereas in 1921 the States of New York and New Jersey entered into a compact whereby they undertook the future planning and development of the port of New York and created the Port of New York Authority as their joint agent and trustee to provide adequate highway and railway communication within the port of New York district; and

Whereas in 1922, with the approval of Congress, the two States adopted a comprehensive plan for the development of the port of New York, with particular regard to railroad facilities and improvements; and

Whereas in 1931, by chapter 47, Laws of New York, 1931, and chapter 4, Laws of New Jersey, 1931, the two States declared and agreed that the vehicular traffic movement across the waters between the States of New York and New Jersey constituted a general movement of traffic, and further agreed that the construction, maintenance, operation, and control of all such bridges and tunnels heretofore and hereafter authorized by the two States should be unified under the Port Authority; and

Whereas the Port Authority is now operating the George Washington Bridge and the Holland Tunnel, constructed at an aggregate cost of approximately $95,000,000, and is engaged in the construction of the Midtown Hudson Tunnel at a cost of approximately $38,000,000, which said facility was included in the comprehensive program of public works pursuant to the National Industrial Recovery Act, and is now in the course of construction; and

Whereas in 1890 the North River Bridge Co. procured a corporate charter from Congress authorizing it to construct a railroad and vehicular bridge across the Hudson River between the State of New Jersey and the city of New York, and to build freight terminals in connection therewith; and

Whereas the said company originally planned to build such bridge in Hoboken, N. J., but has revised and altered its plans and now intends to build it in the vicinity of Fifty-seventh Street and to a corresponding point over the Hudson River in the State of New Jersey; and

Whereas although 45 years have elapsed, such bridge has not been constructed and the plans therefor are still on paper and the two States have since developed and are effectuating a railroad and vehicular program in the port district; and

Whereas there is not and will not for many years to come be sufficient vehicular traffic across the Hudson River in the mid-Manhattan area to justify the construction of both the Midtown Hudson Tunnel and the proposed Fifty-seventh Street bridge; and

Whereas the proposed bridge is in direct conflict with all elements of the carefully conceived plans of the two States for the solution of the railroad and vehicular-communication problems in the port of New York district, and tends to place these plans and the interests of the two States in jeopardy and is contrary to sound Federal and State policy: Now, therefore, be it

Resolved (if the senate concur), That the President and Congress of the United States are hereby memorialized and requested to repeal the charter of the North River Bridge Co., which was granted by act of Congress of the United States (ch. 669, 1889–90, 51st Cong., and Public Act No. 350, 67th Cong., 1922); and

That a copy of this resolution be transmitted by the Secretary of State to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Mem-